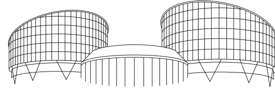

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Information Note on the Court's case-law

No. 124 November 2009

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ARTICLE 2

Life
Effective investigation

Inability to prosecute, and supervision of the investigation by, a chief public prosecutor suspected by the family of masterminding the victim's murder: *violation*

Kolevi v. Bulgaria - 1108/02
Judgment 5.11.2009 [Section V]

Facts – The first applicant, Mr Kolev, was a high-ranking prosecutor who was murdered in 2002. His wife and two children pursued his application after his death.

In 2001 and 2002 several public figures, including Mr Kolev, publicly stated that the Chief Public Prosecutor was suffering from a psychiatric disorder, had committed a number of serious crimes and had terrorised and punished any subordinate who dared disobey his orders even if unlawful. Mr Kolev told the authorities and the press that he expected to be arrested on fabricated drugs charges in an attempt to silence him. He also repeatedly voiced in public fears that he would be killed as part of a merciless campaign against him orchestrated by the Chief Public Prosecutor. In November 2002 the Supreme Judicial Council dealt with the public accusations against the Chief Public Prosecutor and called on him to resign, but he refused.

In January 2001, upon an application by the Chief Public Prosecutor, Mr Kolev was dismissed and forced to retire. On appeal, the courts quashed the dismissal as unlawful, noting that he had not reached retirement age or applied for early retirement. Meanwhile, in June 2001 he was arrested, charged with illegal possession of drugs and a firearm and remanded in custody. Subsequently he was placed under house arrest. He was released in November 2001. In February 2002 the criminal proceedings against him were dismissed on the grounds that he enjoyed immunity from prosecution and he was reinstated as a prosecutor. In December 2002 he was shot dead. Although a number of steps were taken in the investigation, it was repeatedly suspended for failure to identify the perpetrator.

Law – Article 5 § 1: The complaint had been declared admissible only in so far as it concerned Mr Kolev's deprivation of liberty when under house arrest. The domestic law prohibited in absolute terms the institution of criminal proceedings and detention of persons enjoying immunity from prosecution. Mr Kolev's detention order had therefore been issued in excess of jurisdiction and was thus invalid and as such contrary to Article 5 § 1. The Court was not convinced by the Government's argument that the domestic case-law did not make it clear whether removal from office ended immunity with immediate effect or only if the order was upheld on appeal. Relevant here was the fact that the unlawfulness of Mr Kolev's dismissal was flagrant and obvious. In any event, the absence of clarity could be seen in itself as a failure by the State authorities to comply with their Convention duties, which included an obligation to secure a high level of legal certainty, clarity and foreseeability.

Conclusion: violation (unanimously).

Article 2: It was undisputed that the investigation into Mr Kolev's death had started promptly and that numerous urgent and indispensable investigative steps had been taken. The applicants had complained, however, that the investigation had lacked independence and objectivity. The investigative authorities had had before them solid evidence of a serious conflict between Mr Kolev and the Chief Public Prosecutor at the time. They had been aware that the Chief Public Prosecutor had ordered or approved unlawful acts against Mr Kolev, such as his dismissal, his arrest and detention, and the bringing of certain unfounded criminal charges against him and his family. They had also been aware of the findings of the Supreme Judicial Council concerning the Chief Public Prosecutor and of Mr Kolev's public statements shortly before his death. The investigators had received testimony indicating that high-ranking prosecutors, including the Chief Public Prosecutor himself, might have been implicated in Mr Kolev's murder. Consequently, in the absence of clear evidence that these allegations were groundless, the investigators should have examined them. That was decisive in the light of the Convention requirement that the findings of an investigation must be based on a thorough, objective and impartial analysis of *all* the relevant elements. The Court noted that until September 2003 it had not been legally possible to bring criminal charges against the Chief Public Prosecutor against his will. As a result, he could not have been removed from office even if he had committed the most serious crime. Nor could he have been temporarily suspended from duty. While eventually the law had been amended, in practice, and as the Government had admitted,

no Bulgarian prosecutor was prepared to bring charges against the Chief Public Prosecutor. This had been due to a number of factors, including the hierarchical structure of the prosecution service, the authoritarian style of the then Chief Public Prosecutor, the apparently unlawful working methods he had resorted to and also institutional deficiencies. In particular, the prosecutors alone had the exclusive power to bring criminal charges while the Chief Public Prosecutor had the power to set aside any such decision. In addition, the Chief Public Prosecutor could only be removed from office by decision of the Supreme Judicial Council, some of whose members were his subordinates. This arrangement had been repeatedly criticised in Bulgaria as failing to secure sufficient accountability. The Court also considered it highly relevant that the Government had not informed the Court of any investigation into any of the numerous public allegations of unlawful and criminal acts by the former Chief Public Prosecutor. It accepted as plausible the applicants' assertion that it was practically impossible to conduct an independent investigation into the circumstances implicating the Chief Public Prosecutor. Furthermore, there was little doubt that the investigation into Mr Kolev's murder had for practical purposes been under the control of the Chief Public Prosecutor until the end of his term of office in 2006. Although the investigators had taken numerous steps, the fact that the investigation had been under the control of the accused and had failed to follow up one of the possible lines of inquiry which clearly appeared relevant had decisively undermined its effectiveness. The investigation into Mr Kolev's death had, therefore, not been independent, objective or effective. Moreover, the nature of the serious deficiencies was such that the authorities could not be said to have acted adequately to secure accountability and maintain the public's confidence in their adherence to the rule of law and their determination to avoid collusion in or tolerance of unlawful acts. The system chosen by the member State concerned had, however, to guarantee, in law and in practice, the investigation's independence and objectivity in all circumstances, regardless of whether those involved were public figures. These deficiencies had not been remedied after the expiry in 2006 of the Chief Public Prosecutor's term of office.

Conclusion: violation (unanimously).

Article 41: EUR 30,000 in respect of non-pecuniary damage.

ARTICLE 3

Inhuman or degrading treatment
Expulsion

Proposed removal of asylum-seeker to Greece under the Dublin Regulation: *communicated*

Ahmed Ali v. the Netherlands and Greece - 26494/09
[Section III]

The applicant is a Somali national who is currently staying in the Netherlands. After being raped in Somalia by members of another clan, she fled to Greece. The applicant claims that, since she had no identification papers, she was detained for five days and not allowed to file a request for asylum. She further claims that she was ill-treated by the Greek authorities before being deported to Somalia. She subsequently arrived in the Netherlands and applied for asylum there, but her request was rejected since, under the Dublin Regulation[1], Greece was responsible for examining her asylum request. The applicant appealed claiming that she risked ill-treatment if she was returned to Greece and that the Greek authorities would expel her without due process. Her appeal was dismissed.

In June 2009 the European Court issued an interim measure under Rule 39 of the Rules of Court indicating that the Netherlands should not expel the applicant pending the outcome of the proceedings before it.

The Greek Government accepted that Greece was responsible for examining the applicant's asylum request and submitted that the applicant would have the right to file such a request upon her arrival at Athens airport and would not be detained. They denied that the applicant had been detained or ill-treated upon her arrival in Greece in 2006.

The Netherlands Government informed the Court that they had reached an agreement with the Greek authorities on the practical arrangements for the transfer of asylum-seekers from the Netherlands to Greece. Under the terms of the agreement, no more than forty persons are to be transferred per week, a Dutch official is to accompany returnees in order to facilitate the procedure and returnees are to be

1. Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

allowed to lodge an asylum request upon their arrival at the airport in Greece.

Communicated to the Government of the Netherlands and the Government of Greece under Articles 3 and 13, with detailed questions pertaining to the transfer procedure and subsequent procedural guarantees in Greece.

Inhuman and degrading treatment suffered as a result of an asylum-seeker's removal to Greece under the Dublin Regulation: *communicated*

M.S.S. v. Belgium and Greece - 30696/09
[Section II]

The applicant in this case is an Afghan national whose asylum request was dismissed in Belgium and who was deported to Greece. The complaints under Articles 2 and 3 of the Convention are, for the first time, made against both Belgium and Greece. The applicant claims, *inter alia*, that Belgium took the risk of exposing him to inhuman and degrading treatment in Greece, and that he risks being deported to Afghanistan by Greece, without an examination on the merits of the reasons he fled his country. He also alleges that no effective remedy was available to him in Belgium against the deportation order, within the meaning of Article 13 of the Convention.

Communicated to the Belgian and Greek Governments under Articles 2, 3 and 13.

ARTICLE 5

Article 5 § 1

Lawful arrest or detention

Detention of a high-ranking official enjoying immunity from prosecution: *violation*

Kolevi v. Bulgaria - 1108/02
Judgment 5.11.2009 [Section V]

(See Article 2 above, page 7)

ARTICLE 6

Article 6 § 1 (criminal)

Access to court

Access to Court of Cassation hindered by failure to serve judgment on a prisoner awaiting trial in separate proceedings: *violation*

Davran v. Turkey - 18342/03
Judgment 3.11.2009 [Section II]

Facts – In May 2001 an assize court sentenced the applicant, in his absence, to four years' imprisonment and asked the police to establish his whereabouts. In September 2001 he was arrested and placed in pre-trial detention in the connection with another set of criminal proceedings, but the assize court was not informed. Having been unable to establish the applicant's whereabouts, the assize court decided to serve its judgment through publication in the Official Gazette, under section 28 of the Service of Process Act. The judgment became final in January 2002, there having been no appeal on points of law. The assize court subsequently took note of the fact that the applicant was being held in detention. The applicant learned of his conviction in April 2002, when the execution order was served on him. He brought proceedings before the assize court, challenging the validity of the service and requesting that he be allowed to submit an appeal on points of law. His request was dismissed.

Law – Article 6 § 1: The Court of Cassation had declared the applicant's appeal on points of law inadmissible on the ground that the statutory time-limits had expired. The time-limits had begun to run from the date of service of the first-instance judgment, and the applicant had challenged the method by which service had been effected. Although, by absconding for four months, he had contributed to the difficulties in complying with the Service of Process Act following the delivery of the judgment against which he intended to appeal, from the moment he was detained in September 2001 the domestic authorities ought to have been able to locate him. At that point the first-instance judgment had not yet become final. The Government had relied on section 28 of the Service of Process Act to justify service by way of publication. However, it was clear from section 19 of that Act that the responsibility for serving judgments on prisoners lay primarily with the

authorities, who were required to effect service through the administration of the prison concerned. In the applicant's case, section 19 operated as the *lex specialis* to be applied to make the right of access to the cassation court and the exercise of the defence rights effective. It had therefore been open to the domestic authorities, from September 2001, to effect service in accordance with the provisions of that section. The Government's objection that it had been impossible for the judicial authorities to be informed of the arrest was not justified, in so far as it was up to the respondent State to organise its judicial system in such a way as to render effective the rights set out in Article 6 of the Convention and to establish appropriate means to ensure the transmission of information between judicial bodies throughout the country. Thus, the applicant had suffered an excessive restriction of his right of access to court and therefore of his right to a fair trial.

Conclusion: violation (unanimously).

Article 41: EUR 1,000 in respect of non-pecuniary damage.

ARTICLE 8

Private life
Home

Statutory bans on hunting wild mammals with dogs: *inadmissible*

Friend and Others v. the United Kingdom - 16072/06 and 27809/08
Decision 24.11.2009 [Section IV]

Facts – The applications concerned statutory bans introduced in the United Kingdom by the Protection of Wild Mammals (Scotland) Act 2002 and the Hunting Act 2004 on the traditional practice of hunting with dogs. Hunting had a long history in rural Britain and hunts had developed their own particular customs and practices, including codes, dress, etiquette and hierarchy. The new legislation made it a criminal offence, *inter alia*, to hunt a wild mammal with a dog except in certain, statutorily-defined, circumstances. The applicants, a non-governmental organisation called the Countryside Alliance and eleven private individuals, challenged the legislation in the domestic courts but their appeals to the House of Lords were dismissed in a judgment of 28 November 2007. In their applications to the European Court, the applicants complained of a violation of their rights to respect for their private life and, in some instances, of their homes under Article 8 of the Convention. One of the individual applicants, Mr Friend, further complained of a violation of Article 11. The Countryside Alliance and the other individual applicants also complained of violations of Article 1 of Protocol No. 1 owing to the restrictions the ban imposed on the use of their land and the effect it allegedly had on their livelihood. One applicant who rented accommodation as a huntsman and another who rented her home and stables for her livery business also submitted that they would probably lose their homes and livelihoods as a result of the hunting ban and relied on the European Court's decision in the case of *Sidabras and Džiautas v. Lithuania* (nos. 55480/00 and 59330/00, 27 July 2004, Information Note No. 67).

Law – Article 8: (a) *Private life* – Although private life was a broad concept, that did not mean that it protected every activity a person might seek to engage in with other human beings in order to establish and develop relationships with them. There was nothing in the Court's established case-law which suggested that the scope of private life extended to activities of an essentially public nature. By its very nature, hunting was a public activity that was carried out in the open air, across wide areas of land. It attracted a range of participants and very often spectators. Despite the obvious sense of enjoyment and personal fulfilment the applicants derived from it and the interpersonal relations they developed through it, hunting was too far removed from the applicants' personal autonomy and the interpersonal relations they relied on were too broad and indeterminate in scope for the hunting bans to amount to an interference with their rights under Article 8. As to their submission that hunting was part of their lifestyle, the hunting community could not be regarded as an ethnic or national minority. Mere participation in a common social activity, without more, could not create membership of such a minority. Many people chose to socialise with people who shared their interest in a particular activity or pastime, but the interpersonal ties thus created could not be taken to be sufficiently strong to create a discrete minority group. Finally, hunting did not amount to a particular lifestyle so inextricably linked to the identity of those who practised it as to make a ban a threat to the very essence of their identity.

(b) *Home* – As regards those applicants who had alleged that the inability to hunt on their land

amounted to interference with their homes, the Court noted that the concept of home did not include land over which the owner permitted or caused a sport to be conducted and it would strain the meaning of home to extend it in that way. As to the allegations that two of the applicants would lose their homes as a result of the ban, the Court had not been provided with any evidence that this had in fact happened, still less any grounds for finding that this had been a direct consequence of the ban. Unlike the position in the *Sidabras* case, the ban on hunting did not amount to a direct restriction on taking up any kind of employment or create serious difficulties in earning a living; still less did it mark those concerned in the eyes of society. There had therefore been no interference with the applicants' Article 8 rights.

Conclusion: inadmissible (manifestly ill-founded).

Article 11: While the Court was prepared to assume that Article 11 may extend to the protection of an assembly of an essentially social character, the hunting bans did not prevent or restrict Mr Friend's right to assemble with other huntsmen and so did not interfere with his right of assembly *per se*. The bans only prevented a hunt from gathering for the particular purpose of killing a wild mammal with hounds and the hunt remained free to engage in alternatives such as drag or trail hunting. It was also of relevance that the wider public or social dimensions to a traditional hunt had also been preserved in drag or trail hunting. In the Court's view, the mere fact that, prior to the bans, hunting had culminated in the killing of a wild mammal by hounds was not sufficient for it to find that the bans struck at the very essence of the right of assembly.

Even assuming that the hunting bans could be regarded as involving such interference, the interference could be considered justified as it had been introduced after extensive debate by the democratically-elected representatives of the State on the social and ethical issues raised and, having regard to its nature and limited scope, was within the State's margin of appreciation and proportionate to the legitimate aim of protecting morals it pursued.

Conclusion: inadmissible (manifestly ill-founded).

Article 1 of Protocol No. 1: Even assuming that the ban interfered with the applicants' property rights, it had served a legitimate aim and was proportionate. The legislature had a wide margin of appreciation in implementing social and economic policies and the Court would respect its judgement as to what was in the public interest unless that judgement was manifestly without reasonable foundation. There had been extensive public and parliamentary debate and the judgement that it was in the public interest to ban hunting had pre-eminently been for the House of Commons to make. While the Court accepted that a statutory ban on an activity inevitably had an adverse financial impact on those whose businesses or jobs were dependent on the prohibited activity, the domestic authorities had enjoyed a wide margin of appreciation in determining the types of loss for which compensation would be made. The Court would normally respect the legislature's judgement on that issue unless it was manifestly arbitrary or unreasonable, especially in cases concerning control of the use of property rather than the deprivation of possessions. The Court did not find the absence of provision for compensation in the legislation to have been arbitrary or unreasonable or that an individual and excessive burden had been imposed on the applicants and noted in that connection that hunts had continued to gather, albeit without live quarry, since the passage of the Act. Lastly, the domestic courts had given the greatest possible scrutiny to the applicants' complaints and there were no serious reasons to justify departing from their clear findings.

Conclusion: inadmissible (manifestly ill-founded).

Private and family life
Family life

Refusal on grounds of public policy to recognise a monk's adoption of his nephew: *communicated*

Negrepontis-Giannisis v. Greece - 56759/08
[Section I]

This case concerns the applicant's adoption in the United States by his uncle, who had been ordained as a monk of the Eastern Orthodox Church, and the Greek authorities' subsequent refusal to recognise this adoption on the ground that it would be contrary to Greek public policy: under Greek canon law, a monk was not entitled to get married or found a family and thus could not adopt a child.

Communicated under Article 8, Article 14 in conjunction with Article 8, and Article 6 of the Convention, together with Article 1 of Protocol No. 1.

Private and family life

Removal of organs of applicant's son without her knowledge or consent: *communicated*

Petrova v. Latvia - 4605/05
[Section III]

Having sustained life-threatening injuries in a car accident, the applicant's son was taken to hospital, where he underwent head surgery. At 11.50 p.m. the hospital contacted a transplantation centre informing them of a potential organ donor. The applicant's son's death was recorded at 1.20 a.m. Shortly afterwards, a laparotomy was performed on his body, in the course of which his kidneys and spleen were removed for organ-transplantation purposes. The applicant was not informed about the deterioration of her son's condition nor was she asked for her consent to the organ transplantation. In fact, she only learned that his organs had been removed some nine months later in the course of criminal proceedings against the person responsible for the accident. Following a complaint lodged by the applicant, the authorities concluded that the removal of her son's organs had been in compliance with domestic law and refused to initiate criminal proceedings.

Communicated under Articles 3 and 8, with a separate question concerning the applicant's victim status.

Family life
Expulsion

Deportation to Nigeria despite strong family ties and long residence in the United Kingdom: *violation*

Omojudi v. the United Kingdom - 1820/08
Judgment 24.11.2009 [Section IV]

Facts – The applicant, a Nigerian national, came to live in the United Kingdom in 1982, at the age of twenty-two. He got married and had three children, all of whom were British citizens. His oldest child had a daughter, who at the time of the European Court's judgment was two years old. In 1989 the applicant was sentenced to four years' imprisonment for theft and conspiracy to defraud. In 2005 he was nonetheless granted indefinite leave to remain. In 2006 the applicant was convicted of sexual assault for touching a woman's breast without her consent and sentenced to fifteen months' imprisonment. The sentencing judge did not recommend him for deportation. However, some months later the Secretary of State for the Home Department issued a deportation order claiming that it was necessary for the prevention of disorder and crime and the protection of health and morals. He was deported to Nigeria in April 2008.

Law – Article 8: In the Court's view the only relevant offence to be taken into account when assessing the proportionality of the deportation sanction imposed on the applicant was that committed after he had been granted indefinite leave to remain in 2005, since at that time the Secretary of State for the Home Department must have been fully aware of the applicant's offending history. The applicant was clearly not a habitual offender nor was there any evidence of a pattern of sexual offending. Even though sexual assault was undoubtedly a serious offence, given the relatively mild sentence imposed on the applicant, his offence was not at the most serious end of the spectrum of sexual offences. Furthermore, the Court attached considerable importance to the solidity of the applicant's family ties in the United Kingdom and the difficulties his family would face if they were to return to Nigeria. All three of the applicant's children had always lived in the family home and the family had continuously lived as one unit until the applicant's deportation. His two youngest children were born in the United Kingdom, were not of an adaptable age and would likely encounter significant difficulties if they were to relocate to Nigeria. For the oldest son it would be virtually impossible to return to Nigeria as he had a two-year-old daughter, who was also born in the United Kingdom. Given the strength of the applicant's family ties to the United Kingdom, his length of residence and the difficulties his children would face if they were to move to Nigeria, the Court found that the applicant's deportation had been disproportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

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

Family life
Positive obligations

Exercise of father's right of access in context of lengthy repeated absences abroad of mother and child: *no violation*

R.R. v. Romania - 1188/05
Judgment 10.11.2009 [Section III]

Facts – Following the applicant's divorce in 2000, custody of his daughter, then aged four, was awarded to the mother. Several sets of judicial proceedings ensued, concerning in particular the father's right of access in respect of his daughter, which were fixed finally in November 2005 at three weeks per year during the summer holidays. This right was to be exercised in a context where his former wife often took their daughter to stay for long periods in the United States, where she had remarried. The applicant made numerous requests to the Romanian administrative and judicial authorities to obtain an acknowledgment of the wrongful nature of his daughter's repeated removal and to secure her return to Romania. He relied in particular on the Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980. Apart from two initial decisions by the Romanian courts, the constant position of the Romanian administrative and judicial authorities in response to the father's requests was that, since he did not have custody of the child, he was not justified in seeking her return. He was, however, entitled to seek the protection of his right of access, and he did so, obtaining the Romanian authorities' assistance where necessary, in particular when, in the summer of 2008, mother and daughter did not spontaneously return to Romania to allow him to exercise this right.

Law – Article 8: Construed in the light of the Hague Convention, Article 8 did not impose on domestic authorities any positive obligation to ensure the return of a child where the complaining parent only had the right of access. In the circumstances of the case, the Court took the view that after the judgment of November 2005 Article 8, construed in the light of the Hague Convention, obliged the Romanian authorities to adopt measures mainly to secure the child's return for the three weeks during which the father was to exercise his annual right of access. This was in fact what had happened when the father sought protection of his right of access in the summer of 2008, under the Hague Convention. The response of the Romanian Central Authority had been prompt. The Romanian authorities responsible for the application of the Hague Convention, namely the Ministry of Justice and the courts, had made reasonably appropriate and sufficient efforts to protect the exercise of the parental rights that had been granted to the father and they had not therefore, in the particular circumstances of the case, impaired his right to respect for his family life. Moreover, no act or omission of the other national authorities mentioned by the applicant, namely the border police, national social services, school authorities or penal authorities, could be regarded as having impaired his right to respect for his family life. It was also noteworthy that the relevant decisions had been taken after adversarial proceedings during which the applicant, represented by his lawyer, had been able to submit the observations and evidence he deemed necessary, with arguments in support of his case.

Conclusion: no violation (unanimously).

(See also *D.J. and A.-K.R. v. Romania*, no. 34175/05, 20 October 2009, Information Note no. 123)

Home

Identity check by police in orchestra conductor's dressing room: *inadmissible*

Hartung v. France - 10231/07
Decision 3.11.2009 [Section V]

Facts – In February 2005 a company managed by the applicant organised a concert, which he conducted. At the end of the concert at 10.30 p.m., all those who had taken part in it were subjected to checks by the competent employment-law authorities, at the request of the Public Prosecutor. The applicant had already returned to his dressing room when his identity was checked. The police officers asked him to present all documents and other evidence of the musicians' status as employees or self-employed workers. He was prosecuted for concealed work. In 2006 the Court of Cassation definitively dismissed an application by the applicant to have the investigative measures set aside, and confirmed that the dressing room could not be considered as a "home".

Law – Article 8: Under the applicable provisions of domestic law, the police officers had been required to verify the applicant's compliance with employment-law and social welfare regulations. The domestic courts had considered that the police officers had acted within the framework of the Code of Criminal Procedure, which prohibited any such verification at a "home". In addition, despite the fact that an artist's dressing room enabled its occupant to enjoy a certain level of privacy, it had been available for the applicant's use on a very occasional basis, given that it was a dressing room made temporarily available, for the duration of a single concert, to the various artists who might be

booked to perform in the concert hall. In those circumstances, the Court expressed doubt as to whether such premises amounted to a private or professional "home" for the purposes of Article 8. Even supposing that the check carried out by the police officers could be considered as amounting to interference with the applicant's right to respect for his private life, such interference was, in any event, justified, for the following reasons. The check was carried out on the basis of the Code of Criminal Procedure and was thus in accordance with the law. It was intended to verify the applicant's compliance with the employment legislation and thus pursued the legitimate aim of preventing disorder or crime. In addition, it was justified by the need to verify compliance with the provisions of employment law and, if necessary, to gather evidence of a possible offence that may have been committed by the applicant. As to the conditions in which the check took place, after entering the applicant's dressing room the police officers had checked his identity papers and asked him to provide the relevant employment documents, in accordance with the task entrusted to them by the prosecutor, and had not searched the dressing room or seized any objects or papers. Finally, the applicant could have contested the inspection. Thus, the interference with the applicant's right to respect for his private life, assuming that it was proved, had not been disproportionate in relation to the aims pursued.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 9

Freedom of religion
Manifest religion or belief

Display of crucifixes in State-school classrooms: *violation*

Lautsi v. Italy - 30814/06
Judgment 3.11.2009 [Section II]

(See Article 2 of Protocol No. 1 below, page 20)

Freedom of religion

Refusal to permit prisoner to keep religious objects in his cell: *communicated*

Gubenko v. Latvia - 6674/06
[Section III]

The applicant was a follower of the Hare Krishna movement. While serving a prison sentence, he sought permission from the governor of the prison to keep various items in his cell, namely, an audio cassette player with headphones and cassettes with recordings of religious programmes and services, prayer beads for chanting Maha Mantra, and other attributes for prayers and religious rites. The governor refused his request on the grounds that the domestic law did not include these items in the exhaustive list of objects that convicts were allowed to keep in their cells.

Communicated under Article 9.

ARTICLE 10

Freedom of expression

Failure to allocate a radio frequency to a State licensed broadcaster: *communicated*

Centro Europa 7 S.r.l. v. Italy - 38433/09
[Section II]

In 1999 the applicant company was awarded a licence for terrestrial television broadcasting by the appropriate authorities, authorising it to install and operate an analogue television network. As regards the allocation of radio frequencies, the licence referred to the national plan, which was never implemented. A succession of transitional schemes that benefited the existing channels were applied at national level, with the result that even though it had a licence the applicant company was never able to broadcast as it had not been allocated any radio frequencies. In November 2003 it applied to the administrative court, seeking in particular a declaration that it was entitled to the allocation of frequencies and compensation for the damage sustained; its application was dismissed. The applicant company then appealed to the *Consiglio di Stato*, which in April 2005 decided to limit its review to the claim for compensation. However, observing that the failure to allocate radio frequencies to the applicant company had been due to essentially legislative factors, it decided to refer the case to the Court of Justice of the European Communities. In January 2008 the Court of Justice noted that the existing channels had been authorised to continue their broadcasting activities following various legislative measures at national level, to the detriment of new broadcasters which had nonetheless been granted licences for terrestrial television broadcasting. Those measures were not

in conformity with the new common regulatory framework implementing the provisions of the EC Treaty, in particular those concerning freedom to provide services in the area of electronic communications networks and services. In May 2008 the *Consiglio di Stato* concluded that it could not allocate radio frequencies in the Government's place or compel the Government to do so. However, it ordered the Government to deal with the applicant company's application for the allocation of frequencies in a manner consistent with the criteria laid down by the Court of Justice. In the meantime, the relevant ministry extended the validity of the licence awarded in 1999 until the analogue switch-off date, and in June 2009 it allocated the applicant company a single channel, which, according to the company, does not cover 80% of national territory, contrary to the terms of the licence. In January 2009 the *Consiglio di Stato* ordered the ministry to pay the applicant company the sum of approximately one million euros, finding that the award of the licence to the company had not conferred on it the immediate right to engage in the corresponding economic activity, and that the compensation due should therefore be calculated on the basis of its legitimate expectation of being allocated frequencies by the appropriate authorities.

Communicated under Article 6 § 1 and Articles 10 and 14 of the Convention, and Article 1 of Protocol No. 1.

Freedom to impart information

Ten-year prison sentence for communicating non-classified information to a foreign intelligence service: *inadmissible*

Bojolyan v. Armenia - 23693/03
Decision 3.11.2009 [Section III]

Facts – The applicant, a journalist and former intelligence officer, was convicted of high treason in the form of espionage for providing information of a military, economic and political nature to the Turkish intelligence service. The information, which was communicated by the applicant for personal gain, included, *inter alia*, data concerning border controls, military personnel, radar and military installations and military aircraft. The applicant was sentenced to ten years in prison. He appealed unsuccessfully. In his appeal, he argued, *inter alia*, that all the information had been collected from the mass media and was thus in the public domain.

Law – Article 10: The right to freedom of expression, which included freedom to impart information, was not restricted to certain types of information, ideas or forms of expression. Nor did it exclude from its scope information which was addressed only to a limited circle of people and did not concern the public as a whole, including information communicated to a foreign intelligence service. The applicant's conviction had therefore amounted to an interference with his right to freedom to impart information. The formulation of the offence in the domestic law was sufficiently precise to enable the applicant, a former intelligence officer, to have foreseen the consequences of his actions. The interference was therefore prescribed by law. The domestic law criminalised communication of non-classified information only if such information was communicated to a foreign intelligence service in order to be used to the detriment of Armenia's interests. The Court did not find it unreasonable that even certain types of non-classified information, if collected by an intelligence service of a foreign State, might cause damage to a State's national security and that the State had a legitimate interest in making the communication of such information to a foreign intelligence service a punishable act. The present case was distinguishable from those concerning freedom of the press: the information collected from various sources by the applicant had been communicated exclusively to a foreign intelligence service. The domestic courts had therefore enjoyed a wide margin of appreciation in deciding the applicant's case. The fact that at the material time the applicant had also allegedly worked as a journalist was of little importance since he had not been convicted for his journalistic activities. Non-classified information might vary significantly in its nature and substance, as well as the manner and purpose of its communication, as opposed to secret information which, owing to its special status, would almost invariably result in damage to national-security interests if obtained by an intelligence service of a foreign State. The existence of any damage or threats to national security therefore had to be assessed in the particular circumstances of each case. The domestic courts were better equipped than the European Court to assess whether and what damage could be done when non-classified information was communicated to the intelligence service of a foreign State. Nevertheless, the margin of appreciation enjoyed by the domestic courts in this matter, even if a wide one, could not be said to be unlimited and, as in all other freedom of expression cases, the assessment of the necessity for any restriction went hand in

hand with European supervision. Having regard to the nature of the information in question and the purpose of its communication, the Court could not but agree with the assessment of the domestic courts that the communication by the applicant of this information to a foreign intelligence service had posed a real threat to Armenia's national security and had warranted the imposition of a penalty. Acts of espionage endangering the interests of national security ranked among the most serious crimes in most member States and the authorities had to be able to combat and prevent such acts in an effective manner, including by custodial sentences. The penalty in the present case, namely ten years' imprisonment, while undoubtedly harsh, could not however be regarded as disproportionate to the legitimate aim pursued in the particular circumstances of the present case.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 11

Freedom of peaceful assembly

Conviction for holding an unauthorised demonstration in a security-sensitive area designated by law: *inadmissible*

Rai and Evans v. the United Kingdom - 26258/07 and 26255/07
Decision 17.11.2009 [Section IV]

Facts – In 2005 the first applicant organised, and together with the second applicant participated in, a demonstration against the Iraqi conflict. The demonstration was held in Whitehall, opposite Downing Street, a "designated area" requiring authorisation to demonstrate under the Serious Organised Crime and Police Act 2005 ("the 2005 Act"). Prior to the event, the first applicant had informed the police orally that the demonstration was going to be held and that an authorisation would not be sought. The police informed him that he would be arrested under the 2005 Act. The second applicant was also aware of this. At the demonstration, the applicants read out names of Iraqi citizens and British soldiers killed in the Iraqi conflict. Placards were displayed and a bell was rung at regular intervals. The applicants behaved in a peaceful and orderly manner throughout. The police attended the demonstration and warned the applicants that they would be arrested and charged if they continued given the lack of an authorisation. The police then withdrew to enable the applicants to stop the demonstration. They chose to continue and were arrested and subsequently convicted of having held an unauthorised demonstration in a "designated area" contrary to the 2005 Act. The first applicant was sentenced to a fine of 350 pounds sterling (GBP) and ordered to contribute to prosecution costs in the sum of GBP 150, and the second applicant was sentenced to a conditional discharge of twelve months and to contribute to costs in the sum of GBP 100. The magistrates' court noted police evidence to the effect that, had authorisation been sought, no conditions would have attached to it. The High Court later noted that the demonstration had been just as much a demonstration against the requirement for an authorisation under the 2005 Act as against the Iraqi conflict.

Law – Article 11: The applicants' prosecution had constituted an interference with their rights guaranteed by Article 11. The interference was "prescribed by law" and pursued the legitimate aims of protecting national security and preventing disorder or crime. The applicants had not disputed this and both of them had been aware prior to the relevant date that demonstrating in the intended location without an authorisation was unlawful. However, they had considered the interference disproportionate since their conviction had concerned only a lack of authorisation and had not taken into account the peaceful nature of the demonstration. Having regard to the reasonable and calm manner in which the police had ended the demonstration, it could not be said that their intervention had been so excessive as to render the impugned interference disproportionate. Moreover, the applicants had not suggested they had had insufficient time to apply for the authorisation and, given the subject matter of their demonstration and the evidence of their prior knowledge and planning, the time-limits set down in the 2005 Act had not constituted an obstacle to their freedom of assembly. Furthermore, the Court did not agree with the applicants' description of the pre-authorisation procedure as a "blanket ban". In particular, the authorisation was required only as regards certain designated zones considered sensitive from a security point of view and, in the present case, in proximity to the Prime Minister's office and residence. The authorisation had to be accorded, although it could be subjected to conditions which were statutorily defined and which had to be necessary in the "reasonable opinion" of the Commissioner of Police of the Metropolis to prevent defined risks of a public-order, safety and security nature. However, the

domestic evidence was that it was unlikely that conditions would have been imposed given the nature of the demonstration the applicants had proposed. Nor had it been demonstrated that the pre-authorisation requirement was, of itself, a deterrent to demonstrations as the applicants had suggested: the deterrent was rather against unauthorised demonstrations, which limitation was not *a priori* incompatible with Article 11. The criminal sanctions concerned only unauthorised demonstrations in certain limited and security-sensitive areas. The applicants had continued with the demonstration even after the police had given them an opportunity to disband without the imposition of any sanction. Moreover, the sanctions actually imposed had not been severe. While the first applicant had risked imprisonment and/or a fine, he had been ordered to pay a fine at the lowest end of the statutory scale and to contribute a relatively small sum to prosecution costs. The second applicant had risked a fine but had had simply been conditionally discharged and ordered to contribute a small sum to prosecution costs. The interference with the applicants' rights could not therefore be considered to have been disproportionate.

Conclusion: inadmissible (manifestly ill-founded).

Statutory bans on hunting wild mammals with dogs: *inadmissible*

Friend and Others v. the United Kingdom - 16072/06 and 27809/08
Decision 24.11.2009 [Section IV]

(See Article 8 above, page 10)

ARTICLE 35

Article 35 § 1

Effective domestic remedy (Russia)
Six-month period

Supervisory review under the Code of Civil Procedure as amended by Law no. 330-*Ф3* of 4 December 2007: *not effective remedy/inadmissible*

Martynets v. Russia - 29612/09
Decision 5.11.2009 [Section I]

Facts – The applicant lodged an application with the European Court more than six months after a decision at cassation level, but less than six months after the dismissal of her subsequent applications for supervisory review by the Civil Chamber of the Supreme Court and the Deputy President of the Supreme Court. The question arose as to whether or not the supervisory-review procedure that had been introduced by the Law of 4 December 2007 (no. 330-*Ф3*) of the Code of Civil Procedure constituted an effective remedy requiring exhaustion for the purposes of Article 35 § 1 of the Convention. If so, the application had been lodged within the six-month time-limit; if not, it was out of time.

Law – Article 35 § 1: The Court had consistently held in the past that supervisory review by a court of general jurisdiction in Russia was an uncertain remedy dependent on discretionary powers and not, therefore, one requiring exhaustion under Article 35 or of relevance to the calculation of the six-month time-limit. However, the supervisory-review procedure had been amended by Law no. 330-*Ф3*. The new provisions had applied in the applicant's case and the Court therefore had to assess the effectiveness of the supervisory-review remedy as amended. It noted that several tangible changes had been made: the time-limit for making supervisory-review applications had been shortened to six months, the regional-court presidents' unlimited power to overrule dismissals of such applications had been abolished and an obligation to exhaust all appeals before applying for supervisory review had been imposed. However, notwithstanding these changes, a large degree of uncertainty remained, as binding judicial decisions were still liable to challenge in several consecutive supervisory-review instances and the time-limits applicable in such cases were unclear, so creating a risk of cases going back and forth from one instance to another indefinitely. In the Court's view, the recognition of such supervisory review as an effective remedy would create unacceptable uncertainty as to the final point in the domestic litigation, thus rendering the six-month rule nugatory. In this regard, supervisory review under Law no. 330-*Ф3* differed substantially from supervisory review under the Code of Commercial Procedure (which the Court had recently ruled did constitute an effective remedy – see *Kovaleva and Others v. Russia*, no. 6025/09, 25 June 2009, Information Note no. 120). Accordingly, the final domestic decision in the applicant's case was the decision delivered at cassation level more than six months before the date the application was lodged,

not the decisions in the supervisory-review proceedings.

Conclusion: inadmissible (out of time).

Six-month period

Six-month period to be calculated by reference to criteria specific to the Convention: *inadmissible*

Otto v. Germany - 21425/06
Decision 10.11.2009 [Section V]

Facts – The applicant was convicted of fraud and misappropriation of funds. The proceedings concluded with the Federal Constitutional Court's decision of 17 November 2005, which the applicant received on 27 November 2005.

Law – Article 35 § 1: The day on which the final domestic decision is delivered is not counted in the six-month period referred to in Article 35 § 1. The period starts to run on the day after the public delivery of the final decision or, if there is no such delivery, the day after the decision is served on the applicant or his or her representative, and expires six calendar months later, regardless of the actual duration of those months. The six-month period had therefore started to run on 28 November 2005 and had expired on 27 May 2006. However, the first letter including the application form signed by the applicant's first lawyer and dated 25 May 2006 had been sent by fax on 29 May 2006, at 8.17 a.m., and that date should thus be treated as the date on which the application had been lodged. Accordingly, the applicant had applied to the Court more than six months after the date of the final domestic decision. In so far as the last day of the six-month period, namely 27 May 2006, had fallen on a Saturday and the applicant could well have believed that the time-limit had been extended until the next working day, Monday 29 May 2006, the Court reiterated that compliance with the six-month time-limit was determined on the basis of criteria specific to the Convention and not according to the procedure laid down, for example, in each respondent State's domestic legislation. Furthermore, there was no indication in this case that the applicant, who had been represented by a lawyer, had been incapable of foreseeing that the deadline fell on a weekend and acting accordingly.

Conclusion: inadmissible (out of time).

ARTICLE 41

Just satisfaction

Request for reimbursement of lawyer's fees as percentage (20%) of sums awarded by Court: *no award in respect of costs and expenses*

Adam v. Romania - 45890/05
Judgment 3.11.2009 [Section III]

Facts – The national courts had dismissed the applicant's appeal on account of failure to pay stamp duty.

Law – The Court concluded unanimously that there had been a violation of Article 6 § 1 on account of lack of effective access to court.

Article 41: The applicant had requested reimbursement of his lawyer's fees as a percentage (20%) of the sums awarded by the Court. He submitted in that connection a contract for legal assistance concluded with his lawyer, setting out the above conditions. The Court reiterated that an applicant could recover his costs and expenses only in so far as they had been actually and necessarily incurred and were reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria, it decided to make no award to the applicant.

ARTICLE 46

Execution of judgments – Measures of a general character

Delays in implementation of Bosnia and Herzegovina's repayment scheme for foreign currency deposited before the dissolution of the SFRY; respondent State required to take specific remedial measures

Suljagić v. Bosnia and Herzegovina - 27912/02
Judgment 3.11.2009 [Section IV]

(See Article 1 of Protocol No. 1 below, page 19)

ARTICLE 1 OF PROTOCOL No. 1

Control of the use of property

Delays in implementation of Bosnia and Herzegovina's repayment scheme for foreign currency deposited before the dissolution of the SFRY: *violation*

Suljagić v. Bosnia and Herzegovina - 27912/02
Judgment 3.11.2009 [Section IV]

Facts – The applicant had deposited foreign currency he had earned abroad in the 1970s and 1980s with a bank in Tuzla[1] during the era of the Socialist Federal Republic of Yugoslavia (SFRY), but was prevented from withdrawing his deposits after emergency measures were introduced by the SFRY following a monetary crisis in the 1980s. The restrictions remained in force in different forms during the ensuing period, which saw the break-up of the SFRY, the declaration of independence of Bosnia and Herzegovina, the outbreak of war, the Dayton Agreement and economic and other structural reforms. In 2006 new legislation was introduced offering a revised scheme for the repayment of the foreign-currency deposits. Under the Old Foreign-Currency Savings Act 2006 Bosnia and Herzegovina undertook to repay outstanding deposits with accrued interest, calculated at the agreed contractual rate till the end of 1991 and at a reduced rate of 0.5% a year from 1 January 1992 until 15 April 2006 (the Constitutional Court later considered this reduced rate justified in view of the need to reconstruct the national economy following the war). Depositors whose claims had been verified were entitled to an initial cash payment with the balance to be reimbursed in government bonds earning interest at an annual rate of 2.5%. The exact arrangements for the issue of the bonds were left to the three constituent units of the State of Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District). In the Federation, the bonds were to be amortised by March 2015 in eight instalments. In his complaint to the European Court, the applicant complained, *inter alia*, of the arrangements in place for the repayment of his foreign-currency savings and of delays in both the payment of the instalments and the issue of the bonds.

Law – Article 1 of Protocol No. 1: The fundamental issue before the Court was whether the domestic legislation on "old" foreign-currency savings complied with the conditions laid down in Article 1 of Protocol No. 1. The Court limited its analysis to the legislation enacted in 2006. It accepted that the control of the use of the applicant's possessions was lawful and in the public interest. It further noted that, having assumed full liability for "old" foreign-currency claims in locally based banks, the respondent State had been unable to allow the uncontrolled withdrawal of deposits because, in all probability, they had been spent by the former SFRY regime. The core question was thus whether the legislation introduced to deal with this problem and the implementation of that legislation had struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. As to the legislation itself, the Court found that it was compatible with the Convention as, given the catastrophic effects of the war and the ongoing reforms of the economic structure, the solution whereby the applicant was to receive his entire "old" foreign-currency savings in eight instalments by 2015 remained within the State's margin of appreciation. In that connection, the Court noted that there was no reason to suppose that the bonds would not hold their nominal value (bearing in mind the experience in Republika Srpska where they were trading for around 90% of their issue value) and that, in any event, depositors could opt for cash payments in eight instalments instead. Likewise, the fact that the interest rate provided on the deposits for the period from 1992 until 2006 was considerably lower than that offered in other SFRY successor States was not sufficient to render the legislation contrary to Article 1 of Protocol No. 1. Turning to the question of the implementation of the legislation, however, the Court found that the measures taken had been unsatisfactory in two of the constituent units (the Federation and Brčko District), with delays of several months occurring both in the issue of government bonds and the payment of instalments. While the Court was aware that "old" foreign-currency savings, inherited from the SFRY, constituted a considerable burden on all successor States, the rule of law and the principle of lawfulness required the Contracting Parties to respect and apply, in a foreseeable and consistent manner, the laws they had enacted. Owing to the deficient implementation of its legislation on "old" foreign-currency savings, the respondent State had failed to comply with that obligation.

Conclusion: violation (unanimously).

1. Tuzla is located in what is now the Federation of Bosnia and Herzegovina, one of the three constituent units of the State of Bosnia and Herzegovina.

Article 46 of the Convention: In view of the number of similar applications pending before it, the Court considered it appropriate to apply the pilot-judgment procedure. By way of general measures the respondent State was required to ensure that the Federation of Bosnia and Herzegovina issued government bonds and paid any outstanding instalments within six months of the pilot judgment becoming final and that it undertook to pay default interest at the statutory rate in the event of future delays in payment. While the Court did not find it necessary to order adequate redress be made to everyone affected by past delays, it indicated that it may reconsider that issue if the general measures were not adopted. The Court adjourned for six months similar pending applications concerning deposits in the Federation and Brčko District in cases where the applicants had obtained certificates verifying their claims, and advised that it may declare inadmissible applications in which no verification certificate had been obtained or which concerned savings in Republika Srpska.

Conclusion: respondent State required to take general measures (unanimously).

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

(See also *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, 3 October 2008, Information Note no. 112)

Statutory bans on hunting wild mammals with dogs: *inadmissible*

Friend and Others v. the United Kingdom - 16072/06 and 27809/08
Decision 24.11.2009 [Section IV]

(See Article 8 above, page 10)

ARTICLE 2 OF PROTOCOL No. 1

Respect for parents' religious and philosophical convictions

Display of crucifixes in State-school classrooms: *violation*

Lautsi v. Italy - 30814/06
Judgment 3.11.2009 [Section II]

Facts – In 2001/2002 the applicant's two children attended a State school in which a crucifix was displayed in every classroom. Considering this to be contrary to the principle of secularism in which she wished to educate her children, the applicant brought administrative proceedings in 2002 against the head teacher's decision to allow the crucifixes in the classrooms. Her complaints were dismissed by a decision that was upheld at final instance by the *Consiglio di Stato*. In 2007 the Ministry of State Education issued a directive to head teachers, recommending that crucifixes be on display.

Law – Article 2 of Protocol No. 1, in conjunction with Article 9 of the Convention: The State had an obligation to refrain from imposing beliefs, even indirectly, in premises where individuals were dependent on it, or in places where they were particularly vulnerable. The education of children was a particularly sensitive area, since the State's binding authority was imposed on minds which still lacked the critical capacity that would enable them to distance themselves from the message transmitted through a preference shown by the State in religious matters. In the Court's view, the symbol of the crucifix had many connotations, of which the religious one was dominant. The presence of the crucifix in classrooms could not be missed, and it was necessarily perceived in the context of State education as an integral part of the school environment and could therefore be considered a "powerful external symbol". Thus, the presence of a crucifix could easily be interpreted by pupils of all ages as a religious sign and they would feel that they were being educated in a school environment that was characterised by a given religion. Negative freedom, which was not limited to the absence of religious services or religious education, extended to practices and symbols which expressed, in particular or in general, a belief, a religion or atheism. This negative freedom deserved particular protection where it was the State which expressed a belief and the individual was placed in a situation which he or she could not avoid, or could do so only through a disproportionate effort and sacrifice. The State was required to observe confessional neutrality in the context of public education, where attending classes was compulsory, irrespective of religion, and where the aim ought to be to foster critical thinking in pupils. The Court was unable to grasp how the display, in classrooms in State schools, of a symbol that it was reasonable to associate with Catholicism (the majority religion in Italy) could serve the educational pluralism that was essential to the preservation of a "democratic society" as that was

conceived by the Convention. Indeed, the case-law of the Italian Constitutional Court supported that position. The compulsory display of a symbol of a given confession in the exercise of public duties, in specific situations that came under government control, especially in classrooms, restricted the rights of parents to educate their children in conformity with their convictions, and the right of children to believe or not to believe. Such restrictions were incompatible with the State's duty to observe neutrality in the exercise of public duties, and in particular in the field of education.

Conclusion: violation (unanimously).

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

ARTICLE 2 OF PROTOCOL No. 4

Article 2 § 1

Freedom of movement

Automatic, unlimited ban preventing a debtor from leaving the country: *violation*

Gochev v. Bulgaria - 34383/03
Judgment 26.11.2009 [Section V]

Facts – In 1999 and 2001 enforcement orders were issued against the applicant at the request of private companies to which he owed money. In 2001 and 2002, in accordance with the Bulgarian Identity Documents Act 1998, the director of the Department for Identity Documents ordered the applicant's passport to be withdrawn indefinitely, and instructed the competent authorities not to issue him with a new one. The applicant made several appeals to the Supreme Administrative Court, but to no avail: the court upheld the impugned decisions. His creditors having made no further claims, the enforcement proceedings against the applicant were discontinued and he has been free to leave the country since 2008.

Law – Article 2 of Protocol No. 4: The imposition of a measure such as that in the instant case was intended to guarantee the interests of creditors and in principle pursued the legitimate aim of protecting the rights of others. The applicant had been prohibited for more than six years from leaving the territory. The parties had not submitted detailed information on the conduct of the enforcement proceedings which had served as the justification for the restriction on the applicant's freedom of movement. It was consequently impossible to assess whether or not the steps taken by the authorities and creditors to recover the debts had been sufficient, or to evaluate the applicant's capacity to pay the amounts due to his creditors. Nor had those circumstances been discussed in the decisions and judgments of the domestic authorities. The Court was therefore unable to determine whether the imposition and maintenance of the restriction over a considerable period had been objectively justified by the aim of guaranteeing recovery of the debts. On the other hand, it considered that the facts of the case suggested that the applicant had been subjected, from the outset, to a measure of an automatic nature. The measure in question had been imposed by the director of the Department for Identity Documents without a request for explanations by the applicant concerning his personal situation or even about the circumstances surrounding the non-payment of his debts, and without these issues being examined. Thus, the administrative body had not taken account of all the relevant information in order to ensure that the restriction on the applicant's freedom of movement was justified and proportionate in the light of the circumstances of the case. The Court further noted that the director's decisions to impose a prohibition on leaving the territory had been examined by the Supreme Administrative Court. In so far as that court had held that it did not have jurisdiction to rule on the appropriateness of imposing such measures, the Court considered that the scope of the judicial review also failed to satisfy the requirements of Article 2 of Protocol No. 4. As to whether the domestic authorities had fulfilled their duty regularly to re-examine the measures restricting the applicant's freedom of movement, the Court noted that no re-examination of the impugned measures had been carried out following the Supreme Administrative Court's confirmation of the decisions of the director. It followed that the applicant had been subjected to measures of an automatic nature, with no limitation on their scope or duration. The Bulgarian authorities had therefore failed in their obligation under Article 2 of Protocol No. 4 to ensure that any interference with an individual's right to leave his or her country was, from the outset and throughout its duration, justified and proportionate in the light of the circumstances.

Conclusion: violation (unanimously).

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