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COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on the case-law of the European Convention on Human Rights

Business and ECHR

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”) relating to immigration. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court’s judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 1978, § 154, and, more recently, *Jeronovičs v. Latvia* [GC], 2016, § 109).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 2012, § 89). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 156, and more recently, *N.D. and N.T. v. Spain* [GC], 2020, § 110).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle “imposes a shared responsibility between the States Parties and the Court” as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], 2022, § 324).

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the former European Commission of Human Rights (hereafter “the Commission”). Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

I. Introduction

1. There is no provision in the Convention and its Protocols which explicitly refers to business operations, companies, enterprises or commercial undertakings. However, in practice nearly every Convention Article is relevant to the rights of business entities, both companies and individual entrepreneurs. This Guide should be read as an entry point to the Court's case-law on business matters rather than as an exhaustive overview. Most of the cases selected for this Guide concern a business context, but readers are also encouraged to consult other Guides on specific Convention Articles and themes.

II. Business entities as applicants: questions of admissibility¹

Article 34 of the Convention

The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ...

A. Who can bring a case before the ECtHR?

1. The concept of the “non-governmental organisation”

2. **Private individuals and companies.** Under Article 34 the Court may receive applications from “any person, non-governmental organisation or group of individuals”. That means that cases against the member States may be brought by private companies and individual entrepreneurs. Foreign private companies may complain about the violation of their Convention rights by any Member State (see, for example, *Forum Maritime S.A. v. Romania*, 2007, where the applicant, a Panama-registered company, complained *inter alia* about the length of a commercial litigation procedure before Romanian courts; or *Rambus Inc. v. Germany* (dec.), 2009, introduced by an American company about the patent proceedings in Europe). By contrast, a State institution cannot be an applicant, and this also concerns regional and municipal authorities (see *Le Gouvernement de la Communauté Autonome du Pays Basque contre l'Espagne*, (dec.) 2003). Compare with a case introduced by the Saami village in Sweden in *Muonio Saami Village v. Sweden* (dec.), 2000).

3. **A State.** While the Convention provides for inter-State cases (between member States), the State cannot lodge an inter-State complaint to vindicate the rights of a legal entity which would otherwise not qualify as a “non-governmental organisation” (see *Slovenia v. Croatia* (dec.), [GC], 2020, § 70). As to non-member States, in *Democratic Republic of Congo v. Belgium* (dec.), 2020, the Court dismissed an application of the DRC which was a minority shareholder in a mining company and which intervened in the criminal proceedings in Belgium as a civil claimant. The Court decided that, by virtue of Article 34, public authorities of non-member States cannot act as applicants before the Court.

4. **Private companies where the State is one of the shareholders.** This question was examined in the case of *Islamic Republic of Iran Shipping Lines v. Turkey*, 2007, §§ 78-84. The respondent Government

¹ The general principles of admissibility are described in detail in the [Admissibility Guide](#).

argued that the applicant company was not *de jure* and *de facto* distinct from the Government of Iran, which fully owned it, and should therefore be considered as a “governmental” organisation. The ECtHR rejected this argument: the applicant company was governed by company law, did not enjoy any special public powers, and was subject to the jurisdiction of ordinary rather than administrative courts. Therefore, it was a “non-governmental” organisation which could lodge an application before the ECtHR. See along the same line *Ukraine-Tyumen v. Ukraine*, 2007, §§ 25-28, which was introduced by a company in which the State owned approximately one third of the applicant’s share capital and which was established *inter alia* to implement a governmental program of cross-border business cooperation. The Court concluded that the company could act as an applicant: it was governed by company law, the State was a simple shareholder without any special rights and the company carried out ordinary business activities.

5. Companies under full Government control. A State-owned bank had, for the purposes of Article 34 of the Convention, to be regarded as a governmental organization so that it could not apply to the Court. In *Ljubljanska banka d.d. v. Croatia* (dec.), 2015, the Court noted the elements to be assessed to find whether the bank is closely affiliated with the State: “the company’s legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control)” (§ 52).

6. Companies performing public functions. While the fact that a company performs a public service is relevant for deciding whether or not it can be an applicant (*Ärztelkammer für Wien and Dorner v. Austria*, 2016, § 36), that “public service” criterion is not, of itself, decisive. In *Österreichischer Rundfunk v. Austria*, 2006, §§ 46-54, the Court examined the institutional structure of the Austrian Broadcasting Corporation (the applicant) and decided that this corporation had *locus standi* to bring a case against Austria. The corporation performed a public function but did not exercise governmental powers: it did not have a broadcasting monopoly, it enjoyed budgetary independence (even though the State had provided it with capital) and the members of the governing body of the broadcasting corporation (even though the majority of them were appointed by State bodies) enjoyed sufficient independence. Thus, the institutional autonomy of the corporation permitted it to lodge a complaint against the State (see also, for companies exercising a public utility function, *Unedic v. France*, 2008, §§ 48-59; and *Croatian Radio-Television v. Croatia*, 2023, §§ 98-121).

7. Relevance of the public and private interests at stake? In *Transpetrol a.s. v. Slovakia (dec.)*, 2011, the Court found an application of a joint-stock company owned by the State to be inadmissible. The Court noted that the applicant company had features of both a “governmental” and a “non-governmental organisation” within the meaning of Article 34 of the Convention. On the one hand, its functioning was governed by the Civil Code and was subject to the jurisdiction of ordinary courts. The applicant company did not have any governmental or other special powers beyond those conferred by ordinary private law. On the other hand, it was listed as a “natural monopoly”, was not subject to the privatisation and enjoyed a unique market position (see § 58). However, it was the essence of the dispute which the applicant company brought before the Court which was decisive: it was a dispute about the ownership of shares, which primarily concerned the interests of the shareholders, rather than the interests of the company itself. The Court therefore based its reasoning on the “unity of interests” between the applicant company and the State as its major shareholder (see §§ 71 *et seq.*): the interest of the applicant company, if any, and the interest of the State were the same and there was no indication that the application sought to further interests other than those that are concurrently interests of the State. In sum, while the corporate structure and role of the applicant company (an ordinary market player or as a holder of certain special functions and powers) were important, the subject-matter and the context of the proceedings play a role as well. See also *Východoslovenská vodárenská spoločnosť, a.s. v. Slovakia*, 2013, §§ 33 *et seq.*, where a municipally-

owned company, with a public service role of water supply and sewage treatment, could not apply to the Court.

8. **Liquidated private companies.** Where the liquidation of an applicant company is related to the impugned interference by a State authority with the company's rights under Article 1 of Protocol No. 1, the Court may continue the examination of the case even where the company formally ceases to exist (see *DAO Neftyanaya Kompaniya Yukos v. Russia* (dec.), 2009, §§ 439 et seq.). In such cases the Court may also accept an application lodged by its shareholders and even, in rare cases, by its managers (see Sub-Section 3 below).

2. The concept of a “victim”, the loss of the victim status, waivers

9. **The notion of a “victim”.** Article 34 of the Convention sets two conditions: an applicant must fall into one of the categories of applicants noted in Article 34, and must have been the *victim* of a violation of the Convention or the Protocols thereto. The concept of “victim” must be interpreted autonomously and irrespective of domestic concepts such as an interest or capacity to act (*The J. Paul Getty Trust and Others v. Italy*, 2024, § 225): the lack of standing under domestic law does not therefore necessarily mean that the applicant cannot claim to be a victim in the Convention terms (*Cingilli Holding A.Ş. and Cingilloğlu v. Turkey*, 2015, § 26). In addition, in order for an applicant to be able to claim to be a victim of a violation of the Convention, there must be a sufficiently direct link between the applicant and the harm which they consider they have sustained on account of the alleged violation (*Pannon Plakát Kft and Others v. Hungary*, 2022, § 24). If an interference with the applicant's rights has not yet happened, for the applicant to claim to be a victim, the harm should be sufficiently certain and imminent, and the applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting the applicant will occur (*Financial Times Ltd and Others v. the United Kingdom*, 2009, § 56): a mere suspicion or conjecture is insufficient (*Senator Lines GmbH v. fifteen member States of the European Union* (dec.) [GC], 2004). The fact that the applicant company is in the process of bankruptcy does not, as such, affect its victim status (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, §§ 89-95).

10. **Premature complaints.** Where the applicant's case has not yet been resolved at the domestic level, such a situation may be analysed either under Article 35 (as a failure to exhaust domestic remedies) or as a question of “prematurity”. As to the latter approach, in *Laurus Invest Hungary KFT and Others v. Hungary* (dec.), 2015, §§ 32 et seq., the applicant companies complained about the withdrawal of some licenses. The domestic courts had obtained an opinion from the Court of Justice of the European Union (CJEU), which explained the conditions on the basis of which compensation for such a measure may be obtained. The Court concluded that the CJEU ruling opened a reasonable prospect of success for the applicants to have their claims adjudicated on the merits and, potentially, to obtain damages for the withdrawal of licences before the domestic courts. Thus, the applicant's complaint in that case was premature. By contrast, there are situations where the applicants are considered victims even if the negative consequences for them have not yet materialized: either their risk to materialise is real and imminent (see *Financial Times Ltd and Others v. the United Kingdom*, 2009, § 56) or the applicants were affected by the contested measure even before its enforcement (see *The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 225-231).

11. **Loss of victim status by the applicant.** The applicant may *lose* victim status if the Government acknowledges a breach of the applicant's rights and makes necessary reparations. As repeatedly held by the Court, “a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of his or her status as a victim unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention” (*Scordino v. Italy (no. 1)* [GC], 2006, § 180; *East West Alliance Limited v. Ukraine*, 2014, §§ 149-153).

12. **Acknowledgment without redress does not suffice.** In *Shesti Mai Engineering OOD and Others v. Bulgaria*, 2011, the applicants – shareholders of a company – complained of a hostile takeover of their

company by another group of shareholders. This takeover became possible because the city court – in breach of the law – decided to change the official records on the composition of the company’s board of directors. The applicant obtained a judicial decision acknowledging that the change of the record had been unlawful and thus invalid: however, by that time, they had lost control of the company due to a series of decisions adopted by the new “illegitimate” management. The Court concluded, that “the procedures available under Bulgarian law failed to provide effective redress to the applicants and give them adequate protection from the consequences of the registration decisions that enabled private persons fraudulently to take control of their company” so that the applicants remained victims of a violation of Article 1 of Protocol No. 1 (§ 91). In essence, the acknowledgement of the breach of the applicant’s rights was not accompanied by redress.

13. Redress should be adequate, but it is primarily for the national courts to quantify the damage. In *Vladimirova v. Russia*, 2018, the company owned by the applicant acquired a cargo of sugar and transferred it to two private individuals, who failed to pay the company back. This sugar was formally seized in the context of criminal proceedings; although later the seizure was lifted, in the meantime the sugar disappeared. While the domestic courts compensated the company for the unlawful acts of the investigator, the applicant contested the amount of compensation before the Court. The Court decided, with regard to pecuniary damage, that the domestic courts were clearly in a better position to determine its existence and quantum that the domestic courts’ findings did not “appear to be arbitrary or unreasonable” and hence the applicant company has lost its victim status (§ 47). However, as regards non-pecuniary damage, the Court will compare whether the amount of domestic redress is commensurate with the amount of awards made by the Court in similar cases under Article 41 of the Convention (see, for example, *Društvo za varstvo upnikov v. Slovenia*, (dec.), 2017, §§ 48-64, or *Central Mediterranean Development Corporation Limited v. Malta*, 2006, § 29, both cases in connection with the redress for the unreasonable length of proceedings).

14. The applicant should make reasonable steps to obtain redress. In *Uniya OOO and Belcourt Trading Company v. Russia*, 2014, the applicant company’s property has been unlawfully seized and destroyed by customs authorities. The applicant company obtained a judgment in its favour, which defined the amount of compensation for the property seized, and this compensation has been paid. The company did not lodge an appeal and did not contest the alleged inadequacy of the compensation, which led the Court to conclude that it no longer had victim status, since the authorities both acknowledged a violation and compensated it for it (§ 281). Compare *Regent Company v. Ukraine*, 2008, §§ 55 and 61, where the Court concluded that the applicant company could claim to be a victim in relation to non-enforcement of an arbitral award even following a transfer to it of the right to claim a debt under it from the original claimant because it had lodged a request with the courts to declare it as a new creditor and to substitute it for the original claimant in the enforcement proceedings on the grounds of their transfer contract, which the courts had allowed and recognised.

15. Waiver of a right by the applicant. The Court would accept that an applicant has, for example, by signing an arbitration clause, voluntarily waived a Convention right. Thus, in *Transado-Transportes Fluviais do Sado, S.A. v. Portugal* (dec.), 2003, the applicant – a transport company – concluded a concession agreement with the port authorities which provided for an arbitration clause (no appeal would be possible against a decision of the arbitration tribunal). The Court noted that it was the company itself, in agreement with another party, which chose to insert such a clause in the concession contract and that it had thereby waived its right to appeal against the decision. The acceptance of an arbitration clause must be “free, lawful and unequivocal” for it to be considered a valid waiver of the guarantees provided by Article 6 § 1 (*Beg S.p.a. v. Italy*, 2021, § 127).

16. Can a claim under the Convention be ceded to another person? While in many jurisdictions claimants in civil proceedings may cede to a third party their right to obtain compensation from the defendant, rights under the Convention are not transferrable in the same manner. As noted by the Court, “the right of individual petition under Article 34 is not a proprietary right. Nor is it transferable as if it were. Whatever the validity in terms of domestic law of [a given transaction], it would be out

of keeping with the nature of the Convention as an instrument protecting basic human rights and the Court itself as its guardian to allow the status of applicant to be transferred at will” (*Pannon Plakát Kft and Others v. Hungary*, 2022, § 26). This is illustrated by the case of *Nassau Verzekering Maatschappij N.V. v. the Netherlands* (dec.), 2011. The applicant, an insurance company, insured the professional liability of another consultancy firm, H. At some point, H. has lost a civil case, allegedly as a result of the negligence of a court bailiff. H. obtained compensation from the applicant company (the insurer) but then concluded a deed of assignment with the insurer transferring all claims which H. might have had under Article 6 of the Convention vis-à-vis the State (arising from the bailiff’s negligence). The Court declared the claim by the insurance company inadmissible: while there are circumstances where an application may be pursued not by the immediate victim but by his, her, or its successor(s), this case was different: the applicant company was not directly involved in the disputed domestic proceeding nor did it acquire “victim status” through any form of kinship, inheritance, institutional connection to H. or by other means of succession. The right of individual petition guaranteed by Article 34 is not a proprietary right and cannot be transferred as such by a “deed of assignment”, even if this deed was a valid transaction under the Dutch law (see also *RF spol. s r.o. v. Slovakia* (dec.), 2010). However, in *Novikov v. Russia*, 2009, the applicant obtained, by deed of assignment, a claim towards a governmental agency before the domestic proceedings began (and thus before his application before the Court). The complaint was introduced under Article 1 of Protocol No. 1 of the Convention; the Court acknowledged the applicant’s “victim” status since the applicant had acquired a claim valid under domestic law qualifying as a “possession” for the purposes of that Article. See also *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, 2021, §§ 57-62, and *Tunnel Report Limited v. France*, 2010, §§ 24-29.

17. The respondent government must raise its objection concerning the victim status of the applicant in good time. The Court requires that objections related to victim status are raised in good time. A belated invocation of this ground may lead the Court to apply the “estoppel” rule (see *Pine Valley Developments Ltd and Others v. Ireland*, 1991, § 41, where the Government was not prevented from relying on this argument). However, in any event, the Court can examine the question of victim status and *locus standi ex officio*, since it concerns a matter which goes to the Court’s jurisdiction (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 93).

3. Shareholders and managers as applicants and the “corporate veil”

18. Shareholders can complain when the interference affects their rights to the shares but not to the company’s property. The Court distinguishes between complaints brought by shareholders about measures affecting their rights as shareholders and those about acts affecting companies in which they hold shares (*Albert and Others v. Hungary* [GC], 2020, § 122). See also *Cingilli Holding A.Ş. and Cingilioğlu v. Turkey*, § 3, 2015, where the applicants – “main shareholders” of a private bank – were accepted by the Court as applicants in a case concerning the State introducing external management of the bank and transferring to a state regulatory authority most of the shareholders’ powers.

19. Piercing of the corporate veil is, as a general rule, not permissible. Linked to the above, the Court does not usually see shareholders as victims of a violation of their company’s rights under the Convention. Similarly, a company cannot be seen as a victim in a dispute amongst its owners (*Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, 2019, §§ 270-274). The Court explained its approach in *Agrotexim and Others v. Greece*, 1995, where a group of shareholders of a brewery complained about various actions of the municipal authorities which allegedly interfered with the business interests of the brewery. The brewery ultimately went bankrupt and official liquidators were appointed to manage the process of bankruptcy. The applicant companies considered that the financial losses sustained by the brewery were to be regarded as their own. They did not complain of a violation of the rights vested in them as shareholders of the brewery (such as the right to attend the general meeting and to vote). In the eyes of the Court, the fact that the applicant companies were nominal majority shareholders was important but not decisive. There may be differences of opinion

amongst a company's shareholders or between shareholders and the management. The Court stressed that, in the context of the liquidation proceedings, the interests of the creditors of the insolvent company precede those of the shareholders. Piercing of the corporate veil is therefore "justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators" (§ 66). Even though the liquidators had been appointed by the State, "there was no evidence to suggest that at the material time [when the case has been introduced before the Court by its shareholders] it would have been impossible as a matter of fact or of law for the liquidators to do so" (§ 68) and "there was no reason to suppose that the liquidators failed to perform their duties satisfactorily" (§ 70). Thus, a company should be represented by its lawfully appointed managers, unless there is a clear evidence of a lack of diligence on their side or a conflict of interests (see also *Papachela and AMAZON S.A. v. Greece*, 2020, § 37). There are some exceptions described in the paragraphs immediately below.

20. The first exception: "one-man" or "vehicle" companies and alike. One of the situations where the Court departs from the general rule was formulated in *Agrotexim and Others v. Greece*, 1995 and concerns companies fully owned by another company or an individual and their interests fully coincide (as confirmed by the Grand Chamber in *Albert and Others v. Hungary* [GC], 2020, § 157). In *G.J. v. Luxembourg*, 2000, the applicant was a 90-percent shareholder of a limited company undergoing liquidation. He complained about the length of the liquidation proceedings. The Court decided that the applicant retained victim status because his complaint related to the activities of the liquidators and because "he was in effect carrying out his business through the company and had, therefore, a direct personal interest in the subject-matter of the complaint" (§ 24). (Compare with *Agrotexim and Others v. Greece*, 1995, §§ 62-72, where the Court stressed the risk of disagreements amongst the shareholders and the unstable character of majorities which may define the company's policies, a risk which is absent in one-man companies. (See also *KIPS DOO and Drekalović v. Montenegro*, 2018, where the Court underlined that, in one-man companies, there is no risk of differences of opinion among shareholders or between shareholders and a board of directors, and no risk of competing interests; *Pine Valley Developments Ltd and Others v. Ireland*, 2001, § 42, where the first of the applicant companies was a wholly-owned subsidiary of the second company which, in turn, was fully owned by the third applicant, a private individual; *Nikolay Kostadinov v. Bulgaria*, 2022, where the applicant had 50% of the shares in the relevant company and had acted with the owner of the other 50% of the company in the domestic proceedings; and *The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 225-231, as regards the victim status of trustees of a trust). For further examples see *Rustamkhanli v. Azerbaijan*, 2024, §§ 29-30, and *Mickovski v. North Macedonia*, 2022, §27.

21. The second exception where piercing of corporate veil is permissible: impossibility of pursuing the case otherwise. As held by the Court in *Albert and Others v. Hungary* [GC], 2020, § 145 (a case concerning the restructuring of a bank and the victim status of the shareholders), it may accept a complaint brought by the shareholders of a company because "it is practically or effectively impossible for the company to apply to the Convention institutions through the organs set up under its articles of association". Most often this situation may arise either in the context of the alleged "hijacking" of the company's bodies either by a competing group of shareholders, or by the authorities (see also *Feldman and Slovyanskyy Bank v. Ukraine*, 2017, §§ 28-29, and *Vladimirova v. Russia*, 2018, §§ 40-41. For the victim status of an applicant company as a former shareholder of a bank whose shares were revoked and cancelled following a government decision on the bank's restructuring and recovery, see *Project-Trade d.o.o. v. Croatia*, 2020, §§ 43-47). For further examples see *CDI Holding Aktiengesellschaft and Others v. Slovakia* (dec.), 2001, § 4; *Meltex Ltd and Movsesyan v. Armenia*, 2008, § 66; and *Credit and Industrial Bank v. the Czech Republic*, 2003, § 51.

22. Cases introduced by both the sole shareholder and the vehicle company. Where a case is introduced by a "vehicle company" and its sole shareholder, the question arises how many "victims" there could be in that a case. "In numerous cases which were brought by both a company and its

shareholders, the Court has accepted applications for examination only in so far as they were brought by the company itself and has rejected the remainder for lack of standing” (*Albert and Others v. Hungary* [GC], 2020, § 141). But other outcomes are also possible: thus, in *Pine Valley Developments Ltd and Others v. Ireland*, 1991, the Court found that *both* the company and its shareholder were victims. By contrast, in the case of *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, 2003, the Court found that “both applicants are so closely identified with each other that it would be artificial to regard each as an applicant in its/his own right. In reality, the first applicant is the second applicant’s company and the vehicle for his business projects. On that understanding, the Court will consider the alleged violations of the Convention from the standpoint of the second applicant alone” (§ 21).

23. Complaints by managers of a company. A manager of a company may complain of an alleged breach of the Convention in respect of the company he/she runs only as the legal representative of the latter, not in his/her own name. Rule 47 § 3 requires a manager to submit a document or documents showing that the individual who lodged the application has the standing or authority to represent the applicant company. In *Amat-G Ltd and Mebaghishvili v. Georgia*, 2005, § 33, the company manager was found not to be a victim as his complaint was based exclusively on the non-enforcement of a judgment given in favour of “his” company and as there was nothing to suggest that he could have claimed to be an indirect victim of the alleged violation of the Convention affecting the rights of the limited liability company. But see *Korporativna Targovska Banka AD v. Bulgaria*, 2022, where the bank’s former executive directors had been exceptionally entitled to apply to the Court on behalf of this bank, even though they had done so when they had already been removed from office, and the bank had to be represented, under Bulgarian law, by liquidators. (See also *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, §§ 90-95, and the cases cited therein, on the question of the victim status of directors). The fact that the domestic courts recognised the manager’s standing in the domestic proceedings does not automatically confer on him the status of a “victim” (see, in the context of a complaint under Article 6, *Roseltrans, Finlease and Myshkin v. Russia* (dec.), 2004).

24. Who can represent a company in liquidation? As noted above (see *Agrotexim and Others v. Greece*, 1995, §§ 62-70), as a general rule, the Court accepts the company’s lawfully appointed representatives. However, the process of appointment of those representatives may be flawed and may, of itself, raise an issue under the Convention in which case the Court may accept a complaint introduced by the main shareholders and former managers even where, at national level, they are not seen as lawful representatives of the company (*G.J. v. Luxembourg*, 2000, §§ 22-25). In *Credit and Industrial Bank v. the Czech Republic*, 2003, §§ 46-52) the applicant was a bank which had been placed under compulsory administration by the Czech National Bank. The main shareholder of the applicant bank, who was also its former chairman, complained that former management of the bank had not been allowed to take part in the proceedings in which an external administrator had been appointed. The Government argued that only the administrator and not the former chairman can act on behalf of the bank. The Court rejected this objection. The complaint in this case related to the very fact that a compulsory administrator had been appointed without a proper opportunity being granted to the bank which was the subject of the administration order to oppose it (§ 51) (see also, in the same line, *Capital Bank AD v. Bulgaria* (dec.), 2004)).

25. Complaints of minority shareholders. Minority shareholders can, as a rule, only complain about measures affecting their rights as shareholders, but in that case they act in their own name and not as representatives of the company. The case of *Olczak v. Poland* (dec.), 2002, concerned a decision of the board of receivers of a bank to cancel certain shares, including those belonging to the applicant: the impugned measures were not directed against the company (it served rather the interests of the company) but against the interests of one of its shareholders (§§ 58-59; see also *Albert and Others v. Hungary* [GC], 2020, §§ 126-134). In *Erol Aksoy v. Türkiye*, 2026, the Court, in reaching a conclusion that the shareholder’s complaint was incompatible *ratione personae*, noted the applicant’s minimal direct shareholding in the relevant company, and adding that “the mere fact that the domestic courts

considered the applicant as a legitimate plaintiff does not, in itself, confer victim status under the Convention” (see § 112).

26. What if the applicant company has been liquidated after the application had been introduced?

The fact that a legal person is declared bankrupt during the Convention proceedings does not necessarily deprive it of its victim status (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 94). The same applies to a company which has ceased to exist and whose sole shareholders have indicated their interest in continuing the application in its name (*Euromak Metal Doo v. the former Yugoslav Republic of Macedonia*, 2018, §§ 32-33, concerning a tax dispute under Article 1 of Protocol No. 1). The case of *OAO Neftyanaya Kompaniya Yukos v. Russia* (dec.), 2009, concerned the tax liability of a large oil company which had been ultimately liquidated and the respondent Government argued that the proceedings before the Court should be discontinued because the company has been liquidated. The Court responded that, when the case was introduced, the company still existed as a legal entity and that “the various alleged breaches [of the Convention] concern the tax assessment and enforcement proceedings in respect of the applicant company which eventually resulted in its bankruptcy and ceasing to exist as a legal person. Striking the application out of the list under such circumstances would undermine the very essence of the right of individual applications by legal persons, as it would encourage governments to deprive such entities of the possibility to pursue an application lodged at a time when they enjoyed legal personality” (§ 443). See also *Google LLC and Others v. Russia*, 2025, §§ 52-53, where the Court refused to discontinue the examination of a liquidated applicable company’s claim, because the case raised “issues of general interest beyond [its] specific circumstances” (compare, however, with *Gärdean and S.C. Grup 95 SA v. Romania* (revision), 2013, § 16).

27. Absorption, merger and acquisition. When the original legal entity disappears (full absorption) and a universal transfer of assets and liabilities takes place, the absorbing company retains victim status. *Schweizerische Radio- und Fernsehgesellschaft and publisuisse SA v. Switzerland*, 2020, § 43, concerned a company which ceased to operate after having lodged its application with the Court, but its activities were taken over by another firm which wished to pursue the proceedings. See also *Carrefour France v. France* (dec), 2019, §§ 48 and 52, and *Iofil AE v. Greece* (dec.), 2021.

B. Who interfered with the right? Positive obligations of the State in regulating private relations

28. Interference must be attributable to a State authority. In assessing whether the impugned act can be attributed to the State, the Court relies on the case-law about whether a legal entity can be considered to be a “(non)-governmental organisation” within the meaning of Article 34 (see Section II A (1) above) and thus whether the State may be held *directly* liable for actions of that legal entity. Thus, a disciplinary penalty imposed on a barrister by the Spanish Bar, a public-law corporation, was deemed to be an interference by a “public authority” (see *Casado Coca v. Spain*, 1994, § 39). By contrast, in *Kotov v. Russia* [GC], 2012, which concerned fraudulent actions of a bankruptcy liquidator, the Court noted that the liquidator in the Russian legal order enjoyed a considerable amount of operational and institutional independence from the State and did not act as a State agent: consequently, the respondent State could not be held *directly* responsible for his wrongful acts (§ 107).

29. The concept of “positive obligations”. Under certain conditions, the State’s omission (failure to act) may be considered as a breach of the Convention. The case of *Fadeyeva v. Russia*, 2005, concerned the State’s positive obligation to have and put in effect environmental standards protecting residents of a city from the industrial pollution emanating from a privately-owned steel plant, §§ 89-93, and the case of *Bohlen v. Germany*, 2015, concerned the alleged failure of the State to protect the

applicant – a famous musician – from the unauthorised use of his name in an advertisement campaign, §§ 45-60.

30. Positive or negative obligations? The Court has repeated, in different contexts, that the boundaries between the State’s positive and negative duties do not lend themselves to precise definition, and the applicable principles are similar: the Court often finds it unnecessary to categorise under either (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], §§ 101 and 102, in the context of Article 1 of Protocol No. 1, or *Fuentes Bobo v. Spain*, 2000, §§ 42-50, in the context of Article 10). Thus, the case of *Hatton and Others v. the United Kingdom* [GC], 2003, concerned noise caused by low-flying aircrafts. The Court noted that the noise disturbances were not caused by the State but emanated from the activities of private operators. However, the Court observed, “broadly similar principles apply whether a case is analysed in terms of a positive duty on the State or in terms of an interference by a public authority”, so the Court is not required to decide whether the present case falls into the one category or the other (§ 119). In some situations, the question of whether the alleged interference is imputable to the State or to a private actor may be important. For example, the Court has repeatedly held that the State cannot be required to cover debts of private companies which went bankrupt (see, for example, *Mihăilescu v. Romania* (dec.), 2003, or *Fomenko and others v. Russia* (dec.), 2019, § 171): its obligations in such situations are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through a bailiff service or bankruptcy procedures (*Kotov v. Russia* [GC], 2012, § 90). By contrast, if the defaulting debtor is the State itself or a State-owned company, the State is responsible and cannot therefore cite lack of funds as an excuse for not honouring the debt (see *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, 2007, § 26; see also *Tokel v. Turkey*, 2021, §§ 58-63).

31. Public functions delegated to private companies. As the Court held in *Costello-Roberts v. the United Kingdom*, 1993, § 27, a State could not absolve itself from its obligations under the Convention by delegating those obligations to private bodies or individuals. In the case of *Buzescu v. Romania*, 2005, the applicant – a lawyer – complained about his disbarment by the Romanian Union of Lawyers. The Court noted that the Union was invested with administrative as well as rule-making prerogatives by law, pursued general interest aims, its decisions were subject to the jurisdiction of administrative courts and, in the eyes of the domestic law, it fulfilled a public service role and issued administrative acts. It therefore concluded that State responsibility was engaged as a result of the administrative decisions of the Union (§ 78).

32. Private enterprises created by the State authorities. A recurrent question in the Court’s case-law is whether companies owned or controlled by the State and performing some of the functions of the State – like public schools, hospitals, etc. – should be seen as representing the State or rather as ordinary commercial entities. The case of *Copland v. the United Kingdom*, 2007, concerned the monitoring of correspondence of an employee by the employer, a college which is a statutory body possessing certain powers in the educational sphere. The Government accepted that the college was a public body for whose actions the State was directly responsible under the Convention so that the case was analysed through the prism of an “interference by a public authority” (a violation was found due to the absence of legal regulations regulating monitoring at the relevant time). Where the State declines to assume responsibility for the debts of such private enterprises, the Court may examine whether the “socially owned companies”, which were at different stages of the privatisation process, enjoyed “sufficient institutional and operational independence from the State” to absolve the latter from its responsibility under the Convention (see *R. Kačapor and Others v. Serbia*, 2008, § 98).²

² For the State’s liability for the debts of the State-owned companies, see Section IV E (1) below.

III. Lawfulness, legitimate aim and proportionality: general principles

33. In analysing whether an interference with the applicant's rights is compatible with the Convention, the Court usually applies a three-pronged test: the Court assesses:

- whether an interference was “in accordance with the law”,
- whether it pursued a legitimate aim, and
- whether it was “necessary in a democratic society”.

Developed in the context of Articles 8 to 11, the same test has been applied by the Court under other Convention provisions.

A. An interference must be “lawful”

34. **Rule of law.** The rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (*Iatridis v. Greece* [GC], 1999, § 58). It is well-established that the expression “in accordance with the law” requires that the impugned measure should have *some basis* in domestic law, and the legal basis must also have a certain *quality* (see *Lekić v. Slovenia* [GC], 2018, § 94; *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, 2015, § 37; *Yel and Others v. Turkey*, 2021, § 89-90); namely, it must be sufficiently:

- accessible,
- precise and
- foreseeable in its application.

(see also *National Federation of Sportspersons' Associations and unions (FNASS) and Others v. France*, 2018, §160). Finally, the legal basis must provide adequate and sufficient guarantees against abuse and arbitrariness (*East West Alliance Limited v. Ukraine*, 2014, § 167; *Vinci Construction and GTM Génie Civil and Services v. France*, 2015, § 66).³

35. **How precise and foreseeable?** Clarity and foreseeability of the law mean that the existing legal framework should give individuals or companies an “adequate indication as to the circumstances in which and the conditions on which the authorities are entitled to resort to measures affecting their rights under the Convention” (*National Federation of Sportspersons' Associations and unions (FNASS) and Others v. France*, 2018, § 160). The scope of the “foreseeability” requirement depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed (*Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 96. Compare *Versaci v. Italy*, 2025, §§ 107-120, where the legislation allowed public security licences not to be allocated to people not considered to be of “good character”). When the law is too general, it can be seen as insufficiently precise. In *Copland v. the United Kingdom*, 2007, §§ 45-49, the State argued that the monitoring of the employee's emails and telephone usage by the employer was based on a statutory provision which allowed the employer – a public college – to do “anything necessary or expedient” for the purposes of providing higher and further education. The Court did not accept that this very general clause constituted a sufficient legal basis for the interference (see also *Versaci v. Italy*, cited above).

36. **Laws conferring unfettered discretion on the administration.** Any legal discretion granted to the executive should not be “expressed in terms of an unfettered power” (*Hasan and Chaush v. Bulgaria* [GC], 2000, § 84). Thus, in *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, 2007, the national law entitled the national broadcasting authority to reject applications for broadcasting licences on

³ See as to lawfulness” in the context of Article 1 of Protocol No. 1, Section IV E (1) below

broadly formulated grounds, without holding a public hearing, without giving reasons for its decision and without meaningful judicial review of its discretionary powers. The Court found that this regulatory framework did not meet the Convention requirement of lawfulness. The case of *OOO Flavus and Others v. Russia*, 2020, concerned the decision of the Russian authorities to block access to a website for “unlawful content”: the Court noted that the blocking decision was issued before the judicial examination of the question of whether – and which part of – the content was “unlawful”, without notification to the parties, and without the courts examining the proportionality of this measure (§§ 39-43). An absence of reasoning in a decision authorising an audit of bank transactions may also be analysed in terms of “unfettered discretion” (see *Ferrieri and Bonassisa v. Italy*, 2026, § 81). However, a wider discretion may be given by the legislator to the executive authorities in regulating some specific areas of business especially if there is a specific national context such as the fight against organised crime: in *Versaci v. Italy*, 2025, which concerned a refusal by the police to grant the applicant a license to carry out bookmaking activities because he failed to fulfil the “good character” requirement, the Court concluded that the use of this broad basis for denying the license was not contrary to the “lawfulness” criterion, §§ 105-126). Moreover, note that the defects of the law and the absence of procedural safeguards do not automatically lead to a breach of the Convention.

37. Foreseeability of the law in the business context. The Court has reiterated that “the law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true in relation to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on this account be expected to take special care in assessing the risks that such activity entails” (*Forminster Enterprises Limited v. the Czech Republic*, 2008, § 65). In this case the Court noted that the act (acquiring securities) of the applicant company had taken place in the course of its professional activities and considered that, given the unsettled national business environment and the considerable volume of the transaction, the applicant company, if dealing with due care, presupposing *inter alia* legal assistance, could not be regarded as lacking a reasonable opportunity to foresee the consequences of its acts (§ 67). In *Delfi AS v. Estonia* [GC], 2015 (concerning the duty of internet media platforms to moderate users’ posts) the Court observed that “persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation, can on this account be expected to take special care in assessing the risks that such activity entails” (§ 122). In *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, concerning restrictions on the mussel business due to the EU environmental regulations, the Court noted that the company, which had been in the mussels business for years, should have been aware of the preparation of the contested legal regulations, even though they had been made effective at short notice (§ 108).

38. “Lawfulness” must be assessed with reference to all norms regulating the issue, including case-law. The concept of “law” includes everything that goes to make up the written law, including enactments of lower rank than statutes (*National Federation of Sportspersons’ Associations and unions (FNASS) and Others v. France*, 2018, § 160; *Gorlov and Others v. Russia*, 2019, § 89), as well as regulations adopted by professional regulatory bodies under independent rule-making powers delegated to them by Parliament (*Pařízek v. the Czech Republic*, § 43). Case-law of the courts is also a source of “law” within the meaning of the Convention: the Court has repeated, in different contexts, that in any system of law there is an inevitable element of judicial interpretation and there will always be a need for the elucidation of doubtful points and for adapting to changing circumstances: it is in the first place for the national authorities, notably the courts, to interpret and apply national law (see, for example, *Fortum Oil And Gas Oy v. Finland* (dec.), 2002). In sum, the “law” is the provision in force as the competent courts have interpreted it (*Pařízek v. the Czech Republic*, 2023, § 43).

39. Interpretation of national law is primarily the task of the national courts, the Court’s supervisory power in this respect is limited. As the Court repeated on many occasions, it is primarily for the

national authorities, notably the courts, to interpret and apply domestic law: the Court would not review the domestic court’s reading of the national law unless it is “arbitrary or manifestly unreasonable” (see, for example, *Centre for Democracy and the Rule of Law v. Ukraine*, 2020, § 108). It is important, however, that the domestic courts explain the legal basis of their decisions. Thus, in *Khodorkovskiy and Lebedev v. Russia*, 2013, unpaid corporate taxes had been recovered from the managers of the company found guilty of tax evasion. The Court noted that although “piercing of the corporate veil” in such cases was not *per se* impermissible (§ 877), it should have a legal basis, and in that case such basis was unclear: neither the law nor the case-law clearly provided for the liability of the company’s managers for the outstanding tax debts of the company. Moreover, the domestic court’s conclusion on a civil claim worth over EUR 500 million ran to a few lines and contained neither any reference to legal norms, nor any comprehensible calculation of damage. This led the Court to conclude that the measure was unlawful (see §§ 874-885). In *Radelić v. Croatia*, 2025, the Court found a violation of Article 1 of Protocol No. 1 since the national law had only been interpreted and applied by analogy as allowing the confiscation of the proceeds of crime – which had been acquired by a company – from an individual, its shareholder and director, who did not directly or indirectly benefit from the crimes, §§ 53-63. In analysing the quality of domestic legislation the Court may sometimes refer to the opinion of other tribunals, such as the CJEU (for example, see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 151; see also *S.A. Dangeville v. France*, 2002, §§ 46-48).

40. Examination of lawfulness in the context of positive obligations. Usually, when the Court examines compliance of the State with its positive obligations to regulate private relations it does not examine “lawfulness” of the Government’s inaction. As to Court said in *Fadeyeva v. Russia*, 2005, where the State is required to take positive measures, the choice of means falls within its margin of appreciation, and even if the State has failed to apply one particular measure provided by domestic law, it may still fulfil its positive duty by other means. Therefore, in those cases the criterion ‘in accordance with the law’ of the justification test cannot be applied in the same way as in cases of direct interference by the State (§ 96).

41. Safeguards against arbitrariness as an element of the “lawfulness” requirement. Procedural safeguards against abuse of the discretion given to the executive by the legislature have been examined by the Court either as an element of the “lawfulness” requirement (for example, in the context of Article 10, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, concerning a lack of clarity in the legislation regulating the allocation of broadcasting licenses, §§ 156-158. See also *Ferrieri and Bonassisa v. Italy*, 2026, concerning the tax authorities obtaining the applicant’s financial information without a judicial or other independent review of such measures, in breach of the lawfulness requirement of Article 8 § 2 of the Convention (§ 105)).⁴

B. Legitimate aim

42. A rarely used criterion. There have been few cases where the Court has either expressed doubts as to the existence of a legitimate aim while leaving this question open (see, for example, *Drozdyk and Mikula v. Ukraine*, 2024, § 47) or ruled that the interference did not satisfy this criterion (see, for example, the case of *OOO Memo v. Russia*, 2022, § 47, where the Court decided that a defamation claim lodged by a regional administration in its own name did not pursue the legitimate aim of the “protection of the reputation ... of others” since, in essence, a public authority did not have a “reputation” to be defended by such means). However, the Court prefers to construe “legitimate aims” broadly, which means that in practice it is nearly always possible to link the impugned measure to at least one of the aims listed in the relevant Convention provision. In such cases the Court proceeds to the next step in its analysis – “necessity in a democratic society”. Even where the Court doubts that a measure pursued a legitimate aim it often proceeds on the assumption that it did if, in any event, it

⁴ However, the safeguards against the abuse have also been examined as an element of the “necessity/proportionality/fair balance” test – see Section III C below for further detail.

was disproportionate (see, for example, *Gashi v. Croatia*, 2007, § 43, in the context of a case under Article 1 of Protocol No. 1; see also *Google LLC and Others v. Russia*, 2025, §§ 71-73).

43. **Possible simultaneous examination of the “legitimate aim” and the “necessity” questions.** While normally a finding that a particular measure did not pursue a legitimate aim would make any further analysis unnecessary (for example, *Tkachevy v. Russia*, 2012, § 50), in rare cases the Court has examined both questions of legitimate aim and proportionality (see, for example, in the context of a dispute about the reimbursement of unlawfully perceived VAT, *S.A. Dangeville v. France*, 2002, § 58 and § 61).

C. Analysis of necessity/proportionality/fair balance

44. **Necessity and other similar concepts.** While the notion of “necessity” is expressed differently depending on the Article in question. Thus, most commonly in the context of Article 1 of Protocol No. 1 the Court reiterates that “an interference with the peaceful enjoyment of possessions must strike a ‘fair balance’ between the demands of the general interest of the community and the requirements of the protection of the individual’s fundamental rights (*Jahn and Others v. Germany* [GC], 2005, § 93).

45. **Elements of the necessity test.** While the Court has not developed a structured and comprehensive definition of “necessity”, some elements of the necessity test can be derived from the Court’s case-law.

- The impugned measure must be able to achieve the aim: for example, in *Éditions Plon v. France*, 2004, § 53, the Court found that maintaining the prohibition of the publication of a book containing medical secrets about a former French president was ineffective to safeguard them, since the information had already been published on the internet;
- The Court may compare the measure chosen with others to establish where other measures could be of comparable efficiency but less intrusive (see, for example the *Advisory Opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement (request no. P16-2023-001)*, 2023, § 114, concerning the withdrawal of job clearance on the grounds of potential disloyalty). However, the Court has often stressed that the State is not required to demonstrate that, without the impugned measure, the legitimate aim would not be achieved: rather, the Court has to be satisfied that the measure taken remained within the margin of appreciation (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, 2014, § 103, concerning a ban on secondary strikes. On the “margin of appreciation” see the same section, few paragraphs below;
- At its simplest, the proportionality test compares the severity of the measure with the importance of the aim sought to be achieved: for example, in *Džinić v. Croatia*, 2016, §§ 67-81, the applicant was suspected of committing serious economic crimes and his property was seized in view of a possible confiscation. The Court accepted that the seizure of his property pursued a legitimate aim but found a violation because the value of the property seized was almost ten times more than the amount of potential pecuniary gains from the alleged illegal activities. The Court sometimes compares the relative importance of the interests sought to be protected: in *Eweida and Others v. the United Kingdom*, 2013, the Court examined the policy prohibiting employees to wear ostensible religious symbols. While the policy was justified in respect of nurses (health and safety considerations on a hospital ward), it was not in respect of flight attendants, where the competing interest was the employer’s wish to project a certain corporate image (§§ 89-101). The Court also takes a more holistic approach to necessity by assessing several factors; the Court describes this, in the context of Article 1 of Protocol No. 1, as follows: “the character of interference, the aim pursued, the nature of property rights interfered with, and the behaviour of the

applicant and the interfering State authorities are among the principle factors material to the assessment whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants” (*Forminster Enterprises Limited v. the Czech Republic*, 2008, § 75 *in fine*).

46. Procedural safeguards and necessity. Safeguards against abuse have been examined by the Court either as an element of the “lawfulness” requirement (see above, the Section III A) or as an element of the “necessity/proportionality/fair balance” test. In this latter regard, see *Société Colas Est and Others v. France*, 2002, where the Court examined searches conducted in the company’s premises in the framework of a competition-related investigation. In finding that the impugned searches were not proportionate to the legitimate aims pursued, the Court focused on the fact that the inspectors’ investigative powers gave them exclusive competence to determine the expediency, number, length and scale of inspections, without any prior judicial authorisation (§ 49). In addition, in *Naumenko and SIA Rix Shipping v. Latvia*, 2022, §§ 56 *et seq.*, the Court identified some shortcomings in the process of judicial authorisation of a search and seizure operation in the applicant company’s premises, but concluded that these shortcomings did not manifest themselves during the impugned operation and were counterbalanced by other procedural safeguards.

47. The margin of appreciation. The margin of appreciation defines the extent of the Court’s deference vis-à-vis the decisions of the national authorities on matters related to the question of necessity. While certain chapters below describe the application of the margin of appreciation, certain factors, common to most Convention provisions, emerge.

- **A European consensus and international law.** In *Société de conception de presse et d’édition and Ponson v. France*, 2009, the Court noted that there was a European consensus as to the need to strictly regulate the advertising of tobacco products and a general trend to the same effect worldwide. The Court found that it did not have to take into account the actual impact on tobacco consumption of a ban on advertising (including indirect advertising): the fact that the offending publications were regarded as capable of inciting people, particularly young people, to consume such products was, for the Court, a “relevant” and “sufficient” reason to justify the interference. (§§ 57-58). The diversity of practice in the European States speaks in favour of a wider margin of appreciation (see *Casado Coca v. Spain*, 1994, § 55, concerning the ban on advertisement of the barristers’ services, or *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, 2014, § 91 and 92, concerning the ban on secondary industrial actions, or *M. A. and Others v. France*, 2025, §§ 150-153, concerning regulation of the sex industry).
- **The quality of the domestic decision-making.** The Court confirms that it is not its role to re-assess the evidence and review the facts, or re-interpret the domestic law (see, amongst many other authorities, *SA-Capital Oy v. Finland*, 2019, §§ 73-74, *BENet Praha, spol. s r.o. v. the Czech Republic*, 2011, § 97, *BTS Holding, a.s. v. Slovakia*, 2022, § 65) unless the domestic authorities are considered to have failed to properly establish the facts, to address key and relevant points raised by the applicant, or to conduct a proper balancing exercise (see, in the context of Article 6, *Google LLC and Others v. Russia*, 2025, §§ 102-107; in the context of Article 10, *Terentyev v. Russia*, 2017, § 24; and in the context of Article 1 of Protocol No. 1, *Megadat.com SRL v. Moldova*, 2008, §§ 62-79). Where the domestic courts conduct a proper balancing exercise, by applying principles consonant with the Court’s case-law, they are considered to have remained within their margin of appreciation (see, for example, *Florindo de Almeida Vasconcelos Gramaxo v. Portugal*, 2022, § 124, in the context of Article 8, concerning the surveillance of the employees by their employers). Where general legislative measures are at issue, the Court may take into account the quality of the parliamentary and judicial review of the necessity of the measure (see *Animal Defenders International v. the United Kingdom* [GC], 2013, §§ 114-116). In principle, the more convincing the general justifications for the general measure, the less importance the Court

attached to its impact in the particular case (*Ognevenko v. Russia*, 2018, § 69, with further references).

- **The relative importance of the competing public and private interests.** Some aims or policy areas call for a wider margin of appreciation and, consequently, for a less exacting scrutiny by the Court – for example, protecting national security (see *UAB Ambercore DC and UAB Arcus Novus v. Lithuania*, 2023, § 116, concerning the authorities refusal to permit building a data centre), combatting the mafia (see *Raimondo v. Italy*, 1994, § 30, concerning confiscation of assets of presumably criminal origin), regulating the purchase of sexual services (see, for example, *M. A. and Others v. France*, 2025, § 47, where the Court examined a criminal-law prohibition of the purchase of sexual services as part of a wide-ranging legislative approach to combatting prostitution and human trafficking), or implementing gun control policy (see *Ian Edgar (Liverpool) Limited v. the United Kingdom* (dec.), 2000). However, in certain cases the private rights of applicants prevail over those public interests: the demolition of an illegally constructed building was proportionate under Article 1 of Protocol No. 1 but violated the Article 8 rights of those home-owners who actually lived in that building (see *Ivanova and Cherkezov v. Bulgaria*, 2016, and compare the Court’s reasoning under Article 1 of Protocol No. 1 and Article 8, §§ 49-62 and 68-76).

48. The role of the business aspect of the case in the proportionality analysis. In some contexts, the Court has acknowledged that, in the overall balancing exercise, business interests – namely, those which have primarily an economic dimension – may be of a somewhat lesser importance compared to other competing interests. For example, in cases under Article 6 concerning the application of anti-trust regulations, the Court has noted that such cases “typically involve complex and often wide-ranging economic matters and related factual issues, which means that the relevant elements of evidence will also be multifaceted”, that “as a rule, the financial penalties applicable in this field are not imposed on natural persons but on corporate entities, quantified on the basis of the harmful effects of the anti-competitive conduct and taking into account the business turnover of the entities” (see *SA-Capital Oy v. Finland*, 2019, § 78). In cases under Article 8, concerning searches in business premises, the Court has acknowledged that “the fact that the measure was aimed at legal persons meant that a wider margin of appreciation could be applied than would have been the case had it concerned an individual” (*Bernh Larsen Holding AS and Others v. Norway*, 2013, § 159; see also *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, 2016, § 84). In cases under Article 10, the Court has noted that, in the field of competition, States enjoy a wide discretion, and that commercial speech –the statements made for purposes of competition, such as advertisement – “fall outside the basic nucleus protected by the freedom of expression and received a lower level of protection than other ‘ideas’ or ‘information’” (*Markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989, § 32). The fact that the operator of a news platform had an economic interests in the posting of users’ comments – some of which were offensive – was relied upon by the Court in *Delfi AS v. Estonia* [GC], 2015, where the Court concluded that the owner of the news portal had a duty to moderate those comments (compare with *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, 2016, where the Court distinguished between commercial and not-for-profit media platforms, § 64). Moreover, as noted above, businesses are supposed to act with heightened care and must carefully assess potential risks: in *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, which concerned a temporary prohibition on commercial mussel fishing for environmental reasons, the Court noted that the applicant company had been, for many years, involved in the mussel fishing, an activity that was heavily regulated, its continuation was subject to annual authorisations, the company should have anticipated relevant legal developments in the environmental field, was expected to exercise a high degree of caution in its activities and should not have invested in new material when the legislative framework was about to change (see §§ 117 *et seq.*). When discussing the proportionality of a refusal of a private television company to broadcast a television commercial, the Court considered that a margin of appreciation was particularly essential in commercial and advertisement matters (see *VgT Verein gegen Tierfabriken v. Switzerland*, 2001, § 69). Finally, in

dealing with the alleged unfairness of contractual and legislative provisions ensuring enforcement of a defaulted loan contract, the Court in *Nina Dimitrova v. Bulgaria*, 2024, § 142, noted that the applicants in this case were private consumers and not the professional business persons who are supposed to accept greater risks when starting a business venture (compare to *SIC - Sociedade Independente de Comunicação, S.A v. Portugal (no. 2)*, 2026, § 44, where the Court stressed that the company’s interests in broadcasting a certain video were mainly commercial, or, along the same lines, *Sharabidze and Others v. Georgia* (dec.), 2026, where the Court noted that the applicant had not been a private consumer but “a commercial entity, acting through its sole owner, who [had] engaged in a business venture and, as established by the domestic courts, [had been] informed of the risks involved”, § 35).

49. Protecting business interests may be necessitated by the general interest of the public. There may be an important public interest behind protecting or even promoting business interests. Thus, in *F.J.M. v. United Kingdom*, 2016, the Court noted that giving full effect to the agreements concluded between tenants and private home owners ensures stability of contracts and protects the private rent market: it noted that the balancing exercise between the private owners and private tenants had been conducted at the legislative level, when the relevant provisions had been put in place. In such a context, the courts were not required to conduct the balancing exercise themselves and could simply enforce contractual obligations. In *Halet v. Luxembourg* [GC], 2023, § 147, the Court noted that the unauthorised disclosure of confidential information by an employee not only hurts the business interests of the employer but also gives rise “to other detrimental consequences, by affecting, at one and the same time, public interests, such as, in particular, the wider economic good, the protection of property, the preservation of a protected secret such as confidentiality in tax matters or professional secrecy, or citizens’ confidence in the fairness and justice of States’ fiscal policies”.

IV. Protection of possessions (Article 1 of Protocol No. 1)

Article 1 of Protocol No. 1 to the Convention

1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

50. Legal entities are explicitly mentioned. Under Article 1 of Protocol No. 1 “[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions.” Accordingly, protection of property under Article 1 of Protocol No. 1 is the only right in the Convention and its Protocols that explicitly extends to legal persons (legal persons may complain under other Convention provisions in accordance with Article 34).

A. What is a “possession” protected by Article 1 of Protocol No. 1?⁵

51. **Clear-cut cases versus cases where existence of “possessions” is in doubt.** In most cases the existence of a “possession” and the applicant’s legal title to it is not contested, and the interference is evident (for example *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], § 140, where the applicant – an air charter company - complained of the decision of the Irish authorities to impound its aircraft; or *Uniya OOO and Belcourt Trading Company v. Russia*, 2014, §§ 272-309, concerning the seizure and destruction of imported goods by the customs authorities; see also *Fornaci Marzo ‘88 S.p.A. v. Italy*, 2026, § 27). However, the Court is often confronted with applications concerning disputes about the legal title itself, or where the very existence of “possessions” or their scope and economic value are at issue. In deciding such cases the Court, on the one hand, interprets the concept of “possessions” autonomously, but, at the same time, has to take into account the domestic legal framework.

52. **Autonomous meaning of “possessions”.** The Court has repeatedly held that the concept of “possessions” in Article 1 of Protocol No. 1 has an autonomous meaning, namely, independent of the formal classifications in domestic law (*Bélané Nagy v. Hungary* [GC], 2016, § 73; *Saghinadze and Others v. Georgia*, 2010, § 103). It covers both *existing* property or assets, and a “legitimate expectation” of obtaining some property or asset. At the same time, not every pecuniary claim, demand, etc. enjoys the protection of Article 1 of Protocol No. 1. The Court treats as “possessions” only such claims which are “sufficiently established to be enforceable”, which amount to an “assertable right under the domestic law” and satisfy “legal conditions laid down in the domestic law” (see the outline of the relevant case-law in *Bélané Nagy v. Hungary* [GC], 2016, §§ 75 *et seq.*; see also *Radomilja and Others v. Croatia* [GC], 2018, §§ 142-43). Article 1 of Protocol No. 1 does not guarantee the right to acquire property (*Kopecký v. Slovakia* [GC], 2004, § 35). In other words, while the Court recognises that the term “possessions” has an autonomous meaning, it also acknowledges that, to be treated as “possessions”, the applicant’s claim should have had some basis in domestic law. Where the existence of possessions is disputed, the Court applies a holistic approach, taking into account both law and fact, and decides in each case whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by Article 1 of Protocol No. 1 (*Fabris v. France* [GC], 2013, § 51). Thus, the retroactive annulment of a title to real estate does not mean that the applicant had no “possessions”, especially where the State had previously registered the title and where the applicant company had been treated by the State as the owner of the property (*Batkivska Turbota Foundation v. Ukraine*, 2018, § 55; see also the *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 1997, §§ 62-70, where the retroactive legislation extinguished the applicants’ claims, and *Naskov and Others v. North Macedonia*, 2023, §§ 69-79, concerning revocation of a registered title to a land plot).

53. **Conditional claims and entitlements.** There are no “possessions” within the meaning of Article 1 of Protocol No. 1 if the applicant’s claim cannot succeed because it does not satisfy all the conditions which national law attaches to the enjoyment of the rights or receiving benefits sought. Thus, there is no legitimate expectation to financial aid based on a national law that clearly made the “right” to such aid conditional on the availability of sufficient emergency funds and that did not provide for any rules on the amounts to be granted or on the distribution of the emergency fund’s limited financial resources (see *Traina Berto and Others v. Italy* (dec.), 2022, §§ 45-46). In *Eólica de S. Julião, Lda v. Portugal* (dec.), 2024, §§ 94-95, the Court found that the licence for the operation of wind turbines was made conditional on the presentation of a noise impact study. The applicant company had not fulfilled this condition, which meant that it did not have a legitimate expectation to obtain a licence

⁵ For more detailed case-law concerning the notion of “possessions” in general see the *Guide on Article 1 of Protocol No. 1*.

and hence a “possession” within the meaning of Article 1 of Protocol No. 1. In the same vein, in *Galakvoščius v. Lithuania* (dec.), 2020, §§ 56-61, the applicant, a candidate in local elections, was asked for a refund of the electoral deposit: the Court concluded that the applicant, who was not eligible for a refund under the then existing rules, had no “possessions” within the meaning of Article 1 of Protocol No. 1. In *Jarre v. France*, 2024, §§ 48-49, the Court concluded that the applicant had “possessions” in respect of their inheritance claim because they satisfied the four conditions of the law which made them eligible to claim parts in the deceased’s estate (§§ 48 and 49). In the same vein, conditional claims that lapse as a result of the non-fulfilment of a necessary condition are also not regarded as “possession” (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 172). In a case where the disbursement of the Government’s aid to the businesses which suffered losses as a result of a natural disaster was made conditional upon the availability of funds in the State budget, the Court concluded that the applicant’s claim to receive those funds did not amount to “possessions” (*Traina Berto and Others v. Italy* (dec.), 2022, § 47). The Court noted, in particular, that the applicable regulations allocated only limited resources to support the immediate recovery of business activities and clarified that any grant would be determined within the limits of the resources made available by the emergency fund and by any further ministerial allocation in the future. Therefore, the relevant national law clearly made the “right” to obtain financial aid conditional on the availability of sufficient funds. Under these circumstances, the Court concluded that the applicants’ claim to receive financial aid from the emergency fund could not be said to have enjoyed a sufficient basis in national law to be regarded as an “asset” (*ibid.*, § 45).

54. **Hoping to obtain assets.** The mere *hope* of recognition of a property right or a claim cannot be considered a “possession”. Thus, in a number of cases concerning restitution of property seized by the previous communist regime, the Court noted that the hope that a long-extinguished property right may be revived is not protected by Article 1 of Protocol No. 1. For example, in the case of *Von Maltzan and Others v. Germany*, (dec.) [GC], 2005, §§ 74-114, the applicants were heirs to the owners of land or buildings that had been expropriated by the Soviet occupational forces between 1945 and 1949 and later by the authorities of the German Democratic Republic (GDR). As regards the act of expropriation as such, the Court noted that it had been beyond the Court’s temporal or personal jurisdiction (*ratione temporis* and *ratione personae*): the modern Federal Republic of Germany does not have any responsibility for acts committed during the Soviet occupation or perpetrated by the GDR against its own nationals (*ibid.*, § 81). As to those legal obligations which Germany took upon itself following the reunification, they were clearly established in the Indemnification and Compensation Act of 1994, and the State complied with these obligations in full. Previous political declarations on the question of compensation, or the case-law of the Constitutional Court, did not create any concrete claims which the applicant could expect to enforce (see also *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], 2002, §§ 73-74).

55. **Legal entitlements which had been extinguished before the entry into force of the Convention.** In *Molnar Gabor v. Serbia*, 2009, §§ 43-51, the applicants had deposits in a State-owned bank. Following the banks’ failure to return the deposits, the applicants sued the bank and obtained, in 1993, an enforceable court order in their favour. However, by virtue of a law of 1998, the debts of the bank were to be repaid only in 2012. As to the original deposits and any legal claims related thereto, they were formally extinguished in 1998. Another law adopted in 2002 pushed forward the repayment of the debts to 2016 and restructured these deposits into Government bonds. The Court concluded that the legislation extinguished the impact of the final judgment in question well before the respondent State’s ratification of the Convention. The applicant, therefore, “cannot now be said to have a continuing right to the enforcement sought”. As to the subsequent restructuring of the public debt, the Court accepted that “given the dire reality of the Serbian economy at the relevant time” and the wide margin of appreciation afforded to States in respect of matters involving economic policy, the gradual reimbursement of the funds struck a fair balance between the general interest of the community and the applicant’s persisting legitimate claim to his original savings” (*ibid.*, § 50). (Compare with *Broniowski v. Poland* [GC], 2004, §§ 129-133, which concerned compensatory claims

related to land lost as a result of boundary changes following the Second World War: the compensatory scheme introduced by the Polish legislation and claims arising from it were characterized as “possessions” by the Court. See also *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], 2014, where the Court concluded that deposits made in the former Yugoslav banks were not “extinguished” with the dissolution of Yugoslavia, and that the claims arising from the failure of the State-owned banks to repay these deposits continued to exist when the Convention entered into force in respect of Serbia and Slovenia which owned those banks (§§ 74-80)).

56. The concept of “legitimate expectation”. By contrast to “mere hopes” of obtaining property, certain claims may be regarded as “legitimate expectations” which are protected by Article 1 of Protocol No. 1 (*Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, § 31). The concept of a “legitimate expectation” was developed in *Pine Valley Developments Ltd and Others v. Ireland*, 1991, § 51: in that case, the Court found that a “legitimate expectation” arose when an outline planning permission had been granted, in reliance on which the applicant companies had purchased land with a view to its development, which was their principal line of business. The planning permission, which could not be revoked by the planning authority, was “a component part of the applicant companies’ property”. See also *Stretch v. the United Kingdom*, 2003, §§ 34-35, in respect of exercising the option to renew a long-term lease to erect buildings for industrial use. In *Béla Németh v. Hungary*, 2020, § 27, the Court introduced a notion of “an asset in expectancy”: namely, the right of the winner of an auction to buy real estate property which had not yet been formally registered in his name.

57. Proprietary interest should have a sufficient legal basis to be protected under Article 1 of Protocol No. 1. Whether an expectation to obtain something or to keep something of economic value is “legitimate” is defined primarily with reference to national law. There should be a “sufficient basis” for a claim (for example, settled case-law of the domestic courts confirming its existence). By contrast, where there is a dispute as to the correct interpretation and application of domestic law and the applicant’s claim is subsequently rejected by the national courts as unfounded, no “legitimate expectation” arises (see *Kopecký v. Slovakia* [GC], 2004, §§ 49-52, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 173). The Court is reluctant to disagree with the national courts in their interpretation of the national law: as often stressed by the Court, “it is not its function to take the place of the national courts, its role being rather to ensure that their decisions are not flawed by arbitrariness or otherwise manifestly unreasonable” (see, for example, *Zamoyski-Brisson v. Poland* (dec.), 2017, § 82, in the context of a dispute over the existence of a right to indemnity for property confiscated in 1944; or *Zhigalev v. Russia*, 2006, §§ 144-145, in the context of a dispute about the privatisation of the State’s agricultural farms).

58. Article 1 of Protocol No. 1 can apply when there is a dispute about the validity of the legal title to some property. In *Rybářství Třeboň a.s. and Rybářství Třeboň Hld. a.s. v. the Czech Republic*, 2024, the applicant company had obtained, in the early 1990s and within the framework of the State programme of privatisation, certain pieces of land. Later it was ordered to return this land because it had belonged previously to the Church, and, under the law, lands confiscated from the Church by the former communist regime had not been eligible for privatisation. Although the company’s title to this property was annulled as null and void *ab initio*, the Court nevertheless found that Article 1 of Protocol No. 1 was applicable, under the heading of “deprivation” (*ibid.*, § 83), although no violation of that provision was found in the end. (Compare with *Atima Limited v. Ukraine*, 2021, where the Court found that the applicant company had been unlawfully deprived of its “possessions”, and that is despite the fact that the domestic courts had declared the applicant company’s title to the contested property to have been null and void *ab initio*, §§ 34-44).

59. “Legitimate expectation” may be created by well-established case-law. In *Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, § 31, the Court held that the applicants had a “legitimate expectation”, on the basis of a series of decisions of the Court of Cassation, that their claims deriving from shipping accidents would be determined under the general law of tort, according to which such

claims came into existence as soon as the damage occurred. The “legitimate expectation” in this case concerned how the claim (the “asset”) would be treated under domestic law. (Compare *BCR Banca pentru Locuințe S.A. v. Romania* (dec.), 2023, § 135 where the existence of some case-law confirming the applicant’s interpretation of the law did not create a legitimate obligation since the national judicial authorities finally preferred a different, but at the same time not unreasonable, interpretation of the law in the applicant’s case).

60. Political declarations or promises do not create a “legitimate expectation”. Absent any basis in law, an applicant cannot invoke legitimate expectations based on political statements from certain members of Government favourable to the applicant’s restitution claims (*Bata v. Czech Republic* (dec.), 2008, § 77). However, in *Zelenchuk and Tsytsyura v. Ukraine*, 2018, §§ 122-147, the Court examined the legislative history related to the adoption of a moratorium on the sale of agricultural land in Ukraine and decided that the authorities promised to gradually abolish this moratorium, but then failed to keep this promise and, without giving any good reason, extended it several times. Such a failure of the authorities to “meet their self-imposed goals and deadlines” resulted in the prolonged period of uncertainty for the applicants who could not fully enjoy their property, which amounted to a violation of Article 1 of Protocol No. 1 (§ 147).

61. A “legitimate expectation” may be created by a prolonged *status quo*. Even when there was no legal basis for a claim to a title which the applicant sought but failed to assert in the domestic proceedings, the lapse of time may sometimes lead the Court to conclude that the individual’s interest in the *status quo* had become vested in a sufficiently established manner for engaging the application of Article 1 of Protocol No. 1. Thus, in *Öneryıldız v. Turkey* [GC], 2004, § 129, the Court recognised that the applicant had a proprietary interest in his unauthorised dwelling, even though in the eyes of domestic law the applicant had no established right to that dwelling. However, toleration by the authorities of a certain situation does not necessarily make the applicant’s expectation “legitimate”, especially where the applicant knew from the beginning that his legal title was precarious. The Court has to decide whether the behaviour of the authorities gave the applicant a firm hope that some *status quo* would be maintained (see *BCR Banca pentru Locuințe S.A. v. Romania* (dec.), 2023, § 129 and §§ 131-138, concerning the obligation of a financial institution to repay to the State certain bonuses it paid off to its customers, and *Depalle v. France* [GC], 2010, §§ 77-93, concerning the demolition of houses built on land falling within the category of maritime public property. See also *Oklešen et Pokopališko Pogrebne Storitve Lpold Oklešen S.P. c. Slovénie*, 2010, § 62, concerning the *de facto* nationalisation of the funeral business, in which the applicant company had been previously involved).

62. What if the domestic law is not clear? In *Albu and Others v. Romania*, 2012, § 47, the Court noted that “the courts gave varying and even conflicting interpretations of the relevant legal provisions, resulting in a long-lasting divergence in the case-law on the matter”. In such conditions the Court concluded that the applicant’s claims to receive those arrears did not have the character of a “possession” within the meaning of Article 1 of Protocol No. 1. By contrast, in the case of *Aliyeva and Others v. Azerbaijan*, 2021, §§ 109-111, the Supreme Court had departed from its previous case-law on the expropriation for State needs and had not awarded additional statutory compensation to the applicants whose property was expropriated for expanding a highway. The Court held that the applicants had a legitimate expectation to such compensation under a sufficiently established and clearly identifiable line of Supreme Court case-law. Thus, in a situation of continuous uncertainty in the case-law the Court may not acknowledge that the applicant had “possessions” whereas, in a situation of a sudden change in a well-established case-law, the Court’s approach may be different.

63. Existence of a “legitimate expectation” is ultimately a question of interpretation of facts and of the domestic law. The Court usually defers to the national authorities, and in particular courts, in the matters of interpretation of evidence, facts, and of the national law. The Court has sometimes observed that “no ‘legitimate expectation’ can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant’s submissions are subsequently rejected by the national courts” (see, for example, *BCR Banca pentru Locuințe S.A. v.*

Romaina (dec.), 2023, § 121). In *OOO Khabarovskaya Toplivnaya Kompaniya v. Russia* (dec.), 2017, §§ 57-76, the applicant company tried to obtain reimbursement of TVA. The applicant company's claim was rejected for several reasons: in particular, the courts were not persuaded that business operations to which the applicant company referred were real, and that goods were actually received by and payment made to the partner companies, and they considered that some of the information provided by the applicant company was false. The Court accepted the domestic courts' findings as to the absence of real transactions and agreed that the applicant company indicated false information on its bills, and that the domestic courts' reasoning, which led to the rejection of the applicant company's claims, was not manifestly unreasonable or arbitrary. There had been no well-established case-law which would support the applicant company's interpretation, and, in any event, in most of the similar cases the reality of the business operations has not been in doubt. Therefore, the applicant company's claim was not considered sufficiently established to constitute "possessions" (for a similar approach of the Court, see *Immorks Makedonija Doo Skopje v. North Macedonia* (dec.), 2024, §§ 31-41). However, where the eligibility of the applicant company to some tax returns is not disputed (see, for example, *Buffalo S.r.l. in liquidation v. Italy*, 2003, § 28) the Court will find that the applicant's "possessions" were affected (for a finding that the domestic courts' conclusions were manifestly unreasonable or arbitrary see *Centre for Democracy and the Rule of Law v. Ukraine*, 2020, § 108; *NIT S.R.L. v. the Republic of Moldova* [GC], 2022, § 160).

64. Do the possessions at issue belong to the applicant? Certain cases also raise questions of fact. Thus, in *Uniya OOO and Belcourt Trading Company v. Russia*, 2014, the two applicant companies imported alcohol from Europe to Russia. The customs authorities seized several cargos of this alcohol and then allegedly destroyed it. The Government argued that the applicant companies failed to prove to whom exactly the alcohol belonged at the moment of the seizure. The Court, however, rejected this argument, noting that for many years the first applicant company was regarded by the domestic authorities as the owner of the consignment and was required to pay customs duty for alcohol imports. Even assuming that the first applicant company was simply a depositary, the Court observed that, under the contract, the second applicant was the "shipping party" and the first was the "receiving party". So, the Court did not have to define the exact legal title to the alcohol but found, in the absence of other would-be owners and in the light of the circumstances of the importation, that the alcohol for all practical purposes belonged to the second applicant (§§ 302-303).

65. Even if the applicant's legal title had not been recognised, the applicant may still have an economic interest which may be seen as "possession". As a general rule, the Court does not find a "legitimate expectation" where there was a dispute as to how domestic law should be interpreted and applied, and where the applicant's arguments in that regard were ultimately rejected by the national courts. However, the Court has accepted that "the fact that the domestic laws of a State do not recognise a particular interest as a 'right' is not always decisive" (*BCR Banca pentru locuințe S.A. v. Romania* (dec.), 2023, § 129). Indeed, the Court has acknowledged that applicants had "possessions" even though the national courts came to a different conclusion. In this respect, the Court's finding that an applicant had *some proprietary interest* which may be defensible under Article 1 of the Protocol No. 1 is to be distinguished from a *specific title* or *specific claim* which an applicant tried but failed to defend. In *Fener Rum Erkek Lisesi Vakfı v. Turkey*, 2007, §§ 50-60, the Treasury applied for the annulment of the applicant foundation's title to a plot of land, claiming, with reference to a Court of Cassation precedent from 1974, that the foundation had been precluded from acquiring such property. Although at the domestic level, the Turkish courts found that the applicant foundation's title was invalid, the Court noted that the applicant had enjoyed, for over 30 years, its property as the rightful owner and had paid the various property taxes in respect of it, so the invalidation of the title amounted to a deprivation of its possessions. In *Iatridis v. Greece* [GC], 1999, § 54, the applicant had been running an open-air cinema theatre between 1978 and 1989. The title to the land on which this cinema had been built was contested between the State and some private individuals. However, as noted by the Court, "before the applicant was evicted, he had operated the cinema for eleven years under a formally valid lease without any interference by the authorities, as a result of which he had

built up a clientele that constituted an asset”, which amounted to a property right. *Anheuser-Busch Inc. v. Portugal* [GC], 2007, §§ 62-87, concerned the use of the “Budweiser” trademark in Portugal. While the courts initially ruled in favour of the applicant American company (finding that “Budweiser” was not an appellation of origin), the Supreme Court found that the appellation of origin was indeed protected by virtue of a bilateral agreement between the Czech and the Portuguese governments. Although the applicant company’s right to the “Budweiser” trademark had not been finally confirmed by the Portuguese courts and even though trademark rights were conditional, the application for the registration of a trademark, in the circumstances, “gave rise to interests of a proprietary nature” (§ 78).

66. Certain legal entitlements, by their nature, are subject to change and do not create “legitimate expectations” for the future. In *Energyworks Cartagena S.L. v. Spain* (dec.), 2024, §§ 48-49, the Court found that the applicant had no legitimate expectation that subsidies for its renewable energy facility would remain unchanged in the future, as the domestic courts had consistently upheld the government’s regulatory powers to modify subsidies in the energy sector. Thus, the modified regulation only affected future income that lacked a sufficient basis in national law as to qualify as “possessions” within the meaning of Article 1 of Protocol No. 1 (Compare *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 1997, § 69, where the Court have expressed doubts as to whether the applicant’s claim was sufficiently established, given a legislative intervention which reversed previous case-law (favourable to the persons in the applicant’s situation), and where the Court proceeded on the assumption that the applicant companies had “vested rights to restitution”, § 70).

67. Interference by depreciation of the applicant’s “possessions”. The Court may conclude that there has been an interference with “possessions” even if the applicant kept the legal title to property, but cannot derive any benefit from it or the property’s economic value has diminished. In *Pannon Plakát Kft and Others v. Hungary*, 2022, §§ 41-59, the Court qualified as “possessions” the loss of business opportunities related to a legislative measure restricting certain advertisement activities. The applicant advertising companies retained “possessions” in the form of roadside advertising hoardings that were specifically designed for roadside use. The removal of these assets pursuant to new legislation constituted a legislative interference with the applicants’ “possessions”, which translated into lost market opportunities. While the assets in question – billboards – were not physically confiscated and could still be sold for parts, they had lost their economic value in terms of their primary purpose, which led the Court to conclude that there had been an interference with the applicant companies’ rights under Article 1 of Protocol No. 1 (*ibid.*, §§ 45-46).

68. “Inchoate” legal entitlements of undetermined scope. While political declarations do not create “legitimate expectations” as a general rule, the Court recognises proprietary rights where the State has recognised at the legislative level the existence of a general legal obligation to, for example, reimburse property and compensate some losses. The Court’s case-law on the Soviet “commodity bonds” illustrates this point. In both *Grishchenko v. Russia* (dec.), 2004, and *Malysh and Others v. Russia*, 2010, the Court examined the regulation of the reimbursement of USSR “commodity bonds”. The 1995 framework law recognised that these bonds were a part of Russia’s “internal debt”, but the law itself did not provide for any particular mechanism of restructuring that debt at the sub-legislative level and did not allocate funds for the redemption of those bonds. In *Grishchenko v. Russia* (dec.), 2004, the Court noted that the “actual scope of the State’s obligations and, more importantly, the manner of their discharge were not fixed” in the 1995 law. Accordingly, that claim did not constitute a “possession” within the meaning of Article 1 of Protocol No. 1. In 2000 the Government adopted the relevant regulations, introduced a mechanism of redemption and the applicant obtained compensation for his bonds calculated accordingly. The Court concluded that the applicant’s complaint was manifestly ill-founded. By contrast, in *Malysh and Others v. Russia*, 2010, the Court examined another category of bonds, covered by the 1995 framework law; for those bonds the implementing regulations were not adopted until 2010. The Court found that the framework law

created an “entitlement to obtain some form of compensation for, or redemption” of the bonds, even though that right “was created in a kind of inchoate form, as its materialisation was conditional on the enactment of implementing legislation” (§ 71). Since the applicants’ expectation was not – and could not be, in the absence of a redemption mechanism – quantified, the Court examined, not the inadequacy of the compensation for the Soviet bonds, but rather the prolonged situation of uncertainty about the mechanism and the level of compensation (§§ 69-71).

69. Encumbered possessions and precarious titles. While titles to property can be conditioned or encumbered, they can still be seen as “possessions” within the meaning of Article 1 of Protocol No. 1, although this factor would weigh heavily in the Court’s analysis of proportionality of any interference with the same. For example, in *Depalle v. France* [GC], 2010, §§ 77-93, the applicants occupied houses built on land falling within the category of maritime public property. For many years, the authorities tolerated houses built in this zone, temporarily authorised occupancy and even tried to negotiate possible legalisation of the houses with the owners, under certain conditions. However, the applicant had always known that the decisions authorising occupancy were precarious and revocable so that the authorities could not be deemed to have contributed to maintaining uncertainty regarding the legal status of the property. The Court noted that such tolerance could not result in a legalisation *ex post facto* of the unlawful *status quo* and, while the applicant’s house amounted to his “possessions”, he must have anticipated that one day he would have to demolish it.

70. The question of the existence of “possessions” can be examined together with the question of the justification for an interference. In *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 1997, the Court expressed doubts as to whether the applicant’s claim was sufficiently established in domestic law and then noted that the question of the existence of “possessions” was “indissociably bound up with their complaints that they were unjustifiably deprived of those possessions” (§ 70).

71. Deterioration of economic conditions cannot engage the State’s liability under Article 1 of Protocol No. 1 if there was no clear failure of the Government to perform its functions. In *Tunnel Report Limited v. France*, 2010, the applicant company was in the transportation business related to the functioning of the underwater tunnel between the UK and France. Numerous incidents involving illegal migrants using the tunnel to reach the UK forced the main partner of the applicant company to reduce the traffic through the tunnel, which led to the loss of business for the company and resulted finally in its bankruptcy. The applicant company attributed its bankruptcy to the failure of the French State to stop the attempts of migrants to use the tunnel for crossing. The Court did not accept this argument, concluding that, in the long run, the bankruptcy of the applicant company cannot be explained by the failure of the French police to intervene, even despite some isolated incidents when the tunnel was closed because of the influx of migrants (§ 46).

72. “Possessions” must be private to be protected. As transpires from the case of *Former King of Greece and Others v. Greece* [GC], 2000, §§ 61-65, “possessions” which have a status of public property or have a *sui generis* and quasi-public character may not be protected by Article 1 of Protocol No. 1 (although in that case the Court concluded that, since the Greek State treated the former monarch’s property as private property, Article 1 of Protocol No. 1 applied).⁶

B. Particular forms of “possessions” related to business operations

73. Land, money, merchandise, transport, industrial equipment, etc. Since any asset having some economic value may be seen as a “possession”, the Court makes no difference between “possessions” of private individuals or those of business entities: land and real estate property (see *Pine Valley Developments Ltd and Others v. Ireland*, 1991, § 51; *Di Marco v. Italy*, 2011, §§ 45-53; *Maharramov v.*

⁶ As to whether companies which are partially State-owned may be applicants before the Court, see Section II A (1) above, on the concept of the “non-governmental” organisation.

Azerbaijan, 2017, § 54); means of transport or production (see *Pleshkov v. Romania*, 2014, concerning confiscation of a fishing vessel); and confiscated money in cash and the imposition of obligations to pay taxes, administrative fines, damages, etc. (*Lavrechov v. the Czech Republic*, 2013, and *Costa Santos v. Portugal* (dec.), 2023) were seen as “possessions” by the Court.

74. State bonds and other financial instruments. Article 1 of Protocol No. 1 can apply to bonds that are traded on the capital market and are transferred from one bearer to another (although the market value of such instruments may fluctuate depending on a number of factors, *Mamatas and Others v. Greece*, 2016, § 90). Bondholders have, in principle, a “legitimate expectation” to have their claims met in accordance with the contractual clauses on nominal value (*ibid.*), although bonds which have no economic value due to the insolvency of the bank which issued them might not be qualified as “possessions” (*Pintar and Others v. Slovenia*, 2021, § 92). On the one hand, in *Freire Lopes v. Portugal* (dec.), 2023, the Court found that a bank’s agreement to buy the applicant’s shares at a certain price was a sufficiently established financial instrument (akin to a bond) to constitute a possession (§ 78). On the other hand, since Article 1 of Protocol No. 1 covers *existing* possessions and does not encompass the right to *acquire* property, a “special-purpose” or “commodity” State bond, initially providing for a right to receive a car in kind, did not entail a Convention right to become the owner of a specific car so that the State’s offer of a reimbursement at standard car prices was in line with Article 1 of Protocol No. 1 (see *Grishchenko v. Russia* (dec.), 2004). Even where the creditor had a sufficiently specific legitimate expectation, this does not mean that the State must honour its obligations in full and in all conditions – the question of the existence of possessions must be distinguished from the question of the justification of an interference (see *Mamatas and Others v. Greece*, 2016 which concerned the restructuring of the public debt during the financial crisis, which resulted *inter alia* in a cut in the nominal value of bonds issued by the State, § 117).

75. Shares in a company as “possessions”. Most of the shares are traded on the market (a regulated stock exchange or otherwise) and thus have a certain value, albeit dependent on the economy of the State and the economic situation of the particular company. While certain measures taken by the authorities may affect the value of the shares, as a general rule, this does not give to the shareholders a right to bring a case to the Court.⁷ However, if the shares are taken from the shareholder, or if the “bundle of rights” which a shareholder possesses is somehow reduced, that may be analysed as an interference with the shareholder’s possession (for example, *Bramelid and Malmström v. Sweden*, Commission decision, 1982, pp. 82-83, concerning a compulsory buy-off of the shares from the minority shareholders; *Olczak v. Poland* (dec.), 2002, where the cancellation of the shares in a bank by a decision of the board of receivers appointed by the National Bank of Poland instead of the existing governance bodies, led to a reduction of the applicant’s share in the company from 45% to 0.4 %; in *Shesti Mai Engineering OOD and Others v. Bulgaria*, 2011, the interference consisted of an arbitrary replacement of the directors of the company, and the subsequent increase of the company’s capital, which led to a complete loss of control of the company by a group of its shareholders, § 77; and *Forminster Enterprises Limited v. the Czech Republic*, 2008, § 63, which concerned the freezing of shares belonging to a company within the framework of criminal proceedings: that was considered as a “control of use” of the applicant’s property. See also *Sebeleva and Others v. Russia*, 2022. This is true no matter how big the applicant’s shareholding (*Reisner v. Turkey*, 2015, §§ 44-45), although minority shareholders of a company cannot as a rule complain about the measures targeting the company itself, as opposed to the title to the shares or rights conferred by the shares (see, for example, *Erol Aksoy v. Türkiye*, 2026, where the Court, in order to reach a conclusion that the shareholder’s complaint was incompatible *ratione personae*, noted the minimal proportion of the direct shareholding in the company which was directly affected (§ 112), and noted that the mere fact that

⁷ As to the standing to bring a case on behalf of the company, see Section II (3) above on victim status and piercing the corporate veil.

the domestic courts acknowledge the applicant's procedural standing as a "plaintiff" did not, in itself, confer victim status under the Convention (*ibid*).⁸

76. Shares as a "bundle of rights". The Court has noted on several occasions that a "share in a company is a complex object. It certifies that the holder possesses a share in a company together with the corresponding rights" (*Reisner v. Turkey*, 2015, § 45). These rights include, not only an indirect claim on company assets, but other rights, especially voting rights and the right to influence the company, which may stem from the share (*Marini v. Albania*, 2007, § 165). Therefore, an interference with possessions may take the form of a total loss of shares (as in *Reisner v. Turkey*, 2015), a decrease of the applicant's part in the company's capital due while the nominal number of the shares remaining the same (as in *Shesti Mai Engineering OOD and Others v. Bulgaria*, 2011), or the inability of the applicant to use some of the "corresponding rights" of the shareholder within the management structure of the company (as in *Forminster Enterprises Limited v. the Czech Republic*, 2008).

77. Fluctuations in the economic value of shares. Only shares which have some economic value may be seen as a "possession" (*Sovtransavto Holding v. Ukraine*, 2002, § 91). In *Pintar and Others v. Slovenia*, 2021, § 91, the Court found that Article 1 of Protocol No. 1 applied to the cancellation of the applicants' shares, irrespective of whether the shares were of questionable economic value.

78. Need to distinguish between an interference with the company's possessions and an interference with shareholders' rights. Under most circumstances, the company's possessions do not simultaneously qualify as the shareholder's possessions, so the company's shareholders do not have standing if the company's interests are affected, but there was no *direct* interferences with the shares or corresponding rights of the shareholders see; *Albert and Others v. Hungary* [GC], 2020, §§ 124, 157-166.⁹

79. Licenses and concessions. A licence to run a business constitutes a "possession": its revocation is an interference with the rights guaranteed by Article 1 of Protocol No. 1 (*Megadat.com SRL v. Moldova*, 2008, § 65 – licence to provide Internet connection services; *Korporativna Targovska Banka AD v. Bulgaria*, 2002, § 184 – a bank licence; *Fredin v. Sweden (no. 1)*, 1991, § 40 – exploitation licence for a gravel pit, *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, 2005, § 49, a licence to run a bonded warehouse, *Rola v. Slovenia*, 2019, § 72, the licence of a bankruptcy liquidator). The withdrawal of a licence or another administrative authorisation may be seen as an interference with "possessions" even where the applicant could – in theory at least – continue its business by other means (see *Bimer S.A. c. Moldova*, 2007, § 49, the withdrawal of a licence to operate a duty free shop; *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, § 89 where a mussel seed fishing authorisation, connected to the usual conduct of the applicant's aquaculture business, was considered by the Court as a "possession" and the temporary prohibition on mussel seed fishing was regarded as an interference with this possession; and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, §§ 175-179, concerning a licence for nationwide terrestrial television broadcasting which gave rise to a legitimate expectation of being allocated broadcasting frequencies which had a sufficient basis to constitute a "possession").

80. Intellectual property rights. Patents and copyrights qualify as "possessions" under Article 1 of Protocol No. 1 (with respect to patents, see *Smith Kline and French Laboratories Ltd v. the Netherlands*, Commission decision of 1990, p. 89; with respect to copyrights, see *Melnychuk v. Ukraine* (dec.), 2005). The mere application for the registration of a trademark may, pending registration, give rise to interests of a proprietary nature and, even if the registration of the trademark is conditional and can

⁸ On the question of "piercing the corporate veil", see Section II A (3) above.

⁹ For more details, see Chapter II A (3) above.

only become final if it does not infringe legitimate third-party rights, the applicant may be considered to have proprietary rights under national law (*Anheuser-Busch Inc. v. Portugal* [GC], 2007, § 78).

81. Loss of future profits, business opportunities or profitable contracts. As a general rule, future income does not constitute “possessions” unless it has already been earned or is definitely payable (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 172, particularly if it is confirmed by an enforceable court order). A distinction should be made between sums which have already been earned/are definitely payable, and those which are not. Thus, the volume of business enjoyed by a liberal profession – with no fixed income and no guaranteed turnover – which is subject to the hazards of economic life does not constitute a “possession” (*Greek Federation of Customs Officers, Gialouris and Others v. Greece*, Commission decision, 1995, which concerned the loss of income by custom officers following Greece joining the single market and abolishing custom clearance for EU-made goods). If, however, there is *certainty* that certain sums were to be paid, were it not for the subsequent impugned events, such amounts may be seen as “possessions”. Thus, in *Kurban v. Turkey*, 2020, the applicant had concluded a public procurement contract for a construction project, but this contract was subsequently annulled on the grounds that criminal proceedings had been brought against the applicant for offences relating to previous public procurements. The Court held that the annulment of a procurement contract by the authorities amounted to an interference with his “possessions”. In *Bimer S.A. v. Moldova*, 2007, § 51, the Court noted that, although the revocation of the licence to operate a duty-free shop did not prevent the applicant company from pursuing other retail activities, it nevertheless prevented the company from operating its duty-free business at a particular location, which amounted to an interference with its possessions (see also *Pannon Plakát Kft and Others v. Hungary*, 2022, §§ 41-59, concerning the impossibility for the applicants to derive benefits from their property, due to new legislation on roadside advertisement).

82. Professional practices, clientele, and goodwill. Article 1 of Protocol No. 1 extends to professional practices, their clientele, and their goodwill, as these are elements of a certain value that have, in many respects, the nature of private rights and thus they constitute “possessions” (see *Van Marle and Others v. the Netherlands*, 1986, § 41, concerning a practice of accountants; *Döring v. Germany* (dec.), 1999, concerning the disbarment of a lawyer). The Court has held, for instance, that an applicant had an existing possession in respect of his professional practice of providing funeral services during a period when it was a free market activity and until such moment when such funeral services became designated as public services to be performed by municipalities (*Oklešen and Pokopališko Pogrebne Storitve Leopold Oklešen S.P. v. Slovenia*, 2010, §§ 57-58). The case of *Könyv-Tár Kft and Others v. Hungary*, 2018, §§ 31-32 provides a comprehensive overview of the case-law. The applicant companies had been in the business of schoolbook distribution and over the years had built up close relations with the schools located in their area: their clientele was an essential basis for their established business and had, in many respects, the nature of a private right and thus constituted a “possession”, which was destroyed by the creation of a State monopoly in 2011 and 2012. In *Iatridis v. Greece* [GC], 1999, § 54, the Court held that operating a cinema for eleven years, without the interference of the authorities, had resulted in the creation of a clientele which constituted an asset, even though the validity of the lease agreement regarding the land on which the cinema had been built was in dispute. Similarly, the goodwill of a business, which is relevant to the decision of clients to choose this business over others, qualifies as a possession (*Tre Traktörer AB v. Sweden*, 1989, §§ 43 and 53, concerning the clientele of a restaurant; *Malik v. the United Kingdom*, 2012, § 99, concerning the clientele of medical practitioners; *Ian Edgar (Liverpool) Limited v. the United Kingdom* (dec.), 2000, concerning the loss of the clientele of a gun retailer following the introduction of strict gun control legislation in the UK; and *Mickovski v. North Macedonia*, 2022, §§ 32-33, concerning the loss of goodwill and clientele of a private bailiff). An argument concerning the potential “loss of clientele” was at the heart of the case of *M. A. and Others v. France, nos. 63664/19 and 4 others*, 2025. This case was introduced by French sex workers and concerned legislation which provided for the criminal punishment of clients of prostitutes. While the case was examined under Article 8 (because the applicants, all professional prostitutes, argued that the legislation infringed their personal autonomy,

sexual freedom and security), the applicants' arguments and the Court's reasoning had an economic dimension (see in particular § 154) since the impugned measure affected the applicants' main source of earnings the Court also noting that, in regulating the sex industry which involves difficult moral questions, the State enjoys a wide margin of appreciation.

83. Judicial awards of a pecuniary nature. A judgment debt that is sufficiently established to be enforceable is a "possession" (*Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994, § 64; *Burdov v. Russia*, 2002, § 40; *Katona and Závorský v. Slovakia*, 2023, § 52). The Court also considers final and binding arbitral awards to be sufficiently established to amount to a "possession", including arbitral awards rendered by international arbitral tribunals (*BTS Holding, a.s. v. Slovakia*, 2022, § 53). There are two large categories of cases concerning judicial awards: those where awards have not been enforced (at all, or within some reasonable time) due an inaction or omission of the State authorities (see *Burdov v. Russia*, 2002, § 40), and those where a judicial award has been set aside due to the arbitrary reopening of proceedings and the annulment of the final judgment, in violation of the principle of *res judicata* (in *Maltseva v. Russia*, 2008, § 40, the Court found a violation of Article 1 of Protocol No. 1 because a domestic court had reopened a case based on a Supreme Court's judgment which it interpreted as a "newly discovered circumstance". See also *Brumărescu v. Romania* [GC], 1999, § 77).

84. Judgment debts of the State versus judgment debts of private entities. The extent of the State's obligation varies depending on whether the debtor is a State, a State entity or a private person. The Court's approach has been summarised in *Fomenko and others v. Russia* (dec.), 2019, § 171: "Where an applicant complains of the inability to enforce a court order in his or her favour, the extent of the State's obligations under Article 6 and Article 1 of Protocol No. 1 varies depending on the debtor in the specific case. Where a judgment is against the State, the latter must take the initiative to enforce it fully and in due time. In contrast to the obligation of a High Contracting Party to comply expediently with the judgments against it, within the domain of enforcement of a final and binding judicial decision against a private party a State's obligations are limited to providing a creditor with the necessary legal assistance and ensuring the effective operation of the procedure".

85. To be considered a "possession", a judicial award should be of a pecuniary nature, even if its valuation is uncertain. Not every final court decision in the applicant's favour may be seen as confirming the applicant's pecuniary right protected by Article 1 of Protocol No. 1. However, where a judicial award has a clear economic value for the successful litigant, the Court may conclude that it amounts to a possession (even if its value cannot be expressed in exact terms). Thus, in *SC Parmalat Spa et SC Parmalat Romania SA v. Romania*, 2008, the applicant companies obtained a judgment in their favour concerning the unlawful use of their trademark by another company, awarding them damages and obliging the respondent companies "to stop producing, promoting and marketing the products of the [trademark concerned] and to publish the operative part of the judgment in the media" (§ 9). The Government objected that only the monetary part of the award amounted to "possessions": the Court rejected this argument stating that the prohibition on using the contested trademark addressed to another company was to be seen as an interest protected by Article 1 of Protocol No. 1 (§ 26).

86. Claims based on tort law but not yet confirmed by a judicial award. In *Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, the applicants – insurance companies – complained about legislation which retroactively exempted ship pilots from liability for certain accidents. The Court rejected the Government's argument that, to be regarded as "possessions", the claim should be recognised and determined by a binding judicial decision: the applicants' legitimate expectation that their claims would be adjudicated under the general rules of tort had been rendered impossible under the new legislation which may be seen as an interference with the applicants' "possessions" (§§ 31-34).

87. State benefits, subsidies and payments as "possessions". Some cases concern the disbursement of benefits in favour of businesses (see, for example, *Traina Berto and Others v. Italy* (dec.), 2022,

concerning the special recovery funds to compensate businesses for the impact of a natural disaster) with the underlying question often being similar to the cases involving individual recipients: whether the beneficiary's expectation to get funds from the State was sufficiently established as to qualify as an "possession". Where legislation provides for a welfare benefit as a right, that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (*Stec and Others v the United Kingdom*, [GC], (dec.), 2005, § 54). While this is true for benefits *already accrued* on the basis of the laws in force, not every pecuniary benefit or entitlement (even in a specified amount and even regularly payable under the existing law) creates an indefinite "legitimate expectation" for the future since statutory pension regulations are liable to change (see *Grudić v. Serbia*, 2012, § 75, concerning retirement pension entitlements were the Court stressed that "in the area of social legislation [...] States enjoy a wide margin of appreciation, which [...] may legitimately lead them to adjust, cap or even reduce the amount of pensions normally payable to the qualifying population". See also *Valverde Digon v. Spain*, 2023, §§ 52, 61; and *Khoniakina v. Georgia*, 2012, § 72). Accordingly, in *Karachalios v. Greece* (dec.), 2017, the applicant – a head of a State-owned company originally appointed for five years – was dismissed before the expiry of this term following adoption of a law which provided for an automatic termination of employment of a certain category of office-holders. He unsuccessfully sued the State claiming the amount of the salary he would have received until the end of his original contract. The Court concluded that the applicant did not have an existing possession in respect of the amounts of the unpaid salary so that his claim about the new legislative framework and loss of earnings was not sufficiently established to be treated as a legitimate expectation (§§ 43 et seq.)¹⁰

88. Expectation of a tax credit or similar tax-related benefits. Sufficiently established claims for tax credits or reimbursement of VAT are "possessions", especially where the entitlement of the applicant to such benefits was not seriously disputed in the domestic proceedings (see, for example, *Buffalo S.r.l. in liquidation v. Italy*, 2003, § 28, or *Intersplav v. Ukraine*, 2007, § 31), national courts being best placed to establish whether the applicant's claim corresponded to the conditions set out in the domestic legislation (see, for example, *Immorks Makedonija Doo Skopje v. North Macedonia* (dec.), 2024, §§ 32-35, which concerned the non-fulfilment by the applicant claimant company to show that the VAT has been paid by the company's partners in the transactions for which the reimbursement of VAT has been requested).¹¹

89. Obligation to pay may be seen as an interference with "possessions". Where an applicant is required to pay a certain amount or to transfer property either to the State or to another private person, such an obligation may also be characterised as an "interference" with the applicant's "possessions" (see, for example, *Čakarević v. Croatia*, 2018, concerning an obligation of the applicant to return unduly paid social benefits. Compare *Energyworks Cartagena S.L. v. Spain* (dec.), 2024, § 44, concerning a case where the new legal framework on the remuneration system of electric companies included specific safeguards preventing the reimbursement of subsidies received prior to its adoption; and *Heracles S.A. General Cement Company v. Greece* (dec.), 2016, §§ 63-70, concerning the repayment of unlawfully acquired State aid together with accrued interest).

90. Can illegal goods be "possessions"? As noted above, even where the applicant's claim to legal title is disputed, the applicant may have a proprietary interest amounting to "possessions" (see, for example, the case of *Öneriyıldız v. Turkey* [GC], 2004, § 129, concerning a proprietary interest in unauthorised dwellings, or *Brosset-Triboulet and Others v. France* [GC], 2010, §§ 80-96, concerning the obligation on owners to demolish, at their own expense and without compensation, a house they had lawfully purchased on maritime public land). In *AGOSI v. the United Kingdom*, 1986, § 51, the Court characterised the seizure of gold coins smuggled in the country as a "control of use". In *The J.*

¹⁰ For more details, see the Section of social welfare cases in the *Guide on Article 1 of Protocol no. 1*, as well as the transversal theme *Guide on Social Rights*.

¹¹ For more details, see the *Guide on Article 1 of Protocol no. 1*

Paul Getty Trust and Others v. Italy, 2024, §§ 272-280) the Italian authorities succeeded in claiming title to an antique bronze statue which had been acquired in 1977 by J. Paul Getty Trust and kept at the Getty Villa Museum in the US. The Italian courts found that the statute was protected by Italian cultural heritage and customs law, had been unlawfully exported from Italy and before being negligently purchased by the Trust. While the title to the statute had been contested, the Court found that the existence of *some* proprietary interest of the Trust in respect of the statue had been established: the Italian authorities acknowledged that the Trust had been in possession of the statue for a very long period of time and that had had the effect of conferring on the Trust a proprietary interest in the peaceful enjoyment of the statue that had been sufficiently established and weighty to amount to a “possession” within the meaning of Article 1 of Protocol No. 1 (on the confiscation of illicit revenues see, for example, *Todorov and Others v. Bulgaria*, 2021, § 180).

91. **Customary rights of indigenous communities.** The former Commission and the Court have examined several applications by the indigenous communities of Northern Europe which tried to assert their traditional rights of hunting, fishing, grazing in a certain territory, but were opposed by the landowners. So far, such applications have been largely unsuccessful (see *Handölsdalen Sami Village and Others v. Sweden* (dec.), 2009; *Johti Sappmelacat r.y. and Others v. Finland* (dec.), 2005, *G. and E. v. Norway* (dec.), 1983).¹²

C. Interference with the “possessions”: expropriation, control of use, and the general principle of peaceful enjoyment of property

92. Having established that the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1, the Court analyses the case in accordance with one of “three rules”:

1. The **first rule** encompasses the **general principle**, namely the principle of the **peaceful enjoyment of property** (first sentence of the first paragraph of Article 1 of Protocol No. 1).
2. The **second rule** addresses a particular exception to the general principle. It sets out the conditions under which “**deprivations**” of possessions are permissible (second sentence of the first paragraph).
3. The **third rule** specifies another exception to the general principle and recognises a State’s right to **control the use of property** for certain purposes (the “general interest” and the payment of taxes, other contributions or penalties (second paragraph of Article 1 of Protocol No. 1).

93. **Deprivation and similar situations.** If the applicant’s proprietary rights have been extinguished under domestic law *de jure* or *de facto*, the Court usually examines the case as a *deprivation* of “possessions”. While a deprivation of possessions covers a range of situations the most obvious example is an expropriation, where the State takes property for its own use or in the general interest (see *Belvedere Alberghiera S.r.l. v. Italy*, 2000, § 54, taking land for road-building); but a *de facto* situation can also amount to a deprivation (*Katona and Závorský v. Slovakia*, 2023, § 54-56 concerned a debt discharge found to constitute an absolute bar to pursuing the creditors’ established claims against the debtor in bankruptcy or to any other type of proceedings; and *Zammit and Vassallo v. Malta*, 2019, § 54, in which the Court ruled that a demolition amounted to a *de facto* expropriation).

94. **“Control of use”.** Measures less invasive than deprivations may qualify as “*control of use of property*”. Control of use covers a range of situations. It includes, for example, business losses resulting from general restrictions on the sale of a particular commodity or from the withdrawal of an individual licence (see *Tre Traktörer AB v. Sweden*, 1989, §§ 54-55, in relation to the withdrawal of a liquor licence from a restaurant; *Pinnacle Meat Processors Company and Others v. the United*

¹² For more details, see the *Minority Rights Key Theme Guide*.

Kingdom (dec.), 1998, in relation to the loss of a meat processing business resulting from restrictions imposed on the use of specified bovine material; and *Ian Edgar (Liverpool) Ltd v. the United Kingdom* (dec.), 2000, in relation to the loss of business resulting from the new regulations on handguns). Control of use also includes where the applicant company, having lost opportunities on the market, had suffered a decrease in its company value (*Könyv-Tár Kft and Others v. Hungary*, 2018, § 43, in relation to a decrease of equity value following the creation of a State monopoly in the schoolbook distribution market; and *Pannon Plakát Kft and Others v. Hungary*, 2022, §§ 44 and 46, in relation to the loss of business opportunities for an advertisement company due to the new regulation of road-side billboards). Finally, seizure of property for legal proceedings, which does not deprive the owner of his possessions but only provisionally prevents him from using and disposing of them, normally relates to the control of the use of property (*East West Alliance Limited v. Ukraine*, 2014, § 185).

95. Forfeiture and confiscation as forms of “control of use”. Not every loss of title to property automatically qualifies as “expropriation”. Thus, the Court has treated forfeiture and confiscation of the applicant’s property as a control of use, even though these measure effectively deprived the applicant of their “possession” (for example, *AGOSI v. the United Kingdom*, 1986, § 51, concerning the seizure of goods prohibited for import; *Raimondo v. Italy*, 1994, § 29, concerning the temporary freezing of the applicant’s possessions allegedly acquired from mafia operations; *Honecker and Others v. Germany* (dec.), 2001, concerning the refusal to convert the money belonging to the former top officials of the German Democratic Republic into Deutsch marks following the reunification of Germany; *Imeri v. Croatia*, 2021, § 66, concerning the confiscation of cash not declared at the border, and *Silickienė v. Lithuania*, 2012, § 62, concerning confiscation of the proceeds of the crime).

96. Seizure of business documents as a form of the “control of use”. In *East West Alliance Limited v. Ukraine*, 2014, the tax police seized and withheld the original documentation proving the applicant company’s ownership of the aircraft, which limited the company’s ability to enjoy this possession: the Court accepted that it amounted to a measure of control of use of property (§ 174).

97. Statutory obligation to provide services for free. In *Kirovogradoblenergo, PAT c. Ukraine*, 2013, §§ 32-43, the applicant – an electricity company – was required by law to supply judges with electricity at a 50% discount. While the intention of the legislature was that the applicant company’s losses (due to supplying electricity at half price) were to be covered, the law did not provide for such a compensation mechanism and did not allocate any financial resources to it. The Court found that the interference with the applicant’s possessions was unlawful.

98. The general principle of peaceful enjoyment of property (the all-encompassing “first rule”). In certain cases, the Court does not qualify the interference under the second or the third rule and applies the first rule. In *Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994, §§ 62 and 68, the Court examined the legislative intervention that declared an arbitration award void and unenforceable under the general rule and found a violation of the applicants’ right to property. Similarly, in *BTS Holding, a.s. v. Slovakia*, 2022, §§ 64 and 71, the Court relied on the general rule to examine the refusal to enforce a final and binding arbitration award against the respondent State under the arbitration rules of the International Chamber of Commerce (see also *Papamichalopoulos and Others v. Greece*, 1993, § 46, concerning the occupation of the applicants’ land plots by the Navy without formal expropriation; *Aygün v. Turkey*, 2011, § 39, in which the Court considered that the loss of the value of the plots of land, combined with the partial loss of physical access to the land, as a result of the construction of a dam amounted to an interference with the applicants’ property rights even without a formal expropriation; *Lavrechov v. the Czech Republic*, 2013, § 43; *Denisova and Moiseyeva v. Russia*, 2010, § 55, concerning confiscation of property in criminal proceedings against one of the spouses; *Ünspeđ Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria*, 2015, §§ 39-40, concerning the confiscation of a lorry used to transport drugs across the border; and *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], 2014, § 99, where the Court noted that freezing the applicants’ deposits for 20 years in the banks of former Yugoslavia, in

view of the complexity of the legal and factual issues involved in that case, could not be classified as falling into a precise category and should be analysed in the light of the general principle laid down in the first rule of Article 1 of Protocol No. 1.

99. Does the Court apply a different test and different standard of review to the three rules of Article 1 of Protocol No. 1? The applicable test remains largely the same irrespective of the rule applied (the interference must seek to achieve a legitimate aim, be lawful and proportionate), although the Court's approach to the proportionality of the interference can differ: for example, by applying a wider margin of appreciation in cases concerning the control of use of property (for example, *Forminster Enterprises Limited v. the Czech Republic*, 2008, § 75); by approaching the award of compensation differently, so that the case-law on compensation for the deprivation of possessions would not be directly applicable to cases concerning the control of use (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], 2007, § 79, with further references to *AGOSI v. the United Kingdom*, 1986, and to *Air Canada v. the United Kingdom*, 1995, §§ 27-48). However, as reiterated by the Court, the second and third rules must be read in the light of the general principle laid down in the first rule (*Immobiliare Saffi v. Italy* [GC], 1999, § 44). Therefore, in practice, the Court often prefers a holistic approach to examine the interference under the "general rule", without characterising the interference as a "deprivation" or "control of use" and without defining in advance which standard of review it would apply (see, for example, *Lekić v. Slovenia* [GC], 2018, § 93, concerning the civil liability of the owner of a limited company for its debts; and *Sovtransavto Holding v. Ukraine*, 2002, § 93, concerning a dispute between shareholders of a company related to the dilution of their part of shares due to a change in the corporate structure).

D. Disputes between private parties¹³

100. Purely private relations are not as such covered by Article 1 of Protocol No. 1. The primary purpose of Article 1 of Protocol No. 1 is to prevent unjustified interference with "possessions" by the State. Losing civil litigation in court against a private person does not engage *in itself* the responsibility of the State, if the domestic proceedings are not tainted with arbitrariness (see directly below). Thus, as a rule, if the dispute concerned exclusively relationships of a contractual nature between private parties, Article 1 of Protocol No. 1 would not apply (*Gustafsson v. Sweden*, 1996, §§ 58-60). The same would be true for a copyright dispute between private individuals (see *Gülsüm Aydin and Others v. Türkiye* (dec.), 2023, §§ 70-74), or a property dispute between the applicant and a state-owned company where the latter was acting in a private capacity (see *Dabić v. the former Yugoslav Republic of Macedonia* (dec.), 2001). Private investments and undertakings are always uncertain – thus, the Court acknowledged that, by depositing her money with a private bank, the applicant assumed risks of mismanagement and even fraud (*Gherardi Martiri v. San Marino*, 2022, § 109). Any commercial venture by its very nature, involves an element of risk (*Sharabidze and Others v. Georgia* (dec.), 2026, § 35). That does not exclude, however, that the State may have some positive obligations to regulate and adjudicate private disputes (see in detail below): where therefore the impossibility to pay a private debt results from the actions of a Government authority which imposed an embargo on such payments in the interests of preserving financial stability and securing the interests of the creditors of the debtor entity, such measures can engage the State responsibility (see *Freire Lopes v. Portugal* (dec.), 2023, §§ 75-101, concerning similar measures taken in respect of an insolvent bank which, however, were found by the Court not to breach the applicant's rights).¹⁴

101. The fact that the dispute has been adjudicated upon by a State court does not, as such, engage the State's responsibility. The mere fact that the State, through its judicial system, provided a forum

¹³ For more details on the positive obligations of the member States, see the relevant section of the case-law *Guide on Article 1 of Protocol No. 1*

¹⁴ See also in more detail Section IV F (5) below.

for the determination of a private-law dispute does not give rise to an interference by the State with property rights under Article 1 of Protocol No. 1 even if the substantive result of a judgment results in the loss of certain “possessions” (see the Commission decision in *Kuchař and Štis v. the Czech Republic*, 1998, in a case concerning a dispute within a business partnership about the partners’ investment obligations). Similarly, the judicial determination of a dispute between shareholders about the ownership of a broadcasting company cannot be analysed in terms of an “interference” (*Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, 2019, §§ 308-312). However, in the context of private disputes, the State may have certain positive obligations (outlined below).

102. The legal framework governing private relations must strike a fair balance. Positive obligations under Article 1 of Protocol No. 1 concern, *inter alia*, the setting up of an adequate legislative framework governing private relations. In *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], 2007, §§ 58-63, the applicant companies, real-estate developers, lost their title to land in a dispute with a farmer who had used the land for a long period of time and then relied on adverse possession to claim ownership thereof. In *Herrmann v. Germany* [GC], 2012, §§ 72-94, the Court examined, under Article 1 of Protocol No. 1, a rule of domestic law which obliged the applicant, a landowner, to tolerate hunting on his land. In *Freire Lopes v. Portugal* (dec.), 2023, §§ 75-101, the Court examined the proportionality of the measures taken by the Portuguese Central Bank in respect of a private bank which risked collapsing, which consisted of a prohibition addressed to the bank to perform certain operations that made it impossible for the bank to honour its contractual obligations vis-à-vis the applicant (see a similar situation examined in *Katona and Závorský v. Slovakia*, 2023). In *N.M. and Others v. France*, 2022, §§ 49-50, the Court examined whether the State may retroactively change the rules on tort liability for medical errors which would extinguish a part of the compensation which the applicants could have claimed under the previously existing rules. A similar regulation was at the heart of the case of *Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, where the applicants – insurance companies – complained about legislation which retroactively exempted ship pilots from liability for certain accidents. In *Lekić v. Slovenia* [GC], 2018, the applicant, the main shareholder of an extinct company, complained about the rule which permitted “piercing the corporate veil” and which imposed on him personal civil liability for the debt of the company, in certain circumstances. In *Gladysheva v. Russia*, 2011, the Court examined the operation of the rule on the vindication of property rights acquired by a *bona fide* buyer from someone who had acquired the property by fraud (see also *Kotov v. Russia* [GC], 2012, concerning the legal framework protecting the bank’s creditors from the potential abuses by the bank’s liquidators).

103. Abusive clauses in private contracts. In *Antonopoulou v. Greece* (dec.), 2021, the applicant had taken out a mortgage in Swiss francs in order to benefit from a favourable exchange rate. The contract provided that the monthly repayment of the loan was to be made on the basis of the exchange rate at the time of repayment and not at the time the loan was taken. The applicant was later unable to repay the loan because of the strengthening of the Swiss franc which had increased the loan amount by about 60%. The applicant argued unsuccessfully before the domestic courts that the repayment clause was abusive. The Court noted that domestic law offered the applicant adequate remedies to assert her rights relating to the enjoyment of property, including the possibility of bringing an action for annulment of her obligations under the contract and the possibility of seeking renegotiation or even termination of the contract (*ibid.*, § 82). Furthermore, the applicant could have asked the bank at any time to convert the currency of the loan into euros or could have insured herself against the risk of the increase in monthly repayments (*ibid.*). The Court concluded that the legal framework put in place by the State provided the applicant with a mechanism enabling her to ensure respect for her rights guaranteed by Article 1 of Protocol No. 1, and that the State had therefore fulfilled its positive obligations under this Article (*ibid.*, § 84). See also *Car ZRT and Others v. Hungary* (dec.), 2018, which concerned legislation changing the conditions of certain loan agreements in the context of the financial crisis, thus alleviating the financial burden on the debtors.

104. Positive obligation on the State to provide a judicial forum and due process. In addition to the minimum legislative framework regulating private relations, the State must set up a proper forum to allow persons to assert pecuniary rights and have them enforced. By failing to do so, a State would fall short of its obligation to protect the rule of law and prevent arbitrariness (*Kotov v. Russia* [GC], 2012, § 117). This obligation has an inherent “fairness” element: in *Sovtransavto Holding v. Ukraine*, 2002, the Court ruled that under Article 1 of Protocol no. 1 “the States are under an obligation to afford judicial procedures that offer the necessary procedural guarantees and therefore enable the domestic courts and tribunals to adjudicate effectively and fairly any disputes between private persons” (§ 96). The Court further held that “the interference with the rights provided for by Article 1 of Protocol No. 1 cannot [...] have any legitimacy in the absence of adversarial proceedings that comply with the principle of equality of arms, allowing discussion of aspects that are important for the outcome of the case” (see, for example, *G.I.E.M. S.R.L. and Others v. Italy* [GC], 2018, §§ 300 and 302, with further references). Thus, in *Sharabidze and Others v. Georgia* (dec.), 2026, concerning a dispute about a bank loan, the Court concluded that domestic law offered the applicants adequate remedies to assert their rights related to the protection of their property: they had the possibility of challenging the allegedly abusive, fraudulent and/or unfair nature of the contracts before civil courts, which they did; they also had the opportunity to challenge the enforcement writs issued by the notary, which they also duly exercised; and the proceedings, viewed as a whole, afforded them a reasonable opportunity of putting their case to the competent authorities with a view to establishing a fair balance between the conflicting interests at stake in a private dispute (§ 37).

105. The State may even be required to provide criminal-law remedies to defend property rights. In *Nikolay Kostadinov v. Bulgaria*, 2022, the applicant fell victim to a fraud concerning his shares in a company, committed by private individuals: as a result of a series of transactions, he had lost his title to a large plot of land, which was then sold by the perpetrator to a third party. The Court noted that an additional positive obligation arises for the State where the interference with the property rights perpetrated by private individuals is of a criminal nature: this obligation will require that the authorities conduct an effective criminal investigation, in addition to any civil-law remedies. The Court stressed that this obligation is “one of means and not one of result”, and that many crimes remain unresolved or unpunished notwithstanding the reasonable efforts of the State authorities (§ 55). In this case the defects of the criminal investigation, as well as the court’s refusal to order quickly interim measures in respect of the operations with the company’s shares, led to the impossibility for the applicant to return the company’s property. However, the Court’s conclusions would be different if the criminal investigation were unsuccessful due to the applicant’s own behaviour. Thus, in *Gherardi Martiri v. San Marino*, 2022, §§ 103-119, the applicant was a victim of a fraud committed by the employees of a private bank. Criminal proceedings into the fraudulent actions of the bank’s management lasted for eleven years and the case finally became time-barred: however, this was the result of the applicant’s belated lodging of a criminal complaint and, as to the civil proceedings initiated by the applicant, the Court noted that their lack of success was also due to the applicant’s own omissions and choices and that the civil avenues were or still are open to the applicant. The Court concluded that the State complied with its positive obligations.

106. No clear distinction between the State’s negative and positive obligations. The Court repeated that the boundaries between the State’s positive and negative obligations under Article 1 of Protocol No. 1 do not lend themselves to precise definition. Accordingly, very often the Court considers it unnecessary to categorise the case as one concerning positive or negative obligations of the respondent States (see, for example, *Freire Lopes v. Portugal* (dec.), 2023, § 90) because, in any event, applicable principles for negative and positive obligations are similar. In both contexts: regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole; the legitimate aims noted in the Article may be of relevance in assessing whether a balance between the demands of the public interest involved and the applicant’s fundamental right of property has been struck; and the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (*Broniowski v. Poland*

[GC], 2004, § 144; *Hatton and Others v. the United Kingdom* [GC], 2003, §§ 98; *Kotov v. Russia* [GC], 2012, § 110).

107. **The State is not responsible for private debts or for the actions of other States.** The State's positive obligations do not extend to covering the debts of private persons (*Freire Lopes v. Portugal* (dec.), 2023, § 96) or to achieving the return of assets lost in another State (see *Likvidējamā zvejniēku paju sabiedrība Selga and Vasilevska v. Latvia* (dec.), 2013, concerning money on the accounts of a former Soviet bank which were frozen following the dissolution of the Soviet Union: the applicants claimed that authorities of Latvia should have ensured the return of their frozen assets from Russia or compensated them for their loss and the Court concluded that Latvia's positive obligations did not go that far).

E. Justification of interference under Article 1 of Protocol No. 1

108. Although Article 1 of Protocol No. 1 is not formulated exactly along the same lines as Articles 8 to 11, the Court applies broadly the same three-pronged test. Thus, for an interference to be compatible with Article 1 of Protocol No. 1 it should be provided for by law, be in the "general/public interest", and must strike a "fair balance" between the demands of that general interest and the requirements of the protection of the individual's fundamental rights (*Bélané Nagy v. Hungary* [GC], no. 53080/13, §§ 112-113 and 115; *Beyeler v. Italy* [GC], 2000, §§ 107-108).

1. The requirement of "lawfulness" in the context of Article 1 of Protocol No. 115

109. **"Lawfulness" as a question of applicability and merits.** Article 1 of Protocol No. 1 provides that a deprivation of possessions should be "subject to the conditions provided for by law" and the second paragraph recognises that States have the right to control the use of property by enforcing "laws". A finding of unlawfulness of an interference is sufficient to find a violation of Article 1 of Protocol No. 1 and the Court usually does not need to proceed with the analysis of proportionality (*Iatridis v. Greece* [GC], 1999, § 62). It is especially so where the unlawfulness is confirmed by the decisions of the domestic courts (see, as an example, *Belvedere Alberghiera S.r.l. v. Italy*, 2000, § 62). The question of "lawfulness" may also appear in the context of the applicability of Article 1 of Protocol No. 1: thus, the applicant must demonstrate that his/her/its pecuniary claim had sufficient legal basis to qualify as "possessions"¹⁵. These two facets of "lawfulness" may be examined by the Court separately (see, for example, *Lay Lay Company Limited v. Malta*, 2013, §§ 77-89, concerning the refusal of the authorities to issue a building permit to the owner of a plot of land).

110. **The interrelation between the requirement of "lawfulness" and the inherent procedural guarantees of Article 1 of Protocol No. 1.** Article 1 of Protocol No. 1 requires certain procedural safeguards to be in place (*Lekić v. Slovenia* [GC], 2018, § 95). In certain cases those safeguards are analysed under "lawfulness" (see, for example, *Capital Bank AD v. Bulgaria*, 2005, § 139, and *Forminster Enterprises Limited v. the Czech Republic*, 2008, § 65) as well as under proportionality (in *Reisner v. Turkey*, 2015, §§ 49-50, the Court examined first the lawfulness of the interference with the applicant's possessions (shares in a bank) and then, separately, whether the applicant had procedural guarantees to defend his interests as part of the proportionality analysis. In *Marini v. Albania*, 2007, the Court considered that the absence of judicial protection of the applicant's rights – namely the length of the proceedings and the failure of the authorities to enforce the decisions in the applicant's favour against the State (which was the applicant's partner in a joint-venture enterprise), upset the

¹⁵ For the general methodology of assessing lawfulness see Section II B (2) of the *Guide on Article 1 of Protocol No. 1*; see also the general discussion about the "lawfulness" principle of the Convention in Section III A above

¹⁶ For the existence of "legitimate expectations" to obtain property, see Section IV A above.

“fair balance” between his interests and the demands of public interest (§ 174). See also *Vujović and Lipa D.O.O. v. Montenegro (no. 2)*, 2025, §§ 106-110.

111. Deference to the domestic courts in interpreting national law. When the Court has to verify whether domestic law has been correctly interpreted and applied, it will only find an interference with the protection of property if the decisions of domestic courts are arbitrary or otherwise manifestly unreasonable (*Anheuser-Busch Inc. v. Portugal* [GC], 2007, §§ 83-87). As noted above, the State may be held responsible for losses caused if the domestic court decisions are considered to be “arbitrary or manifestly unreasonable” both in the case of a deprivation of a private person’s property in favour of the State itself or another private individual (for a deprivation in favour of a private individual see, for example, *Bramelid and Malmström v. Sweden*, Commission decision, 1982, pp. 82-83; *Dabić v. the former Yugoslav Republic of Macedonia* (dec.), 2001; and compare with *Basyuk v. Ukraine*, 2025, §§ 42-45, and *Tartamella and Others v. Italy*, 2025, § 114).

112. Foreseeability of the law in the context of business operations. The Court does not try to quantify, in precise terms, the degree of “foreseeability” required from the law. It is contextual and depends, in particular, on the subject of the regulations and the legal consequences for those affected, as well as the general political context (see *Velikovi and Others v. Bulgaria*, 2007, § 166). As the Court explains, “a law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. This is particularly true with regard to persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on this account be expected to take special care in assessing the risks that such activity entails. The same may be said to apply to persons engaging in commercial activities” (*The J. Paul Getty Trust and Others v. Italy*, 2024, § 296).

113. Pre-existing legal rules of general application versus individual measures provided by the law. While “the principle of the rule of law requires that any interference be based on an instrument of general application”, i.e. on pre-existing rules, the Court has been prepared to accept exceptionally the existence of special laws laying down specific conditions that apply to one or more named individuals. The case of *Former King of Greece and Others v. Greece* [GC], 2000, § 82, concerned the expropriation of the former royal estates: this expropriation was ordered directly by the legislation; the constitutionality of the legislation had been assessed and confirmed by the Constitutional Court; and the Court was satisfied that this measure was therefore “lawful” within the meaning of Article 1 of Protocol No. 1.

114. Retroactive legislation may be exceptionally justified. The Court reiterated that civil legislation which has a retroactive effect is not expressly prohibited by the Convention and, in certain circumstances, could be justified (see *Lay Lay Company Limited v. Malta*, 2013, § 86, concerning the refusal of the authorities to issue a building permit to the owner of a plot of land). That being said, giving retroactive application to a law where it is not intended by the legislator is impermissible (see *Kechko v. Ukraine*, 2005, § 26). In the tax sphere, the Court has expressly accepted retroactive “windfall taxes” or retroactive taxation applicable essentially to remedy technical deficiencies of the law, provided that the measure is ultimately justified by public-interest considerations. It has held, in particular, that there is an obvious and compelling public interest to ensure that private entities do not enjoy the benefit of a windfall in a changeover to a new tax-payment regime (*N.K.M. v. Hungary*, 2013, § 51).

115. Lawfulness test in tax matters. It is well-established that States may be afforded some degree of additional deference and latitude in the exercise of their fiscal functions under the lawfulness test (see *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 1997, §§ 75-83; *OAO Neftyanaya Kompaniya Yukos v. Russia*, 2011, § 559) and that, in view of the complexity of the relevant field of regulation, corporate entities, as opposed to individual taxpayers, may be required to act with additional caution and diligence by

consulting competent specialists in this sphere (*Špaček, s.r.o., v. the Czech Republic*, 1999, § 59; and *ОАО Нефтяная Компания Yukos v. Russia*, 2011, § 559).

2. Legitimate aim in the context of Article 1 of Protocol No. 117

116. **Specific legitimate aims are not defined in detail in Article 1 of Protocol No. 1.** A legitimate aim may be the “public” interest (first paragraph of Article 1 of Protocol No. 1), or the “general” interest, or “to secure the payment of taxes or other contributions or penalties” (second paragraph of Article 1 of Protocol No. 1). Contrary to Articles 8 – 11, the list of aims that permit interferences in the public interest is not defined by the Convention itself, but the notion of public interest “is necessarily extensive” (*Former King of Greece and Others v. Greece* [GC], 2000, § 87): for example, road traffic safety (*Pannon Plakát Kft and Others v. Hungary*, 2022, § 48), the need to protect the financial stability of the banking sector (*Berent and Others v. Turkey* [Committee], 2021, § 39); and the need to prevent the unauthorised sale of excise goods (*Microintelect OOD v. Bulgaria*, 2014, § 40) were all considered to be in public interest.

117. **Most often the Court accepts that the impugned measure pursued a legitimate aim.** While the Court can conclude a case on the basis of a finding that the aim was not legitimate (see, as a rare example, *Tkachevy v. Russia*, 2012, where the applicants’ real property was expropriated for “safety” reasons and purportedly for transforming them in non-residential property, the Court concluding that this was simply a disguised transfer of property from one private party to another, §§ 38-50), in certain cases the Court has either left this question open (see, for example, *Marija Božić v. Croatia*, 2014, § 58, where the Court expressed doubts as to whether the prolonged non-payment of the applicant’s pension pursued any legitimate aim or the authorities pursued an ulterior goal; see also *Megadat.com SRL v. Moldova*, 2008, § 67) or, more often, has presumed that the measure or policy pursued one of the “legitimate” aims. As the Court repeatedly held, “because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is ‘in the public interest’” (*Bélné Nagy v. Hungary* [GC], 2016, § 113). The questions of legitimate aim and proportionality are sometimes examined together (see *S.A. Dangeville v. France*, 2002, §§ 53-58, and *Vassallo v. Malta*, 2011, § 43).

118. **Public or general interest may be identified by the Court itself, even disagreeing with the Government.** It is sufficient for the Court that the interference serves the public interest, even if different from that invoked by the Government (*Former King of Greece and Others v. Greece* [GC], 2000, § 87; and *Beyeler v. Italy* [GC], 2000, §§ 112-113). In certain instances, the Court identified the purpose on its own motion or disagreed with the authorities as to the nature of the “public interest” at stake (*Ambruosi v. Italy*, 2000, § 28; *Marija Božić v. Croatia*, 2014, § 58, *Katona and Závorský v. Slovakia*, 2023, § 59).

3. Fair balance, necessity, proportionality, and related concepts¹⁸

119. **“Fair balance” principle is not explicit but implied.** Contrary to Articles 8 – 11, Article 1 of Protocol No. 1 does not require that an interference with “possessions” be “necessary in a democratic society”. However, the Court generally subjects interferences to a test of “fair balance” between competing interests at stake (see *Sporrong and Lönnroth v. Sweden*, 1982, § 69, where the Court held

¹⁷ For the general methodology of defining the legitimate aim see Section II B (3) on the “Public interest” of the *Guide on Article 1 of Protocol No. 1*; see also the general discussion about the “legitimate aim” in Section III B above.

¹⁸ For the general methodology of assessing proportionality of the see also Section II B (4) of the *Guide on Article 1 of Protocol No. 1*; see also the general discussion about the necessity/proportionality/fair balance in Section III C above.

that “the search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1”), the Court also using other terms in this regard (“necessity”, “proportionality”, “justification”). This chapter will use “fair balance” as an all-embracing term.

120. Factors affecting the State’s margin of appreciation. The width of the margin of appreciation accorded to the State is an important factor in the fair balance test, and depends on the factual, social, economic and other aspects of the contested measure. In some situations, the State’s margin of appreciation is wider:

- a major political transition (*Bélané Nagy v. Hungary* [GC], 2016, §§ 114; *Forminster Enterprises Limited v. the Czech Republic*, 2008, § 75; *Valkov and Others v. Bulgaria*, 2011, § 91; *Jahn and Others v. Germany* [GC], 2005, § 113);
- where no European consensus can be detected (see *AGOSI v. the United Kingdom*, 1986, § 51, in relation to the seizure of smuggled goods);
- policies in the area of taxation and protecting the public purse in times of economic crisis, (see *N.K.M. v. Hungary*, 2013, §§ 49 and 61, concerning the exceptional taxation of the severance pay of certain categories of public servants; *Savickas and Others v. Lithuania* (dec.), 2013, §§ 90-94, concerning the reduction of the salary of judges; *Koufaki and Adedy v. Greece* (dec.), 2013, §§ 37 and 39; concerning the austerity measures’ effect on the welfare payments to the retired civil servants; *Béla Németh v. Hungary*, 2020, § 49, concerning measures taken by the government to avoid mass defaults on housing loans expressed in foreign loans and avoid mass evictions, in the context of the 2008 financial crisis).
- urban and regional planning policies (*Vistinš and Perepjolkins v. Latvia* [GC], 2012, § 98);
- legislation relevant to social policies, such as welfare benefits (see *Bélané Nagy v. Hungary* [GC], 2016, § 113, about a change in the eligibility to social security benefits; *Papachela and AMAZON S.A. v. Greece*, 2020, § 56, concerning the expulsion of squatters from the applicant company’s premises; *Grudić v. Serbia*, 2012, § 75, concerning retirement pension) or housing policies (*Béla Németh v. Hungary*, 2020, § 34);
- policies of procurement for public needs (see *Kurban v. Turkey*, 2020, § 81, where the Court examined the approach to the assessment of candidates for public procurement).

121. Country-specific context matters. In examining the “fair balance”, the Court often takes into account specific country context or situation even without expressly linking to “margin of appreciation” (for example, in cases regarding confiscation of property of presumably criminal origin, the Court attaches weight to the necessity to combat mafia-type organisations in Italy (see *Raimondo v. Italy*, 1994, § 30. See also *Jahn and Others v. Germany* [GC], 2005 concerning land reform where the Court referred to the “unique context of German reunification”. § 117)).

122. The contested measure does not have to be the best possible solution. Provided that the authorities remain within the bounds of their margin of appreciation, it is not for the Court to say whether the impugned measure represented the best or a better solution for dealing with the problem or whether the authorities’ discretion should have been exercised in another way (see *J.A. Pye (Oxford) Ltd v. the United Kingdom*, 2005, §§ 43-45; see also *Zolotas v. Greece (no. 2)*, 2013, § 44).

123. A “means to ends” test. In determining the “fair balance” test, the Court requires a “reasonable relationship of proportionality” between the means employed and the result which the authorities sought to achieve (*Katona and Závorský v. Slovakia*, 2023, § 60). In *Rosenzweig and Bonded Warehouses Ltd. v. Poland*, 2005, § 56, the Court accepted that the State is entitled to control the movement of goods in and out of the country with a view to, *inter alia*, securing income from relevant customs duties, but it was not convinced that the only alternative available to the authorities would be the measures taken in respect of the applicants, namely a complete withdrawal of the licences to run the company which prevented the company from continuing its operations. In *Ian Edgar*

(Liverpool) Limited v. the United Kingdom (dec.), 2000, the Court compared the aim of ensuring public safety with “the hardship suffered by the applicant company” which was involved in the gun trade and which had been impacted by the new legislative limitations of this business.

124. **Main elements of the “fair balance” analysis.** While the “fair balance” test comprises the examination of all relevant aspects of the case, most often such elements include “the character of interference, the aim pursued, the nature of property rights interfered with, and the behaviour of the applicant and the interfering State authorities” (*Forminster Enterprises Limited v. the Czech Republic*, 2008, § 75). Where the interference requires compensation, the level and conditions of compensation will also be material to the assessment of (*Maria Azzopardi v. Malta*, 2022, § 54).

125. **Measures effectively ending the applicant’s business operations.** That the impugned measure ends the applicant’s business weighs heavily in the Court’s assessment of proportionality. In *Könyv-Tár Kft and Others v. Hungary*, 2018, the applicant company complained of a new system of schoolbook distribution which introduced a monopoly in favour of a State-owned non-profit book distribution company. The Court found this measure disproportionate noting, in particular, that “the fact that it was impossible for the applicant companies to continue or reconstitute their business outside the sphere of schoolbook distribution” (§ 59). Compare *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, § 130, where the Court took “into consideration the fact that the applicant company was not required to cease all of its operations in 2008, and that in 2009 it was able to resume its usual level of business activity” despite the regulations limiting the mussel industry in a particular zone. See also *Donprut S.R.L. v. the Republic of Moldova*, 2015, § 25, and compare *S.C. Zorina International S.R.L. v. Romania*, 2023, §§ 53-54, where the Court concluded that “the restrictive measures imposed on the applicant company were neither prohibitive nor oppressive or otherwise disproportionate”.

126. **The concept of an “individual and excessive burden”.** As the Court has repeated on many occasions, a fair balance will not be found “if the person concerned has had to bear an individual and excessive burden” (see, for example, *Sporrong and Lönnroth v. Sweden*, 1982, § 73). Thus, for example, where a major financial crisis led to a dramatic increase of the cost of the bank loans for the borrowers, the Court held that “the State must take measures to prevent thousands of people, who have taken out real estate loans, from having to suffer, through no fault of their own, a disproportionate burden at the risk of losing their property” (*Antonopoulou v. Greece* (dec.), 2021, § 76).

127. **Quantifying the relative weight of competing interests.** The disproportionate character of an impugned measure may sometimes be demonstrated in numerical terms. In *Urbárska Obec Trenčianske Biskupice v. Slovakia*, 2007, ownership of land was restored to the members of the applicant association which had been given to the members of the gardening cooperatives under the previous regime. Under the new legislation the members of the cooperatives became tenants paying a rent defined by the State, but the amount of this rent was manifestly derisory: it was calculated at the rate of 0.3 crowns per sq.m., at a time when the property tax charged on the land had amounted to 0.44 crowns per sq.m. That fact alone was indicative of the particularly low compensation which the applicant association had received for letting out its land to the gardeners. In addition, a private company had stated that land in the area could be let for at least 20 crowns per sq.m. a year. The Court found no justification for setting such a low level of rent, which bore no relation to the actual value of the land. The Court found a violation in the case of *Džinić v. Croatia*, 2016, which concerned the seizure of assets belonging to a businessman accused of economic crimes, a seizure done to ensure the possible confiscation of the proceeds of the crime. The Court noted that the applicant was suspected of having made a pecuniary gain of approximately 1 million EUR through the commission of the offences, while the domestic courts, without ascertaining the value of the properties, had accepted the prosecution request for seizure of all the properties which were arguably worth nearly 10 million. It was not alleged that these properties had been acquired as a result of crime or were traceable to crime and, moreover, the seizure order lasted for more than two and a half years. In *Perdigão v. Portugal* [GC], 2010, the applicants had their land expropriated by the State. Following

protracted domestic proceedings including various appeals and applications, the applicants were awarded EUR 197,236.25 in compensation for the expropriation. However, given the high amount owed in court fees, they received nothing and indeed had to pay the State an additional EUR 15,000, even after the legal fee sum was substantially reduced. The Court concluded that the court fees represented an “excessive burden” for the applicant (§ 78).

128. Regulatory measures affecting business operations may require transitional arrangements. Unforeseeable and abrupt measures are more difficult for the State to justify. Thus, in the determination of the proportionality of the interference in cases concerning loss of clientele and the practice of a profession, the Court has considered, *inter alia*: (i) the existence of regulations applicable to the applicant’s business; (ii) the nature of such regulations (for example, if the industry was, given its nature, traditionally subject to restrictions); and (iii) whether transitional measures existed (see *Könyv-Tár Kft and Others v. Hungary*, 2018, § 49, with further references – and compare with *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, § 117, where the Court put emphasis on the applicant company’s duty to be aware of the legal developments which may affect its business). A radical change in previously stable regulations without a prior warning or a transitional period may lead to a breach of Article 1 of Protocol No. 1. In *Pannon Plakát Kft and Others v. Hungary*, 2022, §§ 41-59, the applicant company operated a roadside advertisement business. For traffic safety reasons, the Government decided to ban all roadside hoardings, which seriously affected the applicant company’s business and forced them to terminate contracts with their clients and pay for the removal of the hoardings. The Court noted in this case that the roadside advertisement business operated under a legal framework that had remained essentially stable for more than ten years, and that the few months transitional period was insufficient. The Court compared this case to *Ian Edgar (Liverpool) Ltd v. the United Kingdom* (dec.), 2000, and *C.A. Zrt. and T.R. v. Hungary* [Committee], 2020, where progressively more restrictive legislation over a long period foreshadowed the possibility of a ban. The Court found a violation in this case with reference in particular to “the partly retroactive nature of the impugned measure, its unexpected nature, the short transitory period, the lack of any compensatory scheme and the importance that the extinguished business activity had for the applicant companies” (§ 58).

129. Certain businesses are more prone to strict regulations. In *Ian Edgar (Liverpool) Limited v. the United Kingdom* (dec.), 2000, the applicant company was engaged in the wholesale distribution of firearms and had been seriously affected by the new legislation on handgun control introduced in 1997. The Court noted that the company had at all times to operate within a framework of control of the trade in firearms, which has existed in the UK since 1920, and which has become progressively more restrictive. It concluded that the applicant company had no legitimate expectation that it would be able to continue to trade in any particular type of firearm, including handguns. Having examined other elements of the company’s situation (in particular, the effect of the ban and the amount of compensation) the Court concluded that the application was manifestly ill-founded (see also, in the context of the regulation of the financial services market, *BCR Banca pentru Locuințe S.A. v. Romania* (dec.), 2023, §§ 125-139).

130. Seeking to monopolise the market. In *Könyv-Tár Kft and Others v. Hungary*, 2018, the Court examined a legislative measure which led to the monopolisation of the schoolbooks distribution market, in the hands of the State-owned non-profit book distribution company. As a result, the applicant company lost its business. The Court, in assessing the proportionality of this measure, noted that while “the schoolbook market did indeed have some special attributes, these did not give rise to any special or privileged market conditions for the applicant companies such as to justify in itself the State intervention complained of in the present case” (§ 58).

131. The principle of good governance and whether the authorities should bear the consequences for their mistakes. When assessing the proportionality of an interference, the Court considers whether the authorities acted with due care and in accordance with the principles of good governance. As the Court put it in *Megadat.com SRL v. Moldova*, 2008, which concerned the

revocation of a licence which led to the applicant company's bankruptcy, the State regulatory authorities must "act in good time, in an appropriate manner and with utmost consistency" (§ 72). In that case the Court noted that the authorities knew about a change in the applicant company's address, but nevertheless issued it with a licence which referred to its old address, on which ground the licence was revoked, and also made the company believe that it might continue its operation. "Mistakes or errors of the State authorities should serve to the benefit of the persons affected, especially where no other conflicting private interest is at stake" (*Gashi v. Croatia*, 2007, § 40; *Batkivska Turbota Foundation v. Ukraine*, 2018, § 61). Lasting acquiescence by the authorities of a certain *status quo* may speak in favour of the applicant (see *Oklešen and Pokopališko Pogrebne Storitve Leopold Oklešen S.P. v. Slovenia*, 2010, § 61, where the Court compares the facts of that case with *Öneryıldız v. Turkey* [GC], 2004, §§127-129, and *Beyeler v. Italy* [GC], 2000, § 121, "where the authorities largely contributed to the uncertainty as to the fate of the applicants' possessions"). In *KIPS DOO and Drekalović v. Montenegro*, 2018, the applicants complained about the refusal of the authorities to issue a building permit because of the applicants' failure to meet two criteria: (a) to buy the adjacent plot of land; and (b) to pay the communal charges. However, the Court noted that the State's authorities failed to act in good time, in an appropriate manner and with utmost consistency thus making it impossible for the applicants to meet the said conditions: in particular, they were unable for a prolonged period of time to calculate the amount of the communal charges to be paid to satisfy one of the conditions for obtaining the building permit (§ 87). In *Vod Baur Impex S.R.L. v. Romania*, 2022, the Court held that "the risk of any mistake by a State authority – such as, in the present case, the sale to the applicant company of a property which it did not own – must be borne by the State and that such errors should not be remedied at the expense of the individual concerned" (§ 72). In *Drozdyk and Mikula v. Ukraine*, 2024, § 48, the Court noted that "in the context of the revocation of a property title granted erroneously, the 'good governance' principle as developed by the Court may not only impose on the authorities an obligation to act promptly in correcting their mistake, but also necessitate the payment of adequate compensation or another type of appropriate reparation to its former good-faith holder" (this case concerned annulment of the applicants' titles to the land because the land belonged to a railway exclusion zone). Contradictory positions of the authorities and their failure to follow their own findings of fact and law may also be a relevant factor (see *Naskov and Others v. North Macedonia*, 2023, § 74, where the Court noted that the High Administrative Court disregarded its previous reasoning on the matter without explaining its reasons for doing so).

132. **"Legitimate expectations" created by an administrative act.** An individual should, in principle, be entitled to rely on the validity of a final, or otherwise enforceable, administrative decision in his or her favour and on the implementing measures already taken pursuant to it, provided that neither the beneficiary nor anyone on his or her behalf has contributed to such a decision having been wrongly made or wrongly implemented. Thus, while an administrative decision may be subject to revocation in the future, an expectation that it should not be called into question retrospectively should usually be recognised as being legitimate, at least unless there are weighty reasons to the contrary in the general interest or in the interest of third parties (see, in the context of welfare benefits, *Čakarević v. Croatia*, 2018, § 56, and compare *Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, §§ 34 and 39). However, the Court did not consider an applicant company to have legitimate expectations to retain unlawfully claimed, managed and released State bonuses that the company had, as part of its business model, accumulated on behalf of its customers (*BCR Banca pentru locuințe S.A. v. Romania* (dec.), 2023, §§ 131-138). Even though the State had not reacted to the applicant's business practices of claiming such State bonuses for seven years, the applicant could not expect that the supervising administrative authorities would refrain from recovering such bonuses and impose penalties should they find that the bonuses had been unlawfully obtained (*ibid.*, §§ 134-136).

133. **Exceptions to the principle that the authorities should bear the costs of their own mistakes.** In *Rybářství Třeboň a.s. and Rybářství Třeboň Hld. a.s. v. the Czech Republic*, 2024, the unlawful privatisation of land occurred with the blessing of the State's privatisation authority (§ 96). The Court

noted that although the authorities had acted negligently, it did not alter the facts that the transfer of the land was void *ab initio* and that there had been bad faith on the part of applicant in acquiring this land. The same person signed the privatisation deal on behalf of the State-owned enterprise, the newly created private company, and the State regulatory authority which oversaw the deal (see § 95), which added to the “bad faith” element of this case. In *Kurban v. Turkey*, 2020, § 81, the Court noted that “the authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence, because holding otherwise would be contrary to the doctrine of unjust enrichment” (a procurement authority took measures aimed at correcting its mistakes in the interests of the public, § 82) although the Court found a violation of Article 1 of Protocol No. 1 because they had annulled *ex tunc* the procurement contract won by the applicant. *UAB Profarma and UAB Bona Diagnosis v. Lithuania*, 2025, concerned the annulment of contracts between the private applicant companies and the State for the purchase of COVID-19 tests and restitution by the companies of a substantial part of the sum received as being overpaid by the State: the bad faith of the applicant companies, seeking to take advantage of the public health emergency to make an excessive profit, was an important consideration for the Court. Furthermore, the Court accepted that, in certain cases, the applicants may be expected to take separate proceedings to obtain compensation for the property lost as a result of the authorities’ mistake, if the provisions of the domestic law so require – provided, of course, that such remedy is effective (see *Lidiya Nikitina v. Russia*, 2022, §§ 36-40).

134. **The applicant’s conduct.** In *Galtieri v. Italy* (dec.), 2006, the applicant complained about the authorities’ decision to designate a certain area as belonging to the national park, which prevented him from constructing a building on his land which had originally been suitable for construction. The Court noted that the applicant himself for many years did not try to finalise his building project and obtain a permit: by waiting for so long the applicant demonstrated a lack of interest and contributed to the unfavourable outcome, since he knew that the designation of the land might eventually change. In *Lay Lay Company Limited v. Malta*, 2013, the applicant company complained about the refusal of the authorities to issue it with a building permit. However, the Court noted that the company “failed to take the steps required, in a timely manner, to safeguard its interest and conclude the matter rapidly” and demonstrated “inactivity and lack of diligence in pursuing its building permit application” (§ 88). The good faith of the applicant is also relevant (see *Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 120; see also *Tomina and Others v. Russia*, 2016, § 39). Thus, in cases regarding the return of property wrongfully confiscated by the communist regime from the former owners, the Court relied in its analysis on the fact that persons who acquired this property in good faith should not bear the burden of responsibility which is rightfully that of the State which once confiscated those possessions (*Pincová and Pinc v. the Czech Republic*, 2002, § 58). The Court came to a different conclusion in *Rybářství Třeboň a.s. and Rybářství Třeboň Hld. a.s. v. the Czech Republic*, 2024, where a company acquired land property through privatisation, despite the fact that this property had earlier belonged to the Church, had been confiscated from it by the former communist regime, and under the applicable legislation, had not been subject to privatisation. The Court found no violation on account of the invalidation of the applicant company’s property title to this land *ab initio*, noting in particular that the management of the company, at the moment of privatisation, knew that it had been acting in breach of the law and that thus were acting in bad faith. In *Microtelect OOD v. Bulgaria*, 2014, which concerned the seizure of alcohol belonging to the applicant company from a third party which was involved in the trade of this alcohol without the appropriate licence, the Court argued that it was “not fully convinced that the applicant company was diligent in conducting its business matters, seeing that it must have been aware that at the material time the sale of alcohol required a licence, but nevertheless negotiated a venture with the sole traders without checking whether they had obtained such licences” (§ 43). In *Antonopoulou v. Greece* (dec.), 2021, which concerned a sudden and drastic increase in the amount of a real estate loan denominated in Swiss francs, the Court decided that the applicant had ample opportunities, under domestic law, to seek forced re-negotiation of the contract, to convert the loan into Euros, or to take up an insurance which would protect her from such

occurrence, but she failed to do so, which led the Court to conclude, that the applicant's rights were not breached (§§ 76-85).

135. Failure of the State to adopt regulations, and ongoing legal uncertainty. As the Court put it in *Béla Németh v. Hungary*, 2020, § 36, “uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State’s conduct”. Even when the applicant’s claims cannot be exactly quantified, the State’s prolonged and unjustified failure to quantify them may raise an issue under Article 1 of Protocol No. 1. In *Malysh and Others v. Russia*, 2010, §§ 65-86, the Court examined Soviet-era “commodity” bonds which were, by virtue of a 1995 framework law, declared to be part of the internal debt of the Russian Federation. The framework law, however, did not establish any mechanism of the redemption of those bonds, or the level of compensation, leaving these matters to the implementing regulations, which were not adopted until 2010. While the framework law created an entitlement to obtain some form of compensation for the bonds, even in a kind of inchoate form, the violation found was based on the prolonged situation of uncertainty about the mechanism and the level of compensation (§§ 69-71). The Court also found that the Government had failed to fulfil its promise to regulate matter in *Zelenchuk and Tsytsyura v. Ukraine*, 2018, which concerned a ban on the sale of agricultural land in Ukraine. Following privatisation of State-owned agricultural land, the applicants inherited several plots. However, in 2001 a ban, known as the “land moratorium”, on the free sale of the agricultural land was introduced, pending the adoption of legislation necessary for the creation of a well-functioning land sales market. The ban was extended several times and was still in force in 2018, which prevented the applicant from selling the land (they were able to rent it out). The Court concluded that the prolonged moratorium had lost its relevance, had become *de facto* indefinite and the conditions for its lifting were indeterminate, so that the State had *de facto* abandoned the original policy goal of the gradual introduction of a land sales market. Most importantly, the Court held that “it cannot be said that the applicants had to know from the start that they were coming into possession of encumbered property which would remain so encumbered save for the eventuality of some uncertain future development” (§ 116). In *Intersplav v. Ukraine*, 2007, § 39, the Court found a violation of Article 1 of Protocol No. 1 due to the “situation of chronic uncertainty” with the reimbursement of the VAT to the applicant company, resulting from the refusal of the tax administration, without any good reason, to confirm the calculations of the VAT to be returned from the State budget to the company, which led to important delays in the reimbursement of those sums.

136. Expectations created by administrative acts or the behaviour of the authorities. The Court held in *Čakarević v. Croatia*, 2018, that an individual should in principle be entitled to rely on the validity of a final (or otherwise enforceable) administrative decision in his or her favour, and on the implementing measures already taken pursuant to it, provided that neither the beneficiary nor anyone on his or her behalf has contributed to such a decision having been wrongly made or wrongly implemented. Thus, while an administrative decision may be subject to revocation for the future (*ex nunc*), an expectation that it should not be called into question retrospectively (*ex tunc*) should usually be recognised as being legitimate, unless there are weighty reasons to the contrary in the general interest or in the interest of third parties (§ 56). In this case, the applicant, a recipient of welfare benefits, was required to return the amount of benefits wrongly perceived during several years, with a penalty added, under the heading of “unjust enrichment”. The Court noted that the applicant had in no way contributed to the impugned situation. Moreover, these payments covered the most basic subsistence needs of the applicant. While the Court acknowledged that the public authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence, in the specific circumstances of the case, and in particular in view of the effect which the repayment of the sums unduly perceived may have on the applicant’s already difficult financial situation, the Court concluded that there had been a violation of Article 1 of Protocol No. 1. The case-law also suggests that expectations may be created also by behaviour of the authorities: in *Skučai v. Lithuania*, 2025, the applicants complained that their compensation claims against the Government, related to the annulment of their title to a house built in a protected area, were declared time-barred: the Court

noted that the applicant missed the statutory time-limits because the Government engaged in friendly-settlement negotiations with them and that the concrete steps taken by the Government “constituted a good reason for the applicants to believe that the State had a genuine intention to resolve the situation in a way which would not require the demolition of their house and that they should therefore refrain from taking any action which might jeopardise the ongoing negotiations” (§ 132) (contrast with *BCR Banca pentru Locuințe S.A. v. Romania* (dec.), 2023, § 135, where the Court noted that the lasting toleration by the authorities of the applicant company’s unlawful practices did not create a legitimate expectation that unduly paid amounts would never be recovered from it).

137. The State can defend consumers from unfair contract provisions imposed by dominant market players. In *Car ZRT and Others v. Hungary* (dec.), 2018, the Hungarian authorities adopted legislation which provided for compensation for loan interest excessively paid by debtors to financial institutions. The amount of interest was fixed in the loan agreements concluded between the consumers and the banks, which provided for a possibility of unilateral modification of the interest rates by the banks. During the financial crisis of 2008, the applicant companies used this clause, thereby significantly raising the interest rates for the debtors. The Court decided that the retroactive setting aside of unfair terms of loan agreements did not violate the applicant companies’ rights under the Convention.

138. Relevance of the owner’s prior knowledge of potential restrictions. In *Fredin v. Sweden (no. 1)*, 1991, the applicant invested in the operation of a gravel pit on his land. The original permit to exploit gravel was revoked on the basis of an environmental law which provided for the revocation of a mining licence without compensation after the expiry of ten years. That law had already been in force for several years when that applicant had initiated the investment. Thus, the applicant could not have a legitimate expectation of being able to continue working in the pit for a long time. The Court concluded (also taking into consideration the four years’ closing-down period granted to the applicant) that the revocation decision had not been disproportionate. By contrast, in *Werra Naturstein GmbH & Co KG v. Germany*, 2017, the applicant company obtained a licence for the operation of the lime quarry, built infrastructure, and installed necessary machinery: however, the land on which the quarry was supposed to operate has been expropriated by the State for building a road. While the State delivered a 25-year licence for the operation of the quarry, at the time when the planning of the motorway was under way, this factor could not justify the total lack of compensation for the investment related to the development of the site (§§ 50-52). In *Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, 2008, where the applicant company complained that its land, originally designated as “constructible”, and where it had planned to build a hotel, was redesignated banning construction, for environmental reasons. Although the Government argued that the impossibility of constructing the hotel should have been evident to the applicant from the fact that this land had been located in a non-urban area, the Court noted that, if it were the case, there would have been no need for the authorities to take administrative acts prohibiting any constructions on this site (§ 48). In *O’Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, the Court noted that the applicant company, as a professional on the market, “can be expected to display a high degree of caution in the pursuit of its activities, and to take special care in assessing the risks that may attach to those activities” (§ 117).

139. Property acquired as a result of a “windfall”. The case of *Jahn and Others v. Germany* [GC], 2005, concerned land allocated to the applicant by virtue of a law adopted by the German Democratic Republic (GDR) parliament shortly before the reunification of Germany. The land re-distributed by this law had been previously occupied by the Soviet military forces and became vacant following their withdrawal. The authorities of the unified Germany considered that the redistribution of this land by the GDR law was unfair and represented a “windfall”: hence, this land was expropriated without compensation. The Court considered that, in the exceptional circumstances, neither the expropriation, nor the lack of compensation amounted to a violation of Article 1 of Protocol No. 1: the GDR law had been passed by a parliament that had not been democratically elected, during a transitional period marked by upheavals and uncertainties. In those circumstances, “even if the

applicants had acquired a formal property title, they could not be sure that their legal position would be maintained". The Court also noted that the German legislature intervened within a reasonable time to correct the unjust effects of the GDR Law (§§ 116.; see also *UAB Profarma and UAB Bona Diagnosis v. Lithuania*, 2025, in which the private applicant companies largely benefited by the situation created by the COVID-19 emergency in concluding public procurement contracts).

140. Relevance of non-economic interests in property-related cases. While Article 1 of Protocol No. 1 essentially protects pecuniary interests, the Court has also attached weight to moral and ethical considerations. Thus, in *Herrmann v. Germany* [GC], 2012, the applicant, a landowner, had to tolerate hunting on his land, under the provisions of the German Hunting Act. The Court noted that, while compensation was provided to the landowners whose estates were used for hunting, the law took no account of the ethical convictions of landowners opposed to hunting so that the Court found a violation of Article 1 of Protocol No. 1 (§ 92). In *Kozacioğlu v. Turkey* [GC], 2009, §§ 47-55 and, especially, §§ 63-73, which concerned the amount of compensation for a cultural property expropriated by the State, the Court criticised the authorities for failing to take into account, in determining the amount of the compensation, the rarity of the expropriated building or its architectural/historical features. The difficult social and financial situation of the owners of the house which had been expropriated by the State was, in the eyes of the Court, a factor which should be taken into account in determining the amount of compensation they should have been paid (*Pincová and Pinc v. the Czech Republic*, 2002, § 62; see also *Gashi v. Croatia*, 2007, § 42).

141. Severity of the sanction. In assessing the proportionality of an interference, which consists of a fine or other penalty, the Court often takes into account the amount of this penalty. Thus, in *Costa Santos v. Portugal* (dec.), 2023, the applicant set up a financial scheme which allowed him and his wife, by opening nearly a hundred bank accounts in the name of third persons, to acquire shares of several public companies being privatized, in excess of the maximum amount of shares which was open to acquisition by the applicable regulations. Later the applicant resold the shares with a significant gain. The market regulatory authorities sued the applicant for the breach of market regulations, and he was finally convicted and ordered to pay a 50,000 EUR fine and over 425,000 EUR as an accessory penalty which corresponded to his net profits from this operation. Given the scale of the applicant's financial operations, and the large margin of appreciation which the States enjoy in the matters of economic policy, as well as the fact that most of the amount of the accessory penalty had never been recovered from the applicant, and that this debt had become time-barred, the Court found that this sanction was not disproportionate. The question of excessive sanctions for regulatory violations was also raised in *Stoyan Nikolov v. Bulgaria*, 2021, § 63 (compare with *Karapetyan v. Georgia*, 2020, § 40, and *S.C. Zorina International S.R.L. v. Romania*, 2023, § 54).

142. Penalties for a violation of a formal rule, without quantifiable material damage to the public interest. Where the applicant has breached formal rules without affecting any material public interest, the Court would be reluctant to accept a heavy penalty. In *Imeri v. Croatia*, 2021, the applicant failed to declare a large amount of cash while crossing the Croatian border. The whole amount was confiscated with reference to the penalty for the administrative offence of a failure to declare. The Court noted that importing cash to Croatia was not illegal and that the 100% confiscation measure was applied only as a sanction for non-declaration. The applicant had not avoided customs duties or any other levies or caused any other pecuniary damage to the State and, at the time, the applicant was not suspected of money laundering or any criminal activities. The Court concluded that the confiscation amounted to a disproportionate measure violating Article 1 of Protocol No. 1. A similar logic was applied in *Aktiva DOO v. Serbia*, 2021, §§ 84-85, where the Court noted that using the confiscation of all goods as a measure, in response to the company's failure to properly record them, was disproportionate. In *Megadat.com SRL v. Moldova*, 2008, §§ 62-79, the applicant – the biggest internet provider in the country – had its licence withdrawn, for the alleged failure to indicate its new address. This measure quickly led to the company's bankruptcy. The Court noted *inter alia* that, even if the company's old address had been indicated in the text of the licences, contrary to the

regulations in force, this omission did not, in practical terms, affect any public interests or the interests of the company's clients and partners. The company had not been seeking to evade taxes. Furthermore, the Court noted the severity of the sanction applied to the applicant company, and the fact that many other companies in the same situation received more lenient sanctions for similar irregularities (see also *Stoyan Nikolov v. Bulgaria*, 2021, and compare with *Karapetyan v. Georgia*, 2020, § 40). A company cannot be deprived of a licence for the failure to comply with formal rules, where it was difficult if not impossible to comply with them in time (see *Donprut S.R.L. v. the Republic of Moldova*, 2015, § 24).

143. **The deterrent effect of a sanction must be taken into account.** In addressing the proportionality of a sanction, the Court may also consider the general deterrent effect of the sanction. Thus, in *S.C. Zorina International S.R.L. v. Romania*, 2023, the applicant company was required to pay a fine for its failure to issue receipts of sales, and the company's operations were temporarily halted by a court order. While the actual damage incurred by the State amounted to approximately RON 3, the offence committed by the applicant company represented part of a tax evasion problem at the national level, which prevented the economy from functioning properly and efficiently. The Court noted that the State's margin of appreciation in this context was a wide one, and concluded that the sanctions imposed on the company were not "oppressive or otherwise disproportionate" (§ 54).

144. **Shifting the burden of proof where the assets are presumably of illegitimate origin.** As a rule, the Court accepts the confiscation of illegally acquired property, where the unlawfulness of the acquisition has been proven in the domestic courts: *Honecker and Others v. Germany* (dec.), 2001, concerned the refusal to convert money belonging to the former top officials of the GDR into German marks, Deutsche Mark, following the reunification of Germany; and in *Silickienė v. Lithuania*, 2012, the Court noted, relying on the domestic courts' findings, that the applicant knowingly participated in the criminal activities of her husband and understood that his property had been acquired unlawfully). In some contexts, the unlawful origin of money or other assets may be presumed, and it is up to the owner to prove the contrary. Such a reversal of the burden of proof was examined in the case of *Butler v. the United Kingdom* (dec.), 2002, where a large sum of cash, allegedly belonging to the applicant and transported by his relative, had been confiscated at the border as being "drug money". The courts, reviewing the confiscation, decided on the balance of probabilities and referring to circumstantial evidence (for example, the traces of cannabis found on the banknotes) that the confiscation was justified. The Court noted that presumptions on which the court relied were confined within reasonable limits; and it was open for the applicant to adduce evidence in order to satisfy the domestic courts of the legitimacy of the purpose of his visit to Spain, the reasons for taking a large sum of money out of the country in the boot of a car and the source of the money. The courts refrained from any automatic reliance on presumptions created in the relevant provisions of the legislation. Consequently, the applicant's complaint under Article 1 of Protocol No. 1 was found to be manifestly ill-founded.¹⁹

4. Inherent procedural requirements

145. **Due process requirements inherent to Article 1 of Protocol No. 1.** As repeatedly held by the Court, whilst Article 1 of Protocol No. 1 contains no explicit procedural requirements, it nevertheless implies that domestic law must provide for legal protection against arbitrary interference by the public authorities and that any interference with the peaceful enjoyment of possession must be accompanied by certain procedural guarantees (see *Capital Bank AD v. Bulgaria*, 2005, § 134). Procedural requirements of Article 1 of Protocol No. 1 come into play, either in the context of a direct

¹⁹ See also the [Key Theme on Confiscation/seizure of assets](#).

interference by a public authority or in the context of a positive obligation of the State to provide a forum for adjudication of private disputes.

146. Should “procedural safeguards against arbitrariness” always involve a judicial remedy? Cases where the applicants complain about the lack of access to a court in relation to their claims about interference with their possessions were examined by the Court either from the standpoint of Article 6, which guarantees access to a court (see, for example, *First Sofia Commodities EOOD and Paragh v. Bulgaria* (dec.), 2011), or through the prism of Article 1 of Protocol No. 1 which provides for procedural obligations of the State, or under both provisions. Thus, in *Micointelect OOD v. Bulgaria*, 2014, the applicant company transmitted its goods (alcohol) to third parties, from which this alcohol has been confiscated by the tax authorities because these parties were involved in the retail sale of this alcohol without the appropriate licence. The applicant company was unable to challenge the seizure in its own name, which led the Court to conclude that the absence of such a review “put the applicant company in a situation of having no safeguards capable of protecting it against unjustified interference” (§ 47). In this case the Government did not argue that the applicant company could have obtained compensation from the third party which engaged in the illegal sales of alcohol which resulted in its confiscation. In *Korporativna Targovska Banka AD v. Bulgaria*, 2022, the applicants were former top managers of a bank which was placed under special administration by the banking regulatory authority, had its licence withdrawn, and was finally liquidated. The applicants unsuccessfully sought to contest this measure, and although Bulgarian law had provided for the possibility of seeking judicial review of the withdrawal of the bank’s licence, the power to act on the bank’s behalf had been conferred on its special administrators, appointed by and answerable to the regulatory authority and the standing of the banks’ former managers and shareholders, was not recognised by the national courts. The bank had thus been left in a situation where there had been no one, with both standing and an interest, who could seek judicial review of its licence withdrawal. This led the Court to conclude that Article 6 § 1 was breached on account of a lack of “access to court”. The Court also found a violation of Article 1 of Protocol No. 1: while the scope of the inherent procedural guarantee under this provision was not the same as the “access to court” guarantee under Article 6 (§ 173), the applicants were unable to obtain a judicial review of the withdrawal of the bank’s licence, and there were also no other procedural safeguards surrounding this decision, and there was no possibility of contesting the regulatory authority’s decision before a non-judicial authority.

147. Duty of the domestic authorities and, in particular, courts to conduct a balancing exercise. In *Megadat.com SRL v. Moldova*, 2008, §§ 62-79, the applicant – the biggest internet provider in the country – had its licence withdrawn, for the alleged formal omission in the official documents. The Court noted that the requisite procedural safeguards were also lacking, as the applicant company was not given an opportunity to properly present its case, and the examination of the case by the domestic authorities had been unduly formalistic with no attempts to carry out a balancing exercise.

148. The scope of the review conducted by the domestic courts. In *Pintar and Others v. Slovenia*, 2021, the applicants, shareholders of three private banks, complained of the extraordinary measures taken by the Bank of Slovenia in respect of the banks which experienced financial problems, which reduced their share capital to zero. While the decision of the Bank of Slovenia had a basis in domestic law, the applicants were unable to effectively challenge the impugned measures: the former shareholders had not been in a position to effectively dispute the grounds on which the Bank of Slovenia’s decisions had been based as they had lacked access to crucial information, such as the reports of asset quality review and the stress tests (the absence of procedural guarantees against arbitrariness was examined under the “lawfulness” of the interference, § 110). Similarly, in *Litvinenko v. Russia*, 2020, the applicant’s possessions were seized during the criminal proceedings in which she was granted victim status. The prosecution authorities argued that she had been kidnapped by another person who had been manipulating her. Thus, for the prosecution authorities, the seizure was needed to protect her own interests. The applicant herself, through a lawyer, insisted that she had not been kidnapped, but simply did not want to return to Russia, and asked the courts to release her

assets from seizure. The courts held that they were incompetent to review the kidnapping charges and lift the seizure. The Court noted that the authorities had never tried to inquire whether the applicant had indeed been a victim of a kidnapping, and did not address her arguments, but simply referred to the fact that the investigator acted within his competency (§ 51). The Court concluded that the seizure of the applicant's assets had been unlawful (see also *Amerisoc Center S.R.L. v. Luxembourg*, 2024, concerning the lack of a remedy to meaningfully challenge seizure of the applicant company's Luxembourg bank assets following an international request for assistance issued by the Peruvian authorities as part of money-laundering proceedings opened in Peru).

149. Procedural guarantees may be examined separately or as a part of the proportionality analysis. In *Hentrich v. France*, 1994, the Court examined the mechanism of forced acquisition by the tax authorities of real estate proposed for sale. The Court concluded that there had been a breach of Article 1 of Protocol No. 1 in particular because of the absence of effective safeguards against arbitrariness: at the relevant time domestic law allowed the State to exercise the right of pre-emption without indicating the reasons of fact and law for its decision, and the domestic courts did not have to examine those reasons (see §§ 46-49). However, the Court also examined other elements of this pre-emption mechanism, including its effect on the applicant and the lack of adequate compensation for this.

150. Effectiveness of domestic remedies. Even where a business entity succeeded in defending its interests before the domestic courts, it may nevertheless be unable to benefit from it – either for objective reasons or because the remedies it used were not efficient. Thus, in *Shesti Mai Engineering OOD and Others v. Bulgaria*, 2011, the applicants complained of a “hostile takeover” of a company in which they held nearly 50% of shares. The takeover started with a court decision ordering that a new board of directors of the company be recorded in the official company register. The applicant brought court proceedings and obtained a judgment in its favour but, by that time, the applicants had already lost control of the company due to the decisions taken by its new illegitimate management. As the Court observed in § 86, in theory the applicants could have tried to challenge all the resolutions of the illegitimate board or seek compensation for the damage caused by the actions of that illegitimate board's members. However, any such claim would have, in all probability, been stayed to await the outcome of the proceedings against the original decision and would have thus taken many years to examine, possibly allowing the board ample time to shield themselves from liability. Secondly, the applicants would have been required to bring individual challenges against the multitude of decisions taken by that board throughout a considerable period of time during which this board was still considered by the outside world, including the courts, as validly constituted by reason of its featuring in the register of companies. The applicants' attempts to obtain urgent interim measures did not succeed, and their “main” claims, instead of being fast-tracked, were examined over the span of several years under the normal procedure through the three levels of the court system. The Court concluded that the “hostile takeover” of the company required a much more expedited response on the part of the courts, absent which the applicants were incapable of effectively opposing the multitude of steps taken by the fraudulent directors and preventing the damaging effect of those steps on their shareholdings in the company (§ 89). In a small number of cases, the Court has found that the State's response to a violation of Article 1 of Protocol No. 1 must involve criminal law remedies (see for example *Korotyuk v. Ukraine*, 2023, concerning copyright infringement amounting to a crime, in absence of effective civil remedies).

5. Questions of compensation for the loss of assets or revenues

151. Compensation is an important factor but not a *sine qua non*. Not all types of interferences with possessions require payment of individualised compensation to the person affected. If the Court regards a measure or a set of measures as an *expropriation*, this normally entails an obligation for the State to award adequate compensation. Where the lawfulness of the interference and the public interest considerations behind the measure are not at issue, the amount of the compensation may be

a decisive factor in the Court's reasoning (see *Bramelid and Malmström v. Sweden*, Commission decision, 1982, pp. 82-83, concerning the compulsory buy-off of the shares from the minority shareholders). In a situation where a measure *controlling the use of property* is in issue, the lack of compensation is a factor to be taken into consideration in determining whether a fair balance has been achieved (*Depalle v. France* [GC], 2010, § 91; see also *Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, 2008, § 45). Similar considerations apply when the general clause of Article 1 of Protocol No. 1 is at stake (*Sporrong and Lönnroth v. Sweden*, 1982, § 69).

152. **Full compensation is not always guaranteed.** The Court repeatedly held that “Article 1 of Protocol No. 1 does not guarantee a right to full compensation in all circumstances”, while “a total lack of compensation can be considered justifiable only in exceptional circumstances”. Legitimate objectives of “public interest”, such as pursued in measures of economic reform or measures designed to achieve greater social justice, may call for reimbursement of less than the full market value (*Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 112; *Papachelas v. Greece* [GC], 1999, § 48; *The Holy Monasteries v. Greece*, 1994, §§ 70-71; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], 2007, § 54; *Urbárska Obec Trenčianske Biskupice v. Slovakia*, 2007, § 115; *Pálka and Others v. the Czech Republic*, 2022, § 49; *Maria Azzopardi v. Malta*, 2022, § 54). In cases of expropriation of property for public need, the compensation should be “reasonably related to its value” (*Former King of Greece and Others v. Greece* (just satisfaction) [GC], 2002, § 89). What is “reasonable” will depend on the circumstances of a given case, but a wide margin of appreciation is applicable to the determination of the amount of compensation (*James and Others v. the United Kingdom*, 1986, § 54). The Court will respect the legislature's judgment as to the compensation due for expropriation unless it is “manifestly without reasonable foundation” (*Lithgow and Others v. the United Kingdom*, 1986, § 122). In the context of the COVID-19 pandemic, the Court noted the sanitary measures, affecting the operation of certain business, where not as such the sole factor affecting the applicants' business operations, and that the amount of losses sustained while such measures were in operation, should be assessed over a longer period: as it is in normal course of business, losses from one period may be offset by gains from another (*Scheffer and Others v. Slovakia* (dec.), 2025, §§ 90-91).

153. **Compensation for nationalisation measures.** Where expropriation was a result of broad economic reforms or measures designed to achieve greater social justice – such as the nationalisation of the whole sector of industry - the broad margin of appreciation accorded to the State will normally also apply to the determination of the amount of compensation. A decision to enact legislation regarding the nationalisation of a whole industry will commonly involve consideration of various issues on which opinions within a democratic society may reasonably widely differ. Because of their direct knowledge of their society and its needs and resources, the national authorities are in principle better placed than the international judge to appreciate what measures are appropriate in this area, and consequently the margin of appreciation in deciding whether to deprive an owner of his or her property, and to lay down the terms and conditions of the compensation, should be a wide one. Thus, in *Lithgow and Others v. the United Kingdom*, 1986, the Court examined the adequacy of compensation paid to the former owners of companies which were expropriated as a part of the program of nationalisation of the aircraft and shipbuilding industries. The Court examined various aspects of the compensation scheme: which was based on the share values and not on the value of the underlying property, which applied the hypothetical Stock Exchange quotation method of valuation for shares which were not quoted, which fixed the reference period for valuation antedating the date of transfer of ownership, which did not take into account the economic growth and inflation between the reference period and the actual transfer of ownership and which did not take account of an additional value represented by the large or controlling shareholding. The Court concluded that these elements of calculation of compensation remained within the State's margin of appreciation and particularly noted the need to maintain legal certainty and to respect public expectations created by the initial choice of compensation formula (§ 142).

154. **Expropriation of “windfall” or unfairly acquired property does not necessarily need to be compensated.** In *Jahn and Others v. Germany* [GC], 2005, the applicants had to return the land which they had obtained previously under the law (the so-called “Modrow Law”) passed by the parliament of the GDR before the reunification of Germany. The Court examined this situation in the light of the unique context of German reunification: the Modrow Law had been passed by an illegitimate parliament, during a transitional period marked by upheavals and uncertainties, was regarded as unfair and had resulted in the “windfall” from which the applicants had undeniably benefited. The Court observed that, even if the applicants had acquired a formal property title, they could not be sure that their legal position would be maintained, so the authorities’ decision to correct the effects of the Modrow Law for reasons of social justice had not been disproportionate. (§§ 100-117). Compare with *Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994: this case concerned the execution of contracts, which provided for the industrial development of certain land plots and which had been signed by the Greek State under the military junta regime. Once democracy had been restored, the Government took the view that the contract by which the applicant company had received land from the State was prejudicial to the national economy and terminated the contract. The applicant company brought proceedings against the State in ordinary courts, but the State objected claiming that the dispute should be examined in an arbitration tribunal, as per the arbitration clause of the contract. In the arbitration proceedings the applicant company won the case: the arbitration tribunal ordered the State to compensate for the damage incurred by the applicant company which had invested large amounts of money in the project. The Greek State then adopted a law which declared the arbitration clause in the original contracts null which ultimately led to the invalidation of this arbitral award by the Court of Cassation. The Court concluded that, by making the arbitral award unenforceable, the State interfered with the company’s possessions. The Court accepted the Government’s argument that applicant company’s claim was derived from a preferential contract, prejudicial to the national economy, which had helped to sustain a dictatorial regime (§ 72). However, the Court did not consider that the State was free to annul the arbitration clause, which was autonomous from the main contract, and on which the State itself relied: the State was therefore under a duty to pay the applicants the sums awarded against it at the conclusion of the arbitration procedure (§ 74).

155. **Market value of “possessions” in a nationalisation context.** Where compensation is required by virtue of Article 1 of Protocol no. 1, its amount should be reasonably related to its “market value”, as determined at the time of the expropriation. Thus, in the case of *Pincová and Pinc v. the Czech Republic*, 2002, the State ordered the return of the property, confiscated by the communist authorities, to the original owners. The new owners, who acquired this property in 1967 in good faith, received compensation which was, however, calculated on the basis of the 1967 prices. The Court noted that the purchase price paid in 1967, which was returned to the applicants, could not be reasonably related to its value thirty years later, when the expropriation occurred (§ 61). In *Guiso-Gallisay v. Italy* (just satisfaction) [GC], 2009, the Court confirmed, for the purposes of the calculation of just satisfaction claims, that it is the market price of the property at the moment when it has been expropriated which matters: the fact that following the expropriation the development of the land by the new owner increased its market value is immaterial, at least in the context of Article 41 claims (see § 105).

156. **Compensation should take into account the loss of earnings and auxiliary assets.** In *Werra Naturstein GmbH & Co KG v. Germany*, 2017, the applicant company obtained a licence for the operation of a lime quarry, built infrastructure, and brought the necessary machinery: however, the land on which the quarry was supposed to operate was expropriated by the State for building a road. The applicant company was paid compensation for the expropriation of the land, but the amount was calculated on the basis of the value of the land, and did not take into account the effective loss of the applicant company’s mining licence (worthless without the quarry) or the interference with its remaining quarrying operation (§ 49). Losing the main source of income because of expropriation may mean that the applicant had borne an excessive individual burden if the authorities did not address

whether the compensation granted would have covered the actual loss resulting from the deprivation of the means of subsistence or at least would have been sufficient to acquire equivalent land within the area in which the applicant lived (*Osmanyan and Amiraghyan v. Armenia*, 2018, § 70). However, the Court may be more lenient on the failure of the State to take into account the potential loss of auxiliary assets where the measure is ordered within the framework of a larger nationalisation program, and where the compensation program is particularly complex and has to take into account various economic factors, as well as remain stable and predictable for the general public (see *Lithgow and Others v. the United Kingdom*, 1986, § 142).

157. An unreasonable delay in the payment of compensation is a relevant factor, especially if inflation is high. The Court found against the State in a case where the fact that the public authorities determining the amount of compensation did not take account of the fact that over twenty years had elapsed before the applicant received any compensation (*Schembri and Others v. Malta*, 2009, § 43; see also *Malama v. Greece*, 2001, § 51; *Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, 2000, § 54). The Court also found that abnormally lengthy delays in the payment of compensation for expropriation in the context of hyperinflation led to increased financial loss for the person whose land has been expropriated, placing him in a position of uncertainty (*Akkuş v. Turkey*, 1997, § 29). That being said, in the context of a complex reform such as nationalisation of the whole sector of an industry, the compensation scheme does not necessarily need to adjust for inflation because other factors can come into play as well (see *Lithgow and Others v. the United Kingdom*, 1986, §§ 144-147).

158. Determination of the amount of compensation should ensure due process. In *Azas v. Greece*, 2002, the Court held that “where an individual's property is expropriated, there must be a procedure which ensures an overall assessment of the consequences of an expropriation, namely the award of compensation in relation to the value of the property expropriated, the determination of the beneficiaries of the compensation and any other matter relating to the expropriation, including the costs of the proceedings” (§ 48, unofficial translation).

159. Paying compensation does not necessarily absolve the State from its liability under Article 1 of Protocol No. 1. In *Velocci v. Italy*, 2008, the applicants' land has been *de facto* expropriated by the municipality, for the purpose of building a road, in circumvention of the normal rules on expropriation. Although the applicants in this case were awarded compensation by the domestic courts, the Court found a breach of Article 1 of Protocol No. 1, not on account of insufficient compensation for the land expropriated, but on account of the illegality of the expropriation.

160. Lawfulness of the underlying administrative action does not exclude the need to pay compensation. In *Andrzej Ruciński v. Poland*, 2023, the applicant, a businessman in the cigarettes trade, was sued by the tax authorities for the alleged failure to pay excise tax. During the proceedings his accounts, movable and real-estate property were attached, which paralysed his business. The tax proceedings ended in the applicant's favour, but his claim for damages from the State for the prolonged seizure of his possessions was rejected. The Polish courts considered that, although the tax proceedings against the applicant were based on an error of law, this error was not of a manifest character and the State's civil liability may only arise for errors which are qualified, fundamental and manifest. The Court, however, noted that the impugned “error” resulted from the divergent practice of the public authorities concerning the modalities of payment of the excise tax and that it was “for the State to take responsibility for mistakes or omissions resulting from their actions” (§§ 90-91).

F. Operation of general principles in specific areas of business

1. State as a private actor: obligations of State-controlled private companies

161. As noted above in Section IV D, there is a distinction between the State's obligations when the dispute is a purely private or purely public one, although sometimes the borderline between the two

is not clear. In addition, it is not always evident whether the State defaulted on its obligations in a purely private capacity or by using its prerogative as a sovereign. The case of *Gladysheva v. Russia*, 2011, §§ 55-59, concerned the annulment of a purchase contract for a flat between the applicant and another private individual and its eventual return to the original owner (the municipality). The Court notes that “it cannot describe the dispute as a purely civil matter” and that it involved the irregular registration of the original title which was clearly an administrative law matter. Similarly, in *Kurban v. Turkey*, 2020, §§ 62-65, the Court noted that the loss of the procurement contract with a State authority resulted from the application of a mandatory provision of domestic law (related to the fact that the applicant was prosecuted for a procurement-related offence which entailed the termination of any such contracts). In *Marini v. Albania*, 2007, the applicant entered into a joint-venture agreement with the State, by investing a large sum of money into the State-owned factory and obtaining a 50% share in a joint-venture enterprise. At some point the State privatization authority disposed of a part of the assets which belonged to the enterprise. The applicant successfully sued the State and obtained a writ of execution in his favour. However, this writ was never executed. The Court characterized the non-enforcement of the judgment in the applicant’s favour as a breach of the State’s positive obligations (§ 174). By contrast, in *BTS Holding, a.s. v. Slovakia*, 2022, the non-enforcement of an arbitral award in favour of a private company in respect of the national pension fund was characterised as a direct interference (§ 64).

162. The State may sometimes be held liable for the debts of enterprises it owns or controls. The Court said on many occasions that the State is not responsible for the non-enforcement of private debts where the debtor, a private enterprise, is bankrupt (see *Mihăilescu v. Romania* (dec.), 2003). However, the Court has acknowledged that the State may be responsible for the debts of a State-owned company – when those debts are sufficiently established – even if the company is a separate legal entity, provided that it does not enjoy sufficient institutional and operational independence from the State. The criteria for attributing liability to the State were developed in *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], 2014, §§ 114-115, and are as follows: the company’s legal status (under public or private law); the nature of its activity (a public function or an ordinary commercial business); the context of its operation (such as a monopoly or heavily regulated business); its institutional independence (the extent of State ownership); and its operational independence (the extent of State supervision and control). Some additional factors to be taken into consideration include whether the State was directly responsible for the company’s financial difficulties, siphoned the corporate funds to the detriment of the company and its stakeholders, failed to keep an arm’s-length relationship with the company or otherwise acted in abuse of the corporate form (see also *Anokhin v. Russia* (dec.), 2007, and *Khachatryan v. Armenia*, 2009, §§ 51-55). The sphere of operations in which the company operates is considered by the Court as relevant (compare *Mykhaylenko and Others v. Ukraine*, 2005, § 45, and *Fomenko and others v. Russia* (dec.), 2019, § 178. As to the application of these criteria, see *Cooperativa Agricola Slobozia-Hanesei v. Moldova*, 2007, § 19 and 20 : the Court held the State accountable for any debts incurred by the enterprise in view of the “delegation of some State functions” to the enterprise and “significant control over [the respondent company’s] assets”, which consisted in the annulment of some of the debts of this enterprise vis-à-vis the State. This case can be compared with *Tokel v. Turkey*, 2021, where the Court examined, from the standpoint of Article 1 of Protocol No. 1, an unlawful use of the applicant’s patent by a State-owned company: in the specific circumstances of this case the Court considered that the case-law developed in relation to the established debts of State-owned companies also applies to other acts and omissions of these companies, such as the use of a patented invention (§ 58).

163. Debts of municipal enterprises. Since in certain States local communities are seen as a separate branch of public power not directly subordinated to the State, the question arises as to the extent the State should be liable for the actions of such municipal authorities. In *Liseytseva and Malov v. Russia*, 2014, the respondent Government declined responsibility for the debts accrued by insolvent State-owned companies. The Court made a distinction between “classic” private companies and the

particular type of State-owned companies where the applicants worked – the “municipal unitary enterprises”, which did not enjoy a sufficient degree of operational and institutional independence from the local administration: in respect of the latter, the Court concluded that the State was directly responsible for their debts which they accrued vis-à-vis the applicants (§ 214).

164. The State is bound by the terms of a contract it signed. Contractual obligations undertaken by the State must, as a rule, be respected and that is so despite the public prerogative the State as a party to a contract may have. The case of *Consorts Richet and Le Ber v. France*, 2010, concerned the contract of sale of privately owned land on an island to the French State. The owners of the island agreed to the sale for a price below its market value in exchange for the possibility of keeping and developing some parcels of land. Due to the change in the urban planning regulations, any construction on those parcels became impossible. The Court concluded that the right to build, conferred on the owners by virtue of the contract they concluded with the State, amounted to their (and their heirs’) “possessions”. The Court found that when the contract of sale had been negotiated it had been understood that the right to build would not be affected by future changes in urban planning regulations and, if the State envisaged such a change, it should have informed the owners accordingly (§§ 95-96). So, the change in the urban planning regulations running contrary to the State’s contractual obligations amounted to an interference with the applicants’ possessions. The Court found in favour of the applicants: it stressed that at its highest level the authorities were aware of their contractual commitments, their scope and their impact on the environment of the island and failed to find a compromise solution that would reconcile the interests involved, namely respect for the applicants’ building rights and the protection of the island (§§ 121-122).

165. Restructuring of the State’s debt may be possible. As the Court said in *Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994, § 72, “according to the case-law of international courts and of arbitration tribunals any State has a sovereign power to amend or even terminate a contract concluded with private individuals, provided it pays compensation for example”. Thus, exceptionally, the State may unilaterally restructure its own debt and change the scope and the conditions of honouring its obligations, without necessarily infringing Article 1 of Protocol No. 1. However, conditions in which it may be possible should be truly exceptional – the Court accepted the restructuring of the State debt in the context of a major financial crisis which hit Greece between 2009 and 2011 (see *Mamatas and Others v. Greece*, 2016, §§ 106-120).

166. Budgetary problems are not a good argument for the failure to pay off a judgment debt. In the context of non-payment of certain social benefits, the responding State (Russia) referred to the lack of funds allocated for these purposes in the State budget. As a result, judicial decisions rendered in favour of the applicants against the local social security authority remained unenforced. The Court held in that case that “it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt” (*Burdov v. Russia*, 2002, § 35), it being noted that the existence of the debt in that case (the individual recipient of social benefits) had been confirmed by a final judicial decision with the authority of *res judicata*. The Court found a breach of Article 6 § 1 (under the heading of the “right to a court” – see Section IV below) and of Article 1 of Protocol No. 1 to the Convention.

2. Seizures, asset-freezing, confiscations²⁰

167. Seizure and confiscation of assets of presumably criminal origin. As the case of *Raimondo v. Italy*, 1994, demonstrates, in the context of the State policy combatting organised crime and mafia-type organisations, temporary seizure of assets of presumably criminal origin does not perturb the fair balance. In this case, the Court was satisfied that “sufficient circumstantial evidence [existed] to show that the possessions seized represented the proceeds from unlawful activities or their reinvestment” (§ 27). Confiscation of assets of criminal origin may be ordered even before the final conviction of the

²⁰ For the seizure and freezing of assets ordered on the basis of international sanctions imposed by supra-national bodies, see Section VI (B) below.

defendant in the related criminal case, and the “criminal origin” should not necessarily be proven by the “beyond the reasonable doubt” standard of criminal law, but on the basis of a “preponderance of evidence” which suggested that the respondents’ lawful incomes could not have sufficed for them to acquire the property in question – and this concerns confiscation not only from persons directly accused of offences but also those who are presumed to possess and manage the ill-gotten property informally on behalf of the suspected offenders or who otherwise lacked the necessary *bona fide* status (*Gogitidze and Others v. Georgia*, 2015, § 107). For example, in *Silickienė v. Lithuania*, 2012, §§ 60-70, the proceedings resulted in the confiscation of assets registered in the name of the widow of a corrupt public official. The legal basis for such confiscations should be sufficiently clear and foreseeable (*Episcopo and Bassani v. Italy*, 2024, §§ 147-158).

168. Seizure of transport used for smuggling. The case of *Air Canada v. the United Kingdom*, 1995, §§ 44-47, concerned the seizure of a plane used to smuggle drugs. The plane was seized temporarily and returned to the airline company upon payment of the levy of £50 000, in the absence of any finding of fault or negligence on the part of the applicant company (which owned the aircraft but did not have any relation to the cargo). In assessing the reasonableness of this measure, the English courts had only to assess “illegality, irrationality and procedural impropriety” of the impugned measure, and not its proportionality *stricto sensu*. The Court found that this standard of review offered the applicant company a sufficient degree of protection against arbitrariness. The Court also noted that the authorities had previously warned air companies, including the applicant company, that their planes were being used for drug trafficking, due to the lack of proper controls over the content of the cargo. Due to the fact that the impugned cargo contained several hundred kilos of cannabis, the penalty paid by the company for the return of the aircraft was not found to be disproportionate. In *B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia*, 2017, the Court found a violation of Article 1 of Protocol No. 1 on account of the seizure of a lorry in which heroin was being transported. The Court noted that there had been no indication that the applicant company had been involved in smuggling or that it had any knowledge about the illegal activities of its driver or that it had failed to carry out regular controls of the vehicle, and the lorry had been confiscated for good which mandatory confiscation could not be reviewed on any grounds (§§ 39-52).

169. Seizure, with a view to possible confiscation, should broadly correspond to the value of the property which might be confiscated. In *Džinić v. Croatia*, 2016, §§ 76-80, the applicant’s property was temporarily seized with a view to securing a possible confiscation of the proceeds of the crime (the applicant was a businessman accused of economic crimes). The Court accepted that the seizure was done in the “public interest” but noted that it failed to respect the “fair balance” requirement: while the applicant was suspected of having made a pecuniary gain of approximately one million EUR, the property seized was arguably worth nearly ten times more than this amount, and the domestic courts failed to assess this aspect of the case.

170. Relevance of the duration of the seizure. In *Forminster Enterprises Limited v. the Czech Republic*, 2008, the applicant company acquired shares of a company KOTVA from the seller, company KHB. Soon afterwards, the prosecution opened a criminal case against H., one of the directors of KHB, on suspicion of fraud related to the operations with the shares and other securities. Within the framework of those criminal proceedings KOTVA’s shares, belonging to the applicant company, were seized, in order to secure a potential claim for damages which had been brought by the victims of the fraudulent actions of H. The Court acknowledged the importance of investigating suspected serious economic crimes but, taking into account the length of the seizure of the shares belonging to the applicant’s company (more than twelve years) and the considerable value of those assets (which deprived the applicant of the voting rights within the company KOTVA), the Court found a violation of Article 1 of Protocol No. 1 (§ 77). Similarly, the length of the freezing of the applicant’s assets following the seizure was a factor assessed by the Court in *Džinić v. Croatia*, 2016: the Court noted, *inter alia*, that the situation persisted for more than two and a half years without ever addressing the applicant’s specific arguments of disproportion between the value of the seized property and the alleged

unlawfully obtained pecuniary gain (§ 79). In *JGK Statyba Ltd and Guselnikovas v. Lithuania*, 2013, §§ 143-144, the Court found that the attachment of the applicant company's property for nearly ten years, in the context of a purely private dispute, upset the fair balance. However, even a considerable length of the seizure by itself may not lead to a finding of a violation of Article 1 of Protocol No. 1: as the Court noted in *Karahasanoğlu v. Turkey*, 2021, "in previous cases where lengthy precautionary measures gave rise to a violation of Article 1 of Protocol No.1, the finding of a violation was based on an accumulation of factors. While the length of time during which the restrictions remained in place is a crucial part of the Court's assessment, the scope and nature of restrictions as well as the presence or absence of procedural guarantees are no less relevant" (§ 151). In *Uzan and Others v. Turkey*, 2019, §§ 212-215, the Court remarked that, while the initial freezing could have been considered proportionate, it had become disproportionate over time, the Court emphasising that the applicant had not benefited from any individual review of the measures, and could not effectively challenge those measures, and that there was no evidence in the case file indicating that the applicants themselves had been implicated in the commission of the offences which led to the freezing of their assets (see also *Karahasanoğlu v. Turkey*, 2021, § 153, where the Court, applying the same test, came to the conclusion that a prolonged freezing of the applicant's assets had not been disproportionate, and *Béla Németh v. Hungary*, 2020, § 53, where the Court found that the seven-months freezing of the enforcement of the eviction orders, during the 2008 financial crisis, was not disproportionate).

171. Seizure of documents may hinder business operations and thus constitute "control of use". In *East West Alliance Limited v. Ukraine*, 2014, the Court examined the seizure of documents proving the title to an aircraft. Even though the Court did not develop in detail how it affected the economic interests related to the use of the aircrafts, it still characterised such seizure as a "control of use" (§§173-176).

172. The authorities are responsible for safekeeping seized goods. Article 1 of Protocol No. 1 does not, of itself, give rise to an entitlement to compensation for any loss alleged to have been suffered as a result of the impounding of the property during the criminal proceedings: the State is entitled to define the conditions to obtain compensation for such damages. While the modalities of exercise of the compensatory remedy should not impose an "excessive burden" on the applicant, a requirement that compensation is payable only in the case of an "unlawful act" of the authorities is not unreasonable (*Stożkowski v. Poland*, 2021, § 78). Nevertheless, the public authorities responsible for the storage of seized assets should act with the diligence necessary to preserve their value (*Tendam v. Spain*, 2010, § 51): in this case (§ 54), the Court noted that the burden of proof concerning the conditions in which the applicant's assets had been stored fell upon the domestic authorities responsible for the impoundment. In *Credit Europe Leasing Ifn S.A. v. Romania*, 2020, § 87, the Court found that the absence of remedies, allowing the applicant company to obtain compensation resulting from a prolonged seizure of its assets which resulted in the loss of value, amounted to a breach of Article 1 of Protocol No. 1.

3. Taxes and duties

173. Special regime. The second paragraph of Article 1 of Protocol No. 1 specifically refers to taxation and other contributions or penalties. Taxation "is in principle an interference with the right guaranteed by the first paragraph of Article 1 of Protocol No. 1, since it deprives the person concerned of a possession, namely the amount of money which must be paid" (*Buffalo S.r.l. in liquidation v. Italy*, 2003, § 32). Although "the interference is generally justified under the second paragraph of this Article, which expressly provides for an exception as regards the payment of taxes or other contributions", the Court considers "the issue ... nonetheless within the Court's control, since the correct application of Article 1 of Protocol No. 1 is subject to its supervision" (*Burden v. the United Kingdom* [GC], 2008, § 59). However, as specified in *Gasus Dossier- und Fördertechnik GmbH v. the Netherlands*, 1995, § 59, "the importance which the drafters of the Convention attached to this aspect of the second paragraph of Article 1 may be gauged from the fact that at a stage when the proposed

text did not contain such explicit reference to taxes, it was already understood to reserve the States' power to pass whatever fiscal laws they considered desirable, provided always that measures in this field did not amount to arbitrary confiscation".

174. What taxes and contributions are concerned? Income taxes (*R.Sz. v. Hungary*, 2013 concerning the levying tax at a rate of 98% on part of the applicant's severance pay), property and inheritance taxes (*Burden v. the United Kingdom* [GC], 2008, § 59, concerning the requirement for the survivor to pay tax on property inherited from the first person to die), VAT and custom duties (*S.A. Dangeville v. France*, 2002, concerning the reimbursement of the VAT) are all covered by the second paragraph of Article 1 of Protocol No. 1. Not only the payment of taxes, but also the reimbursement of amounts excessively paid, may be examined under this head (*S.A. Dangeville v. France*, 2002, cited above), as well as the absence of any compensation for the belated payment of amounts due from the State budget (see *Eko-Elda AVEE v. Greece*, 2006, concerning the belated payment of the tax credits, where this situation was examined under the general "first rule", even with reference to tax-related case-law). As to the term "contributions" in the second paragraph of Article 1 of Protocol No. 1, the Court interpreted it as covering court fees (*Perdigão v. Portugal* [GC], 2010, § 61). However, in certain cases tax-related obligations have been analysed under the general rule of Article 1 of Protocol No. 1 (for example, in *Khodorkovskiy and Lebedev v. Russia*, 2013, § 873, where unpaid corporate taxes had been recovered from the managers of the company found guilty of tax evasion).

175. The margin of appreciation in matters of taxation and the minimal standard of "reasonable foundation". The Court has recognised that contracting States, not least when framing and implementing policies in the area of taxation, enjoy a wide margin of appreciation and the Court will respect the legislature's assessment in such matters unless it is "devoid of reasonable foundation" ("*Bulves*" *AD v. Bulgaria*, 2009, § 63; *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 1995, § 60, *S.C. Zorina International S.R.L. v. Romania*, 2023, § 41).

176. Additional latitude to the States in interpreting their law, especially in respect of corporate taxes. The Court's well-established position is that States may be afforded additional deference and latitude in the exercise of their fiscal functions under the lawfulness test, and that, in view of the complexity of the relevant field of regulation, corporate entities, as opposed to individual taxpayers, may be required to act with additional caution and diligence by consulting competent specialists in this sphere (see *AO Neftyanaya Kompaniya Yukos v. Russia*, 2011, § 559). Thus, the State enjoys a considerable margin of appreciation as regards both establishing a legislative policy and in applying the law to the specific case. For example, in *Iofil AE v. Greece* (dec.), 2021, the applicant company sold the securities it owned to the members of its board of directors and then, on the next day, repurchased them with a profit. The applicant company argued that it performed this operation for accounting purposes only, in order to comply with a formal obligation to demonstrate the real value of its assets, but the relevant domestic courts characterised this transaction as a real one, generating taxable profits. The Court accepted that the domestic courts' interpretation of the national accounting rules was not "manifestly unreasonable or arbitrary" (§ 45). However, in *Khodorkovskiy and Lebedev v. Russia*, 2013, unpaid corporate taxes had been recovered from the managers of the company found guilty of tax evasion. The Court noted that although "piercing of the corporate veil" in such cases was not *per se* impermissible (§ 877), it should have a legal basis and, in that case, that basis was unclear and, moreover, the domestic court's conclusion on the civil claim worth over EUR 500 million was a few lines and contained neither a reference to legal norms nor any comprehensible calculation of damage. This led the Court to conclude that the measure was unlawful (see §§ 874-885).

177. While the impact of taxation and penalties must be assessed, only excessive taxation raises an issue. In assessing the proportionality of the tax burden, the Court will not intervene unless this burden is considered clearly excessive, it being the case when the effects of the tax "fundamentally interfere with his or its financial position" (*Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, 2014, § 102). Thus, in *Iofil AE v. Greece* (dec.), 2021, the Court accepted the imposition of a tax, resulting from a transaction which the taxpayer company itself considered as a non-taxable accounting

operation, despite the fact that this tax represented 2/3 of other taxes the company paid. The Court noted that there was no evidence that the levying of such a sum fundamentally undermined the applicant company's financial situation (§ 48). In *Christian Religious Organization of Jehovah's Witnesses v. Armenia* (dec.), 2020, § 53, the Court examined the tax on the donations of the religious literature, noting that the VAT of up to 30% was not "exorbitant" and that the applicant organisation's financial situation was not "fundamentally undermined". The case of *Orion Břeclav s.r.o. v. the Czech Republic* (dec.), 2004, concerned an additional local tax on the operation of slot machines. The applicant company, owning and operating these machines, argued that this tax was prohibitive and made the operation of slot machines in the municipalities concerned totally unprofitable. The Court, however, rejected this complaint as manifestly ill-founded, noting that the applicant company did not lose ownership of the machines as such, that it could re-locate the machines to another municipality and that its business remained profitable even after the introduction of the new taxes. In *Imbert de Trémiolles c. France* (dec.), 2008, the applicants owned real-estate property worth EUR 9,5 million and had to pay EUR107,000 in property taxes (called a "solidarity" tax which is collected from the estates of a certain magnitude), while their overall income amounted to EUR 120,000 per year net. They considered that the amount of property tax was "confiscatory", and that they would have to sell some of their possessions to pay this tax. The Court, however, rejected this complaint as manifestly ill-founded relying in particular on the findings of the national courts that the law had fixed an upper limit for the "solidarity" property tax and that, despite this taxation, the overall value of the applicants' estate had continued to grow.

178. Taxes on windfall profits. The case of *Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse and a group of approximately 15,000 individuals v. Sweden*, Commission Decision, 1988, concerned a one-off tax (amounting to 7% of their assets exceeding 10 million Swedish crowns) which the Swedish authorities imposed, retroactively, on life insurance companies which benefited from a particularly good economic environment and the then existing regulations, which led to extraordinary profits. The Commission noted that the situation in the entire life insurance sector was unique at the time, that it enjoyed favourable treatment as regards taxation in general, and that budgetary measures and the reduction of a budget deficit are legitimate aims of the tax policies.

179. The deterrent effect of the penalty has to be taken into consideration. In *S.C. Zorina International S.R.L. v. Romania*, 2023, the applicant company was fined for failing to issue receipts for the merchandise sold. The company argued that the actual damage incurred by the State, due to the failure to issue a receipt for a particular transaction, was minimal. However, the Court observed that the offence committed by the applicant company represented part of a recurring problem at the national level which prevented the economy from functioning properly and efficiently. The Court acknowledged that the legislation pursued aims falling within the more general context of combating tax evasion and tried to encourage more discipline and responsibility in the field of business and accounting (§§ 48 and 50).

180. Measures taken to enforce the collection of taxes. The Court can also assess the manner in which a tax obligation is enforced, and any measure which may be taken to ensure the collection of taxes (very often examining them as a "control of use": see, for example, *Andrzej Ruciński v. Poland*, 2023, § 84). In *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands*, 1995, which concerned the confiscation for tax debts of equipment supplied by a German firm to its Netherlands' commercial partner which had an outstanding tax debt, the Court concluded that granting tax authorities the power to recover tax debts against goods owned by certain third parties (in this case the German company) might be permissible (§ 66). In *"Bulves" AD v. Bulgaria*, 2009, the tax authorities, in calculating the amount of VAT due by the applicant company, refused to deduct the VAT paid by it to its supplier, because of the supplier's belated compliance with its own VAT reporting obligations. The Court noted, in examining the question of "general interest" that "attempts to abuse the VAT system of taxation need to be curbed and that it may be reasonable for domestic legislation to require special diligence by VAT-registered persons in order to prevent such abuse" (§ 65). However, the Court noted

that the supplier did not evade paying VAT but only recorded the operation concerned with a delay; thus, there was no negative effect on the State budget. The Court noted that the applicant company had absolutely no power to monitor, control or secure compliance by its supplier with its VAT reporting, filing and payment obligations and concluded that shifting on to the applicant company the obligation to pay VAT “in the absence of any indication of direct involvement by [it] in fraudulent abuse of a VAT chain of supply, or knowledge thereof” was disproportionate (§§ 68-70). In *Hentrich v. France*, 1994, the Court examined the mechanism of forced acquisition by the tax authorities of real estate proposed for a sale, on account of the sale price being lower than the tax authorities’ estimation of the market price. The Court noted that the right of pre-emption was applied only rarely and was scarcely foreseeable. The State had other suitable methods for discouraging tax evasion and the applicant could not effectively challenge the measure taken against her (at the relevant time domestic law allowed the State to avail itself of its right of pre-emption without indicating the reasons of fact and law for its decision, see §§ 46-50).

181. Retroactive taxation. The Court has confirmed that retroactive tax laws can be in line with the lawfulness requirement. The case of *Vegotex International S.A. v. Belgium*, [GC], 2022, (examined under Article 6) concerned a legislative intervention resulting in the imposition of a tax surcharge in administrative proceedings. While a case was pending in the domestic courts, the legislature modified tax laws to change a position taken in the case-law of the domestic courts. The legislation was to be applied retroactively. The Court stressed that only compelling grounds of general interest could justify an interference by the legislature with the administration of justice designed to influence the judicial determination of an ongoing dispute. In that case, the Court found that there were indeed such compelling grounds of general interest justifying the legislative intervention (§§ 92-124). However, the application of laws with retroactive effect should not be confused with the retroactive re-interpretation of the law following the reopening of a cases decided in favour of the taxpayer: thus, the Court decided that Article 1 of Protocol No. 1 had been violated in *Stere and Others v. Romania*, 2006, where a final judgment in favour of the applicants, which had been implemented, was later set aside with the applicants required to reimburse the sums wrongly received (§§ 52-57), even though the Court did not dispute that the law had been applied incorrectly in the first round of proceedings which ended in the applicants’ favour (see § 49). Furthermore, the retroactive application of the law may be contrary to Article 1 of Protocol No. 1 if this application became possible due to the authorities own failure to act with due diligence and care (see *Di Belmonte v. Italy*, 2010, where the Court concluded that the delay in the payment of a certain compensation to the applicant made it possible for the authorities to apply, retroactively, a new taxation regime to this payment, § 45. See also the *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 1997, on retroactive legislation affecting the outcome of a pending court dispute, and *Huitson v. the United Kingdom* (dec.), 2015, on the retroactive correction of gaps in the tax law leading to tax avoidance).

182. Measures related to taxation may affect other rights under the Convention. The Court’s analysis of taxes, or measures applied to collect them, may be impacted if other Convention rights are at stake. Thus, in *Riener v. Bulgaria*, 2006, the applicant, a businesswoman, was unable to leave Bulgaria because of a travel ban imposed on her because of unpaid taxes. The Court accepted, looking at the case under Article 2 of Protocol No. 4, that the travel ban had a lawful basis and pursued the public interest in recovering unpaid tax. However, a ban may be justified only as long as it serves the aim of recovering the tax debt and should not amount to a *de facto* punishment for the inability to pay. The Bulgarian fiscal authorities did not actively seek to collect the debt, did not examine the applicant’s attitude, or her resources, the chances for recovery, and disregarded the fact that the applicant had a family abroad. This “automatic” nature of the travel ban ran contrary to Article 2 of Protocol No. 4 (§§ 126-128). In *Spampinato v. Italy*, (dec.), 2007, the Court examined, under Article 9 (freedom of religion), a specific arrangement which permitted the taxpayer to allocate a fraction of the tax to one of the religious denominations. In *Busuttil v. Malta*, 2021, the Court examined, under

Article 6 § 2 (presumption of innocence) the conviction of the applicant, a director of a company, for tax evasion, on the basis of “objective liability”.

183. **Possibility of offsetting tax payments against sums owed by the State.** In *Radobuljac v. Croatia (no. 2)*, 2025, the authorities refused to extinguish the applicant’s tax debt by offsetting it with his enforceable claims against the State unrelated to taxation. Referring to the State’s broad margin of appreciation in the field of taxation, to the fact that the State’s debt vis-à-vis the applicant has been ultimately paid, and to the insignificant amount of penalties related to the delay in the payment of taxes, the Court found that the refusal to extinguish the applicant’s tax debt was justified under Article 1 of Protocol No. 1 to the Convention.

4. Banks and other financial institutions

184. **The State has a wide margin of appreciation in regulating the financial sector.** In assessing the proportionality of measures taken in respect of financial institutions, the Court considers their specific role in the economy and the impact their operations may have on the financial stability of the country. As the Court said in *Karahasanoğlu v. Turkey*, 2021, § 150, “the stability of banks and the interests of their depositors and creditors deserve enhanced protection, and the national authorities enjoy a broad margin of appreciation in choosing how to deal with such matters”. Similarly, in *Car ZRT and Others v. Hungary* (dec.), 2018, the Court noted that “the present case concerns an area of banking-sector regulation and a need to respond to financial crises affecting a large group of individuals. Therefore, and in view of the sensitive nature of the social and financial issues involved in achieving a proper balance between the respective interests of banks, consumers and the national economy, the State must be considered to enjoy a wide margin of appreciation” (§ 100). The case of *Olczak v. Poland* (dec.), 2022, concerned the restructuring of the capital of a private bank, ordered by a board of receivers appointed by the National Bank of Poland, which resulted in the drastic reduction of the applicant’s share in the bank. In finding no violation, the Court noted, in particular, that the bank had been mismanaged for many years, had suffered heavy financial losses which exceeded its capital resources and its main shareholder had been arrested and extradited for financial fraud. The Court noted, in particular, that “the bank was an institution of public trust, using the assets of private individuals and companies” and that the previous management of the bank had not “paid adequate attention to the interests of the bank’s customers and to the security of their deposits” (§ 80). Just a day before the compulsory administration had to be introduced, the applicant’s company had taken a significant loan from the bank. The National Bank of Poland had tried to improve the financial situation of the bank by other means, but to no avail. The measures taken by the National Bank were aimed at protecting the interests of the bank’s customers and avoiding the worst (bankruptcy).

185. **The restructuring of a State-owned bank’s assets by the State may give rise to the State’s liability for the repayment of deposits.** In *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], 2014, the applicants, Bosnian nationals, complained of their inability to withdraw their deposits from their accounts in the Bosnian branch of the LBL bank. These funds had become unavailable after the dissolution of the former socialist Yugoslavia (SFRU), and the ensuing fragmentation of its bank system. The Court noted that Slovenia owned and controlled the LBL bank, and had transferred most of its assets to a new bank, to the detriment of the Bosnian banks’ stakeholders. Slovenia thus disposed of LBL bank’s assets as it saw fit. As to the situation with another applicant, who held a deposit in the Investbanka, the Court found that it was State-owned by Serbia, and that Serbia required the bank to write off its considerable claims against State-owned and socially-owned companies to the detriment of the bank and its stakeholders. In such circumstances, both Slovenia and Serbia were responsible for the respective banks’ debts to the applicants. The Court, however, stressed that the two banks were either State-owned or socially-owned, and that its approach might be different in the case of a rehabilitation of an insolvent private bank (see § 118; compare with *Olczak v. Poland* (dec.), 2022, discussed above).

5. Insolvency and other corporate disputes

186. **The State is not responsible for the debts of private individuals.** Where a pecuniary claim is directed against a private company, which is neither affiliated with or controlled by the State nor is performing any public functions, and where this claim cannot be asserted or enforced because of the bankruptcy of the debtor, the State's responsibility under the Convention is not engaged. In *Kotov v. Russia* [GC], 2012, § 90, the Court stated that the State's positive obligations "are limited to providing the necessary assistance to the creditor in the enforcement of the respective court awards, for example, through a bailiff service or bankruptcy procedures" (see also *Shestakov v. Russia* (dec.), 2002, concerning the enforcement proceedings against a private bank, and compare with *Reynbakh v. Russia*, 2005).

187. **Non-enforcement of a judicial award in the applicant's favour.** A distinction should be made between the situations where non-enforcement of an award may be attributed to acts or omissions of State authorities and those cases where the impossibility to recover a judgment debt was rather due to objective reasons. Thus, in *Katona and Závorský v. Slovakia*, 2023, the applicants obtained judicial awards against a private person who went bankrupt. The applicants' claims were of a private-law nature and against a private-law debtor. However, what lay at the heart of that case was not the objective incapacity of the debtor to pay, but rather an amendment to the bankruptcy legislation which precluded creditors from seeking the debt's discharge in the bankruptcy or any other type of proceedings. The Court accepted that "the complex socioeconomic phenomenon of the insolvency of individuals calls for a response on the part of the State, which may in the public interest take the form of special arrangements in insolvency proceedings" and that States may adopt legislation favouring the satisfaction of the principal amount of the original debt to accessory or parallel debts (§ 59). However, in the circumstances, the non-enforcement of the award resulted from the State's legislative interference. The case of *Kesyan v. Russia*, 2006, concerned the bailiff's prolonged passivity which made the enforcement of a judicial award against a private debtor impossible. The key question in non-enforcement cases is therefore whether the final judicial award remained unenforced due to the objective factors, such as the insolvency of the respondent, or because of the inactivity or omissions of the State bodies responsible for the enforcement, like court bailiffs (see, in particular, the Court's reasoning in *Anokhin v. Russia* (dec.), 2007, and compare with *Fuklev v. Ukraine*, 2005, §§ 84 and 93). The responsibility for the prolonged non-enforcement may be also mixed: thus, in *EVT Company v. Serbia*, 2007, §§ 52-54, the Court found that the State failed to enforce a judicial award against a private company. In this case the judicial award had not been enforced party because of the bailiffs' inactivity and partly because the workers of the debtor company prevented the police from seizing the assets of the company. The Court concluded that the authorities failed "to effectively conduct the enforcement proceedings at issue" (§ 54).

188. **The State's liability may be engaged if the insolvency legislation does not strike a fair balance.** In *Katona and Závorský v. Slovakia*, 2023, the applicants obtained judicial awards against a private person who went bankrupt. The applicants' claims were of a private-law nature and against a private-law debtor. The bankruptcy legislation precluded creditors from seeking the debt's discharge. The Court accepted that States may adopt legislation favouring the satisfaction of the principal amount of the original debt to accessory or parallel debts (§ 59). However, the blanket ban in the legislation on the recovery of such types of debts, not allowing for any individualised assessment involving the balancing of different considerations, constituted a violation of Article 1 of Protocol No. 1 (see § 62).

189. **Liability of shareholders for the debts of the company.** The case of *Lekić v. Slovenia* [GC], 2018, concerned the phenomenon of "dormant insolvent companies" established under the previous regime. To address this, new legislation was adopted that introduced an automatic procedure to strike-off such companies. It also made shareholders personally liable with their own assets if they failed to apply for the winding-up of these companies within a specified timeframe. The applicant was a shareholder and the last managing director of a limited liability company that was automatically

struck off in 2001 and in 2007, he was ordered to pay over thirty thousand euros to the company's main creditor.

190 Liability of liquidators, receivers, trustees etc. The case of *Kotov v. Russia* [GC], 2012, was introduced by a creditor of an insolvent private bank: the applicant complained that the bankruptcy liquidator arbitrarily distributed the assets of the bank. The Court noted that the management structure of an insolvent company, including the competencies of the creditor's body and of the liquidator, were established in the legislation: the appointment of the liquidator was supervised by a court, and the courts were entitled to review the lawfulness of the liquidator's actions. However, these factors were not sufficient to attribute the liquidator's actions directly to the State: he was a private individual, chosen from a list of accredited insolvency liquidators by a body of creditors, which was a private and self-interested organ; he enjoyed considerable operational and institutional independence from the State authorities which could not give him instructions or interfere with the bankruptcy procedures as such. So, the regulatory and supervisory role of the State in the process of liquidation was not sufficient to acknowledge the State's direct responsibility in this case (§§ 99-108). That did not prevent the Grand Chamber from considering this case through the prism of the positive obligations and concluding that the State created an appropriate legislative (and operational) framework for defending creditors from abuses committed by (private) liquidators (§§ 116-133). The status and the role of the bank liquidator in *Kotov* may be contrasted with the case of *Olczak v. Poland* (dec.), 2002, which concerned the decisions taken by a board of receivers appointed by the National Bank of Poland to manage the business of a private bank on the brink of collapse. In that case, the Court did not examine this question separately, but simply assumed that the actions of the board of receivers, appointed by the President of the National Bank and acting in the interests of the bank's creditors, were directly attributable to the State.

191. Interference with the corporate structure, hostile takeovers. Disputes amongst shareholders concerning the control of the company have most often been examined from the standpoint of Article 1 of Protocol No. 1. For example, in *Shesti Mai Engineering OOD and Others v. Bulgaria*, 2011, the applicants complained of a "hostile takeover" of a company where they had almost 50% of shares. They were denied the right to participate in the general assembly of the shareholders which increased the shareholding capital and diluted the applicants' share in it and, finally, the applicants had lost control over the company. This case was examined by the Court under Article 1 of Protocol No. 1: the acts of the authorities were characterised as an interference with the applicant's "possessions". However, individual shareholders should not be automatically identified with their companies and cannot, as a rule, complain about the measures introducing supervision of the company's activities by the regulatory authority (see *Albert and Others v. Hungary* [GC], 2020, §§ 146-169).

V. Other Convention rights relevant in the business context

A. Procedural rights (Articles 6 and 13)

Article 6 of the Convention

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

Article 13 of the Convention

Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

1. Which Convention provisions guarantee procedural rights?²¹

192. **Right to a fair trial under Article 6.** This Chapter will deal essentially with cases which are most relevant for business operations: contractual obligations, tort law, labour relations, licencing, urbanism, tax proceedings, other administrative matters, etc. – most often, these cases are examined under the civil heading of Article 6 § 1, but, in some instances, the Court has found the criminal heading applicable.

193. **Fairness in civil and criminal proceedings.** What constitutes a fair trial cannot be the subject of a single unvarying rule but must depend on the circumstances of the particular case (*Ibrahim and Others v. the United Kingdom* [GC], 2016, § 250) – the assessment of fairness requires the examination of various aspects of the trial. The requirements of a fair hearing are stricter in the sphere of criminal

²¹ For the general case-law on procedural rights see the Case-law guides on [Article 6 \(civil\)](#), [Article 6 \(criminal\)](#) and on [Article 13](#).

law than under the civil limb of Article 6 (*Moreira Ferreira v. Portugal (no. 2)* [GC], 2017, § 67; *Carmel Saliba v. Malta*, 2016, § 67, *Dombo Beheer B.V. v. the Netherlands*, 1993, §§ 32-33), although the Court may also draw inspiration from its approach to criminal-law matters in civil cases (*Dilipak and Karakaya v. Turkey*, 2014, § 80).

194. **Procedural and institutional limbs of Article 6.** Article 6 § 1 also establishes institutional requirements in relation to the tribunal including the concept of a “tribunal established by law”, together with the concepts of “independence” and “impartiality” of a tribunal (see *Advance Pharma sp. z o.o v. Poland*, 2022, § 298; *Guðmundur Andri Ástráðsson v. Iceland [GC]*, 2020, § 233).²²

195. **Right to an effective remedy.** Article 6 § 1 is the *lex specialis* in relation to Article 13: the safeguards of Article 6 are stricter than, and absorb those, of Article 13 (*Sporrong and Lönnroth v. Sweden*, 1982, § 88). Article 13 may become pertinent when Article 6 does not apply, since the protection afforded by Article 13 does not go so far as to require any particular form of remedy, and contracting States being afforded a margin of discretion in conforming with their obligations under Article 13 (*Sharxhi and Others v. Albania*, 2018, § 82).

196. **Procedural guarantees in other Convention provisions.** Certain procedural guarantees have been derived from other – substantive – Articles of the Convention such as Article 8 and Article 1 of Protocol no. 1. These “implied procedural guarantees” – which to some extent overlap with the express procedural guarantees of Articles 6 and 13 – are discussed in the parts of this Guide examining those other substantive Articles.

2. Applicability of Article 6

a. Applicability of Article 6 under the “civil” limb

197. **General requirements for the applicability of Article 6 § 1 under its civil head.** Most disputes in the business context would concern the applicant’s “civil rights”, even though this is not always the case. For Article 6 § 1 to apply under its civil head there needs to be a dispute (in French, “*contestation*”) to be resolved in the relevant domestic proceedings. The dispute needs to relate to an arguable civil “right” or an “obligation” recognised in domestic law (not necessarily a right that is protected under the substantive Articles of the Convention) and the result of the proceedings must be directly decisive for the civil right or the obligation in question (*Boulois v. Luxembourg [GC]*, 2012, § 90).

198. **The civil “right” should exist – at least arguably – in the domestic law.** Article 6 § 1 is not aimed at creating new substantive rights without a legal basis in the law of the Contracting State, but at providing procedural protection of rights already recognised in domestic law (*Posti and Rahko v. Finland*, 2002, § 51). In order to decide whether the “right” in question really has a basis in domestic law, the starting-point must be the provisions of relevant domestic law and their interpretation by the domestic courts (*Al-Dulimi and Montana Management Inc. v. Switzerland [GC]*, 2016, § 97. Compare the finding by the Court that no “right” existed in *Károly Nagy v. Hungary [GC]*, 2017, § 77, concerning the dismissal of a priest from an ecclesiastical position). At the same time, the concept of “right” is autonomous and cannot be interpreted *solely* by reference to domestic law (*Posti and Rahko v. Finland*, 2002, § 51; the same is true for the concept of a “criminal charge” – see *Vegotex International S.A. v. Belgium [GC]*, 2022, § 67). Where the economic interest sought cannot be seen, in light of domestic law, as a defensible right but as a mere privilege or a similar advantage which may – or may not – be obtained on a purely discretionary basis, the Court may conclude there is no defensible right. In the context of government tenders, the Court found that there was no right to be awarded a tender

²² For the detailed analysis of the institutional guarantees see Case-Law Guides on [Article 6 \(civil\)](#) and [Article 6 \(criminal\)](#).

or to have it determined by a particular method in the absence of a legal basis in domestic law to that effect (see *I.T.C. Ltd v. Malta* (dec.), 2007 and compare and contrast with *Mirovni Inštitut v. Slovenia*, 2018, § 29, where the Court emphasised that, while the applicant may have had no substantive right to win a tender, there existed a procedural right to “the lawful and correct adjudication of the tenders”). At the same time, the fact that the domestic courts rejected the applicant’s claim does not exclude that a defensible right might have existed at least on an “arguable basis” (*Mustafa and Mustafova v. Bulgaria*, 2025, § 38; and see *NDI SOPOT S.A v. North Macedonia*, 2024, § 77, in the context of the recognition of an arbitral award). The existence of an arguable right may be established with reference to higher-ranking constitutional norms: for example, in the environmental context, the Court has recognised the existence of a civil right, insofar as domestic law recognises an individual right to environmental protection where the rights to life, to physical integrity and to property are at stake (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC]*, 2024, § 600, and *Cangi and Others v. Türkiye*, 2023, § 35).

199. The proceedings should be “decisive” for the applicant’s case. Article 6 under its civil limb applies to the proceedings in which the *main dispute* about the applicant’s rights or obligations is decided. While Article 6 does not generally apply to interlocutory proceedings, interim orders and similar acts not resolving the main dispute, in *Micallef v. Malta* [GC], 2009, §§ 78-86, the Court recognised that some interlocutory decisions may be decisive for a civil right. In *Sharxhi and Others v. Albania*, 2018, §§ 92-97, the Court concluded that Article 6 was applicable to an interim order – a final and binding injunction issued by a domestic court which prevented the authorities demolishing the applicants’ building. The authorities disregarded this interim order and demolished the applicants’ building, which made the main proceedings redundant. In such exceptional circumstances, the Court found that Article 6 was applicable (and that there had been a violation of Article 6 § 1 on account of the non-enforcement of this decision; see also *Central Mediterranean Development Corporation Limited v. Malta (no. 2)*, 2011, §§ 21-23).

200. The right should be “civil”. Court proceedings regarding contractual obligations (*Seksimp Group SRL v. the Republic of Moldova*, 2025; *Central Mediterranean Development Corporation Limited v. Malta (no. 2)*, 2011), tort claims (*Mustafa and Mustafova v. Bulgaria*, 2025; *Agro Frigo Ood v. Bulgaria*, 2019), property disputes between private persons (*Ay Khan Akhundov v. Azerbaijan*, 2023; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], 2016), corporate disputes (*Kohlhofer and Minarik v. the Czech Republic*, 2009) or bankruptcy proceedings (*Capital Bank AD v. Bulgaria*, 2005, § 86) are the more usual examples of disputes involving “civil” rights. Labour disputes based on an employment contract also give rise to civil obligations for both parties, falling within the ambit of Article 6 (*Regner v. the Czech Republic* [GC], 2017, § 106; see also *Buchholz v. Germany*, 1981, § 46). Disputes related to the operation of the social security scheme may also engage the “civil” rights of the employer (see *Eternit v. France* (dec.), 2012, § 32). Other proceedings, which are characterised in the domestic legal order as “administrative”, may be seen as concerning a “civil right” such as licencing procedures (*Traktörer AB v. Sweden*, 1989, § 43. See also in the context of the environmental protection legislation *Cangi and Others v. Türkiye*, 2023, § 35). However, not all disputes which have a pecuniary element are “civil” (for example, ordinary tax proceedings, see below).

201. Public tender proceedings. Participation in public tenders may concern “civil rights” so that participants must enjoy procedural guarantees under Article 6 § 1 (*Marina Aucanada Group S.L. v. Spain*, 2022, § 33; *Mirovni Inštitut v. Slovenia*, 2018, § 29; *Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, 1998, § 63). The case of *Marina Aucanada Group S.L. v. Spain*, 2022, involved an administrative dispute between two public authorities as to whether a decision to announce a call for tenders should be deemed null and void. The Court found Article 6 to be applicable, even though the applicant company was not a party to the conducted proceedings, because it had an interest in them and had subsequently acquired a legitimate interest to appeal the domestic court’s decision as its tender had been accepted for consideration by a public authority and was deemed the most advantageous (§§ 31-33).

202. **Withdrawal of a licence required to run a business.** In *Capital Bank AD v. Bulgaria*, 2005, the Court examined the case of an applicant bank whose licence allowed it to engage in specific banking transactions, contingent on its solvency. The Bulgarian National Bank (BNB) was mandated by law to revoke this licence in the event of insolvency, leading to a winding-up order without discretion. The Court acknowledged that the bank could argue it had the right to operate as long as it was solvent, indicating the existence of a serious dispute over this right. The withdrawal of the licence and the subsequent winding-up order significantly impacted the bank's ability to function and manage its affairs, ultimately resulting in its removal from the company register and its ceasing to exist as a legal person. Thus, this dispute fell under the protection of Article 6 § 1 under its civil head (§§ 87-88). The Court also found that proceedings concerning the placement of a bank under external administration are also covered by Article 6 § 1 (*Credit and Industrial Bank v. the Czech Republic*, 2003, §§ 64-67).

203. **An application to review the lawfulness of licences issued to a rival company.** In *Sine Tsaggarakis A.E.E. v. Greece*, 2019, the Court found that an application to review the lawfulness of licences issued to a rival company for the construction and operation of a similar business in a neighbouring district was a civil dispute since issuing the said licence related to the loss of clientele caused by the competitor and thus concerned a "pecuniary interest" for the applicant company falling within the scope of Article 6 § 1 (§§ 39-42).

204. **Enforcement and annulment of arbitral awards.** Article 6 applies to the enforcement of an arbitral award (*NDI SOPOT S.A v. North Macedonia*, 2024, §§ 76-78). The failure to enforce an arbitral decision may lead to a violation of Article 6 § 1 (*Ostapenko v. Ukraine*, 2007, §§ 40-42; *Marini v. Albania*, 2007, §§ 130-135; *Regent Company v. Ukraine*, 2008, §§ 59-60). Article 6 § 1 also applies to the proceedings to set arbitral awards aside (*Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994, § 40; see also *Xavier Lucas v. France*, 2022, §§ 30-32).

205. **Applicability of Article 6 under its civil limb to tax proceedings and related matters.** Disputes related to the payment of taxes or their amount – despite a clear "pecuniary element" – are seen to form part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant, which means Article 6 § 1 is not applicable to ordinary tax proceedings (*Vegotex International S.A. v. Belgium [GC]*, 2022, § 66). Proceedings concerning the calculation of customs duties or charges are also considered not covered by Article 6 (*Emesa Sugar N.V. v. the Netherlands* (dec.), 2005). However, certain types of proceedings related to the process of recovery of taxes may be seen by the Court as concerning a "civil right" – depending on whether or not the public law element is predominant or not. Thus, in *S.C. Ghepardul S.r.l. v. Romania*, 2009, §§ 45-46, the Court found that Article 6 was not applicable to the proceedings in which the applicant company sought to offset the amount of unpaid tax debt against the amounts due to it by the State under the public works contracts. On the other hand, in *Latorre Atance v. Spain*, 2025, the Court considered that administrative procedures did not displace the civil character of the underlying obligation because the case did not involve the regular determination of own tax liability but rather the attribution of personal civil liability for third party tax debts. Accordingly, the nature and effects of civil liability determination bore the hallmarks of civil liability proceedings, notwithstanding that the case was initiated by the tax authorities and governed by tax legislation, so that the case did not retain a predominantly public character (§§ 39-40). Similarly, in *Ravon and Others v. France* 2008, § 24, the Court concluded that proceedings brought by the applicants, the taxpayers, contesting the search and seizure operations carried out by tax authorities were covered by Article 6. In addition, heavy penalties related to the fiscal sphere may be seen as bringing a dispute within the "criminal" limb of Article 6 (see below).

b. Applicability of Article 6 under the "criminal" limb

206. **Criminal proceedings involving business entities.** It goes without saying that, in principle, Article 6 applies to legal persons in the same way as it does to individuals: a company may be regarded as having been "charged with a criminal offence" (see *Union des Mutuelles d'Assurances Monceau v.*

France (dec.), 2024, §§ 42-43; *Fortum Oil And Gas Oy v. Finland* (dec.), 2002) provided that the offence is “criminal” within the meaning of the Convention. Since the concept of a “criminal charge” in Article 6 § 1 is autonomous, even those disputes which are not characterised in the domestic legal order as “criminal” may be examined by the Court under Article 6 §§ 1, 2 and 3 of the Convention. In deciding whether the “criminal limb” is applicable to a given dispute the Court uses the so-called “Engel” criteria which are: the legal classification of the offence under national law, the nature of the offence, and the severity and the nature of the penalty that the person concerned risks incurring (*Engel and Others v. the Netherlands*, 1976, § 82. See the application of the criminal limb in *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], 2020, § 75, in the context of disciplinary sanctions imposed on lawyers for unprofessional behaviour; in *Dubus S.A. v. France*, 2009, §§ 37-38, concerning an administrative reprimand, taking into account *inter alia* the reputational effect on the applicant company’s business relations; *Milenovic v. Slovenia*, 2013, §§ 31-34, and *Dilek Genç v. Türkiye*, 2025, § 33, concerning an administrative fine imposed on the applicants for infringing regulations on operating hours of a bar and a music hall).

207. Applicability of the criminal limb of Article 6 to tax surcharge proceedings. Ordinary tax proceedings do not normally have a “criminal connotation” so as to fall under the criminal limb of Article 6 (*Ferrazzini v. Italy* [GC], 2001, § 20). However, Article 6 has been held to apply to some (not all) tax surcharges proceedings (*Jussila v. Finland* [GC], 2006, § 38; *Melgarejo Martinez de Abellanos v. Spain*, 2021, § 25). Thus, in *Jussila v. Finland* [GC] the applicant was subjected to tax surcharges amounting to 10% of his re-assessed tax liability: the Court noted the deterrent and punitive nature of the rule imposing those surcharges which meant that the tax offence was therefore “criminal” (see also *Janosevic v. Sweden*, 2002, §§ 64-71; *Georgiou v. the United Kingdom* (dec.), 2000, and *Sträg Datatjänster AB v. Sweden* (dec.), 2005). When, however, the impugned measures do not concern the imposition of tax fines or surcharges but the obligation to pay reassessed VAT liabilities, the proceedings are not considered “criminal” (*Italmoda Mariano Previti and Others v. the Netherlands* (dec.), 2025, §§ 89, 94). The Court, however, acknowledged that as tax penalties differ from the hard core of criminal law, “the guarantees of Article 6 do not necessarily apply with their full stringency” (*Vegotex International S.A. v. Belgium* [GC], 2022, § 76).

208. Some administrative proceedings considered “criminal” in nature. Article 6 is applicable under its criminal head: to administrative offences under the Securities Market Code relating to the unlawful acquisition of shares of public enterprises (*Costa Santos v. Portugal*, 2016, §§ 60-63); to a multi-million administrative fine for a breach of anti-trust rules (*A. Menarini Diagnostics S.R.L. v. Italy*, 2011, §§ 38-45); and often to cases relating to the enforcement of competition law (see, for example, *Lilly France S.A. v. France* (dec.), 2002; *SA-Capital Oy v. Finland*, 2019, § 65; and *Grande Stevens and Others v. Italy*, 2014, §§ 99-101).

3. Access to court (right to a court)

209. An implicit right of access to court. In *Golder v. the United Kingdom*, 1975, the Court held that the “fair trial” guarantee of Article 6 § 1 would be ineffective without an implicit “right to a court” – the right to have a dispute resolved by a judicial body (*Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, § 126). In other words, Article 6 § 1 requires that litigants should have an effective judicial remedy enabling them to assert their civil rights (*Zubac v. Croatia* [GC], 2018, §§ 76-78; *Lawyer Partners A.S. v. Slovakia*, 2009, § 52; *Credit and Industrial Bank v. The Czech Republic*, 2003, § 73). The access to court guarantee applies with equal strength to private disputes as to proceedings involving public authorities, although these factors may have a bearing on the assessment of the proportionality of the impugned measure (*Čolić v. Croatia*, 2021, § 53).

210. Right of access is not absolute, proportionate limitations are permissible. The right of access to a court may be subject to limitations. Such limitations must not restrict or reduce such access in such a way or to such an extent that the *very essence* of the right is impaired (*Naït-Liman v. Switzerland* [GC], 2018, § 113; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, § 129); and

must pursue a legitimate aim and be proportional (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], 2016, § 89; *Nait-Liman v. Switzerland* [GC], 2018, § 115; *Vegotex International S.A. v. Belgium* [GC], 2022, § 133). For example, the mere fact that a claim is held by a domestic court to be inadmissible for lack of a legitimate interest or *locus standi* does not amount to a denial of access to a court as long as the claimant's submissions have been properly examined (*Konkurrenten.no AS v. Norway* (dec.), 2019, § 46).

211. **De jure and de facto obstacles to access to court.** In some cases, the applicants had no access to court at all, whereas in other cases, they had access in theory, but it was seriously limited in practice, due to the operation of various procedural rules. As to the first situation, in *Kohlhofer and Minarik v. the Czech Republic*, 2009, the applicants faced limitations in challenging the lawfulness of a decision to wind up the company and transfer all assets to a shareholder owning more than 90% of the shares. The ordinary courts were precluded from examining the lawfulness of the resolutions once the transfers had been recorded in the commercial register. As minority shareholders, the applicants did not have standing to participate in the proceedings before the judicial bodies responsible for administering the registers. The Court found that the limitation on the applicants' access to court was not proportionate to the legitimate aim pursued (§§ 105-106). As to the second situation, in *Nalbant and Others v. Turkey*, 2022, the Court found a violation of Article 6 § 1 because the domestic courts refused to make any exception for a party to the proceedings which was required to deposit a very considerable amount as a court fee: the Court concluded that the respondent State had failed to strike a fair balance between, on the one hand, its interest in recovering the costs of proceedings and, on the other, the applicants' interest in having their claims examined by the courts (§ 47).

212. **Right to appeal and access to higher instances.** Article 6 § 1 does not compel the State to set up courts of appeal or cassation. However, where appeal procedures are available, the same fundamental guarantees of Article 6 apply to the appellate courts (*Paykar Yev Haghtanak Ltd v. Armenia*, 2007, § 45) although the manner in which Article 6 § 1 applies to courts of appeal or of cassation will depend on the special features of the proceedings concerned. Thus, the conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal. In *Levages Prestations Services v. France*, 1996, § 45, the applicant company complained about the inadmissibility of its civil appeal on points of law by the French Court of Cassation. The Court of Cassation had declared the appeal inadmissible because the applicant had not produced an earlier judgment that was a necessary complement to the impugned judgment. The Court concluded that the procedural requirements were clear and accessible, and the applicant's right of access to a court had not been infringed.

a. Procedural barriers: court fees, time-limits, formalities, etc.

213. **Prescription of pecuniary claims, time-limits for lodging appeals.** In almost all legal orders, the ability to seek redress in courts in respect of private wrongs or acts of public administration is limited in time, and, as a rule, this is compatible with Article 6 (*Sanofi Pasteur v. France*, 2020, § 50). Similarly, the rules governing time-limits for appeals are intended to ensure the proper administration of justice and preserve legal certainty (see *Stubbings and Others v. the United Kingdom*, 1996, § 51, or, in the business context, *Markt intern' Verlag GmbH v. Germany* (dec.), CTE, 2009, §§ 31-32). The courts should not delay the service of their decisions so as to substantially reduce the time for lodging an appeal or even render any appeal impossible – see *Miragall Escolano and Others v. Spain*, 2000, §§ 36-38). However, such time-limits must still comply with a proportionality test: thus, in *Varnima Corporation International S.A. v. Greece*, 2009, the Court determined that there was a violation of Article 6 § 1 because the statute of limitations for the applicant company was 20 times shorter than that for the defendant, which was a state-owned entity (§§ 34-35). The State had not entered into the contract *jure imperii*, in the exercise of its sovereign power (which might in theory justify some difference in treatment) but *jure gestionis*, in a private (management) context. The mere fact of belonging to the structure of the State did not suffice, in itself, to render legitimate, in all circumstances, the application of State privileges (§ 33).

214. **Notification of the proceedings and the parties' duty of diligence.** There is abundant case-law on the failure of the courts to summon one of the parties to a hearing, and its potential effect on the adversarial character of the proceedings and their fairness (see, for example, *Bacaksız v. Turkey*, 2019, §§ 52-57, and/or, more recently, *Seksimp Group SRL v. the Republic of Moldova*, 2025, §§ 38-40). While notification of proceedings cannot be left entirely at the discretion of the opposing party (for a summary of the case-law, see *Schmidt v Latvia*, 2017, §§ 86-90, 92 and 94-95), professional market actors are expected to show heightened diligence. In *Marina Aucanada Group S.L. v. Spain*, 2022, the question was whether the publication of a public notice in the Official Gazette was sufficient to inform interested parties of court proceedings around a public call for tenders. The Court stressed that an applicant can contribute to a large extent, as a result of his or her inaction and lack of diligence, to bringing about the impugned situation, which he or she could have prevented and thus concluded that the applicant company could reasonably have known about the existence of the proceedings and added that companies that participate in public tenders can be expected to regularly inform themselves of their own initiative about the launch and procedural developments of tenders (§ 48, §§ 51-52).

215. **Excessive court fees.** The requirement to pay a court fee in order to be able to bring a claim is not incompatible *per se* with Article 6 § 1, provided that the fee is not excessive. In *Nalbant and Others v. Turkey*, 2022, § 39, the central question was whether the court fees in proceedings (initiated by a bank concerning a loan for financing a commercial shopping center) were so high as to negate the right to court of the applicants. The domestic court ruled in favour of the bank, imposing court fees on the applicants amounting to approximately EUR 15,679,987, calculated as a percentage of the admissible value of the dispute. In response, the applicants filed an appeal against this decision and sought an exemption from the court fees, noting that they were required to deposit one-quarter of the total amount when lodging the appeal. The domestic courts denied the applicant companies' request for exemption, citing the lack of any provision in domestic law that allows for legal aid to be granted to commercial entities. The Court found a violation of Article 6 § 1 as the respondent State had failed to strike a fair balance between, on the one hand, its interest in recovering the costs of proceedings and, on the other, the applicants' interest in having their claims examined by the courts (§ 47). Generally, a blanket prohibition on granting court fee exemptions to commercial entities raises, of itself, an issue under Article 6 § 1 (*Paykar Yev Haghtanak Ltd v. Armenia*, 2007, § 49 ; *Tudor-Comert v. Moldova*, 2008, § 38).

216. **Purpose of a court fee, and the courts' obligation to consider the claimant's financial situation.** In *Podbielski and PPU Polpure v. Poland*, 2005, the applicant had to desist from pursuing his case before the court of appeal because his company had been unable to pay the court fee of PLN 10,000. This amount was too high for the company which had been on the verge of bankruptcy, had constantly incurred losses, had its assets attached and its accounts frozen. While the Court did not rule out that a court fee may be calculated as a percentage of the overall amount of the claim, "restrictions which are of a purely financial nature and which, as in the present case, are completely unrelated to the merits of an appeal or its prospects of success, should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice" (§ 65). In that case, the court fee did not serve the interests of protecting the other party against irrecoverable legal costs, nor did it constitute a barrier protecting the system of justice against unmeritorious appeals. Such fees were simply another source of income for the State. While the applicant asked the courts to allow him to pay the fee in installments, the courts did not explore this solution, insisting that however difficult the situation of the company was, it was the applicant company's duty to find money for the continuation of the proceedings. The Court concluded that such a rigid application of domestic rules on court fees, not taking into account the applicant company's difficult financial situation, constituted a disproportionate restriction on the applicant's right of access to a court, in breach of Article 6 § 1 (§§ 69-70). As to excessive court fees and the need to examine the financial situation of the claimant, in *Centrum Handlowe Agora SP. Z O.O. v. Poland* (dec.), 2024, §§ 19-24, the Court formulated the criteria for assessing requests for a waiver in respect of the payment of the court fees.

217. **If a company – party to the proceedings – wants to be exempted from paying the courts’ fees, it should act with due diligence.** In *Centrum Handlowe Agora SP. Z O.O. v. Poland* (dec.), 2024, the applicant company was required to substantiate its long-term inability to pay court fees but failed to do so (it failed to formulate explicitly an argument relating to the seizures of its accounts). Even though the documents confirming the seizures were attached to the applicant company’s application for an exemption, without any explicit argument in this regard the domestic courts could not be expected to make further inquiries– in essence, the applicant company, by not acting with due diligence, deprived the domestic courts of the opportunity to comprehensively evaluate its financial situation (§ 32).

218. **Procedural rules should be applied without “excessive formalism”.** The purpose of the procedural barriers is *inter alia*: to ensure the efficient conduct of the court proceedings, to avoid frivolous claims and to ensure legal certainty. (*Markt intern’ Verlag GmbH v. Germany* (dec.), 2014, § 32). Therefore, minor procedural omissions (especially when they can be attributed to the negligence of the State authorities themselves (*Sotiris and Nikos Koutras ATTEE v. Greece*, 2000, § 21 which do not jeopardize any important public interest, should not block the party’s access to court or to an appeal mechanism (for example, *Justine v. France*, 2024, where the applicant’s appeal was rejected because the applicant’s lawyer joined to the appeal a copy of another judgement (related to a connected case) instead of a copy of the contested judgment. That mistake was corrected within one day but the appeal was dismissed as belated. The Court found a breach of Article 6 in this case noting that the formal error had therefore no bearing on the proper administration of justice (§§ 45-51). However, the formal requirements for accessing the upper levels of the judiciary may be stricter (*Tourisme d’affaires v. France*, 2012, § 27 in fine). On the use of the specific electronic methods for submitting court documents see *Xavier Lucas v. France*, 2022, §§ 45-57).

219. **Standing.** While most of the legal orders have rules on standing to bring a court case, such rules should not disproportionately limit the possibility to defend one’s civil rights. Thus, in *Kohlhofer and Minarik v. the Czech Republic*, 2009, the applicants, minority shareholders of a company, faced limitations in challenging the lawfulness of a decision to wind up the company and transfer all its assets to a shareholder owning more than 90% of shares. The ordinary courts were precluded from examining the lawfulness of the resolutions once the transfers had been recorded in the commercial register. As minority shareholders, the applicants did not have standing to participate in the proceedings before the judicial bodies responsible for administering the registers. The Court found that the limitation on the applicants’ access to court was not proportionate to the legitimate aim pursued (§§ 104-106).

b. State immunity, justiciability, contesting the legislation

220. **Impossibility to contest decisions related to the foreign policy of States, immunity of States and diplomatic immunity, etc.** The right to court may be limited by the principles of the constitutional order of a State which exclude certain acts of the executive from review by a court, notably in the area of foreign policy (see, for example, the case of *Tamazount and others v. France*, 2024, §§ 112-127, discussing the impossibility to contest in the French courts “acts of government”), or by the operation of principles of international law which prevent the courts of one State from exercising jurisdiction over the sovereign acts of another State or officials of that State. In this latter respect, *Sedelmayer v. Germany* (dec.), 2009, concerned the impossibility to enforce in Germany an arbitral award against the Russian Federation and the German courts refused to execute the award by attaching those assets that served the maintenance of the diplomatic missions’ functions (such as claims of the Russian Federation against Germany related to VAT reimbursement and of those which arose within the sovereign territory of the Russian Federation, such as the air traffic fees which were due by Lufthansa to the Russian State). In *Al-Adsani v. the United Kingdom* [GC], 2001, § 54, the Court held that the recognition of sovereign immunity to a State in civil proceedings pursued the “legitimate aim” of complying with international law to promote comity and good relations between States, and such limitation “cannot in principle be regarded as imposing a disproportionate restriction on the right of

access to a court as embodied in Article 6 § 1”, and “just as the right of access to a court is an inherent part of the fair trial guarantee [...], so some restrictions on access must likewise be regarded as inherent”.

221. Contesting legislation or government decrees. Article 6 does not ensure the right of access to court to invalidate or override legislative acts. However, exceptions exist for measures that significantly impact the “civil rights” or “obligations” of individuals or legal entities (*Posti and Rahko v. Finland*, 2002, §§ 52-53). In *Project-Trade d.o.o. v. Croatia*, 2020, § 68, the Court explained that, where a piece of subordinate legislation such as a governmental decree, does not set a norm of general application but is directed at a specific person or group of persons, Article 6 § 1 may require that such a decree must be reviewed by the courts. This case concerned the impossibility for the applicant – a shareholder in a private bank – to contest the decision of the Government that the private bank had been in need of recovery and whether the statutory conditions for restructuring of its capital had been met.

222. Reviewing decisions made by international organisations. The Court found that Article 6 implies the duty of the domestic court to review pecuniary sanctions imposed on the basis of UN Security Council resolutions, even if the scope of this review may be limited (see *Al-Dulimi and Montana Management Inc v. Switzerland* [GC], 2016, §§ 150-155).²³

c. Effective access to court: scope of judicial review, finality of court judgments, enforcement

223. For the right of access to court to be effective, courts should have full jurisdiction and be able to intervene quickly. As a general rule, Article 6 § 1 requires that a court or tribunal should have “full jurisdiction” to examine all questions of fact and law that are relevant to the dispute before it (see, for example, *Sigma Radio Television Ltd v. Cyprus*, 2011, §§ 151-157). Moreover, it is important that the judicial review proceedings may intervene in good time, before the effects of an administrative act irremediably impair the applicant’s financial situation (see *Janosevic v. Sweden*, 2002, §§ 83-90). An insufficient scope of review of an administrative decision by a court may also be analysed through the prism of the implied procedural safeguards of other Convention Articles or Article 13 which guarantees an “effective remedy” (see, for example, in *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, 2007, the Court criticised, under Articles 10 and 13, the refusal of the administrative courts to examine the rejection by a media regulatory authority of a broadcasting license).

224. The scope of judicial review in administrative-law appeals. The “access to court” guarantee does not mean that the courts should fully reconsider the administration’s decision. In *A. Menarini Diagnostics S.R.L. v. Italy*, 2011, the Italian independent regulatory authority in charge of competition fined the applicant company for unfair competition on the market for diabetes tests. The amount of the fine was set as a deterrent to all pharmaceutical companies. The Court considered adequate the domestic administrative courts’ review of the applicant company’s complaint about the fine. Even though under domestic law the administrative judge was not supposed to substitute his opinion for that of the administrative authority, he could nevertheless verify whether the competition authority had made proper use of its powers, whether its decision had been substantiated and proportionate and whether the penalty fit the offence, changing it if necessary (§§ 63-67). The required scope of judicial review depends on a number of factors including the nature of the dispute, the policy objective pursued, the content of the appeal, and the procedural guarantees available in the proceedings before the administrative body. The general principles applicable are outlined in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 176-186. The “insufficient scope of review” may also be examined under other Convention provisions (see, under Article 1 of Protocol No. 1, *Amerisoc Center S.R.L.*

²³ For more details on the interrelation between the State’s duty to comply with the Convention and its obligations arising from other international law instruments see Section VI below

v. Luxembourg, 2024, §§ 55-58, and, under Article 10, *OOO Flavus and Others v. Russia*, 2020, §§ 39-43).

225. Court proceedings must end with a judgment determining the dispute. In *Marini v. Albania*, 2007, the applicant, acting as an administration of a company in liquidation, lodged an appeal with the Constitutional Court in relation to a decision of an ordinary court ordering the appointment of the liquidator and the winding-up of the company. However, the Constitutional Court, in a formation of seven judges, dismissed the applicant's appeal stating that its vote had been tied and that the court could not reach a majority on any of the solutions proposed. The Court found a breach of Article 6 § 1 on the ground that "in the Albanian legal system a tied vote in the Constitutional Court results in a decision which does not formally determine the issue under appeal. Moreover, no reasons are given for dismissing the appeal in such an eventuality other than that the vote was tied". Hence, the applicant was denied the "right to a court" (§ 123). In *Meli and Swinkels Family Brewers N.V v. Albania*, 2024, the Court concluded that there was no breach of the applicants' right of access to court on account of the impossibility for the Constitutional Court to decide on the applicants' appeal because "the consequences of the tied vote for the outcome of the dispute are sufficiently clear and certain under national law" (§ 60).

226. Final judgments should not be arbitrarily annulled. The principle of legal certainty is implicit in all the Articles of the Convention. Legal certainty requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], 1999, § 61; see also *Advance Pharma sp. z o.o v. Poland*, 2022, § 331) – the principle of the respect for *res judicata*. Thus, the Court condemned the mechanism of "supervisory review": in some post-Soviet legal orders high-ranking judges or prosecutors were entitled to request and obtain a review of a final and enforceable judgment and that power could be exercised without any limitation in time and thus sometimes many years after the judgment entered into force and on a discretionary basis (see *Sovtransavto Holding v. Ukraine*, 2002; *Tregubenko v. Ukraine*, 2004). The Court's case-law on the *res judicata* principle addresses three closely related but distinct situations: the review of a final and binding judgment through an extraordinary remedy (*Treguet v. Russia*, 2022, §§ 30-35; *Tregubenko v. Ukraine*, 2004, §§ 34-38); review based on newly discovered facts (e.g., *Pravednaya v. Russia*, 2004, §§ 27-33); and an extension of the time-limit for using an ordinary remedy (*Magomedov and Others v. Russia*, 2017, §§ 87-89). In *Agrokompleks v. Ukraine*, 2011, the Court concluded that the reopening of the finally settled arbitral award was based merely on the State authorities' disagreement with it, this being disguised as a newly-discovered circumstance and it considered that the reopening of the proceedings amounted to a flagrant breach of the principle of legal certainty enshrined in Article 6 § 1 (§ 151). Such "appeals in disguise" should, however, be distinguished from legitimate attempts to correct a miscarriage of justice. Whether or not the reopening constitutes an appeal in disguise depends on a number of factors, including the effect of the reopening on the applicant's situation, who was at the origin of the request for a reopening, the grounds upon which the final judgment has been overturned, compliance with the procedural requirements of domestic law and the existence and operation of procedural safeguards to prevent abuse of the reopening procedure (see *COMPCAR, s.r.o. v. Slovakia*, 2015, § 63). The principle of legal certainty is not perturbed where a binding and enforceable court decision in the applicant's favour is not liable to challenge indefinitely but only once, before a supreme judicial instance, upon the defendant party's request, on the basis of restricted grounds and within a clearly defined and limited time-frame (*OOO Link Oil SPB v. Russia* (dec.), 2009. See also *Balan v. the Republic of Moldova (no. 2)*, 2022, where the enforcement of a final judgment was obstructed by the abuse of the domestic procedure of "explanation" of the final judgment (§§ 24-31)).

227. Legislative intervention changing the outcome of a court case. The legislature should not, as a rule, encroach upon the judge's prerogative to resolve disputes, but the Court has accepted that retroactive legislation affecting the outcome of a pending court dispute may *exceptionally* be justified on compelling grounds of general interest (see *National & Provincial Building Society, Leeds*

Permanent Building Society and Yorkshire Building Society v. the United Kingdom, 1997, §§ 107, 110, 112-113). These compelling grounds must be scrutinised on an *ad hoc* basis to ensure respect for the principle of rule of law and hence legal certainty. In *Vegotex International S.A. v. Belgium*, [GC], 2022, the applicant was involved in a dispute with the tax authorities. In appealing against the first-instance judgment the applicant company expected that its tax debt would become time-barred, in accordance with the previous case-law of the Court of Cassation. However, in the meantime, Parliament had adopted a law which, with retroactive effect, provided for an interruption of the running of the time-limit. As a result, the court of appeal confirmed the existence of a tax debt. The Court found that, in light of its foreseeability, the intervention of the Belgian legislature was justified by the aim sought and, accordingly, there had been no violation of Article 6 (§§ 153-158). In *Stran Greek Refineries and Stratis Andreadis v. Greece*, 1994, the Court found a breach of Article 6 on account of the annulment by a legislative measure of an arbitration award against the Greek State (§§ 42-50). In assessing whether the legislative interference is acceptable, it may be important to examine at which stage of the proceedings the legislator has intervened (see *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, 2004, § 71).

228. National court judgments must be enforced. The enforcement of a final judgment of a court of law must be regarded as an integral part of the “trial” for the purposes of Article 6 of the Convention. For example, in *ZIT Company v. Serbia*, 2007, the Court found that the prolonged non-enforcement of judgments constituted a violation of the right to a fair trial and the right to peaceful enjoyment of possessions (§ 61). The Court made similar findings in *EVT Company v. Serbia*, 2007, §§ 52-54). As noted in the latter case, it does not matter whether the debtor is a State-owned or a private company: even in respect of purely private debts “the State has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice and ensures their enforcement without undue delay” (§ 52). In such cases, the finding of a violation of Article 6 is often associated with the finding of a violation of Article 1 of Protocol no. 1 (the judgment debt is qualified as a “possession”). The principle of legal certainty extends, in some situations, to the enforcement of interim decisions (i.e. those not defining the object of the dispute in the definitive but remaining in effect until the conclusion of the proceedings, like a court injunction prohibiting a demolition of a building which has been ignored – see *Sharxhi and Others v. Albania*, 2018, §§ 92-96; see also *Sadomski v. Poland*, 2025, § 90). Article 6 also applies to the enforcement of an arbitral award so that the failure to enforce an arbitral decision may lead to a violation of Article 6 § 1 (*Regent Company v. Ukraine*, 2008, §§ 59-60).

229. Enforcement of foreign judgments. The Court has found a violation of Article 6 § 1 in cases where national courts, before recognising foreign judgments, failed to duly satisfy themselves that the trial in the foreign country had been fair (*Dolenc v. Slovenia*, 2022, § 76; see also *Amerisoc Center S.R.L. v. Luxembourg*, 2024, concerning the freezing of bank accounts on the basis of a foreign judicial request). However, the required intensity of the review of a foreign court judgment varies depending on the nature of the case. In *Avotiņš v. Latvia* [GC], 2016, the Court reiterated that a court examining a request for recognition and enforcement of a foreign judgment could not grant the request without first conducting some measure of review of that judgment in the light of the guarantees of a fair hearing (§ 98). In that case, the applicant claimed that he was not aware of the proceedings in Cyprus which resulted in the judgment against him, which was later sent to the Latvian courts for enforcement. The Court, however, concluded that, under Cypriot law the applicant, after he had learned of the existence of the judgment, had ample opportunity to appeal the judgment and have it set aside on arguable grounds. However, he had made no attempt to do so. The Court noted that the applicant, who was an investment consultant, should have been aware of his obligations before the Cypriot company and under the Cypriot legal framework (§ 124). In such circumstances, the review of the validity of the original judgement offered by the Latvian courts was sufficient, and Article 6 § 1 had not been breached.

4. Institutional requirements: independent and impartial, tribunal created by law

230. While most of Article 6 § 1 deals with the procedural guarantees, it also establishes certain institutional requirements for a body examining a civil dispute or a criminal charge. These guarantees include the concept of a “tribunal established by law”, together with the concepts of “independence” and “impartiality” of a tribunal. While they each serve specific purposes as distinct fair-trial guarantees, they are all guided by the aim of upholding the fundamental principles of the rule of law and the separation of powers (*Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, § 233; *Advance Pharma sp. z o.o v. Poland*, 2022, § 298). For a summary of the general principles governing the case-law on impartiality and independence of a tribunal see, for example, *Denisov v. Ukraine* [GC], 2018, §§ 60-65. In general, the personal impartiality of a judge is to be presumed, so the burden of proof is on the applicant to show that it was not the case (*Le Compte, Van Leuven and De Meyere v. Belgium*, 1981, § 58 *in fine*; *Morice v. France* [GC], 2015, § 74).

231. **“Independence”** means the lack of hierarchical subordination of the judge to one of the parties or to the legislative or executive authorities, and the existence of sufficient safeguards protecting the judge from outside pressure. In order to establish whether a court is independent the Court looks at the “manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence” (*Kleyn and Others v. the Netherlands* [GC], 2003, § 190; see also, in the criminal context, *Maktouf and Damjanović v. Bosnia and Herzegovina* [GC], § 49).²⁴

232. **Subjective and objective impartiality.** The judge’s subjective impartiality may be questioned where he or she expressed herself in a way which could demonstrate his or her pre-disposition (*Central Mediterranean Development Corporation Limited v. Malta (no. 2)*, 2011, § 29). “Objective” impartiality concerns the question of whether there are circumstances – such as a link to one of the parties or to the object of the dispute, or another conflict of interests – which may reasonably be considered to cast doubt on the judge’s impartiality (*Cosmos Maritime Trading and Shipping Agency v. Ukraine*, 2019, § 71). For an outline of general principles, see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 144-150.

233. **Personal links of a judge to one of the parties.** In *Croatian Golf Federation v. Croatia*, 2020, the applicant association faced dissolution on insolvency grounds. It filed a constitutional complaint against the administrative authorities’ decision to dissolve the association. One of the judges reviewing the complaint was the President of the golf club against which the applicant association instituted enforcement proceedings with a view to collecting unpaid membership fees. While the two proceedings were unrelated in terms of their subject matter, the dissolution of the applicant association was related to the existence of the golf club’s debt: if the applicant association was dissolved, the debt would be extinguished. The Court held that appearances of partiality may be of a certain importance and that the applicant association’s fears as regards the judge’s impartiality were objectively justified. It found a violation of Article 6 § 1 (§§ 126-133). (See also *Tsulukidze and Rusulashvili v. Georgia*, 2024, where the Court found a violation of Article 6 due to the participation of a judge on the Supreme Court three-member panels rejecting the applicants’ respective claims, his judicial assistant being the daughter of the lawyer representing the respondent company (§§ 58-59).

234. **Impartiality of a judge may be called into question by his involvement in a financial transaction with one of the parties.** In *Cosmos Maritime Trading and Shipping Agency v. Ukraine*, 2019, the Commercial Court handling the applicant company’s bankruptcy proceedings had, not long before the bankruptcy proceedings had started, acquired new premises from one of the applicant’s debtors. The transfer was completed when the bankruptcy proceedings were already under way. The Court

²⁴ For a detailed analysis of the institutional requirement of independence, see the Case-Law Guides on [Article 6 \(civil\)](#) and [Article 6 \(criminal\)](#)

considered that the applicant company's perception that the court dealing with its case lacked impartiality for this reason was not manifestly devoid of merit and therefore the domestic court was bound to examine whether it could still be considered an "impartial tribunal". However, the first instance judge only noted that the transfer of the property to the court did not affect her personally, without addressing the question of the perceived impartiality of the court as a whole and the appellate courts failed to properly address this issue. Regard being had to the confidence which the courts must inspire in those subject to their jurisdiction, the Court found a violation of Article 6 § 1 of the Convention (§§ 77-82).

235. Independence/impartiality examined in the light of the proceedings as a whole. The lack of impartiality of a lower court can be remedied if its decision had been subject to subsequent oversight by a judicial body that had full jurisdiction and addressed the applicants' challenge to the judge's independence and impartiality (see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, 2019, § 345, concerning the alleged partiality of a first-instance court judge whose wife commented on the proceedings on Facebook; see also, along the same lines, *Procedo Capital Corporation v. Norway*, 2009 and *Sigma Radio Television Ltd v. Cyprus*, 2011, where the Court examined whether the decision of a media regulatory authority was subject to adequate review by a court).

236. Bodies combining administrative and adjudicative functions. In *Dubus S.A. v. France*, 2009, the Court noted that the Banking Commission had two main functions: a control function (including administrative oversight and the power to issue injunctions) and a disciplinary function (acting as an "administrative jurisdiction"). There was no clear distinction between the prosecutorial, investigative and judicial functions. The Court's task was to establish whether the Banking Commission was able to decide on the disciplinary sanction without "pre-judgment," considering the actions it took during the procedure. The Court found that the applicant could have objectively founded doubts about the Commission's independence and impartiality due to the lack of clear distinctions between its functions (§§ 55-62). In *Sigma Radio Television Ltd v. Cyprus*, 2011, the Court decided that a media regulatory authority performing adjudicatory functions cannot be seen as an independent and impartial tribunal *inter alia* because it was entitled to keep to itself the fines it imposed for breaches of the applicable regulations (§ 150).

237. Reassignment of a case to another judge. In *Miracle Europe KFT v. Hungary*, 2016, the Court examined a situation where the president of a court had the discretion to reassign a case, but the rules regarding reassignment were not clearly defined. The Constitutional Court had found the legal provisions underlying the reassignment of the applicant's case to be unconstitutional, but such a finding did not have any legal consequences in the applicant's case which led the Court to conclude that the applicant's case was not heard by a "tribunal established by law" (§§ 65-66).

238. Independence and impartiality of bodies adjudicating disputes related to the exercise of regulated professions. A dispute may be examined by a special-purpose adjudicative body which does not satisfy the requirements of Article 6 in every respect – provided that a subsequent review by an independent and impartial tribunal is available to the parties (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 1981, § 51, concerning a dispute examined by a professional body of the Medical Association concerning a disciplinary sanction imposed on the doctors for a breach of rules of professional discipline; see also *Espirito Santo Silva Salgado v. Portugal*, 2024, § 69, where the Central Bank of Portugal imposed an administrative sanction on the applicant, Chairman of the board of directors of a commercial bank). The key question in such cases is the breadth of the scope of examination of the case offered by the reviewing court (*SA-Capital Oy v. Finland*, 2019, §§ 72, 76; *A. Menarini Diagnostics S.R.L. v. Italy*, 2011, §§ 57-61).

239. Commercial arbitration. In *Tabbane v. Switzerland* (dec.), 2016, the Court made it clear that the right of access to a court does not necessarily imply the right to be able to apply to a traditional court, integrated into the ordinary judicial structures of the country: thus, a body responsible for deciding a limited number of specific disputes can be considered a court provided that it offers the necessary

guarantees (§ 25). In that case, the parties had waived an appeal against the arbitral tribunal’s final judgment. The arbitral tribunal was seated in Switzerland and under Swiss international private law such a waiver was possible. This waiver had also been attended by minimum safeguards: the applicant was able to select an arbitrator, the three arbitrators together chose Switzerland as the seat of arbitration which made Swiss law applicable in the case. Furthermore, the Swiss federal tribunal had duly heard all the arguments of the applicant and rendered a reasoned judgment. The Court found the applicants complaint concerning the denial of access to a court in Switzerland in order to challenge the arbitration procedure manifestly ill-founded (§§ 33-36). Commercial arbitration is, in general, in accordance with the Convention, but a distinction has to be made between voluntary and compulsory arbitration (see *Beg S.p.a. v. Italy*, 2021, § 127). The Court has acknowledged that where commercial arbitration has been accepted freely, lawfully and unequivocally, the concepts of independence and impartiality may be interpreted flexibly, since the very essence of the arbitration system lies in the appointment of the decision-making bodies, or at least part of them, by the parties to the dispute (*Mutu and Pechstein v. Switzerland*, 2018, § 146, in the context of professional sports arbitration bodies). Nevertheless, the impartiality of arbitration proceedings remains important, including the role of appearances (*Beg S.p.a. v. Italy*, 2021, §§ 144-153). In the latter case the Court held that the applicant could not be considered to have unequivocally waived the guarantee of the arbitrators’ impartiality nor the guarantee of legal review of the arbitration tribunal’s independence (§ 143). One of the arbitrators was the top official and counsel of the parent entity of the applicant’s opponent company in related civil proceedings: the Court found a violation of Article 6 of the Convention. Additionally, when the parties agree to arbitration, this does not automatically imply that they have unequivocally waived all their rights under Article 6 § 1 (*Suovaniemi and others v. Finland* (dec.), 1999). When it comes to compulsory arbitration, all the guarantees of Article 6 § 1 apply fully (*Ali Rıza and Others v. Turkey*, 2020, § 174, and *Suda v. the Czech Republic*, 2010, § 49). In *Suda v. Czech Republic*, 2010, the applicant was a minority shareholder of a company. The company’s general meeting made a majority decision (which the applicant opposed) to close down the company, to cede its assets to the main shareholder and to buy off the shares of the minority shareholders. The redemption value of the shares held by minority shareholders was determined by a contract between the company and the minority shareholder. This contract included an arbitration clause, removing disputes about the redemption value from the jurisdiction of ordinary courts. The Court considered that the applicant was in a situation of “compulsory arbitration”: if this is the case, the arbitration body should offer all the guarantees of Article 6 (in that case, those concerning the lawful establishment and the publicity of the proceedings), in the absence of which a violation of Article 6 may be found (§§ 50-53). The Court also found a violation where, also in compulsory arbitration, there has been a lack of a public hearing and public pronouncement of the judgment (*Day S.R.O. ao v. Czech Republic*, 2012, §§ 30 and 33).

240. **Participation of non-judicial members in specialised adjudicative bodies.** In *Stechnauer v. Austria*, 2010, §§ 49-59, the Court examined the composition of the Arbitration Commission and the Regional Appeals Commission (bodies competent to examine disputes between the insurance board and medical practitioners) and concluded that the presence of the lay member as such did not compromise its independence or impartiality (provided that those lay members were not affiliated with one of the parties – see § 59).

5. Procedural requirements of fair trial: right to a public hearing, adversarial proceedings, equality of arms

241. **Explicit and implicit guarantees of “fair trial”.** Further guarantees implicit in Article 6 include the principles of adversarial proceedings and equality of arms: a party should be able to plead their case in a public hearing, have an opportunity to present evidence for examination before the court (“adversarial proceedings”) and to do so on an equal footing with the opponent (“equality of arms”). The right to “adversarial proceedings” and the “equality of arms” are often examined together: each

party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* the other party (*Regner v. the Czech Republic* [GC], 2017, § 146; *Seksimp Group SRL v. the Republic of Moldova*, 2025, § 36). The requirement of “equality of arms”, in the sense of a “fair balance” between the parties, applies in principle to civil as well as to criminal cases (*Feldbrugge v. the Netherlands*, 1986, § 44; *Natunen v. Finland*, 2009, § 39).²⁵

242. Fair trial guarantees under the “civil” and “criminal” limbs of Article 6. On the one hand, in analysing civil proceedings the Court may draw inspiration from its approach to criminal-law matters (*Dilipak and Karakaya v. Turkey*, 2014, § 80) and, on the other, where the “criminal” limb of Article 6 is applicable, the level of guarantees would depend on the type of proceedings at issue (*Vegotex International S.A. v. Belgium* [GC], 2022, § 76). As the Court explained in *SA-Capital Oy v. Finland*, 2019, in view of the fact that the range of proceedings which are considered to fall under the criminal limb of Article 6 has expanded, there are “criminal charges” of differing weight and, while the requirements of a fair hearing are strictest concerning the hard core of the criminal law, there are cases where, despite their falling under the criminal head, the procedural guarantees do not necessarily apply with their full stringency (§ 71): this may be particularly important in the context of quasi-criminal proceedings related to certain aspects of business operations.

243. Waiver of a right to a public hearing. Article 6 § 1 does not preclude a free, either express or tacit, waiver of the right to a public hearing (*Mutu and Pechstein v. Switzerland*, 2018, §§ 180-181). The right to a public hearing can be validly waived even in normal court proceedings, and the same applies to arbitration proceedings the purpose of which is often to avoid publicity (*Suovaniemi and others v. Finland* (dec.), 1999). Thus, the lack of a public hearing in arbitration does not of itself mean that the arbitration procedure runs counter Article 6 (*Klausecker v. Germany* (dec.), 2015, § 74; *Kolgu v. Turkey* (dec.), 2013, §§ 44-45), especially if the applicant chose arbitration proceedings instead of proceedings before the ordinary civil courts (*ibid.*, §§ 36-47).

244. Ability to prepare the defence, and have access to the other party’s submissions and to the materials of the case. The concept of a fair trial comprises the fundamental right to adversarial proceedings: parties should have knowledge of and be able to comment on all evidence adduced or observations filed with a view to influencing the court’s decision (*Seksimp Group SRL v. the Republic of Moldova*, 2025, § 36; *Immeubles Groupe Kosser v. France*, 2002, § 24). As a very minimum, the party should be properly notified of a hearing (see *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, 2021, §§ 68-74): domestic courts should not only dispatch judicial summonses, but must make sure whether they reached the absent litigant sufficiently in advance. However, the lack of a summons resulting in an *in absentia* trial may be remedied when a fresh adversarial hearing takes place before a court with full jurisdiction which re-examines the merits of the case (*Seksimp Group SRL v. the Republic of Moldova*, 2025, §§ 38-41). The equality of arms also requires that judicial documents be served on all parties to the proceedings (see *Vorotnikova v. Latvia*, 2021, §§ 21-22), and the failure to do so must be justified by “very weighty reasons” (*Janáček v. the Czech Republic*, 2023, § 53). Observations should be served on the other party (see *Grozdanoski v. the former Yugoslav Republic of Macedonia*, 2007; and, for a criminal context, see *Natunen v. Finland*, 2009, § 39). The time element is also important: in *OAo Neftyanaya Kompaniya Yukos v. Russia*, 2012, the Court found a violation of Article 6 § 1 under its criminal limb, read in conjunction with Article 6 § 3 (b), where the company, among other things, did not have sufficient time to study the case file (§§ 536-541): it had only four days to study 43,000 pages supporting the claim introduced by the tax authorities, so that it

²⁵ For a detailed analysis of the procedural guarantees of the adversarial principle and the principle of equality of arms, see Case-Law Guides on [Article 6 \(civil\)](#) and [Article 6 \(criminal\)](#)

did not matter how many lawyers represented it in the proceedings (§ 540. See also *Marina Aucanada Group S.L. v. Spain*, 2022, § 41, on the need for adequate notification when a time-limit for an appeal is at stake).

245. Restricted access to evidence. Restricted access to *some* evidence may be exceptionally permissible. The case of *UAB Ambercore DC and UAB Arcus Novus v. Lithuania*, 2023, concerned decisions refusing the applicant companies permission to proceed with planned business projects because they were seen as a threat to national security. The applicant companies alleged a breach of their right to adversarial proceedings and equality of arms because the decisions had been taken based on evidence which had not been disclosed to them, as it had been classified. The Court found that the restrictions on the applicant companies' rights had been counterbalanced by other procedural safeguards. They had been able to participate effectively in the administrative proceedings in their cases, and to have witnesses examined; and the classified evidence had not been decisive for the proceedings as there had been other, publicly available, documents on which the decisions had been based (§§ 108-117). See also, on the withholding from a party of confidential information on which the court relied, in relation to the refusal to issue a firearms licence, *T.G. v. Croatia*, 2017, (§§ 60-65)).

246. Right to examine witnesses. If the proceedings at issue are categorised as "criminal", the right to examine witnesses is explicitly guaranteed by Article 6 § 3 (d) whereas, in civil disputes, issues relating to witness evidence are assessed with respect to the overall fairness criteria (*Dombo Beheer B.V. v. the Netherlands*, 1993, § 31). In *Chap Ltd v. Armenia*, 2017, the applicant company's requests to examine witnesses in tax surcharge proceedings had been rejected, while their evidence had been used against it in the proceedings. The Court found that the statements made by those witnesses, while not being the only evidence against the applicant, were relied upon in establishing the applicant company's tax liability and were thus decisive for the determination of the applicant company's tax surcharges. There were no procedural safeguards to compensate for the handicaps caused to the applicant company, the Court concluding that the applicant company had been unreasonably restricted in its right to examine the witnesses so that there had been a violation of Article 6 § 1 read in conjunction with Article 6 § 3 (d) of the Convention.

247. Hearsay evidence. There is no hard rule preventing the courts in business cases from using hearsay evidence. In *SA-Capital Oy v. Finland*, 2019, the Court observed that proceedings related to the alleged breaches of competition law should not necessarily be conducted "according to the classic model of a criminal trial" (§ 72). In that case, the applicant company was accused of entering into a cartel agreement on the asphalt market. Before the first instance court, the competition authority had attached sixty-eight pieces of documentary evidence and adduced further written evidence in the course of the hearing and called fifteen witnesses, including staff of the companies concerned, while the rest were persons having served in relevant public sector organisations involved in asphalt sector works. The defendant companies had called over thirty witnesses and adduced written evidence. The first instance court concluded that the cartel agreement covered only the central government contracts, but not contracts with the local authorities. The competition authority appealed, and the Supreme Administrative Court found – to the detriment of the applicant company – that the whole asphalt sector was covered by the cartel agreement. In reaching this conclusion, the Supreme Administrative Court relied on three witnesses, one of whom had directly implicated the applicant company as a participant in the cartel, and on transcripts of testimonies by further witnesses given before the first instance court. The Court acknowledged that some of the witness evidence included references to second-hand information received from others: however, such indirect evidence was not decisive for the outcome of the anti-trust proceedings, and it had been open to challenge by the applicant company, including cross-examination, in the course of the proceedings, and the applicant company was able to submit their own evidence (§§ 92-95). The Court thus concluded that the extent to which the Supreme Administrative Court had relied on the untested indirect evidence had not been unjustified under Article 6 of the Convention.

248. **Equality of arms and the refusal to hear witnesses.** The principle of equality of arms (*Regner v. the Czech Republic* [GC], 2017, § 146; *Seksimp Group SRL v. the Republic of Moldova*, 2025, § 36; *Vegotex International S.A. v. Belgium* [GC], 2022, § 139), in the sense of a “fair balance” between the parties, applies in principle to civil as well as to criminal cases (*Feldbrugge v. the Netherlands*, 1986, § 44; *Natunen v. Finland*, 2009, § 39). An unjustified refusal to hear a witness may be seen as a violation of the equality of arms principle: in *Dombo Beheer B.V. v. the Netherlands*, 1993, the national courts had not allowed the former managing director of the applicant company to give evidence, whereas the branch manager of the opposing company had been able to testify. The Court found that the applicant company had been placed at a substantial disadvantage vis-à-vis the opposing party and concluded that there had been a violation of Article 6 § 1 of the Convention (§§ 32-35).

249. **Refusal to order an expert examination.** In *Tabbane v. Switzerland* (dec.), 2016, the arbitral tribunal had refused to order an additional expert opinion to be prepared as the opposing party to the proceedings had already provided for a financial expert opinion of their own. The arbitral tribunal had stated that the applicant could have their own expert access to the same accounting documents used by the opposing party’s expert. The Court found that this reasoning was neither unreasonable nor arbitrary. Since the applicant had had access to the disputed documents, they were not placed at a significantly disadvantaged position compared to their opponent (§ 39). There is no automatic entitlement under Article 6 § 1 for a party to a civil or criminal trial to obtain the appointment of an expert or the ordering of any other investigative measure merely because such a request has been made. It is, in principle, for the domestic courts to assess the relevance and necessity of the evidence sought, subject to the overall fairness of the proceedings (see *Gülağacı v. Turkey* (dec.), 2021, § 38).

250. **Right to free legal aid under the “criminal” limb of Article 6.** The right to free legal assistance under Article 6 § 3 (c) is usually invoked by individual defendants in criminal cases who have insufficient means to pay for a lawyer of their choice. It has been rarely invoked by businesspersons or companies. In *Barsom Varli v. Sweden* (dec.), 2008, the applicants, owners of a restaurant, faced tax surcharges: these proceedings were characterised by the Court as “criminal” in nature. The Court noted that, even if the applicants could not pay for a lawyer, the interests of justice did not require that legal aid be granted to them – the applicants were capable of paying the fines, they did not risk imprisonment, their cases were relatively straightforward and did not involve any complex legal issues but rather questions of fact, and the domestic courts were required under law to give directions to the parties to supplement the case-file with the requisite information, if needs be. The Court noted that the applicants were running a restaurant business for almost 30 years, so they were able to present their case and arguments adequately, without legal assistance.

251. **Any right to obtain free legal aid under the civil limb of Article 6?** In the context of civil proceedings the right to free legal assistance was acknowledged in rather exceptional circumstances such as in *Steel and Morris v. the United Kingdom*, 2005, §§ 63-72, where the applicant – physical persons – were involved in particularly complex and lengthy defamation proceedings brought against them by the *McDonalds* corporation. In that case the Court concluded that, in view of the high stakes for the applicants and the complexity of the case, the applicants were incapable of bringing an effective defence and presenting their case effectively before the court, while *McDonalds* was represented by a team of highly experienced lawyers throughout the trial. Thus, the right to legal aid was seen as a corollary of the “equality of arms” principle. By contrast, in *VP Diffusion Sarl v. France*, (dec.), 2008, the Court decided that the absence of legal aid for companies did not breach Article 6, even where the company has insufficient means to pay for a lawyer.

252. **Representative of a litigant linked to the adversary.** In accordance with the right to adversarial proceedings and the right of access to a court, litigants represented by persons dependent, to varying degrees, on the other party to the proceedings would not be able to protect their interests in proper conditions. In *Capital Bank AD v. Bulgaria*, 2005, § 118, in the domestic proceedings the applicant bank was represented by special administrators appointed by, and answerable to, the Bulgarian National Bank which had revoked the applicant banks’ licence which led to its insolvency. The Court concluded

that representation by persons dependent on the adversary prevented the bank from properly stating its case and protecting its interests.

6. Presumption of innocence and the burden of proof

253. **Shifting the burden of proof.** Article 6 § 2, guaranteeing the presumption of innocence, was interpreted by the Court as implying a certain standard of proof and the distribution of the burden of proof. That does not, however, exclude the operation of presumptions of fact or of law to the detriment of the accused: they exist in nearly every criminal-law system and are not as such contrary to the Convention. In *Salabiaku v. France*, 1988, where the Court examined a rebuttable presumption in French customs law that anyone in possession of a piece of luggage carried over the customs border is responsible for any prohibited goods which may be found therein. Similarly, *Janosevic v. Sweden*, 2002, concerned the applicant's tax liability and under Swedish tax law surcharges are imposed on objective grounds namely, without any requirement of intent or negligence on the part of the taxpayer. However, Article 6 § 2 requires States to confine these presumptions within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defence. According to the case-law, these limits will be overstepped where a presumption has the effect of making it impossible for an individual to exonerate himself from the accusations against him, thus depriving him of the benefit of Article 6 § 2 (*G.I.E.M. S.r.l. and Others v. Italy* [GC], 2018, § 243). However, the Contracting States may, under certain conditions, penalise a simple or objective fact, irrespective of whether it results from criminal intent or from negligence. In *Busuttil v. Malta*, 2021, the applicant, a director of a company, was found guilty of failing to pay tax due, under a legal presumption that he must have known about unpaid taxes as a director of the company. The Court found no violation of Article 6 § 2, even though "the defence of impossibility" available to the applicant might be in practice difficult to rebut. The Court stressed that it was "judicious for the law to provide that the [applicant], in taking up his or her responsibilities as director, takes up the obligation to pay the relevant tax due, in order to allow for a functional system in the interests of all those concerned, as long as some means of defence remains available to an accused" (§ 55. See also *Radio France and Others v. France*, 2004, § 24).

254. **Surviving company and criminal liability.** Article 6 does not prohibit a fine to be imposed on the surviving company in respect of an infringement committed by its merged subsidiary, where the core business is continued by the parent company (*Carrefour France v. France* (dec.), 2019, § 47, and *Union des Mutuelles d'Assurances Monceau v. France* (dec.), 2024).

255. **Declaration of guilt despite the discontinuation of criminal proceedings.** Article 6 § 2 safeguards the right to be "presumed innocent until proved guilty according to law" – which means that no one can be declared guilty of a criminal offence other than as a result of a criminal trial. In *Episcopo and Bassani v. Italy*, 2024, the domestic courts, when ordering confiscation, did not merely assess the unlawful origin of the confiscated assets but explicitly stated that the first applicant was criminally liable, despite the discontinuation of the criminal proceedings and in the absence of a formal conviction. While the Court stressed that non-conviction-based confiscation was not, as such, against the Convention, in that case the domestic courts did not merely assess the unlawful origin of the confiscated assets but explicitly stated that the first applicant was criminally guilty of the offence in question and that, had it not been for the discontinuance of the proceedings, he would have been convicted (compare with *G.I.E.M. S.r.l. and Others v. Italy* [GC], 2018).

7. Length of proceedings ("reasonable time" requirement)

256. **Criteria for assessing the "reasonable time" requirement.** The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (*Lupeni Greek Catholic Parish and Others v.*

Romania [GC], 2016, § 143; *Vujović and Lipa D.O.O. v. Montenegro (no.2)*, 2025, § 79). In *Central Mediterranean Development Corporation Limited v. Malta*, 2006, the Court examined the duration of the civil proceedings in which the applicant company tried to re-possess a plot of land from a private individual: under the contract concluded an individual buyer of the land committed to build a house on this land and to pay an agreed annual rent. The buyer failed to do so, and the seller (the company) tried to repossess the land. The proceedings – which the Court did not consider particularly complex – lasted over a decade in two levels of jurisdiction, were adjourned twelve times at first instance and twenty-eight times at the appeal stage, and it took the Court of Appeal almost five years after the date on which the parties had presented their final pleadings to deliver judgment. This was found to amount to a violation of the applicant company’s right to a fair trial within a reasonable period of time under Article 6 § 1 (§§ 38-43). A similar conclusion was drawn by the Court in the case of *Vujović and Lipa D.O.O. v. Montenegro (no.2)*, 2025, even though the insolvency proceedings of the applicant company were significantly less lengthy (six years, two months and twenty-one days, during which time the domestic courts issued fifteen decisions at three levels of jurisdiction). The cumulative effect of the Court of Appeal failing to comply with the Constitutional Court’s decisions on four occasions rendered the length of the proceedings excessive. Even if the length of each stage of the proceedings is not unreasonable taken in isolation, the overall duration may nonetheless be (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, [GC], 2017, §§ 210-214).

257. **Special cases: constitutional courts, arbitration proceedings, CJEU.** In *Project-Trade d.o.o. v. Croatia*, 2020, the Court took note of the special features of the proceedings before the Constitutional Court and, in particular, the need to wait for several years to collect a sufficient number of cases raising a certain problem in order to identify a leading one. Since the proceedings before the Constitutional Court lasted for four more years after this waiting period was over, this was considered by the Court to be excessive (§ 100-103). The length of arbitration proceedings is taken into account not only for the arbitration proceedings *per se* (*Deservire SRL v. Moldova*, 2009, § 48) but also in the assessment of the overall length of proceedings (*Stechnauer v. Austria*, 2010, §§ 43-44, concerning the proceedings between an Arbitration Commission and the Regional Appeals Commission which was competent to hear disputes between the insurance board and medical practitioners; see also *Puchstein v. Austria*, 2010, §§ 39-40). However, the time a case was pending before the CJEU for a preliminary ruling is to be excluded from the length attributable to the domestic authorities (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 208).

8. Quality of justice: reasoning of judgments, inconsistent case-law, arbitrariness, etc. Links to other Convention provisions.

258. **The “fourth instance” doctrine.** Since Article 6 § 1 is primarily a “procedural” provision, the Court does not re-assess under this Article the formal admissibility or probative value or evidence and does not reconsider factual conclusions which the national courts made on the basis of the evidence before them (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], 2016, § 90; *Bochan v. Ukraine (no. 2)* [GC], 2015, § 61). Similarly, under Article 6 the Court does not engage in re-interpreting domestic law and its application to the facts (see, amongst many examples of the application of this doctrine, *Tibet Menteş and Others v. Turkey*, 2017, § 53; *Ukrkava, TOV v. Ukraine*, 2025, § 43; *SA-Capital Oy v. Finland*, 2019, § 73; *Anheuser-Busch Inc. v. Portugal* [GC], 2007, §§ 85-86). However, in a limited number of situations, described below, the Court may assess the *content* of the domestic judicial decisions under Article 6 of the Convention. Moreover, the substance of the court decisions may also be examined under other provisions of the Convention (see, for example, the case of *Total S.A. and Vitol S.A. v. France*, 2023, which concerned the conviction of the applicant companies for the offense of active bribery of foreign public officials and where the Court examined, under Article 7 of the

Convention, whether the criminal sentence against the applicant companies had been foreseeable at the time when the impugned offences had been committed).²⁶

259. **Court decisions must be reasoned.** As repeatedly held by the Court, Article 6 guarantees the right to have reasons provided for decisions handed down by a domestic court (*Google LLC and Others v. Russia*, 2025, § 104; *Tourisme d'affaires v. France*, 2012, § 26). This does not imply the need for a detailed answer to every argument adduced by a litigant. The extent to which the duty to give reasons applies may vary according to the nature of the decision at issue. Article 6 “cannot be understood as requiring a detailed answer to every argument” (*Hiro Balani v. Spain*, 1994, § 27,) but courts must address the “specific, pertinent and important points” raised by a party (see *Aykhan Akhundov v. Azerbaijan*, 2023, § 87, where the courts failed to examine a clearly formulated objection of the applicant related to the statute of limitations which should have prevented the claimant from contesting the validity of a contract; or *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, 2021, § 82, where the Ukrainian courts failed to address the plea as to the lack of jurisdiction of the Ukrainian courts in light of the arbitration clause, or *Google LLC and Others v. Russia*, 2025, where the domestic courts were found to have failed to provide adequate reasoning for the compatibility of the revenue-based approach to impose the fine in question on the company (§ 105) and for the institution of enforcement proceedings against a different company with separate legal personality and for the assertion of jurisdiction over the dispute, despite the presence of express jurisdictional clauses in the relevant contracts (§ 106). The general principle does not exclude that the courts – in particular the higher courts – may use short formulas for dismissing *de plano* inadmissible cases (see, for example, *Marini v. Albania*, 2007, § 106), but the absence of reasoning cannot be justified in cases where the main point of appeal is the lack of reasoning in a lower court’s judgment (see *Meli and Swinkels Family Brewers N.V v. Albania*, 2024, § 73). The absence of reasoning may concern not only the judgment as a whole but a particular part of it, such as the calculation of damages (see *Google LLC and Others v. Russia*, cited above).

260. **Lasting inconsistencies in the case-law.** The development of case-law is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], 2016, § 116, point “c”). At the same time, lasting inconsistencies in the case-law may run counter the principles of the legal certainty and the rule of law (*Hayati Çelebi and Others v. Turkey*, 2016, § 52, point “f”; *Ukrkava, TOV v. Ukraine*, 2025, § 44). In *Sine Tsaggarakis A.E.E. v. Greece*, 2019, the applicant claimed a situation of legal uncertainty before the Supreme Court as the existing mechanism at the domestic level for resolving conflicts in the case-law had not been effective. The divergence in this case concerned the question whether the Court must annul a building permit (delivered to the applicant company’s competitor) issued in breach of environmental regulations or should rather confirm its validity out of respect for the legitimate expectation created by the deliverance (albeit irregular) of the building permit issued by the administration. The Court noted that the divergence of practice between two sections of the Council of State (the supreme administrative jurisdiction) had persisted for several years, and that it concerned an important matter of public interest (§ 51). In the Greek legal order, the Plenary Council of State was supposed to resolve such disputes and put an end to the divergence of jurisprudence. In reviewing the applicant’s complaint, the Plenary ruled that the environmental regulations are more important than the “legitimate expectation” created by the irregular building permit. This reading of the law was favourable to the applicant company. However, the lower court, after the remittal, refused to follow the instructions of the Plenary, stressing that in the “exceptional circumstances” it had to give precedence to the considerations of “legitimate expectation” created by the administration’s error in issuing the building permit to the applicant company’s competitor. The Court concluded that the mechanism of resolving the controversies in the case-law did not function in the applicant’s case, thus breaching Article 6, as contrary to the “legal certainty” principle (§§ 58-59). Compare *Svilengaćanin and Others v. Serbia*, 2021, where the original

²⁶ On the principle of “no punishment without law” see more the case-law [Guide on Article 7](#).

divergence of practice ended with the Supreme Court ruling which effectively resolved the issue (§§ 81-83) and *Šabanović and Others v. Serbia*, 2025, §§ 103 - 116. See also *Episcopo and Bassani v. Italy*, 2024, §§ 105-112, concerning confiscation proceedings, where the Court found that the domestic mechanism in place had resolved the inconsistency in the case-law.

261. Arbitrariness, manifest unreasonableness, denial of justice, etc. However, the Court has exceptionally found that a patent disregard of the evidence, facts or applicable legal provisions amounted to a breach of Article 6 if the domestic courts' findings are considered to be "arbitrary or manifestly unreasonable" (*Bochan v. Ukraine (no. 2)* [GC], 2015, § 61). In *Barać and Others v. Montenegro*, 2011, §§ 33-34, the domestic courts in the labour proceedings based their decision on a sole legal provision which had been previously declared unconstitutional by the Constitutional Court. See also *Anđelković v. Serbia*, 2013, which concerned the payment of work-related benefits, where the Court qualified the court of appeal's decision taken *contra legem* as a "denial of justice" (§ 27 *in fine*).

262. The substance of the domestic decisions may be examined under other Articles of the Convention. The "fourth instance" doctrine (with the exceptions discussed above) does not prevent the Court from examining the substance of the domestic courts' decision through the prism of either Article 6 § 2 (to the extent that the proceedings at issue can be characterised as "criminal") or under *other* provisions of the Convention. Most often the substance of the domestic decisions on business matters concerns Article 1 of Protocol No. 1.²⁷ In the criminal law context it may also be under Article 7 which enshrines the principle that offences and sanctions must be provided for by law and that the criminal law must clearly define the offences and the sanctions by which they are punished and, in that regard, be accessible and foreseeable in its effects. In *G.I.E.M. S.r.l. and Others v. Italy* [GC], 2018, §§ 242-245, concerning the punitive confiscation of land considered as "unlawfully developed", the Court found a breach of the above two Articles because the confiscation had been applied to *bona fide* parties, without establishing their personal liability for the offence of unlawful development (see also *Sud Fondi S.r.l. and Others v. Italy*, 2009). Similarly, Article 4 § 1 of Protocol No. 7, which prohibits the repetition of criminal proceedings that have been concluded by a final decision, has also been invoked in cases which concerned the double collection of a tax debt in tax and criminal proceedings (see *Ruotsalainen v. Finland*, 2009, § 41).

²⁷ See more in Section "Protection of possessions" above.

B. Hazardous activities, privacy, home, and correspondence (Articles 2 and 8)²⁸

Article 2 of the Convention

1. Everyone's right to life shall be protected by law. [...]

Article 8 of the Convention

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

1. Industrial pollution and hazardous activities

a. Environmental cases under Articles 2 and 8²⁹

263. **Industrial pollution might endanger “life”, “private life” and respect for “home”.** The Convention does not guarantee the right to a clean environment as such. The case *Kyrtatos v. Greece*, 2003, concerned construction permits granted in a protected swamp located next to the applicants' home. The applicants complained about environmental pollution caused by the activities of the company overseeing the urban development and about the risks to flora and fauna of the wetland area. The Court emphasised that the Convention does not guarantee a general right to a clean environment so that a violation of the Convention can only be qualified if the action or omissions which has impacted the environment also infringes an individual's fundamental rights (§ 52). Articles 2 and/or 8 may be engaged if the industrial pollution reaches levels which endanger life or interfere with the private life or the enjoyment of “home” within the meaning of Articles 2 and 8, respectively.

264. **The “threshold” requirement under Article 8.** For Article 8 to be applicable, there should be an interference with the persons' private sphere on account of the environmental situation, and it should attain a minimum level of severity (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 515). Thus, in *Ivan Atanasov v. Bulgaria*, 2010, §§ 66-79, the Court considered that the applicants did not suffer any actual harm from pollution, as their home was located far from the tailings pond of a former copper-ore mine, which posed no risk to their health. The case of *Cordella and Others v. Italy*, 2019, concerned the alleged failure of States to act against air pollution emissions from a steelworks company. Since an *actio popularis* is not admissible, individuals living in cities not officially recognized as at risk by the national authorities were not accepted as victims (§ 108. See also *L.F. and Others v. Italy*, 2025, § 125). The State's responsibility may be engaged if there is a direct and immediate link between the pollution and the applicant's home or private or family life. Thus, in *López Ostra v. Spain*, 1994, the applicant lived at a distance of twelve meters from a plant for the treatment of liquid and solid waste. Based on medical reports and expert opinions showing that the emissions from the plant exceeded the permitted limit and could endanger the health of those living nearby, and that there could be a causal link between those emissions and health problems suffered by the applicant's daughter, and given the acceptance of the domestic courts that, without being a grave

²⁸ For more details see [Case-Law Guide on Article 8](#).

²⁹ The sub-section 1 (on “Industrial pollution and hazardous activities”) will cover case-law involving environmental matters which was examined under Articles 2, Article 8 and Article 1 of Protocol no. 1 – on this see more in the [Case-Law Guide on Article 2](#) and the transversal theme [Guide on Environment](#).

health risk, the nuisances in issue impaired the quality of life of those living in the plant's vicinity, the Court was satisfied that Article 8 was engaged (§ 49. See also *Hatton and Others v. the United Kingdom* [GC], 2003, where the applicants complained about the noise disturbances caused by the activities of private airline companies located near their residences, a complaint examined under Article 8 (§§ 118-119).

265. The harmful effects of the pollution should be serious enough to attract the protection of the Convention. As noted above, the impact on the applicant's rights should be minimally serious to attract the protection of the Convention (*Kotov and Others v. Russia*, 2022, § 101, in the context of Article 8). The following lower-level nuisances were found to fall within the ambit of Article 8 of the Convention:

- *Pavlov and Others v. Russia*, 2022 – the applicants complained about the concentration levels of harmful substances in the air and water supplied, which originated from large industrial companies exceeding the maximum allowed limits (respect for private life). The Court stated that a person's health does not necessarily have to be directly affected or even threatened for the threshold to be met under Article 8 due to their exposure to pollution or other nuisances (§ 69);
- *Di Sarno and Others v. Italy*, 2012, concerned the poor management of waste disposal services by the authorities which resulted in the accumulation of the waste on the streets of some municipalities for several months. The Court recognized that the waste accumulation in the applicants' city had directly affected the residents' personal well-being (§ 108);
- *Zammit Maempel v. Malta*, 2011 – the applicants complained about fireworks permits and the resulting noise during two separate weeks each year. The Court considered that, depending on the circumstances, the severity threshold may be met even when the impugned pollution or noise is only occasional (here – several hours per year, § 67).

Even if the minimal threshold is achieved (applicability) the Court may still take into account the intensity of the interference in the overall proportionality analysis (*Ashworth and others v. United Kingdom* (dec), 2004, concerned noise nuisances caused by the activity of a private aerodrome near the applicants' home).

266. Hazardous industrial activities jeopardising the lives of residents. Article 2 requires the State to take all appropriate steps to safeguard life by putting in place a legislative framework and adopting preventive measures, whether the danger is created by public or private activities. For example, see *Öneryıldız v. Turkey* [GC], 2004, which concerned an explosion of gas at the municipal rubbish dump which caused the destruction of the applicant's house and the killing of several members of his family; and *Mučibabić v. Serbia*, 2016 where the applicant's son died in an accident caused by the production of rocket fuel on the premises of a socially owned company. The Court examined whether there had been a breach of the positive obligation under Article 2 to ensure that death caused by a life-threatening activity should be followed by an effective investigation (§§ 124 and 126), although most cases about pollution-related hazards are examined under Article 8 (see *L.F. and Others v. Italy*, 2025, § 108).

267. The obligation of the State to act and counter pollution-related risks arises if the risks are known, and the State has a measure of control over the situation. The case of *Fadeyeva v. Russia*, 2005, concerned environmental pollution caused by a steel-producing company. The plaintiffs lived near the factory in an area where the toxic substances in the air exceeded permissible levels, putting residents' health and lives at risk. The Court found that the State knew that the emission levels had been exceeded (§§ 85-86), that the source of the pollution had been quickly identifiable (§ 90), and that the State had failed to take action to force the plant to reduce them, or to re-settle the applicants, or to mitigate the risks otherwise (§ 92). The Court contrasted this situation with the environmental problems in a big city where it is difficult to identify a single major source of air pollution (§ 91). In *Dubetska and Others v. Ukraine*, 2011, the water, air and soil pollution was caused by a coalmine and

a coal processing factory near the applicants' homes: the situation was long-standing and well known to the authorities (§ 120).

268. How does the Court assess the effects of the industrial pollution? In *Ledyayeva and Others v. Russia*, 2006, concerning the effects of the operation of steelworks in the vicinity of the applicant's house, the Court relied essentially on domestic safety regulations: since the levels of concentration of toxic substances in the air set by the domestic law were seriously and regularly exceeded, the Court assumed that the applicants' health was in danger (§ 96). The Court recognized the difficulty of assessing the impact of industrial pollution on public health, due to the influence of other factors (§ 90). It therefore stated that, to assess the effects of industrial pollution, it must refer to the findings of the domestic courts and, if contradictory, to assess the evidence in its entirety (confirmed in *Dubetska and Others v. Ukraine*, 2011, § 107). However, where the applicant fails to produce any medical evidence or expert assessments which would refute the findings of the domestic courts which were, in contrast, based on relevant studies, the Court would rely on the conclusions of the domestic courts (see *Zapletal v. Czech Republic* (dec.), 2010, concerning noise pollution caused by industrial activity near the applicant's home, declared inadmissible because the applicant failed to produce supporting evidence; *Marchis and others v. Romania* (dec.), 2011, § 38; and *Smaltini v. Italy* (dec.), 2015, §§ 56-57).

269. The scope of the State's positive obligation to regulate and combat industrial pollution. The duties of the State in the environmental area are derived from Articles 2, 8, and 10, and Article 1 of Protocol No. 1. These duties may consist of:

- putting in place a legislative framework and some preventive regulations (including licensing, supervision mechanisms. See *Brincat and Others v. Malta*, 2014, §§ 110-111, where the applicants, former employees of a ship repair yard, claimed that they were continuously and extensively exposed to asbestos particles while performing their duties, leading to serious health consequences and the death of a colleague).
- do environment impact assessments before authorizing hazardous activities (see *Giacomelli v. Italy*, 2006, which concerned a toxic waste treatment factory operating near the applicant's home. The Court held that, when deciding about a business project, the competent authority must first carry out studies and inquiries to assess and prevent the effects of the project on Convention rights, § 94; see also *Greenpeace Nordic and Others v. Norway*, 2025, §§ 318-319, in the particular context of business undertakings having an effect on climate change).
- informing the public and the civil society about environmental risks. In *Guerra and Others v. Italy*, 1998, the applicants, living near an industrial plant representing a risk to public health and the environment, argued that the State failed to collect, process and disseminate information about industrial risks. The Court found that the failure of the State to provide the local population with information about risk factors and how to proceed in the event of an accident at the nearby chemical factory amounted to a breach of Article 8 (§ 60). In *Cannavacciuolo & Others v. Italy*, 2025, the applicants lived near an area affected by the illegal dumping, burial and burning of hazardous waste. Although the national authorities had long been aware of the situation, they remained largely inactive and kept relevant information secret. The Court held that guaranteeing the public's right to information constitutes a positive obligation under Article 2 (§ 382); see also *Budayeva and Others v. Russia*, 2008, § 132);³⁰
- taking practical mitigation measures to protect the health and life of the residents. In *Kolyadenko and Others v. Russia*, 2012, the Court found that the authorities' failure to maintain the channel of a river in a proper state of repair, and to take appropriate measures to mitigate the risk of floods, had resulted in damage to the applicants' homes and property,

³⁰ On the right to information under Article 10 see more in Sub-Section C (1) below

and that Articles 2, 8 and Article 1 of Protocol No. 1 had been breached (§§ 166 and 215). Similarly, in *L.F. and Others v. Italy*, 2025, the applicants complained about the State's failure to take protective measures to minimise or eliminate the effects of the pollution allegedly caused by the continuing operation of a foundry near their home. The Court held that, despite the tangible effects of post-2016 measures aimed at minimising the harmful effects of the foundry's operation, the authorities had failed to consider the previous significant harmful effects on the local population from a prolonged exposure to pollution, leading to a violation of Article 8 of the Convention (§§ 156-172);

- taking measures to help affected populations to cope with the adverse effects of pollution. The case of *Kapa and Others v. Poland*, 2021, concerned the State rerouting, for a period of over 2 years, heavy traffic from a motorway to a public national road near the applicants' house during the construction of a motorway. According to the applicants, this rerouting had the effect of exposing them to severe nuisance: excessive noise, vibrations and exhaust fumes. While the national authorities had taken measures (such as installing anti-noise screens) to facilitate the life of residents during the rerouting (§§ 61 and 171), the Court concluded as to a violation of Article 8 because these measures were applied in an inconsequential manner, putting vehicle users in a privileged position compared with the residents affected by the traffic (§ 172);
- conducting effective investigations into industrial accidents, providing remedies for persons affected and enforcing sanctions with deterrent effect (see, for example, *Tolić and others v. Croatia* (dec.), where the applicants complained of the contamination of their water supply caused by private developers).

270. Even if there are no national regulations or if they have been complied with, the Court may examine whether these regulations adequately responded to an environmental hazard. In *Brincat and Others v. Malta*, 2014, §§ 106-111, concerning the workers' exposure to asbestos, the Court found that the Government had known or ought to have known of the dangers of asbestos at least from the early 1970s. The applicants had been left without any adequate safeguards against the dangers of asbestos, either in the form of protection or information about risks, until the early 2000s by which time they had left employment at the ship repair yard. Legislation which had been passed in 1987 had not adequately regulated asbestos related activity or provided any practical measures to protect employees. In *Jugheli and Others v. Georgia*, 2017, the applicants lived near a thermal power plant releasing toxic pollutants into the air. The Court found the State responsible, stating that the lack of a proper legal and administrative framework for regulating the power plant's potentially dangerous activities had allowed it to operate without the necessary safeguards to prevent, or at least reduce, air pollution and its harmful effects on the applicants' health and well-being (§ 170).

271. Non-compliance with national environmental regulations is a relevant but not decisive factor. In *Kotov and Others v. Russia*, 2022, the applicants challenged the effects of pollution caused by a landfill operated by a local waste management company. The Court reiterated that domestic legality is one but not the principal factor to be considered in assessing whether the State has fulfilled the obligation to ensure "respect for private life" even where the domestic authorities did not comply with some aspects of the domestic legal regime. The Court found a violation of Article 8 noting that the authorities did not rigorously pursue the enforcement of those regulations despite the existence of a rigid and detailed regulatory framework governing waste management operations (§§ 128-130).

272. In authorising industrial activities, the authorities should follow a proper decision-making process. In *Tătar v. Romania*, 2009, concerning the pollution on a large scale by a mining company in an extraction facility near a residential area and the leaking of polluted water into rivers, the Court established the necessary elements of the decision-making process as regards complex environmental and economic policy issues:

- appropriate investigations and studies with an eye to prevention and assessment (§ 101);

- public access to the conclusions of such studies as well as to information enabling them to assess the danger to which they are exposed (§ 113);
- an appeal for the individuals concerned (§ 119).

In that case, the Court observed that, although the Government had carried out an impact assessment before granting the permit, the authorities had failed to address the environmental and public health risks identified in the assessment (§ 112), nor did they disclose to the public the findings of the impact studies (§§112-116). However, in *Hatton and others v. the United Kingdom* [GC], 2003 (concerning the authorisation of a night flights scheme for a major airport), the Court acknowledged that there are limits to what the Government can do in developing a policy with environmental repercussions: while a governmental decision-making process had to involve appropriate investigations, this did not mean that decisions could only be taken if comprehensive and measurable data were available in relation to each and every aspect of the matter (§§ 128-130).

273. Obligation to investigate industrial disasters. The “duty to investigate” under Article 2 has also been applied to cases where persons have been injured or died as a result of industrial accidents. In *Durdaj and Others v. Albania*, 2023, the applicants complained that, following a significant explosion at a facility for dismantling decommissioned or obsolete military weapons, machinery and equipment, the criminal investigation into the accident was ineffective. The Court found that the investigation was thorough enough and it ascertained the circumstances of the incident, identified security flaws and any failures of the regulatory system, and it identified the State officials or authorities who might have been responsible (§§ 191-204). The victims had sufficient access to the materials of the case-file during the investigation (§§ 205-210). Twenty-nine persons were tried and convicted for negligence and received various prison sentences: although no homicide charges had been preferred, the Court found those sentences adequate (§ 216). However, some of the applicants lodged a civil claim against the accused and the domestic court severed their civil claim from the criminal proceedings. As a result, the applicants ceased to be parties to the criminal proceedings (they were no longer informed of procedural steps, were not notified of hearings or decisions and had no right to attend or participate in the trial, §§ 223-227). Furthermore, proceedings against the former Minister of Defence, were protracted, due to his parliamentary immunity (§§ 229-230). As a result, there had been a nine-year gap in his prosecution. Those failures raised serious questions as to the willingness and diligence of the prosecution to pursue the matter in line with the requirements of Article 2, thus creating a potential for impunity (§ 231). The applicants and the general public had the right to know not only the circumstances in which the loss of life and severe injuries had taken place but also the exact role the former Minister of Defence had played in those events (§ 235). In *Kolyadenko and Others v. Russia*, 2012, the applicants challenged the closure by the authorities of their proceedings aimed at holding the director of the public water company accountable for his decision to release a large quantity of water into a river, which resulted in damage to their homes. The Court recalled that, although a preliminary investigation was conducted, the competent authorities failed to demonstrate sufficient determination to establish the circumstances of the incident or to identify and bring those responsible to justice (§§ 200-203).

b. Business entities as applicants in environment-related cases³¹

274. Industrial pollution interfering with the business activities of an applicant. Certain cases, essentially under Article 1 of Protocol No. 1, concern complaints by business entities about the environmental regulations which interfere with their business interests. Thus, in *S.C. Fiercolect Impex S.R.L. v. Romania*, 2016, the applicant company was involved in scrap metal recovery and recycling: its revenue was confiscated and it was fined for the period during which it conducted environmentally harmful activities without the required permits. The Court considered that the complaint fell within

³¹ For further detail see the transversal theme *Guide on Environment*. For the general principles under Article 1 of Protocol No. 1, see the *Guide on Article 1 of Protocol No. 1* and Section “Protection of possessions” above.

the scope of Article 1 Protocol No. 1 as the sum of money which the finance inspectorate had confiscated resulted from the applicant's company's activity and constituted a "possession" (§§ 45 and 57).

275. The State's margin of appreciation in regulating business activities is wider if environmental considerations are at stake. In *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, 2018, the applicant's company suffered economic harm after its mussel-seed fishing activity in a particular zone was temporarily suspended for environmental assessment. The Court found that the protection of the environment could be a legitimate general-interest objective of considerable weight (§ 109). Thus, the Court found that the State may have to intervene and even, in certain circumstances, that could be without compensation if the regulations were introduced to protect the environment (§§ 123-124). In *Depalle v. France* [GC], 2010, the applicant challenged the refusal to permit him to continue to occupy maritime public property where he had his home for several decades, and its consequent demolition. The Court found that, where the community's general interest is pre-eminent, the State's margin of appreciation is greater than when exclusively civil rights are at stake (§ 84). It also reiterated that the protection of the countryside and forests as well as the protection of the natural state of the seashore, coastal areas and in particular beaches, are public areas open to all and could amount to a public interest (§ 81). In *S.A. Bio d'Ardennes v. Belgium*, 2019, a cattle farmer challenged the decision of the Belgian authorities to deny any compensation following the mandatory killing of his brucellosis-infected livestock. The Court found that the imposition of such a preventive measure, aimed at eradicating animal diseases, pursued a legitimate objective based on the need to protect public health (§ 55). In *S.C. Fiercolect Impex S.R.L. v. Romania*, 2016, the applicant company was involved in scrap metal recovery and recycling and it had its revenue confiscated and was fined for the period during which it conducted environmentally harmful activities without the required permits. The Court noted that the applicant company continued to carry out its activity in the absence of an environmental permit even though, pursuant to the newly adopted legislation, its activity was considered by the domestic authorities to have a significant impact on the environment. The issue whether such conduct should be punished by a financial penalty with a deterrent effect such as a fine and the confiscation of the unlawfully obtained revenue, comes within the Contracting States' margin of appreciation (§§ 67-68). So, the penalty – confiscation of the revenue for several months and a 600 EUR fine – was not disproportionate (§§69 and 72). In *Bērziņš and Others v. Latvia*, 2021, the applicants complained that they were unable to access their land due to decisions designating the property as a protected water zone. The Court found that the interference with the applicants' property rights was justified, as the protected zone was established to ensure the preservation and renewal of water resources and, more generally, the conservation of the environment (§ 88). In *Salento Energy S.r.l. and Nuovo Sole S.r.l. v. Italy* (dec.), 2024, the applicant company complained about the reduction of feed-in tariffs for solar photovoltaic installations. The Court considered the wide margin of appreciation in the regulation of the energy sector and in cases concerning a benefit or a privileged right granted by the State (§ 37). The interference (i.e. legislation reducing feed-in tariffs) took into account the needs of the producers of solar energy and avoided placing an excessive burden on the applicant companies (the reduction of feed-in tariffs was not automatic and national authorities introduced compensatory remedies – §§ 38-39). Therefore, the applicant's complaint under Article 1 of Protocol No. 1 was considered to be manifestly ill-founded (§§ 40-43).

276. Before engaging in a project, business entities should assess environmental risks. In *Vladimirov v. Bulgaria* (dec.), 2018, the applicant complained about the revocation of a building permit due to a risk of landslides in the area. The Court recognised that it's the role of the entrepreneur to assess the environmental risks before investing or starting operations, and to assess if the area is fit for the purpose, when information is available: in this case, the applicant had not done so although all the information was available before he bought the land (§ 37). There had therefore been no violation of Article 1 Protocol No. 1. In *Orfanos and Orfanou v. Greece* (dec.), 2006, the applicants complained about the lack of compensation from the national courts following the expropriation of part of their property for the construction of a new railway line. The Court found that, by building on the land after

expropriation, the applicants had acted with full awareness of the situation. It concluded that they were not justified in claiming that the State had acted arbitrarily by refusing compensation for the loss of value of their property or the disruptions to their daily lives. In *Calancea and Others v. Republic of Moldova* (dec.), 2018, the applicants complained about the presence of a high-voltage power line crossing their land. The Court found the application to be inadmissible, as the applicants could not have been unaware of the high-voltage power line when they acquired the building plots on which they constructed their homes. Therefore, they acted with full knowledge of the situation (§ 36. See also *Podelean v. Romania* (dec.), CTE, 2019, which concerned a commercial activity, and where the Court also concluded that the applicant assumed responsibility for the inconveniences he endured, § 36). In *Zhidov and Others v. Russia*, 2018, the applicants contested the domestic courts' decision ordering the demolition of their buildings, which were constructed in prohibited zones near gas or oil pipelines, without any compensation. The Court noted that the presence of oil pipelines and protected zones was indicated on a general plan annexed to a decree issued by the local administration: when purchasing and registering her property rights, the applicant could have consulted this general plan and should have been aware that the disputed plot was located near the oil pipelines. Consequently, the Court concluded that the demolition order for the shed and its annexes, on the grounds that they constituted illegal constructions, did not impose a disproportionate burden on the applicant (§ 115). In *Jugheli and Others v. Georgia*, 2017, the applicants, who live near a thermal power plant, argued that the plant could have carried out hazardous activities by releasing toxic pollutants into the air since there were virtually no laws regulating its operations at the time. The Government argued that the applicant voluntarily moved into a building near the thermal power plant when it was already in operation. However, the Court found that the applicants could not be held responsible for their situation, as they had not been sufficiently aware of the severity of the pollution in the buildings into which they had moved with the assistance of the State, nor did they have any subsequent hope of being relocated (§ 72).

c. Environmental cases under Article 6 (right to fair trial)³²

277. **Cases about environmental damage examined under Article 6.** Article 6 may be applicable to environmental disputes. In cases concerning proceedings in which private individuals contested administrative decisions authorising certain industrial activities, the Court had first to evaluate whether the proceedings concerned a defensible “civil right” (compare *Cangi and Others v. Türkiye*, 2023, §§ 33-38, where the Court found that the applicant had a defensible civil right and *Ivan Atanasov v. Bulgaria*, 2010, §§ 89-96, where the Court concluded that the contested administrative proceedings were not decisive for the applicant’s rights). The cases where the applicability of Article 6 was established or not at issue mostly concerned limitations on the applicant’s access to court. Thus, in *Howald Moor and Others v. Switzerland*, 2014, the applicants, the widow and daughters of a mechanic who died from an asbestos-related disease he was exposed to in the course of his work, challenged the rejection of their compensation claims against a private employer and an insurance fund. The Court considered that the application of limitation or prescription periods to victims of diseases, such as those caused by asbestos which can only be diagnosed many years after the harmful exposure, constitutes a restriction and a violation of the right of access to a court (§§ 74-80). In *Kurşun v. Turkey*, 2018, the applicant challenged the dismissal of his liability action against a petroleum refinery following an explosion that damaged his property, on the grounds of exceeding the statute of limitations. The Court found that the domestic courts applied the procedural rules in force at the time too strictly, thereby depriving the applicant of his right of access to a court: the 1-year time-limit was calculated from the moment of the explosion, not from the moment when all circumstances and causes became clear to the victim and the plaintiff in the compensation proceedings (§§ 103-104).

³² For more details on procedural rights see Section V (A) above, as well as the case-law *Guide on Article 6 (civil)*, *Guide on Article 6 (criminal)*, and *Guide on Article 13*.

2. Protection of “home”, “privacy” and “correspondence” of business entities

278. The concept of “privacy” is quite broad and does not lend itself to a precise definition. Similarly, the terms “home” and “correspondence” were extended to various sorts of premises and communications.³³

279. **A business entity has a right to “home”.** This is the case not only where residential property is used for conducting business (*Chappell v. the United Kingdom*, 1989, concerned a search in a video club premises which also served partly as the applicant’s place of residence, §§ 36 and 51) but also to purely business premises belonging either to the individual business persons or to the companies (*Niemietz v. Germany*, 1992, concerned a search of a lawyer’s office by the police §§ 27-32, where the Court accepted the word “home” as extending to business premises; see also *Crémieux v. France*, 1993, §§ 8 and 31, and *Société Colas Est and Others v. France*, 2002, §§ 40-42). However, some business premises do not qualify as a “home”: in *Leveau and Fillon v. France*, 2005, the Court concluded that the visit of a veterinary inspector to a pigsty in order to count pigs, with a view to imposing an administrative fine on the owner of the pigs for a breach of applicable regulations, did not amount to an interference with the applicant’s “home”, where the Court noted that a pigsty cannot be associated with a home even in its professional meaning.

280. **Does a business entity have a right to “privacy” or to secrecy of “correspondence”?** Searches and seizures carried out on the premises of a commercial company constitute an interference with the rights protected by Article 8. More specifically, the search and seizure of electronic data has been held to amount to an interference with the right to respect for “private life” and “correspondence” (see *Naumenko and SIA Rix Shipping v. Latvia*, 2022, § 45). Similarly, seizures of documents – including in electronic format – at the company’s premises were seen as an interference with its Article 8 rights. Seizure of computers containing information can also be analysed as an interference with Article 8 rights (*Prezhdarovi v. Bulgaria*, 2014, § 41). Professional correspondence (letters, emails, messages, data stored on servers, etc.) is also protected under Article 8 (see *Halford v. the United Kingdom*, 1997, § 44, *Amann v. Switzerland* [GC], 2000, § 44; *Bernh Larsen Holding AS and Others v. Norway*, 2013, §§ 172-175). In order to find Article 8 applicable, the Court must establish whether the information about the business entity or its operation is “private” (see, for example, *G.S.B. v. Switzerland*, 2015, which concerned the disclosure of information about the applicant’s bank accounts to the U.S. tax authorities). In *Ferrieri and Bonassisa v. Italy*, 2026, the Court concluded that access to, and examination of, the applicants’ banking data, including transaction histories and other financial operations related to or traceable to the applicants by the authorities for tax audit purposes, amounted to an interference with their right to respect for their “private life”, even though that “bank data, that is to say purely financial information, do not involve the transmission of intimate details or data closely linked to identity do not merit enhanced protection” under Article 8 (§§ 53-58). In *Green Alliance v. Bulgaria*, 2026, the Court examined the practice of the infiltration of State agents in private organisations and considered that it amounted to an interference with the organisation’s right to respect for its “correspondence” and with its “home” within the meaning of Article 8 § 1 of the Convention (§§ 113-119).

281. **The State’s margin of appreciation in conducting searches and seizures at business premises or obtaining company data.** As the Court held in *Naumenko and SIA Rix Shipping v. Latvia*, 2022, § 51 (which concerned the search of the applicant’s business premises and the seizure of large amounts of documents and electronic files by the competition authority), the scope of the margin of appreciation was described as depending on such factors as the nature and seriousness of the interests at stake and the gravity of the interference. One factor that militates in favour of stricter scrutiny is that a large number of documents and emails are retained. On the other hand, the fact that the measure in

³³ For the general discussion of what those terms mean in the Convention see the *Case-Law Guide on Article 8*.

question mainly targeted legal persons meant that a wider margin of appreciation could be applied than would have been the case had it concerned an individual. In *Ferrieri and Bonassisa v. Italy*, 2026, the Court observed that “bank data, that is to say purely financial information, do not involve the transmission of intimate details or data closely linked to identity do not merit enhanced protection” under Article 8 and the State hence enjoys a broad margin of appreciation in this field (§ 58). See also *Ships Waste Oil Collector B.V. and Others v. the Netherlands* [GC], 2025, concerning the transmission and use, in competition-law proceedings, of data lawfully obtained through telephone tapping in unrelated criminal investigations, by tapping the telephones of individual employees.

282. Procedural safeguards against arbitrary searches and seizures. Any search and seizure should be accompanied by appropriate procedural safeguards against abuse and arbitrariness (see *Vinci Construction and GTM Génie Civil et Services v. France*, 2015, § 66). What is “appropriate” depends on the context: elements to be taken into consideration include whether the search was based on a warrant issued by a judge and based on reasonable suspicion (§ 72). Obtaining a prior judicial warrant authorising a search is an important but not a mandatory requirement (see *DELTA PEKÁRNY a.s. v. the Czech Republic*, 2014, § 83): in a situation of urgency, investigative and other administrative authorities (such as the tax service as well as the customs and competition authority) may conduct inspections of premises, searches and seizures, and the absence of a prior judicial warrant may be counterbalanced by the availability of a *ex post facto* judicial review (*Prezhdarovi v. Bulgaria*, 2014, § 46) of sufficient scope which should include the assessment of the relevance of the information and documents seized (*ibid.*, § 49). Thus, in *BRD – Groupe Société Générale S.A. v. Romania*, 2025, the Court held that the absence of a prior judicial warrant for the inspection of the applicant’s company’s premises by the competition authority was sufficiently counterbalanced by an adequate *ex post facto* judicial review concerning the impugned measure’s necessity and proportionality (§§ 112-115). However, in relation to the search and seizure of computers in the criminal proceedings concerning the company’s employees, the interference was found to be disproportionate in the absence of any meaningful judicial review and given the length of the criminal investigation (§§ 143-149).

283. Searches must be based on a reasonable suspicion. In *Wieser and Bicos Beteiligungen GmbH v. Austria*, 2007, the Court concluded that the search of the applicants’ computer systems was based on a warrant issued by the investigating judge where the Italian authorities were conducting criminal proceedings for illegal trade in medicaments: invoices addressed to the applicant company’s subsidiary had been found, so the Court was satisfied that the search warrant was based on reasonable suspicion (§ 58) (see also *Naumenko and SIA Rix Shipping v. Latvia*, 2022, § 53). However, the non-targeted collection of information does not necessarily require a reasonable suspicion (for the principles concerning such “bulk surveillance” (i.e. mass interception and analysis of communications without targeting a particular person), see *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, §§ 325 and 361).

284. Search warrants should circumscribe the power of the investigative authorities and should be complied with. Broadly formulated search warrants which do not set the limits for the search and seizure powers of the police or other competent authority (i.e. do not indicate what is being searched for and in connection with what procedures, who is subject to the search, fix a time-frame for the search) are considered problematic under Article 8 (see, for example, *André and Another v. France*, 2008, § 45, where the Court found that the search warrant had been worded in overly broad terms). The seizure of a large volume of documents, some of which are irrelevant for the purposes of the search, amounts to a violation of Article 8 (see *Rustamkhanli v. Azerbaijan*, 2024, §§ 38 and 46; and compare with *Vinci Construction and GTM Génie Civil et Services v. France*, 2015, §§ 76 and 77).

285. Conduct of the search. Searches and seizures in a company must be conducted with some level of involvement of the personnel of the company in order to help exclude irrelevant or privileged material (*Vinci Construction and GTM Génie Civil et Services v. France*, 2015, § 78). In *Naumenko and SIA Rix Shipping v. Latvia*, 2022, § 60, the Court noted with approval that, during the search, the required procedural record was drawn up, specifying the type of documents seized and retained.

Additional safeguards may be required in order to preserve the professional secret and to respect lawyer-client confidentiality where the searches are conducted in a lawyer's office. In *Bersheda and Rybolovlev v. Monaco*, 2024, the examination of the entire content of a lawyer's mobile phone outside the scope of an investigation led to a violation of Article 8. After the lawyer had handed over her mobile phone to show her good faith (§ 81), the national authorities conducted extensive research of its content, including personal and professional correspondence (§§ 83-84). The Court found the boundaries of the investigation to have been insufficiently circumscribed by the judicial authorities (§ 107) and that no guarantees had been applied to preserve the professional secrecy of the applicant lawyer (§ 115). One of those guarantees may include the presence of a President of a bar association during the search helping to identify documents protected by professional privilege. In *André and Another v. France*, 2008, § 44, the Court found a violation of Article 8 because the investigators had seized handwritten notes of the lawyers, covered by the professional privilege, despite the objections of the President of the Bar Association present during the search. Similarly, in *Särgava v. Estonia*, 2021, the applicant, an entrepreneur and a lawyer, complained about the seizure of his laptop and mobile telephone by national authorities. The Court considered that domestic law did not provide sufficient procedural safeguards to protect the confidentiality of exchanges between lawyers and their clients: domestic law did not require the presence of the lawyer concerned, nor did it establish how investigators must separate protected (confidential) material from non-protected material or whether to conduct a keyword-based search or use any other method of sifting (§§ 95-110).

286. **Ex post judicial review of the manner in which the search has been conducted.** In *UAB Kesko Senukai Lithuania v. Lithuania*, 2023, §§ 119-121, the Court noted that Article 8 does not require an *ex post facto* judicial review in all cases concerning a search or seizure carried out in the premises of a commercial company: however, where the seizure concerned a large amount of documents, including entire mailboxes of several of its employees, and where the employees were prevented from contacting their lawyers in private and were not informed of their rights, the company had a justified interest in obtaining a review of whether the officials conducting the seizure complied with the prior judicial warrant authorising the search and seizure.

3. Business reputation³⁴

287. **Business reputation of individuals versus business reputation of companies under Article 8.** The reputation of a *private individual* is protected by Article 8 as part of the right to respect for private life (*Axel Springer AG v. Germany* [GC], 2012, § 83). A good reputation may also have an economic dimension if it concerns the professional life of the person. The Court has acknowledged that the protection of a *professional* reputation of a private individual comes within the ambit of Article 8 (*Budimir v. Croatia*, 2021, § 47, and *Pişkin v. Turkey*, 2020, §§ 185-186). The Court used the term "business reputation" where the applicant, complaining under Article 8 about attacks on his reputation, was a businessman. In the case of *Țiriac v. Romania*, where the Court found that the impugned articles containing allegations of misappropriation of State funds affected the business reputation of the applicant so that Article 8 was applicable (§ 61). The Court also noted, in conducting the proportionality analysis, that the impugned publication did not have any negative impact on the applicant's business activities (§ 98). The Court appears to have left open the question of whether the private life aspect of Article 8 protects the reputation of a company (*Firma EDV für Sie, Efs Elektronische Datenverarbeitung Dienstleistungs GmbH v. Germany* (dec.), 2014, § 23, and, more recently, *Freitas Rangel v. Portugal*, 2022, § 48). At the same time, the business reputation of a

³⁴ On business interests as "possessions" within the meaning of Article 1 of Protocol No. 1, see Section "Protection of possessions" above. This sub-section will deal with business reputation, not as an economic asset, but as an element of the privacy interest protected by Article 8, in particular in its relation to freedom of expression protected by Article 10 (on the latter, see also sub-section C below and the case-law *Guide on Article 10*).

company is a legitimate factor to consider in cases under Article 10 (see [Halet v. Luxembourg](#) [GC], 2023, § 108).

288. Whether Article 8 applies to the business reputation of companies? In [Buck v. Germany](#), 2005, § 51, the Court noted that “the attendant publicity of the search of the applicant’s business and residential premises in a [relatively small town] was likely to have an adverse effect on his personal reputation and that of the company owned and managed by him”. In certain cases, the Court, while leaving the question of applicability of Article 8 open, proceeded to the analysis of the substance of the case and concluded that the complaint was manifestly ill-founded. For example, the case of [Petro Carbo Chem S.E. v. Romania](#), 2020, concerned a defamation claim brought by a company, a minority shareholder in a big chemistry enterprise, against the CEO of this enterprise in connection with some public statements made by the latter. The Court emphasised the difference between personal reputation and the business reputation of a company. It continued that “in the absence of sufficient evidence to prove the impact of the [CEO’s] remarks on the applicant company’s chances of continuing to invest in the Romanian market or of acting as an international business partner, the Court cannot speculate on the possible damage suffered in that regard” (§ 73). In [Steel and Morris v. the United Kingdom](#), 2005, § 86: the Court found “that the English law of defamation, and its application in this particular case, pursued the legitimate aim of the protection of the reputation or rights” of the McDonalds company.

289. Do all legal entities have a “business reputation”? If commercial enterprises have a business reputation, a public authority as such (as opposed to legal entities established by this public authority) cannot bring civil defamation proceedings in its own name ([OOO Memo v. Russia](#), 2022, § 47).

290. Difference between the personal reputation of an individual and business reputation. In [Uj v. Hungary](#), 2011, the Court recognised that a company undisputedly has a right to defend itself against defamatory allegations. In addition to the public interest in open debate about business practices, there is a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good. The State therefore enjoys a margin of appreciation as to the means it provides under domestic law to enable a company to challenge the truth, and limit the damage, of allegations which risk harming the company’s reputation. However, there is a difference between the commercial reputational interests of a company and the reputation of an individual concerning his or her social status. Whereas the latter might have repercussions on one’s dignity, for the Court interests of commercial reputation are devoid of that moral dimension which the reputation of individuals encompasses. In that case, the Court found that “the reputational interest at stake is that of a private company; it is thus a commercial one without relevance to moral character” (§ 22). See also [Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary](#), 2016, § 84.

291. Business reputation is a relevant consideration in cases under Article 10 of the Convention. Whether or not a company can complain under Article 8 about harm to its business reputation, its interests may be protected by Article 10 § 2, in that freedom of expression of others may be limited “for the protection of the reputation”. In such cases the following criteria are relevant in the assessment of the necessity of an interference where the right to freedom of the media is to be weighed against the competing right to reputation of a commercial company or a businessman: “the subject matter of the impugned publications, that is, whether they concerned a matter of public interest; the content, form and consequences of the publications; the way in which the information was obtained and its veracity; and the gravity of the penalty imposed on the media outlet or journalists” ([OOO Regnum v. Russia](#), 2020, § 67). In the case of [Lefebvre v. France](#), 2024, the applicant, a municipal councilor, was condemned for statements accusing the mayor of a town of corruption, through a municipality-owned enterprise which provided certain services to the community. In particular, the applicant had been ordered to pay damages to the enterprise on account of attacks affecting its reputation. The Court noted that the need to protect the reputation of a legal person is not as strong as the need to protect the reputation or rights of individuals: the company partly owned

and run by the municipality was not comparable to a simple individual and thus had to show a greater degree of tolerance towards criticism (§ 37). In assessing proportionality, the Court focused on the size and nature of companies complaining of defamatory comments and noted that, insofar as it had public contracts, it voluntarily exposed itself to increased scrutiny by public opinion ([Timpul Info-Magazin and Anghel v. Moldova](#), 2007, § 34). Equally, in some cases the damage to a business reputation did not justify the imposition of disproportionate defamation penalties on the applicant ([Almeida Arroja v. Portugal](#), 2024, §§ 86-90, concerned the applicant's criminal conviction for aggravated defamation causing offence to a legal person for comments made about a law firm and its director on a daily news programme broadcast by a private television channel).

4. Business entities interfering with the privacy of others

292. Monitoring the correspondence and behaviour of its employees. Employees have a certain expectation of privacy even on the employer's premises, and when using employer's equipment so that, even if Article 8 applies in cases about employers supervising an employee's behaviour, due regard must be had to the specific context of labour relations in which an employee is necessarily more exposed to scrutiny by his or her hierarchy. Thus, in [Bărbulescu v. Romania \[GC\]](#), 2017, the applicant was dismissed from a private company for using the work messenger account for personal needs, even though this account was reserved for contacts with customers. The Court admitted that the employer's rules excluding personal use of the messenger could not reduce social life in the workplace to zero, so the monitoring of the applicant's private use of the messenger fell within the ambit of Article 8 (§§ 74-80). In the case of [López Ribalda v. Spain and Gancedo Giménez and Others v. Spain \[GC\]](#), 2019, which concerned the use in disciplinary proceedings of the covert video-surveillance of supermarket cashiers and sales assistants installed by the employer, the Court came to a similar conclusion as to the admissibility of Article 8: it observed that since the cameras were established in the public areas of the supermarket space and since the employees knew about CCTV cameras in operation, their expectation of privacy was limited, but it was not non-existent since, even in such areas, the systemic recording, viewing and usage of the CCTV recordings may fall within the ambit of Article 8 (§§ 92-95). On the merits the Court found a violation in [Bărbulescu v. Romania \[GC\]](#) since the domestic courts failed to properly balance the applicant's expectations of privacy and the employer's interests (§ 141), and no violation in [López Ribalda v. Spain and Gancedo Giménez and Others v. Spain \[GC\]](#), 2019, because the domestic court's approach to the matter was found not too perturb the balance between the competing interests (§ 137). The case of [Florindo de Almeida Vasconcelos Gramaxo v. Portugal](#), 2022, concerned the use of a GPS system in the company vehicle with the aim of monitoring the distances travelled during professional and personal journeys. The applicant was dismissed after a discrepancy, between the mileage data provided by the GPS and by him, was discovered. The Court took into account the facts that employees concerned had been informed of the installation of the GPS and the reasons for same (§ 116) and that the domestic courts had also carried out a detailed balancing exercise (the applicant's right to respect for his private life and his employer's right to ensure the smooth running of the company), taking into account the legitimate aim pursued by the company, namely the right to monitor its expenditure (§§ 117-124).

293. An acceptable level of monitoring of employees. The principles established by the Court in [Bărbulescu v. Romania \[GC\]](#), were later confirmed in [López Ribalda v. Spain and Gancedo Giménez and Others v. Spain \[GC\]](#), 2019, § 116 (and see also [Florindo de Almeida Vasconcelos Gramaxo v. Portugal](#), 2022, § 109). In analysing the proportionality of such surveillance measures in the workplace, the domestic courts had to take account of the following factors:

- Whether the employee has been notified, in a sufficiently clear manner, of the possibility of such surveillance measures being adopted and of the implementation thereof;
- the level of intrusiveness of the monitoring by the employer, taking into account the level of privacy in the area being monitored, together with any limitations in time and space and the number of people who have access to the results;

- the existence of legitimate reasons to justify monitoring and the extent thereof adduced by the employer;
- the availability of less intrusive methods and measures of monitoring;
- the consequences of the monitoring for the employee subjected to it, taking into account, in particular, the use made by the employer of the results of the monitoring and whether such results have been used to achieve the stated aim of the measure;
- the availability of appropriate safeguards for the employer, especially against more intrusive forms of monitoring, such as, for example, the provision of information to the employees concerned or the staff representatives as to the installation and extent of the monitoring, a declaration of such a measure to an independent body or the possibility of making a complaint.

There should also be a sufficient legal basis for the monitoring of the employee's communications where it is done by a public institution (*Copland v. the United Kingdom*, 2007, §§ 45-49) and, in the context of a private employment, the employers must describe its policy and the extent of monitoring to employees (see an example of a monitoring practice found to be compatible with Article 8 in, for example, *Köpke v. Germany* (dec.), 2010).

294. A company investigating clients or partners. The case of *Vukota-Bojić v. Switzerland*, 2016, concerned the secret surveillance of the applicant's daily activities by her insurance company, ordered during an insurance claim investigation to check the real level of her disability. Since the company operated within the State compulsory social insurance scheme, the insurance company was regarded as acting on behalf of the State. The Court found a violation of Article 8 because domestic law did not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on insurance companies to conduct secret surveillance of insured persons, and did not set out sufficient safeguards against abuse (§§ 72-75).

295. Reliance on evidence obtained as a result of monitoring in disciplinary proceedings. While Article 6 does not regulate the admissibility of evidence, the use of information obtained as a result of such monitoring is one of the elements in the overall balancing exercise - see *López Ribalda v. Spain and Gancedo Giménez and Others v. Spain [GC]*, 2019, § 116, where, however, the Court, found no violation of Article 6, because the images obtained from the video-surveillance were not the only items of evidence against employees concerned, the applicants (employees) were able to contest their authenticity/lawfulness, and oppose their use in evidence, the court duly considered their arguments, and the quality of evidence (authenticity or accuracy of the footage) was not disputed.

296. Obligations of companies to give access to client information to the secret services. In *Podchasov v. Russia*, 2024, the applicant was a user of an Internet messaging application (*Telegram*) and the Court found a violation of Article 8, on account of a statutory requirement for providers of messaging services to store all communications data for a duration of one year and the contents of all communications for a duration of six months, and to submit those data to law-enforcement authorities or security services together with the decryption keys. The Court noted that the continuous storage of the applicant's data by *Telegram*, the authorities' potential direct access to these data and *Telegram*'s obligation to decrypt them, amounted to an interference with the applicant's Article 8 rights (§§ 54-55). The Court further noted that the law provided the authorities *with a* right of access on a generalised basis and without sufficient safeguards: the authorities did not need to justify the access, they did not need judicial authorisation to obtain access, and they had continued and direct remote access to all Internet communications and related communications data. The obligation to decrypt some communications would affect the secrecy of communications of all users (not only those targeted by the surveillance) (§§ 72-80). In contrast, in *Kyivstar, PAT v. Ukraine*, 2024, the applicant company complained that, by requiring it to provide confidential telecommunications information about users of its services and by imposing a fine on it for refusing to do so, the authorities had violated Article 8 of the Convention. The Court assessed the quality of domestic law and concluded that the

relevant legal provisions were applied in a manner which involved no ambiguity or arbitrariness and provided for adequate and effective safeguards against abuse (§§ 50-53). Moreover, the measure pursued the legitimate aim of investigating a possible breach of competition law (§ 54) and it was applied with the necessary safeguards (the information requested was limited to the metering data of one telephone number for five months, § 55). See further *Glukhin v. Russia*, 2023, §§ 78-91, concerning the use of the facial recognition techniques, and *Škoberne v. Slovenia*, 2024, §§ 132-147, concerning the obligation of the telecom provider to retain certain data.

297. **Companies protecting the privacy of their clients.** The case of *K.U. v. Finland*, 2008, concerned a situation where an unknown individual, pretending to be the applicant (a young boy at the time), posted on his behalf an advertisement of a sexual character. When the applicant complained to the service provider about the identity theft and asked it to disclose the identity of the person who had placed the advertisement, the service provider refused considering that it would be contrary to the confidentiality rules. The Court observed that national law must have provided the applicant with a remedy enabling him to prosecute the actual offender: the confidentiality rule could not be absolute and had to yield on occasion to other legitimate imperatives (§ 49).

298. **Right to be forgotten.** Article 8 requires that the information harmful to someone's reputation should not be kept and made available for the general public for too long, even if this information is factually correct or at least has a sufficient basis in facts: see the outline of the case-law on this aspect of Article 8 in *Hurbain v. Belgium* [GC], 2023, §§ 187-199.³⁵

5. Business entities as landlords

299. **Tenancy cases.** Tenancy-related cases have been examined by the Court from the standpoint of several Convention provisions: the landlords most usually invoke rights under Article 1 of Protocol No. 1, while tenants rely on Article 8 (guaranteeing the respect for "home"), and both parties can invoke Article 6 (fairness of the proceedings).

300. **Transfer of ownership of leased real-estate property to the tenants.** In *James and Others v. the United Kingdom*, 1986, the trustees of an estate had been deprived of part of their inheritance as a result of the acquisition of some of their bequeathed property by tenants under the Leasehold Reform Act. The Court found that States are afforded a wide margin of appreciation when implementing social and economic policies "in the public interest" (§ 46). The right to acquisition could only be exercised with regard to properties of lesser value, and therefore by those who were experiencing the most serious hardship, and the landlord received compensation for the forced transfer of their property to long-lease tenants. The Court found, in particular, that the fact that private tenants benefited from this scheme did not exclude that it was implemented in the "public interest", even if the community at large had no direct use or enjoyment of the property taken (§ 45).

301. **Private landlord's right to evict tenants and Article 8 rights of the tenant.** The Court has established the principle that, when terminating a lease without a possibility of having the proportionality of the measure evaluated by an independent adjudicator is an increment of Article 8 when the landlord is a public entity (*Kay and Others v. the United Kingdom*, 2010, § 74). However, this principle does not apply where the landlord is a private individual or body (*Vrzić v. Croatia*, 2016, § 67; *F.J.M. v. United Kingdom*, 2018, § 41).

302. **General principles under Article 8 concerning cases of eviction.** The Court has held that the loss of one's home (by eviction, for example) is a particularly extreme form of interference with the rights to respect for home guaranteed by Article 8 of the Convention. This principle was developed with regard to State or socially owned accommodation, and while applicable to private landlords, a distinction exists in that the principle does not automatically apply in cases where possession is sought by a private individual or enterprise (*F.J.M. v. United Kingdom* (dec.), 2016, §§ 40-41). The Court

³⁵ See further, on the right to be forgotten, see the case-law *Guide on Article 10*, Section XIII (6).

further noted that, where possession is sought by a private individual or body, the balancing of the parties' competing interests can be embodied in domestic legislation which makes it unnecessary for a tribunal to weigh up those interests again when considering a claim for possession (§ 42). In this case, the Court considered that the State had an interest in protecting the private residential rented sector, by ensuring contractual certainty. A tenant – even though she was a vulnerable person – had agreed to the terms of the tenancy agreement and had to abide by it. The balancing of the interests of the homeowners and private tenants was conducted at the legislative level: if the courts were free to disregard contractual relations, it would have wholly unpredictable and potentially very damaging effects on the private sector market (§ 43).

303. Protracted failure by the State to enforce eviction orders issued by the courts. The Court found a violation of Article 1 of Protocol 1 given extensive delays in the eviction of tenants (*Immobiliare Saffi v. Italy* [GC], 1999, § 56, where the delay amounted to 11 years). Where the applicant is a private individual planning to live in the house, failure by the national authorities to enforce an eviction order against illegal squatters breaches Article 8 (*Pibernik v. Croatia*, 2004, § 70), whereas the house-owning company may usually invoke Article 1 of Protocol No. 1 or Article 6 in such a scenario (on the latter see *Edoardo Palumbo v. Italy*, 2000, §§ 45-47. See also *Papachela and AMAZON S.A. v. Greece*, 2020, §§ 54-64, where the authorities' failure to act in response to migrants occupying a company-owned hotel for over three years, despite a prosecutor's eviction order and a subsequent court decision, amounted to a violation of Article 1 of Protocol No. 1; *Casa di Cura Valle Fiorita S.r.l. c. Italie*, 2018, §§ 46-60, about the authorities' failure, after approximately one hundred individuals forcibly occupied a company-owned building, to enforce a judicial eviction order for more than five years). However, in *Société Cofinfo v. France* (dec.), 2010, the Court found no violation of Article 6 § 1 or of Article 1 of Protocol No. 1 concerning the non-enforcement of an eviction order relating to a company-owned building occupied for over seven years by several families, including many children, as part of a militant action. The authorities' refusal to enforce the order was justified by serious public-order and social considerations, was subject to judicial review and was accompanied by partial compensation, while the applicant itself contributed to the delays. In these exceptional circumstances, the interference with the applicant's rights was not disproportionate.

304. Rent control schemes and other legislative limitations on the homeowner's rights. The case of *Hutten-Czapska v. Poland* [GC], 2006, concerned housing which was privately owned but rented out by the former communist authorities under conditions particularly favourable to tenants. The Court noted that the operation of the rent-control legislation involved wide-reaching consequences for numerous individuals and had significant economic and social consequences for the country as a whole, so the authorities must have considerable discretion, not only in choosing the form and deciding on the extent of control over the use of property, but also in deciding on the appropriate timing for the enforcement of the relevant laws (§ 223). However, the Court found that the housing owners, in this case, had never entered into any freely negotiated lease agreement with their tenants: rather, the houses had been rented to them by the State. Under the Polish legislation, termination of leases was made particularly difficult for the homeowners: the levels of rent were set below the costs of maintenance of the property, whereas the Polish scheme did not provide for any procedure for maintenance contributions or State subsidies, thereby causing the inevitable deterioration of the property due to lack of adequate investment and modernisation. The Court found that the social and financial burden of the housing crisis was placed on one particular social group, namely the homeowners (§§ 224-225) (see, for a different scenario, *Mellacher and Others v. Austria*, 1989, §§ 48-57, and compare with *Spadea and Scalabrino v. Italy*, 1995, where, in light of an ongoing housing crisis, the Court found a rent control scheme to have been justified and proportionate to the aims pursued by the State in the general interest, §§ 33-41). In *Lindheim and Others v. Norway*, 2012, the Court held that national legislation unduly infringed the rights of private landlords under Article 1 of Protocol No. 1: the Ground Lease Act imposed on lessors the duty to extend ground lease contracts for an indefinite period. The Court found that the level of rent received by the applicants was strikingly low (less than 0.25% of the market value of the plots concerned); the legislation appeared to go beyond situations

of potential financial hardship and social injustice and to apply generally whenever a lease came up for renewal, irrespective of the lessee's financial means; extensions were of indefinite duration and the rent could be increased only in the light of the consumer price index, not the value of the land; and, lastly, only the lessee could choose to terminate a lease agreement, either by rescinding the contract or by redeeming (purchasing under preferential conditions) the plot of land. The Court concluded that a disproportionate burden had thus been placed on the applicant lessors (§§ 129-134) (compare with [The Karibu Foundation v. Norway](#), 2022, § 94, where the Court analyzed the impact of the amended Ground Lease Act, and found no violation of this provision).

C. Freedom of expression and the media market (Article 10)

Article 10 of the Convention

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary

1. Selected general principles³⁶

305. **Article 10 applies to commercial media undertakings, messages and products.** As the Court held in *Autronic AG v. Switzerland*, 1990, § 47, the fact that media business activities are intrinsically commercial does not deprive them of the protection of Article 10. Article 10 applies not only to the content of information, but also to the means of transmission or reception or providing medium for the dissemination of information (see *Öztürk v. Turkey* [GC], 1999, § 49, *Delfi AS v. Estonia* [GC], 2015, § 133; *Hurbain v. Belgium* [GC], 2023, §§ 179-180). Similarly, the fact that an advertisement campaign has a primarily commercial purpose, does not render Article 10 inapplicable (see *Sekmadienis Ltd. v. Lithuania*, 2018, concerning a fine imposed on a commercial company for running clothing advertisements depicting religious figures). At the same time, the Court has acknowledged that “where commercial speech is concerned, the standards of scrutiny [by the Court of the necessity of limitations] may be less severe” (*Demuth v. Switzerland*, 2002, § 42). Article 10 also applies not only to publications and broadcasting but also to other forms of expressive behaviour such as the design of condom packaging produced and sold by the applicant (*Gachechiladze v. Georgia*, 2021, § 45).

306. **Duty to verify information.** Media outlets are required to check the information they provide to the public in line with the rules of responsible journalism, for example by basing its reports on reliable sources, even the information was not later confirmed (*Bladet Tromsø and Stensaas v. Norway* [GC], 1999, § 66, *Gorelishvili v. Georgia*, 2007, § 41, *Anatoliy Yeremenko v. Ukraine*, 2022, §§ 10-104, *Kqcki v. Poland*, 2017, § 52; *Fuchsmann v. Germany*, 2017, §§ 42-47). By contrast, reckless or malicious publication of untrue information is not protected by Article 10 (*Karaca v. Türkiye*, 2023, § 158; *Sellami v. France*, 2020, §§ 52-54; *Milosavljević v. Serbia (no. 2)*, 2021, §§ 65 and 72). In *SIC - Sociedade Independente de Comunicação v. Portugal*, 2021, § 68, the Court took into account that the false information, initially included in the news report, had been rectified a few hours later.

307. **Publications in the media interfering with the privacy, personal data and good reputation of private individuals.** The case of *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, concerned a publication by the first applicant newspaper of information on the taxable income and assets of Finnish taxpayers, and the provision by the second applicant of a service supplying taxation information by SMS text message. The information was, by law, public. The question was

³⁶ This sub-section will highlight certain principles governing the freedom of expression and the media freedom, focusing on issues concerning media as a business undertaking; for further details on the freedom of expression see *Guide on Article 10*.

whether the applicants' particular form of supplying the public information respected the "privacy expectation" of the taxpayers. The Court examined the following criteria, identified in previous case-law, as relevant to the balancing of the competing rights to private life under Article 8 and to freedom of expression under Article 10:

- Contribution of the publication to a debate of public interest (the Court noted that the publication of the raw data *en masse*, almost verbatim, did not contribute to such public debate nor was it even primarily intended to do so, §§ 167-178);
- Subject of the publication (the Court noted that it concerned over a million ordinary taxpayers but only a few of them were rich or well-known personalities, §§ 179-181);
- Manner of obtaining the information and its veracity (the accuracy of information was not disputed, but the method of collection of this information was aimed at circumventing normal channels and, thus, the checks and balances established by the law to regulate access and dissemination, §§ 182-185);
- Content, form and consequences of publication (in Finland, under a normal procedure, the taxation data was accessible for journalistic purposes, but specific rules and safeguards governed its accessibility, in order to prevent indiscriminate collection and mass dissemination of this information, §§ 186-196);
- Severity of the sanction (the applicant companies had not been prohibited from publishing taxation data, but the courts only imposed some limitations on the quantity of the information to be published, which might have rendered some of their business activities less profitable, which did not even amount to a "sanction" within the meaning of the Court's case-law, § 197).

Accordingly, the Court concluded that the limitations imposed on the applicant companies did not disproportionately limit their freedom of expression.³⁷

308. Publications in the press interfering with business reputation or interests. Freedom of speech may come into conflict with the economic interests of businesses. The Court has examined the limits of criticism of companies (including their products, management and business practices) and applies broadly the same test as described above in *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 165 (see also *OOO Regnum v. Russia*, 2020, §§ 67-81). The case of *Hertel v. Switzerland*, 1998, concerned a publication about possible effects of microwaves on public health. The applicant, a researcher whose report has been reproduced in a somewhat "sensationalist" manner in a newspaper, was sued by a Swiss association of manufacturers and sellers of household appliances. The case ended with the applicant being prohibited by the Swiss courts, on pain of criminal-law penalties, from stating that food prepared in microwave ovens is a danger to health, and from using, in publications and public speeches on microwave ovens, the image of death. The Court found a violation of the researcher's right under Article 10 on the ground, *inter alia*, on the ground that the applicant himself had nothing to do with the "sensationalist" publication in question, the findings of his research were on the whole carefully formulated and qualified, that there was nothing to suggest that the plaintiffs' interests were seriously impacted, and that the scope of the injunction (which was partly aimed at censoring the applicant's work and substantially reduced his ability to put forward in public his views – even though those views were not shared by all scientific community) was too broad (§§ 47-51) (see also *Firma EDV für Sie, Efs Elektronische Datenverarbeitung Dienstleistungs GmbH v. Germany* (dec.), 2014, §§ 20-28, concerning a German software company providing services for a widely used medical database which complained that its business reputation had been harmed by a journal article warning of a security vulnerability in its software and describing the company as being closely associated with a religious group, inadmissible and see *Almeida Arroja v. Portugal*, 2024, §§

³⁷ On the general principles governing the interrelation between the freedom of expression and the rights guaranteed by Article 8 see the case-law *Guide on Article 10*, Section IV.

73-93, where the Court stressed the “chilling effect” of a criminal conviction for “aggravated defamation” for comments made about a law firm and its director on a daily news programme broadcast by a private television channel, violation of Article 10 of the Convention).

309. The States have a larger margin of appreciation in regulating commercial speech. While Article 10 applies to “commercial speech”, the Court’s case-law affords a somewhat lesser protection to “commercial speech” as its main objective is the promotion of the economic interests of the speaker (see *Société de conception de presse et d’édition and Ponson v. France*, 2009, § 34; see also *Markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989, § 32, and *Neij and Sunde Kolmisoppi v. Sweden* (dec.), 2013).³⁸

310. Large companies should be more tolerant to criticism by the media. The case of *Steel and Morris v. the United Kingdom*, 2005, concerned the anti-McDonald’s campaign launched by the London Greenpeace members in the mid-1980s. The applicants were held liable for the publication of “untrue or unjustified” factual statements, and damages in favour of McDonald’s were awarded. The Court, in finding that the penalty applied to the applicants was disproportionate, noted that “large public companies inevitably and knowingly lay themselves open to close scrutiny of their acts and, as in the case of the businessmen and women who manage them, the limits of acceptable criticism are wider in the case of such companies”, while, at the same time, stressing that “there is a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good”.

311. Procedural safeguards against abuse. There are implicit procedural guarantees in Article 10 of the Convention. Thus, the case of *OOO Flavus and Others v. Russia*, 2020, concerned the blocking of a website for “unlawful content”. The Court noted, in finding a violation, that the Russian law did not provide owners of online media any procedural safeguards capable of protecting them against arbitrary closure (§ 40). Thus, the website owners were not involved in the blocking and were not even notified in advance: no impact assessment was conducted and the urgency of the immediate blocking without a prior judicial order (or any other independent review mechanism) was not explained. The website owners had no opportunity to remove the illegal content or to apply for a judicial review. The authorities were not required to justify the necessity of the blockage or to consider less intrusive means, like targeting the illegal content instead of the entire website. The breadth of the executive’s discretion was such that it was difficult, if not impossible, to challenge the blocking measure on judicial review (§ 43) (compare *NIT S.R.L. v. the Republic of Moldova* [GC], 2022, §§ 196-230, in which the Court considered that there were sufficient procedural safeguards during the process of revocation of the applicant company’s broadcasting licence: the domestic regulatory framework was sufficiently clear and foreseeable; additional measures ensured fairness and judicial review; the decision-making body (here the media regulator) acted independently and without political motivation.). The excessive length of the judicial review of an injunction prohibiting publication of a book may also be analysed as a lack of efficient safeguards under Article 10 of the Convention (see *Association Ekin v. France*, 2001, § 61). The safeguards against arbitrariness may relate not only to the procedure followed and institutional characteristics of the body imposing a limitation but also to how the limitation at issue is framed. Thus, in *Cumhuriyet Vakfi and Others v. Turkey*, 2013, the applicants were the owner, publisher and chief editorial writer of the Turkish daily newspaper *Cumhuriyet*. Ahead of presidential elections, the newspaper published a political advertisement attributing controversial remarks to a presidential candidate. A domestic court responded to a defamation claim by issuing an interim injunction prohibiting *Cumhuriyet* from republishing the quotation or reporting on the ongoing defamation proceedings for over ten months. The Court stressed that interim measures restricting publication must be accompanied by safeguards, §§ 61-76: such measures should be clearly and narrowly defined, limited in time, and subject to prompt and effective judicial review.

³⁸ On the protection of political speech affecting reputation see the case-law *Guide on Article 10*, and in particular Section “Protection of possessions”.

312. **Use of private property for expressive behaviour.** Under certain circumstances private owners may be required to tolerate expressive behaviour on their property. The case of *Appleby and Others v. the United Kingdom*, 2003, concerned the refusal, by the owners of a shopping mall, to allow the distribution of leaflets on its premises by an environmental group. The Court analysed the concept of the “quasi-public” space where such activities may be allowed, but noted that there was no European consensus on the matter and that, in this case, the applicants (the environmental group) could communicate their views by means other than the distribution of leaflets in a particular spot (at the entrance areas and passageways of the shopping mall) (§ 48). What matters is the response given by the authorities to expressive behaviour which interferes with the private property of others: in *Mariya Alekhina and Others v. Russia*, 2018, the Court accepted that “holding an artistic performance or giving a political speech in a type of property to which the public enjoys free entry may, depending on the nature and function of the place, require respect for certain prescribed rules of conduct” (§ 213): in this case, the Court concluded that imposing a heavy prison sentence on the applicant for performing a punk song in an Orthodox cathedral was disproportionate (§ 229).

2. Broadcasting media market and licencing requirements

313. **Article 10 protects media pluralism.** Article 10 also protects pluralism and diversity in the media market. In *Manole and Others v. Moldova*, 2009, the Court noted that, where the State decides to create a public broadcasting system, domestic law and practice must guarantee that the system provides a pluralistic audiovisual service (§ 107). In that case, the Court found that the relevant legal framework did not ensure the political neutrality of the national broadcaster which enjoyed a virtual monopoly of the audio-visual media sector. In addition, as noted in *VgT Verein gegen Tierfabriken v. Switzerland*, 2001, the danger of monopolisation may also come from “powerful financial groups” dominating the advertisement market (§ 73).

314. **Licensing requirements.** Article 10 permits States to regulate broadcasting by a licensing system based on criteria such as the nature and objectives of the proposed station and its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments (see *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, 2025, § 72).

315. **The risk of monopolisation of the media market.** States may implement a licensing system to regulate broadcasting, in particular its technical aspects, but the failure to allocate a license or a frequency may be seen as an interference with the broadcasting company’s exercise of its right to impart information or ideas (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 136). This case concerned the refusal to allocate a broadcasting frequency, in the absence of a clear legislative framework, while the protracted transitional regime permitted the existing audiovisual companies to use the frequencies, thus preventing new licensed operators from entering the market. This situation was reducing competition in the audiovisual sector. That being said, certain licensing requirements can be aimed at preventing the risk of monopolisation and are thus acceptable, at least in principle: in *United Christian Broadcasters Ltd v. the United Kingdom* (dec.), 2000; the Court held that the rule prohibiting religious bodies from applying for a national radio licence was aimed at ensuring that the limited spectrum available for national radio broadcasting was distributed in such a way as to satisfy as many radio listeners as possible, and is necessary to prevent domination of one viewpoint in a multi-confessional society.

316. **Refusal to allocate a license/a frequency should not be arbitrary.** In *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, 2007, §§ 50-52, the applicant company was refused a broadcasting license by the national regulator, on the basis of vaguely formulated criteria. The regulator’s decision was taken without any public hearing and contained explanation for why the applicant company had failed to meet the statutory requirements for obtaining a license. In the ensuing judicial review proceedings, the administrative courts held that the regulator’s discretion was not reviewable. The Court concluded that the domestic law was not formulated with sufficient precision and did not afford

legal protection against arbitrariness, so that it violated Article 10 of the Convention. In another case, the Court admitted that a licensing authority in the broadcasting sector may possess a certain degree of discretionary power but held that bidders participating in the tender for broadcasting licenses must know in advance the criteria used to define a winner (*Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, 2025, § 78).

317. Media regulatory authorities should act impartially. In the case of *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, 2025, the Court examined, not only the procedure followed by the media regulatory authority in allocating broadcasting licenses at tender, but also the composition of its body. It noted that all of its members were appointed by the President (only), which was contrary to the Council of Europe recommendations in this area. Furthermore, one of the members of the authority had a connection to the winning bidder: the potential conflict of interest was never adequately disclosed or discussed, which cast doubt on the impartiality of the regulatory authority (§§ 83-87).

318. Duty of neutrality of private broadcasters. The Court accepted that an audiovisual license may be withdrawn for a breach of a duty of neutrality which may be imposed even on private broadcasters. Thus, in the case of *NIT S.R.L. v. the Republic of Moldova* [GC], 2022, the broadcasting license of a TV channel was revoked because the TV company in its news coverage favoured an opposition party (PCRM) and broadcasted “distorted” news items. The revocation was based *inter alia* on the monitoring of the press-coverage by the applicant company’s TV channel, which showed clear bias in favour of the PCRM, while the government was repeatedly subjected to virulent attacks expressed in strong language. The Court noted that, under the terms of the relevant legislation, the broadcaster was bound to observe the principle of political pluralism by giving airtime to different political parties or movements in a balanced manner, together with the principles of objectivity and fairness in news coverage by ensuring accuracy and using multi-source information in covering conflict situations (§ 200). There are several ways of ensuring pluralism in the media market: in some countries it is achieved by the existence of several channels providing alternative points of view, while other national systems require stricter content-based duties of internal pluralism within each broadcaster. The Court stressed that Article 10 does not impose a particular model in this respect (§ 190). The Court noted that the duty of neutrality and balanced coverage was introduced in reaction to a nearly total domination of the media market by the PCRM which was the ruling party in the beginning of 2000s. The Court also observed that the procedure in which the licence was revoked afforded sufficient guarantees to the TV broadcasters and that there were sufficient institutional guarantees of independence of the media regulatory authority (§ 222). Given the “national context of the case”, the Court concluded that revocation of the licence was not disproportionate (compare with *Communist Party of Russia and Others v. Russia*, 2012, §§ 107-129, where applicant complained, unsuccessfully, that the “the duty of neutrality” of the media was not effectively enforced during the period of the electoral campaign, in breach of Article 3 of Protocol No. 1 guaranteeing free elections).

3. Regulation of online platforms and social media

319. Internet, social media and traditional press. As the Court confirmed in *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, 2016, news portals providing a forum for the exercise of expression rights, enabling the public to impart information and ideas, “must be assessed in the light of the principles applicable to the press” (§ 61). At the same time, the Court has acknowledged the specific features of the Internet environment for expressive behavior, because of the opportunities it creates (see *Ahmet Yildirim v. Turkey*, 2012, § 48) and also because of the risks associated with the use of the Internet. In the case of *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, 2011, the Court noted that the Internet, “serving billions of users worldwide, is not and potentially will never be subject to the same regulations and control” as traditional national media and that “the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly

higher than that posed by the press. Therefore, policies governing the reproduction of material from the printed media and the Internet may differ” (§ 63) (see also *Străisteanu v. the Republic of Moldova*, 2025, § 63-64, which concerned the domestic courts’ order to remove videos showing a colleague making insulting and homophobic remarks from the applicant’s Facebook page).

320. Duty to moderate users’ content. Operators of online platforms and similar services do not generate content but they may be held responsible for the content posted by users. In the case of *Delfi AS v. Estonia* [GC], 2015, §§ 144-160, the Court found no violation on account of an award of damages in favour of a ferry company against the applicant internet news portal, for offensive comments posted on its site by anonymous third parties about this company’s performance. The Court noted, in particular, that the news portal had an economic interest in users comments, it had the technical means to modify or delete the comments published on the news portal and it had allowed for the publication of anonymous contacts: it was also difficult, if not impossible, to sue the authors of the comments directly. While the news portal had a policy of removing offensive content, in that case offensive comments had remained accessible for six weeks. Finally, the Court observed that the sanction for not removing the comments was modest (320 EUR). The duty to moderate prohibited speech also concerns individuals who allow comments to their own posts on social media platforms (see *Sanchez v. France* [GC], 2023, § 190-201, *Alexandru Pătrașcu v. Romania*, 2025, §§ 127-134, and *Avagyan v. Russia*, 2025, §§ 31-39). A violation was found in the case of *Google LLC and Others v. Russia*, 2025, where the applicant companies complained about the imposition of unprecedentedly heavy fines (expressed in hundreds of millions of euros) for their failure to comply with the authorities’ take-down requests concerning YouTube videos which supported an imprisoned opposition figure, called for peaceful demonstrations, reported on Russia’s invasion of Ukraine and supported LGBTI rights. The applicant companies also did not comply with a domestic court’s order to restore a pro-government television channel’s YouTube account, which had been suspended owing to sanctions imposed on the channel’s owner for Russia’s annexation of Crimea. The Court found a violation of Article 10 on both counts, noting, specifically, that the impugned content touched upon matters of significant public interest, that the domestic courts failed to assess the content’s truthfulness and the risks it had posed and in particular the severity of the penalties, combined with the threat of further sanctions (§§ 82 and 100).

321. Duty to disclose information about users. The anonymity of Internet users may raise issues not only under Article 10 (see above) but also under Article 8 of the Convention. In *K.U. v. Finland*, 2008, an anonymous user posted an advertisement on an Internet dating site in the name of the applicant, who was 12 years old at the time. A complaint was made to the police, but the service provider refused to disclose the identity of the person who had placed the advertisement. The Court noted that the applicant was a minor being a target for paedophiles; such conduct called for a criminal-law response which would enable to bring the actual offender to justice; suing the provider for damages was seen as not a sufficient remedy (§§ 46-47). While the Court has reiterated the importance of Internet anonymity which ensures free debate, this is not an absolute principle since the legislature should provide a framework for “piercing” the veil of anonymity in serious cases (§§ 48-49) but not arrangements which permit law enforcement authorities to have unrestricted and uncontrolled information about the correspondence and identities of users of the social media platforms (see, for example, *Škoberne v. Slovenia*, 2024, §§ 138-139, and *Podchasov v. Russia*, 2024, § 70). In *Standard Verlagsgesellschaft mbH v. Austria (No. 3)*, 2021, the applicant, a media company, published a daily newspaper and ran an online news portal on the Internet carrying articles and discussion forums. The case concerned court orders for the applicant to reveal the sign-up information of registered users who had posted anonymously offensive comments on its website directed at two politicians and a political party. Although anonymity on the Internet is an important feature, it has its limits in order to ensure the prevention of disorder or crime or the protection of the rights and freedoms of others (§ 91). While this case did not concern the question of the applicant company’s liability for the comments, the domestic courts, in conducting a “*prima facie* examination” of the competing interests failed to take account of the importance of anonymity for the avoidance of reprisals or unwanted

attention and thus the role of anonymity in promoting the free flow of opinions (provided it is not hate speech or otherwise clearly unlawful) (§ 95).

322. Duty to remove information (“right to be forgotten”). In *Hurbain v. Belgium*, [GC], 2023, the newspaper publisher was required to anonymise the name of a driver who had caused a fatal accident twenty years before. The publisher brought proceedings to the Court claiming that the forced removal of such information from the online archived version of the original article violated Article 10. The Court considered that such a requirement was proportionate and did not violate Article 10 (§§ 255-257). The Court noted that it was not the lawfulness of the original article as such which was at issue, but its accessibility (by searching for the applicant’s name and surname, and obtaining it, free of charge, from the website of the newspaper) (§ 239). The anonymisation request did not carry a risk of a chilling effect on press freedom: at the time the incident had not received any media attention (except for the article in question) and, with the passage of time, the informational value of the article became even less significant (§§ 240-252). The protagonist of this article (the driver) was not a public figure, he had served his prison sentence and tried to remain out of the spotlight of the media, but the easily accessible digital archive of the article created an eternal “virtual criminal record” for him (§ 234). The newspaper was only required to anonymize the article in the online archive, without removing it, while the original digital and paper versions remained available in the newspaper’s archives and were accessible on request (§ 251-252). Most importantly, the Court noted that “the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by printed publications” (§ 236. See also, along the same lines, *Mediengruppe Österreich GmbH v. Austria*, 2022, §§ 54-73, and *Biancardi v. Italy*, 2021, §§ 57-71).

4. Commercial speech

323. What is “commercial speech”? For the purposes of this section, commercial expression is taken to mean advertisement or any other communication serving to promote a product or a business. However, commercial speech often has elements of artistic expression (see, as an example, *Sekmadienis Ltd. v. Lithuania*, 2018, § 79) or have partly political overtones (*VgT Verein gegen Tierfabriken v. Switzerland*, 2001, § 70, or *Lehideux and Isorni v. France*, 1998, § 46). Thus, in *Barthold v. Germany*, 1985, an article promoting one particular veterinary practitioner and criticizing his fellow veterinarians was found to be contrary to the rules of fair competition and led to an injunction prohibiting this veterinary practitioner (the applicant) from further promoting himself and discussing certain specific deficiencies of the veterinary service. The Court acknowledged that the article had a mixed nature: it both raised an important issue related to the functioning of the veterinary service and, at the same time, put the applicant in a favourable light vis-à-vis his colleagues. While the national courts considered that the “advertisement” element overtook all other motives, the Court considered that this approach risked “discouraging members of the liberal professions from contributing to public debate on topics affecting the life of the community if ever there is the slightest likelihood of their utterances being treated as entailing, to some degree, an advertising effect” (§ 58) and it found a violation of Article 10 on that account (see, along the same lines, *Stambuk v. Germany*, 2002, § 49). The presence of an element of advertisement in expression does not remove it from the protection of Article 10 of the Convention.

324. Advertisement and unfair competition rules. In *Krone Verlag GmbH & Co. KG v. Austria (no. 3)*, 2003, the applicant newspaper advertised itself by comparing its own subscription price with the prices of its competitors, without making reference to their different reporting styles, and describing itself as the “best” local newspaper. The Supreme Court found that the advertisement was misleading, as it compared newspapers of different quality. The Court began by confirming that the State’s margin of appreciation was wide “in the complex and fluctuating area of unfair competition”, and that the same applied to advertising (§ 30). It noted that “for the public, advertising is a means of discovering the characteristics of services and goods offered to them. Nevertheless, it may sometimes be

restricted, especially to prevent unfair competition and untruthful or misleading advertising. In some contexts, even the publication of objective, truthful advertisements might be restricted in order to ensure respect for the rights of others or owing to the special circumstances of particular business activities and professions” (§ 31). However, on the facts the Court found in the applicant company’s favour: the injunction had had significant implications, requiring the applicant company to disclose detailed information on the various reporting styles of the respective newspapers in future advertisements, which was overly broad, posed considerable challenges for the applicant company (although not entirely unfeasible) and, finally, undermined the core purpose of price comparison (§ 33. See also *Markt intern Verlag GmbH and Klaus Beermann v. Germany*, 1989, §§ 33-37, where the Court showed deference to the national court’s assessment of the effect of a negative publication on the competitor’s business practices).

325. Advertisement and personality rights. The case of *Bohlen v. Germany*, 2015, concerned a printed advertisement for Lucky Strike cigarettes which contained a hidden reference to the applicant, one of the singers of a group called *Modern Talking*. This advertisement contained an allusion to an autobiography published by Mr. Bohlen. The applicant unsuccessfully sought damages from the tobacco company for the unauthorized use of his first name. The Court noted that the fact of linking a public figure’s name with a commercial product without his or her consent may raise issues under Article 8, “particularly where the product advertised is not socially accepted or raises serious ethical or moral questions” (§ 55). However, the Court concluded that the decisions of the German courts, rejecting the applicant’s claim for compensation, did not perturb the balance between the applicant’s rights under Article 8 and the tobacco company’s rights under Article 10. The impugned advertisement referred humorously to the case of the applicant’s publication of his autobiography, shortly after the event and in the context of the ensuing media debate on the subject. That advertisement, considered in that context and viewed as satire (recognised in its case-law as a form of artistic expression and social commentary), “contributed, to some extent at least, to a debate of general interest” (§ 50). The advertisement only alluded to the publication of the applicant’s book, without naming him directly, without revealing any details about his personal life and was devoid of any negative content (§ 55). Furthermore, the applicant was one of those public figures “who cannot claim protection of their right to respect for their private life in the same way as private individuals unknown to the public” (§ 51). In publishing his book, the applicant had actively sought the limelight and had courted publicity to further his own interests (§ 53). Thus, the Court considered that the refusal of the German courts to award the applicant damages had not breached his Article 8 rights (§ 59).

326. Limitations on advertisements on public health or other similar grounds. The case of *Société de conception de presse et d’édition and Ponson v. France*, 2009, (§§ 55-58) concerned the conviction of magazines for illegal advertising of tobacco. The advertisement appeared in the photos from some sporting events where the tobacco brand at issue (which sponsored the events) appeared on the uniform of some of the sportsmen. The Court found that the photos accompanied an article with information, so the publication at issue was not purely commercial in nature. However, the Court continued, “there is indeed a European consensus on the desire to strictly regulate the advertising of tobacco products” (§ 57). Thus, the Court did not have to take into account the actual effect of this policy on tobacco consumption: the fact that the publications were regarded as *capable* of inciting people, in particularly younger ones, to smoke, was sufficient to justify the ban (see also *Sigma Radio Television Ltd v. Cyprus*, 2011, §§ 200-201, concerning *inter alia* the prohibition of surreptitious advertising and broadcasts containing violence or any other material likely to impair the development of children without appropriate warnings; and see also *Casado Coca v. Spain*, 1994, §§ 38-57 concerning the banning of an advertisement for a certain category of professional barrister’s services)).

5. Intellectual property, private data, and commercial secrets

327. There are strong private and public interests in favour of protecting intellectual property and commercial secrets and it is necessary to balance these interests against freedom of expression.³⁹

328. **Breaches of copyright.** In the case of *Neij and Sunde Kolmisoppi v. Sweden* (dec.), 2013, the applicants were convicted for their role in the operation of the world's largest file sharing services on the Internet, the website "The Pirate Bay". The Court noted that the respondent State had to balance two competing but protected interests: the intellectual property rights of the owners of the content which was unlawfully shared by this service, and the applicants' right to receive and impart information. In that case, the rights of the copyright holders were found to prevail over the applicants' interest in assisting in the process of sharing copyrighted movies free of charge. Similarly, the case of *Ashby Donald and Others v. France*, 2013, concerned the conviction of photographers for publication on the Internet of photographs of a fashion show. The photographers took pictures at a fashion show and later sold them for publication, without obtaining permission from the fashion house which organised the show. The French courts found the applicants guilty of breaching the authors' rights and ordered them to pay a monetary fine to the State and damages to the fashion house. While the photographers were accredited with the association of the fashion industry and while they had not signed any exclusive agreements and were invited to the show as spectators, the French courts decided that these elements did not imply a permission to take, sell or publish pictures taken at the show. The photographers lodged an application to the Court claiming that their conviction in France breached their freedom of expression. The Court started with noting that "commercial" speech enjoys a somewhat lower protection under the Convention than, for example, political speech (§ 39). The photos taken at the fashion show were destined to be sold and/or published on a paid website. Therefore, the nature of the applicants' acts was primarily commercial (§ 39). And even given an interest which the general public may have in fashion news, "it cannot be said that the applicants took part in a debate of public interest when they merely made photographs of fashion shows available to the public" (§ 39). The Court noted that, in that case, the applicant's rights under Article 10 were in conflict with the fashion house's intellectual property rights protected by Article 1 of Protocol No. 1 (§ 40). The Court, stressing again the "particularly large margin of appreciation" enjoyed by the national authorities in such matters, concluded that the applicants' rights under Article 10 had not been breached (§ 44).

329. **If the manner in which the information was obtained matters is unlawful.** Article 10 does not prevent journalists from publishing information of great public interest even if it was obtained in a somewhat unlawful manner. However, the fact that the information published in the press was obtained by unlawful means (see *Radio Twist a.s. v. Slovakia*, 2006, §§ 59-62) is a factor that the domestic courts must take into account in balancing the commercial interests at issue, on the one hand, and the freedom of press, on the other (see *Herbai v. Hungary*, 2019, § 50). In *Radio Twist a.s. v. Slovakia*, 2006, §§ 59-62, the radio station was fined for transmitting a covert recording of a telephone conversation between two politicians, received from an unknown source. The Court observed that neither the applicant company nor its employees were responsible for the recording or transgressed the criminal law when obtaining this recording. There had been no investigation at the domestic level into the circumstances in which the recording was made. The recording did not contain untrue or distorted information, and its broadcasting had not occasioned any particular harm to the plaintiff's personal integrity and reputation. Equally, in *Haldimann and Others v. Switzerland*, 2015, the journalists, using a hidden camera, obtained and broadcasted a report on the dishonest commercial practices of insurance brokers: although they deceived the broker who had been filmed, his face was blurred and his voice altered (§ 65). Domestic law was unclear about the lawfulness of

³⁹ The case-law on "whistleblowers", which partly concerns the protection of commercial secrets of a company, is addressed below in the Sub-Section "Freedom of expression of the employees and whistleblowing (Article 10)".

the use of hidden cameras in such circumstances and the Court concluded that the journalists were to be granted the benefit of the doubt as to their compliance with the rules of journalistic ethics (§ 61). (see also *Hertel v. Switzerland*, 1998, § 50). On the other hand, *Brambilla and Others v. Italy*, 2016, concerned the conviction of journalists for possessing and using radio equipment to intercept confidential police communications. In finding no violation of Article 10, the Court noted that the decisions of the domestic courts, to the effect that communications between law-enforcement officers were confidential and that the applicant journalists' actions were therefore to be classified as criminal conduct, were properly reasoned (§ 62).

330. Protection of commercial secrets. Article 10 may be applicable to the publication of information containing commercial secrets: this publication may take the form of whistleblowing, which aims at uncovering wrongdoings within a company or may be seen as a simple exercise of freedom of speech by an employee (see *Herbai v. Hungary*, 2019, § 40, making this distinction). The Court has developed a specific test for such cases and, at its core, it balances considerations of commercial secrecy with the right the public to know about reprehensible practices of a company (see *Halet v. Luxembourg* [GC], 2023, §§ 120-154, for the outline of the general principles in this regard).⁴⁰

331. Protection of journalistic sources. The Court has recognised, on many occasions, that investigative journalism would become impossible if the journalists are obliged to reveal their sources of information (*Goodwin v. the United Kingdom*, 1996, § 39; *Weber and Saravia v. Germany* (dec.), 2006, §§ 143-146; *Financial Times Ltd and Others v. the United Kingdom*, 2009, § 59; *Tillack v. Belgium*, 2007, § 53; *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, §§ 442-445, *Sedletska v. Ukraine*, 2021, §§ 54-73). Accordingly, in cases where commercially sensitive information, touching upon “matters of public interest”, has been leaked to the press, the imperative of protecting journalistic sources must be weighed against the interest in discovering the source of the leak.

D. Business entities as employers⁴¹

1. Labour rights under the Convention⁴²

332. The Convention does not guarantee labour rights, as such, but may be engaged if labour-related disputes affect a right provided by the Convention. It is possible for an applicant to invoke the Convention if the *reason* for losing a job (or for any other disciplinary sanction) is related to religious practices of the employee (in this case Article 9 would be applicable),⁴³ to the exercise by the employee of his freedom of speech (in this case Article 10 would be applicable),⁴⁴ to the exercise by him or her of the freedom of association (in this case Article 11 would be applicable),⁴⁵ or if the employer's decision is discriminatory (in which case Article 14 may be triggered).⁴⁶

333. Applicability of Article 8: the “reason-based” and “consequence-based” approach. Article 8 has been invoked by employees either where the employer interfered with their privacy at work (on this see sub-section 2 below, mostly focused on surveillance), or where the *reasons* for applying a disciplinary sanction were related to their personal choices or behaviour in the private sphere (see *A.K. v. Russia*, 2024, §§ 40-46, where a teacher was dismissed for publishing on her social media her

⁴⁰ The case-law related to commercial secrets is summarised in Sub-Section E (4) below. See also the [Key Theme on Whistle-Blowing](#).

⁴¹ See also Sections “Procedural rights (Articles 6 and 13)”, “Hazardous activities, privacy, home, and correspondence (Articles 2 and 8)” and “Freedom of expression of the employees and whistleblowing (Article 10)” of the present Guide.

⁴² For more details on the labour-related disputes see the transversal theme [Guide on Social Rights](#).

⁴³ On this see also Sub-section “Surveillance of the employees” below.

⁴⁴ On this see also in Sub-section “Religion at the workplace” below.

⁴⁵ On this see also Sub-section “Freedom of expression of the employees and whistleblowing (Article 10)” below.

⁴⁶ On this see also Sub-section “Trade unions, associations and industrial actions” below.

photos considered explicit; or *Versaci v. Italy*, 2025, concerning a refusal by the police to allow the applicant a license to carry out bookmaking activities, for not fulfilling the “good character” requirement). The Court has also found Article 8 applicable where it was persuaded that the disciplinary sanction (usually a dismissal) had dramatic consequences for the applicant’s social-professional life (see *Denisov v. Ukraine* [GC], § 115). This consequence-based approach may be applied not only to employees but also to individual entrepreneurs: in *Budimir v. Croatia*, 2021, the applicant complained about the revocation of his license to work as a motor vehicle inspector. His license was ultimately returned to him, but he complained that he was left unemployed for some five years because of the revocation of his license during which he lost his only source of revenue for which he was not compensated. The Court considered that Article 8 applied under the consequence-based approach, as the revocation of the license and dismissal had very serious consequences for the applicant’s “inner circle” and his capacity to establish and develop relationships with others, as well as his social and professional reputation, affecting him to a very significant degree (§§ 45-49).

2. Forced labour and other forms of exploitation (Article 4)

Article 4 of the Convention

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term ‘forced or compulsory labour’ shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
 - (d) any work or service which forms part of normal civic obligations.

334. **Absence of a single definition of slavery, servitude, and forced labour.** Article 4 prohibits “slavery and servitude” in § 1 and “forced and compulsory labour” in § 2, and the case-law has defined and developed these concepts, in particular, by relying on other relevant sources of international law.⁴⁷ Thus, for example, slavery is defined by the 1926 Slavery Convention: it requires the exercise of a genuine right of ownership and reduction of the status of the individual concerned to an “object”. Slavery as a legal institution has been eradicated almost everywhere, but certain situations may be qualified as *de facto* slavery. The Court does not always need to decide whether a particular situation or treatment constitutes “slavery”, “servitude” or “forced and compulsory labour”: it suffices that the situation/treatment complained of falls under Article 4 in general (see *Rantsev v. Cyprus and Russia* [GC], 2010, § 282). In *Zoletic and Others v. Azerbaijan*, 2021, the Court provided an overview of its case-law under Article 4, where it discussed elements of the notion of “forced or compulsory labour” (see §§ 146-155).

335. **How to distinguish normal labour duties, based on a contract, from the “forced and compulsory labour”: consent and coercion.** As noted by the Court in *Zoletic and Others v. Azerbaijan*, 2021, § 147, “the work to be carried out in pursuance of a freely negotiated contract cannot be regarded as falling within the scope of Article 4 on the sole ground that one of the parties has undertaken with the other to do that work and will be subject to sanctions if he does not honour his

⁴⁷ See for further details the *Case-law Guide on Article 4*.

promise". It is crucial, however, whether the contract has been "freely negotiated": if the work has been exacted under the threat of any penalty and performed against the will of the person concerned, a question under Article 4 may arise (*ibid.*). In such cases the Court assesses the existence of a "prior consent" and the "voluntary" character of the employment. However, work may be considered as a "forced or compulsory labour" even where a formal prior consent was present in some form (see *Chowdury and Others v. Greece*, 2017, § 96). The validity of the consent is a factual question to be assessed in the light of all circumstances of the case (*ibid.*, § 147; see also *S.M. v. Croatia*, [GC], 2020, § 302). The Court has made it clear that where an employer abuses his power or takes advantage of the vulnerability of his workers in order to exploit them, they do not offer themselves for work voluntarily (*V.C.L. and A.N. v. the United Kingdom*, 2021, § 149). The Court for example, takes note of the allegations of forced excessively long work shifts, lack of proper nutrition and medical care, and the general picture of the coercive and intimidating atmosphere within the company (*Zoletic and Others v. Azerbaijan*, 2021, § 167). The irregular situation of a migrant worker, retention of IDs, threats of arrests, restriction of movements and arbitrary "fines" imposed by the employers can disclose a situation of vulnerability and may lead the Court to qualify the situation as falling under Article 4 § 2 (*Zoletic and Others v. Azerbaijan*, 2021, § 166). However, see *Tibet Menteş and Others v. Turkey*, 2017, § 66-68, which demonstrates that long shifts do not fall under Article 4 of the Convention.

336. Civic or professional duties to be performed without pay or with minimal pay. The fact that some work has to be performed without pay (or without sufficient pay) does not automatically place it in the category of "forced and compulsory labour". Certain services provided to the general public by members of the legal or medical profession are not seen as falling under Article 4, provided that the burden imposed on them is not disproportionate (see *Van der Musselle v. Belgium*, 1983, § 39, concerning trainee lawyers, and *Steindel v. Germany* (dec.), 2010, concerning medical practitioners). Similarly, the obligation to pay taxes, or the duty of the employer to withhold taxes payable by the employees, does not bring the situation within the ambit of Article 4 of the Convention (*Four Companies v. Austria*, Commission decision, 1976).

337. Human trafficking. While Article 4 does not mention specifically human trafficking, it is prohibited behaviour falling within the ambit of Article 4 (see *Zoletic and Others v. Azerbaijan*, 2021, § 153). In *S.M. v. Croatia* [GC], 2020, the Court enumerated three elements which permit to qualify behaviour as human trafficking: an action of recruitment, transportation, transfer, harbouring or receipt of persons, associated with the means (threat or use of force or other forms of coercion, abduction, fraud, etc., including the abuse of power or of a position of vulnerability, and, finally, an exploitative purpose (§§ 290 and 303).

338. Duty to investigate credible allegations. States have an obligation to establish a suitable legislative and administrative framework to prevent and punish trafficking and to protect victims (*Rantsev v. Cyprus and Russia*, 2010, § 285). This obligation includes the duty of the authorities to investigate credible allegations of human trafficking, and to do it on their own motion even when there has been no formal criminal complaint made by the applicants themselves. Thus, in *Zoletic and Others v. Azerbaijan*, 2021, the Court found that the authorities did not react to credible complaints by the victims of the trafficking and did not try to elucidate the facts, check the working conditions, question the workers, identify and question allegedly implicated persons who were nationals or residents of Azerbaijan (§§ 201-208).

339. Duty to protect victims. In addition to taking procedural steps, the authorities must also take operational measures to protect the victims and potential victims of human trafficking, which may include facilitating the identification of victims by qualified persons and assisting victims in their physical, psychological and social recovery (*Chowdury and Others*, 2017, § 110). Nevertheless, the obligation to take operational measures must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities (*Rantsev v. Cyprus and Russia*, 2010, § 219). The State may also be required to set up a system of effective criminal prosecution and punishment

of the “employers” who subject vulnerable persons to domestic servitude (see *Siliadin v. France*, 2005, § 148).

340. **Employer’s responsibilities.** Positive obligations implied in Article 4 require the States to fight against the phenomenon of forced labour and other forms of exploitation by various means: whether criminal, civil or administrative (*Rantsev v. Cyprus and Russia*, 2010, § 285) and, therefore to put in place policies ensuring that their relations with their employees are not qualified as “forced or compulsory labour” or “servitude”.

3. Surveillance of the employees (Article 8)

341. For case-law on surveillance at the workplace see Sub-Section B (4) above (“Business entities interfering with the privacy of others”).

4. Religion at the workplace (Article 9)

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others

342. **Need for a balancing of the competing rights.** In *Eweida and Others v. the United Kingdom*, 2013, the Court examined a policy of an airline company which prevented flight attendants from wearing visible religious symbols. The first applicant – Ms Eweida – was disciplined for wearing a cross on a necklace. The Court explicitly reversed its earlier jurisprudence holding that the mere possibility of changing jobs does not suffice to conclude that Article 9 rights were not affected. In respect of Ms Eweida, the Court acknowledged that the companies had a legitimate interest to project a certain corporate image (§ 94), but, in the opinion of the Court, national courts attached too much weight to this interest. The religious symbol worn by Ms Eweida was discreet, and other elements of religious clothing, such as turbans and hijabs, had previously been authorised without having any negative impact on the company’s brand or image. Thus, the domestic courts were under an obligation to proceed to a balancing exercise and the voluntary character of employment is not the decisive factor. The Court did not find a breach of Article 9 as regards other applicants. For example, a similar prohibition (to wear a cross) applied to a nurse in a hospital was found proportionate, given the health and safety considerations involved. Another applicant in *Eweida and Others v. the United Kingdom*, was a psychologist who refused to provide counselling to same-sex couples because it was incompatible with his Christian beliefs. In the case of that applicant the Court began by noting that the applicant voluntarily accepted the role which involved that type of counselling, with full knowledge of the company’s non-discrimination policy. The Court stressed, however, that “the most important factor to be taken into account is that the employer’s action was intended to secure the implementation of its policy of providing a service without discrimination” (§ 109).

343. **The beliefs in question must be genuine.** To enjoy special treatment on religious grounds, an employee must demonstrate to the employer the sincerity of his or her religious beliefs. In *Kosteski v. the former Yugoslav Republic of Macedonia*, 2006, §§ 38-39, the domestic courts refused to accept

that the applicant was genuinely a practicing Muslim and decided that he was not entitled to holidays during the Bayram period.

344. **Commercial undertakings “with ethos”.** Certain private commercial companies may also have a religious or ideological mission or ethos: for example, they may belong to churches or other religious organisations. This factor plays a role in the balancing exercise: the Court’s approach to the review of policies adopted by church-based organisations takes into account that these internal policies are an essential manifestation of *their* religious freedom and *their* freedom of association. Thus, in *Siebenhaar v. Germany*, 2011, the applicant worked in a Protestant kindergarten. When it was discovered that she had also belonged to another religious group, she was dismissed. The Court paid particular attention to the specific conditions of her employment (her employer had been a Protestant church (§ 46)). In such a context, the requirement of loyalty, even outside of the strictly professional framework, was held to be acceptable. In this case, the domestic authorities fulfilled their positive obligation by providing a judicial forum for resolving the controversy and conducting an adequate balancing exercise, which remained within their margin of appreciation. In several cases under Article 8 the Court examined dismissals of employees for personal choices they had made in their private life, where the employer, which was a religious organisation, considered those personal choices as ethical breaches. Thus, in *Obst v. Germany*, 2010, § 51, the Court found no violation of Article 8 on account of such a dismissal stressing, in particular, the important role which the applicant played within the Mormon Church. In *Schüth v. Germany*, 2010, § 69, the Court examined “the proximity between the applicant’s activity and the Church’s proclamatory mission”. The applicant in this case was an organist and choirmaster and had therefore a less stringent “duty of loyalty” to the ethos of the employer, compared to a cleric. In *Dautaj v. Switzerland*, 2007, the applicant complained that an employment programme’s social milieu did not suit him, but the Court emphasised that the applicant had been working as a simple receptionist in a hotel and, therefore, could not have been affected by the religious character of the organisation which ran the hotel. In *Fernández Martínez v. Spain* [GC], 2014, §§ 123-153, concerning a Catholic priest who has lost his teaching position because of a breach of the celibacy rule, the Court enumerated the following aspects to be considered when the personal choices of an employee come into conflict with the ethos of the employer and with the State’s duty to respect the autonomy of religious organisations: the status of the employee within the structure, the publicity given by the applicant to his marital status and to his membership of an organisation with aims incompatible with the official Church doctrine, the extent of the State’s responsibility as a co-employer, the severity of the sanction incurred and the quality of the review by the domestic courts.⁴⁸

345. **Sensitive jobs.** In 2023 the Court adopted an *Advisory Opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to or belonging to a religious movement (request no. P16-2023-001)*. The question concerned a person whose clearance to work as a security guard was withdrawn on the basis of his belonging to the Salafist Islamic movement. The Court acknowledged that taking a preventive measure on the basis of an ideological inclination is permissible provided that it has a clear legal basis; is adopted in the light of the conduct or acts of the individual concerned (in the case before the Belgian courts the applicant was actively involved in proselytism); it had to be taken for the purpose of averting a real and serious risk for democratic society; and to pursue at least one of the legitimate aims enumerated in Article 9 § 2 of the Convention. The Court noted that it was for the national authorities to assess the nature, reality, scale and immediacy of the risk, which should give regard to the nature of the professional tasks of the individual and the substance of the beliefs or ideology in question and the character of the person concerned and his or her past and current actions, role and degree of adherence to the relevant religious movement. The absence of professional misconduct or complaints against the person concerned, as well as the absence of repressive measures (dissolution or banning) against the

⁴⁸ On potential discrimination in the relations of a company with its clients and partners (as opposed to employees), see Sub-section “Discrimination in the workplace (Article 14 and Article 1 of Protocol No. 12)” below.

movement, were factors to be taken into account but were not necessarily decisive. The measure had to be proportionate, which meant ensuring that the aim could not be achieved by any less intrusive means. The measure had to be amenable to referral to independent and effective judicial review, surrounded by appropriate procedural safeguards and the authorities had to avoid any form of discrimination, under the guise of protecting the values of a democratic society.

5. Freedom of expression of the employees and whistleblowing (Article 10)⁴⁹

346. This sub-section discusses two scenarios: general criticism of the activities of the company or its managers expressed by an employee in the press, social media, etc., and the more specific situation of whistleblowing (divulging information about potential wrongdoings within the company by persons having exclusive access to some proprietary information (although the distinction between both scenarios is not always clear – see *Matúz v. Hungary*, 2014, § 33).

347. **Duty of restraint on the part of the employees.** Insofar as the duty of restraint of employees of *private companies* is concerned, the Court has formulated its approach as follows: “Even if the requirement to act in good faith in the context of an employment contract does not imply an absolute duty of loyalty towards the employer or a duty of discretion to the point of subjecting the worker to the employer’s interests, certain manifestations of the right to freedom of expression that may be legitimate in other contexts are not legitimate in that of labour relations” (*Palomo Sánchez and Others v. Spain* [GC], 2011, § 76). In *Aghajanyan v. Armenia*, 2024, the Court developed its approach further: it stressed “the importance of the duty of loyalty and discretion of employees to their employers, which requires that the dissemination of even accurate information be carried out with moderation and propriety” – which can, however, “ be overridden by the interest which the public may have in particular information” (§ 41). In *Mehmet Tahir Dede v. Türkiye*, 2024, which concerned the dismissal of a bank employee for having sent an email to the staff of his company’s human resources department criticising a senior executive’s management methods, the Court held that, in reaching the conclusion that the applicant’s email had disrupted the order and tranquillity of his workplace by causing inconvenience, the domestic courts had not appeared to have conducted a sufficiently thorough examination of the content of the disputed email, the context in which it was sent, its potential scope and impact, the negative consequences that the email may have had for the employer or the workplace, or the severity of the penalty imposed on the applicant, noting that those are factors that the Court has already taken into account in cases concerning the freedom of expression of employees (§ 45).

348. **Former employees as competitors.** In *Jacobowski v. Germany*, 1994, a former employer publicly responded to accusations against him which were voiced by the former employer in a press release. The Court noted that the applicant, after his dismissal, set up his own business competing with the business of his former employer and that those publications had an “essentially competitive purpose” (§ 28). The Court agreed with the German courts which considered that those publications had amounted to unfair competition practice in breach of accepted moral standards.

349. **Freedom of speech of the employers in social media.** In the case of *Melike v. Turkey*, 2021, an employee “liked” content published by a third person online which criticised allegedly repressive practices by the authorities and encouraged protests. The employer dismissed the applicant for fault, and the labour court ruled that her behaviour was not protected by freedom of expression and was likely to disturb the peace and tranquillity of the workplace. For the Court, using the “Like” button could not be considered as carrying the same weight as sharing content; and the applicant was not a public figure, so the impact of her “likes” was relatively insignificant to provoke any detrimental consequences at the applicant’s working place, in particular taking into account the time which had elapsed between the “like” and the opening of a disciplinary case against her. The Court further

⁴⁹ For further detail on the caselaw related to whistleblowing see the [Key Theme of Whistleblowing](#) and the [Case-Law Guide on Article 10](#).

stressed the severity of the imposed penalty (dismissal) and criticised the domestic courts for not addressing the above elements of the case, which led to finding a violation of Article 10 of the Convention (§§ 51-56).

350. Representatives of trade unions enjoy heightened protection. In *Straume v. Latvia*, 2022, (examined under Article 11 in the light of Article 10) the applicant, a trade-union representative, was dismissed for statements made regarding airspace safety in a letter to the State officials. This letter raised some concerns about the labour right of aeronavigation workers and alleged that those deficiencies could fatigue the employees, demoralise them, cause senior staff to leave and reduce the quality of the training and, ultimately, affect flight safety. The domestic courts characterised those conclusions as “untruthful”, but the Court noted that drawing inferences from existing facts is generally intended to convey opinions and is thus more akin to value judgments: these inferences could be regarded as a professional assessment of the potential impact of the identified deficiencies. Most importantly, the Court noted that the “duty of loyalty” cannot be relied upon to deprive trade unions and their representatives of the very essence of their right to defend their members’ interests (§ 108).

351. Whistleblowing – general principles. In *Guja v. Moldova* [GC], 2008, §§ 69-79, the Court examined the dismissal of a civil servant for leaking to the press letters showing apparent governmental interference in the administration of justice, and developed a six-steps test, which was later reconfirmed in *Halet v. Luxembourg* [GC], 2023, §§ 120-154; this test involves an assessment of the following elements: channels used to make the disclosure, the authenticity of the disclosed information, good faith, the public interest in the disclosed information, the detriment caused, and the severity of the sanction.⁵⁰

352. Applicability to private companies. As the Court held in *Heinisch v. Germany*, 2011, the principles developed in *Guja v. Moldova* [GC], 2008, §§ 69-79, are applicable in the private law employment context as well (§ 64), although “the nature and extent of loyalty owed by an employee in a particular case has an impact on the weighing of the employee’s rights and the conflicting interests of the employer”, *ibid.*, *in fine*. In that case, the applicant – a geriatric nurse – informed the public about the serious shortcomings in the care provided to elderly patients: this publication led to her dismissal. The Court found a violation of Article 10, noting the particular the vulnerability of elderly patients and hence the public interest in knowing what happens to them; the fact that the applicant had informed her superiors several times about shortcomings in the centre and consulted a lawyer before going public; the fact that her allegations were not knowingly untrue or devoid of factual basis, even though her complaint involved a degree of exaggeration and generalisation; and despite the fact that the preliminary investigations into her allegations were discontinued. The Court also noted that the applicant had been given the heaviest penalty possible under labour law, which could have chilling effect (§§ 71-95).

353. The public has an interest in being informed about morally dubious corporate practices, even if they are not unlawful. The case of *Halet v. Luxembourg* [GC], 2023, concerned a fine of EUR 1,000 imposed on an employee of *PricewaterhouseCoopers* (PwC, a business audit and consultancy firm) for disclosing to the media confidential information about the tax practices of his employer’s clients. This publication, which appeared in several media outlets, concerned highly advantageous tax agreements concluded between PwC clients and the Luxembourg tax authorities. In the first place, the Court applied the test of *Guja v. Moldova* [GC], 2008, §§ 69-79, not to the publication of the employer’s proprietary information, but to the information related to the employer’s clients. Secondly, the Court noted that whistleblowing may concern not only unlawful acts, but such acts, practices or conduct “which, although legal, are reprehensible” (§ 137). In this case, the tax-optimisation practices for the

⁵⁰ For further discussion on the application of this test, see Section VIII A of the *Case-Law Guide on Article 10* and pages 2 to 5 in the *Key Theme of Whistleblowing*.

benefit of large multinational companies and the tax returns prepared by PwC had been legal, so alerting the hierarchy against them would not have been useful (§§ 171-172).

354. Evaluation of damage caused by the disclosure of confidential information. In *Halet v. Luxembourg* [GC], 2023, the Court noted that the evaluation of the damage sustained by the whistleblower’s employer (*PricewaterhouseCoopers*) cannot be assessed only in respect of the possible financial impact of the disclosure: it may have a reputational dimension, “particularly among its clients, since the impugned disclosure could have raised questions about [the PricewaterhouseCoopers’] ability to ensure the confidentiality of the financial data entrusted to it and the tax activities carried out on their behalf” (§ 194). The damage to the employer’s clients should also be assessed, as well as a more general interest in “preventing and punishing theft”, together with the public interest in the preservation of professional secrecy by auditors (§ 197). However, even against this background, given the serious public interest considerations in favour of the disclosure, the Court ruled in favour of the whistleblower and concluded that his criminal conviction was disproportionate (§ 206).

355. Criticism of the company expressed not by the employees but by the minority shareholders. The principles applied in the context of a public dispute between shareholders and/or management of a private company are somewhat similar, but not identical to, the principles developed for the “whistleblowing” situation. Thus, in *Petro Carbo Chem S.E. v. Romania*, 2020, §§ 63-74, the minority shareholder of a company published information about financial problems of that company, alleging that its top management was consciously leading the company towards bankruptcy. The Court noted that the domestic courts failed to apply the Convention principles under Article 10 and found a violation of this provision. The Court did not examine alternative channels of complaint which might have been available to the minority shareholder.

6. Trade unions, associations and industrial actions (Article 11)⁵¹

Article 11 of the Convention

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

356. Main elements of the trade-union rights. The right of association under Article 11, insofar as it applies to trade-unions, includes the following essential elements: the right to form or join a trade union, the prohibition of closed-shop agreements (mandatory membership in a particular union), the right for a trade union to seek to persuade the employer to hear what it has to say on behalf of its members and, in principle, the right to bargain collectively with the employer (see *Humpert and Others v. Germany* [GC], 2023, § 100).

357. Was the employee dismissed because of his or her trade union activity? In *Zakharova and Others v. Russia*, 2022, the applicants, representatives of one of the trade unions, were repeatedly dismissed. The national courts ordered their reinstatement but found that their dismissal had not been discriminatory. The Court reversed the burden of proof: it examined the conflict involving the local

⁵¹ The case-law on the trade-unions’ rights and their relations with the employers can be found in the case-law *Guide on Article 11* and in the transversal theme *Guide on Social Rights*.

administration, the applicants' employer and the trade unions, and the concurrent adverse actions against the applicants, concluding that an independent observer might infer that the applicants' trade unionism could have played a principal role in the way they had been treated by their employer. Thus, the applicants established a *prima facie* case of discrimination, which was not rebutted by the State (§§ 43-44): the authorities' explanation of the dismissal by economic considerations was not convincing, since two people were hired at the same time when the three applicants were dismissed and it was not explained why the three applicants, belonging to a particular trade union, were singled out for repeated dismissal (§ 46). However, compare with *Hoppen and trade union of AB Amber Grid employees v. Lithuania*, 2023, §§ 203-249, where the individual applicant was dismissed for reasons relating to his character, behaviour at work and his relations with colleagues: the Court concluded that the existing legislative framework sufficiently protected the applicant from dismissal on the basis of his trade-union activities.

358. Right not to join a trade union or association and the "closed shop" agreements. Article 11 also provides for a negative right *not to* join an association. In *Mytilinaios and Kostakis v. Greece*, 2015, §§ 54-67, the applicants – individual winegrowers – were not given a licence to grow and sell their wine because they were not members of a Union of winemakers. Under the then existing regulations, the Union had exclusive rights to produce and market Samos muscat wine, and not unaffiliated individual winegrowers. The original idea of compulsory membership in the union, in order to protect the quality of the grape variety and develop cultivation of the grapevines, pursued a legitimate aim, when the Union was formed in 1930s, but in the present time the compulsory membership lost its relevance, since the goals of the union (guaranteeing the quality of the wine and fair prices for the wine produced) had been achieved. Similarly, in *Waldner v. France*, 2023, which concerned an obligation of French lawyers to be members of an association which would audit their revenues. The Court found that the 25% increase in the imputed revenue imposed on those lawyers who did not adhere to this association was disproportionate (§§ 46-60). While the compulsory membership in a trade-union was not contrary to Article 11 as such, the State's margin of appreciation in cases where it allows such closed-shop agreements is reduced (*Sørensen and Rasmussen v. Denmark*, 2006, § 58) – even where the obligation to join a particular trade-union is a pre-condition to concluding a contract (*ibid.*, §§ 60-64). Thus, in *Wilson, National Union of Journalists and Others v. the United Kingdom*, 2002, the Court found a violation of Article 11 in a situation where the legislation permitted the employers to provide financial incentives to the employees who did not adhere to a particular trade-union. The employers asked the applicants to sign a personal contract and lose union rights, or accept a lower pay rise. The Court recalled that it is the essence of the right to join a trade union that the employees are free to instruct or permit their union to make representations to their employers. If employees are prevented from doing so, their freedom to join a trade union becomes illusory (§ 46). The absence of an obligation on employers to enter into collective bargaining did not give rise, in itself, to a violation of Article 11 of the Convention. However, financial inducements to surrender union rights constituted a disincentive or restraint on the use by employees of union membership to protect their interests, and amounted to a violation of Article 11 of the Convention (§§ 47-48).

359. Which industrial actions are protected by Article 11? While Article 11 speaks only of the right to create trade-unions, to join them or not to join them, the right to unionize would be useless if union members were unable to participate collectively in some industrial actions (*Swedish Engine Drivers' Union v. Sweden*, 1976, § 40; *Tüm Haber Sen and Çınar v. Turkey*, 2006, § 28). While rights like, for example, the right to strike, are not an essential element of trade union freedom, they are nevertheless protected by Article 11 (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, § 84, or, in the context of the right of collective bargaining, *Demir and Baykara v. Turkey* [GC], §§ 147-154). That being said, these rights are mostly procedural in nature: workers are not guaranteed to have the collective agreement they want, they can only expect that the administration will engage in meaningful dialogue with them collectively to reach an agreement (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, 2014, § 85).

360. Limitations on the right to strike may be justified in some sectors of the economy. In principle, some categories of workers may be prevented by law from going on strike. The case of *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain*, 2015, concerned the prohibition on going on strike which was applicable to police officers and where the Court did not find a violation of Article 11, in particular, because the ban on strikes was imposed exclusively on law enforcement agents and not across the whole public sector (§ 37). In *Ognevenko v. Russia*, 2018, the applicant, a rail worker, participated in a strike organised by his trade union and was disciplined. The Court noted that the negative economic consequences could not constitute a sufficient reason justifying a complete ban on the right to strike (§ 73). In *Federation of Offshore Workers' Trade Unions and Others v. Norway* (dec.), 2002, the Court examined a limitation on the duration of a strike for workers of offshore oil platforms and the imposition of compulsory arbitration. The Court noted that, if the strike had lasted longer, it would have led to the suspension of all oil and gas production on the Norwegian Continental Shelf, leading to a fall in production of an estimated EUR 0.34 billion per week, affecting energy supply to industries and households in EU countries and Norway's credibility as a gas supplier to the EU, the implementation of transnational agreements forming a complex web of mutually dependent relations between suppliers and buyers and involving investment of an extraordinary magnitude, and having negative repercussions on the State budget, including the funding of social-security services, and on Norway's trade balance. The Court also noted that technical installations were at risk of being damaged if they had to close down for long periods, with the ensuing consequences for health and safety as well as the environment. The Court also noted the very high level of salaries in the sector under consideration compared to that in other sectors which also suggested that the imposition of compulsory arbitration was not disproportionate.

361. The State's margin of appreciation is wider if the core of trade union freedom is not affected. In *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, 2014, the Court examined the prohibition to take secondary action – a sympathy strike aimed at influencing another employer (not party to a labour dispute involving the trade-union). The Court noted that, although it is covered by Article 11 (§ 77), by its nature a secondary industrial action constitutes an accessory rather than a core aspect of trade-union freedom and that, in the absence of a pan-European consensus on the matter or uniform international standards (§§ 91-92), the State's margin of appreciation was wide, and the contested measure was not disproportionate (§§ 100-106). Similarly, in *UNISON v. the United Kingdom* (dec.), 2002, the applicant's trade-union tried to organise a strike in order to stop the mass transfer of its members, employees of a public hospital, to a private company which was to assume the functions of the public hospital. The applicant trade union believed that the conditions of employment in a private company would be worse than in a public hospital, but the domestic courts issued an injunction prohibiting the strike, noting, *inter alia*, that the dispute related to future terms and disputes with an unidentified future employer. The Court noted that the applicant trade-union or its members were not deprived of the possibility of an effective collective action in the future and that the trade-union members were not at any real or immediate risk of detriment or of being left defenceless against future attempts to downgrade pay or conditions. The Court concluded that the application was manifestly ill-founded.

362. Multiple trade-unions in the same industry. The State may establish rules which define which trade-union is entitled to represent the workers in relations with the employers. In, for example, *Schettini and Others v. Italy* (dec.), 2000, the Court found no discrimination, because the applicants' trade-union represented only a minority of school teachers and thus was not entitled to participate in the collective bargaining. In *Swedish Engine Drivers' Union v. Sweden*, 1976, §§ 46-47; see also *Association of Civil Servants and Union for Collective Bargaining and Others v. Germany*, 2022, §§ 60-75, the Court considered that the national legislation, rendering conflicting collective agreements concluded by minority trade unions inapplicable, did not breach Article 11 of the Convention.

363. The right of a business entity not to enter into a collective agreement with a trade-union. In *Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union (NTF) v.*

Norway, 2021, a Danish company operating in a Norwegian port employed several dockers to perform loading-unloading. The Norwegian trade-unions (the two applicants) requested this Danish company to join a collective agreement which had been concluded between the Norwegian trade-unions and the Confederation of Norwegian Enterprise, the largest employer organisation in Norway. The Danish company refused. The applicant trade-unions then declared that they would boycott docking operations where the Danish company was involved. The Supreme Court of Norway decided that the boycott would be contrary to the “freedom of establishment” clause of the 1992 Agreement on the European Economic Area. The Court acknowledged that the boycott may have interfered with internal market freedoms and created financial difficulties for the company: this, however, was not a decisive factor in assessing the proportionality of the restriction (§ 117). However, the Court agreed with the reasoning of the majority of the Supreme Court, noting *inter alia* that the collective agreement which the applicant trade unions sought to impose on the Danish company “had little to do with the protection of workers” (§ 109), that the boycott targeted a third party (§ 113) and that prohibition of the boycott did not prevent the trade-unions from engaging in further collective bargaining (§ 115). The Court concluded that the State enjoyed a large margin of appreciation in this context (§ 114) and that, consequently, the prohibition of the boycott was not disproportionate (§ 119).

7. Discrimination in the workplace (Article 14 and Article 1 of Protocol No. 12)⁵²

Article 14 of the Convention

The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 1 of Protocol No. 12 to the Convention

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

364. **Definition of “discrimination” and the general test.** In determining whether a difference in treatment amounted to “discrimination”, the Court verifies (1) whether there has been a difference in treatment of persons in analogous, or relevantly similar, situations; and (2) whether this differential treatment lacks “an objective and reasonable justification” (*Fábián v. Hungary* [GC], 2017, § 113).⁵³ In the business context, in *Špoljar and Dječji Vrtić Pčelice v. Croatia* (dec.), 2020, § 44, the applicants were private entrepreneurs who complained about discrimination by the state because publicly-owned kindergartens were given higher subsidies than privately-owned kindergartens. However, the Court found the case inadmissible on the grounds that publicly and privately-owned kindergartens were not analogous in light of differences in their structure and rules on enrolment and financing. In examining whether the difference in treatment was “objectively and reasonably” justified, the Court’s considers

⁵² For the detailed overview of the case-law on discrimination see the [Guide on Article 14 and Article 1 of Protocol No. 12](#).

⁵³ The general test on what amounts to discrimination is described in Section III of the [Guide on Article 14 and Article 1 of Protocol No. 12](#).

whether the measure at issue affected a “vulnerable” class of people (see *Ferrero Quintana v. Spain*, 2024, § 85, which concerned an upper age-limit for becoming police officer, and compare with *Konstantin Markin v. Russia* [GC], 2012, §§ 141-143, where the Court stressed that biases and stereotypes cannot justify a difference in treatment between men and women in the employment context).

365. The scope of Article 14 versus Protocol No. 12. The right provided by Article 14 is accessory to other substantive rights guaranteed under the Convention. This means that, in order to be able to raise a discrimination complaint under Article 14, the treatment complained of should fall within the ambit of another Convention provision (*Larkos v. Cyprus* [GC], 1999, § 28). In the employment context, that means that an employee would have to be sanctioned in relation to his personal choices and actions to be able to raise an Article 14 complaint (see *Eweida and Others v. the United Kingdom*, 2013, §§ 89-110, and *Thlimmenos v. Greece* [GC], 2000, §§ 39-49, concerning distinctions based on religion; and *Danilenkov and Others v. Russia*, 2009, §§ 120-125, concerning a distinction based on trade union membership). By contrast, the scope of Article 1 of Protocol No. 12 is broader: to allege discrimination under this provision, it suffices to show that it affects any right under national law (and not necessarily the right protected by the Convention). Article 1 of Protocol No. 12 is also applicable in three other situations described in the Explanatory Report (for more details see *Napotnik v. Romania*, 2020, §§ 54-56). Otherwise, Article 14 and Article 1 of Protocol No. 12 apply the same general principles.

366. Indirect discrimination. Indirect discrimination is found where a general policy or measure has disproportionately prejudicial effects on a particular group, notwithstanding that it is not specifically aimed or directed at that group (*Thlimmenos v. Greece* [GC], 2000, § 42, in the context of employment; see also *Hoogendijk v. the Netherlands* (dec.), 2005, in the context of social benefits). There is further no need to demonstrate discriminatory intent: indirect discrimination can arise from *de facto* situations and neutral rules that have disproportionately prejudicial effects (see *Oršuš and Others v. Croatia* [GC], 2010, where the placement of Roma children in Roma-only classes owing to their allegedly poor command of the Croatian language was not accompanied by sufficient safeguards to ensure that Roma students were not disproportionately affected in the provision of education, § 150).

367. The burden of proof in discrimination cases. When alleging discrimination, the applicant is only required to show a difference in treatment and thereafter it is for the Government to show that there was no differential treatment, that it did not occur on the basis of the protected grounds, or that it was justified. Thus, in *Hoppen and trade union of AB Amber Grid employees v. Lithuania*, 2023, §§ 230 *et seq.*, once the applicants had demonstrated a *prima facie* case of discrimination on grounds of the first applicant’s union membership (the second applicant was the trade union), the Court considered the burden of proof had shifted to the respondent employer (see also *Bakradze v. Georgia*, 2024, §§ 71-85).

368. Can a company’s policy take into account commonly held prejudices? The case of *I.B. v. Greece*, 2013, concerned a dismissal of an employee of a private company. A large group of employees pressured the employer to dismiss one of the co-workers (the applicant) who was HIV-positive. The domestic courts found, in particular, that the dismissal was justified by the need to restore peace in the company and its smooth operation. The Court found that Articles 8 and 14 were applicable: the applicant’s dismissal resulted in his stigmatisation as HIV-positive. On the merits, the Court found a violation of Article 14, in conjunction with Article 8. The Court noted that “ignorance about how this disease spreads had bred prejudices which, in turn, stigmatised or marginalised those who carried the virus”. The applicant’s co-workers’ fears were not justified scientifically. The Court of Cassation did not weigh up all the competing interests carefully and dismissed the applicant’s complaint on rather cursory grounds, without contesting the fact that the applicant’s infection did not adversely affect his ability to perform his employment contract, basing its understanding of the “smooth operation” of the company on the employees’ subjective (and manifestly inaccurate) perception. The Court also noted specifically that the applicant had not sought reinstatement but only compensation for unlawful dismissal. In *Pay v. the United Kingdom* (dec.), 2008, the applicant – a probation officer working with

sex offenders – had been dismissed because of his known involvement in the BDSM practices. The Court seemed to attach importance to the possible perception of such practices amongst the sexual offenders with whom the applicant worked, while acknowledging at the same time that such practices are “increasingly accepted and understood in mainstream British society”.

369. Other grounds of distinction in the employment context: pregnancy, gender and other characteristics: As the Court has noted in *Napotnik v. Romania*, 2020, only women can be treated differently on grounds of pregnancy and, for that reason, an unjustified difference in treatment in employment matters would amount to direct discrimination on grounds of sex (§ 77). However, in this case, the termination of the applicant’s job on account of her pregnancy was not considered discrimination, as the government was able to show that the early termination of the applicant’s diplomatic posting abroad was necessary for ensuring and maintaining the functional capacity of the diplomatic mission and, ultimately, the legitimate aim of protecting the rights of others (§§ 76-86). However, in *Jurčić v. Croatia*, 2021, the Court found a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 on account of the refusal of employment-related benefits to a pregnant employee who underwent *in vitro* fertilisation shortly before employment and requested paid leave soon after the start of her contract. The Court held that a refusal to employ or recognise an employment-related benefit to a pregnant woman based on her pregnancy amounted to direct discrimination on grounds of sex, which could not be justified by the financial interests of the State (§§ 72-85). The case of *Emel Boyraz v. Turkey*, 2014, concerned a distinction on the basis of gender: a woman was dismissed from the post of a security officer on grounds of not “being a man” and not “having completed military service”. The State argued that the work of security officers involved risks and responsibilities which they considered women were unable to assume. The Court found a violation of Article 14 noting, in particular, that nothing in the case-file indicated that the applicant was unable to fulfil the duties of a security officer, and the State had failed to demonstrate that the differential treatment pursued a legitimate aim. The Court referred to other precedents when the appointment of women to the post of security officer was deemed acceptable by the Turkish courts and that the applicant’s own work record was adequate. The fact that security officers had to work on night shifts and in rural areas and might be required to use firearms and physical force could not in itself justify the difference in treatment between men and women. In *Konstantin Markin v. Russia* [GC], 2012, where the Court considered the difference in treatment between male and female military personnel regarding rights to parental leave, and found that men and women are in analogous situations as they are intended to help both parents look after an infant. The reference to the traditional distribution of gender roles in society cannot justify the exclusion of men, including servicemen, from entitlement to parental leave (§ 143). Finally, the Court examined cases in the employment context where the distinction was based on other personal characteristics. In *Ferrero Quintana v. Spain*, 2024, the applicant challenged differential treatment on grounds of his age, as he had not been admitted to the police force on account of being older than 35 years of age. The Court found that Article 1 of Protocol No. 12 was not violated, as the differential treatment pursued a legitimate aim (securing the operational capacity and proper functioning of police services), because the physical capacity of officers could be regarded an essential professional requirement for the performance of duties of an officer and this capacity must be assessed dynamically (see §§ 83-99). In matters of health, the Court has ascertained positive obligations for the State in terms of the reasonable accommodation of people with disabilities (see *Enver Şahin v. Turkey*, 2018, §§ 63-75) and negative obligations in terms of failure of the State to weigh the rights of parties in accordance with the Convention in matters of employment (see *I.B. v. Greece*, 2013, §§ 87-91).

370. Distinction based on religion or other beliefs. For cases discussing different treatment of employees because of their religious beliefs (wearing of religious symbols, working time and holidays arrangements), see the Sub-Section E (3) on “Religion at the workplace” (above).

VI. Jurisdiction of the Court. Other international legal regimes

Article 1 of the Convention

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention.

A. Territorial jurisdiction and exceptions⁵⁴

371. **Territoriality and exceptions to this rule.** As the Court reiterated in *N.D. and N.T. v. Spain* [GC], 2020, § 103, a State’s jurisdictional competence under the Convention is primarily territorial, and “only in exceptional circumstances” may it extend to territories, situations, or people outside of its territory. While most of this case-law concerns alleged human rights violations committed against the individuals abroad, and not situations affecting business interests, one example of a business-related situation raising a jurisdiction issue is the case of *Ukraine v. Russia (re Crimea)* ((dec.) [GC], 2020 (see also *Ukraine v. Russia (re Crimea)* [GC], 2024) where the Court acknowledged that the Russian Federation exercised jurisdiction in the occupied Crimean peninsula (which is an internationally recognised part of the territory of Ukraine, see §§ 304-352) and that it was liable under the Convention for the large-scale expropriation (nationalisation) of property belonging to civilian and private enterprises in Crimea (see §§ 1137-1151). The Court found, in particular, that Russian law could not be regarded as “law” within the meaning of the Convention, because of the international illegality of the occupation. Moreover, the “legal acts” adopted by the Russian and Crimean “authorities” were subject to frequent amendments, contained no criteria for the nationalisation and, in most cases, no information on the owners of nationalised property. They did not specify a procedure for property purchase, require notification of the owners, specify an appeal procedure, and did not provide any compensation. So, these expropriations were considered to be both unlawful and disproportionate.

372. **Acts of State agents abroad and similar measures.** In some circumstances, the State may have jurisdiction abroad because of the use of force by a State’s agents operating outside its territory even if those agents do not exercise “effective control” of the territory as such, but only have control over a person (see, for example, *Carter v. Russia*, 2021, §§ 149-170, concerning the targeted killing by Russian agents of a former Russian security officer living in the UK). There have been no cases discussing the “control over persons” situation in the business context. However, the Court accepts that the State may “project” its jurisdiction abroad by other means such as conducting a hacking attack against a foreign communication network, a scenario examined in *A.L. and E.J. v. France* (dec.), 2024, where the French law-enforcement authorities obtained, by hacking a foreign server, information about the users of a chat service used in criminal dealings. The Court concluded that the jurisdiction of France was established despite the fact that the server and the users (whose data was retrieved) were not on French territory (§§ 96-105). Similarly, the Court considered that the United Kingdom’s jurisdiction was established over bulk interception of information about the electronic communication of users living abroad (see *Wieder and Guarnieri v. the United Kingdom*, 2023, §§ 88-95).

373. **Jurisdictional link.** The Court also considers that the commencement of criminal or civil proceedings before the domestic courts in one of the member-States may create a “jurisdictional link” between that State and the events occurring abroad and at the origin of the litigation. While most cases concerned proceedings about matters such as unlawful killings and ill-treatment (see, for example, *Hanan v. Germany* [GC], 2021, §§ 134-145, or *Markovic and Others v. Italy* [GC], 2006, §§ 100-102), this approach is applied where national courts have been involved in reviewing arbitration

⁵⁴ For more details on the territorial application of the Convention see *Case-law Guide on Article 1*.

awards. Thus, for example, in *Semenya v. Switzerland* [GC], 2025, the applicant was an international athlete who complained about a policy of the World Athletics Association which prevented her from competing in a certain type of competition. This dispute was adjudicated by the Court of Arbitration for Sport (CAS) in Lausanne which, under Swiss law, was subject to appeal before the Federal Supreme Court (FSC) of Switzerland. The Court decided that the applicant's civil-law appeal to FSC against the arbitral award created a jurisdictional link with Switzerland with regard to her complaint under Article 6 of the Convention (Jurisdiction has also been established even in cases where the domestic courts refused to acknowledge that they had jurisdiction. In *Arlewin v. Sweden*, 2016, the Swedish courts refused to examine a defamation complaint about a program broadcast in Sweden but produced by a UK company. The Court found that the defamation claim should have been examined, under the applicable rules, in Sweden rather than in the UK and that in declining to examine the case, the Swedish courts, had impaired the very essence of the applicant's right of access to court (§§ 59-74).

B. Convention and other sources of international law

374. **The principle of harmonious interpretation.** As the Court stated in *Nada v. Switzerland* [GC], 2012, § 169, “the Convention cannot be interpreted in a vacuum but must be interpreted in harmony with the general principles of international law.” “Where a number of apparently contradictory instruments are simultaneously applicable, international case-law and academic opinion endeavor to construe them in such a way as to coordinate their effects and avoid any opposition between them. Two diverging commitments must therefore be harmonised as far as possible so that they produce effects that are fully in accordance with existing law (§ 170). In *Demir and Baykara v. Turkey* [GC], 2008, § 85, the Court stressed that “in defining the meaning of terms and notions in the text of the Convention, [the Court] *can and must* [italics added] take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values”.⁵⁵ It is for the Court to decide which international instruments it considers relevant and how much weight to attribute to them (*Tănase v. Moldova* [GC], 2010, § 176). The Court is not bound by interpretations given to similar instruments by other bodies, having regard to possible differences in the content of the provisions of other international instruments or possible differences in the role of the Court and that of other bodies (*Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], 2024, § 209). In the case of *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, 2014, the Court examined the prohibition of “secondary strikes” in UK law (i.e. strikes which are organised by the workers of one company in order to influence another employer). Even though the ILO Committee of Experts and the European Committee on Social Rights had previously criticised a prohibition of secondary strikes as incompatible with the ILO standards or the European Social Charter, the Court concluded that, in the specific circumstances of the case, the solution adopted by the UK government remained within the authorities’ margin of appreciation under Article 11 (§§ 98 *et seq.*).

375. **Presumption of “equivalent protection” under the EU law.** State action taken in compliance with legal obligations under the EU law is justified as long as the EU legal order “is considered to protect fundamental rights in a manner which can be considered at least equivalent to the protection provided by the Convention” (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 155; this case concerned the seizure by the Irish authorities of an aircraft leased by an airline charter company (the applicant), under an EU (or EC at the time) regulation which, in turn, had implemented the UN sanctions regime against Serbia and Montenegro). Such a presumption is

⁵⁵ For more details on the more specific context of application of the EU law by the Court see the transversal theme guide on *European Union Law in the Court's case-law*.

rebuttable if, in a particular case, the Court finds that the protection of Convention rights at the EU level was manifestly deficient (§§ 149-167).⁵⁶

376. The Convention and international sanctions regimes. In the case of *Nada v. Switzerland* [GC] 2012, §§ 175-199, the Court examined a measure imposed by the Swiss authorities on the applicant in pursuance of the UN Security Council resolutions which targeted Taliban-related individuals. The applicant, the main shareholder and a chairman of a bank allegedly linked to the Taliban, and living in an Italian exclave within the Swiss territory, was subject to a travel ban, which prevented him for many years to cross the Swiss border, which effectively meant that he could not travel outside of the territory of the exclave, see his relatives and friends and visit doctors. The Court noted that the Swiss authorities had enjoyed a limited but real latitude in implementing the binding UN resolutions imposing that sort of sanction, but that they failed to consider the realities of the case, especially the unique situation of the applicant geographically, and the considerable duration of the measure, and they did not try to adapt the sanctions regime to the applicant's individual situation. The Court explicitly in this case refused to determine the question "of the hierarchy between the obligations of the States Parties to the Convention under that instrument, on the one hand, and those arising from the United Nations Charter, on the other". In the Court's view, the important point was that "the respondent Government had failed to show that they attempted, as far as possible, to harmonise the obligations that they regarded as divergent" (§ 197). The case of *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, §§ 134-155, concerned freezing and confiscation measures imposed by the Swiss authorities on the property linked to the officials of the former Iraqi regime. These measures were implemented by the Swiss authorities without any proper judicial review, the Swiss courts being unable to rule on the merits or to check whether the inclusion of the applicants in the listings drawn up by the UN Sanctions Committee was not arbitrary. The Court again noted that in the absence of a clear conflict of obligations under the Convention and those stemming from other international law, the Court did not need to decide which of those obligations were of a higher rank. The Court noted that it was possible for Switzerland to "adapt the sanctions regime to the individual situation of the applicants, at least guaranteeing them adequate protection against arbitrariness", without infringing the UN sanctions regime (§ 149). The Court concluded that there had been a violation of Article 6 § 1 of the Convention.

377. A request for international legal assistance received from abroad does not exclude the duty of the national courts to provide a meaningful review of the measures requested. In *Amerisoc Center S.R.L. v. Luxembourg*, 2025, §§ 37-63, the Court found a breach of Article 1 of Protocol No. 1 on account of the lack of a sufficient review by the domestic court of a decision by which the applicant company's money in Luxembourg had been frozen, following an international request for assistance issued by the Peruvian authorities as part of money-laundering proceedings opened in Peru. The Court admitted that the international obligations of the respondent State, related to the fight against money-laundering, represented an important consideration (§ 46), but that it did not remove the protection offered by the Convention (*ibid.*).

C. Proceedings before the Court and other international bodies

378. Complaints submitted to the Court and to other international fora. According to Article 35 § 2 (b) of the Convention, the Court can find an application inadmissible if it has been submitted to "another procedure of international investigation or settlement". The case of *Le Bridge Corporation LTD S.R.L. v. the Republic of Moldova* (dec.), 2018, § 22-33, concerned arbitral tribunals administered by the International Centre for the Settlement of Investment Disputes ("ICSID"). The Court considered the application lodged with the Court to be substantially the same. The applicant in the Strasbourg proceedings was Le Bridge, a legal entity, while the applicant before the ICSID proceedings was a

⁵⁶ For the detailed description of the "Bosphorus" presumption see the Section I C of the transversal theme guide on *European Union Law in the Court's case-law*.

natural person and investor in *Le Bridge*. The Court considered the case to be substantially the same since the natural person owned 100% of the shares of the applicant company and was also the CEO and signed the application form when introducing the case with the Court. In *The Professional Trades Union for Prison, Correctional and Secure Psychiatric Workers (POA) and Others v. the United Kingdom (dec)*, 2013, §§ 26-33, the applicant association applied both to the Committee on Freedom of Association of the International Labour Organization (ILO), under ILO Convention No. 87, and to the Court, alleging a breach of Article 11 on account of a statutory ban on industrial action by prison officers. The Court found this complaint inadmissible under Article 35 § 2 (b) of the Convention because the application was the same as the matter submitted to another international procedure. However, in *OAO Neftyanaya Kompaniya Yukos v. Russia*, 2011, the Russian Government argued that the proceedings brought by the three shareholders of the company before an arbitration tribunal were essentially the same, but the Court dismissed this objection (see §§ 519-526), stressing, in particular, that the parties to the proceedings before the Court and in the arbitration proceedings were different.

379. Complaints directed against international organisations. In *Rambus Inc. v. Germany* (dec.), 2009, the Court concluded that disputes falling entirely within the internal legal system of an international organisation (European Patent Office) endowed with its own legal personality, where the national authorities had not intervened and had not taken any subsequent measures of implementation, are possibly not within the Court's jurisdiction and, in any event, do not give rise to the liability of the respondent State, even if it is a member of this organisation.

380. Arbitration tribunals and the Convention mechanism.⁵⁷ In *Suda v. the Czech Republic*, 2010, the majority of the shareholders of a company decided to wind it up and to transfer its assets to the main shareholder. The minority shareholders' shares were to be redeemed, but the redemption price was a matter for arbitration and not ordinary court proceedings. The applicant, a minority shareholder, was therefore unable to contest the redemption price before ordinary courts. The Court found that, as a minority shareholder, the applicant had no appropriate means of defence against the decision of the majority shareholders and requiring the applicant to submit his case to arbitration bodies, which not meet the fundamental guarantees of Article 6 § 1, amounted to a violation of his right to a court (§§ 38-55). However, where the applicant entered an arbitration agreement freely, the Court may conclude that it constitutes a form of a waiver of the guarantees of Article 6 of the Convention. Thus, in *Tabbane v. Switzerland* (dec.), 2016, the parties agreed that the arbitral tribunal's award was to be final with no appeal to ordinary courts. The arbitral tribunal was in Switzerland and under Swiss law such a waiver was possible. This waiver had also been attended by minimum safeguards, the Swiss federal tribunal had duly heard all the arguments and rendered a reasoned judgment. The Court concluded that the applicant's complaint about a denial of access to a court in Switzerland, in order to challenge the arbitration procedure, was manifestly ill-founded (§§ 33-36. See also *Eiffage S.A. v. Switzerland* (dec.), 2009). But note that, even where the arbitration is voluntary, this does not mean an automatic waiver of *all* of the procedural guarantees of Article 6, in particular the guarantee of impartiality of the arbitrators: the national courts have an obligation to ensure that those procedural rules are respected unless they are explicitly waived (*Beg S.p.a. v. Italy*, 2021, § 143). Most cases examined by the Court in this context have concerned the sufficiency of the review provided by the national courts in respect of the decisions of arbitration tribunals and, more specifically, which procedural rights might be legitimately waived by the parties submitting their dispute to the competency of an arbitral tribunal (see, in the context of sports arbitration proceedings, *Mutu v. Switzerland and Pechstein v. Switzerland*, 2018, §§ 96 et seq., and, more recently *Semenya v. Switzerland* [GC], 2025, §§ 199-239).

⁵⁷ For further information on arbitration tribunals see the *Key Theme of Arbitration*; see also Section V A (4) above.

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Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation “(dec.)” indicates that the citation is of a decision of the Court and “[GC]” that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk in the list below. Article 44 § 2 of the Convention provides: “The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43”. In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (<http://hudoc.echr.coe.int>) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the ‘Language versions’ tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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