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

Information Note on the Court's case-law

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Inhuman treatment

Failure of authorities to take adequate measures to protect applicant and her daughters from domestic violence: *violation*

Eremia v. the Republic of Moldova - 3564/11
Judgment 28.5.2013 [Section III]

Facts – The first applicant was married to a police officer who would often came home drunk and beat her in the presence of their two teenage daughters, the second and third applicants. After having been fined and given a formal warning by the authorities, he became even more violent and allegedly almost suffocated his wife in November 2010. On 9 December 2010 a district court issued a protection order requiring him to vacate the family home and not to contact any of the applicants. On 13 December the first applicant asked for a criminal investigation to be initiated. Further incidents occurred on 16 and 19 December and were reported to the police and on 13 January the husband entered the family home in breach of the protection order and threatened to kill the first applicant unless she withdrew her criminal complaint. That incident was also reported. However, the criminal investigation was suspended for one year provided the husband did not reoffend after the prosecutor found that although there was substantive evidence of guilt the husband had committed a "less serious offence", had no history of drug or alcohol abuse and "did not represent a danger to society". That decision was upheld by a senior prosecutor on appeal.

Law – Article 3: On 9 December 2010 the district court decided that the situation was sufficiently serious to warrant a protection order being made in respect of the first applicant, who had subsequently obtained medical evidence of ill-treatment. Moreover, the fear of further assaults was sufficiently serious to have caused her suffering and anxiety amounting to inhuman treatment within the meaning of Article 3, which was therefore applicable.

By 13 January 2011, when the first applicant met the prosecutor to discuss her husband's alleged breaches of the protection order, the authorities had sufficient evidence of his violent behaviour and of the risk of further violence. The first applicant was particularly vulnerable to violence in the privacy of the family home from her husband, who, as a police officer, was trained to overcome any resistance. The risk to her physical and psychological well-being was imminent and serious enough to require swift action. Although the authorities had not remained totally passive – the husband had been fined and given a formal warning – none of these measures had proved effective.

However, instead of taking decisive action, the authorities had suspended the investigation into his violent behaviour and offered him the possibility of a complete release from criminal liability if he did not reoffend. Given his repeated assaults on the first applicant and blatant disregard of the protection order it was unclear how the prosecutor could have found that he was "not a danger to society" and decided to suspend the investigation against him. Yet the senior prosecutor had subsequently arrived at the same conclusion only four days after a court had extended the protection order on the grounds that the husband still posed a significant risk. In the Court's view, the suspension of the criminal investigation in such circumstances had had the effect of shielding the husband from criminal liability rather than deterring him from committing further violence, and had resulted in his virtual impunity. The State had thus failed to observe its positive obligations under Article 3.

Conclusion: violation in respect of the first applicant (unanimously).

Article 8: On 9 December 2010 the district court found that the second and third applicants' psychological well-being was being adversely affected as a result of witnessing their father's violence against their mother and made an order extending protection to them also. By late December 2010 the authorities were clearly aware of the husband's breaches of the protection order as well as of his threatening and insulting behaviour towards the first applicant and the effect it was having on the second and third applicants. However, as the Court had already found with respect to the first applicant, little or no action had been taken to prevent the recurrence of such behaviour. On the contrary, despite a further serious assault on 13 January 2011, the husband had eventually been released from all criminal liability. The authorities had therefore not properly complied with their positive obligations under Article 8 in respect of the second and third applicants.

Conclusion: violation in respect of the second and third applicants (unanimously).

Article 14 in conjunction with Article 3: The Court reiterated that a State's failure to protect women against domestic violence breached their right to be equally protected under the law. In the instant case, the first applicant had been repeatedly subjected to violence from her husband and the authorities were well aware of the situation. However, the courts had refused to expedite her divorce, the police had allegedly put pressure on her to withdraw her criminal complaint and the social services had failed to enforce the protection order until 15 March 2011 and had even suggested reconciliation since she was "not the first nor the last woman to[have been] beaten up by her husband". Finally, although he had confessed to beating up his wife, the husband had essentially been exempted from all responsibility following the prosecutor's decision to conditionally suspend the proceedings against him.

The combination of these factors clearly demonstrated that the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman. The findings of the United Nations Special Rapporteur on Violence against Women, its Causes and Consequences only went to support the impression that the authorities did not fully appreciate the seriousness and extent of the problem of domestic violence in the Republic of Moldova and its discriminatory effect on women.

Conclusion: violation in respect of the first applicant (unanimously).

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

(See also: *E.S. and Others v. Slovakia*, no. 8227/04, 15 September 2009, Information Note no. 122; *Opuz v. Turkey*, no. 33401/02, 9 June 2009, Information Note no. 120; *A. v. Croatia*, no. 55164/08, 14 October 2010, Information Note no. 134; *Hajduová v. Slovakia*, no. 2660/03, 30 November 2010, Information Note no. 135; *Kalucza v. Hungary*, no. 57693/10, 24 April 2012; and *Valiulienė v. Lithuania*, no. 33234/07, 26 March 2013, Information Note no. 161)

ARTICLE 5

Article 5 § 1 (a)

After conviction

Applicant's continued placement in psychiatric hospital after expiry of his prison term: *no violation*

Radu v. Germany - 20084/07
Judgment 16.5.2013 [Section V]

Facts – In 1995 the applicant was convicted of homicide and sentenced to eight and a half years' imprisonment and placement in a psychiatric hospital on grounds of diminished responsibility. In making the order for the applicant's placement, the sentencing court relied on expert evidence indicating that he suffered from a serious personality disorder characterised by violent outbursts and diminished capability to control his acts and was likely to kill again if he found himself in a similar conflict situation. No appeal was lodged against that order, which therefore became final. After spending four years in prison, the applicant was transferred to a psychiatric hospital in 1998. However, in subsequent proceedings for review of his detention, the medical director of the hospital concluded that the applicant's placement was wrongful as, although he had an "accentuated personality" and was very likely to reoffend if released, he was not in fact suffering from a persisting pathological mental disorder and lacked the motivation to complete a course of therapy. The court dealing with the execution of sentences then ordered his return to prison, where he served the remainder of his prison sentence. In the meantime, however, the court of appeal upheld a decision by the regional court not to declare the applicant's placement in a psychiatric hospital at an end, despite further expert psychiatric evidence confirming the medical director's view that the applicant had not been suffering from a serious personality disorder diminishing his criminal responsibility at the time the offence was committed. The court of appeal considered that even though the sentencing court's order for the applicant's placement in a psychiatric hospital was the result of an erroneous legal qualification, that qualification could not be corrected by the courts dealing with the execution of sentences without violating the constitutional principle of the finality of judicial decisions. Accordingly, after completing his prison sentence in October 2003 the applicant

was transferred to a psychiatric hospital. The domestic courts came to a like conclusion on a further review of the applicant's psychiatric placement in 2006 and the Federal Constitutional Court declined to consider the applicant's constitutional complaint.

In his application to the European Court, the applicant complained that his continued confinement in a psychiatric hospital had violated his right to liberty as his detention had been prolonged despite the fact that it had been established that he did not suffer and had in fact never suffered from a condition diminishing or excluding his criminal responsibility.

Law – Article 5 § 1 (a): The Court firstly had to establish whether there was a sufficient causal connection between the applicant's conviction by the sentencing court in 1995 and his continuing deprivation of liberty from 2006 onwards. In that connection, it noted that both the sentencing court and the courts dealing with the execution of sentences agreed that the applicant suffered from a personality disorder and was likely to commit further offences if released. Further, even though they disagreed on the legal qualification of that disorder, the courts dealing with the execution of sentences had accepted that the classification by the sentencing court had acquired legal force and could not be changed. In that, connection, the Court noted that a court's reliance on the findings in a final judgment of a criminal court to justify a person's detention, even if such findings were or may have been wrong, did not, as a rule, raise an issue under Article 5 § 1: a flawed conviction would render a detention unlawful only if the conviction were the result of a flagrant denial of justice, which was not the case here. Given that the courts dealing with the execution of sentences had pursued the aims of protecting the public and providing treatment for the applicant's personality disorder, the Court was satisfied that their decision not to release the applicant had been based on grounds consistent with the aims pursued by the sentencing court when ordering his detention in a psychiatric hospital. There therefore remained a sufficient causal connection for the purposes of sub-paragraph (a) of Article 5 § 1 between the applicant's conviction in 1995 and his continuing detention in a psychiatric hospital. Such continuation of the applicant's detention had a legal basis in domestic law, which under the domestic jurisprudence had been foreseeable in his case. Furthermore, the domestic courts had given detailed reasons for their decisions and their interpretation of the applicable provision of domestic law was aimed at protecting the finality of the sentencing court's judgment, which could not be seen as contravening as such the purpose of Article 5. Finally, the applicant had not been arbitrarily deprived of his liberty since the domestic courts' application of the domestic law did not render his release impossible as soon as it could be concluded that he would not commit any further unlawful acts. As the applicant had not yet met that condition, the execution of the detention order against him had not been suspended. The order for the applicant's continued confinement in a psychiatric hospital was therefore "lawful" and "in accordance with a procedure prescribed by law", as required by Article 5 § 1.

Conclusion: no violation (five votes to two).

Article 5 § 1 (b)

Lawful order of a court

Detention in police station of person required by unlawfully issued court order to undergo psychiatric examination: *violation*

Petukhova v. Russia - 28796/07
Judgment 2.5.2013 [Section I]

Facts – In January 2006 the police requested a clinic to carry out a psychiatric examination of the applicant following complaints they had received from neighbours about her behaviour. Seven months later, relying exclusively on evidence from the police that the applicant had at the time refused to consent to a voluntary examination, a psychiatrist at the clinic filed an application with a district court for her involuntary examination. The request was granted in the applicant's absence on 18 August 2006. On 1 December 2006, at the clinic's request, the applicant was apprehended by the police and taken to a police station where she was held for four hours before being transferred to a psychiatric hospital where she was eventually informed of the court order. Her appeals against the decision authorising her involuntary examination were dismissed. In her application to the European Court, she complained of an unlawful deprivation of her liberty at the police station on 1 December 2006.

Law – Article 5 § 1 (b): The purpose of the district court's order of 18 August 2006 was not to authorise the applicant's involuntary hospitalisation as a person of "unsound mind" in accordance with Article 5 § 1 (e) but to ensure she submitted to a

psychiatric examination she had allegedly refused. The restrictions on her rights had therefore relied on the exception set out in Article 5 § 1 (b), which allowed deprivation of liberty in order to ensure compliance with "a lawful order of a court". Therefore, the Court had to determine whether the court order had been lawful and enforced in compliance with that provision.

Under Russian law, involuntary psychiatric examinations could only be conducted in exceptional circumstances, and only in the event that the refusal to have an examination was duly recorded by a psychiatrist, supported by evidence and reviewed by a judge. For her part, the applicant asserted that she had never refused consent. From the material before the Court, it could be seen that her alleged lack of consent had only been mentioned in the application for an involuntary examination and was substantiated solely on the basis of a conversation the psychiatrist had had with a police officer seven months earlier. Even more importantly, the district court had authorised her involuntary examination without duly verifying whether she had in fact objected to the examination in her conversation with the police officer or whether she had changed her mind since. The district court's order of 18 August 2006 had therefore been unlawful.

As regards its enforcement by the Russian authorities, the Court reiterated that persons deprived of their liberty for non-compliance with a lawful order of a court had to have had an opportunity to comply and have failed to do so, either implicitly or explicitly. A refusal to undergo certain measures suggested by the authorities (a healthcare institution and the police in the present case) prior to such measures being ordered by a court, did not necessarily imply refusal to comply with an authoritative judicial decision. In fact, there was no evidence that the applicant had been informed of the order of 18 August 2006 or given an opportunity to comply with it. On 1 December 2006, whilst unaware of the order that had been issued three months earlier, she had unexpectedly been taken to a police station where, instead of being transferred directly to a psychiatric facility for examination, she had been detained for four hours. No reason had been given as to why her detention in the police station had been necessary for the enforcement of the order. Her detention had therefore been unlawful.

Conclusion: violation (unanimously).

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

ARTICLE 6

Article 6 § 1 (civil)

Access to court

Lengthy delays in examination of patent application rendering right of appeal to a court meaningless: *violation*

Kristiansen and Tyvik AS v. Norway - 25498/08
Judgment 2.5.2013 [Section I]

Facts – The applicants jointly owned a patent application that was lodged with the Norwegian Industrial Property Office (NIPO) in 1990. The application was ultimately refused by the NIPO in a decision that was upheld by the Board of Appeals (an internal patents appeal body) in September 2008. By then the twenty-year period of protection that would have applied had the patent been granted was due to expire just two years later. The applicants do not appear to have challenged the Board of Appeals' decision in the domestic courts.

In their application to the European Court, the applicants alleged that, as a result of the excessive length of the proceedings before the national patent authorities and the twenty years' limitation on patent protection under the Patents Act, their right of access to a court had become illusory, in breach of Article 6 § 1 of the Convention.

Law – Article 6 § 1: The Court reiterated that in civil length-of-proceedings cases examined under Article 6 § 1 the period to be taken into consideration did not necessarily start when the competent tribunal was seized but could also encompass the prior administrative phase. In the instant case, there could be little doubt that the length of the administrative proceedings had been excessive. Due to the considerable lapse of time and the twenty years' limitation on the protection offered by the Patents Act, the applicants' exercise of their right of access to a court had become illusory. That state of affairs had resulted in a limitation on the applicants' right of access to a court, which limitation was not only arbitrary for the purposes of the Article 6 § 1 guarantee but had also impaired the very essence of that right.

Conclusion: violation (unanimously).

Article 41: EUR 15,000 to the first applicant in respect of non-pecuniary damage.

Lack of access to court for person seeking restoration of her legal capacity: *violation*

Nataliya Mikhaylenko v. Ukraine - 49069/11
Judgment 30.5.2013 [Section V]

Facts – In 2007 the applicant was deprived of her legal capacity on the grounds that she was suffering from a serious mental illness. Gradually, her mental health improved. In 2009 her guardian applied for her legal capacity to be restored, but the application was dismissed without being considered on the merits owing to the guardian's repeated failure to appear in court. In 2010 the applicant herself lodged an application for her legal capacity to be restored. However, both it and her subsequent appeals were dismissed on the grounds that the Code of Civil Procedure did not provide her with the right to lodge such an application.

Law – Article 6 § 1: Under the domestic legislation it was for the applicant's guardian or the guardianship authority to raise the issue of restoration of her legal capacity before a court. However, the guardian's application had been dismissed without being considered on the merits as the guardian had not appeared before the court. The applicant had had no procedural status in those proceedings and could not influence them. Her subsequent personal application for restoration of her legal capacity was not considered either because the Code of Civil Procedure did not afford her the right to lodge such an application. However, the Code did not indicate that a declaration of legal incapacity was subject to any automatic judicial review and the duration for which that measure had been ordered in respect of the applicant had not been limited in time. Thus, by virtue of clear and foreseeable rules of domestic law, the applicant could not personally apply to a court for restoration of her legal capacity.

Restrictions on the procedural rights of persons deprived of their legal capacity could be justified to protect their own or others' interests or for the proper administration of justice. However, the approach pursued by the domestic law in the instant case, according to which incapacitated persons had no right of direct access to a court with a view to having their legal capacity restored, was not in line with the general trend at European level. Moreover, as regards the situation in Ukraine, the general prohibition on direct access to a court by that category of individuals did not leave any room for exception. Nor did the domestic law provide safeguards requiring the matter of restoration of legal capacity to be reviewed by a court at reasonable intervals. Lastly, it had not been shown that the domestic authorities had effectively supervised the applicant's situation, including the performance of the guardian's duties, or taken the requisite steps to protect her interests. Therefore, the applicant's inability to directly seek the restoration of her legal capacity had resulted in that matter not being examined by the courts. The absence of judicial review of that issue, which had seriously affected many aspects of the applicant's life, could not be justified by the legitimate aims underpinning the limitations on access to a court by incapacitated persons. The situation in which the applicant had been placed had amounted to a denial of justice as regards the possibility of securing a review of her legal capacity.

Conclusion: violation (unanimously).

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

(See also *Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012, Information Note no. 148)

Article 6 § 1 (criminal)

Equality of arms
Independent and impartial tribunal

Trial by judge sitting alone owing to risk of jury tampering: *inadmissible*

Twomey, Cameron and Guthrie v. the United Kingdom - 67318/09 and 22226/12
Decision 28.5.2013 [Section IV]

Facts – The case concerned the power under section 46 of the Criminal Justice Act 2003 for a judge in a trial on indictment to discharge the jury where jury tampering appears to have taken place. The provision also enables the judge to continue the trial alone if satisfied that tampering has in fact taken place and that continuing without a jury would be fair to the defendant.

The first and second applicants were convicted of robbery related charges by a judge sitting alone after the jury had been discharged by the original trial judge on the grounds that a "serious attempt at jury tampering" had taken place during the trial. The material on which the original trial judge relied in reaching that finding was not disclosed to the defence, but defence counsel were able to make representations on the proposal to discharge. The Court of Appeal subsequently ordered that the retrial should be conducted by a judge sitting alone without a jury in view of the very significant danger of jury tampering.

In unrelated proceedings, the third applicant was convicted of fraud with three co-defendants after the trial judge had discharged the jury following allegations of tampering and had decided to try the case alone. The material on which the allegations were made was not disclosed to the defence, but the defence received a gist statement outlining the nature of the allegations and were also given leave to lodge an interlocutory appeal against the judge's decision. At the interlocutory appeal, the Court of Appeal upheld the trial judge's ruling, observing that nothing considered by her under public-interest immunity principles should have been disclosed to the defence; that the gist statement accurately summarised the effect of the undisclosed material; and that there was nothing in the material to suggest that the trial judge should have disqualified herself from continuing with the trial.

In their applications to the European Court, all the applicants complained that the decision to proceed without a jury had been made on the basis of material which was not disclosed to them. The third applicant also complained, *inter alia*, of the risk of bias inherent in the decision of the trial judge in her case to continue without a jury after seeing the undisclosed evidence of jury tampering.

Law – Article 6 § 1: As regards the applicants' complaint that the decision to proceed without a jury had been made on the basis of material which was not disclosed to them, it was important to note that the undisclosed material did not concern the applicants' guilt or innocence, but the separate issue of whether there had been an attempt to contact members of the jury. The material had been relied on by the prosecution solely in relation to the procedural question whether the jury should be discharged and whether the trial should proceed before a judge sitting alone. When deciding whether adequate safeguards had been provided to the defence, the fact that what was at stake was the mode of trial rather than conviction or acquittal had to weigh heavily in the balance. In both cases, the defence had been given the opportunity to make representations as to whether or not the jury should be discharged and to make full submissions on the fairness of continuing without a jury. In the Court's view, the procedure followed had afforded the defence sufficient safeguards, taking into account, on the one hand, the important public-interest grounds against disclosing the relevant evidence to the defence and, on the other, the fact that all that was to be determined was whether the trial should continue before a judge sitting alone or a judge sitting with a jury, two forms of trial which in principle were equally acceptable under Article 6. While the circumstances in which evidence relating to jury tampering could be withheld from the defence were not set out in the legislation, this had not caused unfairness to the defence since the categories of material covered by public-interest immunity were well established in common law.

The Court did not accept the third applicant's argument that there was a risk of bias inherent in the trial judge's decision to continue alone in her case. The trial judge had not seen any undisclosed material that was related to one of the elements of the offences charged and, as an experienced criminal judge, perfectly understood that a conviction could be entered only where the prosecution evidence met the standard of proof beyond reasonable doubt. The legislative provisions in question served the interests of justice, in that individuals accused of criminal offences should not be permitted to escape justice through any attempt to interfere with the jury. Whether, after discharge of the jury, the trial proceeded before the original judge or recommenced before a new judge, as had occurred in the case of the first and second applicants, that judge would know that there had been strong evidence of jury tampering at an earlier stage. Any prejudice thereby caused to the defence in either of the present applications was, in the Court's view, negligible and, moreover, justified by the public interest at stake.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 8

Positive obligations
Respect for private life

Lack of clear legal guidelines regulating the prescription of a drug to enable individual not suffering from a terminal illness to commit suicide: *violation*

Gross v. Switzerland - 67810/10
Judgment 14.5.2013 [Section II]

Facts – For many years, the applicant had expressed the wish to end her life as she was becoming increasingly frail with the passage of time and was unwilling to continue suffering the decline of her physical and mental faculties. She was found to be able to form her own judgement. Following a failed suicide attempt, she decided that she wished to end her life by taking a lethal dose of sodium pentobarbital. However, four medical practitioners declined to issue the requested prescription. At least two of them declined her request on the

grounds that they considered they were prevented from doing so by the medical practitioners' code of conduct or feared lengthy judicial proceedings and, possibly, negative professional consequences. The administrative courts rejected the applicant's appeal.

Law – Article 8: The applicant's wish to be provided with a dose of sodium pentobarbital allowing her to end her life fell within the scope of her right to respect for her private life under Article 8 of the Convention. The case primarily raised the question whether the State had failed to provide sufficient guidelines defining whether medical practitioners were authorised to issue a medical prescription to a person in the applicant's condition and, if so, under what circumstances.

In Switzerland inciting and assisting suicide were punishable only where the perpetrator of such acts was driven to commit them by "selfish motives". Under the case-law of the Swiss Federal Supreme Court, a doctor was entitled to prescribe sodium pentobarbital in order to allow his patient to commit suicide, provided that specific conditions laid down in the Federal Supreme Court's case-law were fulfilled. The Federal Supreme Court, in its case-law on the subject, had referred to the medical ethics guidelines on the care of patients at the end of their life, which had been issued by a non-governmental organisation and did not have the formal quality of law. Furthermore, the guidelines only applied to patients whose doctor had arrived at the conclusion that a process had started which, as experience had indicated, would lead to death within a matter of days or a few weeks. As the applicant was not suffering from a terminal illness, her case clearly did not fall within the scope of application of those guidelines. The Government had not submitted any other material containing principles or standards which could serve as guidelines. This lack of clear legal guidelines was likely to have a chilling effect on doctors who would otherwise have been inclined to provide someone such as the applicant with the requested medical prescription. The uncertainty as to the outcome of her request in a situation concerning a particularly important aspect of her life must have caused the applicant a considerable degree of anguish. This state of anguish and uncertainty would not have occurred if there had been clear, State-approved guidelines defining the circumstances under which medical practitioners were authorised to issue the requested prescription in cases where an individual had come to a serious decision, in the exercise of his or her free will, to end his or her life, but where death was not imminent as a result of a specific medical condition. The Court acknowledged that there may be difficulties in finding the necessary political consensus on such controversial questions with a profound ethical and moral impact. However, these difficulties were inherent in any democratic process and could not absolve the authorities from fulfilling their task therein. The foregoing considerations were sufficient to conclude that Swiss law, while providing the possibility of obtaining a lethal dose of sodium pentobarbital on medical prescription, did not provide sufficient guidelines ensuring clarity as to the extent of this right.

As regards the substance of the applicant's request to be granted authorisation to acquire a lethal dose of sodium pentobarbital, it was primarily up to the domestic authorities to issue comprehensive and clear guidelines. Accordingly, the Court confined itself to the conclusion that the absence of clear and comprehensive legal guidelines had violated the applicant's right to respect for her private life under Article 8 of the Convention, without in any way taking up a stance on the substantive content of such guidelines.

Conclusion: violation (four votes to three).

Article 41: no claim made in respect of damage.

Failure of authorities to take adequate measures to protect daughters traumatised as a result of witnessing their father's violent assaults on their mother: *violation*

Eremia v. the Republic of Moldova - 3564/11
Judgment 28.5.2013 [Section III]

(See Article 3 above, page 7)

Positive obligations
Respect for private life
Respect for family life

Refusal to allow a change of patronymic: *violation*

Garnaga v. Ukraine - 20390/07
Judgment 16.5.2013 [Section V]

Facts – In March 2004 the applicant, a Ukrainian national, lodged a request for a change of her patronymic to one derived from her stepfather's forename. The Registration Office refused on the grounds that the Rules on Civil Status Registration laid down that a person's patronymic could be

changed only in the event of a change of his or her father's forename. The applicant appealed without success. In parallel, in May 2004 she changed her original surname to the surname of her stepfather which was also the surname of her mother and half-brother.

Law – Article 8: The patronymic as a part of a personal name was traditionally derived from the name of the father of the person concerned. Ukrainian legislation recognised, however, that when individuals became mature enough to make their own decisions concerning their names they could keep or change the name given to them at birth. It was particularly noteworthy that a person could preserve his or her patronymic even when his or her father no longer held the forename from which it derived. The new Civil Code enacted on 1 January 2004 laid down that an individual could change the patronymic if his or her father had changed his forename. The domestic authorities had interpreted that provision as a clear indication that a change of name by the father was the only possible ground for changing a person's patronymic. It was a matter of dispute between the parties whether the restriction of the applicant's right was based on law or on an incorrect interpretation of the law. At the relevant time various provisions were in existence, which suggested that the issue of change of patronymic had not been formulated with sufficient clarity. Nevertheless it was undisputed that the right of the individual to keep his or her name was recognised in the Ukrainian legislation, as well as the right to change it. Indeed, the Ukrainian system of changing names appeared to be rather flexible and a person could change his or her name by following a special procedure with only minor restrictions which were applicable in very specific circumstances, mainly related to criminal-justice considerations. In this situation, the restrictions on changing the patronymic did not appear to have been properly and sufficiently reasoned by the domestic law. Furthermore, no justification for denying the applicant her right to decide this important aspect of her private and family life had been given by the domestic authorities and no such justification had otherwise been established. As the authorities had not balanced the relevant interests at stake they had not fulfilled their positive obligation of securing the applicant's right to respect for her private life.

Conclusion: violation (unanimously).

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

Respect for family life

Deportation order issued against wife of Netherlands national and mother of his three children for overstaying following expiration of tourist visa: *relinquishment in favour of the Grand Chamber*

Jeunesse v. the Netherlands - 12738/10
[Section III]

The applicant is a Surinamese national, who entered the Netherlands in 1997 on a tourist visa and continued to reside there after her visa expired. She married a Netherlands national and the couple had three children. The applicant applied for a residence permit on several occasions, but her requests were dismissed as she did not hold a provisional residence visa issued by the Netherlands mission in her country of origin. In 2010 she spent four months in detention with a view to deportation. She was eventually released because she was pregnant.

On 4 December 2012 a Chamber of the Court declared the applicant's complaint under Article 8 admissible and the remainder of her application inadmissible. On 14 May 2013 it decided to relinquish its jurisdiction in the case in favour of the Grand Chamber.

ARTICLE 9

Manifest religion or belief

Ban on wearing religious face covering in public: *relinquishment in favour of the Grand Chamber*

S.A.S. v. France - 43835/11
[Section V]

The applicant, a practising Muslim, wears the burqa and the niqab, which cover her whole body except for her eyes, in order to live according to her faith, culture and personal beliefs. She says that she wears this clothing of her own free will, both in public and in private, but not systematically. Since 11 April 2011, the date of entry into force of law no. 2010-1192 of 11 October 2010, throughout French territory it is prohibited to conceal one's face in public places. The applicant complains of a violation of Articles 3, 8, 9, 10, 11 and 14 of the Convention.

ARTICLE 14

Discrimination (Article 8)

Failure of judicial system to provide adequate response to serious domestic violence against women: *violation*

Eremia v. the Republic of Moldova - 3564/11
Judgment 28.5.2013 [Section III]

(See Article 3 above, page 7)

Refusal to include woman registered as the mother's civil partner on child's birth certificate: *inadmissible*

Boeckel and Gessner-Boeckel v. Germany - 8017/11
Decision 7.5.2013 [Section V]

Facts – The applicants are two women who have been living together in a registered civil partnership since 2001. In 2008 the second applicant gave birth to a son. A birth certificate was issued naming her as the mother. The space provided in the form for the father's name was left blank. In 2009 the applicants concluded an agreement whereby the child would be adopted by the first applicant. The district court granted the adoption order and declared that the child obtained the legal position of a child of both applicants. In the meantime the applicants requested the district court to rectify the child's birth certificate by inserting the first applicant as the second parent. They submitted that the Civil Code, which stipulated that the father was the man who was married to the mother of the child at the time of birth, should be applied *mutatis mutandis* in cases where the mother lived in a registered civil partnership with another woman and argued that it was irrelevant whether the mother's husband was indeed the biological father of the child born into the union. There was thus no reason to treat children born into a civil partnership any differently from children born in wedlock. The domestic courts rejected their request and subsequent appeal.

Law – Article 14 in conjunction with Article 8: In view of the fact that the first applicant had eventually obtained full legal status as the child's second parent, the question arose whether the applicants could still claim to be victims of a violation of their Convention rights within the meaning of Article 34 of the Convention. However, having regard to the nature of the applicants' complaint, the Court based its further examination on the assumption that the applicants could still claim to be victims of a violation of their Convention rights in view of the fact that the first applicant had had to undergo the adoption process in order to be recognised as the second parent. The applicants lived together in a registered civil partnership and were raising the child together. It followed that the relationship between the two applicants and the child amounted to "family life" within the meaning of Article 8 of the Convention. Accordingly, Article 14 of the Convention in conjunction with Article 8 was applicable.

The first issue to be addressed was whether the applicants, who had been living together in a registered same-sex civil partnership when the second applicant had given birth to a child, were in a situation which was relevantly similar to that of a married different-sex couple in which the wife had given birth to a child. The Court took note of the domestic courts' reasoning according to which section 1592 § 1 of the Civil Code contained the – rebuttable – presumption that the man who was married to the child's mother at the time of birth was the child's biological father. This principle was not called into question by the fact that this legal presumption might not always reflect the true descent. The Court also noted that it was not confronted with a case concerning transgender or surrogate parenthood. Accordingly, in cases where one partner of a same-sex partnership gave birth to a child, it could be ruled out on biological grounds that the child descended from the other partner. The Court accepted that, under these circumstances, there was no factual foundation for a legal presumption that the child descended from the second partner. Having regard to the above considerations, it could not be said that the applicants had found themselves in a relevantly similar situation to a married husband and wife in respect of the entries made in the birth certificate at the time of birth. Consequently, there was no appearance of a violation of Article 14 of the Convention read in conjunction with Article 8.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies
Effective domestic remedy – Sweden

Failure to seek compensation in the domestic courts or through the Chancellor of Justice for a Convention violation: *inadmissible*

Ruminski v. Sweden - 10404/10
Decision 21.5.2013 [Section V]

Facts – In his application to the European Court the applicant complained under Article 6 § 1 of the Convention of procedural unfairness in proceedings before the administrative courts for a life annuity. The respondent Government argued that his application was inadmissible as he had failed to seek compensation in the domestic courts or through the Chancellor of Justice, as permitted by domestic law.

Law – Article 35 § 1: The European Court had considered in its judgment in *Eriksson v. Sweden* (no. 60437/08, 12 April 2012) that, since the Supreme Court's judgment of 3 December 2009 (NJA 2009 N 70), there had been an effective remedy in Sweden capable of affording redress through compensation in respect of alleged Convention violations. It saw no reason to come to a different conclusion in the instant case as Article 6 of the Convention had already been the subject of several Supreme Court cases and the Chancellor of Justice had already dealt with the specific question of a lack of reasoning in judgments. The applicant's contention that the only appropriate redress would have been a rehearing of his case was rejected as it was clear from the European Court's case-law that it accepted compensation as suitable redress. As to the choice of remedy, applicants could choose which of the two potentially effective remedies available in Sweden – lodging a complaint with the Chancellor or suing the State before the ordinary courts – to take. Since the applicant had failed to use either remedy his application was inadmissible.

Conclusion: inadmissible (failure to exhaust domestic remedies).

Exhaustion of domestic remedies
Effective domestic remedy – Turkey

Non-exhaustion of a new accessible and effective constitutional remedy: *inadmissible*

Uzun v. Turkey - 10755/13
Decision 30.4.2013 [Section II]

Facts – Decisions that have become final since 23 September 2012 may be appealed against using a new remedy before the Turkish Constitutional Court, which now has jurisdiction to examine individual applications concerning the fundamental freedoms and rights protected by the Constitution and by the European Convention on Human Rights and Protocols thereto, after ordinary remedies have been exhausted.

On 25 September 2012 the Court of Cassation upheld a decision, which the applicant challenged, to register in the name of a third party a plot of land previously used by him. The applicant did not use the aforementioned new remedy.

Law – Article 35 § 1: The Court first looked at the practical aspects of the remedy, such as its accessibility and the provisions for lodging an individual application, before examining the legislature's intentions in creating the new procedure, as regards the scope of the Constitutional Court's jurisdiction, the means granted to it, and the extent and effects of its decisions.

(a) *Accessibility* – The individual application to the Constitutional Court was not subject to any prior remedy or request other than the ordinary remedies. Potential applicants were entitled to lodge their appeal with any national court and therefore did not need to travel or to follow a complicated procedure. The time-limit of thirty days was, in principle, a reasonable one, and there was an extraordinary extension of fifteen days in situations where it was impossible to lodge the appeal within the normal deadline. Lastly, the court costs charged for lodging such an appeal did not detract from its accessibility. They did not appear excessive and the applicants were entitled to seek legal aid. The accessibility of this Constitutional Court procedure did not therefore appear problematic.

(b) *Provisions for use of the remedy* – The Court took note of the following factors: the new rules of the Constitutional Court had become effective well before the entry into force of the legislative provisions concerning individual applications; the Constitutional Court had jurisdiction to ask any authority for information or documents that it needed for its examination of the appeal and for

the purposes of a hearing; a system was in place to rectify any discrepancies in the case-law; the Constitutional Court was entitled to indicate interim measures, of its own motion or at the request of the applicant, when it found this necessary for the protection of his or her rights; lastly, the scope of the Constitutional Court's jurisdiction *ratione materiae* extended to the Convention and to the Protocols thereto ratified by Turkey. In view of the foregoing, the Court found that the procedure before the Constitutional Court afforded, in principle, an appropriate mechanism for the protection of human rights and fundamental freedoms.

(c) *The legislature's intentions* – The legislative and regulatory provisions concerned appeared to grant the Constitutional Court the necessary means for the implementation of the individual remedy mechanism. The Turkish Parliament had demonstrated its intention to entrust the Constitutional Court with specific jurisdiction to establish a breach of Convention provisions and to give it the appropriate powers to secure redress for violations, by granting compensation and/or by indicating the means of redress, which could and should enable the Constitutional Court, if necessary, to prohibit the authority concerned from continuing to breach the right in question and to order it to restore, as far as possible, the *status quo ante*. The number of judges on the bench had been increased and sufficient resources had been made available for the functioning of the registry. The Constitutional Court's decisions bound all the organs of the State and any individual or legal entity. The question of compliance, in practice, with the Constitutional Court's decisions concerning an individual application should not, in principle, arise in Turkey. It was sufficient to note that, in the past, even a decision to dissolve a political party which was in power as part of a coalition government, had been enforced.[1]

Accordingly, it was for the individual claiming to be a victim to test the limits of that protection. As that had not been the case, the present application had to be declared inadmissible. The Court reserved the right to examine the consistency of the Constitutional Court's case-law with its own. It would be for the respondent Government to prove that the remedy was effective, both in theory and in practice.

Conclusion: inadmissible (non-exhaustion of domestic remedies).

1. *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 et al., 13 February 2003, Information Note 50.

Failure to bring action for damages in administrative courts while case against alleged defendant was still pending before the criminal courts: *inadmissible*

Güvenç v. Turkey - 43036/08
Decision 21.5.2013 [Section II]

Facts – A member of the three applicants' family died after being electrocuted because of an electrical fault in the water pump of a fountain in the gardens of a mosque. The applicants applied to the Court alleging a violation of Article 2 of the Convention, and also complained, under Article 6, about the length of the criminal proceedings against a municipal employee responsible for the maintenance of the fountain.

Law – Article 35 § 1: The applicants had not lodged a claim for compensation with the administrative courts. Had they done so, they would have given the authorities an opportunity to afford redress for the alleged damage within the domestic legal system, and to acknowledge wrongful negligence on the part of the administrative authorities in the maintenance and supervision of their infrastructures which had resulted in their relative's death. It should be noted in this connection that the civil claim was not dependent on the outcome of the criminal proceedings in this case. Unlike in the French legal system examined in the case of *Perez v. France* ([GC], no. 47287/99, 12 February 2004), which established the principle that "civil proceedings must await the outcome of criminal proceedings", under Turkish law victims could submit a claim for compensation to the civil or administrative courts at the same time as – or even after – the criminal action. The administrative or civil courts were not bound by criminal law considerations when ruling on a person's liability. They were not obliged to comply with the rules of criminal law or with a criminal court's decision to acquit someone of the act at the origin of the civil proceedings, or to go along with the criminal court's findings as regards the existence or the seriousness of a fault. Therefore, if the applicants had lodged a claim for damages with the administrative courts, those courts would not have based their findings on criminal law considerations but on the principles of administrative law governing the liability of the administrative authorities.

Conclusion: inadmissible (failure to exhaust domestic remedies).

Article 35 § 3: As to the allegedly unreasonable length of the criminal proceedings instituted against a third party before the criminal court, the

Court noted that although the applicants had applied to join the proceedings as an intervening civil party, they had never submitted a quantified claim for damages or even expressly claimed compensation for their loss before the criminal courts. In other words, they had joined the proceedings as an intervening civil party for purely punitive purposes. That being so, the fact that they had joined the criminal proceedings as an intervening civil party did not fall within the scope of Article 6 of the Convention.

Conclusion: inadmissible (incompatible *ratione materiae*).

Article 35 § 2 (b)

Same as matter submitted to other procedure

Trade union officers closely associated with previous procedure of international investigation instituted by the applicant trade union: *inadmissible*

The Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers (POA) and Others v. the United Kingdom - 59253/11
Decision 21.5.2013 [Section IV]

Facts – In 2004 the first applicant, a trade union, lodged a complaint in respect of a statutory ban on industrial action by prison officers with the Committee on Freedom of Association of the International Labour Organization (ILO), alleging a breach of the right to strike under ILO Convention No. 87. The Committee concluded that the State was required to compensate prison officers for the otherwise justified limitation of their right to strike and has also periodically reviewed the situation, most recently in 2012.

In their application to the European Court, the first applicant, joined by the second and third applicants, two trade-union officers, complained under Article 11 of the Convention that the ban was an unjustified restriction on the exercise of their right to freedom of association and that there were no adequate measures in place to compensate them for the restriction.

Law – Article 35 § 2 (b): Even though the Government had not raised a preliminary objection to this end, the Court first examined of its own motion whether the applicants' complaint was "substantially the same as a matter ... already ... submitted to another procedure of international investigation". For this admissibility criterion to apply, the application to the Court must be "substantially the same" as a complaint brought before another international procedure as regards the substance and the complainant. In this case the ILO Committee on Freedom of Association was already recognised as constituting another international procedure for the purposes of this admissibility criterion and the applicants' complaint before the Court was virtually identical to the one raised before that body. However, that complaint had only been raised by the first applicant – the trade union – whereas the second and third applicants were not, and could not be, parties to that previous complaint, as the procedure was collective in nature with standing confined to trade unions and employer organisations. Nonetheless, the second and third applicants had to be seen as being closely associated with the proceedings and the complaints brought before the ILO by virtue of their status as officers of the first applicant. Their individual situations were in no way unique, but instead exemplified the effects of the statutory ban complained of both before the ILO and before the Court. Allowing them to maintain their action before the Court would therefore have been tantamount to circumventing Article 35 § 2 (b) of the Convention.

Conclusion: inadmissible (same as matter submitted to other procedure).

(See also *Fédération hellénique des syndicats des employés du secteur bancaire v. Greece* (dec.), no. 72808/10, 6 December 2011; *Cereceda Martín and Others v. Spain*, no. 16358/90, Commission decision of 12 October 1992)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Disproportionately high taxation of applicant's severance pay: *violation*

N.K.M. v. Hungary - 66529/11
Judgment 14.5.2013 [Section II]

Facts – The applicant, who had been a civil servant for thirty years, was dismissed on 27 May 2011 with effect from 28 July 2011. On dismissal, she was statutorily entitled to her salary for June and July 2011, a sum corresponding to unused leave of absence, and eight months' severance pay. These sums were subsequently taxed pursuant to a law that had entered into force on 14 May 2011 raising tax levels on severance pay in the public sector. As a result, the applicant had an overall tax burden of

approximately 52% on her severance pay, compared to the general personal income-tax rate of 16% at the relevant time.

Law – Article 1 of Protocol No. 1: The severance pay constituted a substantive interest which "had already been earned or was definitely payable" and so was to be regarded as a "possession" for the purposes of Article 1 of Protocol No. 1. The fact that tax was imposed on this income demonstrated that it was regarded as existing revenue by the State, since imposing tax on a non-acquired property or revenue would be inconceivable. The impugned taxation represented an interference with the applicant's right to the peaceful enjoyment of her possessions. The applicant had been notified of her dismissal approximately ten weeks after the entry into force of the amended legislation in May 2011; accordingly, the taxation complained of was not retroactive. Although certain issues as to the constitutionality of the legislation had been raised, it could nevertheless be accepted as providing a proper legal basis for the measure in question. The Court accepted that the impugned measure was intended to protect the public purse against excessive expenditure.

As to the question of proportionality, the States enjoyed a wide margin of appreciation in the area of taxation, which in the interests of social justice and economic well-being might legitimately lead them to adjust, cap or even reduce the amount of severance pay normally due. At 52%, the overall tax rate applied in the applicant's case considerably exceeded the rate applied to all other revenues, including severance pay in the private sector. The personal situation of the applicant, who had suffered a substantial deprivation of income as a result of her unemployment, was also relevant. In the Court's view, she and a group of other dismissed civil servants had been made to bear an excessive and disproportionate burden without the legislature having afforded her a transitional period of adjustment to the new scheme. Moreover, the tax had been directly deducted by the employer from the severance pay without any individualised assessment of her situation and was imposed on income related to activities prior to the material tax year. Taxation at a considerably higher rate than that in force when the revenue was generated could be regarded as an unreasonable interference with the right protected by Article 1 of Protocol No. 1. In conclusion, the measure applied in the applicant's case was not reasonably proportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 41: EUR 11,000 in respect of pecuniary and non-pecuniary damage.

Reduction in remuneration, benefits, bonuses and retirement pensions of public servants: *inadmissible*

Koufaki and Adedy v. Greece
- 57665/12 and 57657/12
Decision 7.5.2013 [Section I]

Facts – In 2010 the Greek Government adopted a series of austerity measures, including reductions in the remuneration, benefits, bonuses and retirement pensions of public servants, with a view to reducing public spending and reacting to the economic and financial crisis the country was facing. In July 2010 the applicants took the matter before the Supreme Administrative Court: the first applicant applied to the court to annul her pay-slip; the second applicant – the Public Service Trade Union Confederation – sought judicial review because of the detrimental effect of the measures on the financial situation of its members. On 20 February 2012 the Supreme Administrative Court rejected the applications.

Law – Article 1 of Protocol No. 1: The restrictions introduced by the disputed austerity measures could be considered as an interference with people's legal right to the peaceful enjoyment of their possessions. The measures had been justified by the exceptional crisis, which was unprecedented in the recent history of Greece and called for an immediate reduction in public spending. The aims of the measures were in the general interest and in that of the Member States of the euro zone, whose obligation it was to observe budgetary discipline and preserve the stability of the zone. The legislature had a wide margin of appreciation in implementing social and economic policies.

Two consecutive laws had provided for measures of a permanent and retroactive nature, applied to all public servants indiscriminately, providing for a 20% reduction in their salaries and pensions as well as reductions in other allowances and benefits. The measures introduced by the second law were considered necessary by the legislature because those taken under the first law had proved insufficient to resolve the country's dire economic predicament. In its judgment of 20 February 2012 the Supreme Administrative Court rejected several arguments based on the alleged breach of the principle of proportionality by the disputed measures,

considering that the fact that the salary and pension reductions were not purely provisional measures was justified because the aim was not merely to remedy the immediate acute budgetary problem but also to strengthen the country's financial stability in the long term. The Supreme Administrative Court also referred to the Court's case-law concerning reductions in salaries and pensions in several States against the same general backdrop of economic crisis. In addition, it observed that the applicants had not claimed in so many words that their situation had deteriorated to such an extent that their very subsistence was in jeopardy.

The Court considered that the reduction of the first applicant's salary from EUR 2,435.83 to EUR 1,885.79 was not such that it risked exposing her to subsistence difficulties incompatible with Article 1 of Protocol No. 1. Regard being had to the above and to the particular climate of economic hardship in which it occurred, the interference in issue could not be considered to have placed an excessive burden on the applicant. As regards the second applicant, the removal of the thirteenth and fourteenth months' pensions had been offset by a one-off bonus. Substitute solutions alone did not make the disputed legislation unjustified. So long as the legislature did not overstep the limits of its margin of appreciation, it was not for the Court to say whether they had chosen the best means of addressing the problem or whether they could have used their power differently.

Conclusion: inadmissible (manifestly ill-founded).

Loss of entitlement to favourable pension rights acquired as a result of employment in the State Security Service of the former communist regime in Poland: *inadmissible*

Cichopek and Others v. Poland - 15189/10 et al.
Decision 14.5.2013 [Section IV]

Facts – Pursuant to the provisions of a law enacted in 2009, the pension rights accumulated by former members of the Polish State Security Service between 1944 and 1990 during the communist regime were reduced. The applicants maintained that they had been required to bear an excessive burden on account of the abrupt, drastic and belated change to their personal circumstances brought about by a law which they considered to be punitive in its effect and a form of collective punishment for their previous employment. 1,628 such cases were filed with the Court.

Law – Article 1 of Protocol No. 1 – The Court recalled at the outset that the reduction of a pension might constitute an interference with "possessions" which required justification. In the applicants' case the interference – the loss of part of their pensions – had a lawful basis in the 2009 Act and pursued the legitimate aim of putting an end to pension advantages regarded as unwarranted or acquired unjustly, in order to ensure greater fairness in the pension system. For the Court, given the reason for which the pension advantages had been granted and the manner in which they had been acquired, they had to be regarded as manifestly unjust from the point of view of the values underlying the Convention. The reductions had not exceeded on average 25-30% and in most cases, notwithstanding the reductions, the applicants continued to receive more than the average pension in Poland. As regards the applicants' argument that the State had waited too long before adopting the impugned measures, the Court noted that the political transition in the post-communist countries involved numerous complex, far-reaching and controversial reforms which necessarily had to be spread over time. It was thus for the national authorities to decide, having regard to the public interest at stake, when such measures should be introduced. Referring to the wide margin of appreciation afforded to those Contracting States engaged in the reform of their political, legal and economic system following their liberation from authoritarianism, the Court concluded that the very essence of the applicants' rights had not been impaired.

Conclusion: inadmissible (manifestly ill-founded).

(See also *Domalewski v. Poland* (dec.), no. 34610/97, 15 June 1999, Information Note no. 7; *Janković v. Croatia* (dec.), no. 43440/98, 12 October 2000, Information Note no. 23; *Schwengel v. Germany* (dec.), no. 52442/99, 2 March 2000; *Lessing and Reichelt v. Germany* (dec.), nos. 49646/10 and 3365/11, 16 October 2012)

Statutory transformation of former police officer's pension into a service allowance: *communicated*

Markovics v. Hungary - 77575/11
[Section II]

The applicant, a retired police officer, was entitled to a service pension of approximately EUR 430. In November 2011 the Hungarian Parliament transformed service pensions of all former mem-

bers of law-enforcement agencies, fire brigades and defence forces into service allowances, which were subject to income tax and other less favourable conditions.

In his application to the European Court, the applicant complains under Article 1 of Protocol No. 1 that the abolition of his service pension amounts to an unjustified and discriminatory interference with the peaceful enjoyment of his possessions. There are about 12,000 cases pending before the Court raising the same issue.

Deprivation of property

Invalidation ten years after the event of privatisation of hostel and all subsequent transfers of property without compensation: *violation*

Maksymenko and Gerasymenko v. Ukraine - 49317/07
Judgment 16.5.2013 [Section V]

Facts – In 2004 the applicants purchased a hostel that had been privatised in 1995 from S., a private company in liquidation. However, in 2006 the domestic courts invalidated the original 1995 decision to privatise the hostel and all subsequent transfers of property and ruled that ownership of the hostel was to be transferred to the town council. The applicants were awarded compensation to be paid by S, but this was never paid. In 2007 the regional court of appeal found in a separate case that the privatisation of another hostel in 1995 had been lawful, since hostels did not form part of State housing stock. Subsequently, the town council sold to their occupants twelve of the fourteen apartments at the hostel that had been purchased by the applicants.

Law – Article 1 of Protocol No. 1: There had been a deprivation of property which amounted to interference with the applicants' right to the peaceful enjoyment of their possessions. The decision of 2006 invalidating the 1995 decision to privatise was based on a provision of national law which appeared unclear as there was no single approach at national-court level on whether "hostels" were caught by the prohibition on privatising "housing stock". The State authorities had, with a view to protecting the housing rights of others, corrected what they considered to be an erroneous interpretation of the law in force more than ten years earlier. In this context, the principle of good governance had particular importance and in addition to imposing an obligation on the authorities to act promptly to correct a mistake, could also require the payment of adequate compensation or another type of appropriate reparation. Before taking the decision to sell the hostel to the applicants, the board of creditors had informed the State authorities of possible complications but in January 2004 the town mayor had explicitly refused to take over ownership of the hostels. A year later the prosecutor had instituted court proceedings seeking to invalidate the contract of sale of the hostel on the grounds that the hostel should not have been privatised in the first place. However, a year after the decision satisfying the prosecutor's claim was upheld by a higher court, 85% of the hostel apartments had been sold on to their occupants. This confirmed that the State did not intend to keep the hostel for use as social housing. Lastly, the applicants had not received any compensation for the property. Although the domestic courts had ordered S. to pay compensation, they must have been aware by then that the company was already insolvent. In such circumstances, the Court was not convinced that the applicants were required to institute further proceedings to claim damages from the State and so dismissed the Government's objection in that regard. Accordingly, even assuming the interference in question was based on clear and foreseeable provisions of the national law and was aimed at protecting the housing rights of others, the fact that the applicants, who were bona fide purchasers, were unable to obtain compensation for their losses, which had been inflicted on them by the inconsistent and erroneous decisions of the State authorities, constituted a disproportionate burden.

Conclusion: violation (unanimously).

Article 41: EUR 3,000 in respect of non-pecuniary damage; EUR 6,127 in respect of pecuniary damage.

ARTICLE 3 OF PROTOCOL No. 1

Vote

Restriction on voting rights of non-resident citizens: *no violation*

Shindler v. the United Kingdom - 19840/09
Judgment 7.5.2013 [Section IV]

Facts – The applicant, a British national, left the United Kingdom in 1982 following his retirement

and moved to Italy with his Italian wife. After fifteen years residence overseas he was no longer entitled to vote in parliamentary elections in the United Kingdom. In his application to the European Court he argued that the fifteen-year time-limit on non-resident voting rights was not proportionate and violated his right to vote under Article 3 of Protocol No. 1. In that connection, he noted that he had retained very strong ties with the United Kingdom and was affected by matters such as pensions, banking, financial regulations, taxation and health, which were all the subject of political decisions there.

Law – Article 3 of Protocol No. 1: The restriction on non-resident voting pursued the legitimate aim of confining the parliamentary franchise to those citizens with a close connection to the United Kingdom and who would therefore be most directly affected by its laws. The restriction did not impair the very essence of the right to vote as non-residents were permitted to vote in national elections for fifteen years following their emigration and the right was in any event restored if the person concerned returned to live in the United Kingdom.

Since the applicant had contended that any restriction on voting in national elections based on residence was of itself disproportionate, the Court had to examine, firstly, whether Article 3 of Protocol No. 1 required Contracting States to grant the right to vote to non-resident citizens without any restriction based on residence and, secondly, whether the legislation disenfranchising non-residents after fifteen years of non-residence was a proportionate limitation on the right to vote which struck a fair balance between the competing interests.

On the first of these issues, the Court reviewed the activities of various Council of Europe bodies and found that they demonstrated a growing awareness at European level of the problems posed by migration in terms of political participation in countries of origin and residence. However, none of the material formed a basis for concluding that, as the law currently stood, States were under an obligation to grant non-residents unrestricted access to the franchise. Likewise, although there was a clear trend in the laws and practices of member States in this sphere in favour of allowing voting by non-residents, and a significant majority in favour of an unrestricted right, it could not be said that the stage had been reached where a common approach or consensus in favour of an unlimited right to vote for non-residents could be identified. Although the matter may need to be kept under review, the margin of appreciation enjoyed by the States in this area thus remained wide.

Turning to the second issue (proportionality) the fifteen-year period during which non-residents were allowed to vote after leaving the country was not unsubstantial. The fact that the applicant might personally have preserved a high level of contact with the United Kingdom, have detailed knowledge of its day-to-day problems and be affected by some of them did not render the imposition of the fifteen-year rule disproportionate as, while they require close scrutiny, general measures which do not allow for discretion in their application may nonetheless be compatible with the Convention. Having regard to the significant burden which would be imposed if the respondent State were required to ascertain in every application to vote by a non-resident whether the individual had a sufficiently close connection to the country, the Court was satisfied that the general measure in this case served to promote legal certainty and to avoid the problems of arbitrariness and inconsistency inherent in weighing interests on a case-by-case basis. It was also relevant that Parliament had sought to weigh the competing interests in the case on several occasions and had debated the question of non-residents' voting rights in some detail. Indeed, the evolution of its views could be seen in amendments to the period of non-residence since the introduction of overseas voting in 1985.

In sum, regard being had to the margin of appreciation available to the domestic legislature, the restriction imposed by the respondent State on the applicant's right to vote could be considered proportionate to the legitimate aim pursued. The legislation thus struck a fair balance between the applicant's interest in participating in parliamentary elections in his country of origin and the chosen legislative policy of the respondent State to confine the parliamentary franchise to citizens with a close connection with the United Kingdom who would therefore be most directly affected by its laws.

Conclusion: no violation (unanimously).

RULES OF COURT

The following provisions of the Rules of Court have been amended with effect from 1 May 2013 (the amendments were adopted by the Plenary Court on 14 January and 6 February 2013):

Rule 8 – Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections

Rule 18A – Non-judicial rapporteurs

Rule 27A – Single-judge formation

Rule 39 – Interim measures

Rule 54A – Joint examination of admissibility and merits

Rule 72 – Relinquishment of jurisdiction in favour of the Grand Chamber

The Rules of Court can be downloaded from the Court's Internet site (www.echr.coe.int – Official texts).

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Jeunesse v. the Netherlands - 12738/10
[Section III]

(See Article 8 above, page 14)

S.A.S. v. France - 43835/11
[Section V]

(See Article 9 above, page 14)

COURT NEWS

Adoption of Protocol No. 15 amending the Convention

On 16 May 2013 the Committee of Ministers adopted Protocol No. 15 amending the European Convention on Human Rights. The Protocol will be opened for signature on 24 June 2013, in Strasbourg.

To maintain the effectiveness of the European Court of Human Rights, this Protocol makes the following changes to the Convention:

• adding a reference to the principle of subsidiarity and the doctrine of the margin of appreciation to the Preamble of the Convention;

• shortening from six to four months the time-limit within which an application must be made to the Court;

• amending the "significant disadvantage" admissibility criterion to remove the second safeguard preventing rejection of an application that has not been duly considered by a domestic tribunal;

• removing the right of the parties to a case to object to relinquishment of jurisdiction over it by a Chamber in favour of the Grand Chamber;

• replacing the upper age limit for judges by a requirement that candidates for the post of judge be less than 65 years of age at the date by which the list of candidates has been requested by the Parliamentary Assembly.

For additional information, please consult the official website of the Treaty Office (www.conventions.coe.int).

New version of Court website launched

In May 2013 the Court launched its newly-designed Internet site (www.echr.coe.int). The website of the Court has been revamped in order to give users better access to a wider range of information relating to the organisation of the Court, its activities and case-law. New features include an enhanced search option, dynamic news feeds and more comprehensive information on the Court and the Registry. The website will be regularly updated and items will be added or developed over the next few months.

The URL address remains the same (www.echr.coe.int). However, as a consequence, hyperlinks to documents hosted on the old site no longer work (except for the links related to the Hudoc database). Please note that all information related to the Court's case-law – including monthly Information Notes – can be found at this new address: www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis

RECENT PUBLICATIONS

Handbook on European law relating to asylum, borders and immigration

This handbook – the second joint publication by the Court and the European Union Agency for Fundamental Rights – is the first comprehensive guide to European law relating to asylum, borders and immigration.

It focuses on law covering the situation of third-country nationals in Europe and covers a broad range of topics, including access to asylum procedures, procedural safeguards and legal support in asylum and return cases, detention and restrictions to freedom of movement, forced returns, and economic and social rights. It also takes into account both the case-law of the European Court of Human Rights and that of the Court of Justice

of the European Union in the areas of asylum, borders and immigration.

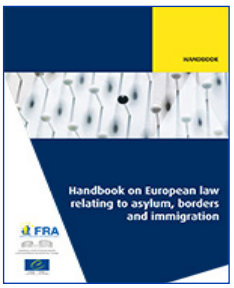
The handbook is currently available in four languages (English, French, German and Italian), with seven further language versions (Bulgarian, Croatian, Greek, Hungarian, Polish, Romanian and Spanish) to follow later this year. It can be downloaded from the Court's Internet site (www.echr.coe.int – Publications).

Handbook (eng)

Manuel (fra)

Handbuch (deu)

Manuale (ita)



Annual Report 2012: execution of judgments of the Court

The Committee of Ministers' sixth annual report on the supervision of the execution of judgments of the European Court of Human Rights was issued in May 2013. The report includes detailed statistics highlighting the main tendencies of the evolution of the execution process in 2012 and a thematic overview of the most important developments in the execution of the cases pending before the Committee of Ministers. It can be downloaded from the Internet site of the Council of Europe's Directorate General of Human Rights and Rule of Law (www.coe.int – Protection of human rights – Execution of judgments of the Court).

Russian edition of the Court's anniversary book

The Russian edition of the Court's anniversary book *The Conscience of Europe: 50 Years of the European Court of Human Rights* was launched in April in Moscow in the presence of representatives from governmental bodies, legal professions, civil society and various media outlets.

The Russian edition was published in cooperation with iRGa 5 Ltd (Moscow) and Third Millennium Information Ltd (London). The richly-illustrated book is in large-format and comes with updated and additional content tailored to the Russian-speaking readership.

The Court's anniversary book was published in early 2011 – with the help of a generous contribution from the Ministry of Foreign Affairs of the Grand Duchy of Luxembourg – to conclude the celebrations marking the Court's 50th anniversary in 2009 and the 60th anniversary of the European Convention on Human Rights in 2010.

The original editions in English and French are no longer available from the publisher but can be downloaded from the Court's Internet site (www.echr.coe.int – Publications). Excerpts from the Russian edition will also be made available online at a later date.