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ARTICLE 3

Inhuman treatment, extradition

Inhuman treatment following applicants' extraordinary rendition to CIA: violations

Abu Zubaydah v. Lithuania, 46454/11, Al Nashiri v. Romania, 33234/12, judgments 31.5.2018 [Section I]

Facts – The applicants were detained by the United States (US) Central Intelligence Agency (CIA) at the start of the “war on terror” following the 11 September 2001 attacks. Following their transfer by means of “extraordinary rendition”, they were held in CIA secret detention facilities in various countries. As “High-Value Detainees” (HVD), that is, terrorist suspects likely to be able to provide information about current terrorist threats against the United States, they were subjected to the “enhanced interrogation techniques”, which included the “waterboard technique”, confinement in a box, sleep and food deprivation, exposure to cold temperature, wall-standing and other stress positions. Mr Al Nashiri was also subjected to “unauthorised” interrogation methods, such as mock executions and hanging upside down.

The circumstances surrounding the applicants' extraordinary rendition have been the subject of various reports and investigations, including reports prepared by Dick Marty, as rapporteur for the investigation conducted by the [Parliamentary Assembly](#) of the Council of Europe (PACE), and the 2014 US Senate report on CIA torture.

In its judgments of 24 July 2014, the Court found several violations of the Convention in connection with the applicants' incommunicado detention in Poland while in CIA custody (applications nos. [7511/13](#) and [28761/11](#), [Information Note 176](#)).

In the present applications, the applicants complained that the respondent States had allowed the CIA to subject them to incommunicado detention and torture on their territory and to transport them subsequently to other CIA detention sites abroad.

Both applicants are currently being held at the US Naval Base in Guantanamo Bay. Mr Husayn, also known as Abu Zubaydah, has never been charged with any offence. Mr Al Nashiri was indicted to stand trial before a US military commission on capital charges.

Law

Establishment of the facts and jurisdiction – The Court found it established conclusively and beyond reasonable doubt that Lithuania and Romania had hosted on their territory a CIA Detention Site; that the applicants had been secretly detained there for more than a year and that the authorities of the respondent States knew of the nature and purposes of the CIA's activities in their countries and had cooperated in the execution of the HVD Programme, while being aware that, by enabling the CIA to detain terrorist suspects on their territory, they were exposing the said suspects to a serious risk of treatment contrary to the Convention.

The matters complained of in the present cases fell within the “jurisdiction” of Lithuania (in respect of Mr Husayn) and Romania (in respect of Mr Al Nashiri) within the meaning of Article 1 and were capable of engaging their responsibility under the Convention.

Article 3 (*substantive aspect*): The Court established beyond reasonable doubt that during their detention in Lithuania and Romania respectively, the applicants had been kept – as any other CIA detainee – under a regime including, as a matter of fixed, predictable routine, the blindfolding or hooding of detainees, which was designed to disorient them and keep them from learning of their location or the layout of the detention facility; removal of hair upon arrival at the site; incommunicado, solitary confinement; continuous noise of high and varying intensity played at all times; continuous light such that each cell was illuminated to about the same brightness as an office; and use of leg shackles in all aspects of detainee management and movement.

While the applicants had not been subjected to interrogations with the use of the harshest methods, they had been subjected to an extremely harsh detention regime in Lithuania and Romania, including a virtually complete sensory isolation from the outside world, and suffered from permanent emotional and psychological distress and anxiety caused by the past experience of most brutal torture in the CIA's hands and constant fear of their future fate. Consequently, having regard to the applicants' regime of detention and its cumulative effects on them, the treatment complained of was to be characterised as intense physical and mental suffering falling within the notion of “inhuman treatment”.

Accordingly, Lithuania and Romania, on account of their “acquiescence and connivance” in the HVD Programme had to be regarded as responsible for the violation of the applicants’ rights under Article 3 committed on their territory.

By enabling the CIA to transfer the applicants out of Lithuania and Romania respectively to other detention facilities, the domestic authorities had exposed them to a foreseeable serious risk of further ill-treatment and conditions of detention in breach of Article 3.

Conclusion: violations (unanimously).

The Court also found, unanimously, violations:

(a) by Romania:

- of Articles 2 and 3 of the Convention in conjunction with Article 1 of Protocol No. 6; and
- of Article 6 § 1 on account of Mr Al Nashiri’s transfer from its territory, despite a real and foreseeable risk that he could face a flagrant denial of justice and be subjected to the death penalty following his trial before a military commission in the USA;

(b) by both respondent States:

- of Article 3 in its procedural aspect on account of the failure to conduct an effective and thorough investigation into the applicants’ allegations of ill-treatment when in CIA custody;
- of Article 5 in respect of the applicants’ secret detention on the respondent States’ territory and their subsequent transfer to another CIA detention site abroad;
- of Article 8 as the interference with the applicants’ right to respect for their private and family life had not been in accordance with the law and lacked any justification, given the imposition of fundamentally unlawful, undisclosed detention; and
- of Article 13 on account of the lack of an effective remedy to complain about violations of the applicants’ rights.

Article 46

(a) *Investigation* – Both respondent States were required to reactivate and bring to a close as soon as possible the criminal investigations into the circumstances and conditions under which the applicants had been brought into, removed from and treated on their territory, with a view to

identifying and, where appropriate, punishing those responsible.

(b) *Diplomatic action* – Lithuania was required to make further representations to the US authorities to remove or, at the very least, seek to limit the effects of the violations of Mr Husayn’s rights. The outcome of the trial against Mr Al Nashiri still being uncertain, Romania should seek assurances from the US authorities that he would not suffer the death penalty.

Article 41: EUR 100,000 to each applicant in respect of non-pecuniary damage.

ARTICLE 8

Respect for private life

Covert video surveillance of supermarket cashiers by employer: case referred to the Grand Chamber

López Ribalda and Others v. Spain, 1874/13 and 8567/13, judgment 9.1.2018 [Section III]

The applicants worked as supermarket cashiers. In order to investigate economic losses, their employer installed surveillance cameras consisting of both visible, of which the applicants were given notice, and hidden cameras, of which they were not. The applicants were dismissed following video footage showing them stealing items. Before the European Court, the applicants argued, *inter alia*, that the covert video surveillance ordered by their employer had violated their right to privacy protected by Article 8 of the Convention.

In a judgment of 9 January 2018 (see [Information Note 214](#)), a Chamber of the Court held, by six votes to one, that there had been a violation of Article 8. In the Court’s view, the video surveillance carried out by the employer, which took place over a prolonged period, did not comply with the requirements stipulated in the relevant legislation and, in particular, with the obligation to previously, explicitly, precisely and unambiguously inform those concerned about the existence and particular characteristics of a system collecting personal data. The rights of the employer could have been safeguarded, at least to a degree, by other means, notably by previously informing the applicants, even in a general manner, of the installation of a system of video surveillance and providing them with the information prescribed

in the Personal Data Protection Act. The domestic courts had failed to strike a fair balance between the applicants' right to respect for their private life under Article 8 of the Convention and their employer's interest in the protection of its property rights.

On 28 May 2018 the case was referred to the Grand Chamber at the Government's request.

Respect for private life

Compulsory provision of buccal swabs from spouse of the accused in criminal proceedings: inadmissible

Caruana v. Malta, 41079/16, decision 15.5.2018 [Section IV]

Facts – Criminal proceedings were instituted against the applicant's husband. He was charged with wilful homicide following a shooting which took place in his and the applicant's residence. In the proceedings it was alleged that the applicant had an extramarital relationship with the victim, which had led to his death.

During the subsequent criminal inquiry the Court of Magistrates authorised the taking of buccal swabs from the applicant. The Constitutional Court found that the impugned measure would not constitute a breach of her rights under Article 8 of the Convention.

Law – Article 8: The taking of a mouth swab in order to obtain cellular material from the applicant amounted to an interference with her right to respect for private life. Although the applicant had not yet been subjected to the swab, the measure had been ordered by a court and was not subject to any further appeal and therefore executable. Thus, the applicant could be considered as a victim of the interference at issue. Recourse to such medical procedures for compulsory DNA testing, particularly when minor, was not *a priori* prohibited in order to obtain evidence related to the commission of a crime when the subject of the test was not the offender, but a relevant witness.

The *ratio* behind the exception of spousal testimonial privilege could only apply to oral evidence (testimony), as opposed to real evidence, which existed independently of a person's will. Similarly, the right not to incriminate oneself was primarily concerned with respecting the will of an

accused person to remain silent, it did not extend to the use, in criminal proceedings, of material which could be obtained from the accused through the use of compulsory powers but which had an existence independent of the will of the suspect such as, *inter alia*, documents acquired pursuant to a warrant, breath, blood, urine, hair or voice samples and bodily tissue for the purpose of DNA testing.

The impugned measure was "in accordance with the law" and pursued a "legitimate aim" – namely the protection of society by "the prevention of crime", that concept encompassing the securing of evidence for the purpose of detecting as well as prosecuting crime. Considering whether the measure had been necessary in a democratic society, the Court noted, firstly, that the situations of a witness and an accused were not comparable. In the Maltese context, relevant consequences were attached to the accused's refusal in the context of the criminal proceedings, which could have a bearing on an eventual finding of guilt and related sanctions. It followed that the application of different guarantees to individuals according to the role they had in proceedings, and what was at stake for them, was warranted. Secondly, it was open to the applicant to challenge the lawfulness of the decision before the courts of general jurisdiction and it had been a court, as opposed to a non-judicial authority, that decided on her measure. Thus, the Court had no reason to doubt that the domestic court ordering such measure had balanced the interests of both the party subject to it and those of the judicial investigation.

The taking of a buccal swab was an act of a very short duration that usually caused no bodily injury or any physical or mental suffering, and thus was of minor importance. The applicant was a witness present on the scene of the murder. Moreover, according to the authorities, her sample had been necessary to determine the accused's motive for the murder. Murder constituted a serious offence, in respect of which the State had obligations arising under Article 2 *vis-à-vis* the victims of such crime and their relatives. It was thus both reasonable and necessary to gather as much evidence as possible. The Court could not find that the measure in question was disproportionate.

Conclusion: inadmissible (manifestly ill-founded).

Respect for private life

Authorities' refusal to recognise as Azerbaijani nationals individuals who possessed official papers attesting to their nationality: *communicated*

Ahmadov and 4 other applications v. Azerbaijan, 32538/10 *et al.* [Section V]

The five applications (nos. 32538/10, 19160/11, 49417/11, 55122/11 and 74756/11) concerned the national authorities' refusal to recognize the applicants as Azerbaijani nationals. The applicants possessed official papers attesting to their Azerbaijani nationality or confirming that they had enjoyed or undertaken rights and duties such as carrying out military service or taking part in national elections, which were reserved to Azerbaijani nationals under the legislation in force.

Cases communicated under Article 8 of the Convention.

Respect for correspondence

Interception and perusal by a police officer of hand-written notes handed over overtly by a lawyer to his clients: *violation*

Laurent v. France, 28798/13, judgment 24.5.2018 [Section V]

Facts – While waiting for the outcome of a hearing before a judge, the two clients of the applicant (a lawyer) were required to wait under the supervision of a police escort. The applicant noted his professional contact details on a folded piece of paper, which he handed over openly to one of his two clients. The senior escorting officer then asked the client to show him the piece of paper. He opened it, read it, then handed it back. The applicant criticised the police officer for failing to respect the confidentiality of exchanges with his client. The same scene was then repeated with the other client. The applicant's complaints alleging a breach of the confidentiality of correspondence were unsuccessful.

Law

Article 35 § 3 (b) (*no significant disadvantage*): The application involved a method of exchanging information on which the Court had not yet been required to rule. In consequence, the Government's objection alleging no significant disadvantage was dismissed.

Article 8: The interception by a police officer of notes written by the applicant – a lawyer – and handed over to his clients amounted to interference in the right to respect for the confidentiality of correspondence between a lawyer and his or her clients. The interference pursued the legitimate aim of preventing disorder and crime.

At the time of the interference the applicant's clients had been deprived of liberty and were under police escort. It followed that monitoring of exchanges could not be totally excluded, but this could be carried out solely when the authorities had credible grounds to believe that the correspondence contained something unlawful.

The senior escorting officer had acted with the aim of preventing any dangerous or illegal act. However, the Government had not submitted any substantive reason capable of justifying the monitoring of the documents and did not maintain that they could have given rise to any particular suspicions. Furthermore, the applicant, in his capacity as a lawyer, had written and handed over the papers in question to his clients in full view of the senior escorting officer, without attempting to conceal his actions. In consequence, in the absence of any suspicion of an unlawful act, the interception of the relevant documents could not be justified. Equally, the content of the documents intercepted by the police officer was immaterial, given that, whatever its purpose, correspondence between lawyers and their clients concerned matters of a private and confidential nature. At every stage of the proceedings the domestic courts had held that while the events in issue did not merit a criminal prosecution, the senior escorting officer's conduct had nonetheless amounted to a breach of the principle of uninhibited communication between a lawyer and his or her client.

Thus, the interception and perusal of the applicant's correspondence with his clients, in his capacity as a lawyer, did not correspond to a pressing social need and had not therefore been necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: finding of a violation sufficient in itself in respect of the non-pecuniary damage.

(See also *Campbell v. the United Kingdom*, 13590/88, 25 March 1992; *Michaud v. France*, 12323/11, 6 December 2012, [Information Note 158](#); and the Factsheet on [Legal professional privilege](#))

ARTICLE 10

Freedom of expression

Fine imposed on political party for making available to voters a mobile telephone application allowing them to share anonymous photographs of their ballot papers: case referred to the Grand Chamber

Magyar Kétfarkú Kutya Párt v. Hungary, 201/17, judgment 23.1.2018 [Section IV]

In 2016 a referendum related to the European Union's migration relocation plan was held in Hungary. Just prior to the referendum, the applicant, a political party, had made available to voters a mobile telephone application which they could use to anonymously upload and share with the public photographs of their ballot papers. Following complaints by a private individual to the National Election Commission, the applicant was fined for infringing the principles of fairness and secrecy of elections.

In a judgment of 23 January 2018 (see [Information Note 214](#)), a Chamber of the Court held, unanimously, that there had been a violation of Article 10 of the Convention. In the Court's view, the applicant's conduct was not conducive to any prejudice in respect of the secrecy or fairness of the referendum. The sanction imposed on the applicant did not pursue any of the legitimate aims enumerated in Article 10 § 2.

On 28 May 2018 the case was referred to the Grand Chamber at the Government's request.

Freedom of expression

Prison sentence and three-year ban on practising journalism, for promoting extremism in the context of Chechen conflict: violation

Stomakhin v. Russia, 52273/07, judgment 9.5.2018 [Section III]

Facts – The applicant, a journalist and civil activist, published his own newsletter and, therein, made a number of statements concerning the Chechen conflict. In 2006 he was sentenced to five years imprisonment and banned from practising journalism for three years on account of statements appealing to violence and extremist activities and inciting hatred and enmity on the ethnic, religious

and social grounds, contrary to the Suppression of Extremism Act.

Law – Article 10

(a) *Aims pursued* – The applicant's conviction pursued several legitimate aims: protecting the rights of others (such groups as the Russian people, Orthodox believers and Russia's servicemen and law-enforcement officers), as well as protecting national security, territorial integrity, public safety, and preventing disorder and crime.

While national security or public safety had to be interpreted restrictively, the matters relative to the conflict in the Chechen Republic had been of a very sensitive nature at the material time, which required particular vigilance on the part of the authorities.

(b) *Necessity in a democratic society* – Relevant factors to be considered in the case of expressions alleged to stir up or justify violence, hatred or intolerance included: the context in which the impugned statements were published, their nature and wording, their potential to lead to harmful consequences, and the reasons adduced by the domestic courts (*Perinçek v. Switzerland* [GC], 27510/08, 15 October 2015, [Information Note 189](#)).

In respect of some of the impugned statements, the authorities had failed to demonstrate convincingly "the pressing social need" for the interference with the applicant's freedom of expression. While the interference at issue had met such a need in respect of other statements, the penalty appeared disproportionate.

(i) *Pressing social need* – The impugned statements were part of a debate on a matter of general and public concern (the conflict in the Chechen Republic), a sphere in which restrictions on freedom of expression are to be strictly construed. They had been made against the background of the separatist tendencies in the region that had led to serious disturbances between Russia's federal armed and security forces and the Chechen rebel fighters, resulting in a heavy loss of life and deadly terrorist attacks in other regions of Russia.

The Court considered that the impugned statements could be divided into three groups.

The first group of statements promoted, justified and glorified terrorism and violence, with an intention to romanticise and idealise the Chechen separatists' cause and to portray the federal armed and security forces as absolute, brutalised

and dehumanised evil. Those accusations might not have been without foundation, particularly in the light of the Court's case-law regarding the Chechen conflict where violations of various Convention provisions had been found. However, by generalising and labelling all the members of Russia's armed and security forces as "maniacs" and "murderers", the texts in question stirred up a deep-seated and irrational hatred towards them and, with due regard to the sensitive context of the counter-terrorist operation, exposed them to a possible risk of physical violence. An enhanced degree of regulation of such statements by the authorities had been all the more justified because they had been published only a few months after terrorist attacks. In that respect, the domestic courts' considerations had been relevant and sufficient. That was also true in respect of the statements referring to "President Maskhadov" as the "legitimate president of Chechnya", which contained in themselves no call for violence and would not have justified an interference with the freedom of expression in another context.

A second group of statements, although virulent, did not go beyond the – wide – limits of acceptable criticism of the Russian Government and the actions of the federal armed and security forces as a part of the machinery of the State. As regards the statement calling for "an immediate compulsory psychiatric examination" of Russia's servicemen and law-enforcement officers, the courts had taken it out of its context. The phrase at issue could only be seen as a scathing criticism of the judicial response to the murder of a young woman by a high-ranking military officer who had been a representative of the State seconded to the Chechen Republic to maintain constitutional order in the region and called upon to protect the interests of civilians; it was also an expression of concern that a mentally unstable person had been placed in command of a regiment, and an emotional appeal to take necessary measures to prevent similar incidents in the future. It was important that domestic authorities adopt a cautious approach in determining the scope of "hate speech" crimes and strictly construe the relevant legal provisions where such charges were brought for mere criticism of the government, State institutions and their policies and practices. As the courts had failed to take account all the relevant factors, the interference had not met "a pressing social need".

In a third group of statements, the applicant accused ethnic Russians of keeping slaves and suggested isolated cases of alleged abuses as typical and characteristic of all Russians and Orthodox believers. In the light of its approach to such broad attacks on ethnic and religious groups, the Court found the considerations of the domestic courts to be relevant and sufficient.

(ii) *Severity of the penalty* – The Court left open the question whether a ban on the exercise of journalistic activities, as such, was compatible with Article 10 of the Convention. A deprivation of liberty coupled with a ban on practising journalism for speech – even if criminal – was an extremely harsh measure, particularly when imposed for such a long period. In that respect, the domestic courts had referred to the applicant's "personality" and the "social danger" posed by his offence. While those were "relevant" considerations, the Court was unable to conclude that the applicant's sentence was rendered necessary by any particular circumstances of his case. The applicant had never been convicted of any similar offence (otherwise, the choice of a harsh sentence would have been more acceptable). Moreover, the potential impact of the impugned statements was reduced. They had been printed in a self-published newsletter with a very low number of copies and an insignificant circulation. The copies had been distributed by the applicant in person or through his acquaintances at public events in Moscow only to those individuals who had expressed their interest. The applicant's punishment had therefore not been proportionate to the legitimate aims pursued.

Conclusion: violation (unanimously).

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

(See also the Factsheet on [Hate speech](#))

Freedom of expression

Conviction of company broadcasting television programmes promoting a terrorist organisation: inadmissible

Roj TV A/S v. Denmark, 24683/14, decision 17.4.2018 [Section II]

Facts – The applicant company is Danish. It operated a television channel which broadcast programmes throughout Europe and the Middle East. In 2012

it was convicted for having promoted the terror operation of the PKK (Workers' Party of Kurdistan) through television programmes broadcast in the period between 2006 and 2010. The domestic courts observed that the PKK, which was on the list of terrorist organisations within the EU, Canada, USA, Australia and the United Kingdom, had committed or intended to commit acts of terrorism within the meaning of the Penal Code. The applicant company was fined and deprived of its licence to broadcast. All appeals were dismissed.

Law – Articles 10 and 17: The domestic courts had carefully assessed the evidence before them and conducted a balancing exercise, which took the applicant company's right to freedom of expression into account. There were no elements indicating that the domestic courts had not based their findings on an acceptable assessment of the relevant facts.

Regarding the applicability of Article 17, significant weight was attached to the findings of the domestic courts that the one-sided coverage with repetitive incitement to participate in fights and actions, incitement to join the organisation/the guerrilla, and the portrayal of deceased guerrilla members as heroes, amounted to propaganda for the PKK, a terrorist organisation, and could not be considered only a declaration of sympathy. Having regard to the content, presentation and connection of the programmes, the case concerned the promotion of the PKK's terror operation. In addition, the domestic courts had established that, at the material time, the applicant company had been financed to a significant extent by the PKK.

Consequently, the Court held that, firstly, taking account of the nature of the impugned programmes, which included incitement to violence and support for terrorist activity, secondly, the fact that the views expressed therein had been disseminated to a wide audience through television broadcasting and, thirdly, that they related directly to an issue which was paramount in modern European society – the prevention of terrorism and terrorist-related expressions advocating the use of violence – the applicant company's complaint did not, by virtue of Article 17, attract the protection afforded by Article 10.

Conclusion: inadmissible (incompatible *ratione materiae*).

ARTICLE 14

Discrimination (Article 4 and Article 8)

Men exempted from military service made subject to a special tax: *communicated*

Kung v. Switzerland, 73307/17 [Section III]

The applicant, who was declared unfit for military service in 2005, was still liable, in 2015, for payment of a special tax (called an "exemption-from-military-service tax"). As the tax was not levied against women, the applicant claimed to have suffered an abnormal difference of treatment on grounds of sex.

Communicated under Article 14 of the Convention taken in conjunction with Article 4 § 3 b) or with Article 8.

Discrimination (Article 3 of Protocol No. 1)

Refusal by the State to grant public funding to a party which had attained the share of the vote required by the former legislation: *communicated*

Demokrat Parti v. Turkey, 8372/10 [Section II]

Following the November 2002 elections, the candidates on the list of the political party Anavatan Partisi (ANAP) failed to pass the national threshold of 10% and were therefore not elected. Following defections by MPs elected on other lists, the ANAP was represented at the National Assembly by three MPs in March 2005, and by ten MPs in April 2005.

Law no. 5341 of 29 April 2005, published in the Official Journal of 7 May 2005, repealed provisional section 16 of Law no. 2820, which provided that political parties represented by at least three MPs in Parliament and which were entitled to take part in elections were eligible for State funding.

In March 2006 the ANAP was refused State funding by the Ministry of Finance. Its appeals against that decision were unsuccessful. In October 2009 the ANAP decided to merge with the applicant party, Demokrat Parti, under the latter's name.

The applicant party alleged before the European Court that, by refusing the request for funding on grounds of the entry into force of Law no. 5341 while agreeing to fund other political parties, the national authorities had infringed its freedom of association and discriminated against it. It submitted that such

discrimination created inequality of opportunity between the different political parties taking part in the election campaign in favour of those who were awarded the funding in question.

Communicated under Articles 11 and 14 of the Convention and Article 3 of Protocol No. 1.

(See also *Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, 7819/03, 10 May 2012, [Information Note 152](#); and the Factsheet on [Political parties and associations](#))

ARTICLE 17

Prohibition of abuse of rights

Conviction of company broadcasting television programmes promoting a terrorist organisation: inadmissible

[Roj TV A/S v. Denmark, 24683/14, decision 17.4.2018 \[Section II\]](#)

(See Article 10 above, [page 11](#))

ARTICLE 33

Inter-State application

Alleged widespread violations of human rights in Crimea and Eastern Ukraine: relinquishments in favour of the Grand Chamber

[Ukraine v. Russia, 20958/14](#),
[Ukraine v. Russia \(IV\), 42410/15](#),
[Ukraine v. Russia \(V\), 8019/16](#),
[Ukraine v. Russia \(VI\), 70856/16 \[Section I\]](#)

The applicant Government complain of numerous violations of the Convention in certain parts of their national territory that came under the *de facto* jurisdiction of the Russian Federation with effect from 27 February 2014, as a result of the allegedly illegal annexation of Crimea and Russia's support for separatist armed groups in eastern Ukraine.

The applicant Government complain of the following in particular: deaths of military personnel, law-enforcement officers and civilians; cases of torture or ill-treatment; cases of arbitrary deprivation of liberty; persecution of certain Crimean Tatars on account of their ethnic origin or their attempts to protect Ukrainian national symbols; searches and seizures in churches and detention of priests as hostages; exertion of pressure on those expressing

the wish to retain Ukrainian nationality in Crimea; persecution of journalists and restrictions on the activities of Ukrainian media outlets; misreporting and use of expressions constituting "hate speech" against Ukraine and its population; interruption of teaching in Ukrainian and the Crimean Tatar language; inability to participate in Ukrainian national elections, and irregularities in local elections; expropriation covered *ex post facto* by Russian legislation; suspension of the operation of the Ukrainian police and courts; and restrictions on freedom of movement as a result of the installation of a new border between Crimea and Ukraine. They rely on Articles 2, 3, 5, 6, 8, 9, 10, 11, 13, 14 and 18 of the Convention, Articles 1, 2 and 3 of Protocol No. 1 and Article 2 of Protocol No. 4.

Under Rule 39 of the [Rules of Court](#), the Court called upon Russia and Ukraine to refrain from any measures, in particular military action, which might bring about violations of the civilian population's Convention rights. This interim measure remains in force.

In November 2014 and March 2015, notice of the applications was given to the respondent Government (see [Information Notes 179](#) and [189](#)), who then submitted their observations.

On 7 May 2018 the Chamber of the Court to which these applications had been allocated decided to relinquish jurisdiction in favour of the Grand Chamber.

The case of *Ukraine v. Russia (II)* (application no. 43800/14), concerning more specifically the alleged abduction of three groups of children in 2014, remains pending before a Chamber. The case of *Ukraine v. Russia (III)* (no. 49537/14) was struck out of the list in September 2015 at the respondent Government's request, as an individual application on the same subject was already before the Court.

ARTICLE 1 OF PROTOCOL No. 1

Control of the use of property

Indefinite blanket ban on alienation of agricultural land: violation

[Zelenchuk and Tsytsyura v. Ukraine, 846/16 and 1075/16, judgment 22.5.2018 \[Section IV\]](#)

Facts – In the 1990s, in the course of the land reform, the former Soviet collective and State-owned farms were dissolved and their members

received land entitlements in the form of shares of the whole land mass of a given farm expressed as a number of hectares but without a specific physical location or defined boundaries. Subsequently, from 2000 onwards, the shares were converted into physical plots of land (defined on the ground) and ownership certificates were issued relating to specific plots of land. In 2001 a ban, known as the “land moratorium”, on any form of alienation of agricultural land, except for inheritance, swap transactions and expropriation for public use, was introduced, pending the adoption of legislation necessary for the creation of a well-functioning land sales market. While the ban was initially set to be in force until 2005, it was extended several times and is still in force. Presently, any change in the designated use of agricultural land is likewise prohibited.

Both applicants received shares of farm land by inheritance in 2000 and 2004 respectively and received property certificates in respect of specific plots in 2007 and 2008. Both plots, subject to the above ban, have been rented out to commercial companies.

Law – Article 1 of Protocol No. 1: The impugned legislative situation constituted an interference with the applicants’ possessions and amounted to control of the use of property. The moratorium and its extensions had a basis in domestic law and was aimed at avoiding impoverishment of the rural population, excessive concentration of land in the hands of wealthy individuals or hostile powers and its withdrawal from cultivation. The domestic authorities’ judgment that the maintenance of the moratorium on land sales served those goals was not “manifestly without reasonable foundation”.

It was not the Court’s role to decide in principle whether a State which had decided to transfer previously State-owned land into private hands should or should not then allow the new owners to sell it and under what conditions. In view of the principle of subsidiarity, the Court could only assess the situation affecting the applicants in the light of the goal of creation of a land sales market, which the respondent State itself had consistently declared. The following factors were relevant for such an assessment.

(a) *Legislative uncertainty* – The motives for the moratoriums introduction and maintenance, its scope and end point had evolved over time. Almost all changes in the moratorium following

its initial adoption were in fact aimed at tightening rather than gradually loosening restrictions. The moratorium had become *de facto* indefinite and the conditions for its lifting indeterminate. No reason had been given for that change and it was in contradiction with the proclaimed aim of the gradual introduction of a land sales market.

(b) *Reasons advanced for the introduction and maintenance of the moratorium* – No specific reasons had been advanced as to exactly why the domestic authorities considered the temporary blanket ban on land sales as the only appropriate measure of achieving their desired social and economic goals, whether they seriously considered other means of achieving them or assessed the proportionality of a total ban. Moreover, once the moratorium had been extended, no reasons had been given for the continuing failure to legislate and consider less restrictive alternatives. That such alternatives were available had been repeatedly recognised at the highest levels of the respondent State.

The concern about impoverishment of the rural population and farmers did not address the situation of owners such as the applicants who lived in urban areas and did not work in farming. It had been acknowledged by the legislator that the absolute prohibition on sales was not needed as such to achieve that goal but rather served to provide time to develop the necessary legislation to ensure a well-regulated land sales market. Concerning preventing excessive concentration of land and its withdrawal from cultivation, domestic law already contained provisions which aimed at achieving the same result. It was also relevant that no other Council of Europe member State, including those who had undergone transition from State-controlled to market economies and had implemented land reform programmes, had in place blanket restrictions on the sale of agricultural land.

(c) *The burden imposed on the applicants* – Both applicants had obtained the land as a result of a land reform which had not been completed by the time they had come into possession of it. The land had been inherited rather than acquired in a commercial transaction and given the reform’s pronounced policy of eventually opening up agricultural land to the market they could not expect that the absolute prohibition would continue indefinitely. Therefore, it could not be said that the applicants had to know that they

were coming into possession of encumbered property which would remain so encumbered save for the eventuality of some uncertain future development.

As to the financial aspect of the burden imposed on the applicants, applicants were free to rent their land out at market rates and the respondent State had sought to benefit the owners by setting minimum rents. At the same time, the applicants' land had been rented by commercial enterprises and the Government had failed to show that the moratorium served to protect vulnerable categories of the population. Furthermore, the applicants had gained the land through the process of ordinary inheritance and it was not a gratuitous windfall for them.

The Court also found relevant the length of time the restrictions remained in place, their broad scope and their blanket and inflexible nature. The restrictions had affected the first and second applicants personally for more than twelve and ten years respectively. They had prevented the applicants from both alienating their land in nearly every possible fashion and using it for any other purpose than agriculture. They had not been subject to any individual review or exception, resulting in the proportionality of the measure not being substantively examined either at the legislative or individual level. Lastly, the uncertainty created by the repeated extensions of the moratorium had in itself contributed to the burden imposed on the applicants. Realisation of one of the key elements of their ownership, the right to dispose of one's property, had become subject to legislation of indefinite content, the passage of which had been postponed in a fashion which appeared unpredictable and insufficiently explained. Their ownership rights had been rendered, in practical terms, precarious and defeasible.

In sum, the applicants had been made to bear the burden of the authorities' failure to meet their self-imposed goals and deadlines. In view of the weakness of the reasons given for the choice of the most restrictive alternative available to the authorities over less restrictive measures, the burden imposed on the applicants had been excessive. A fair balance between the general interest of the community and the property rights of the applicants had not been drawn.

Conclusion: violation (unanimously).

Article 46: The respondent State should take appropriate legislative and/or other general measures to ensure a fair balance between the interests of agricultural land owners on the one hand, and the general interests of the community, on the other hand, in accordance with the principles of protection of property rights under the Convention. It was not for the Court to specify how those interests should be balanced. The Court's judgment should not be understood to mean that an unrestricted market in agricultural land had to be introduced in Ukraine immediately.

Article 41: no claim made in respect of pecuniary damage; finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage. In making that finding the Court had regard to the nature of the burden imposed on the applicants, the requirement for the respondent State to take appropriate general measures and the fact that an exceptionally large number of individuals were affected by the moratorium. Should the respondent State unreasonably delay adoption of the requisite general execution measures, that might, with the passage of time, lead to a situation where awards under Article 41 could eventually become warranted, at least for some categories of agricultural land owners.

ARTICLE 1 OF PROTOCOL No. 7

Procedural safeguards relating to expulsion of aliens

Inadequate judicial scrutiny of order, based on undisclosed classified information, to leave country on grounds of national security: violation

Ljatić v. the former Yugoslav Republic of Macedonia, 19017/16, judgment 17.5.2018 [Section I]

Facts – In 1999 the applicant fled Kosovo to the former Yugoslav Republic of Macedonia, where in 2005 she was granted asylum status. Her residence permit was extended each year until 2014, when the Ministry of the Interior terminated her asylum status, stating merely that she was “a risk to [national] security”, and ordered her to leave the territory of the respondent State within 20 days of receipt of the final decision. The domestic courts upheld that decision, noting that it was based on a classified document obtained from the Intelligence

Agency. They considered irrelevant the applicant's argument that the document had never been disclosed to her.

Law – Article 1 of Protocol No. 7

(a) *Applicability* – The Ministry's decision had the effect of terminating the applicant's asylum, which was her only ground for lawful residence. It contained an explicit order compelling her to leave the respondent State within a specified time-limit. It had not been revoked or suspended and the enforcement order was not subject to any further formal requirements. The applicant thus faced a risk of expulsion at any time. The fact that she had been granted a one-off permission to leave and return to the respondent State and that the order had not been enforced to date were insufficient to conclude that the order was no longer in force or that it could not lead to the applicant's expulsion. Both the permission to leave and the tolerance of the applicant's continued stay had arisen from decisions made in the exercise of the authorities' discretion and were not based on any statutory grounds. The Ministry's decision was therefore to be regarded as a measure of expulsion, which fell within the ambit of Article 1 of Protocol No. 7.

(b) *Merits* – Considering the grounds for the impugned decision, the only relevant fact, which emerged from the redacted version of the classified document that had been produced before the Court, was the applicant's alleged knowledge of and support for other people's involvement in the commission of multiple thefts and acts of concealment. However, there was no indication of the number or the identity of those people or their relationship, if any, to the applicant. No other factual details had been provided in support of those allegations and no criminal proceedings had been brought against the applicant for participating in the commission of any offence in the respondent State or any other country.

As the above-mentioned classified document had not been available to the applicant and the Ministry's decision did not provide her with the slightest indication of the factual grounds for considering her a security risk, she had been unable to present her case adequately in the ensuing judicial review proceedings.

Moreover, there was nothing to suggest that the domestic courts had been provided with the classified document or any further factual details

for the purpose of verifying that the applicant really did represent a danger for national security. They had thus confined themselves to a purely formal examination of the impugned order. The domestic courts had furthermore not given any explanation of the importance of preserving the confidentiality of the classified document or indicated the extent of the review they had carried out. They had therefore failed to subject the executive's assertion that the applicant posed a national security risk to any meaningful scrutiny.

Conclusion: violation (six votes to one).

Article 41: EUR 2,400 in respect of non-pecuniary damage.

(See also *C.G and Others v. Bulgaria*, 1365/07, 24 April 2008, [Information Note 107](#); and *Lupsa v. Romania*, 10337/04, 8 June 2006)

GRAND CHAMBER (PENDING)

Referrals

[López Ribalda and Others v. Spain, 1874/13 et 8567/13, judgment 9.1.2018 \[Section III\]](#)

(See Article 8 above, [page 7](#))

[Magyar Kétfarkú Kutya Párt v. Hungary, 201/17, judgment 23.1.2018 \[Section IV\]](#)

(See Article 10 above, [page 10](#))

Relinquishments

[Ukraine v. Russia, 20958/14, Ukraine v. Russia \(IV\), 42410/15, Ukraine v. Russia \(V\), 8019/16, Ukraine v. Russia \(VI\), 70856/16 \[Section I\]](#)

(See Article 33 above, [page 13](#))

OTHER JURISDICTIONS

European Committee of Social Rights

[No guarantee on the right to inclusive education in ordinary schools for children suffering from an intellectual disability](#)

[Mental Disability Advocacy Center \(MDAC\) v. Belgium, 109/2014, decision on admissibility and the merits 16.10.2017, made public 29.3.2018](#)

The complainant organisation, the Mental Disability Advocacy Center (MDAC), alleged that the Flemish Community of Belgium denied access to mainstream education to disabled children, in particular to children with intellectual disabilities, and failed to provide the necessary assistance to ensure such inclusion.

Law – Article 15 § 1 (right of persons with disabilities to independence, social integration and participation in the life of the community) of the [European Social Charter](#) (revised)

The right of children with intellectual disabilities to an inclusive education – Only mainstream education promoted independence, integration and social participation of persons with disabilities. However, approximately 80% of disabled children were enrolled in a specialised school.

Various measures had been adopted by the Government aiming to ensure that every child with a disability had access to inclusive education, in particular through the adoption of the “M”-Decree. There was integration when pupils were required to fit the mainstream system, whereas inclusion was about the child’s right to participate in mainstream school and the school’s obligation to accept the child taking account of the best interests of the child as well as their abilities and educational needs. However, the eligibility requirements for admission to mainstream education according to the “M”-Decree were based on the notion of integration rather than inclusion. Once in mainstream education, pupils with disabilities faced barriers which seriously hindered them in the effective exercise of their right to inclusive education. For example, school buildings tended not to be accessible and teachers in mainstream schools did not have the training needed to cater for the specific needs of children with disabilities.

As there was no objective and reasonable justification for not providing reasonable accommodation in respect of children with intellectual disabilities, contrarily from other children, the State had infringed those children’s right not to be discriminated against.

The Government had provided no information as to how it planned to ensure the right to inclusive education for children with intellectual disabilities or who could not follow the core curriculum due to their disability. Nor did the Government argue that it would have been impossible financially

and administratively for it to take new measures to ensure reasonable accommodation for children with disabilities to attend mainstream school. The Government had provided neither practical reasons, for example based on lack of resources at the school, nor a clear explanation as to the grounds for the restriction placed on disabled children.

In the light of those factors, the refusal to enrol children with intellectual disabilities in the mainstream school system was not justified by any legitimate aim. The right to inclusive education of children with intellectual disabilities was not effectively guaranteed.

Conclusion: violation.

The European Committee of Social Rights also concluded that there had been a violation of Article 15 § 1 owing to the lack of an effective remedy against refusal of enrolment in mainstream schooling for children with intellectual disabilities; a violation of Article 17 § 2 because children with intellectual disabilities did not have an effective right to an inclusive education; and no violation of Article E read in conjunction with Article 15 § 1 or Article 17 § 2 because there was no discrimination on grounds of socio-economic origin.

(As regards the ECHR case-law, see *Çam v. Turkey*, 51500/08, 23 February 2016, [Information Note 193](#); *Enver Şahin v. Turkey*, 23065/12, 30 January 2018, [Information Note 214](#); and *Stoian v. Romania*, 289/14, case communicated on 14 June 2017)

European Committee of Social Rights

Schooling of Roma children jeopardised through frequent evictions

European Roma and Travellers Forum (ERTF) v. France, 119/2015, decision on the merits 5.12.2017, made public 16.4.2018

The complainant organisation, the European Roma and Travellers Forum (ERTF), alleged violations by France of several provisions of the European Social Charter on account of the exclusion from compulsory schooling of Roma children and adolescents as a result of the permanent instability of the settlements and their living conditions; the administrative, social and economic discrimination; the housing conditions that do not respect the human dignity and the basic needs of children; and successive evacuations preventing any inclusion in the social fabric and any staying in school.

Law – Article 17 § 2 (undertaking to provide a free primary and secondary education and to encourage regular attendance at schools) of the [European Social Charter](#) (revised): The right of access to primary and secondary education was enshrined in the French Constitution. So that it could be implemented as an actual, effective right, in addition to the availability of high-quality teaching establishments, a general environment had to be created in which it could be enjoyed, namely through the stable accommodation of relatives and families in housing of a reasonable standard, ease of access to establishments (transport and proximity), a protective legal framework and security. Frequent evictions of families did not provide this secure environment.

Various measures adopted in France for the support and protection of Roma families had failed, or partly failed, to operate in the situations referred to, affecting the regularity of school attendance. This was especially so given that the Roma population already faced objective difficulties with regard to access to education.

As to the main question raised by the complaint, namely whether eviction orders had been accompanied by the measures and safeguards needed to reduce the impact on the children concerned and their families, the European Committee of Social Rights noted the following aspects of those safeguards: prior dialogue with the persons concerned; the possibility of issuing a warning that a camp or site was to be evacuated within a reasonable time limit; consultation on rehousing possibilities or the proposal of an authorised alternative camp; the temporary maintenance of services and facilities during the transition; possible support and information from the relevant welfare centres to provide useful assistance; guaranteed rights of appeal against decisions or of due process.

The Committee considered once one or the other of those safeguards was not verified in every circumstance, the insecurity of evictions, whether legitimate or abusive, undermined the application of the right to education because of the complications and difficulties to which evictions would inevitably give rise. Moreover, successive expulsion decisions within a short time lapse increased the difficulties for the groups concerned and made their situation and living conditions

worse. They contributed to permanent instability which in turn jeopardised schooling.

Conclusion: violation.

The Committee also concluded that there was no violation of Article 10 § 3 and Article 10 § 5 of the Charter because the ERTF did not substantiate the alleged particular difficulties that would hinder access to vocational training; there was a violation of Article E taken in conjunction with Articles 10 §§ 3 and 5, 17 § 2, 30 and 31 of the Charter because the discriminatory treatment against the Roma population had had the effect of impeding their access to schooling, vocational training, and housing of a sufficient standard; there was no violation of Article E taken in conjunction with Article 16 of the Charter as it was not established that the situation complained of had had the effect of depriving the beneficiaries of the social and family benefits.

(As regards the ECHR case-law, see the judgments in *Lee v. the United Kingdom* [GC], [25289/94](#), 18 January 2001; and *Bagdonavicius and Others v. Russia*, 19841/06, 11 October 2016, [Information Note 200](#); and also the Factsheet on [Roma and Travellers](#))

European Union – Court of Justice (CJEU) and General Court

Assessment of the necessity of a restriction on freedom of movement and residence in respect of an EU citizen or member of his family, on suspicion of having taken part in war crimes

[K. v. Staatssecretaris van Veiligheid en Justitie and H.F. v. Belgische Staat, C-331/16 and C-366/16, judgment 2.5.2018 \(CJEU, Grand Chamber\)](#)

In case C-331/16, K., who was of dual Croatian and Bosnian nationality, arrived in the Netherlands in 2001, accompanied by his wife and a minor son. Three of his consecutive applications for asylum were rejected, the last one in 2013 being accompanied by a ban on entering the Netherlands. During the same year, following Croatia's accession to the European Union, K. sought the withdrawal of the entry ban imposed on him. In 2015 the Netherlands authorities granted that application but declared K. to be an undesirable immigrant to the Netherlands on the grounds that he was

guilty of war crimes and crimes against humanity committed by the special units of the Bosnian army.

In case C-366/16, H.F., of Afghan nationality, arrived in the Netherlands in 2000 and unsuccessfully applied for asylum. In 2011 H.F. and his daughter settled in Belgium. After unsuccessfully lodging a number of applications for a residence permit in that country, H.F. lodged a fresh application, in 2013, on the basis of his being a family member of a Union citizen, since his daughter was a Netherlands national. At final instance, the refusal of the Belgian authorities was based on H.F.'s participation in war crimes or crimes against humanity, or his having given orders to commit such crimes.

Under Article 27(1) of [Directive 2004/38/EC](#),¹ member States could restrict the freedom of movement and residence of Union citizens and their family members, irrespective of nationality, on grounds, *inter alia*, of public policy or public security. Those grounds could not, however, be invoked to serve economic ends.

According to the CJEU, the fact that a Union citizen or a third-country national family member of such a citizen, who had applied for a right of residence in the territory of a member State, had, in the past, been the subject of a decision excluding that person from refugee status on the ground that there were serious reasons to believe that he had been guilty of a war crime, a crime against humanity or of acts contrary to the purposes and principles of the United Nations² did not enable the competent authorities of that member State to consider automatically that the mere presence of that person in its territory constituted, whether or not there was any risk of reoffending, a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, capable of justifying the adoption of measures taken on grounds of public policy or public security.

The finding that there was such a threat had to be based on a case-by-case assessment, by the competent authorities of the host member State, of the personal conduct of the individual concerned, taking into consideration the findings of fact in the decision to exclude that individual from refugee status and the factors on which that

decision was based, particularly the nature and gravity of the crimes or acts that he was alleged to have committed, the degree of his individual involvement in them, whether there were any grounds for excluding criminal liability, and whether or not he had been convicted. That overall assessment also had to take account of the time that had elapsed since the date when the crimes or acts had allegedly been committed and the subsequent conduct of that individual, particularly in relation to whether that conduct revealed the persistence in him of a disposition hostile to the fundamental values enshrined in Articles 2 and 3 of the [Treaty on European Union](#), such as human dignity and human rights, capable of disturbing the peace of mind and physical security of the population. The mere fact that the past conduct of that individual had taken place in a specific historical and social context in his country of origin, which was not liable to recur in the host member State, did not preclude such a finding.

In accordance with the principle of proportionality, the competent authorities of the host member State must, in addition, weigh the protection of the fundamental interest of society at issue, on the one hand, against the interests of the person concerned in the exercise of his right to freedom of movement and residence as an EU citizen and in his right to respect for private and family life as set out in Article 7 of the [Charter of Fundamental Rights of the European Union](#) and in Article 8 of the European Convention on Human Rights, on the other.

Article 28(1) of Directive 2004/38 had to be interpreted as meaning that, where the measures envisaged entailed the expulsion of the individual concerned from the host member State, that State must take account of the nature and gravity of the alleged conduct of the individual concerned, the duration and, when appropriate, the legality of his residence in that member State, the period of time that had elapsed since that conduct, the individual's behaviour during that period, the extent to which he currently posed a danger to society, and the solidity of social, cultural and family links with that member State. Article 28(3)(a) of Directive 2004/38 was not applicable to an EU citizen who did not

1. Directive 2004/38/EC of the European Parliament and of the Council, of 29 April 2004, on the right of citizens of the Union and their family members to move and reside freely within the territory of the member States amending Regulation (EEC) No. 1612/68 and repealing directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

2. Article 1F of the [Geneva Convention](#), or Article 12(2) of [Directive 2011/95/EC](#).

have a right of permanent residence in the host member State.

European Union – Court of Justice (CJEU) and General Court

Request for family reunification by third-country national subject to entry ban

K.A. and Others v. Belgische Staat, C-82/16, judgment 8.5.2018 (CJEU, Grand Chamber)

In disputes in the main proceedings concerning applications for residence for the purposes of family reunification, the (Belgian) Aliens Appeals Board referred a number of requests for a preliminary ruling to the CJEU concerning the interpretation of Article 20 of the [Treaty on the Functioning of the European Union](#) (TFEU), Articles 7 and 24 of the [Charter of Fundamental Rights of the European Union](#) and of [Directive 2008/115/EC](#) on common standards and procedures in Member States for returning illegally staying third-country nationals.

The applicants in the main proceedings were third-country nationals to whom a return decision had been issued, that decision being accompanied by a decision prohibiting their entry into Belgium, and who had subsequently applied for residence for the purposes of family reunification with Belgian nationals. Relying on the entry ban, the competent national authority had refused to examine those applications on the ground that they had been lodged in Belgium: under Belgian law, an application for the removal or suspension of the entry ban had to be made before an application for residence for the purposes of family reunification could be validly submitted; it was the view of the administrative authority that the applicant must first leave Belgium before submitting such an application.

The CJEU provided in substance the following replies.

As a preliminary point, it was observed – in determining the legal frame of reference – that the Belgian nationals concerned had never exercised their freedom of movement within the Union.

(a) *Possibility of refusing to examine an application for family reunification* – Directive 2008/115, which concerned only the return of illegally staying third-country nationals and did not govern family reunification, was not relevant here.

Of relevance, however, was Article 20 of the TFEU, which conferred on every individual who was a national of a member State citizenship of the Union. According to the case-law of the CJEU, enjoyment of the substance of the rights derived from that status had to be effective; there were very specific situations in which third-country nationals could be entitled to rights “derived” from those enjoyed by a Union citizen. However, that could only be the case if there existed between them a relationship of dependency of such a nature that it would lead to the Union citizen being compelled to accompany the third-country national concerned and to leave the territory of the European Union.

Consequently, while it was true that a refusal by a third-country national to comply with the obligation to return and to cooperate in the context of a removal procedure could not enable him to avoid (in whole or in part) the legal effects of an entry ban, the fact remained that the competent national authority could not refuse to examine an application for family reunification solely on the ground that the third-country national was the subject of a ban on entering that member State: it was the duty of that authority to assess whether there existed between the third-country national and Union citizen concerned a relationship of dependency as described above. In such circumstances the member State concerned must withdraw or, at the least, suspend the return decision and the entry ban.

Contrary to what was maintained by the Belgian Government, Directive 2008/115 did not prohibit member States from withdrawing or suspending an entry ban where the return decision had not been complied with: some of its provisions, in certain special cases, made no reference to the prior obligation to leave the territory.

(b) *The existence of a relationship of dependency* – A distinction had to be made here between adults and minors:

– for an adult, the identification of a relationship between adults as one of dependency capable of giving rise to a derived right of residence was conceivable only in exceptional cases (where there could be no form of separation of the individual concerned from the member of his family on whom he was dependent);

– for a minor, in the best interests of the child, the national authorities must take account of,

inter alia, the age of the child, the child's physical and emotional development, the extent of his emotional ties both to the Union citizen parent and to the third-country national parent, and the risks which separation from the latter might entail for that child's equilibrium. The mere existence of a family link (whether natural or legal) between the Union citizen child and his third-country national parent was not sufficient; cohabitation was not necessary, but constituted a relevant factor.

(c) *The importance of the time when the relationship of dependency came into being* – The effectiveness of Union citizenship would be compromised if an application for residence for the purposes of family reunification were to be automatically rejected where the relationship of dependency had come into being at a time when the third-country national was already the subject of a return decision accompanied by an entry ban and was therefore aware that he was staying illegally: in such circumstances, the existence of such a relationship of dependency could not, by definition, have been taken into account when the return decision was adopted.

Accordingly, it was immaterial that the relationship of dependency came into being after the imposition of an entry ban or that the decision had become final at the time when the application for family reunification was submitted.

(d) *The reasons for the entry ban* – It was immaterial that an entry ban was justified by non-compliance with an obligation to return.

Where such a ban was justified on public policy grounds, a derived right to residence could not be refused unless the applicant represented a genuine, present and sufficiently serious threat to the requirements of public security. A specific assessment of all the current and relevant circumstances of the case was required, in the light of the principle of proportionality, the best interests of any children at issue and of fundamental rights. Among the factors to be taken into consideration were the personal conduct of the individual concerned, the length and legality of his residence on the territory of the member State concerned, the nature and gravity of the offence committed, the extent to which the person concerned was currently a danger to society, the age of any children at issue and their state of health, as well as their economic and family situation.

(e) *Invoking, against a return decision, family grounds submitted following an initial return decision* – Where a third-country national could not qualify for a derived right of residence under Article 20 of the TFEU on the basis of the above-mentioned considerations, Article 5 of Directive 2008/115 precluded the adoption of a return decision with respect to a third-country national without any account being taken of the details of his family life, and in particular the interests of a minor child, referred to in an application for residence for the purposes of family reunification submitted after adoption of an initial return decision.

However, the person concerned was subject to a duty of honest cooperation meaning that he was obliged, as soon as possible, to inform the competent authority of any relevant changes in his family life; the right to expect that such changes would be taken into account could not be used in order to reopen or extend indefinitely the administrative procedure. Accordingly, the competent national authority could not be criticised for failing to take into account, in the course of a subsequent return procedure, details which the person concerned ought to have put forward at an earlier procedural stage.

European Union – Court of Justice (CJEU) and General Court

Sanctions imposed on an MEP for using offensive language in Parliament

Janusz Korwin-Mikke v. European Parliament, T-770/16, Janusz Korwin-Mikke v. European Parliament, T-352/17, judgments 31.5.2018 (General Court)

The applicant, a member of the European Parliament, was made the subject of disciplinary penalties for making shocking comments in June 2016 and March 2017 concerning migrants and women during two plenary sessions devoted to migration policy and the gender pay gap respectively.

The penalties consisted of forfeiture of his entitlement to the daily subsistence allowance, temporary suspension from participation in all parliamentary activities, without prejudice to his right to vote in a plenary session, and prohibition from representing the Parliament for a period of one year.

The applicant brought two actions before the General Court for annulment of those decisions on grounds of infringement of freedom of MEPs' expression.

Without it being necessary to examine the proportionality of the penalties in question, the following reasons sufficed for the General Court to conclude that they should be annulled.

According to the case-law of the European Court of Human Rights (ECHR), MPs' freedom of expression had to be afforded greater protection in view of the fundamental importance of the role played by Parliament in a democratic society. With regard in particular to Parliament's ability to punish the conduct of its members, the ECHR had both linked this to the need to ensure that parliamentary business was conducted in an orderly fashion and also recognised that parliaments had broad autonomy in regulating the time, place and manner chosen by parliamentarians to convey their speeches (the scrutiny exercised by the ECHR being therefore limited). On the other hand, however, they had very limited latitude in regulating the content of parliamentary speech (the scrutiny exercised by the ECHR being therefore stricter). Its case-law referred only to "some regulation ... necessary in order to prevent forms of expression such as direct or indirect calls for violence" (see the ECHR judgment in *Karácsony and Others v. Hungary* [GC], 42461/13, 17 May 2016, [Information Note 196](#)).

The General Court concluded that the Rules of Procedure of a parliament could provide for the possibility of penalising MPs for their comments only where those comments undermined its proceedings or posed a serious threat to society, such as incitement to violence or racial hatred.

In the present case Rule 166 of the Rules of Procedure of the Parliament provided that a penalty could be applied against any MEP "in exceptionally serious cases of disorder" or "disruption of Parliament whilst in session in violation of the principles set out in Rule 11".

Admittedly, Rule 11 of those Rules provided that "the conduct of Members shall be characterised by mutual respect, be based on the values and principles laid down in the Treaties, and particularly in the Charter of Fundamental Rights, and shall respect the dignity of Parliament." An amended version (applicable in the second case) of Rule 11

expressly referred to prohibition of any "defamatory, racist or xenophobic language or behaviour".

However, it was Rule 166 – and not Rule 11 – which laid down the conditions in which penalties could be applied. On a literal interpretation, a breach of the "principles and values" set out in Rule 11 did not amount to an independent ground for imposing a penalty, but was an additional condition necessary in order for a "disruption of Parliament whilst in session" to be penalised.

It followed that a breach of the principles set out in Rule 11 of the Rules of Procedure, even if proved, could not, of itself, be penalised as such, but only if it involved disruption of Parliament. In the present case there was no evidence that the comments in question had caused any disorder in those sessions.

The General Court rejected Parliament's argument that regard had to be had to the effects of the applicant's comments outside Parliament through the harm caused to its reputation and institutional standing: since there were no objective criteria, and given the vagueness – to say the least – of the notion of "dignity of Parliament" or undermining of that dignity, and the wide margin of appreciation afforded to Parliament in that area, such an interpretation would have the effect of arbitrarily restricting MEPs' freedom of expression.

Moreover, Rule 166(2) referred to the "behaviour" of the MEP in question, providing that, for the purposes of its assessment, regard was had to its frequency and seriousness. However, comments, language or speeches were not mentioned and no penalty could therefore be imposed in that respect. Accordingly, even supposing that comments made in the context of parliamentary functions could be assimilated to conduct, and thus come within the purview of Rule 11, they could not be penalised in the absence of serious disruption of Parliament whilst in session.

In those conditions, and despite the particularly shocking nature of the applicant's comments, the Parliament could not in the present case impose a disciplinary penalty on the basis of those provisions. The decisions were therefore annulled.

Inter-American Court of Human Rights (IACtHR)

Reinforced duty of due diligence for child victims of sexual violence and jury trials

**V.R.P., V.P.C. et al. v. Nicaragua, Series C
No. 350, judgment 8.3.2018**

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

The applicants, a mother (V.P.C.) and her daughter (V.R.P.), complained about the lack of an effective and non-revictimising investigation into the accusation of rape when the daughter was eight years old. In 2001, V.R.P. was taken to hospital by her mother, where it was found that she had been subjected to sexual abuse and rape allegedly committed by her father in 2000. During the course of the investigation, the girl was required to participate, against her will, in the crime scene reconstruction and was submitted to repeated gynaecological examinations. The case was tried by a jury, according to the criminal procedural law in force at that time in Nicaragua. The jury declared the accused innocent with the verdict being later confirmed by a judge. Several legal actions were taken by the mother denouncing irregularities allegedly committed during the investigation and the criminal procedure. Those claims generated counterclaims against her and her family for libel and slander. The mother and her two daughters fled to the United States of America where they were granted asylum.

Merits – Articles 5(1) (right to personal integrity), 5(2) (prohibition of torture or cruel, inhuman, or degrading treatment), 8(1) (right to a fair trial), 11(2) (right to privacy) and 25(1) (right to judicial protection) of the [American Convention on Human Rights](#) (ACHR), in conjunction with Articles 1(1) (obligation to respect and ensure rights without discrimination) and 19 (rights of the child) thereof, and 7(b) of the [Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women](#): The Inter-American Court (hereafter “the Court”) indicated that, in cases of violence against children and adolescents, States had a reinforced duty of due diligence that required the adoption of special protection measures and the development of a procedure adapted to their needs, with a view to avoid revictimisation. The Court established that States had to immediately provide multidisciplinary care treatment and ensure the coordination of the different State agencies in order to protect children and adolescents.

In the judgment, the Court developed the reinforced due diligence parameters to which all authorities should adhere, such as: to provide information in relation to the investigations and criminal procedure to children and adolescents; to inform about legal assistance and health services, as well as other safeguards available to protect the child; to guarantee the right to be heard and participate in the criminal proceedings, taking into account the age and maturity of the child; to offer the possibility to choose the sex of the medical personnel conducting gynaecological examinations; to avoid duplication of medical exams and questioning of the victim during the proceedings; to guarantee that the justice system personnel involved in the investigations and procedure are trained about child sexual violence; to provide a free public defender specialised to represent the child interests in the proceedings, among others. Moreover, States had to regard the child as an individual entitled to rights when participating in the investigations and criminal proceedings, and not as an object of proof, as had occurred in this particular case.

Additionally, the Court considered it particularly serious that the State had conducted a revictimising investigation. The girl had been asked to narrate the facts repeatedly. During the crime scene reconstruction, she had been ordered to lie down in the same position as she had been placed by her aggressor when raped, which was photographed. Also, the girl had been subjected to gynaecological examinations on several occasions without justification, even by force and against her expressed will, substantially increasing her already existing trauma. In addition, she had testified in front of a non-specialised judge. Instead of protecting and providing the child with mechanisms to contain the trauma, in order to make her feel safe, understood and heard, the State, in violation of its obligations, had subjected the girl to revictimisation during the proceedings. In this regard, the Court concluded that the State had acted as a second aggressor, exercising institutional violence against the victim. Due to the intensity of the suffering it found that the revictimising acts constituted cruel, inhuman and degrading treatment. The Court also determined that Nicaragua had not complied with its reinforced due diligence obligations, as the investigation and criminal proceedings lacked a gender and child-sensitive approach and was conducted in a discriminatory manner. It concluded that the State

had not adopted positive measures to guarantee effective and equal access to justice.

Furthermore, the Court recalled that the ACHR did not endorse any specific criminal procedural system. However, the model adopted by a State should conform to the judicial guarantees established by the ACHR. It indicated that the lack of stated reasons, upon which the verdict adopted by a jury rested, did not in itself breach the duty of motivation. Nonetheless, the verdict had to enable the reconstruction of the logical course of the decision by the jury, in the light of the evidence and debate at the hearing. Thus, a verdict would be deemed arbitrary in the event that this reconstruction was not viable according to rational rules. Hence, the State had an obligation to provide procedural safeguards against arbitrary verdicts, as well as to allow both, the accused and the victim of the crime, to understand the reasons behind the verdict. The Court referenced the ECHR's case law concerning juries, such as the cases of *Saric v. Denmark* (dec.), *Taxquet v. Belgium* [GC] and *Lhermitte v. Belgium* [GC].

The Court noted that the prohibition of arbitrariness could be achieved through different means, such as judicial instructions to the jury; counter-intuitive proof; a list of questions to be answered by the jury as to the basis of their verdict; and the possibility to annul the verdict when it was manifestly contrary to the evidence produced in the proceedings. The Court concluded that such safeguard mechanisms were not reflected in the law in force at the time of the events. Furthermore, it found that the verdict of innocence could not be foreseen by the victims, as it did not show correlation between the facts, the elements of evidence described in the accusation and the evidence received during the proceedings.

Conclusion: violation (unanimously).

Reparations – The Court established that the judgment constituted *per se* a form of reparation and ordered, among others, that the State: (i) determine, through the competent public institutions, the possible responsibilities of the officials who contributed with their actions to the commission of acts of revictimisation and institutional violence; (ii) pay the amounts established as expenses for medical, psychological and/or psychiatric treatment; (iii) adopt, implement, monitor and oversee three standardised protocols in matters involving children and adolescents victims

of sexual violence: a) protocol on investigation and guidelines for conducting criminal proceedings; b) protocol on comprehensive care and medical assessment, and c) protocol on comprehensive care for support services; (iv) create and implement the figure of a specialised free public defender for children and adolescents, especially for cases involving sexual violence; (v) adopt and implement permanent training courses for public officials who work in matters of sexual violence; and (vi) pay pecuniary and non-pecuniary damages, as well as costs and expenses.

(As regards the ECHR case-law, see *Saric v. Denmark* (dec.), 31913/96, 2 February 1999; *Taxquet v. Belgium* [GC], 926/05, 16 November 2010, [Information Note 135](#); and *Lhermitte v. Belgium* [GC], 34238/09, 29 November 2016, [Information Note 201](#))

African Commission on Human and Peoples' Rights

Inability to register religion not recognised by the State on identity documents

Hossam Ezzat and Rania Enayet v. Egypt, 355/07, decision on the merits 17.2.2016, made public 28.4.2018

Egypt recognises only three religions: Islam, Christianity and Judaism. Every Egyptian is required to choose from among these three for identification documents.

The complainants were unable to register their Baha'i faith on their identification documents. Their identity cards with the religion column left blank as well as their daughters' birth certificates indicating Baha'i as their religion were confiscated. The school, which their daughters attended, was further ordered to accept only new certificates that listed their religion as "Muslim" and not to accept any birth certificates where religion was registered as Baha'i.

Subsequently, the Civil Status Law was amended, allowing identity documents to be obtained with the religion column left blank.

The complainants also raised the issue of the State's refusal to recognise and document the Baha'is' marriages.

Merits – Article 8 (freedom of conscience, the profession and free practice of religion) of the [African Charter on Human and Peoples' Rights](#) ("the

Charter”): The core freedoms within the individual’s *forum internum* were guaranteed unconditionally. The primary duty of State parties to the Charter was to respect those core freedoms by desisting from adopting and applying any measures that would invade the individual’s *forum internum* and override his/her volition to adopt or not adopt, to have/hold, to maintain or to recant/denounce a religion. On the other hand, the State could adopt and apply measures which restricted the free practice of religion, exercised in the *forum externum*, with a view to maintaining legitimate law and order.

The Commission considered the specific State conduct complained of to determine whether it engaged the freedom of religion reserved to the *forum internum* or that reserved to the *forum externum*. It was clear that Bahá’ís had to indicate one of the recognised religions to facilitate the computerised process for issuing identity and other official documents. The object of those measures was thus not to compel Bahá’ís to denounce their religion and adopt Islam. However, the compulsion to disclose one’s religion coupled with the requirement to indicate and bear a false religious identity on identity cards, birth certificates and similar official documents affronted an individual’s conscience. The respondent State had thus breached its duty to respect an individual’s *forum internum*, in violation of Article 8 of the Charter. The issue had in the meantime been redressed at the domestic level, following the adoption of amendments to the law which allowed official documents to be obtained with the religion column left blank.

In addition, the refusal to recognise the Bahá’í religion generally and, in particular, by recording it in official documents implicated the freedom to practice religion in the *forum externum*. Relying on the ECHR decision in *Sofianopoulos and Others v. Greece* ((dec.), 1977/02 *et al.*, 12 December 2002, [Information Note 48](#)), it could hardly be said that, in requiring individuals to record their religion on official documents, the respondent State intended to provide a medium for the practice or manifestation of religion. Conversely, the refusal to record “Bahá’í” could not amount to a denial to manifest one’s religion. On the other hand, the State’s refusal to recognise or acknowledge a given religion and the possible consequent refusal to respect or protect its free manifestation or practice

would constitute a violation of the freedom to practice one’s religion.

However, the respondent State had invoked its reservation to Article 8 of the Charter to exclude the obligation to recognise religions other than Islam, Judaism and Christianity for the purpose of respecting and according protection for the free practice or manifestation of such other religions. It followed that the refusal to recognise “Bahá’í” by indicating it in official documents did not and could not expose the respondent State to international responsibility for breach of an obligation under Article 8 of the Charter. The said reservation was not applicable to the freedom of religion within the *forum internum*.

Conclusion: violation in respect of the freedom of religion reserved to the *forum internum*; no violation in respect of the freedom of religion reserved to the *forum externum* in lieu of reservation.

Articles 2 (non-discrimination) and 3 (equality) of the Charter: While Article 2 of the Charter guaranteed the enjoyment of the rights and freedoms under the Charter without discrimination, the indication of one’s religion on official documents did not constitute exercise of any right or freedom, including in particular the practice of religion.

On the other hand, the refusal to issue and the confiscation of Bahá’ís’ official documents was discriminatory and in breach of the obligation to respect the Bahá’ís’ right to access and possess official documents, and therefore a violation of Article 2 as read together with Article 3 of the Charter. However, as noted above, the issue had been redressed at the domestic level.

Moreover, the failure to provide for a neutral legal regime for the recognition and documentation of Bahá’í marriages amounted to unlawful discrimination. The respondent State was therefore requested to adopt necessary measures for the neutral recognition of marriages of Bahá’ís and other persons under its jurisdiction who did not identify with the personal laws that were based on the three recognised religions.

Conclusion: violation.

(As regards the ECHR case-law, see also *Sinan Işık v. Turkey*, 21924/05, 2 February 2010, [Information Note 127](#); and *Muñoz Díaz v. Spain*, 49151/07, 8 December 2009, [Information Note 125](#))

United Nations Committee on the Rights of Persons with Disabilities (CRPD)

Lack of access to an electronic voting system for a person with a disability who therefore had to reveal her voting intentions to another person

Fiona Given v. Australia, 19/2014, views 16.2.2018

The author of the communication uses an electric wheelchair for mobility and an electronic synthetic speech generating device for communication. In order to be able to cast an independent and secret ballot, she requires access to an electronic voting system, such as a computer-generated interface. Under the Election Act, electronically assisted voting was only made available to persons with visual impairments and registered as such.

In September 2013, during the State federal election in the State Party, Australia, in the absence of an electronic voting facility, the author opted to exercise her right as a person with physical disabilities to request the assistance of the polling booth's presiding officer in marking the ballot papers according to her instructions, folding them and depositing them in the ballot box. However, the presiding officer refused her request. The author had to obtain assistance from her attendant, despite not wishing to disclose her voting intention to the attendant.

The author claimed that the State Party had denied her the rights to accessible voting procedures and facilities, to vote by secret ballot using assistive technology and to obtain voting assistance from a person of her choice.

Article 29 of the [Convention on the Rights of Persons with Disabilities](#) (hereafter "the Convention") provided that States Parties were obliged to ensure that persons with disabilities could effectively and fully participate in political and public life on an equal basis with others, including guaranteeing their right to vote. The State Party was obliged to ensure that voting procedures, facilities and materials were appropriate, accessible and easy to understand and use. Their accessibility had to be ensured before the individual concerned sought to enter a space or to use a service.

In accordance with Article 9 of the Convention, States Parties must take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to information and

communications, including new information and communications technologies and systems. The design and production of new technologies should guarantee their accessibility.

Under Article 5 of the Convention, States Parties were under an obligation to prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds. Denial of access to the physical environment, transportation, information and communication or services open to the public should be clearly defined as a prohibited act of discrimination. That Convention obligation also required the States Parties to refrain from establishing discriminatory legislation and practice that could result in factors of discrimination depending on the type of impairment.

None of the options available to the author in the 2013 federal election could have enabled her to exercise her right to vote in the way she wanted without having to reveal her political choice to the person accompanying her. Access to the use of an electronic voting system would have enabled the author to cast an independent and secret ballot without having to reveal her political choice to anyone, on an equal basis with others.

The obligation to implement accessibility was unconditional. The entity obliged to provide accessibility could not excuse the omission to do so by referring to the burden of providing access for persons with disabilities. The State Party had not provided any information that could justify the claim that the use of such an electronic voting option would have constituted a disproportionate burden, so as to prevent its use in the 2013 federal election, for the author and for all persons requiring such accommodation. Consequently, the failure to provide the author with access to an electronic voting platform already available in the State Party, without providing her with an alternative that would have enabled her to cast her vote without having to reveal her voting intention to another person, had resulted in a denial of her rights under Article 29, read alone and in conjunction with Articles 5(2), 4(1) and 9(1) and (2) of the Convention.

Concerning the author, the State Party was under an obligation to, *inter alia*, take adequate measures to ensure that she had access to voting procedures and facilities that would enable her to vote by secret ballot without having to reveal her voting

intention to any other person in all future elections and referendums in the State Party.

In general, the Committee required the State Party to take the following measures: (i) consider amending the Electoral Act in order to ensure that electronic voting options were available and accessible to all people with disabilities who so required, whatever the types of impairment, and that the facilities put in place were accessible to them; (ii) uphold, and guarantee in practice, the right to vote for persons with disabilities, on an equal basis with others, as required by Article 29 of the Convention, by ensuring that voting procedures,

facilities and materials were appropriate, accessible and easy to understand and use, and protect the right of persons with disabilities to vote by secret ballot through the use of assistive technologies; (iii) consider amending the Electoral Act in order to ensure that, in cases where assistance by another person could be necessary to enable a voter to cast his or her vote, the person providing such assistance was under an obligation to maintain the confidentiality of that vote.

(As regards the ECHR case-law, see *Mółka v. Poland* (dec.), 56550/00, 11 April 2006, [Information Note 86](#))

COURT NEWS

Publication of legal summaries in HUDOC

The Court's Case-law Information Note is a monthly publication which compiles the legal summaries of cases considered to be of particular interest (judgments, including the Jurisconsult's selection of key cases, admissibility decisions, communicated cases, etc.).

With the aim of supplying this information in real time, legal summaries are made available in HUDOC on the same day as the document publication to

which they refer and in the language of the case in question (translations are published at a later date).

All the legal summaries, be they in English or French, can be found in HUDOC via the [Legal Summaries](#) filter housed within the Document Collections filter.

The cases for which a legal summary has been published are easily identifiable thanks to the Legal Summary tab which is visible under the case name in the result list.



The screenshot shows the HUDOC search interface. At the top, there is a logo for HUDOC (European Court of Human Rights). Below it, a search bar is visible. The main section is titled 'NARROW YOUR SEARCH' and contains a 'DOCUMENT COLLECTIONS' filter. Under this filter, several categories are listed with checkboxes and counts: Case-Law (69001), Judgments (58356), Decisions (0), Communicated Cases (0), Legal Summaries (10645) (which is checked and highlighted with a green box), Advisory Opinions (0), Reports (0), Resolutions (0), and Execution (0).

CRITERIA ► CLEAR ALL ► Document Co

AFFAIRE LAURENT c. FRANCE

28798/13 | Available in [French](#) [Portuguese](#) | 24/05/2018

Violation de l'article 8 - Droit au respect de la vie privée
violation suffisant (Article 41 - Préjudice moral)
[Case Details](#) [Legal Summary](#) [Language Versions](#)

@ECHRPublication Twitter account

The [@ECHRPublication](#) Twitter account has targeted its essentially legal audience with Court publications since its launch in 2015 and today has more than 14,000 followers.

The tweets mainly concern the Court’s case-law publications in official and non-official languages (case-law guides, admissibility guides, research reports, etc.) as well as those produced in conjunction with other partner institutions notably the European Union Agency for Fundamental Rights.

The Case-law Information Note legal summaries are tweeted using the hashtag [#ECHRlegalsummaries](#)

on their day of delivery. Other key legal Court events are also promoted via the account such as the Superior Courts Network meetings.

For regular updates, please follow <https://twitter.com/echrpublication>. You do not need a Twitter account to access this information.

European Moot Court Competition 2018

On 4 May 2018 the Court welcomed the Grand Final of the 6th European Human Rights Moot Court Competition, in English, organised by the European Law Students’ Association (ELSA) in co-operation with the Council of Europe. The Moot Court Competition aims to provide law students, who are future lawyers or judges, with practical experience on the European Convention on Human Rights and its implementation.

Nineteen university teams from fourteen countries (Albania, Bulgaria, Croatia, the Czech Republic, France, Germany, Greece, Romania, Russia, Spain, Sweden, Turkey, Ukraine and the United Kingdom) have competed in a fictitious case regarding the right to the freedom of religion. Students from IE University (Spain) were declared the winners, after beating a team from the King’s College London.



RECENT PUBLICATIONS

Case-Law Guides: updates

The English version of the Guide on Article 5 of the Convention (right to liberty and security) and the French version of the Guide on Article 9 (freedom of thought, conscience and religion) have been updated since their previous publication in 2014 and 2015 respectively. Translations into French or English are pending.

[Guide on Article 5 of the Convention \(eng\)](#)

[Guide sur l’article 9 de la Convention \(fre\)](#)

Several other Case-Law Guides in English and French have also been updated on 30 April 2018 (Guides on Articles 1, 4, 7 and 15 of the Convention, Articles 2 and 3 of Protocol No. 1 and Article 4 of Protocols No. 4 and No. 7). All Case-Law Guides can be downloaded from the Court’s Internet site (www.echr.coe.int – Case-law).

Case-Law Guides: new translations

The Court has recently published translations of some of the Case-Law Guides into Armenian, Bosnian, Bulgarian, Croatian, Romanian and Serbian on its Internet site (www.echr.coe.int – Case-law):

Ուղեցույց Կոնվենցիայի 6-րդ հոդվածի վերաբերյալ. արդար դատաքննության իրավունք (քրեաիրավական հայեցակետ) (hye)

Vodič o članu 15 Konvencije – Odstupanje u vanrednim okolnostima (bos)

Vodič o članu 2 Protokola br. 1 – Pravo na obrazovanje (bos)

Vodič o članu 3 Protokola br. 1 – Pravo na slobodne izbore (bos)

Vodič o članu 4 Protokola br. 4 – Zabrana kolektivnog protjerivanja stranaca (bos)

Ръководство по член 9 на конвенция – Право на свобода на мисълта, съвестта и религията (bul)

Ръководство по член 2 от Протокол № 1 на конвенция – Право на образование (bul)

Vodič kroz članak 4. Konvencije – Zabrana ropstva i prisilnog rada (hrv)

Vodič kroz članak 6. Konvencije (građanski aspekt) – Pravo na pošteno suđenje (hrv)

Vodič kroz članak 6. Konvencije (kazneni aspekt) – Pravo na pošteno suđenje (hrv)

Ghid privind art. 6 din Convenție (aspectul civil) – Dreptul la un proces echitabil (ron)

Ghid privind art. 6 din Convenție (latura penală) – Dreptul la un proces echitabil (ron)

Vodič za primenu člana 5 Konvencije – prava na slobodu i bezbednost (srp)

Vodič za primenu člana 7 Konvencije – kažnjavanje samo na osnovu zakona (srp)

Vodič za primenu člana 4 Protokola br. 7 – pravo da se ne bude suđen ili kažnjen dvaput u istoj stvari (srp)

Facts and figures by State: Croatia

To mark the Croatian Chairmanship of the [Committee of Ministers](#) of the Council of Europe, the Court has produced a new publication: “[The ECHR and Croatia – Facts and figures](#)”. This is the third document in a series (the previous versions focused on the Czech Republic and Denmark) providing a global overview of the Court’s work and the extent to which its judgments have an impact in each member State. These documents are available on the Court’s Internet site (www.echr.coe.int – Statistics).



European Union Agency for Fundamental Rights (FRA)

The FRA has recently published two reports related to the past year’s activities and developments:

– [Annual activity report 2017](#): this consolidated report provides an overview of the activities and achievements of the FRA in 2017.

– [Fundamental Rights Report 2018 – FRA opinions](#): this report reviews major developments in the EU

between January and December 2017, and outlines FRA’s opinions thereon. Noting both achievements and remaining areas of concern, it provides insights into the main issues shaping fundamental rights debates across the EU.

All reports can be downloaded from the FRA Internet site (<http://fra.europa.eu/en>).

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

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

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

ENG

www.echr.coe.int

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