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ARTICLE 3

Degrading treatment

Handcuffing of patient on her way to a psychiatric hospital: *violation*

Ilievska v. the former Yugoslav Republic of Macedonia - 20136/11
Judgment 7.5.2015 [Section I]

Facts – The applicant underwent cancer surgery and chemotherapy in April 2009. In October 2009 her husband called for medical assistance as she was suffering from anxiety and distress. On the advice of medical practitioners the applicant was transferred to a psychiatric clinic in Skopje with the assistance of two police officers. The applicant alleged that, during the journey to the hospital her hands were handcuffed behind her back and she was forcibly made to lie on a bed in the ambulance with a police officer sitting on her legs and was hit, punched and threatened. She brought criminal charges, *inter alia*, against the two police officers for ill-treatment, but they were acquitted for lack of evidence. The applicant's allegations were contested by the Government.

Law – Article 3: The Court could not establish beyond reasonable doubt that the injuries to the applicant's back, stomach and legs had been inflicted by the police officers during the transfer. However, given medical evidence confirming the presence of haematomas on the applicant's wrists and the Government's lack of explanation for those injuries, the Court accepted that the applicant had been handcuffed. In considering whether the handcuffing had been justified, it noted that at the material time the applicant was suffering from an episode of mental distress of which the police officers were aware. She was clearly under the control of the police during the transfer and was vulnerable due to her psychological state and resulting medical needs. In addition, she was physically weak after recent cancer surgery and chemotherapy. The Court assumed – in reliance on the Government's statements regarding the applicant's tendency to self-harm – that the handcuffing had been aimed at preventing her from harming herself. However, it noted that the issue of the proportionality of the handcuffing had not been considered in the domestic proceedings. The Government had failed to show that no other, less stringent, measures and precautions had been available. As a result, the handcuffing had amounted to degrading treatment.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

Positive obligations (substantive aspect/ procedural aspect)

State's failure to protect demonstrators from homophobic violence and to launch effective investigation: *violation*

Identoba and Others v. Georgia - 73235/12
Judgment 12.5.2015 [Section IV]

Facts – The applicants were a non-governmental organisation set up to promote and protect the rights of lesbian, gay, bisexual and transgender (LGBT) people in Georgia, and 14 individuals. On 17 May 2012 a peaceful demonstration to mark the International Day against Homophobia, organised by the first applicant, took place in Tbilisi and was attended by approximately 30 people, including 13 of the individual applicants. During the event, the LGBT participants in the march were insulted, threatened and assaulted by a larger group of counter-demonstrators who were members of two religious groups. The police eventually arrested four of the applicants and briefly detained and/or drove them around in a police car, with the alleged aim of protecting them from the counter-demonstrators. Following the events, the applicants filed several criminal complaints, requesting in particular that criminal investigations be launched into the attacks against them by the counter-demonstrators which had been perpetrated with discriminatory intent, and into the acts and omissions of the police officers, who had failed to protect them from the assaults. Two investigations into the injuries sustained by two of the applicants were opened in 2012 and remained pending.

Law – Article 3 read in conjunction with Article 14 (second to fourteenth applicants)

(a) *Whether the attack on the applicants reached the minimum threshold of severity under Article 3 taken in conjunction with Article 14 of the Convention* – In assessing the incident, the Court bore in mind the precarious situation in which LGBT persons found themselves in the respondent State at the time of the attacks and the various reports documenting negative attitudes against members of the LGBT

community prevalent in some parts of Georgian society. Against this background, the Court first noted that during the march the applicants had been surrounded by an angry mob that outnumbered them and which had uttered death threats and randomly resorted to physical violence against them. This behaviour had been motivated by a clear homophobic bias, demonstrated by the particularly insulting and threatening language used by the two religious groups and by the acts of ripping LGBT flags and posters followed by actual physical assaults on some of the applicants. The aim of that verbal and physical abuse had evidently been to frighten the applicants so that they would desist from their public expression of support for the LGBT community. The applicants' feelings of distress must have been exacerbated by the fact that the police protection which had been promised to them in advance of the march had not been provided in due time or adequately. That violence had thus rendered the fear, anxiety and insecurity experienced by all 13 applicants severe enough to reach the relevant threshold under Article 3 read in conjunction with Article 14 of the Convention.

(b) *Whether the authorities provided due protection to the applicants* – Since the organiser of the march had specifically warned the police about the likelihood of abuse, the law-enforcement authorities had been under a compelling positive obligation to protect the demonstrators from violence. However, the police officers had been present at the demonstration only in a limited numbers and had distanced themselves without any prior warning from the scene when the verbal attacks started, thus allowing the tension to degenerate into physical violence. By the time they finally decided to step in, the applicants had already been bullied, insulted or assaulted. Furthermore, instead of focusing on restraining the most aggressive counter-demonstrators with the aim of allowing the peaceful procession to proceed, the belated police intervention had shifted onto the arrest and evacuation of some of the applicants, the very victims whom they had been called to protect. Thus, the domestic authorities had failed to provide adequate protection to the applicants from the attacks of private individuals during the march.

(c) *Whether an effective investigation was conducted into the incident* – The authorities had also fallen short of their procedural obligation to investigate what went wrong during the incident of 17 May 2012, with particular emphasis on unmasking bias as a motive and identifying those responsible. Despite the reiterated complaints filed by the applicants immediately after the incident, concerning both their ill-treatment and the purported inaction of the police, the domestic authorities had failed to launch a comprehensive and meaningful inquiry into the circumstances surrounding the incident with respect to all of the applicants. Instead, they had inexplicably narrowed the scope of the investigation to two separate cases concerning physical injuries inflicted on only two individual applicants and which had resulted merely in administrative sanctions for two counter-demonstrators of a fine of some EUR 45 each. This could not be considered sufficient to discharge the State's procedural obligation under Article 3 given the level of the violence and aggression against the applicants.

In the circumstances it had been indispensable for the domestic authorities to take all reasonable steps to unmask possible homophobic motives for the events in question. In the absence of such a meaningful investigation by the law-enforcement authorities, prejudice-motivated crimes would unavoidably be treated on an equal footing with ordinary cases without such overtones, and the resultant indifference would be tantamount to official acquiescence or even connivance in hate crimes. Moreover, it would be difficult for the respondent State to implement measures aimed at improving the policing of similar peaceful demonstrations in the future, thus undermining public confidence in the State's anti-discrimination policy. In the light of these considerations, the domestic authorities had failed to conduct a proper investigation into the thirteen applicants' allegations of ill-treatment.

Conclusion: violation (six votes to one).

The Court also found, unanimously, a violation of Article 11 read in conjunction with Article 14 in that the respondent State, in breach to its positive obligations, failed to ensure that the march of 17 May 2012 took place peacefully by sufficiently containing homophobic and violent counter-demonstrators.

Article 41: sums ranging from EUR 1,500 to 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; *Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 71156/01, 3 May 2007, Information Note 97; *Baczkowski and Others v. Poland*, 1543/06, 3 May 2007, Information Note 97; see also the Factsheet on Sexual orientation issues)

ARTICLE 5

Article 5 § 3

Brought promptly before judge or other officer

Inability of judge to address issue of conditional release in early stages of detention: *no violation*

Magee and Others v. the United Kingdom - 26289/12, 29062/12 and 29891/12
Judgment 12.5.2015 [Section IV]

Facts – The applicants were arrested on suspicion of involvement in the murder of a police officer. They were brought, 48 hours later, before a County Court judge who reviewed the lawfulness of their detention and granted an extension for another 5 days (for further questioning and forensic examinations). Later, their pre-trial detention was further extended, the applicants being ultimately released without charge after 12 days.

Under Schedule 8 of the 2000 Terrorist Act of Northern Ireland, a detainee could be kept in detention for up to 28 days without charge. The lawfulness of that detention had to be reviewed by the competent judge within 48 hours and every 7 days thereafter. While that judge had the power to release if the arrest/early detention was unlawful, he/she had no power to release on bail.

Law – Article 5 § 3: Article 5 § 3 is structurally concerned with two separate matters: the early stages following an arrest, when an individual is taken into the power of the authorities, and the period pending any trial before a criminal court, during which the individual may be detained or released with or without conditions. These two limbs confer distinct rights and are not on their face logically or temporally linked.

As regards the first limb, the Court's case-law establishes that there must be protection, through judicial control, of an individual arrested or detained "on reasonable suspicion of having committed [a criminal] offence", that is to say, even before any criminal charge may have been brought. The judicial control must be prompt, automatic (in other words, not depend on the application of the detained person) and before an independent judge or other officer with the power to order release, after hearing the individual and reviewing the lawfulness of, and justification for, the arrest and detention.

The Court found those conditions were satisfied in the applicants' case and went on to consider whether there should have been a possibility of conditional release during the period of the applicants' detention. It noted that although the applicants were twice brought before a County Court judge while in police custody, at no time were they brought before a judge with power to order conditional release. The Court found, however, that the applicants had been detained for a relatively short period (12 days), and were thus at all times in "the early stages" of the deprivation of liberty, when their detention could be justified by the existence of reasonable suspicion that they had committed a criminal offence. Nothing in the Court's case-law on Article 5 § 3 made it necessary for consideration also to be given to their conditional release during this period.

In any event, a number of safeguards had been in place to protect the applicants against arbitrary detention: the judge could only extend detention for a maximum of 7 days and the overall period could not exceed 28 days; before granting any extension the judge had to be satisfied that there were reasonable grounds for believing that further detention was necessary and that the investigation was being conducted diligently and expeditiously; the judge also had to be satisfied that the arrest was lawful and consider the merits of detention; the first applicant had given evidence on oath during the first review and arguments from both applicants were heard during the second reviews; finally, the applicants had been able to challenge their continued detention by way of judicial review.

In the light of these factors, the absence of a possibility of conditional release during the period of the applicants' deprivation of liberty did not give rise to any issues under Article 5 § 3.

Conclusion: no violation (unanimously).

ARTICLE 6

Article 6 § 1 (civil)

Access to court
Fair hearing

Decision regarding restitution of places of worship based on "wishes of the adherents of the communities which owned the properties": *no violations*

Greek-Catholic Parish of Lupeni and Others v. Romania - 76943/11
Judgment 19.5.2015 [Section III]

Facts – In 1948 the applicants, entities belonging to the Eastern-Rite Catholic (Greek-Catholic or Uniate) Church, were dissolved on the basis of Legislative Decree no. 358/1948. By virtue of the decree, all property belonging to that denomination was transferred to the State, except for parish property, which was transferred to the Orthodox Church in accordance with Decree no. 177/1948, which provided that if the majority of a church's adherents became members of a different church, property belonging to the former would be transferred to the ownership of the latter. In 1967 the church building and adjacent churchyard that had belonged to the applicant parish were entered in the land register as having been transferred to the Romanian Orthodox Church.

After the fall of the communist regime in December 1989, Legislative Decree no. 358/1948 was repealed by Legislative Decree no. 9/1989. The Uniate Church was officially recognised in Legislative Decree no. 126/1990 on certain measures concerning the Romanian Church United with Rome (Greek-Catholic Church). Article 3 of that decree provided that the legal status of property that had belonged to Uniate parishes was to be determined by joint committees made up of representatives of both Uniate and Orthodox clergy. In reaching their decisions, the committees were to take into account "the wishes of the adherents of the communities in possession of these properties".

Article 3 of Legislative Decree no. 126/1990 was supplemented by Government Ordinance no. 64/2004 of 13 August 2004 and Law no. 182/2005. The decree, as amended, specified that in the event of disagreement between the members of the clergy representing the two denominations on the joint committee, the party with an interest entitling it to bring judicial proceedings could do so under ordinary law.

The applicant parish was legally re-established on 12 August 1996. The applicants took steps to have the church building and adjoining courtyard returned to them. Meetings of the joint committee failed to resolve the matter. The applicants therefore instituted judicial proceedings under ordinary law, but without success. The courts based their decision on the special criterion of "the wishes of the adherents of the communities in possession of these properties".

Law – Article 6 § 1

(a) *Right of access to a court* – The present case was to be seen in the special context of restitution of places of worship formerly belonging to the Greek-Catholic Church, a denomination that had been dissolved under the communist regime. Restitution of these religious buildings was a relatively large-scale problem and a socially sensitive issue. The Court had previously held that, even in this particular context, a general exclusion of disputes concerning places of worship from the jurisdiction of the courts infringed in itself the right of a access to a court, especially as the systems for prior dispute resolution instituted by Legislative Decree no. 126/1990 had not been sufficiently regulated and judicial supervision of the joint committee's decisions had not been adequate.[1]

The applicants in the present case had been able to institute proceedings in the County Court against the Orthodox Church, which was now in possession of the place of worship in question, by means of an action for recovery of possession under Article 3 of Legislative Decree no. 126/1990 as amended. However, they contended that the criterion laid down in the special law, by which the legal status of religious sites was to be determined by taking into account "the wishes of the adherents of the communities in possession of these properties", amounted to a limitation of their right of access to a court because it gave precedence to the wishes of the defendant in the proceedings.

In this connection, the Court noted that the domestic courts had not declined jurisdiction to deal with the case but had examined it on the merits before declaring it manifestly ill-founded. They had applied the criterion laid down in the special law, having regard to specific factual considerations such as the historical and social context, and had examined the situation over time. Their judgments

1. *Sâmbata Bihor Greek-Catholic Parish v. Romania*, 48107/99, 12 January 2010, Information Note 126.

had contained careful reasoning and the applicants' arguments of significance for the outcome of the case had been examined in depth. Accordingly, the domestic courts had had full jurisdiction to apply and interpret domestic law, without being bound by the refusal of the Orthodox Church to reach a prior friendly settlement. Furthermore, the scope of their review had been sufficient to comply with the requirements of Article 6 § 1.

The applicants had therefore had their action examined in detail by a court. The mere fact that they considered that the criterion laid down in the special law – "the wishes of the adherents of the communities in possession of these properties" – was unfair was insufficient to render their right of access to a court ineffective.

Taking into account all the circumstances of the case, the applicants had been able to exercise their right of access to a court.

Conclusion: no violation (unanimously).

(b) *Alleged breach of the principle of legal certainty* – The applicants had brought an action in the domestic courts for recovery of possession under ordinary law. However, when the Court of Appeal and the High Court had examined the case, they had instead applied a special law, namely Legislative Decree no. 126/1990. The applicants argued that the application of the criterion laid down in the special law in the context of an action for recovery of possession under ordinary law had not been foreseeable, thereby amounting to a breach of the principle of legal certainty.

The concept of ordinary law had not been interpreted in the ordinance on the basis of which the applicants had applied to the courts. Furthermore, Government Emergency Ordinance no. 94/2000 of July 2005 on restitution of immovable property formerly belonging to religious denominations in Romania had been amended to specify that the legal situation would be governed by a special law.

Accordingly, the courts had had to determine actions for recovery of possession without having access to a sufficiently clear and foreseeable legislative framework. Different national courts had thus reached different legal conclusions on the same legal issue raised before them.

Achieving a consensus in the application of the law was a process that could take time, and periods of conflicting case-law could therefore be tolerated without undermining legal certainty.

The highest national courts – the High Court and Constitutional Court – had settled these conflicts by harmonising their approach to the question of the applicability of the criterion laid down in the special law, namely the wishes of the adherents of the communities in possession of the properties.

The fact that the decision complained of had been delivered before the courts had reached a consistent position on the matter was not sufficient in itself to breach the principles of foreseeability and legal certainty, seeing that the domestic judicial system had been able to resolve this uncertainty by its own means. Moreover, the solution adopted in the applicants' case had been similar to the decision adopted one year later by the Constitutional Court and the virtually unanimous case-law of the High Court.

The complexity of the issue raised in the present case and its social impact were possible reasons why it had taken several years for the domestic courts to harmonise their approach. Furthermore, the present case had not involved clarifying divergent interpretations of a particular legal provision but determining by means of case-law the manner in which ordinary law and the rules of special law should apply.

Lastly, the High Court's interpretation of the concept of "ordinary law" and its relationship with the rule of special law applied to the applicants' detriment did not in itself amount to an infringement of Article 6 of the Convention. The applicants could not claim that they had been denied justice, given that their case had been examined by the Court of Appeal and the High Court. Furthermore, those courts had given proper factual and legal reasons for their decisions, and their interpretation of the circumstances of the case referred to them had not been arbitrary, unreasonable or liable to undermine the fairness of the proceedings, but had simply related to the manner of applying domestic law.

Conclusion: no violation (unanimously).

Article 14 in conjunction with Article 6 § 1: The applicants had claimed to be the victims of discrimination in the exercise of their right of access to a court.

(a) *Whether there had been a difference in treatment based on religion between persons in similar situations* – No difference in treatment based on religion could be found in Article 3 of the impugned Legislative Decree no. 126/1990.

The disputed place of worship had been in the possession of the Orthodox Church, which was the defendant in the proceedings. In general, where

the Legislative Decree in question was applicable, the religious sites forming the subject of actions for recovery were in the possession of entities belonging to the Orthodox Church, and the Greek-Catholic Church was in the position of seeking their restitution. In that context, by establishing that the legal status of the property in issue was to be determined on the basis of the criterion of "the wishes of the adherents of the communities in possession of these properties", Article 3 of Legislative Decree no. 126/1990 could be interpreted as creating a privileged position for the defendant to the applicants' detriment. The Court had already considered that provision in the context of Article 6 of the Convention. There was therefore a difference in the treatment of two groups – the Greek-Catholic Church and the Orthodox Church – which were in a similar situation as regards their claims to ownership of the place of worship at the heart of the dispute.

(b) *Whether there was reasonable and objective justification* – The Government had submitted that the State's intention had been to protect the freedom of those who had been forced to leave the Greek-Catholic faith under the totalitarian regime to express their wishes as to which religion to follow, while retaining the possibility of using the place of worship they had built.

In applying the criterion of "the wishes of the adherents of the communities in possession of these properties", the Romanian courts had not simply noted that the defendant had refused to return the church building in question but had weighed up the interests at stake. Following a thorough examination of the factual circumstances, the domestic courts had delivered detailed judgments containing reasons, and their approach had been consistent with that of the Constitutional Court.

In addition, when examining an objection that the criterion in question was unconstitutional, the Constitutional Court had set out reasons relating to the need to protect the freedom of religious denominations and of others, while placing these factors in the historical context of the case.

Lastly, the applicants' arguments relating to a discrepancy in the case-law concerned an aspect of the principle of legal certainty and had already been examined under Article 6 § 1 of the Convention. There was therefore no need for a further examination under Article 14 of the Convention in conjunction with Article 6 § 1.

Accordingly, in view of the aim pursued and the reasonable justification for it, the adoption of the relevant criterion in national law had not been in breach of Article 14 of the Convention.

Conclusion: no violation (unanimously).

The Court also held unanimously that there had been a violation of Article 6 § 1 of the Convention in that the applicants' case had not been heard within a reasonable time, and awarded the applicants EUR 2,400 jointly in respect of non-pecuniary damage.

Fair hearing

Lack of proper notification of insolvency proceedings: *violation*

Zavodnik v. Slovenia - 53723/13
Judgment 21.5.2015 [Section V]

Facts – In 1997 a labour court ordered a private company to pay the applicant the salary due and applicable benefits (approximately EUR 8,350). In 1999 the judgment became final. In 2000 bankruptcy proceedings were instituted against the company. In 2005 the applicant's claims were recognised in the bankruptcy proceedings. The receiver and the insolvency panel assured the applicant that they would inform him of progress in the case, in particular of the scheduling of hearings concerning the distribution of the estate. In 2008 a hotel complex belonging to the company was sold at public auction. Reports on the sale were published online on a web portal for accountants, on the Slovenian Press Agency website and in a daily financial newspaper. After the sale, in June 2008 the insolvency panel of the district court endorsed a draft proposal on the distribution of the bankrupt company's estate to the 19 remaining creditors. It was proposed that they should each receive 2.85% of the claim acknowledged in the proceedings, which in the applicant's case amounted to EUR 237. The court scheduled a further hearing in September 2008 to confirm the distribution of the estate. The district court published its decision and posted the notification of the hearing on the court's notice board. The notification of the hearing, with its date and venue, was also published in the Official Gazette. At the hearing the district court confirmed the receiver's distribution proposal. Its decision was posted on the court's notice board the next day and could have been challenged within eight days. As no appeal was lodged against that decision, it became final. In November 2008 the bankruptcy proceedings were terminated. In December 2008 the applicant appealed against the decision to ter-

minate the bankruptcy proceedings. He argued that he had not been properly informed of the September hearing on the distribution of the estate and that he should have been awarded the full amount claimed in the bankruptcy proceedings. In 2009 his appeal was dismissed and his constitutional complaint rejected.

Law – Article 6 § 1: The rules on service of summonses and decisions by posting on the court's notice board and publication in the Official Gazette served the legitimate aim of ensuring that bankruptcy proceedings were expeditious and efficient. The rationale behind dispensing with personal service was that this type of proceedings might involve large numbers of creditors and parties. The personal service of court documents could add substantially to the costs of proceedings and, moreover, hamper their course if unsuccessful. However, under the domestic law, the hearing on the distribution of the estate represented a crucial point in the proceedings. Up to that point, the creditors could challenge the official receiver's proposal for the distribution of the estate. They were precluded from doing so at a later stage. In that connection, the eight-day time-limit for lodging an appeal against the decision on distribution was relatively short. The applicant had been a party to the proceedings in which it had taken more than eight years for a hearing on the distribution of the bankruptcy estate to be scheduled. At that point, there had been only 19 creditors left whose names should have been known to the court. In addition, the applicant, who was not represented by a lawyer, had argued that he had been assured by the receiver that he would be informed of any progress in the proceedings. Bearing in mind the rather low number of creditors in the proceedings, the Court saw no reason why the applicant should not have trusted the receiver. Lastly, while the domestic law indeed did not provide for the personal service of summonses and court decisions in bankruptcy proceedings, it did provide for the possibility of publishing the notification of the hearing on the distribution of the estate also in the mass media. The Court regretted that in the instant case the domestic court had failed to use the latter publication option. The Court could not follow the Government's argument that the applicant should have known about the sale of the hotel complex from online media reports. The media concerned could not be considered to have been targeted at the general public and/or to have reached the applicant (contrast *Geffre v. France* (dec.), 51307/99, 23 January 2003, Information Note 49), an elderly person who said that he was unable to use a computer or access the Internet. It would be unrealistic to expect the applicant to regularly consult the notice board of a court located in a different town from his place of residence or to gain access to every issue of the Official Gazette. In the circumstances, the Court was unable to conclude that the applicant had had a fair opportunity to have knowledge of the hearing on the distribution of the estate and that his failure to take part in the proceedings was due to a lack of diligence on his part (contrast *Cañete de Goñi v. Spain*, 55782/00, 15 October 2002, Information Note 38). Moreover, it would not have been disproportionate to require the State to take additional steps to ensure that the few parties left in the proceedings, including the applicant, were informed of the hearing on the distribution and the decision taken at the hearing. By being deprived of the opportunity of taking part in the hearing of 10 September 2008, the applicant had been prevented from challenging the receiver's plan for the distribution of the estate and thus from vindicating his right to obtain a higher percentage of his claim for unpaid wages.

Conclusion: violation (unanimously).

The Court also found a violation of Article 6 § 1 and Article 13 on account of the length of the proceedings and ineffectiveness of remedies in this respect.

Article 41: EUR 12,500 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

Article 6 § 1 (criminal)

Fair hearing

Alleged lack of adequate procedural safeguards to enable accused to understand reasons for jury's guilty verdict in assize court: *no violation*

Lhermitte v. Belgium - 34238/09
Judgment 26.5.2015 [Section II]

Facts – In 2008 the applicant was indicted for the premeditated murder of her five children. Her trial took place in the Assize Court. She did not dispute the facts but argued that she had been incapable of controlling her actions. In response to five questions, a jury found the applicant guilty, and the Assize Court, composed of three judges and the jury, endorsed the guilty verdict and sentenced her to life imprisonment. The Court of Cassation dismissed the applicant's appeal.

The applicant complained before the European Court that the jury's guilty verdict had lacked reasoning.

Law – Article 6 § 1: Since the applicant had not disputed the veracity of the charges, the difficulty in the proceedings had related to the determination of her criminal liability. The indictment was of limited significance, as it predated the trial itself. As regards the findings indicated in the indictment and their potential usefulness for an understanding of the guilty verdict, the Court could not speculate as to whether or not they had influenced the jury's deliberation or the judgment ultimately handed down by the Assize Court.

As to the five questions put to the jury, four of them had concerned the murders and the aggravating factor of premeditation. The last question had concerned the applicant's criminal liability. The questions in themselves had perhaps not enabled the applicant to understand the evidence against her, among everything that had been discussed during the trial, that had ultimately been taken into account in the jury's conclusion that she was criminally liable for her actions. However, it was necessary to look at the proceedings as a whole, including the subsequent court decisions which clarified the reasons for the jury's guilty verdict. Thus the Assize Court, composed of three professional judges and the jury, had stated in its sentencing judgment that the defence relied upon by the applicant, in particular her "mental fragility, depressive state and character", could not explain the acts she had committed and did not even constitute mitigating factors. The Court of Cassation, for its part, had expressly indicated the reasons why the Assize Court had found that the applicant had not been incapable of controlling her actions at the material time. A combined reading of the judgments of the Assize Court and of the Court of Cassation should have enabled the applicant to understand the reasons why the jury had rejected her defence arguments, based on her alleged lack of responsibility at the time of the murders, and had found her, on the contrary, to have been capable of controlling her actions.

The jury alone had decided that the applicant was responsible for her actions, although the reasoning for that verdict had been provided subsequently in the sentencing judgment of the Assize Court, composed of the jurors and three professional judges, and had also been explained by the Court of Cassation. The judges in the Assize Court had thus contributed to drafting reasoning which partly concerned a deliberation at which they had not been present. However, the reasoning given was not thus invalidated, remaining compatible with the right to a fair trial. As the judges had joined the jurors in deliberating on the sentence and on the reasoning therefor, they could have ascertained directly from the jurors the grounds on which they had found the applicant guilty, and together they must have agreed on reasons which, of course, had to be in line with the reasons underlying the verdict. The fact that the Court of Cassation had subsequently explained how the sentencing judgment was to be understood in the light of the guilty verdict could not be criticised. In a system where certain decisions were appealable, the decision of the lower court would understandably have to be construed according to the meaning attributed to it, if appropriate, by the higher court.

Moreover, specifically with regard to the determination of the sentence, the Assize Court judgment had been duly reasoned and did not appear arbitrary. Consequently, the applicant had enjoyed sufficient safeguards allowing her to understand the decisions as to her guilt and her sentence.

Conclusion: no violation (four votes to three).

(See also *Taxquet v. Belgium* [GC], 926/05, 16 November 2010, Information Note 135; and *Legillon v. France* (53406/10) and *Agnelet v. France* (61198/08) 10 January 2013, Information Note 159)

ARTICLE 8

Respect for private life
Positive obligations

Failure to protect complainant's personal integrity in criminal proceedings concerning sexual abuse: *violation*

Y. v. Slovenia - 41107/10
Judgment 28.5.2015 [Section V]

Facts – In 2001, at the age of 14, the applicant was allegedly victim of repeated sexual assaults by a family friend, X. Following a criminal complaint by the applicant's mother, investigations started in 2003 and criminal proceedings were brought against X in 2007. In 2009, after having held 12 hearings in total, the domestic courts acquitted X of all charges on the ground that some of the applicant's allegations concerning X's physical conditions had been disproved by an expert, thus making it impossible, in the domestic courts' view, to prove X's

guilt beyond reasonable doubt. The State Prosecutor's appeal against that judgment was rejected in 2010, as was the applicant's request to the Supreme State Prosecutor for the protection of legality a few months later.

Law – Article 8: The Court had to examine whether the respondent State had afforded sufficient protection of the applicant's right to respect for her private life, and especially for her personal integrity, with respect to the manner in which she had been questioned during the criminal proceedings against her alleged sexual abuser. In so doing, it had to strike a fair balance between the rights of the applicant as a victim called upon to testify in criminal proceedings, protected by Article 8, and those of the defence, namely the right of the accused to call and cross-examine witnesses set out in Article 6 § 3 (d). Unlike the position in other similar cases previously examined by the Court, which had all been brought by the accused persons, in the present case the Court had to examine this issue from the perspective of the alleged victim.

In the instant case, the interests of securing a fair trial required X to be provided an opportunity to cross-examine the applicant, especially as the applicant's testimony at the trial provided the only direct evidence in the case and the other evidence presented was conflicting.

However, given that criminal proceedings concerning sexual offences were perceived as a very unpleasant and prolonged experience by the victims, and that a direct confrontation between those charged with sexual abuse and their alleged victims involved a risk of further traumatisation for the victims, personal cross-examination by the defendant had to be subject to the most careful assessment by the national courts. Indeed, several international instruments, including European Union law, provided that certain rights should be granted to victims of, *inter alia*, sexual abuse, including the duty of the State to protect them from intimidation and repeat victimisation when providing testimony of the abuse.

In this respect, the Court noted that the applicant's questioning had stretched over four trial hearings held over seven months, a lengthy period which in itself raised concerns, especially given the absence of any apparent reason for the long intervals between the hearings. Moreover, at two of those hearings X had personally cross-examined the applicant, continuously contesting the veracity of her answers and addressing her with questions of a personal nature. In the Court's view, those questions were aimed at attacking the applicant's credibility as well as at degrading her character. However, despite the duty incumbent on the judicial authorities to oversee the form and content of X's questions and comments and, if necessary, to intervene, the presiding judge's intervention had been insufficient to mitigate what had clearly been a distressing experience for the applicant.

As to the applicant's claim that X's counsel should have been disqualified from the proceedings as he had been consulted by her on the sexual assaults shortly after the alleged events took place, the Court found that the applicable domestic law, or the manner in which it had been applied in the present case, had not taken sufficient account of the applicant's interests. This was so because the negative psychological effect of being cross-examined by X's counsel had considerably exceeded the apprehension the applicant would have experienced if she had been questioned by another lawyer. Moreover, any information he might have received from her in his capacity as a lawyer should have been treated as confidential and should not have been used to benefit a person with adverse interests in the same matter.

The Court also noted the inappropriateness of the questions put to the applicant by the gynaecologist appointed by the district court to establish whether she had engaged in sexual intercourse at the material time. In this regard, the authorities were required to ensure that all participants in the proceedings called upon to assist them in the investigation or the decision-making process treated victims and other witnesses with dignity and did not cause them unnecessary inconvenience. However, the appointed gynaecologist not only lacked proper training in conducting interviews with victims of sexual abuse, but had also addressed the applicant with accusatory questions and remarks exceeding the scope of his task and of his medical expertise. As a consequence, the applicant had been put in a defensive position unnecessarily adding to the stress of the criminal proceedings.

Even though the domestic authorities had taken a number of measures to prevent further traumatisation of the applicant, such measures had ultimately proved insufficient to afford her the protection necessary to strike an appropriate balance between her rights and interests protected by Article 8 and X's defence rights protected by Article 6 of the Convention.

Conclusion: violation (six votes to one).

The Court also found unanimously a violation of Article 3 on account of the failure of the authorities

of the respondent State to ensure a prompt investigation and prosecution of the applicant's complaint of sexual abuse.

Article 41: EUR 9,500 in respect of non-pecuniary damage.

(See also *S.N. v. Sweden*, 34209/96, 2 July 2002, Information Note 44; *Aigner v. Austria*, 28328/03, 10 May 2012; and the Factsheet on Violence against women)

ARTICLE 10

Freedom to receive information

Authorities' refusal to provide an NGO conducting a survey with the names of public defenders and the number of their respective appointments: *relinquishment in favour of the Grand Chamber*

Magyar Helsinki Bizottság v. Hungary - 18030/11
[Section II]

The applicant NGO is active in the field of monitoring the implementation of international human rights instruments in Hungary and in related advocacy. It unsuccessfully sued two police departments for the names of public defenders retained by them and the number of their respective appointments. This information would have been necessary to complete a survey about the efficiency of the existing system of public defence and to propose a better alternative. The courts however were of the view – after a first-instance judgment in favour of the applicant – that the issue constituted no question of public interest and that the applicant could not claim the surrender of such information under the Data Act 1992. According to the Supreme Court's reasoning, although the implementation of the constitutional right of defence by defence counsels was a task of the State, the public defenders' subsequent activity was a private one and therefore their names did not constitute public information.

The applicant complains under Article 10 that the domestic courts' refusal to order the surrender of the information in question amounted to a breach of its right to access to information.

The case was communicated under Article 10. On 26 May 2015, a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

ARTICLE 11

Freedom of association

Warning issued against trade-union representative for organising event on work premises outside working hours: *violation*

Doğan Altun v. Turkey - 7152/08
Judgment 26.5.2015 [Section II]

Facts – At the material time the applicant worked for Ankara municipality and belonged to a trade union. In November 2006 he and another member of the trade union installed ballot boxes at the door of the canteen in the department for which he worked with a view to holding a referendum on the budget. In May 2007 he received a warning for having organised a referendum without the authorisation of the director of the department in question.

Law – Article 11: The impugned measure could be considered interference in the applicant's right to freedom of association. The foreseeability of the penalty imposed on the applicant was questionable, as was the legitimacy of its aims. Furthermore, it was not even sure that there was any obligation to obtain prior authorisation. Nevertheless, the Court saw no need to go any further into those questions.

During the disciplinary proceedings, the applicant had pointed out that he had organised the referendum in his capacity as secretary of a section of the trade union. Moreover, according to the actual decision imposing the warning, there had been no disruption to the work of the departmental staff. Furthermore, the applicant was sanctioned for having organised a referendum during the lunch break without prior authorisation from his employer, notwithstanding that according to the legislation no sanction could be imposed on civil servants for participating in trade union demonstrations outside of working hours, even if they had not obtained their employer's authorisation. The Court therefore considered that the applicant was penalised by the disciplinary authorities even though the latter had not in any way considered the capacity in which he had organised the referendum. Lastly, however minimal the impugned sanction had been, it had been liable to deter the applicant and other trade union members from freely exercising their activities. Consequently, it had not been demonstrated that the warning imposed corresponded to any overriding social need. It had therefore not been established that there had been a reasonable relation of proportionality between the interference

in the applicant's freedom of association and the aim pursued – the legitimacy of such aim having been accepted – or that the interference had been "necessary in a democratic society".

Conclusion: violation (unanimously).

The Court also unanimously found a violation of Article 13 of the Convention on account of the absence of an effective remedy.

Article 41: EUR 1,500 in respect of non-pecuniary damage.

(See also the Factsheet on Trade union rights under "Right to strike and right of peaceful assembly")

ARTICLE 14

Discrimination (Article 3)

State's failure to protect demonstrators from homophobic violence and to launch effective investigation: *violation*

Identoba and Others v. Georgia - 73235/12
Judgment 12.5.2015 [Section IV]

(See Article 3 above, page 5)

Discrimination (Article 6 § 1)

Decision regarding restitution of places of worship based on "wishes of the adherents of the communities which owned the properties": *no violation*

Greek-Catholic Parish of Lupeni and Others v. Romania - 76943/11
Judgment 19.5.2015 [Section III]

(See Article 6 § 1 (civil) above, page 8)

Discrimination (Article 1 of Protocol No.1)

Alleged discrimination in entitlement to social security benefits of prisoners in psychiatric care compared to other persons detained for psychiatric treatment: *inadmissible*

S.S. and Others v. the United Kingdom - 40356/10 and 54466/10
Decision 21.4.2015 [Section IV]

Facts – Under the relevant domestic legislation prisoners were not entitled to social security benefits while serving a prison sentence, including during any periods they were required to spend in psychiatric hospital pursuant to the Mental Health Act 1983. Conversely, persons not sentenced to a term of imprisonment but who were detained for psychiatric treatment either as civil patients under section 3 of the 1983 Act or as an alternative to prison under section 37 of the Act ("section 37 patients") retained their entitlement to benefits.

The applicants were all convicted and sentenced prisoners who had served, or were serving, part of their sentences in psychiatric hospitals under the relevant provisions of the 1983 Act. In their application to the European Court, they complained that denying them the social security benefits that were paid to other patients being treated under the Act was contrary to Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1.

Law – Article 14 in conjunction with Article 1 of Protocol No. 1: It was undisputed that social security benefits fell within the ambit of Article 1 of Protocol No. 1 and that the status of prisoner was covered by the term "other status" in Article 14. Article 14 was thus applicable.

(a) *Analogous position* – The Court reiterated that prisoners did not forfeit their Convention rights in prison, although the manner and extent to which they could enjoy them would inevitably be influenced by the context. Whether or not a prisoner could, for the purposes of Article 14, claim to be in an analogous position to other categories of the population depended on the subject-matter of the complaint. Although the applicants had asserted that the appropriate comparator group in their case was other detained patients, the Court considered that in reality the applicants had significant elements in common both with other patients and other prisoners. While their stay in hospital undoubtedly served a curative purpose, and not a punitive one, as a matter of domestic law they remained under a sentence of imprisonment. Accordingly, even if it was accepted that the applicants were in all other respects under the same legal regime as section 37 patients, the difference between the two groups in terms of criminal-law status could not be regarded as insignificant or irrelevant. Although this did not preclude a comparison with section 37, the applicants' status as prisoners was "very relevant" to the assessment of compliance with the other requirements of Article 14.

(b) *Objective and reasonable justification* – The Court accepted as being within the respondent State's broad margin of appreciation, both as a matter of penal and social policy, the decision to apply a general rule disqualifying convicted pris-

oners from social security benefits. It followed that the aim of the relevant regulations, which was to apply this exclusionary rule consistently and to correct anomalies, could not be said to be manifestly without reasonable foundation. Fully assimilating the categories of serving prisoners and prisoners transferred to a psychiatric hospital for the purposes of social security could not be said to be lacking in justification, but instead fell within the range of permissible choices open to the domestic authorities.

Nor did the Court discern any failure to respect the requirement of proportionality. The exclusion from entitlement to social security benefits was no broader than necessary, being coterminous with the sentence of imprisonment. In the case of a determinate sentence, those detained beyond what would normally have been the date of release had their entitlements restored, placing them on the same footing as other detained patients. Until such time, the applicants' essential needs, material and medical, were met in any event and they received an allowance to meet their incidental expenses. No different analysis was called for in respect of the two applicants subject to a life sentence who had already served the minimum term imposed on them.

Accordingly, the difference in treatment complained of did not constitute discrimination contrary to Article 14 of the Convention.

Conclusion: inadmissible (manifestly ill-founded).

(See also *Shelley v. the United Kingdom*, 23800/06, 4 January 2008, Information Note 104; *Clift v. the United Kingdom*, 7205/07, 13 July 2010, Information Note 132; and *Stummer v. Austria* [GC], 37452/02, 7 July 2011, Information Note 143)

ARTICLE 37

Striking out applications

State's unilateral declaration recognising violation of applicants' rights and awarding compensation: *struck out*

Union of Jehovah's Witnesses of Georgia and Others v. Georgia - 72874/01
Decision 21.4.2015 [Section IV]

Facts – The applicants were two religious groups and six individuals. In 2002 the two applicant groups' enrolment in the national register of associations was annulled as they could not be classified as a private-law entity under the applicable law then in force. That decision was upheld by the Supreme Court. The domestic law was subsequently amended so as to allow religious groups to register as legal entities of public law. While the second applicant group was re-registered as an association in 2003, the first applicant did not apply for re-registration.

In 2014, in the course of the proceedings before the European Court, the Government submitted a unilateral declaration, recognising the violation of Articles 9 and 11 of the Convention in respect of the first two applicant religious groups and proposing to pay them EUR 1,500 each in respect of pecuniary and non-pecuniary damage. The applicants refused the proposal as they considered the award offered inadequate.

Law – Article 37 § 1 (c): In previous cases concerning the registration of religious organisations, the Court had found that either by denying registration to various religious groups or by annulling their registration, the authorities had interfered with the applicant organisations' right to freedom of religion and association, in violation of Article 11 of the Convention read in light of Article 9. In view of that finding, the Court had not considered it necessary to examine the same facts from the standpoint of Article 14 and found Article 10 complaints to be redundant.

In the present case the Government had explicitly accepted that the annulment of the applicant organisations' registration was in breach of Articles 9 and 11 and the respondent State had amended its law to fill in the legislative gap concerning the legal status of religious groups. Moreover, having regard to the Court's relevant case-law, the applicants' complaints under Articles 10 and 14 of the Convention did not merit a separate examination. Therefore, in view of the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed, it was no longer justified to continue the examination of the application. Furthermore, given the clear and extensive case-law on the topic, respect for human rights as defined in the Convention and the Protocols thereto did not require the Court to continue the examination of the application.

As to the applicants' objection that the unilateral declaration had been submitted outside the friendly settlement procedure, there were exceptional circumstances justifying the Court, according to Rule 62A § 2 of the Rules of Court, to consider the unilateral declaration in the absence of prior friendly settlement negotiations.

Conclusion: struck out (unanimously).

(See also *Tahsin Acar v. Turkey (preliminary objections)* [GC], 26307/95, 6 May 2003, Information Note 53; *WAZA Spółka z o.o. v. Poland* (dec.), 11602/02, 26 June 2007; *Sulwińska v. Poland* (dec.), 28953/03, 18 September 2007; see also the Factsheet on Freedom of religion)

ARTICLE 1 OF PROTOCOL No. 1

Control of the use of property

Forfeiture of a civil servant's wrongfully acquired property as part of domestic anti-corruption measures: *no violation*

Gogitidze and Others v. Georgia - 36862/05
Judgment 12.5.2015 [Section IV]

Facts – In 2004 the first applicant, a former government minister, was charged with abuse of authority and extortion. The Public Prosecutor's Office of the Ajarian Autonomous Republic subsequently initiated proceedings for forfeiture of property against him and the remaining applicants, all close relatives of the first applicant, for having wrongfully and inexplicably acquired property. In September 2004 the Ajarian Supreme Court ordered the confiscation of six properties. In January 2005, following an appeal by all four applicants, the Supreme Court of Georgia set aside the confiscation of one property and upheld the remaining confiscation orders. The first applicant lodged a constitutional complaint challenging the constitutionality of the provisions governing administrative confiscation proceedings. Dismissing that complaint, the Constitutional Court observed that the relevant legislation, which had been introduced in February 2004, served the public interest of intensifying the fight against corruption.

Law – Article 1 of Protocol No. 1: Far from being a purely administrative confiscation, the impugned measure in the instant case was linked to the prior existence of a criminal charge against a public official and thus represented by its nature a civil action *in rem* aimed at the recovery of assets wrongfully or inexplicably accumulated by public officials and their close entourage.

The forfeiture measure amounted to interference through control of the use of property. That interference was lawful and pursued a legitimate aim, namely the fight against corruption in the public service.

As to proportionality, the Court examined whether the procedure for forfeiture was arbitrary. In that connection, it noted that on the basis of internationally acclaimed standards for combatting serious offences entailing unjust enrichment and in the face of alarming levels of corruption in Georgia at all levels, various international bodies, including the Council of Europe Committee of Experts on the Evaluation of Anti Money Laundering Measures and the Financing of Terrorism (MONEYVAL), had repeatedly advised the Georgian authorities to undertake legislative measures to ensure the confiscation of the proceeds of corruption-related offences. The Georgian authorities had put those instructions into practice by adopting the legislative amendment of February 2004, thus bringing Georgian legislation in line with the relevant international standards. In its earlier case-law in this sphere, the Court had seen no problem in finding confiscation measures proportionate even in the absence of a conviction establishing the guilt of the accused persons and did not require proof beyond "reasonable doubt" of the illicit origins of the property concerned. It had also considered that confiscation measures could be applied not only to persons directly accused of offences but also to close relatives presumed to possess and manage the ill-gotten property informally or otherwise lacking the necessary bona fides. Having regard to all these considerations the Court found, by analogy, that the civil proceedings *in rem* in the instant case could not be considered arbitrary or to have upset the proportionality test under Article 1 of Protocol No. 1.

In addition, as regards the proceedings before the domestic courts, the applicants had been duly summoned to make written submissions and to take part in the oral hearing and the public prosecutor's claim had been duly examined in the light of the supporting documents and the applicants' financial situation. There was nothing in the conduct of the civil proceedings *in rem* to suggest that the applicants were denied a reasonable opportunity of putting forward their case or that the domestic courts' findings were tainted with manifest arbitrariness.

In sum, having regard to the Georgian authorities' wide margin of appreciation in their pursuit of the policy designed to combat corruption in the public service and to the fact that the domestic courts had afforded the applicants a reasonable opportunity of putting their case through adversarial proceedings, the requisite fair balance between the general interest of the community and the requirements of the protection of the individual's fundamental rights had not been upset.

Conclusion: no violation (unanimously).

Positive obligations

Failure of the state to protect the property rights of minors under a real-estate swap agreement: *violation*

S.L. and J.L. v. Croatia - 13712/11
Judgment 7.5.2015 [Section I]

Facts – In 1997 the applicants, two minor sisters represented by their mother, purchased a villa for EUR 60,000. The mother and Z.L., who was the applicants' legal guardian and the second applicant's father, invested EUR 40,000 in the renovation of the property.

In October 2001 Z.L. was sentenced to six years' imprisonment and the family experienced financial difficulties. Z.L.'s defence lawyer requested authorisation from the Social Welfare Centre for a real estate swap agreement under which the villa would be transferred to the lawyer's mother-in-law in exchange for a flat worth about EUR 55,000. The applicants were also to receive EUR 5,000 as compensation for the difference in value between the properties.

The Centre granted the authorisation – which was required because the applicants, who owned the villa, were still minors – after interviewing the mother. The properties were exchanged in December 2001. Subsequently, the applicants initiated a civil action for annulment of the swap agreement on the grounds that the Social Welfare Centre had failed to take into account the value of the properties and the nature of their family circumstances, particularly Z.L.'s detention and the mother's drug abuse. That action and the applicants' subsequent appeals were dismissed on the grounds that the Centre's decision could only be challenged in administrative proceedings.

Law – Article 1 of Protocol No. 1: The Court was called upon to determine whether the State had failed to adequately take into account the best interests of the applicant children and to protect their property rights. The initial concern related to the actual relative value of the exchanged properties since the domestic courts had failed to explain how the value of the villa (EUR 100,000) could have corresponded to that of the flat (EUR 55,000).

As regards the conduct of the Social Welfare Centre, the only action it had taken to assess the circumstances of the case was to question the mother. None of the other legal guardians were interviewed or informed about the draft swap agreement. Furthermore, the Centre could reasonably have been expected to assess the actual condition or value of the exchanged properties, but had failed to do so. Likewise, despite being aware of Z.L.'s imprisonment and the family's financial problems, it had not treated the applicants' family situation with the necessary diligence in terms of assessing whether the applicants' proprietary interests were adequately protected against malevolent and/or negligent actions on the part of their parents. The Centre had made no attempt to get more information on the family situation or to assess whether a special guardian should be appointed to protect the applicants' interests. In sum, it had failed to evaluate whether the swap agreement was in the applicants' best interests as children.

In addition, the only recourse available to the applicants had been to lodge a claim before the civil courts. However, the civil courts had failed to examine the particular circumstances of the case and had dismissed the applicants' civil action solely on the grounds that the Centre's decision authorising the swap agreement had not been challenged in the administrative proceedings. In so doing, they ignored the evidence concerning a possible conflict of interest, the applicants' family and financial circumstances and the allegations that the Centre had failed to protect the applicants' best interests, when it had been incumbent on them under the domestic law to examine the allegations carefully in accordance with the principle of the best interests of the child.

The domestic authorities had thus failed to take the necessary measures to safeguard the proprietary interests of the applicants, as children, in the impugned real estate swap agreement and to afford them a reasonable opportunity to effectively challenge the measures interfering with their rights guaranteed by Article 1 of Protocol No. 1.

Conclusion: violation (unanimously).

Article 41: reserved.

(See also *Lazarev and Lazarev v. Russia* (dec.), 16153/03, 24 November 2005, Information Note 80)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Magyar Helsinki Bizottsag v. Hungary - 18030/11 [Section II]

(See Article 10 above, page 14)