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COUR EUROPÉENNE DES DROITS DE L'HOMME

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Positive obligations

Alleged failure by police to take all reasonably available measures to protect schoolchildren and their parents from sectarian violence: *inadmissible*

P.F. and E.F. v. the United Kingdom - 28326/09
Decision 23.11.2010 [Section IV]

Facts – The first applicant was the mother of the second applicant, who was a pupil at a Catholic primary school situated in Belfast (Northern Ireland). During the autumn of 2001 loyalists staged protests along the route the second applicant (and other pupils) used to get to school. Owing to sectarian tensions in the area, the police believed that there was a risk that violence could erupt in other parts of the city if they were forcibly to end the protest. They therefore decided to exercise restraint. Instead of breaking up the protest, they placed themselves between the protesters and the parents and children walking to school and used their shields to protect them against missiles. The protest lasted more than two months. During this period none of the children were physically injured, but they were subjected to sectarian abuse and intimidation as they walked to school every day. The first applicant brought judicial-review proceedings on behalf of herself and her daughter for a declaration that the authorities had failed to secure the effective implementation of the criminal law and to ensure safe passage for her, her daughter and the other pupils to the school. Her application was dismissed in a decision that was upheld on appeal.

Law – Article 3: The behaviour of the loyalist protesters – which was premeditated, had continued for two months and was designed to cause fear and distress to young children and their parents making their way to school – had reached the minimum level of severity required to fall within the scope of Article 3. The police had possessed more than sufficient foreknowledge of that treatment to trigger their obligation to take preventive action. Accordingly, the primary question for the Court was whether the police could be said to have taken all reasonable steps to prevent ill-treatment.

In answering that question, the Court had to bear in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which had to be made in terms of priorities and resources. The obligation to take "all reasonable steps" had to be interpreted in a way which did not impose an impossible or disproportionate burden on the authorities. It followed that the police had to be afforded a degree of discretion in taking operational decisions. Such decisions were almost always complicated and the police, who had access to information and intelligence not available to the general public, were usually in the best position to make them. This was especially the case in a situation as volatile and unpredictable as the one pertaining in north Belfast during the summer and early autumn of 2001, where riots, sectarian murders and violent disorder had erupted.

In view of that context, the Court accepted that the police had taken all reasonable steps to protect the applicants. First, they had followed a course of action they reasonably believed would end the protest with minimal risk to the children, their parents and the community at large. They had intelligence which suggested that a more direct approach could increase the risk to the parents and children walking to the school, lead to further attacks on Catholic schools and also result in increased violence in north Belfast. It could not, therefore, be said that they had either disregarded the risk to the applicants, or given greater priority to the "unspecified risk of disturbances elsewhere". Secondly, they had not stood by and done nothing: rather, they had placed themselves as a shield between the protesters and the parents and children at considerable cost to themselves, with forty-one officers being injured during the operation. By contrast, no child had sustained any physical injury during the whole period. Thirdly, requiring the police in Northern Ireland to forcibly end every violent protest would likely place a disproportionate burden on them, especially where such an approach could result in the escalation of violence across the province. In a highly charged community dispute, most courses of action would have inherent dangers and difficulties and it had to be permissible for the police to take all of those dangers and difficulties into consideration before choosing the most appropriate response. Consequently, the applicants had not demonstrated that the authorities had failed do all that could be reasonably expected of them to protect them from ill-treatment.

Conclusion: inadmissible (manifestly ill-founded).

The Court also declared inadmissible as being manifestly ill-founded the applicants' complaints under Articles 8, 13 and 14 of the Convention.

ARTICLE 5

Article 5 § 1

Procedure prescribed by law

Deprivation of liberty following extraordinary appeal by Procurator-General: *case referred to the Grand Chamber*

Creangă v. Romania - 29226/03
Judgment 15.6.2010 [Section III]

At 9 a.m. on 16 July 2003 the applicant reported to the National Anti-Corruption Prosecution Service. At 10 a.m. he was questioned by a prosecutor. He was held until 8 p.m., when he was informed of the offences of which he was suspected. The National Anti-Corruption Prosecution Service then ordered that he be placed in pre-trial detention for three days, from 10 p.m. on 16 July to 10 p.m. on 18 July. On 18 July 2003 the military court of appeal, sitting as a single judge, extended his pre-trial detention for twenty-seven days. On the same day an arrest warrant was issued against the applicant. On 21 July 2003 the Supreme Court of Justice upheld an appeal against the lawfulness of the bench that had issued that decision, quashed the first-instance decision and ordered that the applicant be released; that order was complied with on the same day. The General Prosecutor then applied to the Supreme Court of Justice for judicial review of that judgment. By a final judgment of 25 July 2003, delivered by a bench of nine judges, the Supreme Court of Justice upheld the application and quashed the judgment of 21 July. On 25 July 2003 the applicant was placed in pre-trial detention. In July 2004 the military court of appeal ordered that the applicant be released, and replaced the measure of pre-trial detention with a ban on leaving the country.

By a judgment of 15 June 2010 a Chamber of the Court concluded, unanimously, that there had been a violation of Article 5 § 1 on account of the absence of a legal basis for the applicant's deprivation of liberty from 10 a.m. to 10 p.m. on 16 July 2003 and his placement in detention on 25 July 2003 following the application for judicial review, and that there had been no violation of Article 5 § 1 with regard to the alleged lack of reasoning for his placement in pre-trial detention from 16 to 18 July 2003.

On 22 November 2010 the case was referred to the Grand Chamber at the Government's request.

Article 5 § 3

Brought promptly before judge or other officer

Detainee brought before public prosecutor who was under authority of executive and parties: *violation*

Moulin v. France - 37104/06
Judgment 23.11.2010 [Section V]

Facts – Ms Moulin, a lawyer in Toulouse, was arrested in Orléans on 13 April 2005 and taken into police custody. She was then taken to Toulouse, where her office was searched in the presence of two investigating judges from Orléans. As those judges were acting outside the area of their territorial jurisdiction, on 14 April her police custody was extended by an investigating judge, who did not take evidence from her in person in order to examine the merits of her detention. The police custody ended on 15 April 2005 when the applicant was brought before the Toulouse deputy public prosecutor, who ordered her detention with a view to her subsequent transfer to appear before the investigating judges in Orléans. On 18 April 2005 she made a first appearance for questioning before the latter, who placed her under formal investigation. The applicant was remanded in custody.

Law – Article 5 § 3: From the time the applicant had been taken into police custody on 13 April 2005 until she was brought before the two investigating judges on 18 April 2005 for "first appearance" questioning, no evidence had been taken from the applicant in person by investigating judges with a view to considering the merits of her detention. That time of more than five days had fallen within the period immediately following her arrest, during which the applicant had been in the hands of the authorities. The applicant had then been taken before the deputy public prosecutor on 15 April 2005, after the end of her police custody. Deputy prosecutors, who were not irremovable, were members of the *ministère public* (prosecuting authorities) under the authority of the Minister of Justice, a member of government, and therefore that of the executive. The hierarchical relationship between the Minister of Justice and the prosecuting authorities was currently a subject of debate in France. However, it was not for the Court to take a stance in a debate which was a matter for the domestic authorities. For its own purposes, the Court took the view that, owing to their status as just mentioned, public prosecutors in France did not

satisfy the requirement of independence from the executive which, according to its well-established case-law, was, like impartiality, one of the guarantees inherent in the autonomous notion of "officer" within the meaning of Article 5 § 3. Moreover, the law entrusted the prosecuting authorities with the conducting of criminal proceedings on behalf of the State. The prosecuting authorities were represented in the form of an indivisible body at each first-instance and appellate criminal court. However, the requisite guarantees of independence from the executive and the parties precluded the "officer", in particular, from intervening against the accused in the subsequent criminal proceedings. It was of little consequence that, in the present case, the deputy public prosecutor served in a different judicial district from that of the two investigating judges; in a previous case, the fact that a deputy public prosecutor, after extending deprivation of liberty, had transferred the case-file to a different prosecuting authority, had not been considered by the Court to be a convincing argument in this connection. Accordingly, the deputy public prosecutor, a representative of the *ministère public*, did not offer the guarantees of independence required by the Court's case-law under Article 5 § 3 in order to be described as a "judge or other officer authorised by law to exercise judicial power" within the meaning of that provision. The applicant had not been brought before such an officer, in this case the investigating judges, for an examination of the merits of her detention, until 18 April 2005, five days after her arrest and placement in police custody. The Court observed that it had found in a previous case that a period of four days and six hours spent in police custody without judicial control had fallen outside the strict constraints as to time permitted by Article 5 § 3.

Conclusion: violation (unanimously).

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

ARTICLE 6

Article 6 § 1 (civil)

Fair hearing

Lack of uniform interpretation of law by county courts sitting as courts of final instance in collective dismissal cases: *violation*

Ştefănică and Others v. Romania - 38155/02
Judgment 2.11.2010 [Section III]

Facts – The applicants were part of a large group of employees who sought compensation following their collective dismissal as a result of the restructuring of their state-owned employer. Their claims were dismissed by a county court sitting as a court of final instance on the grounds that they did not meet the statutory conditions for an entitlement to compensation. They were refused leave to bring an extraordinary appeal before the Supreme Court of Justice. The claims of other employees in different county courts were, however, successful, although the reasoning varied. In their application to the European Court, the applicants complained that the domestic courts had adopted conflicting solutions in respect of similar legal issues.

Law – Article 6 § 1: Once a solution was adopted by a State to regulate the collective dismissal of hundreds of persons from state-owned companies, it had to be implemented with reasonable clarity and coherence in order to avoid, in so far as possible, uncertainty and ambiguity for those affected by the measures. Although the applicants' claims for compensatory payments had been dismissed, awards had been made to persons in similar situations by other county courts in final decisions, so revealing an inconsistent approach by the domestic courts in the interpretation of the statutory conditions for making an award. The Court acknowledged that a lower court's appreciation of the facts and assessment of the evidence could lead to different outcomes for parties with broadly similar grievances. That reality did not, *per se*, entail a violation of the principle of legal certainty. However, a problem did arise where, as in the applicants' case, there were divergences in the application of substantively similar legal provisions to persons in near identical groups. There had been no remedy to resolve such divergences, as the county courts had sat as courts of final instance and the Supreme Court of Justice could not intervene in the ordinary proceedings. As to the possibility of an extraordinary appeal to that court, the applicants' requests for leave had been refused and although other claimants had been successful in such an appeal, the Supreme Court's decision had concerned only their individual case and was not meant to settle conflicting interpretations of national law. In any event, where the intervention of the Supreme Court was only possible by means of an extraordinary appeal, that in itself contradicted the principle of legal certainty.

In sum, the inconsistent adjudication of claims brought by many persons in similar situations had led to a state of uncertainty that had deprived the applicants of a fair hearing.

Conclusion: violation (unanimously).

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

Article 6 § 1 (criminal)

Fair hearing

Lack of adequate procedural safeguards to enable accused to understand reasons for jury's guilty verdict in assize court: *violation*

Taxquet v. Belgium - 926/05
Judgment 16.11.2010 [GC]

Facts – Between 2003 and 2004 the applicant was tried by the Assize Court, together with seven co-defendants, on charges of murdering an honorary minister (*ministre d'Etat*), and attempting to murder the latter's partner. In order to reach a verdict, the lay jury had to answer thirty-two questions, four of which concerned the applicant. Following the jury's guilty verdict, the applicant was sentenced to twenty years' imprisonment. The Court of Cassation dismissed his subsequent appeal on points of law against the Assize Court's judgment.

In a judgment of 13 January 2009 a Chamber of the European Court held unanimously that there had been a violation of Article 6 § 1 of the Convention on account of the lack of reasons given in the Assize Court's judgment (see Information Note no. 115).

Law – Article 6 § 1: Several Council of Europe member States had a system of trial by jury, in which professional judges were unable to take part in the lay jurors' deliberations on the verdict. This system, guided by the legitimate desire to involve citizens in the administration of justice, particularly in relation to the most serious offences, could not be called into question in this context. The Court had previously held that the absence of a reasoned verdict by a lay jury did not in itself breach Article 6. Nevertheless, for the requirements of a fair trial to be satisfied, sufficient safeguards had to be in place to enable the accused and the public to understand the verdict that was given. Such safeguards could consist, for example, in providing directions or guidance to the jurors on the legal issues at stake or the evidence adduced, putting precise, unequivocal questions to the jury to form a framework for the verdict, or offsetting the fact that no reasons were given for the jury's answers. However, in the present case neither the indictment nor the questions to the jury had contained sufficient information as to the applicant's involvement in the offences of which he was accused. The indictment had mentioned each of the offences with which he was charged but had not indicated which items of evidence the prosecution could use against him. The questions put to the jury by the President of the Assize Court had been succinctly worded and identical for all the defendants. Even when viewed in conjunction with the indictment, they had not enabled the applicant to ascertain which items of evidence and factual circumstances had caused the jury to reach a guilty verdict against him. He had been unable to understand, for example, what the jury had perceived to be his precise role in relation to the other defendants, why the offence had been classified as premeditated murder (*assassinat*) rather than murder (*meurtre*), and why the aggravating factor of premeditation had been taken into account in his case as regards the attempted murder of the minister's partner. This shortcoming was all the more problematic because the case was both factually and legally complex and the trial had lasted more than two months, with a large number of people giving evidence. Lastly, the national system made no provision for an ordinary appeal against judgments of the Assize Court. Appeals to the Court of Cassation concerned points of law alone and thus did not provide the accused with adequate clarification of the reasons for the conviction. Accordingly, the applicant had not been afforded sufficient safeguards to enable him to understand why he had been found guilty, and the proceedings had thus been unfair.

Conclusion: violation (unanimously).

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

Undercover police operation resulting in conviction for drug-trafficking offences: *no violation*

Bannikova v. Russia - 18757/06
Judgment 4.11.2010 [Section I]

Facts – In her application to the European Court, the applicant complained of police entrapment that had resulted in her being convicted of drug-

trafficking offences. Between 23 and 27 January 2005 the Federal Security Service ("FSB") recorded a series of telephone conversations between the applicant and a fellow suspect S., who brought the applicant a supply of cannabis on 28 January 2005. The same day the acting regional chief of the FSB authorised an undercover operation in the form of a test purchase, which was carried out the next day by an undercover agent, B, who purported to be a buyer. At her trial, the applicant submitted that she had been harassed and threatened by one Vladimir into selling the cannabis. She was convicted of selling cannabis to B. and of conspiracy and sentenced to four years' imprisonment. Her appeal was dismissed after the regional court rejected her argument of incitement by State agents on the grounds that her participation in the drug sale on 29 January 2005 had been established on the basis of multiple items of evidence and was not denied by her.

Law – Article 6 § 1: The first question to be examined by the Court when confronted with a plea of entrapment was whether the State agents carrying out the undercover activity had remained within the limits of "essentially passive" behaviour or gone beyond them, acting as *agents provocateurs*. In addressing that question, the Court would apply the substantive test of incitement, which entailed examining whether there were objective suspicions that the applicant had been involved in or was predisposed to criminal activity, whether the undercover agents had merely "joined" the criminal acts or had instigated them, and whether they had subjected the applicant to pressure to commit the offence. Unless the applicant's allegations were wholly improbable, it was for the authorities to show that there had been no incitement. The Court found it beyond doubt that undercover agent B. had merely "joined in" the criminal acts rather than instigated them as, by the time of B.'s first encounter with the applicant on 29 January 2005, the FSB was already in possession of the recordings of her conversations with S. concerning the drug deal. However, it could not determine with certainty whether Vladimir's alleged involvement was also part of the undercover operation, as the applicant seemed to be alleging, and if so, whether he had exerted pressure on her to commit the offence.

Where, as here, the substantive test was inconclusive, the Court had to go on to examine whether the applicant had been able to raise the issue of incitement effectively in the domestic proceedings and how the domestic court had dealt with that plea. In that connection, it reiterated that, for a plea of incitement to be effectively addressed, the national court had to have established in adversarial proceedings the reasons why the operation had been mounted, the extent of police involvement in the offence and the nature of any incitement or pressure to which the applicant had been subjected. The Court accepted that the recordings of the applicant's conversation with S. – in which previous drug sales, unsold drugs, potential customers and the prospects of a future deal had all been mentioned – were highly relevant to the conclusion that the applicant had had a pre-existing intent to sell drugs. Furthermore, B. had been called and cross-examined at the hearing and the applicant had had the possibility of putting questions to him concerning Vladimir's identity and his alleged role as the FSB informant or as an *agent provocateur*. However, no such link – or indeed the existence of any such person – had been established as a result. As to the additional materials the applicant had alleged should have been before the trial court, the Court found that they would have been of no assistance to her, were superfluous or did not exist.

In sum, the applicant's plea of incitement had been adequately addressed by the domestic courts, which had taken the necessary steps to uncover the truth and to eradicate the doubts as to whether she had committed the offence as a result of incitement by an *agent provocateur*. Their conclusion that there had been no entrapment had therefore been based on a reasonable assessment of evidence that was relevant and sufficient.

Conclusion: no violation (unanimously).

(See also *Ramanauskas v. Lithuania* [GC], 5 February 2008, no. 74420/01, Information Note no. 105)

Lack of public hearing before appeal court deciding issues of fact: *violation*

García Hernández v. Spain - 15256/07
Judgment 16.11.2010 [Section III]

Facts – The applicant, a doctor, was prosecuted and convicted for negligently causing injury to a patient.

Law – Article 6 § 1: At first instance, the criminal judge had given his ruling on the basis of a number of items of evidence. After a public hearing, at which he had had the opportunity to form his own opinion, he had concluded that there had been no negligence on the applicant's part and had acquitted her. The *Audiencia Provincial* had subsequently overturned the judgment on appeal and found,

without examining in person either the applicant or any of the witnesses who had given evidence to the criminal judge, that the post she held entailed a special duty of care which she had not adequately discharged in respect of the patient concerned. The Court considered that since the issues examined were essentially factual in nature, the applicant's conviction on appeal following a reassessment of factors such as her conduct, without her having the opportunity to give evidence in person and to challenge those findings at a public and adversarial hearing, failed to satisfy the requirements of a fair trial.

Conclusion: violation (unanimously).

(See also *Bazo González v. Spain*, no. 30643/04, 16 December 2008, Information Note no. 114, and *Igual Coll v. Spain*, no. 37496/04, 10 March 2009, Information Note no. 117)

Independent tribunal

Lack of guarantees of independence of assessors (assistant judges) sitting in district courts: *violation*

Henryk Urban and Ryszard Urban v. Poland - 23614/08
Judgment 30.11.2010 [Section IV]

Facts – In 2006 a district court, composed of an assessor, convicted the applicants of failing to disclose their identity to the police and sentenced them to a fine. Their appeal was dismissed in 2007. Under Polish law, a candidate for the office of district-court judge must first serve a minimum of three years as an assessor. Assessors are legally qualified and appointed by the Minister of Justice. In October 2007 the Constitutional Court held that the vesting of judicial powers in assessors by the Minister of Justice (representing the executive) was unconstitutional since assessors did not offer the guarantees of independence that were required of judges. In particular, the Minister of Justice could effectively dismiss an assessor. The Constitutional Court ordered that the unconstitutional provision should be repealed within eighteen months. It did not order an immediate repeal as assessors constituted nearly 25% of the judicial personnel in the district courts and their immediate removal would have seriously undermined the administration of justice. That period was also necessary for Parliament to enact new legislation. In the interim the assessors were allowed to continue adjudicating. Having regard to the constitutional importance of the finality of rulings, the Constitutional Court held that its judgment could not serve as a ground for reopening cases which had been decided by the assessors. In 2009 the office of assessor was abolished. In their application to the European Court the applicants alleged that the district court that had heard their case was not an "independent tribunal".

Law – Article 6 § 1: The Court's task in the present case was not to rule *in abstracto* on the compatibility with the Convention of the institution of assessors or other similar officers which existed in certain member States, but to examine the manner in which Poland regulated the status of assessors. The assessor who had heard the applicants' case had lacked the independence required by Article 6 § 1, the reason being that she could have been removed by the Minister of Justice at any time during her term of office and there had been no adequate guarantees protecting her against the arbitrary exercise of that power by the Minister. The Government's statistics indicating that the Minister of Justice had never exercised the power to remove an assessor did not, in the Court's view, invalidate the reasons for the finding of unconstitutionality. Moreover, according to the Constitutional Court, review by the second-instance court could not remedy the initial lack of independence, as the second-instance court did not have the power to quash the judgment on the ground that the district court had been composed of an assessor. There had accordingly been a violation of Article 6 § 1. Having regard to the principle of legal certainty, the Court considered that in the present case there were no grounds which would require it to direct the reopening of the applicants' case. It would, however, not exclude taking a different approach in a case where, for example, the circumstances gave rise to legitimate grounds for believing that the Minister had or could reasonably be taken to have an interest in the proceedings.

Conclusion: violation (unanimously).

Article 41: The finding of a violation constituted in itself sufficient just satisfaction in respect of any non-pecuniary damage. The authorities of the respondent State had taken the requisite measures to remedy the deficiency underlying the instant case. Moreover, according to the Constitutional Court, there was no automatic correlation between that deficiency and the validity of each and every ruling given previously by assessors in individual cases. Accordingly, in this particular context, there was no call for reopening all proceedings in which the assessors had participated at the first-instance

level. In the absence of any evidence to support the applicants' claim as to costs and expenses, no award was made under this head. In the light of the reasons underlying the finding of a violation in the instant case and the fact that the authorities had taken adequate measures to address the deficiency at issue, there was no justification for awarding legal costs.

Article 6 § 3 (c)

Defence through legal assistance

Lack of personal contact prior to appeal hearing with legal-aid counsel who had to plead the applicant's case on the basis of submissions of another lawyer: *violation*

Sakhnovskiy v. Russia - 21272/03
Judgment 2.11.2010 [GC]

Facts – In 2001 the applicant was convicted of murder and sentenced to a term of imprisonment. In 2002 the Supreme Court dismissed his appeal. In 2007 the Presidium of the Supreme Court granted a request for supervisory review, quashed the appeal decision and remitted the case for fresh examination, finding that the applicant's right to legal assistance had been violated at the appeal hearing. In the new appeal proceedings the applicant followed the hearing from a detention facility by video link as the Supreme Court rejected his request to attend it in person. Before the start of the hearing he was introduced to his new legal-aid counsel, who was present in the courtroom, and they were allowed fifteen minutes of confidential communication by video link. The applicant attempted to refuse the assistance of the counsel on the grounds that he had never met her in person. The Supreme Court rejected his objection to the counsel's assistance as unreasonable, noting that the applicant had not requested replacement counsel or leave to retain counsel privately. In a separate decision the Supreme Court decided that it would not accept a new statement of appeal from the applicant and would consider his position on the basis of the submissions made by his former counsel before the previous appeal hearing in 2002. On the same day the Supreme Court examined the merits of the case and upheld the judgment of 2001.

Law – Article 6 § 1 in conjunction with Article 6 § 3 (c)

(a) *Victim status* – The authorities had acknowledged the original violation of the applicant's rights under Article 6, at least as regards the lack of appropriate legal aid in the appeal proceedings of 2002. However, in the Court's opinion, the mere re- opening of the case had not been sufficient to deprive the applicant of his victim status. This view was closely linked to the particular features of the Russian system of supervisory review, as it operated at the material time. In the first place, there were no limits as to the number of times or the circumstances in which the case could be reopened. Second, reopening was at the discretion of the State prosecutor or judge who decided whether a supervisory-review complaint or application deserved to be examined on the merits. Whether it was a prosecutor lodging an application for reopening or the president of the court reversing a decision of a judge not to entertain a supervisory-review complaint, the decision might be taken *proprio motu*. This would make it possible for the respondent State to evade the Court's substantive review by continuously reopening the proceedings. Moreover, domestic proceedings were frequently reopened at the instigation of the Russian authorities when they learned that the case had been admitted for examination in Strasbourg. Sometimes it benefited the applicant, in which case the reopening served a useful purpose. However, given the ease with which the Government used this procedure, there was also a risk of abuse. If the Court were to accept unconditionally that the mere fact of reopening the proceedings was to have the automatic effect of removing the applicant's victim status, the respondent State would be capable of thwarting the examination of any pending case by having repeated recourse to supervisory-review proceedings, rather than correcting the past violations by giving the applicant a fair trial. To ascertain whether or not the applicant retained his victim status the Court would consider the proceedings as a whole, including the proceedings which had followed the reopening. This approach enabled a balance to be struck between the principle of subsidiarity and the effectiveness of the Convention mechanism. In the instant case, the mere reopening of the proceedings by way of supervisory review had failed to provide appropriate and sufficient redress for the applicant.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Re-communication of applicant's complaint* – The Government had argued that the Court should have brought to their attention the applicant's complaints concerning the second set of appeal proceedings. The applicant had complained about the second appellate hearing of November 2007

by submitting additional pleadings in March 2008. A copy of those pleadings had been sent to the Government in good time. Nothing had prevented the Russian authorities from submitting comments in turn. As the Court had later accepted the Government's request for the examination of the case by the Grand Chamber, the Government had had yet another opportunity to make comments. Therefore, the Government had been placed on an equal footing with the applicant to present their position in the case.

(c) *Waiver of legal assistance* – In 2007 the applicant had expressed his dissatisfaction with how his legal assistance had been organised by the Supreme Court and had refused to accept his newly-appointed lawyer's services. Indeed, he had not asked for a replacement lawyer or for an adjournment of the hearing, but, given that he had had no legal training, he could not have been expected to make specific legal claims. His failure to do so could not, therefore, be considered a waiver of his right to legal assistance.

(d) *Effectiveness of legal assistance* – It was clear that for the authorities the case was complex enough to require the assistance of a professional lawyer. While the newly-appointed lawyer was qualified and had *a priori* been prepared to assist the applicant, these arguments were not decisive. The applicant had been able to communicate with the lawyer for only fifteen minutes, immediately before the start of the hearing. Given the complexity and seriousness of the case, the time allotted had clearly not been sufficient for the applicant to discuss the case and make sure that the lawyer's knowledge of the case and legal position were appropriate. Moreover, it was questionable whether communication by video link had offered sufficient privacy. In the case at hand, the applicant had had to use the video-conferencing system installed and operated by the State. He might legitimately have felt ill at ease when he discussed his case with the lawyer. The Government had not explained why it had been impossible to make different arrangements for the applicant's legal assistance. It was true that transporting the applicant to Moscow for a meeting with his lawyer would have been a lengthy and costly operation. While emphasising the central importance of effective legal assistance, the Court had to examine whether in view of this particular geographic obstacle the Government had undertaken measures which had sufficiently compensated for the limitations of the applicant's rights. Nothing had prevented the authorities from organising at least a telephone conversation between the applicant and the lawyer more in advance of the hearing. Nor had anything prevented them from appointing a lawyer from the town where the applicant was held who could have visited the applicant in the detention centre and been with him during the hearing. Furthermore, it was unclear why the Supreme Court had not assigned the representation of the applicant to the lawyer who had already defended him before the first-instance court and prepared the original statement of appeal. Finally, the Supreme Court could have adjourned the hearing on its own motion so as to give the applicant sufficient time to discuss the case with the new lawyer. The arrangements made by the Supreme Court had been insufficient and had not secured effective legal assistance to the applicant during the second set of appeal proceedings. Accordingly, the second set of appeal proceedings had failed to cure the defects of the first: in neither 2002 nor 2007 had the applicant been able to enjoy effective legal assistance.

Conclusion: violation (unanimously).

Article 41: EUR 2,000 in respect of non-pecuniary damage.

ARTICLE 8

Private life

Conviction of university professor for refusing to comply with court order requiring him to grant access to research materials: *no violation*

Gillberg v. Sweden - 41723/06
Judgment 2.11.2010 [Section III]

Facts – The applicant, a university professor, was responsible for a research project on hyperactivity and attention-deficit disorders in children that was carried out between 1977 and 1992. According to the applicant, the university's ethics committee had made it a precondition for the project that sensitive information about the participants would be accessible only to him and his staff, and he had therefore promised absolute confidentiality to the patients and their parents. In 2002 a researcher from another university and a paediatrician requested access to the research material. After their requests were refused by the university they appealed to the administrative court of appeal, which found that they had shown a legitimate interest and should be granted access to the material on conditions which included restrictions on its use and a ban on removing copies from the university premises. The appli-

cant, however, refused to hand over the material, which was eventually destroyed by colleagues. The applicant was subsequently prosecuted and convicted of misusing his office. His conviction was upheld by the court of appeal, which held that he had wilfully disregarded the obligations of his office by failing to comply with the judgments of the administrative court of appeal.

Law – While on the face of it the case raised important ethical issues involving such matters as medical research, public access to information and the interests of children participating in research, the Court noted that the sole issue before it was whether the applicant's conviction and sentence for disregarding his obligations as a public official were compatible with the Convention. The applicant did not represent the children or families and his complaints concerning the outcome of the civil proceedings were inadmissible as they had been lodged out of time.

Article 8: Leaving open the question whether there had been an interference with the applicant's right to respect for his private life, the Court found that the conviction was in accordance with the domestic law and pursued the legitimate aims of preventing disorder and crime and protecting the rights and freedoms of others.

As to whether the interference had been necessary in a democratic society, the Court noted that, by virtue of its obligation under the Convention to ensure that final binding judicial decisions do not remain inoperative to the detriment of one party, the respondent State had been under a duty to react to the applicant's refusal to comply with the judgments granting the two external researchers access to the research material. The applicant had argued that the domestic authorities' response had been disproportionate in that the court of appeal had failed to take two important mitigating factors – his obligations under the confidentiality undertakings, and his aim of protecting the integrity of the informants and research participants – into account. The Court noted, however, that there was no evidence that the university ethics committee had required an absolute promise of confidentiality, while the assurances the applicant had given to the research participants had, according to the domestic courts, gone beyond what was permitted by the domestic law. Further, as regards the protection of the integrity of the informants and participants, the question of whether the documents were to be released had been settled in the civil proceedings, during which the university had been given the opportunity to present its case. Whether or not it considered that the orders for release were based on erroneous or insufficient grounds, what mattered was that the university administration had understood that it was required to release the documents without delay and that for a considerable period the applicant had intentionally failed to comply with his obligations as a public official arising from the court orders. In rejecting these mitigating circumstances, the court of appeal had not overstepped its margin of appreciation or acted arbitrarily and the sentences it had imposed were not disproportionate.

Conclusion: no violation (five votes to two).

Article 10: The Court accepted that doctors, psychiatrists and researchers may have a similar interest to journalists in protecting their sources and to lawyers in protecting professional secrecy with clients. However, the applicant had been convicted for misuse of office for refusing to make documents available in accordance with the instructions he had received from the university administration pursuant to the judgments of the administrative court of appeal. His conviction did not as such concern the university's or his own interest in protecting professional secrecy with clients or the participants in the research. That part had been settled by the administrative courts' judgments, in relation to which the Court was prevented from examining any alleged violation of the Convention. In these circumstances, the Court was not convinced that the outcome of the criminal proceedings against the applicant had amounted to an interference with his rights within the meaning of Article 10. It did not, however, need to examine that issue further since in any event, for the reasons stated with respect to the Article 8 complaint, there was nothing to suggest that the court of appeal's judgment was arbitrary or disproportionate.

Conclusion: no violation (unanimously).

Private life
Home
Positive obligations

Inadequacy of measures taken by State to curb road-traffic noise: *violation*

Deés v. Hungary - 2345/06
Judgment 9.11.2010 [Section II]

Facts – In order to avoid a recently introduced toll, heavy traffic that would normally have taken a nearby stretch of motorway took an alternative route along the street where the applicant lived. According to the applicant, the resulting noise and

pollution made his house almost uninhabitable. He subsequently sought compensation from the road-maintenance authority after noting that cracks had appeared in the walls of his house. On the basis of decibel readings taken in the street, a court-appointed expert concluded that although the noise levels were above the statutory limit, the vibrations were not strong enough to have caused the cracks. On the basis of that report and after noting that the authorities had taken extensive measures to divert traffic from the street through the construction of by-passes and the imposition of access and speed restrictions, the domestic courts dismissed the applicant's claims.

Law – Article 8: The State had been called on to strike a balance between the interests of the road-users and of local inhabitants. While recognising the complexity of the State's tasks in handling infrastructure issues potentially involving considerable time and resources, the Court considered that the measures taken by the authorities had consistently proved insufficient, so exposing the applicant to excessive noise disturbance over a substantial period and imposing a disproportionate individual burden on him. Although the vibration or noise caused by the traffic had not been substantial enough to cause damage to the applicant's house, the noise had, according to the expert measurements, exceeded the statutory level by between 12% and 15%. There had thus existed a direct and serious nuisance which affected the street in which the applicant lived and had prevented him from enjoying his home. The respondent State had accordingly failed to discharge its positive obligation to guarantee the applicant's right to respect for his home and private life.

Conclusion: violation (unanimously).

The Court also found a violation of Article 6 § 1 on account of the length of the proceedings.

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

Family life

Revocation, on account of unsatisfactory conduct by both parents, of order for return of applicant's daughter following her abduction by mother: *no violation*

Serghides v. Poland - 31515/04
Judgment 2.11.2010 [Section IV]

Facts – The applicant, a British national, requested the return to the United Kingdom of his minor daughter, who had been unlawfully taken to Poland by the mother, a Polish national.

Law – Article 8: In April 2004 the authorities had ordered the child's immediate return to the United Kingdom, then they had swiftly initiated a procedure for the enforcement of the decision in question. However, that procedure had never been completed and the enforcement had become without object about a year and a half later, because the decision that was supposed to be implemented had been amended on 10 May 2005 to the applicant's disadvantage. The authorities had found that the relevant circumstances had changed, with the result that the child's return to the United Kingdom might now expose her to harm, within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction of 1980. A failed attempt by the father to retrieve his child from her mother in order to take her back to the United Kingdom, in spite of the proceedings pending in Poland for the enforcement of the decision ordering her return to her father, had apparently had a negative impact on the child's emotional condition. It had allegedly contributed to a breakdown in emotional ties between the applicant and his daughter, subsequently worsened by the mother's behaviour. Thus it did not appear that the passage of time related to the length of the proceedings had been the main factor for the finding of a change in the relevant circumstances. On the contrary, to a large extent it was the conduct of the child's parents, which was found to have been unsatisfactory by the experts, that had been the cause of that change. In addition, whilst the applicant had been advised by a professional, he had not made use of the means available in domestic law to remain in contact with his daughter during that decisive period for his relationship with his child. The proceedings at issue had lasted for a total of about three and a half years. During that period the authorities had not remained inactive. They had taken action with a view to concluding the case and hearings had generally been held with due diligence. In view of the above, the revocation of the decision ordering the return of the applicant's daughter to him in the United Kingdom could not, on the whole, be attributed to the conduct of the national authorities.

Conclusion: no violation (four votes to three).

Positive obligations

Failure to prevent unlawful operation of computer club causing noise and nuisance in block of flats: *violation*

Mileva and Others v. Bulgaria - 43449/02 and 21475/04
Judgment 25.11.2010 [Section V]

Facts – The applicants lived in flats in the same residential building in the centre of Sofia. In May 2000 a company rented a flat situated on the ground floor of the building and, without obtaining the requisite permissions, started running a computer club. The club was open twenty-four hours a day, seven days a week, and hosted forty-six computers and two vending machines. The club's clients, mostly teenagers and young adults, often gathered outside the building, where they shouted, drank alcohol and sometimes broke the front door and continued created havoc in the lobby. The applicants made numerous complaints to the police and the municipal authorities about the noise and disturbance. In July 2002 the regional building-control directorate prohibited the use of the flat hosting the club, but its decision was not enforced, partly because the competent court twice suspended its enforcement following applications by the club's owner. The computer club continued to operate until November 2004.

Law – Article 8: The manner in which the computer club was run, its opening hours and the noise produced by its clients had affected the applicants' homes as well as their private and family lives. Despite receiving many complaints and being aware that the club was operating without the necessary license, the police and the municipal authorities had failed to take action to protect the well-being of the applicants in their homes. In particular, although the building-control authorities had in July 2002 prohibited the use of the flat as a computer club, their decision had never been enforced, partly as a result of the two court decisions to suspend its enforcement and the inordinate protraction of those proceedings. In addition, it was not until November 2003, some two and a half years after the club had started functioning, that the municipality had imposed a condition requiring the club's managers to have clients enter the club through a rear door. That condition had been completely disregarded by the club and the applicants submitted that it could not, in any event, have been met given the building's layout. In conclusion, the respondent State had failed to approach the matter with due diligence and thus to discharge its positive obligation to ensure the applicants' respect for their homes and their private and family lives.

Conclusion: violation (unanimously).

Article 41: Sums ranging between EUR 6,000 and EUR 8,000 to each applicant in respect of non-pecuniary damage.

Failure to sufficiently protect wife from violent husband: *violation*

Hajduová v. Slovakia - 2660/03
Judgment 30.11.2010 [Section IV]

Facts – In August 2001 the applicant's former husband A. verbally and physically assaulted her in a public place. Although the applicant suffered only minor injuries, out of fear for her life and safety she and her children moved out of the family home and into the premises of a non-governmental organisation. A week later A. repeatedly made death threats against the applicant. Criminal proceedings were instituted against him and he was remanded in custody. In the course of the proceedings, expert witnesses established that A. was suffering from a serious personality disorder. On 7 January 2002 a district court convicted him and ordered him to undergo in-patient psychiatric treatment. A. was then transferred to a hospital, but did not receive any treatment and was released a week later. Following his release, A. repeatedly threatened the applicant and her lawyer. He was again arrested and the district court subsequently arranged for his psychiatric treatment in accordance with its previous order.

Law – Article 8: Even though A.'s repeated threats had never materialised, they were enough to affect the applicant's psychological integrity and well-being, so as to give rise to the State's positive obligations under Article 8. A. had been convicted as a result of his violent behaviour towards the applicant, but following his transfer to hospital the district court had failed to discharge its statutory obligation to order the hospital to detain him and provide him with the necessary psychiatric treatment. It was therefore the domestic authorities' inactivity that had enabled him to continue to threaten the applicant and her lawyer. Only after the applicant filed a fresh criminal complaint did the police take it upon themselves to intervene. Consequently, the lack of sufficient measures in response to A.'s behaviour, and in particular the district court's failure to order his detention for psychiatric treatment following his conviction, had amounted to a breach of the State's positive obligations under Article 8.

Conclusion: violation (unanimously).

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

ARTICLE 10

Freedom of expression

Conviction of university professor for refusing to comply with court order requiring him to grant access to research materials: *no violation*

Gillberg v. Sweden - 41723/06
Judgment 2.11.2010 [Section III]

(See Article 8 above, page 14)

Freedom to impart information

Failure to allocate radiofrequencies to licensed television broadcaster: *relinquishment in favour of the Grand Chamber*

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

In 1999 the relevant authorities granted the applicant company a licence authorising it to install and operate an analogue television broadcasting network. The licence referred to a national programme for allocating radiofrequencies which was never implemented. In contrast to existing channels, which already had radiofrequencies allocated to them under provisional measures, the applicant company was never able to broadcast. In 2003 it applied to the domestic courts seeking, in particular, acknowledgement of its right to be allocated radiofrequencies and compensation for damages. The *Consiglio di Stato* decided to apply to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of Community law concerning the freedom to provide services and competition. In a judgment of 31 January 2008 the Court of Justice held that, in the area of television broadcasting, the Community provisions in question were to be interpreted in such a way as to contest national legislation where its application led to a situation in which it was impossible for a licensed operator to broadcast on account of the absence of broadcasting radiofrequencies allocated on the basis of objective, transparent, non-discriminatory and proportional criteria. The *Consiglio di Stato* subsequently ordered the Government to respect those criteria in dealing with the applicant company's request for radiofrequencies and ordered the supervising ministry to pay slightly over one million euros in damages to the applicant company.

It its application to the European Court, the applicant company alleged a violation of Articles 6 and 10 of the Convention, of Article 14 in conjunction with Article 10, and of Article 1 of Protocol No. 1.

ARTICLE 14

Discrimination (Article 8)

Publications allegedly insulting to the Roma community: *case referred to the Grand Chamber*

Aksu v. Turkey - 4149/04 and 41029/04
Judgment 27.7.2010 [Section II]

In 2000 the Ministry of Culture published a book entitled *The Gypsies of Turkey*, written by an associate professor. The applicant protested to the Ministry, claiming that the book contained expressions that humiliated and debased Gypsies. He brought proceedings in damages against the Ministry and the author of the book. The domestic courts dismissed the applicant's claim finding that the book was the result of academic research, based on scientific data and examined social structures of Gypsies in Turkey. The expressions at issue did not, therefore, insult the applicant.

Meanwhile, in 1998 a non-governmental association, financed by the Ministry of Culture, published a dictionary entitled *Turkish Dictionary for Pupils*. The applicant brought civil proceedings against the publisher claiming that certain entries in the dictionary were insulting to and discriminatory against Gypsies. The domestic courts dismissed the applicant's claim finding that the definitions and expressions in the dictionary were based on historical and sociological reality and that there had been no intention to humiliate or debase an ethnic group. Moreover, there were other similar expressions in Turkish concerning other ethnic groups, which existed in dictionaries and encyclopaedias.

In a judgment of 20 July 2010 a Chamber of the Court found, by four votes to three, that there had been no violation of Article 14 read in conjunction with Article 8 (see Information Note no. 132).

On 22 November 2010 the case was referred to the Grand Chamber at the applicant's request.

Discrimination with regard to binational couple's choice of surname: *violation*

Losonci Rose and Rose v. Switzerland - 664/06
Judgment 9.11.2010 [Section I]

Facts – The law governing surnames in Switzerland is based on the principle that married couples share a single family name, which is automatically the husband's surname unless the couple make a joint application to use the wife's surname. Married persons of foreign origin may request to have their surname governed by their national law.

The applicants are a Hungarian national and his wife, a Swiss national. Before getting married, they notified the registry of births, deaths and marriages that they intended to keep their own surnames rather than choose a double-barrelled surname for one of them. After their request was refused by the authorities, they decided that, in order to be able to marry, they would take the wife's surname as the family name. Following the marriage the first applicant requested, in accordance with his national law, that the double-barrelled surname he had provisionally chosen be replaced in the register by his original surname alone, without any change to his wife's surname. The Federal Court rejected the request, holding that the first applicant's previous decision to take his wife's surname as his family name meant that his wish to have his name governed by Hungarian law was now invalid. In the applicants' submission, such a situation could not have arisen if their sexes had been reversed, since the husband's surname would automatically have become the family name and the wife would have been free to have her choice of surname governed by her national law.

Law – Article 14 in conjunction with Article 8: Although in the case of a Swiss man and a woman of foreign origin, the woman could choose to have her surname governed by her national law, such a choice was not possible in the case of a Swiss woman marrying a man of foreign origin where the couple chose the woman's surname as their family name, as the applicants had done. They could therefore claim to be the victims of a difference in treatment between people in similar situations. According to the national authorities, the interference in question had pursued the legitimate aim of reflecting family unity by means of a single family name. However, as regards the measures that could be taken in this sphere, only compelling reasons could justify a difference in treatment on the ground of sex. A consensus was emerging within the Council of Europe's member States regarding equality between spouses in the choice of family name, and the activities of the United Nations were heading towards recognition of the right of each married partner to keep his or her own surname or to have an equal say in the choice of a new family name. However, the first applicant had been prevented from keeping his own surname after marriage, although he could have done so had the applicants' sexes been reversed. Moreover, it could not be said that the first applicant had suffered no serious disadvantage, since a person's name, as the main means of personal identification within society, was one of the core aspects to be taken into consideration in relation to the right to respect for private and family life. Accordingly, the justification put forward by the Government did not appear reasonable and the difference in treatment had been discriminatory. It followed that the rules in force in the respondent State gave rise to discrimination between binational couples according to whether the man or the woman was a national of that State.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 to the two applicants jointly in respect of non-pecuniary damage.

Restriction on transsexual's access to her child: *no violation*

P.V. v. Spain - 35159/09
Judgment 30.11.2010 [Section III]

Facts – The applicant is a male-to-female transsexual. Prior to her gender reassignment, she had been married and had a son. In 2002 a judge granted a decree for the couple's separation and approved the amicable agreement they had concluded, by which custody of the child was awarded to the mother and parental responsibility to both parents jointly, and contact arrangements were made for the father. In 2004 the applicant's former wife sought to have the father deprived of parental responsibility and to have the contact arrangements suspended, alleging among other things that the applicant was undergoing treatment with a view to gender reassignment. The first-instance judge decided only to restrict the contact arrangements; that decision was upheld by the *Audiencia Provincial*. In 2008 an *amparo* appeal by the applicant was dismissed.

Law – Article 8 in conjunction with Article 14: The applicant's transsexualism was what had prompted the former wife to bring proceedings to amend the arrangements made at the time of their separation. Transsexualism was indisputably

covered by Article 14. In their decisions, the national courts had emphasised that the applicant's transsexualism was not the reason why the initial contact arrangements had been restricted. They had taken into account her emotional instability and the risk that it might be passed on to the child – aged six at the start of the domestic proceedings – and disturb his psychological balance. The Constitutional Court, for example, had referred to an undoubted risk to the child's mental well-being and the development of his personality, in view of his age. The applicant's lack of emotional stability had been noted in a psychological expert report produced at the first-instance judge's request; she had voluntarily undergone the assessment and had not challenged its results in due time. In addition, the first-instance judge had not deprived the applicant either of parental responsibility or of contact, as the mother had requested, but had made new contact arrangements on a gradual and reviewable basis, in accordance with the recommendations made in the expert report. The domestic courts' reasoning suggested that the applicant's transsexualism had not been the decisive factor in the decision to amend the initial contact arrangments. The child's best interests had prevailed, leading the courts to choose a more restrictive arrangement that would allow the child to become gradually accustomed to his father's gender reassignment. That conclusion was supported by the fact that the contact arrangements had twice been extended in 2006, although there had been no change in the applicant's gender status during that period.

Conclusion: no violation (unanimously).

Discrimination (Article 1 of Protocol No. 1)

Refusal to recognise applicant as heir of man she had married in purely religious ceremony: *no violation*

Şerife Yiğit v. Turkey - 3976/05
Judgment 2.11.2010 [GC]

Facts – The applicant contracted a religious marriage in 1976 and her husband died in 2002. In 2003 she brought an action, in her own name and that of her daughter, seeking to have her marriage recognised and to have her daughter entered in the civil register as her husband's child. The District Court allowed the second request but rejected the request concerning the marriage. The applicant also applied to the retirement pension fund to have her late husband's retirement pension and health-insurance benefits transferred to her and her daughter. The benefits were granted to the daughter but not to her mother, on the ground that the marriage had not been legally recognised. The applicant appealed unsuccessfully against that decision.

In a judgment of 20 January 2009 a Chamber of the Court held by four votes to three that there had been no violation of Article 8 (see Information Note no. 115).

Law – Article 14 in conjunction with Article 1 of Protocol No. 1

(a) *Applicability* – According to the domestic legislation and case-law, only persons married in accordance with the Civil Code could inherit their late spouse's social-security entitlements. However, although Article 1 of Protocol No. 1 did not include the right to receive a social-security payment of any kind, if a State did decide to create a benefits scheme it had to do so in a manner which was compatible with Article 14. The applicant complained that she had not been awarded social-security benefits based on her late partner's entitlement on discriminatory grounds, namely her status as a woman married in accordance with religious rites. Accordingly, Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 was applicable in the instant case.

(b) *Merits*

(i) *Whether the civil or religious nature of a marriage could be a source of discrimination prohibited by Article 14*: Although not lawfully married, the applicant had lived in a monogamous relationship with her partner for twenty-six years until his death, and had six children with him. The Labour Court had rejected the applicant's claim for a survivor's pension and social-security benefits based on her late partner's entitlement because she had not contracted a civil marriage. The present case concerned one of the aspects of personal "status" which could be a source of discrimination prohibited by Article 14, as it was not disputed that the difference in treatment to which the applicant had been subjected with regard to the benefits in question had been based solely on the non-civil nature of her marriage to her partner.

(ii) *Whether there had been an objective and reasonable justification for the difference in treatment*: The institution of monogamous civil marriage as a prerequisite for any religious marriage was aimed at protecting women. Hence, the difference in treatment in question had primarily pursued the legitimate aims of protecting public order and protecting the rights and freedoms of others.

The applicant could not argue that she had a legitimate expectation of obtaining social-security benefits on the basis of her partner's entitlement. The rules laying down the substantive and formal conditions governing civil marriage were clear and accessible and the arrangements for contracting a civil marriage were straightforward and did not place an excessive burden on the persons concerned. Moreover, the applicant had had a sufficiently long time – twenty-six years – in which to contract a civil marriage. There was therefore no justification for her assertion that the efforts she had allegedly undertaken to regularise her situation had been hampered by the cumbersome nature or slowness of the administrative procedures. As to whether the civil-status registrar could or should have regularised her situation of his or her own accord on the basis of the amnesty laws enacted in relation to children born outside marriage, while it was true that the State could regulate civil marriage, this did not mean that it could require persons within its jurisdiction to contract a civil marriage. Furthermore, the amnesty laws in question were simply aimed at improving the situation of children. Accordingly, there had been a reasonable relationship of proportionality between the impugned difference in treatment and the legitimate aim pursued. There had therefore been an objective and reasonable justification for the difference in question.

Conclusion: no violation (unanimously).

Article 8: The Grand Chamber fully agreed with the Chamber's conclusion that Article 8 was applicable. The fact that the applicant and her partner had opted for the religious form of marriage and had not contracted a civil marriage had not entailed any administrative or criminal penalties such as to prevent the applicant from leading an effective family life. There had therefore been no interference by the State with her family life. Accordingly, Article 8 could not be interpreted as imposing an obligation on the State to recognise religious marriage; nor did it require the State to establish a special regime for a particular category of unmarried couples. Hence, the fact that the applicant did not have the status of heir, in accordance with the law, did not imply that there had been a breach of her rights under Article 8.

Conclusion: no violation (unanimously).

(See, conversely, *Muñoz Díaz v. Spain*, no. 49151/07, 8 December 2009, Information Note no. 125)

Refusal, under terms of bilateral agreement, of Estonian pension to servicemen in receipt of Russian military pension: *no violation*

Tarkoev and Others v. Estonia - 14480/08 and 47916/08
Judgment 4.11.2010 [Section V]

Facts – In 1994, on concluding a treaty for the withdrawal of Russian troops from Estonian territory, Estonia and the Russian Federation signed a bilateral agreement whereby retired Russian (Soviet) military personnel on the territory would be entitled to apply for residence permits in Estonia and to receive a Russian military pension. Alternatively, provided they had reached the minimum age for retirement under Estonian law and had worked there for at least fifteen years (excluding time spent in Russian (Soviet) military service), they could apply for an Estonian pension, in which case the Russian pension would be suspended. The applicants, who were former Russian (Soviet) military personnel, were in receipt of both pensions until payments of the Estonian old-age pension were discontinued when the Estonian authorities learned that they were also in receipt of a Russian military pension. In their application to the European Court, the applicants complained that they had been discriminated against when compared to other persons who fulfilled the conditions for the receipt of the Estonian pension. In that connection, they noted that there was no prohibition under Estonian law on receiving an Estonian pension concurrently with a foreign pension and that none of Estonia's other bilateral agreements on social insurance prohibited the award of an Estonian pension to persons who satisfied the conditions for entitlement.

Law – Article 14 in conjunction with Article 1 of Protocol No. 1: Although there was no obligation on a State under Article 1 of Protocol No. 1 to create a welfare or pension scheme, if a State did decide to do so the legislation had to be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements. Article 14 was therefore applicable.

The difference in the applicants' treatment compared to other persons who had completed at least fifteen years of pensionable employment in Estonia was not based on the applicants' nationality or ethnic origin and it was questionable whether it was based on any other personal characteristic or "status". However, it was not necessary to de-

termine that matter because the applicants were not, in any event, in a comparable situation with any other group of pensioners eligible for an Estonian pension.

Firstly, the applicants had received the Russian military pension on the basis of the bilateral agreement that had been signed in 1994 in connection with the withdrawal of the Russian troops. That agreement only applied to persons who had already retired and were in receipt of the Russian military pension when it was signed. The conditions on which the Estonian authorities had agreed to accept the continued presence of Russian military retirees on their territory had to be seen in the context of the Russian Federation's primary obligation to secure the withdrawal of its forces. The agreement did not concern any military pensioners who had moved to Estonia after it was signed. Secondly, those Russian military pensioners who had remained in Estonia had been fully aware at the time that receipt of a Russian military pension would mean that they would not be entitled to an additional Estonian pension if they started or continued work in the civil sphere in Estonia. Thirdly, under the terms of the agreement, the applicants were guaranteed a pension at least equal to the minimum pension in Estonia. Lastly, if not in receipt of the Russian military pension they were entitled to apply for the Estonian old-age pension. While in such a case their years of service in the Russian (Soviet) army would not be taken into account for the calculation of their Estonian pension, Estonia could not be considered responsible for any pension payments for such service. Service in the Russian (Soviet) armed forces formed no part of pensionable employment for anyone under the Estonian legislation, so there was no room to find any different treatment of the applicants in that respect.

Conclusion: no violation (unanimously).

Statutory obligation on car insurers to pay percentage of premiums to bodies responsible for road safety: *inadmissible*

Allianz-Slovenská poisťovňa, a.s., and Others v. Slovakia - 19276/05
Decision 9.11.2010 [Section IV]

(See Article 1 of Protocol No. 1 below, page 26)

ARTICLE 34

Victim

Reopening of proceedings by way of supervisory review: *victim status upheld*

Sakhnovskiy v. Russia - 21272/03
Judgment 2.11.2010 [GC]

(See Article 6 § 3 (c) above, page 13)

Attribution of right relied on to municipality, a governmental organisation, not its members: *inadmissible*

Demirbaş and Others v. Turkey - 1093/08 et al.
Decision 9.11.2010 [Section II]

Facts – Municipal councillors complained, in a personal capacity, about the dissolution of the municipal council for using non-official languages in its activities.

Law – Article 34

a) *Lodging of applications by the applicants in a personal capacity* – The interference concerned the municipality as the services and publications in non-official languages had been provided by the applicants as part of their official municipal functions and financed from the municipality's budget. Moreover, all the members of the council, including the dissident members, had been stripped of their functions, and the use of another language in private activities was entirely free. The applicants, in their capacity as individuals, were free to express themselves regarding the need for multilingual services in the municipalities. However, where they took the decision, in their capacity as mayor and members of the municipal council, to use non-official languages in the activities of the municipal authority, it was the freedom of expression of the legal entity of which they formed part that was in issue as a result of the dissolution of that entity. The freedom invoked was therefore attributable to the legal entity, and not to the applicants themselves. Allowing the applicants to lodge the applications in their personal capacity would not only be tantamount to circumventing the existing case-law but would also pose a problem under Article 34, because it would pave the way for any governmental organisation to lodge this type of application,

through the individuals that made up the organisation or represented it, in respect of any act characterised as an offence by the respondent Government on whose behalf they exercised public authority. In the present case the applicants had used their public-authority prerogatives; otherwise, they would not have had *locus standi* in the proceedings under domestic law. Moreover, the three participants in the proceedings – the municipality, the Ministry of the Interior and the judicial authorities conducting the domestic proceedings – each represented public authority and thus the respondent State. Accordingly, the rights and freedoms relied on by the applicants did not concern them individually but were attributable to the municipality. For the same reasons, the applicants could not be regarded as a "group of individuals" claiming to be a victim of a violation of the rights guaranteed under the Convention, within the meaning of Article 34.

b) *The status of the municipality* – This had been defined in the decision given in the case of *Döşemealtı Belediyesi v. Turkey* (no. 50108/06, 23 March 2010, Information Note no. 128). The dispute under domestic law concerned only the dissolution of the municipal council, and related to the right to carry on, as a decision-making body of a local authority, official activities for the municipality. It was therefore a dispute of a strictly "public" nature and, as such, could not be regarded as concerning "civil rights and obligations" within the meaning of Article 6 § 1. In the light of the foregoing, and in accordance with its well-established case-law, the Court held that local authorities did not have *locus standi* to lodge an application under Article 34.

Conclusion: inadmissible (incompatible *ratione personae*).

ARTICLE 35

Article 35 § 1

Effective domestic remedy – Finland

Complaint under Compensation for Excessive Duration of Judicial Proceedings Act: *effective remedy*

Ahlskog v. Finland - 5238/07
Decision 9.11.2010 [Section IV]

Facts – On 25 January 2007 the applicant lodged an application with the European Court in which he complained of the length of criminal proceedings that had been pending against him before the domestic courts since October 2000. On 1 January 2010 the State introduced new legislation – the Compensation for Excessive Duration of Judicial Proceedings Act no. 362/2009 – which provided a remedy for the excessive length of civil and criminal proceedings. The remedy was specifically designed to accelerate such proceedings and to afford compensation for any damage incurred.

Law – Article 35 § 1: The Government raised a preliminary objection that the applicant had failed to exhaust the new remedy. In view of the wording of the new legislation and recent decisions of the domestic courts that indicated that they were awarding relief of a compensatory nature under the Act, the Court was satisfied that the new remedy was effective in the sense that it was capable of providing adequate redress for the excessive length of proceedings in civil and criminal cases, provided that the impugned proceedings were still pending. Following its approach in Italian, Croatian, Slovak and Polish length-of-proceedings cases and taking into account the purpose and nature of the remedy, as well as the principle of subsidiarity, the applicant was instructed to exhaust the new remedy despite the fact that he had lodged his case with the Court prior to the remedy's introduction.

Conclusion: inadmissible (failure to exhaust domestic remedies).

Article 35 § 3

Abuse of the right of application

Length-of-proceedings complaints in small-claims cases by litigious applicant: *inadmissible*

Dudek v. Germany - 12977/09 et al.
Decision 23.11.2010 [Section V]

Facts – In his application to the European Court, the applicant complained under Articles 6 and 13 of the Convention about the length of proceedings he had issued against a dentist's association in the domestic courts for sums ranging from between EUR 70 and EUR 300.

Law – Article 35 § 3: In view of the pettiness of the sums involved, the Court had to determine whether the complaints were admissible under this provision as amended by Protocol No. 14. The applications could not be dismissed under the new – no significant disadvantage – requirement as, in the absence of an effective domestic remedy against the excessive length of civil proceedings under German law, the case had not been "duly considered by a domestic tribunal".

As to whether the applications amounted to an abuse of the right of individual application, the Court considered that its approach in its decision in *Bock v. Germany* (no. 22051/07, 19 January 2010, Information Note no. 126) remained applicable following the entry into force of Protocol No. 14 as the wording of Article 35 § 3 clearly established that the new requirement was an alternative to and not a replacement of the other inadmissibility criteria. The High Contracting Parties clearly wished the Court to devote more time to cases warranting consideration on the merits, whether seen from the perspective of the legal interest of the individual applicant or considered from the broader perspective of the law of the Convention and the European public order to which it contributed, and had invited it to give full effect to the new admissibility criterion and to consider other possibilities of applying the principle *de minimis non curat praetor*. The criteria for abuse of the right of individual application as established in *Bock* had been met: firstly, no important questions of principle had been involved; secondly, the applicant's conduct of the litigation was not beyond reproach (he had a tendency to issue proceedings in parallel, to lodge voluminous submissions out of time and to make wholly disproportionate claims); and, lastly, the length-of-proceedings issue had already been dealt with by the Court in numerous cases, including cases against the respondent Government.

Conclusion: inadmissible (abuse of the right of individual application).

ARTICLE 41

Just satisfaction

Respondent State required to secure execution of just-satisfaction award by facilitating re-establishment of contact with applicant expelled to non-member State

Muminov v. Russia - 42502/06
Judgment (Just satisfaction) 4.11.2010
[Section I]

In the principal judgment delivered on 11 December 2008, the Court had found, in particular, that the applicant's expulsion to Uzbekistan had given rise to violations of Articles 3 and 13 of the Convention. The Court had also stated in this connection that the absence of any reliable information as to the applicant's situation after his expulsion to Uzbekistan, except for the fact of his conviction, remained a matter of grave concern.

Article 41: The Court's decision to reserve the examination of the question concerning just satisfaction had been, *inter alia*, due to the fact that the applicant had no longer been within the jurisdiction of the respondent State and that after his removal to Uzbekistan he had been convicted and sent to serve a prison sentence in an unspecified detention facility. All contact between him and his representative or between him and the Court had been interrupted. In fact, the Court had had no means of renewing contact with the applicant. Nor had there been any prospect of making any other arrangements which would allow execution of any just satisfaction award made by the Court. Indeed, since the applicant remained within the jurisdiction of a State which was not a High Contracting Party to the Convention, the execution of a just-satisfaction award might prove difficult in the circumstances of the case. In the Court's view, in such a situation it could be expected of the respondent Government that they would cooperate fully in the conduct of the subsequent proceedings, in particular by helping, by appropriate means, to re-establish contact between the applicant and his representative and/or between the applicant and the Court. However, it did not appear that such cooperation had been forthcoming. The Court awarded the applicant EUR 20,000 in respect of non-pecuniary damage and held that the respondent State was to secure, by appropriate means, the execution of the just-satisfaction award, in particular, by facilitating contact between the applicant, on the one hand, and the Committee of Ministers of the Council of Europe acting under Article 46 of the Convention, the applicant's representative in the Convention proceedings or any other person entitled or authorised to represent the applicant in the enforcement proceedings, on the other.

Conclusion: EUR 20,000 in respect of non-pecuniary damage (unanimously).

ARTICLE 46

Execution of a judgment – Measures of a general character

Respondent State required to take measures to enable serving prisoners to vote

Greens and M.T. v. the United Kingdom -
60041/08 and 60054/08
Judgment 23.11.2010 [Section IV]

Facts – In its judgment in *Hirst v. the United Kingdom (no. 2)*[1], the Grand Chamber held that the domestic legislation that imposed a blanket restriction on the right to vote of all convicted prisoners in detention, irrespective of the length of their sentence, the nature or gravity of their offence and their individual circumstances, violated Article 3 of Protocol No. 1. That legislation has not been amended and, as a result, the applicants, as serving prisoners, had been ineligible to vote in both the European Parliamentary elections in June 2009 and the general election in May 2010.

Law – The Court found a violation of Article 3 of Protocol No. 1 and no violation of Article 13 of the Convention. As to Article 41, it noted that, while it was a cause for regret and concern that in the five years which had passed since the *Hirst* judgment no amending measures had been brought forward by the Government, aggravated or punitive damages were not appropriate. The finding of a violation, taken together with the Court's directions under Article 46, constituted sufficient just satisfaction.

Article 46: In view of the United Kingdom's lengthy delay in implementing the decision in *Hirst* and the significant number of repetitive applications that had been received by the Court shortly before and since the May 2010 general election, the Court decided to apply the pilot-judgment procedure.

(a) *Specific measures* – The Court had received approximately 2,500 applications in which a similar complaint had been made, around 1,500 of which had been registered and were awaiting a decision. The number continued to grow and, with each relevant election which passed without amended legislation, there was the potential for numerous new cases to be lodged, there being an estimated 70,000 serving prisoners in the United Kingdom at any one time, all of whom were po- tential applicants. The failure of the United Kingdom to introduce the legislative proposals was not only an aggravating factor as regards its responsibility under the Convention, but also represented a threat to the future effectiveness of the Convention system. While the Court did not consider it appropriate to specify the content of future legislative proposals, the lengthy delay to date had demonstrated the need for a timetable. Accordingly, the United Kingdom was required to introduce legislative proposals to amend the legislation concerned within six months of the instant judgment becoming final, with a view to the enactment of an electoral law to achieve compliance with the Court's judgment in *Hirst* according to any time-scale determined by the Committee of Ministers.

(b) *Comparable cases* – Given the findings in the present judgment, and in *Hirst*, it was clear that every comparable case pending before the Court which satisfied the admissibility criteria would give rise to a violation of Article 3 of Protocol No. 1. No individual examination of comparable cases was required in order to assess appropriate redress and no financial compensation was payable. The only relevant remedy was a change in the law. In the light of that and the six-month deadline fixed for introducing legislative proposals, the Court considered that the continued examination of each comparable case was no longer justified. An amendment to the electoral law to achieve compliance with *Hirst* would also result in compliance with the present and any future judgment in any comparable case. In those circumstances, the Court did not think anything was to be gained, or that justice would be best served, by the repetition of its findings in a lengthy series of similar cases, which would be a significant drain on its resources and add to its already considerable caseload. In particular, such an exercise would not contribute usefully or in any meaningful way to the strengthening of human-rights protection under the Convention. The Court accordingly considered it appropriate to discontinue its examination of all registered applications raising similar complaints pending compliance by the United Kingdom with the instruction to introduce legislative proposals. In the event of such compliance, the Court proposed to strike out all such registered cases, without prejudice to its power to restore them to the list should the United Kingdom fail to comply. The Court also considered it appropriate to suspend the treatment of such applications which had not yet been registered, as well as future applications, without prejudice to any decision to recommence treatment of those cases if necessary.

1. 6 October 2005, no. 74025/01, Information Note no. 79.

ARTICLE 57

Reservations

Latvia's reservation under Article 1 of Protocol No. 1 in respect of unlawfully expropriated property and privatisation: *reservation not applicable*

Liepājnieks v. Latvia - 37586/06
Decision 2.11.2010 [Section III]

Facts – Since 1969 the applicant had lived in a nationalised flat on the basis of a lease agreement concluded for an indefinite term. Following the restoration of Latvian independence in 1991, all decrees on nationalisation were declared null and void and nationalised buildings were to be restored to their previous owners or their heirs. Former lease agreements concluded with tenants continued to be binding, however, and, for the first seven years, the tenants could not be evicted without being offered alternative accommodation. Until 2007 the amount of rent payable had a statutory limit set by the State, but after that date owners were free to increase it. In August 2008 the applicant moved out of his flat, allegedly because he could no longer afford to pay the rent. He never instituted proceedings challenging the amount of rent, but instead lodged a civil and, subsequently, an administrative claim against the local authorities and the State for compensation. His claims were rejected after the domestic courts concluded that he had no subjective right to compensation under domestic law.

Law – The Government argued that the Court was precluded from examining the case by virtue of Latvia's reservation under Article 1 of Protocol No. 1, which had been declared compatible with Article 57 of the Convention in a previous case (*Kozlova and Smirnova v. Latvia* (dec.), no. 57381/00, 23 October 2001, Information Note no. 35). The reservation related to laws regulating the restoration or compensation to former owners of, *inter alia*, nationalised property during the Soviet regime and to laws concerning privatisation. However, the subject-matter of the domestic proceedings in the applicant's case was not the restoration or compensation of unlawfully expropriated property, nor was it privatisation. Former owners or their legal heirs were not involved in those proceedings, which concerned primarily the alleged violation by the State of the applicant's 1969 lease. Finally, the domestic courts had not examined or applied the laws on property reforms as listed in the reservation. For these reasons, Latvia's reservation could not be applicable to the applicant's case. However, given that the applicant had voluntarily moved out of the flat without an eviction order ever being issued, the Court considered that he could no longer claim to be a victim of the alleged violation of his property rights.

Conclusion: inadmissible (incompatible *ratione personae*).

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Statutory obligation on car insurers to pay percentage of premiums to road-safety bodies: *inadmissible*

Allianz-Slovenská poisťovňa, a.s., and Others v. Slovakia - 19276/05
Decision 9.11.2010 [Section IV]

Facts – In their application to the European Court, the applicants, who are private insurance companies, complained of their statutory obligation to pay 8% of premiums collected for road-traffic insurance to the Ministry of the Interior for the benefit of the emergency services and other road-safety bodies.

Law – Article 1 of Protocol No. 1: The obligation to pay the contributions amounted to an interference with the applicant companies' right to the peaceful enjoyment of their possessions. That interference had a legal basis and pursued the legitimate aim of road safety that was "in accordance with the general interest". The duty to transfer 8% of collected premiums was imposed not only on the applicant companies but on all providers of insurance for liability for damage caused by the operation of motor vehicles and only in respect of premiums collected for providing this specific type of insurance. No specific facts or arguments had been submitted to establish, by means of calculation or other verifiable assessment, that the scope of the duty under the legislation was prohibitive, oppressive or otherwise disproportionate.

Conclusion: inadmissible (manifestly ill-founded).

Article 14 in conjunction with Article 1 of Protocol No. 1: The applicant companies had argued that they were in an analogous situation to other entrepreneurs but had been treated differently in that they were required to make contributions under the legislation. The Court noted, however, that the applicant companies' situation appeared to be different from that of other entrepreneurs, including insurers who did not provide road-accident insurance, and that in providing that specific type of insurance they had the advantage of a secure market created by the statutory duty of all road users to take out such insurance. All providers of insurance in that market were subject to the same regime as the applicant companies. In any event, even assuming that they could be considered to be in a relevantly similar situation to that of other entrepreneurs, the reasons given for disposing of the

applicant companies' complaint under Article 1 of Protocol No. 1 sufficed to show objective and reasonable justification for any difference of treatment.

Conclusion: inadmissible (manifestly ill-founded).

Deprivation of property

Compensation award for expropriation wholly absorbed by legal costs: *violation*

Perdigão v. Portugal - 24768/06
Judgment 16.11.2010 [GC]

Facts – The applicants claimed more than twenty million euros in compensation for the expropriation of their land, a sum which took into account the profit they could have made from a quarry on the expropriated land. The Court of Appeal rejected their claim, considering that the potential profit from the quarry should not be taken into account, and fixed the compensation at approximately EUR 197,000. However, the court fees the applicants were asked to pay as the losing side in the proceedings exceeded that sum, so not only did the amount awarded in compensation eventually revert to the State, but the applicants had to pay another EUR 15,000. In a judgment of 4 August 2009 a Chamber of the Court found, by five votes to two, that there had been a violation of Article 1 of Protocol No. 1 (see Information Note no. 122).

Law – Article 1 of Protocol No. 1: (a) *Applicability* – The applicants' complaint concerned the way in which the regulations governing court fees – which are considered as "contributions" within the meaning of Article 1 of Protocol No. 1 – had been applied in their particular case.

(b) *Merits* – The applicants did not dispute the lawfulness of the expropriation or the regulations governing court fees. Nor did there appear to have been anything arbitrary about the proceedings. The Contracting States enjoyed a wide margin of appreciation in taking the measures they considered necessary to protect the balanced funding of their justice systems in the general interest. However, the intended outcome of Article 1 of Protocol No. 1 had not been achieved by the regulations as applied in this particular case: not only had the applicants lost their land, but they had also had to pay the State EUR 15,000. The applicants' conduct had certainly contributed to the size of the court fees, as they had claimed a sum well in excess of the compensation figures suggested in the various expert reports produced in the course of the proceedings. And under the relevant Portuguese legislation, claiming such a large sum affected the final amount of the court fees. Also, their appeals against the size of the court fees fixed by the domestic courts had given rise to a number of court decisions. However, neither the applicants' conduct nor the procedural activity set in motion could justify court fees so high as to result in a complete lack of compensation for an expropriation. The applicants had thus had to bear an excessive burden which had upset the fair balance which must be struck between the general interest of the community and the fundamental rights of the individual.

Conclusion: violation (fourteen votes to three).

Article 41: EUR 190,000 in respect of pecuniary and non-pecuniary damage.

Control of the use of property

Refusal by State to honour contractual obligations following introduction of new regulations: *violation*

Richet and Le Ber v. France - 18990/07 and 23905/07
Judgment 18.11.2010 [Section V]

Facts – The applicants inherited an island. In 1969 the State expressed an interest in purchasing the island from the family, who were looking to sell part of their land. Undertakings to sell were signed in December 1970 and it was agreed that some of the land would be kept and built upon. In January 1971 the National Real Property Transactions and Architectural Commission issued a favourable opinion on the transaction and specified that the area of land which could be built on should remain static and should not be affected by changes within the urban planning area. The sales went through in May 1971. In 1978 a draft land-use plan for the municipality was drawn up with a view to preventing all new building on the island because of its environmental value. Observing that the plan took no account, or only partial account, of the State's undertakings arising out of the deeds of sale, the applicants appealed to the authorities, and in particular the prefect, without success. The land-use plan was approved in 1985. As a result, the applications for planning permission lodged by the applicants were turned down. They appealed unsuccessfully to the administrative and the ordinary courts.

Law – Article 1 of Protocol No. 1

(a) *Whether the applicants had a possession* – The guarantee given to the applicants that they would

be able to remain on part of the land and would also retain the right to erect certain buildings on it had been written into the main documents relating to the sale. Nowhere in the deeds of sale or in any of the related documents had it been indicated that the option to build was contingent upon the urban planning rules. The applicants had been granted building rights under the deeds of sale and had had a legitimate expectation of being able to exercise those rights under the contractual conditions laid down. They had therefore had a "possession" within the meaning of Article 1 of Protocol No. 1.

(b) *Whether Article 1 of Protocol No. 1 had been complied with* – There had been interference with the applicants' right to the peaceful enjoyment of their possessions since the authorities had prevented them from enjoying their right to build on the plots of land they had retained, under the terms laid down by the deeds of sale. The measures amounted to a control of the applicants' "use of property" within the meaning of the second paragraph of Article 1 of Protocol No. 1. There was no doubt that the State, in concluding the sales by private treaty, had pursued a legitimate aim in the public interest, namely the protection of the environment and in particular the conservation of the island, and that the interference complained of had pursued the same goal. The applicants could not be criticised for not having constructed the buildings provided for in the deeds of sale before the land-use plan was adopted. On being informed of a possible change in the urban planning regulations and of the adoption of a land-use plan for the municipality replacing the previous rules for the urban planning area, they had contacted the authorities to remind the latter of the State's contractual undertakings and to try to ensure that the urban planning documents reflected them. When this initiative failed to produce any result, the applicants had brought proceedings through two sets of courts, without success, seeking the performance of the contracts or their setting-aside with payment of compensation for the damage sustained. In addition to the fact that the State, regard being had to its powers and the scope of its authority, had played an active and decisive role in the negotiation and drawing-up of the deeds of sale, the authorities had been aware of the scope of their contractual undertakings and their impact on the environment of the island but had taken no steps to honour their commitments. Had the planned buildings actually been incompatible with the conservation of the site, the authorities should have offered the applicants financial compensation or compensation in kind for the damage they had suffered on account of the failure to comply with the deeds of sale. Hence, the authorities' conduct had deprived the applicants of effective enjoyment of their rights and of the opportunity, failing such enjoyment, to either renegotiate the deeds of sale or receive compensation for the damage sustained. The applicants had therefore had to bear an individual and excessive burden which had upset the fair balance to be struck between the protection of their property and the demands of the general interest.

Conclusion: violation (unanimously).

Article 41: EUR 700,000 to Mrs Le Ber and EUR 800,000 jointly to the other applicants in respect of pecuniary damage; EUR 10,000 to Mrs Le Ber and EUR 3,000 to each of the other applicants in respect of non-pecuniary damage.

ARTICLE 3 OF PROTOCOL No. 1

Free expression of opinion of people

Failure for more than thirty years to introduce legislation giving practical effect to expatriates' constitutional right to vote in parliamentary elections from overseas: *case referred to the Grand Chamber*

Sitaropoulos and Giakoumopoulos v. Greece - 42202/07
Judgment 8.7.2010 [Section I]

Facts – In a fax of September 2007 to the Greek Ambassador in France, the applicants, who were permanent residents in France, expressed the wish to exercise their voting rights in France in the Greek parliamentary elections. The Ambassador replied that their request could not be granted "for objective reasons", namely the absence of the legislative regulation that was required in order to define "special measures ... for the setting-up of polling stations in Embassies and Consulates". As a result, the applicants did not exercise their right to vote in the elections.

In a judgment of 8 July 2010 (see Information Note no. 132), the Court held by five votes to two that there had been a violation of Article 3 of Protocol No. 1, finding a breach of the right to free elections on account of the State's failure to take effective measures to implement the provision of the Constitution that permitted the legislature to

lay down the conditions for the exercise of voting rights by expatriate voters.

On 22 November 2010 the case was referred to the Grand Chamber at the Government's request.

ARTICLE 3 OF PROTOCOL No. 7

New or newly discovered facts

Compensation following reversal of a criminal conviction in the light of a change in political regime: *inadmissible*

Bachowski v. Poland - 32463/06
Decision 2.11.2010 [Section IV]

Facts – In 1959 the applicant was convicted of the "dissemination of false information" and sentenced to three years' imprisonment for circulating leaflets criticising the Soviet Union's domination of Poland. In 2001 his conviction was reversed following a cassation appeal brought by the Ombudsman on his behalf. In those proceedings the Supreme Court held that the applicant had not committed the offence of which he had been convicted and that his conviction had been based on an unacceptable interpretation and application of the substantive criminal law. In 2004 a regional court awarded him compensation. The applicant unsuccessfully appealed against the level of that award, which he considered too low.

Law – Article 3 of Protocol No. 7: The Court concurred with the conclusions of the domestic courts overturning the applicant's conviction. It would be incompatible with both the tenets of the rule of law and respect for human rights if a criminal conviction manifestly motivated by the goals of an oppressive political regime remained valid after the convicted person requested to have it reversed in accordance with the applicable provisions of domestic law. However, the applicant's acquittal was the result of a reassessment by the Supreme Court of the evidence which had already been used and was known to the court in 1959, not of new facts. In this context, the Court noted the statements in the Explanatory Report that Article 3 of Protocol No. 7 was applicable only when the original conviction had been reversed because of a new or newly discovered fact showing conclusively that in the original proceedings there had been a serious failure in the judicial process. This indicated that it was the intention of the drafters to delineate the scope of the application of Article 3 of Protocol No. 7 in a narrow manner, with the right to compensation being excluded in respect of reversals of conviction that were based on some other ground than that related to new or newly discovered facts. Therefore, the circumstances of the case did not fall within the scope of Article 3 of Protocol No. 7.

Conclusion: inadmissible (incompatible *ratione materiae*).

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

The following cases have been referred to the Grand Chamber in accordance with Article 43 § 2 of the Convention:

Aksu v. Turkey - 4149/04 and 41029/04
Judgment 27.7.2010 [Section II]

(See Article 14 above, page 18)

Creangă v. Romania - 29226/03
Judgment 15.6.2010 [Section III]

(See Article 5 § 1 above, page 8)

Sitaropoulos and Giakoumopoulos v. Greece - 42202/07
Judgment 8.7.2010 [Section I]

(See Article 3 of Protocol No. 1 above, page 28)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

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

(See Article 10 above, page 18)