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INFORMATION NOTE
on the Court's case-law

NOTE D'INFORMATION
sur la jurisprudence de la Cour

The Court's monthly round-up of case-law, news and publications

Le panorama mensuel de la jurisprudence, de l'actualité et des publications de la Cour

European Court of Human Rights

Cour européenne des droits de l'homme

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

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The Information Note contains legal summaries of the cases examined during the month in question which the Registry considers to be of particular interest. The summaries are drafted by Registry's lawyers and are not binding on the Court. They are normally drafted in the language of the case concerned. The translation of the legal summaries into the other official language can be accessed directly through hyperlinks in the Note. These hyperlinks lead to the HUDOC database, which is regularly updated with new translations. The electronic versions of the Note (in PDF, EPUB and MOBI formats) may be downloaded at www.echr.coe.int/NoteInformation/en.

Legal summaries published in the Case-Law Information Notes are also available in HUDOC, under "Legal Summaries" in the Document Collections box. The HUDOC database is available free-of-charge through the Court's Internet site (http://hudoc.echr.coe.int). It provides access to the case-law of the European Court of Human Rights (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the former European Commission of Human Rights (decisions and reports), and to the resolutions of the Council of Europe's Committee of Ministers.

An annual index provides an overview of the cases that have been summarised in the monthly Information Notes. The annual index is cumulative; it is regularly updated.

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La Note d'information contient les résumés d'affaires dont le greffe de la Cour a indiqué qu'elles présentaient un intérêt particulier. Les résumés sont rédigés par des juristes du greffe et ne lient pas la Cour. Ils sont en principe rédigés dans la langue de l'affaire concernée. Les traductions des résumés vers l'autre langue officielle de la Cour sont accessibles directement à partir de la Note d'information, au moyen d'hyperliens pointant vers la base de données HUDOC qui est alimentée au fur et à mesure de la réception des traductions. Les versions électroniques de la Note (en format PDF, EPUB et MOBI) peuvent être téléchargées à l'adresse suivante : www.echr.coe.int/NoteInformation/fr.

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Un index annuel récapitule les affaires résumées dans les Notes d'information. L'index est cumulatif pour chaque année ; il est régulièrement édité.

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M.N. and Others/et autres – Belgium/Belgique, 3599/18, Decision/Décision 5.5.2020 [GC]

English translation of the summary – Version imprimable

En fait – Ressortissants syriens résidant à Alep, ville alors théâtre d'affrontements armés destructeurs, les requérants se rendirent au Liban, d'où ils sollicitèrent en août 2016 auprès du consulat belge à Beyrouth des visas de court séjour dits « humanitaires » (article 25 du code communautaire des visas), indiquant avoir l'intention de demander l'asile une fois arrivés en Belgique. La demande fut transmise à l'Office des étrangers (« l'Office »), qui estima que cette intention la faisait sortir du champ d'application de la disposition invoquée.

S'ensuivit une série de procédures d'extrême urgence devant la justice administrative belge, les requérants se plaignant que ce refus les exposait à des risques contraires à l'article 3 de la Convention. Dans ce cadre, l'Office réitéra sa décision à deux reprises. Le 20 octobre 2016, le Conseil du contentieux des étrangers (CCE) enjoignit aux autorités belges de leur délivrer sous 48 heures les visas demandés.

Les autorités n'entendant pas revenir sur leur refus, les requérants se tournèrent avec succès vers la justice civile : le 7 décembre 2016, considérant ce refus persistant comme une « voie de fait », la cour d'appel de Bruxelles ordonna d'exécuter immédiatement la décision du CCE, sous astreinte de 1 000 euros par jour de retard. Cette décision fait l'objet d'un pourvoi en cassation de l'État, toujours pendant.

Entre-temps, le CCE interrogea la Cour de justice de l'Union européenne (CJUE) par la voie du renvoi préjudiciel dans une affaire similaire : la CJUE estima que la disposition invoquée du droit de l'Union n'avait pas vocation à s'appliquer dans le cas de figure en cause ; en conséquence de quoi, l'affaire relevait du seul droit national (voir l'arrêt de la CJUE *X et X c. État belge*, C-638/16 PPU, 7 mars 2017, résumé dans la Note d'information 205).

En juin 2017, la cour d'appel de Bruxelles constata que les arrêts précités des 20 octobre et 7 décembre 2016 n'étaient plus d'actualité, puisque la première décision de l'Office refusant la délivrance des visas était devenue définitive, faute d'avoir fait l'objet d'un recours en annulation, et ce, avant que l'astreinte contre l'État belge ait été prononcée.

En droit

Article 1 (à l'égard des griefs tirés des articles 3 et 13) : Tout en précisant que cette conclusion ne fait pas obstacle aux efforts entrepris par les États parties pour faciliter l'accès aux procédures d'asile par le biais de leurs ambassades ou représentations consulaires (voir *N.D. et N.T. c. Espagne* [GC], 8675/15 et 8697/15, 13 février 2020, Note d'information 237), la Cour estime pour les raisons suivantes que les requérants ne relevaient pas de la juridiction de la Belgique au titre des faits dénoncés par eux sur le terrain de l'article 3 de la Convention, ni, par conséquent, de l'article 13.

a) *L'absence de lien juridictionnel « territorial »* – Les décisions litigieuses ont été prises par l'administration centrale en Belgique, en réponse à des demandes de visas que les requérants avaient remises aux services consulaires de l'ambassade belge au Liban. Ces décisions de refus ont ensuite à nouveau transité par les services consulaires de l'ambassade, qui en ont informé les requérants. Certes, en statuant sur ces demandes, les autorités belges ont pris des décisions portant sur les conditions d'entrée sur le territoire belge et ont, de ce fait, ont exercé une prérogative de puissance publique. Toutefois, ce constat ne suffit pas à attirer les requérants sous la juridiction « territoriale » de la Belgique au sens de l'article 1 de la Convention. La circonstance qu'une décision peut avoir un impact sur la situation de personnes résidant à l'étranger n'est pas davantage de nature à établir la juridiction de l'État concerné à leur égard en dehors de son territoire (voir *Banković et autres c. Belgique et autres* (déc.) [GC], 52207/99, 12 décembre 2001).

b) *L'absence de circonstances exceptionnelles propres à créer un lien juridictionnel « extraterritorial »* – Il s'agit là avant tout d'une question de fait qui nécessite de s'interroger sur la nature du lien entre les requérants et l'État défendeur et de déterminer si celui-ci a effectivement exercé son autorité ou son contrôle sur eux. Peu importe à cet égard que les agents diplomatiques n'aient eu, comme en l'espèce, qu'un rôle de « boîte aux lettres », ou de savoir à qui, de l'administration belge sur le territoire national ou des agents diplomatiques en poste à l'étranger, les décisions sont à attribuer.

Ne sont invoqués ici par les requérants : i) aucune présence antérieure sur le territoire national de la

Belgique ; ii) aucune vie familiale ou privée préexistante avec ce pays ; iii) aucune forme quelconque de contrôle que les autorités belges exerceraient en territoire syrien ou libanais.

N'apparaissent non plus pertinents aucuns des précédents jurisprudentiels sur lesquels ils s'appuient.

En premier lieu, les requérants ne présentent aucun des liens de rattachement qui caractérisaient les affaires examinées par la Commission européenne des droits de l'homme concernant les actes ou omissions des agents diplomatiques. D'une part, ils ne sont pas des ressortissants belges demandant à bénéficier de la protection de leur ambassade. D'autre part, les agents diplomatiques n'ont à aucun moment exercé un contrôle de fait sur leur personne : les requérants ont librement choisi de se présenter à l'ambassade de Belgique et d'y déposer leurs demandes de visas, comme ils auraient d'ailleurs pu le faire en s'orientant vers l'ambassade de tout autre État ; ils ont ensuite pu librement quitter les locaux de l'ambassade belge sans rencontrer aucune entrave. Quant au contrôle administratif que l'État exerce sur les locaux de ses ambassades, ce critère ne saurait suffire à faire relever de la juridiction de la Belgique toute personne qui entre dans ces lieux.

Deuxièmement, la présente affaire est fondamentalement différente des nombreuses affaires d'extradition ou d'éloignement, dans lesquelles les intéressés se trouvent par hypothèse sur le territoire, ou à la frontière, de l'État concerné et relèvent dès lors manifestement de sa juridiction.

Troisièmement, on ne trouve aucun appui dans la jurisprudence à la thèse consistant à considérer le fait d'avoir engagé une procédure au niveau national comme une circonstance exceptionnelle suffisante pour déclencher, unilatéralement, un lien juridictionnel extraterritorial. Ainsi, dans l'affaire *Markovic et autres c. Italie* [GC] (1398/03, 14 décembre 2006, Note d'information 92), à propos d'une procédure civile en dommages-intérêts engagée par les requérants devant les tribunaux italiens sur le fondement du droit national, en raison du décès de leurs proches à la suite de frappes aériennes conduites par l'alliance de l'OTAN contre la République fédérale de Yougoslavie, la Cour a conclu à l'absence de « juridiction » pour tous les griefs matériels (c'est-à-dire, autres que ceux visant l'article 6). Et dans l'affaire *Güzelyurtlu et autres c. Chypre et Turquie* [GC] (36925/07, 29 janvier 2019, Note d'information 225), la procédure établissant la juridiction de la Turquie s'agissant de décès survenus en dehors de son territoire était une procédure pénale ouverte à l'initiative des autorités turques (contrôlant la « République turque de Chypre du Nord ») qui s'inscrivait dans le cadre des obligations procédurales découlant de l'article 2. Or, ceci est très différent d'une procédure administrative engagée à l'initiative de particuliers sans aucun lien avec l'État concerné autre qu'une procédure engagée par eux de leur plein gré et sans que leur choix de cet État ne s'impose au titre d'une quelconque obligation conventionnelle.

Au contraire, dans la décision *Abdul Wahab Khan c. Royaume-Uni* (11987/11, 28 janvier 2014, Note d'information 171), la Cour a clairement jugé que le simple fait pour un requérant d'engager une procédure dans un État partie avec lequel il n'a aucun lien de rattachement ne pouvait suffire à établir la juridiction de cet État à son égard : en décider autrement aboutirait à consacrer une application quasi universelle de la Convention sur la base du choix unilatéral de tout individu, où qu'il se trouve dans le monde, et donc à créer une obligation illimitée pour les États parties d'autoriser l'entrée sur leur territoire de toute personne qui risquerait de subir un traitement contraire à la Convention en dehors de leur juridiction.

Or, il en irait de même si la circonstance qu'un État partie se prononce sur une demande en matière d'immigration devait être regardée comme suffisante pour faire relever le demandeur de sa « juridiction » : le demandeur pourrait créer un lien juridictionnel en déposant une demande où qu'il se trouve et donner ainsi naissance, le cas échéant, à une obligation au titre de l'article 3 qui n'existerait pas autrement.

Une telle extension du champ d'application de la Convention aurait en outre pour effet de réduire à néant le principe bien établi en droit international selon lequel les États parties ont – sans préjudice de leurs engagements conventionnels – le droit de contrôler l'entrée, le séjour et l'éloignement des non-nationaux (voir également l'arrêt précité de la CJUE).

Conclusion : irrecevable (incompatibilité *ratione loci*).

Article 6 § 1 : La doléance des requérants vise le droit à l'exécution d'une décision judiciaire – en l'occurrence, l'arrêt de la cour d'appel ordonnant sous astreinte d'exécuter l'arrêt du CCE qui enjoignait aux autorités de délivrer les visas demandés.

Il n'y a pas lieu ici de statuer sur la « juridiction » de l'État défendeur, puisque l'article 6 apparaît en tout état de cause inapplicable en l'espèce. En effet, les procédures en cause ne portaient pas sur des « droits et obligations de caractère civil », et ce, pour les raisons suivantes.

En l'état du droit belge, la compétence de l'administration pour octroyer ou refuser les visas de court séjour au regard de l'article 25 du code com-

munautaire des visas revêtait un caractère discrétionnaire. Néanmoins, les requérants ont pu saisir un tribunal (le CCE), qui a suspendu l'exécution des décisions de l'administration et avait compétence pour les annuler. En pareille hypothèse, si l'article 6 § 1 peut trouver à s'appliquer, c'est à la condition que l'avantage ou le privilège en cause, une fois accordé, crée un droit civil (voir *Regner c. République tchèque* [GC], 35289/11, 19 septembre 2017, Note d'information 210). Or, tel n'aurait pas été le cas de l'entrée sur le territoire belge qui aurait résulté de l'octroi des visas demandés. En effet, il est de jurisprudence constante, pour toutes les décisions relatives à l'immigration, l'entrée, le séjour ou l'éloignement des étrangers, que ces matières sont hors du champ de l'article 6.

Certes, dans la procédure subséquente sur le refus de l'État d'exécuter une décision juridictionnelle en matière administrative, la cour d'appel, pour établir sa compétence au regard du droit interne, a considéré que la contestation portée devant elle avait un caractère « civil ». Pour autant, cette action n'était que le prolongement de la procédure en contestation au fond des refus de délivrer les visas ; il en va de même pour les procédures ultérieures d'exécution de l'arrêt rendu à son tour par la cour civile. Or, le contentieux sous-jacent n'acquiert pas une nature « civile » du seul fait que son exécution est poursuivie en justice et donne lieu à une décision judiciaire (voir *Panjeheighalehei c. Danemark* (déc.), 11230/07, 13 octobre 2009, Note d'information 123). Peu importe ici que les juridictions belges n'aient pas mis en question l'applicabilité de l'article 6 ; en effet, la Convention ne fait pas obstacle à ce que les États parties accordent aux droits et libertés qu'elle garantit une protection juridique plus étendue (article 53).

Conclusion : irrecevable (incompatibilité *ratione materiae*).

ARTICLE 2

Life/Vie
Positive obligations (substantive aspect)/ Obligations positives (volet matériel)

Death from carbon monoxide poisoning following reconnection of improperly installed gas-operated water heater despite warning from gas company: *no violation*

Décès par intoxication au monoxyde de carbone à la suite du mauvais raccordement d'une chaudière à gaz, malgré l'avertissement d'une société gazière : *non violation*

Vardosanidze – Georgia/Géorgie, 43881/10, Judgment/Arrêt 7.5.2020 [Section V]

Traduction française du résumé – Printable version

Facts – In June 2007 gas company technicians discovered, as part of a safety check, that a gas-operated water heater had been improperly installed in the apartment of the applicant's son. The inspection record indicated that the water heater had been disconnected from the gas pipe and that the resident had been provided with instructions. In April 2008 the applicant's son was found dead at home. A forensic medical examination concluded that he had died as a result of poisoning by carbon monoxide. The domestic courts upheld the decision of the prosecutor to terminate a preliminary investigation, finding that the water heater had been carelessly reconnected to the gas supply by the applicant's family, leading to the fatal accident.

Law – Article 2

(a) *Substantive aspect* – The core of the applicant's complaint concerned the alleged inadequacy of the regulatory framework with respect to the safe use of gas-operated household devices, in the context of the Government's positive obligations regarding dangerous activities carrying an inherent risk to life.

It was undisputed that the applicant's son had died as a result of poisoning by carbon monoxide emitted from an incorrectly installed gas-operated water heater. By contrast, the parties disagreed as to whether the domestic legislation had contained adequate guarantees to safeguard his life, as to what particular regulations had been in place to prevent accidents related to the use of gas-operated household devices, and as to whose responsibility it had been to ensure compliance with such regulations. While the Court noted the statistical information regarding the high number of incidents relating to carbon monoxide poisoning in the city of Tbilisi, the Court's task was not to make an abstract assessment of the regulatory framework applicable but to determine whether the manner in which they had been applied to, or had affected, the applicant's son had given rise to a violation of the Convention.

Various regulations had existed at the material time which prohibited the installation of the type of the water heater at the core of the applicant's case in spaces which had not been equipped with adequate ventilation systems. Such safety rules were aimed at avoiding the accumulation of exhaust fumes inside dwelling spaces to safeguard life and health of the population, and appeared reasonable. By contrast, as concerned the supervision of compliance with those rules, the legislation in force

at the material time did not specify how frequently the gas company was to perform safety checks and it was only subsequently that the relevant amendments had been introduced to address the matter.

Furthermore, the domestic legislation did not appear to have required that a written warning be given to a resident of an apartment when a violation of a safety rule had been found. Nevertheless, those deficiencies were not sufficient to hold the respondent Government accountable for failing to avert the death of the applicant's son.

In particular, while the safety regulations did not appear to have been respected, and deficiencies existed in respect of the regularity of safety checkups and the manner in which a violation of the safety rules was to be communicated to the individuals concerned, the Court drew particular attention to the undisputed fact that the violation of the relevant safety rules had in fact been discovered by the gas company before the death of the applicant's son, and the water heater had been disconnected and nevertheless reconnected by the applicant's family.

In that context, the positive obligation under Article 2 could not impose an excessive burden on the authorities, bearing in mind, in particular, the unpredictability of human conduct. The applicant's family having been warned, even if verbally, against using the water heater, their subsequent decision to take the fatal risk by reconnecting the device to the gas supply did not appear reasonable, especially in the face of the widespread knowledge relating to the attendant risks, and could not, in the particular circumstances of the case, give rise to a violation of the State's obligations under Article 2.

(b) *Procedural aspect* – The principal conclusion of the domestic criminal investigation into the death of the applicant's son – that his death had been a fatal accident after the water heater had been reconnected against the warning of the gas company – upheld by the domestic courts did not appear arbitrary and, in the circumstances of the case, did not raise an issue under the procedural limb of Article 2.

Conclusion: no violation (unanimously).

The Court also found that there had been no failure to comply with Article 38 as the Government had provided the documents requested by the applicant.

Life/Vie

Positive obligations (substantive aspect)/ Obligations positives (volet matériel)

Azerbaijan's "approval and endorsement" of crimes committed by its agent in private capacity, without clear and unequivocal "acknowledgement" and "adoption" of crimes "as its own": *no violation*

L'Azerbaïdjan « approuve » des infractions commises dans un cadre privé par l'un de ses agents, sans y « adhérer » ni « s'y associer » de manière claire et non équivoque : *non-violation*

Makuchyan and/et Minasyan – Azerbaijan and Hungary/Azerbaïdjan et Hongrie, 17247/13, Judgment/Arrêt 26.5.2020 [Section IV]

(See below/Voir ci-après)

Positive obligations (procedural aspect)/ Obligations positives (volet procédural)

Azerbaijan's unjustified failure to enforce prison sentence for ethnic hate crime, imposed abroad on its officer, who was pardoned, promoted and awarded benefits upon return: *violation*

No failure by Hungary to ensure that Azerbaijani national would continue to serve his prison sentence in home country: *no violation*

Les autorités azerbaïdjanaises renoncent, sans justifier leur décision, à faire exécuter la condamnation à une peine de prison qui avait été prononcée à l'étranger pour crime de haine motivé par l'origine ethnique contre l'un de ses agents et décident, au retour de l'intéressé, de le gracier, de le promouvoir et de lui octroyer des avantages : *violation*

Absence de manquement des autorités hongroises à leur obligation de veiller à ce qu'un ressortissant azerbaïdjanais continue à purger sa peine de prison dans son pays d'origine : *non-violation*

Makuchyan and/et Minasyan – Azerbaijanand Hungary/Azerbaïdjan et Hongrie, 17247/13, Judgment/Arrêt 26.5.2020 [Section IV]

Traduction française du résumé – Printable version

Facts – While taking part in a NATO course in Budapest, an Azerbaijani officer (R.S.) decapitated an Armenian officer (the second applicant's relative) and threatened to kill another Armenian soldier (the first applicant), trying to break down the door of his room with an axe. R.S. was sentenced to life imprisonment in Hungary. The ethnic bias in respect of his crimes was fully investigated and highlighted by the Hungarian courts. Having served eight years of his sentence in Hungary, R.S. was transferred to Azerbaijan under the Council of Europe Convention on Transfer of Sentenced Persons ("the Transfer Convention") with a view to serving the remainder of his sentence in his home country. However,

upon his return he was immediately released, pardoned, promoted at a public ceremony and awarded arrears in salary for the period spent in prison as well as the use of a flat in Baku. Many comments approving R.S.'s conduct and pardon were made by various high-ranking Azerbaijani officials.

Law

Article 1 (*territorial jurisdiction as regards Azerbaijan*): The enforcement of a sentence imposed in the context of the right to life had to be regarded as an integral part of the State's procedural obligation under Article 2. Regardless of where the crimes had been committed, in so far as Azerbaijan had agreed to and assumed the obligation under the Transfer Convention to continue the enforcement of R.S.'s prison sentence, it had been bound to do so, in compliance with its procedural obligations under Article 2 of the Convention. In sum, there were "special features" that triggered the existence of Azerbaijan's jurisdictional link in relation to the procedural obligation under Article 2.

Article 2

(a) *Applicability as regards the first applicant* – While the first applicant had not sustained any actual bodily harm, the Hungarian courts had sentenced R.S. for the "preparation of his murder". His life had thus been in serious and imminent danger. Article 2 was therefore applicable.

(b) *Substantive obligations under Article 2 of the Convention as regards Azerbaijan* – The Court attached crucial importance to the fact that R.S., although a member of the Azerbaijani military forces at the material time, had not been acting in the exercise of his official duties or on orders by his superiors. On the contrary, the crimes had been committed as a result of his private decision to kill because the Armenian victims had allegedly mocked and provoked him.

The current standard under international law, which stemmed from Article 11 of the Draft Articles on the Responsibility of States of Internationally Wrongful Acts of the United Nations ("the Draft Articles"), set a very high threshold for State responsibility for an act otherwise non-attributable to a State at the time of its commission. In the context of the present case, in order to assuredly establish that there had been a violation by the State of Azerbaijan of Article 2 of the Convention under its substantive limb, it had to be convincingly demonstrated that, by their actions, the Azerbaijani authorities had not only "approved" and "endorsed" the impugned acts, but also had "clearly and unequivocally" "acknowledged" and "adopted" those acts "as their own", "acknowledgement" and "adoption" being cumulative conditions.

Viewing the actions of the Azerbaijani Government as a whole, including the decisions to pardon and to promote R.S. and to award him salary arrears and a flat, Azerbaijan had to be considered, beyond any doubt, to have demonstrated its "approval" and "endorsement" of R.S.'s criminal acts. However, having most thoroughly examined the nature and scope of the impugned measures within their overall context, the Court concluded that it had not been convincingly demonstrated that the State of Azerbaijan had "clearly and unequivocally" "acknowledged" and "adopted" R.S.'s deplorable acts "as its own", thus directly and categorically assuming, as such, responsibility for his actual killing of one victim and the preparation of the murder of the other. The Court emphasised that that assessment was undertaken on the basis of the very stringent standards under the existing rules of international law.

In substance, the impugned measures could rather be interpreted as having the purpose of publicly addressing, recognising and remedying R.S.'s adverse personal, professional and financial situation, which the authorities of Azerbaijan had perceived, unjustifiably in the Court's view, as being the consequence of the allegedly flawed criminal proceedings in Hungary.

Lastly, in cases where crimes had been committed by police officers acting outside of their official duties, the member States of the Council of Europe were expected to set high professional standards within their law-enforcement systems and ensure that the persons serving in these systems met the requisite criteria. Similar standards might apply to members of the armed forces. However, having regard to the particular circumstances of the present case, the Court was not convinced that the private acts of R.S. could have been foreseen by his commanding officers or should be held imputable to the Azerbaijani State as a whole, just because that individual happened to be its agent. Indeed, the impugned acts had been so flagrantly abusive and so far removed from R.S.'s official status as a military officer that, on the facts of the case, his most serious criminal behaviour could not engage the State's substantive international responsibility. Moreover, nothing in the case-file suggested that the procedure in Azerbaijan for the recruitment of members of the armed forces and the monitoring of their compliance with professional standards at the time that R.S. had been sent on his mission, including their continued mental fitness to serve, had been inadequate.

Conclusion: no violation by Azerbaijan (six votes to one).

(c) *Procedural obligations under Article 2 of the Convention as regards Azerbaijan* – From the point at

which Azerbaijan had assumed responsibility for the enforcement of R.S.'s prison sentence – i.e. the moment of his transfer – it had been called upon to provide an adequate response to a very serious ethnically-biased crime. In view of the extremely tense political situation between the two countries, the authorities should have been all the more cautious, given that the victims of the crimes in the present case had been of Armenian origin.

The Court was not convinced by any of the Azerbaijani Government's arguments for R.S.'s immediate release. First of all, R.S. had been afforded a criminal trial in Hungary before courts at two judicial instances, which had delivered well-reasoned decisions. In that respect, he had not lodged an application under Article 6 against Hungary with the Court. In any event, there was insufficient evidence that any procedural omission had not been subsequently offset by procedural safeguards or that such an omission had rendered the entire proceedings against him unfair. Secondly, the alleged personal history and mental difficulties of R.S. could hardly be sufficient to justify the Azerbaijani authorities' failure to enforce the punishment for a serious hate crime committed abroad. R.S.'s mental capacities had been thoroughly assessed during his trial in Hungary. Moreover, his promotion to a higher military rank would clearly suggest that he had not suffered from a serious mental condition.

In sum, R.S. had been treated as an innocent or wrongfully convicted person and bestowed with a number of benefits (salary arrears, a flat, a promotion) that were devoid of any legal basis under domestic law. In view of the foregoing, the acts of Azerbaijan in effect had granted R.S. impunity for the crimes committed against his Armenian victims. This had not been compatible with Azerbaijan's obligation under Article 2 to effectively deter the commission of offences against the lives of individuals.

Conclusion: violation bu Azerbaijan (unanimously).

(d) *Procedural obligations under Article 2 of the Convention as regards Hungary* – The Court was called upon to examine whether and to what extent a transferring State might be responsible for the protection of the rights of victims of a crime or their next-of-kin. The Hungarian authorities had followed the procedure set out in the Transfer Convention in its entirety. In particular, they had requested that the Azerbaijani authorities specify which procedure would be followed in the event of R.S.'s return to his home country. Although the reply of the Azerbaijani's authorities had been admittedly incomplete and worded in general terms, which in turn could have aroused suspicion as to the manner of the execution of R.S.'s prison sentence and prompted them to further action, no tangible evidence had been adduced before the Court to show that the Hungarian authorities had unequivocally been or should have been aware that R.S. would be released upon his return to Azerbaijan. Indeed, bearing in mind particularly the time already served by R.S. in a Hungarian prison, the Court did not see how the competent Hungarian bodies could have done anything more than respect the procedure and the spirit of the Transfer Convention and proceed on the assumption that another Council of Europe member State would act in good faith. Accordingly, the Hungarian authorities had not failed to fulfil their procedural obligations.

Conclusion: no violation by Hungary (six votes to one).

Article 14 in conjunction with Article 2 (*Azerbaijan*): The Court's task was to establish whether or not the Armenian ethnic origin of R.S.'s victims and the nature of his crimes had played a role in the measures taken by the Azerbaijani authorities following his return to Azerbaijan. The Government had not indicated a domestic legal basis for all the afore-mentioned benefits granted to R.S., understandably perceived as constituting rewards for his actions. Nor had they provided any past examples of other convicted murderers who had received analogous benefits upon their release following a presidential pardon. In addition, it was deplorable that a number of high-ranking Azerbaijani officials had made statements glorifying R.S. as a patriot and a hero and expressing particular support for the fact that his crimes had been directed against Armenian soldiers. On a special page created for that purpose on the website of the President of Azerbaijan, a vast number of individuals had thanked the President for pardoning R.S. on the basis that they had condoned his having killed his Armenian victim. While the President himself had never posted anything on that page, because of its mere existence the granting of the pardon could be perceived as an important step in the process of legitimising and glorifying R.S.'s actions.

The applicants had therefore put forward sufficiently strong, clear and concordant inferences as to make a convincing prima facie case that the measures taken by the Azerbaijani authorities in respect of R.S., leading to his virtual impunity and coupled with the glorification of his extremely cruel hate crime, had had a causal link to the Armenian ethnicity of his victims and had thus been racially motivated. The Azerbaijani Government had sought to justify their actions by relying on the same reasons that were dismissed by the Court as unconvincing in the context of the applicants' complaint under the procedural limb of Article 2 (above). The Government had thus failed to disprove the applicants' arguable allegation of discrimination.

Conclusion: violation (six votes to one).

The Court also found, unanimously, that there had been no failure of Azerbaijan nor of Hungary to comply with Article 38.

Article 41: no claim made in respect of damage.

Article 46: no indication of general or individual measures in respect of Azerbaijan.

(See concerning Article 2: *Makaratzis v. Greece* [GC], 50385/99, 20 December 2004, Information Note 70; *Gray v. Germany*, 49278/09, 22 May 2014, Information Note 174; *Marguš v. Croatia* [GC], 4455/10, 27 May 2014, Information Note 174; *Zoltai v. Hungary and Ireland* (dec.), 61946/12, 29 September 2015, Information Note 189; *Kitanovska Stanojkovic and Others v. the former Yugoslav Republic of Macedonia*, 2319/14, 13 October 2016, Information Note 200; *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 36925/07, 29 January 2019, Information Note 225. See also concerning Article 14 in conjunction with the procedural aspect of Article 2: *Nachova and Others v. Bulgaria* [GC], 43577/98 and 43579/98, 6 July 2005, Information Note 77; *Angelova and Iliev v. Bulgaria*, 55523/00, 26 July 2007, Information Note 99)

Effective investigation/Enquête effective

Lack of proper investigation into refusal by medical personnel to administer usual insulin treatment to a diabetic in precarious condition: *violation*

Défaut d'enquête effective sur des allégations de refus de la part de personnel soignant d'administrer à une personne diabétique en situation de précarité son traitement habituel par insuline : *violation*

Aftanache – Romania/Roumanie, 999/19, Judgment/Arrêt 26.5.2020 [Section IV]

Traduction française du résumé – Printable version

Facts – On 30 March 2017, the applicant, diagnosed with type-1 diabetes and insulin-dependent since 1996, went to a pharmacy to buy medication prescribed by his diabetologist. On arrival he had to sit down as he was feeling weak. An ambulance came and the applicant informed the paramedics about his medical condition. A blood test performed in the ambulance confirmed an imbalance in the applicant's glucose level. Nevertheless, medical personnel from the ambulance and the municipal and psychiatric hospitals, where he was taken involuntarily, with the help of the police, refused to administer his insulin treatment despite his precarious condition. They suspected that he was a drug addict.

The applicant complained that his life had been put at risk in violation of Article 2 and that he was unlawfully deprived of his liberty in the hospitals in breach of Article 5 § 1.

Law – Article 2 (*procedural aspect*)

(a) *Applicability* – Given the scarcity of available evidence, the Court could not speculate as to the exact effect on the applicant of the delayed insulin treatment on 30 March 2017 or whether his own behaviour, notably his refusal to submit to a drugs test, had contributed decisively to it. However, very high blood sugar levels could lead to diabetic ketoacidosis, a life threatening condition necessitating hospital treatment. Moreover, this condition, which was commonly triggered by infections, could develop quickly over a few hours. In the past, the applicant had already suffered a diabetic coma. Given the nature of the applicant's illness and the absence of any conclusive evidence submitted by the Government that his life had not been put in danger, the denial of treatment on 30 March 2017 had caused a threat to his life serious enough to engage the State's responsibility under Article 2.

(b) *Merits* – The prosecutor had only heard evidence from the four members of the ambulance team and from the applicant. No independent witness had been heard. The other individuals involved in the incident had not been interviewed by the investigators: the pharmacists, the police officers, the applicant's wife, his regular doctor C.H., and the medical personnel at the two hospitals that the applicant had been taken to against his will that day. Moreover, the out-of-court statement made by C.H. had not been taken into account by the prosecutor or the court.

Although the applicant's medical condition had been a key element in the incidents, no expert medical evidence had been requested by the prosecutor. In particular, several elements should have alerted the investigators to the need for further clarifications. The treatment had been postponed only because of suspicions of drug abuse. The first test carried out by the ambulance team had already showed an imbalance in the applicant's blood glucose level. Moreover, the medical personnel had been diligently informed that he was a diabetic in need of insulin and none of the doctors who had seen the applicant on that day had denied it. There had been no evidence in the file supporting the Government's assertion that the doctors had been unaware of his medical condition. However, if that had been indeed the case, far from being imputable to the applicant, such an omission on the part of the medical personnel would amount to an admission of professional misconduct, which could have put the applicant's life at risk. At the least, those aspects should have called for a more thorough investigation by the authorities.

In addition, the District Court, which had been called on to examine the prosecutor's decision, had merely upheld that decision based on the evidence already in the file, without taking the opportunity to complete the investigation or to ask the prosecutor to do so.

Having regard to the above deficiencies, the State authorities had failed to conduct a proper investigation into the incident of 30 March 2017. Those deficiencies made it impossible to assess whether the State had complied with its positive obligation to protect the applicant's life.

Conclusion: violation (unanimously).

Article 5 § 1: Notwithstanding the relatively short duration of the events, that is about six hours, an element of coercion present throughout the events was indicative of a deprivation of liberty. No legal basis had been offered by the authorities for the applicant's deprivation of liberty. The applicant had duly brought his grievance to the authorities' attention, but had received no answer from them.

Different possible reasons could have justified the applicant's deprivation of liberty.

Firstly, concerning the grounds permitted by Article 5 § 1 (c), under domestic law, an individual suspected of having committed a criminal act could be escorted to the police station if his identity could not be verified. However, there had been nothing in the domestic decisions leading the Court to believe that the applicant would have refused to state his identity. The police had not asked for his identity papers. Moreover, no legal actions had been taken in that respect. The allegations that the applicant had been verbally abusive and aggressive towards the police officers and the medical personnel, had been dismissed as unfounded by the District Court. Consequently, his deprivation of liberty could not be justified on those grounds.

On the grounds listed under Article 5 § 1 (e), under domestic legislation, the police or medical personnel might request non-voluntary admission to a psychiatric hospital. However, in the present case, no such official request seemed to have been made. In any event, regarding the necessity of the measure, a first blood test, confirming the applicant's blood sugar levels, had already been done by the ambulance paramedics. Moreover, the applicant had informed the doctor on duty of his condition upon admission to the municipal hospital. The applicant had not had a psychiatric record and the domestic courts had found that he had not been violent during the incident.

The applicant, faced with denial of treatment that he had considered vital for him, could have been uncooperative. And he had also been falsely accused of drug use and threatened with psychiatric confinement. Throughout that time, he had been suffering from an imbalance in his blood sugar level. A certain state of discomfort and agitation was thus understandable in those circumstances. However, there was no evidence that the medical professionals had considered his personal circumstances and the possible explanations for his behaviour before recommending admission to the psychiatric hospital. Consequently, the applicant's alleged agitation had not been sufficient to render the measure of confinement necessary.

For these reasons, the applicant's deprivation of liberty on 30 March 2017 had not been free from arbitrariness and in compliance with domestic law. Consequently, it had not fallen within one of the exceptions set out in sub-paragraphs (a) to (f) of Article 5 § 1, nor had it been "lawful" within the meaning of that provision.

Conclusion: violation (unanimously).

Article 41: EUR 12,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

ARTICLE 3

Degrading treatment/Traitement dégradant

Compensation for poor conditions of detention by specific and measurable reduction in sentence leading to applicants' release: *inadmissible*

Mauvaises conditions de détention compensées par une remise de peine explicite et mesurable ayant entraîné la libération des requérants : *irrecevable*

Dîrjan and/et Ştefan – Romania/Roumanie, 14224/15 and/et 50977/15, Decision/Décision 15.4.2020 [Section IV]

(See Article 34 below/Voir l'article 34 ci-dessous, page 35)

ARTICLE 5

Article 5 § 1

Deprivation of liberty/Privation de liberté
Lawful arrest or detention/Arrestation ou détention régulières

Arbitrary and unlawful six-hour involuntary confinement in hospital: *violation*

Confinement forcé, arbitraire et illégal, pendant six heures, dans un hôpital : *violation*

Aftanache – Romania/Roumanie, 999/19, Judgment/Arrêt 26.5.2020 [Section IV]

(See Article 2 above/Voir l'article 2 ci-dessus, page 14)

ARTICLE 6

Article 6 § 1 (civil)

Access to court/Accès à un tribunal

Inability of chief prosecutor to effectively challenge premature termination of mandate: *violation*

Impossibilité pour la procureure principale de contester effectivement sa révocation précoce : *violation*

Kövesi – Romania/Roumanie, 3594/19, Judgment/Arrêt 5.5.2020 [Section IV]

Traduction française du résumé – Printable version

Facts – In 2013 the applicant was appointed as chief prosecutor of the National Anticorruption Directorate ("the DNA"") by the President of Romania for a three year term. In 2016 the Higher Council of the Judiciary ("the CSM") (the body responsible for management and disciplinary matters within the judiciary) gave a favourable opinion to the proposal by the Minister of Justice to reappoint the applicant for a further three-year term.

Parliamentary elections took place in December 2016. A new parliamentary majority was formed and a new government established. In August 2017 the Minister of Justice announced a thorough reform to the judicial system. The amendments and related legislative process drew criticism in Romania and internationally.

In February 2018 the Minister of Justice sent the CSM a Report, including a proposal for the applicant's removal from her position and referring to public statements she had made in relation to the reforms. The CSM decided by a majority of votes not to endorse the removal proposal and the President of Romania refused to sign it off. The Prime Minister lodged an application with the Constitutional Court to resolve the constitutional conflict caused by the President's refusal. The Constitutional Court confirmed the existence of a constitutional conflict and ordered the President to sign off on the decree for the applicant's removal from her position as chief prosecutor of the DNA.

On 9 July 2018 the applicant was removed from her position by presidential decree.

Law – Article 6

(a) *Applicability*

(i) *Existence of a right* – Although access to the functions performed by the applicant constituted in principle a privilege that could be granted at the relevant authority's discretion and could not be legally enforced, that could not be the case regarding the termination of such an employment relationship. The applicant's premature removal from her position had had a decisive effect on her personal and professional situation preventing her from continuing to carry out certain duties. As such, there was a genuine and serious dispute over a "right" which the applicant could claim on arguable grounds under domestic law, notably the right not to be dismissed from her functions outside the cases specifically provided for by law.

(ii) *Civil nature of the right* – Disputes between the State and its civil servants fell in principle within the scope of Article 6 except where both the cumulative conditions set out by the Grand Chamber in the case of *Vilho Eskelinen and Others v. Finland* had been satisfied. Firstly, the State in its national law had to have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion had to be justified on objective grounds in the State's interest.

There was no provision in the domestic legal system "expressly" excluding the applicant from the right of access to a court. On the contrary, domestic law expressly provided for the right to a court in matters concerning the career of prosecutors. The first condition of the *Eskelinen* test had therefore not been met.

That, in itself, was sufficient to conclude that Article 6 § 1 was applicable under its civil limb. However, in the applicant's case the Court considered it useful to continue its examination and consider the second condition of the *Eskelinen* test. In a legal framework where the removal from office of the chief prosecutor of the DNA had been decided on by the President following a proposal by the Minister of Justice with the endorsement of the CSM, the absence of any judicial control of the legality of the decision of removal could not be in the interest of the State. Senior members of the judiciary should enjoy – as other citizens – protection from arbitrariness from the executive power and only oversight by an independent judicial body of the legality of such a removal decision was able to render such a right effective. The Constitutional Court's ruling concerning the respective competencies of the constitutional bodies had not deprived those considerations of their pertinence. The second condition had not been fulfilled.

Conclusion: Article 6 applicable.

(b) *Merits* – The Government did not dispute the lack of judicial review in the applicant's case, but contended that it had been due to the applicant's failure to exhaust the various remedies available in the situation at hand.

As regards the possibility for the applicant to contest before the courts the Report of the Minister of Justice proposing her removal, the Constitutional Court had considered that the Report could not produce any effects by itself and was just a preliminary act leading to the adoption of the presidential decree. Moreover, even assuming that a complaint against that act would have been admissible before the administrative courts, it was apparent from the documents submitted by the Government that non-governmental organisations throughout the country had tried that avenue without success and no other example of administrative proceedings instituted against a similar document had been submitted. Therefore, it had not been established in the context of the applicant's case that a complaint to the administrative courts against the Report of the Minister of Justice would have been an effective domestic remedy.

The right to challenge before a court the decisions adopted by the CSM with respect to the prosecutors' careers and rights was expressly provided for by law. However, since the decision adopted by the CSM had been favourable to her, the applicant had no interest in contesting it.

As regards the president's removal decree, domestic law did indeed provide for a general possibility to contest before the administrative courts any administrative decision and a presidential decree was an administrative decision within the meaning of that law. However, the examples submitted by the Government did not concern situations similar to the applicant's. The Constitutional Court had considered that such a review was limited to the lawfulness *stricto sensu* of the decree. In view of the specific limits set by the Constitutional Court, a complaint before the administrative courts would have been effective only for having the external legality of the presidential decree examined, hence offering only a formal review. Such an avenue would not have been an effective remedy for the core of the applicant's complaint – the fact that her removal had been an illegal disciplinary sanction triggered by her opinions expressed publicly in the context of legislative reforms – which would have called for an examination of the merits and the internal legality of the decree in question.

In view of those considerations, the applicant did not have an available domestic remedy for effectively attacking in court what she really intended to challenge, namely the reasons of her removal from the position of chief prosecutor. All possibility of judicial review had been limited to the formal review of the removal decree, while any examination of the appropriateness of the reasons, the relevance of the alleged facts on which the removal had been based or the fulfilment of the legal conditions for its validity, had been specifically excluded. Therefore, the extent of the judicial review available to the applicant in the circumstances of the current case could not be considered "sufficient".

The Court dismissed the Government's objection as to the non-exhaustion of domestic remedies and concluded that the respondent State had impaired the very essence of the applicant's right of access to a court owing to the specific boundaries for a review of her case set down in the ruling of the Constitutional Court.

Conclusion: violation (unanimously).

Article 10: The premature termination of the applicant's mandate constituted an interference with her right to freedom of expression. No evidence had been brought to show that the impugned measure had served the aim of protecting the rule of law or any other legitimate aim. The measure had been a consequence of the previous exercise of her right to freedom of expression. In cases where it concluded that the interference had not pursued a legitimate aim, the Court found a violation of the Convention without further investigation. However, in the circumstances of the case, it was useful to establish also whether the interference had been necessary in a democratic society.

The impugned interference had been prompted by the views and criticisms that the applicant had publicly expressed. The Court attached particular importance to the office held by the applicant, whose functions and duties included expressing her opinion on legislative reforms which were likely to have an impact on the judiciary and its independence and, more specifically, on the fight against corruption conducted by her department. Her views and statements had not contained attacks against other members of the judiciary; nor had they concerned criticisms with regard to the conduct of the judiciary when dealing with pending proceedings. Her statements had not gone beyond mere criticism from a strictly professional perspective. Accordingly, the applicant's position and statements, which clearly fell within the context of a debate on matters of great public interest, called for a high degree of protection for her freedom of expression and strict scrutiny of any interference, with a correspondingly narrow margin of appreciation being afforded to the authorities of the respondent State.

Although the applicant had remained on as a prosecutor, she had ultimately been removed from her

position as chief prosecutor before the end of her mandate. That removal and the reasons justifying it could hardly be reconciled with the particular consideration to be given to the nature of the judicial function as an independent branch of State power and to the principle of the independence of prosecutors, which was a key element for the maintenance of judicial independence. Against that background, her removal defeated the very purpose of maintaining the independence of the judiciary. Furthermore, the premature termination had been a particularly severe sanction, which undoubtedly had a "chilling effect" in that it had to have discouraged not only her but also other prosecutors and judges in future from participating in public debate on legislative reforms affecting the judiciary and more generally on issues concerning the independence of the judiciary.

Lastly, due account had to be taken of the procedural aspect of Article 10. In the light of the considerations that led it to find a violation of Article 6 § 1, the Court considered that the impugned restrictions on the applicant's exercise of her right to freedom of expression under Article 10 had not been accompanied by effective and adequate safeguards against abuse.

The applicant's removal from her position of chief prosecutor of the DNA had not pursued a legitimate aim and, moreover, was not a measure "necessary in a democratic society" within the meaning of that provision.

Conclusion: violation (unanimously).

(See *Vilho Eskelinen and Others v. Finland* [GC], 63235/00, 19 April 2007, Information Note 96, and compare *Suküt v. Turkey* (dec.), 59773/00, 11 September 2007, Information Note 100; *Baka v. Hungary* [GC], 20261/12, 23 June 2016, Information Note 197; *Wille v. Liechtenstein* [GC], 28396/95, 28 October 1999, Information Note 11; *Brisc v. Romania*, 26238/10, 11 December 2018, Information Note 224; *Kudeshkina v. Russia*, 29492/05, 26 February 2009, Information Note 116; *Morice v. France* [GC], 29369/10, 23 April 2015, Information Note 184. See also Recommendation Rec(2000)19 on the Role of Public Prosecution in the Criminal Justice System, adopted by the Committee of Ministers of the Council of Europe on 6 October 2000)

Access to court/Accès à un tribunal

Inability of a member of the National Council of the Judiciary to challenge premature termination of mandate: *communicated*

Impossibilité pour un membre du Conseil national de la magistrature de contester la cessation anticipée de son mandat : *affaire communiquée*

Żurek – Poland/Pologne, 39650/18, Communication [Section I]

(See Article 10 below/Voir l'article 10 ci-dessous, page 30)

Article 6 § 1 (criminal/pénal)

Public hearing/Audience publique

Exclusion of public from entire rape trial in order to protect victim, even though she had given interviews to media about the case: *no violation*

Procès pour viol intégralement tenu à huis clos afin de protéger la victime, alors que celle-ci avait accordé des interviews aux médias sur l'affaire : *non-violation*

Mraović – Croatia/Croatie, 30373/13, Judgment/Arrêt 14.5.2020 [Section I]

Traduction française du résumé – Printable version

Facts – During the applicant's first trial on rape charges he asked for the proceedings to be *in camera*. He was acquitted but his acquittal was quashed. He wished his second trial to be held in public, but the victim's request for an *in camera* hearing was upheld. During the second trial, the victim gave several interviews to national newspapers on the subject in which the experience of giving evidence during the trial was discussed.

Law – Article 6 § 1: In criminal proceedings concerning such a serious and intimate crime as rape, in line with the applicable international and European Union standards, the exclusion of the public from part or all of the proceedings might be necessary for the protection of rape victims' private life, in particular their identity, personal integrity and dignity. This might be necessary not only to protect the victims' privacy, but to protect them from secondary trauma and/or re-victimisation. The foregoing was crucial in order to encourage the victims of sexual abuse to report the incidents and allow them to feel secure and able to express themselves candidly on highly personal issues – often humiliating or otherwise damaging to their dignity – without fear of public curiosity or comment. The justice system should operate in a manner that did not increase the suffering of victims of crime or discourage them from participating in it. However, due regard had also to be had to the rights of accused persons, including their right to public scrutiny of the criminal proceedings against them.

The nature of the charges and the sensitive content of the testimony to be provided by the victim in the present case might and did call for limitation of the applicant's right to a public hearing, all the more so

given the significant media attention on that case since its very outset. The reasons given by the county court for the exclusion of the public had a clear basis in domestic law. It was true that the county court had applied the relevant provision somewhat automatically, without performing a detailed balancing of the applicant's right to a public hearing against the interests of the protection of the victim's private life, or providing an extensive explanation as to why it had been necessary to exclude the public from the entire trial, and not only from certain hearings. However, when reviewing that decision on appeal, the Supreme Court had concluded that it had not resulted in a breach of any of the applicant's rights in the criminal proceedings. Moreover, the prosecution and the defence had been given an opportunity to submit their arguments on the matter. Furthermore, even if the right to a judgment pronounced publicly was distinct from the right to a public hearing as such, the pronouncement of the county court's judgment against the applicant had been open to the public and broadcast by multiple television channels, which must have contributed to the public scrutiny of administration of justice in that particular case.

The specificity of the present case lay in the fact that the victim had previously given interviews in national newspapers on several occasions. However, the foregoing did not dispense the State from its positive obligation to protect her privacy as well as to protect her from secondary victimisation. This was so, first, because in her statements to the media the victim had controlled the information she was sharing, whereas in the courtroom this had not been possible in view of the applicant's rights. Indeed, cross-examination of a rape victim in court is highly sensitive as it necessarily reveals information about the most intimate aspects of the victim's life. Second, in the present case the State had been under an obligation to provide an even higher degree of protection to the victim, given that the police authorities had breached her privacy by unlawfully publishing her personal information at the very outset of the case.

The Court found it important to emphasise that intimate details from a rape victim's life could be disclosed at any stage of a criminal trial against the alleged perpetrator and not only during cross-examination of the victim. Consequently, since the present case concerned the need to protect the victim's integrity and dignity, as well as protect her from further embarrassment and stigmatisation, in the Court's view, closing only part of the proceedings would not have sufficed to protect her rights in the particular circumstances of the present case.

In sum, bearing in mind the highly intimate nature and the seriousness of the charges in the present case, which involved one of the most humiliating attacks on a person, the Court was satisfied that the discretion which the county court had exercised was not incompatible with the applicant's right to a public hearing.

Conclusion: no violation (six votes to one).

(See also *Y. v. Slovenia*, 41107/10, 28 May 2015, Information Note 185)

Article 6 § 1 (enforcement/exécution)

Civil rights and obligations/Droits et obligations de caractère civil

Non-enforcement of judicial decision concerning administrative refusals to grant visas: *article 6 not applicable*

Non-exécution d'une décision judiciaire portant sur des refus de visas par l'administration : *article 6 non applicable*

M.N. and Others/et autres – Belgium/Belgique, 3599/18, Decision/Décision 5.5.2020 [GC]

(See Article 1 above/Voir l'article 1 ci-dessus, page 8)

Article 6 § 2

Presumption of innocence/Présomption d'innocence

Applicant, neither charged nor aware of criminal investigation until after its discontinuation, ordered to pay compensation for "crime" in civil proceedings brought shortly thereafter: *Article 6 applicable; violation*

Condamnation d'un ressortissant azerbaïdjanais, qui n'avait pas été mis en examen et qui n'avait été informé de l'enquête pénale dont il avait fait l'objet qu'une fois celle-ci terminée, à verser une réparation à l'issue d'une procédure civile dans le cadre de laquelle il avait été reconnu coupable d'« infraction pénale » : *article 6 applicable ; violation*

Farzaliyev – Azerbaijan/Azerbaïdjan, 29620/07, Judgment/Arrêt 28.5.2020 [Section V]

Traduction française du résumé – Printable version

Facts – The applicant, a former Prime Minister of an autonomous region in Azerbaijan, was ordered to pay compensation in civil proceedings for his "crime" of criminal embezzlement. The applicant had never been charged and had only discov-

ered there had been a brief criminal investigation against him during the civil proceedings.

Law – Article 6 § 2

(a) *Applicability* – The impugned civil proceedings had been instituted after the criminal proceedings involving the applicant had been discontinued as statute barred. The applicant had never been formally charged as an "accused" within the meaning of domestic law and had not become aware of those proceedings until after their discontinuation, when the prosecuting authorities had lodged a civil claim. Given such circumstances, the questions to be answered were, firstly, whether the discontinued criminal proceedings had involved the applicant as a person "charged with a criminal offence" within the meaning of the Convention and, if so, secondly, whether the subsequent civil proceedings fell within the ambit of Article 6 § 2.

Article 6 § 2 applied where a person had been "charged with a criminal offence". Within the meaning of Article 6 § 2, that was an autonomous concept and had to be interpreted according to the three criteria set out in the Court's case-law, namely the classification of the proceedings in domestic law, their essential nature, and the degree of severity of the potential penalty. A "criminal charge", within the autonomous meaning of Article 6, existed from the moment that an individual had been officially notified by the competent authority of an allegation that he has committed a criminal offence, or from the point at which his situation has been substantially affected by actions taken by the authorities as a result of a suspicion against him. It was the actual occurrence of the first of the aforementioned events, regardless of their chronological order, which triggered the application of Article 6 in its criminal aspect.

In order to answer the question of whether the applicant had been a person "charged with a criminal offence" within the autonomous meaning of Article 6 § 2, the Court had to look behind the appearances and investigate the realities of the situation before it. It was true that in the applicant's case no formal decision charging him with the criminal offences had been taken. However, the decision to institute criminal proceedings had expressly designated him as one of the primary suspects with regard to the offences of embezzlement and abuse of official power. The authorities had intended to question him, albeit at that stage in the formal capacity of a witness, but clearly in connection with their suspicion that he had committed those offences. The authorities had considered that the applicant should be formally charged under the Criminal Code, the relevant provisions of which all provided for prison sentences in the event of a finding of guilt, but they had been precluded from doing so owing to the expiry of the criminal prescription period. Lastly, the prosecuting authorities had lodged a civil claim under the provisions of the Code of Criminal Procedure on the procedure for "civil claims within the framework of criminal proceedings". That procedure required, inter alia, the existence of a "criminal charge", as it could be lodged only against an "accused" person or a person who could be held materially liable for the criminal actions of the accused. The applicant had become aware of the allegations made against him in the criminal proceedings only after the civil claim had been lodged, less than a month after their discontinuation.

Having regard to the case-specific sequence of closely inter-connected events, considered as a whole, as well as to the relatively close temporal proximity between the relevant events in question, in the particular circumstances of the applicant's case, the combined effect of the authorities' actions taken as a result of a suspicion against the applicant was that his situation had been "substantially affected" by the conduct of the authorities and that therefore, for the purposes of the complaint, he had to be considered as a person "charged with a criminal offence" within the autonomous meaning of Article 6 § 2.

When the question of the applicability of Article 6 § 2 arose in the context of subsequent proceedings, the applicant had to demonstrate the existence of a link between the concluded criminal proceedings and the subsequent proceedings. Such a link was likely to be present, for example, where the subsequent proceedings required examination of the outcome of the prior criminal proceedings and, in particular, where they obliged the court to analyse the criminal judgment, to engage in a review or evaluation of the evidence in the criminal file, to assess the applicant's participation in some or all of the events leading to the criminal charge, or to comment on the subsisting indications of the applicant's possible guilt.

In the applicant's case the subsequent civil proceedings had been linked to the discontinued criminal proceedings, and it had not been argued otherwise. The civil compensation claim had been brought against the applicant by the prosecution authorities on behalf of the State under the provisions of the Code of Criminal Procedure on "civil claims within the framework of criminal proceedings". The prosecution authorities had relied on the evidence collected by the investigation, arguing that the defendants, including the applicant, had committed embezzlement of State funds in large amounts but could not be held criminally liable owing to the expiry of the prescription period, and had requested the court to order those individuals

to compensate the State for the "embezzlement". Accordingly, under the relevant legislation and practice as applied by the domestic authorities and courts, the civil proceedings were the "direct consequence" of the criminal investigation. Moreover, the statements made by the court allegedly imputing criminal liability on the applicant had also created a link with the criminal proceedings.

Conclusion: Article 6 § 2 applicable.

(b) *Merits* – The criminal proceedings against the applicant had been discontinued owing to the expiry of the criminal prescription period. The applicant had never been tried for that offence by a court competent to determine questions of guilt under criminal law. The domestic court ruling on the civil claim had stated that money had been "embezzled" and that, even though the defendants had been absolved of criminal liability by way of discontinuation of the criminal proceedings, "the damage caused as a result of the criminal offence" had not been compensated. The wording employed reflected an unequivocal opinion that a criminal offence had been committed and that the applicant had been guilty of that offence, even though he had never been convicted and had never had the opportunity to exercise his rights of defence in a criminal trial.

Conclusion: violation (unanimously).

The Court also held that there had been a violation of Article 6 § 1, finding that the applicant's right to a reasoned judgment had been breached.

Article 41: EUR 4,700 in respect of non-pecuniary damage.

(See also *Allen v. the United Kingdom* [GC], 25424/09, 12 July 2013, Information Note 165; *Simeonovi v. Bulgaria* [GC], 21980/04, 12 May 2017, Information Note 207; *Allenet de Ribemont v. France*, 15175/89, 10 February 1995, Information Note; *Vulakh and Others v. Russia*, 33468/03, 10 January 2012, Information Note 148; and *Batiashvili v. Georgia*, 8284/07, 10 October 2019, Information Note 223)

ARTICLE 7

Nullum crimen sine lege
Retroactivity/Rétroactivité

Use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law

Utilisation de la technique de « législation par référence » pour la définition d'une infraction et critères à appliquer pour comparer la loi pénale telle qu'elle était en vigueur au moment de la commission de l'infraction et la loi pénale telle que modifiée

Advisory opinion requested by the Armenian Constitutional Court/Avis consultatif demandé par la Cour Constitutionnelle arménienne, P16-2019-001, Opinion/Avis 29.5.2020 [GC]

Traduction française du résumé – Printable version

Background – In 2018 the former President of Armenia, Mr R. Kocharyan, was charged with overthrowing constitutional order essentially on account of having declared a state of emergency and used the armed forces to quell post-election protests in February-March 2008. At the material time, acts aimed at the violent overthrow of the constitutional order were punishable under Article 300 of the former version of the Criminal Code (CC) as part of the offence of "usurpation of power". In 2009 the CC was amended and the definition of the offences of "usurpation of power" (Article 300) and "overthrowing the constitutional order" (Article 300.1) was modified, the penalty for both remaining the same. Mr Kocharyan was charged under Article 300.1 of the 2009 CC, which defined the offence as the "*de facto* elimination of any of the norms prescribed by Articles 1 to 5 and paragraph 1 of Article 6 of the Constitution, by terminating the validity of that norm in the legal system". The previous version was broader in that any action *aimed* at overthrowing the constitutional order was punishable, whereas under the 2009 version, only the *de facto* elimination of specified fundamental principles of the Constitution was punishable. In other respects, Article 300 of the former CC was narrower, as it contained an element of violence which was missing from Article 300.1 of the 2009 CC.

The first-instance court and Mr Kocharyan lodged applications with the Constitutional Court, which requested that the European Court give an advisory opinion on the questions concerning the relevant requirements of Article 7 of the Convention.

Opinion

(i) *Preliminary considerations*

First, the questions submitted were, at least in part, broad and very general. The Court, however, had the power to reformulate and combine them, having regard to the specific factual and legal circumstances in issue in the domestic proceedings. Moreover, even though the Panel had accepted the request for an advisory opinion as a whole, that could not deprive the Grand Chamber of the possibility of employing the full range of powers, including its power in relation to the Court's jurisdiction.

Nor could the Panel's decision preclude it from assessing, on the basis of the original request, the observations received and all other material before it, whether each of the submitted questions fulfilled the requirements of Article 1 of Protocol No. 16.

Secondly, the proceedings before the Constitutional Court were, by their nature, preliminary. While that did not constitute an obstacle to dealing with the present request, it nevertheless framed the Court's approach, in particular where, as in the present case, the main proceedings were pending at a very early stage and the relevant facts had not yet been the subject of any judicial determination. In accordance with the principle of subsidiarity, the Court's advisory opinion would proceed on the basis of the facts as provided by the Constitutional Court and would inform that Court's own interpretation of the domestic provisions relevant for the case before it, in the light of the requirements flowing from Article 7 of the Convention. In turn, it would be for the first-instance court to apply the answer given by the Constitutional Court to the concrete facts of the case.

(ii) *The first and second questions*

> "Does the concept of 'law' under Article 7 of the Convention and referred to in other Articles of the Convention, for instance, in Articles 8-11, have the same degree of qualitative requirements (certainty, accessibility, foreseeability and stability)?
>
> If not, what are the standards of delineation?"

The Court did not discern any direct link between those questions and the pending domestic proceedings. The Court's answer would be of an abstract and general nature, thus going beyond the scope of an advisory opinion as envisaged by Protocol No. 16. Those questions thus did not fulfil the requirements of Article 1 of Protocol No. 16 and could not be reformulated so as to enable the Court to discharge its advisory function effectively and in accordance with its purpose. It could therefore not answer those questions.

(iii) *The third question*

> "Does the criminal law that defines a crime and contains a reference to certain legal provisions of a legal act with supreme legal force and higher level of abstraction meet the requirements of certainty, accessibility, foreseeability and stability?"

This question referred to the fact that Mr Kocharyan had been accused of an offence, which was defined by the use of the technique of "blanket reference" or "legislation by reference" (i.e. the technique where substantive provisions of criminal law, when setting out the constituent elements of criminal offences, referred to legal provisions outside criminal law). In the case of Article 300.1 of the 2009 CC, that legislative technique had been used to refer to Articles 1 to 5 and 6 § 1 of the Armenian Constitution, which had supreme legal force and were formulated with a higher level of abstraction than the provisions of the Criminal Code. In substance, the Constitutional Court had been asking whether that was compatible with Article 7 of the Convention, and above all with the requirements of clarity and foreseeability.

The Court had not yet explicitly ruled on the question of whether the use of the said technique as such was compatible with Article 7. However, as followed from the case-law examples (*Kuolelis and Others v. Lithuania*; *Haarde v. Iceland*), where the criminal law in issue contained references to other areas of law, including the Constitution, the Court had implicitly accepted the use of that technique and determined whether the criminal law referencing a provision of the Constitution and the referenced constitutional provision read together had been sufficiently clear and foreseeable in their application. Due to their high level of abstraction, constitutional provisions were often developed further through acts of lower hierarchical levels, through non-codified constitutional customs and through jurisprudence. The Court saw no reason to depart from its finding in the *Haarde* judgment, to the effect that Article 7 of the Convention did not exclude that evidence of existing constitutional practice might form part of the national court's overall analysis of foreseeability of an offence based on a provision of a constitutional nature. Furthermore, both of the above cases, where the Court had found no breach of Article 7, appeared to indicate that particular caution might be required from professional politicians or high office holders in assessing whether a specific conduct might entail criminal liability.

The Court was therefore of the opinion that using the "blanket reference" or "legislation by reference" technique in criminalising acts or omissions was not in itself incompatible with the requirements of Article 7. However, in order to comply with that provision, a criminal law defining an offence by making use of that technique had to be sufficiently precise, accessible and foreseeable in its application. Given that the referenced provision became part of the definition of the offence, both norms (the referencing and the referenced provision) taken together had to enable the individual concerned to foresee, if need be with the help of appropriate legal advice, what conduct would make him or her criminally liable. That requirement applied equally to situations where the referenced provision had a higher hierarchical rank in the legal order concerned or a higher level of abstraction than the referencing provision.

The most effective way of ensuring clarity and foreseeability was for the reference to be explicit, and for the referencing provision to set out the constituent elements of the offence. Moreover, the referenced provisions might not extend the scope of criminalisation as set out by the referencing provision. In any event, it was up to the court applying both the referencing provision and the referenced provision to assess whether criminal liability was foreseeable in the circumstances of the case.

(iv) *The fourth question*

> "In the light of the principle of non-retroactivity of criminal law (Article 7 § 1 of the Convention), what standards are established for comparing the criminal law in force at the time of committal of the crime and the amended criminal law, in order to identify their contextual (essential) similarities or differences?"

Having regard to the context in which the Constitutional Court had been asking its question (i.e. the 2009 amendment of the definition of the offence of overthrowing the constitutional order), the Court's case-law relating to the reclassification of charges in the event of a succession of criminal laws over the course of time was of particular interest (*G. v. France*; *Ould Dah v. France*; *Berardi and Mularoni v. San Marino*; *Rohlena v. the Czech Republic* [GC]). In such situations, the Court primarily sought to determine, in essence, whether the acts in question had already been punishable under the provisions in force at the time of their commission. Furthermore, it had held that the punishment imposed could not exceed the limits fixed by the provision that had been in force at the time of the commission of the offence.

The Court's case-law did not offer a comprehensive set of criteria for comparing the criminal law in force at the time of commission of the offence and the amended criminal law. Nonetheless, it was possible to draw the conclusion that such comparison had to be carried out by the competent court, not by comparing the definitions or formal classifications of the offence *in abstracto*, but *in concreto*, having regard to the specific circumstances of the case. The Grand Chamber case of *Maktouf and Damjanović v. Bosnia and Herzegovina* was particularly instructive regarding the application of the method of comparison *in concreto* in respect of penalties. Even though the principle of concretisation had been developed in cases relating to an amendment of the relevant penalties, the Court considered it should also apply to cases involving a comparison between the definition of the offence at the time of its commission and a subsequent amendment.

As pointed out by the Constitutional Court, the definition of the offence of overthrowing the constitutional order in Article 300.1 of the 2009 CC was broader in one respect while it was narrower in another compared to the provision which had been in force at the time of the alleged commission of the offence. Having regard to the considerations set out above, the Court was of the view that the question as to whether the application of the 2009 provision would violate the principle of non-retroactivity contained in Article 7 of the Convention, should not be answered *in abstracto*, but *in concreto*, on the basis of the specific circumstances of the case. It would be for the competent domestic courts to compare the legal effects of possible application of both provisions in question. Should they establish either that all constitutive elements of the offence and other conditions for criminality had not been fulfilled under the provision in force at the time of the impugned events, or that the application of the 2009 provision would attract more serious consequences for the accused than the preceding provision, the subsequent 2009 provision could not be considered as more lenient and, consequently, must not be applied in the case.

In sum, in order to establish whether, for the purposes of Article 7, a law passed after an offence had allegedly been committed was more or less favourable to the accused than the law that had been in force at the time of the alleged commission of the offence, regard had to be had to the specific circumstances of the case (the principle of concretisation). If the subsequent law was more severe than the law that had been in force at the time of the alleged commission of the offence, it must not be applied.

ARTICLE 8

Respect for private and family life/Respect de la vie privée et familiale

Eviction, without any offer of accommodation, of Roma living in an unauthorised camp for six months and belated review, post-eviction, of the proportionality of the measure: *violation*

Expulsion, sans proposition de relogement, de Roms vivant illégalement dans un camp depuis six mois et examen tardif après l'évacuation de la proportionnalité de la mesure : *violation*

Hirtu and Others/et autres – France, 24720/13, Judgment/Arrêt 14.5.2020 [Section V]

English translation of the summary – Version imprimable

En fait – Les requérants, ressortissants roumains appartenant à la communauté rom, ont été forcés d'évacuer le campement sur lequel ils étaient installés illégalement depuis six mois. Leurs procédures contestant l'évacuation ont été infructueuses.

En droit – Article 8: La notion de «domicile», au sens de l'article 8, ne se limite pas au domicile légalement occupé ou établi, mais il s'agit d'un concept autonome qui ne dépend pas d'une qualification en droit interne. La question de savoir si une habitation particulière constitue un «domicile» relevant de la protection de l'article 8 dépend des circonstances factuelles, notamment de l'existence de liens suffisants et continus avec un lieu déterminé. En l'espèce, les requérants n'étaient installés dans le campement que depuis six mois lorsqu'il a été évacué. Dans ces conditions, ils ne peuvent invoquer le droit au respect de leur domicile, en l'absence de tout lien suffisant et continu avec ce lieu.

Cependant, il y a eu ingérence dans le droit au respect de la vie privée et familiale des requérants, prévue par la loi et visant les buts légitimes de la protection de la santé et de la sécurité publique, ainsi que des droits et libertés d'autrui.

S'agissant de la décision d'expulsion, les autorités avaient en principe le droit d'expulser les requérants, qui occupaient illégalement un terrain communal et qui, en tant qu'occupants sans titre, ne pouvaient prétendre avoir une espérance légitime d'y rester, d'autant plus qu'ils n'y étaient installés que depuis six mois.

S'agissant de la mesure d'expulsion, elle n'a pas été prise en exécution d'une décision de justice, mais selon la procédure de la mise en demeure prévue par l'article 9 de la loi du 5 juillet 2000 ayant entraîné plusieurs conséquences.

En premier lieu, vu le bref délai entre l'adoption de l'arrêté préfectoral (29 mars), sa notification (2 avril) et l'évacuation elle-même (12 avril), aucune des mesures préconisées par la circulaire interministérielle de 2012 relative à l'anticipation et à l'accompagnement des opérations d'évacuation des campements illicites n'a été mise en place (diagnostic des familles et personnes concernées, accompagnement en matière scolaire, sanitaire et d'hébergement). Si le Gouvernement soutient qu'il n'y aurait pas eu d'obligation de relogement dès lors que les requérants disposaient de caravanes, ces derniers ont fait valoir que toutes leurs caravanes, à l'exception de celle d'une famille, ont été saisies et, les mesures énumérées par la circulaire sont applicables indépendamment du fait que les intéressés disposent ou non de caravanes. Il n'y a donc eu aucune prise en compte des conséquences de l'expulsion et de la situation particulière des requérants.

En second lieu, en raison de la procédure de mise en demeure appliquée, le recours prévu par le droit interne est intervenu après la prise de décision par l'administration, alors que dans d'autres cas, le juge judiciaire examine la proportionnalité de la mesure avant de prendre sa décision. Et les recours introduits par les requérants, déclarés irrecevables, ne leur ont pas permis ultérieurement de faire valoir leurs arguments devant une juridiction. La première juridiction à se prononcer sur la proportionnalité de l'ingérence a été la cour administrative d'appel dix-huit mois après l'évacuation du campement. Or, d'une part, l'appartenance des requérants Roms à un groupe socialement défavorisé et leurs besoins particuliers à ce titre doivent être pris en compte dans l'examen de proportionnalité que les autorités nationales sont tenues d'effectuer, non seulement lorsqu'elles envisagent des solutions à l'occupation illégale des lieux, mais encore, si l'expulsion est nécessaire, lorsqu'elles décident de sa date, de ses modalités et, si possible, d'offres de relogement. D'autre part, au titre des garanties procédurales de l'article 8, toute personne victime d'une ingérence dans les droits que lui reconnaît cette disposition doit pouvoir faire examiner la proportionnalité de cette mesure par un tribunal indépendant à la lumière des principes pertinents qui en découlent.

Conclusion: violation (unanimité).

La Cour conclut aussi à l'unanimité à la non-violation de l'article 3 dans son volet matériel, étant donné que l'expulsion par la force des requérants n'a pas été établie, et qu'il ne saurait être reproché aux autorités françaises d'être restées indifférentes à la situation des requérants concernant leurs conditions de vie après l'évacuation.

La Cour conclut également à l'unanimité à la violation de l'article 13, étant donné que ni le recours suspensif spécifique à la mesure d'évacuation du campement ni le recours en référé liberté, *a priori* effectifs mais déclarés irrecevables, n'ont permis un examen juridictionnel des arguments des requérants sous l'angle des articles 3 et 8 de la Convention en première instance, ni au fond, ni en référé.

Article 41: 7 000 EUR pour préjudice moral à chaque requérant individuel, ainsi qu'à un couple.

(Voir aussi, concernant l'article 8, *Prokopovitch c. Russie*, 58255/00, 18 novembre 2004, Note d'information 69; *McCann c. Royaume-Uni*, 19009/04, 13 mai 2008, Note d'information 108; *Orlić c. Croatie*, 48833/07, 21 juin 2011; *Yordanova et autres c. Bulgarie*, 25446/06, 24 avril 2012, Note d'information 151; et *Winterstein et autres c. France*, 27013/07, 17 octobre 2013, Note d'information 167)

Respect for private and family life/Respect de la vie privée et familiale

Challenge of a foreseeable contact ban in the context of sexual abuse of a mentally disabled woman, mother of the applicant's child: *inadmissible*

Contestation d'une interdiction de contact imposée de manière prévisible dans le cadre d'une affaire d'abus sexuels perpétrés sur une femme handicapée mentale, mère de l'enfant du requérant : *irrecevable*

Evers – Germany/Allemagne, 17895/14, Judgment/Arrêt 28.5.2020 [Section V]

Traduction française du résumé – Printable version

Facts – The 71-year-old applicant had been living with his partner, P.B., who was the guardian of her daughter, V., a 22-year-old mentally disabled woman. The applicant had sexual relations with V., with whom he fathered a child born in March 2011.

In 2009 and 2010 two criminal proceedings had been initiated against the applicant in respect of his alleged sexual abuse of persons incapable of resistance. Both were discontinued.

On September 2010 the District Court had been notified by a medical clinic that V. had likely been sexually abused because she suffered from a moderate mental disability and had been impregnated by the applicant. The District Court, by means of an interim injunction, placed V. in a specialised residential home and appointed a professional guardian. On March 2011 the District Court upheld the interim injunction, relying on three expert opinions. Nevertheless, the applicant wished to continue his sexual relationship with V. However, on January 2013 a contact ban was issued by the District Court for V.'s protection.

The applicant had alleged that this contact ban infringed his rights under Articles 6 and 8 of the Convention.

Law – Article 8: The mere fact that the applicant had been living in a common household with P.B. and V. and that he was the biological father of V.'s child had not constituted a family link which would fall under the protection of Article 8 under its "family life" head.

The "private life" limb could not be understood as guaranteeing the right to establish a relationship with one particular person. "Private life" had not as a rule come into play in situations where a complainant had not enjoyed "family life" in relation to that person and where the latter had not shared the wish for contact. This had been all the more so if the person with whom a complainant had wished to maintain contact had been the victim of behaviour which had been deemed detrimental by the domestic courts.

Nor could Article 8 be relied on to complain of a loss of reputation which had been the foreseeable consequence of one's own actions, such as, for example, the commission of a criminal offence. This rule had not been limited to reputational damage but had been expanded to a wider principle according to which personal, social, psychological and economic suffering which were the foreseeable consequences of the commission of a criminal offence could not be relied on in order to complain that a criminal conviction in itself amounted to an interference with the right to respect for "private life". This extended principle had covered not only criminal offences but also other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life".

In the present case, the contact ban had not touched upon relations of the applicant with other people in general, but had only excluded contact of any sort with V. The applicant had insisted on contact with V., whereas the domestic courts had established that V. had expressed no particular interest in having contact with him. Moreover, contact between the applicant and V. had been deemed detrimental for the latter, who had showed signs of mental distress and had needed medication after his visit to the residential home. The Court therefore concluded that the applicant could not rely on Article 8 to challenge the order to abstain from entering into contact with V.

In addition, according to the civil courts which had based their decisions on the conclusions of three experts, V.'s child had been the result of a severe violation of her personality rights as she was unable to understand the consequences and risks of sexual acts and pregnancy. The applicant had continued to pursue his intention to abuse V. which would likely lead to further pregnancies and significant further risks for V. In its decision proposing to discontinue criminal proceedings, the Regional Court had explicitly pointed out to the applicant and P.B. that V. had to be considered as incapable of resistance. The decision to issue the contact ban and its consequences could therefore be seen as a foreseeable consequence of the applicant's intention to continue visiting V.

In these circumstances the applicant's challenge of the contact ban had not fallen within the scope of the private life limb of Article 8.

Conclusion: inadmissible (incompatible *ratione materiae*).

Article 6 (civil): The proceedings had not lacked, overall, a sufficient evidentiary basis since the domestic courts had heard V. and had consulted three expert opinions. They also had further evidence at their disposal and had given the applicant the possibility to submit his arguments in writing.

The domestic authorities had based their decision to ban contact, not on V.'s status as a person with a disability, but rather on the finding that her disability had been of such a nature as to render her unable to adequately understand (i) the significance and implications of the contact at issue and (ii) the particularities of her relationship with the applicant, including, inter alia, the fact that the applicant had previously been her mother's partner. The domestic authorities also had regard to the fact that any other form of contact would not be to her benefit either.

In sum, there had been nothing to indicate that the domestic courts had based their decisions on insufficient grounds or that they had arbitrarily refused to consider relevant evidence.

Conclusion: no violation (unanimously).

Article 6 (civil): The questions at the heart of the proceedings at issue had entailed an assessment of the applicant's personality and his relationship to V., the nature of which the applicant had contested. Even though the applicant had maintained his position to continue to have sexual contact with V. and even though the District Court had heard him personally throughout the guardianship proceedings, the issue in the proceedings had not been purely legal and technical, but would have allowed the domestic courts to form their own impression of the applicant and the latter to explain his personal situation. There had therefore been no exceptional circumstances that would have justified dispensing the domestic courts with a personal hearing of the applicant.

Conclusion: violation (four votes to three).

The Court also held, unanimously, that there had been no violation of Article 6 § 1 on the grounds that the domestic court's refusal to grant the applicant full access to the guardianship case-file had not been of such a nature as to impede the essence of the applicant's ability to defend his position in relation to the proposed contact ban and they had been supported by relevant and sufficient reasons.

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

(See concerning Article 8: *X and Y v. the Netherlands*, 8978/80, 26 March 1985; *Elsholz v. Germany* [GC], 25735/94, 13 July 2000, Information Note 20; *Söderman v. Sweden* [GC], 5786/08, 12 November 2013, Information Note 168; *Kruškić v. Croatia* (dec.), 10140/13, 25 November 2014, Information Note 180; *A.-M.V. v. Finland*, 53251/13, 23 March 2017, Information Note 205; and *Denisov v. Ukraine* [GC], 76639/11, 25 September 2018, Information Note 221. See also concerning Article 6 § 1: *Pönkä v. Estonia*, 64160/11, 8 November 2016, Information Note 201; and *Mirovni Inštitut v. Slovenia*, 32303/13, 13 March 2018, Information Note 216)

Respect for private life/Respect de la vie privée
Positive obligations/Obligations positives

Protracted difficulties for stateless person to regularise legal position: *violation*

Obstruction prolongée à la régularisation d'un apatride : *violation*

Sudita Keita – Hungary/Hongrie, 42321/15, Judgment/Arrêt 12.5.2020 [Section IV]

Traduction française du résumé – Printable version

Facts – The applicant, a stateless person of Somali and Nigerian descent, arrived in Hungary in 2002. His attempts to regularise his status were unsuccessful. In 2015 the Constitutional Court removed the provision in the law on the admission and right of residence of third-country nationals ("the RRTN Act") which required "lawful stay in the country" as a precondition for granting stateless status, holding that the requirement contravened public international law obligations ratified by Hungary.

The applicant was ultimately granted stateless status in October 2017. He complained about the protracted difficulties he had had in regularising his legal situation, with allegedly adverse repercussions on his access to healthcare and employment and his right to get married.

Law – Article 8: The principal question was whether the Hungarian authorities had provided an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of his further stay and status in Hungary determined with due regard to his private-life interests.

There was no doubt that the applicant enjoyed private life in Hungary and the Court accepted that the uncertainty of his legal status, lasting for about fifteen years, had had adverse repercussions on that private life. The applicant had lived in Hungary without any legal status while being deprived of basic entitlements to healthcare and employment. The Nigerian embassy in Budapest had refused to

recognise his Nigerian citizenship in 2006, rendering the applicant de facto stateless from that point in time. The domestic authorities had not informed the applicant about the possibility of applying for stateless status at that time.

Up until the decision of the Constitutional Court removing the "lawful stay" requirement from the RRTN Act, it had been practically impossible for the applicant to be recognised as stateless as he did not meet that requirement. Thus, in reality, contrary to the principles flowing from the 1954 UN Convention relating to the Status of Stateless Persons, the applicant, a stateless individual, had been required to fulfil requirements which, by virtue of his status, he had been unable to fulfil. Following the decision of the Constitutional Court, it had taken the domestic courts more than two years to reach a final decision in his case, ultimately granting him stateless status.

In the particular circumstances of the case, the respondent State had not complied with its positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issue of his status in Hungary determined with due regard to his private-life interests under Article 8.

Conclusion: violation (unanimously).

Article 41: EUR 8,000 in respect of non-pecuniary damage; claim for pecuniary damage dismissed.

(See *Hoti v. Croatia*, 63311/14, 26 April 2018, Information Note 217, and contrast *Abuhmaid v. Ukraine*, 31183/13, 12 January 2017, Information Note 203)

Respect for private life/Respect de la vie privée

Unnecessary disclosure of sensitive medical data in certificate to be produced in various situations: *violation*

Présence non nécessaire de données médicales sensibles sur une attestation destinée à être produite dans diverses situations : *violation*

P.T. – Republic of Moldova/République de Moldova, 1122/12, Judgment/Arrêt 26.5.2020 [Section II]

Traduction française du résumé – Printable version

Facts – The applicant needed either a military service book or an exemption certificate for many administrative reasons including obtaining a driving licence and applying for a job. He obtained an exemption certificate on medical grounds which, by referring to other published standards, allowed the identification of the type of illness from which he suffered (HIV).

Law – Article 8: The inclusion of medical data in a certificate which was to be presented to third parties constituted an interference with the applicant's rights protected under Article 8. The interference was in accordance with the domestic law at the relevant time. However, neither the Government in their submissions nor the authorities in their decisions had referred to any specific legitimate aim of the interference with the applicant's rights. Moreover, the parties had not made any submissions concerning the legislative history of the relevant Government decision so as to verify whether a legitimate aim could be discovered there. It was not the Court's task to identify such an aim in the authorities' place. In fact, it could hardly see what legitimate aim could have been pursued by revealing the applicant's illness to third persons in various situations which were unconnected to any health risks the applicant's illness might possibly entail. The policy did not appear to have a rational basis or connection to any of the legitimate aims foreseen in Article 8 § 2.

The above was sufficient to find a violation of Article 8. However, as the interference in the present case also raised a serious issue of proportionality to any possible legitimate aim, the Court decided to examine that aspect as well. The manner in which personal medical data in an exemption certificate was protected from unnecessary disclosure was deficient. In particular, it allowed third parties to find out the type of illness which had served as a basis for exempting the applicant from military service, even if they had no ostensible interest in having access to that information. The fact that the relevant section of the Medical Standards, which the applicant's certificate referred to, provided for a number of various serious illnesses and not only HIV, did not change the effect on the applicant, in so far as all those illnesses constituted sensitive medical data, the disclosure of which seriously affected a person's rights under Article 8. The Government had not submitted any explanation of the need to include such a degree of sensitive medical details in a certificate which could be requested in a variety of situations where the applicant's medical condition was of no apparent relevance. Accordingly, the interference with the applicant's right had been disproportionate.

Conclusion: violation (unanimously).

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

(See also *Surikov v. Ukraine*, 42788/06, 26 January 2017)

Respect for family life/Respect de la vie familiale

Severance of parent-child tie, in a specific context of differences in cultural and religious backgrounds of mother and adoptive parents: *case referred to the Grand Chamber*

Rupture des liens parent-enfant, dans un contexte de différences religieuses et culturelles entre la mère et les parents adoptifs : *affaire renvoyée devant la Grande Chambre*

Abdi Ibrahim – Norway/Norvège, 15379/16, Judgment/Arrêt 17.12.2019 [Section II]

English translation of the summary – Version imprimable

Ressortissante somalienne, la requérante obtint en 2010 le statut de réfugiée en Norvège, accompagnée de son enfant né quelques mois plus tôt au Kenya. En décembre 2010, le nourrisson fit l'objet d'une prise en charge d'urgence par les services sociaux. Il fut ensuite placé dans une famille chrétienne, alors que la requérante avait demandé à ce qu'il le soit chez des cousins à elle, ou bien dans une famille somalienne ou musulmane. Les services sociaux demandèrent plus tard que la famille d'accueil de l'enfant soit autorisée à l'adopter, ce qui comportait pour la mère la déchéance de ses droits parentaux et l'interdiction de tout contact avec son fils.

La requérante forma un recours : sans demander le retour de son fils auprès d'elle, car celui-ci avait déjà passé beaucoup de temps avec ses parents d'accueil et s'y était attaché, elle sollicitait un droit de visite afin que l'enfant puisse conserver un lien avec ses racines culturelles et religieuses.

En 2015, la cour d'appel rejeta ce recours et autorisa l'adoption, après avoir examiné notamment les questions soulevées sur le plan ethnique, culturel et religieux.

Par un arrêt du 17 décembre 2019, une chambre de la Cour a :

– estimé qu'il y avait lieu d'examiner les griefs sous l'angle de la vie familiale uniquement (la requérante invoquait également l'article 9, eu égard aux aspects religieux),

– conclu à l'unanimité à la violation de l'article 8 de la Convention ;

– constaté que la requérante n'avait demandé aucune indemnisation pour dommage.

La chambre s'est référée aux principes résumés dans l'arrêt *Strand Lobben et autres c. Norvège* [GC], 37283/13, 10 septembre 2019, Note d'information 232. Elle a indiqué fonder sa conclusion de violation sur l'affaire dans son ensemble et sur les raisons qui militaient pour le maintien des contacts, notamment sur le plan culturel et religieux.

Le 11 mai 2020, l'affaire a été renvoyée devant la Grande Chambre à la demande de la requérante.

ARTICLE 9

Freedom of religion/Liberté de religion

Muslim prisoner reprimanded for performing acts of worship at night time in breach of prison schedule: *violation*

Avertissement infligé à un détenu musulman ayant accompli des rites religieux pendant la nuit, en violation du règlement pénitentiaire : *violation*

Korostelev – Russia/Russie, 29290/10, Judgment/Arrêt 12.5.2020 [Section III]

Traduction française du résumé – Printable version

Facts – The applicant, a practising Muslim, had been reprimanded on account of his misconduct in prison – namely, two acts of worship ("Salah") at night time, when "sleep without interruption" was prescribed for all detainees.

Law – Article 9: The applicant had been reprimanded for a breach of the prison schedule and for disregarding the prison guards' orders to return to his sleeping place. The imposition of a disciplinary punishment on the applicant, even in such a lenient form as a reprimand, amounted to an interference with his right to freedom of religion. The question was whether the interference had been justified and necessary in a democratic society.

It appeared that the only reason for disciplining the applicant had been the formal incompatibility of his actions with the prison schedule and the authorities' attempt to ensure full and unconditional compliance with that schedule by every prisoner. Although the Court recognised the importance of prison discipline, it could not accept such a formalistic approach, which palpably disregarded the applicant's individual situation and did not take into account the requirement of striking a fair balance between the competing private and public interests.

It was of particular importance for the applicant to comply with his duty to perform acts of worship at the time prescribed by his religious belief. That duty had to be complied with every day, not least during Ramadan. There was nothing to suggest that the applicant's adherence to acts of worship at night-time posed any risks to prison order or safety. The applicant had not used dangerous objects or

sought to engage in collective worship in a large group together with other prisoners. Moreover, the applicant's worship had not disturbed the prison population or the prison guards, because he had performed Salah while in solitary confinement, without any noise or other disturbing factors. Lastly, it did not appear that performing Salah had left the applicant exhausted or could have undermined his health or his ability to participate in criminal proceedings.

The prison schedule did not explicitly set out "time for worship" or "personal time" which could be used at the discretion of prisoners as recommended by the European Prison Rules. In the circumstances of the case no special arrangements on the part of the authorities would have been required to have respected the applicant's wish to worship.

Lastly, being a form of disciplinary punishment, the reprimand had not only decreased the applicant's chances of early release, mitigation of the prison regime, or of obtaining a reward, but also had a chilling effect on other prisoners. The proportionality of that sanction had not been assessed by the domestic courts in a meaningful manner. The latter had confined their inquiry to whether or not the applicant's conduct had breached the prison schedule. They had failed to identify the legitimate aim of the impugned interference in the applicant's freedom of religion, or to carry out a balancing exercise.

In the light of the above, the interference with the applicant's freedom of religion could not be regarded as having been necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: EUR 2,600 in respect of non-pecuniary damage.

(See also *Jakóbski v. Poland*, 18429/06, 7 December 2010, Information Note 136, and by contrast *X. v. Austria*, 1753/63, Commission decision of 15 February 1965, and *Kovaļkovs v. Latvia* (dec.), 35021/05, 31 January 2012)

ARTICLE 10

Freedom of expression/Liberté d'expression

Premature termination of chief prosecutor's mandate following public criticism of legislative reforms: *violation*

Révocation précoce de la procureure principale à la suite de critiques qu'elle avait formulées contre des réformes législatives : *violation*

Kövesi – Romania/Roumanie, 3594/19, Judgment/Arrêt 5.5.2020 [Section IV]

(See Article 6 § 1 (civil) above/Voir l'article 6 § 1 (civil) ci-dessus, page 16)

Freedom of expression/Liberté d'expression

Lack of adequate safeguards for suspending journalists' accreditation to enter Parliament on account of interviews and video recordings with MPs outside designated areas: *violation*

Absence de garanties relativement à la décision de retirer à des journalistes l'accréditation qui leur permettait d'entrer au Parlement, au motif qu'ils avaient interviewé et filmé des parlementaires en dehors des zones prévues à cet effet : *violation*

Mándli and Others/et autres – Hungary/Hongrie, 63164/16, Judgment/Arrêt 26.5.2020 [Section IV]

Traduction française du résumé – Printable version

Facts – The applicant journalists' accreditations to enter the Parliament building were suspended by the Speaker for having conducted interviews and video recordings with members of Parliament (MPs) outside the designated areas. The suspension lasted five months.

Law – Article 10: The suspension of the applicants' accreditation to enter the Parliament building for a period of almost five months had had adverse effects, preventing them from obtaining first-hand and direct knowledge based on their personal experience of the work of Parliament and of events taking place in the building. There had been an interference with the applicants' right to freedom of expression.

The interference complained of had a legal basis and the relevant provisions satisfied the "lawfulness" requirements. The applicants, media professionals, had been aware of the relevant provisions and, in the case of disorderly conduct, it had been only to be expected that they would be escorted out of the Parliament building and that their entry would be restricted.

The interference had been intended to prevent disruption to the work of Parliament so as to ensure its effective functioning and thus had pursued the legitimate aim of the "prevention of disorder". It had also been intended to protect the rights of MPs and thus had pursued the aim of the "protection of the rights of others".

The recordings in question had not been meant to present MPs in a sensationalist manner. They had

intended to document the reaction of MPs on alleged illicit payments linked to the National Bank, a matter of considerable public interest which had attracted significant media attention. As regards the applicants' interest in being allowed entry to Parliament for further reporting, this had been related to matters of which the public had a legitimate interest in being informed.

Having regard to the fact that the allegedly disruptive conduct had occurred outside plenary sessions or other political discussions within Parliament, the present case was to be distinguished from situations where measures had been taken in response to speech or conduct interfering with the orderly conduct of parliamentary debate. However, Parliaments were entitled to some degree of deference in regulating conduct in Parliament, by designating areas for recording, to avoid disruption in parliamentary work without such disruption being manifest, and the Court's scrutiny of such regulations should be limited. In any case, the prohibition on recording was limited to clearly defined areas in Parliament that appeared to be directly relevant to the functioning of the legislature. Furthermore, by not respecting the regulations on recording, the applicants had knowingly risked being sanctioned. The impugned sanction had thus been supported by relevant reasons. The Court decided not to examine whether those reasons were also sufficient. Instead, it focused its review on whether the restriction in issue had been accompanied by effective and adequate safeguards against abuse.

With regard to the manner in which the sanction had been imposed on the applicants, the procedural safeguards should be adapted to the parliamentary context, bearing in mind the generally recognised principles of parliamentary autonomy and the separation of powers. At the same time, precisely because of those principles, the applicants could not be considered entitled to a remedy to challenge outside Parliament a sanction imposed by organs of Parliament. The lack of any external control made the argument for procedural safeguards particularly relevant in the present case.

At the material time, domestic law contained a restriction on entry in the event of a breach of the relevant provisions, without requiring any assessment of the potential impact of the sanction or the relevance of the journalistic activity giving reason for the restriction. Furthermore, it did not provide for the possibility for persons sanctioned to be involved in the relevant decision-making procedure. The procedure in the applicants' case had consisted of a letter addressed to the relevant editors-in-chief informing them of the suspension of the applicants' accreditation. Furthermore, neither the relevant provisions nor the impugned decision to ban the applicants from entering Parliament specified the period of restriction and the applicants' subsequent requests for authorisation to enter Parliament had been left unanswered. Lastly, domestic law did not offer any effective means of challenging the Speaker's decision where the applicants could have presented their arguments.

Having regard to the foregoing, the impugned interference with the applicants' right to freedom of expression had not been proportionate to the legitimate aims pursued because it had not been accompanied by adequate procedural safeguards.

Conclusion: violation (unanimously).

Article 41: finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage.

(See also *Karácsony and Others v. Hungary* [GC], 42461/13 and 44357/13, 17 May 2016, Information Note 196; and *Selmani and Others v. the former Yugoslav Republic of Macedonia*, 67259/14, 9 February 2017, Information Note 204)

Freedom of expression/Liberté d'expression

Premature termination of mandate of a member of the National Council of the Judiciary, following public criticism of the Government-led reform of the judiciary: *communicated*

Cessation anticipée du mandat d'un membre du Conseil national de la magistrature, faisant suite à des critiques publiques des réformes judiciaires du gouvernement : *affaire communiquée*

Żurek – Poland/Pologne, 39650/18, Communication [Section I]

Traduction française du résumé – Printable version

The applicant is a judge. He was also a member of the National Council of the Judiciary ("the NCJ").

In 2014, after being re-elected for a second four-year term of office, he was appointed the NCJ's spokesperson, and, as such, became one of the main critics of the changes to the judiciary initiated by the legislative and executive branches of the new Government that had come to power in 2015. He pointed in particular to the threat to judicial independence stemming from the Government's proposals.

In 2018 his mandate as a member of the NCJ, as that of the other judicial members, was prematurely ended, following the entry into force of new legislation in the context of wide-scale reform of the judiciary.

In particular, the Act Amending the Act on the NCJ of 2017 provided that judicial members of the NCJ would no longer be elected by judges but by the *Sejm* (the lower house of the Parliament), and that the newly elected members would immediately replace those elected under the previous legislation. Thus, when the *Sejm* elected fifteen judges as new members of the NCJ on 6 March 2018, the applicant's mandate was terminated. He did not receive any official notification. In consequence, he also ceased to act as the NCJ's spokesperson.

The bill amending the legislation on the NCJ was criticised at national and international level. Several national bodies issued opinions stating that the amendments violated the Constitution because they allowed the legislature to gain control over the NCJ, contrary to the principle of the separation of powers.

The applicant alleges that he had no access to a court or any other remedy to contest the premature termination of his mandate; and that his dismissal as spokesperson for the NCJ, combined with other punitive measures, entailed a breach of his right to freedom of expression.

Communicated under Articles 6 § 1, 10 and 13 of the Convention.

ARTICLE 11

Freedom of association/Liberté d'association

Refusal to register a political party declaring itself as the successor to the communist party dissolved in 1989 for imposing a totalitarian regime: *no violation*

Refus d'inscrire, sur la liste des partis politiques, un parti se voulant continuateur du parti communiste dissous en 1989 pour son régime totalitaire : *non-violation*

Ignatencu et Parti communiste roumain (PCR) – Romania/Roumanie, 78635/13, Judgment/Arrêt 5.5.2020 [Section IV]

English translation of the summary – Version imprimable

En fait – Le second requérant, dénommé le Parti communiste roumain (PCR), est une formation politique qui proclame vouloir être le continuateur en fait et en droit du PCR qui a gouverné la Roumanie pendant le régime totalitaire, et qui a été dissous à la suite de son renversement du pouvoir par les actions violentes de décembre 1989. Le premier requérant en est le président. Les juridictions nationales ont refusé la demande des requérants d'inscrire le second requérant sur la liste des partis politiques.

En droit – Article 11 : Le refus d'enregistrement du second requérant en tant que parti politique s'analyse en une ingérence dans le droit à la liberté d'association des requérants, prévue par la loi et ayant visé à la protection de la sécurité nationale et à la protection des droits et libertés d'autrui.

Le tribunal départemental et la cour d'appel ont motivé le rejet de la demande des requérants par deux catégories d'arguments.

i. *Quant aux raisons formelles retenues pour justifier le refus d'enregistrement*

La loi interne prévoyait précisément deux hypothèses d'inscription d'une formation politique sur la liste des partis politiques : la constitution d'une nouvelle formation politique ou une réorganisation, la formation politique à restructurer devant avoir été préalablement légalement constituée. Or la demande des requérants de reconstituer un parti ayant eu préalablement une activité politique ne rentrait dans le cadre de ces hypothèses : l'ancien PCR ne fonctionnait plus depuis décembre 1989 et il n'avait pas été légalement enregistré sur la liste des partis politiques après cette date.

Il n'est pas déraisonnable pour un État de subordonner la formation d'un parti politique à la réalisation, dans un ordre précis, de certaines étapes qui ne sont pas indûment exagérées. Les formalités requises peuvent varier en fonction des facteurs historiques et politiques propres à chaque pays, et les États disposent d'une certaine marge d'appréciation pour les fixer. En l'espèce, il n'est pas déraisonnable, surtout dans le contexte historique de l'affaire, que la législation roumaine ne permette pas la reconstitution de formations politiques n'ayant jamais fonctionné légalement dans un régime démocratique tel que le PCR depuis décembre 1989, date du premier acte normatif venu réglementer le pluralisme politique dans une société démocratique.

En outre, il n'est pas non plus déraisonnable, en soi, d'exiger qu'un demandeur joigne une déclaration de responsabilité de la personne ayant établi la liste des signatures en question à sa demande. En l'espèce, les exigences légales que les requérants n'avaient pas respectées sont purement neutres quant à leur contenu et ne visaient pas spécifiquement le parti requérant. Ainsi, cette catégorie d'arguments opposés à la demande des intéressés n'avait pas pour but de pénaliser ce parti en raison des opinions ou des politiques qu'il défendait.

Enfin, les requérants pouvaient satisfaire à la condition relative à la soumission de la déclaration de responsabilité en présentant une nouvelle déclara-

tion émise par la personne chargée de l'établissement de la liste des signatures des partisans, ce qui ne constituait pas un obstacle démesuré.

Partant, les raisons formelles opposées par la cour d'appel à l'enregistrement du parti requérant sont « pertinentes et suffisantes » et « proportionnées au but légitime poursuivi ».

ii. *Quant aux raisons liées au contenu des statuts et du programme politique retenues pour justifier le refus d'enregistrement*

Le fait qu'un projet politique passe pour incompatible avec les principes et structures actuels de l'État ne le rend pas en soi contraire aux règles démocratiques. Et l'on ne saurait exclure que le programme politique d'un parti cache des objectifs et intentions différents de ceux qu'il affiche publiquement. Pour s'en assurer, il faut comparer le contenu de ce programme avec les actes et prises de position des membres et dirigeants du parti en cause.

Les statuts et le programme politique du parti requérant insistent sur le respect de l'intégrité territoriale et de l'ordre juridique et constitutionnel du pays, ainsi que sur les principes de la démocratie, parmi lesquels le pluralisme politique, et ils mentionnent de manière expresse l'opposition dudit parti au totalitarisme et à tout type de discrimination. Ces documents ne renferment aussi aucun passage qui puisse passer pour un appel à la violence, au soulèvement ou à toute autre forme de rejet des principes démocratiques, et qui puisse être perçu comme un appel à la « dictature du prolétariat ».

L'expérience du communisme totalitaire en Roumanie jusqu'en 1989 ne saurait justifier à lui seul la nécessité de l'ingérence, d'autant plus que des partis communistes ayant une idéologie marxiste existent dans plusieurs pays signataires de la Convention dont en Roumanie. Ainsi, le droit des requérants de se constituer en un parti politique communiste n'est pas illusoire, d'autant moins que les intéressés pourraient réaménager leurs documents constitutifs et qu'ils ont affirmé vouloir y parvenir avec de nouveaux statuts et ne souhaiter reprendre que les seules valeurs positives de l'ancien PCR. Cependant, les requérants ne demandaient pas la simple création d'un parti communiste.

Les autorités internes ont motivé leur refus par la mention contenue dans les statuts aux termes de laquelle le parti requérant « assum[ait] la continuité de l'expérience théorique et pratique du mouvement des travailleurs socialistes et communistes de Roumanie », après s'être livrées à une appréciation des moyens proposés pour atteindre le but du parti requérant, à savoir la mise en place d'une société socialiste fondée principalement sur la propriété socialiste des moyens de production, à la lumière des déclarations des requérants selon lesquelles le second d'entre eux entendait être le continuateur de l'ancien PCR. Ainsi, les requérants ne se sont pas dissociés concrètement et entièrement de l'ancien PCR.

La cour d'appel a amplement expliqué aux requérants quelles sont les raisons qui l'ont amenée à juger que leur demande ne satisfaisait pas aux conditions prévues par la loi et la Constitution et, en outre, elle a démontré en quoi le programme et les statuts du parti requérant étaient contraires à l'ordre constitutionnel et juridique du pays, et notamment aux principes fondamentaux de la démocratie.

Dans ce contexte très particulier, eu égard aussi à la marge d'appréciation bien que réduite dont disposent les États, l'analyse des juridictions nationales quant aux statuts et au programme politique présentés par les requérants n'est pas dénuée de fondement. Le motif du refus d'enregistrement opposé aux intéressés résidait dans la volonté d'empêcher une formation politique qui avait gravement abusé de sa position au cours d'une longue période, en instaurant un régime totalitaire, de faire à l'avenir un mauvais usage de ses droits, et d'éviter ainsi des atteintes à la sûreté de l'État ou aux fondements d'une société démocratique. Le refus d'enregistrement avait donc pour finalité de contrer un abus particulièrement grave, quoique seulement potentiel, de la part des intéressés, qui aurait consisté en une entorse aux principes de l'État de droit et aux fondements de la démocratie.

Partant, les raisons liées au contenu des textes fondateurs du parti requérant opposées par les juridictions nationales à l'enregistrement de ce dernier sont « pertinentes et suffisantes » et « proportionnées au but légitime poursuivi ».

Conclusion : non-violation (unanimité).

(Voir aussi *Parti communiste unifié de Turquie et autres c. Turquie* [GC], 19392/92, 30 janvier 1998 ; *Parti socialiste et autres c. Turquie* [GC], 21237/93, 25 mai 1998 ; *Refah Partisi (Parti de la prospérité) et autres c. Turquie* [GC], 41340/98 et al., 13 février 2003, Note d'information 50 ; *Parti socialiste de Turquie (STP) et autres c. Turquie*, 26482/95, 12 novembre 2003 ; *Gorzelik et autres c. Pologne* [GC], 44158/98, 17 février 2004, Note d'information 61 ; *Partidul Comunistilor (Nepeceristi) et Ungureanu c. Roumanie*, 46626/99, 3 février 2005, Note d'information 72 ; *Ždanoka c. Lettonie* [GC], 58278/00, 16 mars 2006, Note d'information 84 ; *Tsonev c. Bulgarie*, 45963/99, 13 avril 2006 ; *Parti nationaliste basque – Organisation régionale d'Iparralde c. France*, 71251/01, 7 juin 2007, Note d'information 98 ; *Organisation macédonienne unie Ilinden – PIRIN et autres (n° 2)*, 41561/07 et 20972/08, 18 octobre 2011)

ARTICLE 13

Effective remedy/Recours effectif

Failure to exhaust new remedy dealing with prolonged non-enforcement of final decisions awarding compensation for property expropriated during the communist regime: *inadmissible*

Défaut d'épuisement d'un nouveau recours permettant de remédier aux inexécutions prolongées de décisions définitives accordant des indemnités pour des biens expropriés à l'époque du régime communiste : *irrecevable*

Beshiri and Others/et autres – Albania/Albanie, 29026/06, Decision/Décision 7.5.2020 [Section II]

Traduction française du résumé – Printable version

Facts – The applicants have all received final administrative decisions recognising their right to compensation *in lieu* of the restitution of properties that were confiscated or nationalised by the former communist regime. However, those final decisions have never been enforced in full.

In response to the Court's pilot judgment in *Manushaqe Puto and Others v. Albania*, in 2015 the Albanian Parliament adopted the Treatment of Property and Finalisation of the Property Compensation Process Act (the 2015 Property Act) aimed at creating a feasible and workable scheme to ensure equal treatment of property owners and solve the long-standing issue.

Law – Article 13 of the Convention and Article 1 of Protocol No. 1

(1) *As regards the effectiveness of the 2015 Property Act*

The new remedy was found to be effective having regard to the following considerations:

(a) *Appropriateness of the form of redress* – The 2015 Property Act had provided for various forms of compensation. It had also taken account of the fact that unauthorised buildings had been constructed on expropriated land and had made provision for the recognition of former owners' rights to compensation where restitution had been impossible. If appropriate compensation had been paid in accordance with the Court's case-law, there had been in general no unfair balance between the parties' interests.

Furthermore, under the 2015 Property Act, Agency for Treatment of Property (ATP) decisions could be challenged before courts at various degree of jurisdiction, including decisions on property rights and the right to compensation; any failure to determine a pending property claim or financial compensation within a three-year time-limit; and decisions on the amount of compensation. However, having regard to the reasonable time requirement, consistent judicial practice and expeditious processes had been required to deal with almost 7,000 pending property claims.

The ATP could not call into question the finality of decisions without quantum which would be subject to a financial evaluation in order to determine the amount of compensation. The 2015 Property Act upheld the finality of decisions determining the amount of compensation subject to indexation. Because the right to compensation remains unchallengeable and indisputable, the 2015 Property Act did not give rise to a breach of the principle of legal certainty in so far as the right to compensation was concerned.

The domestic authorities had enjoyed a wide margin of appreciation as regards the choice of forms of redress for breaches of property rights. Therefore the appropriateness of the form of redress provided for by the 2015 Property Act did not put into question the effectiveness of the remedy.

(b) *Adequacy of the compensation* – As regards decisions without quantum, the amounts to be awarded as compensation under the 2015 Property Act might, in some cases, be considerably reduced owing to changes in the cadastral classification of the expropriated property over time. The new compensation scheme had pursued the public interest of resolving property issues within ten years under sensible financial costs and to establish social peace. It had been adopted in response to the pilot judgment to resolve a structural and systemic problem that had persisted since 1993 and affected at least 26,000 claims for compensation. The authorities' approach had not appeared unreasonable and disproportionate, considering their duty to correct the ineffectiveness of prior legislation and given their wide margin of appreciation in situations involving a wide-reaching but controversial legislative scheme with significant economic impact for the country as a whole.

The reference to the original cadastral category of the expropriated property as a basis for carrying out the financial evaluation had not been *per se* arbitrary. However in order to prevent an extreme burden on former owners, the remedy could only be considered effective to the extent that the aggregate amount of compensation had amounted to at least 10% of the value calculated by reference to the current cadastral category of the expropriated property. The 10% minimum threshold for

the amount of compensation could be considered reasonable in view of the overall level of sacrifice imposed by the new compensation scheme on former owners compared to their expectation to receive current market value compensation which had flowed from prior legislation.

Former successful applicants had received compensation at the market value which had been consistent with the legislation in force at the material time. The difference in treatment invoked by the applicants had related to their amount of compensation to be calculated by reference to the cadastral category of the property at the time of expropriation instead of by reference to the current market price of the property. This difference had been exclusively due to an intervening change in the legislation and could not therefore be regarded as discriminatory. In the same vein, the fact that some former owners might be deemed to have been fully compensated under the 2015 Property Act on account of the prior (partial) restitution of the property they had obtained, could not be regarded as a difference in treatment and it had not affected or altered the form of compensation they had already obtained. The absence of an award of further compensation would indeed be the logical result of the application of the new compensation scheme. Otherwise they would obtain an unfair advantage over former owners who have not yet been able to receive any form of compensation.

Lastly, the Government's decision to reduce the cap on financial compensation from ALL 50 million (EUR 403,763) to ALL 10 million (EUR 81,100) had not resulted in a situation of significant legal uncertainty or a general difference in treatment. The average award of financial compensation had not been significantly (if at all) reduced. Nevertheless frequent changes to the legislation, including implementing decisions, might contribute to a general lack of legal certainty, which would be taken into account in assessing the State's conduct in the future.

Having regard to the scheme of staggered payment of compensation, the amount of compensation ought to be indexed to inflation until final payment in order for the remedy to continue to remain effective. Under the 2015 Property Act, final decisions which had determined the amount of compensation to be awarded to former owners are subject to indexation.

Subject to compliance with the 10% minimum threshold for the amount of compensation, no issues had arisen as regards the adequacy of compensation provided for by the 2015 Property Act that would put into question the effectiveness of the remedy in this respect.

(c) *Accessibility and efficiency of the remedy* – There had been a progression in the enforcement of decisions, the evaluation of compensation and the examination of new claims. The Government had allocated significant annual budgetary resources for the payment of financial compensation and had also enlarged the pool of land for the payment of compensation in kind.

The 2015 Property Act had laid down clear and binding time-limits for the authorities to act and had established the responsibility of the ATP for examining property claims and recognising property rights, including the right to compensation. The ATP would also determine the financial evaluation concerning decisions pending before the national authorities and the European Court. It had determined the financial evaluation in respect of almost each application of the present case. Otherwise a fully judicial procedure had been established, which could result in a legally binding court decision. The applicants and other former owners had already appealed against ATP decisions. And it would be speculative for the Court to find that the domestic courts dealing with such appeals were not acting with due diligence.

As regards those applicants who had introduced an application with the European Court by the date of the delivery of this decision and had chosen not to appeal against the ATP decision or not to submit any missing documents within the statutory time-limits, it had been open to the applicants, starting from the official publication of the 2015 Property Act, to comply with the statutory requirements. It would not be fair and reasonable to dispense them from having recourse to it. To hold differently could give rise to an unjustified difference in treatment vis-à-vis those former owners who had complied with the requirements of the new domestic remedy.

As regards the 10-year time-frame for the full payment of compensation, even though the applicants might have to wait for a number of years to have the compensation amounts paid to them in full, this system might be accepted in the exceptional circumstances of this case and would not *per se* call into question the effectiveness of the remedy or be contrary to the reasonable time requirement guaranteed by Article 6 of the Convention.

In sum, no issues had arisen as regards the accessibility and efficiency of the remedy provided for by the 2015 Property Act.

(2) *As regards the applicants' obligation to exhaust the new remedy*

Firstly, it would be in line with the spirit and logic of the pilot judgment that applicants complaining

about the non-enforcement of their right to compensation could claim redress for their grievances in the first place through the 2015 Property Act. Secondly, the 2015 Property Act had applied to all individuals who had lodged an application with the European Court before the entry into force of the 2015 Property Act. There were no exceptional circumstances to exempt the applicants from the obligation to exhaust domestic remedies. Most of the applications were therefore rejected for non-exhaustion of domestic remedies.. As regards some of the applicants, knowing that the domestic proceedings had been pending before the domestic courts, it would be premature for the Court to deal with their complaint. The applicants who had received the full payment of the compensation award could no longer claim to be a victim within the meaning of Article 34 of the Convention. The Court had also found that the applicants' complaint under Article 13 of the Convention was manifestly ill-founded.

The Court might review its position in the future depending on the authorities' capacity to demonstrate that the remedies introduced in the 2015 Property Act had continued to comply with the Convention requirements in practice, including their ability to (i) to deal with almost 7,000 pending property claims in an effective manner, (ii) provide for compensation of no less than 10% of the value to which the applicants would have been entitled if the financial evaluation had been carried out by reference to the current cadastral category of the expropriated property, and (iii) provide for indexation of the amount of compensation until final payment.

Conclusion: inadmissible.

(See also *Broca and Texier-Micault v. France*, 27928/02 and 31694/02, 21 October 2003, Information Note 57; *Broniowski v. Poland* [GC], 31443/96, 22 June 2004, Information Note 65; *Ramadhi and Others v. Albania*, 38222/02, 13 November 2007, Information Note 102; *Wolkenberg and Others v. Poland* (dec.), 50003/99, 4 December 2007, Information Note 103; *Guiso-Gallisay v. Italy* (just satisfaction) [GC], 58858/00, 22 December 2009, Information Note 125; *Manushaqe Puto and Others v. Albania*, 604/07 et al., 31 July 2012, Information Note 154; *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], 71243/01, 25 October 2012, Information Note 172; *Kurić and Others v. Slovenia* (just satisfaction) [GC], 26828/06, 13 March 2014, Information Note 172; *Preda and Others v. Romania*, 9584/02 et al., 29 April 2014, Information Note 173; *Anastasov and Others v. Slovenia* (dec.), 65020/13, 18 October 2016, Information Note 201)

ARTICLE 14

Discrimination (Article 2)

Azerbaijan's failure to enforce prison sentence for hate crime against Armenian victims, imposed abroad on its officer, who was glorified as hero, promoted and awarded benefits upon return: *violation*

Défaut d'exécution par l'Azerbaïdjan d'une peine de prison pour crime de haine contre des victimes arméniennes qui avait été prononcée à l'étranger contre l'un de ses agents, lequel, à son retour en Azerbaïdjan, a été accueilli en héros, a reçu une promotion et a bénéficié d'avantages : *violation*

Makuchyan and/et Minasyan – Azerbaijan and Hungary/Azerbaïdjan et Hongrie, 17247/13, Judgment/Arrêt 26.5.2020 [Section IV]

(See Article 2 above/Voir l'article 2 ci-dessus, page 11)

ARTICLE 34

Victim/Victime

Compensation for poor conditions of detention by specific and measurable reduction in sentence leading to applicants' release: *loss of victim status*

Mauvaises conditions de détention compensées par une remise de peine explicite et mesurable ayant entraîné la libération des requérants : *perte de la qualité de victime*

Dîrjan and/et Ştefan – Romania/Roumanie, 14224/15 and/et 50977/15, Decision/Décision 15.4.2020 [Section IV]

English translation of the summary – Version imprimable

En fait – À la suite de l'arrêt pilote *Rezmiveş et autres c. Roumanie* (61467/12 et al., 25 avril 2017, Note d'information 206), la loi n° 169/2017 a institué une compensation sous la forme d'une réduction de la peine à exécuter expressément accordée dans le cas de mauvaises conditions de détention subies dans différents établissements pénitentiaires ou dépôts de police dans la période allant du 24 juillet 2012 au 20 décembre 2019.

Les présents requérants ont bénéficié d'une réduction de peine dans ce cadre. L'éligibilité du premier requérant à une libération conditionnelle s'en trouva avancée de deux mois, et la peine ainsi réduite du second était purgée dans sa totalité ; ce qui entraîna leur libération anticipée.

En droit

Article 3 (*volet matériel*) : Les deux conditions détaillées ci-après étant remplies, la Cour parvient à la conclusion que les requérants ont perdu la qualité de « victimes » des mauvaises conditions de détention qu'ils ont subies.

a) *Les autorités nationales ont reconnu la violation de l'article 3 de la Convention* – Cette reconnaissance a été faite en substance, par le biais de la loi n° 169/2017, dont le but était d'indemniser les requérants pour la période d'incarcération ayant eu lieu dans des conditions contraires à cette disposition.

L'appréciation des conditions de détention était opérée par une commission d'évaluation spécialement instaurée par le législateur et selon des critères conformes aux normes minimales du Conseil de l'Europe et à la jurisprudence de la Cour (l'espace vital, la possibilité de pratiquer des activités en dehors des cellules, la lumière, la ventilation et la température des cellules, l'utilisation des groupes sanitaires et le respect de l'hygiène, ainsi que l'état des murs des cellules).

b) *La violation a été réparée de manière appropriée et suffisante* – Sur le plan général, la Cour note que :

– la réduction de peine offerte était égale à six jours pour chaque période de trente jours de détention dans de mauvaises conditions, soit une réduction plus importante que celle déjà jugée convenable par la Cour dans la décision *Stella et autres c. Italie* (49169/09 et al., 16 septembre 2014, Note d'information 177), à savoir un jour de réduction pour dix jours de détention ;

– le calcul de la réduction à appliquer était opéré par les bureaux de gestion de la détention, et le bénéfice direct de la réduction était la libération anticipée des détenus ;

– en droit roumain, la procédure de libération conditionnelle est engagée soit par les personnes intéressées soit par les commissions de libération, et l'analyse des demandes de libération conditionnelle se fait, en principe, à intervalle hebdomadaire.

En l'espèce, les requérants ont ainsi bénéficié respectivement de 324 et 318 jours de réduction de peine dans ce cadre, avec pour effet direct leur libération anticipée, et ainsi la cessation de la violation alléguée.

Bien que le recours compensatoire en cause n'ait connu qu'une application temporaire, le secrétariat du Comité des Ministres du Conseil de l'Europe a confirmé que la réduction opérée avait un impact mesurable sur le quantum de la peine et contribuait à réduire le surpeuplement carcéral, et le Comité des Ministres lui-même a conclu au caractère effectif de cette compensation en matière de conditions de détention (CM/Del/Dec(2018)1310/H46-13, 15 mars 2018)

Conclusion : irrecevable (perte de la qualité de victime).

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies/ Épuisement des voies de recours internes

No final decision in main proceedings, leaving open the possibility of *in concreto* examination notwithstanding the reply to a priority question of constitutionality: *inadmissible*

Absence de décision définitive dans la voie de recours principale, laissant toujours une possibilité de contrôle *in concreto* nonobstant la réponse reçue à une question prioritaire de constitutionnalité : *irrecevable*

Graner – France, 84536/17, Decision/Décision 5.5.2020 [Section V]

English translation of the summary – Version imprimable

En fait – En droit français, la procédure de « question prioritaire de constitutionnalité » (QPC) permet aux justiciables de contester la constitutionnalité d'une disposition législative à l'occasion d'un procès devant une juridiction administrative ou judiciaire. Si le Conseil constitutionnel répond que la disposition contestée est conforme à la Constitution, la juridiction saisie du litige est tenue de l'appliquer, à moins qu'elle ne la juge incompatible avec une disposition du droit de l'Union européenne ou d'un traité.

Dans le cadre de recherches historiques, le requérant demanda en 2015 à consulter plusieurs volumes des archives d'un ancien président de la République. Le directeur des archives nationales ne put que partiellement satisfaire sa demande, en raison de l'opposition du mandataire de l'ancien président.

Le requérant saisit le tribunal administratif d'un recours en annulation de ce refus partiel : selon lui, la disposition légale prévoyant cette faculté d'opposition méconnaissait le droit d'accès à l'information et le droit à un recours effectif, tels qu'ils lui paraissaient garantis tant par la Déclaration des droits de l'homme et du citoyen de 1789 (articles 15 et 16) – à valeur constitutionnelle – que par la Convention (articles 10 et 13).

En 2017, saisi d'une QPC du requérant sur le premier aspect, le Conseil constitutionnel jugea la loi litigieuse conforme à la Constitution. Le requérant saisit alors la Cour européenne, sans attendre l'issue de l'instance principale. En 2018, le tribunal administratif rejeta son recours. Le requérant a formé un pourvoi en cassation, actuellement pendant devant le Conseil d'État.

En droit – Article 10 (seul ou combiné avec l'article 13) : Le fait que la présente requête a été introduite devant la Cour alors que la procédure était pendante devant le juge administratif n'est pas rédhibitoire. Ce qui importe, c'est que la décision interne définitive ait été prise avant que la Cour se prononce sur la recevabilité de la requête.

Or, en matière administrative, le recours en annulation pour excès de pouvoir offre en principe une voie de recours effective, jusqu'au juge de cassation. Toutefois, le requérant soutient qu'il en va différemment en l'espèce, vu la décision rendue par le Conseil constitutionnel et son autorité pour les autres juridictions.

Certes, la QPC soumise au Conseil constitutionnel à la demande du requérant visait très exactement la disposition légale appliquée en sa cause, et concernait des droits individuels garantis par la Constitution identiques aux droits individuels garantis par la Convention.

Toutefois, le contrôle de constitutionnalité opéré par le Conseil constitutionnel et le contrôle de conventionnalité opéré par le juge ordinaire sont distincts. Le premier consiste à vérifier *in abstracto* si telle disposition légale est conforme à la Constitution. Le second doit permettre de vérifier *in concreto* si une action ou une omission imputable à un État partie est conforme à la Convention

De fait, le tribunal administratif a différencié, d'un côté, le moyen tiré d'une atteinte par la loi en cause aux droits et libertés garantis par la Constitution et, de l'autre, les moyens tirés d'une violation des droits et libertés garantis par la Convention.

Or, la décision du Conseil constitutionnel n'a motivé que le rejet du moyen « constitutionnel » ; pour écarter les moyens « conventionnels », en revanche, le tribunal ne s'est pas fondé sur cette décision, mais sur un motif spécifique – en l'occurrence, qu'il n'y avait « pas d'atteinte » aux droits protégés par les articles 10 et 13 de la Convention.

Sans préjuger du caractère suffisant ou non du contrôle ainsi opéré par le tribunal administratif quant au respect de la Convention – l'appréciation en revenant au Conseil d'État en premier lieu –, cela montre que n'ont fait obstacle à l'examen des moyens tirés des droits protégés par la Convention ni la décision du Conseil constitutionnel, ni le fait que la loi en cause mette l'administration dans une situation de compétence liée par rapport à l'avis du mandataire.

Ainsi, pour autant qu'il visait les droits tirés des articles 10 et 13 de la Convention, on ne saurait dire que le recours en annulation devant les juridictions administratives se trouvait « de toute évidence voué à l'échec » au vu de la décision du Conseil constitutionnel.

Enfin, c'est à tort que le requérant se réfère à l'arrêt *S.A.S. c. France* [GC] (43835/11, 1er juillet 2014) : dans cette affaire, la Cour a seulement jugé que la question de l'épuisement des voies de recours internes était dénuée de pertinence dans le contexte du système légal français dès lors qu'elle venait de conclure que la requérante pouvait se dire victime nonobstant l'absence de mesure individuelle ; ce n'est que « surabondamment » qu'elle a ensuite observé, sans en tirer aucune conclusion, que le Conseil constitutionnel s'était prononcé sur la loi critiquée par la requérante.

Conformément au principe de subsidiarité, il appartient maintenant au Conseil d'État, dûment saisi en cassation par le requérant, de vérifier si l'examen de ses moyens relatifs à la Convention par le tribunal administratif a répondu aux exigences qui se dégagent de la jurisprudence de la Cour.

Dans l'attente de cette décision interne définitive, les griefs du requérant sont prématurés.

Conclusion : irrecevable (non-épuisement des voies de recours internes).

(Voir aussi *Charron et Merle-Montet c. France*, 22612/15, 16 janvier 2018)

Exhaustion of domestic remedies/ Épuisement des voies de recours internes Effective domestic remedy/Recours interne effectif – Albania/Albanie

Failure to exhaust new remedy dealing with prolonged non-enforcement of final decisions awarding compensation for property expropriated during the communist regime: *inadmissible*

Défaut d'épuisement d'un nouveau recours permettant de remédier aux inexécutions prolongées de décisions définitives accordant des indemnités pour des biens expropriés à l'époque du régime communiste : *irrecevable*

Beshiri and Others/et autres – Albania/Albanie, 29026/06, Decision/Décision 7.5.2020 [Section II]

(See Article 13 above/Voir l'article 13 ci-dessus, page 33)

PROTOCOL No. 16/DU PROTOCOLE N° 16

Advisory opinions/Avis consultatifs

Use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law

Utilisation de la technique de « législation par référence » pour la définition d'une infraction et critères à appliquer pour comparer la loi pénale telle qu'elle était en vigueur au moment de la commission de l'infraction et la loi pénale telle que modifiée

Advisory opinion requested by the Armenian Constitutional Court/Avis consultatif demandé par la Cour Constitutionnelle arménienne, P16-2019-001, Opinion/Avis 29.5.2020 [GC]

(See Article 7 above/Voir l'article 7 ci-dessus, page 21)

GRAND CHAMBER (PENDING)/ GRANDE CHAMBRE (EN COURS)

Referrals/Renvois

Abdi Ibrahim – Norway/Norvège, 15379/16, Judgment/Arrêt 17.12.2019 [Section II]

(See Article 8 above/Voir l'article 8 ci-dessus, page 28)

COURT NEWS/DERNIÈRES NOUVELLES DE LA COUR

70th anniversary of the Convention: European conference/70 ans de la Convention : conférence européenne

President Linos-Alexandre Sicilianos took part in an on-line conference to mark the 70th anniversary of the European Convention on Human Rights, which took place on 5 May 2020 in Norway. Topics included the importance of human rights for pan-European cohesion and peace, current challenges to democracy and protecting freedom of expression in Europe.

More information on the conference and speech by President Linos-Alexandre Sicilianos

-ooOoo-

Le président Linos-Alexandre Sicilianos a pris part à une conférence numérique destinée à marquer les 70 ans de la Convention européenne des droits de l'homme, qui s'est tenue le 5 mai 2020 en Norvège. Parmi les sujets abordés figuraient l'importance des droits de l'homme pour la cohésion et la paix paneuropéennes, les défis actuels de la démocratie et la protection de la liberté d'expression en Europe.

Plus d'informations sur la conférence et discours du président Linos-Alexandre Sicilianos

SCN: new member/SCN : nouveau membre

On 12 May 2020 the Superior Courts Network welcomed a new member: the Greek Supreme Civil and Criminal Court (*Areios Pagos*), which brings the membership of the SCN to 90 courts from 40 States.

-ooOoo-

Le 12 mai 2020, le Réseau des cours supérieures a accueilli un nouveau membre : la Cour suprême civile et pénale hellénique (*Areios Pagos*), faisant passer le nombre de membres actuels à 90 juridictions de 40 États.

New President of the ECHR/Nouveau président de la CEDH

Robert Spano, judge elected in respect of Iceland, took office as President of the European Court of Human Rights on 18 May 2020. He succeeds Linos-Alexandre Sicilianos, judge elected in respect of Greece.

More information on the presidency and the composition of the Court

Robert Spano, juge élu au titre de l'Islande, a pris ses fonctions de président de la Cour européenne des droits de l'homme le 18 mai 2020. Il succède à Linos-Alexandre Sicilianos, juge élu au titre de la Grèce.

Plus d'informations sur la présidence et la composition de la Cour

Videoconference by President Spano/ Visioconférence du président Spano

On 29 May 2020 President Robert Spano gave a videoconference presentation on the theme of "The principle of judicial independence". Organised by ICOURTS at the University of Copenhagen, this event was broadcast live, with the President of the ECHR subsequently answering questions from an online audience.

Le 29 mai 2020, le président Robert Spano a fait une présentation en visioconférence sur le thème «Le principe de l'indépendance judiciaire». Organisé par ICOURTS à l'université de Copenhague, cet événement a été diffusé en direct et suivi de questions posées au président de la CEDH par le public en ligne.

RECENT PUBLICATIONS/ PUBLICATIONS RÉCENTES

The ECHR and Greece in Facts and Figures/La CEDH et la Grèce en faits et chiffres

To mark the Greek Presidency of the Committee of Ministers of the Council of Europe, the Court has produced a new publication: The ECHR and Greece in Facts and Figures. It is part of a series which provides a global overview of the Court's work and the extent to which its judgments have an impact in each member State.

Pour marquer la présidence grecque du Comité des Ministres du Conseil de l'Europe, la Cour a produit un nouveau document: La CEDH et la Grèce en faits et chiffres. Cette série de documents permet d'avoir une vision globale du travail de la Cour et de l'étendue de l'impact de ses arrêts pour chaque État membre.

Case-law guides: new translations/Guides sur la jurisprudence: nouvelles traductions

The English version of the Guide on Article 13 of the Convention (right to an effective remedy) has recently been published. A translation into Bosnian of the Guide on Article 4 (prohibition of slavery and forced labour) and a translation into Bulgarian of the Guide on prisoners' rights have also been published. All case-law guides can be downloaded from the Court's website.

Guide to Article 13 of the Convention – Right to an effective remedy (eng)

Vodič za član 4. Konvencije – Zabrana ropstva i prinudnog rada (bos)

Практика по Конвенцията – права на затворниците (bul)

La traduction vers l'anglais du Guide sur l'article 13 de la Convention (droit à un recours effectif) vient d'être publiée. Une traduction en bosniaque du Guide sur l'article 4 (interdiction de l'esclavage et du travail forcé) et une traduction en bulgare du Guide sur les droits des prisonniers viennent aussi d'être publiées. Tous les guides sur la jurisprudence peuvent être téléchargés à partir du site web de la Cour.