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INFORMATION NOTE
on the Court's case-law

NOTE D'INFORMATION
sur la jurisprudence de la Cour

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

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

European Court of Human Rights

Cour européenne des droits de l'homme

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

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An annual index provides an overview of the cases that have been summarised in the monthly Information Notes. The index for 2019 is cumulative and is regularly updated.

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

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Un index annuel récapitule les affaires résumées dans les Notes d'information. L'index pour 2019 est cumulatif ; il est régulièrement édité.

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TABLE OF CONTENTS / TABLE DES MATIÈRES

ARTICLE 1

Responsibility of States/Responsabilité des États

- State's responsibility for alleged denial of access to court by the Court of Justice of the EFTA States: *inadmissible*
- Responsabilité d'un État pour un prétendu déni d'accès à un tribunal par la Cour de justice des États de l'AELE : *irrecevable*

Konkurrenten.no AS – Norway/Norvège, 47341/15, Decision/Décision 5.11.2019 [Section II] 8

Jurisdiction of States/Juridiction des États

- Jurisdiction in a case of alleged cross-border violations by alleged State agents operating on another State's territory
- Juridiction dans le cas de griefs de violations prétendument commises par des agents supposés d'un État sur le territoire d'un autre

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III] 8

ARTICLE 2

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

- Sufficiency of preventive measures in light of no discernible risk of child's murder at school by father accused of domestic violence and barred from home: *case referred to the Grand Chamber*
- Mesures préventives jugées suffisantes du fait de l'impossibilité de discerner le risque qu'un enfant soit tué à l'école par son père accusé de violences domestiques et frappé d'une interdiction de domicile : *affaire renvoyée devant la Grande Chambre*

Kurt – Austria/Autriche, 62903/15, Judgment/Arrêt 4.7.2019 [Section V] 8

ARTICLE 3

Inhuman or degrading treatment/Traitement inhumain ou dégradant
Positive obligations (substantive aspect)/Obligations positives (volet matériel)

- Nine-year-old child subjected to witnessing violent arrest of her father who put up no resistance: *violation*
- Enfant de neuf ans témoin de l'arrestation violente de son père, lequel n'a pas opposé de résistance : *violation*

A – Russia/Russie, 37735/09, Judgment/Arrêt 12.11.2019 [Section III] 9

Degrading treatment/Traitement dégradant

- Conditions of confinement in transit zone: *no violation*
- Conditions de rétention dans une zone de transit : *non-violation*

Ilias and/et Ahmed – Hungary/Hongrie, 47287/15, Judgment/Arrêt 21.11.2019 [GC] 9

- Conditions in which asylum-seekers were held in airport transit zone: *violation*
- Conditions de rétention de demandeurs d'asile dans une zone de transit aéroportuaire : *violation*

Z.A. and Others/et autres – Russia/Russie, 61411/15 et al., Judgment/Arrêt 21.11.2019 [GC] 9

Effective investigation/Enquête effective

- Insufficient investigation into credible allegations of police ill-treatment: *violation*
- Insuffisance d'une enquête portant sur des allégations crédibles de brutalités policières : *violation*

A – Russia/Russie, 37735/09, Judgment/Arrêt 12.11.2019 [Section III] 9

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

- Respondent States' failure to investigate allegations of cross-border abduction and ill-treatment involving State agents: *violation*

- Manquement des États défendeurs au devoir d'enquêter sur des allégations d'enlèvement transfrontalier avec mauvais traitements impliquant des agents d'État : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III] 10

Expulsion

- Respondent State's failure to assess the risk of denial of access to asylum proceedings in a presumed safe third country, including *refoulement*: *violation*
- Absence d'évaluation par l'État défendeur du risque pour des demandeurs d'asile de se voir refuser l'accès à la procédure d'asile dans un pays tiers présumé sûr, et notamment du risque de refoulement : *violation*

Ilias and/et Ahmed – Hungary/Hongrie, 47287/15, Judgment/Arrêt 21.11.2019 [GC] 10

ARTICLE 5

Article 5 § 1

Deprivation of liberty/Privation de liberté

- *De facto* confinement lasting twenty-three days in land border transit zone: *inadmissible*
- Confinement de fait, pendant vingt-trois jours, dans une zone de transit frontalière terrestre : *irrecevable*

Ilias and/et Ahmed – Hungary/Hongrie, 47287/15, Judgment/Arrêt 21.11.2019 [GC] 13

- Asylum-seekers held for lengthy periods in airport transit zone: *violation*
- Demandeurs d'asile retenus pendant de longues périodes dans une zone de transit aéroportuaire : *violation*

Z.A. and Others/et autres – Russia/Russie, 61411/15 et al., Judgment/Arrêt 21.11.2019 [GC] 13

Positive obligations/Obligations positives

- Respondent States' failure to investigate allegations of cross-border abduction and ill-treatment involving State agents: *violation*
- Manquement des États défendeurs au devoir d'enquêter sur des allégations d'enlèvement transfrontalier avec mauvais traitements impliquant des agents d'État : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III] 16

Article 5 § 5

Compensation/Réparation

- Pre-trial detention in inappropriate premises compensated for by way of reduced sentence: *inadmissible*
- Détention provisoire dans des locaux inadaptés réparée sous la forme d'une réduction de peine : *irrecevable*

Porchet – Switzerland/Suisse, 36391/16, Decision/Décision 8.10.2019 [Section III] 17

ARTICLE 6

Article 6 § 1 (criminal/pénal)

Fair hearing/Procès équitable

- Conviction based to a decisive degree on statements by accomplice arising from plea-bargaining arrangement, without adequate scrutiny thereof: *violation*
- Condamnation fondée de manière décisive sur les déclarations d'un complice dans le cadre d'une « transaction pénale », sans contrôle juridictionnel adéquat de cette transaction : *violation*

Adamčo – Slovakia/Slovaquie, 45084/14, Judgment/Arrêt 12.11.2019 [Section III] 17

- Co-defendant admitted as witness against the accused after conviction in disjoined plea-bargaining procedure without prior adversarial scrutiny: *violation*
- Co-accusé admis comme témoin à charge après sa condamnation séparée par voie de transaction pénale, sans examen contradictoire préalable : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III] 19

Article 6 § 1 (administrative/administratif)

Access to court/Accès à un tribunal

- *Locus standi* denied to applicant by the Court of Justice of the EFTA States: *inadmissible*
- Qualité pour agir déniée à la requérante par la Cour de justice des États de l'AELE : *irrecevable*

Konkurrenten.no AS – Norway/Norvège, 47341/15, Decision/Décision 5.11.2019 [Section II] 19

Article 6 § 3 (b)

Adequate facilities/Facilités nécessaires

- Unnecessary confinement of accused in glass cabin at court hearings that lasted a number of months: *violation*
- Applicant's ineffective participation in his trial due to excessively intensive court hearing schedule coupled with lengthy prison transfers: *violation*
- Enfermement injustifié de l'accusé dans une cage de verre aux audiences, durant des mois : *violation*
- Participation du requérant au procès ineffective vu l'intensité excessive du calendrier des audiences au regard des délais de transfèrement carcéral de l'accusé : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III] 20

ARTICLE 8

Respect for private life/Respect de la vie privée

- Inability for opioid addicts to obtain methadone or buprenorphine replacement therapy: *no violation*
- Impossibilité pour les dépendants aux opiacés de bénéficier d'un traitement de substitution par la méthadone ou la buprénorphine : *non-violation*

Abdyusheva and Others/et autres – Russia/Russie, 58502/11 et al., Judgment/Arrêt 26.11.2019 [Section III] 21

Respect for family life/Respect de la vie familiale

- Denial of family reunion to beneficiary of temporary protection: *relinquishment in favour of the Grand Chamber*
- Rejet d'une demande de regroupement familial formée par un bénéficiaire d'une protection temporaire : *dessaisissement en faveur de la Grande Chambre*

M.A. – Denmark/Danemark, 6697/18 [Section II] 22

Expulsion

- Deprivation of citizenship and expulsion of dual national convicted of having joined Islamic State's ranks with terrorist objectives: *communicated*
- Déchéance de nationalité et expulsion d'un binational condamné pour avoir rejoint les rangs de l'État islamique à des fins terroristes : *affaire communiquée*

Johansen – Denmark/Danemark, 27801/19, Communication [Section IV] 23

ARTICLE 11

Freedom of peaceful assembly/Liberté de réunion pacifique

- Conviction for organising "mass disorder" following clashes during demonstration, without sufficient scrutiny of event organiser's own acts and intentions: *violation*
- Condamnation pour organisation de « désordre en masse » à la suite des affrontements ayant émaillé une manifestation, sans examen suffisant des actes et intentions propres de son organisateur : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III] 23

ARTICLE 14

Discrimination (Article 8)

- Beneficiaries of temporary protection required to wait longer than refugees or international protection beneficiaries to become eligible for family reunion: *relinquishment in favour of the Grand Chamber*

- Obligation pour les bénéficiaires d'une protection temporaire d'attendre plus longtemps que les réfugiés ou les bénéficiaires d'une protection internationale avant de pouvoir prétendre au regroupement familial : *dessaisissement en faveur de la Grande Chambre*

M.A. – Denmark/Danemark, 6697/18 [Section II] 25

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies/Épuisement des voies de recours internes

- Failure to make use of cassation appeal review by a person detained pending deportation: *inadmissible*
- Détenu en attente de son expulsion n'ayant pas fait usage de la possibilité de se pourvoir en cassation : *irrecevable*

Pantsulai – Russia/Russie, 34275/19, Decision/Décision 8.10.2019 [Section III] 25

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

Referrals/Renvois

Kurt – Austria/Autriche, 62903/15, Judgment/Arrêt 4.7.2019 [Section V] 26

Relinquishments/Dessaisissements

M.A. – Denmark/Danemark, 6697/18 [Section II] 26

OTHER JURISDICTIONS/AUTRES JURIDICTIONS

European Union – Court of Justice (CJEU) and General Court/Union européenne – Cour de justice (CJUE) et Tribunal

- Applicants for international protection – Violence or breaches of the rules of the accommodation centres – Limits to applicable sanctions – Housing, food or clothing – Minors
- Demandeurs de protection internationale – Violence ou manquement au règlement des centres d'hébergement – Limites aux sanctions applicables – Logement, nourriture, habillement – Mineurs

Zubair Haqbin – Federaal Agentschap voor de opvang van asielzoekers, C-233/18, Judgment/Arrêt 12.11.2019 (CJEU, Grand Chamber/CJUE, grande chambre) 26

- Need to verify independence of Polish Supreme Court's new chamber with jurisdiction to send judges into retirement
- Nécessité de vérifier l'indépendance de la nouvelle chambre disciplinaire de la Cour suprême polonaise compétente en matière de mise à la retraite de juges

A.K. – Krajowa Rada Sądownictwa and/et CP and/et DO – Sąd Najwyższy, C-585/18, C-624/18 and/et C-625/18, Judgment/Arrêt 19.11.2019 (CJEU, Grand Chamber/CJUE, grande chambre) 27

COURT NEWS/DERNIÈRES NOUVELLES DE LA COUR

Commemoration of the fall of the Berlin Wall/Commémoration de la chute du Mur de Berlin 27

Meeting with the Government Agents/Réunion avec les Agents de gouvernement 28

Webcasting: contribution from Ireland/Webcasting : soutien de l'Irlande 28

RECENT PUBLICATIONS/PUBLICATIONS RÉCENTES

The ECHR and Georgia in Facts and Figures/La CEDH et la Géorgie en faits et chiffres 28

New Case-Law Guide/Nouveau Guide sur la jurisprudence 29

Case-Law Guides: new translations/Guides sur la jurisprudence: nouvelles traductions 29

Overview of the Court's case-law for 2018: new translation/Aperçu sur la jurisprudence de 2018 : nouvelle traduction 29

Joint publications by the ECHR and FRA: new translation/Publications conjointes de la CEDH et la FRA : nouvelle traduction 29

Commissioner for Human Rights/Commissaire aux droits de l'homme 29

OTHER INFORMATION/AUTRES INFORMATIONS

30th anniversary of the CPT: Conference and ceremony/30e anniversaire du CPT : conférence et cérémonie 29

ARTICLE 1

Responsibility of States/Responsabilité des États

State's responsibility for alleged denial of access to court by the Court of Justice of the EFTA States: *inadmissible*

Responsabilité d'un État pour un prétendu déni d'accès à un tribunal par la Cour de justice des États de l'AELE : *irrecevable*

Konkurrenten.no AS – Norway/Norvège, 47341/15, Decision/Décision 5.11.2019 [Section II]

(See Article 6 § 1 below/Voir l'article 6 § 1 ci-dessous, page 19)

Jurisdiction of States/Juridiction des États

Jurisdiction in a case of alleged cross-border violations by alleged State agents operating on another State's territory

Juridiction dans le cas de griefs de violations prétendument commises par des agents supposés d'un État sur le territoire d'un autre

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III]

(See Article 11 below/Voir l'article 11 ci-dessous, page 23)

ARTICLE 2

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

Sufficiency of preventive measures in light of no discernible risk of child's murder at school by father accused of domestic violence and barred from home: *case referred to the Grand Chamber*

Mesures préventives jugées suffisantes du fait de l'impossibilité de discerner le risque qu'un enfant soit tué à l'école par son père accusé de violences domestiques et frappé d'une interdiction de domicile : *affaire renvoyée devant la Grande Chambre*

Kurt – Austria/Autriche, 62903/15, Judgment/Arrêt 4.7.2019 [Section V]

Traduction française du résumé | Printable version

In 2010 the applicant's husband was convicted of causing bodily harm to her and making dangerous threats towards his relatives. A barring order, with which he complied, obliged him to stay away from their apartment, as well as from the applicant's parents' apartment and the surrounding areas for fourteen days. In the following two years the applicant did not report any incidents to the police. In 2012 the applicant filed for divorce and reported her husband to the police for rape, domestic violence and for making dangerous threats on a daily basis in the preceding two months. When interviewed, their minor son and daughter stated that their father had beaten their mother, as well as them. On the same day, criminal proceedings were opened and a new barring order was issued against the applicant's husband, prohibiting him from returning to their marital home, the applicant's parents' apartment and the surrounding areas. His keys were seized. Three days later, he shot their son dead at school and committed suicide by shooting himself. The applicant unsuccessfully brought official liability proceedings, claiming that her husband should have been held in pre-trial detention.

In a judgment of 4 July 2019 (see Information Note 231), a Chamber of the Court held, unanimously, that there had been no violation of Article 2. In the Court's view, the real and immediate risk of a planned murder by the applicant's husband obtaining a gun and shooting his son at school had not been detectable. On the basis of the information available at the time, when looked at cumulatively, the domestic authorities had been entitled to conclude that the barring order combined with a seizure of the keys would be sufficient for the protection of the applicant's life, as well as those of her children, and that a more serious measure such as pre-trial detention had not been warranted. For the same reason although a legal framework for the applicant's and her children's protection existed, full use of it had not been made. In those circumstances, the competent authorities had not failed to comply with their positive obligations to the life of the applicant's son.

On 4 November 2019 the case was referred to the Grand Chamber at the applicant's request.

ARTICLE 3

Inhuman or degrading treatment/ Traitement inhumain ou dégradant
Positive obligations (substantive aspect)/ Obligations positives (volet matériel)

Nine-year-old child subjected to witnessing violent arrest of her father who put up no resistance: *violation*

Enfant de neuf ans témoin de l'arrestation violente de son père, lequel n'a pas opposé de résistance : *violation*

A – Russia/Russie, 37735/09, Judgment/Arrêt 12.11.2019 [Section III]

Traduction française du résumé | Printable version

Facts – The applicant had claimed that she had been present during her father's arrest and that she had witnessed violence towards her father, who had not put up any resistance to his arrest, which involved his being knocked to the ground and beaten up. Shortly after those events she had been diagnosed with a number of medical conditions, including a neurological disorder, enuresis and post-traumatic stress disorder. The Government had contested the applicant's allegations, claiming that no use of force had been applied in her father's arrest and that the authorities could not therefore be held responsible for any harm suffered by the applicant.

Law – Article 3 (*substantive and procedural aspects*): Different assessment led the Court to conclude that the applicant's allegations concerning her being subjected to witnessing her father's arrest, and the violent nature of the arrest, had been credible.

The Government's version of the facts had been based on the pre-investigation inquiry, the first stage in the procedure for examining criminal complaints. However the Court had no reason to depart from its previous case-law that the mere carrying out of a pre-investigation inquiry, not followed by a preliminary investigation, was insufficient for the authorities to comply with the requirements of an effective investigation into credible allegations of ill-treatment by the police under Article 3. The authorities had responded to the applicant's credible allegations of treatment proscribed by Article 3 by carrying out a pre-investigation inquiry and had refused to institute criminal proceedings and carry out a fully-fledged investigation. This had been endorsed by the domestic courts, thereby departing from their procedural obligation under Article 3. The pre-investigation inquiry had not provided the Government with a proper basis to discharge their burden of proof and produce evidence capable of casting doubt on the applicant's credible allegations concerning her being subjected to witnessing the violent arrest of her father, which the Court therefore found established.

The interests of the applicant, who had been nine years old at the time, had not been taken into consideration at any stage in the planning and carrying out of the authorities' arrest of her father. The law-enforcement officers had paid no heed to her presence, of which they had been well aware, proceeding with the arrest and subjecting her to witnessing a scene of violence towards her father during which he put up no resistance. This had affected the applicant very severely and had amounted to a failure on the part of the authorities to prevent her ill-treatment.

There had been a failure of the State under its positive substantive obligation under Article3 and under its procedural limb in that no effective investigation had been carried out in that respect.

Conclusion: violation (unanimously).

Article 41: EUR 25,000 in respect of non-pecuniary damage.

(See also *Lyapin v. Russia*, 46956/09, 24 July 2014, Information Note 176)

Degrading treatment/Traitement dégradant

Conditions of confinement in transit zone: *no violation*

Conditions de rétention dans une zone de transit : *non-violation*

Ilias and/et Ahmed – Hungary/Hongrie, 47287/15, Judgment/Arrêt 21.11.2019 [GC]

(See below/Voir ci-dessous, page 10)

Degrading treatment/Traitement dégradant

Conditions in which asylum-seekers were held in airport transit zone: *violation*

Conditions de rétention de demandeurs d'asile dans une zone de transit aéroportuaire : *violation*

Z.A. and Others/et autres – Russia/Russie, 61411/15 et al., Judgment/Arrêt 21.11.2019 [GC]

(See Article 5 § 1 (f) below/Voir l'article 5 § 1 f) ci-dessous, page 13)

Effective investigation/Enquête effective

Insufficient investigation into credible allegations of police ill-treatment: *violation*

Insuffisance d'une enquête portant sur des allégations crédibles de brutalités policières : *violation*

A – Russia/Russie, 37735/09, Judgment/Arrêt 12.11.2019 [Section III]

(See above/Voir ci-dessus)

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

Respondent States' failure to investigate allegations of cross-border abduction and ill-treatment involving State agents: *violation*

Manquement des États défendeurs au devoir d'enquêter sur des allégations d'enlèvement transfrontalier avec mauvais traitements impliquant des agents d'État : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III]

(See Article 11 below/Voir l'article 11 ci-dessous, page 23)

Expulsion

Respondent State's failure to assess the risk of denial of access to asylum proceedings in a presumed safe third country, including *refoulement*: *violation*

Absence d'évaluation par l'État défendeur du risque pour des demandeurs d'asile de se voir refuser l'accès à la procédure d'asile dans un pays tiers présumé sûr, et notamment du risque de refoulement : *violation*

Ilias and/et Ahmed – Hungary/Hongrie, 47287/15, Judgment/Arrêt 21.11.2019 [GC]

Traduction française du résumé | Printable version

Facts – The applicants, Bangladeshi nationals, arrived in the transit zone situated on the border between Hungary and Serbia and submitted applications for asylum. Their applications were rejected and they were escorted back to Serbia.

In the Convention proceedings, they complained, *inter alia*, that their deprivation of liberty in the transit zone had been unlawful, that the conditions of their allegedly unlawful detention had been inadequate, and that their expulsion to Serbia had exposed them to a real risk of inhuman and degrading treatment.

In a judgment of 14 March 2017 (see Information Note 205) a Chamber of the Court held, unanimously, that there had been a violation of Article 3 as regards the applicants' expulsion to Serbia and a violation of Article 5 § 1. In the Court's view the Hungarian authorities had, in breach of Article 3, disregarded country reports and other evidence submitted by the applicants, imposed an unfair and excessive burden of proof, and had failed to provide them with sufficient information. As regards Article 5 § 1, the applicants had been deprived of their liberty without any formal decision of the authorities solely by virtue of an elastically interpreted general provision of the law.

The Court also held, unanimously, that there had been no violation of Article 3 as regards the conditions of detention in the transit zone, but violations of Article 5 § 4 and Article 13 taken together with Article 3.

On 18 September 2017 the case was referred to the Grand Chamber at the Government's request.

Law – Article 3

(a) *Expulsion to Serbia*

The applicants had not left the transit zone of their own free will. The applicants' removal from Hungary was therefore imputable to the respondent State.

The content of the expelling State's duties under Article 3 differed depending on whether the receiving country was the asylum-seeker's country of origin or a third country and, in the latter situation, on whether the expelling State had dealt with the merits of the asylum application or not.

The Court added that in all cases of removal of an asylum-seeker from a Contracting State to a third intermediary country without examination of the asylum requests on the merits, regardless of whether the receiving third country is an EU member State or not or whether it is a State Party to the Convention or not, it was the duty of the removing State to examine thoroughly the question whether or not there was a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement*, that is, being removed, directly or indirectly, to his or her country of origin without a proper evaluation of the risks he or she faced from the standpoint of Article 3. If it was established that the existing guarantees in this regard were insufficient, Article 3 implied a duty that the asylum-seekers should not be removed to the third country concerned.

In addition to this main question, where the alleged risk of being subjected to treatment contrary to Article 3 concerned, for example, conditions of detention or living conditions for asylum-seekers in a receiving third country, that risk was also to be assessed by the expelling State.

If it was found *ex post facto* in national or international proceedings that the asylum-seeker did not run a risk in his or her country of origin, this could not serve to absolve the State retrospectively of the procedural duty described above. If it were otherwise, asylum-seekers who faced deadly danger in

their country of origin could be lawfully and summarily removed to "unsafe" third countries. Such an approach would in practice render meaningless the prohibition of ill-treatment in cases of expulsion of asylum-seekers.

With regard to asylum-seekers whose claims were unfounded or, even more so, who had no arguable claim about any relevant risk necessitating protection, Contracting States were free, subject to their international obligations, to dismiss their claims on the merits and return them to their country of origin or a third country which accepted them. The form of such examination on the merits would naturally depend on the seriousness of the claims made and the evidence presented.

In the present case, based on the Hungarian Asylum Act which provided for the inadmissibility of asylum requests in a number of circumstances and reflected the choices made by Hungary in transposing the relevant EU law, the Hungarian authorities had not examined the applicants' asylum requests on the merits – that is to say, whether the applicants risked ill-treatment in their country of origin, Bangladesh. Instead, the Hungarian authorities had declared the asylum requests inadmissible on the basis that the applicants had come from Serbia, which, according to the Hungarian authorities had been a safe third country and, therefore, could take in charge the examination of the applicants' asylum claims on the merits.

As a consequence, the thrust of the applicants' complaints under Article 3 is that they had been removed despite clear indications that they would not have access in Serbia to an adequate asylum procedure capable of protecting them against *refoulement*.

Since the Hungarian authorities' impugned decision to remove the applicants to Serbia had been unrelated to the situation in Bangladesh and the merits of the applicants' asylum claims, it was not the Court's task to examine whether the applicants had risked ill-treatment in Bangladesh. Nor was it for the Court to act as a court of first instance and deal with aspects of the asylum claims' merits in a situation where the defendant State had opted – legitimately so – not to deal with those and at the same time the impugned expulsion had been based on the application of the "safe third country" concept. The question whether there was an arguable claim about Article 3 risks in the country of origin was relevant in cases where the expelling State had dealt with those risks.

The Court had therefore to examine: (i) whether these authorities had taken into account the available general information about Serbia and its asylum system in an adequate manner and of their own initiative; (ii) whether the applicants had been given a sufficient opportunity to demonstrate that Serbia had not been a safe third country in their particular case; and (iii) whether the Hungarian authorities had failed to take into consideration the allegedly inadequate reception conditions for asylum-seekers in Serbia.

The Hungarian authorities had relied on a list of "safe third countries" established by a government decree which had put in place a presumption that the listed countries were safe.

The Convention did not prevent Contracting States from establishing lists of countries which were presumed safe for asylum-seekers. Member States of the European Union did so, in particular, under the Asylum Procedures Directive. However, any presumption that a particular country was "safe", if it had been relied upon in decisions concerning an individual asylum-seeker, had to be sufficiently supported at the outset by an analysis of the relevant conditions in that country and, in particular, of its asylum system. However, in the instant case, the decision-making process in that respect had not involved a thorough assessment of the risk that was posed by the lack of an effective access to asylum proceedings in Serbia, including the risk of *refoulement*.

Moreover, in the applicants' case the expulsion decisions had disregarded the authoritative findings of the UNHCR as to a real risk of denial of access to an effective asylum procedure in Serbia and summary removal from Serbia to North Macedonia and then to Greece, and, therefore, of being subjected in Greece to conditions incompatible with Article 3.

The Hungarian authorities had exacerbated the risks facing the applicants by inducing them to enter Serbia illegally instead of negotiating an orderly return in an effort to obtain guarantees from the Serbian authorities.

Finally, as regards the Government's argument that all parties to the Convention, including Serbia, North Macedonia and Greece, had the same obligations and that Hungary would not bear an additional burden to compensate for their deficient asylum systems, this was not a sufficient argument to justify a failure by Hungary – which had opted for not examining the merits of the applicants' asylum claims – to discharge its own procedural obligation, stemming from the absolute nature of the prohibition of ill-treatment under Article 3.

In sum, the respondent State had failed to discharge its procedural obligation under Article 3 to assess the risks of treatment contrary to that provision before removing the applicants from Hungary.

Conclusion: violation (unanimously).

(b) *Conditions of confinement in the transit zone*

The Grand Chamber endorsed the Chamber's analysis in the present case regarding the physical conditions in which the applicants had lived while confined to the transit zone. The applicants had been confined to an enclosed area of some 110 square metres for 23 days. Adjacent to that area they had been provided with a room in one of several dedicated containers. The room contained five beds but at the material time the applicants had been the only occupants. The hygienic conditions were good and persons staying at the zone were provided with food of a satisfactory quality and medical care, if needed, and could spend their time outdoors. They had opportunities for human contact with other asylum-seekers, UNHCR representatives, NGOs and a lawyer. The applicants had been no more vulnerable than any other adult asylum-seeker detained at the time. Even if the applicants had surely been affected by the uncertainty of whether they were in detention and if legal safeguards against arbitrary detention applied, the brevity of the relevant period and the fact that the applicants were aware of the procedural developments in the asylum procedure, which unfolded without delays, indicated that the negative effect of any such uncertainty on them must have been limited. In sum, the situation complained of did not reach the minimum level of severity necessary to constitute inhuman treatment within the meaning of Article 3.

Conclusion: no violation (unanimously).

Article 5 §§ 1 and 4: *Applicability*

In drawing the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of asylum-seekers, the Court's approach had to be practical and realistic, having regard to present-day conditions and challenges. It was important in particular to recognise the States' right, subject to their international obligations, to control their borders and to take measures against foreigners circumventing restrictions on immigration.

In determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in airport transit zones and reception centres for the identification and registration of migrants, the factors taken into consideration by the Court could be summarised as follows: (i) the applicants' individual situation and their choices; (ii) the applicable legal regime of the respective country and its purpose; (iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events; and (iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants

The present case concerned, apparently for the first time, a transit zone located on the land border between two member States of the Council of Europe, where asylum-seekers had to stay pending the examination of the admissibility of their asylum requests.

The applicants had not crossed the border from Serbia because of a direct and immediate danger to their life or health in that country but did so of their own free will. They had entered the transit zone of their own initiative.

The right of States to control the entry of foreigners into their territory necessarily implied that admission authorisation might be conditional on compliance with relevant requirements. Therefore, in the absence of other significant factors, the situation of an individual applying for entry and waiting for a short period for the verification of his or her right to enter could not be described as deprivation of liberty imputable to the State, since in such cases the State authorities had undertaken *vis-à-vis* the individual no other steps than reacting to his or her wish to enter by carrying out the necessary verifications

As long as the applicant's stay in the transit zone did not exceed significantly the time needed for the examination of an asylum request and there were no exceptional circumstances, the duration in itself could not affect the Court's analysis on the applicability of Article 5 in a decisive manner. That was particularly so where the individuals, while waiting for the processing of their asylum claims, had benefited from procedural rights and safeguards against excessive waiting periods. The fact that domestic regulations existed limiting the length of stay in the transit zone was of significant importance in this regard.

The size of the area and the manner in which it was controlled were such that the applicants' freedom of movement had been restricted to a very significant degree, in a manner similar to that characteristic of certain types of light-regime detention facilities.

On the other hand, while waiting for the procedural steps made necessary by their application for asylum, the applicants had been living in conditions which, albeit involving a significant restriction on their freedom of movement, had not limited their liberty unnecessarily or to an extent or in a manner unconnected to the examination of their asylum claims. Finally, despite very significant difficulties engendered by a mass influx of asylum-seekers and migrants at the border, the applicants spent only twenty-three days in the zone, a period which did not exceed what was strictly necessary to verify whether the applicants' wish to enter Hungary to

seek asylum there could be granted. The applicants' situation was not influenced by any inaction of the Hungarian authorities.

It is further significant that, in contrast to, for example, persons confined to an airport transit zone, those placed in a land border transit zone – as with the applicants in the present case – did not need to board an aeroplane in order to return to the country from which they had come. The applicants had come from Serbia, a country bound by the Geneva Convention relating to the Status of Refugees and the territory of which was immediately adjacent to the transit zone area. In practical terms, therefore, the possibility for them to leave the land border transit zone was not only theoretical but also realistic.

Where – as in the present case – the sum of all other relevant factors did not point to a situation of *de facto* deprivation of liberty and it was possible for the asylum-seekers, without a direct threat to their life or health, known by or brought to the attention of the authorities at the relevant time, to return to the third intermediary country they had come from, Article 5 could not be seen as applicable to their situation in a land border transit zone where they awaited the examination of their asylum claims, on the ground that the authorities had not complied with their separate duties under Article 3. The Convention cannot be read as linking in such a manner the applicability of Article 5 to a separate issue concerning the authorities' compliance with Article 3.

In the circumstances of the present case and in contrast to the situation that obtained in some of the cases concerning airport transit zones, and notably in *Amuur v. France*, the risk of the applicants' forfeiting the examination of their asylum claims in Hungary and their fears about insufficient access to asylum procedures in Serbia, while relevant with regard to Article 3, did not render the applicants' possibility of leaving the transit zone in the direction of Serbia merely theoretical. The Court could not accept that those fears alone, despite all other circumstances in the present case (which were different from those obtaining in the cases concerning airport transit zones), were sufficient to bring Article 5 into application. Such an interpretation of the applicability of Article 5 would stretch the concept of deprivation of liberty beyond its meaning intended by the Convention.

Therefore, the risks in question had not had the effect of making the applicants' stay in the transit zone involuntary from the standpoint of Article 5 and, consequently, could not trigger, of itself, the applicability of that provision.

Conclusion: inadmissible (incompatible *ratione materiae*).

Article 41: EUR 5,000 to each of the two applicants in respect of non-pecuniary damage.

(See the Factsheet on "Dublin" cases; *T.I. v. the United Kingdom* (dec.), 43844/98, 7 March 2000, Information Note 16; *M.S.S. v. Belgium and Greece* [GC], 30696/09, 21 January 2011, Information Note 137; *Mohammed Hussein and Others v. the Netherlands and Italy* (dec.), 27725/10, 2 April 2013, Information Note 162; *Tarakhel v. Switzerland* [GC], 29217/12, 4 November 2014, Information Note 179; and *Paposhvili v. Belgium* [GC], 41738/10, 13 December 2016, Information Note 202. See also the Factsheet on Detention conditions and treatment of prisoners; *Amuur v. France*, 19776/92, 25 June 1996; *Shamsa v. Poland*, 45355/99 and 45357/99, 27 November 2003, Information Note 58; *Mogoş v. Romania* (dec.), 20420/02, 6 May 2004, Information Note 79; *Mahdid and Haddar v. Austria* (dec.), 74762/01, 8 December 2005, Information Note 81; *Riad and Idiab v. Belgium*, 29787/03 and 29810/03, 24 January 2008, Information Note 104; and *Nolan and K. v. Russia*, 2512/04, 12 February 2009, Information Note 116)

ARTICLE 5

Article 5 § 1

Deprivation of liberty/Privation de liberté

De facto confinement lasting twenty-three days in land border transit zone: _inadmissible_

Confinement de fait, pendant vingt-trois jours, dans une zone de transit frontalière terrestre : _irrecevable_

Ilias and/et Ahmed – Hungary/Hongrie, 47287/15, Judgment/Arrêt 21.11.2019 [GC]

(See Article 3 above/Voir l'article 3 ci-dessus, page 10)

Deprivation of liberty/Privation de liberté

Asylum-seekers held for lengthy periods in airport transit zone: _violation_

Demandeurs d'asile retenus pendant de longues périodes dans une zone de transit aéroportuaire : _violation_

Z.A. and Others/et autres – Russia/Russie, 61411/15 et al., Judgment/Arrêt 21.11.2019 [GC]

Traduction française du résumé | Printable version

Facts – The four applicants, who were asylum-seekers, were held in the international transit zone of Sheremetyevo Airport in Russia for periods ranging from five months to one year and ten months after being refused entry into Russia. They had to sleep on a mattress on the floor in the boarding area of the airport, which was constantly lit, crowded and noisy, and were sustained by emergency rations provided by the Russian office of UNHCR. There were no showers. In the Convention proceedings, they complained that they had been unlawfully deprived of their liberty (Article 5 § 1 of the Convention) and of the conditions in which they were held (Article 3).

In a judgment of 28 March 2017 (Information Note 205), a Chamber of the Court held, by six votes to one, that there had been a violation of Article 5 § 1 of the Convention. The confinement of the applicant asylum-seekers for lengthy periods in the airport transit zone without the possibility to enter Russian territory or a State other than that which they had left amounted to a *de facto* deprivation of liberty for which there was no legal basis in Russian law. The Chamber also found, by six votes to one, a violation of Article 3 on account of the conditions the applicants were forced to endure in the transit zone over extended periods.

On 18 September 2017 the case was referred to the Grand Chamber at the Government's request.

Law

Preliminary considerations

The right to have one's liberty restricted only in accordance with the law and the right to humane conditions, if detained under State control, were minimum guarantees that had to be available to those under the jurisdiction of all member States, despite the mounting "migration crisis" in Europe.

Article 5 § 1

(a) *Applicability*

In drawing the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of asylum-seekers, the Court's approach had be practical and realistic, having regard to the present-day conditions and challenges. It was important in particular to recognise the States' right, subject to their international obligations, to control their borders and to take measures against foreigners circumventing restrictions on immigration.

In determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in airport transit zones and reception centres for the identification and registration of migrants, the factors taken into consideration by the Court might be summarised as follows: (i) the applicants' individual situation and their choices; (ii) the applicable legal regime of the respective country and its purpose; (iii) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events; and (iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants

In the present case, having regard to the known facts about the applicants and their respective journeys and, notably, the fact that they had not arrived in Russia because of a direct and immediate danger to their life or health but rather due to specific circumstances of their travel routes, there had been no doubt that they had entered the airport involuntarily, but without the Russian authorities being involved. It was therefore clear that, in any event, the Russian authorities had been entitled to carry out the necessary verifications and examine their claims before deciding whether or not to admit them.

The Russian authorities had not sought to deprive the applicants of their liberty and they had denied them entry at once. The applicants had remained in the transit zone essentially because they had been awaiting the outcome of their asylum proceedings.

The right of States to control the entry of foreigners onto their territory necessarily implied that admission authorisation might be conditional on compliance with relevant requirements. Therefore, in the absence of other significant factors, the situation of an individual applying for entry and waiting for a short period for the verification of his or her right to enter could not be described as deprivation of liberty imputable to the State, since in such cases the State authorities had taken *vis-à-vis* the individual no other steps than reacting to his or her wish to enter by carrying out the necessary verifications

It was further relevant whether, in line with the purpose of the applicable legal regime, procedural guarantees concerning the processing of the applicants' asylum claims and domestic provisions fixing the maximum duration of their stay in the transit zone had existed and whether they had been applied in the present case.

On the facts, the respondent Government had been unable to refer to any domestic provisions fixing the maximum duration of the applicants' stay in the transit zone. Furthermore, in disregard of the Russian domestic rules granting every asylum-seeker the right to be issued with an examination certificate and to be placed in temporary accommodation facilities pending examination of the asylum application, the applicants had been essentially left to their own devices in the transit zone. The Russian

authorities had not acknowledged that they had been in any manner responsible for the applicants, thereby leaving the latter in a legal limbo without any possibility of challenging the measures restricting their liberty. While in the transit zone, all four applicants had little information regarding the outcome of their respective applications for refugee status and temporary asylum.

As long as the applicant's stay in the transit zone did not exceed significantly the time needed for the examination of an asylum request and there were no exceptional circumstances, the duration in itself was not likely to affect the Court's analysis on the applicability of Article 5 in a decisive manner. That was particularly so where the individuals, while waiting for the processing of their asylum claims, had benefited from procedural rights and safeguards against excessive waiting periods. The fact that domestic regulation existed limiting the length of stay in the transit zone was of significant importance in this regard.

The applicants' situation had been very seriously influenced by delays and inaction on the part of the Russian authorities which had been clearly attributable to them and had been not justified by any legitimate reasons.

The case file contained no indication that the applicants had failed to comply with the legal regulations in place or had not acted in good faith at any time during their confinement in the transit zone or at any stage of the domestic legal proceedings by, for instance, complicating the examination of their asylum cases.

Even though the applicants had been largely left to their own devices within the perimeter of the transit zone, the size of the area and the manner in which it had been controlled had been such that the applicants' freedom of movement had been restricted to a very significant degree, in a manner similar to that characteristic of certain types of light regime detention facilities.

Leaving the airport transit zone in a direction other than the territory of Russia would have required planning, contacting airlines, purchasing tickets and possibly applying for a visa depending on the destination. The Government had failed to substantiate their assertion that despite these obstacles "the applicants had been free to leave Russia at any time and go wherever they wished". The practical and real possibility for the applicants to leave the airport transit zone and do so without any direct threat to their life or health, as known by or brought to the attention of the authorities at the relevant time, had to be convincingly shown to exist.

Having regard to various factors – in particular the lack of any domestic legal provisions fixing the maximum duration of the applicants' stay, the largely irregular character of the applicants' stay in the airport transit zone, the excessive duration of such stay and considerable delays in domestic examination of the applicants' asylum claims, the characteristics of the area in which the applicants had been held and the control to which they had been subjected during the relevant period of time and the fact that the applicants had no practical possibility of leaving the zone – it was concluded that the applicants had been deprived of their liberty within the meaning of Article 5.

Article 5 § 1 was therefore applicable.

(b) *Merits*

The Court was fully conscious of the difficulties that member States might face during periods when asylum-seekers arrived in large numbers at their borders. Subject to the prohibition of arbitrariness, the lawfulness requirement of that provision might be considered generally satisfied by a domestic legal regime that provided, for example, for no more than the name of the authority competent to order deprivation of liberty in a transit zone, the form of the order, its possible grounds and limits, the maximum duration of the confinement and, as required by Article 5 § 4, the applicable avenue of judicial appeal.

Furthermore, Article 5 § 1 (f) did not prevent States from enacting domestic law provisions that formulated the grounds on which such confinement could be ordered with due regard to the practical realities of a massive influx of asylum-seekers. In particular, paragraph 1 (f) did not prohibit deprivation of liberty in a transit zone for a limited period on grounds that such confinement was generally necessary to ensure the asylum seekers' presence pending the examination of their asylum claims or, moreover, on grounds that there was a need to examine the admissibility of asylum applications speedily and that, to that end, a structure and adapted procedures had been put in place at the transit zone.

There had been no strictly defined statutory basis in Russian law capable of serving as grounds for justifying the applicants' deprivation of liberty.

This in itself would have been sufficient to find a violation of Article 5 § 1. However, there were additional factors worsening the applicants' respective situations.

The applicants' access to the asylum procedure had been considerably impeded as a result of their detention, as there had been no information available on asylum procedures in Russia in the transit

zone and their access to legal assistance had been severely restricted.

The applicants had experienced serious delays when attempting to submit and register their asylum applications and, despite their written requests, had not been issued and served with examination certificates as required by the domestic law.

There had been delays communicating to the applicants some of the decisions taken by the Russian administrative and judicial bodies.

Moreover, the applicants had been confined in a place which had been clearly inappropriate for any long-term stay.

Lastly, the duration of each applicant's stay in the airport transit zone had been considerable and clearly excessive in view of the nature and purpose of the procedure concerned, ranging from five months to over a year and nine months.

The applicants' detention for the purposes of the first limb of paragraph 1 (f) of Article 5 had fallen short of the Convention standards.

Conclusion: violation (unanimously).

Article 3: On the basis of the available material, the Court could clearly see that the conditions of the applicants' stay in the airport transit zone had been unsuitable for an enforced long-term stay. In its view, a situation where a person not only had to sleep for months at a stretch on the floor in a constantly lit, crowded and noisy airport transit zone without unimpeded access to shower or cooking facilities and without outdoor exercise, but also had no access to medical or social assistance, fell short of the minimum standards of respect for human dignity.

This situation had been aggravated by the fact that the applicants had been left to their own devices in the transit zone, in disregard of the Russian domestic rules granting every asylum-seeker the right to be issued with an examination certificate and to be placed in temporary accommodation facilities pending examination of the asylum application.

Three of the applicants had been eventually recognised by the UNHCR as being in need of international protection, which had suggested that their distress had been accentuated on account of the events that they had been through during their migration.

Lastly, the detention had been of extremely long duration for each of the applicants. The applicants' detention had lasted for many months in a row (between nearly five and twenty-two months).

Taken together, the appalling material conditions which the applicants had to endure for such long periods of time and the complete failure of the authorities to take care of the applicants constituted degrading treatment contrary to Article 3.

The applicants had been under the respondent State's control and in their custody throughout the relevant period of time.

Conclusion: violation (unanimously).

Article 41: EUR 15,000 to one of the applicants, EUR 20,000 each to two of the applicants, and EUR 26,000 to a fourth applicant, all in respect of non-pecuniary damage.

(See the Factsheet on Detention conditions and treatment of prisoners; see also *Amuur v. France*, 19776/92, 25 June 1996; *Shamsa v. Poland*, 45355/99 and 45357/99, 27 November 2003, Information Note 58; *Mogoş v. Romania* (dec.), 20420/02, 6 May 2004, Information Note 79; *Mahdid and Haddar v. Austria* (dec.), 74762/01, 8 December 2005, Information Note 81; *Riad and Idiab v. Belgium*, 29787/03 and 29810/03, 24 January 2008, Information Note 104; *Nolan and K. v. Russia*, 2512/04, 12 February 2009, Information Note 116; *M.S.S. v. Belgium and Greece* [GC], 30696/09, 21 January 2011, Information Note 137; *Kanagaratnam v. Belgium*, 15297/09, 13 December 2011, Information Note 147; *Ananyev and Others v. Russia*, 42525/07 and 60800/08, 10 January 2012, Information Note 148; *Suso Musa v. Malta*, 42337/12, 23 July 2013, Information Note 165; *Gahramanov v. Azerbaijan* (dec.), 26291/06, 15 October 2013, Information Note 168; *Muršić v. Croatia* [GC], 7334/13, 20 December 2016, Information Note 200; and *Khlaifia and Others v. Italy* [GC], 16483/12, 15 December 2016, Information Note 202)

Positive obligations/Obligations positives

Respondent States' failure to investigate allegations of cross-border abduction and ill-treatment involving State agents: *violation*

Manquement des États défendeurs au devoir d'enquêter sur des allégations d'enlèvement transfrontalier avec mauvais traitements impliquant des agents d'État : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III]

(See Article 11 below/Voir l'article 11 ci-dessous, page 23)

Article 5 § 5

Compensation/Réparation

Pre-trial detention in inappropriate premises compensated for by way of reduced sentence: *inadmissible*

Détention provisoire dans des locaux inadaptés réparée sous la forme d'une réduction de peine : *irrecevable*

Porchet – Switzerland/Suisse, 36391/16, Decision/Décision 8.10.2019 [Section III]

English translation of the summary | Version imprimable

En fait – Placé en détention provisoire, le requérant resta maintenu seize jours dans une cellule réservée à la garde à vue (alors que la limite légale pour ce type de cellule était de 48 heures) avant d'être transféré dans un établissement adéquat.

Plus tard, le tribunal correctionnel condamna le requérant à une peine privative de liberté (dont onze mois ferme) ainsi qu'à une amende ; à titre de réparation pour les seize jours de détention provisoire dans des conditions inadaptées, le tribunal lui accorda une réduction de peine de huit jours.

Estimant cette forme de réparation inadéquate, le requérant demanda vainement aux juridictions supérieures que lui soit substituée une réparation pécuniaire. Le Tribunal fédéral jugea que le mode de réparation choisi n'outrepassait pas le pouvoir d'appréciation des juges du fond.

En droit – Article 5 § 5 : Le requérant fait grief aux autorités d'avoir opté pour une réduction de peine comme mode de réparation de sa détention non conforme à l'article 5 § 1 de la Convention.

La Cour note que, d'une part, le Tribunal fédéral a confirmé, en analysant explicitement la question sous l'angle de l'article 5 de la Convention, que la détention provisoire du requérant s'était initialement déroulée dans des conditions non conformes aux dispositions légales ; et que, d'autre part, le tribunal correctionnel lui a accordé une réduction de peine de huit jours en réparation de ces seize jours de détention provisoire dans des locaux inadaptés.

Or, si le droit à réparation garanti par l'article 5 § 5 est principalement de nature pécuniaire, cela n'exclut pas qu'il puisse avoir un contenu plus large. Dans des affaires relatives à d'autres dispositions de la Convention, la Cour a déjà jugé qu'une réduction de la peine infligée au requérant pouvait constituer une réparation adéquate de la violation en cause, pourvu que cette réduction soit mesurable et explicitement opérée dans cette intention (voir en particulier, dans le cas de conditions de détention contraires à l'article 3, *Stella et autres c. Italie* (déc.), 49169/09 et al., 16 septembre 2014, Note d'information 177).

En supposant l'article 5 § 5 applicable au grief du requérant, la Cour relève que :

– l'illicéité constatée par les autorités nationales ne tenait pas à la nécessité de la détention provisoire ou à sa durée, mais uniquement à la nature des locaux où elle s'était déroulée ;

– la détention provisoire et la condamnation ultérieure sur laquelle s'est imputée la réduction de peine concernaient la même infraction ;

– c'est précisément en considération de l'illicéité d'une partie de la détention provisoire que la réduction de la peine du requérant a été décidée par le tribunal ;

– le requérant ne se plaint pas de l'insuffisance de la réparation, mais uniquement de sa nature non pécuniaire.

Aux yeux de la Cour, l'intention réparatoire de la décision du tribunal correctionnel et le caractère proportionné de la réduction de peine sont clairement établis.

Dans un arrêt motivé, le Tribunal fédéral a considéré que l'allocation d'une réparation sous la forme d'une réduction de peine plutôt que d'une prestation financière était parfaitement conforme au droit suisse. La motivation en question ne révélant rien d'arbitraire ou de déraisonnable, la Cour n'a pas vocation à substituer son interprétation du droit interne à celle des tribunaux nationaux.

Partant, compte tenu de ce que, par les jugements définitifs précités, les autorités nationales ont reconnu la violation en cause puis l'ont réparée d'une manière comparable à la satisfaction équitable dont parle l'article 41 de la Convention, le requérant ne peut plus se prétendre victime d'une violation de l'article 5 § 5 de la Convention.

Conclusion : irrecevable (incompatibilité *ratione personae*).

ARTICLE 6

Article 6 § 1 (criminal/pénal)

Fair hearing/Procès équitable

Conviction based to a decisive degree on statements by accomplice arising from plea-bargaining arrangement, without adequate scrutiny thereof: *violation*

Condamnation fondée de manière décisive sur les déclarations d'un complice dans le cadre d'une « transaction pénale », sans contrôle juridictionnel adéquat de cette transaction : *violation*

Adamčo – Slovakia/Slovaquie, 45084/14, Judgment/Arrêt 12.11.2019 [Section III]

Traduction française du résumé | Printable version

Facts – The applicant was convicted of murder, in the context of organised crime. At the domestic level he unsuccessfully complained (i) that the observations of the prosecution service on his appeal and appeal on points of law had not been served on him, and (ii) that his conviction had been based on evidence from a witness (M.) who had been motivated by the prosecution to testify falsely against the applicant in return for impunity.

The order of events as regards the latter complaint was as follows:

– *prior to the applicant's conviction*: (i) M. had been charged with the murder of O. and detained pending trial on that charge, but was released from detention and the investigation in respect of that charge was closed upon his changing his version of events to incriminate the applicant, and (ii) the bringing of charges against M. for being the applicant's accomplice in the murder of K. was temporarily suspended.

– *after the applicant's conviction (although pending appeal on points of law)*: (i) M. was investigated for perjury, but the decision to open that investigation was quashed, and (ii) M. was formally charged with the murder of K., but his prosecution for that murder was terminated with final effect.

The applicant's arguments challenging M.'s credibility as a witness before the domestic courts were only examined by the court of appeal (the cassation court and the Constitutional Court gave no specific reply in that connection). The court of appeal found (i) that by changing his previous position in the applicant's trial M. had merely incriminated himself in addition to the applicant, and that he had obtained no advantage since his prosecution for the murder of K. had only been suspended, and (ii) that M.'s evidence had been corroborated by other incriminating evidence.

Law – Article 6: The following reasons led the Court to the conclusion that, in view of the importance of M.'s evidence to the applicant's trial, its use at the trial had not been accompanied by appropriate safeguards so as to ensure the overall fairness of the proceedings.

(a) *Impact of the evidence in issue* – The other evidence against the applicant had been indirect and had formed part of a whole only when considered with the direct evidence from M.; his changing his version of events could therefore be regarded as a decisive turning-point in the trial. Accordingly, M.'s evidence had constituted, if not the sole, then at least the decisive evidence against the applicant.

(b) *Advantages obtained by the testimony-giver in the different trials* – Firstly, the domestic courts had not scrutinised the applicant's argument with reference to its factual basis in its entirety. Indeed, it transpired form the order of events that, at the time of the applicant's conviction and appeal, the benefits M. had allegedly obtained in return for incriminating the applicant had consisted of (i) the charge of the murder of O. being dropped, the investigation being closed, and his being released from detention pending trial on that charge, and (ii) the bringing of charges for the murder of K. being suspended. However, the court of appeal had limited its scrutiny to any advantage M. might have received within that same trial (for the murder of K.). Any advantage he might have received in the context of the prosecution for the murder of O. had not been examined. But the fact remained that after M. had changed his version of events the charge had been dropped, the investigation had been closed and he had been released from detention pending trial. None of the courts had taken any position as regards these facts.

Secondly, the courts' conclusion that M. did not gain any advantage was contradicted by the subsequent development consisting of (i) the quashing of the decision to open an investigation into the suspicion that he had committed the offence of perjury, and (ii) the termination of his prosecution for the murder of K., which had been granted expressly and specifically in return for his testimony. Admittedly, the outcome of this development post-dated the applicant's trial. However, during the applicant's trial, M.'s prosecution for the murder of K. had already been suspended. This had been a preliminary step towards the ultimate termination of that prosecution.

Thirdly, the advantages M. obtained had been extended to him under the authority of the prosecution service, which in Slovakia is organised as a single hierarchy. This presupposed a degree of coordination, which in the present case was further suggested by a certain personal overlap in the form of the involvement of the same prosecutor in the various proceedings. The preliminary advantage M. had had the benefit of at the time of the applicant's trial could not be dissociated from the overall advantage he had received in relation to his own prosecution for the murder of K. in return for his testimony incriminating the applicant.

Fourthly, neither had any particular consideration been given to the fact that M.'s evidence originated from a witness who was, by his own account, himself involved in the offence, whereas the advantage obtained by him went beyond a mere reduction of sentence or financial benefit and practically meant impunity for an offence of unlawful killing.

Fifthly, M.'s plea-bargain arrangements in the applicant's own trial were not subject to appropriate

judicial review. The review by the court of appeal had been inadequate, and the higher courts had failed to respond to the applicant's argument altogether. Moreover, all the decisions concerning the prosecution of M. had been taken under the sole responsibility of the prosecution service with no element of any judicial control.

The Court also found that the failure to send the applicant a notification of the observations of the prosecution service on his appeal and appeal on points of law had breached his right to a fair hearing.

Conclusion: violation (unanimously).

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

(Contrast *Habran and Dalem v. Belgium*, 43000/11 and 49380/11, 17 January 2017, Information Note 203)

Fair hearing/Procès équitable

Co-defendant admitted as witness against the accused after conviction in disjoined plea-bargaining procedure without prior adversarial scrutiny: *violation*

Co-accusé admis comme témoin à charge après sa condamnation séparée par voie de transaction pénale, sans examen contradictoire préalable : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III]

(See Article 11 below/Voir l'article 11 ci-dessous, page 23)

Article 6 § 1 (administrative/ administratif)

Access to court/Accès à un tribunal

Locus standi* denied to applicant by the Court of Justice of the EFTA States: *inadmissible

Qualité pour agir déniée à la requérante par la Cour de justice des États de l'AELE : *irrecevable*

Konkurrenten.no AS – Norway/Norvège, 47341/15, Decision/Décision 5.11.2019 [Section II]

Traduction française du résumé | Printable version

Facts – Norway is a member of the European Free Trade Association (EFTA) and of the European Economic Area (EEA). The applicant, a company operating in the express bus market, lodged a series of complaints before the EFTA Surveillance Authority (ESA) about an allegedly illegal State aid to the benefit of one of its competitors. Upon the ESA's refusal to investigate the matter, the applicant brought the case directly before the EFTA Court. However, the EFTA Court dismissed its application as inadmissible on the ground that the applicant lacked *locus standi*, considering that its market position had not been substantially affected by the aid in question. This outcome was in accordance with the observations that the Norwegian State had submitted in those proceedings, as allowed by the relevant rules.

Law – Article 6 § 1

Since the EFTA was not party to the Convention, the application seemed *a priori* to be incompatible *ratione personae* with the provisions contained therein. However, the applicant had provided two different arguments as to why the respondent State's responsibility under the Convention pursuant to Article 1 might nonetheless have been engaged in the context of the proceedings before the EFTA Court. Both were rejected as follows.

(a) *As to the role of the respondent State in the proceedings in issue* – The Court did not find that the respondent State in the applicant's case had been involved in the EFTA Court proceedings in such a manner as to justify attributing responsibility for compliance of those proceedings with Article 6 of the Convention to it.

Firstly, there were no links between any domestic proceedings and those before the EFTA Court (contrast *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), 13645/05, 20 January 2009, Information Note 115). Secondly, the respondent State had had no influence on those proceedings apart from what may or may not have followed from the persuasiveness of its arguments as they appeared from the written and oral submissions to the EFTA Court.

In the Court's view, the fact that an EEA EFTA State, in accordance with the relevant procedural rules, had availed itself of submitting observations in a case pending before the EFTA Court could not as such engage its responsibility under the Convention.

That was the case irrespective of the State's position on the issue to be decided by the EFTA Court or of the quality of its submissions. If the EFTA Court were ultimately to decide the case more or less along the same lines as had been argued in those submissions, that could not in itself trigger the responsibility of the State concerned under the Convention; indeed, the EFTA Court was a judicial body, deciding cases on a legal basis, independently and impartially.

(b) *As to whether the matters complained of had been the result of a structural shortcoming in the EFTA Court regime*

(i) *Methodology* – In *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC] (45036/98, 30 June 2005, Information Note 76), the Court had mainly held that: (i) if an organisation to which a Contracting State had transferred jurisdiction was considered to protect fundamental rights in a manner which could be considered at least "equivalent" to that for which the Convention provided, the presumption would be that a State had not departed from the requirements of the Convention when it did no more than implement legal obligations flowing from its membership of the organisation; (ii) the presumption could be rebutted if the protection of Convention rights was manifestly deficient in the case at hand.

However, the basis for that presumption was in principle lacking when it came to the implementation of EEA law at domestic level within the framework of the EEA Agreement, due to the specificities of the governing treaties, compared with those of the European Union; indeed: (i) in contrast to EU law, there was within the framework of the EEA Agreement itself no direct effect and no supremacy; (ii) although the EFTA Court had expressed the view that the provisions of the EEA Agreement were "to be interpreted in the light of fundamental rights" in order to enhance coherence between EEA law and EU law, the EEA Agreement did not include the EU Charter of Fundamental Rights, or any reference whatsoever to other legal instruments having the same effect, such as the Convention.

That said, the issue in this case was not whether Norway could be held responsible under the Convention for implementing EEA law, but rather whether it was responsible for the alleged denial of access to a court by the EFTA Court when it had dismissed the applicant's case. However, this responsibility would only come into play if, and to the extent that, the alleged violation could be attributed to a structural shortcoming in the procedural guarantees afforded under the organisational and procedural regime of the EFTA Court. The test in that connection was whether the procedural regime was manifestly deficient when compared with the Convention requirements (see *Gasparini v. Italy and* Belgium (dec.), 10750/03, 12 May 2009, Information Note 119).

(ii) *Application in the instant case* – Against the following background, no appearance of any manifest deficiencies in the protection of the applicant's Convention rights could be discerned.

– *Presumption* – Given that the EFTA Court had been set up to operate as a judicial body similar to the Court of Justice of the European Union (CJEU), and that the essential procedural principles governing the operation of the EFTA Court had been inspired by those of the CJEU, the only starting-point could be that there were no such manifest deficiencies. This was indeed confirmed by specific provisions in the EEA and ESA/Court Agreements, the EFTA Court's Rules of Procedure and its case-law as the parties and the ESA had presented it. In particular, the EFTA Court was a body of independent and impartial judges which delivered reasoned decisions based on proceedings that were public and adversarial.

– *Absence of rebuttal* – The applicant had not rebutted the strong presumption stemming from the above. Firstly, the applicant had been fully involved in the EFTA Court proceedings and had had every opportunity to plead the admissibility of its application and to present that court with evidence to prove that it met the criteria for legal standing. Secondly, the EFTA Court had given detailed reasons as to why the applicant did not have legal standing in accordance with the applicable rules.

Conclusion: inadmissible (manifestly ill-founded).

Article 6 § 3 (b)

Adequate facilities/Facilités nécessaires

Unnecessary confinement of accused in glass cabin at court hearings that lasted a number of months: *violation*

Applicant's ineffective participation in his trial due to excessively intensive court hearing schedule coupled with lengthy prison transfers: *violation*

Enfermement injustifié de l'accusé dans une cage de verre aux audiences, durant des mois : *violation*

Participation du requérant au procès ineffective vu l'intensité excessive du calendrier des audiences au regard des délais de transfèrement carcéral de l'accusé : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III]

(See Article 11 below/Voir l'article 11 ci-dessous, page 23)

ARTICLE 8

Respect for private life/Respect de la vie privée

Inability for opioid addicts to obtain methadone or buprenorphine replacement therapy: *no violation*

Impossibilité pour les dépendants aux opiacés de bénéficier d'un traitement de substitution par la méthadone ou la buprénorphine : *non-violation*

Abdyusheva and Others/et autres – Russia/Russie, 58502/11 et al., Judgment/Arrêt 26.11.2019 [Section III]

English translation of the summary | Version imprimable

En fait – Dépendants aux opiacés, les requérants se plaignent de l'impossibilité d'accéder à un traitement de substitution par la méthadone ou la buprénorphine. En droit russe, les deux substances sont interdites aux fins de traitement de la toxicomanie.

En droit – Article 8

1. *M*me *Abdyusheva* – Compte tenu, d'une part, des risques du traitement de substitution pour la santé publique et, d'autre part, de la situation individuelle de la requérante, qui bénéficie d'une assistance médicale, la Cour parvient ci-après à la conclusion que les autorités n'ont pas outrepassé leur marge d'appréciation. Peu importe, à cet égard, que l'affaire soit examinée sous l'angle d'une ingérence ou sous l'angle des obligations positives de l'État (voir de même, à propos d'une demande d'accès à des médicaments non autorisés, *Hristozov et autres c. Bulgarie*, 47039/11 et 358/12, 13 novembre 2012, Note d'information 157).

a) *Sur la nécessité du traitement de substitution pour la requérante* – La Cour se trouve ici confrontée à des avis médicaux divergents, entre lesquels elle n'a pas vocation d'arbitrer :

– d'un côté, des experts ukrainiens ont répondu par l'affirmative à la question de savoir si son cas réunissait les critères de mise en place du traitement de substitution, que l'intéressée avait auparavant entamé ;

– de l'autre, des experts russes ont estimé que le traitement de substitution n'était pas indiqué, car la patiente n'avait pas épuisé les possibilités de traitement conventionnel disponibles en Russie, notamment les phases de réhabilitation et de réinsertion sociale.

Il reste cependant que les établissements médicaux du pays possèdent une expertise solide en la matière et prennent en charge les dépendants aux opiacés. La requérante peut y avoir recours si nécessaire. Son cas doit être étudié par des spécialistes, seuls compétents pour lui prescrire un traitement approprié.

Au demeurant, la requérante n'a pas épuisé toutes les méthodes de traitement conventionnel ; et ces méthodes sont toujours à sa disposition (au contraire de l'affaire *Hristozov et autres*, où le traitement conventionnel anticancéreux avait déjà été essayé).

b) *Sur le souhait de pouvoir sauter les étapes préconisées par la médecine conventionnelle* – La Cour écarte un à un les arguments avancés ci-après.

i. *Autres instruments internationaux applicables* – La partie requérante ne cite aucun instrument juridiquement contraignant qui obligerait la Russie, de manière non équivoque, à mettre en place un traitement de la toxicomanie par la méthadone ou la buprénorphine.

ii. *Prévention de la dissémination du VIH* – Le traitement souhaité ne serait pas de nature à prévenir la contamination de la requérante, qui est porteuse de ce virus. Étudier son efficacité pour d'autres patients n'entre pas dans la vocation de la Cour.

iii. *Existence d'un consensus européen* – Le fait que de nombreux États autorisent le traitement de la dépendance aux opiacés par la méthadone et la buprénorphine ne constitue pas un élément décisif. Dans l'arrêt *Wenner c. Allemagne* (62303/13, 1er septembre 2016, Note d'information 199), la Cour a constaté que, bien qu'étant répandu dans les États membres du Conseil de l'Europe, le traitement de substitution souhaité est sujet à controverse.

Il ressort des observations des parties et des données fournies à l'appui que la présence de risques pour la santé – notamment le risque d'une nouvelle dépendance et d'une polytoxicomanie, entraînant un risque élevé de décès – ne saurait être écartée comme une allégation dépourvue de fondement. Ces risques sont aussi étayés, de manière indirecte, par le cas du requérant dans l'arrêt *Wenner*. Les avantages allégués du recours aux produits de substitution sont alors susceptibles d'être réduits à néant.

Devant ces risques, les autorités sont donc fondées à prendre des mesures, parfois aussi drastiques que l'interdiction de certains opiacés, afin de minimiser des dégâts causés ou susceptibles d'être causés. Ce poids accordé à l'intérêt public de protéger la santé des personnes entre à tout le moins dans leur marge d'appréciation (voir *Hristozov et autres*, à propos de l'accès à certains médicaments pour les patients souffrant d'une maladie en phase terminale ; exemple valant à plus forte raison pour la requérante, qui n'est pas en fin de vie).

iv. *Possibilité de remplacer l'interdiction par une simple réglementation, accompagnée de formations et de campagnes de sensibilisation* – En matière de santé publique, les autorités nationales doivent jouir d'une ample marge d'appréciation. Les autorités russes sont mieux placées que la Cour pour définir la politique à suivre dans un domaine aussi délicat que la lutte contre le trafic de stupéfiants,

la réglementation du marché des stupéfiants et les soins médicaux pour les dépendants aux opiacés. Consciente de la nature subsidiaire de sa mission, la Cour ne saurait leur dicter la manière dont ce problème doit être résolu, ou se prononcer sur la question de savoir si l'éventuelle consommation concomitante de plusieurs types d'opiacés pourrait de façon réaliste être détectée par des contrôles.

Par ailleurs, la loi russe ne prodigue pas de soins médicaux malgré ou contre la volonté des patients : ceux-ci sont libres d'interrompre le traitement et de refuser le suivi médical par les dispensaires toxicologiques à tout moment. Contraindre les patients à être suivis par des médecins, voire enquêter sur le respect des conditions d'admission au programme pertinent, reviendrait à empiéter sur l'autonomie personnelle que la requérante cherche à protéger par sa requête devant la Cour.

v. *Efficacité comparée des traitements* – Le rôle de la Cour n'est pas de remplacer les professionnels de la santé et de juger de l'efficacité des méthodes de traitement de la dépendance. En l'espèce, une assistance médicale conventionnelle fondée sur le progrès de la science est à la disposition de la requérante dans des établissements médicaux russes.

Conclusion : non-violation (six voix contre une).

2. *Autres requérants* – Des tests urinaires ont indiqué que les deux autres requérants étaient en état de rémission ; sans explication de leur part sur cette incohérence, leur besoin d'un traitement de substitution n'est donc pas prouvé.

Conclusion : irrecevable (défaut manifeste de fondement).

La Cour a également écarté, à l'unanimité, les griefs d'entrave au droit de recours individuel (article 34). Elle a par ailleurs déclaré irrecevables, pour défaut manifeste de fondement, les griefs présentés par les requérants sous l'angle de l'article 14 combiné avec l'article 8, et de l'article 3, seul ou combiné avec l'article 14.

(Outre les arrêts précités *Wenner* et *Hristozov et autres*, voir également *A.M. et A.K. c. Hongrie* (déc.), 21320/15 et 35837/15, 4 avril 2017, à propos de l'usage thérapeutique du cannabis, et *Durisotto c. Italie* (déc.), 62804/13, 6 mai 2014, à propos d'une méthode thérapeutique reposant sur l'utilisation de cellules-souches)

Respect for family life/Respect de la vie familiale

Denial of family reunion to beneficiary of temporary protection: *relinquishment in favour of the Grand Chamber*

Rejet d'une demande de regroupement familial formée par un bénéficiaire d'une protection temporaire : *dessaisissement en faveur de la Grande Chambre*

M.A. – Denmark/Danemark, 6697/18 [Section II]

Traduction française du résumé | Printable version

The applicant, a Syrian national, entered Denmark in January 2015 and requested asylum. On June 2015 he was granted temporary protection status for one year under section 7, subsection 3 of the Aliens Act, concerning "individuals who face capital punishment, torture or inhumane or degrading treatment or punishment due to severe instability and indiscriminate violence against civilians in their home country". His residence permit was subsequently prolonged for one year at a time.

However, the authorities found that the applicant did not fulfil the requirements for being granted protection under section 7, subsection 1 of the Act, concerning "individuals falling under the protection of the UN Refugee Convention" or under subsection 2, concerning "individuals, who do not qualify as refugees, but who are facing capital punishment, torture or inhumane or degrading treatment or punishment, if returned to their home country". Residence permits under subsections 1 and 2 were normally granted for five years.

In November 2015 the applicant requested a family reunion with his wife, whom he had married in 1990. His request had been refused by a final decision of September 2016 of the Immigration Appeals Board because the applicant had not possessed a residence permit for the last three years and because there had been no special reasons, including concern for the unity of the family, to justify a family reunion.

The applicant had instituted proceedings before the courts complaining that the refusal to grant him a family reunion with his wife had been in breach of Article 14 taken in conjunction with Article 8, and of Article 8 taken alone. He submitted in particular that the legislation discriminated against those who had been granted temporary protection, such as himself, because they only became eligible for a family reunion after three years, whereas others who were granted a higher degree of protection were eligible after one year of lawfully residing in Denmark.

The High Court of Eastern Denmark had found against him in a judgment of May 2017, upheld on appeal by the Supreme Court on November 2017. The Supreme Court had found in particular that the difference in treatment in the right to a family reunion had been justified by the fact that some groups

of individuals had required greater protection. For example, those who were personally at risk of persecution in their country of origin required more protection than those who had fled a general situation, such as war, which could quickly change and make those individuals' needs more temporary.

On 19 November 2019 the Chamber of the Court to which the case had been allocated decided to relinquish jurisdiction in favour of the Grand Chamber.

Expulsion

Deprivation of citizenship and expulsion of dual national convicted of having joined Islamic State's ranks with terrorist objectives: *communicated*

Déchéance de nationalité et expulsion d'un binational condamné pour avoir rejoint les rangs de l'État islamique à des fins terroristes : *affaire communiquée*

Johansen – Denmark/Danemark, 27801/19, Communication [Section IV]

Traduction française du résumé | Printable version

The applicant was born in Denmark of a Danish mother and a Tunisian father; he had both Danish and Tunisian citizenship. In October 2017 he was convicted for having joined Islamic State with the purpose of committing terrorist crimes and was sentenced to four years' imprisonment. In November 2019, unlike the lower courts, the Supreme Court accepted the prosecution's request that the applicant's Danish citizenship be withdrawn, and that he be expelled from Denmark.

Communicated under Article 8 of the Convention.

ARTICLE 11

Freedom of peaceful assembly/Liberté de réunion pacifique

Conviction for organising "mass disorder" following clashes during demonstration, without sufficient scrutiny of event organiser's own acts and intentions: *violation*

Condamnation pour organisation de « désordre en masse » à la suite des affrontements ayant émaillé une manifestation, sans examen suffisant des actes et intentions propres de son organisateur : *violation*

Razvozzhayev – Russia/Russie and/et Ukraine and/et Udaltsov – Russia/Russie, 75734/12 et al., Judgment/Arrêt 19.11.2019 [Section III]

Traduction française du résumé | Printable version

Facts – This case relates to the halting by police of a political rally held by opposition activists which was organised by the second applicant and which was staged in Moscow, in Bolotnaya Square on 6 May 2012 (see *Frumkin v. Russia*, 74568/12, 5 January 2016, Information Note 192). Following the events, both applicants were subsequently convicted for their involvement in organising mass disorder.

The first applicant maintained that he was later abducted in Kyiv in October 2012 and ill-treated by unidentified individuals (allegedly Russian State agents acting with the tacit agreement of the Ukrainian authorities). He was then forcibly taken away to Russia where he was detained before being brought before an investigation committee.

Law

Articles 3 and 5 (*procedural aspects*) (*first applicant*)

(a) *Jurisdiction of the respondent States (Article 1)* – Both States had "jurisdiction" over the facts which had occurred on their respective territories. As regards the alleged involvement of Russian State agents in Ukraine, the jurisdictional link with Russia was established on the basis of its authority and control allegedly exercised through its agents operating abroad.

(b) *Merits* – Since there was no evidence that the abductors had acted on behalf of the Russian authorities, or that the Ukrainian authorities had actively or passively participated in the abduction, there were no grounds to find either respondent State in breach of the substantive guarantees of Articles 3 and 5.

On the other hand, the applicant had an arguable claim of abduction and ill-treatment, which he put forward before the authorities of both respondent States. The essential facts underlying the first applicant's complaint of abduction were not contested by either of the respondent Governments. However, neither respondent State had carried out an effective investigation.

(i) *Ukraine* – The authorities had initially refused to open a criminal investigation after a cursory inquiry which (as they implicitly acknowledged) had not constituted an effective investigation. While they subsequently undertook to carry one out, the progress of those proceedings had hitherto remained unknown.

(ii) *Russia* – Despite the absence of injuries, the first applicant was able to present eyewitness statements to make a prima facie case of abduction, possibly associated with inhuman or degrading treatment during his transfer to Russia; this fact placed the Russian authorities under an obliga-

tion to investigate the abduction. If they could not take any practical steps towards an inquiry for lack of territorial jurisdiction, it was their obligation to seek the assistance of the Ukrainian authorities. This had not been carried out. In any event, the order for the first applicant's abduction had allegedly been given in Russia, and his deprivation of liberty and ill-treatment had allegedly continued on Russian territory.

There had thus been a violation of the procedural guarantees of Articles 3 and 5 as neither respondent State had taken the necessary steps to verify the first applicant's plausible allegations (to the extent these fell within their respective jurisdiction).

Conclusion: violation (unanimously) by both respondent States.

Article 6 (*Russia only*)

(a) *Article 6 § 1 as regards the admission, as a "witness", of a former co-defendant convicted after plea bargaining (both applicants)* – The decision to disjoin the case against a former co-defendant (L.) had not involved an assessment of the countervailing interests or consultation of the applicants with a view to giving them an opportunity to object to the cases being separated. His credibility as a witness in the applicants' case had been compromised, given that he had been compelled to maintain the statements he had made in order to negotiate the reduction of his sentence while not being bound by the witness oath. Moreover, the domestic law expressly conferred *res judicata* on judgments even if issued in accelerated proceedings. Both L. and the domestic courts thus had an obvious incentive to remain concordant with the findings made in that context, despite their lack of adversarial scrutiny.

Conclusion: violation (unanimously).

(b) *Article 6 §§ 1 and 3 (b) and (c), as regards the confinement in a glass cabin (first applicant)* – The use of this security installation had not been warranted by any specific security risks or courtroom order issues but had been applied to the first applicant automatically because he was in pre-trial detention, and without any compensatory measures. Such circumstances having prevailed for over five months during the trial at first instance, they amounted to a disproportionate restriction of the defendants' rights to participate effectively in the proceedings and to receive practical and effective legal assistance, and inevitably had an adverse effect on the fairness of the proceedings as a whole.

Conclusion: violation (unanimously).

(c) *Article 6 §§ 1 and 3 (b), as regards the schedule for the court hearings (first applicant)* – The cumulative effect of exhaustion caused by lengthy prison transfers – in poor conditions and with less than eight hours of rest, repeated for four days a week over a period of more than four months – must have seriously undermined the first applicant's ability to follow the proceedings, make submissions, take notes and instruct his lawyers. Not enough consideration had been given to the applicant's requests for a hearing schedule that might have been less intensive. Consequently, the first applicant had not been afforded adequate facilities for the preparation of his defence, which had undermined the requirements of a fair trial and equality of arms.

Conclusion: violation (unanimously).

Article 11 (*Russia only*)

(a) *Applicability* – Article 11 did not cover demonstrations where the organisers and participants had intended to cause violence.

(i) *First applicant* – The first applicant had led a number of individuals to break through the police cordon; witnesses confirmed that he had intended to do so. Given that the breaking of the cordon had led to an escalation of violence at a crucial moment and triggered the onset of clashes, the applicant's deliberate acts which had contributed to its occurrence fell outside the notion of "peaceful assembly".

Conclusion: Article 11 not applicable.

(ii) *Second applicant* – The acts imputed to the second applicant (namely, the calling-out to the protesters to begin an "indefinite protest action" at the location where the meeting was supposed to be held, and the setting-up of an illegal campsite) had not shown any intention to use violence. None of the witnesses at the trial stated that he had taken part in any violent acts or encouraged them; on the contrary, he had insisted on a "strictly peaceful" form of conduct.

Conclusion: Article 11 applicable.

(b) *Merits (proportionality)* – The second applicant's conviction was based on the finding that, as one of the organisers of the event, he was responsible for the stand-off between the protesters and the police and that, moreover, the stand-off had been part of the plan to take the protest outside the allocated perimeter and to set up a long-term protest campsite in the park.

The Court found that the sanction imposed on him had been disproportionate in view of the following:

– the domestic judgments had left open the question whether the "political instability" allegedly promoted by the second applicant carried an element of violence in the sense of riots or mass disorder, as opposed to advocating political change by peaceful means;

– since there was no evidence that some protesters had been incited by him to commit violent acts, the mere fact that he had been one of the organisers of the event was not a sufficient reason to have held him responsible for the conduct of the attendees; besides, the judgments had failed to assess the extent to which the authorities themselves had contributed to the deterioration of the assembly's peaceful character;

– the sentence had been severe (more than four years' imprisonment); and its chilling effect had been further amplified not only by the fact that it had targeted a well-known public figure, but also by the large-scale proceedings, which had attracted widespread media coverage.

Conclusion: violation (unanimously) as regards the second applicant.

Other findings on the merits, as to Russia (unanimously): violation of Article 5 § 3 as regards both applicants (pre-trial detention, house arrest); no violation of Article 5 § 1 as regards the second applicant (house arrest); violation of Article 8 as regards the first applicant (transfer of the first applicant to a remote prison and refusal to allow him to visit his ill mother or to attend her funeral later); violation of Article 1 of Protocol No. 1 as regards the second applicant (seizure of assets).

Article 41 (*non-pecuniary damage*)

(i) As to the violations of Articles 3, 5 and 8 of the Convention and Article 1 of Protocol No. 1:

– to be paid by Ukraine: EUR 4,000 to the first applicant;

– to be paid by Russia: EUR 11,000 to the first applicant, and EUR 9,000 to the second applicant.

(ii) As to the violations of Articles 6 and 11: no additional award necessary; the domestic law provided for the possibility of a reopening of the proceedings.

ARTICLE 14

Discrimination (Article 8)

Beneficiaries of temporary protection required to wait longer than refugees or international protection beneficiaries to become eligible for family reunion: *relinquishment in favour of the Grand Chamber*

Obligation pour les bénéficiaires d'une protection temporaire d'attendre plus longtemps que les réfugiés ou les bénéficiaires d'une protection internationale avant de pouvoir prétendre au regroupement familial : *dessaisissement en faveur de la Grande Chambre*

M.A. – Denmark/Danemark, 6697/18 [Section II]

(See Article 8 above/Voir l'article 8 ci-dessus, page 22)

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies/ Épuisement des voies de recours internes

Failure to make use of cassation appeal review by a person detained pending deportation: *inadmissible*

Détenu en attente de son expulsion n'ayant pas fait usage de la possibilité de se pourvoir en cassation : *irrecevable*

Pantsulai – Russia/Russie, 34275/19, Decision/ Décision 8.10.2019 [Section III]

Traduction française du résumé | Printable version

Facts – The applicant was placed in detention pending deportation under the judicial procedure prescribed by the Code of Administrative Procedure of 2015. The latest in a series of detention orders was issued by the town court and the applicant's appeal against it was dismissed by the regional court.

Law – Article 35 § 1: In *Chigirinova v. Russia* (dec.), 28448/16, 13 December 2016, Information Note 203, the Court had concluded that in cases concerning disputes regarding public authorities, any person who intended to lodge an application in respect of a violation of the rights under the Convention had to – in addition to the ordinary appeal provided for by the Code of Administrative Procedure – use the remedies offered by the two-layer cassation procedure, since it constituted an effective remedy capable of providing redress in cases examined under the Code.

Nothing in the present case indicated that the applicant had lodged a cassation appeal against the judgment of the regional court, or intended to do so, or had in any way been prevented from lodging such an appeal.

Given that Chapter 28 of the Code did not provide any special rules or exceptions to the ordinary procedure of cassation appeal review for persons detained pending deportation or readmission, the applicant had not exhausted the effective domestic remedies available to him.

Conclusion: inadmissible (failure to exhaust domestic remedies).

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

Referrals/Renvois

Kurt – Austria/Autriche, 62903/15, Judgment/Arrêt 4.7.2019 [Section V]

(See Article 2 above/Voir l'article 2 ci-dessus, page 8)

Relinquishments/Dessaisissements

M.A. – Denmark/Danemark, 6697/18 [Section II]

(See Article 8 above/Voir l'article 8 ci-dessus, page 22)

OTHER JURISDICTIONS/ AUTRES JURIDICTIONS

European Union – Court of Justice (CJEU) and General Court/Union européenne – Cour de justice (CJUE) et Tribunal

Applicants for international protection – Violence or breaches of the rules of the accommodation centres – Limits to applicable sanctions – Housing, food or clothing – Minors

Demandeurs de protection internationale – Violence ou manquement au règlement des centres d'hébergement – Limites aux sanctions applicables – Logement, nourriture, habillement – Mineurs

Zubair Haqbin – Federaal Agentschap voor de opvang van asielzoekers, C-233/18, Judgment/Arrêt 12.11.2019 (CJEU, Grand Chamber/CJUE, grande chambre)

See press release | Voir le communiqué de presse

Article 20(4) and (5) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, read in the light of Article 1 of the Charter of Fundamental Rights of the European Union, must be interpreted in the sense that:

– a member State cannot, among the sanctions that may be imposed on an applicant for serious breaches of the rules of the accommodation centres as well as seriously violent behaviour, provide for a sanction consisting in the withdrawal, even temporary, of material reception conditions, within the meaning of Article 2(f) and (g) of the Directive, relating to housing, food or clothing, in so far as it would have the effect of depriving the applicant of the possibility of meeting his or her most basic needs;

– the imposition of other sanctions under Article 20(4) of the Directive must, under all circumstances, comply with the conditions laid down in Article 20(5) thereof, including those concerning the principle of proportionality and respect for human dignity;

– in the case of an unaccompanied minor, those sanctions must, in the light, *inter alia*, of Article 24 of the Charter of Fundamental Rights, be determined by taking particular account of the best interests of the child.

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L'article 20 §§ 4 et 5 de la directive 2013/33/UE du Parlement européen et du Conseil du 26 juin 2013 établissant des normes pour l'accueil des personnes demandant la protection internationale, lu à la lumière de l'article 1er de la Charte des droits fondamentaux de l'Union européenne, doit être interprété dans en ce sens que :

– un État membre ne peut pas prévoir, parmi les sanctions susceptibles d'être infligées à un demandeur en cas de manquement grave au règlement des centres d'hébergement ainsi que de comportement particulièrement violent, une sanction consistant à retirer, même de manière temporaire, le bénéfice des conditions matérielles d'accueil, au sens de l'article 2, sous f) et g), de cette directive, ayant trait au logement, à la nourriture ou à l'habillement, dès lors qu'elle aurait pour effet de priver ce demandeur de la possibilité de faire face à ses besoins les plus élémentaires ;

– l'infliction d'autres sanctions au titre dudit article 20 § 4, doit, en toutes circonstances, respecter les conditions énoncées au paragraphe 5 de cet article, notamment, celles tenant au respect du principe de proportionnalité et de la dignité humaine ;

– s'agissant d'un mineur non accompagné, ces sanctions doivent, eu égard, notamment, à l'article 24 de la charte des droits fondamentaux, être adoptées en prenant particulièrement en compte l'intérêt supérieur de l'enfant.

European Union – Court of Justice (CJEU) and General Court/Union européenne – Cour de justice (CJUE) et Tribunal

Need to verify independence of Polish Supreme Court's new chamber with jurisdiction to send judges into retirement

Nécessité de vérifier l'indépendance de la nouvelle chambre disciplinaire de la Cour suprême polonaise compétente en matière de mise à la retraite de juges

A.K. – Krajowa Rada Sądownictwa and/et *CP and/et DO – Sąd Najwyższy*, C-585/18, C-624/18 and/et C-625/18, Judgment/Arrêt 19.11.2019 (CJEU, Grand Chamber/CJUE, grande chambre)

See press release | Voir le communiqué de presse

Article 47 of the Charter of Fundamental Rights of the European Union and Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding cases concerning the application of EU law from falling within the exclusive jurisdiction of a court which is not an independent and impartial tribunal. That is the case where the objective circumstances in which that court was formed, its characteristics and the means by which its members have been appointed are capable of giving rise to legitimate doubts, in the minds of subjects of the law, as to the imperviousness of that court to external factors, in particular, as to the direct or indirect influence of the legislature and the executive and its neutrality with respect to the interests before it. All this may thus lead to that court not being seen to be independent or impartial with the consequence of prejudicing the trust which justice in a democratic society must inspire in subjects of the law. It is for the referring court to determine, in the light of all the relevant factors established before it, whether that applies to a court such as the Disciplinary Chamber of the Supreme Court.

If that is the case, the principle of the primacy of EU law must be interpreted as requiring the referring court to disapply the provision of national law which reserves jurisdiction to hear and rule on the cases in the main proceedings to the above-mentioned chamber, so that those cases may be examined by a court which meets the above-mentioned requirements of independence and impartiality and which, were it not for that provision, would have jurisdiction in the relevant field.

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L'article 47 de la Charte des droits fondamentaux de l'Union européenne et la directive 2000/78/CE du 27 novembre 2000 portant création d'un cadre général en faveur de l'égalité de traitement en matière d'emploi et de travail, doivent être interprétés en ce sens qu'ils s'opposent à ce que des litiges concernant l'application du droit de l'Union puissent relever de la compétence exclusive d'une instance ne constituant pas un tribunal indépendant et impartial. Tel est le cas lorsque les conditions objectives dans lesquelles a été créée l'instance concernée et les caractéristiques de celle-ci ainsi que la manière dont ses membres ont été nommés sont de nature à engendrer des doutes légitimes, dans l'esprit des justiciables, quant à l'imperméabilité de cette instance à l'égard d'éléments extérieurs, en particulier, d'influences directes ou indirectes des pouvoirs législatif et exécutif, et à sa neutralité par rapport aux intérêts qui s'affrontent et, ainsi, sont susceptibles de conduire à une absence d'apparence d'indépendance ou d'impartialité de ladite instance qui soit propre à porter atteinte à la confiance que la justice doit inspirer auxdits justiciables dans une société démocratique. Il appartient à la juridiction de renvoi de déterminer, en tenant compte de tous les éléments pertinents dont elle dispose, si tel est le cas en ce qui concerne une instance telle que la chambre disciplinaire de la Cour suprême.

En pareille hypothèse, le principe de primauté du droit de l'Union doit être interprété en ce sens qu'il impose à la juridiction de renvoi de laisser inappliquée la disposition du droit national réservant la compétence pour connaître des litiges au principal à ladite instance, de manière à ce que ceux-ci puissent être examinés par une juridiction répondant aux exigences d'indépendance et d'impartialité susmentionnées et qui serait compétente dans le domaine concerné si ladite disposition n'y faisait pas obstacle.

COURT NEWS/DERNIÈRES NOUVELLES DE LA COUR

Commemoration of the fall of the Berlin Wall/ Commémoration de la chute du Mur de Berlin

President Linos-Alexandre Sicilianos, the Mayor of Strasbourg, Roland Ries, and the Permanent Representative of Germany to the Council of Europe, Rolf Mafael, together with the Permanent Representative of France to the Council of Europe, Jean-Baptiste Mattéi, took part in a ceremony marking the 30th anniversary of the fall of the Berlin Wall on 9 November 2019. They addressed a gathering of people in front of the 4 slabs of the Berlin Wall that were donated by Germany in 1990 to the Council of Europe and now stand on the forecourt of the Human Rights Building.

Speech by President Sicilianos (in French only)

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Le président Linos-Alexandre Sicilianos, le maire de Strasbourg, Roland Ries, ainsi que le représentant permanent de l'Allemagne auprès du Conseil de l'Europe, Rolf Mafael, et le représentant permanent de la France auprès du Conseil de l'Europe, Jean-Baptiste Mattéi, ont pris part à une cérémonie

marquant les 30 ans de la chute du Mur de Berlin, le 9 novembre 2019. C'est devant les quatre fragments du Mur de Berlin donnés par l'Allemagne en 1990 au Conseil de l'Europe, et se trouvant sur le parvis du Palais des droits de l'homme, qu'ils se sont adressés au public présent.

Discours du président Sicilianos

Meeting with the Government Agents/Réunion avec les Agents de gouvernement

On 25 November 2019 the Government Agents, who represent the States in proceedings before the Court, attended a meeting in which President Linos-Alexandre Sicilianos, the Registrar of the Court Roderick Liddell, Judges, Section Registrars and other registry lawyers participated.

This event, which takes place every two years, provides an opportunity for the Agents to express their concerns and indicate any problems they have encountered in their work, while also allowing the Court's representatives to explain new working methods and obtain feedback on them. Various procedural and practical matters were also discussed at the meeting.

Speech by President Sicilianos (in French only)

Le 25 novembre 2019, les Agents de gouvernement, qui représentent les États dans la procédure devant la Cour, ont participé à un séminaire auquel ont pris part le président Linos-Alexandre Sicilianos, le greffier de la Cour, Roderick Liddell, ainsi que des juges, des greffiers de section et des juristes du greffe.

Cet événement, qui se déroule tous les deux ans, est l'occasion pour les Agents d'exprimer leurs préoccupations et d'indiquer les obstacles qu'ils rencontrent dans leur activité. Cela permet également aux représentants de la Cour d'expliquer et de recevoir un feed-back concernant les nouvelles méthodes de travail. Diverses questions procédurales et pratiques ont été abordées à l'occasion de cette réunion.

Discours du président Sicilianos

Webcasting: contribution from Ireland/ Webcasting : soutien de l'Irlande

Ireland has recently renewed its support for the webcasting project, which enables all the public hearings of the Court to be filmed, recorded and broadcast on the ECHR Internet site.

Thanks to the funding received since 2007 from the Irish Department of Foreign Affairs and Trade, more than 250 hearings have been filmed to date and have reached a wide audience via the Internet. The videos are made available on the day of the hearing and even the older videos can still be watched.

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L'Irlande vient de renouveler son soutien au projet de webcasting, grâce auquel toutes les audiences publiques de la Cour sont filmées, enregistrées et retransmises sur le site web de la CEDH.

Ce financement assuré depuis 2007 par le ministère irlandais des Affaires étrangères et du Commerce a permis, à ce jour, de filmer plus de 250 audiences et de les diffuser largement sur internet. Les vidéos sont disponibles le jour même de la tenue des audiences, et restent consultables même si elles sont anciennes.

RECENT PUBLICATIONS/ PUBLICATIONS RÉCENTES

The ECHR and Georgia in Facts and Figures/La CEDH et la Géorgie en faits et chiffres

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

-ooOoo-

Pour marquer la présidence géorgienne du Comité des Ministres du Conseil de l'Europe, la Cour a produit un nouveau document : La CEDH et la Géorgie en faits et chiffres. Cette série de documents

permet d'avoir une vision globale du travail de la Cour et de l'étendue de l'impact de ses arrêts pour chaque État membre.

New Case-Law Guide/Nouveau Guide sur la jurisprudence

As part of its series on the case-law relating to particular Convention Articles, the Court has recently published a Guide on Article 13 of the Convention (right to an effective remedy). The Guide is available in French only – a translation into English is pending. All Case-Law Guides can be downloaded from the Court's website.

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Dans le cadre de sa série sur la jurisprudence par article de la Convention, la Cour vient de publier un Guide sur l'article 13 de la Convention (droit à un recours effectif). Une traduction vers l'anglais de ce guide est en cours. Tous les guides sur la jurisprudence peuvent être téléchargés à partir du site web de la Cour.

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

Translations into Georgian, Turkish and Ukrainian of certain case-law guides have recently been published on the Court's website.

სახელმძღვანელო კონვენციის მე-9 მუხლის შესახებ – აზრის, სინდისისა და რელიგიის თავისუფლება (geo)

Sözleşme Madde 8 Rehberi – Özel hayata ve aile hayatına saygı hakkı (tur)

Protokol No. 1 Madde 1 Rehberi – Mülkiyetin Korunması (tur)

Довідник із застосування статті 2 – Право на життя (ukr)

Les traductions de certains guides sur la jurisprudence en géorgien, turc et ukrainien ont été publiées récemment sur le site web de la Cour.

Overview of the Court's case-law for 2018: new translation/Aperçu sur la jurisprudence de 2018 : nouvelle traduction

A translation into Turkish of the Overview of the Court's case-law for 2018 has just been published on the Court's website.

Mahkeme'nin 2018 yılı içtihadına genel bakış (tur)

Une traduction en turc de l'Aperçu sur la jurisprudence de 2018 vient d'être publiée sur le site web de la Cour.

Joint publications by the ECHR and FRA: new translation/Publications conjointes de la CEDH et la FRA : nouvelle traduction

A Polish version of the Handbook on European law relating to the rights of the child has just been published. All the handbooks can be downloaded from the Court's website.

Podręcznik prawa europejskiego dotyczącego praw dziecka (pol)

Une version en polonais du Manuel de droit européen en matière de droits de l'enfant vient d'être publiée. Tous les manuels peuvent être téléchargés à partir du site web de la Cour.

Commissioner for Human Rights/Commissaire aux droits de l'homme

The third quarterly activity report 2019 of the Council of Europe's Commissioner for Human Rights, Dunja Mijatović, is available on the Commissioner's website.

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Le troisième rapport trimestriel d'activité 2019 de la Commissaire aux droits de l'homme du Conseil de l'Europe, Dunja Mijatović, est disponible sur le site web de cette dernière.

OTHER INFORMATION/AUTRES INFORMATIONS

30th anniversary of the CPT: Conference and ceremony/30e anniversaire du CPT : conférence et cérémonie

Over 300 participants gathered on 4 November 2019 in Strasbourg to mark the 30th anniversary of the CPT (European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment).

President Linos-Alexandre Sicilianos delivered a speech at the high-level conference, which attracted representatives from all 47 Council of Europe members States and beyond. Panels of experts took the opportunity to discuss the effective implementation of safeguards in the first hours of police

custody. Following the conference, a ceremony to mark the 30th anniversary of the CPT was held.

Videos of the conference and the ceremony are available on the CPT website.

Plus de 300 participants étaient réunis le 4 novembre 2019 à Strasbourg pour célébrer le 30e anniversaire du CPT (Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants).

Le président Linos-Alexandre Sicilianos a donné un discours lors de la conférence à haut niveau qui a rassemblé des représentants de l'ensemble des États membres du Conseil de l'Europe et au-delà. Des panels d'experts ont profité de cette occasion pour discuter de la mise en œuvre effective des garanties dans les premières heures de la garde à vue. À l'issue de la conférence, une cérémonie célébrant le 30e anniversaire du CPT a eu lieu.

Des vidéos de la conférence et la cérémonie sont disponibles sur le site web du CPT.