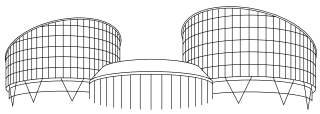

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Police failure to take reasonable measures to protect life of lawyer killed by mentally disturbed man: *violation*

Bljakaj and Others v. Croatia - 74448/12
Judgment 18.09.2014 [Section I]

Facts – The applicants were five close relatives of a lawyer who was shot dead in 2002 by A.N., the husband of one of her clients. At the time, A.N. was mentally disturbed and had a history of domestic violence, unlawful possession of firearms and alcohol abuse. On the day before the shootings, A.N.'s wife informed the police that he had threatened to kill her, but they took no action. The following day after attempting to kill his wife, A.N. went to the lawyer's office and shot her dead. He then committed suicide. Although shortly before the shooting he had been under police control, visibly disturbed and dangerous, the officers in charge had left him without supervision and had only belatedly reported the situation to the medical authorities. Following the shooting, disciplinary proceedings were brought against the police officer on duty on the day of the killing and the commanding officer who had been in charge the previous day. The officers were found guilty of falsifying the reports concerning the measures the police had taken on the morning of the incident and of failing to report their interview with A.N. and his wife the previous day.

Law – Article 2 (*substantive aspect*): Considering the circumstances in which the deceased had been killed, the Court found that what was at issue in the present case was the respondent State's obligation to afford general protection to society against potential violent acts of an apparently mentally disturbed person. The risk to life had been real and immediate and the authorities had or ought to have had knowledge of it, as A.N. had appeared mentally disturbed and dangerous, the authorities had considered that further medical supervision was necessary, and A.N. had twice been under immediate police control and supervision on the morning of the incident. In such situations the States' positive obligations under Article 2 of the Convention required the domestic authorities to do all that could reasonably be expected of them to avoid such a risk. However, the domestic proceedings had identified several shortcomings in the manner in which the police had dealt with the situation and there had been several other measures the authorities could reasonably have been expected to take. While the Court could not conclude with certainty that matters would have turned out differently if the authorities had acted otherwise, the fact that reasonable measures could have had a real prospect of altering the outcome or mitigating the harm sufficed to engage the State's responsibility under Article 2. The failures of the police had not only been a missed opportunity, but, had they not occurred, could have objectively altered the course of events by leading to A.N's medical supervision and the taking of further necessary action relevant to his apparently disturbed mental state. Therefore, the police's lack of diligence disclosed a breach of the respondent State's obligation to take all reasonable measures to safeguard the right to life.

Conclusion: violation (unanimously).

Article 41: EUR 20,000 jointly in respect of non-pecuniary damage.

(See also *Mastromatteo v. Italy* [GC], 37703/97, 24 October 2002, Information Note 46; *Maiorano and Others v. Italy*, 28634/06, 15 December 2009, Information Note 125; and *Choreftakis and Choreftaki v. Greece*, 46846/08, 17 January 2012, Information Note 148)

Effective investigation

Lack of investigation into death of man during June 1990 demonstrations against Romanian regime: *violation*

Mocanu and Others v. Romania - 10865/09, 32431/08 and 45886/07
Judgment 17.09.2014 [GC]

Facts – In June 1990 the Romanian Government undertook to end the occupation, of several weeks' duration, of University Square by demonstrators

protesting about the regime then in power. On 13 June 1990 the security forces intervened and arrested numerous demonstrators; this had the effect of increasing the demonstrations. While the army was sent into the most sensitive areas, shots were fired from inside the Ministry of the Interior, which was surrounded by demonstrators, striking Mr Mocanu, the first applicant's husband, in the head and resulting in his death. During the evening Mr Stoica (the second applicant) and some other people were arrested and ill-treated by uniformed police officers and men in civilian clothing inside the headquarters of the State television service. The criminal investigation into this crackdown began in 1990 with a very large number of individual files, which were subsequently joined and transferred to the military prosecutor's office in 1997.

On 18 June 2001, that is more than eleven years after the events complained of, the second applicant filed a criminal complaint with a prosecutor at the military section of the prosecutor's office at the Supreme Court of Justice. The investigation opened into the ill-treatment inflicted on Mr Stoica on 13 June 1990 was closed by a decision not to bring a prosecution, dated 17 June 2009, and upheld by a judgment of the High Court of Cassation and Justice of 9 March 2011.

The criminal proceedings into the unlawful killing of the first applicant's husband were still pending when the European Court's judgment was delivered.

By a judgment of 13 November 2012 (see Information Note 157), a Chamber of the Court held unanimously that there had been a violation of the procedural aspect of Article 2 of the Convention in respect of the first applicant and by five votes to two that there had been no violation of the procedural aspect of Article 3 in respect of the second applicant.

Law – Article 35 § 3: The respondent Government made no plea before the Grand Chamber as to the Court's lack of jurisdiction *ratione temporis*. However, they submitted that the Court could examine the complaints brought before it only in so far as they related to the period after 20 June 1994, the date on which the Convention entered into force in respect of Romania.

The Chamber had declared that it had jurisdiction *ratione temporis* to examine the allegation of a procedural violation of Articles 2 and 3 of the Convention, dismissing the objection which had been raised by the Government in this connection with regard only to the application by the second applicant.

The Grand Chamber held that the complaints in respect of the procedural aspect of Articles 2 and 3 of the Convention concerned the investigation into the armed repression conducted on 13 and 14 June 1990 against the anti-government demonstrations, and that this repression had cost the life of the first applicant's husband and interfered with the second applicant's physical integrity. The investigation had begun in 1990, shortly after those events, giving rise, *inter alia*, to investigative measures, the primary aim of which had been to identify the victims who had been killed by gunfire, including the first applicant's husband.

Four years had passed between the triggering event and the Convention's entry into force in respect of Romania, on 20 June 1994. This lapse of time was relatively short. It was less than ten years and less than the time periods in issue in similar cases examined by the Court[1]. In addition, the majority of the proceedings and the most important procedural measures had been carried out after the critical date.

Consequently, the Court found that it had jurisdiction *ratione temporis* to examine the complaints raised by the first and second applicants under the procedural aspect of Articles 2 and 3 of the Convention, in so far as those complaints related to the criminal investigation conducted in the present case after the entry into force of the Convention in respect of Romania on 20 June 1994.

Article 35 § 1: The Chamber had considered that the objection – alleging that the second applicant had lodged his criminal complaint with the relevant authorities out of time – should be joined to the examination of the merits of the complaint alleging a violation of the procedural aspect of Article 3 of the Convention, and had declared the complaint admissible.

The Grand Chamber considered that the issue of the diligence incumbent on the second applicant was closely linked to that of any tardiness in lodging a criminal complaint within the domestic legal system. Taken together, these arguments could be regarded as an objection alleging a failure to comply with the six-month time-limit under Article 35 § 1 of the Convention.

The second applicant's vulnerability and his feeling of powerlessness, which he shared with numerous

1. Among other cases, *Şandru and Others v. Romania*, 22465/03, 8 December 2009, Information Note 125.

other victims who, like him, had waited for many years before lodging a complaint, amounted to a plausible and acceptable explanation for his inactivity from 1990 to 2001. The applicant had not therefore failed in his duty of diligence in this respect.

Moreover, several elements indicated that the authorities had known or could have discovered without any real difficulties at least some of the names of the victims of the abuses committed on 13 June 1990 and over the following night. In those circumstances, it could not be concluded that the second applicant's delay in lodging his complaint had been capable of undermining the effectiveness of the investigation. In any event, the applicant's complaint had been added to an investigation case file which concerned a large number of victims of the events of 13 to 15 June 1990 and the decision of 29 April 2008 by the military section of the prosecutor's office had included the names of more than a thousand victims. Thus, the investigation had been undertaken in entirely exceptional circumstances.

Moreover, from 2001 onwards, there had been meaningful contact between the second applicant and the authorities with regard to the former's complaint and his requests for information, which he had submitted annually by going to the prosecutor's office in person to enquire about progress in the investigation. In addition, there had been tangible indications that the investigation was progressing.

Regard being had to the developments in the investigation subsequent to 2001, its scope and its complexity, the applicant, after having lodged his complaint with the domestic authorities, could legitimately have believed that the investigation was effective and could reasonably have awaited its outcome, so long as there was a realistic possibility that the investigative measures were moving forward.

The second applicant had lodged his application with the Court on 25 June 2008, more than seven years after lodging his criminal complaint with the prosecuting authorities. The investigation was still pending at the time, and investigative steps had been taken. For the reasons indicated above, which remained valid at least until the time when the applicant had lodged his application before the Court, he could not be criticised for having waited too long. Moreover, the final domestic decision in the applicant's case had been the judgment of 9 March 2011. Thus, the application had not been lodged out of time.

Conclusion: preliminary objection rejected (fourteen votes to three).

Article 2 and Article 3 (*procedural aspect*): A criminal investigation had been opened of the authorities' own motion shortly after the events of June 1990. That investigation, which from the outset had concerned the death by gunfire of the first applicant's husband and other persons, was still pending in respect of the first applicant. The part of the investigation concerning the second applicant and implicating 37 high-ranking civilian and military officials had been terminated by a judgment delivered on 9 March 2011 by the High Court of Cassation and Justice.

The Court's jurisdiction *ratione temporis* permitted it to consider only that part of the investigation which had occurred after 20 June 1994, the date on which the Convention entered into force in respect of Romania.

With regard to the question of independence, the investigation had been entrusted to military prosecutors who, like the accused, were officers in a relationship of subordination within the military hierarchy, a finding which had already led the Court to conclude that there had been a violation of the procedural aspect of Article 2 and Article 3 of the Convention in previous cases against Romania.

With regard to the expedition and adequacy of the investigation, the investigation concerning the first applicant had been pending for more than 23 years, and for more than 19 years since the Convention was ratified by Romania. In respect of the second applicant, the investigation had been terminated by a judgment delivered on 9 March 2011, 21 years after the opening of the investigation and 10 years after the official lodging of the second applicant's complaint and its joinder to the investigation case file. While acknowledging that the case was indisputably complex, the Court considered that the political and societal stakes referred to by the Government could not justify such a long period. On the contrary, the importance of those stakes for Romanian society should have led the authorities to deal with the case promptly and without delay in order to avoid any appearance of collusion in or tolerance of unlawful acts.

Yet lengthy periods of inactivity had occurred in the investigation concerning the first applicant. In addition, the national authorities themselves had found numerous shortcomings in the investigation.

Furthermore, the investigation into the violence inflicted on the second applicant had been ter-

minated by a decision of 17 June 2009 not to bring a prosecution, which was upheld by the judgment of 9 March 2011, that is, 10 years after he lodged a complaint. However, in spite of the length of time involved and the investigative acts carried out in respect of the second applicant, none of those decisions had succeeded in establishing the circumstances of the ill-treatment which the applicant and other persons claimed to have sustained at the State television headquarters. This branch of the investigation had been terminated essentially on account of the statutory limitation of criminal liability. However, the procedural obligations arising under Articles 2 and 3 of the Convention could hardly be considered to have been met where an investigation was terminated, as in the present case, through statutory limitation of criminal liability resulting from the authorities' inactivity.

It appeared that the authorities responsible for the investigation had not taken all the measures reasonably capable of leading to the identification and punishment of those responsible.

With regard to the obligation to involve victims' relatives in the proceedings, the first applicant had not been informed of progress in the investigation prior to the decision of 18 May 2000 committing for trial the persons accused of killing her husband. Moreover, she had been questioned by the prosecutor for the first time on 14 February 2007, almost 17 years after the events, and, following the High Court of Cassation and Justice's judgment of 17 December 2007, she had no longer been informed about developments in the investigation. The Court was not therefore persuaded that her interests in participating in the investigation had been sufficiently protected.

Thus, In the light of the foregoing, the first applicant had not had the benefit of an effective investigation as required by Article 2 of the Convention, and the second applicant had also been deprived of an effective investigation for the purposes of Article 3.

Conclusions: violation of Article 2 – procedural aspect (sixteen votes to one); violation of Article 3 – procedural aspect (fourteen votes to three).

Article 41: EUR 30,000 for the first applicant and EUR 15,000 for the second applicant in respect of non-pecuniary damage.

The Court also concluded, unanimously, that there had been a violation of Article 6 § 1 in respect of the third applicant, the Association "21 December 1989", an association bringing together individuals who had been injured during the violent crackdown on anti-government demonstrations which took place in December 1989 and the relatives of persons who died during those events, finding that the length of the impugned proceedings had been excessive.

(See also *Janowiec and Others v. Russia* [GC], 55508/07 and 29520/09, 21 October 2013, Information Note 167)

ARTICLE 3

Inhuman or degrading treatment

Use of electrical discharge weapons (Tasers) during police raid on company offices: *violation*

Anzhelo Georgiev and Others v. Bulgaria - 51284/09
Judgment 30.9.2014 [Section IV]

Facts – Masked police officers raided the offices where the applicants worked. In the course of the operation they used electrical discharge weapons in contact mode, allegedly to overcome the applicants' resistance and to prevent them from destroying evidence. Some of the applicants sustained burns as a result. A preliminary inquiry into the applicants' allegations ended with a decision of the military prosecutor not to institute criminal proceedings against the officers concerned.

Law – Article 3: Electroshock discharges applied in contact mode (known also as "drive-stun" mode) were known to cause intense pain and temporary incapacitation. Bulgarian law at the time lacked any specific provisions on the use of electroshock devices by the police, who were not trained in their use. The Court noted that in its 20th General Report the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) had expressed strong reservations regarding the use of electrical discharge weapons in contact mode. Properly trained law enforcement officers had many other control techniques available to them when they were in touching distance of a person who had to be immobilised.

Given the failure of the preliminary inquiry to establish in detail the exact circumstances of the incident and to account in full for the use of force of the extent and type alleged, the Government had failed to discharge the burden of disproving the applicants' version of the events or to furnish

convincing arguments justifying the degree of force used. There had thus been a violation of both the substantive and procedural aspects of Article 3.

Conclusion: violations (unanimously).

Article 41: EUR 2,500 in respect of non-pecuniary damage to each applicant whose complaint was declared admissible.

Effective investigation

Lack of effective investigation into arrest and ill-treatment of man during June 1990 demonstrations against Romanian regime: *violation*

Mocanu and Others v. Romania - 10865/09, 32431/08 and 45886/07
Judgment 17.09.2014 [GC]

(See Article 2 above, page 7)

Expulsion

Order for deportation of a Mandaean woman to Iraq: *case referred to the Grand Chamber*

W.H. v. Sweden - 49341/10
Judgment 27.3.2014 [Section V]

The applicant, who was born in Baghdad and is of Mandaean denomination, applied for asylum after arriving in Sweden in August 2007. She explained that, as the smallest and most vulnerable minority in Iraq, Mandaeans were subjected to extortion, kidnappings and murder and Mandaean women and children were forced to convert to Islam, often after being assaulted and raped. They were not a large enough community to be able to protect and support each other and there was no particular region where they could settle safely. The applicant, who was divorced, feared that she would be forcibly remarried. Her situation had been further aggravated by the fact that she is a single woman without a social network in Iraq. Furthermore, in Sweden she had met a Muslim man with whom she had formed a relationship, a situation that would never be accepted in Iraq. In December 2009 the Migration Court upheld a decision of the Migration Board rejecting her application for asylum after finding that the threat concerning forced marriage was primarily related to the general security situation in Iraq which had since improved.

In a judgment of 27 March 2014, a Chamber of the Court held unanimously that the implementation of the deportation order against the applicant would not give rise to a violation of Article 3 of the Convention, provided that she was not returned to parts of Iraq situated outside the Kurdistan Region. It found that, although, as a Mandaean single woman, she may face a real risk of being subjected to treatment contrary to Article 3 if she was returned to the southern and central parts of Iraq, she could reasonably relocate to the Kurdistan Region, where she would not face such a risk. Neither the general situation in that region nor any of her personal circumstances indicated the existence of such a risk.

The indication made under Rule 39 of the Rules of Court requiring the Government not to deport the applicant pending the final outcome of the proceedings before the Court remains in force.

On 8 September 2014 the case was referred to the Grand Chamber at the applicant's request.

Extradition

Extradition to a non-Contracting State where applicant faces risk of irreducible life sentence if convicted: *violation*

Trabelsi v. Belgium - 140/10
Judgment 4.9.2014 [Section V]

Facts – The applicant, who holds Tunisian nationality, was extradited from Belgium to the United States, where he is to stand trial for offences of a terrorist nature. The Belgian authorities extradited him even though, under Rule 39 of the Rules of Court, the European Court had indicated that the Belgian State should not extradite the applicant to the US before the end of the proceedings before it.

Law – Article 3: The applicant was extradited to the US, where he is under prosecution on charges linked to Al-Qaeda-inspired acts of terrorism for which he is subject to a maximum life prison sentence. This sentence is discretionary to the extent that the court may opt for a more lenient sentence, and decide to imprison him for a term of years.

In line with the approach adopted in *Babar Ahmad and Others*,[1] and given the seriousness of the terrorist offences with which the applicant is charged and the fact that the sentence might not be imposed until after the court has taken into consideration all the mitigating and aggravating factors, the discretionary life sentence which might be imposed would not be completely disproportionate.

Ever since *Soering*,[2] in cases of extradition the Court has had to assess the risk incurred by the applicant under Article 3 *ex ante* – that is to say, in the present case, before his possible conviction in the United States – rather than *ex post facto*.

US legislation does not provide for parole in cases of life prison sentences, whether mandatory or discretionary, but there are several possible means of reducing such sentences. In any case, the explanations given by the US authorities on sentencing and their references to the applicable provisions of US legislation governing sentence reduction and Presidential pardons are very general and vague and can in no way be deemed sufficiently specific. Lastly, regardless of the assurances given, the life term to which the applicant might be sentenced cannot be regarded as reducible for the purposes of Article 3 of the Convention.[3] By exposing the applicant to the risk of treatment contrary to that provision, the Government had engaged the responsibility of the respondent State under the Convention.

Conclusion: violation (unanimously).

Article 34: None of the arguments put forward by the Belgian Government justified the non-observance of the interim measure indicated by the Court. For example, the Belgian State should not have replaced the Court's appraisal of the diplomatic assurances provided by the US authorities and of the merits of the application with its own in deciding to override the interim measure indicated.

The effectiveness of the exercise of the right of application, which requires the Court to be able to examine the application in accordance with its usual procedure at all stages in the proceedings before it, has been undermined. The applicant, who is in solitary confinement in a US prison, has been deprived of direct contact with his representative before the Court. The Government's actions have made it more difficult for the applicant to exercise his right of application, and the exercise of the rights secured under Article 34 of the Convention has consequently been hampered. Therefore, by deliberately failing to observe the interim measure indicated by the Court under Rule 39 of the Rules of Court, the respondent State has breached its obligations under Article 34 of the Convention.

Conclusion: failure to comply with Article 34 (unanimously).

Article 41: EUR 60,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

1. See *Babar Ahmad and Others v. the United Kingdom*, 24027/07, 10 April 2012, Information Note 151.
2. See *Soering v. the United Kingdom*, 14038/88, 7 July 1989.
3. See *Vinter and Others v. the United Kingdom* [GC], 66069/09, 130/10 and 3896/10, 9 July 2013, Information Note 165.

ARTICLE 5

Article 5 § 1

Deprivation of liberty

Renewal of therapeutic confinement on grounds of no improvement in patient's condition since psychiatric report two years' earlier: *no violation*

C.W. v. Switzerland - 67725/10
Judgment 23.9.2014 [Section II]

Facts – In September 2001 the applicant was sentenced to five years' imprisonment. The sentence was suspended in favour of an "inpatient treatment order". On 15 May 2007, when the initial term of the treatment order expired, the authorities refused the applicant's request for conditional release and sought the extension of the order for a further five years. The applicant requested that the order be extended by a maximum of two years.

On 19 April 2010 the District Court extended the order by five years. The court based its decision on the opinion expressed by two doctors in a letter of 16 March 2010. The doctors confirmed the findings of a therapeutic report drawn up in July 2008 by the psychiatrists in the centre where the applicant had been placed and stated that, in their view, no further expert report was necessary given that the applicant's condition had not improved. They recommended that the applicant should receive long-term treatment in a secure setting and that the treatment order should therefore be ex-

tended for five years. At the same time the two doctors advised the Cantonal Court to order an external expert report so as to avoid giving the applicant the impression of bias.

The applicant contended, in substance, that given that the increasingly distant temporal connection between his initial conviction and the extension of the treatment order to which he had been made subject, the judge should have ordered a complete reassessment of his dangerousness, to be carried out by an independent medical expert.

Law – Article 5 § 1: The decision in question had been based on the opinion of the psychiatrists in the centre where the applicant was being treated. However, this fact in itself did not raise an issue under Article 5 of the Convention. The applicant had not alleged that the bond of trust with the team treating him had been broken, that the diagnosis of his disorder had been incorrect or that the medication he had been receiving in the centre had not been appropriate. His differences of opinion with the care team, whose impartiality and compliance with the rules of professional conduct he had not disputed at any point, did not relate to the substance of the treatment order but essentially to its duration. Furthermore, even during the last set of proceedings before the District Court in July 2012 the applicant had not appealed against the order as such but had simply requested that it be extended for two years rather than five.

In those circumstances the Cantonal Court, in its judgment of 19 April 2010, had been justified in basing its decision on the opinion of the two doctors and on the 2008 and 2009 psychiatric expert reports when determining the duration of confinement which was best designed to minimise the risk of a repeat offence linked to the applicant's disorder. In the absence of a clear challenge to the scientific and ethical validity of that opinion and of the 2008 and 2009 psychiatric expert reports, no external medical opinion had been necessary.

Accordingly, the Court, like the Federal Court in its judgment of 4 October 2010 – which, moreover, had been accompanied by detailed reasons – could discern no trace of arbitrariness in the judgment of the Cantonal Court.

Conclusion: no violation (unanimously).

(See also *Ruiz Rivera v. Switzerland*, 8300/06, 18 February 2014, Information Note 171)

Lawful arrest or detention

Internment in Iraq under Third and Fourth Geneva Conventions: *no violation*

Hassan v. the United Kingdom - 29750/09
Judgment 16.9.2014 [GC]

Facts – In March 2003 a coalition of armed forces led by the United States of America invaded Iraq. After occupying the region of Basrah, the British army started arresting high-ranking members of the ruling Ba'ath Party and the applicant, a senior member of the party, went into hiding leaving his brother Tarek behind to protect the family home in Umm Qasr. On the morning of 23 April 2003 a British Army unit came to the house hoping to arrest the applicant. According to their records, they found Tarek Hassan in the house armed with an AK-47 machine gun and arrested him on suspicion of being a combatant or a civilian posing a threat to security. He was taken later that day to Camp Bucca, a detention facility in Iraq operated by the United States. Parts of the camp were also used by the United Kingdom to detain and interrogate detainees. Following interrogation by both United States and United Kingdom authorities, Tarek Hassan was deemed to be of no intelligence value and, according to the records, was released on or around 2 May 2003 at a drop-off point in Umm Qasr. His body was discovered, bearing marks of torture and execution, some 700 kilometres away in early September 2003.

In 2007 the applicant brought proceedings in the English administrative court, but these were dismissed on the grounds that Camp Bucca was a United States rather than a United Kingdom military establishment.

In his application to the European Court, the applicant alleged that his brother was arrested and detained by British forces in Iraq and subsequently found dead in unexplained circumstances. He complained under Article 5 §§ 1, 2, 3 and 4 of the Convention that the arrest and detention were arbitrary and unlawful and lacking in procedural safeguards and under Articles 2, 3 and 5 that the United Kingdom authorities had failed to carry out an investigation into the circumstances of the detention, ill-treatment and death.

Law – Article 2 and Article 3: There was no evidence to suggest that Tarek Hassan had been ill-treated while in detention such as to give rise to an obligation under Article 3 to carry out an official investigation. Nor was there any evidence that the

United Kingdom authorities were responsible in any way, directly or indirectly, for his death, which had occurred some four months after his release from Camp Bucca, in a distant part of the country not controlled by United Kingdom forces. In the absence of any evidence of the involvement of United Kingdom State agents in the death, or even of any evidence that the death occurred within territory controlled by the United Kingdom, no obligation to investigate under Article 2 could arise.

Conclusion: inadmissible (manifestly ill-founded).

Article 5 §§ 1, 2, 3 and 4

(a) *Jurisdiction*

(i) *Period between capture by British troops and admission to Camp Bucca* – Tarek Hassan was within the physical power and control of the United Kingdom soldiers and therefore fell within United Kingdom jurisdiction. The Court rejected the Government's argument that jurisdiction should not apply in the active hostilities phase of an international armed conflict, where the agents of the Contracting State were operating in territory of which they were not the occupying power, and where the conduct of the State should instead be subject to the requirements of international humanitarian law. In the Court's view, such a conclusion was inconsistent with its own case-law and with the case-law of the International Court of Justice holding that international human rights law and international humanitarian law could apply concurrently.[1]

(ii) *Period after admission to Camp Bucca* – The Court did not accept the Government's argument that jurisdiction should be excluded for the period following Tarek Hassan's admission to Camp Bucca as it involved a transfer of custody from the United Kingdom to the United States. Tarek Hassan was admitted to the Camp as a United Kingdom prisoner. Shortly after his admission, he was taken to a compound entirely controlled by United Kingdom forces. Under the Memorandum of Understanding between the United Kingdom, United States and Australian Governments relating to the transfer of custody of detainees it was the United Kingdom which had responsibility for the classification of United Kingdom detainees under the Third and Fourth Geneva Conventions[2] and for deciding whether they should be released. While it was true that certain operational aspects relating to Tarek Hassan's detention at Camp Bucca were transferred to United States forces (such as escorting him to and from the compound and guarding him elsewhere in the camp) the United Kingdom had retained authority and control over all aspects of the detention relevant to the applicant's complaints under Article 5.

Tarek Hassan had thus been within the jurisdiction of the United Kingdom from the moment of his capture on 23 April 2003 until his release, most probably at Umm Qasr on 2 May 2003.

Conclusion: within the jurisdiction (unanimously).

(b) *Merits* – There were important differences of context and purpose between arrests carried out during peacetime and the arrest of a combatant in the course of an armed conflict. Detention under the powers provided for in the Third and Fourth Geneva Conventions was not congruent with any of the permitted grounds of deprivation of liberty set out in subparagraphs (a) to (f) of Article 5 § 1 of the European Convention.

The United Kingdom had not lodged any formal request under Article 15 of the Convention (derogation in time of emergency) allowing it to derogate from its obligations under Article 5 in respect of its operations in Iraq. Instead, the Government had in their submissions requested the Court to disapply United Kingdom's obligations under Article 5 or in some other way interpret them in the light of the powers of detention available to it under international humanitarian law.

The starting point for the Court's examination was its constant practice of interpreting the Convention in the light of the 1969 Vienna Convention on the Law of Treaties, Article 31 § 3 of which made it necessary when interpreting a treaty to take into account (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions, (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation and (c) any relevant rules of international law applicable in the relations between the parties.

1 See, in particular, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004, ICJ Reports 2004).

2. There are four Geneva Conventions of 12 August 1949: the third is the Geneva Convention relative to the Treatment of Prisoners of War, and the fourth the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

As to Article 31 § 3 (a), there had been no subsequent agreement between the Contracting States as to the interpretation of Article 5 in situations of international armed conflict. However, as regards Article 31 § 3 (b), the Court had previously stated that a consistent practice on the part of the Contracting States, subsequent to their ratification of the Convention, could be taken as establishing their agreement not only as regards interpretation but even to modify the text of the Convention. The practice of the Contracting States was not to derogate from their obligations under Article 5 in order to detain persons on the basis of the Third and Fourth Geneva Conventions during international armed conflicts. That practice was mirrored by State practice in relation to the International Covenant for the Protection of Civil and Political Rights.

As to the criterion contained in Article 31 § 3 (c), the Court reiterated that the Convention had to be interpreted in harmony with other rules of international law, including the rules of international humanitarian law. The Court had to endeavour to interpret and apply the Convention in a manner which was consistent with the framework under international law delineated by the International Court of Justice. Accordingly, the lack of a formal derogation under Article 15 of the Convention did not prevent the Court from taking account of the context and the provisions of international humanitarian law when interpreting and applying Article 5 in the applicant's case.

Nonetheless, even in situations of international armed conflict, the safeguards under the Convention continued to apply, albeit interpreted against the background of the provisions of international humanitarian law. By reason of the co-existence of the safeguards provided by international humanitarian law and by the Convention in time of armed conflict, the grounds of permitted deprivation of liberty set out under subparagraphs (a) to (f) should be accommodated, as far as possible, with the taking of prisoners of war and the detention of civilians who pose a risk to security under the Third and Fourth Geneva Conventions. The Court was mindful of the fact that internment in peacetime did not fall within the scheme of deprivation of liberty governed by Article 5 of the Convention without the exercise of the power of derogation under Article 15. It could only be in cases of international armed conflict, where the taking of prisoners of war and the detention of civilians who pose a threat to security were accepted features of international humanitarian law, that Article 5 could be interpreted as permitting the exercise of such broad powers.

As with the grounds of permitted detention set out in those subparagraphs, deprivation of liberty pursuant to powers under international humanitarian law had to be "lawful" to preclude a violation of Article 5 § 1. That meant that detention had to comply with the rules of international humanitarian law, and most importantly, that it should be in keeping with the fundamental purpose of Article 5 § 1, which was to protect the individual from arbitrariness.

As regards procedural safeguards, the Court considered that, in relation to detention taking place during an international armed conflict, Article 5 §§ 2 and 4 must also be interpreted in a manner which took into account the context and the applicable rules of international humanitarian law. Articles 43 and 78 of the Fourth Geneva Convention provided that internment "shall be subject to periodical review, if possible every six months, by a competent body". Whilst it might not be practicable, in the course of an international armed conflict, for the legality of detention to be determined by an independent "court" in the sense generally required by Article 5 § 4, nonetheless, if the Contracting State is to comply with its obligations under Article 5 § 4 in this context, the "competent body" should provide sufficient guarantees of impartiality and fair procedure to protect against arbitrariness. Moreover, the first review should take place shortly after the person is taken into detention, with subsequent reviews at frequent intervals, to ensure that any person who does not fall into one of the categories subject to internment under international humanitarian law is released without undue delay. Article 5 § 3, however, had no application in the present case since Tarek Hassan was not detained in accordance with the provisions of paragraph 1 (c) of Article 5.

Turning to the facts of the applicant's case, the Court considered that the United Kingdom authorities had had reason to believe that Tarek Hassan, who was found by British troops armed and on the roof of his brother's house, where other weapons and documents of a military intelligence value had been retrieved, might be either a person who should be detained as a prisoner of war or whose internment was necessary for imperative reasons of security, both of which provided a legitimate ground for capture and detention under the Third and Fourth Geneva Conventions. Almost immediately following his admission to Camp Bucca, he had been subject to a screening process in the form

of two interviews by United States and United Kingdom military intelligence officers, which had led to his being cleared for release since it was established that he was a civilian who did not pose a threat to security. The evidence pointed to his having been physically released from the Camp shortly thereafter.

Against this background, it would appear that Tarek Hassan's capture and detention was consistent with the powers available to the United Kingdom under the Third and Fourth Geneva Conventions, and was not arbitrary. Moreover, in the light of his clearance for release and physical release within a few days of being brought to the Camp, it was unnecessary for the Court to examine whether the screening process constituted an adequate safeguard to protect against arbitrary detention. Finally, it would appear from the context and the questions that Tarek Hassan was asked during the two screening interviews that the reason for his detention would have been apparent to him.

Conclusion: no violation (thirteen votes to four).

(See also *Al-Skeini and Others v. the United Kingdom* [GC], 55721/07, and *Al-Jedda v. the United Kingdom* [GC], 27021/08, both delivered on 7 July 2011, Information Note 143)

ARTICLE 6

Article 6 § 1 (civil)

Fair hearing
Equality of arms

Enforcement in Latvia of judgment delivered in Cyprus in the debtor's absence: *case referred to the Grand Chamber*

Avotiņš v. Latvia - 17502/07
Judgment 25.2.2014 [Section IV]

In May 1999 the applicant, a Latvian national, and a commercial company registered in Cyprus signed before a notary a formal acknowledgement of debt in which the applicant stated that he had borrowed a sum of money from the company and undertook to repay the sum in question, with interest, by 30 June 1999. The document was governed by Cypriot law and the Cypriot courts had jurisdiction to rule on any dispute arising out of it.

In 2003 the company sued the applicant in a Cyprus court for failure to repay his debt. In May 2004, ruling in the applicant's absence, the court ordered him to pay the debt together with interest. According to the judgment, the applicant had been duly notified of the hearing but had not appeared.

In February 2005 the company started proceedings in a Latvian court seeking recognition and enforcement of the Cypriot judgment. In February 2006 the Latvian court ordered the recognition and enforcement of the Cypriot judgment and the recording of a charge against the applicant's property in the land register.

The applicant claimed that he had learnt by chance in June 2006 of the existence of both the Cypriot judgment and the Latvian court's enforcement order. He did not attempt to challenge the Cypriot judgment before the domestic courts but appealed against the Latvian enforcement order in the Latvian courts.

In a final judgment of January 2007 the Senate of the Latvian Supreme Court upheld the company's claim and ordered the recognition and enforcement of the Cypriot judgment and the recording of a charge against the applicant's immovable property in the land register. On the basis of that judgment a court issued a writ of execution and the applicant complied with the judgment. The charge against his property was lifted shortly afterwards.

In his application to the European Court the applicant complained that by enforcing the judgment of the Cypriot court which, in his view, was clearly unlawful as it disregarded his defence rights, the Latvian courts had failed to comply with Article 6 § 1 of the Convention. He had alleged before the Latvian courts that the notice to appear before the court in Cyprus and the statement of claim by the company had not been served on him in a proper and timely manner, with the result that he had been unable to defend his case. Consequently, the Latvian courts should have refused to enforce the Cypriot judgment.

In a judgment of 25 February 2014 a Chamber of the Court held unanimously that there had been no violation of Article 6 § 1. It observed that the fulfilment by the State of the legal obligations arising from its membership of the European Union was a matter of general interest. The Senate of the Latvian Supreme Court had been under a duty to ensure the recognition and the rapid and effective enforcement of the Cypriot judgment in Latvia.

The Court noted that the applicant had not sought to lodge any appeal against the Cypriot court's judgment of 24 May 2004. The applicant, an

investment consultant who had borrowed money from a Cypriot company and had signed an acknowledgement of debt governed by Cypriot law containing a clause which conferred jurisdiction on the Cypriot courts, had accepted this contractual liability of his own free will; he could thus have been expected to acquaint himself with the legal consequences of any failure to repay the debt and with the manner in which proceedings would be conducted before the Cypriot courts. Hence, the applicant had, as a result of his own actions, forfeited the possibility of pleading ignorance of Cypriot law. The onus had been on him to produce evidence of the inexistence or ineffectiveness of a remedy before the Cypriot courts, but he had not done so either before the Senate of the Latvian Supreme Court or before the European Court of Human Rights.

Regard being had to the interest of the Latvian courts in ensuring the fulfilment of the legal obligations arising from Latvia's status as a European Union member State, the Senate of the Latvian Supreme Court had taken sufficient account of the applicant's rights.

On 8 September 2014 the case was referred to the Grand Chamber at the applicant's request.

Article 6 § 3 (d)

Examination of witnesses

Inability to examine absent witnesses, whose testimonies carried considerable weight in applicant's conviction: *case referred to the Grand Chamber*

Schatschaschwili v. Germany - 9154/10
Judgment 17.4.2014 [Section V]

The applicant was convicted of two counts of aggravated robbery in conjunction with aggravated extortion and sentenced to nine and a half years' imprisonment. As regards one of the offences, the trial court relied in particular on witness statements made by the two victims of the crime to the police at the pre-trial stage. The statements were read out at the trial as the two witnesses had left Germany and refused to testify as they continued to be traumatised by the crime.

In a judgment of 17 April 2014 a Chamber of the Court found, by five votes to two, that there had been no violation of the applicant's rights under Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention.

On 8 September 2014 the case was referred to the Grand Chamber at the applicant's request.

ARTICLE 7

Article 7 § 1

Nullum crimen sine lege

Conviction for illegal fishing in territorial waters based on unforeseeable application of legislation implementing United Nations Convention on the Law of the Sea: *violation*

Plechkov v. Romania - 1660/03
Judgment 16.9.2014 [Section III]

Facts – The applicant lived in Bulgaria. At the relevant time he was both captain and owner of a fishing vessel registered in Bulgaria. In May 2002, when his boat was about 29 nautical miles off the Romanian coast, it was stopped and searched by officers of the Romanian Navy, who found industrial fishing equipment and about 300 kg of shark meat on board. The ship was then escorted to the port of Constanța in Romania, where it was detained together with its cargo. On the same day Mr Plechkov was taken into police custody, then remanded pending trial, and his equipment was seized. On the basis of decree no. 142/1986 on the exclusive economic zone, he was charged with illegal shark fishing in Romania's exclusive economic zone in the Black Sea. Before the first-instance court, the applicant declared that he had never entered Romania's territorial waters.

In a judgment of 18 July 2002 the court first found that decree no. 142/1986 had established Romania's exclusive economic zone in the Black Sea, with Article 2 thereof stipulating that the zone extended "for a distance of 200 nautical miles from the baselines from which the width of the territorial sea is measured". It noted, however, that the decree had been repealed by Law no. 36/2002, and took the view that this Law had changed the definition of Romania's exclusive economic zone. In particular,

it found that the applicable Law no longer stipulated the exact width of the zone but merely indicated that it "could extend up to 200 nautical miles", and that the precise delimitation of the zone was to be fixed by agreement between Romania and the neighbouring States, in compliance with the United Nations Convention on the Law of the Sea ("UNCLOS"). The court further found that Romania and Bulgaria had begun negotiations with a view to delimiting the exclusive economic zones of the two States but that no agreement had yet been reached. It inferred from this that UNCLOS, which provided the legal framework for the establishment of such zones, had not been implemented by Romania and Bulgaria, in the absence of a bilateral agreement. The court acquitted the applicant, taking the view that his vessel had been arrested in a zone that was not subject to Romanian law.

On appeal, the County Court overturned the judgment of the court below. It first observed that Romania and Bulgaria were both parties to UNCLOS before going on to find that the provisions of that Convention on exclusive economic zones were directly applicable in domestic law, even in the absence of a bilateral agreement between the States concerned, because Law no. 36/2002 incorporated a number of UNCLOS provisions.

The County Court found that the applicant's vessel had engaged in industrial fishing activities in Romania's exclusive economic zone, as delimited by Law no. 36/2002 and by UNCLOS, and declared him guilty as charged. An appeal on points of law by the applicant was dismissed.

Law – Article 7: It was not the Court's role to decide on the interpretation of UNCLOS or the relevant Romanian legislation, or on the application of those instruments by the Romanian courts. It could not therefore rule on the width or existence of Romania's exclusive economic zone within the meaning of UNCLOS or on any rights and obligations that Romania might have with regard to such a zone. It had only to ascertain that the provisions of domestic law, as interpreted and applied by the domestic courts, had not produced any consequences that were incompatible with the Convention.

In the present case the Government first argued that the imposition of criminal sanctions for the acts committed by the applicant stemmed directly from UNCLOS and that, accordingly, the applicant's conviction was accessible and foreseeable. However, the applicant's conviction had not been based on that instrument. In those circumstances, the Court did not have to examine whether the rule stipulated therein, taken by itself, satisfied the requirements of the Convention.

The Court noted, however, that in order to answer the question whether the acts of which the applicant was accused fell within the criminal law, the domestic courts had first examined the scope of the relevant provisions, as amended by Law no. 36/2002. The courts in question had reached totally opposite conclusions. First of all the applicant had been sent for trial on the basis of decree no. 142/1986 of the *Consiliul de Stat*, whereas that decree had been repealed by Law no. 36/2002 before the acts in question had been committed by the applicant. Secondly, the relevant legislation, as amended by Law no. 36/2002, in force at the relevant time – provisions which the courts had to substitute of their own motion, in order to examine the question of the applicant's guilt, for the obsolete legal basis given in the indictment – did not delimit the Romanian exclusive economic zone with the necessary precision. In addition, the determination of the zone's width had been expressly reserved, by the same provision, for an agreement that was to be reached between Romania and the States with coasts adjacent to or facing the Romanian coast, including Bulgaria. Such a provision could not reasonably be regarded as foreseeable in its application, in the absence of an agreement with Bulgaria or any other element that would allow the applicant to adapt his conduct. A precise definition under Romanian law of the limits of the exclusive economic zone proclaimed by Romania within the meaning of UNCLOS had been necessary, having regard to the criminal-law consequences that would arise in the event of a violation of the sovereign rights attached to that zone. The courts which had convicted the applicant had further held that, even if an agreement had been reached between Romania and Bulgaria, it would not have been favourable to the applicant. However, such an interpretation, by the County Court and the Court of Appeal, had not been based on any established domestic case-law.

Consequently, neither the domestic legislation nor the interpretation thereof by the domestic courts rendered the applicant's conviction sufficiently foreseeable.

Conclusion: violation (unanimously).

The Court also found, unanimously, that there had been a violation of Article 1 of Protocol No. 1.

Article 41: EUR 6,500 in respect of pecuniary and non-pecuniary damage.

ARTICLE 8

Respect for private and family life
Respect for home

Unlawful construction and use of a cemetery near the applicant's home and water supply: *violation*

Dzemyuk v. Ukraine - 42488/02
Judgment 4.9.2014 [Section V]

Facts – The applicant lived in a village with no centralised water supply and used water from wells fed by groundwater for his household needs. In 2000 the local authority decided to construct a cemetery on a neighbouring plot of land, some 40 metres from his house. The applicant instituted proceedings seeking annulment of that decision and closure of the cemetery. Ultimately, in 2003 the court hearing the application upheld his claim after finding that the cemetery had been built too close to a residential area and a water source, in breach of environmental health laws and regulations. The court ordered closure of the cemetery, but its order was not enforced. Meanwhile, a bacteriological analysis of water from the applicant's well in 2008 showed that the index of *E. coli* bacteria far exceeded the level permitted by law.

Law – Article 8

(a) *Applicability* – The Court reiterated that in order to raise an issue under Article 8 the alleged interference must directly affect the applicant's home, family or private life and attain a certain minimum level. The high level of bacteria found in the water from the applicant's well, coupled with a blatant violation of national environmental health and safety regulations confirmed the existence of environmental risks, namely serious water pollution, that affected the applicant's "quality of life" and attained a sufficient degree of seriousness to trigger the application of Article 8.

(b) *Compliance* – The unlawfulness of the cemetery's location had been signalled on numerous occasions by the environmental-health authorities and acknowledged by decisions of the domestic courts. Moreover, the competent local authorities had failed to abide by a final and binding domestic court order to close the cemetery. Accordingly, the interference with the applicant's right to respect for his home and private and family life had not been "in accordance with the law".

Conclusion: violation (unanimously).

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

(See also *Dubetska and Others v. Ukraine*, 30499/03, 10 February 2011; *Fadeyeva v. Russia*, 55723/00, 9 June 2005, Information Note 76; and *Hardy and Maile v. the United Kingdom*, 31965/07, 14 February 2012)

Respect for family life

Refusal to grant family reunion to a Danish citizen and his foreign wife on the ground that the spouses' ties with another country were stronger than their ties with Denmark: *case referred to the Grand Chamber*

Biao v. Denmark - 38590/10
Judgment 25.3.2014 [Section II]

In 2003 the first applicant, a naturalised Danish citizen since 2002, married the second applicant, a Ghanaian national. The second applicant was born and raised in Ghana and at the time of the marriage had never visited Denmark and did not speak Danish. After the marriage, the second applicant requested a residence permit for Denmark, which was refused by the Aliens Authority on the grounds that the applicants did not comply with the requirement under the Aliens Act (known as the "attachment requirement") that a couple applying for family reunion must not have stronger ties with another country – Ghana in the applicants' case – than with Denmark. The "attachment requirement" was lifted for persons who had held Danish citizenship for at least 28 years, as well as for non-Danish nationals who were born and/or raised in Denmark and had lawfully stayed there for at least 28 years.

In a judgment of 25 March 2014 a Chamber of the Court held unanimously that there had been no violation of the applicants' rights under Article 8 (see Information Note 172). Moreover, by four votes to three it held that there had been no violation of Article 14 taken in conjunction with Article 8 of the Convention on account of different treatment of Danish nationals who held their nationality for more than 28 years from those who had it for a shorter period of time.

On 8 September 2014 the case was referred to the Grand Chamber at the applicants' request.

Opinion of 11 year old child not taken into account in return proceedings under Hague Convention: *no violation*

Gajtani v. Switzerland - 43730/07
Judgment 9.9.2014 [Section II]

Facts – The applicant, who was from the Republic of Kosovo,[1] lived in the former Yugoslav Republic of Macedonia with her two children and their father. In November 2005 she separated from the children's father and moved with the children to join her family in Kosovo. There she married an Italian national and went to live with him in Switzerland. In 2006 the children's father took steps to have the children returned to the former Yugoslav Republic of Macedonia. In December 2006 the authorities of that country awarded him sole custody of the children. Several days later, both parents and the elder son, then aged 11 and a half, were interviewed by the Swiss authorities. In March 2007 the Swiss supervisory authority refused the father's application for the return of the children, notably because the elder son had strongly objected to the idea of returning to live with his father and had even refused to meet him. The authority's decision was set aside in June 2007 by the Swiss court of appeal, which found that the son was not yet mature enough for his categorical refusal to return to be taken into account. In October 2007 the children were intercepted by the police and were taken back to the former Yugoslav Republic of Macedonia without the applicant.

Law – Article 8: There had been an interference with the applicant's right to respect for her family life. The interference had been based on the Hague Convention[2] and had pursued the legitimate aim of protecting the rights and freedoms of the children and their father. The only question arising in this case was whether the competent authorities had taken sufficient account of the children's views.

The court of appeal had concluded, after careful analysis of the statements made by the applicant's son, that he was not mature enough for his categorical refusal to return to be taken into account. It had found that his behaviour did not indicate a sufficient degree of maturity for his views to be regarded as sufficiently independent. It had noted his intention to shield his mother from any responsibility, particularly as regards the abduction. The court had further observed that the child had been caught up in a conflict of loyalties and that he had probably been afraid of being cut off from his mother if he resumed contact with his father.

The court of appeal's conclusion that the applicant's son's statements could not be taken into account in the decision on the children's return was not unreasonable. Ruling on the basis of the child's interview by the lower authority, the court had given detailed reasons for its decision. In view of the clear margin of appreciation enjoyed in this sphere by the domestic authorities, which were better placed than the Court to assess the matter, it had been reasonable for the court of appeal to take the view that it was neither necessary nor appropriate to interview the son again, particularly as interviews of that kind could have a traumatic effect on a child and lead to considerable delays in the proceedings.

The couple's daughter, who had been five years old at the time, did not appear to have been interviewed. The applicant had not alleged that she had asked for her daughter to be interviewed and had the request denied. Nor had she claimed that an interview was essential to ascertain whether any of the circumstances precluding the child's return as laid down in the Hague Convention were applicable. Furthermore, the Hague Convention did not place any obligation on the national authorities to interview the child.

Accordingly, the court of appeal could not be criticised for refusing to take account of the objections to returning voiced in particular by the applicant's son. The decision-making process under domestic law had therefore satisfied the procedural requirements inherent in Article 8.

Conclusion: no violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 6 of the Convention on account of the lack of access to a court.

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

1. All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.
2. The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

Refusal to provide applicants with a travel document to enable their child, born abroad as a result of a surrogacy arrangement, to travel back with them to their country of origin: *inadmissible*

D. and Others v. Belgium - 29176/13
Decision 8.7.2014 [Section II]

Facts – A. was born on 26 February 2013 as a result of a surrogacy arrangement in Ukraine. On 31 July 2013 the Brussels Court of Appeal upheld the applicants' appeal contesting the Belgian authorities' refusal to issue a travel document in A.'s name, considering that they had by that stage sufficiently established that the first applicant was A.'s biological father and that the public-order concerns previously expressed by the authorities with regard to the circumstances of A.'s birth had been lifted. It ordered the Belgian State to issue the first applicant with an appropriate document bearing A.'s name, in order to enable him to travel to Belgium with the first applicant. A. arrived in Belgium with the applicants on 6 August 2013. Before the European Court, relying on Article 8 of the Convention, the applicants alleged, *inter alia*, that their effective separation from the child on account of the Belgian authorities' refusal to issue a travel document had severed the relationship between a baby aged only a few weeks and his parents.

Law – Article 8: This Article was applicable wherever there existed *de facto* family ties. While it was true that the applicants had been separated from the child during the period under consideration, an intended family life did not fall entirely outside the ambit of Article 8. It was not disputed that the applicants wished to care for the child, as parents, from his birth, and that they had taken steps to allow for an effective family life. Since A.'s arrival in Belgium, he and the applicants had lived together in a manner that was indistinguishable from the traditional notion of "family life". Article 8 was therefore applicable.

The Belgian authorities' refusal to issue a travel document for the child, which had resulted in an effective separation of the applicants and the child, had amounted to an interference in the applicants' right to respect for their family life. The interference had been provided for by law and pursued several legitimate aims, in particular, the prevention of trafficking in human beings, and the protection of the rights of others, in this case those of the surrogate mother and also, to a certain extent, those of A.

The applicants and the child had been separated for three months and twelve days, during which period the applicants had paid at least two one-week visits to Ukraine. The urgent proceedings had lasted four months and twelve days. This situation must have been difficult for the applicants, who may have suffered anguish, or even distress, and this had not been favourable to maintaining family ties between the applicants and A. Equally, it was important for a child's psychological development to have sustained contact with one or several persons who were close to him or her, especially in the first months of life.

Nonetheless, having regard to the circumstances of the case, neither the urgent proceedings nor the period of the applicants' actual separation from A. could be considered as unreasonably long. The Convention could not oblige the States to authorise entry to their territory of children born to a surrogate mother without the national authorities having a prior opportunity to conduct certain relevant legal checks. Moreover, the applicants could reasonably have foreseen that the procedure to have the family relationship recognised and to take the child to Belgium would necessarily take a certain time. In addition, the Belgian State could not be held responsible for the difficulties the applicants had encountered in remaining in Ukraine for a longer period, even during the entire period that the proceedings were pending before the Belgian courts. Lastly, the time taken to obtain the laissez-passer had, at least in part, been attributable to the applicants themselves, in that they had not submitted sufficient evidence at first instance to demonstrate, prima facie, their biological ties to A. Thus, in refusing until 31 July 2013 to authorise A.'s entry to the national territory, the Belgian State had acted within the limits of the margin of appreciation enjoyed by it.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 10

Freedom of expression

Fine imposed on opposition MPs for showing billboards during parliamentary votes: *violation*

Karácsony and Others v. Hungary - 42461/13
Judgment 16.9.2014 [Section II]

Facts – At the material time, all four applicants were members of the opposition in the Hungarian Parliament. On a motion introduced by the Speak-

er, they were fined amounts ranging from EUR 170 to EUR 600 for having gravely disrupted parliamentary proceedings after they displayed billboards accusing the government of corruption. The fines were imposed by the Parliament in plenary session without a debate.

In their application to the European Court, the applicants complained that the decisions to fine them for showing the billboards during the voting procedure had violated their right to freedom of expression under Article 10 of the Convention.

Law – Article 10: The fines imposed on the applicants constituted interference with their right to freedom of expression. The interference was prescribed by law and pursued the legitimate aims of protecting the rights of others and preventing disorder.

In assessing the proportionality of the interference, the Court considered the nature of the speech in the context of the legitimate aim sought to be protected, the nature of the impact of the impugned expression on order in parliament and the authority of parliament, the process applied and the sanctions imposed.

(a) *Nature of the expression* – The views expressed by the applicants concerned a public matter of the highest political importance that was directly related to the functioning of a democracy. Their main purpose was to criticise the parliamentary majority and the Government, rather than to personally attack one of the MPs or any other individual. Although they had had an opportunity to express their views on the bill subject of the vote, showing the billboards was also part of their political expression. The expressive acts of protest could not be equated in their function and effect with the speech opportunity that had been granted to them during the debate. Given the importance of public exposure to minority views as an integral function of democracy, minority members should have leeway to express their views, including in a non-verbal fashion, and considering the symbolic aspects of their speech, within a reasonable framework.

(b) *Impact on parliamentary authority and order* – The Court noted the importance of orderly conduct in parliament and the importance of respect for constitutional institutions in a democratic society. However, it was satisfied that the applicants' display of the billboards had not created a significant disturbance: they had not delayed or prevented the parliamentary debate or vote, and had not disturbed the actual functioning of parliament. Their accusations against the Government's policies had not challenged or undermined the authority of the Parliament, or exposed it to ridicule or disrespect.

(c) *Procedure* – Given the State's margin of appreciation in this sphere, the arguably partisan nature of the sanctioning procedure did not in itself constitute a violation of the Convention. However, the Court identified a number of shortcomings in the procedure that was followed: the applicants were not given any warning that sanctions might be imposed, the Speaker did not specify why their conduct was "gravely offensive", and the decision to impose fines was taken without debate at a plenary session, which could not be considered an appropriate forum for examining issues of fact and law, assessing evidence and making a legal characterisation of the facts.

(d) *Sanctions* – While not atypical in parliamentary law in matters of personal affront, the fines imposed on the applicants could be seen as having a chilling effect on opposition or minority speech and expressions in Parliament.

In sum, there had been no compelling reason for the interference since parliamentary authority and order had not been seriously affected and it had not been shown that those interests had on balance been weightier than the opposition's right to freedom of expression. The interference could not, therefore, be considered to have been "necessary in a democratic society".

Conclusion: violation (unanimously).

Article 41: awards ranging from EUR 170 to EUR 600 in respect of pecuniary damage.

ARTICLE 14

Discrimination (Article 8)

More favourable conditions for family reunion applying to persons who had held Danish citizenship for at least 28 years: *case referred to the Grand Chamber*

Biao v. Denmark - 38590/10
Judgment 25.3.2014 [Section II]

(See Article 8 above, page 19)

ARTICLE 34

Hinder the exercise of the right of application_

Extradition to United States despite real risk of irreducible life sentence without parole and in breach of interim measure ordered by European Court: *violation*

Trabelsi v. Belgium - 140/10
Judgment 4.9.2014 [Section V]

(See Article 3 above, page 11)

ARTICLE 35

Article 35 § 1

Six-month period_____

Inaction on part of applicant who took eleven years to make complaint to domestic authorities: preliminary objection dismissed

Mocanu and Others v. Romania -
10865/09, 32431/08 and 45886/07
Judgment 17.09.2014 [Section III]

(See Article 2 above, page 7)

Exhaustion of domestic remedies
Effective domestic remedy – Italy_____

New preventive and compensatory remedies for prison overcrowding: *effective remedy*

Stella and Others v. Italy - 49169/09 et al.
Decision 16.9.2014 [Section II]

Facts – The applicants all claimed that they had been kept in overpopulated cells, having had at their disposal approximately 3 sq. m of living space.

Following the communication of the applications to the Government, the Court had applied the pilot-judgment procedure in the case of *Torreggiani and Others v. Italy*,[1] in which it had noted that prison overcrowding in Italy represented an endemic and structural problem. Under Article 46 of the Convention, the Court had considered that the respondent State was to put in place an effective domestic preventive and compensatory remedy or a combination of such remedies capable of securing genuinely effective redress for the violations of the Convention resulting from cases of overcrowding in Italian prisons.

Following that judgment, the Italian State had enacted a number of legislative measures aimed at resolving the structural problem of overcrowding in prisons and, in parallel, had reformed the law to allow detained persons to complain to a judicial authority about the material conditions of detention and had also introduced a compensatory remedy providing for damages to be paid to persons who had been subjected to detention contrary to the Convention.

Law – Article 35 § 1: The introduction of the new domestic remedies was a direct consequence of the application of the pilot-judgment procedure; they were intended to deal with cases brought against Italy concerning prison overcrowding, with a view to meeting the growing threat to the Convention system resulting from the large number of similar cases. The respondent State's domestic authorities had thus complied with the principles established in the Court's case-law in this area, and with the findings set out in the pilot judgment under Article 46 of the Convention.

(a) *The Court's assessment of the preventive remedy*

Through the introduction of this new remedy, the respondent State had sought to respond to the reservations expressed by the Court in the *Torreggiani and Others* judgment concerning the effectiveness of the previously existing remedy, namely, on the one hand, the lack of certainty with regard to the binding force of decisions taken by the judge responsible for the execution of sentences and, on the other, the structural nature of the phenomenon of prison overcrowding in Italy, which in practice prevented the prison authorities from guaranteeing to prisoners conditions of detention that were compatible with the Convention.

The new remedy now specified that the decisions taken by the judge responsible for the execution of sentences on prisoners' complaints concerning the prison administration were binding on the relevant administrative authorities. The latter were obliged to comply within a deadline set by the judge, which, in principle, satisfied the criterion that judicial proceedings be expeditious, failing which enforcement proceedings could be initiated. Furthermore, and this was a crucial aspect, the respondent State had put in place a series of substantive measures intended to resolve the structural problem of overcrowding in prisons. Several legislative provisions had been enacted in the area of

1. *Torreggiani and Others v. Italy*, 43517/09 et al., 8 January 2013, Information Note 159.

criminal policy with a view, among other things, to promoting greater use of alternatives to detention and to reducing the sentences laid down for minor offences. The application of those provisions had already resulted in a significant reduction in the prison population and, in so far as they concerned structural reforms to criminal policy, their application was likely to continue to have a favourable impact on prison overcrowding in Italy. Moreover, major organisational changes had been made in order to enable prisoners to spend at least eight hours per day outside their cell. Lastly, the renovation of existing prison buildings and the construction of new premises had increased the number of places available and permitted a better distribution of prisoners, so that all those detained in Italian prisoners currently had a minimum personal space of 3 sq. m. Under domestic law, the standard minimum surface area for shared cells was 5 sq. m per person, which was more than that recommended by the Court's case-law and by the CPT.

The Court welcomed the significant results obtained through the considerable efforts made by the Italian authorities at several levels, and noted that the problem of prison overcrowding in Italy, while persistent, was now at less alarming proportions. It could only encourage the respondent State to continue this positive trend.

In view of the nature of the preventive remedy afforded by the domestic legislation and of the context in which the relevant domestic authorities were presently acting, the new domestic remedy constituted, *a priori,* an accessible remedy, capable of offering litigants reasonable prospects of success.

(b) *The Court's assessment of the compensatory remedy*

The new remedy was accessible to anyone, including the applicants, who alleged they had been imprisoned in Italy in physical conditions that were contrary to the Convention. A transitional provision referred explicitly to applications already lodged with the Court and was therefore designed to bring within the jurisdiction of the national courts all applications currently pending before the Court that had not yet been declared admissible.

As to the characteristics of the redress, the remedy in question provided for two types of compensation. Individuals who were detained and had still to complete their sentence could receive a reduction in sentence equal to one day for each period of ten days of detention that were incompatible with the Convention. Individuals who had served their sentences or in respect of whom the part of the sentence which remained to be served did not allow for full application of the reduction could obtain compensation of EUR 8 for each day spent in conditions considered contrary to the Convention. Decision-making competence lay with the courts for the execution of sentences with regard to complaints from detainees, and with the ordinary courts for individuals who had been released.

A reduction in sentence constituted an adequate remedy in the event of poor material conditions of detention in so far as, on the one hand, it was specifically granted to repair the violation of Article 3 of the Convention and, on the other, its impact on the length of the sentence of the person concerned was measurable. In addition, this form of redress had the undeniable advantage of helping to resolve the problem of overcrowding by speeding up detainees' release from prison. With regard to the financial compensation, the amount of compensation provided for under domestic law could not be considered unreasonable – even if it was lower than that set by the Court – or such as to deprive the remedy introduced by the respondent State of its effectiveness.

In consequence, in so far as they alleged that they had been imprisoned in conditions contrary to Article 3 of the Convention, the applicants were required to use the new remedy introduced into Italian legislation, in order to obtain acknowledgment of the violation and, where appropriate, adequate compensation. With regard to those applicants who might still be detained in poor conditions, they were also to submit a complaint to the judge responsible for the execution of sentences, with a view to obtaining an immediate improvement of their living conditions in prison.

Conclusion: inadmissible (unanimously).

Article 35 § 3 (a)

Abuse of the right of application

Failure to inform Court of applicant's death in proceedings concerning her ability to obtain drug enabling her to commit suicide:
inadmissible

Gross v. Switzerland - 67810/10
Judgment 30.9.2014 [GC]

Facts – For many years the applicant had expressed the wish to end her life, as she was becoming increasingly frail as time passed and was unwilling to continue suffering the decline of her physical and mental faculties. She had decided to end her

life by taking a lethal dose of sodium pentobarbital. As she had encountered difficulties in obtaining a prescription for the substance in question, she had lodged an application with the European Court in 2010.

In a judgment of 14 May 2013 (see Information Note 163), a Chamber of the Court held that there had been a violation of Article 8 of the Convention. The case was referred to the Grand Chamber.

The Court was not made aware of the applicant's death until January 2014, when informed by the Government that, while preparing their written submissions, they had enquired about the applicant's situation and learned of her death and the circumstances thereof. In October 2011 the applicant had obtained a prescription from a doctor for a lethal dose of sodium pentobarbital and had ended her life by imbibing the prescribed substance on 10 November 2011. According to a police report of 14 November 2011, no relatives of the deceased could be identified. The report concluded that the applicant had committed suicide and that no third person could be deemed criminally liable in that context.

Law – Article 35 § 3 (a): An application could be rejected as an abuse of the right of individual application if, among other reasons, it had been knowingly based on untrue facts. The submission of incomplete, and thus misleading, information could also amount to an abuse of the right of application, especially if the information concerned the core of the case and the applicant had failed to provide a sufficient explanation for the failure to disclose the relevant information. The same applied if new, important developments had occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant had failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty.

Counsel for the applicant had explained that he had only had contact with his client via an intermediary, who – at her request – had purposely refrained from notifying counsel of her death. However, bearing in mind the particular nature of the present case, the fact that counsel for the applicant had had no direct contact with his client but had agreed to communicate with her indirectly through an intermediary gave rise to a number of concerns regarding his role as a legal representative in the proceedings before it. In addition to the duties of an applicant to cooperate with the Court and to keep it informed of all circumstances relevant to his or her application, a representative bore a particular responsibility not to make misleading submissions.

It transpired from counsel's explanation that the applicant had not only failed to inform him, and by implication the Court, of the fact that she had obtained the required medical prescription, but had also taken special precautions to prevent information about her death from being disclosed to counsel and eventually to the Court in order to stop the latter discontinuing the proceedings in her case. The fact and the circumstances of the applicant's death did indeed concern the very core of the matter underlying her complaint under the Convention. It was also conceivable that had those facts been known to the Chamber they might have had a decisive influence on its judgment of 14 May 2013 concluding that there had been a violation of Article 8 of the Convention. There was no need for the Grand Chamber to speculate on this, however, since in any event the Chamber's judgment of 14 May 2013 had not become final.

The applicant's motive for withholding the relevant information had allegedly been that, regardless of the fact that the ongoing grievance arising from her own personal situation had ceased, the proceedings in her case should continue for the benefit of other people who were in a similar situation. Whilst such a motive might be understandable from the applicant's perspective in the exceptional situation in which she found herself, the Court found it sufficiently established that by deliberately omitting to disclose that information to her counsel the applicant had intended to mislead the Court on a matter concerning the very core of her complaint under the Convention.

Accordingly, the applicant's conduct constituted an abuse of the right of individual application.

Conclusion: inadmissible (nine votes to eight).

Competence *ratione temporis*

Four years between the triggering event and the Convention's entry into force in respect of Romania: *preliminary objection dismissed*

Mocanu and Others v. Romania - 10865/09, 32431/08 and 45886/07
Judgment 17.09.2014 [GC]

(See Article 2 above, page 7)

ARTICLE 46

Pilot judgment – General measures

Provision of effective remedies in respect of prison overcrowding following pilot judgment

Stella and Others v. Italy - 49169/09
Decision 16.9.2014 [Section II]

(See Article 35 § 1 above, page 23)

ARTICLE 1 OF PROTOCOL No. 1

Possessions
Deprivation of property

Obligation on company to transfer fishing grounds to public authority without compensation and to pay substantial mesne profits if it remained in unlawful possession: *violation*

Valle Pierimpiè Società Agricola S.p.a. v. Italy - 46154/11
Judgment 23.9.2014 [Section II]

Facts – The applicant company acquired a production facility known as *Valle Pierimpiè*, a "fishing valley" situated on a lagoon in the province of Venice, on the basis of a notarised deed of sale. The company carried out a particular form of fish rearing on the site. On three occasions, in 1989, 1991 and 1994, the provincial department of the public revenue service ordered the company to vacate the property on the ground that it actually belonged to the public maritime domain. The applicant subsequently applied to the domestic courts seeking recognition of its alleged status as the owner of *Valle Pierimpiè.* The application was rejected by the District Court, which ruled that *Valle Pierimpiè* was State property and that the company was therefore liable to pay the administrative authorities compensation for unlawful occupation of the fishing valley, in an amount to be determined in separate proceedings. That decision was upheld following an ordinary appeal and an appeal on points of law.

Law – Article 1 of Protocol No. 1: According to the Government, the applicant had never had a "possession" within the meaning of Article 1 of Protocol No. 1, as *Valle Pierimpiè* had for many years been State property, and as such could not be disposed of. However, the Court pointed out that a "possession" within the meaning of that provision could be said to exist even where title to the property was withdrawn, provided that the factual and legal situation prior to such withdrawal had conferred upon the applicant a legitimate expectation linked to property rights which was sufficient to constitute a substantive interest protected by the Convention. There were several indications that the applicant company had possessed such an interest. Firstly, it had possessed formal title to the property, as recorded by a notary and entered in the property registers; secondly, it could found its legitimate expectation on the long-standing practice of granting individuals title to the fishing valleys and tolerating their continued occupation and use of them; lastly, the site was the base for the applicant company's activities and the profit it derived from them was its main source of income. Article 1 of Protocol No. 1 was therefore applicable.

The applicant's possession had been acquired by the State and the applicant company had forfeited any possibility of asserting title to it. In order to continue to carry out its fish rearing activities in *Valle Pierimpiè* it would have to apply for a licence and, if it obtained one, would have to pay rent or compensation. There had therefore been interference with the applicant company's right to the peaceful enjoyment of its possessions, amounting to a "deprivation" of property within the meaning of the first paragraph, second sentence of Article 1 of Protocol No. 1.

The declaration of State ownership of the applicant's "possession" had had a sufficient legal basis in Italian law. The incorporation of the fishing valley into the public maritime domain had pursued the legitimate aim in the general interest of preserving the environment and the lagoon ecosystem and ensuring that the latter was actually designated for public use.

The applicant had not been offered any compensation for the deprivation of its possession. On the contrary, it had been ordered to pay compensation for unlawful occupation of *Valle Pierimpiè*. Although the amount of compensation had yet to be determined in separate civil proceedings, the applicant alleged that it could be as high as twenty million euros, a sum that would render the company insolvent. The Government did not dispute this and stated that the compensation should be calculated with effect from 1984, an indication that the amount would be very significant.

It also had to be borne in mind that, in the instant case, the acquisition of the property by the State had not been founded on economic reform or social justice measures. Furthermore, there was nothing in the file to show that the authorities had taken account of the fact that the transfer of the

fishing valley to the public maritime domain had caused the applicant to lose the "tools of its trade" since the valley was the base for its business activities, which it had carried out in a lawful manner.

It was true that, as far back as 1989, the applicant company had been aware of the fact that the State considered *Valle Pierimpiè* to belong to the State maritime domain, and that it could have considered relocating its activities accordingly. Furthermore, it was not ruled out that the company might be allowed to continue to use the fishing valley, subject to payment of a fee. Nevertheless, acquiring an alternative site for fish rearing was likely to be difficult and, like the payment of a fee, was liable to entail significant costs. The authorities had not taken any steps to lessen the financial impact of the interference. This appeared particularly vexatious given that there was no evidence in the present case that the applicant had not acted in good faith.

Accordingly, the interference in question, which had not been accompanied by any compensation and had entailed an additional burden on the applicant, had been manifestly disproportionate to the legitimate aim pursued. Hence, the State had not struck a fair balance between the public and private interests at stake, and an excessive and impracticable burden had been imposed on the applicant.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage; question of just satisfaction in respect of pecuniary damage reserved.

ARTICLE 2 OF PROTOCOL No. 1

Respect for parents' religious convictions

Lack of objectivity and pluralism in the teaching of religious instruction and limited possibilities for exemption from compulsory classes: *violation*

Mansur Yalçın and Others v. Turkey - 21163/11
Judgment 16.9.2014 [Section II]

Facts – The applicants are the parents of children of compulsory school age. They are members of the Alevi religious community.

They complained to the Court that the provision of compulsory religion and ethics classes in primary and secondary schools infringed their right to respect for their religious beliefs. In the 2011/12 school year, following the publication of the judgment of the Court *Hasan and Eylem Zengin v. Turkey*, significant changes had been made to the curriculum and textbooks for the religion and ethics classes.

Law – Article 2 of Protocol No. 1: Following publication of the *Hasan and Eylem Zengin* judgment, changes had been made to the curriculum of the compulsory religion and ethics classes. The changes had been chiefly intended to ensure the provision of information about the various beliefs existing in Turkey, including the Alevi faith, but the main aspects of the curriculum had not really been overhauled since it focused predominantly on knowledge of Islam as practised and interpreted by the majority of the Turkish population. In so far as the case concerned a debate relating to Islamic theory, it was not for the Court to take a stance on such matters, which would be manifestly outside its jurisdiction. Nevertheless, it was clear from the case file and the Government's observations that the curriculum of the religion and ethics classes was structured around the fundamental concepts of Islam, such as the Koran and the sunna. Admittedly, the fact that the curriculum gave greater prominence to Islam as practised and interpreted by the majority of the Turkish population than to the various minority interpretations of Islam and other religions and philosophies could not in itself be viewed as contravening the principles of pluralism and objectivity and potentially amounting to indoctrination. However, bearing in mind the particular features of the Alevi faith as compared with the Sunni understanding of Islam, the applicants could legitimately have considered that the way in which this subject was taught was likely to cause their children to face a conflict of allegiance between the school and their own values, thus giving rise to a possible issue under Article 2 of Protocol No. 1.

The Court failed to see how, given that the religion and ethics classes were compulsory and there was no appropriate exemption system in place, the prospect of pupils facing a conflict between the religious instruction provided by the school and their parents' religious or philosophical convictions could be avoided. The discrepancies between the approach adopted in the curriculum and the particular features of the applicants' faith as compared with the Sunni understanding of Islam were so great that they could scarcely be alleviated to a sufficient degree by the few references to Alevi beliefs and practice that had been included in the textbooks. In addition, the possibility that pupils might be given more detailed information in

optional religious education classes did not exempt the State from its obligation to ensure that the teaching of compulsory subjects met the criteria of objectivity and pluralism while also respecting religious or philosophical convictions.

Accordingly, notwithstanding the significant changes made in 2011/12 to the curriculum and textbooks for the compulsory religion and ethics classes, the respondent State's education system still did not appear adequately equipped to ensure respect for parents' convictions. In particular, no possibility for an appropriate choice had been envisaged for the children of parents who had a religious or philosophical conviction other than that of Sunni Islam, and the very limited exemption procedure was likely to subject those parents to a heavy burden and to the need to disclose their religious or philosophical convictions in order to have their children exempted from the religion lessons.

Conclusion: violation (unanimously).

Article 41: no claim made in respect of damage.

Article 46: One of the main reasons for the Court's finding of a violation of the Convention was that in the field of religious instruction, the Turkish education system was still not adequately equipped to ensure respect for parents' convictions. This conclusion in itself implied that the violation of the applicants' right, as guaranteed by the second sentence of Article 2 of Protocol No. 1, had originated in a structural problem, as in the case of *Hasan and Eylem Zengin*. The Court therefore stressed the need to ensure appropriate means of affording these possibilities without further delay, in accordance with the principles set out in this judgment and without requiring pupils' parents to disclose their own religious or philosophical convictions.

(See *Hasan and Eylem Zengin v. Turkey*, 1448/04, 9 October 2007, Information Note 101)

ARTICLE 3 OF PROTOCOL No. 1

Free expression of the opinion of the people
Vote

Use of special polling stations for the military in circumstances not permitted by domestic law: *violation*

Karimov v. Azerbaijan - 12535/06
Judgment 25.9.2014 [Section I]

Facts – Under the Azerbaijan Electoral Code, military personnel were required to vote in ordinary polling stations. However, where this was not practical, arrangements could be made for them to vote in military polling stations provided three conditions were fulfilled: that the unit was located outside a populated area, it would take more than an hour to get to the nearest ordinary polling station by public transport and the total number of servicemen concerned exceeded 50. The applicant, a candidate in the 2005 parliamentary elections, complained to the Electoral Commission and the domestic courts that special polling stations had been created in his constituency for military personnel even though the statutory conditions had not been met since the units concerned were located in a populated area within a short walking distance of the ordinary polling stations. His complaint and subsequent appeals to the domestic courts were rejected.

Law – Article 3 of Protocol No. 1: Although Article 3 of Protocol No. 1 did not contain an express reference to the "lawfulness" of any measures taken by the State, the rule of law was inherent in all the Articles of the Convention and its Protocols. That principle entailed a duty on the part of the State to put in place a legislative framework for securing its obligations under the Convention in general and Article 3 of Protocol No. 1 in particular, and to ensure that its public

fficials charged with executing those obligations did not act outside the law, but exercised their powers in accordance with the applicable legal rules.

While the Court was not required under Article 3 of Protocol No. 1 to verify whether every particular alleged irregularity amounted to a breach of domestic electoral law, its task was nevertheless to satisfy itself, from a more general standpoint, that the respondent State had complied with its obligation to hold elections under free and fair conditions and had ensured that individual electoral rights were exercised effectively. In cases where it was alleged that the breach of the domestic legal rules was such as to seriously undermine the legitimacy of the election as a whole, Article 3 of Protocol No. 1 required the Court to assess whether such a breach had taken place and resulted in a failure to hold free and fair elections. In so doing, the Court could have regard to whether an assessment in this respect had been made by the domestic courts. If it had, the Court could then confine its own review to whether or not the domestic courts' finding was arbitrary. In the applicant's case, however, no such assessment had been made.

It was clear that the elections in the two polling stations concerned had been conducted outside the applicable legal framework and were illegitimate. The fact that the results from those polling stations were then taken into account by the electoral authorities and aggregated with the legitimate votes cast in other polling stations, with a significant impact on the overall election result, had undermined the integrity of the entire election process in the applicant's constituency.

The circumstances of the case and the observations of the OSCE/ODIHR in its final report on the 2005 elections[1] showed that this situation was the result not of a mistake but of a deliberate practice of organising military voting in breach of the requirements of the Electoral Code, as was further demonstrated by the manner in which the applicant's complaints had been ignored by the Electoral Commission and summarily rejected by the domestic courts without any examination of the substance. Such conduct on the part of the electoral commissions and courts revealed an apparent lack of genuine concern for upholding the rule of law and protecting the integrity of the election.

These considerations were sufficient for the Court to conclude that the national authorities had failed to hold the election in the applicant's constituency in accordance with the requirements of Article 3 of Protocol No. 1.

Conclusion: violation (unanimously).

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

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

W.H. v. Sweden - 49341/10
Judgment 27.3.2014 [Section V]

(See Article 3 above, page 11)

Avotiņš v. Latvia - 17502/07
Judgment 25.2.2014 [Section IV]

(See Article 6 § 1 (civil) above, page 16)

Schatschaschwili v. Germany - 9154/10
Judgment 17.4.2014 [Section V]

(See Article 6 § 3 (d) above, page 17)

Biao v. Denmark - 38590/10
Judgment 25.3.2014 [Section II]

(See Article 8 above, page 19)

COURT NEWS

Elections

On 15 September the Plenary Court re-elected Judge Josep Casadevall as Vice-President of the Court. His new mandate will start on 4 November 2014.

Court's Internet site: information to the applicants

In order to inform potential applicants and/or their representatives of the conditions for lodging an application, the Court has decided to gradually expand its range of information materials designed to assist applicants with the procedure in all the languages of the States Parties to the Convention.

• Web pages for applicants

Web pages providing helpful information for anyone wishing to apply to the Court are now fully available in the languages of the States Parties to the Convention, Armenian being the last published language. These pages and contain all the documents needed to apply to the Court, together with translations of publications, flow charts and videos and useful links explaining the functioning of the Court in 35 languages. They can be accessed *via* the Court's Internet site (<www.echr.coe.int> – Applicants/Other languages).

• Tutorial for applicants

A tutorial for applicants, explaining how to fill in the application form correctly, is available in 16 official languages of Council of Europe member States. The video clip sets outs the formal requirements which must be complied with when applying to the Court; failure to meet these requirements will result in an application being rejected instead of being assigned to a judicial formation.

Video clips in English and French and in Bosnian, Bulgarian, German, Italian, Hungarian, Latvian, Polish, Romanian, Russian, Serbian, Slovenian, Spanish, Turkish and Ukrainian can be accessed *via* the Court's internet site (<www.echr.coe.int> – The Court/Videos). Other language versions of this video clip will soon be available.

1. The Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (OSCE/ODIHR) found that special military polling stations had been set up without the requisite exceptional circumstances being present, that the election procedures in such stations had lacked transparency and that voter turnout and voting patterns had differed significantly from those in ordinary polling stations.

Poster

The Court has the pleasure to unveil its new promotional poster which lists the name of the Court in the official languages of all the High contracting parties to the Convention. The poster also highlights the unusual but iconic view of the Human Rights building.

RECENT PUBLICATIONS

Reports of Judgments and Decisions

The last two volumes (V and VI) and Index for 2012 have now been published.

The print edition is available from Wolf Legal Publishers (the Netherlands) at <sales@wolfpublishers.nl>. They can also be purchased from the Amazon website. All published volumes from the *Reports* series may also be downloaded from the Court's Internet site (<www.echr.coe.int> – Case-law).

Human rights factsheets by country

The 47 "country profiles", setting out information on the human rights issues 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).

Handbook on European law relating to asylum, borders and immigration: Polish translation

The Polish edition of this handbook is now available and can be downloaded from the Court's Internet site (www.echr.coe.int – Publications).

The Handbook on European non-discrimination law and its update: Albanian version

The Handbook on European non-discrimination law and its update, published jointly by the Court and the European Union Agency for Fundamental Rights (FRA), are now available in Albanian on the Court's website:

This translation has been provided by the Directorate General of Human Rights and Rule of Law of the Council of Europe within the framework of the EC/CoE project "Enhancing Human Rights protection in Kosovo"[1]

1. All reference to Kosovo, whether to the territory, institutions or population, shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudicee to the status of Kosovo.