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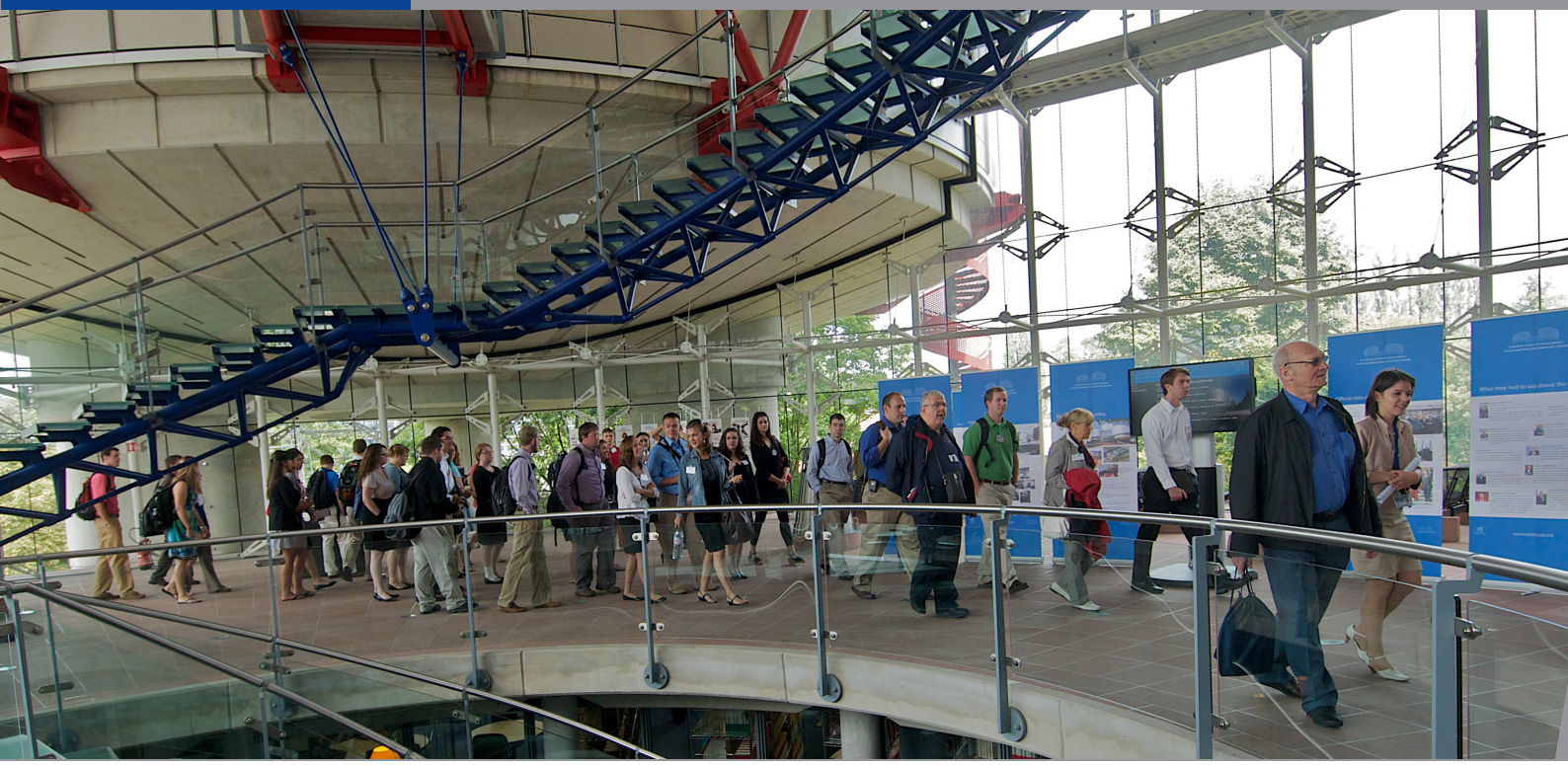

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ARTICLE 5 § 3

Brought promptly before judge or other officer

Lack of independence of military court owing to judges' appraisal system and presence of active officer on the bench: *violation*

Kerman v. Turkey, 35132/05, judgment 22.11.2016 [Section II]

Facts – The applicant, a serviceman, was suspected of abuse of office. In April 2005 a military court decided to place him in pre-trial detention; the court was composed of two permanent military judges and an officer sitting as an *ad hoc* judge. The applicant unsuccessfully applied for release; another military court dismissed his appeal. Having been committed for trial, the applicant was released from pre-trial detention in August 2005. In 2009 the military court convicted him, but decided to suspend pronouncement of the judgment for a period of five years; at the end of this probation period, the judgment was set aside and the case struck out.

Law

Article 5 § 3: The military court which had ordered the applicant's placement in pre-trial detention lacked the requisite independence:

(i) the officer who sat as an *ad hoc* judge did not enjoy the same constitutional safeguards as the permanent judges. He continued to serve as an officer throughout the period he sat on the judicial bench, and was in this capacity subject to military discipline. In addition, the officers who were called upon to sit as judges were appointed on a case-by-case basis by the military hierarchy, that is, by the executive. In those circumstances, this member of the court did not present sufficient guarantees of independence to be able to be considered a "judge or other officer" for the purposes of Article 5 § 3 of the Convention;

(ii) the appraisal system for the other judges involved a high-ranking military officer. The possibility that a member of the military hierarchy might be tempted to exert pressure on them through their "officer's appraisal sheet" was such as to affect the appearance of independence that the judges had a duty to present.

Moreover, the Turkish Constitutional Court had itself held in two judgments of 2009 that these two circumstances (the presence of a serving officer and the appraisal system for the other judges) infringed the principle of the independence of the justice system.

Conclusion: violation (unanimously).

Article 5 § 4: The military courts which had examined the applicant's requests for review of the lawfulness of his detention at first and second instance had the same lack of guarantees of independence as that found under Article 5 § 3.

Conclusion: violation (unanimously).

Article 5 § 5: At the relevant time there was no legal provision allowing for the possibility of claiming reparation for damage sustained as a result of procedural shortcomings or a lack of independence resulting from the legislation itself.

Conclusion: violation (unanimously).

Article 6: The applicant could no longer claim to be the victim of the alleged various breaches of his right to a fair trial. In this connection, the suspension of the "pronouncement" of the judgment enjoyed by the applicant was to be distinguished from a straightforward suspension of the "execution" of a judgment (see *Böber v. Turkey*, 62590/09, 9 April 2013). In the present case, the applicant had ultimately never been convicted in a final judgment, and no entry had been made in his criminal record. He had not been required to comply with any obligation during the probation period. All the damaging consequences of the alleged lack of fairness in the proceedings had thus been erased.

Conclusion: inadmissible (lack of victim status).

Article 41: EUR 6,500 in respect of non-pecuniary damage; claim in respect of pecuniary damage rejected.

ARTICLE 6

ARTICLE 6 § 1 (CIVIL)

Access to court

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

Greek-Catholic Parish of Lupeni and Others v. Romania, 76943/11, judgment 29.11.2016 [GC]

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

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

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

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

By a judgment of 19 May 2015 (see Information Note 185), a Chamber of the Court concluded, unanimously, that there had been no violation of Article 6 § 1 and of Article 14 taken together with Article 6 § 1.

On 19 October 2015 the case was referred to the Grand Chamber at the applicants' request.

Law – Article 6 § 1: The action brought by the applicants concerned a civil right and was intended to establish, through the courts, a right of ownership, even if the subject matter of the dispute was a place of worship. It followed that Article 6 § 1 of the Convention was applicable in the present case.

(a) *Right of access to a court* – The applicants had not been prevented from bringing their action for restitution of the church building before the domestic courts, which had carried out a detailed examination of their case.

The domestic courts, which were independent and impartial, had a discretionary power of assessment in exercising their jurisdictional competence, and their role was not limited to endorsing a predetermined outcome.

Thus, what was at stake in the present case was not a procedural obstacle hindering the applicants' access to the courts, but a substantive provision which, while it was such as to have an impact on the outcome of the proceedings, did not prevent the courts from examining the merits of the dispute. In reality, the applicants complained about the difficulty in satisfying the conditions imposed by substantive law in order to obtain restitution of the place of worship in question.

Yet the distinction between procedural and substantive elements remained determinative of the applicability and, as appropriate, the scope of the guarantees of Article 6 of the Convention, which could, in principle, have no application to substantive limitations on a right existing under domestic law.

The criterion of the worshippers' wishes in issue in the present case could not be considered as limiting in any way the courts' jurisdiction to decide actions for recovery of possession in respect of places of worship, but as qualifying a substantive right. The domestic courts in the present case had had full jurisdiction to apply and interpret the national law, without being bound by the refusal of the Orthodox parish to reach a friendly settlement in the context of the procedure before the joint committee.

The criterion in dispute had given rise to heated debates when it was adopted by Parliament and when the amendments made to Legislative Decree no. 126/1990 by Law no. 182/2005 were adopted. Equally, both of the Churches concerned had been consulted as part of the legislative process that resulted in adoption of the criterion in dispute. The Constitutional Court's case-law had been consistent with regard to the compatibility of this criterion with the Constitution, both in its application by the joint committees and when applied in the context of judicial proceedings based on the provisions of ordinary law.

In the *Sâmbata Bihor Greek Catholic Parish v. Romania* judgment (48107/99, 12 January 2010, Information Note 126), the Court had found a restriction on the right of access to a court after examining the legislative framework which existed prior to the amendments made to the text of Article 3 of Legislative Decree no. 126/1990 by Ordinance no. 64/2004 and Law no. 182/2005, and thus before the possibility, clearly provided for by these amendments, of bringing legal proceedings based on the provisions of ordinary law had become available.

Having regard to the considerations set out above, the applicants had not been deprived of the right to a determination of the merits of their claims concerning their property right over a place of worship. The difficulties encountered by the applicants in their attempts to secure the return of the contested church building had resulted from the applicable substantive law and were unrelated to any limitation on the right of access to a court.

Conclusion: no violation (twelve votes to five).

(b) *Compliance with the principle of legal certainty* – The conflicting interpretation of the concept of "ordinary law" had existed within the High Court itself, called upon to settle these disputes at last instance. It had been reflected in the decisions taken by the lower courts, which had also delivered contradictory judgments.

From 2012 onwards the High Court and the Constitutional Court had aligned their respective positions in procedures concerning the restitution of places of worship, which had resulted, in practice, in harmonisation of the case-law of the lower courts.

Nonetheless, from 2007 to 2012 the High Court had delivered judgments that were diametrically opposed. These fluctuations in judicial interpretation could not be regarded as evolving case-law which is an inherent trait of any judicial system, given that the High Court had reversed its position.

Lastly, the legal uncertainty had concerned, successively, the questions of access to a court and the applicable substantive law.

It followed that in the present case "profound and long-standing differences" had existed in the case-law, within the meaning of the Grand Chamber judgment in the case of *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], 13279/05, 20 October 2011, Information Note 145).

The context in which the action brought by the applicants had been examined, namely one of uncertainty in the case-law, coupled with the failure to make prompt use of the mechanism foreseen under domestic law for ensuring consistent practice even within the highest court in the country, had undermined the principle of legal certainty and, in so doing, had had the effect of depriving the applicants of a fair hearing.

Conclusion: violation (unanimously).

The Court also held, by twelve votes to five, that there had been no violation of Article 14 taken together with Article 6 § 1, given that there had been no difference in treatment between the applicants and the defendant in respect of the possibility of applying to the courts and obtaining a judicial decision on the action to recover possession of the place of worship; and, unanimously, that there had been a violation of Article 6 § 1, on the ground that the applicants' case had not been heard within a reasonable time.

Article 41: EUR 4,700 to the applicants jointly in respect of non-pecuniary damage.

(See also *Beian v. Romania*, 30658/05, 6 December 2007, Information Note 103; *Albu and Others v. Romania*, 34796/09, 10 May 2012, Information Note 152; and *Ferreira Santos Pardal v. Portugal*, 30123/10, 30 July 2015)

Absence of universal jurisdiction of civil courts in torture cases: *case referred to the Grand Chamber*

Naït-Liman v. Switzerland, 51357/07, judgment 21.6.2016 [Section II]

During a brief stay in a Swiss hospital in 2001 by a former Minister of the Interior of the Republic of Tunisia, the applicant, a Tunisian political refugee who had settled in Switzerland in 1993, lodged a

criminal complaint against him for allegedly torturing him in 1992 on the premises of the Ministry of the Interior in Tunisia. The proceedings in respect of his complaint were discontinued on the grounds that the former minister had left Switzerland. The applicant then brought a civil action against the former minister and the Tunisian State seeking damages. However, the Swiss courts declined jurisdiction on the grounds that there was an insufficient link connecting the alleged facts with Switzerland.

In a judgment of 21 June 2016 (see Information Note 197), a Chamber of the Court had concluded, by four votes to three, that there had been no violation of Article 6 § 1 of the Convention, on the grounds, *inter alia*, that

(i) the decision of the Swiss courts to decline jurisdiction as "forum of necessity" within the meaning of the domestic law (section 3 of the Federal Act on International Private Law) was not arbitrary; and

(ii) no binding provision of international law – whether a treaty or customary law – required the respondent State to accept universal civil jurisdiction.

The Chamber held that, notwithstanding the fact that the prohibition of torture was a rule of *jus cogens*, the decision of the Swiss courts to decline jurisdiction regarding the applicant's claim for damages had pursued legitimate aims and been proportionate to those aims and had not reduced the applicant's right of access to a court to such an extent that the very essence of the right was impaired.

On 28 November 2016 the case was referred to the Grand Chamber at the request of the applicant.

Grant of State immunity from jurisdiction in respect of claim for unfair dismissal by Embassy employee working on cultural and information matters: *inadmissible* (Sweden); *violation* (Lithuania)

Naku v. Lithuania and Sweden, 26126/07, judgment 8.11.2016 [Section IV]

Facts – The applicant worked at the Swedish Embassy in Vilnius (Lithuania) from 1992 until 2006. She was initially employed as a receptionist and translator but in 2001, following a letter she had sent to the Swedish ambassador requesting a salary increase, her contractual work description was amended to cover cultural and information matters. The applicant was also chair of the trade union for locally employed staff at the Embassy. In 2005 she was dismissed from her job at the Embassy. She challenged her dismissal in the Lithuanian courts but they declined jurisdiction on the grounds of State immunity after the Supreme Court noted that under Lithuanian law everyone working in a diplomatic representation of a foreign State contributed to the performance of the sovereign rights of that State, carrying out public-law functions, and was therefore considered to be employed in the civil service of that State.

In the Convention proceedings, the applicant alleged that she had been deprived of her right of access to a court on account of the jurisdictional immunity invoked by her employer and upheld by the Lithuanian courts.

Law – Article 6 § 1

(a) *Complaint against Sweden* – Although Sweden was the defendant in the proceedings brought by the applicant, the proceedings had been conducted exclusively in Lithuania and the Lithuanian courts were the only bodies with sovereign power over the applicant. The fact that the Swedish ambassador had raised the defence of sovereign immunity before the Lithuanian courts, where the applicant had decided to institute proceedings, did not suffice to bring the applicant "within the jurisdiction" of Sweden for the purposes of Article 1 of the Convention.

Conclusion: inadmissible (incompatible *ratione personae*).

(b) *Complaint against Lithuania* – On the basis of her job description in the contract of 2001 and subsequently, the Court was ready to accept that the applicant worked on culture and information matters and was thus involved in the Embassy's activities in that field. It noted, however, that her job description stated that she was to act "in consultation", or "in cooperation with and under the guidance" of Swedish diplomatic staff. Furthermore, although the applicant was also the head of the trade union for locally employed staff, it had not been shown how those duties could objectively have been linked to Sweden's sovereign interests.

While the Court could not overlook the applicant's own written statement which accentuated the importance of her duties at the Embassy in her request for a rise in salary or the conflict between

her and the new counsellor for cultural affairs which had later arisen over her responsibilities, it was precisely the scope of the applicant's actual duties that should have been examined in substance by the Lithuanian courts in order to determine whether she "performed particular functions in the exercise of governmental authority".

By plainly considering that everyone who worked in a diplomatic representation of a foreign State, including the administrative, technical and service personnel, by virtue of that employment alone in one way or another contributed to the meeting of the sovereign goals of a represented State, and thus upholding an objection based on State immunity and dismissing the applicant's claim without giving relevant and sufficient reasons, the Lithuanian courts had impaired the very essence of the applicant's right of access to a court.

Conclusion: violation (unanimously).

Article 41: EUR 8,000 in respect of non-pecuniary damage; a retrial or reopening of the case, if the applicant so requested, represented in principle an appropriate way of redressing the violation.

(See also *Cudak v. Lithuania* [GC], 15869/02, 23 March 2010, Information Note 128)

Fair hearing

Profound and lasting divergences in the case-law of a superior court and failure to use mechanism designed to avoid case-law conflict: *violation*

Greek-Catholic Parish of Lupeni and Others v. Romania, 76943/11, judgment 29.11.2016 [GC]

(See above, page 6)

Failure of domestic authorities to thoroughly assess evidence in civil proceedings: *violation*

Saliba v. Malta, 24221/13, judgment 29.11.2016 [Section IV]

Facts – Mr and Ms Z. sued the applicant in civil proceedings for damage resulting from a robbery that had taken place in their home five years previously. In retrospect, although he had not done so at the time, Mr Z considered that he recognised the applicant as one of the robbers. The applicant complained that he had been denied a fair trial contrary to Article 6 of the Convention as the domestic courts had failed to give attention to the validity, credibility and relevance of the evidence before them.

Law – Article 6 § 1: Article 6 § 1 placed a tribunal under a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties. Contracting States had greater latitude when dealing with cases concerning civil rights and obligations than they had when dealing with criminal cases. However, when examining proceedings that fell within the civil-law aspect of Article 6 it was necessary to draw inspiration from the approach to criminal-law matters. There was no doubt that in cases imputing civil responsibility for damage arising out of criminal acts it was imperative that the domestic decisions were based on a thorough assessment of the evidence presented and that the decisions contained adequate reasons due to the harsh consequences which could ensue from such findings.

The first-instance court's conclusions were based on Mr Z's inconsistent testimony. No account had been taken of witness statements raising doubts as to the veracity of his testimony. In a criminal context inconsistencies between a witness's own statements given at various stages, as well as serious inconsistencies between different types of evidence, would normally give rise to a serious ground for challenging the credibility of the witness and the probative value of his or her testimony. It was striking that, while highlighting Mr Z's inconsistencies, the domestic court gave no reasons as to why it considered that his statements remained credible and reliable. Such consideration was all the more necessary given that Mr Z's identification of the applicant had occurred only five years after the robbery.

Conclusion: violation (unanimously).

Article 41: most appropriate form of redress would be reopening of the proceedings should the applicant so request; EUR 10,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

Oral hearing

Lack of substantive reasons for small-claims court's refusal to hold oral hearing: *violation*

Pönkä v. Estonia, 64160/11, judgment 8.11.2016 [Section II]

Facts – The applicant, a Finnish national, was convicted of murder in an Estonian court and transferred to Finland to serve his sentence. A civil claim was subsequently brought against him in the Estonian courts. In view of the low value of the claim, it was dealt with under a simplified (small-claims) procedure and the applicant's request for an oral hearing was refused. In the Convention proceedings, the applicant complained that the lack of an oral hearing had deprived him and two witnesses he wished to call of the opportunity to give evidence.

Law – Article 6 § 1: According to the Court's established case-law, in proceedings before a court of first and only instance, the right to a "public hearing" within the meaning of Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing. The exceptional character of the circumstances that may justify dispensing with an oral hearing essentially come down to the nature of the issues to be decided by the national court (for example, where the proceedings concern exclusively legal or highly technical questions (*Koottummel v. Austria*, 49616/06, 10 December 2009, Information Note 125) or raise no questions of fact or law which could not be adequately resolved on the basis of the case-file and the parties' written observations (*Döry v. Sweden*, 28394/95, 12 November 2002, Information Note 47)). Other than in wholly exceptional circumstances, litigants must at least have the opportunity of requesting a public hearing.

In the instant case, the decision of the domestic court to opt for a written procedure did not mention the nature of the issues before it or whether they could be examined without holding a hearing. Furthermore, even though the applicant's defence raised certain questions of fact, the decision made no mention of his request for evidence to be taken from him and the witnesses. Although the applicant had requested an oral hearing, the domestic court in substance had given no reasons for refusing his request, but merely cited Article 404 of the Code of Civil Procedure[1] without explaining why it was applicable in the applicant's case. In this connection, the Court noted that, pursuant to Article 5 of Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure – which had served as the basis for the relevant provisions of Estonian law – the domestic court would have been under an obligation to give reasons for such refusal in writing. Lastly, although the Court acknowledged that there had been a practical problem in that the applicant was serving his prison sentence in Finland at the material time, it observed that "hearing" the applicant did not necessarily have to take the form of an oral hearing in a court room in Estonia. However, it did not appear that the domestic court had considered other alternative procedural options (such as the use of modern communications technology) with a view to ensuring the applicant's right to be heard orally.

Conclusion: violation (five votes to two).

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

ARTICLE 6 § 1 (CRIMINAL)

Fair hearing

Adequate procedural safeguards in place to enable accused to understand reasons for jury's guilty verdict in assize court: *no violation*

Lhermitte v. Belgium, 34238/09, judgment 29.11.2016 [GC]

Facts – The applicant was committed to stand trial for the murder of her five children. She was tried in 2008 by an Assize Court composed of three judges and a lay jury. Her defence counsel argued that at the time of the events she had been suffering from a mental disturbance making her incapable of controlling her actions. Having initially taken the opposite view, the psychiatric experts ultimately supported this opinion in the light of certain new items of evidence produced at the trial. The jury, however, answered "yes" to the questions of guilt and premeditation. On the same day, the Assize Court sentenced the applicant to life imprisonment. The Court of Cassation dismissed a subsequent appeal on points of law in which the applicant had

1. Article 404 allows a court trying a civil claim below a certain value to conduct written proceedings if a party has significant difficulties in appearing before the court due to the length of the journey or for another good reason. It further provides that the written proceedings shall be cancelled if, in the opinion of the court, the personal appearance of the parties is unavoidable for ascertaining the facts on which the action is based or if the party due to whom the written proceedings were ordered applies for adjudication of the matter in a court hearing.

complained of the lack of reasons given for the jury's verdict and the sentencing judgment.

In a judgment of 26 May 2015 (see Information Note 185) a Chamber of the Court held that there had been no violation of Article 6 § 1 of the Convention, finding in particular that the combination of the questions to the jury, the Assize Court's sentencing judgment and the Court of Cassation's subsequent judgment had made it possible for the applicant to understand the reasons for her conviction.

On 14 September 2015 the case was referred to the Grand Chamber at the applicant's request.

Law – Article 6 § 1: The case did not relate either to whether and how the impugned acts had been committed – both of which matters were established and had been admitted by the applicant – or to the legal characterisation of the offences or the severity of the sentence. The question arising was whether or not the applicant had been able to understand the reasons why the jury had found that she had been responsible for her actions at the material time, despite the fact that the psychiatric experts had changed their opinion at the end of the hearing. The Court answered this question in the affirmative, on the basis of the following observations and considerations.

(a) *Adversarial nature of the proceedings* – The following safeguards had been in place during the trial:

(i) at the start of the trial the indictment had been read out in full and the nature of the offence forming the basis of the charge and any circumstances that might aggravate or mitigate the sentence had likewise been indicated;

(ii) the case against the applicant had then been the subject of adversarial argument, each item of evidence being examined and the defendant, assisted by counsel, having the opportunity to call witnesses and respond to the testimony heard; and

(iii) the questions put by the president to the twelve members of the jury at the end of the ten-day hearing had been read out and the parties had been given a copy.

(b) *Combined impact of the indictment and the questions to the jury* – Firstly, counsel for the applicant had not raised any objections on learning of the president's questions to the jury, seeking neither to amend them nor to propose others.

Furthermore, since the first question had concerned the applicant's guilt, a positive answer necessarily implied that in the jury's view, she had been responsible for her actions at the material time. The applicant could not therefore maintain that she had been unable to understand the jury's position on this matter.

Admittedly, the jury had not provided any reasons for its finding in that regard. However, compliance with the requirements of a fair trial had to be assessed on the basis of the proceedings as a whole by examining whether, in the light of all the circumstances of the case, the procedure followed had made it possible for the accused to understand why he or she had been found guilty.

Such an examination in the present case revealed a number of factors that might have dispelled any doubts on the applicant's part as to the jurors' conviction that she had been criminally responsible at the time of the events:

(i) From its preliminary stage, the investigation had focused on the applicant's psychological state at the time of the killings. The indictment, which had been some fifty pages long, had given an account of the precise sequence of events, the steps taken and evidence obtained during the investigation, and the forensic medical reports, but a substantial part of it had also discussed the applicant's personal history and family life and the motives and reasons that had prompted her to carry out the killings, particularly in the light of the expert assessments of her psychological and mental state.

Admittedly, the indictment had been of limited effect in assisting an understanding of the verdict to be reached by the jury, since it had been filed before the trial hearing, the crucial part of proceedings in the Assize Court; Article 6 required an understanding not of the reasons that had prompted the judicial investigating bodies to send the case for trial in the Assize Court, but rather of the reasons that had persuaded the members of the jury, after attending the trial hearing, to reach their decision on the issue of guilt. Moreover, the Court could not speculate as to whether or not the findings of fact set out in the indictment had influenced the deliberations and the decision ultimately reached by the jury.

(ii) During the trial in the Assize Court, the question of the applicant's criminal responsibility had been a central focus of the proceedings, since the emergence of new evidence had led the president

to order a further psychiatric assessment, the conclusions of which had then been examined.

(iii) The sentencing judgment had explicitly mentioned both the applicant's resolve to commit the murders and the cold-blooded manner in which she had carried them out. The conclusion as to her criminal responsibility had been logical in view of the jury's answers to the questions. The Court of Cassation, moreover, had not interpreted the sentencing judgment in any other way, since it had held that consideration of the applicant's cold-blooded manner and her determination to carry out her crimes had constituted the Assize Court's reason for finding that she had been criminally responsible at the time of the events.

(c) *Drafting of the sentencing judgment by professional judges who had not attended the deliberations on the issue of guilt* – This factor could not call into question the value and impact of the explanations provided to the applicant, seeing that:

(i) the explanations had been provided without delay, at the end of the Assize Court session, since the sentencing judgment had been delivered on the day of the verdict;

(ii) although the judgment in question had been formally drafted by the professional judges, they had been able to obtain the observations of the twelve members of the jury, who had in fact sat alongside them in deliberating on the sentence and whose names appeared in the judgment; and

(iii) the professional judges had themselves been present throughout the trial hearing, and must therefore have been in a position to place the jurors' observations in their proper context.

(d) *Lack of specific explanations for the difference in opinion between the jury and the psychiatric experts on the issue of the applicant's ability to control her actions at the time of the events* – Admittedly, in their last report the three psychiatric experts had stated their unanimous opinion that the applicant had been "suffering at the time of the events from a severe mental disturbance making her incapable of controlling her actions".

However, the Court had already found that statements made by psychiatric experts at an Assize Court trial formed only one part of the evidence submitted to the jury.

Moreover, the experts themselves had played down the impact of their findings by stating that their answers reflected their personal conviction while acknowledging that they were only ever "an informed opinion, and not an absolute scientific truth".

Accordingly, the fact that the jury had not indicated the reasons that had prompted it to adopt a view at variance with the psychiatric experts' final report in favour of the applicant had not been capable of preventing her from understanding the decision to find her criminally responsible.

***

In conclusion, the applicant had been afforded sufficient safeguards enabling her to understand the guilty verdict.

Conclusion: no violation (ten votes to seven).

(See *Taxquet v. Belgium* [GC], 926/05, 16 November 2010, Information Note 135; and *Legillon v. France* (53406/10) and *Agnelet v. France* (61198/08), judgments of 10 January 2013 summarised in Information Note 159; see also, in the series of case-law guides, the Guide on Article 6 (criminal limb))

ARTICLE 8

Respect for private life

Legislation preventing health professionals assisting with home births: *no violation*

Dubská and Krejzová v. the Czech Republic, 28859/11 and 28473/12, judgment 15.11.2016 [GC]

Facts – The applicants wished to give birth at home with the assistance of a midwife. However, under Czech law, health professionals assisting with home births ran the risk of disciplinary and criminal penalties. In practice, therefore, the applicants had the choice between giving birth at home unassisted or delivering in hospital. The first applicant gave birth to her child at home unaided while the second applicant delivered her child in a maternity hospital.

In their applications to the European Court, the applicants complained of a violation of Article 8 in that Czech law did not allow health professionals to assist them with giving birth at home.

In a judgment of 11 December 2014 (see Information Note 180), a Chamber of the Court, by six votes to one, found that there had been no violation of Article 8 of the Convention. On 1 June 2015 the

case was referred to the Grand Chamber at the applicants' request.

Law – Article 8: Giving birth was a unique and delicate moment in a woman's life, encompassing issues of physical and moral integrity, medical care, reproductive health and the protection of health-related information. These issues, including the choice of the place of birth, were therefore fundamentally linked to a woman's private life and fell within the scope of that concept for the purposes of Article 8.

The applicants' case had involved an interference with their right to avail themselves of the assistance of midwives when giving birth at home, owing to the threat of sanctions for midwives, who in practice were prevented from assisting the applicants by the operation of the law. That interference was in accordance with the law and, since it was designed to protect the health and safety of the mother and the child during and after delivery, pursued the legitimate aims of protecting health and the rights of others. The Court went on to consider whether the interference had been necessary in a democratic society.

In that connection, it found that the respondent State had to be afforded a wide margin of appreciation as (a) the case involved a complex matter of health-care policy requiring an assessment by the national authorities of expert and scientific data concerning the risks of hospital and home births; (b) general social and economic policy considerations came into play, including the allocation of financial means, since budgetary resources may need to be shifted from the general system of maternity hospitals to the provision of a framework for home births; and (c) there was no consensus among the member States of the Council of Europe capable of narrowing the State's margin of appreciation in favour of allowing home births.

The Court found that, having regard to that wide margin of appreciation, the interference with the applicants' right to respect for their private life had not been disproportionate. The risk for mothers and newborn babies was higher in the case of home births than in the case of births in maternity hospitals which were fully staffed and adequately equipped from a technical and material perspective, and even if a pregnancy proceeded without any complications and could therefore be considered "low-risk", unexpected difficulties could arise during delivery which would require immediate specialist medical intervention, such as a Caesarean section or special neonatal assistance. Moreover, maternity hospitals could provide all the necessary urgent medical care, which was not possible in the case of home births, even with a midwife attending (the Czech Republic had not set up a system of specialist emergency assistance for home births).

While the Court could not disregard the fact that conditions in a number of Czech maternity hospitals appeared to be questionable, it nevertheless acknowledged that since 2014 the Government had taken initiatives with a view to improving the situation. It invited the Czech authorities to make further progress by keeping the relevant legal provisions under constant review, so as to ensure that they reflected medical and scientific developments whilst fully respecting women's rights in the field of reproductive health, notably by ensuring adequate conditions for both patients and medical staff in maternity hospitals across the country.

Conclusion: no violation (twelve votes to five).

ARTICLE 10

Freedom of expression

Dismissal of diplomats for alleging in public that a presidential election had been fraudulent: *no violation*

Karapetyan and Others v. Armenia, 59001/08, judgment 17.11.2016 [Section I]

Facts – A presidential election was held in Armenia in February 2008. Immediately following the election the opposition candidate announced that it had been rigged and nationwide protests were organised by his supporters. Several ambassadors for Armenia made a statement setting out their concern and calling on television companies to ensure impartial and comprehensive coverage. The following day, the applicants, professional diplomats, issued a joint statement alleging that the election had been fraudulent. Their statement, along with their names and official titles, was reported by several mass-media outlets. The applicants were subsequently dismissed from office.

The applicants complained under Article 10 that their dismissal had violated their right to freedom of expression.

Law – Article 10: The applicants' dismissal amounted to an interference with their right to

freedom of expression. That interference pursued the legitimate aims of protecting national security and public safety and the prevention of disorder and was prescribed by law. As to whether the interference had been necessary in a democratic society the Court found that measures directed at the need to preserve the political neutrality of civil servants could in principle be considered legitimate and proportionate for the purposes of Article 10. However, such measures should not be applied in a general manner which could affect the essence of the right protected, without having in mind the functions and the role of the civil servant in question, and, in particular, the circumstances of each case.

A special bond of trust and loyalty between a civil servant and the State was important, in particular in the case of diplomats who were especially expected to be loyal. That was a particularly important element in societies which were in the process of building up the institutions of a pluralistic democracy. In view of the particular history of a Contracting State, the national authorities could, so as to ensure the consolidation and maintenance of democracy, consider it necessary to have constitutional safeguards to achieve the aim of having a politically neutral body of civil servants, including a diplomatic corps, by restricting the freedom of civil servants to engage in political activities.

It was of particular importance that all four applicants occupied high-ranking positions within the Ministry of Foreign Affairs and that their names, with an explicit reference to their official titles, appeared on their statement. In its assessment on whether to institute disciplinary proceedings and proceed with dismissals, the respondent State was entitled to have regard to the requirement that high-ranking civil servants respected and ensured the special bond of trust and loyalty between them and the State in the performance of their functions. The domestic courts had taken into account the applicants' right to freedom of expression in its overall assessment of the applicants' claims in a manner sufficiently in conformity with the requirements of the Convention.

Viewing the particular circumstances as a whole, no evidence had been adduced that could call into question the respondent State's assessment. The dismissal of the applicants, although severe, did not constitute a disproportionate measure and had been based on relevant and sufficient grounds.

Conclusion: no violation (six votes to one).

(See also *Rekvényi v. Hungary* [GC], 25390/94, 20 May 1999; and *Baka v. Hungary*, 20261/12, 23 June 2016, Information Note 197)

Conviction of journalists for satirical publication found to be insulting to regional prosecutor: *violation*

Grebneva and Alisimchik v. Russia, 8918/05, judgment 22.11.2016 [Section III]

Facts – The applicants were the editor and journalist of a regional newspaper. They were convicted for a publication which the domestic courts had found to be insulting to the regional prosecutor. They complained under Article 10 of the Convention that their conviction had violated their right to freedom of expression.

Law – Article 10: The applicants' conviction amounted to an interference with their right to freedom of expression. That interference pursued the legitimate aim of the protection of the reputation or rights of others and had been prescribed by law. The question before the Court was whether their conviction had been necessary in a democratic society.

The Court stressed the essential role of the press in a democratic society and its task of imparting information and ideas on matters of public interest. It was particularly important in the period preceding an election that opinions and information of all kinds were permitted to circulate freely. The applicants had published a number of items on the parliamentary election campaign which was underway in their region at that period. The articles addressed, in a satirical and farcical way, various irregularities that, in the applicants' view, had taken place during the campaign.

Seen as a whole, the article could not be understood as a gratuitous personal attack on, or insult to the prosecutor. The provocative comparisons did not concern his private or family life, but clearly related to his institutional responsibility as the head of the prosecutor's office of the entire region. The published material denounced the alleged corruption during the election campaign. The applicants had raised an important issue of general interest, which they considered significant for society and thus open public debate.

The terse and underdeveloped reasoning of the domestic courts rendered any defence raised by the applicants devoid of any practical effect. The courts

had failed to take any account of the social and political context in which the article had been published or to examine whether it involved a matter of general interest. In particular they had made no attempt to analyse the substance of the published material in the context of the ongoing election campaign or the satirical nature of the publication and the irony underlying it. Finally, they had failed to balance the prosecutor's right to his reputation against the applicants' freedom of expression and their duty, as journalists, to impart information of general interest. As such, the domestic courts had failed to provide relevant and sufficient reasons to justify the interference complained of.

Irrespective of the severity of the penalty which is liable to be imposed, recourse to the criminal prosecution of journalists for purported insults criticising a public figure in a manner which could be regarded as personally insulting was likely to deter journalists from contributing to the public discussion of issues affecting the life of the community. The national authorities' reaction to the applicants' satirical article was disproportionate to the legitimate aim pursued and was therefore not necessary in a democratic society.

Conclusion: violation (unanimously).

Article 41: EUR 3,000 each in respect of non-pecuniary damage; EUR 920 each in respect of pecuniary damage.

Seizure and confiscation for more than five years of all copies of edition of a magazine containing article on "pornography": *violation*

Kaos GL v. Turkey, 4982/07, judgment 22.11.2016 [Section II]

Facts – All the copies of an issue of a magazine published by the applicant, an association promoting the rights of the LGBT community, were seized by the domestic authorities in July 2006. The content of certain articles and images published as part of the "pornography" feature in the issue in question contravened the principle of protection of public morals. Confiscation of the copies of the magazine did not cease until February 2012, following a judgment of the Court of Cassation.

Law – Article 10: The seizure of all copies of an issue of a magazine amounted to an interference with the applicant's right to freedom of expression, as prescribed by constitutional law and pursued the legitimate aim of protecting public morals.

The decisions given by the domestic courts did not indicate any reasons why any given article or image published in the relevant issue of the magazine infringed public morals. Consequently, it was impossible to accept that the domestic courts had duly assessed the criteria to be taken into account in order to restrict the applicant association's freedom of expression. Accordingly, the argument concerning protection of public morals, relied upon in such a broad and unreasoned manner, was insufficient to justify the seizure and confiscation order for all copies of the relevant issue of the magazine for more than five years.

In the Court's view, having regard to the content of the articles concerning the sexuality of the LGBT community and relating to pornography and to the explicit nature of certain images used which might be deemed liable to offend the sensibilities of sections of the general public, the relevant issue of the magazine could be considered as a specialised publication aimed at a specific section of society.

The magazine in question was therefore not appropriate for all sections of the public, a fact which the applicant association acknowledged. Accordingly, even though only a small number of copies of the magazine had been earmarked for sale in newspaper outlets, the measures implemented to block access by specific groups of persons, especially minors, to that publication could have been a response to a pressing social need.

However, although the need to protect the sensibilities of a section of the public, minors in particular, was acceptable for the purposes of protecting public morals, there was no justification for blocking the access of the whole general public to the impugned issue of the magazine. In that connection, the domestic authorities had not attempted to implement any preventive measure less drastic than the seizure of all copies of the issue, such as prohibiting its sale to persons under the age of eighteen or requiring special packaging with a warning for minors, or even withdrawing the publication from the newspaper kiosks, stopping short of seizing subscriber copies.

Even supposing that, as the decision of the domestic criminal court would suggest, the issues seized, accompanied by a warning for persons under the age of eighteen, could have been distributed after the return of the confiscated copies, that is to say after the Court of Cassation's judgment of February 2012, the confiscation of the copies of the magazine

and the delay of five years and seven months in distributing the publication could not be considered as proportionate to the aim pursued.

Consequently, the interference with the exercise of the applicant association's right to freedom of expression was disproportionate.

Conclusion: violation (unanimously).

Article 41: no claim made in respect of damage.

Freedom to receive information

Authorities' refusal to provide an NGO conducting a survey with the names of public defenders and the number of their appointments: *violation*

Magyar Helsinki Bizottság v. Hungary, 18030/11, judgment 8.11.2016 [GC]

Facts – The applicant NGO was founded in 1989 with the task of monitoring the implementation of international human-rights standards in Hungary and providing related legal representation, education and training. In the context of a survey regarding the efficiency of the system of public defence, the applicant requested from various police departments the names of the public defenders retained by them and the number of their respective appointments. Seventeen police departments complied with the request; a further five disclosed the requested information following a successful legal challenge. However, the applicant was unsuccessful in its action against a further two police departments which refused to disclose the requested information. The applicant complained under Article 10 that the domestic courts' refusal to order the disclosure of the information sought amounted to a breach of its right to access to information.

Law – Article 10

(a) *Applicability and the existence of an interference* – The Convention had to be interpreted in the light of the rules provided for in Articles 31 to 33 of the Vienna Convention on the Law of Treaties 1969 and of the object and purpose of the Convention read as a whole. The Court could not disregard common international or domestic-law standards of European States and the consensus emerging from specialised international instruments and the practice of Contracting States could also constitute a relevant consideration. Finally, when interpreting the Convention, recourse could also be had to supplementary means of interpretation including the *travaux préparatoires*.

In the light of those principles the Court had to consider whether and to what extent a right of access to State-held information could be viewed as falling within the scope of Article 10, notwithstanding the fact that such a right was not immediately apparent from the text of that provision.

National legislation in the majority of Contracting States recognised a statutory right of access to information and a broad consensus existed on the need to recognise an individual right of access to State-held information so as to enable the public to scrutinise and form an opinion on any matter of public interest, including on the manner of functioning of public authorities in a democratic society. A high degree of consensus had also emerged at the international level. In particular, the right to seek information was expressly guaranteed by Article 19 of the International Covenant on Civil and Political Rights 1966 and the existence of a right of access to information had been confirmed by the United Nations Human Rights Committee on a number of occasions. In addition, Article 42 of the European Union Charter of Fundamental Rights guaranteed citizens a right of access to certain documents. The adoption of the Council of Europe Convention on Access to Official Documents, even though it had only been ratified by seven member States, denoted a continuous evolution towards the recognition of the State's obligation to provide access to public information.

Taking those factors into account the Court did not consider that it was prevented from interpreting Article 10 § 1 as including a right of access to information. The Court recognised that in the interest of legal certainty, foreseeability and equality before the law, it should not depart, without good reason, from precedents laid down in previous cases[2] but, since the Convention was first and foremost a system for the protection of human rights, regard had also to be had to the changing conditions within Contracting States and the Court had to respond to any evolving convergence as to the standards to be achieved.

The right to receive information could not be constructed as imposing positive obligations on a State to collect and disseminate information of its own motion and Article 10 did not confer on the

2. See *Leander v. Sweden*, 9248/81, 26 March 1987.

individual a right of access to information held by a public authority or oblige the Government to impart such information to the individual. However, such a right or obligation could arise, firstly, where disclosure of the information had been imposed by a judicial order which had gained legal force and, secondly, in circumstances where access to the information was instrumental for the individual's exercise of his or her right to freedom of expression, in particular the freedom to receive and impart information and where its denial constituted an interference with that right.

Whether and to what extent the denial of access to information constituted an interference with an applicant's freedom of expression had to be assessed in each individual case and in the light of its particular circumstances including; (i) the purpose of the information request; (ii) the nature of the information sought; (iii) the role of the applicant; and (iv) whether the information was ready and available. The Court was satisfied that the applicant in the present case wished to exercise the right to impart information on a matter of public interest and had sought access to information to that end and that the information was necessary for the exercise of its right to freedom of expression. The information on the appointment of public defenders was of an eminently public-interest nature. There was no reason to doubt that the survey in question contained information which the applicant undertook to impart to the public and which the public had a right to receive and the Court was satisfied that it was necessary for the applicant's fulfilment of that task to have access to the requested information. Lastly, the information was ready and available.

There had therefore been an interference with a right protected under Article 10, which was applicable in the case.

(b) *Whether the interference was justified* – The Court accepted that the interference had been prescribed by law and that the restriction on the applicant's freedom of expression pursued the legitimate aim of protecting the rights of others. The request for data, although consisting of personal data, related predominantly to the conduct of professional activities in the context of public proceedings. In that sense, public defenders' professional activities could not be considered to be a private matter. The information sought did not relate to the public defender's actions or decisions in connection with the carrying out of their tasks as legal representatives or consultations with their clients and the Government had not demonstrated that the disclosure of the information requested could have affected the public defenders' enjoyment of their right to respect for private life within the meaning of Article 8 of the Convention. There was no reason to assume that information about the names of public defenders and their appointments could not be known to the public through other means. The interests invoked by the Government with reference to Article 8 were not of such a nature and degree as could warrant engaging the application of that provision and bringing it into play in a balancing exercise against the applicant's right protected by Article 10.

The subject matter of the survey concerned the efficiency of the public defenders system and was closely related to the right to a fair hearing, a fundamental right in Hungarian law and a right of paramount importance under the Convention. Any criticism or suggested improvement to a service so directly connected to fair-trial rights had to be seen as a subject of legitimate public concerns. The Court was satisfied that the applicant intended to contribute to a debate on a matter of public interest and the refusal to grant the request had effectively impaired its contribution to a public debate on a matter of general interest. Although the information requested concerned personal data, it did not involve information outside the public domain. The Court concluded that notwithstanding the State's margin of appreciation, there had not been a reasonable relationship of proportionality between the measure complained of and the legitimate aim pursued.

Conclusion: violation (fifteen votes to two).

Article 41: EUR 215 in respect of pecuniary damage; no claim made in respect of non-pecuniary damage.

(See also *Leander v. Sweden*, 9248/81, 26 March 1987; *Gaskin v. the United Kingdom*, 10454/83, 7 July 1989; *Guerra and Others v. Italy*, 14967/89, 19 February 1998; *Roche v. the United Kingdom* [GC], 32555/96, 19 October 2005, Information Note 79; *Sdružení Jihočeské Matky v. the Czech Republic* (dec.), 19101/03, 10 July 2006; and *Youth Initiative for Human Rights v. Serbia*, 48135/06, 25 June 2013, Information Note 164)

ARTICLE 35

ARTICLE 35 § 1

Exhaustion of domestic remedies, effective domestic remedy – Russia

Failure to use new cassation appeal procedure in commercial proceedings introduced by Constitutional Amendment Act No. 2-FKZ: *inadmissible*

Sakhanov v. Russia, 16559/16, decision 18.10.2016 [Section III]

Facts – Amendments to the Constitution introduced by the Constitutional Amendment Act No. 2-FKZ on 6 February 2014 provided that the Supreme Commercial Court was to be abolished following a provisional period of six months and all its functions were to be gradually transferred to the Supreme Court. Amendments to the Code of Commercial Procedure which came into effect on 6 August 2014 empowered the Supreme Court to consider cassation and supervisory-review appeals against the final decisions of commercial courts.

Before the European Court the applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 about the outcome of proceedings before the Russian commercial courts. He had not lodged an application for cassation review with the Chamber of the Supreme Court in the domestic proceedings. The question therefore arose as to whether he had exhausted domestic remedies.

Law – Article 35 § 1: The cassation and supervisory-review proceedings introduced for Russian commercial courts by the new legislation were very similar to the cassation and supervisory-review proceedings in place for courts of general jurisdiction. In particular, the second cassation appeal before the Supreme Court allowed potential applicants to submit their grievances to the highest judicial body of the Russian Federation, which was able to consider any complaint about an alleged violation of the Convention in commercial cases and remedy any such violation at the domestic level prior to examination of the case by the Court.

The Court therefore considered it appropriate to apply its conclusions in *Abramyan and Yakubovskiye v. Russia* ((dec.), 38951/13 and 59611/13, 12 May 2015, Information Note 186), which concerned the effectiveness of cassation appeals and supervisory-review in civil proceedings before the Supreme Court to the present case. Accordingly, an application for cassation review before the Chamber of the Supreme Court, based as it was on strict time-limits, constituted an effective remedy capable of also providing redress and requiring exhaustion in commercial disputes.[3]

Since the applicant had not lodged an application for cassation review with the Chamber of the Supreme Court he had not exhausted domestic remedies.

Conclusion: inadmissible (failure to exhaust domestic remedies).

ARTICLE 35 § 3 (b)

No significant disadvantage

Discrimination with respect to enjoyment of right to fair trial: *inadmissible*

Kiril Zlatkov Nikolov v. France, 70474/11 and 68038/12, judgment 10.11.2016 [Section V]

Facts – The applicant was prosecuted for a criminal offence related to organised crime. He did not benefit from the guarantee laid down in Article 116-1 of the Code of Criminal Procedure, consisting of an audiovisual recording of interrogations of persons placed under formal investigation conducted in the investigating judge's chambers, the seventh paragraph of which provision excluded that guarantee where the investigation concerned the criminal offences in question or crimes infringing the fundamental interests of the French Nation and terrorism. The Constitutional Council declared the provision in question of the Code of Criminal Procedure unconstitutional under the equality principle. However, the Court of Cassation dismissed the applicant's appeal on points of law on the grounds that the Constitutional Council's decision only applied to persons in the applicant's situation as from the date of its publication. The applicant therefore complained, *inter alia*, that he had suffered discrimination in the exercise of his right to a fair trial.

Law – Article 14 in conjunction with Article 6 § 1: There was no evidence to show that the failure to record the applicant's interrogations had any significant impact on the exercise of his rights in the framework of the criminal proceedings against him, or even, more generally, any effect on his personal situation.

3. The Court noted, however, that supervisory review in commercial proceedings could not be seen as an effective remedy within the meaning of Article 35 of the Convention.

In any event, the discrimination in his entitlement to a fair trial complained of by the applicant did not cause him any "significant disadvantage" within the meaning of Article 35 § 3 (b) of the Convention.

Accordingly, given the revocation of the impugned article of the Code of Criminal Procedure, respect for human rights as secured under the Convention and the Protocols thereto did not require any assessment of the merits of that part of the application; the issue submitted to the Court had been settled at the domestic level, such that the case now only had an historical interest in that respect. Furthermore, the complaint under Article 14 taken in conjunction with Article 6 § 1 had been duly examined by a domestic court.

Conclusion: inadmissible (no significant disadvantage).

The Court therefore unanimously found no violation of Article 5 § 3 on the ground that the time-limit for bringing the applicant before the investigating judge had been in conformity with domestic law, falling short of the four-day maximum posited in the case-law of the Court. Moreover, the circumstances of the case sufficiently explained why it had been impossible to bring the applicant before the investigating judge any sooner.

ARTICLE 37

Striking out applications

Applicants' failure to keep in touch with their lawyer: *struck out*

V.M. and Others v. Belgium, 60125/11, judgment 17.11.2016 [GC]

Facts – The applicants, a married couple of Roma origin and their five children, were Serbian nationals who sought asylum in Belgium, which provided them with accommodation in various reception centres. They were then refused leave to remain and were served with an order to leave Belgian territory for France, which was the country responsible for examining their asylum application. The time-limit for enforcement of the orders to leave Belgium was subsequently extended for four months owing to the first applicant's pregnancy and imminent confinement.

The applicants complained before the European Court that during the period following their eviction from the reception centre on the expiry of the extended time-limit for enforcement of the orders to leave the country, on 26 September 2011, until their departure for Serbia, on 25 October 2011, they had not been provided with reception facilities enabling them to meet their basic needs.

In a judgment of 7 July 2015 (see Information Note 187), a Chamber of the Court concluded, *inter alia*, that there had been a violation of Article 3 of the Convention on account of the family's living conditions combined with the lack of any prospect of an improvement in their situation, and a violation of Article 13 on account of the lack of an effective remedy in respect of their asylum application.

On 14 December 2015 the case was referred to the Grand Chamber at the request of the Government.

Law – Article 37: The applicants had failed to maintain contact with their lawyer or to keep her informed of their place of residence or provide her with any other means of contacting them. It could therefore be concluded, in accordance with Article 37 § 1 (a) of the Convention, that they had lost interest in the proceedings and no longer intended to pursue their application.

The last time the applicants and their lawyer had been in contact had been on a date prior to the Chamber judgment of 7 July 2015 and the applicants were unaware of that judgment and of the referral of the case to the Grand Chamber. Their representative could not now meaningfully pursue the proceedings before the Court, in the absence of instructions from her clients, particularly regarding the factual questions raised by the new documents produced by the Government.

The applicants' voluntary return to Serbia and their departure from Belgium did not appear to have resulted in the loss of contact with their lawyer, who had maintained contact with them throughout the proceedings before the Chamber. The loss of contact had not therefore been a consequence of any act of the respondent Government. Nor was there anything to suggest that the precarious conditions in which the applicants had lived in Serbia had been such as to prevent them from maintaining some form of contact with their lawyer, if necessary through a third party, for such a long period.

Where a request for referral had been accepted by the panel of the Grand Chamber the judgment of the Chamber did not become final and thus produced no legal effect. The judgment of the Chamber would be set aside in order to be replaced

by the new judgment of the Grand Chamber, with which the States Parties would be obliged to comply. That situation, which in the present case was prejudicial to the applicants, had, however, been the consequence of their lack of contact with their lawyer and not of the Government's use of the possibility of requesting that the case be referred to the Grand Chamber. Moreover, where justified by the circumstances, the applicants could request that the application be restored to the list of cases.

In the light of the foregoing, the applicants no longer intended to pursue their application. Furthermore, no particular circumstance relating to respect for the rights guaranteed by the Convention or its Protocols required the Court to continue the examination of the application.

Conclusion: struck out (twelve votes to five).

Complaint concerning adequacy of domestic compensation scheme set up for the "erased": ***struck out; pilot judgment closed***

Anastasov and Others v. Slovenia, 65020/13, decision 18.10.2016 [Section IV]

Facts – In its pilot judgment in the case of *Kurić and Others v. Slovenia* ([GC], 26828/06, 26 June 2012, Information Note 153), the Grand Chamber of the Court required Slovenia to set up an *ad hoc* compensation scheme for former nationals of the Socialist Federal Republic of Yugoslavia ("the SFRY") whose names had been deleted from the Slovenian Register of Permanent Residents in breach of their rights under Articles 8, 13 and 14 of the Convention. In its just satisfaction judgment in the same case (*Kurić and Others v. Slovenia* (just satisfaction) [GC], 26828/06, 12 March 2014, Information Note 172), the Grand Chamber made a preliminary positive assessment of the *ad hoc* scheme that had in the meantime been implemented under the Act on Compensation for Damage to Persons Erased from the Register of Permanent Residents 2013 ("Erased" Compensation Act).

The 212 applicants in the instant case had been "erased" from the Register of Permanent Residents but their status had since been regularised through the acquisition of either a permanent residence permit or Slovenian citizenship. In their application to the European Court, they complained that their situation had remained unsettled for several years and that the Slovenian authorities had failed to grant them prompt and adequate financial redress for the damage they had sustained. None of the applicants appeared to have made use of the compensatory remedy provided for by the "Erased" Compensation Act.

Law – Article 37 § 1: The levels of financial compensation available under the domestic *ad hoc* compensation scheme (ranging between 20% and 60% of the Grand Chamber's individual awards in the pilot case) did not appear to be unreasonable or disproportionate, considering the wide margin of appreciation afforded the State. Likewise, the payment intervals (amounts exceeding EUR 1,000 were payable over a maximum period of five years) did not appear unreasonable. Furthermore, the "Erased" Compensation Act provided for different forms of redress aimed at the reintegration of the "erased" into Slovenian society.

Having regard in particular to Resolution CM/ResDH(2016)112, in which the Committee of Ministers had satisfied itself that all the measures required by Article 46 § 1 of the Convention had been adopted, the Court was satisfied that the "Erased" Compensation Act in principle constituted effective implementation of the requirement to set up an *ad hoc* domestic compensation scheme for the breaches of Articles 8, 13 and 14 of the Convention identified in the pilot case.

In these circumstances, the Court found that the matter giving rise to the instant and remaining applications against Slovenia lodged by the "erased" where the applicants had regularised their legal status had been resolved for the purposes of Article 37 § 1 (b) of the Convention and the continued examination of those cases was no longer justified (without prejudice, however, to the possibility to restore an application if the circumstances so justified). The Court accordingly closed the pilot judgment in respect of those Slovenian cases lodged by the "erased" where the applicants had regularised their legal status.

Conclusions: application struck out; pilot-judgment procedure closed.

ARTICLE 1 OF PROTOCOL No. 1

Possessions, peaceful enjoyment of possessions

Claims to ownership of socially owned property through adverse possession: ***cases referred to the Grand Chamber***

Jakeljić v. Croatia, 22768/12, Radomilja and Others v. Croatia, 37685/10, judgments 28.6.2016 [Section II]

Both cases concerned claims to the acquisition of plots of land through adverse possession.

The legislation of the former Yugoslavia (in particular section 29 of the 1980 Basic Property Act) prohibited the acquisition of ownership of socially owned property by adverse possession. That provision was repealed by the Croatian Parliament in 1991 and section 388(4) of the Ownership and Other Rights *In Rem* Act 1996, which entered into force on 1 January 1997, provided that the period prior to 8 October 1991 was to be included in calculating the period for acquiring ownership by adverse possession of socially owned immovable property. However, in a decision of 17 November 1999 the Constitutional Court invalidated section 388(4) of the 1996 Act on the grounds that its retroactive effect and the adverse consequences it produced on the rights of third parties was unconstitutional.

In the applicants' cases, the domestic courts refused to make a declaration that the applicants had through adverse possession acquired title to land registered in the name of local authorities. They found that the applicants' predecessors-in-title had only been in possession of the land (continuously and in good faith) since 1912 and that the running of the statutory 40-year time-limit had been interrupted in April 1941, when the legislation of the former Yugoslavia first prohibited the acquisition of ownership of socially owned property by adverse possession, and had only started to run again after October 1991, when that provision was repealed by Parliament.

Relying on Article 1 of Protocol No. 1, the applicants complained that, in dismissing their claims, the domestic courts had misapplied the relevant domestic law, as the statutory time-limit for acquiring ownership by adverse possession had been 20, not 40, years.

In its judgments of 28 June 2016, a Chamber of the Court held by six votes to one in both cases that there had been a violation of Article 1 of Protocol No. 1. As regards the applicability of that provision, it found that the fact that the applicants had not brought their actions in the domestic courts until 2002, almost three years after the Constitutional Court had invalidated section 388(4) of the 1996 Act (the provision which had allowed the period before October 1991 to be taken into account in the calculation of the period of adverse possession), was irrelevant for the purpose of establishing whether their claims to be declared the owner of property by adverse possession could qualify as an "asset". In both cases, the applicants' predecessors-in-title had been in possession since at least 1912 and, by virtue of section 388(4), had thus *ex lege* became the owners of the plots of land either on the date the 1996 Act had entered into force (1 January 1997) or, as regards one plot of land, on the date of its acquisition (20 July 1999). At the time of the alleged interference, therefore, the applicants' claim to ownership of the plots of land had a sufficient basis in national law to qualify as an "asset" protected by Article 1 of Protocol No. 1.

As to the merits, the Chamber found no reason to depart from its conclusions in the similar case of *Trgo v. Croatia* (35298/04, § 17, 11 June 2009), in which it had found a violation of Article 1 of Protocol No. 1. It noted, in particular, that (i) there was no indication, that anyone apart from the local authorities themselves had acquired or claimed any rights over the plots of land in question, so no third-party rights had been affected; and (ii) the applicants had reasonably relied on the legislation that had later been invalidated and should not – in the absence of any prejudice to the rights of others – have to bear the consequences of the State's own mistake in enacting unconstitutional legislation.

On 28 November 2016 the cases were referred to the Grand Chamber at the Government's request.

Refusal to grant compensation for accidental public-works damage to building erected without permission: *violation*

Keriman Tekin and Others v. Turkey, 22035/10, judgment 15.11.2016 [Section II]

Facts – The applicants, who owned a plot of land in an area of ground instability, built a house on it in 1997 without applying for planning permission. In 2004 excavation work (in preparation for the construction of a school on a neighbouring plot of land) triggered a landslide which damaged the house to the extent that it was rendered uninhabitable.

The applicants brought an action for damages against the authorities which had ordered the construction work. Several expert reports were drawn up; they concluded that there had been a combination of technical factors at play, and held that the

structural faults in the applicants' home had also contributed to the damage by 15-20%. However, the courts refused to grant even partial compensation, on the grounds that: (i) the applicants had never submitted a request under the law for the regularisation of illegal dwellings; and (ii) in any event, their property could not be rendered compliant, for reasons based on both the current planning regulations and the specific technical features of the building.

Law – Article 1 of Protocol No. 1

(a) *Existence of a "possession"* – The applicants' house had been built on a plot of land that belonged to them, but without planning permission, in breach of planning regulations. Nor did they have authorisation to use it for habitation.

However, no action had ever been taken against the applicants on account of this failure to comply with the regulations, and they had enjoyed their possession in a completely normal manner between the year that it was built and the year of the incident. There was nothing to indicate that the authorities had ever contemplated exercising their legal powers to order the demolition of the building in question.

Furthermore, the applicants' claim that no building in the administrative area in question had received planning permission had never been contradicted.

Lastly, the house was entered in the land register and was expressly mentioned, with no specific comments, in the title deed issued to the applicants.

Having regard to those circumstances, the applicants had a proprietary interest in peaceful enjoyment of their house, an interest that was of a sufficient nature to constitute a "possession". Article 1 of Protocol No. 1 was thus applicable.

(b) *Enjoyment of possessions* – What was at stake here was solely the lack of compensation in respect of the physical damage caused to the applicants' house: their rights to the land on which the house was situated were not in dispute. As the interference with the applicants' possession thus consisted solely in their inability to use their house, which was due to be demolished, the contested interference fell to be examined in the light of the "general" rule contained in Article 1 of Protocol No. 1.

The applicants' house had been built at a time when no urban plan had yet been adopted by the municipal authorities, and they had used it for several years.

Admittedly, the house had been constructed without the requisite planning permission, and under domestic law the authorities were entitled to order its demolition as a means of punishing this non-compliance with the urban-planning regulations.

However, it had to be acknowledged that the contested damage had been caused by chance, and that the authorities had never issued a decision ordering that the house be demolished (a point which distinguished the present case from the cases of *Tiryakioğlu v. Turkey* (dec.), 24404/02, 13 May 2008, and *Hamer v. Belgium*, 21861/03, 27 November 2007, Information Note 102). On the contrary, the question of planning permission had been raised for the first time by the authorities during the procedure with regard to the compensation claim, in order to avoid their own liability.

The Court was not convinced that the interference in question arose from a concern on the part of the authorities to apply the regulations in force: it seemed instead that the regulations had served as a pretext, for purely financial purposes. There was nothing to show that the Turkish authorities had had a coherent policy in place to combat illegal dwellings, or that they had decided to have demolished all the dwellings in a similar situation to that of the applicants, at least in the district in question. Neither the authorities, nor the Government before the Court, had contested the claim that almost none of the buildings in the district in question had been granted planning permission. Indeed, the legislative practice known as "urban amnesties" appeared to attest to the scale of the phenomenon of unauthorised dwellings in the respondent State, the authorities' tolerance towards it and their wish to regularise the legal situation of the buildings concerned.

Likewise, the reasons given for the refusal to compensate the applicants were not based on environmental considerations.

In those circumstances, the authorities' refusal to provide redress for the material damage sustained had placed an individual and excessive burden on the applicants, which had upset the fair balance between their interests and those of the community.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage; EUR 11,000 in respect of pecuniary damage.

(See also *Öneryıldız v. Turkey* [GC], 48939/99, 30 November 2004, Information Note 69)

ARTICLE 4 OF PROTOCOL No. 7

Right not to be tried or punished twice

Parallel administrative and criminal proceedings in respect of the same conduct: *no violation*

A and B v. Norway, 24130/11 and 29758/11, judgment 15.11.2016 [GC]

Facts – The applicants had tax surcharges imposed on them in administrative proceedings for failing to declare certain income on their tax returns. In parallel criminal proceedings they were convicted and sentenced for tax fraud for the same omissions. The applicants complained under Article 4 of Protocol No. 7 that they had been prosecuted and punished twice in respect of the same offence.

On 7 July 2015 a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

Law – Article 4 of Protocol No. 7: This provision contained three distinct guarantees and provided that for the same offence, no one should be (i) liable to be tried, (ii) tried, or (iii) punished. Whether the administrative proceedings were criminal for the purposes of Article 4 of Protocol No. 7 was to be assessed on the basis of the three *Engel* criteria developed for the purposes of Article 6 of the Convention. The question as to whether the offences dealt with in separate proceedings were the same required a facts-based assessment rather than a formal assessment consisting of comparing the essential elements of the offences.

The object of Article 4 of Protocol No. 7 was to prevent the injustice of a person being prosecuted or punished twice for the same criminalised conduct. It did not outlaw legal systems which took an integrated approach to the social wrongdoing in question, and in particular an approach involving parallel stages of legal response by different authorities and for different purposes. A fair balance had to be struck between duly safeguarding the interests of the individual protected by the *ne bis in idem* principle, on the one hand, and accommodating the particular interest of the community in being able to take a calibrated regulatory approach in the area concerned, on the other.

Article 4 of Protocol No. 7 did not exclude the conduct of dual proceedings provided that certain conditions were fulfilled. In particular, the respondent State had to demonstrate convincingly that the dual proceedings in question were sufficiently closely connected in substance and in time. That implied not only that the purposes pursued and the means used to achieve them should in essence be complementary and linked in time, but also that the possible consequences of organising the legal treatment of the conduct concerned in such a manner should be proportionate and foreseeable for the persons affected. Material factors for determining whether there was a sufficiently close connection in substance included (i) whether the different proceedings pursued complementary purposes and therefore addressed different aspects of the social misconduct involved, (ii) whether the duality of the proceedings concerned was a foreseeable consequence, both in law and in practice, (iii) whether the relevant sets of proceedings were conducted in such a manner as to avoid as far as possible any duplication in the collection as well as the assessment of the evidence, notably through adequate interaction between the various competent authorities to bring about that the establishment of facts in one set was also used in the other set and (iv) whether the sanction imposed in the proceedings which became final first was taken into account in those which became final last, so as to prevent the individual concerned bearing an excessive burden. The connection in time had to be sufficiently close to protect the individual from being subjected to uncertainty and delay and from proceedings becoming protracted over time. The weaker the connection in time the greater the burden on the State to explain and justify any such delay as may be attributable to its conduct of the proceedings.

The national authorities had found that the applicants' conduct called for two responses, an administrative penalty and a criminal one. The administrative penalty of a tax surcharge served as a general deterrent and to compensate for the considerable work and costs incurred by the tax authorities on behalf of the community in carrying out checks and audits in order to identify such defective declarations. The criminal conviction served not only as a deterrent but also had a punitive purpose in respect of the same anti-social

omission, involving the additional element of the commission of culpable fraud. It was particularly importance that, in sentencing the applicants, the domestic court had had regard to the fact that they had already been sanctioned by the imposition of the tax penalty. The conduct of the dual proceedings, with the possibility of different cumulated penalties had been foreseeable in the circumstances and the establishment of facts made in one set of proceedings had been relied upon in the other.

There was no indication that the applicants had suffered any disproportionate prejudice or injustice and there was a sufficiently close connection, both in substance and in time, between the two sets of proceedings.

Conclusion: no violation (sixteen votes to one).

(See also *Sergey Zolotukhin v. Russia* [GC], 14939/03, 10 February 2009, Information Note 116; *Engel and Others v. the Netherlands*, 5100/71 *et al.*, 8 June 1976; *R.T. v. Switzerland* (dec.), 31982/96, 30 May 2000, Information Note 18; *Nilsson v. Sweden*, 73661/01, 13 December 2005, Information Note 81; and *Nykänen v. Finland*, 11828/11, 20 May 2014)

PENDING GRAND CHAMBER

Referrals

Naït-Liman v. Switzerland, 51357/07, judgment 21.6.2016 [Section II]

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

Jakeljić v. Croatia, 22768/12, Radomilja and Others v. Croatia, 37685/10, judgments 28.6.2016 [Section II]

(See Article 1 of Protocol No. 1 above, page 22)

OTHER JURISDICTIONS

Court of Justice of the European Union (CJEU)

Partner of retired employee not entitled to survivor's benefits where domestic law did not allow civil partnerships for same-sex couples at relevant time: *no discrimination found*

David L. Parris v. Trinity College Dublin e.a., C-443/15, judgment (first chamber) 24.11.2016

In the framework of a substantive dispute between Mr Parris (who was born in 1946 and holds joint Irish and United Kingdom nationality) and his former employer concerning the latter's refusal to grant his partner a survivor's pension, the Irish *Labour Court* referred three requests for preliminary rulings to the CJEU: the question, in substance, was whether a national rule which, in connection with an occupational benefit scheme, makes the right of surviving civil partners of members to receive a survivor's benefit subject to the condition that the civil partnership was entered into before the member reached the age of 60, where national law did not allow the member to enter into a civil partnership before reaching that age limit, constitutes discrimination on grounds of sexual orientation*, or discrimination on grounds of age, or discrimination on combined grounds of sexual orientation and age*. The question called for an interpretation of Articles 2 and 6 § 2 of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ("the Directive").

Having lived for some thirty years in a stable relationship with his same-sex partner, Mr Parris entered into a civil partnership with him, which was registered in the United Kingdom in 2009. Mr Parris retired on 31 December 2010. The Irish Civil Partnership Act entered into force on 1 January 2011. Mr Parris's partnership was then recognised in Irish law, with effect from 12 January 2011. His partner was nevertheless refused a survivor's pension on the following grounds: (i) his partnership had not been recognised in Ireland at the material time; and (ii) the applicable rules excluded the payment of a survivor's benefit where the member married or entered into a civil partnership after the age of 60. His complaints were brought, unsuccessfully, before the *Equality Tribunal*. Mr Parris appealed to the Labour Court.

Mr Parris considered, in particular, that the impugned condition amounted to indirect discrimination in that it disadvantaged homosexual workers who had already reached the age of 60 at the time of entry into force of the Civil Partnership Act, that is to say homosexual workers born before 1951.

The CJEU answered all three questions in the negative, on the following grounds:

(a) *Discrimination on grounds of sexual orientation* – The national rules on the survivor's benefit in

question did not give rise to direct discrimination on grounds of sexual orientation: surviving civil partners were not treated less favourably than surviving spouses.

As regards the existence of indirect discrimination (Article 2 § 2 (b) (i) of the Directive), it transpired that Mr Parris's inability to meet the impugned condition was a consequence:

– of the state of the law existing in Ireland at the time of his 60th birthday, in particular the absence at that time of a law recognising any form of civil partnership of a same-sex couple;

– of the absence, in the rules governing the survivor's benefit at issue in the main proceedings, of transitional provisions for homosexual members born before 1951.

Recital 22 of the Directive explicitly stated that the instrument was without prejudice to national laws on marital status and the benefits dependent thereon. Moreover, civil status and the benefits dependent thereon were matters which fell within the competence of the Member States – provided they exercise that competence in compliance with EU law, and in particular the provisions relating to the principle of non-discrimination. The Member States were thus free to provide or not provide for marriage for persons of the same sex, or an alternative form of legal recognition of their relationship, and, if they did so provide, to lay down the date from which such a marriage or alternative form was to have effect. Consequently, EU law did not require Ireland:

– to provide before 1 January 2011 for marriage or a form of civil partnership for same-sex couples,

– or to give retrospective effect to the Civil Partnership Act and the provisions adopted pursuant to that act,

– or to lay down transitional measures for same-sex couples in which the member of the scheme had already reached the age of 60 on the date of entry into force of the act.

The national rules at issue could therefore not be considered as indirect discrimination on grounds of sexual orientation, as had been claimed.

(b) *Discrimination on grounds of age* – The national rules at issue did give rise to a difference in treatment directly based on the age criterion.

However, in making the acquisition of the right to receive a survivor's benefit subject to the condition that the member marries or enters into a civil partnership before the age of 60, that rule merely laid down an age limit for entitlement to that benefit. It was therefore covered by Article 6 § 2 of the Directive, which laid down that such a situation "does not constitute discrimination on the grounds of age".

The fact that it was legally impossible for the member of the scheme at issue to enter into a registered partnership before his 60th birthday did not alter the situation, given that the said state of domestic law was compatible with EU law.

c) *Discrimination as a result of the combined effect of sexual orientation and age* – While discrimination could indeed be based on several of the grounds set out in Article 1 of Directive 2000/78, there was no new category of discrimination resulting from the combination of more than one of those grounds, such as sexual orientation and age, that could be found to exist where discrimination on the basis of those grounds taken in isolation had not been established.

***

In conclusion, the CJEU ruled, in substance:

– that national rules such as those at issue in the present case constituted neither discrimination on grounds of sexual orientation nor discrimination on grounds of age;

– that, where they did not constitute discrimination according to either of those criteria taken in isolation, such rules also could not be considered as discrimination as a result of the combined effect of sexual orientation and age.

Inter-American Court of Human Rights (IACtHR)

Right to life and personal integrity of prisoners

Case of Chinchilla Sandoval v. Guatemala, Series C No. 312, judgment 29.2.2016

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

Facts – In 1995 Ms María Inés Chinchilla Sandoval was sentenced to thirty years' imprisonment for aggravated theft and manslaughter. She served

her sentence in a prison for women in Guatemala. She suffered from diabetes and other ailments and between 1997 and 2004 her health progressively deteriorated causing her physical and sensory disabilities. In particular, she had to have a leg amputated and was confined to a wheelchair. She also suffered partial loss of sight. Between 2002 and 2004 her lawyer applied for her early release on four occasions. Even though the prison clearly lacked the technical, professional and medical capacity to provide the applicant with adequate treatment, the judge dismissed all four applications. On 25 May 2004, while in prison, Ms Chinchilla fell down a flight of stairs in her wheelchair. She was aided by a group of inmates and later by a prison nurse, but died shortly afterwards. The investigation into her death was discontinued because the autopsy did not reveal any harmful substances in her body.

(a) *Articles 5(1) (right to personal integrity) and 4(1) (right to life), in relation to Article 1(1) (obligation to respect and ensure rights without discrimination) of the American Convention on Human Rights (ACHR)* – The Inter-American Court reiterated the State´s special obligation to guarantee the rights of individuals deprived of their liberty. The Court determined that the right to life of persons deprived of their liberty also implies the State's obligation to secure their physical and mental health, specifically through the provision of regular medical check-ups, as well as adequate, timely and, where appropriate, specialised medical treatment in accordance with their special needs. The Court highlighted that the lack of adequate medical care for persons deprived of their liberty and in the custody of the State could be considered a violation of Article 5(1) and 5(2) of the ACHR, depending on their specific circumstances, such as their state of health or the type of illness from which they were suffering, the period for which they had been without medical attention, the cumulative physical and mental effects and, in some cases, their sex and age. The Court stressed that in the present case, the burden of proof rested on the State.

The Court considered that the State´s special obligation to guarantee the rights of individuals deprived of their liberty can be conditioned, underscored or defined according to the type of illness, particularly if it is terminal or liable to be complicated or aggravated by either the individual's specific circumstances, the conditions of his or her detention or the actual health-care capacities of the prison or the authorities in charge. This obligation rests both with the penitentiary and the judicial authorities which, of their own initiative or at the request of the person concerned, must exercise judicial control with respect to the guarantees for persons deprived of their liberty.

Moreover, the Court held that persons deprived of their liberty suffering from serious, chronic or terminal illness should not remain in prison except where the State could ensure that they had adequate medical-care units, with equipment and qualified personnel, in which they could be provided with specialised care and treatment. The State must also provide adequate food and diets as prescribed. The Court also observed that States have the obligation to ensure that medical records be kept for any person entering a detention centre.

In the present case, the Court found that the State could not prove that Ms Chinchilla had medical records, that adequate food and medicines had been regularly administered, and that she had received periodic and systematic medical care for her illnesses. The authorities had assessed her ailments and disability but had not prevented the aggravation of her condition by ensuring periodic, adequate and systematic medical care and supervision, in particular through the provision of an appropriate diet, rehabilitation and other necessary facilities.

The Court stated that if the State had no means to guarantee such medical care and supervision within the prison, a mechanism or protocol for systematic, diligent and opportune treatment should have been established, since the procedure for outside consultation was not swift enough to guarantee appropriate medical treatment, particularly in the event of an emergency. The procedures set up for external consultation in hospitals were not swift enough to effectively allow for timely medical treatment. For the aforementioned reasons, the Court concluded that the State had not guaranteed Ms Chinchilla's rights to personal integrity and to life during her detention.

With regard to Ms Chinchilla's disability, the Court held, relying *inter alia* on the ECHR case of *Mircea Dumitrescu v. Romania* (14609/10, 30 July 2013), that the State had the obligation to guarantee to prisoners with disabilities access to different prison areas, including through making reasonable infrastructure adjustments to allow for as much independence as possible and equal conditions when compared to the conditions of inmates in good

health. The Court considered that the State should have provided access to reasonable means for rehabilitation. In this respect, it found that Ms Chinchilla had been discriminated against on account of her disabilities and that her conditions of detention were not compatible with her right to physical and mental integrity.

The Court also concluded that the State had not guaranteed diligent medical attention on the day of her death.

Conclusion: violation (unanimously).

(b) *Reparations* – The Inter-American Court established that the judgment constituted *per se* a form of reparation and ordered the State to: (i) adopt measures to train judicial authorities in charge of the execution of penalties as well as prison staff and other competent authorities who deal with prisoners in order to adequately fulfil their role as guarantors of prisoners' rights; (ii) publish the judgment and its official summary, and (iii) pay compensation in respect of pecuniary and non-pecuniary damage, as well as costs and expenses.

COURT NEWS

Treaties of Nijmegen Medal 2016

On 18 November the Court received the Treaties of Nijmegen Medal 2016. This prize is awarded every two years to a key international figure or organisation in recognition of their contribution to the development of Europe. Noting the crucial role played by the Court in contributing to safeguarding human rights, the organisers of the Treaties of Nijmegen Medal expressed their appreciation for the exceptional, pioneering and important work of the Court over the last 55 years for peace on the European continent.

More information on the organisers' Internet site: https://treatiesofnijmegenmedal.eu.

COURTalks – Videos on asylum and on terrorism

Within the pilot series *COURTalks-disCOURs*, the two new training videos released in June 2016 (one on asylum and the second on terrorism) have now been subtitled in around ten non-official languages: Bulgarian, Croatian, German, Greek, Italian, Macedonian, Polish, Romanian, Russian, Serbian, Spanish, Turkish and Ukrainian.

The videos and their manuscripts listing the relevant case-law are available on the Court's Internet site (www.echr.coe.int – Case-law) and its YouTube channel: https://www.youtube.com/user/EuropeanCourt (for the videos only).

RECENT PUBLICATIONS

New factsheets

The Court has launched two new factsheets: one on the Right not to be tried or punished twice (the *non bis in idem* principle) and the other on Surveillance at workplace. All the Court's factsheets, in English, French and some non-official languages, are available for downloading from the Court's Internet site (www.echr.coe.int – Press).

Case-Law Guides: new translations

The English translation of the Guide on Article 7 of the Convention is now available, as well as the French translations of the Guides on Article 15 of the Convention and on Article 4 of Protocol No. 4. The Case-Law Guides can be downloaded from the Court's Internet site (www.echr.coe.int – Case-law).

Guide on Article 7 of the Convention (no punishment without law) (eng)

Guide sur l'article 15 de la Convention – Dérogation en cas d'état d'urgence (fre)

Guide sur l'article 4 du Protocole n° 4 – Interdiction des expulsions collectives d'étrangers (fre)

New case-law research reports

Two Research Reports (in English only) have been updated up to the end of October 2016: the report on Bioethics and the case-law of the ECHR and the report on the References to the Inter-American Court of Human Rights in the case-law of the ECHR. The Research Reports are available on the Court's Internet site (www.echr.coe.int – Case-Law).

Bioethics and the case-law of the ECHR (eng)

References to the Inter-American Court of Human Rights in the case-law of the ECHR (eng)

Handbook on access to justice: new translations

The Handbook on European law relating to access to justice – which was published jointly by the Court, the Council of Europe and the European Union Agency for Fundamental Rights (FRA) in 2016 – has been translated into the following 16 languages: Bulgarian, Czech, Danish, Estonian, German, Greek, Italian, Latvian, Lithuanian, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Sweden.

All FRA/ECHR Handbooks on European law can be downloaded from the Court's Internet site (www.echr.coe.int – Case-law).

Наръчник по европейско право в областта на достъпа до правосъдие (bul)

Příručka o evropských právních předpisech v oblasti přístupu ke spravedlnosti (ces)

Håndbog om europæisk lovgivning vedrørende adgang til klage, administrativ rekurs og domstolsprøvelse (dan)

Õiguskaitse kättesaadavust käsitleva Euroopa õiguse käsiraamat (est)

Handbuch zu den europarechtlichen Grundlagen des Zugangs zur Justiz (deu)

Εγχειρίδιο σχετικά με την ευρωπαϊκή νομοθεσία για την πρόσβαση στη δικαιοσύνη (ell)

Manuale di diritto europeo in materia di accesso alla giustizia (ita)

Rokasgrāmata par Eiropas tiesībām saistībā ar tiesu iestāžu pieejamību (lav)

Europos teisės į teisingumą vadovas (lit)

Podręcznik prawa europejskiego dotyczącego dostępu do wymiaru sprawiedliwości (pol)

Manual de legislação europeia sobre o acesso à justiça (por)

Manual de drept european privind accesul la justiție (ron)

Príručka o európskom práve v oblasti prístupu k spravodlivosti (slk)

Priročnik o evropski zakonodaji v zvezi z dostopom do pravnega varstva (slv)

Manual sobre el Derecho europeo relativo al acceso a la justicia (spa)

Handbok om europeisk rätt rörande tillgång till rättslig prövning (swe)

Handbook on the rights of the child: new translations

The Handbook on European law relating to the rights of the child – published jointly by the Court, the Council of Europe and the FRA in 2015 – has also been translated into the following 15 languages: Bulgarian, Croatian, Czech, Danish, Dutch, Estonian, Finnish, Greek, Hungarian, Italian, Lithuanian, Romanian, Slovak, Slovenian and Spanish.

All FRA/ECHR Handbooks on European law can be downloaded from the Court's Internet site (www.echr.coe.int – Case-law).

Наръчник по европейско право в областта на правата на детето (bul)

Priručnik o pravima djeteta u europskom pravu (hrv)

Příručka evropského práva v oblasti práv dítěte (ces)

Håndbog om europæisk lovgivning om børns rettigheder (dan)

Handboek over het Europese recht inzake de rechten van het kind (nld)

Lapse õigusi käsitleva Euroopa õiguse käsiraamat (est)

Käsikirja Euroopan lapsen oikeuksia koskevasta oikeudesta (fin)

Εγχειρίδιο σχετικά με την ευρωπαϊκή νομοθεσία για τα δικαιώματα του παιδιού (ell)

Kézikönyv a gyermekjogokra vonatkozó európai jogról (hun)

Manuale di diritto europeo in materia di diritti dell'infanzia e dell'adolescenza (ita)

Vaiko teises reglamentuojančios Europos teisės vadovas (lit)

Manual de drept european privind drepturile copilului (ron)

Príručka o európskom práve týkajúcom sa práv dieťaťa (slk)

Priročnik o evropskem pravu v zvezi z otrokovimi pravicami (slv)

Manual de legislación europea sobre los derechos del niño (spa)

Commissioner for Human Rights

The third quarterly activity report 2016 of the Council of Europe's Commissioner for Human rights is available on the Commissioner's Internet site (www.coe.int – Commissioner for Human Rights – Activity reports).

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

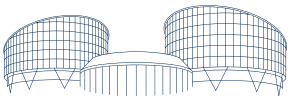
In the provisional version the summaries are normally drafted in the language of the case concerned, whereas the final single-language version appears in English and French respectively. The Information Note may be downloaded at www.echr.coe.int/NoteInformation/en. For publication updates please follow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

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

ENG

www.echr.coe.int

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



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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE