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

Information Note on the Court's case-law

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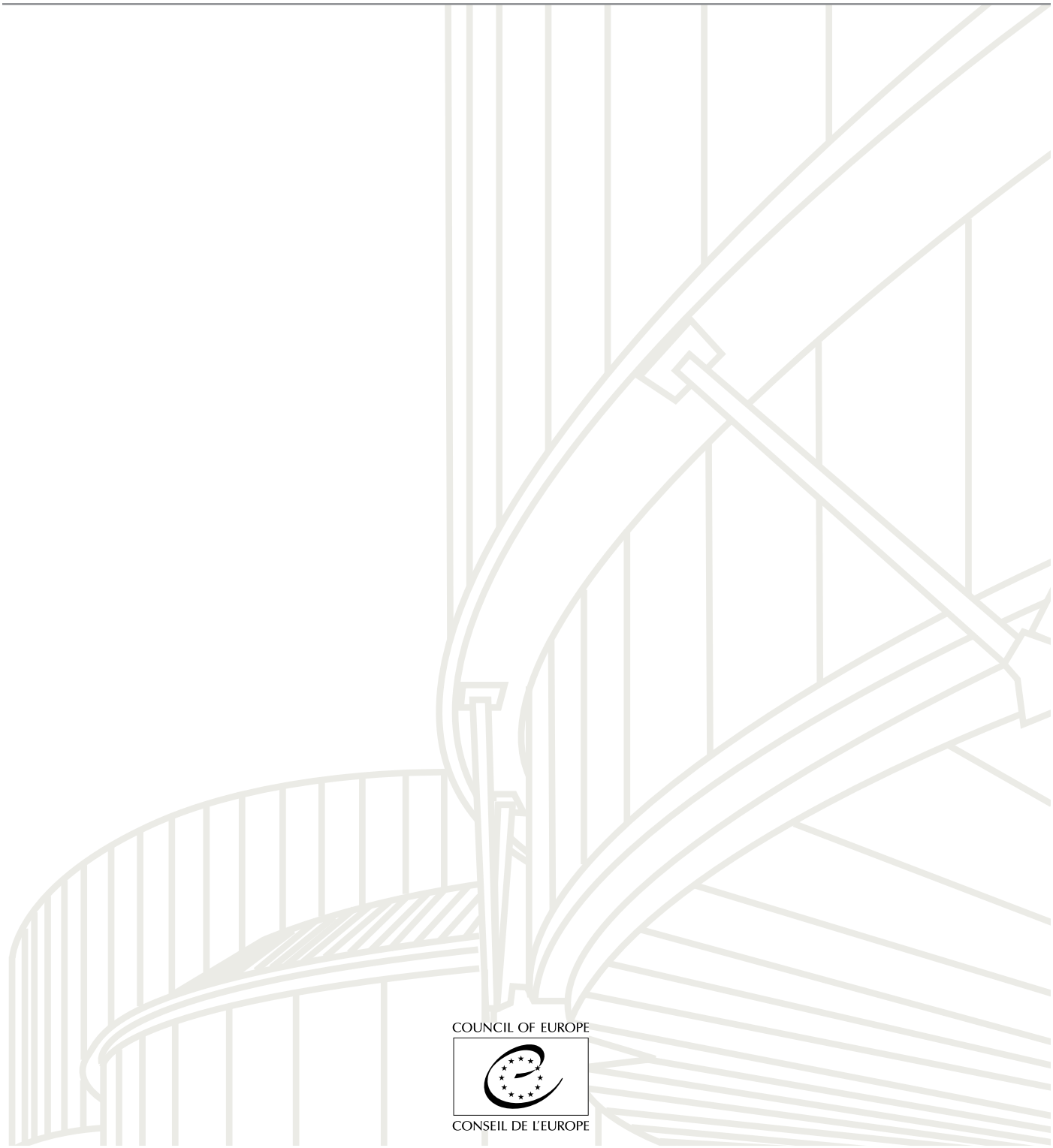

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ARTICLE 2

Positive obligations

Suicide while in custody: *inadmissible*

Robineau v. France - 58497/11
Decision 3.9.2013 [Section V]

Facts – In October 2003 a member of the applicants' family was taken into police custody. He was subsequently brought before the public prosecutor, who called for the opening of an investigation and for his placement under judicial supervision. As he was authorised to see his lawyer, his police and security escort took him into an ordinary room in the court house. At his lawyer's request the man's handcuffs were removed and the two escorting officers left the room so that he and the lawyer could talk in private. They nevertheless kept an eye on him through a glass panel. About twenty minutes into the interview the man got up, went over to the window and jumped to his death.

Law – Article 2: In French law "*défèrement*" – the time between the formal end of police custody and the moment when the individual is brought before a judge – was undeniably a custodial measure, comparable in practical terms to police custody, the individual concerned remaining in the hands of the investigating authorities, under judicial supervision.

The domestic authorities could not have known the suspect would commit suicide. He had seemed calm to everyone who met him while he was in police custody and during his transfer. The psychiatrist who examined him had found him stable, even noting that he appeared not to be particularly upset by what was happening to him. It was true that the authorities should perhaps have seen a warning sign in the fact that he had refused to eat three of the four meals he was offered at the time. That was not sufficient in itself, however, to alert the investigators or the escorting officers to an imminent risk of suicide. That being so, and there being no other objective grounds to believe that the authorities had known, or should have known, that the man might commit suicide, the positive obligations incumbent on the authorities under Article 2 of the Convention had not required them to take any special measures in this case, other than the basic precautions necessary to protect a person's life.

Also, although the escorting officers had left the room to allow the suspect to have a private conversation with his lawyer, they had kept an eye on him through a glass panel. The question of the safety of suspects between the end of police custody and their presentation before a judge warranted the introduction of a more precise legal framework, so that it was not left to the police alone to assess the psychological situation of the people they escorted and the risk of their committing suicide. However, as no particular risk had been or ought to have been identified, the precautions taken in this case had been sufficient and the file disclosed no failure by the State to honour its obligations under Article 2 of the Convention.

Lastly, this case differed from that of *Eremiášová and Pechová v. the Czech Republic* (23944/04, 16 February 2012), where the Court had found a violation of Article 2, particularly its substantive aspect. In that case, where apparently the subject had killed himself while attempting to escape by jumping out of a window, it appeared that the authorities had actually taken steps indicating that they anticipated the possibility of an escape attempt. Furthermore the incident had taken place at a time when the individual concerned was entirely under the supervision of police officers who were escorting him from the toilets to another part of the police station, and not, as in the present case, during an interview with a lawyer, which was by nature confidential.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 3

Inhuman treatment
Degrading treatment
Effective investigation

Use of batons to control applicant during identity check: *violation*

Dembele v. Switzerland - 74010/11
Judgment 24.9.2013 [Section II]

Facts – On 2 May 2005 the applicant, a Burkina Faso national living in Geneva, was approached by two gendarmes for an identity check. According to the applicant, although he had complied with the gendarmes' request by showing his papers, they subjected him to ill-treatment. He also complained of the lack of a thorough, prompt and independent investigation.

Law – Article 3

(a) *Substantive aspect* – While the parties' versions of events differed as to whether the applicant had submitted to the identity check by presenting his papers, it was not disputed that he had refused several times to extinguish his cigarette, that he had reacted strongly when one of the gendarmes had taken the cigarette, that he had refused to lie down on the ground when the situation became more tense and that when one of the gendarmes had tried to take him by the arm to lead him to the police vehicle he had struggled and managed to run away. In addition, the medical findings made at the clinic found injuries to the arm and neck of one of the gendarmes and a superficial wound, with inflammation, on the forearm of the other gendarme. This evidence was sufficient to establish that the applicant had offered physical resistance to the gendarmes and that the use of force by the latter had been justified in principle. It remained to be ascertained whether the force used had been proportionate to the resistance offered by the applicant.

In that connection the fractured collarbone sustained by the applicant unquestionably exceeded the threshold of severity required for the treatment to which he had been subjected by the gendarmes who arrested him to come within the scope of Article 3 of the Convention. The applicant had been placed on sick leave for an initial period of twenty-one days as a result of the injuries caused by the gendarmes' actions.

Quite apart from the direct and specific cause of the applicant's fractured collarbone, the methods employed by the gendarmes, taken overall, disclosed a disproportionate use of force. It was not disputed that the applicant had not been armed with dangerous objects apart from the cigarette he was holding in his hand or that, at least in the early stages of the incident, he had not injured the gendarmes or attempted to injure them by punching or kicking them or by striking them using any other means. The resistance he had offered before being pinned to the ground and biting the arm of one of the gendarmes had therefore been largely passive, albeit determined. The use of batons by the gendarmes, whether or not this had been the direct cause of the injury to the applicant, had thus been unjustified *per se*. Accordingly, in view of the foregoing considerations, the force used to control the applicant had been disproportionate.

Conclusion: violation (six votes to one).

(b) *Procedural aspect* – A total of over five and a half years had elapsed from the time of the applicant's arrest until the discontinuance of the proceedings by the Principal Public Prosecutor. The investigation had also lasted for more than one year and eleven months from the date when the Principal Public Prosecutor had forwarded the file to the investigating judge until the decision to discontinue the proceedings. In view of the seriousness of the accusations against the two gendarmes who had arrested the applicant, the relatively straightforward nature of the case in terms of the number of persons and events concerned, and the fact that the investigation had simply amounted to hearing evidence from five witnesses and producing a limited number of readily accessible items of physical evidence, such delays were unjustified.

As to the degree of care with which the domestic authorities had established the facts of the case, the reopening of the investigation ordered by the Federal Court had enabled some of the defects in the initial set of proceedings to be remedied, notably through the organisation of interviews with the key witnesses. Nevertheless, further investigative steps would have shed light on the precise circumstances in which the applicant had sustained the fracture to his collarbone. The investigation into the incident of 2 May 2005 had therefore not been conducted with the requisite diligence.

Conclusion: violation (five votes to two).

Article 41: EUR 4,000 in respect of non-pecuniary damage; EUR 15,700 in respect of pecuniary damage.

Expulsion

Alleged risk of proscribed treatment if applicant family is expelled to Italy:
relinquishment in favour of Grand Chamber

Tarakhel v. Switzerland - 29217/12
[Section II]

The first applicant, who is of Afghan origin, met his wife in Pakistan. They left Pakistan for Iran, where they lived for fifteen years. They subsequently travelled to Turkey and from there took a boat to Italy. They were arrested by the police at sea. In July 2011 they were taken with their children to a reception centre. They allege that the conditions in which they were accommodated were poor, in particular owing to the lack of sanitary facilities, and that they were regularly exposed to violence because of the fights that broke out every day. They

left Italy for Austria and there lodged an asylum application which was rejected. As they were at risk of being deported again to Italy, they travelled to Switzerland. In November 2011 they applied for asylum there. However, their application was refused and an order was made for their deportation to Italy. The applicants lodged appeals which were dismissed.

In their application to the European Court the applicants complain of a violation of Articles 3, 8 and 13 of the Convention.

Proposed expulsion of asylum-seeker to Mogadishu (Somalia) following improvements in general situation there: *deportation would not constitute a violation*

K.A.B. v. Sweden - 886/11
Judgment 5.9.2013 [Section V]

Facts – The applicant was a Somali national who entered Sweden in 2009 and requested asylum. He claimed that while living in Mogadishu he had received threats in particular from the al-Shabaab and that he would be at serious risk from them if he was to be returned to Somalia. The Migration Board found the applicant's claims unsubstantiated and incoherent and therefore rejected his asylum request. It concluded that the applicant could relocate to Somaliland, where some of his family lived. That conclusion was subsequently upheld by the Migration Court.

Law – Articles 2 and 3: The Court firstly examined the possibility of the applicant's expulsion to Somaliland. However, it concluded that, given the lack of any clan connections there, the applicant would very likely not be admitted to that part of the country. The Court therefore had to examine whether his return to his place of origin – Mogadishu – would violate his rights under Articles 2 or 3. The situation in Mogadishu had changed since July 2011, when the Court adopted its judgment in the case of *Sufi and Elmi v. the United Kingdom*[1] and concluded that all returns to Mogadishu would be regarded as incompatible with the Convention. Al-Shabaab had withdrawn from the city, which was now governed by a new administration. According to reliable international sources the general level of violence in the city had decreased, there being no frontline fighting or shelling anymore and the daily life of ordinary citizens had to a certain extent normalised. Moreover, the relevant country information indicated that people were returning to Mogadishu, although it was not clear to what extent. In those circumstances, the Court concluded that available country information did not indicate that the situation was of such a nature as to place everyone in the city at a real risk of treatment contrary to Article 3 of the Convention. As to the personal circumstances of the applicant, he did not belong to any group that was at risk of being targeted by al-Shabaab and he allegedly had a home in Mogadishu, where his wife lived. Moreover, he had failed to substantiate his allegations that he would be targeted if returned to Somalia as his submissions in that respect were incoherent and incomplete. Finally, the applicant had been heard by both the Migration Board and the Migration Court, which had carefully examined his claims and given extensive reasons for their conclusions. In such circumstances, the applicant had failed to make a plausible case that he would face a real risk of being killed or subjected to ill-treatment upon return to Somalia.

Conclusion: deportation would not constitute violation (five votes to two).

1. *Sufi and Elmi v. the United Kingdom*, 8319/07 and 11449/07, 28 June 2011, Information Note 142.

ARTICLE 5

Article 5 § 1

Procedure prescribed by law

Twenty-one day confinement of remand prisoner in psychiatric hospital for observation: *violation*

Ümit Bilgiç v. Turkey - 22398/05
Judgment 3.9.2013 [Section II]

Facts – In December 2002 the applicant was placed in pre-trial detention for thirty-five days in the context of criminal proceedings against him for contempt of court.

In the meantime, the Ministry of Justice requested the public prosecutor's office to take the necessary steps with a view to examining the applicant's mental health and, if necessary, making him subject to an adult protection measure. In July 2002 the public prosecutor's office requested the District Court to make a guardianship order in respect of the applicant on grounds of his impaired mental capacity. On 2 January 2003 the applicant was taken from the prison where he was being detained to a psychiatric hospital, where he was placed under

observation. He was brought before the medical board on 20 January and taken back to the prison on 23 January 2003. The medical board's report dated 21 January 2003 found no disturbance of the applicant's mental faculties or of his ability to exercise his civil rights. On 7 February 2003 the District Court, basing its findings on that report, refused the application for a guardianship order.

Law – Article 5 § 1: The applicant had been placed in a psychiatric hospital and had stayed there for twenty-one days, during a period of pre-trial detention ordered in the context of several sets of criminal proceedings. The order placing him under observation which constituted the legal basis for his detention in the psychiatric hospital had been unconnected to his pre-trial detention and had not been aimed at altering the conditions of the deprivation of liberty already ordered in the context of a different set of proceedings. Furthermore, at the time the order was made the applicant had not yet been remanded in custody.

The replacement of detention in prison by confinement in a psychiatric institution had significantly altered the nature of the applicant's detention and his situation during the relevant period. Notwithstanding the fact that his placement in pre-trial detention had been lawful, the issue of the compatibility with domestic law and with the Convention of the applicant's transfer to and confinement in the psychiatric hospital concerned not just his conditions of detention but also the lawfulness of the deprivation of his liberty for the purposes of Article 5 § 1.

The statutory provisions on which the applicant's placement under observation had been based related to the compulsory psychiatric admission, with a view to treatment, of mentally ill persons who presented a danger to society. However, the applicant did not fall into that category. It had not been established that he suffered from a mental disorder requiring treatment, still less that he presented a danger to society. His compulsory admission had been designed to establish whether or not he suffered from a disorder which rendered him incapable of protecting his own interests and which required his placement under guardianship. The legislative provisions in question could not therefore constitute a legal basis for the applicant's compulsory admission.

Furthermore, under a provision of civil law the courts could not rule in favour of a guardianship application without a medical report stating the need for such a measure. The provision in question did not indicate which authority had the power to decide on such deprivation of liberty or what procedure was applicable. In addition, it did not require a doctor to be consulted prior to any decision to detain a person with a view to a compulsory psychiatric examination. The provision therefore lacked the requisite clarity. Thus, even assuming that it could have served as the basis for the applicant's compulsory admission, the provision in question fell short of the required level of protection against arbitrariness.

In sum, the applicant's placement under observation in a psychiatric hospital in January 2003 had lacked any legal basis for the purposes of the Convention.

Conclusion: violation (unanimously).

Article 10: The applicant had been found guilty of contempt of court. There had been interference with the exercise of his right to freedom of expression. The interference had been prescribed by law and had pursued the legitimate aim of "maintaining the authority of the judiciary". The applicant's remarks, which had been particularly caustic, virulent and offensive towards several members of the judiciary, had been recorded only in writing and had not been made public. Accordingly, their impact on public confidence in the administration of justice had been very limited. Moreover, the applicant was not a member of the legal profession, a fact which had undoubtedly had a bearing on the tone and terms he used and his lack of familiarity with the conventions used in court documents. In addition, the expert reports ordered in the context of the various sets of proceedings in question had established that the applicant was suffering at the time of the events with mental problems which made him incapable of discernment, a fact which explained the content and form of his remarks.

The Court could accept that the authorities had considered it necessary to take criminal proceedings against the applicant on account of some of his remarks which had been a direct affront to the dignity of members of the judiciary. While it was true that the applicant had not received a sentence, he had been remanded in custody and detained in a psychiatric hospital from the beginning of the proceedings, for a period of thirty-five days. Moreover, the public prosecutor's office which had sought his detention had participated in the proceedings concerning his placement under guardianship and had therefore been aware, when requesting his detention, that his mental state was at the very least open to question and might have been the reason for his actions. Consequently,

however legitimate the concern to preserve the dignity of members of the judiciary and a calm environment for judicial activity, in the circumstances of the case the measures taken against the applicant, including his placement in detention and his compulsory psychiatric admission, had amounted to interference that was disproportionate to the aims pursued. That interference could not therefore be regarded as "necessary in a democratic society".

Conclusion: violation (unanimously).

Article 41: No claim made in respect of damage.

Lawful arrest or detention

Order for continued preventive detention made 27 days after expiry of statutory time-limit: *violation*

H.W. v. Germany - 17167/11
Judgment 19.9.2013 [Section V]

(See Article 5 § 1 (a) below)

Article 5 § 1 (a)

After conviction

Failure to obtain fresh psychiatric reports before making order for continued preventive detention: *violation*

H.W. v. Germany - 17167/11
Judgment 19.9.2013 [Section V]

Facts – In November 1997 the applicant was convicted of a series of offences, including rape, and sentenced to nine years and six months' imprisonment. At the same time, the sentencing court ordered his preventive detention, finding that he suffered from a personality disorder and had a propensity to commit serious offences, which made him dangerous to the public. In November 2009, after he had served his full sentence and had been held in preventive detention for almost two years, the domestic courts initiated a procedure to review whether his continued preventive detention was necessary, as the statutory two-year time-limit for such a review was due to expire on 24 December 2009. On 20 January 2010, after consulting his case-file and his counsel, a regional court ordered the applicant's continued preventive detention on the grounds that he was likely to reoffend if released. The decision was upheld on 16 September 2010, when the Constitutional Court declined to consider his constitutional complaint.

In his application to the European Court, the applicant complained under Article 5 § 1 of the Convention that the domestic courts' had failed to comply with the statutory time-limit for review and had taken their decision without ordering fresh psychiatric reports.

Law – Article 5 § 1

(a) *Failure to comply with the statutory time-limit for review* – The order continuing the applicant's preventive detention had not been made until twenty-seven days after the two-year statutory time-limit had expired. While the Court was prepared to accept that the detention during that period nevertheless remained lawful under the domestic law, it had to go on to determine whether it was arbitrary. Relevant here was the speed with which the domestic courts had issued a fresh detention order after the expiry of the previous one, the existence of adequate safeguards against unreasonable delay, the complexity of the proceedings and the applicant's conduct.

A delay of almost one month was at the upper limit of what could be considered reasonable, but this depended on all the circumstances. It was notable that the applicant had not contributed to the delays (indeed, he had enquired about progress) and he had clearly not accepted the prolongation of the review proceedings beyond the two-year time-limit. In the Court's view, the delays in the review proceedings were mainly caused by the fact that the domestic authorities had initiated the review proceedings belatedly, just six weeks before the expiry of the time-limit, and that essential procedural steps, such as the appointment of counsel for the applicant, the grant of access to the case-file and the holding of a hearing, were not taken until after the time-limit had expired. There had not been any unforeseeable complexity of the proceedings. Finally, no sufficiently clear safeguards had been in place to ensure that a decision on the applicant's release from detention would not be delayed unreasonably. The threshold applied by the domestic courts – whether the review procedure disclosed a "flagrant irregularity" – was too high and failed to afford sufficient protection. Accordingly, the applicant's detention between 24 December 2009 and 20 January 2010 was arbitrary and thus unlawful.

(b) *Failure to obtain up-to-date medical evidence* – The domestic courts had had before them a number of elements for concluding that the applicant was

still likely to reoffend if released and still dangerous to the public. He had been convicted of very serious sexual offences and, because he said he was only prepared to work with a therapist he could trust, he had not undergone the psycho-therapeutic treatment the psychiatric evidence available at the time of his conviction had indicated was necessary.

The Court noted however that, as more than twelve and a half years had elapsed since the domestic courts had last assessed the applicant's dangerousness with the help of a medical expert, recent expert advice had been necessary to determine whether he remained dangerous. Moreover, further elements relevant to the development of his personality in prison, and thus of his dangerousness, remained unclear. There had in particular been no examination of the question, raised by the prison authorities, whether the applicant's advancing age or his contact with the psychological counselling service had initiated any changes in his personality which could be taken up in a new therapy. It was also relevant that the applicant had been detained for a considerable time in a prison in which there appeared to be no means of breaking the deadlock that had set in and ensuring his cooperation with the prison staff. In such a situation, it was particularly important to consult an external expert to obtain fresh proposals for initiating the necessary therapeutic treatment. In that connection, the Court recalled that a decision not to release a detainee as he still posed a threat to the public could become inconsistent with the objectives of an order for preventive detention if the person concerned was deprived of the means, such as suitable therapy, to demonstrate that he was no longer dangerous.

Accordingly, in the absence of a fresh external medical report on the need for continued preventive detention, there was no longer a sufficient causal connection, for the purposes of sub-paragraph (a) of Article 5 § 1, between the applicant's criminal conviction by the sentencing court in 1997 and his continued preventive detention ordered on 20 January 2010.

Conclusion: violation (unanimously).

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

Article 5 § 1 (b)

Non-compliance with court order

Deprivation of liberty to enforce fine that had already been paid: *violation*

Velinov v. "the former Yugoslav Republic of Macedonia" - 16880/08
Judgment 19.9.2013 [Section I]

Facts – In 2000 the applicant was convicted of a minor offence and ordered to pay a fine within fifteen days of the judgment becoming final. He was informed that if he did not pay in time the fine would be converted into a prison sentence. In November 2001 the trial court ordered the applicant to pay the fine and appear in court in order to submit proof of payment. In February 2002 the fine was converted into a two-day prison sentence. Six days later the applicant paid the fine but did not produce evidence of payment to the trial court. In 28 October 2002 he was imprisoned before being released the next day after producing the requisite evidence.

Law – Article 5 § 1 (b): The Court had to examine two issues: whether the fact that the fine was paid after it had been converted into a prison sentence had made the applicant's subsequent imprisonment unlawful and whether the applicant's failure to notify the court that he had paid the fine had justified his imprisonment.

As to the first issue, unlike the position with respect to partial payment of a fine, there were no rules governing the position where a fine, in respect of which a prison sentence had been imposed in default of payment, was subsequently paid in full. Under the legislation governing partial payment, the unpaid part of the fine would be converted into a prison sentence but the sentence would end if the fine was then paid. There was no reason why this rule could not have been relied on in the applicant's case, as it was evident from the release order that he was released on the basis of evidence of payment. In these circumstances, the basis for the applicant's detention under Article 5 § 1 (b) of the Convention had ceased to exist as soon as he complied with the payment order.

As to the second issue, the applicant had not notified the trial court of the payment, despite being ordered to do so. Noting that failure, the trial court had concluded that no responsibility could attach to the State for the applicant's subsequent arrest and detention. However, there was no statutory provision requiring the applicant to notify the court of the payment. Furthermore, he was arrested and imprisoned over eight months after the detention order was issued and he had paid the fine, but the Ministry of Finance had not informed the trial court of the payment. The applicant's failure to notify the trial court that he

had paid the fine could not release the respondent State from the obligation to have in place an efficient system for recording the payment of court fines. The decision-making process in matters where a person's liberty was at stake should have taken into account all the relevant circumstances of the case. The importance of the applicant's right to liberty required the respondent State to take all necessary measures in order to avoid his liberty being unduly restricted. In view of the foregoing, the applicant's detention had been contrary to Article 5 § 1 (b) of the Convention.

Conclusion: violation (unanimously).

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

ARTICLE 6

Article 6 § 1 (civil)

Access to court

Striking out of appeal on points of law for failure to comply with decision of court below: *inadmissible*

Gray v. France - 27338/11
Decision 3.9.2013 [Section V]

Facts – In 2005, in conformity with an undertaking he had previously signed, the applicant was ordered to assume liability for judgments pronounced against a company and pay compensation, in its stead, for breach of contract and legal costs. His subsequent appeal on points of law was struck out of the Court of Cassation's list, pursuant to Article 1009-1 of the Code of Civil Procedure, for failure to comply with the decision at the origin of the appeal. In 2010 his request to have the case reinstated on the court's list was rejected, again for failure to comply with the decision. Asset-freezing measures in parallel proceedings revealed the amount of money the applicant had in a particular bank account.

Law – Article 6 § 1: The Court began by pointing out that it had already examined, in the case of *Annoni di Gussola and Others v. France*[1], whether an order striking out an appeal under Article 1009-1 of the Code of Civil Procedure might restrict a person's access to a court in such a way or to such an extent as to impair the very essence of the right of access to a court. In that judgment, after having deemed legitimate the aims pursued by the obligation to comply with a judgment enshrined in the aforesaid Article 1009-1, the Court had considered whether, in the light of the "manifestly unreasonable consequences" identified by the President of the Court of Cassation, the removal of the appeal from the list had amounted to a proportionate interference with the right of access to that court. In so doing, it had examined the personal situation of each applicant, the sums they had been ordered to pay and how effectively these factors had been taken into account by the Court of Cassation in deciding whether they could have complied with the impugned judgment. In that case the Court had found that it had clearly been impossible for the applicants even to begin to comply with the court orders. In the present case it now had to see whether the applicant's situation had been such that it was impossible for him to pay the sum ordered by the court. In so doing, it should not focus solely on the time at which the request to strike out the appeal had been made, but rather consider the proceedings in their entirety.

It was clear from the order striking the appeal out of the list of the Court of Cassation that the applicant had not demonstrated to the court that it had been impossible for him to comply with the appellate court's decision, or that to do so might well have entailed manifestly unreasonable consequences for him in view of his personal situation. Nor was it possible, based on the evidence in the file, to assess the applicant's assets or the real extent of his wealth. What is more, the applicant did not claim to have been awarded legal aid. He had substantial assets, consisting at the very least of the sums deposited in the bank in respect of which the successive garnishee orders had been issued. On that point, although one such order had been served on the bank concerned by a party alien to the proceedings in issue, it only concerned part of the assets in the applicant's account. As to the other orders to attach the assets concerned, as they had been issued on behalf of the respondent in the appeal proceedings, they were not an obstacle to the applicant's compliance with the decision against which he had appealed. Therefore, regard being had to his financial situation, it had not been impossible for the applicant to pay the sums ordered by the court, and this might have led the Court of Cassation to consider, first, that the applicant had failed to show that he had taken any steps apt to demonstrate his intention to comply

1. *Annoni di Gussola and Others v. France,* 31819/96 and 33293/96, 14 November 2000, Information Note 24.

with the decision of the lower court, or that it had been impossible for him to do so, and subsequently, following the removal of the appeal from the list, to refuse to restore it to the list in the absence of such compliance.

Consequently, the decisions to strike the applicant's appeal out of the Court of Cassation's list and not to reinstate it had not been disproportionate to the aim pursued, and the applicant's right of effective access to the Court of Cassation had not been hindered to the point of impairing the very essence of that right.

Conclusion: inadmissible (manifestly ill-founded).

Fair hearing

Statutory intervention preventing re-assessment of compensation despite pending judicial proceedings: *violation*

M.C. and Others v. Italy - 5376/11
Judgment 3.9.2013 [Section II]

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

ARTICLE 7

Article 7 § 1

Nullum crimen sine lege

Conviction in 2004 for alleged genocide of a political group in 1953: *relinquishment in favour of the Grand Chamber*

Vasiliauskas v. Lithuania - 35343/05
[Section II]

On 4 February 2004 a regional court found the applicant guilty under Article 99 of the new Lithuanian Criminal Code of the genocide of a political group and sentenced him to six years' imprisonment. The conviction arose out of his alleged participation as a Security Ministry officer in the killing of two partisans in January 1953. It was upheld on appeal. The wording of Article 99, which only entered into force on 1 May 2003, differs from that set out in Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) and includes political groups within the range of groups capable of being victims of genocide.

In his application to the European Court, the applicant complains that his conviction of genocide was in breach of Article 7 of the Convention as Article 99 of the new Lithuanian Criminal Code had retroactive effect and defined the notion of genocide in wider terms than the international definition set out in the CPPCG.

Nulla poena sine lege

Conviction for "continuing" offence comprising acts committed before it was introduced in the Criminal Code: *case referred to the Grand Chamber*

Rohlena v. the Czech Republic - 59552/08
Judgment 18.4.2013 [Section V]

The applicant was formally charged with repeatedly abusing his wife while drunk. In 2007 he was found guilty of a continuing offence under Article 215a of the Criminal Code, as worded since 1 June 2004, of physically and mentally abusing his wife between 2000 and February 2006. He was given a suspended sentence. Upholding the conviction, the Supreme Court observed that where the offence was a continuing one that was regarded as a single act, the criminal nature of that act had to be assessed under the law in force at the time of the last act constituting the offence and that that law also applied to preceding acts on condition that these would have been criminal acts according to the preceding law. In the present case the applicant's acts prior to the amendment of the Criminal Code on 1 June 2004 had amounted to violence against an individual or group of individuals within the meaning of Article 197a of the Criminal Code and assault within the meaning of Article 221 of that Code.

In a judgment of 18 April 2013 (see Information Note 162), a Chamber of the Court held unanimously that there had been no violation of Article 7 of the Convention. The interpretation adopted by the domestic courts in the present case was not in itself unreasonable, given that a continuing offence extended, by definition, over a certain period of time and that it was not arbitrary to consider that it ceased at the time of perpetration of the last assault. The courts had not punished isolated acts by the applicant but his conduct extending continuously over the period in question. The applicant's acts had at all times been punishable as criminal offences. The applicant had not alleged that the courts' interpretation in his case was contrary to established case-law or that it had not been

foreseeable, having recourse if necessary to appropriate advice. In these circumstances the relevant legal provisions, together with interpretative case-law, had been capable of enabling the applicant to foresee the legal consequences of his acts and adapt his conduct accordingly.

On 9 September 2013 the case was referred to the Grand Chamber at the applicant's request.

ARTICLE 8

Respect for correspondence

Refusal by prison authorities to transmit to prisoner e-mail from his lawyer: *inadmissible*

Helander v. Finland - 10410/10
Decision 10.9.2013 [Section IV]

Facts – While the applicant was in prison, his lawyer sent him an email using the prison's e-mail account. The prison governor refused to transfer the email to the applicant and advised the lawyer to contact the applicant by post or telephone. The domestic law did not require the prison authorities to forward to prisoners email communications which arrived at the prison's electronic address. The applicant unsuccessfully applied to the domestic courts for an order directing the prison governor to transmit the email to him.

Law – Article 8: Even though the electronic message in question had been submitted to the prison's common electronic mailbox, it was nevertheless destined for the applicant and accompanied with a request that it be transmitted to him. The message thus fell within the scope of "correspondence" for the purposes of Article 8 of the Convention. The domestic law was based on the principle that prisoners' contacts with their lawyers were to be made by post, telephone or visits. Similar principles were found in the European Prison Rules. The Court accepted that the aforementioned means were sufficient and that the choice of introducing a possibility of receiving emails should be left to legislators. The Finnish legal system in respect of prisoners' correspondence was drafted clearly and fulfilled the requirements of the Convention and the positive obligations imposed on the respondent State. There were legitimate reasons not to allow emails as the current legislation could not guarantee lawyer-client confidentiality in respect of such communications. The refusal by the domestic authorities to transmit the email to the applicant could not be regarded as disproportionate. The sender had been immediately informed of the non-delivery and instructed to use proper means of communication. He had had several means of communication available which were as effective and rapid as emails. His failure to use them was not attributable to the respondent State. Hence, having regard to the margin of appreciation left to the State, the domestic authorities' refusal to transmit the email message in question to the applicant could not be regarded as unjustified. In particular, a fair balance had been struck between the different interests involved.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 10

Freedom of expression

Award of damages against applicant who denied making the defamatory statements for which he was found liable: *Article 10 applicable; violation*

Stojanović v. Croatia - 23160/09
Judgment 19.9.2013 [Section I]

Facts – In 2003 a municipal court found the applicant jointly and severally liable with the publisher in a civil action in damages brought by a government minister following the publication of two allegedly defamatory articles in a magazine. The first article contained an interview in which the applicant, who was from the same political party as the minister, criticised ministerial policy. The applicant was held liable for harming the minister's reputation as the title of the article described his actions as "machinations". The applicant's liability with regard to the second article concerned two defamatory statements he had allegedly been overheard to make during a telephone conversation with the party's general secretary, one of which concerned an alleged threat to the applicant's career advancement. During the domestic proceedings, the applicant relied on his right to freedom of expression and maintained that he had not uttered the words attributed to him, but his arguments were rejected.

Law – Article 10

(a) *Applicability* – The Government had argued that, since the applicant insisted that he had never

made the impugned statements, he could not rely on his right to freedom of expression. However, the extent of liability in defamation could not go beyond a person's own words, and an individual could not be held responsible for statements or allegations made by others. Therefore, in a situation where the applicant actually argued that, by attributing to him statements he had never made and ordering him to pay damages, the domestic courts had indirectly stifled the exercise of his freedom of expression, he was entitled to rely on the protection of Article 10. Otherwise, if his argument proved to be correct, the award of damages would be likely to discourage him from making criticisms of that kind in the future. Article 10 was therefore applicable.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits* – The order to pay damages amounted to interference with the applicant's right to freedom of expression, which 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 was called upon to apply the distinction between statements of facts and value judgments to the allegedly defamatory statements attributed to the applicant in order to ascertain whether his liability in tort for defamation had gone beyond his own words. As for the title of the first article, any liability for its wording could be imputed only to the editor-in-chief of the magazine, not to the applicant himself. As regards the second article and the applicant's allegedly defamatory statement concerning the minister's view on the applicant's career advancement, the domestic courts had mistakenly qualified it as a statement of fact rather than a value judgment, the veracity of which was not susceptible of proof. By holding the applicant liable for the title of the first article and for that statement in the second article, the domestic courts had extended his liability in defamation beyond his own words without providing "relevant and sufficient" reasons to justify such interference with his freedom of expression.

Conclusion: violation (unanimously).

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

(See also *Reznik v. Russia*, 4977/05, 4 April 2013, Information Note 162)

Imposition of suspended sentence on newspaper chief for publishing defamatory article: *violation*

Belpietro v. Italy - 43612/10
Judgment 24.9.2013 [Section II]

Facts – At the relevant time the applicant was the director of the daily newspaper *Il Giornale*. In 2004 the newspaper published an article written by a senator criticising a number of members of the national legal service. Two public prosecutors, taking the view that the article infringed their honour, lodged a complaint for defamation against the senator and the applicant. The applicant was ordered to pay damages amounting to EUR 110,000 and was given a suspended sentence of four months' imprisonment.

Law – Article 10: The applicant's conviction had constituted interference with his right to freedom of expression. The interference had been prescribed by law and was capable of achieving the legitimate aim of protecting the reputation or the rights of the two prosecutors.

The senator's article had concerned a subject of general interest, namely the relationship between the prosecuting authorities and the *carabinieri* in Palermo in the sensitive sphere of anti-Mafia activities. As to the content of the impugned article, it had contained serious accusations against State civil servants which had not been backed up by objective evidence. In this respect the present case bore similarities to the case of *Perna*[1]. However, the latter had concerned the conviction of the article's author, whereas the present case dealt with the conviction of the director of the newspaper which had published the article, for having omitted to exercise the necessary supervision in order to prevent the commission of offences through the medium of the press. The fact that the author of the article had been a senator did not exempt the applicant from his duty of supervision, particularly since the senator had already been finally convicted of defamation on previous occasions. It also had to be borne in mind that the director of the newspaper was responsible for the manner in which an article was presented and for the prominence given to it within the publication. In the instant case, the graphic manner of presentation had

1. *Perna v. Italy* [GC], 48898/99, 6 May 2003, Information Note 53.

served to reinforce in readers' minds the arguments set out in the article, including those which could be seen as an attack on the prosecutors' professional standing. Accordingly, the applicant's conviction had not in itself been contrary to Article 10 of the Convention.

Nevertheless, the nature and severity of the penalties imposed also had to be taken into consideration in assessing the proportionality of the interference. In the present case the applicant, in addition to being ordered to pay damages, had been sentenced to four months' imprisonment. Although that sentence had been suspended, the fact that a prison sentence had been imposed was liable to have a significant dissuasive effect. Furthermore, there were no exceptional circumstances capable of justifying such a heavy penalty in the present case, which concerned a lack of supervision in connection with defamation. In the *Perna* case the penalty imposed had been merely a fine. Consequently, the interference with the applicant's right to freedom of expression had not been proportionate to the legitimate aims pursued.

Conclusion: violation (unanimously).

Article 41: EUR 10,000 in respect of non-pecuniary damage.

ARTICLE 14

Discrimination (Article 8)

Exclusion owing to date of birth from benefit of new rules governing the transmission of surnames: *inadmissible*

De Ram v. France - 38275/10
Decision 27.8.2013 [Section V]

Facts – The first applicant, Mr Luc De Ram, a Belgian national, and his wife Mrs Jossia Berou (married name De Ram), a French national, have two daughters – the second and third applicants – born in 1986 and 1989 respectively. The children were born within the marriage and were entered in the civil register under their father's surname, in accordance with the legislation in force. However, their parents decided that, for everyday purposes, the girls should use the first applicant's surname followed by that of his wife (De Ram-Berou), as permitted by law.

In March 2002 the legislature enacted a new law concerning surnames, which was amended in June 2003 by the law on the transmission of surnames. These introduced far-reaching changes to the rules on children's surnames and allowed parents to give their children the father or mother's surname or the two surnames combined, in whichever order they saw fit. However, those provisions did not apply to children born before 1 January 2005. For children born before that date, the law provided for transitional arrangements allowing parents who had parental responsibility, where the eldest child had been born after 1 September 1990, to request that the second parent's surname be added after the first parent's. Because of their dates of birth, the second and third applicants were not covered by these provisions. In 2003 Mr De Ram filed a request under Article 61 of the Civil Code on behalf of his two minor daughters to have their surname changed, seeking to have them entered in the civil register under the name De Ram-Berou. The request was mainly motivated by the fact that the two girls, who had lived all their lives in Belgium, had experienced considerable difficulties in having their usual surname recognised by the Belgian authorities. The request was refused on the grounds that the wish to allow the first applicant's daughters to use the surname by which they were commonly known in place of the name entered in the civil register did not constitute a "legitimate interest" within the meaning of Article 61 of the Civil Code.

Law – Article 14 read in conjunction with Article 8: The second and third applicants, who had been born in 1986 and 1989 respectively, could not claim entitlement under the new provisions and their situation was governed by the previous legislation, which did not allow the mother's surname to be added to the father's. The applicants were therefore complaining of a difference in treatment between children born before 1 September 1990 and those born after that date, stemming directly from the transitional provisions of the 2002 and 2003 laws. The distinction, based on the children's date of birth, came under the heading of "other status" within the meaning of Article 14 of the Convention.

Furthermore, it had an objective and reasonable justification. The application over time of the above-mentioned laws as adjusted by the transitional provisions had clearly been the result of a balancing exercise between, on the one hand, the principle of the immutability of civil status, aimed at ensuring legal certainty in view of the significant impact which the change in the legislation would inevitably have on the keeping of the civil register, and, on the other hand, the interest of children in

adding to the surname given to them at birth, in accordance with the new legislation. The age criterion laid down by the legislature, which imposed conditions on the possibility of adding the second parent's surname, coincided with the right afforded elsewhere to children over the age of thirteen to consent to a change of surname. Accordingly, this distinction between children could not be regarded as arbitrary. Consequently, the transitional arrangements had pursued a legitimate aim capable of justifying the difference in treatment at issue. Furthermore, the applicants had availed themselves of the opportunity afforded to them under domestic law of instituting proceedings to have the children's surname changed. Their request had been examined in adversarial proceedings at three levels of jurisdiction. The Court could understand their disappointment at seeing their request refused, in view of the new possibilities offered by the 2002 and 2003 laws regarding the rules on the transmission of surnames. However, the second and third applicants had used the surname by which they were commonly known throughout their school careers in Belgium and had not alleged that they were unable to continue doing so. In view of the foregoing considerations, the difference in treatment to which the applicants had been subjected had been reasonably and objectively justified by the need to ensure a gradual transition in the rules governing the transmission of surnames and by the legitimate decision to take into consideration the principles of legal certainty and the immutability of surnames by deciding to exclude from those arrangements children born prior to the entry into force of the 2002 and 2003 laws who had been born before 1 September 1990. The consequences of the difference in treatment at issue had not been disproportionate to the legitimate aim pursued.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 36

Article 36 § 1

Third-party intervention

Chechen asylum-seekers fearing ill-treatment if returned to Russia: *application not transmitted to the applicant's State of origin for intervention*

I v. Sweden - 61204/09
Judgment 5.9.2013 [Section V]

Facts – The applicants, Russian nationals of Chechen origin, came to Sweden in 2007 and requested asylum. They alleged that they had left Russia under threat from the so-called "Kadyrov's group", which had arrested and tortured the first applicant on account of his having photographed and reported on the execution of villagers by Russian federal troops. The Migration Board refused their asylum request after finding that they failed to prove their identity and that their story was incoherent on several points. The Migration Court upheld that decision.

Law – Article 36: Taken together with Rule 44 § 1 (a) and (b) of the Rules of Court, Article 36 § 1 of the Convention allowed a member State to intervene in a case lodged with the Court by one of its nationals against another member State. The provision reflected the right of diplomatic protection which gave States an opportunity to protect their nationals in a situation where they suffered injury as a result of a breach of public international law by another member State. The question arose whether in the light of the spirit of the Convention a right to intervene applied in cases such as the present one, in which the applicants had been refused asylum and feared ill-treatment if returned to their State of origin. The preparatory works relating to Article 36 were silent in this respect and there appeared to be no specific case-law on the point either. The Court considered that, where nationals made allegations which prima facie could give rise to a potential breach of Articles 2 and 3 of the Convention in case of their return to a member State, that State would not appear objectively in a position to support its nationals before the Court. Moreover, Article 36 § 1 did not encompass a member State's right to defend itself before the Court unless the applicants in their application claimed to be victims of a violation of their rights by that member State as well. Thus, the Court concluded that Article 36 § 1 did not apply in cases where the applicants' reason for applying to the Court was fear of being returned to the relevant member State, which allegedly would subject them to a treatment contrary to Articles 2 and 3. Consequently, in such circumstances, applications were not transmitted to the applicants' State of origin inviting their Government to intervene.

On the merits the Court found, by five votes to two, that the applicants' deportation to Russian would give rise to a violation of Article 3.

Article 41: No claim made in respect of damage.

ARTICLE 46

Pilot judgment – General measures

Respondent State required to pay compensation as reassessed to persons entitled

M.C. and Others v. Italy - 5376/11
Judgment 3.9.2013 [Section II]

(See Article 1 of Protocol No. 1 below)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Statutory intervention preventing re-assessment of compensation despite pending judicial proceedings: *violation*

M.C. and Others v. Italy - 5376/11
Judgment 3.9.2013 [Section II]

Facts – The applicants or their deceased relatives had all been contaminated by the human immunodeficiency virus (HIV), hepatitis B or hepatitis C following blood transfusions or the administration of blood products. All received (or had received) compensation for the permanent damage sustained as a result of that contamination. The total allowance was made up of two parts: a fixed sum and a supplementary allowance ("the IIS"). Between 2005 and 2010 the issue of the IIS's re-assessment was the subject of judicial debate. By emergency legislative decree no. 78/2010, the Government intervened in the question of the IIS's re-assessment, indicating that the law was to be interpreted to the effect that it was impossible to adjust for inflation the amount corresponding to the IIS. In addition, they specified that measures taken by virtue of an enforceable decision, resulting in re-assessment of that amount, would cease to have effect from the date of the legislative decree's entry into force. By judgment no. 293/2011, the Constitutional Court held that the relevant provisions of the legislative decree were contrary to the principle of equality and were therefore unconstitutional. In spite of that judgment, the applicants were unable to have their compensation re-assessed.

Law

Article 6 § 1: The issue of whether the IIS was subject to annual re-assessment in line with inflation had been at the centre of a complex judicial debate in which the State had been a party. Yet the enactment of legislative decree no. 78/2010 had definitively set the terms of the debate submitted to the courts, by providing an authentic interpretation of law no. 210/1992 in a way that was favourable to the State, since it specified, *inter alia*, that the disputed IIS could not be re-assessed. Even considering that the law of authentic interpretation in question was enacted in an area which was the object of a large-scale judicial dispute, it was indisputable that that law established criteria which determined the outcome of pending proceedings, rendering ineffective the favourable decisions obtained by certain applicants, entailing the interruption of execution of decisions which were favourable to them and rendering nugatory any possible appeals against decisions dismissing applications for adjustment of the IIS. Yet the materials of the case, including the Constitutional Court's judgment no. 293/2011, did not indicate that the State, in enacting that legislative decree, was pursuing any other aim but the preservation of its own financial interests. This aim could not correspond to "compelling grounds of the general interest", which, moreover, the respondent State had not relied upon. In addition, the Constitutional Court had held in its judgment that those same criteria were contrary to Article 3 of the Constitution. However, the principles laid down by legislative decree no. 78/2010 had continued to have effect in the applicants' cases, since they had been unable to obtain re-assessment of the IIS even after the date on which the Constitutional Court's judgment was published. In view of those considerations, the enactment of legislative decree no. 78/2010 had been in breach of the principle of the rule of law and the applicants' right to a fair hearing, enshrined in Article 6 § 1 of the Convention.

Conclusion: violation (unanimously).

Article 1 of Protocol No. 1: Those applicants who had obtained a final domestic decision acknowledging their right to the adjustment in question had had it refused from the date of entry into force of legislative decree no. 78/2010 or from 2011. In respect of the other applicants, the decision recognising their right to re-assessment of the IIS had never been executed. They thus had a proprietary interest which constituted, if not a claim against the adverse party, at least a "legitimate expectation" of being able to obtain payment of the disputed sums, which consequently had the nature of a "possession". In addition, the other applicants who were entitled to the allowance provided for by Law no. 210/1992 had also had a similar interest since at the latest publication of the Constitutional Court's judgment no. 293/2011.

The impugned legislative decree, by ruling on the merits of the issue in a final manner and interrupting the execution of decisions that were favourable to the applicants, had amounted to interference in the latter's right to the peaceful enjoyment of their possessions.

None of the applicants had benefited from re-assessment of the IIS, even after publication of the Constitutional Court's judgment. The pathologies from which the applicants suffered or had suffered, six of them having died in the course of the proceedings, had to be taken into account in this context. Moreover, particular importance had to be attached to the fact that the IIS represented more than 90% of the total amount of the allowance paid to the applicants. In addition, this allowance was intended (or had been intended) to cover the health care costs of the applicants or of their deceased relatives and, as indicated in the medical report submitted by the applicants, the prognosis for their chances of survival and recovery was (or had been) strictly linked to receipt of the allowances. The enactment of legislative decree no. 78/2010 had therefore placed an "individual and excessive burden" on the applicants and the interference with their right to the peaceful enjoyment of their "possessions" had been disproportionate; the fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights had not been struck.

Conclusion: violation (unanimously).

The Court also concluded, unanimously, that there had been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

Article 41: reserved.

Article 46: The respondent State was required to set, within a period of six months from the date on which the Court's judgment became final, a time-limit in which it undertook to guarantee, by appropriate legal and administrative measures, the effective and rapid realisation of the entitlements in question, particularly through the payment of the re-assessed IIS to any person entitled to the compensation provided for by Law no. 210/1992 from the date on which it had been granted to him or her, and irrespective of whether or not the individual had brought proceedings to obtain it. Examination of non-communicated applications having the same subject-matter as the present case was adjourned for one year.

Inability to recover judgment debt from local authority in receivership: *violation*

De Luca v. Italy - 43870/04
Judgment 24.9.2013 [Section II]

Facts – In December 1993 the municipality of Benevento declared itself insolvent. An extraordinary liquidation committee (the OSL) was entrusted with the management of its finances. In a judgment given in November 2003 further to an action in damages brought in 1992 the local court ordered the municipality to pay the applicant damages in the amount of EUR 17,604.46, plus statutory interest and compensation to offset inflation. However, under a decree passed in 2000, from the declaration of insolvency until final approval of the accounts no enforcement proceedings could be brought in respect of debts on the list drawn up by the OSL. Nor could the insolvent local authority be required to pay statutory interest on its debts or compensation for inflation. In June 2005 the OSL acknowledged that the municipality owed the applicant EUR 42,028.58. In February 2006 the OSL offered the applicant a friendly settlement in the amount of 80% of the outstanding debt. The applicant declined the offer.

Law – Article 1 of Protocol No. 1: Following the declaration of insolvency it had been impossible for the applicant to bring enforcement proceedings against the municipality of Benevento, which had failed to honour its debts, in breach of the applicant's right to the peaceful enjoyment of his possessions. By failing to enforce the Benevento court's judgment the domestic authorities had prevented the applicant from receiving money he could reasonably have expected to receive. It was true that the OSL had offered the applicant a friendly settlement, to the tune of 80% of the sum owed to him; but had he accepted that offer the applicant would have lost the other 20% as well as forfeiting any interest or compensation for inflation. The reasons given by the Government to justify this interference with the applicant's right to the peaceful enjoyment of his possessions were the insolvency of the municipal authority and the concern to guarantee that all creditors were treated equally in recovering their debts. However, a local authority could not use financial difficulties as an excuse not to honour its obligations arising from a final judgment against it. The debt in this case was that of a local authority, a State body, ordered by a court to pay damages. In that respect this case differed

from that of *Bäck v. Finland*,[1] which concerned social-policy plans to reduce the salaries and pensions of public servants.

Conclusion: violation (unanimously).

Article 41: EUR 50,000 for pecuniary and non-pecuniary damage.

ARTICLE 2 OF PROTOCOL No. 1

Right to education

Inability to complete high-school education while serving prison sentence: *inadmissible*

Epistatu v. Romania - 29343/10
Judgment 24.9.2013 [Section III]

Facts – In his application to the European Court, the applicant complained under Article 2 of Protocol No. 1 to the Convention of a breach of his right to education in that he had been forced to abandon his last year of high school in order to serve a prison sentence and the prison authorities had not allowed him to complete his high-school education in prison.

Law – Article 2 of Protocol No. 1: The Court reiterated that being prevented from continuing in full-time education during lawful detention after conviction by a court cannot be construed as a deprivation of the right to education within the meaning of Article 2 of Protocol No. 1. Nor did that provision impose an obligation on prison authorities to set up *ad hoc* courses for prisoners.

The applicant had been forced to abandon his full-time high-school education only after he was detained following a lawful conviction by a competent court and following criminal proceedings that did not appear arbitrary. In addition, during his detention his requests to be enrolled in and allowed to finish his high-school education were examined by the prison authorities, and he was informed that the prison facilities did not have the resources to arrange the courses requested. The reasons provided did not fall outside the legal framework regulating the provision of courses for detainees. Moreover, the applicant had been allowed to enrol in and attend various sporting, artistic, religious and literary competitions, and a number of training and educational programmes in prison. There had thus been no failure by the prison authorities to comply with their obligations under Article 2 of Protocol No. 1.

Conclusion: inadmissible (manifestly ill-founded).

The Court unanimously found a violation of Article 3 of the Convention on account of overcrowding in the prison.

ARTICLE 3 OF PROTOCOL No. 1

Vote

Automatic and indiscriminate disenfranchisement of persons convicted of intentional offences, irrespective of the nature and gravity of the offence: *violation*

Söyler v. Turkey - 29411/07
Judgment 17.9.2013 [Section II]

Facts – Under Turkish law, persons convicted of having intentionally committed an offence are unable to vote. Their disenfranchisement does not come to an end if they are released from prison on probation, but only when the full period for which they were originally sentenced has elapsed. Likewise, when a prison sentence longer than one year is suspended and the convicted person does not serve any time in prison, he or she will still be unable to vote for the duration of the period for which the sentence is suspended.

The applicant was given a five-year sentence for cheque fraud in 2007. He was released on probation two years later. Between 2007 and 2012 two general elections were held but he was unable to vote in either.

Law – Article 3 of Protocol No. 1: In so far as the restrictions placed on voting rights in Turkey were applicable to convicted persons who did not even serve a prison term, they were harsher and more far-reaching than those applicable in the United Kingdom, Austria and Italy, which had been the subject matter of examination by the Court in its judgments in the cases of *Hirst (no. 2)*, *Frodl* and *Scoppola (no. 3)*. In Turkey, disenfranchisement was an automatic consequence derived from statute, and was therefore not left to the discretion or supervision of the judiciary. Moreover, unlike the situation in Italy which had been examined in the

1. *Bäck v. Finland*, 37598/97, 20 September 2004, Information Note 66.

case of *Scoppola (no. 3)*, the measure restricting the right to vote in Turkey was indiscriminate in its application in that it did not take into account the nature or gravity of the offence, the length of the prison sentence – leaving aside suspended sentences of less than one year – or the individual circumstances of the convicted persons. The Turkish legislation contained no express provisions categorising or specifying any offences for which disenfranchisement was foreseen. The Court did not consider that the sole requirement of the element of "intent" in the commission of the offence was sufficient to lead it to conclude that the current legal framework adequately protected the rights in question and did not impair their very essence or deprive them of their effectiveness. As such, the applicant's case illustrated the indiscriminate application of the restriction even to persons convicted of relatively minor offences. Furthermore, the Court was also unable to see any rational connection between the sanction and the applicant's conduct and circumstances. The automatic and indiscriminate application of this harsh measure on a vitally important Convention right had to be seen as falling outside any acceptable margin of appreciation.

Conclusion: violation (unanimously).

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

(See *Hirst v. the United Kingdom (no. 2)* [GC], 74025/01, 6 October 2005, Information Note 79; *Frodl v. Austria*, 20201/04, 8 April 2010, Information Note 129; and *Scoppola v. Italy (no. 3)* [GC], 126/05, 22 May 2012, Information Note 152)

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

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

Rohlena v. the Czech Republic - 59552/08
Judgment 18.4.2013 [Section V]

(See Article 7 § 1 above, page 14)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Tarakhel v. Switzerland - 29217/12
[Section II]

(See Article 3 above, page 8)

Vasiliauskas v. Lithuania - 35343/05
[Section II]

(See Article 7 § 1 above, page 14)

COURT NEWS

Election

During its plenary session in Strasbourg from 30 September to 4 October 2013, the Parliamentary Assembly of the Council of Europe elected Iulia Antoanella Motoc as judge to the European Court of Human Rights in respect of Romania. She will begin her nine-year term in office on 17 December 2013, or in any event no later than three months after the date of her election.

60th anniversary of entry into force of the Convention

The Court has celebrated the 60th anniversary of the entry into force of the European Convention on Human Rights.

The Convention, which was signed in Rome on 4 November 1950, entered into force on 3 September 1953. Under Article 66 of the Convention, its entry into force was triggered by the deposit in Strasbourg of the tenth instrument of ratification, which was deposited by the Grand Duchy of Luxembourg.

Since 1953, over 500,000 applications have been dealt with by the machinery set up under the Convention, and the Court has delivered approximately 16,500 judgments.

Protocol No. 16 to the Convention

Protocol No. 16 to the Convention, which will allow the highest courts and tribunals of a State Party to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the protocols thereto,

was opened for signature on 2 October 2013. This new protocol will enter into force once it has been ratified by ten States Parties to the Convention. Thus far seven States have signed the treaty: Armenia, Finland, France, Italy, San Marino, Slovakia and Slovenia.

RECENT PUBLICATIONS

1. Reports of Judgments and Decisions

On 9 September 2013 the Court launched new print and online collections of its leading case-law in order to heighten awareness of the most important cases and encourage their application at domestic level.

The print edition of the Court's *Reports of Judgments and Decisions* is now being produced in cooperation with Wolf Legal Publishers (the Netherlands), who can provide more information about the new Reports: <www.wolfpublishers.nl>; <sales@wolfpublishers.nl>.

Electronic versions of all published reports can be downloaded from the Court's Internet site under the e-Reports heading (<www.echr.coe.int> – Case-law).

2. Human rights factsheets by country

The 47 "country profiles", setting out information on the human rights issues already addressed or due to be addressed by the Court in respect of each of the States Parties to the Convention, have recently been updated. They can be downloaded from the Court's Internet site (<www.echr.coe.int> – Press).

3. Practical guide on admissibility criteria

The guide, which describes in detail the conditions of admissibility an application must meet, has now been translated into Polish by the Polish Ministry of Foreign Affairs.

In addition to the English and French versions, this publication now exists in 20 official languages of Council of Europe member States, thanks to translations provided by the national authorities or by Bar associations or foundations in the countries concerned. The guide's original and translated versions can be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Praktyczny przewodnik w sprawie kryteriów dopuszczalności (pol)

4. New videos

The Court has published 10 new language versions of the video clip on the criteria for admissibility, designed to inform potential applicants of the main conditions for admissibility. The video is now available in 31 languages.

Catalan (cat)

Czech (ces)

Finnish (fin)

Georgian (kat)

Greek (ell)

Macedonian (mkd)

Polish (pol)

Portuguese (por)

Slovenian (slv)

Turkish (tur)

5. Dialogue between judges 2013

The publications in the Dialogue between judges series are a record of the proceedings of seminars held annually to mark the opening of the judicial year of the Court. This year some 150 eminent figures from the European judicial scene attended a seminar on the theme "Implementing the European Convention on Human Rights in times of economic crisis". The proceedings of the seminar have now been published on the Court's Internet site (<www.echr.coe.int> – Publications).