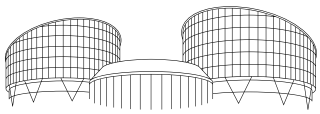

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Information Note on the Court's case-law

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Inhuman treatment

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

State's accountability for "disappearance" of person at risk of ill-treatment in Uzbekistan: *no violation*

Mamazhonov v. Russia - 17239/13
Judgment 23.10.2014 [Section I]

Facts – In 2008 the applicant fled his native Uzbekistan fearing prosecution for religious extremism and entered Russia. In June 2012 the Russian authorities arrested him and subsequently authorised his extradition to Uzbekistan. During the extradition proceedings the applicant argued that he had been prosecuted for religious extremism and faced a risk of ill-treatment if extradited. His appeals were all dismissed by the Russian courts. However, the extradition order was not enforced because of an interim measure issued by the European Court requiring the Russian Government not to extradite the applicant until further notice. In June 2013 the applicant was released from custody. He disappeared later the same day. A criminal investigation into his disappearance was initiated a week later. The applicant's current whereabouts and the circumstances surrounding his disappearance remain unknown.

Law – Article 3

(a) *Exposure of the applicant to risk of ill-treatment in Uzbekistan* – Despite having at their disposal substantial grounds for believing that the applicant faced a real risk of ill-treatment if extradited to Uzbekistan, the domestic authorities had not adequately assessed his claims. Even though undisputedly aware of the interim measure indicated to the Government the Supreme Court had trivialised the applicant's claim that he risked ill-treatment, giving it passing scrutiny rather than the searching scrutiny interim measures called for. Regard being had to the available material concerning the fate of persons accused of religiously and politically motivated crimes in Uzbekistan, the authorisation of the applicant's transfer to that country had exposed him to a risk of treatment proscribed by Article 3.

Conclusion: violation (unanimously).

(b) *The applicant's "disappearance"*

(i) *Obligation to protect the applicant against risk of ill-treatment* – The domestic authorities had been well aware both before and after the applicant's release that he faced a real and immediate risk of forcible transfer to Uzbekistan and exposure to torture and ill-treatment. However, the only measure they had taken in an attempt to avoid that risk was to release him from the detention facility outside normal working hours. Yet releasing a person fearing unlawful and covert action, alone and outside normal working hours, could in fact have been a contributing factor to his disappearance. Moreover, even though the applicant's lawyer had immediately informed the authorities of his client's disappearance, they had taken no action for several days. In sum, despite being aware before the applicants' release of a real and immediate risk of forcible transfer and exposure to torture and ill-treatment, the national authorities had failed to take any measures to protect against the risk.

Conclusion: violation (unanimously).

(ii) *Effectiveness of the investigation* – The unexplained delay of six days between notification of the disappearance and the start of the preliminary inquiry had resulted in the loss of precious time. Moreover, although the applicant's lawyer had consistently alleged that the applicant might have been abducted with a view to his being forcibly transferred to Uzbekistan and although the authorities were aware of similar previous incidents, the investigation had refused to consider abduction as a possible reason for his disappearance. Furthermore, no further action was taken after August 2013, even though the investigation had not reached any conclusions. Thus, despite the initial active approach, the subsequent cessation of activities had irreparably undermined the effectiveness of the investigation.

Conclusion: violation (unanimously).

(iii) *Whether the authorities were accountable for the applicant's "disappearance"* – The Court could not infer from the lack of adequate preventive measures that the applicant had in fact disappeared. The present case differed from previous cases in which the Court had found State agents' involvement in forcible removal and concealment operations, as there was no evidence that the applicant had crossed the State border on a regular flight despite border controls or had suddenly and inexplicably

disappeared in Russia before almost immediately reappearing in his home country. While it was regrettable that the applicant's release had been marked by irregularities, there was no evidence credibly proving the involvement of State agents in his disappearance or a failure to act in the face of unlawful removal by others. It was thus not possible to conclude that the Russian authorities had been involved in the applicant's disappearance.

Conclusion: no violation (unanimously).

Article 34: The Court was alarmed by the domestic authorities' conduct, which appeared to have followed the same pattern as in similar previous cases: namely, failing to comply with an interim measure indicated under Rule 39 of the Rules of Court in respect of applicants criminally prosecuted in Uzbekistan and Tajikistan. The national authorities had not put in place protective measures capable of preventing the applicant's disappearance and possible transfer to Uzbekistan, or effectively investigated that possibility, thus disregarding the indicated interim measure.

Conclusion: violation (unanimously).

Article 46

(a) *Individual measures* – While it was for the Committee of Ministers to supervise the adoption of feasible, timely, adequate and sufficient individual measures, the Court found it indispensable for the respondent State to vigilantly pursue the criminal investigation into the applicant's disappearance and to take all further measures within its competence in order to put an end to the violations found and make reparations for their consequences.

(b) *General measures* – In *Savriddin Dzhurayev v. Russia* the Court stated that decisive general measures capable of resolving the recurrent problem with similar cases had to be adopted without delay, including "further improving domestic remedies in extradition and expulsion cases, ensuring the lawfulness of any State action in this area, effective protection of potential victims in line with the interim measures indicated by the Court and effective investigation into every breach of such measures or similar unlawful acts". As noted in that case, Ruling no. 11 of 14 June 2012 of the Supreme Court of the Russian Federation remained the tool to be used by domestic authorities to improve domestic remedies in extradition and expulsion cases.

Article 41: EUR 7,500 in respect of non-pecuniary damage.

(See also *Savriddin Dzhurayev v. Russia*, 71386/10, 25 April 2013, Information Note 162; *Kasymakhunov v. Russia*, 29604/12, 14 November 2013; *Abdulkhakov v. Russia*, 14743/11, 2 October 2012, Information Note 156; and *Muminov v. Russia*, 42502/06, 11 December 2008)

ARTICLE 5

Article 5 § 1

Lawful arrest or detention

Detention without a court order: *violation*

Chanyev v. Ukraine - 46193/13
Judgment 9.10.2014 [Section V]

(See Article 46 below, page 27)

Article 5 § 1 (b)

Secure fulfilment of obligation prescribed by law

Detention for refusing to comply with order to reveal whereabouts of property attached to secure payment of tax debts: *no violation*

Göthlin v. Sweden - 8307/11
Judgment 16.10.2014 [Section V]

Facts – The applicant was detained for a period of 42 days after refusing to comply with an injunction issued by an Enforcement Authority requiring him to reveal the whereabouts of a sawmill which had been attached as security for his tax debts.

Law – Article 5 § 1 (b): The Court reiterated that detention is authorised under sub-paragraph (b) of Article 5 § 1 only to "secure the fulfilment" of the obligation prescribed by law. It follows that, at the very least, there must be an unfulfilled obligation incumbent on the person concerned and the arrest and detention must be for the purpose of securing its fulfilment and not punitive in character. As soon as the relevant obligation has been fulfilled, the basis for detention under Article 5 § 1 (b) ceases to exist.

In the instant case, it was clear that the applicant was detained for the purpose of securing the fulfilment of an obligation prescribed by law, namely, to tell the Enforcement Authority where

he had hidden the sawmill. The circumstances of the case did not reveal any punitive or other character. It was also clear from the relevant provision of the Enforcement Code that the applicant would have been immediately released had he provided the information.

As regards proportionality, three points were relevant: the nature of the obligation arising from the relevant legislation including its underlying object and purpose; the person detained and the particular circumstances that had led to the detention; and the length of the detention.

As to the nature, object and purpose of the obligation, measures taken to facilitate the enforcement of tax debts and secure tax revenue to the State were in the general interest and of significant importance, especially when, as here, the debtor had sufficient assets to cover the debt but refused to pay. As regards the applicant's situation and the circumstances in which he had been detained, he was not particularly vulnerable or otherwise unfit to be detained and had been aware of the possible consequences of not providing the required information. As to the third point, while the length of the detention (42 days) was relatively long, it was relevant that the applicant would have been released earlier, indeed immediately, had he provided the information. Moreover, adequate procedural guarantees were in place: the lawfulness and reasonableness of his continued detention was reviewed every other week by the domestic courts, the applicant was heard in person and he had a right of appeal. The deprivation of liberty had thus been proportionate.

Conclusion: no violation (unanimously).

ARTICLE 6

Article 6 § 1 (civil)

Fair hearing

Failure of filtering instance to give reasons for its refusal to admit an appeal for examination: *violation*

Hansen v. Norway - 15319/09
Judgment 2.10.2014 [Section I]

Facts – The High Court refused to admit for examination a civil appeal by the applicant against a decision by the City Court after finding that "it was clear that it would not succeed". This was the formula set out in the Code of Civil Procedure. The applicant's further appeal against the High Court's ruling was then rejected by the Appeals Leave Committee of the Supreme Court on the grounds that its jurisdiction was confined to reviewing the High Court procedure.

In his application to the European Court, the applicant complained under Article 6 § 1 of the Convention that the High Court should have given more detailed reasons for its decision to dismiss his appeal.

Law – Article 6 § 1

(a) *Admissibility* – Although, as noted in *Valchev and Others v. Bulgaria*,[1] there had been cases in which leave-to-appeal proceedings had been found not to involve a "determination" of civil rights, the prevailing approach seemed to be that Article 6 § 1 did apply to such proceedings.[2] The manner of its application depended on the special features of the proceedings, account being taken of the entirety of the proceedings conducted in the domestic legal order and of the role of the appellate or cassation court therein. In the instant case, the City Court's judgment had determined the dispute since, following the High Court's refusal to admit the appeal, the result of the proceedings seen as a whole was directly decisive for the right in question. Article 6 § 1 was accordingly applicable.

Conclusion: admissible (unanimously).

(b) *Merits* – The applicant had appealed to the High Court against the City Court's examination of his pleas on points of law and its sudden decision to drastically shorten the hearing from three days to five hours thereby substantially reducing the time available to hear witnesses and present evidence. The High Court's jurisdiction was not limited to questions of law and procedure but extended also to questions of fact. However, the High Court had simply paraphrased the relevant provision of the Code of Civil Procedure, stating that it was clear that it would not succeed. The Court was not convinced that this reason given by the High Court had addressed the essence of the issue to be decided by it in a manner that adequately

1. *Valchev and Others v. Bulgaria* (dec.), 47450/11, 26659/12 and 53966/12, 21 January 2014, Information Note 171.
2. *Monnell and Morris v. the United Kingdom*, 9562/81, 2 March 1987; and *Martinie v. France* [GC], 58675/00, 12 April 2006, Information Note 85.

reflected its role as an appellate court entrusted with full jurisdiction or that it had acted with due regard to the applicant's interests.

The Court also took into account the fact that the High Court's decision could itself form the subject of an appeal to the Appeals Leave Committee of the Supreme Court, whose role was to consider the High Court's application of the law and assessment of the evidence in so far as it related to points of procedure. However, it was not persuaded that the reasons stated by the High Court for refusing to admit the applicant's appeal had made it possible for him to exercise effectively his right of appeal to the Supreme Court.

Conclusion: violation (six votes to one).

Article 41: The domestic judicial and legislative changes that had been made and the finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

Article 6 § 1 (enforcement)

Reasonable time

State's failure to enforce final judgments within a reasonable time: *violation*

Liseytseva and Maslov v. Russia - 39483/05 and 40527/10
Judgment 9.10.2014 [Section I]

Facts – Both applicants worked for municipally owned companies which operated under a specific legal regime which entitled them to the "right of economic control". Companies operating under this regime did not own their assets and could conduct activities only in so far as they did not go beyond their statutory goals and purposes. They were not liable for the debts of their owners, and the owners were normally not liable for the companies' debts. The applicants instituted proceedings against the companies for salary arrears and the domestic courts found in their favour. However, by the time the court orders became final, the companies had become insolvent. The applicants then instituted proceedings against the municipalities that owned the companies but these were dismissed as the municipalities were found to have no liability for the insolvencies. At the time of the European Court's judgment, the judgments in the applicants' favour remained unenforced.

Law – Article 6 of the Convention and Article 1 of Protocol No. 1

(a) *Admissibility (compatibility* ratione personae *and the respondent State's responsibility for the companies' debts)* – State-controlled enterprises enjoyed some degree of legal and economic independence. However, they had several features that distinguished them from "classic" private companies, as under domestic law the State could control the crucial aspects of such companies' activity and the scope of the State's control could be further enhanced in view of the particular functions performed. Therefore, the existing legal framework did not provide such companies with a degree of institutional and operational independence that would absolve the respondent State from responsibility for such companies' debts.

In the first applicant's case, the debtor company had provided public-transport services to several groups of individuals free of charge, conditional on the cost of those services being reimbursed from public funds later. However, public authorities had failed to comply with their undertaking in a timely manner, thus triggering the company's difficult financial situation. Moreover, the municipality had disposed of the company's property as they saw fit. It thus appeared that the company's assets and activities were controlled and managed by the State to a decisive extent at the relevant time and that the company had not enjoyed sufficient institutional and operational independence. Accordingly, the municipal authority, and hence the State, were to be held responsible under the Convention for the judgment debt in the first applicant's favour.

As for the second applicant's case, its institutional links with the public administration had been strengthened by the special nature of its activities as it provided water and heating services which, by their nature, were of vital importance to the local population. The property allocated for these purposes accordingly enjoyed special treatment under the domestic law. Moreover, the tariffs for the heating and water-supply services provided by the company were set by the district administration, and the tariff-setting policy adopted by the local administration had considerable effect on the company's financial situation. Therefore, the company's core activities constituted "public duties performed under the control of the authorities". Furthermore, the actual degree of State control over the company was demonstrated by the fact that, in 2005-06, the district administration, after disposing of the company's assets, decided to close it, with the result that it was unable to satisfy the applicant's claims in the insolvency proceedings. These circumstances clearly showed that a strong degree of State control had been exercised by the

municipal authority over the debtor company, which had not enjoyed the level of institutional or operational independence necessary to exclude the responsibility of the municipal authority, and hence the State, to pay the debt in the second applicant's favour.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits*

Article 6: Given the finding of State liability for the debts owed to the applicants in the present case, the period of non-execution should include the period of debt recovery in the course of the liquidation proceedings. The judgment in the second applicant's favour had remained unenforced for slightly more than one year and eight months by the date of the debtor company's liquidation. Three judgments in favour of the first applicant had remained partially unenforced for periods ranging between two and a half years and more than three years before the company had ceased to exist. While liquidation proceedings could objectively justify some limited delays in enforcement, the continuing non-execution of the judgments in the applicants' favour for several years could hardly be justified in any circumstances. Therefore, by failing for several years to take the necessary measures to comply with the final judgments in the instant case, the domestic authorities had deprived the provisions of Article 6 § 1 of all useful effect.

Conclusion: violation (unanimously).

Article 1 of Protocol No. 1: By failing, for a considerable period, to take the necessary measures to comply with the final judgment the domestic authorities had prevented the applicants from receiving in full the money to which they were entitled. This amounted to a disproportionate interference with their peaceful enjoyment of their possessions.

Conclusion: violation (unanimously).

The Court also found a violation of Article 13 of the Convention.

Article 41: EUR 3,000 to the first applicant and EUR 1,500 to the second applicant in respect of non-pecuniary damage; EUR 338 to the first applicant and EUR 2,020 to the second applicant in respect of pecuniary damage.

(See also *Shlepkin v. Russia*, 3046/03, 1 February 2007; *Grigoryev and Kakaurova v. Russia*, 13820/04, 12 April 2007; and *Yershova v. Russia*, 1387/04, 8 April 2010)

Article 6 § 3 (e)

Free assistance of interpreter

Lack of access to an interpreter during police questioning: *violation*

Baytar v. Turkey - 45440/04
Judgment 14.10.2014 [Section II]

Facts – On 17 December 2001 the applicant visited her brother, who was serving a prison sentence in connection with a case involving the PKK, an illegal armed organisation. She was arrested after being searched and found in possession of a document concerning, among other matters, the PKK's strategy and its activities inside prisons. The following day she was questioned by two gendarmes in Turkish. She said she had found the document by chance in the waiting room and picked it up. The record of the interview indicated that she had been informed of her right to legal assistance but did not wish to have any. In the course of a hearing before a judge on 18 December 2001 at which she was assisted by an interpreter she said that the statement she had given to the gendarmes referred to events in a previous set of proceedings and that no document had been found in her possession on 17 December. At her subsequent trial, she was assisted by a lawyer and an interpreter. In convicting her, the court relied, among other things, on the inconsistent statements she had made at the pre-trial stage.

Law – Article 6 § 3 (e) in conjunction with Article 6 § 1: The applicant alleged that her trial had been unfair as a result of her not having an interpreter when she was questioned by the police.

It was common ground that the applicant's level of Turkish was such that the services of an interpreter had been required.

Further, although the applicant had been assisted by an interpreter at the hearing before the judge responsible for ruling on pre-trial detention, this had not been the case when she was questioned by the gendarmes when she stated that she had found the document in question on the floor of the prison waiting room thereby admitting that a document had indeed been found in her possession.

Without the possibility of having the questions put to her interpreted, and of forming as accurate an idea as possible of the alleged offences, the applicant had not been able to appreciate fully the consequences of her alleged waiver of her rights to keep

silent and to legal assistance and, in consequence, of the whole range of services specifically associated with legal assistance. It was therefore legitimate to question whether the choices the applicant had made without access to an interpreter had been fully informed. In the Court's view, this initial shortcoming had thus affected other rights which, while distinct from that in respect of which a violation was alleged, were closely related to it and had compromised the fairness of the proceedings as a whole.

While it was true that the applicant had been assisted by an interpreter at the hearing before a judge at the close of police custody, this fact could not remedy the defect which had vitiated the proceedings in the initial stages. In addition, it appeared that the judge had not sought to verify the skills of the interpreter, who was just a member of the applicant's family who happened to be present in the corridor. Furthermore, although the trial judges had based her conviction on a range of evidence, it remained the case that the statements obtained without the assistance of an interpreter while she was in police custody had also served as a basis for the conviction.

Conclusion: violation (unanimously).

Article 41: EUR 1,500 in respect of non-pecuniary damage.

ARTICLE 8

Respect for private life

Presence without mother's consent of medical students during child birth: *violation*

Konovalova v. Russia - 37873/04
Judgment 9.10.2014 [Section I]

Facts – The applicant was admitted to a public hospital in anticipation of the birth of her child. At the time of her admission, she was handed a booklet advising patients about their possible involvement in the hospital's clinical teaching programme. The applicant was suffering from complications associated with her pregnancy and, on two separate occasions, was put into a drug-induced sleep because she was suffering from fatigue. She alleges that she was informed prior to being sedated that her delivery was scheduled for the next day and would be attended by medical students. The delivery took place as scheduled in the presence of doctors and medical students who had been briefed about her health and medical treatment. According to the applicant, she had objected in the delivery room to the presence of medical students.

The domestic courts dismissed the applicant's civil action, essentially on the grounds that the legislation did not require the written consent of a patient to the presence of medical students at the time of delivery. The applicant had been given a copy of the hospital's booklet, which contained an express warning about the possible presence of medical students, and there was no evidence to show that she had raised an objection.

Law – Article 8: The attendance of medical students with access to confidential medical information at the birth had been sufficiently sensitive to amount to interference with her private life. That interference had had a legal basis under the domestic law in force at the time, namely Article 54 of the Health Care Act, which provided that specialist medical students could observe patients' treatment in line with the requirements of their curriculum and under the supervision of the medical staff responsible for them.

However, Article 54 was of a general nature, principally aimed at enabling medical students to take part in the treatment of patients as part of their clinical education. The relevant national legislation in force at the time did not contain any safeguards to protect patients' privacy rights.

This serious shortcoming was exacerbated by the way in which the hospital and domestic courts had addressed the issue. In particular, the booklet issued by the hospital contained a rather vague reference to the involvement of medical students in the "study process", without specifying the scope and degree of that involvement. Moreover, the involvement of medical students was presented in such a way as to suggest that participation was mandatory and that the applicant had no choice in the matter.

In addition, when dismissing the applicant's civil claim the domestic courts failed to take a number of important considerations into account: the inadequacy of the information in the hospital's booklet; the applicant's vulnerability at the time of notification of her possible involvement in the clinical teaching programme (she had suffered prolonged contractions and been in a drug-induced sleep); and the availability of alternative arrangements in the event of her objecting to the presence of the students during the birth.

Given the lack of procedural safeguards against arbitrary interference with privacy rights in the national legislation at the time, the presence of the medical students during the birth had not been in accordance with the law.

Conclusion: violation (unanimously).

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

Multiple arrests and convictions of a "naked rambler" resulting in a cumulative period of imprisonment of over seven years: *no violation*

Gough v. the United Kingdom - 49327/11
Judgment 28.10.2014 [Section IV]

(See Article 10 below, page 16)

Respect for family life

Refusal to grant residence permit on ground of family life despite existence of exceptional circumstances: *violation*

Jeunesse v. the Netherlands - 12738/10
Judgment 3.10.2014 [GC]

Facts – The applicant, a Surinamese national, entered the Netherlands in 1997 on a tourist visa and continued to reside there after her visa expired. She married a Dutch national and they had three children. The applicant applied for a residence permit on several occasions, but her requests were dismissed as she did not hold a provisional residence visa issued by the Netherlands mission in her country of origin. In 2010 she spent four months in detention pending deportation. She was eventually released because she was pregnant.

Law – Article 8: The Court recalled its well-established case-law that, when family life was created at a time when the persons involved were aware that the immigration status of one of them was such that the persistence of that family life within the host State would from the outset be precarious, the removal of the non-national family member would constitute a violation of Article 8 only in exceptional circumstances. The applicant's situation in the respondent State had been irregular since she had outstayed her tourist visa. Having made numerous unsuccessful attempts to regularise her residence status in the Netherlands, she had been aware – well before she commenced her family life in that country – of the precariousness of her situation.

As to the existence of exceptional circumstances, all the members of the applicant's family were Dutch nationals entitled to enjoy family life with each other in the Netherlands. Moreover, the applicant's position was not comparable to that of other potential migrants in that she had been born a Dutch national but had lost that nationality involuntarily in 1975 when Suriname became independent. Her address had always been known to the domestic authorities, who had tolerated her presence in the country for 16 years. Such a lengthy period had actually enabled her to establish and develop strong family, social and cultural ties in the Netherlands. The Court further noted that the applicant did not have a criminal record and that settling in Suriname would entail hardship for her family. Nor had the domestic authorities paid enough attention to the impact on the applicant's children of the decision to deny their mother a residence permit. They had also failed to take account of or assess evidence as to the practicality, feasibility and proportionality of denying her residence in the Netherlands. Viewing these factors cumulatively, the Court concluded that the circumstances of the applicant's case were indeed exceptional. Accordingly, a fair balance had not been struck between the personal interests of the applicant and her family in maintaining their family life in the Netherlands and the public order interests of the Government in controlling migration.

Conclusion: violation (fourteen votes to three)

Article 41: EUR 1,714 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Butt v. Norway*, 47017/09, 4 December 2012; *Nunez v. Norway*, 55597/09, 28 June 2011, Information Note 142)

Refusal to transfer prisoner to a prison nearer home so that he could receive visits from his elderly mother: *violation*

Vintman v. Ukraine - 28403/05
Judgment 23.10.2014 [Section V]

Facts – In his application to the European Court the applicant complained that he had been forced

to serve his prison sentence far from his home, with the result that his elderly mother, who was in poor health, had been unable to visit him for over ten years. At the time of the Court's judgment he was serving his sentence in a prison some 700 kilometres from home with a journey time that took between 12 and 16 hours. The prison authorities had repeatedly refused his requests for a transfer citing problems of space and, more recently, his behaviour.

Law – Article 8: The failure to transfer the applicant to a prison closer to home had effectively denied him any personal contact with his mother and thus amounted to interference with his right to respect for his family life under Article 8. The Court was prepared to accept that the interference was in accordance with the law and pursued the legitimate aims of preventing prison overcrowding and maintaining discipline. It was, however, disproportionate. Although the authorities had relied on the absence of available places, they had failed to give any details and there was no evidence that they had in fact considered placing him in any of the many regions closer to his home address. In point of fact, the region where the applicant was transferred in December 2009 was one of the furthest from his home. As regards the applicant's behaviour, no differentiation was made between his requests for mitigation of his prison regime and those for his transfer to a prison of the same security level closer to home. In any event, the question of behaviour was raised by the authorities for the first time in April 2010, whereas the applicant had been asking for a transfer since December 2001. Lastly, the authorities did not dispute that the applicant's elderly and frail mother was physically unable to travel to visit him in the regions where he was imprisoned. The fact of the matter was that the applicant's personal situation and his interest in maintaining his family ties had never been assessed, and no relevant and sufficient reasons for the interference in question were ever adduced.

Conclusion: violation (unanimously).

The Court also found unanimously violations of Article 8 in conjunction with Article 13 in respect of the lack of an effective remedy for the applicant's inability to obtain a transfer to a prison closer to home and of Article 8 taken alone on account of the monitoring of his correspondence.

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

(See also *Khodorkovskiy and Lebedev v. Russia*, 11082/06 and 13772/05, 25 July 2013, Information Note 165)

Respect for family life
Positive obligations

Failure to enforce residence order concerning child abducted by his mother: *violation*

V.P. v. Russia - 61362/12
Judgment 23.10.2014 [Section I]

Facts – In 2008 the applicant's former wife took their child from Moldova, where they lived, to Russia without the applicant's consent. Shortly before the abduction, the applicant had filed a request before a Moldovan court for a residence order in respect of the child, which request was eventually granted in 2009. However, the child's mother refused to comply. The applicant tried to enforce the judgment in Russia. In 2011 the Russian authorities issued a warrant of execution in respect of the Moldovan court judgment, but the bailiffs refused to enforce it. In 2012 the applicant's former wife eventually returned to Moldova with the child, who was again living with the applicant at the time of the European Court's judgment.

Law – Article 8: The 2009 Moldovan court's judgment and the subsequent warrant of execution issued by the Russian authorities had shown due regard to the best interests of the child and were thus in line with the Convention. However, it had taken the Russian authorities more than a year to issue the warrant of execution. In the Court's opinion, that delay was attributable to the authorities, who had incorrectly interpreted the applicable legislation and had considered the judgment as "self-executing" with no further action needed to enforce it. In addition, as the bailiffs' service had also wrongly interpreted the applicable legislation and refused to enforce the warrant of execution, the applicant had had to initiate another set of court proceedings in Russia, which had only ended in 2012. In this respect, the bailiffs' refusal had not only been unlawful, but had also prejudiced the applicant's and the child's interests by prolonging their separation. As for the existence of other mechanisms in Russian law which would allegedly have facilitated the enforcement of the Moldovan court's judgment, the Court observed that no measures had ever been taken. Thus, the applicant's former wife had never been subject to an administrative sanction for the unlawful retention of the child and the Russian authorities had refused to consider her behaviour as criminally punishable under Russian law. Although none of these shortcomings was serious in itself, the Court nevertheless

stressed that proceedings concerning child-residence matters required urgent handling. In the light of these considerations, the measures taken by the Russian authorities in order to enforce the Moldovan judgment could not be considered "adequate and effective".

Conclusion: violation (unanimously).

Article 41: EUR 7,000 in respect of non-pecuniary damage.

(See also *X v. Latvia* [GC], 27853/09, 26 November 2013, Information Note 168; *Chabrowski v. Ukraine*, 61680/10, 17 January 2013; *Neulinger and Shuruk v. Switzerland* [GC], 41615/07, 6 July 2010, Information Note 132; *P.P. v. Poland*, 8677/03, 8 January 2008; *Ignaccolo-Zenide v. Romania*, 31679/96, 25 January 2000; and see generally the Factsheet on International child abductions)

ARTICLE 10

Freedom of expression

Journalist dismissed for publishing a book criticising his employer in breach of confidentiality clause: *violation*

Matúz v. Hungary - 73571/10
Judgment 21.10.2014 [Section II]

Facts – The applicant was a Hungarian journalist employed by the State television company. In 2004 he was dismissed for breaching a confidentiality clause after he published a book concerning alleged censorship by a director of the company. The applicant challenged his dismissal in the domestic courts, but without success.

Law – Article 10: The applicant's dismissal constituted an interference with the exercise of his right protected by Article 10 as the decision was prompted only by the publication of his book, without further examination of his professional ability. The book essentially concerned a matter of public interest and no third party had even complained about it. Regard being had to the role played by journalists in a democratic society and to their responsibilities to contribute to and encourage public debate, confidentiality constraints and the obligation of discretion could not be said to apply with equal force to them, given that it was in the nature of their functions to impart information and ideas. Furthermore, in the particular context of the applicant's case, his obligations of loyalty and restraint had to be weighed against the public character of the broadcasting company he worked for. In this respect, the domestic authorities should have paid particular attention to the public interest attaching to the applicant's conduct. Furthermore, while the authenticity of the documents published by the applicant had never been called into question, some of his statements amounted to value judgments, the truth of which was not susceptible of proof. Although the publication of the documents in the applicant's book constituted a breach of confidentiality, their substance had already been made accessible to the public through an online publication before the book was published. As to the applicant's motives, namely, to draw public attention to censorship within the State television, his good faith had never been called into question during the domestic proceedings. Furthermore, the book was published only after the applicant had unsuccessfully tried to complain about the alleged censorship to his employer. In addition, the sanction imposed – termination of the employment with immediate effect – was rather severe. Finally, the domestic courts had found against the applicant solely on the ground that publication of the book breached his contractual obligations, without considering his argument that he was exercising his freedom of expression in the public interest. The domestic courts had thus failed to examine whether and how the subject matter of the applicant's book and the context of its publication could have affected the permissible scope of restriction on his freedom of expression. Therefore, the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society".

Conclusion: violation (unanimously).

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

(See also *Fuentes Bobo v. Spain*, 39293/98, 29 February 2000; and *Wojtas-Kaleta v. Poland*, 20436/02, 16 July 2009, Information Note 121)

Thirteen years' imprisonment for pouring paint over statues of Atatürk: *violation*

Murat Vural v. Turkey - 9540/07
Judgment 21.10.2014 [Section II]

Facts – The applicant was sentenced to thirteen years' imprisonment in 2007 after being found guilty of an offence under the Law on Offences

committed against Atatürk (Law no. 5816) for having poured paint on statues of Kemal Atatürk. In accordance with domestic legislation, between the date on which his conviction became final and the official end date of his prison term, the applicant was unable to vote or be a candidate in elections. He was conditionally released from prison in 2013.

Law – Article 10: The action which led to the applicant's conviction had constituted an expressive act. In the course of the criminal proceedings and before the Court the applicant maintained that his aim had been to express his "lack of affection" for Atatürk and his dissatisfaction with Kemalist ideology and its followers. The domestic courts had not found him guilty of vandalism, but of having insulted the memory of Atatürk. Therefore, through his actions the applicant had exercised his right to freedom of expression, and his conviction, imprisonment and disenfranchisement as a result of that conviction constituted interference with his Article 10 rights. That interference was prescribed by law and pursued the legitimate aim of protecting the reputation or rights of others.

As to whether it had been "necessary in a democratic society", the Court first recalled that Kemal Atatürk had been an iconic figure in Turkey and that the Turkish Parliament had chosen to criminalise certain conduct which it considered insulting to his memory and damaging to the sentiments of Turkish society. However, the Court was struck by the extreme severity of the penalty laid down by domestic law and imposed on the applicant, which was grossly disproportionate to the legitimate aim pursued and therefore not necessary in a democratic society.

Conclusion: violation (unanimously).

Article 3 of Protocol No. 1: As a consequence of his conviction, the applicant had been prevented from voting for a period of over eleven years and so was directly affected by the statutory measure, which had already prevented him from voting on two occasions in parliamentary elections. The Court recalled that in previous cases it had found that the application of disenfranchisement in Turkey was automatic and indiscriminate and thus did not fall within any acceptable margin of appreciation. There was no reason to reach a different conclusion in the applicant's case.

Conclusion: violation (unanimously).

Article 41: EUR 26,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Söyler v. Turkey*, 29411/07, 17 September 2013, Information Note 166; *Tatár and Fáber v. Hungary*, 26005/08 and 26160/08, 12 June 2012, Information Note 153; *Hirst v. the United Kingdom (no. 2)* [GC], 74025/01, 6 October 2005, Information Note 79; *Başkaya and Okçuoğlu v. Turkey*, 23536/94 and 24408/94, 8 July 1999)

Multiple arrests and convictions of a "naked rambler" resulting in a cumulative period of imprisonment of over seven years: *no violation*

Gough v. the United Kingdom - 49327/11
Judgment 28.10.2014 [Section IV]

Facts – The applicant adhered to a firmly held belief in the inoffensiveness of the human body. This had in turn given rise to a belief in social nudity, which he expressed by being naked in public. In 2003 he decided to take his first trek through the United Kingdom, earning the nickname "the naked rambler". Over the years, he was arrested and sentenced numerous times.

Law – Article 10

(a) *Scope of the complaint* – The applicant clearly complained about his repeated arrest, prosecution, conviction and imprisonment for the offence of breach of the peace owing to his refusal to wear clothes in public. Although this had not amounted to a continuing situation for the purposes of the six-month rule in Article 35 § 1 of the Convention, the incidents had formed part of a pattern. Therefore, although only the complaint concerning the applicant's 2011 arrest, prosecution, conviction and imprisonment was admissible, the Court examined the compatibility with Article 10 in the light of the pattern of prior and subsequent such incidents.

(b) *Applicability* – The applicant had chosen to be naked in public in order to give expression to his opinion as to the inoffensive nature of the human body. Therefore, his public nudity could be seen as a form of expression which fell within the ambit of Article 10 and his arrest, prosecution, conviction and detention had constituted repressive measures taken in reaction to that form of expression of his opinions. There had therefore been interference with the exercise of his right to freedom of expression.

(c) *Merits* – The interference was prescribed by law and had pursued the broader aim of seeking to ensure respect for the law in general, and thereby preventing the crime and disorder which would

potentially ensue had the applicant been permitted to continually and persistently flout the law with impunity.

The extent to which, and the circumstances in which, public nudity is acceptable in a modern society was a matter of public interest. The fact that the applicant's views on public nudity were shared by very few people was not, of itself, conclusive of the issue before the Court. As an individual intent on achieving greater acceptance of public nudity, the applicant had been entitled to seek to initiate such a debate and there was a public interest in allowing him to do so. However, the issue of public nudity also raised moral and public-order considerations. Thus, the applicable margin of appreciation in reacting to instances of public nudity, as opposed to regulating mere statements or arguments on the subject, was a wide one.

The measures taken against the applicant had not been the result of any blanket prohibition: each incident had been considered on its facts and in light of the applicant's own history of offending. As to the severity of the sanctions, it was noteworthy that after his early convictions the applicant had been either admonished or had received short sentences of imprisonment. It had only been after a number of convictions that the courts had begun to impose more substantial custodial sentences and, even then, efforts had been made to reach a less severe penalty. In assessing the proportionality of the penalty imposed, the Court was therefore not concerned with the respondent State's response to an individual incident but with its response to the applicant's persistent public nudity and his wilful and contumacious refusal to obey the law over a number of years.

It was true that by the time the 2011 sentence was imposed, the applicant had already served a cumulative total of five years and three months in detention on remand with only four days' spent at liberty since May 2006. The cumulative period of imprisonment in Scotland since 2003 for the repeated instances of his refusal to dress in public stood at over seven years. While the penalty imposed for each individual offence, taken on its own, was not such as to raise an issue under Article 10 in terms of lack of proportionality, the cumulative impact on the applicant of the measures taken by the respondent State was otherwise. However, the applicant's own responsibility for the convictions and the sentences imposed could not be ignored. In exercising his right to freedom of expression, he had in principle been under a general duty to respect the country's laws and to pursue his desire to bring about legislative or societal change in accordance with them. Many other avenues for the expression of his opinion on nudity or for initiating a public debate on the subject were open to him. He had also been under a duty, particularly in the light of the fact that he was asking for tolerance in respect of his own conduct, to demonstrate tolerance of and sensibility to the views of other members of the public. However, he appeared to reject any suggestion that acceptance of public nudity could vary depending on the nature of the location and the presence of other members of the public. Without any demonstration of sensibility to the views of others and behaviour they might have considered offensive, he had insisted upon his right to appear naked at all times and in all places.

The applicant's case was troubling, since his intransigence had led to his spending a substantial period in prison for what was – in itself – usually a relatively trivial offence. However, his imprisonment was the result of his repeated violation of the criminal law in full knowledge of the consequences, through conduct which he had full well known not only went against the standards of accepted public behaviour in any modern democratic society but also was liable to be alarming and morally and otherwise offensive to other, unwarned members of the public going about their ordinary business. Therefore, the repressive measures taken in reaction to the particular, repeated form of expression chosen by the applicant had met a pressing social need and had been, even if considered cumulatively, proportionate.

Article 10 did not go so far as to enable individuals, even those sincerely convinced of the virtue of their own beliefs, to repeatedly impose their antisocial conduct on other, unwilling members of society and then to claim a disproportionate interference with the exercise of their freedom of expression when the State, in the performance of its duty to protect the public from public nuisances, enforced the law in respect of such deliberately repetitive antisocial conduct.

Conclusion: no violation (unanimously).

Article 8: As concerns in particular an individual's personal choices as to his desired appearance in public, Article 8 could not be taken to protect every conceivable personal choice in that domain: there must presumably be a *de minimis* level of seriousness as to the choice of desired appearance in question. Whether the requisite level of seriousness had been reached in relation to the applicant's choice to appear fully naked on all occasions in all public places without distinction may be doubted, having

regard to the absence of support for such a choice in any known democratic society in the world. In any event, however, even if Article 8 were to be taken to be applicable to the circumstances of the present case, those circumstances were not such as to disclose a violation of that provision. In sum, any interference with the applicant's right to respect for his private life had been justified under Article 8 § 2 for essentially the same reasons given in the context of the analysis under Article 10 of the Convention.

Conclusion: no violation (unanimously).

Sentence of ten days' detention for publicly detaching part of a ribbon from wreath laid by the President at a commemorative ceremony: *violation*

Shvydka v. Ukraine - 17888/12
Judgment 30.10.2014 [Section V]

Facts – The applicant, a member of an opposition party in Ukraine, took part in an Independence Day ceremony in 2011. After the ceremony and in order to express her disagreement with presidential policies, she detached part of a ribbon bearing the words "the President of Ukraine V.F. Yanukovych" from a wreath laid by the President. A district court found her guilty of petty hooliganism and sentenced her to ten days' detention. Although the applicant lodged an appeal against the judgment on the first day of her detention, it was not heard until three weeks later, by which time she had served her sentence in full.

Law – Article 10: The act which led to the applicant's conviction had been the detachment of a ribbon from the wreath laid by the President of Ukraine at an Independence Day ceremony attended by many people. The applicant belonged to the opposition party, whose leader was then in prison. Having regard to the applicant's conduct and its context, the Court accepted that by her act she had sought to convey certain ideas in respect of the President to the people around her. It could therefore be regarded as a form of political expression. Accordingly, punishing her with ten days' detention amounted to interference with her right to freedom of expression. The measure applied to the applicant was lawful and pursued the legitimate aim of protecting public order and the rights of others. However, the domestic courts had imposed on the applicant, a sixty-three-year-old woman with no criminal record, the harshest penalty for a wrongdoing that involved no violence or danger, on the grounds that she had refused to admit her guilt. This was tantamount to punishing her reluctance to change her political views. There being no justification for such an approach, the measure was disproportionate.

Conclusion: violation (unanimously).

Article 2 of Protocol No. 7: As the applicant's appeal against the district court's judgment had no suspensive effect, the sentence had been executed immediately in accordance with the domestic law. In addition, the appellate review had taken place only after the sentence had been served in full. In these circumstances, the review had been unable to effectively redress the mistakes of the lower court. Moreover, the retrospective and purely compensatory remedy available in the event of the court of appeal quashing the district court's decision could not be regarded as a substitute for the right to a review embedded in Article 2 of Protocol No. 7.

Conclusion: violation (unanimously).

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

Freedom to receive information
Freedom to impart information

Award of costs against journalists for destroying evidence in order to protect their sources: *inadmissible*

Keena and Kennedy v. Ireland - 29804/10
Decision 30.9.2014 [Section V]

Facts – The first applicant was a correspondent on and the second applicant the editor of the *Irish Times* newspaper. In 2006 the newspaper published an article containing references to a confidential letter that had been sent to a third party by a tribunal of inquiry set up to investigate alleged corruption. The tribunal ordered the applicants to produce and hand over the documents on which the article was based, but the second applicant replied that they had been destroyed to protect the newspaper's sources. The tribunal then brought proceedings in the Irish courts for orders compelling the applicants to comply with the tribunal's order and to appear before the tribunal to answer its questions concerning the source and whereabouts of the documents. Although the Supreme Court ultimately found in the applicants' favour, it nevertheless ordered them to pay the costs of the proceedings on the grounds that by deliberately

destroying the evidence they had deprived the courts of any power to give effect to the tribunal's order.

In their application to the European Court, the applicants complained that the costs award had interfered with their right to protect their journalistic sources.

Law – Article 10: The Supreme Court's ruling on costs was not to be characterised as an interference with the applicants' right to protect the secrecy of their journalistic sources. The issue whether the tribunal had an interest in ascertaining the source of the leak would have involved the balancing of competing public interests and was for the domestic courts to resolve in the first place, guided by the relevant Convention case-law. The domestic courts would have been in a position to do so had the applicants not destroyed the documents. Where competing public interests were in issue, the correct course would have been to allow for a proper judicial determination of the matter in its entirety. Permitting the High Court, and subsequently the Supreme Court, to adjudicate the matter in full would have been fully consonant not only with Article 10, but also with the rule of law, a fundamental principle of the Convention as a whole.

The course of action adopted by the applicants in the instant case was not a legitimate exercise of their right under Article 10 to refuse to disclose their source. The protection of the courts had been available to them in order to vindicate their rights. The Convention did not confer on individuals the right to take upon themselves a role properly reserved to the courts. As the domestic courts had underscored, this was, effectively, what the applicants had done through the deliberate destruction of the very documents that were at the core of the Tribunal's inquiry.

The Court did not accept that the order for costs was liable to have a chilling effect on freedom of expression. As a general principle, costs were a matter for the discretion of the domestic courts. Furthermore, the order for costs in the circumstances of the applicants' case could have no impact on public interest journalists who vehemently protected their sources yet recognised and respected the rule of law. The Court could discern nothing in the costs ruling to restrict publication of a public interest story, to compel disclosure of sources or to interfere in any other way with the work of journalism. What the ruling signified was that all persons must respect the role of the courts, and that nobody, journalists included, could usurp the judicial function. The true purport of the Supreme Court's ruling was to signal that no party was above the law or beyond the lawful jurisdiction of the courts.

Conclusion: inadmissible (manifestly ill-founded).

Freedom to impart information

Finding of liability against publishers of article and photographs revealing existence of monarch's secret child: *case referred to the Grand Chamber*

Couderc and Hachette Filipacchi Associés v. France
- 40454/07
Judgment 12.6.2014 [Section V]

The applicants are respectively the publication director and the publisher of the weekly magazine *Paris-Match*. In 2005 the magazine published an article in which Ms C. made statements about her son, claiming that Albert Grimaldi, the reigning Prince of Monaco, was his father. She provided details about how she had met the prince, their meetings, their intimate relationship and feelings, the way in which the prince had reacted to the news of her pregnancy and his attitude on meeting the child. The prince brought proceedings against the applicants, seeking compensation for invasion of privacy and infringement of his right to protection of his own image. The French courts granted his claim and awarded him EUR 50,000 in damages; they also ordered that details of the court's judgment be published on the front cover of the magazine, occupying one third of the space.

In a judgment of 12 June 2014 (see Information Note 175), a Chamber of the Court held by four votes to three that there had been a violation of Article 10 of the Convention. It found that the judgment against the applicants had made no distinction between information which formed part of a debate of general interest and that which exclusively reported details of the Prince's private life. Accordingly, in spite of the margin of appreciation left to States in this sphere, there had been no reasonable relationship of proportionality between the restrictions imposed by the domestic courts on the applicants' right to freedom of expression and the legitimate aim pursued, namely protecting the reputation or rights of others.

On 13 October 2014 the case was referred to the Grand Chamber at the request of the Government.

Prison sentence for candidate in municipal elections for disseminating press release before statutory electioneering period: *violation*

Erdoğan Gökçe v. Turkey - 31736/04
Judgment 14.10.2014 [Section II]

Facts – The applicant was due to stand as a candidate in municipal elections to be held on 28 March 2004. In March 2003, while covering a demonstration in his capacity as a journalist, he handed out a written declaration, intended for the press, in which he set out the main themes of his programme for the 2004 municipal elections.

In October 2003 the public prosecutor brought criminal proceedings against him for failing to comply with the statutory electioneering period for municipal elections. In December 2003 the criminal court of first instance sentenced him to three months' imprisonment and a fine. The prison sentence was commuted to a large fine.

The applicant appealed unsuccessfully. Moreover, he did not pay the fine as he did not have the necessary resources. In May 2004 the prosecutor's office gave him a 27-day prison sentence in default, 13 of which were to be served and the remaining 14 suspended. The applicant was detained from 20 May to 2 June 2004.

The candidates from the other political parties taking part in the municipal elections of March 2004 made themselves known from the end of June 2003 and, from August 2003 onwards, several candidates made the main themes of their programmes public.

Law – Article 10: The applicant was prosecuted and convicted essentially for his failure to comply with the ten-day electioneering period laid down in section 49 of Law no. 298.

It had not been established that the ten-day electioneering period had been laid down by the Turkish legislature in order to limit all forms of expression of opinions and ideas concerning the municipal elections outside that period. The amendments made to Law no. 298 in 2010 clearly specified that electioneering in the written press or via Internet could be carried out freely until the end of the period (without defining a starting point for the latter), and that the dissemination of pamphlets, brochures or other advertising material bearing the symbols of political parties was unrestricted during the electoral period (generally speaking, three months prior to the elections).

However, prior to the changes introduced in 2010 and in the absence of any specific supplementary criterion, the judicial authorities were likely to apply the criminal law to any form of expression concerning municipal elections which occurred prior to the electioneering period.

In the applicant's case, the judicial authorities did not seem to have assessed whether the impugned prohibition was genuinely necessary for the proper conduct of the elections. They had interpreted the provision on the authorised electioneering period strictly, thereby preventing the applicant from expressing his views outside that period on questions concerning municipal public services, notwithstanding his intention to stand in the municipal elections scheduled for the following year.

The examples of other candidates in the municipal elections who had discussed the reasons for their standing and their programmes almost six months before the elections showed that, in practice, the judicial authorities had not always interpreted the relevant law so strictly.

In those circumstances, the Court could not consider it established that a pressing social need had made it necessary to restrict to ten days before the elections the period during which the applicant could freely express his views on an issue concerning municipal services, even though he was involved in the forthcoming municipal elections.

In addition, the applicant had served 13 days of actual imprisonment with 14 days release on licence following his criminal conviction. By its nature and severity, the prison sentence imposed on the applicant had amounted to an interference that was disproportionate to the legitimate aims pursued by the domestic authorities. The fact that the prison sentence originally imposed had been commuted to a fine, which the applicant was unable to pay on account of a lack of means, did not alter the assessment of the seriousness of the penalty imposed on him.

Conclusion: violation (unanimously).

Article 41: claim made out of time.

ARTICLE 11

Freedom of peaceful assembly

Failure to assess proportionality when convicting applicants for taking part in public demonstration: *violation*

Yılmaz Yıldız and Others v. Turkey - 4524/06
Judgment 14.10.2014 [Section II]

Facts – In their capacity as branch chairmen and officers of local branches of the Health and Social

Workers' Union, the applicants participated in gatherings outside two local hospitals in which they read out a press release issued by the trade union criticising the transfer of the hospitals to the Ministry of Health. The police did not prevent or interfere with either of the gatherings, but instead issued verbal warnings that they were illegal and ordered their dispersion. In subsequent court proceedings the applicants were found guilty of disobeying official orders and ordered to pay fines of approximately EUR 62 each. Their convictions were upheld on appeal.

Law – Article 11: The prosecution and conviction of the applicants for drawing attention to the transfer of hospitals to the Ministry of Health – a topical issue at the time – could have had a chilling effect and discouraged them from participating in similar meetings in the future. It thus constituted an interference with their right to freedom of peaceful assembly. The Court reiterated that any demonstration in a public place inevitably caused a certain level of disruption to ordinary life and it was thus important for public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly guaranteed by Article 11 was not to be deprived of all substance. Moreover, a peaceful demonstration should in principle not be made subject to the threat of penal sanction. However, the applicants were convicted for merely participating in a public demonstration without any assessment by the domestic courts of the proportionality of such an interference with their freedom of assembly. The reasons given by the domestic courts were therefore neither relevant nor sufficient.

Conclusion: violation (unanimously).

Article 41: EUR 1,500 each in respect of non-pecuniary damage; EUR 62 each in respect of pecuniary damage.

Form and join trade unions

Prohibition on members of the armed forces taking part in activities of professional associations: *violation*

Matelly v. France - 10609/10
Adefdromil v. France - 32191/09
Judgments 2.10.2014 [Section V]

Facts – The applicant in the *Matelly* case was an officer in the gendarmerie. In March 2008 he set up an association whose primary purpose was, according to the memorandum of association, "to defend the pecuniary and other interests of gendarmes". The Director General of the National Gendarmerie was informed that the association had been set up. In May 2008 he ordered the applicant and the other serving gendarmes who were members of the association to resign from it immediately as he considered that it resembled a trade-union. Even before receiving the order, the applicant had stated that the association was willing to amend its memorandum of association to remove any ambiguity concerning its members' military obligations. He resigned from the association a few days later. All his appeals were dismissed.

The applicant in the *Adefdromil* case was an association set up in 2001 by two servicemen with the statutory aim of "examining and defending the collective or individual rights and pecuniary, occupational and non-pecuniary interests of military personnel". Neither the President of the Republic (Head of the Armed Forces) nor the Prime Minister had reacted to its creation despite being informed. In November 2002, noting trade-unionist aims of the association, the principal private secretary of the Minister of Defence informed military personnel on active service that it was a disciplinary offence to join the association and that any personnel who were already members must resign. The association thus lost several leading members. It alleged that it had been unable to obtain judicial review of the measure which had resulted in the resignations. It also lodged several applications with the *Conseil d'État* for judicial review of three decrees issued by the Minster of Defence, which it alleged contravened the general regulations for service personnel and of the principle of equality. The *Conseil d'État* held that the applicant association did not have standing to request the setting aside of the decrees as it had contravened the rules preventing service personnel from joining groups set up to defend service personnel's professional interests.

Law – Article 11: The impugned measures amounted to interference with the rights to form and join trade unions. They had been provided for by the Defence Code and had the legitimate aim of preserving the order and discipline necessary in the armed forces, of which the gendarmerie was also a part.

The relevant provisions of the Defence Code contained an outright ban on military personnel joining any trade-union body. Neither tolerance of trade-union organisations set up by members of the armed forces nor the creation of special bodies and procedures to defend their interests could act

as a substitute for the recognition of the right of military personnel to form and join trade unions.

While trade-union activity had to be adapted to take into account the specific nature of the armed forces' mission, such activity could nonetheless, by its purpose, bring to light concerns regarding decisions that affected the pecuniary and other interests of military personnel. Thus, while restrictions, even significant ones, could be imposed on the forms of action and expression of an occupational association and of the military personnel who joined it, such restrictions were not to deprive service personnel and their trade unions of the general right of association to defend their occupational and non-pecuniary interests.

By failing to take account of Mr Matelly's attitude and wish to comply with his obligations, and by prohibiting the applicant association, as a matter of principle, from bringing a court action on account of the trade-union nature of its stated aim, without identifying in tangible terms the individual restrictions required by the specific role of the military, the domestic authorities had undermined the very essence of freedom of association. They had thus failed to comply with their duty to strike a fair balance between the relevant competing interests. While the freedom of association of military personnel could be subject to legitimate restrictions, a blanket ban on forming or joining a trade union encroached on the very essence of that freedom and was as such prohibited by the Convention.

Conclusion: violation (unanimously).

Article 41: no claim in respect of damage submitted in either case.

ARTICLE 13

Effective remedy

Lack of remedy for complaints about the length of pending criminal proceedings: *violation*

Panju v. Belgium - 18393/09
Judgment 28.10.2014 [Section II]

Facts – The applicant was arrested in November 2002 on suspicion of illegal trafficking in gold and money laundering. The 50 kg of gold he was carrying at the time was confiscated and his Belgian bank accounts frozen. In April 2005 he was formally charged with money laundering by an investigating judge. Since then the judicial investigation remained pending, despite numerous applications by the applicant complaining of the procedural delays and seeking the lifting of the confiscation measure.

Law – The applicant's complaint concerning the length of the judicial investigation was *prima facie* "arguable", as the proceedings had lasted for more than eleven years. The applicant was thus entitled to an effective remedy in that connection.

Article 35 § 1: In a judgment of 28 September 2006, the Court of Cassation had acknowledged the possibility of bringing an action to establish the non-contractual liability of the State to complain about the length of the proceedings.

As regards the length of civil proceedings, the Court had recognised in the case of *Depauw v. Belgium* ((dec.), 2115/04, 15 May 2007, Information Note 97) that the compensatory remedy had acquired a sufficient degree of certainty from 28 March 2007 onwards and that, consequently, for the purposes of Article 35 § 1 of the Convention, any application lodged after that date had to establish that this remedy had been used.

The Court further took the view that there was no reason why the remedy endorsed by the Court of Cassation could not apply to complaints about the length of criminal proceedings as well. However, it noted that among the cases cited the Government had not given a single example of a judicial decision to illustrate the application of this case-law to criminal proceedings.

In the present case, the applicant had not brought an action to establish the State's liability in respect of the length of the proceedings as he considered that this remedy was not effective.

The Government, on whom the burden of proof lay, had not shown that this compensatory remedy was granted in practice by the courts in the context of criminal proceedings. Accordingly, the remedy could not at present be regarded as an effective remedy to complain of the length of the criminal judicial investigation.

Conclusion: preliminary objection joined to the merits and dismissed (failure to exhaust domestic remedies).

Article 13 in conjunction with Article 6 § 1: In a judgment of 8 April 2008 the Court of Cassation, departing from precedent, had acknowledged that it had to be possible for a breach of an individual's right to a hearing within a reasonable time to be established at all stages of criminal proceedings, even during the judicial investigation and that,

consequently, the Indictments Division had a duty to review, of its own motion or at the request of one of the parties, the lawfulness of the proceedings referred to it, including the issue of their duration.

In the case of *Tyteca and Others v. Belgium* ((dec.), 483/06, 24 August 2010), taking note of this jurisprudential development, the Court had nuanced its position, declaring inadmissible a complaint about the length of the judicial investigation on the ground that the applicants had neither brought an action to establish civil liability nor used any of the remedies provided for in Articles 136 and 136*bis* of the Belgian Code of Criminal Procedure, namely a review of the judicial investigation by the Indictments Division of the Court of Appeal, which was entitled, in particular, to give directions to the investigating judge or even to take over the handling of the case.

However, it could not be inferred from that decision that the measures open to the Indictments Division under the relevant Articles of the Code of Criminal Procedure, for the purpose of ensuring the proper conduct of the proceedings, now constituted, in each case, an effective remedy within the meaning of Article 13 of the Convention where the duration of a criminal judicial investigation had exceeded a reasonable time.

Firstly, while admitting that the directions which the Indictments Division was entitled to give could have the effect of expediting the proceedings if they were complied with immediately, the Court noted that none of the measures in question was specifically directed at the delay complained of. Unlike, for example, the system in Spain, Portugal or Slovenia, it was not established that in the Belgian system the Indictments Division could fix time-limits for the completion of procedural acts, order the investigating judge to set a date for a hearing or to close the investigation, or decide that the case should be given priority treatment.

Secondly, in the present case, the Indictments Division had not yet taken, of its own motion, any of the measures that it was entitled to order for the purpose of expediting the proceedings. It appeared to the Court, in examining the possible reason for this failure, that it might have stemmed from the fact that the measures in question would not, in any event, have addressed the shortcomings identified by the Principal Public Prosecutor himself, namely the lack of staff and structural deficiencies in the public prosecutor's office responsible for the case. Nor had the Indictments Division ordered any such measure at the request of the applicant.

Thirdly, the Court noted that, except in situations where unreasonable length resulted in the proceedings being declared inadmissible or the prosecution being time-bared because defence rights had been irretrievably prejudiced, the courts did not have the power to impose penalties for proceedings exceeding a reasonable time. The fact that the trial court was obliged to take into account, in an overall assessment of the case, the Indictments Division's finding that the duration had exceeded a reasonable time, could not constitute appropriate redress within the meaning of the Court's case-law. Moreover, in cases where the judicial investigation was ultimately discontinued or the person charged was acquitted, that power of the trial court would not provide any redress whatsoever.

It followed that the preventive remedies could not therefore be regarded, in the present case, as effective.

Conclusion: violation (six votes to one).

The Court further held, by six votes to one, that there had been a violation of Article 6 § 1 on account of the length of the proceedings, the main cause of which had been the way in which the authorities had handled the case.

Article 41: No claim made in respect of damage.

ARTICLE 14

Discrimination (Article 8)

Barring of a former collaborator of the political police from public-service employment: *no violation*

Naidin v. Romania - 38162/07
Judgment 21.10.2014 [Section III]

Facts – Between 1990 and 1991 the applicant was a deputy prefect. He was subsequently elected and re-elected as a member of Parliament and served three parliamentary terms prior to 2004. In 2000, when the applicant was standing for election to the Chamber of Deputies for the third time, the National Council for the Study of the Former Political Police Archives ("the CNSAS") carried out checks into the applicant's past on its own initiative and concluded that he had collaborated with the political police between 1971 and 1974, providing information about some of his colleagues considered to be suspect. The applicant contested the CNSAS's interpretation of his past actions before the Court of Appeal. His appeal was dismissed on the ground that he had indeed collaborated with the political police and that it was

unnecessary to focus on the actual repercussions his actions may have had on the persons concerned. In 2003 a legislative amendment was introduced which barred individuals found to have worked with the political police from employment in the public service. In 2004, at the end of his parliamentary term, the applicant made a request to resume his functions as a civil servant. His request was refused.

Law – Article 14 in conjunction with Article 8: As a matter of principle, States had a legitimate interest in regulating employment conditions in the public service. A democratic State was entitled to require civil servants to show loyalty to the constitutional principles on which the State was founded. In the present case, the situation of Romania under the communist regime had to be taken into account, as did the fact that, in order to avoid a repetition of its past, the State had to be founded on a democracy capable of defending itself. Accordingly, the difference in treatment applied to the applicant had pursued the legitimate aim of protecting national security, public safety and the rights and freedoms of others.

As to the absolute nature of the ban, the Court noted that the applicant's career prospects had been halted only in the public service. Civil servants, and especially those occupying posts entailing a high degree of responsibility such as the post in which the applicant wished to resume employment, wielded a portion of the State's sovereign power. The prohibition imposed on the applicant was therefore not disproportionate to the legitimate objective pursued by the State of ensuring the loyalty of persons responsible for protecting the public interest. Furthermore, no restrictions were imposed affecting the applicant's employment prospects in the private sector, even in companies of potential significance for the State's economic, political and security-related interests, or in other areas of the public sector which did not involve the exercise of public authority. Lastly, as to the alleged failure to take into consideration the nature and consequences of the applicant's actions, these aspects had been examined in adversarial proceedings by the Court of Appeal. As they constituted factual elements which clearly fell within the margin of appreciation left to the national authorities, the Court could not call into question the findings reached by the domestic courts.

Conclusion: no violation (unanimously).

Difference in criminal liability between underage boys and underage girls engaging in sexual intercourse: *inadmissible*

M.D. v. Ireland - 50936/12
Decision 16.9.2014 [Section V]

Facts – At the age of 15, the applicant engaged in sexual acts with a 14 year-old girl. He was subsequently convicted under Section 3(1) of the Criminal Law (Sexual Offences) Act 2006, which made it an offence to engage in a sexual act with a child under the age of 17, there being no defence of consent. In his application to the European Court, the applicant effectively complained of discriminatory treatment in that, by virtue of Section 5 of the Act, girls under the age of 17, unlike boys, could not be guilty of an offence under the Act by reason only of engaging in an act of sexual intercourse. The rationale for this difference in treatment was explained by the domestic courts as being to protect young girls from pregnancy, as they were only relieved from criminal liability in respect of intercourse, not in respect of other sexual activity with underage children.

Law – Article 14 in conjunction with Article 8: The State must be allowed a margin of appreciation in determining whether different treatment is justified between two similar situations. Unlike the usual position in cases concerning sex discrimination, in the specific circumstances of the applicant's case, which concerned a weighty matter of public interest – protecting the integrity and well-being of children – that margin was not to be narrowly confined.

As to the question of objective and reasonable justification for the difference in treatment, the Irish legislature had objective reason to criminalise all sexual activity involving children (to protect them from physical and psychological harm) and to make special provision for girls only in respect of sexual intercourse (because of the added hazard for girls of pregnancy). Accordingly, it could not be said that Section 5, which provided a limited exemption from criminal liability for girls in respect of one form of sexual activity (sexual intercourse), was arbitrary or motivated merely by traditions, general assumptions or prevailing social attitudes in the respondent State. The Court did not consider that the exemption from criminal liability applied to young girls in respect only of sexual intercourse was so broad as to raise a doubt about its proportionality to its intended and legitimate aim. Instead, the legislation achieved an accommodation between the need to deter and

punish sexual acts involving children and the reality that it was not uncommon for young people to be engaged in underage sexual activity. Just as the penalties were increased where the perpetrator was a person in authority over the child, so the consequences were lessened where the parties were close in age. Moreover, where the persons concerned were underage, the Director of Public Prosecutions (DPP) examined each case in the light of its individual facts, paying particular regard to any element of exploitation but also taking account of any genuine emotional relationship between the parties, in order to determine whether the public interest required prosecution.

The difference in treatment was, therefore not lacking in justification, and fell within the State's margin of appreciation.

Conclusion: inadmissible (manifestly ill-founded).

Article 6 and Article 14: The applicant argued that it was unfair that he alone should face a criminal charge and that the 2006 Act specifically excluded the defence of consent even though the offence of defilement through sexual intercourse was essentially akin to a rape charge. He also submitted that the fact that the DPP was vested with discretion under the Act did not cure the unfairness or act as any sort of safeguard as the DPP was not required to give reasons for taking proceedings or to have regard to the fact that the accused was himself a child at the material time.

The Court rejected these arguments. The discrimination complaint was essentially a reiteration of that already examined under Article 14 in conjunction with Article 8. Referring to its decision in the similar case of *G. v. the United Kingdom*, the Court found no reason to impugn the choice of the Irish Parliament to exclude the defence of consent in respect of offences perpetrated upon children. Indeed, this was entirely consistent with the Act's important purpose. Nor did the applicant's criticism of the DPP's discretion add anything to his complaint of unfairness. In some jurisdictions prosecutorial discretion was a feature of the criminal law. Moreover, the applicant appeared to have benefitted in several respects from the DPP's discretion as he had been charged with the lesser (Section 3) offence which meant a lighter range of sentences and his not being registered as a sex offender, and he had also avoided prosecution on a separate count of buggery.

Conclusion: inadmissible (manifestly ill-founded).

(See, for a case on similar facts decided under Articles 8 and 6 of the Convention, *G. v. the United Kingdom* (dec.), 37334/08, 30 August 2011, Information Note 144)

ARTICLE 34

Victim

Constitutional remedy affording appropriate and sufficient redress: *loss of victim status*

Hebat Aslan and Firas Aslan v. Turkey - 15048/09
Judgment 28.10.2014 [Section II]

(See Article 35 § 3 (b) below, page 26)

Hinder the exercise of the right of application

Failure to take preventive measures against risk of "disappearance" of person at risk of ill-treatment in Uzbekistan and disregard of interim measure ordered by the Court: *violation*

Mamazhonov v. Russia - 17239/13
Judgment 23.10.2014 [Section I]

(See Article 3 above, page 7)

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies

New remedy to be exhausted in cases concerning length of proceedings before the administrative courts: *inadmissible*

Xynos v. Greece - 30226/09
Judgment 9.10.2014 [Section I]

Facts – The applicant complained before the Court about the length of administrative proceedings. The Government raised an objection of non-exhaustion as Law no. 4239/2014, which entered into force on 20 February 2014, had created a remedy allowing compensation to be obtained for unjustified delays in proceedings before civil or criminal courts and the Court of Audit.

Law – Article 35 § 1: The remedy afforded by Law no. 4239/2014 offered the requisite effectiveness, since it provided for redress *a posteriori* for an existing breach of the right to a hearing within a

reasonable time in respect of the relevant court proceedings.

(a) *Proceedings concerning request for re-adjustment of the amount of the retirement pension*: The period to be taken into consideration ended on 18 April 2008, with judgment no. 966/2008 of the Court of Audit, that is to say more than six months before the applicant lodged his application on 15 May 2009.

Conclusion: inadmissible (out of time).

(b) *Proceedings concerning claim for damages*: These proceedings had begun with the applicant's claim to the Court of Audit on 9 November 2009 – that is before the entry into force of Law no. 4239/2014 – and were still pending. It was in principle at the time when the application was lodged that the effectiveness of a given remedy had to be assessed. However, given the nature of Law no. 4239/2014 and the context in which it had been enacted, it was justified in the circumstances to make an exception to the general principle.

The applicants' heirs were thus required, in accordance with Article 35 § 1 of the Convention, to use this remedy, after the proceedings before the Court of Audit ended. Moreover, there was no exceptional circumstance that could dispense the applicant's heirs from the obligation to avail themselves, in due course, of this domestic remedy.

Conclusion: inadmissible (failure to exhaust domestic remedies).

The Court further found, unanimously, that there had been a violation of Article 6 § 1 on account of the belated execution of judgment no. 966/2008 of the Court of Audit.

(See also *Techniki Olympiaki A.E. v. Greece* (dec.), 40547/10, 1 October 2013, Information Note 167)

Article 35 § 3 (b)

No significant disadvantage

Crucial importance to applicants of proceedings opposing continued detention: *preliminary objection dismissed*

Hebat Aslan and Firas Aslan v. Turkey - 15048/09
Judgment 28.10.2014 [Section II]

Facts – In 2008 the applicants were arrested and remanded in custody before being charged with a number of offences. Their detention was extended by the Assize Court at successive hearings held between June 2009 and April 2012, in spite of various appeals lodged by their lawyer.

In December 2012 the applicants appealed to the Constitutional Court. In November 2013 that court found a violation of the Constitution on account of the length of their detention on remand (Article 19 § 7 of the Constitution) and the failure to transmit the public prosecutor's opinion to the applicants or their lawyer, thus preventing them from commenting on that opinion (Article 19 § 8). Lastly, in the light of the particular circumstances of the case, and ruling on an equitable basis, it made an award in respect of the non-pecuniary damage sustained by the applicants.

Law – Article 34 (*complaint under Article 5 § 3 of the Convention*): The domestic authorities had found that the total duration of the applicants' detention on remand had been excessive, and the Constitutional Court had awarded sums equivalent to EUR 1,470 and EUR 1,550 to the first and second applicants in respect of non-pecuniary damage.

The general right of individual petition before the Turkish Constitutional Court entered into force on 23 September 2012. In principle this remedy afforded to complainants the prospect of having the contested deprivation of liberty terminated[1]. Taking account particularly of the characteristics of this remedy and the speed with which the Constitutional Court had provided redress for the complaint in question, the sums awarded to the applicants could not be regarded as manifestly insufficient.

As the redress provided in domestic law appeared sufficient and appropriate, the applicants could no longer claim to be "victims" of a violation of Article 5 § 3 of the Convention. The Court thus upheld the Government's objection on that point.

Conclusion: preliminary objection upheld (unanimously).

Article 35 § 3 (b): The applicants complained that their right to adversarial proceedings and to equality of arms had been breached as the public prosecutor's opinion on their appeals against detention had not been transmitted to them.

The nature of the right allegedly breached and the subject matter and outcome of the domestic proceedings differed considerably from the cases where

1. *Koçintar v. Turkey* (dec.), 77429/12, 1 July 2014, Information Note 176.

the Court had found that the applicants had not suffered a "significant disadvantage" in the exercise of their right[1]. In previous cases the applicants had complained of a breach of the principle of adversarial proceedings under Article 6 of the Convention, in the context of the determination of their civil rights or of criminal proceedings where there was no impact on the applicant's liberty.

In the present case the subject matter and outcome of the appeals had been of crucial importance for the applicants, as they sought a court decision on the lawfulness of their detention and in particular the termination of that detention if it were to be found unlawful.

Thus, in the light of the foregoing and in view of the importance of the right to liberty in a democratic society, the Court could not conclude that the applicants had not suffered a "significant disadvantage" in the exercise of their right to participate appropriately in the proceedings concerning the examination of their appeals.

Conclusion: preliminary objection dismissed (unanimously).

The Court also found, unanimously, that there had been a violation of Article 5 § 4 of the Convention on account of the failure to transmit the public prosecutor's opinion when the applicants' appeals were examined and a violation of Article 5 § 5 of the Convention on account of the lack of an effective remedy by which to seek compensation.

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

ARTICLE 46

Execution of judgment – General measures

Respondent State required to amend legislation governing pre-trial detention in order to ensure compliance with Article 5

Chanyev v. Ukraine - 46193/13
Judgment 9.10.2014 [Section V]

Facts – The applicant was arrested on 30 November 2012 on suspicion of murder and the regional court ordered that he remain in detention for two months. His detention was later extended by the investigating judge until 27 February 2013. On 26 February 2013 the applicant was indicted and the case-file was forwarded to the competent court. Two days later the applicant's lawyer requested the applicant's release since the period of detention ordered had expired. The head of the detention facility replied that under the applicable rules, once the case-file had been forwarded to the trial court it was for that court to decide on the applicant's continued detention. Subsequent requests for release filed by the applicant's lawyer were ultimately dismissed on the basis of Article 331-3 of the Code of Criminal Procedure, which gave the trial court judge two months to decide whether to prolong detention following indictment. The applicant's detention was prolonged on 15 April 2013. He was subsequently found guilty of the offence and sentenced to eleven years' imprisonment.

Law – Article 5 § 1: The applicant complained that he had been detained without a court order between 28 February and 15 April 2013. The Court had previously addressed a number of shortcomings relating to pre-trial detention of criminal suspects in Ukraine, including the practice of detaining persons without a court order during the period between the end of the investigation and the beginning of the trial. Such practice, which violated Article 5 § 1 of the Convention, was recurrent and resulted from legislative lacunae. The applicant's case had been conducted within the framework of the new 2012 Code of Criminal Procedure, which was designed to eliminate the legislative shortcomings underlying recurrent violations of Article 5. However, the new Code did not regulate in a clear and precise manner the detention of the accused between the end of the investigation and the start of the trial. For example, Article 331-3 of the Code gave the trial court two months to decide on the continued detention of the accused even when the previous detention order issued by the investigating judge had already expired. It thus allowed the continued detention of the accused without a judicial decision for up to two months. The provisions had been applied in the applicant's case and had resulted in him being detained for a month and a half without a court ruling.

Conclusion: violation (unanimously).

Article 46: In the case of *Kharchenko v. Ukraine* the Court had noted that the recurrent violations of Article 5 § 1 against Ukraine stemmed from legislative lacunae and invited the respondent State to take urgent action on order to bring its legislation and administrative practice into line with Article 5.

1. See, among others, *Holub v. the Czech Republic* (dec.), 24880/05, 14 December 2010, Information Note 138; and *Liga Portuguesa de Futebol Profissional v. Portugal* (dec.), 49639/09, 3 April 2012, Information Note 151.

As the applicant's case showed, the new legislation contained a similar shortcoming leading to like violations of Article 5 of the Convention. The most appropriate way to address this situation was thus to amend the relevant legislation in order to ensure compliance of domestic criminal procedure with the requirements of Article 5.

(See also *Kharchenko v. Ukraine*, 40107/02, 10 February 2011, Information Note 138)

Respondent State required without delay to ensure lawfulness of State action in extradition and expulsion cases and effective protection of potential victims

Mamazhonov v. Russia - 17239/13
Judgment 23.10.2014 [Section I]

(See Article 3 above, page 7)

Execution of judgment – Individual measures

Respondent State required to vigilantly pursue criminal investigation into applicant's disappearance, to put an end to the violations found and make reparation

Mamazhonov v. Russia - 17239/13
Judgment 23.10.2014 [Section I]

(See Article 3 above, page 7)

ARTICLE 4 OF PROTOCOL No. 4

Prohibition of collective expulsion of aliens

Indiscriminate collective expulsions to Greece: *violation*

Sharifi and Others v. Italy and Greece - 16643/09
Judgment 21.10.2014 [Section II]

Facts – The four applicants stated that on various dates in 2007 and 2008 they had entered Greek territory from Afghanistan. After illegally boarding vessels for Italy, they had arrived between January 2008 and February 2009 in the port of Ancona, where the border police had intercepted them and immediately deported them back to Greece. According to the applicants, this practice of immediate return had already been followed for several months by the Italian authorities. Neither Italy nor Greece had authorised them to apply for asylum.

In respect of Greece, they complained of the difficulties encountered in the procedures for obtaining asylum.

In respect of Italy, the applicants alleged that they had been unable to contact lawyers or interpreters. They had been given no information about their rights. Equally, they had been given no "official, written and translated" document concerning their return. They alleged that the Italian border police had immediately taken them back to the ships from which they had just disembarked.

Law – Compliance with Article 4 of Protocol No. 4 by Italy: It followed from the Government's observations that, in order for the applicants to have their case examined and decided by the Dublin Unit within the Ministry of the Interior, they had to have expressed, during the identification process, a wish to benefit from asylum or another form of international protection. Consequently, a lack of essential information in a comprehensible language during the identification process in the port of Ancona would deprive intercepted immigrants of any possibility of claiming asylum in Italy. The participation of officials from the Italian Council for Refugees and of an interpreter during the identification process had therefore been crucial. However, even in the case of the sole applicant whose name appeared in the register of the Italian immigration authorities, there was nothing in the case file to confirm their involvement.

In any event, the case file contained no request for readmission sent to the Greek authorities in application of Article 5 of the 1999 bilateral agreement between Italy and Greece on readmission and of the protocol on its execution. This finding seemed to corroborate the fears of the Special Rapporteur of the United Nations Human Rights Council, to the effect that readmission to Greece as practised in the Italian ports of the Adriatic Sea was frequently in breach of the scope of the 1999 bilateral agreement and the procedures laid down in it. Equally, the concerns expressed by the Commissioner for Human Rights of the Council of Europe with regard to what he described as "automatic returns" from Italy to Greece could not be overlooked. In sum, the fact that the border police in the ports of the Adriatic Sea carried out immediate returns, with no safeguards for the persons concerned, seemed to be confirmed.

In those circumstances, the measures to which the applicants had been subjected in the port of An-

cona amounted to collective and indiscriminate expulsions.

Conclusion: violation (unanimously).

The Court also held, unanimously, that there had been a violation by Greece of Article 13 in conjunction with Article 3 of the Convention, and a violation by Italy of Article 3, of Article 13 taken together with Article 3 of the Convention and of Article 4 of Protocol No. 4.

Article 41: claim made out of time in respect of Italy; no claim made against Greece.

ARTICLE 2 OF PROTOCOL No. 7

Right of appeal in criminal matters

Appellate review only after sentence had been served in full: *violation*

Shvydka v. Ukraine - 17888/12
Judgment 30.10.2014 [Section V]

(See Article 10 above, page 18)

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

Couderc and Hachette Filipacchi Associés v. France - 40454/07
Judgment 12.6.2014 [Section V]

(See Article 10 above, page 19)