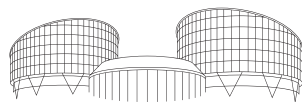


EUROPEAN COURT OF HUMAN RIGHTS

REPORTS
OF JUDGMENTS AND DECISIONS

CUMULATIVE INDEX 1999-2015



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

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The *Reports of Judgments and Decisions* is an official publication of the European Court of Human Rights containing a selection of key judgments and decisions of the Court with summaries prepared by the Registry. For the years 2007 and onwards the selection has been made by the Bureau¹ of the Court following a proposal by the Jurisconsult².

With the exception of decisions by single judges, all the Court's judgments and decisions, including those not published in this series, can be consulted online in the HUDOC database at <http://hudoc.echr.coe.int>.

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In the absence of any indication to the contrary the cited text is a judgment on the merits delivered by a Chamber of the Court. Any variation from that is added in brackets after the name of the case: "(dec.)" for a decision on admissibility, "(preliminary objections)" for a judgment concerning only preliminary objections, "(just satisfaction)" for a judgment concerning only just satisfaction, "(revision)" for a judgment concerning revision, "(interpretation)" for a judgment concerning interpretation, "(striking out)" for a judgment striking the case out, "(friendly settlement)" for a judgment concerning a friendly settlement. If the judgment or decision has been given by the Grand Chamber of the Court, "[GC]" is added after the name of the case or after the case description that appears in brackets.

Examples

Judgment on the merits delivered by a Chamber

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Judgment on the merits delivered by the Grand Chamber

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Judgment on a friendly settlement delivered by a Chamber

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1. The Bureau is composed of the President and Vice-Presidents of the Court and of the Section Presidents.

2. The Jurisconsult is responsible for case-law monitoring and plays a key role in preventing case-law conflicts.

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2. Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Serbia and Montenegro, Slovenia, Slovak Republic, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, the United Kingdom.

3. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

4. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

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1. The indexes of headnotes and key concepts by Article have been merged into a single index. As a result, for certain cases the same headnote may appear under several Articles, whereas the key concepts will differ according to the Article under which such concepts have been reported.

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Makaratzis v. Greece [GC], 2004-XI

Deaths and destruction of property as a result of dangerous activities

Life • Deaths caused by explosion at industrial site • Positive obligations • Infringements of right to life as a result of dangerous activities • Prevention of infringements of right to life as a result of dangerous activities • Judicial response required where right to life infringed through dangerous activities • Authorities’ awareness of risks to life • Authorities’ failure, while fully realising likely consequences, to take necessary and sufficient measures to avert known risks • Importance of deterrent function of criminal law • Lack of acknowledgment of authorities’ responsibility for failing to protect right to life • Obligation to ensure adequate protection “by law” safeguarding right to life and deterring life-endangering conduct

Öner Yardız v. Turkey [GC], 2004-XII

Failure to provide adequate care for HIV-positive mental patient

Positive obligations • Failure to provide adequate care for HIV-positive mental patient • Obligation to take appropriate measures to protect patients’ lives • Knowledge of real and immediate risk to life • Known deficiencies in standard of care afforded in hospital in which highly vulnerable patient was placed

Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], 2014-V

Unsolved killing of journalist whose requests for protection had not been taken seriously by the authorities

Life • Unsolved killing of journalist whose requests for protection had not been taken seriously by the authorities • Journalist • Security forces • Lack of evidence of involvement of security forces in killing • Positive obligation • Preventive measures to protect life • Known risk of attack on life • Authorities informed of risk • Effective protection by law • Defects in criminal proceedings against security forces in south-east Turkey • Effectiveness of investigation into unsolved killing

Kılıç v. Turkey, 2000-III

Unsolved murder of a doctor and effectiveness of the related investigation

Life • Unsolved murder of doctor • Doctor • Security forces • Lack of evidence of security forces' involvement in the murder • Positive obligation • Preventive measures • Known risk of attack on life • Authorities informed of risk • Effective protection by law • Flawed criminal proceedings against security forces in south-east Turkey • Effectiveness of investigation into unsolved murder

Mahmut Kaya v. Turkey, 2000-III

Murder by unidentified perpetrators and effectiveness of subsequent investigation

Life • Murder by unidentified perpetrators • Lack of evidence of involvement of State agents in murder • Positive obligations • Preventive measures to protect life • Known risk of attack on life • Authorities informed of risk • Effective protection by law • Defects in criminal proceedings against security forces in south-east Turkey • Effectiveness of investigation into murder committed by unidentified perpetrators

Akkoç v. Turkey, 2000-X

Suicide of prisoner suffering from mental illness

Life • Suicide of prisoner suffering from mental illness • Positive obligations • Question whether authorities knew or ought to have known of risk to life • Duty of authorities to protect persons in custody • Question whether authorities took sufficient measures to avoid risk of suicide

Keenan v. the United Kingdom, 2001-III

Murder by unknown perpetrators and effectiveness of subsequent investigation

Life • Murder by unknown perpetrators • Positive obligation • Alleged failure of authorities to take protective measures • Question whether authorities knew or

ought to have known of risk to life • Effectiveness of investigation into murder by unknown perpetrators

Denizci and Others v. Cyprus, 2001-V

Killing of detainee by mentally ill cell-mate and effectiveness of investigation

Life • Killing of detainee by mentally ill cell-mate • Question whether authorities knew or ought to have known risk • Question whether authorities took sufficient measures to avoid risk • Effectiveness of investigation into killing of detainee by mentally ill cell-mate • Independence of inquiry • Absence of power to compel witnesses • Adequacy of relatives' involvement in proceedings • Holding of inquiry in private • Promptness and expedition of investigation

*Paul and Audrey Edwards
v. the United Kingdom, 2002-II*

Refusal to give advance undertaking not to prosecute a husband for assisting his paralysed wife to commit suicide

Life • Refusal to give advance undertaking not to prosecute a husband for assisting his paralysed wife to commit suicide • Obligation of the State to protect life • Absence of a right to die

Pretty v. the United Kingdom, 2002-III

Disappearance and death of political journalist

Life • Positive obligations • Obligation of State to protect individual whose life is at risk • Real and immediate risk to life • Negligent treatment of request for protection measures and complaints about illegal surveillance • Disappearance and death of political journalist • Authorities' failure to protect life • Lack of effective investigation

Gongadze v. Ukraine, 2005-XI

Deaths and destruction of property caused by natural disaster

Life • Deaths caused by natural disaster • Positive obligations • Foreseeability of risk • Adequacy of safety measures • Failure to make necessary repairs, assess risks or warn public • Lack of legislative and administrative framework providing effective protection • Adequacy of judicial or other response • Absence of criminal, technical or administrative inquiry • Failure of civil courts to exercise powers to call witnesses and seek expert evidence

Budayeva and Others v. Russia, 2008-II (extracts)

Suicide of mentally disturbed prisoner in a punishment cell

Life • Suicide of mentally disturbed prisoner in a punishment cell • Known real risks requiring careful monitoring • Failure to ensure suitable placement • Failure to supervise taking of daily medication • Detention in punishment cell resulting in isolation likely to aggravate risk of suicide • Positive obligations

Renolde v. France, 2008-V (extracts)

Domestic violence causing fatal injuries

Life • Positive obligation to protect life • Domestic violence causing fatal injuries • Foreseeability of risk • Pattern of escalating domestic violence • Measures to protect life • Factors relevant to decision whether to bring a prosecution in domestic-violence cases • Obligations of authorities where victims sought to withdraw complaints • Obligation to consider detention or non-custodial protective measures • Effective investigation • Failure of criminal-justice system to act as adequate deterrent

Opuz v. Turkey, 2009-III

Obligation to take operational measures to protect life

Positive obligations • Obligation to take operational measures to protect life • Absence of foreseeable real and immediate risk to life • Effective investigation • Deficiencies in investigation • Failure to secure relevant evidence abroad under international convention on mutual assistance • No duty to provide for universal jurisdiction in respect of death of nationals overseas • No duty to secure evidence in absence of request from State where death occurred

Rantsev v. Cyprus and Russia, 2010-I (extracts)

Use of potentially lethal gas and inadequate preparation of hostage-rescue operation

Life • Positive obligations • Use of force • Effective investigation • Use of potentially lethal gas and inadequate preparation of hostage-rescue operation • Existence of real, serious and immediate risk of mass human losses justifying use of gas • Positive obligation to protect life • Flawed implementation of hostage-rescue operation • Lack of thorough and independent investigation into authorities' negligence

Finogenov and Others v. Russia, 2011-VI (extracts)

Refusal to allow the use of an unauthorised experimental drug for medical treatment

Positive obligations • Life • Refusal to allow the use of an unauthorised experimental drug for medical treatment • No positive obligation on States to frame in a

particular way regulations governing access to unauthorised medicinal products in cases where conventional forms of medical treatment appeared insufficient

Hristozov and Others v. Bulgaria, 2012-V (extracts)

Refusal to carry out emergency operation on a pregnant woman on account of her inability to pay the fees for surgery

Positive obligations • Refusal to carry out emergency operation on a pregnant woman on account of her inability to pay the fees for surgery • Right to life • Lack of a prompt and effective criminal investigation • Access to medical care subject to a prior financial requirement • Medical staff were aware of seriousness of patient's health condition and the need for emergency surgery • Flagrant malfunctioning of hospital departments • Absence of domestic-law provisions aimed at preventing a failure to provide emergency medical treatment • Discontinuance of criminal proceedings against doctors concerned as being time-barred

Mehmet Şentürk and Bekir Şentürk v. Turkey, 2013-II

Suicide in custody

Life • Suicide in custody • Positive obligations • Question whether authorities ought to have known of risk to life • Shortcomings in recording of information • Foreseeability of suicide • “Real possibility” test • Absence of requirement to apply minimum standard of care for all prisoners to avoid suicides

Younger v. the United Kingdom (dec.), 2003-I

Allegedly insufficient public funding of medical treatment and related transportation, causing the applicants suffering and jeopardising their lives

Right to life • Alleged failure by State to cover medication costs • Poor financing of public hospital • No evidence that applicants' lives had been put at risk • Disease in question had high rate of mortality worldwide • Fact that one applicant had died of disease at the same hospital not in itself proof that his death had been caused by shortcomings in medical care system

Pentiacova and Others v. Moldova (dec.), 2005-I

Decision not to discharge soldiers from the army following conviction for murder of applicant's son

Life • Fatal shooting of civilian by State agents • Procedural obligation • Securing accountability of State agents • Criminal prosecution • Disciplinary proceedings • Disciplinary proceedings generally only relevant where criminal-law sanction not available or applied • Decision not to discharge soldiers from the army following conviction for murder of applicant's son • Allowing soldiers to rejoin their unit after

six years in prison not flagrant rejection of conviction or retrospective approbation of misconduct • Question of future protection of citizens too hypothetical and remote to affect applicant's rights

McBride v. the United Kingdom (dec.), 2006-V

POSITIVE OBLIGATIONS (PROCEDURAL ASPECT)

Murder by unidentified perpetrators and effectiveness of subsequent investigation

Life • Murder by unidentified perpetrators • Effectiveness of investigation into murder committed by unidentified perpetrators

Tanrikulu v. Turkey [GC], 1999-IV

Prosecution of doctor for involuntary manslaughter time-barred as a result of procedural delays

Life • Prosecution of doctor for involuntary manslaughter time-barred as a result of procedural delays • Positive obligations • Obligation of State to ensure that hospitals adopt appropriate measures to protect patients' lives • Effective independent judicial system • Appropriate remedies in respect of unintentional infringement of the right to life • Procedural delays • Extrajudicial settlement of civil claims

Calvelli and Ciglio v. Italy [GC], 2002-I

Disappearance following abduction by unidentified perpetrators and effectiveness of subsequent investigation

Life • Disappearance following abduction by unidentified perpetrators • Disappearance • Positive obligations • Absence of evidence of death • Effectiveness of investigation into disappearance

Tahsin Acar v. Turkey [GC], 2004-III

Lack of criminal-law remedy for involuntary termination of pregnancy as a result of medical error

Life • Lack of criminal-law remedy for involuntary termination of pregnancy as a result of medical error • Right of "everyone" ("*toute personne*") to life • Lack of a European consensus • States' margin of appreciation • Right to life "protected by law" • Legal protection of the mother for the involuntary termination of pregnancy • Positive obligations • Obligations concerning the preservation of life in the public-health sphere • Procedural obligations in cases of involuntary violations of

the right to physical integrity • Adequacy of a claim for compensation as a remedy in medical negligence cases • Action in damages • Limitation period • Compensation

Vo v. France [GC], 2004-VIII

Ineffectiveness of investigation into fatal shooting by police

Right to life • Use of force • Absolutely necessary • Procedural obligation • Ineffectiveness of investigation into fatal shooting by police • Shortcomings and risk of collusion undermining adequacy of investigation • Involvement in investigation of colleagues of suspected police officers • Connection between work of public prosecutor supervising investigation who decided not to prosecute and that of suspected police officers • Extent of applicants' involvement in investigation • Non-public character of proceedings brought by applicants for review of decision not to prosecute police officer presumed responsible for fatal shooting

*Ramsahai and Others
v. the Netherlands* [GC], 2007-II

Failure to conduct effective investigation into fate of Greek Cypriots missing since Turkish military operations in northern Cyprus in 1974

Life • Positive obligations • Obligations of State in zone of international conflict • Failure to conduct effective investigation into fate of Greek Cypriots missing since Turkish military operations in northern Cyprus in 1974 • Subsistence of obligation despite politically sensitive context and limited intervention of supranational body

Varnava and Others v. Turkey [GC], 2009-V

Failure to hold fully independent and effective investigation into deaths of Iraqi nationals during occupation of southern Iraq by British armed forces

Effective investigation • Failure to hold fully independent and effective investigation into deaths of Iraqi nationals during occupation of southern Iraq by British armed forces • Lack of operational independence of investigating authority

*Al-Skeini and Others v. the United
Kingdom* [GC], 2011-IV

Lack of an effective investigation following death of a man in demonstrations of June 1990 against the Romanian regime in power

Effective investigation • Lack of an effective investigation following death of a man in demonstrations of June 1990 against the Romanian regime in power

*Mocanu and Others
v. Romania* [GC], 2014-V (extracts)

Failure to hold effective investigation into alleged fatal shooting by Netherlands forces at vehicle checkpoint in southern Iraq

Effective investigation • Failure to hold effective investigation into alleged fatal shooting by Netherlands forces at vehicle checkpoint in southern Iraq • Failure to assess proportionality of use of force • Measures to prevent collusion between key witnesses • Independence • Alleged lack of operational independence of investigating authority • Inadequacy of autopsy

Jaloud v. the Netherlands [GC], 2014-VI

Unsolved killing of journalist whose requests for protection had not been taken seriously by the authorities

Life • Unsolved killing of journalist whose requests for protection had not been taken seriously by the authorities • Journalist • Security forces • Lack of evidence of involvement of security forces in killing • Positive obligation • Preventive measures to protect life • Known risk of attack on life • Authorities informed of risk • Effective protection by law • Defects in criminal proceedings against security forces in south-east Turkey • Effectiveness of investigation into unsolved killing

Kılıç v. Turkey, 2000-III

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Mahmut Kaya v. Turkey, 2000-III

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Akkoç v. Turkey, 2000-X

Shooting by police and effectiveness of subsequent investigation

Life • Use of force • Shooting by police • Examination of factual issues pending

in civil proceedings • Positive obligations • Effectiveness of investigation • Lack of independence of police investigation • Lack of public scrutiny of independent police investigation • Lack of reasonable expedition of independent police investigation • Failure of public prosecutor to give reasons for decision not to prosecute • Limited scope of inquest • Non-disclosure of witness statements prior to giving of evidence at inquest • Effect of public interest immunity certificates • Non-compellability of witnesses at inquest • Lack of promptness and reasonable expedition of inquest

McKerr v. the United Kingdom, 2001-III

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Life • Murder by unknown perpetrators • Positive obligation • Alleged failure of authorities to take protective measures • Question whether authorities knew or ought to have known of risk to life • Effectiveness of investigation into murder by unknown perpetrators

Denizci and Others v. Cyprus, 2001-V

Killing of detainee by mentally ill cell-mate and effectiveness of investigation

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Paul and Audrey Edwards v. the United Kingdom, 2002-II

Effectiveness of investigation into shooting allegedly carried out with the collusion of the security forces

Life • Positive obligations • Effectiveness of investigation into shooting allegedly carried out with the collusion of the security forces • Effectiveness of investigation • Lack of independence of police investigation • Limited scope of inquest • Lack of public scrutiny of independent police inquiries • Lack of promptness and expedition of independent police inquiry • Failure of public prosecutor to give reasons for decision not to prosecute

Finucane v. the United Kingdom, 2003-VIII

Death during detention and effectiveness of official investigation from which deceased's next-of-kin were excluded

Life • Death during detention • Positive obligations • Effectiveness of official investigation from which deceased's next-of-kin were excluded • Access of deceased's

next-of-kin to official investigation opened by authorities into causes of death • Scope of State's obligation towards next-of-kin of person who dies in suspicious circumstances while in custody of the authorities • Detention pending deportation

Slimani v. France, 2004-IX (extracts)

Disappearance and death of political journalist

Life • Positive obligations • Obligation of State to protect individual whose life is at risk • Real and immediate risk to life • Negligent treatment of request for protection measures and complaints about illegal surveillance • Disappearance and death of political journalist • Authorities' failure to protect life • Lack of effective investigation

Gongadze v. Ukraine, 2005-XI

Domestic violence causing fatal injuries

Life • Positive obligation to protect life • Domestic violence causing fatal injuries • Foreseeability of risk • Pattern of escalating domestic violence • Measures to protect life • Factors relevant to decision whether to bring a prosecution in domestic-violence cases • Obligations of authorities where victims sought to withdraw complaints • Obligation to consider detention or non-custodial protective measures • Effective investigation • Failure of criminal-justice system to act as adequate deterrent

Opuz v. Turkey, 2009-III

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Rantsev v. Cyprus and Russia, 2010-I (extracts)

Use of potentially lethal gas and inadequate preparation of hostage-rescue operation

Life • Positive obligations • Use of force • Effective investigation • Use of potentially lethal gas and inadequate preparation of hostage-rescue operation • Existence of real, serious and immediate risk of mass human losses justifying use of gas • Positive obligation to protect life • Flawed implementation of hostage-rescue operation • Lack of thorough and independent investigation into authorities' negligence

Finogenov and Others v. Russia, 2011-VI (extracts)

Refusal to carry out emergency operation on a pregnant woman on account of her inability to pay the fees for surgery

Positive obligations • Refusal to carry out emergency operation on a pregnant woman on account of her inability to pay the fees for surgery • Right to life • Lack of a prompt and effective criminal investigation • Access to medical care subject to a prior financial requirement • Medical staff were aware of seriousness of patient's health condition and the need for emergency surgery • Flagrant malfunctioning of hospital departments • Absence of domestic-law provisions aimed at preventing a failure to provide emergency medical treatment • Discontinuance of criminal proceedings against doctors concerned as being time-barred

*Mehmet Şentürk and
Bekir Şentürk v. Turkey, 2013-II*

Excessive delay in investigation into deaths at the hands of security forces in Northern Ireland

Positive obligations • Effective investigation • Excessive delay in investigation into deaths at the hands of security forces in Northern Ireland • Requirement for investigative process to be commenced promptly and carried out with reasonable expedition

*McCaughey and Others
v. the United Kingdom, 2013-IV*

Effectiveness of investigation carried out by the authorities following death of suspect on his arrest by police

Life • Positive obligation • Effectiveness of investigation carried out by the authorities following death of suspect on his arrest by police • Flaws in investigation carried out by the authorities

Grams v. Germany (dec.), 1999-VII

Alleged failure to ensure effective investigation into death resulting from purported medical negligence

Life • Alleged failure to ensure effective investigation into death resulting from purported medical negligence • Positive obligations • Health care • Extent of State's obligations in the field of health care • Effectiveness of investigation into circumstances of death • Settlement of civil action, precluding full investigation into circumstances of death • Victim

Powell v. the United Kingdom (dec.), 2000-V

Effectiveness of police investigation into racist murder

Life • Effectiveness of police investigation into racist murder • Positive obligations • Racism • Defects in police handling of investigation • Conviction of perpetrators • Enforcement of criminal law

Menson v. the United Kingdom (dec.), 2003-V

DEATH PENALTY

Impending deportation of first applicant to Syria where he had been sentenced to death *in absentia*

Death penalty • Inhuman or degrading treatment or punishment • Impending deportation of first applicant to Syria where he had been sentenced to death *in absentia* • No guarantee of a retrial or that the death penalty would not be requested at any retrial • Justified and well-founded fear of execution • Lack of public scrutiny and accountability • Fear, anguish and intolerable uncertainty • Flagrant denial of a fair trial • Real risk of execution and/or proscribed treatment

Bader and Kanbor v. Sweden, 2005-XI

USE OF FORCE

Life-threatening assault by security forces and effectiveness of investigation

Life • Use of force • Life-threatening assault by security forces • Non-lethal use of force • Examination of non-lethal use of force under Article 3

İlhan v. Turkey [GC], 2000-VII

Shooting of night-watchman during military operation

Life • Use of force • Absolutely necessary • Shooting of night-watchman during military operation • Deficiencies in planning and execution of military operation • Adequacy of investigation into shooting of civilian by security forces

Oğur v. Turkey, 1999-III

Shooting and killing of person during siege who had failed to heed police orders

Life • Shooting and killing of person during siege who had failed to heed police

orders • Use of force • Absolutely necessary • Planning and control of police operation • Effectiveness of ensuing investigation

Bubbins v. the United Kingdom, 2005-II (extracts)

Abduction and killing of a civilian in Chechnya by agents of the Russian State, followed by inadequate criminal investigation

Right to life • Abduction and killing of a civilian in Chechnya by agents of the Russian State, followed by inadequate criminal investigation • Use of force • Effective investigation • Delays in criminal investigation • Positive obligations • State liability proved “beyond reasonable doubt”

Luluyev and Others v. Russia, 2006-XIII (extracts)

ARTICLE 3

TORTURE

Torture of detainee

Torture • Torture of detainee • Suffering of relative of disappeared person • Facts relevant to assessment of suffering of relative of victim of serious violations

Çakıcı v. Turkey [GC], 1999-IV

Ill-treatment by police of suspect held in police custody

Torture • Inhuman treatment • Degrading treatment • Ill-treatment by police of suspect held in police custody • Assessment of the facts and facts accepted by the Court • Medical reports • Physical and mental suffering • “Severity” of suffering within meaning of United Nations Convention Against Torture • “Severity” and “minimum severity” relative, in nature of things • Increasingly high standard being required in area of protection of human rights • Repeated and sustained acts of violence

Selmouni v. France [GC], 1999-V

Life-threatening assault by security forces and effectiveness of investigation

Torture • Life-threatening assault by security forces • Severity of injuries • Assault causing brain damage resulting in long-term impairment of functions • Delay in providing medical treatment

İlhan v. Turkey [GC], 2000-VII

Death in police custody and effectiveness of subsequent investigation

Torture • Ill-treatment of detainee by police • Medical evidence • Injuries sustained

during interrogation • Nature and degree of ill-treatment • Very serious and cruel suffering

Salman v. Turkey [GC], 2000-VII

Ill-treatment of detainees and conditions of detention

Torture • Inhuman and degrading treatment • Relevance of imposition of death penalty • Ill-treatment of detainees • Conditions of detention • Lack of adequate medical care • Lack of adequate nutrition • Restrictions on detainees' correspondence • Restrictions on detainees' right to receive visits

Ilaşcu and Others v. Moldova and Russia [GC], 2004-VII

Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA

Torture • Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA • Inhuman or degrading treatment • Incommunicado detention • Solitary confinement • Excessive use of force • Forcible undressing • Use of physical restraints and hooding • Forcible administration of suppository • Effective investigation • Extra-judicial transfer of persons from one jurisdiction or State to another for the purposes of detention and interrogation outside the normal legal system • State secret privilege invoked to obstruct search for truth • Absence of legitimate request for extradition or arrest warrant • Failure to seek assurances from US authorities to assess the risk of ill-treatment

El-Masri v. the former Yugoslav Republic of Macedonia [GC], 2012-VI

Ill-treatment by police of suspect held in police custody

Torture • Inhuman treatment • Degrading treatment • Ill-treatment by police of suspect held in police custody • Assessment of facts and facts accepted by the Court • Medical reports • Physical and mental suffering • Effectiveness of investigation of ill-treatment

Dikme v. Turkey, 2000-VIII

Torture of detainee

Torture • Torture of detainee • Physical and mental suffering • Post-traumatic stress • Importance of proper medical examination of detainee • cursory and collective medical examinations of detainees on release

Akkoç v. Turkey, 2000-X

Death in police custody and effectiveness of subsequent investigation

Torture • Alleged torture in police custody • Medical evidence

Tanli v. Turkey, 2001-III

Ill-treatment of young or pregnant prisoners in police custody and effectiveness of the investigation

Torture • Ill-treatment of young or pregnant prisoners in police custody • Assessment of the facts by the Court • Physical and mental suffering • Duration of the ill-treatment • Treatment inflicted intentionally by State agents in order to extract a confession or to obtain information • Age of the victims • “Severity” of the suffering • Legal classification of the facts by the Court

Bati and Others v. Turkey, 2004-IV (extracts)

Force-feeding of hunger-striking detainee without medical justification

Torture • Force-feeding • Medical necessity • Procedural safeguards

Nevmerzbitsky v. Ukraine, 2005-II (extracts)

Torture in police custody and effectiveness of investigation

Torture • Torture in police custody and effectiveness of investigation • Intentional infliction of pain with a view to extracting information • Particularly vulnerable individual • No establishment of material circumstances of ill-treatment

Menesheva v. Russia, 2006-III

Ill-treatment and unjustified use of truncheons against detainees

Torture • Ill-treatment and unjustified use of truncheons against detainees • Indiscriminate recourse to physical force • Punitive and retaliatory nature of use of force • Absence of violent or organised behaviour on part of detainees • Lack of legal basis for use of truncheons • Force disproportionate to alleged transgressions of detainees and inconsistent with tasks of prison officers • Gratuitous violence aimed at debasing detainees • Intense mental and physical suffering

Dedovskiy and Others v. Russia, 2008-III (extracts)

INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Allegations of ill-treatment of a prisoner; effectiveness of the investigation

Inhuman and degrading treatment • Allegations of ill-treatment of a prisoner • Ineffectiveness of an investigation by the authorities into allegations of ill-treatment

Labita v. Italy [GC], 2000-IV

Failure of social services to take into care children subjected to serious neglect and emotional abuse

Inhuman and degrading treatment • Failure of social services to take into care children subjected to serious neglect and emotional abuse • Neglect and abuse of children constituting inhuman and degrading treatment • Statutory duty of authorities to protect children and availability of relevant powers

Z and Others v. the United Kingdom [GC], 2001-V

Forcible administration of emetics to recover evidence of drug trafficking concealed by ingestion

Inhuman and degrading treatment • Interference with physical integrity in order to obtain evidence of criminal offence • Emetics • Forcible administration of emetics to recover evidence of drug trafficking concealed by ingestion • Necessity of measure • Health risks associated with measure • Manner of administration • Forcible insertion of nasogastric tube • Availability of less intrusive methods • Adequacy of medical supervision • Absence of proper anamnesis • Unnecessary physical pain and mental suffering • Minimum level of severity

Jalloh v. Germany [GC], 2006-IX

Prolonged detention of a prisoner in solitary confinement and lack of a remedy

Inhuman or degrading treatment • Prisoner • Prolonged detention of a prisoner in solitary confinement • Terrorist • Conditions of detention • Physical conditions of detention • European Prison Rules • Nature of isolation • Partial and relative isolation • Length of solitary confinement • Exclusion of a prisoner from prison community not in itself a form of inhuman treatment • Higher security regimes for dangerous prisoners • Decisions to extend lengthy period of solitary confinement • Prisoner's health • Prisoner's character and dangerousness • Risk of proselytism • Risk of renewed contact with terrorist cell

Ramirez Sanchez v. France [GC], 2006-IX

Mandatory life sentence with no prospect of release for good behaviour following changes to the legislation

Inhuman treatment • Degrading treatment • Mandatory life sentence with no prospect of release for good behaviour following changes to the legislation • Sentence reducible *de facto* and *de jure* • No legitimate expectation of release • Changes to domestic law six years before potential release date, making it clear that applicant would be serving a whole-life term • Suffering inherent in nature of sentence imposed

Kafkaris v. Cyprus [GC], 2008-I

Indefinite detention of foreign nationals suspected of involvement in terrorism

Inhuman or degrading treatment • Indefinite detention of foreign nationals suspected of involvement in terrorism • Availability of review procedures • Situation not comparable to irreducible life sentence

A. and Others v. the United Kingdom [GC], 2009-II

Imprisonment for life with release possible only in the event of terminal illness or serious incapacitation

Inhuman treatment • Degrading treatment • Imprisonment for life with release possible only in the event of terminal illness or serious incapacitation • Requirement for reducibility of life sentences • Legitimate penological grounds for detention • Procedural requirement for a review of whole life sentences • Right of whole life prisoners to know at the outset conditions for and timing of review of sentence

Vinter and Others v. the United Kingdom [GC], 2013-III (extracts)

Inhuman and degrading treatment

Inhuman and degrading treatment • Positive obligation • Concept of torture • United Nations Convention against Torture • Extreme seriousness and cruelty

Mahmut Kaya v. Turkey, 2000-III

Allegation of ill-treatment in police custody and effectiveness of subsequent investigation

Inhuman and degrading treatment • Allegation of ill-treatment during attempted escape • Whether force used by police officers was proportionate • Allegation of ill-treatment in police custody • Domestic courts' findings unimpeachable • Effectiveness of investigation by national authorities

Caloc v. France, 2000-IX

Suicide of prisoner suffering from mental illness

Inhuman or degrading treatment or punishment • Suicide of prisoner suffering from mental illness • Lack of effective monitoring of condition of mentally ill prisoner • Failure to ensure sufficient psychiatric assessment and treatment of mentally ill prisoner • Imposition of disciplinary sanction on mentally ill prisoner

Keenan v. the United Kingdom, 2001-III

Prison conditions and strip-search of male prisoner in presence of female prison officer

Inhuman or degrading treatment • Prison conditions • Detention in segregation unit • Visit to prison by delegation of the Court • Examination of prison conditions • Strip-search of male prisoner in presence of female prison officer • Conduct of strip-search • Alleged victimisation of detainee by prison staff

Valašinas v. Lithuania, 2001-VIII

Refusal to give advance undertaking not to prosecute a husband for assisting his paralysed wife to commit suicide

Inhuman or degrading treatment • Refusal to give advance undertaking not to prosecute a husband for assisting his paralysed wife to commit suicide • Absence of act or “treatment” by the State • Interpretation of Article 3 in harmony with Article 2 • Positive obligations • Absence of obligation to sanction actions intended to terminate life

Pretty v. the United Kingdom, 2002-III

Continued detention of prisoner undergoing treatment for cancer

Inhuman and degrading treatment • Continued detention of prisoner undergoing treatment for cancer • Care taken of prisoner’s health by authorities • Conditions for transferring sick prisoner to hospital • Handcuffing • Recommendations of the European Committee for the Prevention of Torture • Minimum level of severity

Mouisel v. France, 2002-IX

Detention regime in maximum-security prison

Inhuman or degrading treatment • Detention regime in maximum-security prison • Detention in high-security prison • Respect for human dignity • Assessment of effect of measures on individual detainee • Strict limitations on social contacts • Risk of escape and danger to public • Use of systematic strip-searches • Combined effect of systematic strip-searches and strict control measures

Van der Ven v. the Netherlands, 2003-II

Adequacy of medical care provided by prison authorities for heroin addict suffering withdrawal symptoms

Inhuman or degrading treatment • Adequacy of medical care provided by prison authorities for heroin addict suffering withdrawal symptoms • Duty of prison authorities to provide requisite care for detainees • Alleged deficiencies in medical

care of prisoner • Distress and suffering resulting from failure of prison authorities to take adequate steps to ensure appropriate medical care

McGlinchey and Others v. the United Kingdom, 2003-V

Conditions of detention of a person sentenced to death

Inhuman or degrading treatment • Conditions of detention of a person sentenced to death • Uncertainty and anguish resulting from death sentence • Diminishing risk of execution following moratorium and subsequent commutation of sentence to life imprisonment • Material conditions of detention • Confinement to cell twenty-four hours a day • Lack of natural light • Lack of opportunity for exercise and activities • Lack of contact with others • Absence of intention to humiliate

Poltoratskiy v. Ukraine, 2003-V

Adequacy of domestic law and practice in providing protection against non-consensual sexual acts

Inhuman and degrading treatment • Private life • Physical integrity • Sexual autonomy • Positive obligations • Adequacy of domestic law and practice in providing protection against non-consensual sexual acts • Historical requirement of proof of physical force in establishing offence of rape • General trend in European and other legal systems • Allegedly restrictive approach of domestic authorities to investigation and prosecution of rape • Obligation on authorities to conduct context-sensitive assessment of rape allegations and to verify all surrounding circumstances • Importance of issue of lack of consent in rape investigation • Deficiencies in investigation

M.C. v. Bulgaria, 2003-XII

Conditions of transport of remand prisoner to court hearings

Inhuman and degrading treatment • Conditions of transport of remand prisoner to court hearings • Cramped conditions without food or exercise

Khudoyorov v. Russia, 2005-X (extracts)

State agents given suspended minimum sentences for ill-treating minor

Ill-treatment • Procedural requirements • State agents given suspended minimum sentences for ill-treating minor • Age of victim • Protection of minors • State agent accused of acts that violate Article 3 • Courts' determination to punish offenders • Deterrent effect of judicial system • *De facto* impunity of guilty police officers

Okkaly v. Turkey, 2006-XII (extracts)

Pre-trial detention of minor in adult prison

Inhuman and degrading treatment • Pre-trial detention of minor in adult prison • Positive obligations • Obligation to protect physical well-being of detainees • Children and other vulnerable persons • Impact of charges carrying the death penalty • Absence of adequate medical care

Güveç v. Turkey, 2009-I (extracts)

Failure of authorities to take adequate deterrent measures to protect spouse from violent husband

Inhuman treatment • Degrading treatment • Positive obligation to protect personal integrity • Failure of authorities to take adequate deterrent measures to protect spouse from violent husband

Opuz v. Turkey, 2009-III

Lack of access to prenatal genetic tests

Inhuman and degrading treatment • Positive obligations • Lack of access to prenatal genetic tests • Applicant's inability to obtain information about health of her foetus and to decide whether to have recourse to legal abortion

R.R. v. Poland, 2011-III (extracts)

Violence among pupils in school

Inhuman and degrading treatment • Respect for private life • Violence among pupils in school • Positive obligations • Requirement of adequate legal framework for the protection of vulnerable groups • Vague and unspecified allegations of violence insufficient to trigger State's positive obligations

Durđević v. Croatia, 2011-V (extracts)

Sterilisation of Roma woman without her informed consent

Inhuman and degrading treatment • Sterilisation of Roma woman without her informed consent • Gross disregard for the applicant's right to autonomy and choice as a patient • Consent to sterilisation obtained during labour and without adequate information • Effective investigation

V.C. v. Slovakia, 2011-V (extracts)

Failure by the authorities to protect a disabled person from violent and persistent harassment by children

Inhuman and degrading treatment • Positive obligations • Failure by the authorities to protect a disabled person from violent and persistent harassment by children •

Harassment • Combined effect of incidents of harassment • Positive obligations outside the sphere of criminal law • Below age of criminal responsibility • Lack of a systematic approach

Dorđević v. Croatia, 2012-V

Refusal to allow the use of an unauthorised experimental drug for medical treatment

Inhuman or degrading treatment • Positive obligations • Refusal to allow the use of an unauthorised experimental drug for medical treatment • Denial of potentially life-saving treatment whose safety and efficacy were in doubt did not cause mental suffering of a sufficient level of severity to fall within the scope of Article 3 • No positive obligation to alleviate disparities between levels of health care available in various countries

Hristozov and Others v. Bulgaria, 2012-V (extracts)

Appalling conditions of storage of the bodies of the applicants' deceased relatives

Inhuman treatment • Degrading treatment • Appalling conditions of storage of the bodies of the applicants' deceased relatives • Logistical difficulties caused by terrorist armed attack • Absence of purposeful intention to cause applicants psychological suffering

Sabanchiyeva and Others v. Russia, 2013-III (extracts)

Whole life prison regime offering inadequate opportunities for rehabilitation in order to be able to obtain a reduction in sentence

Inhuman treatment • Degrading punishment • Whole life prison regime offering inadequate opportunities for rehabilitation in order to be able to obtain a reduction in sentence • Life imprisonment without the possibility of commutation • *De jure* and *de facto* reducibility of sentence • Legitimate penological grounds for incarceration • Rehabilitation • Impoverished regime affording no opportunity to reform • Absence of periodic assessment of progress

Harakchiev and Tolumov v. Bulgaria, 2014-III (extracts)

Possibility of convicted prisoner being reincarcerated following successful treatment for cancer

Inhuman or degrading treatment • Possibility of convicted prisoner being reincarcerated following successful treatment for cancer • Medical fitness to serve sentence • Regular monitoring of risk of relapse • Adequacy of health-care arrangements prior to suspension of sentence • Minimum level of severity

Saydam v. Turkey (dec.), 2006-III

Continued enforcement in Contracting State pursuant to prisoner-transfer agreement of lengthy sentence imposed in non-Contracting State

Inhuman punishment • Degrading punishment • Continued enforcement in Contracting State pursuant to prisoner-transfer agreement of lengthy sentence imposed in non-Contracting State • Grossly disproportionate sentence • Purpose of prisoner-transfer agreements • Requirement to take into account degree of humiliation or suffering inherent in serving sentence abroad when assessing whether its continued enforcement in receiving State amounts to proscribed treatment

Willcox and Hurford v. the United Kingdom (dec.), 2013-I

INHUMAN TREATMENT OR PUNISHMENT

Public trial in an adult court of juvenile charged with murder and imposition of a sentence of detention during Her Majesty's pleasure with a tariff of fifteen years fixed by a member of the executive

Inhuman treatment • Inhuman punishment • Minimum age of criminal responsibility • Public trial in an adult court of juvenile charged with murder • Protection of privacy of juvenile defendants • Special measures to attenuate rigours of adult trial • Inevitable suffering caused by proceedings to determine circumstances of serious crime • Juvenile sentenced to detention during Her Majesty's pleasure • Indeterminate sentence including tariff in respect of punitive element • Length of tariff period • Uncertainty of sentence due to failure to fix tariff

V. v. the United Kingdom [GC], 1999-IX

Adequacy of psychiatric care of detainee

Inhuman treatment • Detainee suffering from depression and with suicidal tendencies • Adequacy of psychiatric care of detainee • Psychological condition aggravating distress felt by detainee • Minimum level of severity

Kudła v. Poland [GC], 2000-XI

Imposition of death sentence following proceedings found to be unfair

Inhuman treatment • Imposition of death sentence following proceedings found to be unfair • Real risk that death sentence would be executed

Öcalan v. Turkey [GC], 2005-IV

Silence of authorities in face of real concerns about fate of men missing since Turkish military operations in northern Cyprus

Inhuman treatment • Silence of authorities in face of real concerns about fate of men missing since Turkish military operations in northern Cyprus

Varnava and Others v. Turkey [GC], 2009-V

Threats of physical harm by police to establish whereabouts of missing child

Inhuman treatment • Threats of physical harm by police to establish whereabouts of missing child • Absolute nature of Article 3 prohibiting torture, inhuman or degrading treatment

Gäfgen v. Germany [GC], 2010-IV

Alleged failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyn in 1940

Inhuman treatment • Positive obligations • Alleged failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyn in 1940 • Absence of uncertainty as to fate of applicants' relatives by time Convention came into force in respect of Russia • "Confirmed death" case • Absence of special circumstances entailing suffering distinct from emotional distress inevitably caused to relatives of victims of serious human rights violations

Janowiec and Others v. Russia [GC], 2013-V

Alleged ill-treatment of detainee

Inhuman treatment • Alleged ill-treatment of detainee (friendly settlement)

Denmark v. Turkey (friendly settlement), 2000-IV

Disappearance following detention by security forces and effectiveness of subsequent investigation

Inhuman treatment • Suffering of relative of disappeared person • Elements relevant to assessment of suffering of relative of victim of serious violations

Timurtaş v. Turkey, 2000-VI

Ill-treatment on arrest

Inhuman treatment • Ill-treatment on arrest • Absence of aim of extracting confession • Injuries inflicted over short period of heightened tension and emotions • Uncertainty as to gravity of injuries • Absence of evidence of long-term consequences

Egmez v. Cyprus, 2000-XII

Ill-treatment on arrest

Inhuman treatment • Ill-treatment on arrest • Circumstances of arrest • Absence of establishment of facts by domestic courts • Burden of proof • Failure to provide convincing or credible explanation for injuries • Excessive use of force

Rehbock v. Slovenia, 2000-XII

Ill-treatment by the police

Inhuman treatment • Ill-treatment by the police • Degree of severity of ill-treatment • Insufficient evidence to qualify ill-treatment as torture

Denizci and Others v. Cyprus, 2001-V

Ill-treatment of detainee

Inhuman treatment • Ill-treatment of detainee

Anguelova v. Bulgaria, 2002-IV

Conditions of prisoner's stay in hospital

Inhuman treatment • Conditions of prisoner's stay in hospital • Use of restraints • Prisoner's age and health • Proportionality of measure restricting movement • European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Hénaf v. France, 2003-XI

Detention regime in a correctional institution

Inhuman treatment • Detention regime in a correctional institution • Solitary confinement • Cell lacking adequate protection against the elements • Use of handcuffs and fetters • Alleged lack of adequate medical treatment • Relevance of period spent in particular conditions of detention

Mathew v. the Netherlands, 2005-IX

Conditions of detention and deportation of an unaccompanied five-year-old alien

Inhuman treatment • Conditions of detention and deportation of an unaccompanied five-year-old alien • Child who had become separated from her family held in facility for adults • Extremely vulnerable person • State's positive obligations • Factors relevant to determining whether a parent is a victim of the ill-treatment

of his or her child • Authorities' treatment of the mother of a child held alone in a foreign country and subsequently deported

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, 2006-XI

Abduction and killing of a civilian in Chechnya by agents of the Russian State, followed by inadequate criminal investigation

Inhuman treatment • Anguish and distress over uncertainty about relatives' whereabouts • Applicants not involved in the investigation

Luluyev and Others v. Russia, 2006-XIII (extracts)

Handcuffing of prisoner recovering from internal surgery and transport in standard prison van two days later

Inhuman treatment • Handcuffing of prisoner recovering from internal surgery and transport in standard prison van two days later • Handcuffing disproportionate to needs of security • Prisoner unfit for transport

Tarariyeva v. Russia, 2006-XV (extracts)

Subjection of conscript with known health problems to strenuous physical exercise

Inhuman punishment • Military discipline • Subjection of conscript with known health problems to strenuous physical exercise • Severity • Punishment calculated to cause intense physical suffering • Absence of disciplinary or military necessity

Chember v. Russia, 2008-IV

Transfer of detainees to Iraqi authorities despite risk of capital punishment

Inhuman treatment • Transfer of detainees to Iraqi authorities despite risk of capital punishment • Well-founded and continuing fear of execution • Indicators that death penalty now prohibited in all circumstances • Positive obligations • Duty not to enter into agreement with another State conflicting with Convention obligations • Paramount obligations in respect of persons brought into jurisdiction through arrest and detention • Failure to seek alternatives to referral or binding assurances

Al-Saadoon and Mufdhi v. the United Kingdom, 2010-II

Special prison regime aimed at preventing any contact with the Mafia

Inhuman treatment • Inhuman punishment • Conditions of detention • Special prison regime aimed at preventing any contact with the Mafia • Seriousness of

crimes • Concept of isolation • European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

Messina v. Italy (no. 2) (dec.), 1999-V

Special interrogation technique using psychological methods to obtain a confession

Inhuman treatment • Special interrogation technique using psychological methods to obtain a confession • Minimum level of severity

Ebbinge v. the Netherlands (dec.), 2000-IV

Convicted man kept in prison despite his advanced age and health problems

Inhuman treatment • Convicted man kept in prison despite his advanced age and health problems • Conditions of detention • Very elderly prisoner • Medical supervision • Minimum level of severity

Papon v. France (no. 1) (dec.), 2001-VI

Imprisonment of very elderly person following conviction

Inhuman treatment • Inhuman punishment • Imprisonment of very elderly person following conviction • Imposition of life sentence on very elderly convict • Obligation to provide medical care • Obligation to take measures to safeguard well-being of detainees • Life sentence • Prospects for release

Sawoniuk v. the United Kingdom (dec.), 2001-VI

Special prison regime designed to sever all ties between the prisoner and his original criminal environment and entailing restrictions on family visits

Inhuman treatment • Inhuman punishment • Conditions of detention • Special prison regime designed to sever all ties between the prisoner and his original criminal environment and entailing restrictions on family visits • Seriousness of offences committed • Concept of isolation

Bastone v. Italy (dec.), 2005-II (extracts)

DEGRADING TREATMENT OR PUNISHMENT

Use of metal cage to hold defendants during criminal trial

Degrading treatment • Use of metal cage to hold defendants during criminal trial • Order and security in courtroom • Objectively justified fears that public exposure

in a cage would undermine right to be presumed innocent • Inability of security considerations to justify use of cage • Human dignity

Svinarenko and Slyadnev v. Russia [GC], 2014-V (extracts)

Slaps allegedly administered by police officers during questioning

Degrading treatment • Slaps allegedly administered by police officers during questioning • No necessity for the use of such physical force • Infringement of human dignity • Special significance of a slap to the face • Humiliation of the slapped persons in their own eyes • Subjection to an unlawful act by police officers potentially causing a feeling of arbitrary treatment, injustice and powerlessness • Psychological impact on a minor

Effective investigation • Slaps allegedly administered by police officers during questioning • Length of the investigation

Bouyid v. Belgium [GC], 2015-V

Discharge of homosexuals from the armed forces following intrusive investigations

Degrading treatment • Intrusive investigations into private lives of homosexuals in the armed forces • Minimum level of severity

Smith and Grady v. the United Kingdom, 1999-VI

Conditions of detention pending expulsion

Degrading treatment • Conditions of detention pending expulsion • Examination of conditions of detention • Relevance of period spent in specific conditions of detention

Dougoz v. Greece, 2001-II

Prison conditions

Degrading treatment • Prison conditions • Detention in segregation unit • Visit to prison by delegation of the European Commission of Human Rights • Absence of intention of authorities to humiliate or debase • Examination of conditions of detention

Peers v. Greece, 2001-III

Conditions of detention of disabled person

Degrading treatment • Conditions of detention of disabled person • Absence of positive intention to humiliate or debase • Difficulties faced by severely disabled person in detention

Price v. the United Kingdom, 2001-VII

Prison conditions

Degrading treatment • Prison conditions • Examination of conditions of detention • Overcrowding • Sleep deprivation • Prison hygiene • Health care • Relevance of period spent in particular conditions of detention • Absence of intention of authorities to humiliate or debase

Kalashnikov v. Russia, 2002-VI

Shaving of detainee's head in conjunction with disciplinary sanction of solitary confinement

Degrading treatment • Shaving of detainee's head in conjunction with imposition of disciplinary sanction of solitary confinement • Change to physical appearance against will • Absence of reasons of hygiene • Absence of legal basis or valid justification • Context of punishment • Age of applicant • Public appearance

Yankov v. Bulgaria, 2003-XII (extracts)

Government's failure to submit documentary evidence relevant to the killing of civilians during military operation

Degrading treatment • Body of applicant's son mutilated *post mortem*

Akkum and Others v. Turkey, 2005-II (extracts)

Living conditions of Roma villagers following police involvement in the killing of members of their community and the destruction of their homes

Degrading treatment • Lengthy period spent in a severely overcrowded and unsanitary environment • Detrimental effect on health and well-being • General attitude of the authorities • Diminished human dignity, humiliation and debasement • Discriminatory remarks an aggravating factor

Moldovan and Others v. Romania
(no. 2), 2005-VII (extracts)

Disappearance and death of political journalist

Degrading treatment • Failure to perform prompt identification of corpse presumed to be applicant's husband • Prolonged uncertainty as to fate of applicant's husband • Prolonged refusal to grant applicant access to investigation case file

Gongadze v. Ukraine, 2005-XI

Detention in overcrowded and unsanitary prison

Degrading treatment • Hardship of an intensity exceeding the unavoidable level of suffering inherent in detention • Humiliating practice • Detention in overcrowded and unsanitary prison • Lack of access to toilet for over twelve hours a day

Cenbauer v. Croatia, 2006-III

Procedures used to strip-search visitors to a prison

Degrading treatment • Procedures used to strip-search visitors to a prison • Distress • Failure to adhere rigorously to procedures • Minimum level of severity not reached

Wainwright v. the United Kingdom, 2006-X

Heavy-handed nature of police operation to arrest politician at his home in the presence of his wife and minor children

Degrading treatment • Heavy-handed nature of police operation to arrest politician at his home in the presence of his wife and minor children • Necessity and proportionality of use of force • Failure to take account of the nature of the criminal offences of which the individual concerned was suspected and lack of a history of violence on his part • Failure to take account of the legitimate interests of the members of the suspect's family, who were on the premises, and especially of his minor children • Lack of prior judicial review of necessity and lawfulness of the police operation • Psychological ordeal giving rise to strong feelings of fear, anxiety and powerlessness

Gutsanovi v. Bulgaria, 2013-V (extracts)

Emotional suffering caused by removal of tissue from the applicant's deceased husband's body without her knowledge or consent

Degrading treatment • Emotional suffering caused by removal of tissue from the applicant's deceased husband's body without her knowledge or consent • Respect for human dignity

Elberte v. Latvia, 2015-I

Suicide of detainee confined to cell due to disruptive behaviour

Degrading punishment • Treatment of detainees • Suicide of detainee confined to cell due to disruptive behaviour • Alleged negligence of prison officers in treatment of detainee • Minimum level of severity

Bollan v. the United Kingdom (dec.), 2000-V

POSITIVE OBLIGATIONS (PROCEDURAL ASPECT)

Allegations of ill-treatment of a prisoner; effectiveness of the investigation

Inhuman and degrading treatment • Allegations of ill-treatment of a prisoner • Ineffectiveness of an investigation by the authorities into allegations of ill-treatment

Labita v. Italy [GC], 2000-IV

Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA

Torture • Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA • Inhuman or degrading treatment • Incommunicado detention • Solitary confinement • Excessive use of force • Forcible undressing • Use of physical restraints and hooding • Forcible administration of suppository • Effective investigation • Extra-judicial transfer of persons from one jurisdiction or State to another for the purposes of detention and interrogation outside the normal legal system • State secret privilege invoked to obstruct search for truth • Absence of legitimate request for extradition or arrest warrant • Failure to seek assurances from US authorities to assess the risk of ill-treatment

El-Masri v. the former Yugoslav Republic of Macedonia [GC], 2012-VI

Alleged failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyn in 1940

Inhuman treatment • Positive obligations • Alleged failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyn in 1940 • Absence of uncertainty as to fate of applicants' relatives by time Convention came into force in respect of Russia • "Confirmed death" case • Absence of special circumstances entailing suffering distinct from emotional distress inevitably caused to relatives of victims of serious human rights violations

Janowiec and Others v. Russia [GC], 2013-V

Sexual abuse of child by teacher in Church-managed school

Positive obligations • Sexual abuse of child by teacher in Church-managed school • Inherent obligation of government to ensure protection of children from ill-treatment • Inability of State to absolve itself from obligations by delegating duties to private bodies or individuals • Awareness of risk • Effectiveness of mechanisms for detecting and reporting ill-treatment • Effective investigation

O'Keeffe v. Ireland [GC], 2014-I (extracts)

Lack of an effective investigation following ill-treatment of a man by State agents in demonstrations of June 1990 against the Romanian regime in power

Effective investigation • Lack of an effective investigation following ill-treatment of a man by State agents in demonstrations of June 1990 against the Romanian regime in power

Mocanu and Others v. Romania [GC], 2014-V (extracts)

Ill-treatment by police of suspect held in police custody

Torture • Inhuman treatment • Degrading treatment • Ill-treatment by police of suspect held in police custody • Assessment of facts and facts accepted by the Court • Medical reports • Physical and mental suffering • Effectiveness of investigation of ill-treatment

Dikme v. Turkey, 2000-VIII

Allegation of ill-treatment in police custody and effectiveness of subsequent investigation

Inhuman and degrading treatment • Allegation of ill-treatment during attempted escape • Whether force used by police officers was proportionate • Allegation of ill-treatment in police custody • Domestic courts' findings unimpeachable • Effectiveness of investigation by national authorities

Caloc v. France, 2000-IX

Adequacy of domestic law and practice in providing protection against non-consensual sexual acts

Inhuman and degrading treatment • Private life • Physical integrity • Sexual autonomy • Positive obligations • Adequacy of domestic law and practice in providing protection against non-consensual sexual acts • Historical requirement of proof of physical force in establishing offence of rape • General trend in European and other legal systems • Allegedly restrictive approach of domestic authorities to investigation and prosecution of rape • Obligation on authorities to conduct context-sensitive assessment of rape allegations and to verify all surrounding circumstances • Importance of issue of lack of consent in rape investigation • Deficiencies in investigation

M.C. v. Bulgaria, 2003-XII

Torture in police custody and effectiveness of investigation

Torture • Torture in police custody and effectiveness of investigation • Intentional infliction of pain with a view to extracting information • Particularly vulnerable individual • No establishment of material circumstances of ill-treatment

Menesheva v. Russia, 2006-III

Subjection of conscript with known health problems to strenuous physical exercise; effectiveness of ensuing investigation

Positive obligations • Effective investigation • Defective investigation into allegations of ill-treatment of military conscript • Failure to secure victim's procedural rights • Absence of independent review of evidence by civil courts • Vicious circle of shifted responsibility

Chember v. Russia, 2008-IV

Sterilisation of Roma woman without her informed consent

Inhuman and degrading treatment • Sterilisation of Roma woman without her informed consent • Gross disregard for the applicant's right to autonomy and choice as a patient • Consent to sterilisation obtained during labour and without adequate information • Effective investigation

V.C. v. Slovakia, 2011-V (extracts)

EXPULSION

Real and serious risk of treatment contrary to Article 3 in the event of expulsion to a country where the applicant had been convicted of terrorist acts

Expulsion • Real and serious risk of treatment contrary to Article 3 in the event of expulsion to a country where the applicant had been convicted of terrorist acts • Absolute nature of the protection • Assessment of the degree of risk not dependent on dangerousness of the individual • Evidence • Reports from reliable sources recording cases of torture and ill-treatment • Lack of diplomatic assurances

Saadi v. Italy [GC], 2008-II

Threat of expulsion of Aids sufferer to home country with no certainty that appropriate medical treatment would be available to her there

Expulsion • Threat of expulsion of Aids sufferer to home country with no certainty that appropriate medical treatment would be available to her there • No right to remain on territory of Contracting State in order to continue receiving medical treatment • Speculation as to evolution of applicant's condition • Lack of critical condition and/or lack of very exceptional circumstances

N. v. the United Kingdom [GC], 2008-III

Conditions of detention and living conditions of an asylum-seeker expelled under the Dublin Regulation

Expulsion • Degrading treatment • Conditions of detention and living conditions of an asylum-seeker expelled under the Dublin Regulation • Identity and situation as potential asylum-seeker known to the authorities • Lack of information on reasons for detention • Feeling of arbitrariness, inferiority, anxiety and severe deprivation of human dignity • Duty of State to inform about available accommodation • No prompt examination of application for asylum • Vulnerability of an asylum-seeker • Practical difficulties in application of “Dublin” system in Greece • Deficiencies of asylum procedure known to Belgian authorities, who should verify proper application of the legislation by Greece • Belgian authorities aware of risk of degrading treatment facing asylum-seekers expelled to Greece

M.S.S. v. Belgium and Greece [GC], 2011-I

Return of migrants intercepted on high seas to country of departure

Expulsion • Return of migrants intercepted on high seas to country of departure • Principle of *non-refoulement* • Obligation on Contracting States to enquire into treatment to which applicants would be exposed after removal • Obligation on returning State to ensure intermediary country offers sufficient guarantees against arbitrary repatriation exposing parties concerned to risk of ill-treatment in country of origin • Real risk of ill-treatment in intermediary third country and/or country of origin • Real risk of arbitrary repatriation from third country • Reports of torture and ill-treatment from reliable sources • No asylum and protection procedures for refugees in third country

Hirsi Jamaa and Others v. Italy [GC], 2012-II

Threatened expulsion to Italy under Dublin II Regulation of a family of Afghan nationals seeking asylum

Expulsion • Threatened expulsion to Italy under Dublin II Regulation of a family of Afghan nationals seeking asylum • Failings in reception system for asylum-seekers • Insufficient capacity of existing reception facilities • Lack of privacy and even insalubrious conditions or violence • Lack of assurances that family would be taken charge of in a manner adapted to the age of the children and would be kept together

Tarakbel v. Switzerland [GC], 2014-VI (extracts)

Threatened deportation to Islamic country where there is a risk of stoning for adultery

Inhuman and degrading punishment • Expulsion • Threatened deportation to Islamic country where there is a risk of stoning for adultery • Obligation of

Contracting States to conduct rigorous scrutiny of alleged risk of ill-treatment in third country • Short time-limit for asylum applications • Absence of examination of substance of arguable claim of risk of ill-treatment in third country • Evidence of human rights situation in third country

Jabari v. Turkey, 2000-VIII

Deportation of schizophrenic to a country where adequate medical treatment is allegedly not available

Expulsion • Inhuman treatment • Deportation of schizophrenic to a country where adequate medical treatment is allegedly not available • Risks emanating from sources other than State authorities • Risk to mental health in event of deportation • Availability of medical treatment in country of destination • Alleged risks involved in travelling to hospital, due to terrorist activity

Bensaid v. the United Kingdom, 2001-I

Threatened deportation of asylum-seeker to Tanzania

Expulsion • Threatened deportation of asylum-seeker to Tanzania • Risk of exposure to ill-treatment • Evidence of previous ill-treatment • Possibility of deportation to another part of the country of destination • “Internal flight” option • Evidence before the Court • Endemic human rights problems in country of destination • Institutional links between police forces in country of destination

Hilal v. the United Kingdom, 2001-II

Impending expulsion to Eritrea of alleged deserter

Expulsion • Torture • Inhuman treatment or punishment • Degrading treatment or punishment • Real risk • Impending expulsion to Eritrea of alleged deserter • Criticism of military authorities • Consistent and credible account of escape • Information from public sources describing the treatment of deserters in Eritrea as inhuman

Said v. the Netherlands, 2005-VI

Impending deportation of first applicant to Syria where he had been sentenced to death *in absentia*

Death penalty • Inhuman or degrading treatment or punishment • Impending deportation of first applicant to Syria where he had been sentenced to death *in absentia* • No guarantee of a retrial or that the death penalty would not be requested at any retrial • Justified and well-founded fear of execution • Lack of public scrutiny and accountability • Fear, anguish and intolerable uncertainty • Flagrant denial of a fair trial • Real risk of execution and/or proscribed treatment

Bader and Kanbor v. Sweden, 2005-XI

Detailed assurances from receiving State that high-profile Islamist would not be ill-treated if returned to Jordan

Expulsion • Torture • Detailed assurances from receiving State that high-profile Islamist would not be ill-treated if returned to Jordan • Counterterrorism and national-security objectives • Reliability of diplomatic assurances • Transparent and detailed assurances • Mechanism for monitoring respect of assurances

Othman (Abu Qatada) v. the United Kingdom, 2012-I (extracts)

Deportation to another Contracting State which has already rejected an asylum request

Expulsion • Inhuman treatment • Deportation to another Contracting State which has already rejected an asylum request • Risk of deportation from a third country to a country where applicant risks ill-treatment • State responsibility when deporting to a “safe third country” • Risks emanating from sources other than State authorities

T.I. v. the United Kingdom (dec.), 2000-III

EXTRADITION

Non-compliance with interim measures indicated by the Court held to be a failure by the State to comply with its obligations under Article 34

Extradition • Risk of ill-treatment in the receiving country • Date of assessment of the risk • Court prevented from assessing the “real risk” in the manner it considered appropriate

Mamatkulov and Askarov v. Turkey [GC], 2005-I

Conditions of extradition and detention

Extradition • Impossibility of contacting applicants after their extradition • Inhuman treatment • Conditions of execution of extradition orders problematical in themselves • Applicants not informed of their extradition • Conditions of their removal with a view to extradition

Shamayev and Others v. Georgia and Russia, 2005-III

Extradition to a State not party to the Convention where the applicant is liable to life imprisonment without parole

Extradition • Extradition to a State not party to the Convention where the applicant is liable to life imprisonment without parole • *Ex ante* assessment of the risk incurred

Trabelsi v. Belgium, 2014-V (extracts)

Extradition to the United States of person asserting that he ran the risk of life imprisonment there without any possibility of early release

Extradition • Inhuman treatment • Extradition to the United States of person asserting that he ran the risk of life imprisonment there without any possibility of early release • Attitude of relevant prosecuting authorities in the United States • United States authorities' undertakings such as to avert danger of life imprisonment without any possibility of early release

Nivette v. France (dec.), 2001-VII

Extradition to the United States, where applicant would allegedly face “death-row phenomenon” and irreducible life sentence

Extradition • Inhuman treatment and punishment • Extradition to the United States, where applicant would allegedly face “death-row phenomenon” and irreducible life sentence • Attitude of competent prosecuting authorities in the United States • American authorities' undertakings sufficient to remove danger of death sentence • Irreducible life sentence • Possibility of parole

Einhorn v. France (dec.), 2001-XI

ARTICLE 4

PROHIBITION OF SLAVERY AND FORCED LABOUR

Refusal to take work performed in prison into account in calculation of pension rights

Forced or compulsory labour • Work required to be done in the ordinary course of detention • Refusal to take work performed in prison into account in calculation of pension rights

Stummer v. Austria [GC], 2011-V

Foreign minor held in domestic servitude

Foreign minor held in domestic servitude • Forced labour • Servitude • Slavery • Positive obligations • Practical and effective protection

Siliadin v. France, 2005-VII

Order by the authorities for payment of a fee, despite stay of execution of the decision imposing it, by an army medical officer seeking to resign before the end of his term of service

Forced labour • Order by the authorities for payment of a fee, despite stay of

execution of the decision imposing it, by an army medical officer seeking to resign before the end of his term of service • Work by regular members of armed forces potentially qualifying as forced or compulsory labour • Requirement to commit to serving in the army for a certain number of years after obtaining degree • Duration of officers' engagement and possibility of ending it • Margin of appreciation • Principle of buying back remaining years of service • Proportionality • Reasonable amount • Surcharge of approximately 13% in interest • Risk of increase pending Court of Audit's decision • Debt not repayable in instalments • Action under constraint • Disproportionate burden

Chitos v. Greece, 2015-V (extracts)

TRAFFICKING IN HUMAN BEINGS

Trafficking in human beings

Applicability • Trafficking in human beings • Nature of trafficking • Incompatibility of trafficking with Convention values • Positive obligations to prevent trafficking, protect victims and prosecute traffickers • Obligation to cooperate with other investigating States • Failure to establish suitable framework to combat trafficking in human beings or to take operational measures to protect victims • “Cabaret-artiste” visa regime • Indicators of real and immediate risk of trafficking or exploitation

Rantsev v. Cyprus and Russia, 2010-I (extracts)

ARTICLE 5

Failure to conduct effective investigation into arguable claim that missing men had been detained during military operations

Liberty of person • Failure to conduct effective investigation into arguable claim that missing men had been detained during military operations

Varnava and Others v. Turkey [GC], 2009-V

Detention of alien beyond period required to check her papers and subsequent consignment to custody of private individual

Deprivation of liberty • Lawfulness of detention • Detention of alien beyond period required to check her papers and subsequent consignment to custody of private individual • Arbitrariness

Rantsev v. Cyprus and Russia, 2010-I (extracts)

Article 5 § 1

LIBERTY AND SECURITY OF PERSON

Disappearance following detention by security forces and effectiveness of subsequent investigation

Liberty and security of person • Disappearance following detention by security forces • Deficiencies in custody records • Effectiveness of investigation into disappearance

Çakıcı v. Turkey [GC], 1999-IV

Detention during and following operation involving extraordinary rendition to CIA

Liberty and security of person • Detention during and following operation involving extraordinary rendition to CIA • Extraordinary place of detention outside any judicial framework • Unacknowledged and incommunicado detention • Arbitrary deprivation of liberty • Deliberate circumvention of due process • Positive obligation • Failure to protect the applicant from arbitrary detention in a State not party to the Convention • “Enforced disappearance” • Effective investigation

El-Masri v. the former Yugoslav Republic of Macedonia [GC], 2012-VI

Disappearance following detention by security forces and effectiveness of subsequent investigation

Liberty and security of person • Disappearance following unacknowledged detention by security forces • Deficiencies in custody records • Effectiveness of investigation into disappearance

Timurtaş v. Turkey, 2000-VI

Abduction and killing of a civilian in Chechnya by agents of the Russian State, followed by inadequate criminal investigation

Liberty of person • Deprivation of liberty • Lawful arrest or detention • Procedure prescribed by law • Unacknowledged detention

Luluyev and Others v. Russia, 2006-XIII (extracts)

Alleged risk of breach of Article 5 rights in event of expulsion to non-Contracting State

Expulsion • Length of pre-trial detention • Alleged risk of breach of Article 5 rights in event of expulsion to non-Contracting State • Applicability of Article 5 to

detention following expulsion • High threshold applicable to real-risk-of-flagrant-breach-of-rights test in expulsion cases

Othman (Abu Qatada) v. the United Kingdom, 2012-I (extracts)

Preventive detention of convicted prisoner until judgment became final, even after his prison sentence had expired

Lawful arrest or detention • After conviction • Preventive detention of convicted prisoner until judgment became final, even after his prison sentence had expired

Ruslan Yakovenko v. Ukraine, 2015-II

DEPRIVATION OF LIBERTY

Detention of crew on board foreign ship intercepted on the high seas

Deprivation of liberty • Applicability • Detention of crew on board foreign ship intercepted on the high seas • Legal channels • Public international law principle of the exclusive jurisdiction of the flag State in cases concerning drug trafficking on the high seas • Flag State not party to international agreements on the subject • Diplomatic note of flag State formally authorising interception, inspection and legal action • Diplomatic note compared with agreement or treaty in international law • Lack of precision, clarity and foreseeability of diplomatic note • Exceptional, one-off nature of cooperation measure between two States • Lack of legal certainty

Medvedyev and Others v. France [GC], 2010-III

Lawfulness of placement in a social care home for people with mental disorders

Deprivation of liberty • Lawfulness of placement in a social care home for people with mental disorders • Applicability • System of leave of absence • Applicant's state of health not likely to put him at immediate risk • Indefinite duration of placement • Lack of consent by the person concerned • Significant restrictions on personal liberty • Procedure prescribed by law • Person of unsound mind • Lack of assessment at regular intervals of persistence of mental disorders warranting placement

Stanev v. Bulgaria [GC], 2012-I

Containment of peaceful demonstrators within a police cordon for over seven hours

Deprivation of liberty • Applicability • Kettling • Containment of peaceful demonstrators within a police cordon for over seven hours • Criteria for determining whether there has been deprivation of liberty • Distinction between deprivation of liberty and restriction on freedom of movement • Type of measure • Manner of

implementation • Least intrusive and most effective means of averting real risk of serious injury or damage in exceptional circumstances of case

Austin and Others v. the United Kingdom [GC], 2012-II

Prohibition on travel through country surrounding enclave

Deprivation of liberty • Applicability • Prohibition on travel through country surrounding enclave • Confined geographical area • Restrictions not preventing free movement within territory of permanent residence

Nada v. Switzerland [GC], 2012-V

Members of sect deprived of liberty in order to be “deprogrammed”

Deprivation of liberty • Legal remedies • Members of a sect deprived of liberty in order to be “deprogrammed” • No legal basis in domestic law • Whether deprivation of liberty attributable to the authorities: authorities’ role and the decisiveness of their intervention

Riera Blume and Others v. Spain, 1999-VII

Placement of elderly person in a nursing home on account of serious neglect

Deprivation of liberty • Placement of elderly person in a nursing home on account of serious neglect • Factors to be taken into account in determining whether a measure constitutes a deprivation of liberty • Examination of whether placement of an elderly person in a nursing home constituted a deprivation of liberty • Measure taken in the interests of the individual

H.M. v. Switzerland, 2002-II

Detention order inconsistent with general protection against arbitrariness

Deprivation of liberty • Lawful arrest or detention • Procedure prescribed by law • Administrative detention • Lack of records of applicant’s arrest • Detention order inconsistent with general protection against arbitrariness

Menesheva v. Russia, 2006-III

Detention of an unaccompanied five-year-old in a facility for adults

Physical liberty • Right to liberty • Detention of an unaccompanied five-year-old in a facility for adults • Conditions relating to quality which laws authorising a deprivation of liberty must satisfy to avoid all risk of arbitrariness • Absence of statutory provisions dealing specifically with minors

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, 2006-XI

Hospitalisation of borderline mental patient

Deprivation of liberty • Hospitalisation of borderline mental patient • Factors relevant to issue of consent to confinement • Absence of reliable evidence of condition necessitating confinement

Shtukaturov v. Russia, 2008-II

Continued placement in preventive detention beyond maximum period authorised at time of initial detention

Deprivation of liberty • Lawful arrest or detention • Continued placement in preventive detention beyond maximum period authorised at time of initial detention • Procedure prescribed by law • Retroactivity • After conviction • Lack of sufficient causal connection between conviction and continued deprivation of liberty • Reasonably necessary to prevent offence • Potential further offences not sufficiently concrete and specific • Persons of unsound mind

M. v. Germany, 2009-VI

Forced confinement in a mental institution

Deprivation of liberty • Persons of unsound mind • Forced confinement in a mental institution • Lack of independent psychiatric opinion concerning continued confinement • Inability of patient to seek judicial review of need to continue confinement • Lack of adequate safeguards against arbitrariness

X v. Finland, 2012-IV (extracts)

Transfer and stay at police headquarters of a group of immigrant protesters with a view to identifying and deporting unlawful residents

Deprivation of liberty • Applicability • Transfer and stay at police headquarters of a group of immigrant protesters with a view to identifying and deporting unlawful residents • Criteria for determining whether there has been a deprivation of liberty • Element of coercion • Scale, aim and early hour of police operation • Deprivation of liberty without any clear legal basis

M.A. v. Cyprus, 2013-IV (extracts)

Suicide of detainee confined to cell due to disruptive behaviour

Deprivation of liberty • Measures taken in prison • Disciplinary measures affecting conditions of detention • Confinement of detainee to cell due to disruptive behaviour

Bollan v. the United Kingdom (dec.), 2000-V

Prisoner-transfer arrangements resulting in longer *de facto* term of imprisonment in receiving State for prisoners who had pleaded guilty – Detention pursuant to prisoner-transfer agreement following allegedly unfair trial in transferring State

Deprivation of liberty • Prisoner-transfer arrangements resulting in longer *de facto* term of imprisonment in receiving State for prisoners who had pleaded guilty • Arbitrariness • Interaction between sentencing law of transferring State and rules on early release in receiving State • Consent to and benefits of transfer for prisoner

Deprivation of liberty • After conviction by a competent court • Detention pursuant to prisoner-transfer agreement following allegedly unfair trial in transferring State • Flagrant denial of justice • Presumptions of fact or of law • Irrebuttable presumption under foreign law precluding defence that drugs were for personal use did not destroy very essence of right to fair trial

Willcox and Hurford v. the United Kingdom (dec.), 2013-I

LAWFUL ARREST OR DETENTION

Delay in executing an order for a prisoner's release after acquittal

Lawfulness of detention • Delay in executing an order for a prisoner's release after his acquittal

Labita v. Italy [GC], 2000-IV

Refusal by a territorial entity to comply with a judgment acquitting the applicant issued by the central authority

Lawful detention • Refusal by a territorial entity to comply with a judgment acquitting the applicant issued by the central authority • Continued detention of an applicant following a final and enforceable order for his release • Deprivation of liberty without statutory basis • Legal certainty

Assanidze v. Georgia [GC], 2004-II

Continued preventive detention of Iraqi national by British armed forces in Iraq on basis of United Nations Security Council Resolution

Lawful arrest or detention • Continued preventive detention of Iraqi national by British armed forces in Iraq on basis of United Nations Security Council resolution • Conflict of international obligations • Presumption that United Nations Security Council resolutions not intended to impose obligation to breach fundamental

principles of human rights • Indefinite detention without charge • Absence of binding obligation express or implied to use internment

Al-Jedda v. the United Kingdom [GC], 2011-IV

Postponement of final date of release as a result of change in case-law after imposition of original sentence

Lawful arrest or detention • Postponement of final date of release as a result of change in case-law after imposition of original sentence

Del Río Prada v. Spain [GC], 2013-VI (extracts)

Internment in Iraq under Third and Fourth Geneva Conventions

Lawful arrest or detention • Internment in Iraq under Third and Fourth Geneva Conventions • International armed conflict • Absence of request for derogation under Article 15 of the Convention • Rules of interpretation under Article 31 § 3 (b) and (c) of Vienna Convention on the Law of Treaties • Subsequent State practice of non-derogation • Interrelationship between international humanitarian law and international human rights law • Grounds of permitted deprivation of liberty under Article 5 § 1 of the Convention • Lawfulness • Arbitrariness • Procedural safeguards

Hassan v. the United Kingdom [GC], 2014-VI

Prolongation of detention on remand on the basis of a practice lacking any legal basis

Lawful detention • Prolongation of detention on remand on the basis of a practice lacking any legal basis • Foreseeability • Legal certainty • Implicit requirement that prolongation of detention be ordered by a court or judge

Baranowski v. Poland, 2000-III

Detention in a sobering-up centre

Lawful detention • Deprivation of liberty • Alcoholics • Interpretation of the term “alcoholics” • Vienna Convention on the Law of Treaties • Intoxicated persons • Behaviour threatening to others or oneself • Sobering-up centre • Detention in a sobering-up centre • Consideration of alternatives to detention

Witold Litwa v. Poland, 2000-III

Prolongation of detention on remand without any legal basis

Lawful detention • Preventive detention • Prolongation of detention on remand

without any legal basis • Legal certainty • Lack of precision of law • Practice lacking any legal basis • Procedure prescribed by law • Lack of precision in detention order

Jėčius v. Lithuania, 2000-IX

Detention aimed at preventing participation in demonstrations

Lawful arrest or detention • Detention reasonably necessary to prevent a concrete and specific offence • Secure fulfilment of obligation prescribed by law • Detention aimed at preventing participation in demonstrations

Schwabe and M.G. v. Germany, 2011-VI (extracts)

Article 5 § 1 (a)

DETENTION AFTER CONVICTION

Continued detention, following expiry of a prison sentence, on the basis of an earlier mandatory life sentence in respect of which a life licence had been revoked

Lawful detention • Continued detention, following expiry of a prison sentence, on the basis of an earlier mandatory life sentence in respect of which a life licence had been revoked • Detention after conviction • Mandatory life sentence • Lawfulness of detention in domestic law • Dynamic interpretation of the Convention • Developments in domestic law • Nature of mandatory life sentence • Fixing of punishment element of sentence by the executive • Absence of causal connection between purpose of continued detention and original sentence • Absence of danger to the public

Stafford v. the United Kingdom [GC], 2002-IV

Detention after conviction under a regime not recognised by the international community

Lawful detention • Detention after conviction under a regime not recognised by the international community • Detention after conviction by a competent court • Responsibility of Moldova and the Russian Federation in respect of continuing detention on the basis of convictions by “the Supreme Court of the Moldavian Republic of Transdnistria” prior to their ratification of the Convention • Arbitrary nature of circumstances in which applicants tried and convicted

Ilaşcu and Others v. Moldova and Russia [GC], 2004-VII

House arrest imposed on a civil guard by his superior for a disciplinary breach

After conviction by a competent court • House arrest imposed on a civil guard by his superior for a disciplinary breach • Holding of disciplinary proceedings before superior lacking any independence from his hierarchy • Appeal without suspensive effect against immediately enforceable sentence of house arrest

Dacosta Silva v. Spain, 2006-XIII

Jurisdiction of German courts to try the applicant for genocide committed in Bosnia and Herzegovina

Lawful arrest or detention • After conviction • Competent court • Jurisdiction of German courts to try the applicant for genocide committed in Bosnia and Herzegovina

Jorgic v. Germany, 2007-III

Transfer of prisoner to his country of origin where he might be released on parole later than in the respondent State

Deprivation of liberty • Lawful arrest or detention • After conviction • Transfer of prisoner to his country of origin where he might be released on parole later than in the respondent State • Convention on the Transfer of Sentenced Persons • No obligation for Contracting Parties to impose Convention standards on third States • Interpretation in line with current trend towards strengthening international cooperation in the administration of justice • Safeguards against arbitrariness • Possibility of challenging transfer decision in the sentencing State • No risk of a flagrantly longer *de facto* sentence in the administering State • Applicant's case to be heard before a court in the administering State prior to sentence conversion

Veermäe v. Finland (dec.), 2005-VII

Transfer of a sentenced foreign national to his country of origin resulting *de facto* in a longer term of imprisonment

Deprivation of liberty • After conviction • Convention on the Transfer of Sentenced Persons • Transfer of a sentenced foreign national to his country of origin resulting *de facto* in a longer term of imprisonment • Lack of arbitrariness • Proportionality

Szabó v. Sweden (dec.), 2006-VIII

Article 5 § 1 (b)

LAWFUL ARREST OR DETENTION FOR NON-COMPLIANCE WITH A COURT ORDER OR TO SECURE FULFILMENT OF OBLIGATIONS PRESCRIBED BY LAW

Disproportionate detention for failure to pay amount due for breach of bail conditions

Non-compliance with court order • Secure fulfilment of obligation prescribed by law • Lawfulness of detention • Disproportionate detention for failure to pay amount due for breach of bail conditions

Gatt v. Malta, 2010-V

Article 5 § 1 (c)

ARREST OR DETENTION WITH A VIEW TO BRINGING BEFORE COMPETENT AUTHORITY

Detention in respect of acts allegedly not constituting a criminal offence

Lawful detention • Reasonable suspicion of an offence • Detention in respect of acts allegedly not constituting a criminal offence • Uncertainty as to interpretation of legal provision • Absence of arbitrariness or unreasonableness in courts' interpretation of law

Włoch v. Poland, 2000-XI

Disappearance of person held in police custody and effectiveness of the investigation into his disappearance

Lawful detention • Disappearance of person held in police custody • Authorities' refusal to acknowledge detention • Authorities' duty to provide information on a detainee's fate • Entry in the custody record • Lack of any plausible explanation as to the detainee's fate

İrfan Bilgin v. Turkey, 2001-VIII

Delay in transferring applicants pursuant to decision to substitute house arrest for detention pending trial

Deprivation of liberty • Lawful detention • Delay in transferring applicants pursuant to decision to substitute house arrest for detention pending trial • Change in nature of place of pre-trial detention • Pre-trial detention in prison • House arrest • Authorities obliged to keep delays in carrying out decisions to release detainees to a minimum

Mancini v. Italy, 2001-IX

Reasonableness of suspicion held by police officer effecting arrest

Lawful arrest or detention • Reasonable suspicion • Reasonableness of suspicion held by police officer effecting arrest • Terrorist offences • Police informants • Protection of confidential sources • Information provided to arresting officer by superiors • Examination by domestic courts of reasonableness of suspicion • Absence of evidence of lack of good faith • Accountability of police

O'Hara v. the United Kingdom, 2001-X

Whether there was a valid detention order

Lawful detention • Whether there was a valid detention order • Continuation of pre-trial detention during examination of case file by indictment division • Examination of applicable domestic law • Foreseeability • Lawfulness • Well-established case-law of long standing • Applicant assisted by lawyer

Laumont v. France, 2001-XI

Detention in breach of domestic-law requirement of written detention order

Lawful detention • Detention in breach of domestic-law requirement of written detention order • Deficiencies in custody records

Angelova v. Bulgaria, 2002-IV

Independence of prosecutor ordering pre-trial detention

Lawful arrest and detention • Procedure prescribed by law • Absence of legal basis in domestic law

Pantea v. Romania, 2003-VI (extracts)

Detention notwithstanding amnesty precluding criminal prosecution

Lawful detention • Detention notwithstanding amnesty precluding prosecution • Reasonable suspicion of having committed an offence • Evidence satisfying objective observer • Procedure prescribed by law • Quality of law • Absence of examples of application of legal provision • Detention contrary to provisions of domestic law

Gusinskiy v. Russia, 2004-IV

Remand prisoner taken back to gendarmerie command for questioning

Lawful detention • Remand prisoner taken back to gendarmerie command for questioning • Legislation in force during state of emergency

Emrullah Karagöz v. Turkey, 2005-X (extracts)

Arrest of illegal immigrants

Lawful arrest • Reasonable grounds of suspicion • Arrest of illegal immigrants

Cisse v. France (dec.), 2001-I

Article 5 § 1 (d)**MINORS****Detention of minor in penal institution due to lack of appropriate secure educational facilities**

Lawful detention • Detention of minor in penal institution due to lack of appropriate secure educational facilities • Deprivation of liberty • Educational supervision • State's obligation to put in place appropriate institutional facilities • Availability of optional educational facilities • Interim custody measure followed speedily by educational supervisory regime • Absence of proposals for secure and appropriate educational facilities

D.G. v. Ireland, 2002-III

Article 5 § 1 (e)**PREVENTION OF SPREADING OF INFECTIOUS DISEASES****HIV-positive person placed in compulsory isolation in order to prevent him from spreading his infection**

Deprivation of liberty • HIV-positive person placed in compulsory isolation in order to prevent him from spreading his infection • Lawful arrest or detention • Prevention of the spreading of infectious diseases • Proportionality

Enhorn v. Sweden, 2005-I

PERSONS OF UNSOUND MIND**Lawfulness of psychiatric confinement for examination ordered by a prosecutor without obtaining a medical opinion**

Deprivation of liberty • Lawful detention • Procedure prescribed by law • Persons of unsound mind • Lawfulness of psychiatric confinement for examination ordered by a prosecutor without obtaining a medical opinion • Requirement of recent medical evidence of mental illness • Absence of legal basis for committal to psychiatric hospital by a prosecutor

Varbanov v. Bulgaria, 2000-X

Lawfulness of detention on the basis of a mental disorder not amenable to treatment

Lawful detention • Lawfulness of detention on the basis of a mental disorder not amenable to treatment • Purpose of compulsory confinement on grounds of mental illness • Risk of reoffending • Benefit of hospital environment • Relationship between grounds of detention and the place and conditions of detention

Hutchison Reid v. the United Kingdom, 2003-IV

Psychiatric confinement as an “informal patient” of individual incapable of giving or refusing consent

Lawful arrest or detention • Persons of unsound mind • Psychiatric confinement as an “informal patient” of individual incapable of giving or refusing consent • Deprivation of liberty • Examination of concrete situation • Existence of mental disorder warranting compulsory confinement • Basis for detention in domestic law • Lack of procedural safeguards

H.L. v. the United Kingdom, 2004-IX

Deferral of discharge from detention in psychiatric hospital because of health authority’s inability to provide psychiatric supervision

Lawful detention • Persons of unsound mind • Mental disorder • Conditional discharge • Deferral of discharge from detention in psychiatric hospital because of health authority’s inability to provide psychiatric supervision

Kolanis v. the United Kingdom, 2005-V

Lack of legal basis for admission to and treatment in a private psychiatric clinic

Deprivation of liberty • Persons of unsound mind • Lawfulness of detention • Procedure prescribed by law • Lack of legal basis for admission to and treatment in a private psychiatric clinic • Objective and subjective elements of deprivation of liberty • Capacity to consent • Direct involvement of public authorities • Positive obligations

Storck v. Germany, 2005-V

Transfer of detainee to psychiatric hospital in another State

Lawful detention • Transfer of detainee to psychiatric hospital in another State • Psychiatric detention • Legal basis for detention in another State

Frommelt v. Liechtenstein (dec.), 2003-VII (extracts)

Article 5 § 1 (f)**EXPULSION OR EXTRADITION****Indefinite detention of foreign nationals suspected of involvement in terrorism**

Deportation • Indefinite detention of foreign nationals suspected of involvement in terrorism • Absence of sufficiently certain or determinative action with a view to deportation

A. and Others v. the United Kingdom [GC], 2009-II

Conditions of detention pending expulsion

Lawful detention • Procedure prescribed by law • Absence of legal basis for detention ordered by a court pending expulsion • Insufficiency of senior public prosecutor's interpretation of law as legal basis for detention

Dougoz v. Greece, 2001-II

Arrest of aliens with a view to their expulsion after requiring them to attend the police station to complete their applications for asylum

Lawful arrests • Arrest of aliens with a view to their expulsion after requiring them to attend the police station to complete their applications for asylum • Expulsion • Misleading conduct by the authorities

Čonka v. Belgium, 2002-I

Unjustified delays in extradition proceedings for purposes of prosecution in another State

Extradition • Unjustified delays in extradition proceedings for purposes of prosecution in another State • Two distinct forms of extradition • Particular expedition required when prosecution is pending in requesting State • Unjustified delays in extradition proceedings

Gallardo Sanchez v. Italy, 2015-II

PREVENT UNAUTHORISED ENTRY INTO COUNTRY**Detention for seven days of a temporarily admitted asylum-seeker in a detention centre**

To prevent his effecting an unauthorised entry into the country • Detention for seven days of a temporarily admitted asylum-seeker in a detention centre • Right to control the entry and residence of aliens • Lawful detention • Good faith •

Deprivation of liberty to enable an asylum claim to be processed speedily and effectively • Appropriate conditions of detention • Reasonable period of detention

Saadi v. the United Kingdom [GC], 2008-I

Holding of asylum-seeker in airport waiting zone after the Court had indicated an interim measure under Rule 39 of the Rules of Court aimed at preventing his removal to his country of origin

Deprivation of liberty • Legal remedies • Lawful detention • Preventing unauthorised entry into country • Holding of asylum-seeker in airport waiting zone after the Court had indicated an interim measure under Rule 39 of the Rules of Court aimed at preventing his removal to his country of origin

Gebremedhin [Gaberamadhien] v. France, 2007-II

Asylum-seekers refused entry into Austria, and their subsequent stay in transit zone of Vienna Airport

Deprivation of liberty • Asylum-seekers refused entry into Austria, and their subsequent stay in transit zone of Vienna Airport • Physical liberty • Unsuccessful attempts of expulsion by authorities • Strict police surveillance only for some hours • Freedom of movement whilst in transit zone • Situation not equivalent or comparable to that of detained persons • Control of aliens' entry into territory

Mahdid and Haddar v. Austria (dec.), 2005-XIII (extracts)

Article 5 § 2

INFORMATION ON REASONS OF ARREST

Seventy-six hour delay in informing a temporarily admitted asylum-seeker of the reasons for his detention in a detention centre

Information on reasons for arrest • Seventy-six hour delay in informing a temporarily admitted asylum-seeker of the reasons for his detention in a detention centre • Failure to meet requirement to give reasons promptly

Saadi v. the United Kingdom [GC], 2008-I

Whether suspected terrorist informed of reasons for his arrest

Whether suspected terrorist informed of reasons for his arrest • Whether informed of charge • Whether informed promptly

Dikme v. Turkey, 2000-VIII

Arrest of aliens with a view to their expulsion after requiring them to attend the police station to complete their applications for asylum

Information on the reasons for the arrest • Arrest of aliens with a view to their expulsion after requiring them to attend the police station to complete their applications for asylum • Notification of the reasons for arrest • Presence of an interpreter
Čonka v. Belgium, 2002-I

Conditions of extradition and detention

Information on reasons for arrest • Detention with a view to extradition
Shamayev and Others v. Georgia and Russia, 2005-III

Article 5 § 3

JUDGE OR OTHER OFFICER EXERCISING JUDICIAL POWER

Independence of military officer before whom detainee brought

Judge or other officer exercising judicial power • Independence of judge or other officer • Independence of officer deciding on detention of soldier
Hood v. the United Kingdom [GC], 1999-I

Detainee brought before judge without power to order release

Judge or other officer exercising judicial power • Judge lacking power to order release • Scope of review on first appearance of detainee before judge
Aquilina v. Malta [GC], 1999-III

Detainee brought before judge without power to order release

Judge or other officer exercising judicial power • Judge lacking power to order release • Automatic refusal of bail when person charged with certain serious offences has previously been convicted of one of those offences
Caballero v. the United Kingdom [GC], 2000-II

Ordering of house arrest by investigator

Judge or other officer authorised by law to exercise judicial power • Ordering of house arrest by investigator • Deprivation of liberty • Independence and impartiality of officer ordering detention • Role of investigator in prosecution
Vachev v. Bulgaria, 2004-VIII (extracts)

Inability of judge to address issue of conditional release in early stages of detention

Deprivation of liberty • Brought promptly before judge or other officer • Inability of judge to address issue of conditional release in early stages of detention • Whether Article 5 § 3 imposes obligation to consider conditional release during initial automatic review of lawfulness • Safeguards against arbitrary detention

Magee and Others v. the United Kingdom, 2015-V (extracts)

BROUGHT “PROMPTLY” BEFORE A JUDGE OR OTHER OFFICER

Detainees brought before a judge after thirteen days’ detention following interception of ship on high seas

Brought promptly before a judge or other officer authorised by law • Detainees brought before a judge after thirteen days’ detention following interception of ship on high seas • Normal time taken to reach France • Held in custody for eight or nine hours after arriving in France

Medvedyev and Others v. France [GC], 2010-III

Suspect held in police custody for sixteen days before being brought before a judge

Whether brought promptly before a judge or other judicial officer • Suspect held in police custody for sixteen days before being brought before a judge • Particular demands of investigations into terrorist offences no justification for dispensing with supervision by courts and the Convention institutions

Dikme v. Turkey, 2000-VIII

Effect of expiry of reservation on obligation to bring promptly before a judge

Brought promptly before judge or other officer • Scope of right • Period to take into consideration • Reservation in respect of Article 5 § 3 • Validity of reservation • Effect of expiry of reservation • Length of pre-trial detention

Jėčius v. Lithuania, 2000-IX

Reasonableness of suspicion held by police officer effecting arrest

Brought promptly before a judge • Detention lasting six days and thirteen hours without being brought before a judge • Counter-terrorist legislation

O’Hara v. the United Kingdom, 2001-X

Independence of prosecutor ordering pre-trial detention

Prompt appearance before judge • Length of detention prior to appearance before judge • Scope of supervision at first appearance before judge • No examination of whether detention order was justified • Independence of prosecutor ordering pre-trial detention • Judge or other officer • Independence of judge or officer • Absence of guarantees of independence from executive • Detention of four months' duration prior to appearance before judge to consider whether detention was justified

Pantea v. Romania, 2003-VI (extracts)

Detention lasting sixteen days before person detained brought before a judge, following arrest on the high seas

Brought promptly before a judge • Detention lasting sixteen days before person detained brought before a judge, following arrest on high seas • Exceptional circumstances • Physical impossibility of bringing person detained before a judge

Rigopoulos v. Spain (dec.), 1999-II

RELEASE PENDING TRIAL

Inability to make bail application to resident magistrate for certain types of offence

Release pending trial • Inability to make bail application to resident magistrate for certain types of offence • Distinction between arrest period and pre-trial detention period • No requirement for issues of lawfulness and bail to be examined by same judicial officer • Lawfulness • Prompt, automatic scrutiny by duly empowered judicial officer • Accessible procedure conducted with due expedition

McKay v. the United Kingdom [GC], 2006-X

High sum set for bail in the case of the Master of a ship that caused marine pollution

Release during the proceedings • Guarantee to appear for trial • High sum set for bail in the case of the Master of a ship that caused marine pollution • Amount of bail that exceeded the defendant's capacity to pay but took into consideration the seriousness of the offence, his personal situation and his professional environment • Criminal law as a means of enforcing environmental obligations • Amount of bail relative to the level of liability incurred • Disastrous environmental and economic consequences

Mangouras v. Spain [GC], 2010-V

LENGTH OF PRE-TRIAL DETENTION

Length of detention pending trial

Length of detention pending trial • Determination of the date detention ceased • Whether continued detention was reasonable • Whether reasonable grounds remained for suspecting the person held in detention pending trial of an offence • Statements by *pentiti* to be corroborated if continued detention pending trial is to be justified • Relevant and sufficient grounds • Authorities to exercise special diligence in the prosecution of proceedings against persons held in detention pending trial

Labita v. Italy [GC], 2000-IV

Right to an effective remedy in respect of a complaint concerning the length of court proceedings

Length of pre-trial detention • Calculation of period to be examined • Reasonableness of continuing detention on remand • Risk of absconding • Effect of passage of time on relevance of grounds for detention • Relevant and sufficient reasons

Kudła v. Poland [GC], 2000-XI

Length of detention on remand

Length of detention on remand • Relevant and sufficient reasons • Duty of authorities to act with due expedition

Kalashnikov v. Russia, 2002-VI

Length of detention on remand (five and a half years) of stateless person extradited to Germany to stand trial for international terrorism

Length of pre-trial detention • Reasonableness of pre-trial detention • Length of detention on remand (five and a half years) of stateless person extradited to Germany to stand trial for international terrorism • Relevant and sufficient grounds to be given by domestic authorities • Persistence of reasonable suspicions • Nature and seriousness of offence • Risk of absconding • Lack of fixed dwelling and social ties in the respondent State • Complexity of investigation • Special diligence to be displayed by domestic authorities in the conduct of proceedings • Special consideration called for with regard to international terrorism

Chraïdi v. Germany, 2006-XII

Pre-trial detention of minor for four and a half years

Length of pre-trial detention • Pre-trial detention of minor for four and a half

years • Absence of genuine public-interest requirement • Failure to consider alternative measures

Güveç v. Turkey, 2009-I (extracts)

Article 5 § 4

REVIEW OF LAWFULNESS OF DETENTION

Scope of court review of lawfulness of detention

Review of lawfulness of detention • Scope of review of lawfulness of detention on remand • Court not empowered to examine circumstances militating against detention on remand • Procedural guarantees of review • Adversarial proceedings • Equality of arms • Detainee not informed of prosecutor's comments on appeal against detention • Access to file • Detainee denied access to investigation file for appeal against detention

Nikolova v. Bulgaria [GC], 1999-II

Public trial in an adult court of juvenile charged with murder and imposition of a sentence of detention during Her Majesty's pleasure with a tariff of fifteen years fixed by a member of the executive

Review of lawfulness of detention • Take proceedings • Detention during Her Majesty's pleasure • Incorporation of review in trial court's sentence • Review not incorporated in trial court's sentence when tariff part of indeterminate sentence not set by the court

V. v. the United Kingdom [GC], 1999-IX

Impartiality of judge participating in examination of application for release from psychiatric detention after giving opinion as qualified psychiatrist

Review of lawfulness of detention • Review by court • Psychiatric detention • Impartiality of judge participating in examination of application for release from psychiatric detention after giving opinion as qualified psychiatrist • Impartiality of "tribunal" • Objective impartiality • Examination of role of judge • Tribunal requested to assess evidence previously given by one of its judges in form of expert opinion • Judge having previously twice formulated prior to hearing his conclusion regarding application for release

D.N. v. Switzerland [GC], 2001-III

Continued detention, following expiry of a prison sentence, on the basis of an earlier mandatory life sentence in respect of which a life licence had been revoked

Review of lawfulness of detention • Nature of mandatory life sentence • Basis of

continuing detention susceptible to change with passage of time • Review of lawfulness not incorporated in trial and appeal proceedings • Absence of review of lawfulness of detention

Stafford v. the United Kingdom [GC], 2002-IV

Withholding on national security grounds of material relevant to lawfulness of detention

Review of lawfulness of detention • Take proceedings • Withholding on national security grounds of material relevant to lawfulness of detention • Requirement for specific allegations affording defence opportunity to refute

A. and Others v. the United Kingdom [GC], 2009-II

Lack of remedies to challenge lawfulness of placement in a social care home for people with mental disorders

Review of lawfulness of detention • Introduction of a remedy • Lack of remedies to challenge lawfulness of placement in a social care home for people with mental disorders • Lack of automatic periodic judicial review of placement

Stanev v. Bulgaria [GC], 2012-I

Prolongation of detention on remand without any legal basis

Review of lawfulness of detention • Scope of review of lawfulness of detention • Absence of right of appeal against decisions relating to detention on remand

Jėčius v. Lithuania, 2000-IX

Lawfulness of psychiatric confinement for examination ordered by a prosecutor without obtaining a medical opinion

Review of lawfulness of detention • Review by a court • Absence of court review of psychiatric confinement ordered by a prosecutor

Varbanov v. Bulgaria, 2000-X

Lack of procedural guarantees in review of lawfulness of detention

Review of lawfulness of detention • Procedural guarantees of review • Absence of right to attend or be represented at hearings concerning detention on remand • Absence of opportunity to respond to prosecutor's submissions • Access to file • Adversarial proceedings • Equality of arms • Speed of review of lawfulness of detention

Włoch v. Poland, 2000-XI

Refusal of access to investigation file in connection with detention on remand

Review of lawfulness of detention • Refusal of access to investigation file in connection with detention on remand • Detention on remand • Procedural guarantees of review • Adversarial proceedings • Equality of arms • Access to investigation file • Relevance of Article 6 to pre-trial proceedings • Relevance of guarantees of Article 6 to proceedings for review of lawfulness of detention • Obligation to give accused access to information essential for assessment of lawfulness of detention

Lietzow v. Germany, 2001-I

Review of lawfulness of detention • Refusal of access to investigation file in connection with detention on remand • Detention on remand • Procedural guarantees of review • Adversarial proceedings • Equality of arms • Access to investigation file • Relevance of Article 6 to pre-trial proceedings • Relevance of guarantees of Article 6 to proceedings for review of lawfulness of detention • Obligation to give accused access to information essential for assessment of lawfulness of detention • Waiver of rights

Schöps v. Germany, 2001-I

Conditions of detention pending expulsion

Review of lawfulness of detention • Absence of review of lawfulness of detention pending expulsion • Discretionary powers of ministers • Failure of court to rule on complaint

Dougoz v. Greece, 2001-II

Arrest of aliens with a view to their expulsion after requiring them to attend the police station to complete their applications for asylum

Take proceedings • Persons detained unable to exercise existing remedies

Čonka v. Belgium, 2002-I

Lack of effective legal assistance in proceedings for review of need for continued psychiatric detention

Review of lawfulness of detention • Speedily • Lack of periodic review of lawfulness of continued psychiatric detention and non-examination of detainee's applications for release • Lack of recent medical evidence • Failure to comply with mandatory periodic review prescribed by law • Procedural guarantees of review • Lack of effective legal assistance in proceedings for review of need for continued psychiatric detention

Magalhães Pereira v. Portugal, 2002-I

Dismissal of an appeal against detention on remand, on the ground of failure to comply with time-limit

Review of lawfulness of detention • Dismissal of an appeal against detention on remand, on the ground of failure to comply with time-limit • Strict scrutiny of procedural limitations on right to challenge lawfulness of detention • Absence of review by independent judicial officer • Lack of clarity in law and practice

Shishkov v. Bulgaria, 2003-I (extracts)

Burden of proof placed on detainee to show no mental illness warranting detention

Review of lawfulness of detention • Burden of proof placed on detainee to show no mental illness warranting detention • Burden of proof capable of influencing outcome of review of lawfulness of detention • Speediness of review • Relevance of period concerning judicial review

Hutchison Reid v. the United Kingdom, 2003-IV

Ordering of house arrest by investigator

Review of lawfulness of detention • Absence of judicial review of lawfulness of house arrest • Incorporation of the Convention • Absence of case-law demonstrating effectiveness of remedy based on Convention

Vachev v. Bulgaria, 2004-VIII (extracts)

Psychiatric confinement as an “informal patient” of individual incapable of giving or refusing consent

Review of lawfulness of detention • Scope of *habeas corpus* proceedings • Scope of judicial review • Relevance of action in negligence • Action for false imprisonment • Application for declaratory relief • Absence of case-law demonstrating effectiveness of review

H.L. v. the United Kingdom, 2004-IX

Conditions of extradition and detention

Review of lawfulness of detention • Lodging of appeal • Detention with a view to extradition • Applicant not informed of extradition proceedings against him • Lack of access to extradition case file

Shamayev and Others v. Georgia and Russia, 2005-III

Prolongation of detention on remand without public hearing

Review of lawfulness of detention • Prolongation of detention on remand without public hearing • Different purposes pursued by Article 5 § 4 and Article 6 • Reviews of lawfulness of detention liable to be delayed if held in public

Reinprecht v. Austria, 2005-XII

Decisions ordering extension of detention on remand

Review of lawfulness of detention on remand • Decisions ordering extension of detention on remand • Scope of review • Procedural guarantees accompanying review • Effective examination of parties' observations • Reasons given for extension orders • Access to file • Formalism • Equality of arms • Refusal to grant detained person's lawyer access to investigation file • Obligation to allow access to file to enable effective challenge to be made against continuing detention • Obligation to provide remedy capable of ensuring adequate periodic review of lawfulness of detention at trial stage • Accessibility and effectiveness of remedy

Svipsta v. Latvia, 2006-III (extracts)

Failure to notify the applicant or his counsel of a Court of Cassation hearing concerning pre-trial detention

Review of the lawfulness of detention • Pre-trial detention • Failure to notify the applicant or his counsel of a Court of Cassation hearing concerning pre-trial detention • Public prosecutor's appeal on points of law following applicant's release from pre-trial detention • Adversarial proceedings • Equality of arms

Fodale v. Italy, 2006-VII

Deportation of an alien despite the fact she had made a successful application for release

Deportation of an alien despite the fact that she had made a successful application for release • Remedy deprived of all effectiveness

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, 2006-XI

Inability of person deprived of legal capacity to challenge lawfulness of detention other than through guardian

Review of the lawfulness of detention • Inability of person deprived of legal capacity to challenge lawfulness of detention other than through guardian • Absence of court review • Inquiry by prosecutor not equivalent to review by court

Shtukaturv v. Russia, 2008-II

Thirteen days' detention without charge under anti-terrorism legislation

Review of lawfulness of detention • Thirteen days' detention without charge under anti-terrorism legislation • Deprivation of liberty on grounds of reasonable suspicion of commission of an offence • National security • Threat of imminent terrorist attack justifying some restrictions on adversarial procedure for warrants for further detention • Closed hearings • Power to appoint special advocate • Procedural fairness in proceedings to determine lawfulness of detention

Sher and Others v. the United Kingdom, 2015-VII (extracts)

SPEEDINESS OF REVIEW

Length of time taken to decide on a request for release from psychiatric detention

Review of lawfulness of detention • Speediness of review • Psychiatric detention • Time taken to examine request for release from psychiatric detention • Courts' responsibility in respect of experts

Musiak v. Poland [GC], 1999-II

Length of time taken to decide on applications for release from detention on remand

Review of lawfulness of detention • Speediness of review • Length of time taken to decide on applications for release from detention on remand • Complexity of medical issues • Complexity of medical issues not absolving authorities from obligation to ensure speedy review of lawfulness of detention

Baranowski v. Poland, 2000-III

Two-year period between automatic reviews of discretionary life sentence

Review of lawfulness of detention • Speediness of review • Discretionary life sentence • Two-year period between automatic reviews of discretionary life sentence

Oldham v. the United Kingdom, 2000-X

Deferral of discharge from detention in psychiatric hospital because of health authority's inability to provide psychiatric supervision

Review of lawfulness of detention • Speediness of review • Inability of tribunal to review of its own motion or on application • Release on conditions

Kolanis v. the United Kingdom, 2005-V

Applications for immediate discharge from psychiatric institution not examined by a court

Speedy review • Compulsory admission to psychiatric institution • Applications for immediate discharge from psychiatric institution not examined by a court

Van Glabeke v. France, 2006-III

Inordinate delay by Supreme Court and refusal to entertain appeal against detention once period covered by detention order had expired

Review of lawfulness of detention • Speediness of review • Inordinate delay by Supreme Court and refusal to entertain appeal against detention once period covered by detention order had expired • Effective remedy • Legal interest in determination of lawfulness of detention after detainee's release

S.T.S. v. the Netherlands, 2011-III

Time taken to hear an application for a provisional stay of execution of an order requiring two stowaways to be confined on board ship

Speedy review • Time taken to hear an application for a provisional stay of execution of an order requiring two stowaways to be confined on board ship • Detention ending "speedily" • Release ordered by person responsible for the deprivation of liberty before the court had heard the application • Account taken of the effective length of "detention", which in any event ended "speedily"

M.A. and M.M. v. France (dec.), 1999-VIII

Article 5 § 5

COMPENSATION

Right to compensation in respect of allegedly unlawful pre-trial detention

Compensation • Right to compensation in respect of allegedly unlawful pre-trial detention • Possibility of applying for compensation in respect of pre-trial detention, following acquittal • Right to compensation for "unjust" detention comparable to right to compensation for unlawful detention

N.C. v. Italy [GC], 2002-X

Absence of enforceable claim before national courts

Compensation • Absence of enforceable claim before national courts • Powers limited to issuing declaration of incompatibility with Convention

A. and Others v. the United Kingdom [GC], 2009-II

Deferral of discharge from detention in psychiatric hospital because of health authority's inability to provide psychiatric supervision

Compensation • No enforceable right to compensation prior to entry into force of the Human Rights Act 1998

Kolanis v. the United Kingdom, 2005-V

ARTICLE 6

Article 6 § 1 (civil and administrative)

APPLICABILITY

Applicability of Article 6 to disputes raised by public servants

Applicability • Civil rights and obligations • Administrative proceedings • Public officials under contract • Concept of “civil service” • Autonomous interpretation • Participation in exercise of powers conferred by public law and duties designed to protect the general interests of the State and other public authorities • State's sovereign power • Disputes concerning pensions

Pellegrin v. France [GC], 1999-VIII

Applicability of Article 6 to disputes raised by civil servants

Applicability • Civil rights and obligations • Administrative proceedings • Public officials under contract • Concept of “civil service” • Autonomous interpretation • Participation in exercise of powers conferred by public law and duties designed to protect the general interests of the State and other public authorities • Dispute concerning non-renewal of a contract

Frydender v. France [GC], 2000-VII

Applicability of Article 6 to proceedings for rescission of an exclusion order

Applicability • Proceedings for rescission of an exclusion order • Interpretation of the Convention in the light of the entire Convention system, including the Protocols • Intention of the member States apparent from the Protocol, its preamble and the explanatory report • Civil rights and obligations • Criminal charge • Autonomous concepts • Characterisation of the measure in domestic law • Nature of the penalty • Preventive measure

Maaouia v. France [GC], 2000-X

Applicability of Article 6 to proceedings for recognition of entitlement to an allowance

Applicability • Civil right • Applicability of Article 6 to proceedings for recognition of entitlement to an allowance • Administrative proceedings

Mennitto v. Italy [GC], 2000-X

Applicability of Article 6 to tax disputes

Applicability • Civil rights and obligations • Applicability of Article 6 to tax disputes • “Pecuniary” obligations belonging to the realm of public law • Interpretation of the Convention in the light of present-day conditions • Tax disputes • Public-authority prerogatives

Ferrazzini v. Italy [GC], 2001-VII

Applicability of Article 6 to criminal complaints accompanied by a civil claim

Applicability • Civil rights and obligations • Applicability of Article 6 to criminal complaints accompanied by civil claims • Dispute • Outcome decisive • Rights and status of victims in criminal proceedings

Perez v. France [GC], 2004-I

Failure to provide an adequate procedure enabling applicant to access information of assistance in assessing health risk due to participation in army gas tests

Applicability • Civil rights and obligations • Access to a court • Secretary of State’s certificate blocking judicial review proceedings relating to health deterioration allegedly due to army gas tests • No intention by the legislator to confer on servicemen any substantive right to claim damages against the Crown • No encroachment by the executive into the judicial realm • No civil “right” recognised under domestic law

Roche v. the United Kingdom [GC], 2005-X

Proceedings levying surcharge against public accountant

Applicability • Proceedings levying surcharge against public accountant • Public hearing • Surcharge levied against public accountant unable to request public hearing on appeal before Court of Audit • Technical nature of proceedings • Importance of public scrutiny where financial position affected • Fair hearing • Position of prosecutor in proceedings before Court of Audit on appeal from judgment levying surcharge against public accountant • Presence of Government Commissioner at deliberations of *Conseil d’État*

Martinie v. France [GC], 2006-VI

Applicability of Article 6 to disputes involving civil servants

Applicability • Civil rights and obligations • Administrative proceedings • Applicability of Article 6 to disputes involving civil servants • Dispute regarding police personnel's entitlement to a special allowance • Concept of "civil service" • Autonomous interpretation • Functional criterion abandoned • Presumption of applicability of Article 6 to ordinary labour disputes • Burden of proof placed on respondent Government • Whether access to court excluded under national law on objective grounds in the State's interests • Whether subject matter of dispute related to the exercise of State power • Applicants not barred from access to court under national law

*Vilho Eskelinen and Others
v. Finland* [GC], 2007-II

Applicability of Article 6 to injunction proceedings

Applicability • Injunction proceedings • Civil rights and obligations • European consensus regarding applicability of Article 6 to interim measures • New criteria • "Civil" right at stake in both main and injunction proceedings • Applicability of procedural safeguards to proceedings concerning interim measure • Circumstances in which procedural safeguards can be dispensed with • Inalienable procedural safeguards • Impartial tribunal • Objective impartiality • Deficiency of domestic law • Objectively justified fears • Lack of statutory right to challenge judge on basis of family ties with a party's advocate

Micallef v. Malta [GC], 2009-V

Proceedings for unfair dismissal by employee of foreign embassy

Applicability • Civil rights and obligations • Proceedings for unfair dismissal by employee of foreign embassy • Civil servant • Minor administrative duties not of a nature to objectively justify exclusion of Article 6 protection

Cudak v. Lithuania [GC], 2010-III

Prison board's repeated refusal, with no right of appeal to the administrative courts, to grant prisoner temporary leave of absence

Applicability • Prison board's repeated refusal, with no right of appeal to the administrative courts, to grant prisoner temporary leave of absence • Civil rights and obligations • Prison leave characterised in domestic law as a "privilege" falling within the discretion of the prison authorities • No consensus within Europe • Dispute not relating to a "right" recognised in the domestic legal system or the Convention

Boulois v. Luxembourg [GC], 2012-II

Grossly arbitrary construction of European Court's judgment by Supreme Court when dismissing "appeal in the light of exceptional circumstances"

Civil rights and obligations • Fresh application concerning measures taken by a respondent State in execution of a European Court judgment • Applicability • Extraordinary appeal • Applicability of Article 6 to proceedings concerning extraordinary appeals • Fair hearing • Grossly arbitrary construction of European Court's judgment by Supreme Court when dismissing "appeal in the light of exceptional circumstances" • Denial of justice

Bochan v. Ukraine (no. 2) [GC], 2015-I

Applicability of Article 6 to non-contentious proceedings relating to registration of an association

Applicability • Civil rights and obligations • Registration of association • Non-contentious proceedings • Existence of right recognised under national law • Civil nature of right • Existence of genuine and serious dispute • Fair hearing • Equality of arms • Non-notification of intervention by public prosecutor • Non-disclosure of submissions by Attorney-General

APEH Üldözötteinek Szövetsége and Others v. Hungary, 2000-X

Applicability of Article 6 to proceedings for division of estate conducted by notaries (notaires) under supervision of court

Civil rights and obligations • Applicability of Article 6 to proceedings for division of estate conducted by notaries under supervision of court

Siegel v. France, 2000-XII

Applicability of Article 6 to constitutional proceedings

Applicability • Constitutional proceedings • Constitutional appeal lodged by an individual against a law • Civil rights and obligations • Right recognised in domestic law • Outcome decisive • Right to continue practising profession

Voggenreiter v. Germany, 2004-I (extracts)

Enactment of law during proceedings and challenging of its constitutionality

Applicability • Administrative proceedings • Constitutional proceedings • Civil rights and obligations • Dam construction project with repercussions for the applicants' personal possessions and lifestyles

Gorraiz Lizarraga and Others v. Spain, 2004-III

Use of a dangerous substance near housing

Applicability • Civil rights and obligations • Administrative proceedings • Right to adequate protection of one's physical integrity • Right to live in healthy and balanced environment • Access to a court • Decisions by State authorities amounting to circumvention of judicial decision • Rule of law • Legal certainty

Taşkın and Others v. Turkey, 2004-X

Refusal of authorities to enforce court judgments ordering a halt in the operation of thermal power plants

Administrative proceedings • Enforcement proceedings • Applicability • Civil right • Genuine and serious dispute • Right to live in a healthy and balanced environment • Standing under domestic law to apply for suspension of environmentally hazardous activities • Right to compensation under domestic law for non-enforcement or circumvention of judgments • Refusal of authorities to enforce court judgements ordering a halt in the operation of thermal power plants • Government's decision circumventing court judgments

Okyay and Others v. Turkey, 2005-VII

Delays in enforcing judgments awarding judicial benefits and salary arrears to judges

Applicability • Civil rights and obligations • Delays in enforcing judgments awarding judicial benefits and salary arrears to judges • Civil proceedings • Exercise of powers conferred by public law • Serving and retired judges • Article 6 not applicable to disputes involving serving judges

Zubko and Others v. Ukraine, 2006-VI (extracts)

Access to court for purpose of challenging refusals to grant compensation in respect of forced labour during Second World War

Applicability • Civil rights and obligations • Genuine and serious dispute • Access to court for purpose of challenging refusals to grant compensation in respect of forced labour during Second World War • Tribunal • Absence of generally recognised international practice excluding judicial review in matters arising out of wartime persecution • Absence of alternative means of redress

Woś v. Poland, 2006-VII

Civil character of right to pursue university studies

Administrative proceedings • Civil rights and obligations • Civil character of right to pursue university studies • Genuine and serious dispute • Outcome of proceedings

under “public law” directly decisive for a civil right • Right enforceable by means of a judicial remedy • Personal rights

Emine Araç v. Turkey, 2008-IV

Appeal by a local environmental-protection association not equivalent to an *actio popularis*

Applicability • Administrative proceedings • Civil rights and obligations • Dispute • Appeal by a local environmental-protection association not equivalent to an *actio popularis* • Sufficient link between the dispute and a right to which the applicant association could claim to be entitled

L'Érablière A.S.B.L. v. Belgium, 2009-II (extracts)

Exhaustion of domestic remedies – effectiveness of remedies in respect of complaint about length of proceedings

Civil rights and obligations • Applicability of Article 6 to civil party to criminal proceedings • Applicability of Article 6 to object liability proceedings

Basic v. Austria (dec.), 1999-II

Refusal to reimburse election expenses

Civil rights and obligations • Elections • Electoral disputes • Scrutiny of election expenses • Political rights • Refusal to reimburse election expenses

Cheminade v. France (dec.), 1999-II

Loss of veteran status and of entitlement to special allowance attached thereto

Applicability • Civil rights and obligations • Pecuniary rights • Loss of special allowance attached to veteran status

Domalewski v. Poland (dec.), 1999-V

Applicability of Article 6 to tax proceedings

Applicability • Civil rights and obligations • Non-applicability of Article 6 to tax proceedings • Pecuniary nature of litigation • Pecuniary obligation arising from tax dispute

Vidacar S.A. and Opergrup S.L. v. Spain (dec.), 1999-V

Refusal of putative father's request for determination of biological paternity of child born during the mother's marriage to another man

Applicability • Civil rights and obligations • Right not recognised under national

law • Request of putative father for determination of biological paternity • Presumption of husband's paternity of child born in wedlock

Nylund v. Finland (dec.), 1999-VI

Special appeal to the President of the Republic not subject to the provisions of Article 6

Applicability • Special appeal • Special appeal to the President of the Republic not subject to provisions of Article 6 • Choice of this remedy in preference to the possibility, known to the applicant, of bringing an action in the courts under the ordinary law

Nardella v. Italy (dec.), 1999-VII

Failure to hold valid elections of municipal council and mayor

Civil and political rights • Political rights • Right to vote • Right to stand for election

Cherepkov v. Russia (dec.), 2000-I

Alleged failure to ensure effective investigation into death resulting from purported medical negligence

Access to court • Civil proceedings • Civil rights and obligations • Right recognised in domestic law • Arguable claim • Absence of right recognised in domestic law

Powell v. the United Kingdom (dec.), 2000-V

Refusal to extend licence to trade in military equipment

Civil rights and obligations • Refusal to extend licence to trade in military equipment • Existence of "right" recognised under national law • Unfettered discretion of public authority

Ankarcrona v. Sweden (dec.), 2000-VI

Proceedings to have the criminal conviction of a deceased relative annulled

Civil rights and obligations • Criminal charge • Proceedings to have the criminal conviction of a deceased relative annulled • Existence of "right" recognised under national law • Civil nature of right • Absence of pecuniary interest • Right to enjoy a good reputation and right to protect honour of family

Kurzac v. Poland (dec.), 2000-VI

Applicability of Article 6 to proceedings relating to calls for tenders in respect of public works

Applicability • Applicability of Article 6 to proceedings relating to calls for tenders in respect of public works • Civil rights and obligations • Existence of “right” recognised under national law • Absence of right to be awarded a particular contract upon tender • Discretion of authorities

Marti AG and Others v. Switzerland (dec.), 2000-VIII

Applicability of Article 6 to proceedings to set aside a protective measure

Applicability • Civil rights and obligations • Not applicable to proceedings to set aside a protective measure • Outcome not decisive

Moura Carreira and Lourenço Carreira v. Portugal (dec.), 2000-VIII

Applicability of Article 6 to dispute raised by public servant

Applicability • Civil rights and obligations • Disciplinary proceedings • Discharge of lecturer from national fire service • Status of national fire service • Research relevant to national defence • Participation in exercise of powers conferred by public law and duties designed to protect the general interests of the State and other public authorities • State’s sovereign power

Kępka v. Poland (dec.), 2000-IX

Applicability • Civil rights and obligations • Dismissal of personnel officer by municipal authority • Concept of “civil service” • Participation in exercise of powers conferred by public law and duties designed to protect the general interests of the State and other public authorities

E.T. v. Finland (dec.), 2000-IX

Refusal to grant permanent residence to foreign national owning a house in the country concerned

Applicability • Civil rights and obligations • Criminal charge • Inapplicability of Article 6 to proceedings concerning entry, stay and deportation of aliens

Ilić v. Croatia (dec.), 2000-X

Reduction of military pension of former officer in Yugoslav People’s Army following dissolution of Socialist Federal Republic of Yugoslavia

Civil rights and obligations • Reduction of military pension of former officer in Yugoslav People’s Army following dissolution of Socialist Federal Republic of

Yugoslavia • Pecuniary rights • Applicability • Constitutional Court proceedings • Role of Constitutional Court

Janković v. Croatia (dec.), 2000-X

Applicability of Article 6 to extradition proceedings

Applicability • Inapplicability of Article 6 to extradition proceedings • Extradition proceedings • Civil rights and obligations • Criminal charge

Raf v. Spain (dec.), 2000-XI

Inability of a third party to proceedings to secure the criminal conviction of the defendants

Applicability • Civil rights and obligations • Criminal charge • Inability of a third party to proceedings to secure the criminal conviction of the defendants • Third-party prosecutor • No right to begin or procure the prosecution of a third party • No civil rights relied on

Asociación de víctimas del terrorismo v. Spain (dec.), 2001-V

Absence of public hearing in proceedings at single level of jurisdiction

Applicability • Constitutional proceedings • Public hearing • Absence of public hearing in proceedings at single level of jurisdiction • Federal Constitutional Court

Hesse-Anger and Anger v. Germany (dec.), 2001-VI

Applicability of Article 6 to proceedings concerning a constitutional complaint challenging the constitutionality of legislation

Applicability • Constitutional proceedings • Proceedings concerning a constitutional complaint challenging the constitutionality of legislation • Civil rights and obligations • Determination • Decisiveness of outcome of proceedings for the determination of civil rights

Bakarić v. Croatia (dec.), 2001-IX

Applicability of Article 6 to proceedings relating to an application for relocation of a notary's practice

Applicability • Civil rights and obligations • Administrative proceedings • Applicability of Article 6 to proceedings relating to an application for relocation of a notary's practice • Arguable right

Desmots v. France (dec.), 2001-XI

Whether Article 6 is applicable to proceedings entailing assessment of experience for carrying on a profession

Applicability • Non-applicability to proceedings entailing assessment of experience for carrying on a profession • Lack of a “contestation” (dispute)

San Juan v. France (dec.), 2002-III

Whether Article 6 applies to proceedings for annulment of instrument publishing an agreement between two States

Applicability • Civil rights and obligations • Whether Article 6 applies to proceedings for annulment of instrument publishing an agreement between two States • Administrative proceedings • Dispute with economic implications • Outcome not directly decisive for applicant’s “pecuniary” right

SARL du Parc d’activités de Blotzheim and SCI Haselaecker v. France (dec.), 2003-III

Applicability of Article 6 to amnesty proceedings

Applicability • Amnesty proceedings • Civil rights and obligations • Criminal charge • Execution of sentences

Montcornet de Caumont v. France (dec.), 2003-VII

Applicability of Article 6 to proceedings concerning mayor’s management of public accounts

Applicability • Civil rights and obligations • Applicability of Article 6 to proceedings concerning mayor’s management of public accounts • Dispute involving financial stakes for mayor • Status of mayor *vis-à-vis* the State

Richard-Dubarry v. France (dec.), 2003-XI (extracts)

Applicability of Article 6 to proceedings concerning disclosure of administrative documents

Applicability • Civil rights and obligations • Applicability of Article 6 to proceedings concerning disclosure of administrative documents • Genuine and serious dispute • Right recognised under domestic law • Economic nature of dispute

Loiseau v. France (dec.), 2003-XII (extracts)

Applicability of Article 6 to a challenge procedure

Applicability • Civil rights and obligations • Challenge procedure • Ancillary action, independent of main proceedings • Nature of fine for abuse of process

Schreiber and Boetsch v. France (dec.), 2003-XII

Applicability of Article 6 to proceedings relating to public accountant's obligation to repay irregular expenses

Applicability • Civil rights and obligations • Proceedings relating to public accountant's obligation to repay irregular expenses • Public finance courts • Accountant's pecuniary obligation • Predominance of private-law aspects

Martinie v. France (dec.), 2004-II (extracts)

Applicability of Article 6 to a dispute concerning the pension of a member of parliament

Applicability • Civil rights and obligations • Dispute concerning the pension of a member of parliament • Right of a political nature

Papon v. France (dec.), 2005-XI (extracts)

Perjury conviction for giving untruthful information to parliamentary inquiry

Applicability • Civil rights and obligations • Criminal charge • Obligation to testify in parliamentary inquiry • Normal civic duty in a democratic society • Obligation exclusively within the realm of public law • Prohibition of criminal prosecution on the basis of evidence given to parliamentary inquiry • Parliamentary inquiry not amounting to a disguised form of criminal proceedings • Self-incrimination • Right to silence • No question of using compulsorily obtained information in subsequent criminal proceedings • Perjury conviction for giving untruthful information to parliamentary inquiry

Van Vondel v. the Netherlands (dec.), 2006-IV

Dismissal of objections raised by a shareholder in a limited-liability company being wound up, relating exclusively to the company's capital

Applicability • Civil rights and obligations • Determination • *Ratione materiae* • Dismissal of objections raised by shareholder in limited-liability company being wound up, relating exclusively to the company's capital • Effects on applicant not "directly decisive" for his individual rights

Pokis v. Latvia (dec.), 2006-XV

ACCESS TO COURT

Access to court – Immunity of international organisation

Access to court • Employment dispute • Immunity from jurisdiction • Immunity of international organisation • European Space Agency

Waite and Kennedy v. Germany [GC], 1999-I

Staggering of police assistance to enforce eviction orders

Applicability • Enforcement proceedings • Dispute over date of eviction • Right to a court • Non-execution of court order • Access to court • Power of prefects to overrule date of eviction set by court • Absence of court review of prefectural decisions

Immobiliare Saffi v. Italy [GC], 1999-V

Access to court – Objection to government decision authorising continued operation of nuclear power plant

Access to court • Objection to government decision authorising continued operation of nuclear power plant • Civil rights and obligations • Rights recognised under domestic law • Genuine and serious dispute • Decision decisive for rights in question • Existence of serious, specific and imminent danger • Link between impugned decision and rights under domestic law too tenuous and remote • Choice of process for taking decisions on nuclear power a matter for the State

Athanassoglou and Others v. Switzerland [GC], 2000-IV

Access to court – Striking out of claims on ground of no cause of action

Access to court • Civil proceedings • Striking out of claims on ground of no cause of action • Absence of procedural bars • Striking out of claims without determination of facts • Absence of cause of action not constituting immunity • Civil rights • Arguable grounds of existence of right in domestic law

Z and Others v. the United Kingdom [GC], 2001-V

Access to a court • Civil proceedings • Striking out of claims on ground of no cause of action • Absence of procedural bars • Striking out of claims without determination of facts

T.P. and K.M. v. the United Kingdom [GC], 2001-V

Access to a court – Exclusion of jurisdiction of German courts in respect of claims relating to expropriation of external assets for the purpose of reparation

Access to a court • Civil proceedings • Exclusion of jurisdiction of German courts in respect of claims relating to expropriation of external assets for the purpose of reparation • Legitimate aim • Post-war status of Germany • Reunification of Germany • Interpretation of international convention • Proper forum for settlement of disputes • Remoteness of connection between factual basis of claim and jurisdiction of courts • Proportionality

Prince Hans-Adam II of Liechtenstein v. Germany [GC], 2001-VIII

Access to a court – State immunity

Access to a court • Civil proceedings • State immunity • Striking out of civil claim on ground of State immunity • Civil right • Procedural bar not qualifying substantive right • Limitations on access to a court • Legitimate aim • Compliance with international law in order to promote good relations • Proportionality • Interpretation of the Convention in harmony with international law • Inherent limitations on access to a court • Prohibition of torture as *jus cogens* • Lack of basis for concluding States no longer enjoy immunity in civil matters

Al-Adsani v. the United Kingdom [GC], 2001-XI

Access to a court • Civil proceedings • State immunity • Striking out of civil claim on ground of State immunity • Civil right • Procedural bar not qualifying substantive right • Limitations on access to a court • Legitimate aim • Compliance with international law in order to promote good relations • Proportionality • Interpretation of the Convention in harmony with international law • Lack of basis for concluding States no longer enjoy immunity in respect of personal injury • Possibility of pursuing action against State in its own courts

McElhinney v. Ireland [GC], 2001-XI

Access to a court • Civil proceedings • State immunity • Striking out of civil claim on ground of State immunity • Civil right • Procedural bar not qualifying substantive right • Limitations on access to a court • Legitimate aim • Compliance with international law in order to promote good relations • Proportionality • Interpretation of the Convention in harmony with international law • Employment in foreign embassies

Fogarty v. the United Kingdom [GC], 2001-XI

Inability to bring civil action against State in respect of extraterritorial acts

Access to a court • Civil proceedings • Inability to bring civil action against State in respect of extraterritorial acts • Claim for damages for deaths of relatives killed in NATO air strike on Federal Republic of Yugoslavia • Applicability • Genuine and serious dispute over existence of right • Effect of subsequent adverse court ruling • Complaints not retrospectively unarguable • Compliance • Inability to sue arising out of limitations on substantive right of action, not State immunity

Markovic and Others v. Italy [GC], 2006-XIV

Restriction of right of access to a court during period of placement in a high-supervision prison unit

Access to a court • Restriction of the right of access to a court during period of

placement in a high-supervision prison unit • Dispute relating to personal rights • Placement not entailing any restrictions on civil rights

Enea v. Italy [GC], 2009-IV

Grant of State immunity from jurisdiction in respect of claim for unfair dismissal by employee of foreign embassy

Civil proceedings • Access to court • Grant of State immunity from jurisdiction in respect of claim for unfair dismissal by foreign embassy employee • Legitimate aim • Comity and good inter-State relations • Proportionality • Trend in international law towards limiting application of State immunity • Minor administrative duties unrelated in practice to sovereign or security interests

Cudak v. Lithuania [GC], 2010-III

Lack of direct access to court for a person partially deprived of legal capacity and wishing to seek its restoration

Access to court • Lack of direct access to court for a person partially deprived of legal capacity and wishing to seek its restoration • Trend at European level towards granting legally incapacitated persons direct access to court to seek restoration of capacity • Margin of appreciation • State free to determine procedure for ensuring direct access to court for legally incapacitated persons

Stanev v. Bulgaria [GC], 2012-I

Third party unable to intervene in proceedings for rectification of a judgment, despite having acquired the rights of one of the parties to the principal proceedings

Access to a court • Civil proceedings • Third party unable to intervene in proceedings for rectification of a judgment, despite having acquired the rights of one of the parties to the principal proceedings

Trome S.A. v. Spain (striking out), 1999-III

Calculation of time-limits imposed on persons wishing to challenge judicial decisions affecting them when they were not parties to the proceedings

Access to a court • Administrative proceedings • Challenge to a judicial decision filed out of time by persons who were not parties to the proceedings • Calculation of time-limit for challenging decision • Starting-point • Service • Judicial decision affecting third parties • Legal certainty • Effective protection through the courts

Miragall Escolano and Others v. Spain, 2000-I

Refusal to exempt an appellant from an obligation to deposit monies as a

condition precedent to lodging an appeal despite the fact that her application for legal aid, in which her financial difficulties were set out, had not been considered

Access to a court • Civil proceedings • Refusal to exempt an appellant from an obligation to deposit monies as a condition precedent to lodging an appeal despite the fact that her application for legal aid, in which her financial difficulties were set out, had not been considered • Obligation to deposit monies • Proportionality • Margin of appreciation

García Manibardo v. Spain, 2000-II

Access to a court – Legal aid refused before the Court of Cassation as no arguable ground of appeal

Access to a court • Legal aid refused before the Court of Cassation as no arguable ground of appeal • Proceedings without compulsory representation • Simplified procedure • Prescribed ground for refusal • System for selecting cases • Guarantees against arbitrariness

Gnahoré v. France, 2000-IX

Access to a court – Appeal to Court of Cassation not examined because of failure to comply with judgment of the court of appeal

Access to a court • Civil proceedings • Appeal to Court of Cassation not examined because of failure to comply with judgment of the court of appeal • Effective access to the Court of Cassation • Removal of an appeal from the Court of Cassation's list • System aimed at ensuring a proper administration of justice • Applicants' precarious financial circumstances made compliance with the judgment of the court of appeal impossible • Lack of an effective examination in practice of the issue of "manifestly unreasonable consequences" • Whether the measure was reasoned and proportionate

Annoni di Gussola and Others v. France, 2000-XI

Access to court – Dismissal of application to Supreme Administrative Court on ground of procedural flaw for which public authority registering application was responsible

Access to court • Administrative proceedings • Dismissal of application to Supreme Administrative Court on ground of procedural flaw for which public authority registering application was responsible • Formalities for lodging applications • Excessive strictness in application of procedural rules for lodging applications

Sotiris and Nikos Koutras ATTEE v. Greece, 2000-XII

Access to a court – Dismissal of an application without examination of the merits

Fair trial • Right to a court • Access to a court • Civil procedure • Dismissal of an application without examination of the merits • Rule that time ceases to run during the judicial vacation only operates in favour of the State • Court bailiffs acting as public State representatives

Platakou v. Greece, 2001-I

Requirement to pay court fees in order to lodge civil claim

Access to court • Civil proceedings • Requirement to pay court fees in order to lodge civil claim • Court fees • Ability of litigant to pay court fees • Level of court fees • Speculative assessment by court of litigant's ability to pay court fees • Refusal of exemption from court fees • Possibility of revoking exemption from court fees

Kreuz v. Poland, 2001-VI

Access to a court – Scope of review by Supreme Administrative Court

Access to a court • Administrative proceedings • Scope of review by Supreme Administrative Court • Review of lawfulness of administrative decision

Potocka and Others v. Poland, 2001-X

Access to a court – Applicants debarred, at advanced stage of lengthy proceedings, from relying on their right to compensation for expropriation

Access to a court • Civil proceedings • Applicants debarred, at advanced stage of lengthy proceedings, from relying on their right to compensation for expropriation • Action statute-barred • Disproportionate hindrance of right of access to a court

Yagtzilar and Others v. Greece, 2001-XII

Access to a court – Legal aid to appeal to the Court of Cassation refused on the ground that there was no arguable ground of appeal

Access to a court • Civil proceedings • Legal aid to appeal to the Court of Cassation refused on the ground that there was no arguable ground of appeal • No right to legal aid in civil proceedings • Legitimate to restrict the use of public funds to applicants who have reasonable prospects of success • Special nature of the domestic legal aid scheme • Guarantees against arbitrariness • Composition of the legal aid office • Right of appeal against its decision

Del Sol v. France, 2002-II

Legislation staying all civil proceedings relating to claims for damages in respect of terrorist acts

Right to a court • Access to a court • Civil proceedings • Legislation staying all civil proceedings relating to claims for damages in respect of terrorist acts • Length of time elapsed without enactment of new legislation to permit determination of civil claims

Kutić v. Croatia, 2002-II

Prolonged delay in execution of court judgments by State authorities

Right to a court • Civil proceedings • Enforcement proceedings • Prolonged delay in execution of court judgments by State authorities • Insufficiency of lack of funding as reason for non-execution of court judgments • Delays in execution rendering Article 6 devoid of purpose

Burdov v. Russia, 2002-III

Unavailability of legal aid for defendant in defamation action

Access to a court • Fair hearing • Civil proceedings • Unavailability of legal aid for defendant in defamation action • Defamation proceedings • Scope of right to legal assistance in civil proceedings • Ability of litigant to present case effectively • Jury trial in High Court • Burden of proof in defamation proceedings • Ability of litigant to formulate cogent argument • Clear and unambiguous rules of procedure • Absence of legal complexity • Limited legal representation • Exclusion of evidence • Emotional involvement of unrepresented litigant

McVicar v. the United Kingdom, 2002-III

Lack of legal representation in proceedings concerning child care

Access to a court • Fair hearing • Civil proceedings • Lack of legal representation in proceedings concerning child care • Legal representation • Effective access to a court • Effective participation of party to court proceedings • Complexity of case • Importance of what is at stake • Emotive nature of subject matter • Refusal of adjournment to allow party to obtain legal representation

P., C. and S. v. the United Kingdom, 2002-VI

Access to a court – Imposition of restrictions on fishing rights

Access to a court • Civil proceedings • Imposition of restrictions on fishing rights • Civil rights and obligations • Fishing rights acquired by virtue of lease from State • General measure affecting individual's civil rights in substance

Posti and Rahko v. Finland, 2002-VII

Failure to effect personal service on a third party interested in the proceedings

Access to a court • Administrative proceedings • Failure to effect personal service on a third party interested in the proceedings • Constructive notice of proceedings • Settled, accessible case-law supplementing the wording of the statute • Pragmatic approach when a court is confronted with a large number of applications in the same set of proceedings

Cañete de Goñi v. Spain, 2002-VIII

Failure to examine the applicants' claims and appeals on the merits

Right to a court • Access to a court • Civil proceedings • Failure to examine the applicants' claims and appeals on the merits • Judicial interpretation of procedural requirements • Proper administration of justice • Legal certainty • Effective protection of the courts • Particularly strict interpretation of a procedural rule by the ordinary courts • Access to the Constitutional Court • Procedure on appeal • Conditions of the admissibility of appeals on points of law in civil cases • Discretionary power of the Supreme Court • Fair balance between ensuring that the formal procedure for lodging appeals with the Constitutional Court is complied with and the right of access to that court

Běleš and Others v. the Czech Republic, 2002-IX

Access to a court – Formal procedure for appealing to the Constitutional Court

Access to a court • Formal procedure for appealing to the Constitutional Court • Constitutional appeal inadmissible as being out of time • Determination of date when time starts to run for the purposes of an appeal to the Constitutional Court • Hearing on the merits prevented by domestic courts' interpretation of procedural rules • Unpredictability of application for leave to appeal • Legal certainty • Disproportionate burden

Zvolský and Zvolská v. the Czech Republic, 2002-IX

Access to a court – Parliamentary immunity attaching to allegedly defamatory statements made by a member of Parliament

Access to a court • Civil proceedings • Parliamentary immunity attaching to allegedly defamatory statements made by a member of Parliament • Legitimate aim • Protection of free speech in Parliament • Separation of powers • Proportionality • Absolute nature of privilege • Importance of freedom of expression for elected representatives • Practice in Contracting States and international organisations • Availability of possible means of redress • Margin of appreciation • Unavailability of

legal aid for defamation proceedings • Limited free legal advice permitting evaluation of risks • Possibility of proceedings based on contingency fee

A. v. the United Kingdom, 2002-X

Access to a court – Parliamentary immunity

Access to a court • Civil procedure • Parliamentary immunity • Senate's resolution resulting in a decision of no case to answer in favour of a senator being prosecuted • Senator • Interference with the right of access to a court • Legitimate aim • Protection of free parliamentary debate • Separation of legislative and judicial powers • Proportionality • Freedom of expression of an elected representative • Lack of clear connection between the acts in issue and parliamentary activities • Restriction on access to a court stemming from the resolution of a political body • Balance between general and individual interests • No alternative means of effectively protecting Convention rights

Cordova v. Italy (no. 1), 2003-I

Access to a court • Civil procedure • Parliamentary immunity • Quashing of parliamentarian's conviction for defamatory allegations made during election meetings • Parliamentarians • Restriction on right of access to a court • Legitimate aim • Protection of free parliamentary debate • Separation of legislative and judicial powers • Proportionality • Freedom of expression of an elected representative • Lack of clear connection between allegedly defamatory statements and the exercise of parliamentary functions • Restriction on access to a court stemming from the resolution of a political body • Balance between general and individual interests • No alternative means of effectively protecting Convention rights

Cordova v. Italy (no. 2), 2003-I

Inability of a legally aided applicant to secure legal representation for proceedings against a lawyer

Access to a court • Civil proceedings • Inability of a legally aided applicant to secure legal representation for proceedings against a lawyer • Legal aid • Right to proper assistance • Representation by a lawyer not compulsory • Obligation on the domestic authorities to secure effective assistance

Bertuzzi v. France, 2003-III

Minister's opinion considered binding by a court

Right to a tribunal • Administrative proceedings • Applicability of Article 6 • Arguable existence of a right in domestic law • Conditions governing access to a profession • International treaty • Reciprocity • Minister's opinion considered binding by a court • Court's referral of preliminary question to minister • Court's consultation

of Minister for Foreign Affairs as to application of treaty by other contracting State • Minister's opinion decisive for outcome of legal proceedings and not open to challenge or discussion by parties • Court's refusal to accept full jurisdiction

Chevol v. France, 2003-III

Failure of the authorities to comply with binding court judgments

Right to a court • Administrative proceedings • Failure of the authorities to comply with binding court judgments

Kyrtatos v. Greece, 2003-VI (extracts)

Limitation on the capacity to take legal proceedings

Access to a court • Civil proceedings • Bankruptcy proceedings • Limitation on the capacity to take legal proceedings • Effects of inordinately lengthy bankruptcy proceedings on the bankrupt • Rights and interests of creditors • Proportionality

Luordo v. Italy, 2003-IX

Supervisory review of final and binding judgment

Right to a court • Civil proceedings • Supervisory review of final and binding judgment • Absence of time-limit on exercise of power of supervisory review • Principle of legal certainty

Ryabykh v. Russia, 2003-IX

Access to a court – Prolonged stay of proceedings due to failure to adopt new legislation

Access to a court • Civil proceedings • Staying of proceedings pending enactment of legislation dealing with the matter in issue • Damage to property • Prolonged stay of proceedings due to failure to adopt new legislation

Aćimović v. Croatia, 2003-XI

Access to a court – Inadmissibility of appeal on ground that period of validity of measure concerned had expired

Access to a court • Right to a court • Inadmissibility of appeal on ground that period of validity of measure concerned had expired • Applicability of Article 6 to proceedings concerning restrictive detention measures • Civil rights and obligations • Failure by court to comply with statutory time-limit for determining appeal • Lack of decision on merits • Effective judicial protection

Ganci v. Italy, 2003-XI

Prolonged delay by State authorities in execution of court judgments

Right to a court • Civil proceedings • Enforcement proceedings • Prolonged delay by State authorities in execution of court judgments • Restitution of property • Lack of funding not a valid reason for failing to comply with a court judgment • Delays in execution depriving Article 6 of all useful effect

Prodan v. Moldova, 2004-III (extracts)

Prolonged failure to execute final adoption orders

Right to a court • Civil proceedings • Children lawfully adopted abroad not handed over to adoptive parents • Prolonged failure to execute final adoption orders • Refusal of private institution to hand over children adopted by means of binding decisions to adoptive parents • State obligations • Principle of legal certainty • Requirement of promptness

Pini and Others v. Romania, 2004-V (extracts)

Jurisdiction declined by both civil and administrative courts

Right to a court • Civil proceedings • Administrative proceedings • Jurisdiction declined by both civil and administrative courts • No decision on merits of dispute • Denial of justice

Beneficio Cappella Paolini v. San Marino, 2004-VIII (extracts)

Exclusion from court review of decision by property commission established under law on relations between State and Church

Access to a court • Civil proceedings • Exclusion from court review of decision by property commission established under law on relations between State and Church • Existence of genuine and serious dispute • Absence of alternative means of vindicating rights • Proportionality

Związek Nauczycielstwa Polskiego v. Poland, 2004-IX

Non-execution of judgments awarding salary arrears to employees of a State-owned company

Right to a court • Non-execution of judgments

Mykhaylenky and Others v. Ukraine, 2004-XII

Refusal by bar association to comply with binding orders made by higher court

Access to a court • Administrative proceedings • Fair trial • Reasonable time • Administrative nature of bar association's decision • Jurisdiction of Supreme

Administrative Court • Refusal by bar association to comply with binding orders made by higher court

Turczanik v. Poland, 2005-VI

Non-enforcement of a final judgment on account of limited budgetary resources

Right to a court • Civil proceedings • Enforcement proceedings • Non-enforcement of a final judgment on account of limited budgetary resources • Insufficiency of lack of funding as a reason for non-execution of court judgments • Delays in execution rendering Article 6 devoid of purpose

Amat-G Ltd and Mebaghishvili v. Georgia, 2005-VIII

Cancellation of judicial proceedings for failure to pay an excessive amount of stamp duty

Access to a court • Civil proceedings • Cancellation of judicial proceedings for failure to pay an excessive amount of stamp duty • Financial restriction on access to a court at initial stage of the proceedings • Amount of costs • Set percentage, laid down by law, of the sum at stake in the proceedings • Possibility of exemption

Weissman and Others v. Romania, 2006-VII (extracts)

Statutory prevention of the enforcement of a final judgment in the applicant's favour

Enforcement proceedings • Access to court • Statutory prevention of the enforcement of a final judgment in the applicant's favour • Lack of State funds as reason for non-enforcement of a court judgment • Delays in execution impairing essence of the right of access to a court • Inability to recover savings following dissolution of a State and disintegration of its banking and monetary systems

Jeličić v. Bosnia and Herzegovina, 2006-XII

Obligation on impecunious judgment creditor to pay preliminary expenses in order to initiate enforcement proceedings

Civil proceedings • Enforcement proceedings • Access to a court • Obligation on impecunious judgment creditor to pay preliminary expenses in order to initiate enforcement proceedings • Positive obligation to organise effective system of enforcement • Financial responsibility for organising enforcement proceedings • Judgment creditor's financial situation • Indigence • Excessive burden

Apostol v. Georgia, 2006-XIV

Lack of access to a court on account of a rule requiring the consent of all co-owners in order to bring an action for recovery of property held in common

Civil proceedings • Access to a court • Lack of access to a court on account of a rule requiring the consent of all co-owners in order to bring an action for recovery of property held in common • Permanent restriction on right of access to a court to seek recovery of property held in common • Proportionality

Lupaş and Others v. Romania, 2006-XV (extracts)

Applicants' inability to effectively present their case owing to authorities' refusal to grant them access to decisive evidence

Access to a court • Civil proceedings • Applicants' inability to effectively present their case owing to authorities' refusal to grant them access to decisive evidence • Statutory restrictions on access to evidence • Disproportionate limitation on ability to effectively present court case

K.H. and Others v. Slovakia, 2009-II (extracts)

Refusal of domestic courts to process civil actions submitted electronically

Access to a court • Civil proceedings • Refusal of domestic courts to process civil actions submitted electronically • Absence of abuse of process in view of large number of actions involved • Provision in domestic law for electronic lodging of court actions • Proportionality

Lawyer Partners a.s. v. Slovakia, 2009-III

Decision to strike out civil claims alleging torture on account of immunity invoked by defendant State (the Kingdom of Saudi Arabia) and its officials

Civil proceedings • Access to a court • State immunity • Immunity granted to State officials • Decision to strike out civil claims alleging torture on account of immunity invoked by defendant State (the Kingdom of Saudi Arabia) and its officials • Special rule or exception in respect of acts of torture • Customary international law • *Jus cogens*

Jones and Others v. the United Kingdom, 2014-I

Access to a tribunal – rejection of an application to vary an administrative decision for lack of standing in case concerning nuisances caused by steelworks

Access to a tribunal • Rejection of an application to vary an administrative decision for lack of standing • Access to a court having full jurisdiction • Alternative remedies

Asselbourg and Others v. Luxembourg (dec.), 1999-VI

Access to a court – Appeal to Court of Cassation not examined because of failure to comply with judgment of the court of appeal

Access to a court • Civil proceedings • Effective access to the Court of Cassation • Appeal to Court of Cassation not examined because of failure to comply with judgment of the court of appeal • Removal of the appeal from the Court of Cassation's list • Applicant's personal circumstances did not make part-execution of the court of appeal's judgment impossible • Application by the applicant for a declaration that the proceedings had lapsed • Proportionality of the order for removal of the appeal from the list

Arvanitakis v. France (dec.), 2000-XII

Access to a tribunal – lack of remedies available to holders of Russian bonds

Respect for peaceful enjoyment of possessions • Possessions • Debt • General interest • Fair balance • Effects on private debts of bilateral agreements between States definitively settling such debts • Bonds issued by Russian State before 1914 • Franco-Russian agreements on final settlement of mutual debts • Arrangements for compensation of holders of Russian bonds • Partial compensation • Risks linked to financial operation

Abrial and Others v. France (dec.), 2001-VI

Scope of judicial review of administrative decisions in planning matters

Right to a court • Administrative proceedings • Scope of judicial review of administrative decisions in planning matters • Scope of judicial review • Town and country planning • Procedural guarantees of fairness in administrative proceedings

Holdings and Barnes PLC v. the United Kingdom (dec.), 2002-IV

Legislation staying all civil proceedings relating to claims for damages in respect of terrorist acts and acts of members of the army or police during time of war

Access to a court • Civil proceedings • Legislation staying all civil proceedings relating to claims for damages in respect of terrorist acts and acts of members of the army or police during time of war • Failure of applicant to institute civil proceedings

Ostojić v. Croatia (dec.), 2002-IX

Refusal to grant litigants leave to bring proceedings against a foreign State to enforce recovery of final debt

Access to a court • Civil proceedings • Enforcement proceedings • Refusal to grant litigants leave to bring proceedings against a foreign State to enforce recovery of

final debt • State immunity • Restriction • Legitimate aim • Proportionality • Interpretation of the Convention • Vienna Convention of 1969 on the Law of Treaties • Rules of international law • Impartial tribunal • Judge's participation in proceedings for damages and subsequent enforcement proceedings

Kalogeropoulou and Others v. Greece and Germany (dec.), 2002-X

Lack of individual notification of an administrative order

Right to a court • Access to a court • Administrative procedure • Lack of individual notification of an administrative order • System of general announcement of administrative acts • Whether there was an effective possibility of challenging an administrative act • Resolution of the Committee of Ministers under Article 46 of the Convention • Balance between private interests and the general interest

Geffre v. France (dec.), 2003-I (extracts)

Access to a court – Untraceable defendant summoned by newspaper announcement

Access to a court • Civil proceedings • Untraceable defendant summoned by newspaper announcement • Legal certainty • Proper administration of justice • Opportunity to challenge validity of summons

Nunes Dias v. Portugal (dec.), 2003-IV

Advance for costs required by Constitutional Court before considering appeal

Access to a court • Constitutional proceedings • Advance for costs required by Constitutional Court before considering appeal • Financial restrictions on individuals' access to court

Reuther v. Germany (dec.), 2003-IX

Parliamentary immunity attaching to allegedly defamatory statements made by a Minister of State in Parliament

Access to a court • Civil proceedings • Parliamentary immunity attaching to allegedly defamatory statements made by a Minister of State in Parliament • Protection of free speech in Parliament • Separation of powers • Proportionality • Absolute nature of privilege • Margin of appreciation • Seriousness of allegations and repercussions on business

Zollmann v. the United Kingdom (dec.), 2003-XII

Invalidation of a clause in a collective agreement on the ground that it hindered competition

Access to a court

Swedish Transport Workers' Union v. Sweden (dec.), 2004-XII (extracts)

Access to a court for challenging refusals of compensation for forced labour during the Second World War

Access to a court • Civil rights and obligations • Genuine and serious dispute

Woś v. Poland (dec.), 2005-IV

Refusal by authorities to execute decision ordering restitution of a building housing an embassy

Access to a court • Civil procedure • Enforcement proceedings • Refusal by authorities to execute decision ordering restitution of a building housing an embassy • State immunity • Interpretation of the Convention • 1961 Vienna Convention on Diplomatic Relations • Foreign States' immunity from execution in respect of premises of consular or diplomatic missions

Manoilescu and Dobrescu v. Romania and Russia (dec.), 2005-VI

State's refusal to grant request for enforcement of decision restoring property used by a foreign embassy

Fair hearing • Access to a court • State's refusal to grant request for enforcement of decision restoring property used by a foreign embassy • Justified restriction • Vienna Convention on Diplomatic Relations • Rules of international law on sovereign immunity

Treska v. Albania and Italy
(dec.), 2006-XI (extracts)

Decision of Netherlands courts to decline jurisdiction to hear claim against the United Nations arising out of the Srebrenica massacre

Access to a court • Immunity from suit of international organisation • Decision of Netherlands courts to decline jurisdiction to hear claim against the United Nations arising out of the Srebrenica massacre • Civil claim based on allegation of a particularly grave violation of a norm of international law • Absence of alternative international remedy not imputable to respondent State

Stichting Mothers of Srebrenica and Others v. the Netherlands (dec.), 2013-III (extracts)

FAIR HEARING

Inadequate reasons for a judicial decision

Fair hearing • Civil proceedings • Reasons for judicial decisions • Inadequate reasons for a judicial decision

García Ruiz v. Spain [GC], 1999-I

Quashing of a final and executed judicial decision

Fair hearing • Right to a court • Civil proceedings • Application by Procurator-General to have a final judgment quashed • Quashing of a final and executed judicial decision • Principle of legal certainty • Ordinary courts lacking jurisdiction to determine disputes such as actions for recovery of possession of nationalised properties

Brumărescu v. Romania [GC], 1999-VII

Legislative intervention favourable to the authorities in pending civil proceedings to which they were a party

Fair trial • Civil proceedings • Right to a court • Legislative intervention favourable to the authorities in pending civil proceedings to which they were a party • Private-law bodies having a public-service mission and coming under supervision of State

Zielinski and Pradal and Gonzalez and Others v. France [GC], 1999-VII

Presence, without right to vote, of Government Commissioner at *Conseil d'État's* deliberations

Fair trial • Procedure in administrative courts • Non-disclosure of Government Commissioner's submissions in advance of hearing before *Conseil d'État* and impossibility of replying to them • Equality of arms • Adversarial procedure • Role of Government Commissioner • Procedural safeguards counterbalancing Government Commissioner's power • Presence, without right to vote, of Government Commissioner at *Conseil d'État's* deliberations • Doctrine of appearances • Secrecy of deliberations • Higher interest of litigant

Kress v. France [GC], 2001-VI

Lack of oral hearing in proceedings concerning compensation for detention

Fair hearing • Oral hearing • Adversarial proceedings • Civil proceedings • Civil rights and obligations • Statutory compensation scheme • Lack of oral hearing in proceedings concerning compensation for detention • Assessment of level of compensation • Importance of oral hearing in assessment of emotional suffering •

Absence of exceptional circumstances justifying dispensing with oral hearing • Non-communication to appellant of opinion of Principal Public Prosecutor at the Court of Cassation • Entitlement of party to full knowledge of adverse submissions • Absence of safeguards • Duty of courts to inform parties of new elements in file

Göç v. Turkey [GC], 2002-V

Compensation awarded following use of domestic remedy open to victims of excessively long proceedings

Fair hearing • Civil proceedings • Expropriation • Immediate application of Law intended to modify applicable rules relating to compensation • Insufficient amount of expropriation compensation on account of retrospective application of Law • Justification of retrospective effect

Scordino v. Italy (no. 1) [GC], 2006-V

Cocchiarella v. Italy [GC], 2006-V

Musci v. Italy [GC], 2006-V (extracts)

Absence of public hearing in administrative proceedings

Public hearing • Administrative proceedings • Absence of public hearing in administrative proceedings • Public hearing excluded by law • Nature of subject matter of proceedings

Eisenstecken v. Austria, 2000-X

Intervention by legislature favourable to authorities in pending civil proceedings

Fair trial • Civil proceedings • Intervention by legislature in pending judicial proceedings • Court's decision dismissing appeal based subsidiarily on statute adopted during proceedings • Statute-influenced determination of dispute

Anagnostopoulos and Others v. Greece, 2000-XI

Decision of Vatican Courts declared enforceable at the end of allegedly unfair proceedings

Fair trial • Civil proceedings • Decision of Vatican Courts declared enforceable at the end of allegedly unfair proceedings • Proceedings to have judgment declared enforceable • Obligation on Contracting States before authorising enforcement of court decision delivered by another State • Adversarial proceedings • Legal assistance • Ecclesiastical court • Canon law • Declaration of nullity of marriage

Pellegrini v. Italy, 2001-VIII

Unrepresented appellant not notified of a hearing before the *Conseil d'État* and unable to acquaint himself with Government Commissioner's submissions

Fair trial • Administrative proceedings • Unrepresented appellant not notified of a hearing before the *Conseil d'État* and unable to acquaint himself with Government Commissioner's submissions • Proceedings in which parties are not represented by a lawyer • Adversarial principle • Equality of arms • Obligation on States to ensure that rights guaranteed are enjoyed in an effective manner

Fretté v. France, 2002-I

Executive intervention in the judicial process

Fair trial • Civil proceedings • Objection (*protest*) against a final decision • Possibility of reopening final judgments indefinitely • Principle of legal certainty • Different and conflicting approaches to the interpretation and application of the law by the courts • Independent and impartial tribunal • Executive intervention in the judicial process • Procedural formalities • Excessive formalism

Sovtransavto Holding v. Ukraine, 2002-VII

Role of Government Commissioner in proceedings to establish compensation for expropriation

Fair hearing • Administrative proceedings • Role of Government Commissioner in proceedings to establish compensation for expropriation • Equality of arms • Positions and respective advantages of parties to the proceedings • Adversarial proceedings • Notification of Government Commissioner's submissions • Government Commissioner last to speak at hearing

Yvon v. France, 2003-V

Refusal to order reimbursement by a private health insurance company of costs of gender reassignment surgery

Fair hearing • Civil proceedings • Refusal to order reimbursement by a private health insurance company of costs of gender reassignment surgery • Assessment by the domestic courts of the medical necessity of gender reassignment • Sufficiency of medical evidence obtained by domestic courts • Developments in Convention case-law relating to transsexuals

Van Kück v. Germany, 2003-VII

Enactment of law during proceedings and challenging of its constitutionality

Fair hearing • Administrative proceedings • Enactment of law during proceedings •

Regional Planning Act • Urban planning • State's margin of appreciation • Law not intended to circumvent principle of rule of law

Equality of arms • Proceedings before the Constitutional Court • Examination of application for preliminary ruling on constitutionality of law • Applicants not invited to submit observations

Gorraiz Lizarraga and Others v. Spain, 2004-III

Lack of legal aid in defamation proceedings and proportionality of damages awarded

Fair hearing • Civil proceedings • Lack of legal aid in defamation proceedings and proportionality of damages awarded • Complexity of case requiring the provision of legal aid • Inequality of arms

Steel and Morris v. the United Kingdom, 2005-II

Lack of public hearing and non-communication of observations in proceedings before Constitutional Court

Public hearing • Lack of public hearing and non-communication of observations in proceedings before Constitutional Court • Absence of hearing in constitutional proceedings sufficiently compensated for by hearings for the determination of merits of substantive claims • Fair hearing • Equality of arms • Onus on Constitutional Court to secure right to adversarial procedure

Milatová and Others v. the Czech Republic, 2005-V

Lack of legal basis for admission to and treatment in a private psychiatric clinic

Fair hearing • Adversarial trial • Equality of arms • Interpretation of expert evidence • Distribution of the burden of proof

Storck v. Germany, 2005-V

Refusal to order reimbursement of litigation costs arising out of a public prosecutor's unsuccessful civil claim

Civil proceedings • Fair hearing • Equality of arms • Refusal to order reimbursement of litigation costs arising out of a public prosecutor's unsuccessful civil claim • Necessity of professional legal representation • Costs not incurred recklessly or without proper justification

Stankiewicz v. Poland, 2006-VI

Summary endorsement of trial court's decision by appellate court without addressing appellant's arguments

Fair hearing • Civil proceedings • Duty to state reasons • Absence of factual basis for trial court's findings • Summary endorsement of trial court's decision by appellate court without addressing appellant's arguments

Tatishvili v. Russia, 2007-I

Conflicting rulings by a supreme court

Fair hearing • Administrative proceedings • Conflicting rulings by a supreme court • Principle of legal certainty • Failure of supreme court to fulfil its role of resolving conflicts

Beian v. Romania (no. 1), 2007-V (extracts)

Exclusion of borderline mental patient from proceedings to determine his legal capacity

Fair hearing • Exclusion of borderline mental patient from proceedings to determine his legal capacity • Order affecting personal autonomy • Personal attendance necessary for patient as interested party and to enable court to form an opinion • Breach of principle of adversarial proceedings

Shtukaturov v. Russia, 2008-II

Alleged risk of unfair trial before Iraqi High Tribunal

Fair hearing • Alleged risk of unfair trial before Iraqi High Tribunal • Absence of evidence of flagrantly unfair trial

Al-Saadoon and Mufdhi v. the United Kingdom, 2010-II

Absence of limitation period for imposing disciplinary penalty on judges

Fair hearing • Absence of limitation period for imposing disciplinary penalty on judges • Legal certainty • Abuse of electronic voting system in Parliament when adopting decision on judge's dismissal • Tribunal established by law • Composition of chamber examining applicant's case defined by a judge whose term of office as court's president had expired

Oleksandr Volkov v. Ukraine, 2013-I

Alteration by legislative means of a legal situation resulting from a final court decision

Fair trial • Administrative court proceedings • Finality of judgments • Legislative

intervention • Alteration by legislative means of a legal situation resulting from a final court decision

Preda and Dardari v. Italy (dec.), 1999-II

Compulsory disclosure of adverse expert opinion obtained by parent in child care proceedings

Fair hearing • Civil proceedings • Disclosure • Child care • Expert medical opinion • Compulsory disclosure of adverse expert opinion obtained by parent in child care proceedings • Litigation privilege • Criminal proceedings • Self-incrimination

L. v. the United Kingdom (dec.), 1999-VI

Disclosure of adverse expert opinion obtained by party in separate proceedings

Fair hearing • Civil proceedings • Disclosure • Expert medical opinion • Disclosure of adverse expert opinion obtained by party in separate proceedings

Vernon v. the United Kingdom (dec.), 1999-VI

No examination by the Court of Cassation of a ground allegedly raised before the judges of fact

Fair trial • Civil proceedings • No examination by Court of Cassation of ground allegedly raised before judges of fact • Cassation proceedings • Court of Cassation • Distinction drawn between ground and argument

Jahnke and Lenoble v. France (dec.), 2000-IX

Statutory ratification of regulatory measures before proceedings to have them quashed could be brought

Fair hearing • Administrative proceedings • Statutory ratification of regulatory measures before proceedings to have them quashed could be brought • Legislative intervention • Final judgment

Organisation nationale des syndicats d'infirmiers libéraux (ONSIL) v. France (dec.), 2000-IX

Alleged failure of court to give reasons when refusing leave to appeal on points of law on the ground that there were no reasonable prospects of success

Fair trial • Civil proceedings • Reasoning in court decisions • Alleged failure of court to give reasons when refusing leave to appeal on points of law on the ground that there were no reasonable prospects of success • Consideration and dismissal of the grounds of appeal

Bufferne v. France (dec.), 2002-III

Reasons for dismissing appeal on a point of law

Fair trial • Civil proceedings • Reasons for dismissing appeal on a point of law • Reasons for judicial decisions • Appellate court • Dismissal of appeal on a point of law because grounds of appeal were not such as to warrant admitting it • Ordinary courts

Burg and Others v. France (dec.), 2003-II

No prior communication of Government Commissioner's submissions and impossibility of replying to them at hearing before the *Conseil d'État*

Fair trial • Administrative proceedings • No prior communication of Government Commissioner's submissions and impossibility of replying to them at hearing before the *Conseil d'État* • Equality of arms • Adversarial proceedings • Failure by applicant to produce memorandum for the deliberations • Obligation to be represented before the *Conseil d'État* by specialist lawyer • Impartial tribunal • Advisory and judicial functions within the *Conseil d'État*

G.L. and S.L. v. France (dec.), 2003-III (extracts)

Equality of arms – Prosecution allowed longer period in which to appeal than civil parties

Fair trial • Criminal proceedings and joinder of civil party seeking damages • Equality of arms • Prosecution allowed longer period in which to appeal than civil parties • Time-limits for appealing • Distinct nature of actions brought by Principal Public Prosecutor and civil parties

Guigue and SGEN-CFDT v. France (dec.), 2004-I

Enactment of retrospective legislation during proceedings

Fair hearing • Civil proceedings • Enactment of retrospective legislation during proceedings • Retrospective legalising legislation • Public-interest grounds • Scope of subsequent judicial review

EEG-Slachthuis Verbist Izegem S.A. v. Belgium (dec.), 2005-XII

Decision taken under the Hague Convention ordering a child wrongfully removed to be returned to Israel

Fair trial • Civil proceedings • Decision taken under the Hague Convention ordering a child wrongfully removed to be returned to Israel • Obligation on Contracting States before ordering the return to a third country of a child wrongfully removed • “Flagrant” denial of justice • Rabbinical courts • Third country bound by other human rights protection instruments

Eskinazi and Chelouche v. Turkey (dec.), 2005-XIII (extracts)

Refusal by Court of Justice of the European Communities to authorise third party to respond to Advocate General's opinion

Civil proceedings • Fair hearing • Adversarial proceedings • Refusal by Court of Justice of the European Communities to authorise third party to respond to Advocate General's opinion • International organisation not party to the Convention • Responsibility of member State arising out of preliminary rulings procedure initiated by domestic court before Court of Justice • Presumption of equivalent protection of fundamental rights by Community law • Procedural guarantees before Court of Justice

Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands (dec.), 2009-I

PUBLIC HEARING

Practice of not holding public hearings and not pronouncing judgment in public in civil proceedings relating to children

Public hearing • Public judgment • Civil proceedings • Proceedings relating to children • Practice of not holding public hearings in civil proceedings relating to children • Circumstances in which exclusion of public envisaged by Article 6 • Designation of entire class of case as exception to general rule of publicity • Discretion of court to hold public hearings • Practice of not pronouncing judgment in public in civil proceedings relating to children • Risk of public pronouncement of judgment frustrating aims of non-public proceedings • Accessibility of judgments to interested persons • Routine publication of cases of interest

B. and P. v. the United Kingdom, 2001-III

Lack of public hearing and non-communication of observations in proceedings before Constitutional Court

Public hearing • Lack of public hearing and non-communication of observations in proceedings before Constitutional Court • Absence of hearing in constitutional proceedings sufficiently compensated for by hearings for the determination of merits of substantive claims • Fair hearing • Equality of arms • Onus on Constitutional Court to secure right to adversarial procedure

Milatová and Others v. the Czech Republic, 2005-V

REASONABLE TIME

Length of civil proceedings

Reasonable time • Length of proceedings concerning judicial separation and ancillary matters

Laino v. Italy [GC], 1999-I

Reasonable time • Length of proceedings concerning assessment of compensation for expropriation

Papachelas v. Greece [GC], 1999-II

Reasonable time • Length of proceedings concerning war pension • Practice in violation of the Convention

Bottazzi v. Italy [GC], 1999-V

Reasonable time • Length of civil proceedings concerning eviction • Practice in violation of the Convention

Di Mauro v. Italy [GC], 1999-V

Beginning of period to be taken into consideration

Reasonable time • Criminal complaint and application to join proceedings as civil party • Beginning of period to be taken into consideration • Seriousness of matters complained of

Selmouni v. France [GC], 1999-V

Compensation awarded following use of domestic remedy open to victims of excessively long proceedings

Reasonable time • Civil proceedings • Existence of domestic remedy for victims of excessively long proceedings • Compensation awarded following use of domestic remedy open to victims of excessively long proceedings • Insufficient amount and late payment of compensation • Period to be considered • Case where compensatory remedy did not take account of entire length of impugned proceedings • Practice incompatible with Convention • Aggravating circumstance due to victim status being maintained despite domestic compensatory remedy

Scordino v. Italy (no. 1) [GC], 2006-V

Cocchiarella v. Italy [GC], 2006-V

Musci v. Italy [GC], 2006-V (extracts)

Conditions of compensation, after German reunification, for expropriations in GDR and Soviet Occupied Zone of Germany

Reasonable time • Constitutional proceedings • Length of proceedings relating to constitutionality of statute governing compensation for expropriations under communist regime • Leading judgment • Stakes involved in dispute • Exceptional context: reunification of Germany

Von Maltzan and Others v. Germany (dec.) [GC], 2005-V

Reasonable time – Criminal proceedings and civil-party application

Reasonable time • Criminal proceedings and civil-party application • Civil rights and obligations • Special diligence required of national authorities

Caloc v. France, 2000-IX

Reasonable time – Length of civil proceedings

Civil proceedings • Reasonable time • Jurisdiction *ratione temporis* • Length of civil proceedings

Zwierzyński v. Poland, 2001-VI

Length of summary proceedings

Reasonable time • Civil proceedings • Length of summary proceedings • Distinction between substantive and summary proceedings • Nature of summary proceedings • Summary proceedings relating to custody of children in divorce proceedings

Boca v. Belgium, 2002-IX

Length of constitutional court proceedings

Reasonable time • Civil proceedings • Length of proceedings on application for access to a child • Constitutional court proceedings • Reform of legislation that is the subject of a constitutional appeal that is under way

Niederböster v. Germany, 2003-IV (extracts)

Length of civil proceedings

Reasonable time • Civil proceedings • Length of proceedings for the eviction of tenants • Complexity of domestic procedure • Limited power of judge to influence conduct of proceedings

Tierce v. San Marino, 2003-VII

Length of enforcement proceedings under the United Nations Convention on the Recovery Abroad of Maintenance

Reasonable time • Civil proceedings • Enforcement proceedings • Length of enforcement proceedings under the United Nations Convention on the Recovery Abroad of Maintenance • Applicant not party to proceedings • Victim

K. v. Italy, 2004-VIII

INDEPENDENT AND IMPARTIAL TRIBUNAL

Impartiality of administrative body and scope of judicial review

Impartial tribunal • Administrative proceedings • Civil rights and obligations • Impartiality of administrative body • Gaming Board • Impartiality of administrative body having reached conclusion before hearing of case • Scope of judicial review

Kingsley v. the United Kingdom [GC], 2002-IV

Impartial tribunal – Compatibility of judicial role of Council of State with its advisory role in relation to draft legislation

Independent and impartial tribunal • Compatibility of judicial role of Council of State with its advisory role in relation to draft legislation • Objective impartiality • Consecutive exercise of advisory and judicial functions • Institutional structure of Council of State • Examination of whether advisory and judicial functions related to the same case or decision

Kleyn and Others v. the Netherlands [GC], 2003-VI

Judge publicly expressing unfavourable view of applicant's case that he has to decide

Impartial tribunal • Judicial authorities' duty of discretion • Reply to provocation • Judge publicly expressing unfavourable view of applicant's case that he has to decide • Objective justification for fears as to a judge's impartiality

Buscemi v. Italy, 1999-VI

Impartiality of judge previously involved in the adoption of the regulations at issue

Independent tribunal • Impartial tribunal • Administrative proceedings • Exercise by the same individual of judicial and non-judicial functions • Impartiality of judge previously involved in the adoption of the regulations at issue • Role of the Bailiff in Guernsey • Waiver of Convention right

McGonnell v. the United Kingdom, 2000-II

Impartiality of an insolvency judge in judicial reorganisation proceedings subsequently presiding over liquidation of the companies concerned

Impartial tribunal • Civil proceedings • Insolvency judge in judicial reorganisation proceedings subsequently presiding over liquidation of the companies concerned • Subjective impartiality • No evidence of personal bias on the part of the judge • Objective impartiality • Nature and extent of the insolvency judge's functions and

of the measures he adopted • No similarity with the issues to be tried by the court over which he presided

Morel v. France, 2000-VI

Impartiality of part-time judge having acted as lawyer for the opposing party in separate proceedings brought by applicant

Impartial tribunal • Civil proceedings • Impartiality of part-time judge having acted as lawyer for the opposing party in separate proceedings brought by applicant • Part-time judges • Absence of material link between separate proceedings • Overlap in time between separate proceedings

Wettstein v. Switzerland, 2000-XII

Impartiality of a judge whose husband's debts had been considerably reduced by a bank party to proceedings in which she was participating

Impartial tribunal • Civil proceedings • Impartiality of a judge whose husband's debts had been considerably reduced by a bank party to proceedings in which she was participating • Level of judge's husband's indebtedness at the time of her participation in proceedings involving the creditor • Absence of direct financial link between judge's husband and bank party to proceedings in which she was participating • Role of judge in facilitating settlement of debts resulting in husband being relieved of substantial financial obligations • Favourable treatment given to judge's husband • Reasonable fears of lack of impartiality

Pétur Thór Sigurðsson v. Iceland, 2003-IV

Impartiality of judge who was associate law professor at respondent university

Impartial tribunal • Administrative procedure • Impartiality of judge who was associate law professor at respondent university • Objective impartiality • Application for removal • Presumption that links between judge and respondent were known • Regular professional and financial links with respondent

Pescador Valero v. Spain, 2003-VII

Impartiality of expert lay judge who was also a member of parliament

Impartial tribunal • Independent tribunal • Civil proceedings • Impartiality of expert lay judge who was also a member of parliament • Separation of powers • Subjective impartiality • Objective impartiality • Expert lay members of courts • Absence of connection between judge and parties or subject matter of case • Absence of previous involvement of judge in adoption of legislation in issue

Pabla Ky v. Finland, 2004-V

Impartiality of judges examining request for retrial after dismissing appeal

Impartial tribunal • Civil proceedings • Impartiality of judges examining request for retrial after dismissing appeal • Applicability • Request for retrial similar to appeal on points of law • Outcome decisive for civil rights and obligations • Judges called upon to review own decision on merits • Objective impartiality

San Leonard Band Club v. Malta, 2004-IX

Independence and impartiality of maritime chambers

Independent and impartial tribunal • Civil proceedings • Civil rights and obligations • Right to a good reputation • Independence and impartiality of maritime chambers

Brudnicka and Others v. Poland, 2005-II

Compatibility of judicial and advisory functions of the *Conseil d'État*

Administrative proceedings • Independent and impartial tribunal • Compatibility of judicial and advisory functions of the *Conseil d'État* • Appointment to a key post in the ministry responsible for mines of a member of the *Conseil d'État* who had participated in proceedings concerning mining law • Appointment envisaged at the time of the deliberations of the *Conseil d'État* • Lack of safeguards against possible outside influence on a member sitting in a judicial capacity • Objective impartiality • Consecutive exercise of advisory and judicial functions • Whether the consecutive exercise of advisory and judicial functions involved the same case or same decision

Sacilor-Lormines v. France, 2006-XIII

Supreme Court formation including three judges who had already ruled on the case in parallel proceedings and three other judges who had participated in the case at lower instance

Impartial tribunal • Subjective impartiality • Objective impartiality • Supreme Court formation including three judges who had already ruled on the case in parallel proceedings and three other judges who had participated in the case at lower instance

Driza v. Albania, 2007-V (extracts)

Independent and impartial tribunal – Composition of bodies deciding on dismissal of a judge

Civil proceedings • Structural defects of the system of judicial discipline • Impartial tribunal • Independent tribunal • Composition of bodies deciding on dismissal of

a judge • Separation of powers between the political organs of government and the judiciary • Objective impartiality • Subjective impartiality • Personal bias • Plenary meeting of Parliament not an appropriate forum for examining questions of law and fact • Insufficiency of judicial review

Oleksandr Volkov v. Ukraine, 2013-I

Impartiality of judge belonging to Freemasons

Impartial tribunal • Civil proceedings • Impartiality of judge belonging to Freemasons • Alleged partiality of judge due to his and one party's membership of Freemasons

Kiiskinen v. Finland (dec.), 1999-V

Impartiality of a commercial court on making of a personal bankruptcy order when the same judge acted both as president and insolvency judge

Impartial tribunal • Civil proceedings • Impartiality of a commercial court on making of a personal bankruptcy order when the same judge acted both as president and insolvency judge • Objective impartiality • Nature and extent of the insolvency judge's functions and the measures adopted by him • No similarity between the issues to be decided

Delage and Magistrello v. France (dec.), 2002-III

Public stance taken by association of judges on issue submitted to a court for adjudication

Impartial tribunal • Administrative procedure • Public stance taken by association of judges on issue submitted to a court for adjudication • Challenge for bias • Excessive formalism

Sofianopoulos and Others v. Greece (dec.), 2002-X

Independence and impartiality of district and circuit judges in proceedings against the Lord Chancellor's Department

Impartial tribunal • Independent tribunal • Civil proceedings • Independence and impartiality of district and circuit judges in proceedings against the Lord Chancellor's Department • Separation of powers • Subjective impartiality • Objective impartiality • Manner of appointment of these judges and guarantees against outside pressures • Lord Chancellor's power of removal as regards these judges

Clarke v. the United Kingdom (dec.), 2005-X (extracts)

TRIBUNAL ESTABLISHED BY LAW

Composition of chamber examining applicant's case defined by a judge whose term of office as court's president had expired

Fair hearing • Absence of limitation period for imposing disciplinary penalty on judges • Legal certainty • Abuse of electronic voting system in Parliament when adopting decision on judge's dismissal • Tribunal established by law • Composition of chamber examining applicant's case defined by a judge whose term of office as court's president had expired

Oleksandr Volkov v. Ukraine, 2013-I

PUBLIC JUDGMENT

Practice of not holding public hearings and not pronouncing judgment in public in civil proceedings relating to children

Public hearing • Public judgment • Civil proceedings • Proceedings relating to children • Practice of not holding public hearings in civil proceedings relating to children • Circumstances in which exclusion of public envisaged by Article 6 • Designation of entire class of case as exception to general rule of publicity • Discretion of court to hold public hearings • Practice of not pronouncing judgment in public in civil proceedings relating to children • Risk of public pronouncement of judgment frustrating aims of non-public proceedings • Accessibility of judgments to interested persons • Routine publication of cases of interest

B. and P. v. the United Kingdom, 2001-III

Publicity of judgments – Pronouncement of judgment in civil case confined to the operative provisions

Public judgment • Civil proceedings • Pronouncement of judgment in civil case confined to the operative provisions • Purpose of publicity requirement • Content of the requirement • Absence of other means under domestic law of making reasons public • No indication in operative provisions of applicable legal principle

Ryakib Biryukov v. Russia, 2008-I

Article 6 § 1 (criminal)

APPLICABILITY

Applicability – Immediate withdrawal of a driving licence

Applicability • Immediate withdrawal of a driving licence • Criminal charge •

Classification of measure in domestic law • Classification of safety measure in domestic law not province of criminal law • Nature of measure in question • Immediate withdrawal not presupposing any finding of guilt and not having punitive purpose • Immediate withdrawal distinguishable from disqualification from driving which may be ordered at the end of criminal proceedings • Nature and degree of severity of “penalty” • Limited impact of measure

Escoubet v. Belgium [GC], 1999-VII

Applicability – Tax surcharge

Applicability • Administrative proceedings • Tax surcharge imposed without an oral hearing • Criminal charge • Classification of offence in domestic law • Nature of offence • Nature and severity of penalty • Minor nature of penalty insufficient to render Article 6 inapplicable • Fair hearing • Oral hearing • Public hearing • Tax issues more efficiently dealt with in written proceedings

Jussila v. Finland [GC], 2006-XIV

Applicability – Impossibility for an MP to waive his parliamentary immunity in order to defend himself in criminal proceedings

Applicability • Criminal proceedings • Access to court • Reasonable time • Impossibility for an MP to waive his parliamentary immunity to defend himself in criminal proceedings • Protecting the independence of Parliament • Margin of appreciation • Relative scope of parliamentary inviolability • Delay in access to court • MP agrees to waive own inviolability • Temporary procedural obstacle • Single suspension with no intervention in the course of justice • Proportionality

Kart v. Turkey [GC], 2009-VI

Applicability of Article 6 to constitutional proceedings

Applicability • Constitutional proceedings • Applicability of Article 6 to constitutional proceedings • Length of constitutional proceedings • Special role of Constitutional Courts

Gast and Popp v. Germany, 2000-II

Applicability – Imposition of fine for abuse of process

Fair hearing • Criminal proceedings • Imposition of fine for abuse of process • Applicability • Criminal charge • Classification of offence in domestic law • Nature of offence • Nature and severity of penalty • Rights of the defence • Adequate time and facilities • Information on nature and cause of accusation

T. v. Austria, 2000-XI

Applicability – Confiscation order based on statutory assumptions as to origins of assets

Applicability • Applicability of Article 6 to post-conviction confiscation proceedings • Fair hearing • Criminal proceedings • Confiscation order based on statutory assumptions as to origins of assets • Presumptions of fact or law • Safeguards in respect of statutory assumptions • Rebuttable assumption

Phillips v. the United Kingdom, 2001-VII

Applicability of Article 6 to the procedure for examining legal-aid applications

Applicability • Applicability of Article 6 to the procedure for examining legal-aid applications • Applicant defending criminal proceedings • Criminal charge • Interests of justice • Limited amount at stake and “simplicity” of criminal procedure • Legal representation not compulsory • Civil rights and obligations • No arguable right under domestic law

Gutfreund v. France, 2003-VII

Applicability – conviction for disseminating false information about a candidate for the presidency of Ukraine

Criminal proceedings • Criminal charge • Remittal of the case for additional investigation • Fair hearing • Lack of reasons for a judicial decision • Adversarial trial • Equality of arms • Applicant not present at supervisory review proceedings • Failure to provide the applicant with prosecutor’s motion (*protest*) and resolution in supervisory review proceedings • Impartial tribunal • Independent tribunal • Lack of sufficient guarantees against pressure from the Presidium of the regional court • Binding nature of the instructions given by the Presidium of the regional court • Legal certainty • Foreseeability • Rule of law • No time-limit for lodging supervisory review application • Quashing in supervisory review proceedings of a final procedural decision

Salov v. Ukraine, 2005-VIII (extracts)

Applicability – Subject matter of proceedings not “the determination of a criminal charge”

Applicability • Criminal limb • Subject matter of proceedings not “the determination of a criminal charge” • Civil limb • Potential conflict with Article 5 § 4 if applied • Contrary to principle of harmonious interpretation to derive more stringent requirements from civil limb of Article 6 • Article 5 § 4 the *lex specialis*

Reinprecht v. Austria, 2005-XII

Applicability – Proceedings concerning costs and expenses

Applicability • Criminal proceedings • Proceedings concerning costs and expenses • Criminal charge • Reasonable time • Period to be taken into account • Proceedings concerning costs and expenses inherently linked to outcome of criminal trial • Length of costs and expenses proceedings to be taken into account in the calculation of the overall length of criminal proceedings

Mamič v. Slovenia (no. 2), 2006-X (extracts)

Applicability – Proceedings leading to demolition of house built without planning permission

Applicability • Criminal proceedings • Criminal charge • Proceedings leading to demolition of house built without planning permission • Demolition measure considered to be a penalty • Reasonable time

Hamer v. Belgium, 2007-V (extracts)

Applicability of Article 6 to pre-trial proceedings

Determination of criminal charge • Court of Inquiry proceedings preceding criminal charge • Applicability of Article 6 to pre-trial proceedings • Prejudice to fairness of subsequent proceedings

Ninn-Hansen v. Denmark (dec.), 1999-V

Applicability – conviction for tax evasion after tax penalties had been imposed for the same matter

Fair hearing • *Non bis in idem* • *Non bis in idem* rule does not come within the scope of Article 6

Ponsetti and Chesnel v. France (dec.), 1999-VI

Applicability of Article 6 to military disciplinary proceedings

Applicability • Military disciplinary proceedings • Criminal charge • Classification of the measure in domestic law • Disciplinary law offence • Nature of the measure concerned • Measure designed to ensure compliance with specific rules governing the conduct of servicemen • Nature and degree of severity of “penalty” • Penalty not amounting to a deprivation of liberty in practice

Brandão Ferreira v. Portugal (dec.), 2000-X

Applicability of Article 6 in proceedings concerning an administrative fine for carrying out work without the necessary permit

Applicability • Applicability of Article 6 in proceedings concerning an administrative

fine for carrying out work without the necessary permit • Criminal charge • Criteria for defining a criminal charge • Classification of offence in domestic law • Nature of offence • Nature and degree of severity of penalty

Inocêncio v. Portugal (dec.), 2001-I

Applicability – Relief from penalties imposed for bad faith in tax proceedings

Applicability • Criminal charge • Relief from penalties imposed for bad faith in tax proceedings • Tax dispute • Public-authority prerogatives

Mieg de Boofzheim v. France (dec.), 2002-X

Applicability of Article 6 to a request for a retrial following the finding of a violation by the Court

Applicability • Request for a retrial following the finding of a violation by the Court • Determination of a criminal charge • Supervision of the execution of judgments

Franz Fischer v. Austria (dec.), 2003-VI

Applicability – Proceedings to establish whether an accused found to be unfit to plead committed the act in question

Applicability • Determination of criminal charge • Proceedings to establish whether an accused found to be unfit to plead committed the act in question • Impossibility of proceedings resulting in conviction • Absence of punitive sanctions

Antoine v. the United Kingdom (dec.), 2003-VII (extracts)

Applicability of Article 6 to tax surcharge for failure to submit tax return

Applicability • Tax disputes • Criminal charge • Inapplicability of Article 6 to a tax surcharge for failure to submit tax return • Rate and amount of surcharge

Morel v. France (dec.), 2003-IX

Applicability – Period of preliminary investigation before injured party joins proceedings as civil party

Applicability • Criminal complaint • Failure by public prosecutor to call for autopsy during preliminary investigation • Injured party • Rights of injured party at preliminary-investigation stage • Period of preliminary investigation before injured party joins proceedings as civil party • Judicial autopsy

Sottani v. Italy (dec.), 2005-III (extracts)

Applicability – Lustration proceedings resulting in politician’s temporary disqualification from public office

Applicability • Criminal charge • Lustration proceedings resulting in politician’s temporary disqualification from public office • Classification of proceedings under domestic law • Nature of offence • Nature and degree of severity of penalty • Punitive and deterrent character of sanction • Criminal features of proceedings • Legal provision directed at vast group of persons

Matyjek v. Poland (dec.), 2006-VII

Applicability – Attachment of assets in the context of a criminal investigation aimed at safeguarding claims of aggrieved parties

Applicability • Criminal charge • Civil rights and obligations • Determination • Purpose of the measure • Impact of the measure on the applicant’s criminal record • Provisional nature of the measure • Attachment of assets in the context of a criminal investigation aimed at safeguarding claims of aggrieved parties

Dogmoch v. Germany (dec.), 2006-XIII

Applicability of Article 6 to the European arrest warrant procedure

Criminal proceedings • Criminal charge • Applicability of Article 6 to the European arrest warrant procedure • Procedure replacing extradition procedure with the same aim • Execution of European arrest warrant practically automatic

Monedero Angora v. Spain (dec.), 2008-IV

ACCESS TO COURT

Refusal by a territorial entity to comply with a judgment acquitting the applicant issued by the central authority

Right to a court • Criminal proceedings • Refusal by a territorial entity to comply with a judgment acquitting the applicant issued by the central authority • Failure to comply with a judicial decision

Assanidze v. Georgia [GC], 2004-II

Access to a court – Requirement that permission of State Council’s Office be obtained to lodge *empara* appeal with Andorran Constitutional Court

Access to a court • Criminal proceedings • Constitutional appeal • Requirement that permission of State Council’s Office be obtained to lodge *empara* appeal with Andorran Constitutional Court

Millan I Tornes v. Andorra (friendly settlement), 1999-IV

Obligation to surrender to custody on day before hearing in Court of Cassation on pain of forfeiture of the right to appeal

Access to a court • Criminal proceedings • Obligation to surrender to custody on day before hearing in Court of Cassation on pain of forfeiture of the right to appeal • Forfeiture of the right to appeal on points of law • Application for exemption from the obligation to surrender to custody

Khalfaoui v. France, 1999-IX

Access to a court • Criminal proceedings • Proceedings relating to serious crime • Obligation to surrender to custody on day before hearing in Court of Cassation or else forfeit right to appeal • Forfeiture of right to appeal on points of law • Application for exemption from obligation to surrender to custody

Papon v. France, 2002-VII

Access to a court – Exclusion of cassation appeal against conviction *in absentia* in the Netherlands Antilles

Access to a court • Criminal proceedings • Exclusion of cassation appeal against conviction *in absentia* in the Netherlands Antilles • Appeal • Cassation appeal • Adversarial trial • Objection proceedings • Obligation of accused to appear as precondition to examination of objection • Balance between interest of State and rights of accused

Eliazer v. the Netherlands, 2001-X

Access to a court – Enforcement of tax surcharges prior to determination of liability by a court

Access to a court • Criminal proceedings • Enforcement proceedings • Enforcement of tax surcharges prior to determination of liability by a court • Applicability • Civil rights and obligations • Criminal charge • Classification of measure in domestic law • Nature of measure in question • Severity of penalty • Review of administrative decisions by a court with full jurisdiction • Prejudicial consequences of immediate enforcement of tax surcharges • Obligation on authorities to conduct tax proceedings promptly

Janosevic v. Sweden, 2002-VII

Conditions of admissibility of appeal by civil party to Court of Cassation on points of law where prosecution does not appeal

Access to a court • Criminal proceedings and application to join them as civil party seeking damages • Conditions of admissibility of appeal by civil party to Court of Cassation on points of law where prosecution does not appeal • Foreseeability •

Role accorded to civil action in criminal trial • Review by Court of Cassation to ensure impugned decision properly reached

Berger v. France, 2002-X

Withdrawal of appeals upon agreement with Advocate-General that sentence would be remitted

Access to a court • Criminal proceedings

Marpa Zeeland B.V. and Metal Welding B.V. v. the Netherlands, 2004-X (extracts)

Inability of courts to vary statutory fixed-rate fine

Access to court • Criminal proceedings • Inability of courts to vary statutory fixed-rate fine • Extended powers of court in full administrative proceedings • Statutory fine proportionate to seriousness of taxpayer's conduct • Possibility for applicant to submit all factual and legal arguments • Requirement of efficacy in tax disputes to protect State interests • Tax proceedings not part of hard core of criminal law for purposes of Convention

Segame SA v. France, 2012-III (extracts)

Shortcomings of attorney appointed under legal aid scheme

Access to court • Criminal proceedings • Right to have legal assistance • Shortcomings of attorney appointed under legal aid scheme • Independence of attorneys' professional association from State • Responsibility of State for conduct of attorney appointed under legal aid scheme in connection with an *amparo* appeal • Remedy aimed at safeguarding fundamental rights

Alvarez Sánchez v. Spain (dec.), 2001-XI

FAIR TRIAL

Public trial in an adult court of juvenile charged with murder and imposition of a sentence of detention during Her Majesty's pleasure with a tariff of fifteen years fixed by a member of the executive

Fair hearing • Criminal proceedings • Participation of accused in trial • Ability of accused to understand and participate in trial • Minimum age of criminal responsibility • Public trial of juvenile in an adult court • Measures taken to facilitate participation of accused • Applicability of Article 6 to sentencing • Fixing of tariff part of indeterminate sentence amounting to a sentencing exercise • Independent tribunal • Fixing of tariff by a member of the executive

V. v. the United Kingdom [GC], 1999-IX

Non-disclosure to the defence of evidence held by the prosecution, on grounds of public interest immunity

Fair hearing • Criminal proceedings • Adversarial trial • Equality of arms • Disclosure of evidence • Duty of prosecution to disclose evidence • Non-disclosure to the defence of evidence held by the prosecution, on grounds of public interest immunity • Procedural safeguards • Balance between public interest and the rights of the defence

Rowe and Davis v. the United Kingdom [GC], 2000-II
Fitt v. the United Kingdom [GC], 2000-II

Inability to make oral representations at a hearing of the Court of Cassation, either in person or through a member of an ordinary bar

Fair hearing • Criminal proceedings • Oral procedure • Inability to make oral representations at a hearing of the Court of Cassation, either in person or through a member of an ordinary bar • Special nature of the proceedings before the Criminal Division of the Court of Cassation • Essentially written procedure • To defend oneself in person • Legal assistance of one's own choosing • Monopoly enjoyed by members of the *Conseil d'État* and Court of Cassation Bar • Guarantees afforded by the domestic system of representation by a lawyer in proceedings in the Court of Cassation • Adversarial proceedings • Failure to communicate submissions of the advocate-general at the Court of Cassation and inability to reply in writing thereto • Impact on the appellant's procedural options

Meftah and Others v. France [GC], 2002-VII

Journalist convicted of libelling a public prosecutor

Fair trial • Criminal proceedings • Trial for defamation • Request by defendant for certain evidence to be admitted and for complainant to be examined • Relevance of evidence for establishment of the truth

Perna v. Italy [GC], 2003-V

Non-disclosure by prosecution, on ground of public interest, of material potentially relevant to defence of entrapment

Fair hearing • Criminal proceedings • Adversarial trial • Equality of arms • Non-disclosure by prosecution, on ground of public interest, of material potentially relevant to defence of entrapment

Edwards and Lewis v. the United Kingdom [GC], 2004-X

Fair hearing – Risk of a flagrant denial of justice in the receiving country

Criminal charge • Fair hearing • Risk of a flagrant denial of justice in the receiving country • Court prevented from obtaining additional information to assist it in its assessment

Mamatkulov and Askarov v. Turkey [GC], 2005-I

Person convicted *in absentia* with no knowledge of prosecution and charges

Criminal proceedings • Defence rights • Person convicted *in absentia* with no knowledge of prosecution and charges • Applicant untraceable at opening of criminal proceedings and during his trial • Whether the applicant sought to evade trial • Whether there was an unequivocal waiver of the right to appear in court • Opportunity to obtain a retrial

Sejdovic v. Italy [GC], 2006-II

Evidence obtained by breach of core Convention right

Fair trial • Criminal proceedings • Evidence obtained by breach of core Convention right • Absence of discretion to exclude evidence so obtained • Evidence decisive in securing conviction • Privilege against self-incrimination

Jalloh v. Germany [GC], 2006-IX

Accused tried under summary procedure

Criminal proceedings • Fair trial • Accused tried under summary procedure • Public trial • Summary procedure aimed at simplifying and expediting criminal proceedings • Absence of public hearing before trial court under summary procedure requested by the accused found not to be in breach of the Convention • Appearance of accused at appeal stage • Presence of accused at appeal hearing not a requirement of fairness • Waiving of right to attend appeal hearing • Accused informed of date of hearing while in prison • Failure to request his transfer to hearing room • No obligation on State to spell out defendant's rights and entitlements at each step in the procedure • Lawyer's obligation to inform his client • Time needed to arrange transfer of prisoner • Objection raised by lawyer at hearing to continuation of proceedings in the absence of his client • Tacit but unequivocal waiver

Hermi v. Italy [GC], 2006-XII

Obligation for registered keeper of a vehicle to provide information identifying the driver where a road-traffic offence was suspected

Fair trial • Criminal proceedings • Obligation for registered keeper of a vehicle to provide information identifying the driver where a road-traffic offence was

suspected • Right to remain silent • Right not to incriminate oneself • Nature and degree of compulsion • Road users' acceptance of regulatory regime • Limited nature of police powers • Safeguards • Absence of strict liability • Use made of information obtained as a result of the statutory obligation • Identity of driver not sole evidence required for conviction of road-traffic offence

O'Halloran and Francis v. the United Kingdom [GC], 2007-III

Conviction of bribery based on evidence obtained as a result of police incitement

Criminal proceedings • Fair hearing • Conviction of bribery based on evidence obtained as a result of police incitement • Safeguards • Authorities responsible for offer of bribe by the police in absence of legal framework or judicial authorisation • No evidence of applicant's involvement in or predisposition to corruption • Burden on prosecution to prove absence of incitement • Courts' failure to examine the applicant's incitement allegations

Ramanauskas v. Lithuania [GC], 2008-I

Use in trial of evidence obtained under duress

Criminal proceedings • Fair trial • Use in trial of evidence obtained under duress

Gäfgen v. Germany [GC], 2010-IV

Lack of adequate procedural safeguards to enable accused to understand reasons for lay jury's guilty verdict in the Assize Court

Fair trial • Criminal proceedings • Lack of adequate procedural safeguards to enable accused to understand reasons for lay jury's guilty verdict in the Assize Court • Lack of sufficient information in indictment and questions to the jury as to the accused's involvement in alleged offences • No possibility of ordinary appeal against an Assize Court judgment

Taxquet v. Belgium [GC], 2010-VI

Lack of a hearing before the trial or appellate judge in criminal proceedings

Oral proceedings • Criminal proceedings • Lack of a hearing before the trial or appellate judge in criminal proceedings

Stefanelli v. San Marino, 2000-II

Drawing of adverse inferences by a jury from suspect's silence

Fair hearing • Criminal proceedings • Right to remain silent • Drawing of adverse inferences by a jury from suspect's silence • Access to lawyer during initial questioning

by police • Deficiency in trial judge's summing-up to jury • Absence of reasons in jury trial • Distinction between safety of conviction and fairness of hearing

Condron v. the United Kingdom, 2000-V

Fair hearing • Criminal proceedings • Right to remain silent • Drawing of adverse inferences from suspect's silence • Denial of access to lawyer during initial questioning by police • Existence of other evidence against accused • Evidence calling for an explanation by accused

Averill v. the United Kingdom, 2000-VI

Use in criminal trial of evidence obtained in violation of Article 8 of the Convention

Fair hearing • Criminal proceedings • Evidence • Admissibility of evidence • Use in criminal trial of evidence obtained in violation of Article 8 • Nature of "unlawfulness" • Admissibility of evidence in domestic law • Opportunity to contest authenticity and use of evidence • Domestic courts' discretion to exclude evidence

Khan v. the United Kingdom, 2000-V

Procedural rules not established beforehand

Fair trial • Criminal proceedings • Procedural rules not established beforehand • Principle that criminal procedure must be laid down by written law • Equality of arms • Tribunal established by law • Concept of "tribunal" • Special procedure followed for prosecution of a minister also applied to persons who were not ministers • Application of the connection rule • Possibility of extending the jurisdiction of the Court of Cassation not prescribed by law • Refusal to refer an application for a preliminary ruling to another national authority • Decision not arbitrary • Independent and impartial tribunal • Independence and impartiality of Court of Cassation • Role of the Principal Public Prosecutor at the Court of Cassation

Coëme and Others v. Belgium, 2000-VII

Evidence not having been heard from accused during appeal proceedings

Fair trial • Criminal proceedings • Evidence not having been heard from accused during appeal proceedings • Right to oral trial • Applicability of Article 6 to appeal proceedings • Appellate court ruling on questions of fact and of law

Constantinescu v. Romania, 2000-VIII

Use at trial of statements previously made under obligation to inspectors investigating a company take-over

Fair trial • Criminal proceedings • Use at trial of statements previously made under

obligation to inspectors investigating a company take-over • Self-incrimination • Alleged improper collusion between company inspectors and the prosecuting authorities • Absence of arbitrariness in review by domestic courts • Disclosure of evidence • Non-disclosure to the defence of material held by the prosecution • Disclosure of material prior to review by Court of Appeal • Reasonable time • Starting-point of criminal proceedings • Charged with a criminal offence • Investigation of company take-over • Exclusion of period between judgment of Court of Appeal and referral by the Secretary of State

I.J.L. and Others v. the United Kingdom, 2000-IX

Self-incrimination – Conviction for refusing to answer police questions

Fair hearing • Presumption of innocence • Self-incrimination • Conviction for refusing to answer police questions • Criminal charge • Suspect “substantially affected” • Victim • Applicability of Article 6 notwithstanding acquittal • Safeguards against abuse • Essence of right not to incriminate oneself • Degree of compulsion • Security and public order considerations

Heaney and McGuinness v. Ireland, 2000-XII

Holding of trial in prison

Public hearing • Criminal proceedings • Holding of trial in prison • Accessibility of trial to public • Duty of State to take special measures when trial not held in regular courtroom • Absence of special circumstances justifying lack of publicity • Scope of review by appellate court

Riepan v. Austria, 2000-XII

Conviction of an adult subject to a supervision order without his supervisor being informed

Fair hearing • Criminal proceedings • Rights of the defence • The right to defend oneself through legal assistance • Conviction of an adult subject to a supervision order without his supervisor being informed • Importance of the accused’s attendance in person • Special procedural safeguards to protect persons who are not fully capable of acting for themselves • Positive obligation • Effective enjoyment of the rights guaranteed • Right to liberty • More at stake in criminal proceedings than in civil proceedings • Requirements of the proper administration of justice • Obligations on the national authorities to take further steps

Vaudelle v. France, 2001-I

Self-incrimination – Imposition of fines for refusal to submit documents to the tax authorities

Fair hearing • Criminal proceedings • Self-incrimination • Imposition of fines for refusal to submit documents to the tax authorities • Criminal charge • Mixed nature of proceedings • Risk of incurring sanction • Nature and severity of sanction

J.B. v. Switzerland, 2001-III

Conviction *in absentia* of a defendant who was prevented from appearing at his trial by the decision of a foreign court

Fair trial • Criminal proceedings • Rights of the defence • Right to defend oneself • Conviction *in absentia* • Conviction *in absentia* of a defendant who was prevented from appearing at his trial by the decision of a foreign court • Decision of a foreign court • Defendant prevented from appearing at the trial • Failure to appear without good cause • Lack of arbitrariness

Medenica v. Switzerland, 2001-VI

Non-disclosure of the defence of evidence held by the prosecution, on grounds of public interest immunity and use in criminal trial of evidence obtained in violation of Article 8 of the Convention

Fair hearing • Criminal proceedings • Adversarial trial • Equality of arms • Disclosure of evidence • Duty of prosecution to disclose evidence • Non-disclosure to the defence of evidence held by the prosecution, on grounds of public interest immunity • Use in criminal trial of evidence obtained in violation of Article 8 • Procedural safeguards • Balance between public interest and the right of the defence • Evidence • Admissibility of evidence • Nature of “unlawfulness” • Admissibility of evidence in domestic law • Opportunity to contest authenticity and use of evidence • Domestic courts’ discretion to exclude evidence

P.G. and J.H. v. the United Kingdom, 2001-IX

Use in criminal trial of statements made by witnesses held in prison abroad

Examination of witnesses • Use in criminal trial of statements made by witnesses held in prison abroad • Hearing of witnesses abroad • Failure of accused’s lawyer to attend hearing of witnesses • Absence of impediment to lawyer attending hearing of witnesses • Analysis by court of credibility of witnesses and weight to be given to statements • Existence of corroborating evidence • Attendance of witnesses • Refusal of court to summon witnesses requested by the accused

Solakov v. the former Yugoslav Republic of Macedonia, 2001-X

Inadmissibility of appellant's supplementary pleadings in Court of Cassation as being out of time

Fair hearing • Criminal proceedings • Inadmissibility of appellant's supplementary pleadings in Court of Cassation as being out of time • Equality of arms • Appellant in Court of Cassation placed at disadvantage by time-limit for filing pleadings • Notification of hearing in Court of Cassation through list displayed at registry • Arrangements for summoning parties to attend hearings • Accessibility • Additional notification arrangements • Non-communication of State Counsel's submissions • Adversarial proceedings • Alleged lack of opportunity to reply to State Counsel's submissions • Inability of applicants and their counsel to attend hearing not attributable to authorities • Refusal to submit preliminary question to another national authority • Lack of arbitrariness

*Wynen and Centre hospitalier interrégional
Edith-Cavell v. Belgium, 2002-VIII*

Eliciting of incriminating statements by police informer placed in suspect's cell

Fair trial • Criminal proceedings • Self-incrimination • Eliciting of incriminating statements by police informer placed in suspect's cell • Right to remain silent • Undermining of right to remain silent by means of subterfuge • Psychological pressure impinging on voluntary nature of statements • Use in criminal trial of evidence obtained in violation of Article 8 of the Convention • Admissibility of evidence in domestic law • Opportunity to contest authenticity and use of evidence

Allan v. the United Kingdom, 2002-IX

Refusal of defendant's request for production of certain items of evidence

Fair hearing • Criminal proceedings • Evidence • Production of evidence • Refusal of defendant's request for production of certain items of evidence

Georgios Papageorgiou v. Greece, 2003-VI (extracts)

Non-disclosure to the defence of evidence held by the prosecution, on grounds of public interest immunity

Fair hearing • Criminal proceedings • Adversarial trial • Equality of arms • Non-disclosure to the defence of evidence held by the prosecution, on grounds of public interest immunity • Disclosure of evidence • Duty of prosecution to disclose evidence • Procedural safeguards • Assessment by appellate court of material disclosed after trial • Possibility of review by appellate court of undisclosed material

Dowsett v. the United Kingdom, 2003-VII

Effectiveness of participation of 11-year-old child of low intellectual ability in criminal trial

Fair trial • Criminal proceedings • Effectiveness of participation of 11-year-old child of low intellectual ability in criminal trial • Minimum age of criminal responsibility • Ability of accused to understand and participate in trial • Measures taken to facilitate participation of accused • Importance of specialist tribunal in dealing with juveniles unable to participate effectively in criminal trial

S.C. v. the United Kingdom, 2004-IV

Notice of prosecution allegedly not received by person convicted *in absentia*

Fair trial • Criminal proceedings • Notice of prosecution allegedly not received by person convicted *in absentia* • Right to appear at one's trial and defend oneself • Any waiver of the right to appear in court to be unequivocal • Duties incumbent on the prosecuting authorities • Information that proceedings had been instituted come by unofficially

Somogyi v. Italy, 2004-IV

Application for supervisory review of final acquittal

Fair trial • Criminal proceedings • Application for supervisory review of final acquittal • Legal certainty • Time-limit for requesting supervisory review • Reopening of criminal case • Effect of reopening on essence of right to a fair trial

Nikitin v. Russia, 2004-VIII

Accused's participation in proceedings by videoconference

Criminal proceedings • Fair trial • Rights of the defence • Accused's participation in proceedings by videoconference • Accused's participation in proceedings by videoconference not as such contrary to the Convention • Serious Mafia-related offences • Risks inherent in transfer of certain detainees and their presence at hearing • Simplification and acceleration of criminal proceedings • Legitimate aims • Arrangements for conduct of hearings • Audiovisual link between accused and hearing room • Confidentiality of communication between accused and defence counsel • Conventions on Mutual Assistance in Criminal Matters • Hearing of witnesses and experts at a distance

Marcello Viola v. Italy, 2006-XI (extracts)

Conviction of offence incited by undercover police

Criminal proceedings • Fair hearing • Conviction of offence incited by undercover

police • Evidence obtained as a result of police incitement • No distinction made between entrapment and legitimate investigation method

Khudobin v. Russia, 2006-XII (extracts)

Conviction based on statements of co-accused whom defendants had no opportunity to examine

Criminal proceedings • Fair hearing • Questioning of witnesses • Notion of a witness • Right to remain silent • Conviction based on statements of co-accused whom defendants had no opportunity to examine • Statements of decisive influence

Kaste and Mathisen v. Norway, 2006-XIII

Use at trial of statements obtained from accused and witnesses through torture

Criminal proceedings • Fair hearing • Admissibility of evidence • Use at trial of statements obtained from accused and witnesses through torture • Privilege against self-incrimination • Torture established at domestic level • Evidence of continued threats of further torture and retaliation • Reiteration of coerced statements irrelevant to the issue of their credibility • Use of evidence obtained under duress rendering trial unfair as a whole

Harutyunyan v. Armenia, 2007-III

Proposed expulsion entailing risk of conviction on basis of evidence obtained by torture of third parties

Fair hearing • Torture • Proposed expulsion entailing risk of conviction on basis of evidence obtained by torture of third parties • Meaning of “flagrant denial of justice” where trial to be held in non-Contracting State • Basic international standards of fair trial • Burden of proof • “Real risk” test • Legal guarantees of limited practical value

Othman (Abu Qatada) v. the United Kingdom, 2012-I (extracts)

Conviction without examination of merits of case following plea bargain

Right to a fair trial • Fair hearing • Criminal proceedings • Plea bargaining • Conviction without examination of merits of case following plea bargain • Guilty plea • *Nolo contendere* • Waiver of procedural rights • Procedural safeguards • Waiver of right to examination of case on the merits • Voluntary entry into agreement • Judicial review of plea bargain • Accusations supported by prima facie evidence • Right of appeal in criminal matters • Scope of right where conviction based on plea bargain • Margin of appreciation • Waiver of right to ordinary appellate review • Absence of arbitrary restriction falling foul of requirement of reasonableness

Natsvlshvili and Togonidze v. Georgia, 2014-II (extracts)

Special interrogation technique using psychological methods to obtain a confession

Fair trial • Criminal proceedings • Special interrogation technique using psychological methods to obtain a confession • Presumption of innocence • Right to remain silent • Right not to incriminate oneself • Questioning of suspect • Confession • Adversarial proceedings • Exclusion of evidence

Ebbinge v. the Netherlands (dec.), 2000-IV

Use of reports from disciplinary proceedings in criminal proceedings concerning the same facts

Fair trial • Criminal proceedings • Disciplinary proceedings • Self-incrimination • Rules of evidence • Use of reports from disciplinary proceedings in criminal proceedings concerning the same facts • Coercive nature of questioning

Serves v. France (dec.), 2000-V

Use at trial of statements which the accused was previously obliged to make to inspectors investigating suspected insider dealing

Fair hearing • Criminal proceedings • Self-incrimination • Use at trial of statements which the accused was previously obliged to make to inspectors investigating suspected insider dealing • Voluntary nature of statements • Use made by prosecution of statements made under compulsory powers

Staines v. the United Kingdom (dec.), 2000-V

Trial for war crimes committed more than fifty years earlier

Fair trial • Criminal proceedings • Trial for war crimes committed more than fifty years earlier • Admissibility and evaluation of evidence • Adversarial proceedings • Lack of reasons for refusal of leave to appeal

Sawoniuk v. the United Kingdom (dec.), 2001-VI

Extradition to the United States, where applicant had been convicted *in absentia*, following enactment of statute providing for possibility of a retrial

Fair hearing • Extradition to the United States, where applicant had been convicted *in absentia*, following enactment of statute providing for possibility of a retrial • Undertakings of appropriate American authorities sufficient to remove danger of sentence being imposed *in absentia* • Obligation of Contracting States not to extradite person who risks suffering “flagrant denial of justice” in requesting State • Media influence on jurors during trial of extradited person

Einhorn v. France (dec.), 2001-XI

Defendant unable to cross-examine victim of sexual abuse at retrial hearing

Fair trial • Criminal proceedings • Examination of witnesses • Defendant unable to cross-examine victim of sexual abuse at retrial hearing • Defence rights • Specific features of criminal proceedings in connection with rape and other sexual offences • Adversarial procedure • Adversarial examination of victim during earlier proceedings in same case • Conviction not based exclusively on victim's evidence

N.F.B. v. Germany (dec.), 2001-XI

Assize court juries not required to give reasons for findings of fact

Fair trial • Criminal proceedings • Statement of reasons for judicial decisions • Assize court juries not required to give reasons for findings of fact

Papon v. France (no. 2) (dec.), 2001-XII

Undercover agent's role in the commission of an offence

Fair trial • Criminal proceedings • Undercover agent's role in the commission of an offence • No police incitement • No incitement to commit an offence which would not have been committed without the undercover agent's intervention

Calabrò v. Italy and Germany (dec.), 2002-V

Failure to communicate the advocate-general's submissions to an appellant in the Criminal Division of the Court of Cassation

Fair hearing • Criminal proceedings • Failure to communicate the advocate-general's submissions to an appellant in the Criminal Division of the Court of Cassation • Adversarial process • Existence of a practice ensuring due adversarial process • Practice existing at the material time

Pascolini v. France (dec.), 2002-V

Self-incrimination – Conviction for making false declaration of assets to the tax authorities

Fair hearing • Criminal proceedings • Self-incrimination • Conviction for making false declaration of assets to the tax authorities • Use of compulsory powers • Absence of pre-existing offence • Degree of compulsion

Allen v. the United Kingdom (dec.), 2002-VIII

Role of undercover agents in connection with criminal proceedings

Fair trial • Criminal proceedings • Undercover agents • Absence of police incitement • Adversarial proceedings • Conviction based on other evidence

Sequeira v. Portugal (dec.), 2003-VI

Disappearance and destruction of evidence

Fair trial • Criminal proceedings • Disappearance and destruction of evidence • Adversarial proceedings • Equality of arms • Evidence • Impartial tribunal • Allegations of bias arising out of the manner in which the judgment was reasoned

Sofri and Others v. Italy (dec.), 2003-VIII (extracts)

Conviction of a writer for denial of crimes against humanity

Fair trial • Criminal proceedings • Refusal to join several sets of proceedings • Smooth operation of the justice system • Conduct of authorities • Fair balance

Garaudy v. France (dec.), 2003-IX (extracts)

Enticement by investigative journalist to commit offence

Fair trial • Enticement by investigative journalist to commit offence • Admission of evidence obtained by alleged entrapment • Entrapment by individuals other than agents of the State • Examination by trial judge of fairness of admitting evidence

Shannon v. the United Kingdom (dec.), 2004-IV

Use at trial of statements made by witness having concluded an arrangement with the prosecution in the context of separate criminal proceedings against him

Fair trial • Use at trial of statements made by witness having concluded an arrangement with the prosecution in the context of separate criminal proceedings against him • Statements made by witness in exchange for immunity or other advantage • Opportunity for defence to test reliability and credibility of witness • Existence of other evidence • Refusal of court to order full disclosure of documents requested by defence • Documents not constituting material evidence

Cornelis v. the Netherlands (dec.), 2004-V (extracts)

Offence allegedly instigated by police

Fair trial • Criminal proceedings • Offence allegedly instigated by police • Nature of the offence • Company providing a data-communications service convicted of living on immoral earnings • Role of the investigators in obtaining factual evidence of the offence • Distinction between “instigation” and “infiltration” by the police • Safeguards • Conviction based on other evidence

Eurofinacom v. France (dec.), 2004-VII (extracts)

Conviction of journalist for insult and defamation

Fair trial • Criminal proceedings • Failure to appear at hearings • Decision not to refer objection of unconstitutionality to Constitutional Court

Ivanciuc v. Romania (dec.), 2005-XI

Surrender of suspect to fellow State Party to Convention despite alleged risk of unfair trial

Criminal proceedings • Fair hearing • Surrender of suspect to fellow State Party to Convention despite alleged risk of unfair trial • European arrest warrant and surrender procedures • Impact of delay in prosecution on fairness of proceedings • Absence of substantial grounds for fearing real risk of “flagrant denial” of Convention rights • Most appropriate forum • Not a case concerning non-derogable rights with risk of onward transfer to non-Contracting State • Availability of domestic and Convention remedies in transferee State

Stapleton v. Ireland (dec.), 2010-IV

Use in criminal prosecution for torture of statements made on a confidential basis in asylum proceedings

Fair hearing • Privilege against self-incrimination • Use in criminal prosecution for torture of statements made on a confidential basis in asylum proceedings • Purpose of confidentiality in asylum proceedings • Absence of coercion • Practice of confidentiality no bar to condign punishment

H. and J. v. the Netherlands (dec.), 2014 (extracts)

REASONABLE TIME

Length of criminal proceedings resulting in the conviction of television programme producers for having defamed a senior police officer

Criminal proceedings • Reasonable time

Pedersen and Baadsgaard v. Denmark [GC], 2004-XI

Length of criminal proceedings – Delays in execution of letters rogatory abroad

Reasonable time • Criminal proceedings • Criminal proceedings lasting six years • Complexity of case • Delays in execution of letters rogatory abroad • Delays not attributable to domestic authorities

Włoch v. Poland, 2000-XI

Length of criminal proceedings – Duty of authorities to act with special diligence when accused in detention

Reasonable time • Criminal proceedings • Length of criminal proceedings • Duty of authorities to act with special diligence when accused in detention

Kalashnikov v. Russia, 2002-VI

Calculation of length of criminal proceedings reopened at discretion of public prosecutor's office after an order discontinuing proceedings

Length of criminal proceedings • Reopening of criminal proceedings after an order discontinuing proceedings • Calculation of length of criminal proceedings reopened at discretion of public prosecutor's office after an order discontinuing proceedings • Both phases of proceedings taken into consideration

Stoianova and Nedelcu v. Romania, 2005-VIII

Effect of accused's absconding on period to be taken into account when assessing length of proceedings

Criminal proceedings • Reasonable time • Effect of accused's absconding on period to be taken into account when assessing length of proceedings • Fugitive not entitled to complain of unreasonable duration of proceedings in respect of period following flight

Vayıç v. Turkey, 2006-VIII (extracts)

Length of criminal proceedings – Effect of decision to join several cases

Reasonable time • Criminal proceedings • Effect of decision to join several cases • Complexity of the case • Conduct of the authorities and the courts

Wejrup v. Denmark (dec.), 2002-IV

Length of criminal proceedings – Charges left on file following discontinuation of criminal proceedings

Reasonable time • Criminal proceedings • Charges left on file following discontinuation of criminal proceedings • Determination of criminal charge • Safeguards attached to resurrection of charges left on file

Withey v. the United Kingdom (dec.), 2003-X

INDEPENDENT AND IMPARTIAL TRIBUNAL

Independence and impartiality of court martial

Criminal proceedings • Independent and impartial tribunal • Independence and impartiality of court martial • Role of military officers in courts martial

Hood v. the United Kingdom [GC], 1999-I

Independence and impartiality of National Security Court

Independent and impartial tribunal • Criminal proceedings • Independence and impartiality of National Security Court • Participation of military judge in trial concerning charge of disseminating separatist propaganda • Status of military judges

Karataş v. Turkey [GC], 1999-IV

Başkaya and Okçuoğlu v. Turkey [GC], 1999-IV

Sürek v. Turkey (no. 1) [GC], 1999-IV

Independence and impartiality of court-martial

Independent tribunal • Impartial tribunal • Criminal proceedings • Independence and impartiality of court-martial • Determination of criminal charges by military tribunals • Separation of prosecution, convening and adjudicating roles • Role of legally qualified civilian judge advocate • Role of permanent president of courts-martial • Security of tenure • Lack of legal qualification of members of court-martial • Scope of appraisal reports on members of court-martial • Safeguards against outside pressure being brought to bear on members of court-martial • Role of non-judicial authority in reviewing verdict of court-martial • Role of Courts-Martial Appeal Court

Cooper v. the United Kingdom [GC], 2003-XII

Independent tribunal • Impartial tribunal • Criminal proceedings • Independence and impartiality of court-martial • Role of *ad hoc* president of court-martial • Role of naval judge advocate • Security of tenure • Safeguards against outside pressure being brought to bear on members of court-martial • Possibility of appraisal reports on judicial performance of naval judge advocate

Grieves v. the United Kingdom
[GC], 2003-XII (extracts)

Imposition of death sentence following proceedings found to be unfair

Independence and impartiality of tribunal • Composition of national security court • Participation of military judge in interlocutory decisions forming an integral

part of criminal proceedings against a civilian • Replacement of military judge before end of proceedings did not dispose of concern about trial court's independence and impartiality • Fair trial • Access to a lawyer denied while in police custody • Impossibility of communicating with lawyers out of the hearing of third parties • Impossibility of gaining direct access to the case file until a very late stage in the proceedings • Restrictions on the number and length of visits by counsel • Counsel given proper access to the case file belatedly

Öcalan v. Turkey [GC], 2005-IV

Summary proceedings against defence counsel for contempt in the face of the court at a murder trial

Impartial tribunal • Summary proceedings against defence counsel for contempt in the face of the court at a murder trial • Objective impartiality • Contempt in the face of the court • Confusion of roles between complainant, witness, prosecutor and judge • Objectively justified fears • Subjective impartiality • Personal conduct of judges at hearing

Kyprianou v. Cyprus [GC], 2005-XIII

Impartial tribunal – Racist remarks by juror

Impartial tribunal • Criminal proceedings • Presumption of subjective impartiality of jurors • Racist remarks by juror • Legitimate doubts as to impartiality of juror • Sufficiency of judge's direction to jury

Sander v. the United Kingdom, 2000-V

Whether *Commissario della Legge* who acted as both investigating and trial judge was impartial

Impartial tribunal • Criminal procedure • Whether *Commissario della Legge* who acted as both investigating and trial judge was impartial • Combination of functions • Public hearing • Hearing • Absence of hearing on appeal

Tierce and Others v. San Marino, 2000-IX

Impartiality of court – Appointment of judges by hierarchical superior to examine petition lodged by him

Impartial tribunal • Criminal proceedings • Appointment of judges by hierarchical superior to examine petition lodged by him • Role of President of the Criminal Division of the Supreme Court in lodging petition with the Supreme Court to have a lower court's judgment quashed or amended

Daktaras v. Lithuania, 2000-X

Recharacterisation of offences on last day of trial

Independent and impartial tribunal • Independence and impartiality of National Security Court • Inclusion on bench of regular army officer who was member of Military Legal Service

Sadak and Others v. Turkey (no. 1), 2001-VIII

Independence and impartiality of martial-law court

Independent and impartial tribunal • Criminal proceedings • Independence and impartiality of martial-law court • Examination of independence and impartiality together • Status of military judges • Safeguards against outside pressures • Subordination of military judges to military hierarchy and discipline • Manner of appointment of military judges • Status of army officer sitting on martial-law court • Trial of civilian by martial-law court

Şabiner v. Turkey, 2001-IX

Independence and impartiality of court martial

Independent and impartial tribunal • Criminal proceedings • Independence and impartiality of court martial • Examination of independence of members of court martial • Relationship between senior army command and members of court martial • Manner of appointment • Security of tenure • Safeguards against outside interference • Review of conviction and sentence by non-judicial authority • Fundamental flaws not corrected by appeal

Morris v. the United Kingdom, 2002-I

Non-compliance with rules on participation of lay judges in criminal trials

Tribunal established by law • Criminal proceedings • Non-compliance with rules on participation of lay judges in criminal trials • Requirements for appointment and participation of lay judges

Posokhov v. Russia, 2003-IV

Impartial tribunal – Examination of appeal against conviction by judges who had previously ruled on appeal against committal order

Impartial tribunal • Criminal proceedings • Court of Cassation • Examination of appeal against conviction by judges who had previously ruled on appeal against committal order • Role and nature of Court of Cassation's supervision

Depiets v. France, 2004-I

Judge, who was also defendant's opponent in separate proceedings, found

against defendant for comments made about him in an application for his withdrawal

Impartial tribunal • Criminal proceedings • Judge, who was also defendant's opponent in separate proceedings, found against defendant for comments made about him in an application for his withdrawal • Disciplinary fine for contempt of court because of comments made in application for judge's withdrawal • Judge's personal assessment of comments made in application for him to stand down • Examination of application for withdrawal without hearing views of judge concerned • Overlapping of separate proceedings • Legitimate doubt as to judge's impartiality • Scope of review by higher court

Chmelíř v. the Czech Republic, 2005-IV

Independence and impartiality of a military court judging a civilian in criminal proceedings

Criminal proceedings • Fair hearing • Independent tribunal • Impartial tribunal • Independence and impartiality of a military court judging a civilian in criminal proceedings • Objective impartiality

Ergin v. Turkey (no. 6), 2006-VI (extracts)

Independence and impartiality of Court of Impeachment

Independent and impartial tribunal • Independence and impartiality of Court of Impeachment • Composition of Court of Impeachment responsible for trial of former Minister • Independence and impartiality of lay judges elected by Parliament to sit in Court of Impeachment • Security of tenure • Freedom of judges from outside influence • Impartiality of judges having taken pre-trial decisions • Scope and nature of pre-trial decisions • Effect of extensive publicity on impartiality of judges • Reasonable time • Criminal proceedings lasting four years and eight months • Complexity of case • Absence of delays attributable to authorities

Ninn-Hansen v. Denmark (dec.), 1999-V

Impartiality of court certain of whose judges had discharged several functions in the course of criminal proceedings

Criminal proceedings • Impartial tribunal • Impartiality of court certain of whose judges had discharged several functions in the course of criminal proceedings • Judge who had upheld charge also member of trial court • Outcome of proceedings not prejudged by decision to uphold charges • Judge who had carried out investigative measures also member of trial court

Garrido Guerrero v. Spain (dec.), 2000-III

Surrender to the International Criminal Tribunal for the former Yugoslavia of person against whom criminal proceedings are pending in the domestic courts

Independent and impartial tribunal • Reasonable time • Criminal proceedings • Surrender to the International Criminal Tribunal for the former Yugoslavia of person against whom criminal proceedings are pending in the domestic courts • Alleged effect of surrender to international tribunal on length of hypothetical future proceedings in domestic courts • Distinction between extradition and surrender to international tribunal • Guarantees of fair trial offered by international tribunal

Naletilić v. Croatia (dec.), 2000-V

Impartial tribunal – Role and conduct of justices’ clerk

Impartial tribunal • Criminal proceedings • Role and conduct of justices’ clerk • Participation of justices’ clerk in magistrates’ deliberations • Questioning of accused by justices’ clerk on behalf of magistrates • Alleged bias of justices’ clerk • Criminal charge • Proceedings for enforcement of fines • Classification of proceedings in domestic law • Nature of proceedings • Nature and severity of sanction

Mort v. the United Kingdom (dec.), 2001-IX

Replacement of military judge by a civilian judge during proceedings in national security court

Independent and impartial tribunal • Criminal proceedings against a civilian • Composition of national security court • Replacement of military judge by a civilian judge during proceedings in national security court • Doubts as to trial court’s independence and impartiality not dispelled by replacement of military judge before the end of the proceedings • Nature of procedural steps in which military judge was involved • Steps not required to be taken afresh after military judge’s replacement

Ceylan v. Turkey (dec.), 2005-X

TRIBUNAL ESTABLISHED BY LAW

Jurisdiction of German courts to try the applicant for genocide committed in Bosnia and Herzegovina

Criminal proceedings • Tribunal established by law • Principle of universal jurisdiction • Convention on the Prevention and Punishment of the Crime of Genocide • Jurisdiction of German courts to try the applicant for genocide committed in Bosnia and Herzegovina

Jorgic v. Germany, 2007-III

Article 6 § 2

PRESUMPTION OF INNOCENCE

Refusal of compensation following reversal of applicant's conviction for criminal offence

Presumption of innocence • Refusal of compensation following reversal of applicant's conviction for criminal offence • Applicability • Critical importance of language used by decision-maker in proceedings following conclusion of criminal proceedings • Absence of acquittal on merits in true sense • Absence of statutory criteria or judicial language in subsequent proceedings calling into question innocence of an acquitted person

Allen v. the United Kingdom [GC], 2013-IV

Statement of prosecutor that suspect's guilt "proved" by evidence on case file

Presumption of innocence • Statement of prosecutor that suspect's guilt "proved" by evidence on case file

Daktaras v. Lithuania, 2000-X

Self-incrimination – Conviction for refusing to answer police questions

Fair hearing • Presumption of innocence • Self-incrimination • Conviction for refusing to answer police questions • Criminal charge • Suspect "substantially affected" • Victim • Applicability of Article 6 notwithstanding acquittal • Safeguards against abuse • Essence of right not to incriminate oneself • Degree of compulsion • Security and public order considerations

Heaney and McGuinness v. Ireland, 2000-XII

Absence of right to separate treatment for accused and convicted persons in prison

Presumption of innocence • Absence of right to separate treatment for accused and convicted persons in prison

Peers v. Greece, 2001-III

Confiscation order based on statutory assumptions as to origins of assets

Charged with a criminal offence • Confiscation order based on statutory assumptions as to origins of assets • Classification of the proceedings under domestic law • Nature of the proceedings • Type and severity of penalty • Procedure analogous

to sentencing • Applicability of Article 6 § 2 to post-conviction confiscation proceedings

Phillips v. the United Kingdom, 2001-VII

Presumption of innocence – Public statements of guilt by high-ranking State officials

Presumption of innocence • Public statements of guilt by high-ranking State officials • Duty to keep public informed of criminal proceedings against politician • Importance of care in public statements during initial stages of criminal proceedings • Statements by Prosecutor General • Statements by chairman of parliament

Butkevičius v. Lithuania, 2002-II

Presumption of innocence – Enforcement of tax surcharges prior to determination of liability by a court

Presumption of innocence • Objective liability • Presumptions provided for by domestic law • Possibility of rebutting presumption • Financial interests of the State • System of taxation dependent on provision of correct information • Enforcement of tax surcharges prior to determination of liability by a court • Striking of fair balance • Purpose of tax surcharges • Possibility of reimbursement in the event of successful appeal

Janosevic v. Sweden, 2002-VII

Refusal of compensation following acquittal, on the ground of failure to show, on the balance of probabilities, that the person did not carry out the acts in question

Presumption of innocence • Refusal of compensation following acquittal, on the ground of failure to show, on the balance of probabilities, that the person did not carry out the acts in question • Charged with a criminal offence • Scope of application of the presumption of innocence • Link between compensation claim and criminal trial • Damage engaging responsibility of the State • Voicing of suspicion by a court following acquittal

O. v. Norway, 2003-II

Award of compensation in civil proceedings against person previously acquitted of criminal offence concerning the same facts

Presumption of innocence • Award of compensation in civil proceedings against person previously acquitted of criminal offence concerning the same facts • Charged with a criminal offence • Classification of proceedings in domestic law • Nature of proceedings • Separate assessment of criminal and civil liability on basis of different

standards of proof • Absence of common approach in Contracting States • Purpose and size of award of compensation • Absence of sufficient link between criminal and civil proceedings

Ringvold v. Norway, 2003-II

Finding by a court in civil proceedings brought following an acquittal that the defendant had “committed the offences”

Presumption of innocence • Award of compensation in civil proceedings against person previously acquitted of criminal offence concerning the same facts • Charged with a criminal offence • Classification of proceedings in domestic law • Nature of proceedings • Separate assessment of criminal and civil liability on basis of different standards of proof • Absence of common approach in Contracting States • Statement by court in civil proceedings imputing criminal liability to defendant • Link between criminal and civil proceedings sufficient to render presumption of innocence applicable

Y. v. Norway, 2003-II (extracts)

Conviction of a publishing director and a journalist of a radio station for defamation

Presumption of innocence • Legal presumption of liability of the publishing director of a radio station • Defamation • Importance of what was at stake

Radio France and Others v. France, 2004-II

Obligation to prove innocence in order to claim compensation for pre-trial detention in proceedings subsequently discontinued

Presumption of innocence • Obligation to prove innocence in order to claim compensation for pre-trial detention in proceedings subsequently discontinued • Compensation proceedings following a discontinuation order • Burden of proof

Capeau v. Belgium, 2005-I

Adverse comments by judge when refusing to award defendant costs following his acquittal

Presumption of innocence • Person acquitted at criminal trial • Statement by a public official reflecting opinion as to guilt • Adverse comments by judge when refusing to award defendant costs following his acquittal • Absence of misconduct by defendant • Natural interpretation of judge’s words • Voicing of suspicion following acquittal

Yassar Hussain v. the United Kingdom, 2006-III

Pre-trial detention order declaring detainee guilty as charged

Presumption of innocence • Criminal proceedings • Pre-trial detention order declaring detainee guilty as charged • Judicial statement on guilt preceding final conviction

Matijašević v. Serbia, 2006-X

Obligation on motorists to submit to a breath test

Presumption of innocence • Right to remain silent • Right not to incriminate oneself • Material, relevant to criminal proceedings, which has an existence independent of the will of the suspect • Obligation on motorists to submit to a breath test • Common practice in Council of Europe member States

*Tirado Ortiz and Lozano
Martin v. Spain* (dec.), 1999-V

Special interrogation technique using psychological methods to obtain a confession

Fair trial • Criminal proceedings • Special interrogation technique using psychological methods to obtain a confession • Presumption of innocence • Right to remain silent • Right not to incriminate oneself • Questioning of suspect • Confession • Adversarial proceedings • Exclusion of evidence

Ebbinge v. the Netherlands (dec.), 2000-IV

Use at trial of statements which the accused was previously obliged to make to inspectors investigating suspected insider dealing

Fair hearing • Criminal proceedings • Self-incrimination • Use at trial of statements which the accused was previously obliged to make to inspectors investigating suspected insider dealing • Voluntary nature of statements • Use made by prosecution of statements made under compulsory powers

Staines v. the United Kingdom (dec.), 2000-V

Consequences for fairness of former minister's trial in assize court of press campaign about the case

Presumption of innocence • Consequences for fairness of former minister's trial in assize court of press campaign about the case

Papon v. France (no. 2) (dec.), 2001-XII

Forfeiture of money believed to be intended for use in drug trafficking

Charged with a criminal offence • Forfeiture of money believed to be intended for use in drug trafficking • Nature of forfeiture order • Preventive measure

Butler v. the United Kingdom (dec.), 2002-VI

Rejection of insurance claim in civil proceedings despite acquittal in criminal proceedings concerning the same incident

Presumption of innocence • Rejection of insurance claim in civil proceedings despite acquittal in criminal proceedings concerning the same incident • Charged with a criminal offence • Classification of proceedings in domestic law • Relationship between civil proceedings and earlier criminal proceedings • Separate assessment of criminal and civil liability on basis of different standards of proof • Absence of sufficient links between criminal and civil proceedings

Lundkvist v. Sweden (dec.), 2003-XI

Parliamentary immunity attaching to allegedly defamatory statements made by a Minister of State in Parliament

Presumption of innocence • Parliamentary immunity attaching to allegedly defamatory statements made by a Minister of State in Parliament • Criminal offence • Relevance of United Nations Security Council resolution to existence of “international offence” • Absence of sufficient links between statements in Parliament and criminal proceedings abroad

Zollmann v. the United Kingdom (dec.), 2003-XII

Imposition of a fine on a registered car owner who had not been the actual driver at the time of the offence

Presumption of innocence • Imposition of a fine on a registered car owner who had not been the actual driver at the time of the offence • Criminal offence • Strict liability approach for traffic offences in domestic law • Use of presumptions in criminal law • Proportionality • Rights of defence not infringed by the impugned legislation

Falk v. the Netherlands (dec.), 2004-XI

Article 6 § 3

RIGHTS OF DEFENCE

Accused’s participation in proceedings by videoconference

Rights of the defence • Fair trial • Criminal proceedings • Accused’s participation in proceedings by videoconference • Accused’s participation in proceedings by

videoconference not as such contrary to the Convention • Serious Mafia-related offences • Risks inherent in transfer of certain detainees and their presence at hearing • Simplification and acceleration of criminal proceedings • Legitimate aims • Arrangements for conduct of hearings • Audiovisual link between accused and hearing room • Confidentiality of communication between accused and defence counsel • Conventions on Mutual Assistance in Criminal Matters • Hearing of witnesses and experts at a distance

Marcello Viola v. Italy, 2006-XI (extracts)

Article 6 § 3 (a)

INFORMATION ON NATURE AND CAUSE OF ACCUSATION

Conviction on appeal of an offence different from one charged

Information regarding the nature of the accusation • Preparation of the defence • Adequate time • Adequate facilities • Conviction on appeal of an offence different from one charged

Pélissier and Sassi v. France [GC], 1999-II

Failure to provide accused with adequate information as to the cause of the accusation

Rights of the defence • Information on nature and cause of accusation • Information in detail • Failure to provide accused with adequate information as to the cause of the accusation • Changes in accusation • Adequate time and facilities • Vagueness of indictment • Access to file • Obligation of prosecution to provide details of accusation • Absence of opportunity for defence to react to changes in accusation during trial

Mattochia v. Italy, 2000-IX

Imposition of fine for abuse of process

Fair hearing • Criminal proceedings • Imposition of fine for abuse of process • Applicability • Criminal charge • Classification of offence in domestic law • Nature of offence • Nature and severity of penalty • Rights of the defence • Adequate time and facilities • Information on nature and cause of accusation

T. v. Austria, 2000-XI

Conviction of an adult subject to a supervision order without his supervisor being informed

Fair hearing • Criminal proceedings • Rights of the defence • The right to defend oneself through legal assistance • Conviction of an adult subject to a supervision

order without his supervisor being informed • Importance of the accused's attendance in person • Special procedural safeguards to protect persons who are not fully capable of acting for themselves • Positive obligation • Effective enjoyment of the rights guaranteed • Right to liberty • More at stake in criminal proceedings than in civil proceedings • Requirements of the proper administration of justice • Obligations on the national authorities to take further steps

Vaudelle v. France, 2001-I

Conviction on appeal of an offence different from the one charged

Information regarding the nature of the accusation • Preparation of the defence • Adequate time • Adequate facilities • Conviction on appeal of an offence different from the one charged • Scope of review • Full review of procedural and substantive law issues, curing defects in proceedings before lower courts

Dallos v. Hungary, 2001-II

Recharacterisation of offences on last day of trial

Notification of nature and cause of accusation • Preparation of defence • Adequate time • Adequate facilities • Recharacterisation of offences on last day of trial • New offence distinct from previous one • Impossibility for defence to react following recharacterisation of offences

Sadak and Others v. Turkey
(no. 1), 2001-VIII

Defendant not notified of existence of criminal complaint before being charged

Accused of an offence • Person directly affected by an accusation • Defendant not notified of the existence of a criminal complaint before being charged

Padin Gestoso v. Spain (dec.), 1999-II

Notification of charges and conviction in a language that is not understood

Information of the nature and cause of the accusation • Information in a language that is not understood • Notification of charges and conviction in a language that is not understood • Assistance of an interpreter • Quality of interpretation not contested

Husain v. Italy (dec.), 2005-III

Article 6 § 3 (b)

ADEQUATE TIME AND FACILITIES FOR PREPARATION OF DEFENCE

Conviction on appeal of an offence different from one charged

Information regarding the nature of the accusation • Preparation of the defence • Adequate time • Adequate facilities • Conviction on appeal of an offence different from one charged

Pélissier and Sassi v. France [GC], 1999-II

Imposition of death sentence following proceedings found to be unfair

Independence and impartiality of tribunal • Composition of national security court • Participation of military judge in interlocutory decisions forming an integral part of criminal proceedings against a civilian • Replacement of military judge before end of proceedings did not dispose of concern about trial court's independence and impartiality • Fair trial • Access to a lawyer denied while in police custody • Adequate time and facilities • Impossibility of communicating with lawyers out of the hearing of third parties • Impossibility of gaining direct access to the case file until a very late stage in the proceedings • Restrictions on the number and length of visits by counsel • Counsel given proper access to the case file belatedly

Öcalan v. Turkey [GC], 2005-IV

Failure to provide accused with adequate information as to the cause of the accusation

Rights of the defence • Information on nature and cause of accusation • Information in detail • Failure to provide accused with adequate information as to the cause of the accusation • Changes in accusation • Adequate time and facilities • Vagueness of indictment • Access to file • Obligation of prosecution to provide details of accusation • Absence of opportunity for defence to react to changes in accusation during trial

Mattoccia v. Italy, 2000-IX

Imposition of fine for abuse of process

Fair hearing • Criminal proceedings • Imposition of fine for abuse of process • Applicability • Criminal charge • Classification of offence in domestic law • Nature of offence • Nature and severity of penalty • Rights of the defence • Adequate time and facilities • Information on nature and cause of accusation

T. v. Austria, 2000-XI

Availability of written judgment only in abridged form

Fair hearing • Criminal proceedings • Rights of the defence • Adequate time and facilities • Availability of written judgment only in abridged form • Availability of written judgment in time for lodging appeal • Adequacy of abridged version of written judgment

Zoon v. the Netherlands, 2000-XII

Conviction on appeal of an offence different from the one charged

Information regarding the nature of the accusation • Preparation of the defence • Adequate time • Adequate facilities • Conviction on appeal of an offence different from the one charged • Scope of review • Full review of procedural and substantive law issues, curing defects in proceedings before lower courts

Dallos v. Hungary, 2001-II

Recharacterisation of offences on last day of trial

Notification of nature and cause of accusation • Preparation of defence • Adequate time • Adequate facilities • Recharacterisation of offences on last day of trial • New offence distinct from previous one • Impossibility for defence to react following recharacterisation of offences

Sadak and Others v. Turkey (no. 1), 2001-VIII

Refusal to order second expert opinion requested by defendant following expert's unfavourable change of mind

Rights of the defence • Adequate time and facilities • Refusal to order second expert opinion requested by defendant following expert's unfavourable change of mind • Production of new evidence during trial • Equality of arms • Adversarial proceedings • Change of mind by expert in the course of a single trial • Time afforded to expert to study new evidence • Influence of expert's opinion on jurors

G.B. v. France, 2001-X

Alleged insufficiency of time for preparation of defence

Preparation of defence • Time needed • Alleged insufficiency of time for preparation of defence

Padin Gestoso v. Spain (dec.), 1999-II

Time available to defence counsel for familiarising himself with case files and

expert opinion received only days before the trial began but not examined until later hearings

Criminal proceedings • Adequate time • Defendant facing possible compulsory confinement • Time available to defence counsel for familiarising himself with case files and expert opinion received only days before the trial began but not examined until later hearings • Time available between hearings counts as preparatory time

Mattick v. Germany (dec.), 2005-VII

Article 6 § 3 (c)

DEFENCE IN PERSON OR THROUGH LEGAL ASSISTANCE

Appellate court's refusal to allow a lawyer to represent his client where the latter did not attend in person

Fair hearing • Criminal proceedings • Rights of the defence • Equality of arms • Right to be defended by counsel • Failure to attend • Appellate court's refusal to allow a lawyer to represent his client where the latter did not attend in person

Van Geyselhem v. Belgium [GC], 1999-I

Monopoly enjoyed by members of the *Conseil d'État* and Court of Cassation Bar

Fair hearing • Criminal proceedings • Oral procedure • Inability to make oral representations at a hearing of the Court of Cassation, either in person or through a member of an ordinary bar • Special nature of the proceedings before the Criminal Division of the Court of Cassation • Essentially written procedure • To defend oneself in person • Legal assistance of one's own choosing • Monopoly enjoyed by members of the *Conseil d'État* and Court of Cassation Bar • Guarantees afforded by the domestic system of representation by a lawyer in proceedings in the Court of Cassation • Adversarial proceedings • Failure to communicate submissions of the advocate-general at the Court of Cassation and inability to reply in writing thereto • Impact on the appellant's procedural options

Meftah and Others v. France [GC], 2002-VII

Refusal to allow prisoners legal representation in disciplinary proceedings

Applicability • Defence through legal assistance • Refusal to allow prisoners legal representation in disciplinary proceedings • Charged with a criminal offence • Classification of offence in domestic law • Nature of charges • Nature and severity of

penalty • Imposition of disciplinary punishment of additional days' imprisonment • Appreciably detrimental nature of penalty

Ezeh and Connors v. the United Kingdom [GC], 2003-X

Imposition of death sentence following proceedings found to be unfair

Independence and impartiality of tribunal • Composition of national security court • Participation of military judge in interlocutory decisions forming an integral part of criminal proceedings against a civilian • Replacement of military judge before end of proceedings did not dispose of concern about trial court's independence and impartiality • Fair trial • Access to a lawyer denied while in police custody • Impossibility of communicating with lawyers out of the hearing of third parties • Impossibility of gaining direct access to the case file until a very late stage in the proceedings • Restrictions on the number and length of visits by counsel • Counsel given proper access to the case file belatedly

Öcalan v. Turkey [GC], 2005-IV

Use in evidence of a statement given to police by a minor without access to a lawyer

Fair trial • Criminal proceedings • Defence rights • Use in evidence of a statement given to police by a minor without access to a lawyer • Defence through legal assistance • Systematic denial of legal assistance in police custody where offences fell within jurisdiction of State Security Courts • Statement was main evidence in support of conviction • Subsequent legal assistance and adversarial nature of ensuing proceedings could not cure earlier defect • Fundamental importance for minors to have access to lawyer while in police custody

Salduz v. Turkey [GC], 2008-V

Denial, without relevant and sufficient reasons, of access to a lawyer of the suspect's own choosing during police questioning

Right to a fair trial • Criminal proceedings • Fair hearing • Defence through legal assistance • Legal assistance of his own choosing • Informed choice • Denial, without relevant and sufficient reasons, of access to a lawyer of the suspect's own choosing during police questioning • Failure to inform suspect that his family had appointed a lawyer to represent him during police questioning • No effective opportunity to challenge circumstances in which lawyer was chosen • Significant likely impact of initial confession on further development of the criminal proceedings • Unfairness of the criminal proceedings as a whole

Dvorski v. Croatia [GC], 2015-VI

Denial of access to a lawyer during initial questioning by police

Fair hearing • Defence rights • Defence through legal assistance • Denial of access to a lawyer during initial questioning by police • Applicability of Article 6 to pre-trial phase • Right to remain silent • Drawing of adverse inferences from suspect's silence • Confession • Coercive questioning by police • Prejudice to defence

Magee v. the United Kingdom, 2000-VI

Fair hearing • Defence rights • Defence through legal assistance • Denial of access to a lawyer during initial questioning by police • Right to remain silent • Drawing of adverse inferences from suspect's silence • Prejudice to defence

Averill v. the United Kingdom, 2000-VI

No access to a lawyer during detention in police custody

Criminal proceedings • Fair trial • Defending oneself through legal assistance • No access to a lawyer during detention in police custody • Applicability of Article 6 during preliminary police investigation • Overall examination of proceedings • Criminal proceedings pending

Dikme v. Turkey, 2000-VIII

Refusal to allow an absent defendant to be represented or defended at his trial before the assize court

Defence rights • Right to defend oneself through legal assistance • Criminal proceedings • Trial in the absence of the defendant • Refusal to allow an absent defendant to be represented or defended at the trial before the assize court • Defence submission on a point of law • Absolute bar on any defence

Krombach v. France, 2001-II

Conviction *in absentia* of a defendant who was prevented from appearing at his trial by the decision of a foreign court

Fair trial • Criminal proceedings • Rights of the defence • Right to defend oneself • Conviction *in absentia* • Conviction *in absentia* of a defendant who was prevented from appearing at his trial by the decision of a foreign court • Decision of a foreign court • Defendant prevented from appearing at the trial • Failure to appear without good cause • Lack of arbitrariness

Medenica v. Switzerland, 2001-VI

Police supervision of detainee's interview with lawyer

Defence through legal assistance • Access to a lawyer • Detainee • Denial of access

to a lawyer during initial questioning by police • Counter-terrorism legislation • Confession • Admissions made in absence of lawyer but after expiry of deferral of access • Use in evidence of admissions made to police in absence of lawyer • Existence of safeguards against oppressive conduct by police • Examination in adversarial procedure of reliability and admissibility of admissions • Desirability of police interviews being attended by lawyer and/or recorded • Police supervision of detainee's interview with lawyer • Right of detainee to communicate with lawyer out of hearing of third persons • Inhibiting effect of presence of police officer at detainee's interview with lawyer • Importance of detainee being able to speak freely with lawyer about matters relevant to defence

Brennan v. the United Kingdom, 2001-X

Negligence of lawyer appointed under legal-aid scheme

To be assisted by a lawyer of one's own choice • Negligence of lawyer appointed under legal-aid scheme • Fundamental principle of independence of legal profession • Authorities' responsibility for conduct of officially appointed lawyer • Inadequacy or mistake in conduct of defence • Failure to comply with purely formal condition entailing deprivation of a remedy • Supreme Court • Situation of "manifest failure" requiring positive measures by authorities • Interest in proper administration of justice

Czekalla v. Portugal, 2002-VIII

Failure by authorities to intervene regarding manifest shortcomings of officially assigned lawyers

Rights of the defence • Defence through legal assistance • Failure by authorities to intervene regarding manifest shortcomings of officially assigned lawyers • Conduct of accused does not relieve authorities of their duty to react

Sannino v. Italy, 2006-VI

Lack of adequate legal representation for minor defendant

Criminal proceedings • Fair trial • Defence through legal assistance • Lack of adequate legal representation for minor defendant • Circumstances in which State's responsibility may be engaged for manifest failings of defence lawyer

Güveç v. Turkey, 2009-I (extracts)

Qualifications of an officially assigned lawyer

Defending oneself with assistance of defence counsel • Qualifications of an officially

assigned lawyer • Officially assigned lawyer • Lack of substantial evidence to support assertion of incompetence

Franquesa Freixas v. Spain (dec.), 2000-XI

Refusal of officially appointed lawyer to lodge cassation appeal in absence of grounds of appeal

Legal assistance • Refusal of officially appointed lawyer to lodge cassation appeal in absence of grounds of appeal • Absence of State liability for officially appointed lawyers • Duty of authorities with regard to inadequate legal representation • Appointment of lawyer by court • Absence of negligence on part of officially appointed lawyer • Discretion of lawyer in refusing to lodge remedy lacking prospects of success

Rutkowski v. Poland (dec.), 2000-XI

Shortcomings of attorney appointed under legal aid scheme

Access to court • Criminal proceedings • Right to have legal assistance • Shortcomings of attorney appointed under legal aid scheme • Independence of attorneys' professional association from State • Responsibility of State for conduct of attorney appointed under legal aid scheme in connection with an *amparo* appeal • Remedy aimed at safeguarding fundamental rights

Alvarez Sánchez v. Spain (dec.), 2001-XI

Refusal to grant lawyer leave to defend himself in person

Defend oneself in person • Rights of the defence • Refusal to grant lawyer leave to defend himself in person • Compulsory representation • Margin of appreciation • Interests of justice

Correia de Matos v. Portugal (dec.), 2001-XII

Article 6 § 3 (d)

EXAMINATION OF WITNESSES

Journalist convicted of libelling a public prosecutor

Criminal proceedings • Fair trial • Trial for defamation • Request by defendant for certain evidence to be admitted and for complainant to be examined • Relevance of evidence for establishment of the truth

Perna v. Italy [GC], 2003-V

Convictions based on statements by absent witnesses

Examination of witnesses • Convictions based on statements by absent witnesses • Exceptions to rule requiring witnesses to give evidence at trial • Deceased witness • Absence through fear • Availability of alternative means of giving evidence • Weight attached to evidence of absent witness • Sole or decisive rule • Counterbalancing factors • Effective procedural safeguards

Al-Khawaja and Tahery v. the United Kingdom [GC], 2011-VI

Inability to examine absent witnesses, whose testimonies carried considerable weight in applicant's conviction

Right to a fair trial • Criminal proceedings • Fair hearing • Examination of witnesses • Inability to examine absent witnesses, whose testimonies carried considerable weight in applicant's conviction • Good reason for non-attendance of witnesses at trial • Evidence of absent witnesses decisive for applicant's conviction • Possibility of appointing lawyer to attend witness hearing before investigating judge • Counterbalancing measures insufficient to permit fair and proper assessment of reliability of untested evidence • Trial as a whole unfair

Schatschaschwili v. Germany [GC], 2015-VIII

Conviction based solely on statements by witnesses whom the accused had been given no opportunity to examine or to have examined

Questioning of witnesses • Conviction based solely on statements by witnesses whom the accused had been given no opportunity to examine or to have examined • Witnesses resident abroad • International rogatory letters for the examination of witnesses residing abroad • No key witnesses present at the trial

A.M. v. Italy, 1999-IX

Conviction based exclusively on statements of a co-accused whom the defendant had no opportunity of examining or having examined

Questioning of witnesses • Conviction based exclusively on statements of a co-accused whom the defendant had no opportunity of examining or having examined • Notion of a witness • Evidence for the prosecution • Right to remain silent at the trial

Lucà v. Italy, 2001-II

Use in criminal trial of statements made by witnesses held in prison abroad

Examination of witnesses • Use in criminal trial of statements made by witnesses held in prison abroad • Hearing of witnesses abroad • Failure of accused's lawyer to

attend hearing of witnesses • Absence of impediment to lawyer attending hearing of witnesses • Analysis by court of credibility of witnesses and weight to be given to statements • Existence of corroborating evidence • Attendance of witnesses • Refusal of court to summon witnesses requested by the accused

Solakov v. the former Yugoslav Republic of Macedonia, 2001-X

Absence of opportunity to examine child witness, victim of sexual abuse

Examination of witnesses • Absence of opportunity to examine child witness, victim of sexual abuse • Defence rights • Right to secure appearance of witnesses • Notion of “witness” • Special features of criminal proceedings concerning sexual offences • Minors • Protection of victim of sexual offences • Opportunity for defence counsel to have questions put during police interview • Use at trial of video- and audio-recordings of police interviews • Requirement of extreme care in evaluation of witness evidence obtained under conditions in which defence rights cannot be fully secured

S.N. v. Sweden, 2002-V

Conviction based decisively on statements by gendarmes whom defendant was unable to examine or have examined

Rights of the defence • Examination of witnesses • Conviction based decisively on statements by gendarmes whom defendant was unable to examine or have examined • Evidence for the prosecution • Denial in court of confessions obtained from defendant during police custody • Unlawful methods used before trial to obtain evidence for the prosecution • Main evidence taken before trial without legal assistance • Lack of confrontation in trial court with witnesses who had made statements against defendant

Hulki Güneş v. Turkey, 2003-VII (extracts)

Conviction based on statements of co-accused whom defendants had no opportunity to examine

Criminal proceedings • Fair hearing • Questioning of witnesses • Notion of a witness • Right to remain silent • Conviction based on statements of co-accused whom defendants had no opportunity to examine • Statements of decisive influence

Kaste and Mathisen v. Norway, 2006-XIII

Defendant not able to have witness examined before trial

Examination of witnesses • Defendant not able to have a witness examined before trial

Padin Gestoso v. Spain (dec.), 1999-II

Non-appearance of a witness who was abroad

Cross-examination of witnesses • Non-appearance of witness who was abroad • Limits on right to have witness summoned • Impossibility of securing appearance of witness

Ubach Mertes v. Andorra (dec.), 2000-V

Use of evidence of anonymous witness in criminal proceedings

Examination of witnesses • Use of evidence of anonymous witness in criminal proceedings • Anonymous witness • Sufficiency of reasons for anonymity of witness • Existence of other evidence • Procedure followed in questioning anonymous witness

Kok v. the Netherlands (dec.), 2000-VI

Defendant unable to cross-examine victim of sexual abuse at retrial hearing

Fair trial • Criminal proceedings • Examination of witnesses • Defendant unable to cross-examine victim of sexual abuse at retrial hearing • Defence rights • Specific features of criminal proceedings in connection with rape and other sexual offences • Adversarial procedure • Adversarial examination of victim during earlier proceedings in same case • Conviction not based exclusively on victim's evidence

N.F.B. v. Germany (dec.), 2001-XI

Use at trial of statements of a witness whose whereabouts are unknown

Questioning of witnesses • Use at trial of statements of a witness whose whereabouts are unknown • Witness abroad whose whereabouts are unknown • Extent of the domestic authorities' obligation to secure the production of a witness overseas • Conviction not based solely on statements of a witness whom the accused has been unable to examine or to have examined

Calabrò v. Italy and Germany (dec.), 2002-V

Disappearance and destruction of evidence

Hearing of witnesses • Inability to examine a witness who exercised her right to remain silent in review proceedings

Sofri and Others v. Italy (dec.), 2003-VIII (extracts)

Conviction for sexual abuse of minors based mainly on evidence given by the victims during preliminary investigation

Questioning of witnesses • Conviction for sexual abuse of minors based mainly on evidence given by the victims during preliminary investigation • Rights of defence •

Special features of criminal proceedings concerning sexual offences • Minors • Protection of victim of sexual offence • Hearing of evidence from children by investigating judge assisted by expert psychologist • Hearing followed via two-way mirror • Possibility for defence counsel to have questions put to witnesses • Use in trial of video and audio recording of hearing • Decision by courts not to order further hearing or psychologist's report

Accardi and Others v. Italy (dec.), 2005-II

Article 6 § 3 (e)

FREE ASSISTANCE OF INTERPRETER

Notification of charges and conviction in a language that is not understood

Information of the nature and cause of the accusation • Information in a language that is not understood • Notification of charges and conviction in a language that is not understood • Assistance of an interpreter • Quality of interpretation not contested

Husain v. Italy (dec.), 2005-III

ARTICLE 7

Article 7 § 1

NULLUM CRIMEN SINE LEGE

Imposition of prison sentence on basis of interpretation by analogy

Nullum crimen sine lege • Foreseeability • Precision of law • Interpretation by courts • *Nulla poena sine lege* • Interpretation by analogy

Başkaya and Okçuoğlu v. Turkey [GC], 1999-IV

Conviction of a border guard of the former GDR after German reunification for killing an East German attempting to flee to the West

Nullum crimen sine lege • Conviction of a border guard of the former GDR after German reunification for killing an East German attempting to flee to the West • Interpretation by the courts of the FRG of the legal provisions of the former GDR • Grounds of justification • State practice superimposed on rules of written law • State practice flagrantly disregarding of fundamental rights • Foreseeability •

Accessibility • Rules of international law on protection of human rights • International protection of right to life

K.-H.W. v. Germany [GC], 2001-II

Conviction of leaders of the former GDR after German reunification on account of their responsibility for the deaths of East Germans attempting to flee to the West

Nullum crimen sine lege • Conviction of leaders of the former GDR after German reunification on account of their responsibility for the deaths of East Germans attempting to flee to the West • Interpretation by the courts of the FRG of the legal provisions of the former GDR • Grounds of justification • State practice superimposed on rules of written law • State practice flagrantly disregarding fundamental rights • Rules of international law on protection of human rights • Foreseeability • Accessibility • International protection of right to life • International protection of freedom of movement • Individual criminal responsibility as leaders of the GDR

Streletz, Kessler and Krenz v. Germany [GC], 2001-II

Conviction on account of an act not constituting a criminal offence under the relevant international law at the time it was committed

Nullum crimen sine lege • Criminal offence • Conviction on account of an act not constituting a criminal offence under the relevant international law at the time it was committed • Accessibility • Foreseeability • Classification as a crime against humanity • Criteria • Geneva Conventions • Failure to examine a constituent element of the offence • Victim unable to be classified as a “non-combatant”

Korbely v. Hungary [GC], 2008-IV

Conviction under legislation introduced in 1993 for war crimes committed during the Second World War

Nullum crimen sine lege • Conviction under legislation introduced in 1993 for war crimes committed during the Second World War • Legal basis for crimes at time of commission • Conviction based on international law • 1907 Hague Regulations • War crimes • Breaches of rights of “civilians who had participated in hostilities” or of “combatants” • Limitation period determined by reference to international law • Foreseeability • Sufficiency of international laws and customs of war as basis for individual criminal responsibility • Command responsibility • Obligation of commanders to take special care in assessing risks • Legitimacy and foreseeability of prosecution by successor State

Kononov v. Latvia [GC], 2010-IV

Retroactive application of criminal law under which the sentences for war crimes were heavier than those applicable when the offences were committed

Heavier penalty • Retroactive application of criminal law under which the sentences for war crimes were heavier than those applicable when the offences were committed • Real possibility that retroactive application of criminal legislation would operate to accused's disadvantage • Absence of any general exception to the rule of non-retroactivity in respect of acts that are criminal under "the general principles of law recognised by civilised nations"

Maktouf and Damjanović v. Bosnia and Herzegovina [GC], 2013-IV (extracts)

Conviction for "continuous" offence comprising acts committed before the offence was introduced into the Criminal Code

No punishment without law • Heavier penalty • *Nullum crimen sine lege* • Time when act or omission was committed • Conviction for "continuous" offence comprising acts committed before the offence was introduced into the Criminal Code • Foreseeability • Offence clearly defined in national law

Rohlena v. the Czech Republic [GC], 2015-I

Conviction in 2004 for alleged genocide of Lithuanian partisans in 1953

Nullum crimen sine lege • Genocide • Conviction in 2004 for alleged genocide of Lithuanian partisans in 1953 • Existence of legal basis in international law for conviction of genocide at time of commission of offence • Foreseeability • Exclusion of political groups from definition of genocide • Meaning of "intent to destroy, in whole or in part" • Judicial guidance on relevant aspects of definition only emerging half a century after commission of offence

Vasiliauskas v. Lithuania [GC], 2015-VII

Extension of the limitation period

Principle that offences and the relevant penalties must be defined by written law • Extension of the limitation period • Code of Criminal Procedure • Immediate application of a law • Foreseeability that conduct will constitute an offence

Coëme and Others v. Belgium, 2000-VII

Retroactive application of criminal law

Retroactivity • Retroactive application of criminal law • Time of act or omission • Continuing offence

Veeber v. Estonia (no. 2), 2003-I

Conviction of a publishing director and a journalist of a radio station for defamation

Nullum crimen sine lege • Principle that offences and penalties must be defined by law • Foreseeability of rules of criminal liability • Interpretation of legislation by courts

Radio France and Others v. France, 2004-II

Interpretation by German courts of the crime of genocide

Nullum crimen sine lege • Criminal offence • Interpretation by German courts of the crime of genocide • Interpretation consistent with the essence of the offence • Foreseeability • Convention on the Prevention and Punishment of the Crime of Genocide

Jorgic v. Germany, 2007-III

Conviction of East German public prosecutor after German reunification on account of his submissions during the trial of a dissident

Nullum crimen sine lege • Conviction of East German public prosecutor on account of his submissions during the trial of a dissident • Interpretation by a German court of the GDR's statutory provisions • Foreseeability • Accessibility • Offence not subject to limitation • International Covenant on Civil and Political Rights • Foreseeability of an offence under principles of human rights protection

Glässner v. Germany (dec.), 2001-VII

Foreseeability of rules governing criminal liability

Nullum crimen sine lege • Principle that only the law can define a crime and prescribe a penalty • Foreseeability of rules governing criminal liability • Judicial interpretation of legislation • Status of those to whom legislation is directed • Professionals

Eurofinacom v. France (dec.), 2004-VII (extracts)

Foreseeability of rules on labelling of cigarette packets

Nullum crimen sine lege • Principle that only the law can define a crime and prescribe a penalty • Foreseeability of rules on labelling of cigarette packets • Interpretation of legislation by courts • Status of those to whom legislation is directed • Professionals

Delbos and Others v. France (dec.), 2004-IX

Fine imposed by an administrative authority for failing to comply with terms of planning permission

Nullum crimen sine lege • Punishment • Foreseeability • Fine imposed by an

administrative authority for failing to comply with terms of planning permission • Interpretation of legislation by domestic courts reasonably foreseeable by people in the trade

Valico S.r.l. v. Italy (dec.), 2006-III

Universal jurisdiction of Contracting State to prosecute acts of torture and barbarity despite amnesty law in State where acts had been committed

Nullum crimen sine lege • Universal jurisdiction of Contracting State to prosecute acts of torture and barbarity despite amnesty law in State where acts had been committed • Acts constituting aggravating circumstances and not separate offences at time of commission • General principles of law recognised by civilised nations • Accessibility and foreseeability of criminal offences

Ould Dah v. France (dec.), 2009-I

NULLA POENA SINE LEGE

Imposition of prison sentence on basis of interpretation by analogy

Nullum crimen sine lege • Foreseeability • Precision of law • Interpretation by courts • *Nulla poena sine lege* • Interpretation by analogy

Başkaya and Okçuoğlu v. Turkey [GC], 1999-IV

Sentence subject to rules on recidivism following application of new law

Nulla poena sine lege • Principle that only the law can define a crime and prescribe a penalty • Sentence subject to rules on recidivism following application of new law • Power of member States to determine their own criminal policy • Application of successive criminal laws • Immediate application of new rules extending relevant period • Distinction between court's consideration of past events and retrospective application of law • Accessibility and foreseeability of criminal statute

Achour v. France [GC], 2006-IV

Conflicting statutory provisions as to meaning of life imprisonment for the purpose of establishing the right to remission of sentence

Nulla poena sine lege • Conflicting statutory provisions as to meaning of life imprisonment for the purpose of establishing the right to remission of sentence • Accessibility • Foreseeability • Difficulty in distinguishing between scope of sentence and manner of its execution • Change in legislation concerning remission for good conduct in the case of a life prisoner informed by trial court from the outset that

his sentence meant imprisonment for life • No imposition of a heavier penalty • Change in legislation not concerning the penalty itself but only its execution

Kafkaris v. Cyprus [GC], 2008-I

Retroactive application of criminal law under which the sentences for war crimes were heavier than those applicable when the offences were committed

Heavier penalty • Retroactive application of criminal law under which the sentences for war crimes were heavier than those applicable when the offences were committed • Real possibility that retroactive application of criminal legislation would operate to accused's disadvantage • Absence of any general exception to the rule of non-retroactivity in respect of acts that are criminal under "the general principles of law recognised by civilised nations"

Maktouf and Damjanović v. Bosnia and Herzegovina [GC], 2013-IV (extracts)

Postponement of final date of release as a result of change in case-law after imposition of original sentence

Nulla poena sine lege • Heavier penalty • Retroactivity • Postponement of final date of release as a result of change in case-law after imposition of original sentence • Scope of penalty • Term to be served • Sentences pronounced or imposed • Remission of sentence • Combination of sentences and setting of maximum total term • Maximum term as a new, independent sentence • "Parot doctrine" • Manner of execution of sentence • Foreseeability

Del Río Prada v. Spain [GC], 2013-VI (extracts)

Imposition of heavier penalty on accused on the basis of a law promulgated after commission of the offence

Nulla poena sine lege • Heavier penalty • Imposition of heavier penalty on accused on the basis of a law promulgated after commission of the offence • Retroactivity • Continuing offence • Principle of legal certainty • Precision of indictment

Ecer and Zeyrek v. Turkey, 2001-II

Placement on national sex offenders register for maximum period of thirty years running from completion of the prison sentence

Nulla poena sine lege • Placement on national sex offenders register for a maximum period of thirty years running from completion of prison sentence • Penalty • Retrospective application • Obligation to provide proof of address and changes of address • Preventive and deterrent purpose of measure • Severity of measure

Gardel v. France, 2009-V

Extension with retrospective effect of maximum period of preventive detention

Penalty • Extension with retrospective effect of maximum period of preventive detention • Retroactivity • Prohibition of retrospective penalties • Qualification of measure under domestic law • Autonomous concept • Nature and purpose of measure • Absence of substantial difference between execution of prison sentence and that of preventive detention order • Absence of substantial measures specifically aimed at prisoners in preventive detention • Preventive and punitive purposes of preventive detention • Severity of measure • Unlimited duration of preventive detention • Extension of period of preventive detention constituting additional penalty

M. v. Germany, 2009-VI

Surrender to the International Criminal Tribunal for the former Yugoslavia of person against whom criminal proceedings are pending in the domestic courts

Heavier penalty • Surrender to the International Criminal Tribunal for the former Yugoslavia of person against whom criminal proceedings are pending in the domestic courts • General principles of law recognised by civilised nations

Naletilić v. Croatia (dec.), 2000-V

Taking of a DNA sample from a convicted person and storage of his DNA profile in a national database for thirty years

Nulla poena sine lege • Penalty • Taking of a DNA sample from a convicted person and storage of his DNA profile in a national database for thirty years • Link between the conviction and the impugned measure • Characterisation of the measure under domestic law • Purpose of the measure • Severity of the measure

Van der Velden v. the Netherlands (dec.), 2006-XV

Article 7 § 2

GENERAL PRINCIPLES OF LAW RECOGNISED BY CIVILISED NATIONS

Surrender to the International Criminal Tribunal for the former Yugoslavia of person against whom criminal proceedings are pending in the domestic courts

Heavier penalty • Surrender to the International Criminal Tribunal for the former Yugoslavia of person against whom criminal proceedings are pending in the domestic courts • General principles of law recognised by civilised nations

Naletilić v. Croatia (dec.), 2000-V

No limitation for crimes against humanity

General principles of law recognised by civilised nations • No limitation for crimes against humanity

Papon v. France (no. 2) (dec.), 2001-XII

Prosecution for crimes against humanity committed before such an offence existed under domestic law

Retroactivity • Prosecution for crimes against humanity committed before such an offence existed under domestic law • Deportation of civilian population in 1949 • General principles of law recognised by civilised nations • Inapplicability of statutory limitation to crimes against humanity

Kolk and Kislyiy v. Estonia (dec.), 2006-I

ARTICLE 8**PRIVATE LIFE****Storing and use by the authorities of incorrect, secretly gathered personal information**

Private life • Storing and use by the authorities of incorrect, secretly gathered personal information • Information relating to private life • Interference • In accordance with the law • Whether there was a basis in law • Accessibility • Foreseeability • Precision of the law • Procedure for supervising a system of secret surveillance

Rotaru v. Romania [GC], 2000-V

Absence of legal recognition of change of sex

Private life • Absence of legal recognition of change of sex • Positive obligations • Post-operative transsexuals • Reassessment of issue in light of “present-day conditions” • Failure to recognise legal implications of lawful change of sex • International trend in favour of granting legal recognition of change of sex • Implications for existing system of registration of births • Right of transsexuals to personal development and physical and moral security • Absence of detriment to public interest • Duty of society to accept certain inconvenience • Margin of appreciation

Christine Goodwin v. the United Kingdom [GC], 2002-VI

Refusal to disclose natural parents' identity

Private life • Refusal to disclose natural parents' identity • Circumstances surrounding

the birth • Access to information about the natural family • Inability to establish parental ties with natural mother • Conflict between competing private interests • Margin of appreciation • Relations between individuals • Balance between the respective interests of natural parents, adoptive parents and natural siblings

Odièvre v. France [GC], 2003-III

Failure to provide an adequate procedure enabling applicant to access information of assistance in assessing health risk due to participation in army gas tests

Respect for private life • Positive obligation • Failure to provide an adequate procedure enabling applicant to access information of assistance in assessing health risk due to participation in army gas tests • Requirement of a structured disclosure process independent of litigation

Roche v. the United Kingdom [GC], 2005-X

Requirement of male gamete provider's consent to the continued storage and implantation of fertilised eggs

Private life • Right to respect for decision to become a parent in the genetic sense • Requirement of male gamete provider's consent to the continued storage and implantation of fertilised eggs • Positive obligations • Margin of appreciation • Absence of European consensus • Sensitive moral and ethical issues in rapidly evolving sphere • Fair balance • Irreconcilable private interests • Legislation product of exceptionally detailed examination of social, ethical and legal implications • Primacy of consent • Respect for human dignity and free will • Legal certainty

Evans v. the United Kingdom [GC], 2007-I

Retention of the applicants' fingerprints and DNA data after the criminal proceedings against them had ended with an acquittal or had been discontinued

Private life • Retention of the applicants' fingerprints and DNA data after the criminal proceedings against them had ended with an acquittal or had been discontinued • Personal data • Interference • In accordance with the law • Quality of law • Prevention of crime • Necessary in a democratic society • Blanket and indiscriminate nature of power of retention • Absence of time-limit on retention • No independent review of justification for retention • Risk of stigmatisation • Especially harmful to minors • Proportionality

S. and Marper v. the United Kingdom [GC], 2008-V

Restrictions on obtaining an abortion in Ireland

Private life • Restrictions on obtaining an abortion in Ireland • Interference • Legitimate aim • Protection of morals • Margin of appreciation • Prohibition of abortion

in respondent State for health and well-being reasons • Legislation ensuring provision of information and counselling about abortion services available abroad and of appropriate medical care • Abortion on ground of risk to mother's life • Absence of effective and accessible procedures for determining whether applicant qualified for lawful abortion • Positive obligations • Failure to introduce legislation or regulations to remove legal uncertainty

A, B and C v. Ireland [GC], 2010-VI

Refusal of domestic courts to issue injunction restraining further publication of photograph of public figures taken without their knowledge

Respect for private life • Positive obligations • Refusal of domestic courts to issue injunction restraining further publication of photograph of public figures taken without their knowledge • Debate of general interest • Circumstances in which pictures were taken • Margin of appreciation • Careful balancing by domestic courts of competing interests of freedom of expression and privacy in light of European Court's case-law

Von Hannover v. Germany
(no. 2) [GC], 2012-I

Publications allegedly insulting to the Roma community

Private life • Positive obligations • Publications allegedly insulting to the Roma community • Academic study based on scientific research • Absence of racist intentions • Balance between right to respect for private life and freedom of expression • Margin of appreciation

Aksu v. Turkey [GC], 2012-I

Prohibition, under legislation implementing United Nations Security Council resolutions, on travel through country surrounding enclave

Respect for private life • Respect for family life • Prohibition, under legislation implementing United Nations Security Council resolutions, on travel through country surrounding enclave • Prevention of crime • Protection of national security and public safety • Clear and explicit language of resolution indicating intention to require States to take measures conflicting with their international human rights law obligations • Freedom of choice regarding mode of transposition of Security Council resolutions into domestic legal order • Failure to take all possible measures to harmonise allegedly conflicting international obligations by adapting sanctions regime to applicant's situation • Proportionality

Nada v. Switzerland [GC], 2012-V

Lack of clear statutory provisions criminalising act of covertly filming a naked child

Respect for private life • Lack of clear statutory provisions criminalising act of covertly filming a naked child • Violation of personal integrity • Offence not involving physical violence, abuse or contact • Offence against a minor by a person whom the victim was entitled and expected to trust • Positive obligations • Absence of adequate legal framework consisting of criminal and/or civil-law remedies

Söderman v. Sweden [GC], 2013-VI

Non-renewal of the employment contract of a teacher of Catholic religion and ethics who had publicly displayed his situation as a “married priest”

Respect for private life • Non-renewal of the employment contract of a teacher of Catholic religion and ethics who had publicly displayed his situation as a “married priest” • Interference by the State with the right to respect for one’s private life • Autonomy of the Church • Heightened duty of loyalty • Contractual limitation of the extent of the right to respect for private and family life • Special bond of trust • Proportionality

Fernández Martínez v. Spain [GC], 2014-II (extracts)

Ban on wearing of religious clothing concealing the face in public places

Private life • Ban on wearing of religious clothing concealing the face in public places • Public safety • Protection of the rights and freedoms of others • Necessary in a democratic society • Guaranteeing the conditions of “living together” • Proportionality • Wide margin of appreciation • Lack of European consensus

S.A.S. v. France [GC], 2014-III (extracts)

Denial of access to homes to Azerbaijani citizens displaced in the context of the Nagorno-Karabakh conflict

Respect for family life • Respect for private life • Respect for home • Denial of access to homes to Azerbaijani citizens displaced in the context of the Nagorno-Karabakh conflict • Lack of compensation

Chiragov and Others v. Armenia [GC], 2015-III

Restriction on long-term family visits for a life sentenced prisoner

Private life • Family life • Restriction on long-term family visits for a life sentenced prisoner • Restrictions imposed directly by legislation, solely on account of the convict having been sentenced to life imprisonment • Wide margin of appreciation • No distinction between prisoners on the basis of their sentence in the majority

of the Contracting States • Considerable worsening of the applicant's situation compared with the position of an average prisoner serving a long-term sentence • Narrowing of the margin of appreciation • Extreme severity and duration of the restrictions • Interests of the convict and his or her relatives and family members • International consensus on entitlement of all prisoners, irrespective of their sentence, to an "acceptable" or "reasonably good" level of contact with their families • Restrictions pursuing the aim of isolation rather than reintegration • Contrary to international instruments • Proportionality • Particular difficulties in maintaining contact with his child and elderly parents • Fair balance not struck • Necessary in a democratic society

Khoroshenko v. Russia [GC], 2015-IV

Prohibition on donating embryos obtained from *in vitro* fertilisation to scientific research

Respect for private life • Prohibition on donating embryos obtained from *in vitro* fertilisation to scientific research • Applicability • Right to self-determination • Aim of protecting morals and the rights and freedoms of others • Right not one of the core protected rights • Wide margin of appreciation • Delicate moral and ethical questions • Lack of European consensus • Limits aimed at tempering excesses • Account taken of the different interests at stake during the drafting process of the law in question • Desire to contribute to scientific research did not directly affect the applicant • Necessary in a democratic society

Parrillo v. Italy [GC], 2015-V

Shortcomings in legal framework governing secret surveillance of mobile-telephone communications

Respect for private life • Shortcomings in legal framework governing secret surveillance of mobile-telephone communications • Interference • Prescribed by law • Accessibility • Foreseeability • Safeguards against abuse • Necessary in a democratic society • National security • Public safety • Authorities' almost unlimited discretion • Circumstances in which authorities are empowered to resort to secret surveillance measures not defined with sufficient clarity • Provisions on discontinuation of surveillance measures lacking sufficient guarantees against arbitrariness • Automatic storage of clearly irrelevant data • Circumstances in which intercept material will be stored and destroyed after end of trial not clearly defined • Judicial scrutiny at authorisation stage limited in scope • Authorisation procedures not capable of ensuring that secret surveillance measures are ordered only when "necessary in a democratic society" • Authorities' ability to circumvent authorisation procedure and to intercept directly all communications • Ineffectiveness of supervision arrangements • Supervisory bodies not open to public scrutiny and lacking independence and powers with respect to detected breaches • Absence of notification of

interceptions • Lack of access to documents and information relating to interceptions • Ineffectiveness of judicial review

Roman Zakharov v. Russia [GC], 2015-VIII

Impossibility for an Armenian citizen displaced in the context of the Nagorno-Karabakh conflict to gain access to his home and relatives' graves

Respect for family life • Respect for private life • Respect for home • Impossibility for an Armenian citizen displaced in the context of the Nagorno-Karabakh conflict to gain access to his home and relatives' graves • Lack of compensation

Sargsyan v. Azerbaijan [GC], 2015-IV

Discharge of homosexuals from the armed forces following intrusive investigations

Private life • Blanket ban on homosexuals in the armed forces • Discharge of homosexuals from the armed forces • Intrusive investigations into private lives of homosexuals • Interference • Severity of interference • National security • Prevention of disorder • Necessary in a democratic society • Proportionality • Requirement of convincing and weighty reasons justifying interference

Smith and Grady v. the United Kingdom, 1999-VI

Secret surveillance by the police – adequacy of legal basis

Private life • Secret surveillance by the police • Interference • Prescribed by law • Absence of statutory regulation of secret surveillance by the police • Non-binding guidelines • Direct public accessibility

Khan v. the United Kingdom, 2000-V

Prohibition on homosexual acts involving more than two males

Private life • Prohibition on homosexual acts involving more than two males • Conviction for gross indecency • Homosexual acts carried out in private • Video-recording of homosexual acts carried out in private • Absence of risk of material entering public domain • Protection of morals • Protection of the rights and freedoms of others • Necessary in a democratic society • Narrow margin of appreciation with regard to intimate aspects of private life • Absence of public-health considerations

A.D.T. v. the United Kingdom, 2000-IX

Deportation of schizophrenic to a country where adequate medical treatment is allegedly not available

Private life • Deportation • Deportation of schizophrenic to a country where

adequate medical treatment is allegedly not available • Scope of private life • Mental health and preservation of mental stability • Economic well-being of the country • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality

Bensaid v. the United Kingdom, 2001-I

Adequacy of measures taken by courts to establish paternity

Private life • Adequacy of measures taken by courts to establish paternity • Paternity • Physical and social identity • Establishment of relationships with others • Measures available to courts in establishing paternity

Mikulić v. Croatia, 2002-I

Refusal to give advance undertaking not to prosecute a husband for assisting his paralysed wife to commit suicide

Private life • Refusal to give advance undertaking not to prosecute a husband for assisting his paralysed wife to commit suicide • Personal autonomy and self-determination • Conduct posing a danger to health or life • Compulsory medical treatment • Prevention from exercising choice to avoid distressing and undignified death • Interference • Necessary in a democratic society • Protection of weak and vulnerable • Blanket prohibition on assisted suicides • Proportionality • Rule of law • Absence of arbitrariness or unreasonableness

Pretty v. the United Kingdom, 2002-III

Disclosure to public of closed-circuit television footage of individual in public street

Private life • Disclosure to public of closed-circuit television footage of individual in public street • Interference • Monitoring of public places by photographic means • Recording of data • Disclosure of recordings to public • Scope of right to privacy in public places • Foreseeability of disclosure to public of data recorded in public place • Public safety • Prevention of crime • Prevention of disorder • Rights of others • Necessary in a democratic society • Role of closed-circuit television in prevention of crime • Importance of obtaining individual's consent or adequately masking identity • Existence of adequate safeguards • Proportionality

Peck v. the United Kingdom, 2003-I

Refusal to order reimbursement by a private health insurance company of costs of gender reassignment surgery

Private life • Positive obligations • Refusal to order reimbursement by a private health insurance company of costs of gender reassignment surgery • Transsexuals •

Assessment by the domestic courts of the causes of transsexuality and of the medical necessity of gender reassignment • Obligation on transsexual to prove necessity of gender reassignment • Proportionality • Margin of appreciation

Van Kück v. Germany, 2003-VII

Covert filming of suspect at police station for identification purposes

Private life • Covert filming of suspect at police station for identification purposes • Use of security cameras in public places • Recording and use of film footage • Interference • In accordance with the law • Adequacy of legal basis for interference • Non-compliance with relevant code of conduct

Perry v. the United Kingdom, 2003-IX (extracts)

Refusal to return identity document on release from detention on remand

Private life • Refusal to return identity document on release from detention on remand • Importance of identity document in everyday life • Interference • Failure to comply with applicable rules

Smirnova v. Russia, 2003-IX (extracts)

Compulsory gynaecological examination of detainee

Private life • Compulsory gynaecological examination of detainee • Vulnerable position of detainees • Husband complaining about violation of wife's rights • Interference • Prescribed by law • Absence of medical necessity and circumstances provided for by law

Y.F. v. Turkey, 2003-IX

Person repeatedly required to undergo psychiatric examinations at short intervals

Private life • Person repeatedly required to undergo psychiatric examinations at short intervals • Interference • Rights of the individual and judicial diligence • Fair balance between respect for private life and the proper administration of justice

Worwa v. Poland, 2003-XI

Adequacy of domestic law and practice in providing protection against non-consensual sexual acts

Inhuman and degrading treatment • Private life • Physical integrity • Sexual autonomy • Positive obligations • Adequacy of domestic law and practice in providing protection against non-consensual sexual acts • Historical requirement of proof of physical force in establishing offence of rape • General trend in European and other

legal systems • Allegedly restrictive approach of domestic authorities to investigation and prosecution of rape • Obligation on authorities to conduct context-sensitive assessment of rape allegations and to verify all surrounding circumstances • Importance of issue of lack of consent in rape investigation • Deficiencies in investigation

M.C. v. Bulgaria, 2003-XII

Administration of drugs to disabled child despite mother's opposition

Private life • Administration of drugs to disabled child despite mother's opposition • Interference • Protection of the rights and freedoms of others • Necessary in a democratic society • Emergency situation • Failure of hospital to seek court order

Glass v. the United Kingdom, 2004-II

Publication in tabloid press of photos showing a princess engaged in her private activities

Private life • Publication in tabloid press of photos showing a princess engaged in her private activities • Right to control of use of one's picture • Positive obligations • Balancing protection of private life and freedom of expression • Person photographed without their knowledge or consent • Publication of photos relating to details of private life • Public figure having no official function • No contribution to debate of public interest • Right to "legitimate expectation" of protection of private life • Means of mass communication • Effective protection of private life • Limits on right of public to be informed and commercial interest of magazines • Lack of fair balance

Von Hannover v. Germany, 2004-VI

Publication in the press of identity photograph taken at the time of compiling arrest file

Private life • Publication in the press of identity photograph taken at the time of compiling arrest file • Scope of private life • Photograph of a person who was the subject of criminal proceedings released to the press by investigators • Interference • Person under house arrest • In accordance with the law

Sciacca v. Italy, 2005-I

Lack of legal basis for admission to and treatment in a private psychiatric clinic

Private life • Interference • Positive obligations • Forcible administration of medication • In accordance with the law

Storck v. Germany, 2005-V

Confiscation of passport during lengthy proceedings

Private life • Confiscation of passport during lengthy proceedings • Interference • National security • Prevention of crime • Necessary in a democratic society • Right to freedom of movement as an aspect of the right to respect for private life • Family, occupational and economic ties in several countries

İletmiş v. Turkey, 2005-XII

Public servant wishing to challenge registration in former State security agency files denied access to relevant rules on national security grounds

Private life • Scope • Public servant • Registration in former State security agency files • Public servant wishing to challenge registration in former State security agency files denied access to relevant rules on national security grounds • Procedural requirements • Validity of national security arguments in lustration proceedings • Principle of equality • Unrealistic and excessive evidential burden

Turek v. Slovakia, 2006-II (extracts)

Personal and professional restrictions arising out of entry of person's name in bankruptcy register

Applicability • Private life • Bankruptcy proceedings • Personal and professional restrictions arising out of entry of person's name in bankruptcy register • Interference • Necessary in a democratic society • Automatic nature of restrictions • Conditions and time-limit for lifting of restrictions • Civil rehabilitation

Campagnano v. Italy, 2006-IV

Inability of post-operative male-to-female transsexual to draw retirement pension at same age as other women

Private life • Absence of legal recognition of change of gender • Post-operative transsexuals • Inability of post-operative male-to-female transsexual to draw retirement pension at same age as other women • Victim • Date victim status acquired • Effect on applicant's rights of European Court ruling in separate case • Victim status not suspended by legislative process

Grant v. the United Kingdom, 2006-VII

Storage of, and refusal to grant full access to, personal information kept in security police records

Respect for private life • Public authority • Interference • Prescribed by law • Safeguards against abuse • Protection of national security • Prevention of disorder and crime • Combating terrorism • Necessary in a democratic society • Storage of, and

refusal to grant full access to, personal information kept in security police records • Storage of personal information related to political opinion, affiliations and activities • Lack of sufficient reasons for continued storage of 30-year-old data, including information on membership of political parties advocating change in the social order • Refusal to grant full access justified by need to ensure efficacy of system

Segerstedt-Wiberg and Others v. Sweden, 2006-VII

No legal possibility to deregister from the applicant's home address a previous owner unable to establish a new permanent place of residence

Respect for private life • Respect for home • Interference • Positive obligations • Relations between individuals • No legal possibility to deregister from the applicant's home address a previous owner unable to establish a new permanent place of residence • Proportionality • Fair balance to be struck between the interests of an individual and those of the community

Babylonová v. Slovakia, 2006-VIII

Refusal to authorise a DNA test on a deceased person whom the applicant wished to establish with certainty was his biological father

Private life • Scope • Proceedings to establish biological ties • Refusal to authorise a DNA test on a deceased person whom the applicant wished to establish with certainty was his biological father • Fair balance between general interest and interests of the individual • Right to an identity • Right to establish parentage • Moral and mental suffering • Absence of religious or philosophical reasons for opposing exhumation • Absence of interference with private life of deceased • No effect on inheritance rights or on entries in civil registers

Jaggi v. Switzerland, 2006-X

Procedures used to strip-search visitors to a prison

Private life • Physical and moral integrity • Procedures used to strip-search visitors to a prison • Legitimate aim • Prevention of crime and disorder • Necessary in a democratic society • Protection of dignity • Failure to adhere rigorously to procedures

Wainwright v. the United Kingdom, 2006-X

Reproduction of an extract from a personal medical document in a divorce decision

Private life • Reproduction of an extract from a personal medical document in a divorce decision • Interference • Protection of rights and freedoms of others • Necessary in a democratic society • Proportionality • Importance of protecting personal

data • Information of a medical nature • Respect for confidentiality of health data • Domestic legislation must afford appropriate safeguards • Limit to judicial interference with private sphere in divorce proceedings

L.L. v. France, 2006-XI

Impossibility of challenging a judicial declaration of paternity

Private life • Positive obligations • Protection of the interests of children • Impossibility of challenging a judicial declaration of paternity • Proportionality

Paulík v. Slovakia, 2006-XI (extracts)

Monitoring of public servant's communications at work

Private life • Correspondence • Monitoring of public servant's communications at work • Scope of protection • Absence of warning that communications were liable to monitoring • Reasonable expectation of privacy • Interference • Collection and storage of personal information without employee's knowledge • In accordance with the law • Foreseeability • Absence of inherent power to monitor • Absence of regulatory framework

Copland v. the United Kingdom, 2007-I

Refusal to perform therapeutic abortion despite risk of serious deterioration of mother's eyesight if pregnancy continued to term

Respect for private life • Refusal to perform therapeutic abortion despite risk of serious deterioration of mother's eyesight if pregnancy continued to term • Positive obligations • Margin of appreciation • Absence of transparent and clearly defined procedures for determining whether preconditions of legal abortion were satisfied • Effective respect for physical integrity of pregnant women • Insufficiency of retrospective legal measures

Tysiąc v. Poland, 2007-I

Failure to introduce implementing legislation to enable a transsexual to undergo full gender reassignment surgery and change his gender identification in official documents

Private life • Positive obligations • Failure to introduce implementing legislation to enable a transsexual to undergo full gender reassignment surgery and change his gender identification in official documents • Respect for human dignity and quality of life • Preoperative transsexual who had undergone partial gender reassignment surgery • Legislative gap • Budgetary burden on the State not likely to be excessive •

Proportionality • Fair balance to be struck between competing interests • Margin of appreciation

L. v. Lithuania, 2007-IV

Order depriving borderline mental patient of legal capacity

Private life • Interference • Order depriving borderline mental patient of legal capacity • Absence of procedural safeguards • Inadequate reasons • Inability to challenge order other than through guardian • Absence of statutory framework covering borderline cases • Proportionality

Shtukaturov v. Russia, 2008-II

Refusal by Internet service provider to disclose identity of person wanted for placing an indecent advertisement about a minor

Private life • Refusal by Internet service provider to disclose identity of person wanted for placing an indecent advertisement about a minor • Positive obligations • Protection of physical and moral welfare of persons at risk • Requirement for criminal-law response and effective deterrence • Limitations on freedom of expression and privacy of telecommunications and Internet users • Absence of legislative framework for reconciling competing interests

K.U. v. Finland, 2008-V

Placement on national sex offenders register for a maximum period of thirty years running from completion of prison sentence

Respect for private life • Placement on national sex offenders register for a maximum period of thirty years running from completion of prison sentence • Necessary in a democratic society • Prevention of crime • Prevention of disorder • Proportionality • Personal data • Time-limit on retention of data • Independent judicial review of justification for retention of data • Access to register subject to rules • Duty of confidentiality on authorities with access to register • Margin of appreciation • Fair balance between competing private and public interests

Gardel v. France, 2009-V

Power to stop and search individuals without reasonable suspicion of wrongdoing

Private life • Power to stop and search individuals without reasonable suspicion of wrongdoing • Interference • Public nature of search • Absence of implied consent to search • In accordance with the law • Widely drafted statutory powers to authorise stop and search • Broad discretion afforded to police officers to exercise stop

and search powers • Statistical evidence • Practical limitations on effective judicial review • Absence of adequate legal safeguards to avoid clear risk of arbitrariness

Gillan and Quinton v. the United Kingdom, 2010-I (extracts)

GPS surveillance of suspected terrorists

Private life • Interference • Prescribed by law • Foreseeability • Safeguards against abuse • Protection of national security and public safety • Prevention of crime • Proportionality • GPS surveillance of suspected terrorists

Uzun v. Germany, 2010-VI (extracts)

Refusal to provide medication necessary for the suicide of a person suffering from mental illness

Private life • Positive obligations • Refusal to provide medication necessary for the suicide of a person suffering from mental illness • Obtaining lethal substance without medical prescription • Lack of European consensus on decriminalisation of assisted suicide • Margin of appreciation • Protection of the individual and his or her free will • Effective access to a medical assessment

Haas v. Switzerland, 2011-I

Lack of effective access to diagnostic services

Respect for private life • Positive obligations • Lack of effective access to diagnostic services • Practical implementation of domestic law in discordance with theoretical right to lawful abortion in Poland

R.R. v. Poland, 2011-III (extracts)

Violence among pupils in school

Inhuman and degrading treatment • Respect for private life • Violence among pupils in school • Positive obligations • Requirement of adequate legal framework for the protection of vulnerable groups • Vague and unspecified allegations of violence insufficient to trigger State's positive obligations

Đurđević v. Croatia, 2011-V (extracts)

Forced administration of therapeutic drugs in mental institution

Respect for private life • Forced administration of therapeutic drugs in mental institution • Interference with personal integrity • In accordance with the law • Absence of judicial scrutiny or mechanism for ruling on lawfulness or proportionality of measure • Lack of adequate safeguards against arbitrariness

X v. Finland, 2012-IV (extracts)

Refusal to allow the use of an unauthorised experimental drug for medical treatment

Positive obligations • Respect for private life • Personal autonomy and quality of life • Refusal to allow the use of an unauthorised experimental drug for medical treatment • Absence of consensus among Contracting States regarding use of unauthorised medicinal products • Solution tilting the balance decisively in favour of medicine risk avoidance rather than potential therapeutic benefit within State's wide margin of appreciation regarding matters of health-care policy

Hristozov and Others v. Bulgaria, 2012-V (extracts)

Obligation for lawyers, when not acting in their defence capacity, to report suspicions of illegal money-laundering activities on the part of their clients

Correspondence • Private life • Obligation for lawyers, when not acting in their defence capacity, to report suspicions of illegal money-laundering activities on the part of their clients • Continuing interference • Prevention of disorder • Prevention of crime • Application of a European Directive • Choice of means and manner of application • No referral for preliminary ruling • Presumption of equivalent protection not applicable • General interest • Limited interference with lawyers' professional privilege • Proportionality

Michaud v. France, 2012-VI

Dismissal of a judge for “breach of oath” in absence of consistent interpretation of that offence and of requisite procedural safeguards

Respect for private life • Dismissal of a judge for “breach of oath” in absence of consistent interpretation of that offence and of requisite procedural safeguards • Prescribed by law • Foreseeability • Safeguards against abuse • Principle of proportionate application of disciplinary sanctions on judges • Lack of independent and impartial judicial review

Oleksandr Volkov v. Ukraine, 2013-I

Lack of clarity in domestic law on consent of close relatives to tissue removal from dead body

Respect for private life • Interference • In accordance with the law • Foreseeability • Lack of clarity in domestic law on consent of close relatives to tissue removal from dead body • Lack of adequate legal protection against arbitrariness

Elberte v. Latvia, 2015-I

Gender reassignment surgery made conditional on proof that the person concerned was unable to procreate

Respect for private life • Gender reassignment surgery made conditional on proof that the person concerned was unable to procreate • Possibility for transgender persons to obtain gender reassignment treatment in Council of Europe member States • Respect for physical integrity • In accordance with the law • Requirement wholly unnecessary for the protection of the general interest and the interests of the individual • Lack of sufficient reason • Necessary in a democratic society

Y.Y. v. Turkey, 2015-I (extracts)

Failure to protect victim's personal integrity in criminal proceedings concerning sexual abuse

Respect for private life • Failure to protect victim's personal integrity in criminal proceedings concerning sexual abuse • Fair balance between rights of victims of crime and rights of defence • Rights of victims of sexual abuse including protection from intimidation and further victimisation during testimony

Y. v. Slovenia, 2015-II (extracts)

Refusal to recognise acquisition of nationality by birth

Private life • Nationality • Denial of nationality • Refusal to recognise acquisition of nationality by child born to parents of uncertain nationality • Consequences of denial of nationality

Karashev v. Finland (dec.), 1999-II

Obligation on motorists to submit to a breath test

Private life • Interference • Prevention of crime • Protection of rights and freedoms of others • Necessary in a democratic society • Road safety

Tirado Ortiz and Lozano Martin v. Spain (dec.), 1999-V

Surveillance of the applicant by private detectives instructed by an insurance company

Private life • Surveillance of the applicant by private detectives instructed by an insurance company • Positive obligations • Interference with personality rights • Thorough analysis by the domestic courts of the competing interests • Aim pursued • Overriding interest of the insurer

Verliere v. Switzerland (dec.), 2001-VII

Dismissal of civil servant for having collaborated with the GDR Ministry of National Security and having denied the fact after German reunification

Private life • Dismissal of civil servant for having collaborated with the GDR Ministry of National Security and having denied the fact after German reunification • Interference • In accordance with the law • Accessibility • Foreseeability • Prevention of disorder • Protection of rights and freedoms of others • Conduct capable of destroying authorities' trust • Exceptional context of German reunification • Proportionality

Knauth v. Germany (dec.), 2001-XII

Lack of facilities for disabled access to buildings open to the public

Private life • Positive obligations • Lack of facilities for disabled access to buildings open to the public • Relations between individuals • Interpersonal relations of broad and indeterminate scope • Direct and immediate link between measures requested by applicant and the latter's private life • Exceptional circumstances causing interference with right to personal development and right to establish and develop relationships with others

Zehmalová and Zehmal v. the Czech Republic (dec.), 2002-V

Lack of assistance for disabled voter at polling station

Applicability • Respect for private life • Positive obligations • Exercise of civic duties • Striking of fair balance between competing interests • Margin of appreciation • Lack of assistance for disabled voter at polling station • Allocation of limited State resources • Isolated incident • New legislation providing for adequate access for the disabled to polling stations

Mółka v. Poland (dec.), 2006-IV

Exhumation of corpse for genetic examination

Respect for private life • Interference • Exhumation of corpse for genetic examination • No interference with the rights of the estate or those of the deceased

Estate of Kresten Filtenborg Mortensen v. Denmark (dec.), 2006-V

Unforeseeable harmful effects of surgery on account of psychosomatic tendencies not known prior to operation

Respect for private life • Unforeseeable harmful effects of surgery on account of psychosomatic tendencies not known prior to operation • Positive obligations •

Obligation on doctor to inform patients only of foreseeable consequences of medical intervention

Trocellier v. France (dec.), 2006-XIV

Taking of a DNA sample from a convicted person and storage of his DNA profile in a national database for thirty years

Respect for private life • Taking of a DNA sample from a convicted person and storage of his DNA profile in a national database for thirty years • Interference • Prescribed by law • Necessary in a democratic society • Prevention of crime • Protection of the rights and freedoms of others

Van der Velden v. the Netherlands (dec.), 2006-XV

PRIVATE AND FAMILY LIFE

Separation of long-term immigrant from his partner and children due to imposition of ten-year exclusion order following criminal conviction

Respect for private and family life • Expulsion • Separation of long-term immigrant from his partner and children due to imposition of ten-year exclusion order following criminal conviction • Interference • Necessary in a democratic society • Public safety • Prevention of disorder • Prevention of crime • Proportionality • Nature and seriousness of offence • Length of applicant's stay in the host country • Applicant's criminal propensities • Length of couple's family life • Young age and adaptability of children • Possibility for children to return regularly to the respondent State

Üner v. the Netherlands [GC], 2006-XII

Failure by the applicants to act upon respondent Government's proposals to regularise their immigration status

Private and family life • Immigration status • Failure by the applicants to act upon respondent Government's proposals to regularise their immigration status • Absence of uncertainty • Problems largely of applicants' own making • No bars on employment or education • Absence of real and imminent risk of deportation • Adequate and sufficient proposals • Matter resolved

Sisojeva and Others v. Latvia (striking out) [GC], 2007-I

Refusal to grant artificial insemination facilities to prisoner

Applicability • Private life • Family life • Positive obligations • Refusal to grant artificial insemination facilities to prisoner • Convention rights retained on imprisonment • Artificial insemination applicants' only realistic hope of having a child

together • Rehabilitative aim of imprisonment • State's obligation to ensure effective protection of children • Failure to strike a fair balance between competing public and private interests • No European consensus • Margin of appreciation • Proportionality • Inordinately high burden of proof placed on a prisoner requesting artificial insemination facilities • No proportionality assessment of a restriction in an individual case

Dickson v. the United Kingdom [GC], 2007-V

Exclusion order imposed on applicant on account of convictions for essentially non-violent offences committed while he was a minor

Private life • Family life • Exclusion order imposed on applicant on account of convictions for essentially non-violent offences committed while he was a minor • Interference • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Obligation to reintegrate into society • Child's best interests • Length of lawful residence • Social, cultural and family ties with host country • Lack of such ties with country of origin • Length of exclusion order not decisive

Maslov v. Austria [GC], 2008-III

Prohibition on the use of ova and sperm from donors for *in vitro* fertilisation

Private and family life • Prohibition on the use of ova and sperm from donors for *in vitro* fertilisation • Interference • Protection of health • Protection of morals • Protection of the rights and freedoms of others • Necessary in a democratic society • Absence of sufficiently established European consensus • Sensitive moral and ethical issues raised by fast-moving medical and scientific developments • State's wide margin of appreciation • Careful and cautious approach adopted by legislator • Need to keep artificial procreation under constant review by States

S.H. and Others v. Austria [GC], 2011-V

Failure to regulate residence of persons who had been "erased" from the register of permanent residents following Slovenia's independence

Respect for private and family life • Failure to regulate residence of persons who had been "erased" from the register of permanent residents following Slovenia's independence • In accordance with the law • Unforeseeability of measure • Necessary in a democratic society • Protection of interests of national security • Formation of corpus of citizens • Legal vacuum depriving long-term legal immigrants of residence status

Kurić and Others v. Slovenia [GC], 2012-IV (extracts)

Refusal to give applicant female identity number following sex change unless marriage was transformed into a civil partnership

Respect for private and family life • Refusal to give applicant female identity number following sex change unless marriage was transformed into a civil partnership • Positive obligation to recognise change of gender undergone by post-operative transsexuals • Change of gender in context of pre-existing marriage • Same-sex marriage • Possibility of converting existing marriage into registered partnership • Margin of appreciation • Proportionality

Hämäläinen v. Finland [GC], 2014-IV

Temporary exclusion order imposed on a foreign national after long period of residence

Private life • Family life • Temporary exclusion order imposed on a foreign national after long period of residence • Interference • Right to regulate the entry, stay and expulsion of foreign nationals • Conviction for drug trafficking • Prevention of crime • Prevention of disorder • Protection of health • Necessary in a democratic society • Proportionality • Seriousness of the offences • Links with the country of origin

Baghli v. France, 1999-VIII

Delay in returning deceased child's body to parents

Private life • Family life • Delay in returning deceased child's body to parents • Interference • Prevention of crime • Purposes of inquiry • Fair balance

Pannullo and Forte v. France, 2001-X

Detention regime in maximum-security prison

Private and family life • Detention regime in maximum-security prison • Strict limitations on social contacts • Restrictions on family visits • Interference • Prevention of disorder and crime • Necessary in a democratic society • Purpose of security measures • Proportionality

Van der Ven v. the Netherlands, 2003-II

Adequacy of measures taken to reunite a deported alien with his family

Private life • Family life • Adequacy of measures taken to reunite a deported alien with his family • Finding of violation by the Court • Positive obligations • Permanent territorial exclusion • Requirement of expedition • Compulsory residence order

Mehemi v. France (no. 2), 2003-IV

Use of a dangerous substance near housing

Applicability • Activity entailing threats to environment and life of local residents • Private and family life • Positive obligations • Decision by State with bearing on environmental matters • Decision-making process • Procedural guarantees • National legislation providing procedural guarantees to applicants • Actions by authorities depriving existing procedural guarantees of any useful effect

Taşkın and Others v. Turkey, 2004-X

Living conditions of Roma villagers following police involvement in the killing of members of their community and the destruction of their homes

Private life • Family life • Home • Living conditions of Roma villagers following police involvement in the killing of members of their community and the destruction of their homes • Direct repercussions of the acts of State agents • Police involvement in criminal acts • Failure to institute criminal proceedings • Claims for damages refused or delayed • Discriminatory remarks • Houses not rebuilt or uninhabitable • Feelings of insecurity perpetuated by authorities' general attitude

Moldovan and Others v. Romania
(no. 2), 2005-VII (extracts)

Widow not permitted to transfer late husband's ashes from one family burial plot to another

Family life • Private life • Widow not permitted to transfer late husband's ashes from one family burial plot to another • Interference • Necessary in a democratic society • Protection of morals • Protection of the rights of others • Sanctity of graves • Wide margin of appreciation • Proportionality • Burial at initial location seemingly in accordance with wishes of deceased • Widow not precluded from being buried with her late husband • Relevant and sufficient reasons given by the domestic authorities

Elli Poluhas Dödsbo v. Sweden, 2006-I

Inability to challenge legal presumption of paternity

Private life • Family life • Inability to challenge legal presumption of paternity • Positive obligations • Necessary in a democratic society • Proportionality • Margin of appreciation • Protection of legal certainty of family relationships • Biological and social reality • Scientific evidence

Mizzi v. Malta, 2006-I (extracts)

Refusal to allow unlawfully resident foreigner to remain in the Netherlands in order to share in the care of her Dutch child born there

Private and family life • Positive obligations • Refusal to allow unlawfully resident foreigner to remain in the Netherlands in order to share in the care of her Dutch child born there • Failure to abide by immigration rules • Illegal residence at the time of the child's birth • Economic well-being of the country • Interests of the child • Close ties between child and mother • Young age of the child • Impossibility for foreign mother having no parental authority to take her child abroad • Impossibility for foreign mother to maintain regular contact with her child if expelled to her country of origin • Excessive formalism • Failure to strike a fair balance between different interests at stake

Rodrigues da Silva and Hoogkamer v. the Netherlands, 2006-I

Deportation and ten-year exclusion order on grounds of national security

Private life • Family life • Deportation and ten-year exclusion order on grounds of national security • Alien • Interference • In accordance with the law • Foreseeability • Level of precision • Guarantees against arbitrariness • Adversarial proceedings before a review body • Deportation order based on general ground • Lack of offence • Non-communication of deportation order prior to enforcement • Purely formal judicial review • Minimum degree of protection by authorities against arbitrariness not attained

Lupsa v. Romania, 2006-VII

Forcible entry and search of house by police without taking proper steps to verify identity of the residents

Private and family life • Interference • Forcible entry and search of house by police without taking proper steps to verify identity of the residents • Necessary in a democratic society • Relevant reasons • Sufficient reasons • Absence of malice not decisive • Failure to take reasonable and available precautions • Proportionality

Keegan v. the United Kingdom, 2006-X

Conditions of detention and deportation of an unaccompanied five-year-old alien

Family life • Private life • Five-year-old alien minor travelling alone placed in detention and deported without being allowed to join her refugee mother overseas • Interference • National security • Economic well-being of the country • Prevention of disorder • Prevention of crime • Necessary in a democratic society •

Proportionality • Positive obligations • Obligation to facilitate family reunification • Obligation to provide care for unaccompanied minors

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, 2006-XI

Legislation preventing patients from photocopying their medical records

Private and family life • Positive obligations • Legislation preventing patients from photocopying their medical records • Data protection • Access to information • Requirement of compelling reasons for denying access to medical data • Protection of information from abuse • Margin of appreciation

K.H. and Others v. Slovakia, 2009-II (extracts)

Dismissal of a Church employee on ground of adultery

Private and family life • Dismissal of a Church employee on ground of adultery • Autonomy of religious communities • State's positive obligations fulfilled by system of employment tribunals and a constitutional court to review decisions • Consideration of both ordinary domestic law and Church law • Churches' marital fidelity requirements not inconsistent with general principles of law • Brevity of employment tribunals' reasoning • Employing Church's interests weighed only against the applicant's interest in keeping his post • Employing Church's view regarded as decisive • Proportionality • Applicant's individual right in opposition to a collective right • Employment relationship based on civil law without special ecclesiastical status • Limited opportunities of finding a new job outside the employing Church

Schüth v. Germany, 2010-V

Absence of safeguards giving special consideration to the reproductive health of the applicant as a Roma woman

Private and family life • Positive obligations • Absence of safeguards giving special consideration to the reproductive health of the applicant as a Roma woman • Serious medical intervention without the patient's informed consent

V.C. v. Slovakia, 2011-V (extracts)

Statutory ban on returning bodies of terrorists for burial

Private life • Family life • Statutory ban on returning bodies of terrorists for burial • Prevention of disorder • Public safety • Protection of the rights and freedoms of others • Authorities entitled to act with a view to avoiding disturbances related to burial of terrorists, minimising the informational and psychological impact of terrorist acts on the population and protecting the feelings of relatives of victims of terrorism • Necessary in a democratic society • Proportionality • Margin of

appreciation • Applicants denied any opportunity to pay last respects to their deceased relatives • Automatic nature of the ban • Absence of individualised assessment of circumstances of each of the deceased and their families

Sabanchiyeva and Others v. Russia, 2013-III (extracts)

Refusal to recognise under French law parent-child relationship legally established in the United States between children born as the result of a surrogacy arrangement and the couple having recourse to that method

Private life • Family life • Refusal to recognise under French law parent-child relationship lawfully established in the United States between children born as the result of a surrogacy arrangement and the couple having recourse to that method • Legitimate aims • Protection of health • Protection of rights and freedoms of others • Deterring nationals from going abroad to obtain method of assisted reproduction prohibited on national territory • Lack of European consensus • Margin of appreciation • Surmountable practical consequences for family life • Fair balance • Lack of recognition of nationality • Undermining of identity of children within French society • Children's best interests • Failure to recognise or establish biological parentage • Infringement of respect for private life

Mennesson v. France, 2014-III (extracts)

Failure to hear child's views during protracted custody proceedings

Right to respect for private and family life • Rights of the child • Failure to hear child's views during protracted custody proceedings • Positive obligations • Sufficient involvement in the decision-making process • Article 12 of the Convention on the Rights of the Child

M. and M. v. Croatia, 2015-V (extracts)

Deportation of a foreign national after a lengthy period of residence

Private life • Family life • Deportation • Right to control entry, residence and expulsion of non-nationals • Deportation of a foreign national after lengthy period of residence • Interference • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Seriousness of offences committed • Links with country of origin

Benrachid v. France (dec.), 1999-II

Application of the principle that male heirs take precedence over female heirs in the transmission of nobiliary titles

Private and family life • Scope of application of Article 8 • Nobiliary titles not to be

equated with a person's surname or first names • Dispute concerning nobiliary titles outside the scope of application of Article 8

De la Cierva Osorio de Moscoso and Others v. Spain (dec.), 1999-VII

Refusal to grant statutory surviving spouse's pension to survivor of homosexual couple

Family life • Private life • Long-term homosexual relationship not falling within scope of right to respect for family life • Lack of broad consensus between member States with regard to legal recognition of homosexual partnerships • Long-term homosexual relationship falling within scope of right to respect for private life • Margin of appreciation

Mata Estevez v. Spain (dec.), 2001-VI

Termination of pregnancy despite father's opposition

Private life • Family life • Limited scope of potential father's rights with regard to abortion • Mother's rights • Mother's health

Boso v. Italy (dec.), 2002-VII

Transcription of a surname of foreign origin in a passport

Private life • Family life • Transcription of a surname of foreign origin in a passport • Rules governing the use of surnames • Original spelling of a surname of foreign origin altered in identity papers owing to the application of the phonetic and grammatical rules of the national language • Extent of the difference between the two written forms • Interference • Measures to protect a national language • Protection of the rights and freedoms of others • Necessary in a democratic society • References to surnames and forenames of foreign origin in official documents • Margin of appreciation • Phonetic transliteration and grammatical adaptation • Proportionality

Mentzen v. Latvia (dec.), 2004-XII

Allegedly insufficient public funding of medical treatment and related transportation, causing the applicants suffering and jeopardising their lives

Applicability • Right to respect for private and family life • Positive obligations • Allegedly insufficient public funding of medical treatment and related transportation, causing the applicants suffering and jeopardising their lives • Access to medical care • Allocation of limited State resources • Margin of appreciation • Striking of a fair balance between competing interests

Pentiacova and Others v. Moldova (dec.), 2005-I

Former Soviet army officer refused extension of his residence permit in view of his voluntary undertaking to relocate to Russia

Family life • Private life • Aid programme run by the United States of America aimed at facilitating the withdrawal of Russian troops from Estonia • Former Soviet army officer refused extension of his residence permit in view of his voluntary undertaking to relocate to Russia • Waiver of Convention right made in an unequivocal manner and without prejudice to any important public interest

Nagula v. Estonia (dec.), 2005-XII (extracts)

Rule making full recognition of a married applicant's newly acquired gender conditional on the dissolution of the marriage

Private life • Family life • Post-operative transsexuals • Transsexual already married at time of gender reassignment surgery • Gender recognition certificates • Rule making full recognition of a married applicant's newly acquired gender conditional on the dissolution of the marriage • Positive obligation • Margin of appreciation • Bar on same-sex marriages • Alternative means of continuing relationship • Civil partnership • Fair balance

Parry v. the United Kingdom (dec.), 2006-XV

FAMILY LIFE

Refusal to grant right of access to father of child born out of wedlock

Family life • *De facto* family • Natural father • Refusal to grant right of access to father of child born out of wedlock • Interference • Protection of health or morals • Protection of rights and freedoms of others • Necessary in a democratic society • Relevant and sufficient reasons • Balance between interests of parent and interests of child • Welfare of child • Involvement of parent in decision-making process • Failure to obtain expert psychological opinion in proceedings relating to access to child • Absence of oral hearing in appeal proceedings relating to access to child

Elsholz v. Germany [GC], 2000-VIII

Temporary placement of children in a home by social services and prolonged absence of contact with their mother

Family life • Temporary placement of children in a home by social services and prolonged absence of contact with their mother • Interference • Protection of health • Protection of morals • Protection of the rights and freedoms of others • Necessary in a democratic society • Suspension of parental authority • Relevant and sufficient reasons • Ultimate aim: reuniting the parents with their children •

Prolonged absence of contact between mother and her children in temporary care • Duty of courts to exercise constant vigilance in the implementation of decisions concerning the renewal of contact between parents and children • Delays in execution of judicial decisions concerning contact between a mother and her children in temporary care • Negative attitude of the social services to the parents • Obligation to give reasons for placing children in care • No maximum time-limit for keeping children in care

Scozzari and Giunta v. Italy [GC], 2000-VIII

Taking of child into care and adequacy of parent's involvement in decision-making process

Family life • Taking of child into care and adequacy of parent's involvement in decision-making process • In accordance with the law • Protection of health and morals • Protection of the rights and freedoms of others • Necessary in a democratic society • Relevant and sufficient reasons • Strong suspicion of sexual abuse of child • Error in identification of abuser • Proportionality • Restrictions on parent's access to child • Adequacy of parent's involvement in decision-making process • Parent's right of access to information on which care order is based • Positive obligations • Responsibility of social services • Role of courts

T.P. and K.M. v. the United Kingdom [GC], 2001-V

Taking of children into care and restrictions on parents' access

Family life • Taking of children into care on emergency basis • Placement of children in public care • Restrictions on parents' access to children in care • Existence of family life • Interference • Protection of health or morals • Protection of the rights and freedoms of others • Necessary in a democratic society • Urgent situations requiring immediate removal of children from parents • Removal of child from mother immediately after birth • Obligation of authorities to consider options which minimise intrusion into family life • Proportionality • Involvement of parents in decision-making process • Obligation of authorities to promote family reunification • Obligation of authorities to review family situation periodically

K. and T. v. Finland [GC], 2001-VII

Refusal to grant right of access to father of child born out of wedlock

Family life • Refusal to grant right of access to father of child born out of wedlock • Interference • Protection of health or morals • Protection of rights and freedoms of others • Necessary in a democratic society • Relevant reasons • Examination of sufficiency of reasons • Involvement of parent in decision-making process relating to access • Opportunity to present arguments • Question whether appropriate for

court to hear child dependent on circumstances • Reliability of expert opinion • Margin of appreciation

Sahin v. Germany [GC], 2003-VIII

Family life • Refusal to grant right of access to father of child born out of wedlock • Interference • Protection of health or morals • Protection of rights and freedoms of others • Necessary in a democratic society • Relevant reasons • Examination of sufficiency of reasons • Involvement of parent in decision-making process relating to access • Opportunity to present arguments • Question whether appropriate for court to obtain psychological opinion dependent on circumstances • Evaluation by domestic courts of child's attitude to access • Margin of appreciation

Sommerfeld v. Germany [GC], 2003-VIII (extracts)

Compensation on account of a disability

Family life • Reorganisation of disability compensation system • Loss of a substantial portion of damages claimed • Retrospective legislation • Protection of health • Protection of morals • Wide margin of appreciation

Maurice v. France (just satisfaction – striking out) [GC], 2006-IX

Order for return of child, accompanied by mother, to father's country of residence from which it had been wrongfully removed

Family life • Order for return of child, accompanied by mother, to father's country of residence from which it had been wrongfully removed • Margin of appreciation • Proportionality of expulsion measure concerning a child who has settled in host country • Acquisition of nationality of country in which minor has continually resided for about four years • Risk of serious consequences for child if uprooted • Threat of criminal sanctions for mother in the event of her return • Doubts about father's capacities to take care of child • Best interests of child • Proportionality

Neulinger and Shuruk v. Switzerland [GC], 2010-V

Lack of an in-depth examination of all relevant factors in reaching a decision on the return of a child in application of the Hague Convention

Family life • Procedural requirements • Lack of an in-depth examination of all relevant factors in reaching a decision on the return of a child in application of the Hague Convention • Necessary in a democratic society • Margin of appreciation • Best interests of the child • "Grave risk" to the child within the meaning of Article 13 (b) of the Hague Convention • Harmonious interpretation of the European Convention on Human Rights and the Hague Convention

X v. Latvia [GC], 2013-VI

Placement of child in children's home and restrictions on father's access

Family life • Placement of a child in a children's home and restrictions on father's access • Interference • In accordance with the law • Protection of the rights of others • Measures to remove a child • Child's interests • Fair balance between the interests of the child and those of her father • Margin of appreciation • Arrangements for producing an expert psychological opinion • Parent's role in the decision-making process • Fairness in the decision-making process

Buscemi v. Italy, 1999-VI

Father refused custody of child on the ground of his homosexuality

Family life • Child custody award • Interference • Protection of health • Protection of rights and liberties of others

Salgueiro da Silva Mouta v. Portugal, 1999-IX

Adequacy of steps taken to ensure return of children to their mother in accordance with court decisions

Family life • Positive obligations • Adequacy of steps taken to ensure return of children to their mother in accordance with court decisions • Procedural requirements in Article 8 • Right to parental responsibility and return of children • Requirement of expeditiousness • The Hague Convention on the Civil Aspects of International Child Abduction • Margin of appreciation • No coercive measures or preparatory contacts with a view to children's return

Ignaccolo-Zenide v. Romania, 2000-I

Expulsion of father while proceedings concerning access to child pending

Family life • Expulsion of father while proceedings concerning access to child pending • Existence of family life between parent and child following divorce • Positive obligations • Interference • Economic well-being of the country • Necessary in a democratic society • Involvement of parent in decision-making process • Lack of coordination between different authorities

Ciliz v. the Netherlands, 2000-VIII

Adequacy of measures taken to enforce parent's right of access to child

Family life • Positive obligations • Adequacy of measures taken to enforce parent's right of access to child • Coercive measures • Conduct of parent seeking enforcement of right of access • Margin of appreciation

Nuutinen v. Finland, 2000-VIII

Exclusion from inheritance of child born out of wedlock, due to non-retroactivity of legitimation

Family life • Children born out of wedlock • Absence of legal relationship between child born out of wedlock and natural father • Absence of effect on family life between child and mother

Camp and Bourimi v. the Netherlands, 2000-X

Separation of foreign national from spouse due to refusal to renew residence permit following criminal conviction

Respect for family life • Expulsion • Separation of foreign national from spouse due to refusal to renew residence permit following criminal conviction • Interference • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Principles applicable to cases involving separation of family as a result of expulsion • Nature and seriousness of offence • Conduct of applicant during period since commission of offence • Examination of possibility of establishing family life elsewhere

Boultif v. Switzerland, 2001-IX

Withdrawal of parental responsibility on the ground that the parents did not have the intellectual capacity to bring up their children properly

Family life • Withdrawal of parental responsibility on the ground that the parents did not have the intellectual capacity to bring up their children properly • Interference • Protection of health or morals • Rights and freedoms of others • Necessary in a democratic society • Conflicting expert reports • No allegation of ill-treatment or neglect • Positive obligations • Obligation to facilitate the reunion of the family • Obligation to examine less radical alternatives to separation • Restrictions leading to increased alienation • Relevance and sufficient reasons

Kutzner v. Germany, 2002-I

Taking of child into care at birth and subsequent freeing for adoption

Family life • Taking of child into care at birth • Interference • Protection of health • Protection of the rights and freedoms of others • Necessary in a democratic society • Involvement of parents in decision-making process • Relevant and sufficient reasons • Removal of child from mother immediately after birth • Limited capacity and opportunity to cause harm • Absence of suspicion of life-threatening conduct • Lack of legal representation in proceedings concerning care and freeing for adoption orders • Lack of time between making of care order and making of freeing for adoption order

P., C. and S. v. the United Kingdom, 2002-VI

Refusal to allow natural father to recognise child

Family life • Refusal to allow natural father to recognise child • Existence of family life • Period of cohabitation and subsequent contacts • Interference • Protection of the rights and freedoms of others • Necessary in a democratic society • Continued enjoyment of family life through access • Paramount interests of child • Assessment by domestic courts of child's best interests

Yousef v. the Netherlands, 2002-VIII

Taking into care on emergency basis of child believed to be at risk

Family life • Taking into care on emergency basis of child believed to be at risk • Interference • Protection of the rights and freedoms of others • Necessary in a democratic society • Involvement of parents in decision-making process • Emergency care measures • Relevant and sufficient reasons • Absence of opportunity to express views prior to making of provisional care order

Venema v. the Netherlands, 2002-X

Adequacy of measures taken to secure a child's return to its mother as required by court orders

Family life • Positive obligations • Adequacy of measures taken to secure a child's return to its mother as required by court orders • Right to custody and sole parental responsibility • The Hague Convention on the Civil Aspects of International Child Abduction • Implementation of the rights to custody and parental responsibility • Margin of appreciation • Lack of measures to secure the child's return • Inadequacy of the applicable domestic legislation

Iglesias Gil and A.U.I. v. Spain, 2003-V

Adequacy of measures taken to reunite a child with his father

Family life • Positive obligations • Adequacy of measures taken to reunite a child with his father • Exclusive custody and parental responsibility rights over the child • The Hague Convention on the Civil Aspects of International Child Abduction • Convention on the Rights of the Child • Requirement of expedition • Behaviour of the parent who abducted the child • Absence of coercive measures • Margin of appreciation • Effect of passage of time for parent separated from child • Young child

Maire v. Portugal, 2003-VII

Withdrawal of parental rights on emergency basis and prohibition on access to children

Family life • Withdrawal of parental rights on emergency basis and prohibition on

access to children • Interference • Protection of health or morals • Protection of the rights and freedoms of others • Necessary in a democratic society • Abrupt removal of children and placement in foster homes • Relevant and sufficient reasons • Removal of child from mother immediately after birth • Involvement of parents in decision-making process • Urgent situations requiring immediate removal of children from parents • Lack of urgency • Lack of compelling reasons for removing new-born baby • Proportionality

Haase v. Germany, 2004-III (extracts)

Refusal to grant right of access to father of a child born out of wedlock

Family life • Refusal to grant right of access to father of a child born out of wedlock • Failure of father to recognise formally child born out of wedlock • Lack of cohabitation • Biological kinship between parent and child without existence of close personal relationship • Child born from genuine relationship • Factors establishing existence of “family life”

Lebbink v. the Netherlands, 2004-IV

Children lawfully adopted abroad not handed over to adoptive parents

Family life • Adoption • Children lawfully adopted abroad not handed over to adoptive parents • Bonds amounting to “family life” • Adoptive parents having no close ties with children adopted abroad • Right of adoptive parents to develop relationship with adopted children • Positive obligations • Treaties on intercountry adoption • Conflict of interests between adopted children and their adoptive parents • Refusal of adopted children to join their adoptive family • Limits on the State’s obligation to ensure enforcement of judicial decisions • Importance of adopted child’s best interests

Pini and Others v. Romania, 2004-V (extracts)

Contact between a person held in police custody and his family

Respect for family life • Positive obligations • Contact between a person held in police custody and his family • Possibility of communicating with family promptly after arrest • Absence of legislation on notification of detainees’ families

Sarı and Çolak v. Turkey, 2006-V (extracts)

No remedy for preventing or punishing international child abduction obstructing the enforcement of a custody order

Respect for family life • No remedy for preventing or punishing international child abduction obstructing the enforcement of a custody order • Positive obligations

Bajrami v. Albania, 2006-XIV (extracts)

Continuing failure to provide credible information concerning fate of newborn baby in hospital care

Respect for family life • Positive obligations • Effective investigation • Continuing failure to provide credible information concerning fate of newborn baby in hospital care • Lack of effective legislation and procedures governing authorities' obligations in such circumstances

Zorica Jovanović v. Serbia, 2013-II

Complete and automatic exclusion of applicant from child's life after it was established he was not the biological father

Respect for family life • Positive obligations • Complete and automatic exclusion of applicant from child's life after it was established he was not the biological father • Child born during applicant's marriage • Parental care provided by applicant to child for a long period • Close personal bond • Contact rights • Necessary in a democratic society • Inflexibility of domestic legal provisions • Failure to take into account variety of family situations and best interests of child • Lack of examination of particular circumstances of the case • No relevant reasons advanced for applicant's exclusion from child's life

Nazarenko v. Russia, 2015-V (extracts)

Compulsory disclosure of adverse expert opinion obtained by parent in child care proceedings

Family life • Child care • Compulsory disclosure of expert opinion obtained by parent in child care proceedings • Interference • Protection of parent's rights in child care proceedings • Welfare of child in child care proceedings • Protection of health or morals • Protection of the rights of others

L. v. the United Kingdom (dec.), 1999-VI

Refusal of putative father's request for determination of biological paternity of child born during the mother's marriage to another man

Family life • Natural father • Examination of bond between natural father and child • Private life • Presumption of husband's paternity of child born in wedlock • Refusal of putative father's request for determination of biological paternity of child born during the mother's marriage to another man • Balance between interests of child born in wedlock and interest of putative father to have his paternity of the child determined

Nylund v. Finland (dec.), 1999-VI

Children of a German national living in Germany ordered by the French and German courts to live with their mother in France

Family life • Interference • Children of a German national living in Germany ordered by the French and German courts to live with their mother in France • Prescribed by law • The Hague Convention • Necessary in a democratic society • Proportionality • Children's interests • Relevant and sufficient reasons • Determination of place of residence of children whose parents have separated and live in different countries • Parallel proceedings concerning the same case in two different countries

Tiemann v. France and Germany (dec.), 2000-IV

Deportation of wife and child of detainee, preventing them from visiting him in prison

Family life • Deportation of wife and child of detainee, preventing them from visiting him in prison • Positive obligations • Effect of place of detention on maintenance of family life • Organisational difficulties • Possibility for family to communicate with prisoner from abroad

Selmani v. Switzerland (dec.), 2001-VII

Child taken abroad by one of the parents

Family life • Positive obligations • Child taken abroad by one of the parents • The Hague Convention on Civil Aspects of International Child Abduction • Conditions of application • Parent having "rights of custody"

Guichard v. France (dec.), 2003-X

Special prison regime designed to sever all ties between the prisoner and his original criminal environment and entailing restrictions on family visits

Family life • Special prison regime applied to ex-Mafia member • Restrictions on visits by family members • Interference • In accordance with the law • Prevention of disorder • Prevention of crime • Necessary in a democratic society

Bastone v. Italy (dec.), 2005-II (extracts)

Decision taken under the Hague Convention ordering a child wrongfully removed to be returned to Israel

Family life • Child taken abroad by one of the parents • Hague Convention on the Civil Aspects of International Child Abduction • Decision taken under the Hague Convention ordering a child wrongfully removed to be returned to Israel

Eskinazi and Chelouche v. Turkey (dec.), 2005-XIII (extracts)

Impending expulsion of Christians to country where they allegedly faced persecution on religious grounds

Family life • Impending expulsion of adult children from country where their parents and siblings lived • Relationships between adult relatives • Absence of dependency beyond normal emotional ties

Z. and T. v. the United Kingdom (dec.), 2006-III

HOME

Refusal of planning permission for Gypsy to station mobile home permanently on her own land

Home • Private life • Family life • Refusal of planning permission for Gypsy to station mobile home permanently on her own land • Gypsy lifestyle • Interference • Protection of the rights and freedoms of others • Necessary in a democratic society • Planning policy • Margin of appreciation • Protection of the environment • Protection of minorities • Positive obligations • Establishment of home in violation of the law • Availability of suitable alternative accommodation • Relevant and sufficient reasons • Proportionality

Chapman v. the United Kingdom [GC], 2001-I

Denial of access to homes to Azerbaijani citizens displaced in the context of the Nagorno-Karabakh conflict

Respect for family life • Respect for private life • Respect for home • Denial of access to homes to Azerbaijani citizens displaced in the context of the Nagorno-Karabakh conflict • Lack of compensation

Chiragov and Others v. Armenia [GC], 2015-III

Impossibility for an Armenian citizen displaced in the context of the Nagorno-Karabakh conflict to gain access to his home and relatives' graves

Respect for family life • Respect for private life • Respect for home • Impossibility for an Armenian citizen displaced in the context of the Nagorno-Karabakh conflict to gain access to his home and relatives' graves • Lack of compensation

Sargsyan v. Azerbaijan [GC], 2015-IV

Searches and seizures of documents at companies' registered offices, branches or other premises

Home • Searches and seizures of documents at companies' registered offices,

branches or other premises • Scope of concept of “home” • Dynamic interpretation of the Convention • Juristic person • Applicability of Article 8 to a company’s registered office, branch or other business premises • 1945 Ordinance on detection, prosecution and punishment of offences against legislation on trade and industry • Interference • Country’s economic well-being • Prevention of crime • Necessary in a democratic society • Margin of appreciation • Juristic person’s business premises • Adequacy and effectiveness of safeguards against abuse

Société Colas Est and Others v. France, 2002-III

Eviction from flat after death of partner who held tenancy rights to the flat

Respect for home • Home • Eviction from flat after death of partner who held tenancy rights to the flat

Prokopovich v. Russia, 2004-XI (extracts)

Decision to transfer flat to new occupant and subsequent proceedings to set that decision aside

Home • Private and family life • Positive obligations • Decision to transfer flat to new occupant and subsequent proceedings to set that decision aside • Length of proceedings • Conduct of the courts • Governmental organisation • Conduct of the authorities • Conditions for recovering possession of a flat • Fair balance between competing interests

Novoseletskiy v. Ukraine, 2005-II (extracts)

Search of residential and business premises in order to investigate traffic offence committed by a third party

Home • Search of residential and business premises in order to investigate traffic offence committed by a third party • Content and scope of search and seizure order • Proportionality of the interference

Buck v. Germany, 2005-IV

Issue of wide-ranging search warrant in case of suspected terrorist activity

Respect for private life • Respect for home • Issue of wide-ranging search warrant in case of suspected terrorist activity • Necessary in a democratic society • Urgency • Absence of specific information about intended nature of attack or its targets • Need to afford police degree of flexibility in searches linked to terrorism • Judicial safeguards

Sher and Others v. the United Kingdom, 2015-VII (extracts)

Transfer of population, including members of a national minority, from one village to another

Private life • Home • Transfer of population, including members of a national minority, from one village to another • National minority • No rights applying specifically to national minorities • Interference • Seriousness of the interference • Economic well-being of the country • Necessary in a democratic society • Margin of appreciation • Measures for protecting cultural identity of national minorities

Noack and Others v. Germany (dec.), 2000-VI

Abolition of specially protected tenancies of privately owned flats

Home • No right to buy a particular home • Landlord and tenant • Abolition of specially protected tenancies of privately owned flats • Alternative means of protecting tenancies • Absence of direct effect of legislation on applicants

Strunjak and Others v. Croatia (dec.), 2000-X

Inapplicability of Article 8 to buildings housing livestock

Applicability • Home • Farm enterprise • Business premises • Inapplicability of Article 8 to buildings housing livestock

Leveau and Fillon v. France (dec.), 2005-X

HOME AND PRIVATE LIFE

Noise nuisance from night flights

Private life • Home • Noise nuisance from night flights • Environmental issues • Margin of appreciation • State responsibility • Positive obligations • Striking of fair balance between interests of individual and those of the community • Economic well-being of the country • Decisions relating to matters of policy • Measures to mitigate noise disturbance • Possibility for individuals to move away from area without financial loss • Procedural aspects of decision-making process involving environmental issues • Duty to conduct investigations and studies when environmental issues involved • Procedural safeguards

Hatton and Others v. the United Kingdom [GC], 2003-VIII

Expulsion of family of former Soviet officer in context of agreed withdrawal of Russian troops following Latvian independence

Private life • Home • Expulsion of family of former Soviet officer in context of agreed withdrawal of Russian troops following Latvian independence • Interference •

Notion and scope of family life • Relevance of family relationships to private life • In accordance with the law • Interpretation of domestic law in light of international treaty • Foreseeability • Accessibility • National security • Necessary in a democratic society • Public interest in withdrawal of foreign troops and their families • Position of retired officers and their families • Requirement to take individual circumstances into account • Degree of integration into local society

Slivenko v. Latvia [GC], 2003-X

Expulsion of family from Latvia on basis of treaty providing for withdrawal of Russian troops

Private life • Home • Family life • Expulsion of family from Latvia on basis of treaty providing for withdrawal of Russian troops

Slivenko v. Latvia (dec.) [GC], 2002-II

Search of a lawyer's office and seizure of a document

Private life • Home • Correspondence • Search of a lawyer's office and seizure of a document • Interference • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Special procedural safeguards • Search intended to identify a journalist's sources through his lawyer • Proportionality

Roemen and Schmit v. Luxembourg, 2003-IV

Effect of urban development on the environment

Private life • Family life • Home • Effect of urban development on the environment • Absence of harmful effect on the individual's private and family sphere • General deterioration in the environment • Protection of the environment • Disturbances resulting from urban development

Kyrtatos v. Greece, 2003-VI (extracts)

Noise from discotheques

Private life • Home • Noise from discothèques • Failure by the authorities to take action to compel third parties to keep noise levels down • Level of disturbance • Positive obligations • Adoption of protective regulations • Conduct of the authorities

Moreno Gómez v. Spain, 2004-X

Failure to resettle a family living in a severely polluted area deemed unfit for habitation

Home • Private life • Positive obligations • Failure to resettle a family living in a

severely polluted area deemed unfit for habitation • Pollution manifestly exceeding permissible limits • Failure to strike a fair balance between the interests of the community and the applicant's effective enjoyment of her right to respect for her home and her private life

Fadeyeva v. Russia, 2005-IV

Failure to conduct a prior environmental assessment and refusal to suspend the operation of a plant generating toxic emissions close to a dwelling

Private life • Family life • Home • Dangerous industrial activities • Failure to conduct a prior environmental assessment and refusal to suspend the operation of a plant generating toxic emissions close to a dwelling • Government decisions affecting environmental issues • Margin of appreciation • Fair balance to be struck between interests of the individual and of the community • Decision-making process • Authorities' failure to comply with legislation and judicial decisions • Procedural machinery deprived of useful effect

Giacomelli v. Italy, 2006-XII

Eviction of council-house tenant under summary procedure

Home • Eviction of council-house tenant under summary procedure • Legitimate aims • Protection of right to regain possession • Regulation of housing provision • Necessary in a democratic society • Eviction procedure • Right of persons at risk of losing their home to have proportionality of measure determined by an independent tribunal • Lack of adequate procedural safeguards

McCann v. the United Kingdom, 2008-III

Search of residential premises during an investigation into an alleged tax fraud by companies

Private life • Domicile • Search of residential premises during an investigation into an alleged tax fraud by companies • Interference • In accordance with the law • Article L 16 B of the Code of Tax Procedure • Economic well-being • Prevention of crime • Margin of appreciation • Rules governing the issue of warrants for searches of residential premises • Decisions of domestic courts complied with domestic law • Judicial supervision of the search procedures • Proportionality • Necessary in a democratic society

Keslassy v. France (dec.), 2002-I

Search of lawyer's office and removal of material in the context of an investigation concerning his clients

Private life • Home • Correspondence • Search of lawyer's office and removal of

material in the context of an investigation concerning his clients • Interference • Prevention of crime • Prevention of disorder • Economic well-being of the country • Necessary in a democratic society • Search • Safeguards against abuse • *Ex parte* procedure • Judicial supervision of search • Degree of specification in search warrant • Legal professional privilege • Supervision by independent counsel • Proportionality

Tamosius v. the United Kingdom (dec.), 2002-VIII

CORRESPONDENCE

Censorship of a prisoner's correspondence by the prison authorities

Correspondence • Interference • In accordance with the law • Censorship of a prisoner's correspondence by the prison authorities

Labita v. Italy [GC], 2000-IV

Systematic opening by prison authorities of letters from the European Commission of Human Rights

Correspondence • Systematic opening by prison authorities of letters from the European Commission of Human Rights • Interference • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Negligible risk of abusive use of forged envelopes

Peers v. Greece, 2001-III

Monitoring of correspondence between a prisoner awaiting trial on charges of terrorism and his lawyer

Correspondence • Monitoring of correspondence between a prisoner awaiting trial on charges of terrorism and his lawyer • In accordance with the law • National security • Prevention of disorder or crime • Necessary in a democratic society • Proportionality • Special context of the prevention of terrorism • Exception to the general rule of confidentiality • Measure restricted to prisoners suspected of membership of a terrorist organisation • Safeguards on use of monitoring • Margin of appreciation

Erdem v. Germany, 2001-VII

Control of prisoner's correspondence

Correspondence • Control of prisoner's correspondence • Interference • Prevention of disorder • Prevention of crime • Necessary in a democratic society

Valašinas v. Lithuania, 2001-VIII

Monitoring of a bankrupt's correspondence

Correspondence • Bankruptcy proceedings • Monitoring of a bankrupt's correspondence • Interference • Protection of the rights of others • Necessary in a democratic society • Effects of inordinately lengthy bankruptcy proceedings on the bankrupt • Proportionality

Luordo v. Italy, 2003-IX

Monitoring of public servant's communications at work

Private life • Correspondence • Monitoring of public servant's communications at work • Scope of protection • Absence of warning that communications were liable to monitoring • Reasonable expectation of privacy • Interference • Collection and storage of personal information without employee's knowledge • In accordance with the law • Foreseeability • Absence of inherent power to monitor • Absence of regulatory framework

Copland v. the United Kingdom, 2007-I

Search and seizure of electronic data on lawyer's computer system

Respect for correspondence • Search and seizure of electronic data on lawyer's computer system • Interference • Prescribed by law • Prevention of crime • Necessary in a democratic society • Safeguards against abuse • Lawyers' professional secrecy • Proportionality • Failure to comply with procedural safeguards

Wieser and Bicos Beteiligungen GmbH v. Austria, 2007-IV

Monitoring of prisoner's correspondence with medical specialist

Correspondence • Monitoring of prisoner's correspondence with medical specialist • Interference by a public authority • Prevention of crime • Protection of the rights and freedoms of others • Necessary in a democratic society • Proportionality • Low-risk prisoner • Importance of uninhibited correspondence between prisoner suffering from life-threatening condition and medical advisers

Szuluk v. the United Kingdom, 2009-III

Obligation for lawyers, when not acting in their defence capacity, to report suspicions of illegal money-laundering activities on the part of their clients

Correspondence • Private life • Obligation for lawyers, when not acting in their defence capacity, to report suspicions of illegal money-laundering activities on the part of their clients • Continuing interference • Prevention of disorder • Prevention of crime • Application of a European Directive • Choice of means and manner of application • No referral for preliminary ruling • Presumption of equivalent

protection not applicable • General interest • Limited interference with lawyers' professional privilege • Proportionality

Michaud v. France, 2012-VI

Search of lawyer's office and removal of material in the context of an investigation concerning his clients

Private life • Home • Correspondence • Search of lawyer's office and removal of material in the context of an investigation concerning his clients • Interference • Prevention of crime • Prevention of disorder • Economic well-being of the country • Necessary in a democratic society • Search • Safeguards against abuse • *Ex parte* procedure • Judicial supervision of search • Degree of specification in search warrant • Legal professional privilege • Supervision by independent counsel • Proportionality

Tamosius v. the United Kingdom (dec.), 2002-VIII

CORRESPONDENCE AND PRIVATE LIFE

Interception of a telephone call, creation and storing of a card in the card index kept by the Public Prosecutor's Office

Private life • Correspondence • Interception of a telephone call • Creation and storing of a card in the card index kept by the Public Prosecutor's Office • Data relating to "private life" • Interference • In accordance with the law • Existence of a legal basis • Foreseeability • Precision of the law

Amann v. Switzerland [GC], 2000-II

Secret surveillance by the police – adequacy of legal basis

Private life • Correspondence • Secret surveillance by the police • Covert recording of voice samples of suspects at police station • Relationship between public activities and private life • Reasonable expectation of privacy • Permanent record of material from public domain • Interference • Prescribed by law • Absence of statutory regulation of secret surveillance by the police • Non-binding guidelines • Direct public accessibility • Investigation of crime • Public safety • Prevention of crime • Protection of the rights and freedoms of others • Necessary in a democratic society

P.G. and J.H. v. the United Kingdom, 2001-IX

Strategic monitoring of telecommunications

Private life • Correspondence • Strategic monitoring of telecommunications • Interference • In accordance with the law • International law • Monitoring of international wireless telecommunications from territory of respondent State • Absence of

concordant inferences of illegal extraterritorial acts • Statutory basis • Accessibility • Foreseeability • Legitimate aims • National security • Public safety • Necessary in a democratic society • Margin of appreciation • Transmission of personal data • Destruction of data • Notification of monitoring • Adequate and effective guarantees against abuse

Weber and Saravia v. Germany (dec.), 2006-XI

CORRESPONDENCE AND FAMILY LIFE

Monitoring by the prison authorities of a prisoner's correspondence

Family life • Correspondence • Special prison regime imposed on a Mafia member • Restrictions on a prisoner's family visits • Monitoring by the prison authorities of a prisoner's correspondence • In accordance with the law • Existence of a basis in law • Foreseeability • Precision of the law

Messina v. Italy (no. 2), 2000-X

Restriction imposed on Turkish prisoners concerning the use of Kurdish in their telephone conversations

Family life • Correspondence • Restriction imposed on Turkish prisoners concerning the use of Kurdish in their telephone conversations • Interference • Right to maintain meaningful contact with one's family • Restrictions for the purposes of adequate supervision • Exception allowed at the inmate's expense • Rules generally applicable without distinction to all inmates • Kurdish language used in family relations and only language understood by relatives • Relevant and sufficient reasons • Necessary in a democratic society

Nusret Kaya and Others v. Turkey, 2014-II (extracts)

ARTICLE 9

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

Obligation of Members of Parliament to swear an oath on the Gospels

Freedom of religion • Freedom not to hold religious beliefs • Oath of allegiance • Member of Parliament • Obligation of Members of Parliament to swear an oath on the Gospels • Interference • Necessary in a democratic society

Buscarini and Others v. San Marino [GC], 1999-I

Religious body refused the approval it needed to be able to practise ritual slaughter in accordance with the religious prescriptions of its members

Freedom of religion • Religious body • Manifestation of religion through observance • Religious body refused the approval it needed to be able to practise ritual slaughter in accordance with the religious prescriptions of its members • Scope of the right to freedom of religion • Interference • Protection of public health • Protection of public order • Necessary in a democratic society • Proportionality • Margin of appreciation

Cha'are Shalom Ve Tsedek v. France [GC], 2000-VII

Recognition by the authorities of one of two rival leaderships of the Muslim community

Freedom of religion • Manifest religion or belief • Recognition by the authorities of one of two rival leaderships of the Muslim community • Importance to believers of personality of ministers of religion • Prohibition of arbitrary State intervention in functioning of religious communities • State's duty of neutrality in recognition of religious communities • Absence of reasons for favouring particular religious leader • Prescribed by law • Lack of precision of law • Absence of safeguards against arbitrary exercise of discretion

Hasan and Chaush v. Bulgaria [GC], 2000-XI

Prohibition on a student wearing the Islamic headscarf at university

Freedom to manifest one's religion • Prohibition on a student wearing the Islamic headscarf at university • Prescribed by law • Accessibility • Foreseeability • Statutory framework supplemented by decision of the Constitutional Court • Legitimate aims • Protection of the rights of others and of public order • Necessary in a democratic society • Notion of secularism consistent with Convention values • Margin of appreciation • Students otherwise free to practise habitual forms of Muslim observance • Continued dialogue throughout decision-making process

Leyla Şahin v. Turkey [GC], 2005-XI

Conviction of conscientious objector for refusing to perform military service

Freedom of religion or belief • Applicability • Existence of European consensus recognising right to conscientious objection • No longer necessary to interpret Article 9 in the light of Article 4 § 3 (b) of the Convention • Manifest religion or belief • Conviction of conscientious objector for refusing to perform military service • Necessary in a democratic society • Pressing social need • Margin of appreciation

Bayatyan v. Armenia [GC], 2011-IV

Ban on wearing of religious clothing concealing the face in public places

Manifesting one's religion or beliefs • Ban on wearing of religious clothing concealing the face in public places • Public safety • Protection of the rights and freedoms of others • Necessary in a democratic society • Guaranteeing the conditions of "living together" • Proportionality • Wide margin of appreciation • Lack of European consensus

S.A.S. v. France [GC], 2014-III (extracts)

Conviction of unofficially elected Muslim leader for usurping the functions of a minister of a "known religion"

Freedom of religion • Manifest religion or belief • Conviction of unofficially elected Muslim leader for usurping the functions of a minister of a "known religion" • Interference • Public order • Competing State-appointed and unofficially elected religious leaders • Necessary in a democratic society • Absence of acts intended to produce legal effects • Tensions resulting from pluralism • Role of the authorities in promoting tolerance

Serif v. Greece, 1999-IX

Authorities' refusal to grant a Church official recognition

Freedom of religion • Authorities' refusal to grant a Church official recognition • Interference • Prevention of disorder • Public safety • Duty of neutrality and impartiality incompatible with any power on State's part to assess legitimacy of religious beliefs • No concrete evidence justifying authorities' attitude • Effects of non-recognition for a Church • Proportionality

Metropolitan Church of Bessarabia and Others v. Moldova, 2001-XII

Bad-faith denial of re-registration, resulting in loss of religious association's legal status

Freedom of religion • Manifest religion or belief • Freedom of association • Bad-faith denial of re-registration, resulting in loss of religious association's legal status • Interference • Prescribed by law • Necessary in a democratic society • Proportionality • Lack of reasonable and objective justification for difference in treatment of Russian and foreign nationals • Domestic courts' task to provide the applicant with guidance on applicable legal requirements • Arbitrary findings of domestic courts devoid of evidentiary basis • Failure to give "relevant and sufficient" reasons • Failure to respect neutrality and impartiality *vis-à-vis* applicant's religious community

Moscow Branch of the Salvation Army v. Russia, 2006-XI

Refusal to register religious groups for failure to demonstrate at least fifteen years' existence

Freedom of religion • Freedom of association • Refusal to register religious groups for failure to demonstrate at least fifteen years' existence • No relevant or sufficient reason to justify lengthy waiting period for religious groups to obtain legal personality • Religious nature of Scientology teachings • Protection of public order • Purely formal grounds for refusing registration, unconnected to actual functioning of religious groups concerned • Necessary in a democratic society

Kimlya and Others v. Russia, 2009-IV

Indication of religion on identity cards

Freedom of religion • Indication of religion on identity cards • Freedom of conscience • Right not to be obliged to manifest one's religion or belief • State's duty of neutrality and impartiality

Sinan Işık v. Turkey, 2010-I

Refusal to adjourn a hearing coinciding with a Jewish religious holiday

Freedom of religion • Refusal to adjourn hearing coinciding with a Jewish religious holiday • Interference • Prescribed by law • Attendance of complainant's representative optional • Possibility of arranging for lawyer to be replaced at hearing • No restriction or pressure to manifest his religion or beliefs • Legitimate aims • Protection of rights and freedoms of others • Public's right to proper administration of justice • Compliance with principle that cases be heard within a reasonable time • Proportionality

Francesco Sessa v. Italy, 2012-III (extracts)

Manifestation of religion or belief in the workplace

Freedom of religion • Manifest religion or belief • Manifestation of religion or belief in the workplace • Disciplinary measures against employees for wearing religious symbols (cross) at work or refusing to perform duties they considered incompatible with their religious beliefs • Interference • Positive obligations • Discrimination • Absence of specific legislation regulating wearing of religious clothes and signs in the workplace • Legitimate aim • Proportionality • Margin of appreciation • Competing interests • Relevance of nature of aim pursued by measure restricting right to manifest religion to question of proportionality

Eweida and Others v. the United Kingdom, 2013-I (extracts)

Non-renewal of a hospital employee's contract on account of her refusal to remove her veil

Manifest one's religion or convictions • Non-renewal of a hospital employee's contract on account of her refusal to remove her veil • Protection of the rights and freedoms of others • Constraints in respect of "public safety" or "protection of public order" not necessary • Public hospital service • Principles of secularism and neutrality • Patients' state of fragility or dependence • Primacy of the rights of others, equal treatment for patients and the proper functioning of the service over the manifestation of religious beliefs • Desire for conciliation

Ebrahimian v. France, 2015-VIII

Obligation of Members of Parliament to swear an oath of allegiance to the monarch

Freedom of thought, conscience and religion • Oath of allegiance • Member of Parliament • Obligation of Members of Parliament to swear an oath of allegiance to the monarch

McGuinness v. the United Kingdom (dec.), 1999-V

Prohibition barring teacher from wearing Islamic headscarf while carrying out her professional duties

Freedom of religion • Manifestation of one's religion or beliefs • Prohibition barring teacher from wearing Islamic headscarf while carrying out her professional duties • Wearing a headscarf • Teacher • Secularism • Public safety • Protection of public order • Protection of rights and freedoms of others • Protection of pupils • Religious harmony • Margin of appreciation • Necessary in a democratic society • Proportionality

Dahlab v. Switzerland (dec.), 2001-V

Refusal to grant planning permission for cemetery

Freedom of religion • Manifest one's religion or beliefs • Refusal to grant planning permission for cemetery • Religious community • Restriction • Protection of rights and freedoms of others • Requirements relating to environmental protection • General prohibition • Margin of appreciation in planning matters • Proportionality

Johannische Kirche and Peters v. Germany (dec.), 2001-VIII

Refusal by pharmacists to sell contraceptive on religious grounds

Freedom of religion • Manifest religion or belief • Refusal by pharmacists to sell contraceptive on religious grounds • Professional sphere

Pichon and Sajous v. France (dec.), 2001-X

Removal of reference to religion from identity cards

Freedom of religion • Manifest one's religion or beliefs • Removal of reference to religion from identity cards • Information appearing on an identity card • System of identification of citizens • No link between purpose of identity card and right to manifest one's religion

Sofianopoulos and Others v. Greece (dec.), 2002-X

Obligation to remove a turban during an airport security check

Freedom of religion • Manifest a religion or belief • Obligation to remove a turban during an airport security check • Public safety • Need for security checks in airports • Arrangements for implementing the checks • Margin of appreciation

Phull v. France (dec.), 2005-I

Prohibition on students wearing the Islamic headscarf in State-funded religious secondary schools

Freedom of religion • Freedom to manifest one's religion or beliefs • Prohibition on students wearing the Islamic headscarf in State-funded religious secondary schools • General rule applicable irrespective of individual religious beliefs

Köse and Others v. Turkey (dec.), 2006-II

Rule preventing university professor from wearing the Islamic headscarf at work

Freedom of religion • Freedom to manifest one's religion or beliefs • Interference • Necessary in a democratic society • Rule preventing university professor from wearing the Islamic headscarf at work • Protection of the rights and freedoms of others • Margin of appreciation • Rules on dress imposed without distinction on all public servants • Principles of secularism and neutrality of the public service

Kurtulmuş v. Turkey (dec.), 2006-II

Impending expulsion of Christians to country where they allegedly faced persecution on religious grounds

Freedom of religion • Right to manifest one's religion • Impending expulsion of Christians to country where they allegedly faced persecution on religious grounds • No obligation on Contracting States to act as indirect guarantors of freedom of worship • Circumstances in which returning State's responsibility might exceptionally be engaged • Real risk of flagrant violation • Absence of personal risk or of official bar on Christian community in State of origin

Z. and T. v. the United Kingdom (dec.), 2006-III

ARTICLE 10

FREEDOM OF EXPRESSION

Conviction for insulting municipal guards

Freedom of expression • Defamation • Conviction for insulting municipal guards • Prevention of disorder • Necessary in a democratic society • Proportionality • Margin of appreciation • Relevant and sufficient reasons • Limits of acceptable criticism of civil servants • Protection of civil servants from verbal abuse

Janowski v. Poland [GC], 1999-I

Constitutional prohibition on police officers engaging in political activities and joining political parties

Freedom of expression • Police officers • Constitutional prohibition on police officers engaging in political activities • Interference • Prescribed by law • Foreseeability • Precision of law • National security • Public safety • Prevention of disorder • Necessary in a democratic society • Margin of appreciation • Proportionality • Historical background of totalitarianism

Rekvényi v. Hungary [GC], 1999-III

Conviction for disseminating separatist propaganda

Freedom of expression • Conviction for disseminating separatist propaganda • Interference • National security • Territorial integrity • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Artistic expression • Poetry • Political debate • Public interest • Limits of acceptable criticism of government • Prevention of terrorism • Incitement to violence • Margin of appreciation • Nature and severity of penalty

Karataş v. Turkey [GC], 1999-IV

Freedom of expression • Conviction for disseminating separatist propaganda • Interference • National security • Territorial integrity • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Freedom of the press • Political debate • Public interest • Limits of acceptable criticism of government • Prevention of terrorism • Incitement to violence • Margin of appreciation • Duties and responsibilities of journalists • Right of the public to receive information • Nature and severity of penalty • Relevant and sufficient reasons

Erdoğan and İnce v. Turkey [GC], 1999-IV

Freedom of expression • Conviction for disseminating separatist propaganda • Interference • Prescribed by law • Foreseeability • Precision of law • Legal basis

repealed prior to conviction • National security • Territorial integrity • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Political debate • Academic freedom • Public interest • Limits of acceptable criticism of government • Prevention of terrorism • Incitement to violence • Margin of appreciation • Nature and severity of penalty • Relevant and sufficient reasons

Başkaya and Okçuoğlu v. Turkey [GC], 1999-IV

Freedom of expression • Conviction for disseminating separatist propaganda • Interference • National security • Territorial integrity • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Freedom of the press • Political debate • Public interest • Limits of acceptable criticism of government • Prevention of terrorism • Incitement to violence • Duties and responsibilities of journalists • Margin of appreciation • Nature and severity of penalty • Relevant and sufficient reasons

Sürek v. Turkey (no. 1) [GC], 1999-IV

Conviction for incitement to hatred and hostility

Freedom of expression • Conviction for incitement to hatred and hostility • Interference • National security • Territorial integrity • Prevention of disorder • Necessary in a democratic society • Proportionality • Political debate • Public interest • Limits of acceptable criticism of government • Prevention of terrorism • Incitement to violence • Margin of appreciation • Nature and severity of penalty

Ceylan v. Turkey [GC], 1999-IV

Freedom of expression • Conviction for incitement to hatred and hostility • Interference • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Political debate • Public interest • Limits of acceptable criticism of government • Prevention of terrorism • Incitement to violence • Margin of appreciation • Nature and severity of penalty

Öztürk v. Turkey [GC], 1999-VI

Conviction of a journalist for criminal libel

Freedom of expression • Conviction of a journalist for criminal libel • Freedom of the press • Protection of reputation of others • Necessary in a democratic society • Duties and responsibilities of journalists • Right of the public to receive information • Public interest • Reduced margin of appreciation of the national authorities • Critical value judgments and truth of allegations • Statements concerning management of State assets • Statements concerning public life of an elected representative of the people

Dalban v. Romania [GC], 1999-VI

Announcement by head of State of intention not to appoint judge to public office in future, on account of the views he had expressed on certain constitutional issues

Freedom of expression • Announcement by head of State not to appoint judge to public office in future, on account of the views he had expressed on certain constitutional issues • Civil servants • Access to civil service • Interference • Necessary in a democratic society • Duties and responsibilities incumbent on judges • Political implications of constitutional issues • Expression of opinion by judge on constitutional issues

Wille v. Liechtenstein [GC], 1999-VII

Binding over to be of good behaviour following conduct *contra bonos mores*

Freedom of expression • Disruption of fox hunt • Expression of opinion impeding lawful activities • Binding over to be of good behaviour following conduct *contra bonos mores* • Prior restraint • Prescribed by law • Foreseeability • Precision of definition of conduct “*contra bonos mores*”

Hashman and Harrup v. the United Kingdom [GC], 1999-VIII

Defamatory statements made by representatives of police association declared null and void by a court

Freedom of expression • Defamation • Defamatory statements made by representatives of police association declared null and void by a court • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Relevant and sufficient reasons • Public interest • Allegation of lying • Expression of opinions supported by objective factors • Conduct of plaintiff

Nilsen and Johnsen v. Norway [GC], 1999-VIII

Journalist convicted of libelling a public prosecutor

Freedom of expression • Journalist convicted of libelling a public prosecutor • Defamation • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Proportionality • State legal officer accused of abusing authority for political ends • Facts not proved • Overall approach for the purposes of Article 10 to the press article containing the assertions held to be defamatory

Perna v. Italy [GC], 2003-V

Proportionality of sanctions imposed on journalists convicted of defamation

Freedom of expression • Proportionality of sanctions imposed on journalists

convicted of defamation • Protection of the rights of others • Protection of the reputation of others • Necessary in a democratic society • Article containing information about management of public funds • Public interest • Role and freedom of investigative journalists • Serious accusations presented as established facts potentially rendering named individuals criminally liable • Local elected representatives and public officials • Rights and responsibilities of journalists • Journalists' conduct during their trial • Relevant and sufficient reasons • Nature and severity of sanctions • Proportionality • Prison sentence • Disqualification from exercising certain civil rights • Temporary prohibition on working as journalist • Prior restraints on journalists' activities

Cumpănă and Mazăre v. Romania [GC], 2004-XI

Criminal proceedings resulting in the conviction of television programme producers for having defamed a senior police officer

Freedom of expression • Criminal proceedings resulting in the conviction of television programme producers for having defamed a senior police officer • Interference • Necessary in a democratic society • Protection of the reputation or rights of others

Pedersen and Baadsgaard v. Denmark [GC], 2004-XI

Summary proceedings against defence counsel for contempt in the face of the court at a murder trial

Freedom of expression • Immediate custodial sentence imposed on defence counsel for contempt in the face of the court • Legitimate aim of maintaining judicial authority • Necessary in a democratic society • Chilling effect of custodial sentence • Procedural unfairness • Proportionality

Kyprianou v. Cyprus [GC], 2005-XIII

Conviction of author and publisher of a novel for defamation against a political party of the far right and its Chairman

Conviction of a newspaper director for defamation following the publication of a petition reproducing defamatory passages and protesting about convictions in respect thereof

Freedom of expression • Conviction of author and publisher of a novel for defamation against a political party of the far right and its Chairman • Prescribed by law • Accessibility • Foreseeability • Protection of the reputation and rights of others • Necessary in a democratic society • Discussion on matters of public interest • Political and militant expression • Limited margin of appreciation • Duties and

responsibilities • Virulent allegations consisting both of value judgments and allegations of fact • Lack of basic verification • Proportionality of penalties

Freedom of expression • Freedom of the press • Conviction of a newspaper director for defamation following the publication of a petition reproducing defamatory passages and protesting about convictions in respect thereof • Discussion on matters of public interest • Duties and responsibilities • Expression of direct thought of petitioners • Widespread circulation of serious, defamatory allegations • Lack of moderation • Moderate nature of penalties

*Lindon, Otchakovsky-Laurens
and July v. France* [GC], 2007-IV

Conviction of a journalist for publication of a diplomatic strategy paper classified as confidential

Freedom of expression • Conviction of a journalist for publication of a diplomatic strategy paper classified as confidential • Necessary in a democratic society • Disclosure of information received in confidence • Public interests • Protection of diplomatic relations • Breach of journalistic ethics • Negligible contribution to public debate • Proportionality of penalty

Stoll v. Switzerland [GC], 2007-V

Continued prohibition of broadcasting of commercial despite adverse European Court finding

Freedom of expression • Continued prohibition of broadcasting of commercial despite adverse European Court finding • Public interest • Positive obligation • Execution of judgment of European Court • Reopening of domestic proceedings • New fact capable of giving rise to fresh Convention violation • Excessive formalism of domestic courts

*Verein gegen Tierfabriken Schweiz (VgT)
v. Switzerland (no. 2)* [GC], 2009-IV

Dismissal of trade unionists for publishing offensive articles about their colleagues

Freedom of expression • Dismissal of trade unionists for publishing offensive articles about their colleagues • Trade-union freedom • Positive obligations • Protection of the reputation of others • Limits of acceptable criticism in labour relations • Principle of good faith in the professional environment • Written allegations • Insulting nature of language used • Proportionality

Palomo Sánchez and Others v. Spain [GC], 2011-V

Ban of poster in public space on grounds of association's immoral activity and reference to proselytising website

Freedom of expression • Ban of poster in public space on grounds of association's immoral activity and reference to proselytising website • Interference • Prevention of criminal offences • Protection of health • Protection of morals • Protection of the rights of others • Broad margin of appreciation • Effectiveness of judicial supervision • Limited scope of impugned measure • Possibility of disseminating ideas by other means • Proportionality • Relevant and sufficient reasons • Pressing social need

Mouvement raëlien suisse v. Switzerland [GC], 2012-IV (extracts)

Lawyer's conviction for complicity in defamation of investigating judges on account of remarks reported in the press

Freedom of expression • Lawyer's conviction for complicity in defamation of investigating judges on account of remarks reported in the press • Protection of the reputation of others • Protection of the rights of others • Remarks concerning the functioning of the judiciary • Remarks aimed at investigating judge removed from the proceedings • Debate on a matter of public interest • Narrow margin of appreciation • Value judgments • Sufficient factual basis • Remarks to be considered in context of case together with content of letter taken as a whole • Members of the judiciary subject to wider limits of acceptable criticism than ordinary citizens • Nature of remarks not capable of undermining the proper conduct of the judicial proceedings • Use of available remedies • Remarks amounting to criticisms of judges expressed as part of a debate on a matter of public interest, relating to the functioning of the justice system, and in the context of a case that had received significant media coverage from the outset • Severe criminal sanction • Proportionality • Necessary in a democratic society

Morice v. France [GC], 2015-II

Criminal conviction for rejecting legal characterisation of atrocities committed by Ottoman Empire against the Armenian people from 1915 as "genocide"

Freedom of expression • Criminal conviction for rejecting legal characterisation of atrocities committed by Ottoman Empire against the Armenian people from 1915 as "genocide" • Inapplicability of Article 16 restricting political activity of aliens • Prescribed by law • Prevention of disorder • Protection of the rights of others • Criminal-law measures • Respect for dignity and identity • Political statements • Absence of calls for hatred, violence or intolerance • Matter of public interest • Context of interference • Geographical and historical factors • Absence of heightened tensions or special historical overtones in Switzerland • Time factor • Limited interference of the applicant's statements with the rights of members of the

Armenian community • Diversity of approaches to denial of historical events among High Contracting Parties • Interference not required by Switzerland's international obligations • Reasoning employed by Swiss courts to justify criminal conviction • Expression of an opinion diverging from established views in Switzerland • Seriousness of criminal penalty and conviction • Balancing the applicant's right to freedom of expression against the Armenians' right to respect for their private life • Necessary in a democratic society • Inapplicability of Article 17 prohibiting abuse of rights

Perinçek v. Switzerland [GC], 2015-VI (extracts)

Arrest and conviction of journalist for not obeying police orders during a demonstration

Freedom of expression • Arrest and conviction of journalist for not obeying police orders during a demonstration • Interference • Prevention of crime • Prevention of disorder • Public safety • Prescribed by law • Applicant aware of legal consequences of disobeying police orders and knowingly took risk of arrest • Conviction amounting only to formal finding of commission of offence • Absence of "chilling effect" on persons taking part in demonstrations • Proportionality • Necessary in a democratic society

Pentikäinen v. Finland [GC], 2015-VII

Injunction preventing newspaper from publishing pictures of a suspect in connection with reports on the criminal proceedings against him

Freedom of expression • Injunction preventing newspaper from publishing pictures of a suspect in connection with reports on the criminal proceedings against him • Interference • Prescribed by law • Foreseeability • Imprecision of the law • Interpretation of legislation by courts • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Freedom of the press • Public interest • Duties and responsibilities of the press • Press reporting on court proceedings • Publication of pictures of suspect • Private life • Relevant and sufficient reasons

News Verlags GmbH & CoKG v. Austria, 2000-I

Campaign of intimidation against newspaper

Freedom of expression • Positive obligations • Campaign of intimidation against newspaper • Killings, assault and arson attacks on newspaper • Obligations to take positive protective measures • Search disrupting production of newspaper • Convictions resulting from publication of articles • Selective examination of domestic decisions • Interference • National security • Territorial integrity • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality

Özgür Gündem v. Turkey, 2000-III

Editor's conviction for disseminating separatist propaganda

Freedom of expression • Editor's conviction for disseminating separatist propaganda • Interference • Prescribed by law • Legislation on the prevention of terrorism • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Freedom of the press and right of the public to receive information • Political debate • General interest • Limit on admissible criticism of government • Prevention of terrorism • Incitement to violence

Erdoğdu v. Turkey, 2000-VI

Conviction for criminal libel

Freedom of expression • Criminal libel • Conviction for criminal libel • Protection of the reputation of others • Necessary in a democratic society • Limits on freedom of expression • Public interest • Relevant and sufficient grounds • Proportionality

Constantinescu v. Romania, 2000-VIII

Conviction of a journalist for libel

Freedom of expression • Libel • Conviction of journalist for libel • Protection of the reputation of others • Necessary in a democratic society • Freedom of the press • Limits on freedom of expression • Duties and responsibilities of journalists • Public interest • Relevant and sufficient grounds • Proportionality

Lopes Gomes da Silva v. Portugal, 2000-X

Injunction prohibiting municipal councillor from repeating statements about sects

Freedom of expression • Injunction prohibiting municipal councillor from repeating statements about sects • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Freedom of expression of elected representatives • Public debate • Political debate • Distinction between value judgment and statement of fact • Failure of courts to admit relevant evidence

Jerusalem v. Austria, 2001-II

Award of damages for defamation

Freedom of expression • Award of damages for defamation • Public interest • Housing policy • Level of damages awarded • Proportionality

Marônek v. Slovakia, 2001-III

Journalist ordered to pay damages for quoting allegations made by a fellow journalist against State officials

Freedom of expression • Journalist ordered to pay damages for quoting allegations made by a fellow journalist against State officials • Freedom of the press • Journalist • Prescribed by law • Protection of the reputation or rights of others • Boundaries of acceptable criticism of civil servants • Necessary in a democratic society • Proportionality • General interest • Punishment of journalists assisting in the dissemination of statements made by others • Citations by journalists of statements that might insult or provoke others or damage their reputation • Sufficient reasons

Thoma v. Luxembourg, 2001-III

Refusal of television authority to broadcast “political” commercial

Freedom of expression • Refusal of television authority to broadcast “political” commercial • State responsibility for broadcasting • Interference • Prescribed by law • Foreseeability • Prohibition on political advertising • Protection of the rights of others • Necessary in a democratic society • Margin of appreciation • Commercial advertising • Public debate • Prohibition applying only to certain media • Relevant and sufficient reasons • Access to broadcasting

VgT Verein gegen Tierfabriken v. Switzerland, 2001-VI

Ban on book “of foreign origin”

Freedom of expression • Ban on book “of foreign origin” • Prior restraints on publication • Interference • Prescribed by law • Foreseeability • Prevention of disorder • Prevention of crime • Necessary in a democratic society • Proportionality • Regardless of frontiers • General and absolute ban on circulation, distribution and sale of a publication • Need for legal framework ensuring tight control over scope of bans • Form, extent and effectiveness of judicial review of bans • Sufficient guarantees against abuse • Examination of content of publications

Association Ekin v. France, 2001-VIII

Order by court to publish acknowledgment of defamatory nature of statements about government minister

Freedom of expression • Order by court to publish acknowledgement of defamatory nature of statements about government minister • Defamation • Interference • Prescribed by law • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Political speech • Political debate • Public interest • Limits of acceptable criticism wider as regards politicians • Distinction

between statements of fact and value judgments • Relevant and sufficient reasons • Fair balance

Feldek v. Slovakia, 2001-VIII

Injunction on repeating statements alleging racist agitation by politician

Freedom of expression • Injunction on repeating statements alleging racist agitation by politician • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Political debate • Public interest • Duties and responsibilities of journalists • Distinction between statements of fact and value judgments • Margin of appreciation

Unabhängige Initiative Informationsvielfalt v. Austria, 2002-I

Refusal to register titles of periodicals

Freedom of expression • Refusal to register titles of periodicals • Interference • Prescribed by law • Foreseeability • Novel interpretation of subordinate legislation

Gawęda v. Poland, 2002-II

Defamation of prosecutor by defence counsel

Freedom of expression • Defamation of prosecutor by defence counsel • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Limits on right of lawyers to comment in public on administration of justice • Limits of acceptable criticism of civil servants • Protection of civil servants from verbal abuse • Limits on defence counsel's freedom of expression in course of trial • Distinction between role of prosecutor and role of judge • Wider scope for defence counsel's criticism of prosecutor • Criticism of prosecution strategy • Absence of personal insult • Chilling effect on defence counsel's freedom of expression

Nikula v. Finland, 2002-II

Conviction for incitement to hatred and hostility

Freedom of expression • Conviction for incitement to hatred and hostility • Friendly settlement providing for payment of compensation, undertaking to implement necessary reforms and application of individual measures • Reference to Interim Resolution of the Committee of Ministers

Altan v. Turkey (friendly settlement), 2002-III

Unavailability of legal aid for defendant in defamation action

Freedom of expression • Defamation • Unavailability of legal aid for defendant

in defamation action • Exclusion of evidence • Balancing of competing interests • Costs order • Injunction • Burden of proof • Rights of others • Reputation of others • Necessary in a democratic society • Proportionality • Duty of journalists to verify defamatory factual statements • Serious consequences of defamation for plaintiff • Absence of proper verification by journalist

McVicar v. the United Kingdom, 2002-III

Criminal conviction of journalists for the offence of insulting a foreign head of State

Freedom of expression • Criminal conviction of journalists for the offence of insulting a foreign head of State • In accordance with the law • Protection of the reputation and rights of others • Necessary in a democratic society • Freedom of the press • Role of the press • Public interest • Duties and responsibilities of journalists • Reliability of official sources • Relevant and sufficient reasons • Proportionality • Special statutory protection for foreign heads of State • Failure to take into account whether criticism was warranted • No defence of justification

Colombani and Others v. France, 2002-V

Conviction for insulting public prosecutor

Freedom of expression • Conviction for insulting public prosecutor • Interference • Prescribed by law • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Limits of acceptable criticism of civil servants • Protection of civil servants from verbal abuse • Limits of acceptable criticism of officials involved in the administration of justice • Unsubstantiated allegations against public prosecutor • Relevant and sufficient reasons • Margin of appreciation • Proportionality

Lešník v. Slovakia, 2003-IV

Refusal of permission to solicit signatures for a petition in a privately owned shopping mall

Freedom of expression • Refusal of permission to solicit signatures for a petition in a privately owned shopping mall • Absence of direct State responsibility • Positive obligations • Limits on freedom of expression • Conflict between different Convention rights • Absence of emerging consensus in United States and Canadian case-law • Potential positive obligation to regulate property rights where effective exercise of freedom of expression prevented • Possibility for applicants to communicate views by other means

Appleby and Others v. the United Kingdom, 2003-VI

Conviction of leader of religious sect for hate speech

Freedom of expression • Conviction of leader of religious sect for hate speech • Incitement to violence • Prevention of disorder • Prevention of crime • Protection of morals • Protection of rights of others • General interest • Necessary in a democratic society • Television debate • Oral statements broadcast live • Defence of sharia • Sufficient reasons • Proportionality

Gündüz v. Turkey, 2003-XI

Conviction for defamation of a journalist and a newspaper publisher

Freedom of expression • Conviction for defamation of a journalist and a newspaper publisher • Interference • Prescribed by law • Legitimate aim of protecting the reputation or rights of others • Limits of acceptable criticism for a politician • Value judgment on subject of public interest • Necessary in a democratic society

Scharsach and News Verlagsgesellschaft mbH v. Austria, 2003-XI

Disciplinary proceedings against a lawyer in respect of statements made in his professional capacity during court proceedings

Freedom of expression • Disciplinary proceedings against a lawyer in respect of statements made in his professional capacity during court proceedings • Interference • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Limits of acceptable criticism of civil servants • Context in which criticism made • Absence of personal insult • Failure of authorities to attempt to establish whether statements true or made in good faith • “Chilling effect” of threat of *ex post facto* review of statements made by lawyer in court proceedings

Steur v. the Netherlands, 2003-XI

Injunction prohibiting the publication of an advertisement unless a number of conditions were met

Freedom of expression • Injunction prohibiting the publication of an advertisement unless a number of conditions were met • In accordance with the law • Protection of the reputation and rights of others • Necessary in a democratic society • Wide margin of appreciation accorded to States in areas of unfair competition and advertising • Far-reaching consequences of the injunction • Essence of price comparison impaired • Non-proportionality of the measure • Margin of appreciation overstepped by domestic authorities

Krone Verlag GmbH & Co. KG v. Austria (no. 3), 2003-XII

Conviction of a lawyer for criticising a judicial decision

Freedom of expression • Conviction of a lawyer for criticising a judicial decision • Interference • Prescribed by law • Foreseeability • Precision of the law • Maintaining the authority and impartiality of the judiciary • Necessary in a democratic society • General interest • Limits of acceptable criticism of the judiciary • Context in which the alleged remarks were made • Remarks published without the knowledge of the person who made them and denied in part • Severity of the sentence

Amihalachioaie v. Moldova, 2004-III

Convictions of a writer and a publisher for defamation

Freedom of expression • Convictions of a writer and a publisher for defamation • Publishing company • Book on historical events • Historical debate • Interference • Prescribed by law • Foreseeability • Precision of the law • Professionals who must have been aware of the risk of prosecution • Protection of the reputation of others • Necessary in a democratic society • Relevant and sufficient reasons • Failure to comply with historical method • Nature and severity of the penalty • Duties and responsibilities of publishers • Proportionality

Chauvy and Others v. France, 2004-VI

Conviction for publication of articles infringing the privacy of a member of parliament

Freedom of expression • Interference • Prescribed by law • Necessary in a democratic society • Protection of the reputation or rights of others

Karhuvaara and Iltalehti v. Finland, 2004-X

Criminal conviction of the applicants for failure by an association to comply with prescribed publication procedure

Freedom of expression • Criminal conviction of the applicants for failure by an association to comply with prescribed publication procedure • Interference • Prescribed by law • Accessibility • Foreseeability • Interpretation by the domestic court extending scope of relevant provision

Karademirci and Others v. Turkey, 2005-I

Lack of legal aid in defamation proceedings and proportionality of damages awarded

Freedom of expression • Interference • Protection of the reputation and rights of others • Necessary in a democratic society • Lack of procedural fairness and

equality • “Chilling effect” • Award of damages disproportionate to the legitimate aim served

Steel and Morris v. the United Kingdom, 2005-II

Existence of adequate safeguards against disproportionate jury award in libel case

Freedom of expression • Existence of adequate safeguards against disproportionate jury award in libel case • Necessity of the interference • Reasonable relationship of proportionality between the award of damages and the injury to reputation • Margin of appreciation

Independent News & Media PLC and Independent Newspapers (Ireland) Ltd v. Ireland, 2005-V (extracts)

Conviction of author for defamation of the Christian community

Freedom of expression • Conviction of author for defamation of the Christian community • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Criticism of the Pope’s position • Absence of attack on religious beliefs • Contribution to a debate of public interest • Debate on acts amounting to crimes against humanity • Nature and severity of the sentence • Obligation to publish a statement on the conviction

Giniewski v. France, 2006-I

Upholding of viewers’ complaints about history programme broadcast on a State-owned television channel

Freedom of expression • Upholding of viewers’ complaints about history programme broadcast on a State-owned television channel • Interference • Necessary in a democratic society • Search for historical truth an integral part of freedom of expression • Protection of viewers’ right to receive objective and transparent information • Matter of major public concern • Criticism of country’s leaders • Limited margin of appreciation • Proportionality • Ongoing debate among historians • Sphere where certainty is unlikely • Efforts by countries to debate their own history openly and dispassionately • Consideration of passing of time in assessing compatibility of interference with Article 10 • Journalists’ duties and responsibilities • Public service television • Potential impact of medium of expression concerned • Audiovisual media • Nature and severity of sanction

Monnat v. Switzerland, 2006-X

Conviction of a politician for public defamation of a civil servant

Freedom of expression • Conviction of a politician for public defamation of a civil

servant • Protection of reputation • Necessary in a democratic society • General interest • Protection of the environment and public health • Political or “militant” expression • Narrow margin of appreciation • Inability to plead the defence of truth (*exceptio veritatis*) • Infotainment television show • Civil servant no longer in service at material time

Mamère v. France, 2006-XIII

Offence of defamation found in respect of investigating judges by the publication of an article reporting remarks made at a press conference

Freedom of expression • Offence of defamation found in respect of investigating judges by the publication of an article reporting remarks made at a press conference • Protection of the reputation or rights of others • Maintaining the authority and impartiality of the judiciary • Necessary in a democratic society • Public interest • Narrow margin of appreciation • Legitimate interest of public in the provision and availability of information about criminal proceedings • Precautions taken by journalists • Freedom of the press • Limits to permissible criticism of civil servants • Relevant and sufficient reasons • Lack of manifestly abusive language

July and SARL Libération v. France, 2008-II (extracts)

Criminal conviction for wearing an outlawed totalitarian symbol (the red star) at a political demonstration

Freedom of expression • Criminal conviction for wearing an outlawed totalitarian symbol (the red star) at a political demonstration • Necessary in a democratic society • Prevention of disorder • Protection of the rights of others • Restriction on political speech • Multiple meanings of the symbol • Context in which the symbol was used • Absence of actual or remote danger of disorder • Absence of totalitarian propaganda or threat of restoration of dictatorship • Blanket and indiscriminate ban on public display of the symbol • Pressing social need • Proportionality • Margin of appreciation • Nature and severity of the penalty

Vajnai v. Hungary, 2008-IV

Imposition of a fine on a television station for broadcasting an advertisement by a minor political party

Freedom of expression • Imposition of a fine on a television station for broadcasting an advertisement by a minor political party • Statutory prohibition of party political broadcasts • Payment of fee irrelevant to political character of advertisement • Necessary in a democratic society • Protection of the rights of others • Lack of European consensus • Margin of appreciation • Powerful impact of audio-visual media • Applicant party at disadvantage compared to major parties with respect to access to editorial television coverage • Advertisement unlikely to lower the quality

of political debate or offend sensitivities • Proportionality • Relevant and sufficient reasons

TV Vest As and Rogaland Pensjonistparti v. Norway, 2008-V (extracts)

Rule that new cause of action accrues every time defamatory material on the Internet is accessed

Freedom of expression • Rule that new cause of action accrues every time defamatory material on the Internet is accessed • Necessary in a democratic society • Press obligations regarding accuracy of published archived material • Limitation periods in libel actions • Requirement to publish appropriate qualification where libel action pending • Proportionality

Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2), 2009-I

Criminal conviction for insulting the King

Freedom of expression • Criminal conviction for insulting the King • Necessary in a democratic society • Protection of the reputation or rights of others • Political debate on matters of public interest • Narrow margin of appreciation left to State • Value judgments • Provocative language • No incitement to violence or hate speech • Remarks made orally at a press conference • Comments relating solely to the King's institutional responsibility • Proportionality • Nature and severity of penalty

Otegi Mondragon v. Spain, 2011-I

Lack of safeguards in domestic law for journalists using information obtained from the Internet

Freedom of expression • Freedom of the press • Lack of safeguards in domestic law for journalists using information obtained from the Internet • Inability to foresee consequences of publication

Editorial Board of Pravoye Delo and Shtekel v. Ukraine, 2011-II (extracts)

Refusal to grant citizenship to leader of protest movement against government's language policy

Freedom of expression • Refusal to grant citizenship to leader of protest movement against government's language policy • Applicant not prevented from expressing his disagreement with government policies • Domestic law did not provide the applicant with an unconditional right to Latvian citizenship • Authorities' decision not arbitrary

Petropavlovskis v. Latvia, 2015-I

Refusal to reimburse election expenses

Freedom of expression • Interference

Cheminade v. France (dec.), 1999-II

Obligation of Members of Parliament to swear an oath of allegiance to the monarch

Freedom of expression • Oath of allegiance • Member of Parliament • Obligation of Members of Parliament to swear an oath of allegiance to the monarch • Member of Parliament denied access to facilities due to refusal to swear allegiance to monarch

McGuinness v. the United Kingdom (dec.), 1999-V

Dismissal, after German reunification, of history lecturer from the GDR on account of lack of professional qualifications

Freedom of expression • Dismissal, after German reunification, of history lecturer from the GDR on account of lack of professional qualifications • Interference • Prescribed by law • Accessibility • Foreseeability • Prevention of disorder • Protection of rights of others • Need to ensure quality of officials • Exceptional context of German reunification • Proportionality

Petersen v. Germany (dec.), 2001-XII

Prohibition on making public statements on dangers to health of microwave ovens, without referring to differences of opinion

Freedom of expression • Prohibition on making public statements on dangers to health of microwave ovens, without referring to differences of opinion • Interference • Protection of the rights of others • Necessary in a democratic society • Seriousness of interference • Unfair competition

Hertel v. Switzerland (dec.), 2002-I

Award of damages against publisher for disclosing identity of police officer in report on death of deportee

Freedom of expression • Award of damages against publisher for disclosing identity of police officer in report on death of deportee • Interference • Protection of reputation and rights of others • Necessary in a democratic society • Public interest • Role of the press • Balancing of interests by domestic courts • Disclosure of identity of police officer under criminal investigation

“Wirtschafts-Trend” Zeitschriften-Verlagsgesellschaft mbH v. Austria (no. 2) (dec.), 2002-X

Conviction of a writer for denial of crimes against humanity

Freedom of expression • Conviction of a writer for denial of crimes against humanity • Destruction of rights and freedoms • Limits on freedom of expression • Negation or revision of clearly established historical facts • Breaches of fundamental values of the Convention • Use of right guaranteed by the Convention for purposes contrary to text and spirit of the Convention

Garaudy v. France (dec.), 2003-IX (extracts)

Conviction for public incitement to commit offence

Freedom of expression • Conviction for public incitement to commit offence • Interference • Prevention of crime • Necessary in a democratic society • Incitement to violence • Comments placing others in danger • Relevant and sufficient reasons • Severity of sentence • Negation of founding principles of a pluralist democracy

Gündüz v. Turkey (dec.), 2003-XI (extracts)

Attempted dismissal of President of Supreme Court, allegedly on account of his views

Freedom of expression • Attempted dismissal of President of Supreme Court, allegedly on account of his views • Limited duration of any chilling effect • Limited reliance on views as ground for proposed dismissal

Harabín v. Slovakia (dec.), 2004-VI

Refusal of a newspaper to publish the reply of an author whose works it had criticised

Freedom of expression • Refusal of a newspaper to publish the reply of an author whose works it had criticised • Right of reply as an element of freedom of expression • Editorial discretion of private media • Obligation of media to publish retraction or apology under exceptional circumstances in defamation cases • Positive obligations • Possibility for applicant to exercise his right of reply and to complain to courts

Melnychuk v. Ukraine (dec.), 2005-IX

Conviction of journalist for insult and defamation

Freedom of expression • Defamation • Conviction of journalist for insult and defamation • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Public interest • Duties and responsibilities • Lack of factual basis • Offensive term • Satirical review • Relevant and sufficient

grounds • Proportionality • Attitude of journalist during the proceedings • Manifest lack of interest in the proceedings

Ivanciuc v. Romania (dec.), 2005-XI

Conviction for publishing obscene material on a free preview page of a website

Freedom of expression • Interference • Conviction for publishing obscene material on a free preview page of a website • Prescribed by law • Legitimate aim • Protection of morals and/or rights of others • Proportionality • Margin of appreciation • Applicability of domestic law to publications on a foreign website • Protection of young persons from obscene photographs freely available in preview form • Purely commercial purpose • Length of sentence not disproportionate

Perrin v. the United Kingdom (dec.), 2005-XI

Order for an account of profits arising from the publication of an autobiography by a former officer of the British Secret Intelligence Service

Freedom of expression • Order for an account of profits arising from the publication of an autobiography by a former officer of the British Secret Intelligence Service • Undertaking of confidentiality not sufficiently unequivocal to constitute waiver of right to complain under the Convention • Interference • Prescribed by law • Foreseeability • No direct precedent for order made by House of Lords • Judicial law-making well entrenched and necessary part of legal tradition • Exceptional case • Clear and strong public interest • Legitimate aims • National security • Prevention of crime • Proportionality • Relatively minor interference • Closely connected to the applicant's criminal past and breach of confidence

Blake v. the United Kingdom (dec.), 2005-XII (extracts)

Television production company compelled to hand over unedited footage and background material to public prosecutor

Freedom of expression • Prescribed by law • Necessary in a democratic society • Protection of morals • Legitimate aim of preventing disorder or crime • Public interest • Television production company compelled to hand over unedited footage and background material to public prosecutor

*Nordisk Film & TV A/S
v. Denmark* (dec.), 2005-XIII

Penalty imposed by professional disciplinary bodies, under the Code of Professional Conduct for medical practitioners, on journalists registered with the Medical Association

Freedom of expression • Penalty imposed by professional disciplinary bodies, under

the Code of Professional Conduct for medical practitioners, on journalists registered with the Medical Association • Interference • Prescribed by law • Protection of the reputation of others • Necessary in a democratic society • Sensitive and controversial subject • Failure to nuance comments or take precautions • Most moderate disciplinary penalty available

Houdart and Vincent v. France (dec.), 2006-X (extracts)

Strategic monitoring of telecommunications

Freedom of expression • Interference • Strategic monitoring of telecommunications for journalistic purposes • Necessary in a democratic society • Monitoring not aimed at journalists or their sources • Adequate and effective safeguards • Disclosure of journalistic sources kept to unavoidable minimum

Weber and Saravia v. Germany (dec.), 2006-XI

Conviction for publication of a book inciting readers to use drugs

Freedom of expression • Conviction for publication of a book inciting readers to use drugs • Criminal conviction • Interference • Prescribed by law • Protection of health • Protection of morals • Potential financial gain • Margin of appreciation • Proportionality • Necessary in a democratic society

Palusinski v. Poland (dec.), 2006-XIV

Conviction of comedian for conveying negationist and anti-Semitic ideas during show

Freedom of expression • Prohibition of abuse of rights • Conviction of comedian for conveying negationist and anti-Semitic ideas during show • Demonstration of hatred and anti-Semitism • Holocaust denial • Ideology at odds with fundamental Convention values of justice and peace and not to be treated as entertainment, however satirical or provocative • Applicability of Article 17 • Inability to enjoy protection of Article 10

M'Bala M'Bala v. France (dec.), 2015-VIII (extracts)

FREEDOM TO RECEIVE AND IMPART INFORMATION

Conviction of journalists for publishing extracts from tax-assessment forms

Freedom to impart information • Conviction of journalists for publishing extracts from tax-assessment forms • Freedom of the press • Duties and responsibilities of journalists • Right of the public to receive information • Protection of the rights of others • Protection of the reputation of others • Preventing the disclosure of

information received in confidence • Necessary in a democratic society • Proportionality • Information already available to the public

Fressoz and Roire v. France [GC], 1999-I

Defamatory statements published by a newspaper declared null and void by court

Freedom of expression • Freedom to impart information and ideas • Freedom of the press • Defamation • Defamatory statements published by newspaper declared null and void by court • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Proportionality • Relevant and sufficient reasons • Public interest • Duties and responsibilities of the press • Nature and degree of defamation • Reliance on official sources

Bladet Tromsø and Stensaas v. Norway [GC], 1999-III

Dismissal of civil servant for divulging internal information showing interference in the administration of criminal justice

Freedom of expression • Freedom to impart information • Dismissal of civil servant for divulging internal information showing interference in the administration of criminal justice • Imparting of information via the press • Legitimate aim • Preventing disclosure of information received in confidence • Necessary in a democratic society • Civil servants' duties and responsibilities • Proportionality • Lack of other means of disclosure • Questions falling within the scope of political debate • Fight against corruption and trading in influence • Legitimate interest of public opinion in provision of information • Public interest in disclosure outweighed the interest in maintaining public confidence in an institution • Good faith • Harshness of sanction

Guja v. Moldova [GC], 2008-II

Inability of a television company to broadcast after being awarded a licence but not allocated frequencies

Freedom to impart information • Inability of a television company to broadcast after being awarded a licence but not allocated frequencies • Interference prescribed by law • Foreseeability • Safeguards against abuse • Protection against arbitrariness • Domestic legislative framework lacking clarity and precision • Positive obligations • Obligation on the State to set up legislative and administrative framework guaranteeing effective media pluralism

Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], 2012-III

Refusal of permission for non-governmental organisation to place television advert owing to statutory prohibition on political advertising

Freedom of expression • Freedom to impart information • Refusal of permission for non-governmental organisation to place television advert owing to statutory prohibition on political advertising • Necessary in a democratic society • Criteria for measuring proportionality of general measures applicable to pre-defined situations • Relevance of parliamentary and judicial review of measure • Scope of acceptable restrictions on political advertising in broadcast media • Widening of margin of appreciation in view of lack of European consensus • Access to alternative media

Animal Defenders International v. the United Kingdom [GC], 2013-II (extracts)

Court ruling of liability for the publication of an article and photographs revealing the existence of a monarch's secret child

Freedom to impart information • Court ruling of liability for the publication of an article and photographs revealing the existence of a monarch's secret child • Protection of the rights of others • Birth falling within the public sphere • Debate on a matter of public interest • Competing private interests • The manner in which the information was obtained • Enhancement and presentation of the information

Couderc and Hachette Filipacchi Associés v. France [GC], 2015-VII (extracts)

Award of damages against Internet news portal for offensive comments posted on its site by anonymous third parties

Freedom to impart information • Freedom of expression • Award of damages against Internet news portal for offensive comments posted on its site by anonymous third parties • User-generated expressive activity on the Internet • “Duties and responsibilities” of Internet news portals • Prescribed by law • Foreseeability • Necessary in a democratic society • Individual's fundamental rights should in principle override the economic interests of the operator of a search engine and the interests of other Internet users • Effective measures to limit dissemination of hate speech or speech inciting violence cannot be equated to “private censorship” • Proportionality of sanction

Delfi AS v. Estonia [GC], 2015-II

Award of damages against a newspaper for defamation of cosmetic surgeon

Freedom of expression • Freedom to impart information • Freedom of the press • Award of damages against a newspaper for defamation of cosmetic surgeon • Interference • Protection of the reputation of others • Protection of the rights of

others • Necessary in a democratic society • Proportionality • Relevant and sufficient reasons • Public interest • Duties and responsibilities of the press • Accuracy of facts reported by press • Proper balance in reporting

Bergens Tidende and Others v. Norway, 2000-IV

Conviction of journalists for publishing information about civil-party application

Freedom to impart information • Conviction of journalists for publishing information about civil-party application • Freedom of the press • Protection of reputation of others • Protection of rights of others • Maintaining authority and impartiality of the judiciary • Necessary in a democratic society • Proportionality • Journalists' duties and responsibilities • Sufficient reasons • Public interest • General and absolute prohibition of publication

Du Roy and Malaurie v. France, 2000-X

Conviction of journalist for insulting the wife of a prominent politician in an interview

Freedom of expression • Freedom to impart ideas • Conviction of journalist for insulting the wife of a prominent politician in an interview • Interference • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Margin of appreciation • Remarks relating to private life • Use of insulting terms • Value judgment • Absence of public interest • Proportionality • Nature and severity of sanction

Tammer v. Estonia, 2001-I

Refusal of licence to broadcast special interest television programme

Freedom to impart information • Licensing of broadcasting enterprises • Refusal of licence to broadcast specialised television programme • Interference • Prescribed by law • Legitimate aim of broadcasting restrictions • Quality and balance of programmes • Necessary in a democratic society • Margin of appreciation • Commercial broadcasts • Specific political and cultural context • Federal State • Possibility of obtaining licence

Demuth v. Switzerland, 2002-IX

Ban on the distribution of a newspaper in a region in which a state of emergency has been declared

Freedom of expression • Freedom to impart ideas and information • Ban on the distribution of a newspaper in a region in which a state of emergency has been declared • Necessary in a democratic society • Judicial review to prevent abuse •

Prevention of terrorism • Press • Importance of a plurality of ideas and information • No reasons given for administrative ban on publication and no possibility of seeking judicial review

Çetin and Others v. Turkey, 2003-III (extracts)

Searches carried out at a journalist's home and workplace to identify his sources

Freedom to impart information • Searches carried out at a journalist's home and workplace to identify his sources • Interference • Prevention of disorder • Prevention of crime • Necessary in democratic society • General interest • Protection of journalists' sources • Relevant and sufficient reasons • Proportionality

Roemen and Schmit v. Luxembourg, 2003-IV

Prohibition on religious advertising on television and radio

Freedom of expression • Freedom to communicate information • Prohibition on religious advertising • Refusal to authorise broadcasting on radio of advertisement publicising screening of religious video • Interference • Prevention of disorder • Public safety • Protection of the rights of others • Necessary in a democratic society • Duties and responsibilities • Duty to respect religious sensibilities • Margin of appreciation • Absence of European consensus with regard to protection of religious sensibilities • Prohibition on religious advertising limited to broadcast media • Impact of broadcast media • Distinction between advertisement and neutral programmes • Relevant and sufficient reasons

Murphy v. Ireland, 2003-IX (extracts)

Conviction of a publishing director and a journalist of a radio station for defamation

Freedom to impart information • Publishing director and journalist of a radio station convicted of defamation • Audiovisual media • Interference • Prescribed by law • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Proportionality • Public debate • Freedom of the press • Journalists' duties and responsibilities • Reporting on issues of general interest • Dissemination of incorrect information • Relevant and sufficient reasons • Impact of the medium used to disseminate information • Radio station received throughout French territory • Severity of the penalty

Radio France and Others v. France, 2004-II

Prohibition on continuing to distribute book containing confidential medical information about a deceased head of State

Freedom of expression • Freedom to impart information • Prohibition on continuing

to distribute book containing confidential medical information about a deceased head of State • Interim injunction followed by permanent ban • Interference • Protection of rights of others • Prevention of disclosure of information received in confidence • Necessary in a democratic society • Public interest • Proportionality • Prohibition on continued distribution of book • Importance of emotional background to case • Importance of passage of time for compliance of interference with Article 10 • Information already in public domain • Severity of penalty

Editions Plon v. France, 2004-IV

Conviction for publication of a novel insulting the Muslim religion

Freedom of expression • Freedom to impart ideas • Interference • Prescribed by law • Necessary in a democratic society • Prevention of disorder • Protection of morals • Protection of the rights of others • Freedom of thought, conscience and religion • Pressing social need • Proportionality • Margin of appreciation • Conviction for publication of a novel insulting the Muslim religion

İ.A. v. Turkey, 2005-VIII

Conviction for disseminating false information about a candidate for the presidency of Ukraine

Freedom of expression • Freedom to impart information • Necessary in a democratic society • Prescribed by law • Conviction for disseminating false information about a candidate for the presidency of Ukraine • False statement of fact • No prohibition to disseminate information suspected to be untruthful • No intention to deceive voters and to impede their ability to vote • Minor impact of dissemination of false information • Proportionality of interference • Nature and severity of penalties

Salov v. Ukraine, 2005-VIII (extracts)

Conviction of radio station for broadcasting a telephone conversation between government officials

Freedom to impart information • Conviction of radio station for broadcasting a telephone conversation between government officials • Protection of the rights of others • Protection of the reputation of others • Matter of general interest • Pressing social need • Proportionality • Necessary in a democratic society • No indication of bad faith on the part of applicant company

Radio Twist a.s. v. Slovakia, 2006-XV

Statutory guarantees of editorial independence and institutional autonomy of public broadcasters

Freedom of expression • Freedom to impart information • Public broadcasters •

Positive obligation • Pluralistic audio-visual service • Statutory guarantees of editorial independence and institutional autonomy of public broadcasters • Public access to accurate and impartial information and full range of political opinion and debate • Interference • Position of dominance held by public broadcaster • Political bias • State censorship • Restrictions on reporting • Absence of legal framework ensuring independence of supervisory body and management from political control • Administrative practice

*Manole and Others
v. Moldova, 2009-IV (extracts)*

Temporary ban on broadcasting a current-affairs television programme

Freedom of expression • Temporary ban on broadcasting a current-affairs television programme • Freedom to impart information • Prior restraint • Prescribed by law • Foreseeability • Lack of a precise and consistent legislative framework and judicial approach

RTBF v. Belgium, 2011-III (extracts)

Dismissal of nurse for lodging criminal complaint alleging shortcomings in care provided by employer

Freedom of expression • Freedom to impart information • Whistle-blowing • Dismissal of nurse for lodging criminal complaint alleging shortcomings in care provided by employer • Application of *Guja* criteria to private-sector employment • Bona fide reporting of factual information through proper channels • Public interest outweighing interest in protecting employer's reputation • Chilling effect of penalty

Heinisch v. Germany, 2011-V (extracts)

Court order blocking a website as a preventive measure, with the collateral effect of blocking access to an entire domain and all the websites hosted on it

Freedom of expression • Freedom to impart information • Freedom to receive information • Court order blocking a website as a preventive measure, with the collateral effect of blocking access to an entire domain and all the websites hosted on it • Interference • Prescribed by law • Insufficient grounds to suspect commission of offence on the basis of the site's content • Extensive powers conferred on an administrative body • Ineffective judicial review • Lack of strict legal framework surrounding prohibition • Law not requiring courts to examine need for wholesale blocking • Foreseeability • Arbitrary effects of measure

Ahmet Yıldırım v. Turkey, 2012-VI

Wholesale blocking of access to YouTube without any legal basis

Freedom to receive information • Freedom to impart information • Wholesale blocking of access to YouTube without any legal basis • Accessibility of the Internet • Very popular platform for political speeches and political and social activities • Emergence of citizen journalism • Unique platform with no equivalent on account of its characteristics, accessibility and potential impact • Lack of legal basis

Cengiz and Others v. Turkey, 2015-VIII

Conviction of journalists for filming and broadcasting meeting with insurance broker for public-interest purposes

Freedom to impart information • Conviction of journalists for filming and broadcasting meeting with insurance broker for public-interest purposes • Freedom of expression • Protection of rights and reputation of others • Private life • Report not focusing on a well-known public figure • Report criticising practices within a profession and not a specific individual • Debate of considerable public interest • Recording not a deliberate breach of press ethics • Measures taken to protect individual's identity • Limited interference with private individual's interests and reputation • Proportionality

Haldimann and Others v. Switzerland, 2015-I

Judgment against defendants in civil proceedings for breach of the right of an aristocrat and her husband to honour and to respect for their private life

Freedom to impart information • Judgment against defendants in civil proceedings for breach of the right of an aristocrat and her husband to honour and to respect for their private life • Freedom of the press • Obligations and responsibilities of the press • Protection of the rights of others • Necessary in a democratic society • Margin of appreciation • Reports on the private lives of public figures • Absence of any debate on a matter of public interest • Domestic decisions striking a fair balance between the competing interests

Campmany y Diez de Revenga and Lopez-Galiacho Perona v. Spain (dec.), 2000-XII

Award of damages against a newspaper for defamation of plastic surgeon

Freedom of expression • Freedom to impart information • Freedom of the press • Award of damages against a newspaper for defamation of plastic surgeon • Interference • Protection of the reputation of others • Protection of the rights of others • Necessary in a democratic society • Public interest • Duties and responsibilities of the press • Accuracy of facts reported by the press • Proper balance in reporting • Proportionality • Relevant and sufficient reasons

Verdens Gang and Aase v. Norway (dec.), 2001-X

Refusal of application to broadcast murder trial live on radio

Freedom to impart information • Refusal of application to broadcast murder trial live on radio • Rights or reputation of others • Authority and impartiality of judiciary • Necessary in a democratic society • Potential effect of live broadcasting on characteristics of a trial and conduct of participants • Margin of appreciation • Relevant and sufficient reasons • Proportionality • Public trial • Arrangements for press to follow trial on equal basis

P4 Radio Hele Norge ASA v. Norway (dec.), 2003-VI

ARTICLE 11

FREEDOM OF PEACEFUL ASSEMBLY

Criminal sanctions for farmers blocking traffic on major roads for two days

Freedom of peaceful assembly • Criminal sanctions for farmers blocking traffic on major roads for two days • Applicability • Conduct not at core of freedom of assembly • Conduct not undermining foundations of democratic society • Interference • Prescribed by law • Prevention of disorder • Protection of the rights and freedoms of others • Necessary in a democratic society • Breach of conditions stipulated in permits to demonstrate without any prior notice to authorities • No need for immediate response to current event • Existence of alternative and lawful means to protect interests of demonstrators • Intentional roadblocks aimed at pressuring the government to accept demonstrators' demands • Disruption to lawful activities which have no direct connection with the object of demonstrators' protest • Extent of disruption exceeding that caused by normal exercise of right of peaceful assembly in public place • Reprehensible act justifying imposition of penalties • Absence of involvement in or incitement to violence on part of demonstrators • Relevant and sufficient reasons • Margin of appreciation • Authorities demonstrating high degree of tolerance • Proportionality • Lenient criminal sanction

Kudrevičius and Others v. Lithuania [GC], 2015-VI

Refusal of permission for public meetings

Freedom of peaceful assembly • Refusal of permission for public meetings • Exclusion of violent demonstrations • Interference • Prescribed by law • Legitimate aims • Necessary in a democratic society • Relationship between freedom of assembly and freedom of expression • Offensive nature of aims of demonstration • Protection of minority views • Expression of separatist views • Absence of incitement to violence and of undemocratic aims • Reasons given by authorities for prohibition on meetings

Stankov and the United Macedonian Organisation Ilinden v. Bulgaria, 2001-IX

Police evacuation of a church occupied by a group of aliens without residence permits

Freedom of peaceful assembly • Police evacuation of a church occupied by a group of aliens without residence permits • Interference • Prescribed by law • Prevention of disorder • Necessary in a democratic society • Proportionality • Legitimate restrictions • Wide margin of appreciation left to the States

Cisse v. France, 2002-III

Refusal of permission to cross from the north to the south of Cyprus for the purpose of attending bi-communal meetings

Freedom of peaceful assembly • Refusal of permission to cross from the north to the south of Cyprus for the purpose of attending bi-communal meetings • Scope of notion of freedom of assembly • Interference • Prescribed by law • Absence of regulation of issuing of permits to cross from the north to the south of Cyprus

Djavit An v. Turkey, 2003-III

Temporary ban on opposition party on account of unauthorised gatherings

Freedom of peaceful assembly • Freedom of association • Interference • Necessary in a democratic society • Margin of appreciation • Proportionality • Pressing social need • Chilling effect • Temporary ban on opposition party on account of unauthorised gatherings • Authorities' failure to give relevant and sufficient reasons • Peaceful gatherings organised to protest against government policy on schooling • Principles of pluralism and democracy • Public interest and topicality of the issue

Christian Democratic People's Party v. Moldova, 2006-II

Prohibition of meeting at cemetery seeking to commemorate Jews killed by the SS and to counter a gathering in memory of SS soldiers

Freedom of peaceful assembly • Freedom of expression • Freedom of religion • Prohibition of meeting at cemetery seeking to commemorate Jews killed by the SS and to counter a gathering in memory of SS soldiers • Prevention of disorder • Protection of the rights and freedoms of others • Necessary in a democratic society • Positive obligations • Issue of public interest • No previous violent incident • Disturbance to cemetery visitors likely to be limited • Proportionality • Margin of appreciation • Failure to strike a fair balance between competing interests

Öllinger v. Austria, 2006-IX

Forceful dispersal by police of peaceful demonstration held during rush hour without prior compulsory notification

Freedom of peaceful assembly • Forceful dispersal by police of peaceful

demonstration held during rush hour without prior compulsory notification • Necessary in a democratic society • Prevention of disorder • Protection of the rights and freedoms of others • Proportionality • Importance of preventive security measures • Limited number of demonstrators • Unlawfulness of demonstration did not in itself justify interference with freedom of assembly • Tolerance towards peaceful gatherings required from public authorities

Oya Ataman v. Turkey, 2006-XIV

Dispersal of a peaceful demonstration for failure to give prior notice to the police

Freedom of peaceful assembly • Interference • Dispersal of a peaceful demonstration for failure to give prior notice to the police • Legitimate aim • Prevention of disorder • Protection of the rights and freedoms of others • Necessary in a democratic society • Proportionality • Restrictions encroaching on essence of right • Absence of illegal conduct or danger to public order • Need for tolerance of peaceful gatherings

Bukta and Others v. Hungary, 2007-III

Detention aimed at preventing participation in demonstrations

Freedom of peaceful assembly • Detention aimed at preventing participation in demonstrations • Interference • Prevention of disorder • Proportionality • Existence of less intrusive measures

Schwabe and M.G. v. Germany, 2011-VI (extracts)

Refusal to grant citizenship to leader of protest movement against government's language policy

Freedom of peaceful assembly • Refusal to grant citizenship to leader of protest movement against government's language policy • Applicant not prevented from participating in meetings or movements • Domestic law did not provide the applicant with an unconditional right to Latvian citizenship • Authorities' decision not arbitrary

Petropavlovskis v. Latvia, 2015-I

Conviction of mayor for stirring up national, racial and religious hatred

Freedom of peaceful assembly • Conviction of mayor for stirring up national, racial and religious hatred • Interference • Prevention of disorder • Prevention of crime • National security • Public safety • Protection of the rights and freedoms of others • Freedom of peaceful assembly especially important for elected representatives of the people • Proportionality

Osmani v. the former Yugoslav Republic of Macedonia (dec.), 2001-X

FREEDOM OF ASSOCIATION

Landowners opposed to hunting unable to obtain exemption from statutory obligation to transfer hunting rights over their land to their local municipal hunters' association and to join the association

Freedom of association • Negative freedom of association • Landowners opposed to hunting unable to obtain exemption from obligation to join their local municipal hunters' association • Interference • Protection of the rights and freedoms of others • Necessary in a democratic society • Balance between rights guaranteed by Convention and rights not set forth therein • Moral convictions

Chassagnou and Others v. France [GC], 1999-III

Constitutional prohibition on police officers engaging in political activities and joining political parties

Freedom of association • Police officers • Constitutional prohibition on police officers joining political parties • Interference • Lawful restrictions • Foreseeability • Precision of law • National security • Public safety • Prevention of disorder • Necessary in a democratic society • Margin of appreciation • Proportionality • Historical background of totalitarianism

Rekvényi v. Hungary [GC], 1999-III

Dissolution of political party by the Constitutional Court

Freedom of association • Dissolution of political party by the Constitutional Court • Interference • National security • Necessary in a democratic society • Strict interpretation of exceptions with regard to political parties • Limited margin of appreciation • Incitement to violence • Political manifesto respecting democratic principles

Freedom and Democracy Party (ÖZDEP) v. Turkey [GC], 1999-VIII

Freedom of association • Dissolution of political party by the Constitutional Court • Interference • Prescribed by law • Precedence of Constitution over statute law • Foreseeability • National security • Public safety • Prevention of disorder • Prevention of crime • Protection of rights and freedoms of others • Necessary in a democratic society • Imminence of danger posed by political party • Imputability to political party of statements made by leaders and members in elected posts • Assessment of compatibility of political aims with respect for democracy • Compatibility of plurality of legal systems with democracy and human rights • Compatibility of Islamic law with democracy and human rights • Advocacy of use of force in achieving political goals

Refah Partisi (the Welfare Party) and Others v. Turkey [GC], 2003-II

Refusal to register association set up by a minority

Freedom of association • Refusal to register association set up by a minority • Association formed in order to promote identity of minority • National minority • Interference • Prescribed by law • Precision of law • Foreseeability • Prevention of disorder • Protection of rights of others • Necessary in a democratic society • Electoral privileges resulting from registration • Margin of appreciation • Proportionality • Restrictions on appellation of association • Restrictions not affecting essence of freedom of association

Gorzelik and Others v. Poland [GC], 2004-I

Disciplinary sanction imposed on judge for membership of Masonic lodge

Freedom of association • Disciplinary sanction imposed on judge for membership of Masonic lodge • Interference • Prescribed by law • Accessibility • Foreseeability

Maestri v. Italy [GC], 2004-I

Legislative exclusion of Freemasons from public office

Freedom of association • Legislative exclusion of Freemasons from public office • Interference • Protection of national security • Prevention of disorder • Necessary in a democratic society • Part of administration of the State • Foreseeability • Concept of administration of the State

Grande Oriente d'Italia di Palazzo Giustiniani v. Italy, 2001-VIII

Disciplinary sanction imposed on judge for his membership of Masonic lodge

Freedom of association • Disciplinary sanction imposed on judge for his membership of Masonic lodge • Interference • Prescribed by law • Accessibility • Foreseeability

N.F. v. Italy, 2001-IX

Dissolution of political party by the Constitutional Court

Freedom of association • Dissolution of political party by the Constitutional Court • Interference • National security • Necessary in a democratic society • Incitement to violence • Compliance of political statements with democratic principles • Permissible criticism of a government

Yazar and Others v. Turkey, 2002-II

Refusal to enter political group in register of political parties

Freedom of association • Refusal to enter political group in register of political

parties • Necessary in a democratic society • Political group not politically active before applying for registration • Political groups complying with fundamental democratic principles • Historical context of totalitarianism

Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania, 2005-I (extracts)

Attacks against offices of a political party representing a minority

Freedom of association • Attacks against offices of a political party representing a minority • Display of party name in two languages arousing hostility • Tension resulting from pluralism • Role of authorities in promoting tolerance, social cohesion and reconciliation • Political wording liable to offend majority's patriotic or political feelings • Obligation to take effective investigative measures

Ouranio Toxo and Others v. Greece, 2005-X (extracts)

Bad-faith denial of re-registration, resulting in loss of religious association's legal status

Freedom of association • Freedom of religion • Manifest religion or belief • Bad-faith denial of re-registration, resulting in loss of religious association's legal status • Interference • Prescribed by law • Necessary in a democratic society • Proportionality • Lack of reasonable and objective justification for difference in treatment of Russian and foreign nationals • Domestic courts' task to provide the applicant with guidance on applicable legal requirements • Arbitrary findings of domestic courts devoid of evidentiary basis • Failure to give "relevant and sufficient" reasons • Failure to respect neutrality and impartiality *vis-à-vis* applicant's religious community

Moscow Branch of the Salvation Army v. Russia, 2006-XI

Refusal to grant authorisation for a funding association of a political party that received most of its funds from a foreign political party

Freedom of association • Refusal to grant authorisation for a funding association of a political party that received most of its funds from a foreign political party • Interference • Impact on party's capacity to carry out its political activities • Prescribed by law • Foreseeability • Prevention of disorder • Necessary in a democratic society • Financial transparency in political life • Preservation of national sovereignty • Margin of appreciation

Parti nationaliste basque – Organisation régionale d'Iparralde v. France, 2007-II

Dissolution of a public association for negating the ethnic identity of the Macedonian people

Freedom of association • Dissolution of a public association for negating the ethnic identity of the Macedonian people • Prescribed by law • Protection of the rights

and freedoms of others • Necessary in a democratic society • Exercise of freedom of expression • Ideology perceived as offensive by majority of the population • Absence of incitement to violence or of undemocratic means • Absence of threat to public order, society or State • Failure to adduce relevant and sufficient reasons

Association of Citizens Radko and Paunkovski v. the former Yugoslav Republic of Macedonia, 2009-I (extracts)

Dissolution of political parties linked to terrorist organisation

Freedom of association • Dissolution of political parties linked to terrorist organisation • Necessary in a democratic society • Prevention of disorder • Public safety • Protection of rights and freedoms of others • Support for terrorism • Advocating use of force • Omissions or lack of response of politicians tantamount to taking a stand • Proportionality

Herri Batasuna and Batasuna v. Spain, 2009-III

Dissolution of association for alleged managerial irregularities

Freedom of association • Dissolution of association for alleged managerial irregularities • Prescribed by law • Foreseeability • Necessary in a democratic society • Regulations on corporate governance and management • Unduly wide ministerial discretion to intervene in internal management of an association • Absence of independent judicial inquiry • Absence of relevant and sufficient reasons justifying dissolution • Severity of sanction • Arbitrariness

Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan, 2009-V

Statutory liability to make financial contribution to private industrial federation

Freedom of association • Statutory liability to make financial contribution to private industrial federation • Interference • Right not to join an association • Protection of rights and interests of others • Relevant reasons • Promotion of Icelandic industry • Absence of sufficient reasons • Ill-defined role and duties of recipient federation • Inadequate supervision • Lack of adequate safeguards to ensure protection of non-members' interests • Proportionality

Vörður Ólafsson v. Iceland, 2010-III

Dissolution of association involved in anti-Roma rallies and paramilitary parading

Freedom of association • Dissolution of association involved in anti-Roma rallies and paramilitary parading • Prevention of disorder • Protection of the rights and freedoms of others • Public safety • Right of States to take preventive measures to

protect democracy • Relevant and sufficient reasons • Series of coordinated and planned actions liable to have an intimidating effect on members of a racial minority • Proportionality

Vona v. Hungary, 2013-IV

Ban on taking secondary industrial action against an employer not party to a labour dispute

Freedom of association • Scope • Ban on taking secondary industrial action against an employer not party to a labour dispute • Interference • Prescribed by law • Legitimate aim • Rights and freedoms of others • Necessary in a democratic society • Essential elements of trade union's right to freedom of association • Right to represent members • Right to engage in collective bargaining • Right to organise strike of members at place of work • Margin of appreciation • Wide margin where interference was on limited scale and concerned social and economic strategy • Relevant and sufficient reasons • Long-standing and broad domestic consensus for ban on secondary action • Proportionality

National Union of Rail, Maritime and Transport Workers v. the United Kingdom, 2014-II

Suicide of detainee confined to cell due to disruptive behaviour

Freedom of association • Prisoners • Absence of right of prisoners to mix socially at any particular time or place

Bollan v. the United Kingdom (dec.), 2000-V

Obligation to join a professional association in order to be allowed to practise as a private notary

Freedom of association • Obligation to join a professional association in order to be allowed to practise as a private notary • Role of professional associations • Absence of restrictions on forming or joining other associations to promote professional interests

O.V.R. v. Russia (dec.), 2001-V

Prohibition on formation of association with objectives contrary to the Convention

Freedom of association • Prohibition on formation of association with objectives contrary to the Convention • Destruction of rights and freedoms • Anti-Semitic statements in memorandum of association • Use of right guaranteed by the Convention for purposes contrary to the text and spirit of the Convention

W.P. and Others v. Poland (dec.), 2004-VII (extracts)

Refusal to register as a political party an association openly declaring affiliation with a certain ethnic group

Freedom of association • Refusal to register as a political party an association openly declaring affiliation with a certain ethnic group • Pressing social need • Margin of appreciation • Proportionality • Freedom of association not restricted *per se* • Respect for national specificity in electoral matters

Artyomov v. Russia (dec.), 2006-XV

FORM AND JOIN TRADE UNIONS

Obligation to join trade union as a condition of employment

Freedom of association • Obligation to join trade union as a condition of employment • Negative right to freedom of association • No renunciation of right by acceptance of job offer • Serious consequences (dismissal) of non-compliance • Compulsion striking at very substance of right • Fair balance • General developments in society and the labour market • Closed-shop agreements not indispensable tool for effective enjoyment of trade union freedoms

Sørensen and Rasmussen v. Denmark [GC], 2006-I

Municipal civil servants prohibited from forming a trade union and annulment *ex tunc* of a collective agreement

Right to form and to join trade unions • Municipal civil servants prohibited from forming a trade union and annulment *ex tunc* of a collective agreement • Members of the administration of the State • Applicability • Substance of the right of association • Right to collective bargaining inherent in Article 11 • Interference • Positive obligations • Prevention of disorder • Necessary in a democratic society • Right recognised by international instruments • Existence of European practice • State's commitment to recognise right in question • Restrictive interpretation by Court of Cassation • Inactivity of legislature

Demir and Baykara v. Turkey [GC], 2008-V

Refusal to register a trade union for priests on account of the autonomy of religious communities

Freedom of association • Applicability • Refusal to register a trade union for priests on account of the autonomy of religious communities • Protection of the rights of others • Lack of European consensus on relations between States and religious communities • Wide margin of appreciation • Proportionality

Sindicatul "Păstorul cel Bun" v. Romania [GC], 2013-V (extracts)

Offering of incentives to employees to renounce right to representation by trade union

Form and join trade unions • Interests of members • Offering of incentives to employees to renounce right to representation by trade union • Positive obligations • Trade union • Collective bargaining • Strike action • Role of trade unions in protecting members' interests • Use of financial incentives to induce employees to renounce rights

Wilson, National Union of Journalists and Others v. the United Kingdom, 2002-V

Dissolution of trade union on the ground that public-sector employees were not entitled to form one

Forming and joining trade unions • Dissolution of trade union on the ground that public-sector employees were not entitled to form one • Necessary in a democratic society • Prevention of disorder • Limitation on civil servants' entitlement to form trade unions • European Social Charter

Tüm Haber Sen and Çınar v. Turkey, 2006-II

Union threatened with dissolution for defending the right to education in a mother tongue other than the official national language

Freedom of association • Union threatened with dissolution for defending the right to education in a mother tongue other than the official national language • Necessary in a democratic society • Prevention of disorder • Protection of national security • Protection of State's territorial integrity • Linguistic pluralism • No incitement to hatred • No unlawful activity • Public debate • Proportionality • Relevant and sufficient reasons

Eğitim ve Bilim Emekçileri Sendikası v. Turkey, 2012-III (extracts)

Refusal to remunerate a trade-union representative for time spent studying new legislation on trade-union elections

Freedom of association • Trade-union freedom • Refusal to remunerate a trade-union representative for time spent studying new legislation on trade-union elections • Workers' representatives • Facilities to enable trade-union representatives to perform their functions rapidly and effectively • Existence of an interference

Sánchez Navajas v. Spain (dec.), 2001-VI

Prohibition of strike organised by trade union

Freedom of association • Prohibition of strike organised by trade union • Trade

union • Protection by trade union of occupational interests of its members • Strike • Restriction on ability of trade union to protect occupational interests of its members • Protection of the rights of others • Necessary in a democratic society • Policy of privatisation • Margin of appreciation • Examination of effect of prohibition of strike on trade union's ability to protect interests of its members

UNISON v. the United Kingdom (dec.), 2002-I

Termination of strike and imposition of compulsory arbitration by government

Form and join trade unions • Protection of interests • Termination of strike and imposition of compulsory arbitration by government • Examination of victim status of trade union • Restrictions on the right to strike • Opportunity to conduct collective bargaining • Compulsory mediation • Limited exercise of the right to strike • Prescribed by law • Public safety • Rights and freedoms of others • Protection of health • Necessary in a democratic society • Effect of strike on national economy • Effect of strike on implementation of transnational agreements • Consequences of strike for health and safety and the environment • Exceptional circumstances • Margin of appreciation • Relevant and sufficient reasons • Proportionality

Federation of Offshore Workers' Trade Unions and Others v. Norway (dec.), 2002-VI

Invalidation of a clause in a collective agreement on the ground that it hindered competition

Freedom of association • Interests of members

Swedish Transport Workers' Union v. Sweden (dec.), 2004-XII (extracts)

ARTICLE 11 READ IN THE LIGHT OF ARTICLE 9

New legislation requiring established Churches to re-register in order to continue to enjoy monetary and fiscal advantages

Freedom of assembly and association • Freedom to manifest one's religion • New legislation requiring established Churches to re-register in order to continue to enjoy monetary and fiscal advantages • Interference • Deregistration of Churches • Legitimate aim • Prevention of disorder • Prevention of crime • Fraudulently obtaining financial benefits from the State • Necessary in a democratic society • Pressing social need • Positive obligations • Margin of appreciation • Legal status of religious organisations • Absence of weighty and compelling reasons for requiring re-registration • State cooperation with religious communities • Obligation of State neutrality in allocation of benefits • Absence of objective grounds for differential treatment

Magyar Keresztény Mennonita Egyház and Others v. Hungary, 2014-I (extracts)

ARTICLE 12

RIGHT TO MARRY

Impossibility for post-operative transsexual to marry person of opposite sex

Right to marry • Impossibility for post-operative transsexual to marry person of opposite sex • Men and women • Inadequacy of purely biological criteria in determining sex • Social change in relation to institution of marriage • Medical and scientific developments in the field of transsexuality • Essence of the right to marry

Christine Goodwin v. the United Kingdom [GC], 2002-VI

Absence of possibility for Turkish Cypriot of Muslim faith to contract civil marriage

Marry • Absence of possibility for Turkish Cypriot of Muslim faith to contract civil marriage • Friendly settlement providing for payment of compensation • Amendment of law

Selim v. Cyprus (friendly settlement), 2002-VI

Refusal to allow remand prisoner to marry prospective prosecution witness

Right to marry • Refusal to allow remand prisoner to marry prospective prosecution witness • Detention not legal obstacle to marriage • Absence of security risk or necessity to prevent crime and disorder • Privilege against incrimination of spouse • Absence of legal basis for ban on prisoner's right to marry during trial • No justification under Article 12 for delaying marriage of persons fulfilling statutory requirements • Arbitrariness • Proportionality

Frasik v. Poland, 2010-I (extracts)

Inability of same-sex couple to marry

Right to marry • Applicability • Inability of same-sex couple to marry • Impact of wording of Charter of Fundamental Rights of the European Union granting right to marry • Choice whether to allow same-sex couples to marry left to Contracting States

Schalk and Kopf v. Austria, 2010-IV

Requirement of certificate of approval for immigrants wishing to marry other than in the Church of England

Right to marry • Requirement of certificate of approval for immigrants wishing to

marry other than in the Church of England • Decision as to approval not based solely on genuineness of proposed marriage • Blanket prohibition on right of certain categories of person to marry • Fee levels prohibitive for persons subject to immigration control • Impairment of essence of right

O'Donoghue and Others v. the United Kingdom, 2010-VI (extracts)

Rule making full recognition of a married applicant's newly acquired gender conditional on the dissolution of the marriage

Right to marry • Post-operative transsexuals • Effects of change of gender in context of marriage • Absence of provisions allowing marriage to continue where one partner makes use of the gender recognition procedure • Margin of appreciation • Proportionality • Relevance of protection afforded by civil partnership provisions

Parry v. the United Kingdom (dec.), 2006-XV

ARTICLE 13

RIGHT TO AN EFFECTIVE REMEDY

Effective remedy – Refusal of authorities to return property to tenant after eviction order quashed

Effective remedy • Refusal of authorities to return property to tenant after eviction order quashed

Iatridis v. Greece [GC], 1999-II

Disappearance following detention by security forces and effectiveness of subsequent investigation

Effective remedy • Effectiveness of investigation into disappearance

Çakıcı v. Turkey [GC], 1999-IV

Murder by unidentified perpetrators and effectiveness of subsequent investigation

Effective remedy • Effectiveness of investigation into murder committed by unknown perpetrators

Tanrıkulu v. Turkey [GC], 1999-IV

Effective remedy – interception of a telephone call, creation and storing of a card in the card index kept by the Public Prosecutor’s Office

Effective remedy • Remedy “effective” notwithstanding dismissal of applicant’s claims

Amann v. Switzerland [GC], 2000-II

Effective remedy – storing and use by the authorities of incorrect, secretly gathered personal information

Effective remedy • Effectiveness of a remedy

Rotaru v. Romania [GC], 2000-V

Life-threatening assault by security forces and effectiveness of investigation

Effective remedy • Effectiveness of investigation into alleged assault by security forces

İlhan v. Turkey [GC], 2000-VII

Death in police custody and effectiveness of subsequent investigation

Effective remedy • Effectiveness of investigation into death in custody

Salman v. Turkey [GC], 2000-VII

Effective remedy – recognition by the authorities of one of two rival leaderships of the Muslim community

Effective remedy • Religious communities • Provision of remedies accessible only to representatives of religious community • Scope of judicial review • Non-compliance with court judgments

Hasan and Chaush v. Bulgaria [GC], 2000-XI

Right to an effective remedy in respect of a complaint concerning the length of court proceedings

Effective remedy • Examination of relevance of Article 13 in relation to Article 6 • Article 6 § 1 as *lex specialis* in relation to Article 13 • Safeguards of Article 13 absorbed by those of Article 6 § 1 • Distinct nature of complaint about length of proceedings • Review of case-law • Frequency of violations due to undue length of proceedings • Subsidiary nature of Convention protection • Right to an effective remedy in respect of complaint concerning length of court proceedings • Absence of effective remedy

Kudła v. Poland [GC], 2000-XI

Effective remedy – noise nuisance from night flights

Effective remedy • Judicial review • Scope of judicial review

Hatton and Others v. the United Kingdom [GC], 2003-VIII

Effectiveness of remedy in respect of death caused by dangerous activities

Effective remedy • Effectiveness of remedy in respect of death caused by dangerous activities • Examination of manner in which authorities discharged procedural obligation under Article 2 • Possibility of using existing remedies for obtaining redress after investigation has identified those responsible • Effectiveness of action for damages • Lack of diligence • Compensation not paid • Effectiveness of remedy in respect of destruction of property as a result of dangerous activities

Öneryıldız v. Turkey [GC], 2004-XII

Ineffectiveness of domestic remedies in respect of excessive length of judicial proceedings

Effective remedy • Remedy capable of expediting proceedings • Remedy capable of providing adequate redress for delays that have already occurred • Federal Constitutional Court not empowered to set deadlines for lower court or to award compensation • Uncertainty as to admissibility criteria and practical effect of a special complaint alleging inaction • Action for damages incapable of securing compensation for non-pecuniary damage • Ineffectiveness of combination of various domestic remedies in respect of excessive length of judicial proceedings

Sürmeli v. Germany [GC], 2006-VII

Prolonged detention of a prisoner in solitary confinement and lack of a remedy

Effective remedy • Decisions to extend prisoner's solitary confinement • Prolonged detention of a prisoner in solitary confinement and lack of a remedy • Requirements regarding effective remedy

Ramirez Sanchez v. France [GC], 2006-IX

Deficiencies of asylum procedure in Greece and risk of expulsion without proper examination of asylum application and with no access to effective remedy

Effective remedy • Deficiencies of asylum procedure in Greece and risk of expulsion without proper examination of asylum application and with no access to effective remedy • Extremely urgent procedure remedy in Belgium bound to fail

M.S.S. v. Belgium and Greece [GC], 2011-I

No accessible remedy for migrants intercepted on high seas and returned to country of departure

Effective remedy • No accessible remedy for migrants intercepted on high seas and returned to country of departure • Right to obtain sufficient information to gain effective access to procedures to prevent enforcement of removal measure • Requirement that remedy be of suspensive effect

Hirsi Jamaa and Others v. Italy [GC], 2012-II

Effective remedy – Lack of remedy enabling Security Council sanctions to be lifted for failure to respect human rights

Effective remedy • Lack of remedy enabling Security Council sanctions to be lifted for failure to respect human rights

Nada v. Switzerland [GC], 2012-V

Lack of effective remedy in respect of loss of homes and property by persons displaced in the context of the Nagorno-Karabakh conflict

Effective remedy • Lack of effective remedy in respect of loss of homes and property by persons displaced in the context of the Nagorno-Karabakh conflict

Chiragov and Others v. Armenia [GC], 2015-III

Lack of effective remedy in respect of loss of homes or property by persons displaced in the context of the Nagorno-Karabakh conflict

Effective remedy • Lack of effective remedy in respect of loss of homes or property by persons displaced in the context of the Nagorno-Karabakh conflict

Sargsyan v. Azerbaijan [GC], 2015-IV

Effectiveness of judicial review as a remedy in respect of complaint concerning privacy

Effective remedy • Judicial review • Test of irrationality applied by domestic courts precluding examination of necessity and proportionality

Smith and Grady v. the United Kingdom, 1999-VI

Effective remedy – unsolved killing of journalist whose requests for protection had not been taken seriously by the authorities

Effective remedy • Effectiveness of investigation into unsolved killing • Arguable complaint • Compensation • Complainant's access to investigation procedure

Kılıç v. Turkey, 2000-III

Unsolved murder of a doctor and effectiveness of the related investigation

Effective remedy • Effectiveness of investigation into unsolved murder • Arguable claim • Access of complainant to investigation procedure

Mahmut Kaya v. Turkey, 2000-III

Disappearance following detention by security forces and effectiveness of subsequent investigation

Effective remedy • Effectiveness of investigation into disappearance

Timurtaş v. Turkey, 2000-VI

Death in police custody and effectiveness of subsequent investigation

Effective remedy • Effectiveness of investigation into death in police custody

Velikova v. Bulgaria, 2000-VI

Effective remedy – threatened deportation to Islamic country where there is a risk of stoning for adultery

Effective remedy • Judicial review of deportation order limited to formal legality

Jabari v. Turkey, 2000-VIII

Murder by unidentified perpetrators and effectiveness of subsequent investigation

Effective remedy • Effectiveness of investigation into murder committed by unidentified perpetrators • Broader requirements of Article 13 in relation to Article 2

Akkoç v. Turkey, 2000-X

Effective remedy – failure by courts to comply with statutory time-limit for determining an appeal

Effective remedy • Failure by courts to comply with statutory time-limit for determining an appeal

Messina v. Italy (no. 2), 2000-X

Effective remedy – deportation of schizophrenic to a country where adequate medical treatment is allegedly not available

Effective remedy • Judicial review of decision to deport • Scope of review and powers of court

Bensaid v. the United Kingdom, 2001-I

Effective remedy – threatened deportation of asylum-seeker to Tanzania

Effective remedy • Judicial review of deportation decision • Scope of judicial review

Hilal v. the United Kingdom, 2001-II

Shooting by police and effectiveness of subsequent investigation

Effective remedy • Civil proceedings as remedy in respect of shooting by police

McKerr v. the United Kingdom, 2001-III

Disappearance of person held in police custody and effectiveness of the investigation into his disappearance

Effective remedy • Thorough and effective investigation enabling those responsible to be identified and punished • Effectiveness of the investigation into the disappearance of a person in police custody

İrfan Bilgin v. Turkey, 2001-VIII

Effective remedy – covert recording of voice samples of suspects at police station

Effective remedy • Effectiveness of remedies in respect of complaint that interference with the right to respect for private life not “in accordance with the law” • Domestic courts unable to deal with substance of complaint • Insufficient independence of system of investigation of complaints by Police Complaints Authority

P.G. and J.H. v. the United Kingdom, 2001-IX

Effective remedy – arrest of aliens with a view to their expulsion after requiring them to attend the police station to complete their applications for asylum

Effective remedy • Expulsion • Application for a stay of execution • Applications without suspensive effect

Čonka v. Belgium, 2002-I

Availability of effective remedy in respect of killing of detainee by mentally ill cell-mate

Effective remedy • Availability of effective remedy in respect of killing of detainee by mentally ill cell-mate • Civil proceedings • Proceedings under the Human Rights Act • Non-statutory inquiry

Paul and Audrey Edwards v. the United Kingdom, 2002-II

Murder by unidentified assailants and effectiveness of the investigation

Effective remedy • Arguable complaint • Effectiveness of the investigation into a murder by unidentified assailants

Sabuktekin v. Turkey, 2002-II

Effective remedy – unavailability of widows' allowances to widowers

Effective remedy • Absence of right to a remedy to challenge primary legislation

Willis v. the United Kingdom, 2002-IV

Effective remedy – disclosure to public of closed-circuit television footage of individual in public street

Effective remedy • Scope of judicial review • Threshold of irrationality excessively high in relation to issue of proportionality • Remedies not providing for award of damages • Action for breach of confidence

Peck v. the United Kingdom, 2003-I

Effective remedy – adequacy of medical care provided by prison authorities for heroin addict suffering withdrawal symptoms

Effective remedy • Remedies in respect of alleged lack of adequate medical care for prisoner • Importance of right to compensation for breaches of Articles 2 and 3 of the Convention

McGlinchey and Others v. the United Kingdom, 2003-V

Effectiveness of remedies available in respect of the length of proceedings

Effective remedy • Right to an effective remedy to complain of the length of judicial proceedings • Appeal to a higher authority • Constitutional appeal • Compensation claim

Hartman v. the Czech Republic, 2003-VIII (extracts)

Right to an effective remedy in respect of a complaint concerning the length of court proceedings

Effective remedy • Right to an effective remedy in respect of a complaint concerning the length of court proceedings • Remedy capable of either expediting proceedings or providing adequate redress • Examination of remedy based on constitutional rights • Absence of effective remedy

Doran v. Ireland, 2003-X (extracts)

Ill-treatment of young or pregnant prisoners in police custody and effectiveness of the investigation

Effective remedy • Obligation to conduct an effective investigation • Appearance of the defendants before the court • Medical examination • Acquittal under the statute of limitations of those accused of ill-treatment • Relevant remedies rendered ineffective by delays in the conduct of the investigation into the allegations of ill-treatment

Bati and Others v. Turkey, 2004-IV (extracts)

Effective remedy – shooting and killing of person during siege who had failed to heed police orders

Effective remedy • Arguable claim • Impossibility of obtaining compensation for non-pecuniary damage

Bubbins v. the United Kingdom, 2005-II (extracts)

Effective remedy – conditions of extradition and detention

Effective remedy • Extradition • Extradition order not served on applicants and their lawyers • Brevity of period between adoption of decision and its execution

Shamayev and Others v. Georgia and Russia, 2005-III

Effective remedy – Effectiveness of newly created statutory remedy in length-of-proceedings cases

Effective remedy • Effectiveness of newly created statutory remedy in length-of-proceedings cases • Explicit legal basis • Ability to handle actions with special diligence and attention • Adequacy of the remedy • Level of compensation • Doubts as to the functioning of the remedy • Sufficient level of certainty

Krasuski v. Poland, 2005-V (extracts)

Shortcomings of remedies to destroy security police records or to erase or rectify the information contained therein

Effective remedy • Shortcomings of remedies to destroy security police records or to erase or rectify the information contained therein • Parliamentary Ombudsperson and Chancellor of Justice lacking power to give a legally binding decision • Records Board and Data Inspection Board not competent to order destruction of files or erasure or rectification of information contained therein • No direct access to any legal remedy as regards erasure of information • Shortcomings not offset by possibility of seeking compensation from the Chancellor of Justice

Segerstedt-Wiberg and Others v. Sweden, 2006-VII

Effective remedy – forcible entry and search of house by police without taking proper steps to verify identity of the residents

Effective remedy • Action in damages against police requiring proof of malice • Absence of proportionality or reasonableness tests • Balance set in favour of police protection

Keegan v. the United Kingdom, 2006-X

Effective remedy – procedures used to strip-search visitors to a prison

Effective remedy • Absence of cause of action based on prison officers' negligence • Absence of general tort of invasion of privacy

Wainwright v. the United Kingdom, 2006-X

Effective remedy – Inability to enforce compensation awards due to absence of adequate procedures and statutory framework

Effective remedy • Inability to enforce compensation awards due to absence of adequate procedures and statutory framework

Driza v. Albania, 2007-V (extracts)

Dismissal of action for full loss suffered to property in natural disaster

Effective remedy • Dismissal of action for full loss suffered to property in natural disaster • Payments made under general scheme of emergency relief • Absence of unreasonableness or arbitrariness

Budayeva and Others v. Russia, 2008-II (extracts)

Civil action following prosecution decision not to institute criminal proceedings

Effective remedy • Civil action following prosecution decision not to institute criminal proceedings • Statutory bar on making civil claim when criminal proceedings discontinued for absence of offence • Lack of independent assessment of facts by civil court

Chember v. Russia, 2008-IV

Inability to claim compensation in respect of non-pecuniary damage sustained as a result of ill-treatment by the police

Effective Remedy • Applicability *ratione temporis* • Inability to claim compensation in respect of non-pecuniary damage sustained as a result of ill-treatment by the police

Poghosyan and Baghdasaryan v. Armenia, 2012-III

Effective remedy – Effectiveness of a remedy grounded on the Pinto Act

Effective remedy • Effectiveness of a remedy grounded on the Pinto Act

Cataldo v. Italy (dec.), 2004-VI

**Article 13 in conjunction
with Article 3****Absence of domestic remedy to establish liability of State in respect of child abuse by teacher in Church-managed school**

Effective remedy • Absence of domestic remedy to establish liability of State in respect of child abuse by teacher in Church-managed school

O’Keeffe v. Ireland
[GC], 2014-I (extracts)

Lack of remedy with automatic suspensive effect for an asylum-seeker placed in an airport waiting zone in respect of a decision refusing him leave to enter France and ordering his removal

Effective remedy • Lack of remedy with automatic suspensive effect for an asylum-seeker placed in an airport waiting zone in respect of a decision refusing him leave to enter France and ordering his removal

Gebremedhin [Gaberamadhien]
v. France, 2007-II

**Article 13 in conjunction
with Article 8****Removal order enforced within fifty minutes of application to a court for its suspension**

Effective remedy • Expulsion • Removal order enforced within fifty minutes of application to a court for its suspension • Private life • Family life • Interference • In accordance with the law • No serious examination of deportee’s objections • Existing remedies ineffective and unavailable because of speed of expulsion • Lack of justification for exceptional expulsion conditions

De Souza Ribeiro
v. France [GC], 2012-VI

ARTICLE 14

DISCRIMINATION

Article 14 in conjunction with Article 2

Duty to investigate possible racist motives in fatal shooting of two fugitives of Roma origin during attempted arrest by military police

Discrimination • Race • Ethnic origin • Alleged racist motives in shooting • Burden of proof • Duty to investigate possible racist motives in fatal shooting of two fugitives of Roma origin during attempted arrest by military police • Evidence of racist verbal abuse by law enforcement agents • Background of prejudice and hostility against Roma • Use of grossly excessive force • Plausible information sufficient to alert prosecuting authorities

Nachova and Others v. Bulgaria [GC], 2005-VII

Article 14 in conjunction with Articles 2 and 3

Failure of judicial system to provide adequate response to serious domestic violence

Discrimination • Sex • Right to equal protection of the law • Failure of judicial system to provide adequate response to serious domestic violence • Impunity

Opuz v. Turkey, 2009-III

Allegedly insufficient public funding of medical treatment and related transportation, causing the applicants suffering and jeopardising their lives

Discrimination • Patients not residing within the city limits allegedly prevented from seeking care at alternative hospital • No evidence showing that other hospital was better financed or that its patients received better treatment

Pentiacova and Others v. Moldova (dec.), 2005-I

Article 14 in conjunction with Article 3

Ill-treatment of two Roma during arrest and police custody

Discrimination • Race • Ill-treatment of two Roma during arrest and police custody • Allegation that ill-treatment was racially motivated • Not established beyond reasonable doubt that racist attitudes played a role in the applicants' treatment by police • Duty of States to unmask possible racist motives when investigating violent

incidents • General information about police abuse of Roma in Greece • Need to secure evidence and verify statements • Effectiveness of investigation as to whether discrimination may have played a role in the events

Bekos and Koutropoulos v. Greece, 2005-XIII (extracts)

Article 14 in conjunction with Article 4

Discrimination against men due to negligible percentage of women called to serve as jurors

Discrimination • Difference in treatment on ground of sex • Normal civic obligation • Discrimination against men due to negligible percentage of women called to serve as jurors • Discrimination resulting from *de facto* situation • Comparable situation • Objective and reasonable justification

Zarb Adami v. Malta, 2006-VIII

Article 14 in conjunction with Article 6

Discrimination – Exclusion of cassation appeal against conviction *in absentia* in the Netherlands Antilles

Discrimination • Exclusion of cassation appeal against conviction *in absentia* • Comparable situation • Conviction *in absentia*

Eliazer v. the Netherlands, 2001-X

Article 14 in conjunction with Article 8

Discriminatory treatment of tenants of State-owned accommodation

Discrimination • Comparable situation • Objective and reasonable justification • Margin of appreciation • Home • Landlord and tenant • Eviction by the State • Different treatment of tenants of State-owned accommodation

Larkos v. Cyprus [GC], 1999-I

Refusal to grant right of access to father of child born out of wedlock

Discrimination • Refusal to grant right of access to father of child born out of wedlock • Application of legislation distinguishing between fathers of children born out of wedlock and fathers of children born in wedlock • Less favourable position of fathers of children born out of wedlock with regard to access • Absence of weighty reasons justifying difference in treatment

Sahin v. Germany [GC], 2003-VIII

Discrimination • Refusal to grant right of access to father of child born out of wedlock • Application of legislation distinguishing between fathers of children born out of wedlock and fathers of children born in wedlock • Less favourable position of fathers of children born out of wedlock with regard to access • Absence of weighty reasons justifying difference in treatment • Restricted rights of appeal of fathers of children born out of wedlock with regard to access

Sommerfeld v. Germany [GC], 2003-VIII (extracts)

Difference in treatment between male and female military personnel regarding rights to parental leave

Discrimination • Family life • Difference in treatment between male and female military personnel regarding rights to parental leave • Difference in treatment on grounds of sex • Objective and reasonable justification • European trend towards more equal sharing of parental responsibility • Impact on operational effectiveness of armed forces • Circumstances in which restrictions on entitlement to parental leave might be justifiable • General and automatic restriction

Konstantin Markin v. Russia [GC], 2012-III (extracts)

Difference in treatment between citizens of former Yugoslav republics other than Slovenia and other aliens

Discrimination • Nationality • Difference in treatment between citizens of former Yugoslav republics other than Slovenia and other aliens • No legitimate aim • Excessive and disproportionate burden

Kurić and Others v. Slovenia [GC], 2012-IV (extracts)

Impossibility of second-parent adoption in same-sex couple

Discrimination • Impossibility of second-parent adoption in same-sex couple • Family life • Sexual orientation • Difference in treatment between same-sex couple and unmarried different-sex couple in which one partner wished to adopt the other partner's child • Comparable situation • Objective and reasonable justification • Protection of family in traditional sense • Protection of interests of child • Proportionality • Narrow margin of appreciation • Lack of evidence of detrimental impact of same-sex family on a child • Lack of coherence of domestic law • Importance of granting legal recognition to *de facto* family life

X and Others v. Austria [GC], 2013-II

Exclusion of same-sex couples from “civil unions”

Discrimination • Exclusion of same-sex couples from “civil unions” • Private life • Family life • Applicability • Situation comparable to that of different-sex couples •

Difference in treatment • Sexual orientation • Situation of children born outside marriage • Institution of marriage • Protection of the family • Proportionality • Legal recognition of same-sex relationships • Trend towards recognition in Europe

*Vallianatos and Others
v. Greece* [GC], 2013-VI (extracts)

Father refused custody of child on the ground of his homosexuality

Discrimination • Sexual orientation • Homosexuality • Father refused custody of child on the ground of his homosexuality

*Salgueiro da Silva Mouta
v. Portugal*, 1999-IX

Distinction in law between adulterine children and legitimate children with regard to inheritance rights

Discrimination • Birth • Distinction in law between adulterine children and legitimate children with regard to inheritance rights • Descent • Legitimate child • Adulterine child • Objective and reasonable justification • Proportionality • Protection of the family • Dynamic interpretation of the Convention • United Nations Convention on the Rights of the Child

Mazurek v. France, 2000-II

Exclusion from inheritance of child born out of wedlock, due to non-retroactivity of legitimation

Discrimination • Birth • Exclusion from inheritance of child born out of wedlock, due to non-retroactivity of legitimation • Family life • Inheritance • Intestate succession • Comparable situation • Children born out of wedlock • Different treatment of children recognised by natural father and children obtaining letters of legitimation • Protection of legitimate heirs • Proportionality

Camp and Bourimi v. the Netherlands, 2000-X

Unmarried homosexual refused authorisation to adopt on account of his “choice of lifestyle”

Discrimination • Unmarried homosexual refused authorisation to adopt on account of his “choice of lifestyle” • Applicability of Article 14 • Right to adopt • Private life • Sexual orientation • Difference in treatment • Protection of health and rights of children • No common approach among member States • Scope of States’ margin of appreciation • Child’s interests • Objective and reasonable justification

Fretté v. France, 2002-I

Age of consent for homosexual acts between an adult and an adolescent

Discrimination • Sexual orientation • Age of consent for homosexual acts between an adult and an adolescent • Difference of treatment based on sexual orientation • Legitimate aim • Objective and reasonable justification • Margin of appreciation • Scientific research indicating sexual orientation established before puberty • Growing consensus among member States as to equality of treatment in respect of age of consent

L. and V. v. Austria, 2003-I

Discrimination • Sexual orientation • Age of consent for homosexual acts between an adult and an adolescent • Difference of treatment based on sexual orientation • Legitimate aim • Objective and reasonable justification • Margin of appreciation • Scientific research indicating sexual orientation established before puberty • Growing consensus among member States as to equality of treatment in respect of age of consent

S.L. v. Austria, 2003-I (extracts)

Refusal to recognise homosexual as “life companion” entitled to take over deceased’s partner’s lease

Discrimination • Refusal to recognise homosexual as “life companion” entitled to take over deceased partner’s lease • Home • Sexual orientation • Protection of traditional family • Margin of appreciation • Proportionality • Absence of convincing and weighty reasons justifying difference in treatment of homosexuals

Karner v. Austria, 2003-IX

Refusal to grant custody of children to mother on account of her religion

Discrimination • Religion • Family life • Refusal to grant custody of children to mother on account of her religion • Jehovah’s Witness • Protection of children’s interests • Objective and reasonable justification • Proportionality • Relevant and sufficient reasoning • No inquiry into the children’s living conditions

Palau-Martinez v. France, 2003-XII

Refusal of inheritance claim of child born out of wedlock and not recognised by the deceased

Discrimination • Family life • Birth • Refusal of inheritance claim of child born out of wedlock and not recognised by the deceased • Refusal of courts to establish paternity • Sporadic contacts between child born out of wedlock and putative biological

father • Absence of right under Article 8 to be recognised as heir for inheritance purposes • Possibility of seeking judicial declaration of paternity

Haas v. the Netherlands, 2004-I

Adopted child prevented from inheriting estate following an interpretation by the courts of testator's intention

Discrimination • Adopted child prevented from inheriting estate following an interpretation by the courts of testatrix's intention • Family life • Succession • Child inheriting via adoptive father estate left by adoptive grandmother deceased prior to his adoption • Difference in treatment on account of birth outside marriage • Interpretation by national court of private deed • Will • General principle of law • Interpretation of the Convention in the light of present-day conditions • Interpretation by national court of legal deed blatantly inconsistent with right guaranteed by the Convention and principles underlying the Convention

Pla and Puncernau v. Andorra, 2004-VIII

Employment restrictions on former employees of the KGB

Discrimination • Private life • Employment restrictions on former employees of the KGB • Difference of treatment • Effect on private life of ban on employment in various branches of the private sector • Regulation of employment by the State • Historical background • Legitimate aims of restrictions on access to employment • Distinction between public service and private sector employment • Proportionality

Sidabras and Džiautas v. Lithuania, 2004-VIII

Obligation on married woman to bear her husband's name

Discrimination • Obligation on married woman to bear her husband's name • Private and family life • Difference in treatment on grounds of sex • Reflection of family unity • Margin of appreciation • Objective and reasonable justification

Ünal Tekeli v. Turkey, 2004-X (extracts)

Differences in ability of judicially declared father and presumed father to contest paternity in light of new evidence

Discrimination • Differences in ability of judicially declared father and presumed father to contest paternity in light of new evidence • Comparable situation • Objective and reasonable justification • No allowance under domestic law for applicant's specific circumstances

Paulík v. Slovakia, 2006-XI (extracts)

Person declared unfit for military service obliged to pay military service exemption tax

Discrimination • Other situation • Disability • Person declared unfit for military service obliged to pay military service exemption tax • Differential treatment • Comparable situation • Objective and reasonable justification • Need to foster full participation and integration in society for people with disabilities • Very narrow margin of appreciation • No exoneration for people of modest means • No provision for civilian service suitable for person with disability

Glor v. Switzerland, 2009-III

Inability of same-sex couple to marry

Discrimination • Family life • Cohabiting same-sex couple living in a stable relationship • Inability of same-sex couple to marry • Different treatment on the basis of sexual orientation • Relevantly similar situation • Area of evolving rights with no established consensus • Alternative means of legal recognition of same-sex partnership • Margin of appreciation

Schalk and Kopf v. Austria, 2010-IV

Single mother of a certain age debarred from adopting a second child

Discrimination • Single mother of a certain age debarred from adopting a second child • Private and family life • Applicability • Similar situation • Legitimate aim to protect child's well-being and rights • Significant age difference • Child's best interests • Wide margin of appreciation in absence of European consensus • Lack of arbitrariness • Proportionality

Schwizgebel v. Switzerland, 2010-V (extracts)

Difference in treatment of HIV-positive alien regarding application for residence permit

Discrimination • Difference in treatment of HIV-positive alien regarding application for residence permit • Applicability • Family life • Health status • Comparable situation • Particularly vulnerable group • State's narrow margin of appreciation • European consensus • Objective and reasonable justification • Protection of public health • Proportionality • Absence of economic considerations for exclusion of HIV-positive applicants from residence • Blanket and indiscriminate nature of impugned measure • Lack of individualised assessment • Failure to take into account applicant's state of health and family ties in Russia

Kiyutin v. Russia, 2011-II

Refusal to take minor subject to immigration control into account when determining priority in entitlement to social housing

Discrimination • Refusal to take minor subject to immigration control into account when determining priority in entitlement to social housing • Home • Family life • “Other status” • Conditional immigration status • Reasonable and objective justification • Margin of appreciation • Legitimate aim • Leave to enter on condition of no recourse to public funds • Fair allocation of scarce resources between different categories of claimant with priority needs • Absence of actual prejudice

Bah v. the United Kingdom, 2011-VI

Difference in treatment between remand and convicted prisoners regarding visits and access to television

Discrimination • Difference in treatment between remand and convicted prisoners regarding visits and access to television • “Other status” • Relevantly similar situation • Objective and reasonable justification • Restrictions imposed on class of prisoners • Proportionality

Laduna v. Slovakia, 2011-VI

Refusal of simple adoption order in favour of homosexual partner of biological mother

Discrimination • Family life • Refusal of simple adoption order in favour of homosexual partner of biological mother • Transfer of parental responsibility for the child to the adoptive parent, depriving the biological mother of her rights • Comparable legal situation • Sexual orientation

Gas and Dubois v. France, 2012-II

Dismissal of HIV-infected person owing to pressure exerted by his colleagues

Discrimination • Private life • Dismissal of HIV-infected person owing to pressure exerted by his colleagues • Less favourable treatment solely on account of HIV-positive status with no effect on capacity to carry out the work • Narrow margin of appreciation • Inadequate grounds for domestic courts’ decisions

I.B. v. Greece, 2013-V

Difference in treatment between tenants of privately owned flats and tenants of State-owned flats

Discrimination • Difference in treatment between tenants of privately owned flats

and tenants of State-owned flats • Comparable situation • Objective and reasonable justification

Strunjak and Others v. Croatia (dec.), 2000-X

Refusal to grant statutory surviving spouse's pension to survivor of homosexual couple

Discrimination • Sexual orientation • Refusal to grant statutory surviving spouse's pension to survivor of homosexual couple • Objective and reasonable justification • Legitimate aim of protection of the family based on marriage bonds • Difference in treatment falling within margin of appreciation • Lack of discriminatory interference with private life

Mata Estevez v. Spain (dec.), 2001-VI

Article 14 in conjunction with Article 8 or Article 9

Ban on wearing of religious clothing concealing the face in public places

Discrimination • Ban on wearing of religious clothing concealing the face in public places • Objective and reasonable justification

S.A.S. v. France [GC], 2014-III (extracts)

Article 14 in conjunction with Article 9

Exclusion from liberal profession on account of previous conviction for having refused, on religious grounds, to wear a military uniform

Discrimination • Exclusion from liberal profession on account of previous conviction for having refused, on religious grounds, to wear a military uniform • Freedom of religion • Conscientious objection • Obligation to ensure different treatment of persons in different situations • Comparable situation • Legitimate aim • Nature of offence not implying dishonesty or moral turpitude • Objective and reasonable justification

Thlimmenos v. Greece [GC], 2000-IV

Religious body refused the approval it needed to be able to practise ritual slaughter in accordance with the religious prescriptions of its members

Discrimination • Religious body refused the approval it needed to be able to practise

ritual slaughter in accordance with the religious prescriptions of its members • Difference in treatment • Objective and reasonable justification

Cha'are Shalom Ve Tsedek v. France, 2000-VII

Requirement of certificate of approval for immigrants wishing to marry other than in the Church of England

Discrimination • Religion • Difference in treatment • Requirement of certificate of approval for immigrants wishing to marry other than in the Church of England • Absence of objective and reasonable justification

O'Donoghue and Others v. the United Kingdom, 2010-VI (extracts)

Disciplinary measures against employees for wearing religious symbols (cross) at work or refusing to perform duties they considered incompatible with their religious beliefs

Freedom of religion • Manifest religion or belief • Manifestation of religion or belief in the workplace • Disciplinary measures against employees for wearing religious symbols (cross) at work or refusing to perform duties they considered incompatible with their religious beliefs • Interference • Positive obligations • Discrimination • Absence of specific legislation regulating wearing of religious clothes and signs in the workplace • Legitimate aim • Proportionality • Margin of appreciation • Competing interests • Relevance of nature of aim pursued by measure restricting right to manifest religion to question of proportionality

Eweida and Others v. the United Kingdom, 2013-I (extracts)

Inability of members of a Protestant Church to exercise the option available to members of the Catholic Church to allocate part of their income tax to the support of their Church

Discrimination • Religion • Inability of members of a Protestant Church to exercise the option available to members of the Catholic Church to allocate part of their income tax to the support of their Church • Financing of Churches and religions • Agreements whereby a State grants an individual Church special tax status • Objective and reasonable justification • Relations between the State and religions • Margin of appreciation • Common European standard governing the financing of Churches or religions

Alujer Fernández and Caballero García v. Spain (dec.), 2001-VI

Article 14 in conjunction with Articles 10 and 11

Constitutional prohibition on police officers engaging in political activities and joining political parties

Discrimination • Police officers • Prohibition on political activities of police officers • Prohibition on police officers joining political parties • Objective and reasonable justification

Rekvényi v. Hungary [GC], 1999-III

Article 14 in conjunction with Article 11

Landowners opposed to hunting unable to obtain exemption from statutory obligation to transfer hunting rights over their land to their local municipal hunters' association and to join the association

Discrimination • Property • Different treatment according to size of properties • Objective and reasonable justification

Chassagnou and Others v. France [GC], 1999-III

State's failure to afford effective judicial protection against discrimination on the ground of trade-union membership

Discrimination • State's failure to afford effective judicial protection against discrimination on the ground of trade-union membership • Freedom of association • Form and join trade unions • Positive obligations • Techniques to induce employees to relinquish trade-union membership • Prima facie case of discrimination • State protection granted only in respect of one-off measures by employer • Denial of access to civil remedy • Deficiency of criminal remedy • Chilling effect of discrimination on freedom of association

Danilenkov and Others v. Russia, 2009-III (extracts)

Article 14 in conjunction with Article 12

Requirement of certificate of approval for immigrants wishing to marry other than in the Church of England

Discrimination • Religion • Difference in treatment • Requirement of certificate of approval for immigrants wishing to marry other than in the Church of England • Absence of objective and reasonable justification

O'Donoghue and Others v. the United Kingdom, 2010-VI (extracts)

Article 14 in conjunction with Article 1 of Protocol No. 1

Obligation to transfer property without compensation after reunification of Germany

Difference of treatment • Legislation relating to liquidation of land reform • Objective and reasonable justification • Margin of appreciation • Exceptional context: reunification of Germany

Jahn and Others v. Germany [GC], 2005-VI

Differences in entitlement for men and women to certain social security benefits

Discrimination • Sex • Differences in entitlement for men and women to certain social security benefits • Objective and reasonable justification • Peaceful enjoyment of possessions • Earnings-related benefit under social security system • Differential pensionable age • Legitimate aim • Disadvantaged economic position of women because of shorter working life • Change in social conditions • Margin of appreciation • Absence of common standard amongst the Contracting States • Gradual move towards single pensionable age

Stec and Others v. the United Kingdom [GC], 2006-VI

No exemption from inheritance tax outside marriage or civil partnership

Discrimination • Other situation • No exemption from inheritance tax outside marriage or civil partnership • Long-term cohabitation of sisters • Comparable situation • Relationships of a different nature • No legally binding agreement

Burden v. the United Kingdom [GC], 2008-III

Refusal to take applicant's years of employment in former Soviet Union into account when calculating her entitlement to retirement pension because she did not have Latvian citizenship

Applicability • Pecuniary claim falling within ambit of Article 1 of Protocol No. 1 • Discrimination • Refusal to take applicant's years of employment in former Soviet Union into account when calculating her entitlement to retirement pension because she did not have Latvian citizenship • Nationality • Permanently resident non-citizen • Objectively similar situation • Protection of the economic system • Objective and reasonable justification • Absence of very weighty reasons

Andrejeva v. Latvia [GC], 2009-II

Refusal of index-linking for pensioners resident in overseas countries which had no reciprocal arrangements with the United Kingdom

Discrimination • Scope • Legislation providing for welfare benefits or pension • Other status • Place of residence • Refusal of index-linking for pensioners resident in overseas countries which had no reciprocal arrangements with the United Kingdom • Absence of relevantly similar position with persons making private pension contributions, residents or pensioners living in countries with reciprocal arrangements

Carson and Others v. the United Kingdom [GC], 2010-II

Refusal to take work performed in prison into account in calculation of pension rights

Discrimination • Peaceful enjoyment of possessions • Refusal to take work performed in prison into account in calculation of pension rights • Relevantly similar situation of working prisoners and ordinary employees in respect of affiliation to old-age pension system • Difference in treatment • Objective and reasonable justification • Legitimate aim • Preserving the economic efficiency and overall consistency of the old-age pension system • No European consensus on social security for prisoners • European Prison Rules • Wide margin of appreciation in State's general choice of economic and social policy

Stummer v. Austria [GC], 2011-V

Difference in treatment for inheritance purposes between child born outside and child born within marriage

Discrimination • Peaceful enjoyment of property • Difference in treatment for inheritance purposes between child born outside and child born within marriage • Applicability • Birth • Reform of inheritance law • Transitional measures guaranteeing rights acquired by third parties • Imperative of equality of treatment • Recognition of unchallenged rights • Proportionality • Legitimate aim • Objective and reasonable justification • General measures

Fabris v. France [GC], 2013-I (extracts)

Exclusion of non-nationals from right to claim restitution of property

Discrimination • Nationality • Exclusion of non-nationals from right to claim restitution of property • Complementary nature of Article 14 • Facts not falling within the scope of a substantive provision

Gratzinger and Gratzingerova v. the Czech Republic (dec.) [GC], 2002-VII

Differing entitlement of men and women to certain social security benefits of a non-contributory nature

Discrimination • Sex • Differing entitlement of men and women to certain social security benefits of a non-contributory nature • Possessions • Non-contributory benefit funded by general taxation • Enforceable right under domestic law to a welfare benefit • Distinction in the Court's case-law between contributory and non-contributory benefits no longer justified

Stec and Others v. the United Kingdom (dec.) [GC], 2005-X

Distinction in law between adulterine children and legitimate children with regard to inheritance rights

Deprivation of property • Inheritance • Distinction in law between adulterine children and legitimate children with regard to inheritance rights

Mazurek v. France, 2000-II

Discriminatory treatment of married women under pensions legislation

Discrimination • Sex • Discriminatory treatment of married women under pensions legislation • Pension • Prevailing social attitudes • International obligations • Absence of retroactive effect of legislation reflecting changes in social attitudes • Objective and reasonable justification

Wessels-Bergervoet v. the Netherlands, 2002-IV

Unavailability of widows' allowances to widowers

Discrimination • Sex • Unavailability of widows' allowances to widowers • Social security • Contributory benefits • Pecuniary right falling within ambit of Article 1 of Protocol No. 1 • Reasonable and objective justification • Speculative right to a pension

Willis v. the United Kingdom, 2002-IV

Refusal to award allowance for disabled adults to foreign national

Discrimination • Refusal to award allowance for disabled adults to foreign national • Possessions • Non-contributory benefits • Allowance for disabled adult • Pecuniary right • Statutory conditions for award of social benefit • Nationality conditions • Reciprocity conditions • Like situation • Objective and reasonable justification • Obligation to secure Convention rights to "everyone"

Koua Poirrez v. France, 2003-X

Refusal to recognise validity of Roma marriage for purposes of entitlement to survivor's pension

Discrimination • Refusal to recognise validity of Roma marriage for purposes of entitlement to survivor's pension • National minority • Peaceful enjoyment of possessions • Collective beliefs of a culturally well-defined community • International consensus • Obligation to take account of specificities of persons belonging to national minorities • Applicant's good faith as to validity of her marriage • Inconsistent attitude of authorities • Disproportionate difference in treatment

Muñoz Díaz v. Spain, 2009-VI

Loss of veteran status and of entitlement to special allowance attached thereto

Peaceful enjoyment of possessions • Possessions • Contributory benefits • Pension • Special allowance attached to status of veteran • Discrimination • Loss of veteran status on account of previous involvement in communist security services • Objective and reasonable justification • Regulation of system of exceptional privileges

Domalewski v. Poland (dec.), 1999-V

Revocation of a professional appointment made in the GDR during the transitional period preceding Germany's reunification

Difference of treatment • Objective and reasonable justification • Margin of appreciation • Exceptional context: Germany's reunification

Olbertz v. Germany (dec.), 1999-V

Application of the principle that male heirs take precedence over female heirs in the transmission of nobiliary titles

Possessions • No right to acquire possessions by succession • Legitimate expectation of acquiring a possession • Nobiliary titles • Hope of exploiting a nobiliary title for commercial purposes by a person who is not the holder

De la Cierva Osorio de Moscoso and Others v. Spain (dec.), 1999-VII

Reduction of military pension of former officer in Yugoslav People's Army following dissolution of Socialist Federal Republic of Yugoslavia

Peaceful enjoyment of possessions • Possessions • Contributory benefits • Pension • Reduction of military pension of former officer in Yugoslav People's Army following dissolution of Socialist Federal Republic of Yugoslavia • Margin of appreciation in matters of social policy • No impairment of essence of pension rights • Discrimination

Janković v. Croatia (dec.), 2000-X

No compensation in full for repatriated French nationals dispossessed of their property

Discrimination • Capping of compensation • Margin of appreciation • Objective and reasonable justification

Teytaud and Others v. France (dec.), 2001-I

No readjustment of pension rights for transitional period after German reunification

Difference in treatment • Right to peaceful enjoyment of possessions • No readjustment of pension rights for transitional period after German reunification • Possessions • Pension • Rights deriving from payment of contributions • Objective and reasonable justification • Margin of appreciation • Exceptional context: German reunification

Kuna v. Germany (dec.), 2001-V

Refusal to pay “head of the family” service allowance to servicewoman married to serviceman

Discrimination • Sex • Refusal to pay “head of the family” service allowance to servicewoman married to serviceman • Service allowance • Pecuniary right • Rule against payment of higher family allowance to both spouses • Other situation • Retrospective legalising Act • Difference of treatment • Legitimate aim • Objective and reasonable justification

Duchez v. France (dec.), 2002-VIII

**Article 14 in conjunction
with Article 2 of Protocol No. 1**

Placement of Roma children in “special” schools

Discrimination • Right to education • Placement of Roma children in “special” schools • Disadvantaged minority requiring special protection • Disproportionately large number of Roma children in special schools • Presumption of indirect discrimination • Lack of objective and reasonable justification • Whether parents can waive Convention right where it is not in public interest for them to do so • Absence of adequate safeguards in schooling arrangements • More basic curriculum than that followed in ordinary schools • Isolation from the wider population

D.H. and Others v. the Czech Republic [GC], 2007-IV

Placement of Roma children in Roma-only classes owing to their allegedly poor command of the Croatian language

Discrimination • Race • Right to education • Placement of Roma children in Roma-only classes owing to their allegedly poor command of the Croatian language • Insufficient safeguards in schooling arrangements for special needs of a disadvantaged group • No clear or transparent criteria for transfer to mixed classes • Margin of appreciation

Oršuš and Others v. Croatia [GC], 2010-II

Requirement for aliens without permanent residence to pay secondary-school fees

Discrimination • Requirement for aliens without permanent residence to pay secondary-school fees • Applicability • Objective and reasonable justification • Reduced margin of appreciation in sphere of secondary education • Legitimacy of restrictions on provision of free public services for immigrants • Special role of education • Proportionality

Ponomaryovi v. Bulgaria, 2011-III

**Article 14 in conjunction
with Article 3 of Protocol No. 1**

Ineligibility of members of certain minority communities for political office

Discrimination • Race • Ineligibility of members of certain minority communities for political office • Parliamentary elections • Restoration of peace • Post-conflict society • Council of Europe standards regarding electoral legislation • Objective and reasonable justification

Sejdić and Finci v. Bosnia and Herzegovina [GC], 2009-VI

Refusal to register Turkish Cypriot in Greek-Cypriot electoral roll

Discrimination • Refusal to register Turkish Cypriot in Greek-Cypriot electoral roll • Reasonable and objective grounds for difference in treatment

Aziz v. Cyprus, 2004-V

Refusal of State funding to a political party that did not obtain the statutory 7% minimum share of the vote

Discrimination • Refusal of State funding to a political party that did not obtain the statutory 7% minimum share of the vote • Difference in treatment • Exercise of

electoral rights • Free expression of opinion of the people • Dissemination of political opinions • Public funding for political parties • Equitable allocation system • Political pluralism • Need to prevent excessive and dysfunctional fragmentation of candidacies • Proportionality • Objective and reasonable justification • No monopoly on funding • Failure of applicant party to secure a minimum of electoral support • Significant share of vote • Compensatory effect of other State corrective mechanisms

Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey, 2012-III

Article 14 in conjunction with Article 2 of Protocol No. 4

Chechen prevented from crossing administrative border between two republics of the Russian Federation

Discrimination • Ethnic origin • Race • Objective and reasonable justification • Racial discrimination • Chechen prevented from crossing administrative border between two republics of the Russian Federation • No differential treatment based on ethnicity capable of being justified in a contemporary democratic society

Timishev v. Russia, 2005-XII

ARTICLE 15

DEROGATION IN TIME OF EMERGENCY

Validity of derogation in respect of powers to detain foreign nationals suspected of terrorism

Derogation in time of emergency • Validity of derogation in respect of powers to detain foreign nationals suspected of terrorism • Public emergency • Threat to the life of the nation • Margin of appreciation • Extent strictly required by situation • Indefinite detention without charge • Unjustified discrimination between nationals and non-nationals

A. and Others v. the United Kingdom [GC], 2009-II

ARTICLE 17

PROHIBITION OF ABUSE OF RIGHTS

Dissolution of association on account of demonstration that was not declared unlawful and did not lead to violence

Prohibition of abuse of rights • Destruction of rights and freedoms • Dissolution

of association on account of demonstration that was not declared unlawful and did not lead to violence

Vona v. Hungary, 2013-IV

Conviction of a writer for denial of crimes against humanity

Freedom of expression • Conviction of a writer for denial of crimes against humanity • Destruction of rights and freedoms • Limits on freedom of expression • Negation or revision of clearly established historical facts • Breaches of fundamental values of the Convention • Use of right guaranteed by the Convention for purposes contrary to text and spirit of the Convention

Garaudy v. France (dec.), 2003-IX (extracts)

Prohibition on formation of association with objectives contrary to the Convention

Freedom of association • Prohibition on formation of association with objectives contrary to the Convention • Destruction of rights and freedoms • Anti-Semitic statements in memorandum of association • Use of right guaranteed by the Convention for purposes contrary to the text and spirit of the Convention

W.P. and Others v. Poland (dec.), 2004-VII (extracts)

Conviction for publicly displaying signs of hostility towards a religious group

Destruction of rights and freedoms • Freedom of expression • Discrimination • Religion • Conviction for publicly displaying signs of hostility towards a religious group • Form of expression incompatible with values proclaimed and guaranteed by the Convention

Norwood v. the United Kingdom (dec.), 2004-XI

Conviction of comedian for conveying negationist and anti-Semitic ideas during show

Freedom of expression • Prohibition of abuse of rights • Conviction of comedian for conveying negationist and anti-Semitic ideas during show • Demonstration of hatred and anti-Semitism • Holocaust denial • Ideology at odds with fundamental Convention values of justice and peace and not to be treated as entertainment, however satirical or provocative • Applicability of Article 17 • Inability to enjoy protection of Article 10

M'Bala M'Bala v. France (dec.), 2015-VIII (extracts)

ARTICLE 18**LIMITATIONS ON USE OF RESTRICTIONS ON RIGHTS****Detention for purpose of intimidation**

Restrictions for unauthorised purposes • Detention for purpose of intimidation • Offer by government minister to drop criminal charges in exchange for sale of detainee's company to State-controlled monopoly • Detention for reasons alien to Article 5

Gusinskiy v. Russia, 2004-IV

ARTICLE 34**VICTIM****Victim – conviction of a journalist for criminal libel**

Victim • National judgment not providing adequate redress • No implied or express acknowledgment of the violation by the national authorities

Dalban v. Romania [GC], 1999-VI

Victim – quashing of a final judicial decision, already executed, whereby a property nationalised under the communist regime had been returned to owner

Victim • Obligation on authorities to acknowledge and redress breaches of the Convention

Brumărescu v. Romania [GC], 1999-VII

Victim – Voluntary dissolution of political party in anticipation of dissolution by the Constitutional Court

Victim • Voluntary dissolution of political party in anticipation of dissolution by the Constitutional Court • Threat of adverse consequences

Freedom and Democracy Party (ÖZDEP) v. Turkey [GC], 1999-VIII

Victim – length of detention pending trial

Victim • Standing as a victim • Compensation awarded after acquittal for unjustified detention does not amount to an acknowledgment that the length of detention was unreasonable

Labita v. Italy [GC], 2000-IV

Victim – storing and use by the authorities of incorrect, secretly gathered personal information

Victim • Whether applicant a victim • Partial redress

Rotaru v. Romania [GC], 2000-V

Victim – life-threatening assault by security forces and effectiveness of investigation

Victim • *Actio popularis* • Application on behalf of victim of alleged violation • Failure to name victim as applicant • Representation of applicant • Consent of victim to introduction of application • Participation of victim in proceedings before the Commission • Absence of conflict of interest • Special considerations when victim suffering from after-effects of ill-treatment

İlhan v. Turkey [GC], 2000-VII

Compensation awarded following use of domestic remedy open to victims of excessively long proceedings

Victim • Context particular to length-of-proceedings cases • Scales established for awards under Article 41 • Compensation awarded following use of domestic remedy open to victims of excessively long proceedings • Link between victim status and effectiveness of domestic remedy • Advantage of remedy designed to expedite proceedings over purely compensatory remedy • Consequences to be drawn by Court from introduction of domestic remedy • Case of purely compensatory remedy • Wide margin of appreciation of State • Principle of subsidiarity • Characteristics of appropriate and sufficient redress • Maximum period of time for paying compensation • Reasonable-time requirement applicable to compensatory remedy itself • Amount of compensation awarded at end of domestic proceedings • Pecuniary damage • Non-pecuniary damage • Presumption of non-pecuniary damage in event of excessive length • Case of State affording various remedies for excessive length • Amounts that are not unreasonable compared with those awarded by Strasbourg Court in similar cases

Scordino v. Italy (no. 1) [GC], 2006-V

Cocchiarella v. Italy [GC], 2006-V

Musci v. Italy [GC], 2006-V (extracts)

Victim – People who risk being directly affected by legislation

Victim • No exemption from inheritance tax outside marriage or civil partnership • People who risk being directly affected by legislation • Real risk

Burden v. the United Kingdom [GC], 2008-III

Application introduced on behalf of applicant's sister, who had died while her constitutional claim concerning the alleged breach of her right to a fair trial was pending

Victim • Application introduced on behalf of applicant's sister, who had died while her constitutional claim concerning the alleged breach of her right to a fair trial was pending • Applicant allowed to intervene in the proceedings by domestic courts • Patrimonial interest to recover costs • Case raising important question of general interest

Micallef v. Malta [GC], 2009-V

Insufficient redress for threats of physical harm during police interrogation

Victim • Loss of victim status • Insufficient redress for threats of physical harm during police interrogation • Acknowledgment by national authorities of inhuman treatment but without compensation or adequate punishment of offenders

Gäfgen v. Germany [GC], 2010-IV

Standing of non-governmental organisation to lodge application on behalf of deceased mental patient

Locus standi • Standing of non-governmental organisation to lodge application on behalf of deceased mental patient • Victim • Absence of direct or indirect victim status • Exceptional circumstances justifying grant of standing to *de facto* legal representative • Person in state of extreme vulnerability, incapable of initiating proceedings by himself, with no next of kin and without proper legal support and advice

Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], 2014-V

***Locus standi* of deceased applicant's universal heir**

Locus standi • *Locus standi* of deceased applicant's universal heir • Matter of applicant's inheritance not resolved at domestic level

Malhous v. the Czech Republic (dec.) [GC], 2000-XII

Victim – Quashing of fine imposed by European Commission

Victim • Quashing of fine imposed by European Commission • Absence of reasonable and convincing evidence of likelihood of violation

Senator Lines GmbH v. 15 member States of the European Union (dec.) [GC], 2004-IV

User of mobile phone complaining of system of secret surveillance without effective domestic remedies

Victim • User of mobile phone complaining of system of secret surveillance without effective domestic remedies • Conditions under which an applicant can claim to be a victim of a violation of Article 8 without having to prove that secret surveillance measures had in fact been applied to him • Need to prevent secret surveillance measures from being effectively unchallengeable and outside supervision by domestic courts and the Court • Applicant affected by legislation permitting secret surveillance measures • Availability and effectiveness of domestic remedies • Degree of Court's scrutiny dependent on effectiveness of domestic remedies • Exception to rule denying individuals the right to challenge law *in abstracto*

Roman Zakharov v. Russia [GC], 2015-VIII

Victim – Resettlement of asylum-seekers in a third country

Victim • Resettlement of asylum-seekers in a third country • Alleged risk of death, torture and break-up of family in the event of deportation

G.H.H. and Others v. Turkey, 2000-VIII

Victim – Accused considered to be guilty and liable to penalties by trial court in its reasoning, although no penalty was imposed

Victim • Accused considered to be guilty and liable to penalties by trial court in its reasoning, although no penalty was imposed • Reasoning in the decision indissociable from the operative provisions • Absence of reparation for alleged violation

Guisset v. France, 2000-IX

Victim – murder by unidentified perpetrators and effectiveness of subsequent investigation

Victim • Quashing of disciplinary sanction imposed on teacher in respect of statement made to press • Length of disciplinary proceedings • Absence of compensation • Lack of causal link between sanction and identifiable prejudice

Akkoç v. Turkey, 2000-X

Victim – age of consent for homosexual acts between an adult and an adolescent

Victim • Prohibition on homosexual acts between an adult and an adolescent • Repeal of impugned provision • Direct effect of provision on applicant until date of majority • Absence of acknowledgment of violation and absence of redress

S.L. v. Austria, 2003-I (extracts)

Victim – minister’s opinion considered binding by a court

Victim • Examination of whether applicant still a “victim” • Lack of explicit or implicit acknowledgment by national authorities and courts of alleged violation • Partial redress for alleged violation

Chevol v. France, 2003-III

Victim – non-compliance with rules on participation of lay judges in criminal trials

Victim • Quashing of conviction • Absence of examination of alleged violation • Absence of acknowledgement of violation

Posokhov v. Russia, 2003-IV

Locus standi of former chairman and majority shareholder of bank placed under compulsory administration

Locus standi • *Locus standi* of former chairman and majority shareholder of bank placed under compulsory administration • Access to a court • Exceptional circumstances entitling former chairman and majority shareholder of bank placed under compulsory administration to lodge an application on the bank’s behalf

Credit and Industrial Bank v. the Czech Republic, 2003-XI (extracts)

Victim – Association established to defend its members’ interests

Victim • Association established to defend its members’ interests • Recognition of victim status for association and its members • Evolutive interpretation of concept of “victim”

Gorraiz Lizarraga and Others v. Spain, 2004-III

Victim – obligation on married woman to bear her husband’s name

Victim • Married woman • Obligation to change name

Ünal Tekeli v. Turkey, 2004-X (extracts)

Victim – independence and impartiality of maritime chambers

Victim • Applicants directly affected • Possible harm to good reputation

Brudnicka and Others v. Poland, 2005-II

Victim – upholding of viewers’ complaints about history programme broadcast on a State-owned television channel

Victim • Act with only temporary legal effects sufficient for recognition as victim •

Measure directed against applicant's employer but with significant impact on his own job security

Monnat v. Switzerland, 2006-X

Victim requirement fulfilled by State-owned company operating with legal and financial independence

Right of petition • Non-governmental organisation • Victim • *Locus standi* • *Ratione personae* • Victim requirement fulfilled by State-owned company operating with legal and financial independence

Islamic Republic of Iran Shipping Lines v. Turkey, 2007-V

Victim – Wholesale blocking of access to YouTube, of which the applicants were active users

Victim • Wholesale blocking of access to YouTube, of which the applicants were active users • Status of active user of a website • Applicants' rights affected even though they were not directly targeted by blocking order

Cengiz and Others v. Turkey, 2015-VIII

Foreign national with a temporary residence permit not able to be regarded as a victim

Victim • Deportation • Refusal of permanent residence permit • Foreign national with a temporary residence permit not to be regarded as a victim

Maaouia v. France (dec.), 1999-II

***Locus standi* of unmarried person in respect of death of cohabitant**

Victim • *Locus standi* • *Locus standi* of unmarried person in respect of death of cohabitant

Velikova v. Bulgaria (dec.), 1999-V

Victim – applicants complaining of an infringement of their right to respect for private and family life and their homes on account of nuisances caused by steelworks

Victim of a violation • Non-governmental organisation • Problems which can be encountered only by natural persons • Prevention of a violation • Exceptional circumstances in which the risk of a future violation may confer the status of victim • Risks inherent in an industrial activity • No serious infringement of the principle of

precaution • No evidence of the existence and intensity of the nuisances allegedly caused by an industrial activity

Asselbourg and Others v. Luxembourg (dec.), 1999-VI

Governmental organisation – *Locus standi* of a municipal section and its board of management

Locus standi • Governmental organisation • *Locus standi* of a municipal section and its board of management • Public-law entity sharing in exercise of public authority • Management of collective property and rights in the general interest • Group of individuals • Management of collective interests not reducible to sum of common individual interests

Municipal Section of Antilly v. France (dec.), 1999-VIII

Victim – Applicant complaining about legislation which does not directly affect him

Victim • *Locus standi* • *Actio popularis* • Applicant complaining about legislation which does not directly affect him

Očić v. Croatia (dec.), 1999-VIII

Victim – Acceptance by applicant of compensation for the killing of her husband by soldiers

Victim • Payment of compensation for unjustified use of lethal force • Acceptance by applicant of compensation for the killing of her husband by soldiers • Adequacy of compensation • Voluntary nature of settlement of civil claim • Alleged insufficiency of domestic standard of lawfulness of use of force • Alleged administrative practice

Caraher v. the United Kingdom (dec.), 2000-I

Victim – Payment of compensation without acknowledgment of violation

Victim • Payment of compensation without acknowledgment of violation

Aydın v. Turkey (dec.), 2000-III

Shareholder of a limited liability company cannot claim to be a victim of the length of proceedings to which only the company is a party

Victim • Civil proceedings • Reasonable time • Shareholder of limited liability company cannot claim to be victim of length of proceedings to which only company was party

F. Santos, Lda., and Fachadas v. Portugal (dec.), 2000-X

Victim – Acceptance by applicants of compensation for the shooting of their brother by police officers

Victim • Payment of compensation for death resulting from use of force • Acceptance by applicants of compensation for the shooting of their brother by police officers • Settlement of civil claim “without prejudice” to application to the Court • Absence of any element of abuse in settlement • Absence of allegation of insufficient legal protection or of administrative practice

Hay v. the United Kingdom (dec.), 2000-XI

Victim – Heir unable to continue legal proceedings instituted by person since deceased for recognition of right to euthanasia

Victim • *Locus standi* • Heir unable to continue legal proceedings instituted by person since deceased for recognition of right to euthanasia • Succession to legal proceedings • *Amparo* appeal • Non-transferable rights • Euthanasia

Sanles Sanles v. Spain (dec.), 2000-XI

Governmental organisation – Standing of a local authority

Standing • Governmental organisation • Standing of a local authority • National authority exercising public functions • Decentralised authority • Group of individuals

Ayuntamiento de Mula v. Spain (dec.), 2001-I

Victim status of foreign national in respect of whom exclusion order had expired

Victim • Deportation • Exclusion order • Victim status of foreign national in respect of whom exclusion order had expired

Hamaïdi v. France (dec.), 2001-V

Victim – Payment of compensation awarded ten years earlier

Victim • Payment of compensation awarded ten years earlier • Non-enforcement of court orders • Absence of acknowledgement of violation • Absence of redress

Burdov v. Russia (dec.), 2001-VI

Victim – Reduction of sentence by appellate court, partly on account of the length of the proceedings

Victim • Reduction of sentence by appellate court, partly on account of the length of the proceedings

Jensen v. Denmark (dec.), 2001-X

Victim – Association complaining of parliamentary report and of law on sects

Victim • Association complaining of parliamentary report and of law on sects • Parliamentary report of no legal effect • Impugned measures not directly based on report in issue • Potential victim • Legislation not directly affecting an association

Fédération chrétienne des témoins de Jéhovah de France v. France (dec.), 2001-XI

Victim – search of residential premises during an investigation into an alleged tax fraud by companies

Victim • Standing as a victim • Individual • Search of the applicant's home, which also served as the head office of a company the applicant controlled

Keslassy v. France (dec.), 2002-I

Victim – Acquittal of journalists on account of inapplicability to press of criminal provision under which they had been charged

Victim • Acquittal of journalists on account of inapplicability to press of criminal provision under which they had been charged • Challenge to legal provision • Direct effects of legislation • Journalist • No risk of prosecution

Roșca Stănescu and Ardeleanu v. Romania (dec.), 2002-III

Victim – Decision of criminal appeal court to reduce costs order and not to increase sentence, on account of the length of the proceedings

Victim • Decision of criminal appeal court to reduce costs order and not to increase sentence, on account of the length of the proceedings

Wejrup v. Denmark (dec.), 2002-IV

Victim – Associations and their spokespersons complaining of common positions adopted by the European Union

Victim • Associations and their spokespersons complaining of common positions adopted by the European Union • Applicability of the case-law principles on victim status to acts emanating from an international legal order • Direct or potential victim • No legally binding obligations for applicants • No particular measures applied to them • National or international judicial review

Segi and Gestoras Pro-Amnistía v. 15 member States of the European Union (dec.), 2002-V

Victim – inability to withdraw amounts indexed to savings deposits

Victim • Personal interest • Applicants directly and personally affected

Gayduk and Others v. Ukraine (dec.), 2002-VI

Victim – Insufficient amount of compensation awarded by domestic courts for non-pecuniary damage

Victim • Standing as “victim” • Insufficient amount of compensation awarded by domestic courts for non-pecuniary damage • Excessive length of proceedings • Acknowledgment of violation and payment of compensation under domestic law • Margin of appreciation • Obligation to comply with the Court’s case-law

Scordino v. Italy (dec.), 2003-IV

Locus standi of person acting in defence of municipal interests

Locus standi • *Locus standi* of person acting in defence of municipal interests • Municipality • Governmental organisation • Public-law entity

Breisacher v. France (dec.), 2003-X

Victim – Non-governmental organisation – National radio broadcasting company

Victim • Non-governmental organisation • National radio broadcasting company • Legal persons other than territorial authorities • Concept of governmental organisation • Analysis of the position of national radio broadcasting company *vis-à-vis* the State

Radio France and Others v. France (dec.), 2003-X (extracts)

Victim – Acknowledgment of violation and reduction of sentence, having regard to excessive length of criminal proceedings

Victim • Victim status • Acknowledgment of violation and reduction of sentence, having regard to excessive length of criminal proceedings

Morby v. Luxembourg (dec.), 2003-XI

Standing of applicant’s widow to pursue complaints concerning police custody and procedural unfairness

Standing • Death of applicant • Standing of applicant’s widow to pursue complaints concerning police custody and procedural unfairness

Örs and Others v. Turkey (dec.), 2003-XI (extracts)

Victim – Whether amount of compensation awarded by domestic court was sufficient reparation for non-pecuniary damage

Victim • “Victim status” • Whether amount of compensation awarded by domestic court was sufficient reparation for non-pecuniary damage • Excessive length of proceedings • Acknowledgment of violation and payment of compensation under domestic law • Loss of victim status after recourse to remedy provided for in Pinto Act

Cataldo v. Italy (dec.), 2004-VI

Victim status of deceased’s daughter and executors of his estate having lodged an application on his behalf following his death

Victim • Victim status of deceased’s daughter and executors of his estate having lodged an application on his behalf following his death • Application introduced only after the death of the directly aggrieved person • Lack of *locus standi*

Fairfield and Others v. the United Kingdom (dec.), 2005-VI

Victim – Failings in judicial system acknowledged in substance as a Convention breach

Victim • Failings in judicial system acknowledged in substance as a Convention breach • Public apology by judge for the failings accompanied by detailed analysis of defects and a list of recommendations • No claim for monetary compensation • Action for compensation still possible at domestic level • Applicant no longer a victim

M.A. v. the United Kingdom (dec.), 2005-VIII

***Locus standi* of a person who is neither a close relative nor an heir of the deceased applicant**

Locus standi • *Locus standi* of a person who is neither a close relative nor an heir of the deceased applicant • Eminently personal and non-transferable rights

Thévenon v. France (dec.), 2006-III

HINDER THE EXERCISE OF THE RIGHT OF APPLICATION

Allegations of pressure by the authorities on the applicant

Hindrance in the exercise of the right of petition • Allegations of pressure by the authorities on the applicant • Attempts to cast doubt on validity of application

Tanrikulu v. Turkey [GC], 1999-IV

Applicant blindfolded and questioned about application

Hindrance in the exercise of the right of petition • Applicant blindfolded and questioned about application

Salman v. Turkey [GC], 2000-VII

Non-compliance with interim measures indicated by the Court held to be a failure by the State to comply with its obligations under Article 34

Court prevented from conducting a proper examination of the complaints • Applicants hindered in the effective exercise of their right of petition • State's failure to comply with obligations

Mamatkulov and Askarov v. Turkey [GC], 2005-I

Police questioning touching on the application to the Court after the first applicant had alleged corruption among immigration officials

Right of individual petition • Hindrance of its exercise • Police questioning touching on the application to the Court after the first applicant had alleged corruption among immigration officials • Focus, nature and manner of questioning • No compulsion to give evidence or disclose names • Absence of pressure, intimidation or harassment

Sisojeva and Others v. Latvia (striking out) [GC], 2007-I

Unsolicited visit by prosecutor to applicant's home while application to European Court pending

Hinder the exercise of the right of petition • Unsolicited visit by prosecutor to applicant's home while application to European Court pending • Absence of evidence of attempt to induce applicant to withdraw application

Konstantin Markin v. Russia [GC], 2012-III (extracts)

Questioning of detainee about application to Convention organs

Hindering of the exercise of the right of petition • Questioning of detainee about application to Convention organs

Akkoç v. Turkey, 2000-X

Extradition executed in spite of interim measure indicated by the Court to suspend such action

Hindrance of right of individual application • Extradition executed in spite of

interim measure indicated by the Court to suspend such action • Applicants' representatives before the Court deprived of all contact with applicants • Non-compliance by State with undertakings given to the Court

Shamayev and Others v. Georgia and Russia, 2005-III

Failure to comply with an interim measure indicated under Rule 39 of the Rules of Court

Hindrance of exercise of the right of application • Failure to comply with an interim measure indicated under Rule 39 of the Rules of Court • Effective exercise of the right of individual application • States' obligations under Article 34 • Expulsion despite application of Rule 39 of the Rules of Court

Aoulmi v. France, 2006-I (extracts)

Failure to comply with interim measure indicated by the Court

Extradition in spite of application of Rule 39 of Rules of Court • Failure to comply with interim measure indicated by the Court • Effective exercise of right to individual petition • Obligations of States under Article 34 • Date of assessment of risk in receiving country • Duty of States to comply with interim measure under Rule 39 of Rules of Court, even if risk subsequently fails to materialise

Olaechea Cahuas v. Spain, 2006-X (extracts)

Ban on mental patient communicating with his lawyer

Hinder the exercise of the right of petition • Ban on mental patient communicating with his lawyer • Interim measure • Binding nature of interim measures • Compliance • Incompatibility of measure with domestic law no defence

Shtukaturvov v. Russia, 2008-II

Transfer of detainees to Iraqi authorities in contravention of interim measure

Hinder the exercise of the right of petition • Transfer of detainees to Iraqi authorities in contravention of interim measure • Absence of objective impediment to Convention compliance • Entry into arrangements conflicting with Convention obligations • Failure to seek binding assurances • Failure to take reasonable steps to comply with interim measure • Transfer of detainees unjustifiably nullifying effectiveness of appeal to House of Lords

Al-Saadoon and Mufdhi v. the United Kingdom, 2010-II

Forcible transfer of applicant to Tajikistan with real risk of ill-treatment and circumvention of interim measures indicated by the Court

Hindrance of exercise of right of application • Forcible transfer of applicant to Tajikistan with real risk of ill-treatment and circumvention of interim measures indicated by the Court • Interim measure still in force • Inconceivability of allowing circumvention by national authorities • Flagrant disregard for the rule of law • Breach of obligations under both Russian law and the Convention • Effective protection of potential victims in line with interim measures indicated by the Court • Effective investigation

Savridin Dzhurayev v. Russia, 2013-III (extracts)

Transfer to the United States of a person running a real risk of incurring a life sentence without parole, and overriding of the interim measure ordered by the Court

Impeding exercise of the right of appeal • Transfer to the United States of a person running a real risk of incurring a life sentence without parole, and overriding of the interim measure ordered by the Court

Trabelsi v. Belgium, 2014-V (extracts)

ARTICLE 35

ADMISSIBILITY

Government's observations on admissibility submitted out of time

Estoppel • Government's observations on admissibility submitted out of time • Former Article 29 of the Convention

Dikme v. Turkey, 2000-VIII

EXHAUSTION OF DOMESTIC REMEDIES

ALBANIA

Application to Ombudsperson

Effective domestic remedy • Application to Ombudsperson • Ineffectiveness of application to Ombudsperson • Decisions of Ombudsperson unenforceable against governmental authorities

Qufaj Co. sh.p.k. v. Albania (dec.), 2003-XI

AUSTRIA

Effectiveness of remedy in relation to length of court proceedings

Effective domestic remedy • Length of court proceedings • Section 91 of the Courts Act • Remedy capable of speeding up court proceedings

Holzinger v. Austria (no. 1), 2001-I

Effective domestic remedy • Length of court proceedings • Article 132 of the Austrian Federal Constitution • Remedy capable of speeding up court proceedings

Basic v. Austria, 2001-I

Effectiveness of remedies in respect of complaint about length of proceedings

Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of remedies in respect of complaint about length of proceedings

Basic v. Austria (dec.), 1999-II

BOSNIA AND HERZEGOVINA

Domestic character of human rights tribunal set up by international treaty

Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of appeal before the Human Rights Chamber • Applicant entitled to choose between two effective domestic remedies

Jeličić v. Bosnia and Herzegovina (dec.), 2005-XII (extracts)

BULGARIA

Exhaustion of domestic remedies – Remedies to be exhausted in respect of death in police custody

Exhaustion of domestic remedies • Remedies to be exhausted in respect of death in police custody • No obligation to institute civil proceedings in addition to criminal complaint

Velikova v. Bulgaria (dec.), 1999-V

CROATIA

Effectiveness of constitutional complaint as a remedy in respect of the length of court proceedings

Effective domestic remedy • Effectiveness of constitutional complaint as a remedy

in respect of the length of court proceedings • Section 59(4) of the Constitutional Act on the Constitutional Court • Discretion of Constitutional Court in admitting complaint • Lack of precision of terms used in legal provision • Absence of settled case-law on interpretation of legal provision • Hierarchical appeal

Horvat v. Croatia, 2001-VIII

Effectiveness of constitutional complaint as a remedy in respect of the length of court proceedings

Effective domestic remedy • Effectiveness of constitutional complaint as a remedy in respect of the length of court proceedings • Section 63 of the 2002 Constitutional Act on the Constitutional Court • Creation of remedy in response to judgment of the Court • Removal of obstacles to effectiveness identified by the Court • Power of Constitutional Court to set time-limit for decision on merits and to award compensation

Slaviček v. Croatia (dec.), 2002-VII

Creation of remedy in respect of excessive length of proceedings after lodging of application with the Court

Effective domestic remedy • Creation of remedy in respect of excessive length of proceedings after lodging of application with the Court • Reference point for assessing availability of remedy • Exceptions to general rule • Remedy in respect of length of proceedings

Nogolica v. Croatia (dec.), 2002-VIII

CYPRUS

Failure to pursue appeal based on Convention or equivalent constitutional provision

Failure to pursue appeal based on Convention or equivalent constitutional provision • Complaint raised in substance • Obligation to exercise remedy enabling domestic courts to address alleged violation • Direct applicability of Convention in domestic law

Azinas v. Cyprus [GC], 2004-III

Exhaustion of domestic remedies

Exhaustion of domestic remedies • Effective domestic remedy • Obligation to carry out effective investigation into alleged ill-treatment • Complaint to Ombudsman • Effectiveness of investigation by Ombudsman • Absence of powers to order

measures or impose sanctions • Failure to institute criminal proceedings • Effectiveness of criminal proceedings in ensuring effective investigation

Egmez v. Cyprus, 2000-XII

Effectiveness of constitutional complaint to contest law concerning civil marriages of Muslim Turkish Cypriots

Effective domestic remedy • Effectiveness of constitutional remedy to contest law concerning civil marriages of Muslim Turkish Cypriots • Legislative provision respecting specific constitutional arrangements • Sufficient degree of certainty of existence of available and effective remedy

Selim v. Cyprus (dec.), 2001-IX

CZECH REPUBLIC

Effectiveness of remedies available in respect of the length of proceedings

Effective domestic remedy • Effectiveness of remedies in respect of the length of proceedings • Appeal to a higher authority • Constitutional appeal • Compensation claim • Criteria for assessing effectiveness of a domestic remedy

Hartman v. the Czech Republic, 2003-VIII (extracts)

ESTONIA

Availability of effective remedy in respect of complaint about opening of prisoner's correspondence

Exhaustion of domestic remedies • Effective domestic remedy • Availability of effective remedy in respect of complaint about opening of prisoner's correspondence • Applicability of Convention in domestic law

Slavgorodski v. Estonia (dec.), 1999-II

FINLAND

Extraordinary remedy allowing annulment of final judgment

Exhaustion of domestic remedies • Effective domestic remedy • Extraordinary remedy allowing annulment of final judgment

Kiiskinen v. Finland (dec.), 1999-V

Effectiveness of petition to Ombudsman to contest lawfulness of seizure

Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of petition to Ombudsman to contest lawfulness of seizure

Lehtinen v. Finland (dec.), 1999-VII

FRANCE

Exhaustion of domestic remedies – conviction of journalists for publishing extracts from tax-assessment forms

Exhaustion of domestic remedies • Complaint raised in substance • Provisions of domestic law equivalent to the terms of the Convention

Fressoz and Roire v. France [GC], 1999-I

Exhaustion of domestic remedies – ill-treatment by police of suspect held in police custody

Exhaustion of domestic remedies • Effective domestic remedy • Diligence in conducting inquiry relevant to assessing its “effectiveness” • Seriousness of matters complained of • Government’s obligation to take positive measures to ensure availability of a sufficient remedy

Selmouni v. France [GC], 1999-V

Effectiveness of appeal in respect of excessive length of completed or pending proceedings

Effective domestic remedy • Effectiveness of appeal in respect of excessive length of completed or pending proceedings • Article L. 781-1 of Code of Judicial Organisation • Case-law of domestic courts • Purely compensatory remedy

Mifsud v. France (dec.) [GC], 2002-VIII

Effectiveness of appeal on points of law in relation to length of pre-trial detention

Exhaustion of domestic remedies • Effective domestic remedy • Appeal on points of law • Effectiveness of appeal on points of law in relation to length of pre-trial detention • Jurisdiction of Court of Cassation as to questions of fact and law • Ascertainment that findings of facts by tribunals of fact support their conclusions • Review of reasoning

Civet v. France, 1999-VI

Effectiveness of an action in the administrative courts to complain of interference with a prisoner’s correspondence

Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of an action in the administrative courts to complain of interference with a prisoner’s correspondence • Well-established domestic case-law • No obligation to bring an

action in the administrative courts after lodging a criminal complaint which was not found to be inadequate

Demirtepe v. France, 1999-IX

Whether purging contempt is an effective remedy

Effective domestic remedy • Purge of contempt • Whether purging contempt is an effective remedy

Krombach v. France, 2001-II

Effective domestic remedy – conditions of prisoner’s stay in hospital

Effective domestic remedy • Particular circumstances explaining procedural shortcomings on applicant’s part • Remedies bound to fail • Seriousness of allegations • State’s obligation to take positive measures to ensure availability and sufficiency of ordinary remedy

Hénaf v. France, 2003-XI

Effective domestic remedy – death during detention and effectiveness of official investigation from which deceased’s next-of-kin were excluded

Effective domestic remedy • Suspicious death of applicant’s partner placed in detention • Criminal complaint together with application to join proceedings as civil party

Slimani v. France, 2004-IX (extracts)

Exhaustion of domestic remedies – reproduction of an extract from a personal medical document in a divorce decision

Exhaustion of domestic remedies • Applicant did not pursue divorce proceedings before Court of Cassation after refusal to grant him legal aid • Proceedings with mandatory representation

L.L. v. France, 2006-XI

Effective domestic remedy – arrest of illegal immigrants

Effective domestic remedy • Complaint raised in substance

Cisse v. France (dec.), 2001-I

Effectiveness of appeal on points of law to Court of Cassation regarding application to have exclusion order lifted

Effective domestic remedy • Appeal on points of law • Effectiveness of appeal on points of law to Court of Cassation regarding application to have exclusion order

lifted • Jurisdiction of Court of Cassation to examine grounds of fact and of law • Review of whether facts found by tribunals of fact support their conclusions • Review of compatibility with Convention

Hamaïdi v. France (dec.), 2001-V

Effectiveness of remedy against unreasonable length of proceedings

Effective domestic remedy • Effectiveness of remedy against unreasonable length of proceedings • Article L. 781-1 of Code of Judicial Organisation • Applicant could not have been unaware of existence of domestic remedy

Papon v. France (no. 2) (dec.), 2001-XII

Ground of appeal declared inadmissible as being out of time

Ground of appeal declared inadmissible as being out of time • No opportunity for domestic courts to look into and put right alleged violation • Possibility of submitting to Court of Cassation a ground of appeal based on the Convention

Multigestion v. France (dec.), 2002-V

GEORGIA

Effective domestic remedy – refusal by a territorial entity to comply with a judgment acquitting the applicant issued by the central authority

Effective domestic remedy • Extraordinary procedural remedies not entailing the setting aside or review of a final judgment • Parliamentary committee report • Principle of legal certainty • Intervention by a non-judicial authority in the administration of justice

Assanidze v. Georgia [GC], 2004-II

Exhaustion of domestic remedies – obligation on impecunious judgment creditor to pay preliminary expenses in order to initiate enforcement proceedings

Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of constitutional complaint • Powers of Constitutional Court on individual complaint • Lack of power to set aside individual decisions • Absence of effective mechanism affording direct and specific redress

Apostol v. Georgia, 2006-XIV

GERMANY

Advance for costs required by Constitutional Court before considering appeal

Advance for costs required by Constitutional Court before considering appeal •

Constitutional Court not given opportunity to examine complaints brought before the Court • Letters from legal secretary informing appellant of obstacles as to admissibility and merits not regarded as equivalent to decision by Constitutional Court

Reuther v. Germany (dec.), 2003-IX

GREECE

New remedy available after application lodged

New remedy available after application lodged • Enforcement proceedings against the State • Long-standing failure by national authorities to comply with final decision

Karahalios v. Greece (dec.), 2002-VIII

HUNGARY

Constitutional complaint not an effective remedy as the impugned criminal appeal proceedings could not be reopened in consequence

Exhaustion of domestic remedies • Effective domestic remedy • Constitutional complaint not an effective remedy as the impugned criminal appeal proceedings could not be reopened in consequence

Csikós v. Hungary, 2006-XIV (extracts)

Domestic remedy made possible by European Union law not yet exhausted

Exhaustion of domestic remedies • Domestic remedy made possible by European Union law not yet exhausted • Preliminary ruling of the CJEU offering guidance to domestic courts on applicable criteria to be followed in pending case • Effective remedy

Laurus Invest Hungary KFT and Others v. Hungary (dec.), 2015-VI (extracts)

ITALY

Compensation awarded following use of domestic remedy open to victims of excessively long proceedings

Exhaustion of domestic remedies • Compensation awarded following use of domestic remedy open to victims of excessively long proceedings • Effectiveness of appeal

to Court of Cassation to dispute amount of non-pecuniary damage • Departure from precedent • Date from which remedy must be used

Scordino v. Italy (no. 1) [GC], 2006-V

Cocchiarella v. Italy [GC], 2006-V

Musci v. Italy [GC], 2006-V (extracts)

Effective domestic remedy – Length of enforcement proceedings under the United Nations Convention on the Recovery Abroad of Maintenance

Effective domestic remedy • Length of enforcement proceedings under the United Nations Convention on the Recovery Abroad of Maintenance • Existence of remedy in respect of length of proceedings • Effectiveness of remedy in respect of length of proceedings to which applicant was not party

K. v. Italy, 2004-VIII

New remedy to be exercised

New remedy to be exercised • Remedy in respect of length of proceedings • Reference point for assessing availability of remedy • Transitional provision enabling application of new Act to cases pending before the Court

Brusco v. Italy (dec.), 2001-IX

Creation of new remedy after application lodged in respect of excessive length of proceedings

Effective domestic remedy • Creation of new remedy after application lodged • Reference point for assessing availability of remedy • Exceptions to general principle • Remedy by which to complain of length of proceedings • Transitional provision enabling application of new Act to cases pending before the Court

Giacometti and Others v. Italy (dec.), 2001-XII

Withdrawal of all grounds of appeal in connection with negotiation of sentence during cassation proceedings

Withdrawal of all grounds of appeal in connection with negotiation of sentence during cassation proceedings • Consequence as regards the exhaustion of domestic remedies of exercising a free and voluntary choice of defence

Borghi v. Italy (dec.), 2002-V

Effectiveness of appeal to Court of Cassation to contest amount of compensation awarded for excessive length of proceedings

Domestic remedy in respect of excessive length of proceedings • Effectiveness of

appeal to Court of Cassation to contest amount of compensation awarded for excessive length of proceedings

Scordino v. Italy (dec.), 2003-IV

Effective domestic remedy – Extradition to the United States, with alleged risk of indefinite detention

Extradition to the United States, with alleged risk of indefinite detention • Scope of judicial review by regional administrative court • Suspensive effect

Sardinas Albo v. Italy (dec.), 2004-I (extracts)

LATVIA

Effectiveness of a constitutional appeal as regards the potential breach by national law of a right guaranteed by the Constitution

Effective domestic remedy • Complaint concerning the actual wording of national legislation or regulations • Right relied on under the Convention also guaranteed by the Constitution • Effectiveness of appeal to the Constitutional Court

Grišankova and Grišankovs v. Latvia (dec.), 2003-II (extracts)

LITHUANIA

No obligation in principle to exhaust foreign remedies

Exhaustion of domestic remedies • Remedy available in foreign court • No obligation in principle to exhaust foreign remedies • Effective domestic remedy • Accessibility and effectiveness of remedy

Cudak v. Lithuania [GC], 2010-III

POLAND

Exhaustion of domestic remedies – detention in respect of acts allegedly not constituting a criminal

Exhaustion of domestic remedies • Effective domestic remedy • Lawfulness of detention • Ineffectiveness of action for damages as remedy in respect of unlawful detention • Article 552 of the (new) Polish Code of Criminal Procedure

Włoch v. Poland, 2000-XI

Effectiveness of constitutional complaint as remedy in respect of complaint about length of proceedings

Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of constitutional complaint as remedy in respect of complaint about length of proceedings (Article 79 of the Constitution and Article 781 of the Code of Civil Procedure)

Dewicka v. Poland (dec.), 1999-VI

Effectiveness of new remedy capable of accelerating court proceedings and resulting in compensation award

Exhaustion of domestic remedies • Effective domestic remedy • Criminal proceedings • Reasonable time • Accessible remedy • Acknowledgment of a violation • Measures to accelerate proceedings • Compensatory award • Court fee not excessive and subject to reimbursement • One-year interval for fresh complaint not unreasonable • Possibility of separate civil claim for further compensation

Charzyński v. Poland (dec.), 2005-V

Effectiveness of new remedy concerning length of judicial proceedings

Civil proceedings • Reasonable time • Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of new remedy concerning length of judicial proceedings • Applicant unable to challenge duration under transitional provisions or by claiming compensation

Ratajczyk v. Poland (dec.), 2005-VIII

PORTUGAL

Effectiveness of application for an order to expedite proceedings in pursuance of a complaint about excessive length of criminal proceedings

Exhaustion of domestic remedies — Effective domestic remedy — Effectiveness of application for an order to expedite proceedings in pursuance of a complaint about excessive length of criminal proceedings (Articles 108 and 109 of the Code of Criminal Procedure)

Tomé Mota v. Portugal (dec.), 1999-IX

Effectiveness of remedy in respect of length of judicial proceedings

Effective domestic remedy • Effectiveness of remedy in respect of length of judicial proceedings • Degree of legal certainty of action to establish non-contractual liability on the part of the State in respect of excessive length of proceedings

Paulino Tomás v. Portugal (dec.), 2003-VIII

Existence of several effective domestic remedies with similar purpose

Existence of several effective domestic remedies with similar purpose • Use by applicant of only one of available remedies

Moreira Barbosa v. Portugal (dec.), 2004-V (extracts)

Appeal lodged before the domestic case-law had become settled

Exhaustion of domestic remedies • Doubts over the effectiveness of a remedy • Appeal lodged before the domestic case-law had become settled • Possibility of asking the authority concerned to reconsider its decision

Roseiro Bento v. Portugal (dec.), 2004-XII (extracts)

ROMANIA

Obligation under Articles 2 and 3 to conduct an effective investigation could be rendered illusory if an applicant were required to bring an action leading only to an award of damages

Exhaustion of domestic remedies • Obligation under Articles 2 and 3 to conduct an effective investigation could be rendered illusory if an applicant were required to bring an action leading only to an award of damages

Mocanu and Others v. Romania [GC], 2014-V (extracts)

RUSSIA

Inapplicability of obligation to exhaust domestic remedies owing to administrative practice of arresting, detaining and expelling Georgian nationals

Exhaustion of domestic remedies • Administrative practice • Inapplicability of obligation to exhaust domestic remedies owing to administrative practice of arresting, detaining and expelling Georgian nationals • Effectiveness • Accessibility

Georgia v. Russia (I) [GC], 2014-IV (extracts)

Effectiveness of remedies in respect of conditions of pre-trial detention

Effective domestic remedies • Effectiveness of remedies in respect of conditions of pre-trial detention

Kalashnikov v. Russia (dec.), 2001-XI

Effective domestic remedy – Request for supervisory review

Effective domestic remedy • Request for supervisory review • Absence of time-limit

for lodging request for supervisory review • Six-month period • Final domestic decision • Calculation of six-month period

Berdzenishvili v. Russia (dec.), 2004-II (extracts)

SLOVAKIA

Creation of remedy in respect of excessive length of proceedings after lodging of application with the Court

Effective domestic remedy • Creation of remedy in respect of excessive length of proceedings after lodging of application with the Court • Reference point for assessing availability of remedy • Exceptions to general rule • Remedy in respect of length of proceedings

Andrášik and Others v. Slovakia (dec.), 2002-IX

SLOVENIA

Respondent State encouraged to amend existing range of remedies or add new ones so as to secure effective redress for violations of the right to a trial within a reasonable time

Exhaustion of domestic remedies • Effective domestic remedy • Adequacy of domestic legislation to secure the right to a trial within a reasonable time • Possibility of expediting unduly protracted proceedings • Compensation for non-pecuniary damage • Administrative action • Claim for damages in civil proceedings • Request for supervision • Constitutional appeal • Effectiveness of combined use of remedies • Probable excessive duration of the combined proceedings • Unreasonable burden on applicant

Lukenda v. Slovenia, 2005-X

SPAIN

Exhaustion of domestic remedies – Applicants (natural persons) having argued their case through applicant association, which alone brought proceedings

Exhaustion of domestic remedies • Applicants (natural persons) having argued their case through applicant association, which alone brought proceedings • Applicant association having defended interests of other applicants before the courts

Gorraiz Lizarraga and Others v. Spain, 2004-III

Six-month rule – Inappropriateness of the *recurso de amparo* with regard to the right of property

Six-month rule • Final domestic decision • Inappropriateness of the *recurso de amparo* with regard to the right of property

De Parias Merry v. Spain (dec.), 1999-II

Effectiveness of an appeal (*recurso de amparo*) when lodged by appellants on the basis of section 44 of the Constitutional Court Act

Exhaustion of domestic remedies • Domestic remedy • Effectiveness of an appeal (*recurso de amparo*) when lodged by appellants on the basis of section 44 of the Constitutional Court Act

Riera Blume and Others v. Spain (dec.), 1999-II

Exhaustion of domestic remedies – Effectiveness of procedure whereby an application may be made to the Ministry of Justice for compensation for a malfunctioning of the judicial system on account of the length of criminal proceedings

Exhaustion of domestic remedies • Effective domestic remedy • Effectiveness of procedure whereby an application may be made to the Ministry of Justice for compensation for a malfunctioning of the judicial system on account of the length of criminal proceedings

Gonzalez Marin v. Spain (dec.), 1999-VII

Effect of an appeal available only to State Counsel's Office on the requirement to exhaust domestic remedies

Exhaustion of domestic remedies • Six-month time-limit • Final domestic decision • Constitutional appeal • *Súplica* appeal • Appeal available only to State Counsel's Office

Moyá Alvarez v. Spain (dec.), 1999-VIII

Exhaustion of domestic remedies – Appeal against a court decision lodged out of time

Exhaustion of domestic remedies • Failure to comply with an essential formal requirement • *Amparo* appeal • Appeal against a court decision lodged out of time • Calculation of time-limits for lodging an appeal • *Terminus a quo* • Determination of *terminus a quo* for lodging an appeal where applicants had been informed only belatedly of the existence and content of the decision in issue • Notification of a court decision • Judgment having become final • Whether informed of existence and content of a court decision • Choice of remedy

Ben Salah Adraqui and Dhaima v. Spain (dec.), 2000-IV

Effectiveness of an application to the Ministry of Justice for compensation for delays in civil proceedings

Six-month time-limit • Determination of the start of the six-month time-limit

for an application containing several complaints • Complaints treated as a whole • Exhaustion of domestic remedies • Effectiveness of an application to the Ministry of Justice for compensation for delays in civil proceedings

Fernández-Molina González and Others v. Spain (dec.), 2002-IX

Existence of compensatory remedy by which to complain of length of constitutional proceedings

Effective domestic remedy • Constitutional proceedings terminated • Existence of compensatory remedy

Caldas Ramírez de Arrellano v. Spain (dec.), 2003-I (extracts)

TURKEY

Exhaustion of domestic remedies – murder by unidentified perpetrators and effectiveness of subsequent investigation

Exhaustion of domestic remedies • Effective remedy • Ineffectiveness of civil action for damages against the State due to requirement to identify perpetrator of unlawful act • Ineffectiveness of administrative-law action based on strict liability of the State (Article 125 of the Turkish Constitution) • Ineffectiveness of criminal-law remedies when criminal investigation pending

Tanrikulu v. Turkey [GC], 1999-IV

Exhaustion of domestic remedies – life-threatening assault by security forces and effectiveness of investigation

Exhaustion of domestic remedies • Effective remedy • Ineffectiveness of administrative-law action based on strict liability of the State (Article 125 of the Turkish Constitution) • Ineffectiveness of civil action for damages against the State due to requirement to identify perpetrator of unlawful act • Ineffectiveness of criminal-law remedies when public prosecutor has failed to carry out a proper investigation

İlhan v. Turkey [GC], 2000-VII

Exhaustion of domestic remedies – Claims to Immovable Property Commission in respect of loss of property in northern Cyprus

Exhaustion of domestic remedies • Effective remedy • Claims to Immovable Property Commission in respect of loss of property in northern Cyprus • Reference point for determining whether domestic remedies exhausted • Remedies introduced specifically to redress grievances in similar pending cases • Appropriate forum • Effective domestic remedy • Nature of remedy • Discretionary nature of restitutionary power

no obstacle to effectiveness of remedy • Independence and impartiality • Compensation levels • Accessibility and efficiency

Demopoulos and Others v. Turkey (dec.) [GC], 2010-I

Exhaustion of domestic remedies – shooting of night-watchman during military operation

Exhaustion of domestic remedies • Effective remedy • Ineffectiveness of civil action for damages against the State due to requirement to identify perpetrator of unlawful act • Ineffectiveness of administrative-law action based on strict liability of the State (Article 125 of the Turkish Constitution) • Applicant not required to institute criminal proceedings when someone else has done so

Oğur v. Turkey, 1999-III

Effectiveness of domestic remedies in respect of ill-treatment by agents of the State

Effective remedy • Ill-treatment by agents of the State • Evaluation of authorities' determination to identify and prosecute those responsible • Cases in which domestic remedies available to victim are effective

Pütün v. Turkey (dec.), 2004-XII (extracts)

Introduction of new domestic remedy to tackle systemic problem of inadequate redress for internally displaced persons

Exhaustion of domestic remedies • Effective domestic remedy • Introduction of new domestic remedy to tackle systemic problem of inadequate redress for internally displaced persons • Effectiveness • Substantial number of sample decisions demonstrating availability of remedy in practice • Adversarial proceedings • Compensation commissions not “tribunals” • Reference date for determination of remedies requiring exhaustion • Remedy introduced after the application had been lodged • Factors favouring departure from general rule • Measure introduced specifically to redress structural problem identified by the European Court

İçyer v. Turkey (dec.), 2006-I

UKRAINE

Introduction of new remedy with transitional provisions allowing final and binding court decisions to be challenged

Effective domestic remedy • Introduction of new remedy with transitional provisions allowing final and binding court decisions to be challenged • Remedy akin to request for reopening of proceedings • Extraordinary remedy • *Res judicata*

Prystavska v. Ukraine (dec.), 2002-X

Cassation appeals to the Higher Commercial Court and the Supreme Court considered effective remedies in commercial-law cases

Exhaustion of domestic remedies • Effective domestic remedy • Cassation appeals to the Higher Commercial Court and the Supreme Court considered effective remedies in commercial-law cases

MPP Golub v. Ukraine (dec.), 2005-XI

UNITED KINGDOM

Public trial in an adult court of juvenile charged with murder and imposition of a sentence of detention during Her Majesty's pleasure with a tariff of fifteen years fixed by a member of the executive

Exhaustion of domestic remedies • Burden of proof on Government to show availability of an effective domestic remedy • Availability of effective remedy in respect of inability to participate effectively in trial

V. v. the United Kingdom [GC], 1999-IX

Request for declaration of incompatibility of domestic legislation

Exhaustion of domestic remedies • Request for declaration of incompatibility of domestic legislation • Effectiveness of remedy still uncertain

Burden v. the United Kingdom [GC], 2008-III

SIX-MONTH PERIOD

Exhaustion of domestic remedies – obligation of members of Parliament to swear an oath on the Gospels

Exhaustion of domestic remedies • Effective domestic remedy • Six-month period • Date of introduction • Representation of applicants

Buscarini and Others v. San Marino [GC], 1999-I

Six-month period – irrebuttable presumption of benefit accruing from expropriation

Six-month period • Final domestic decision • No service of final domestic decision • Six-month period running from “finalising” of judgment

Papachelas v. Greece [GC], 1999-II

Six-month period – Receipt after expiry of six months of letter dated before expiry

Six-month period • Date of introduction of application • Receipt after expiry of six months of letter dated before expiry • Absence of indication of backdating of letter

Erdoğdu and İnce v. Turkey [GC], 1999-IV

Six-month period – Final domestic decision

Six-month period • Final domestic decision • Referral to Court of Cassation on written order of Minister of Justice

Öztürk v. Turkey [GC], 1999-VI

Application lodged more than six months after respondent State's ratification of right of individual petition

Six-month period • Application lodged more than six months after respondent State's ratification of right of individual petition • Starting point for six-month period in disappearance cases • Actual or constructive knowledge that there was no immediate, realistic prospect of an effective investigation • Reasonable expedition

Varnava and Others v. Turkey [GC], 2009-V

Six-month period – Applicant's passivity for eleven years before submitting his complaint to the relevant national authorities

Six-month period • Applicant's passivity for eleven years before submitting his complaint to the relevant national authorities • Duty of diligence complied with • Effectiveness of the investigation not compromised • Legitimate expectation • Not out of time

Mocanu and Others v. Romania
[GC], 2014-V (extracts)

Six-month time-limit – Failure to notify the applicant or his representative of the final decision

Six-month time-limit • Failure to notify the applicant or his representative of the final decision • Difficulty in obtaining information from overseas

Baghli v. France, 1999-VIII

Starting-point for six-month period in disappearance cases

Six-month period • Application lodged more than six months after respondent State's ratification of right of individual petition • Starting-point for six-month

period in disappearance cases • Actual or constructive knowledge that there was no immediate, realistic prospect of an effective investigation • Absence of excessive or unexplained delay on applicant's part

Zorica Jovanović v. Serbia, 2013-II

Six-month period – Applicability of rule in the absence of Government observations on the issue

Six-month period • Applicability of rule in the absence of Government observations on the issue • Legal certainty

Walker v. the United Kingdom (dec.), 2000-I

Six-month period – Starting-point when remedy turns out to be ineffective

Six-month period • Starting-point in absence of effective remedy • Starting-point when remedy turns out to be ineffective

Aydın v. Turkey (dec.), 2000-III

Six-month rule – ineffectiveness of an appeal on points of law lodged by the civil party alone, in cases other than those provided for by law

Six-month rule • Effective domestic remedy • Final domestic decision • Ineffectiveness of an appeal on points of law lodged by the civil party alone, in cases other than those provided for by law

Rezgui v. France (dec.), 2000-XI

Starting point in absence of effective remedies

Starting point in absence of effective remedies • Six-month period starting to run when applicants become or should have become aware of absence of effective domestic remedies

Bayram and Yıldırım v. Turkey (dec.), 2002-III

Determination of the start of the six-month time-limit for an application containing several complaints

Determination of the start of the six-month time-limit for an application containing several complaints • Complaints treated as a whole • Exhaustion of domestic remedies • Effectiveness of an application to the Ministry of Justice for compensation for delays in civil proceedings

Fernández-Molina González and Others v. Spain (dec.), 2002-IX

Delay between date of letter accompanying application and date when application was posted

Delay between date of letter accompanying application and date when application was posted

Arslan v. Turkey (dec.), 2002-X

Six-month rule – Quashing of final judgment in supervisory-review procedure

Quashing of final judgment in supervisory-review procedure • Determination of start of six-month period • Instantaneous nature of supervisory review • Absence of effective remedy against supervisory review

Sardin v. Russia (dec.), 2004-II

Notification of final domestic decision to lawyer with whom applicant had lost contact

Notification of final domestic decision to lawyer with whom applicant had lost contact • Determination of the start of the six-month time-limit from date of final decision • Applicant's negligence in tardily becoming aware of final decision • Court not bound by date used by domestic courts in compensation procedure for calculation of the six-month period

Çelik v. Turkey (dec.), 2004-X

Article 35 § 2 | Article 35 § 2 (a)

ANONYMOUS APPLICATION

Failure to disclose identity in application to European Court

Anonymous application • Failure to disclose identity in application to European Court

“Blondje” v. the Netherlands (dec.), 2009-V

Article 35 § 2 (b)

SAME AS MATTER ALREADY EXAMINED

Court's jurisdiction where it had already examined substantially same facts in inter-State case

Substantially the same application • Court's jurisdiction where it had already

examined substantially same facts in inter-State case • Applications not introduced by same persons • Differences in remedies available in inter-State case and on individual applications • Legal interest in pursuing examination

Varnava and Others v. Turkey [GC], 2009-V

Individual complaint to the European Commission not similar to an application before the Court

Same as a matter already submitted to another international body • Individual complaint to the European Commission not similar to an application before the Court • Similarity of facts and complaints • Complaint to the European Commission about a breach of European Union law by a member State • Purpose of “infringement proceedings” or “pre-litigation phase” • To compel member State to comply with European Union law • No effect on individual rights

Karoussiotis v. Portugal, 2011-II (extracts)

Domestic character of human rights tribunal set up by international treaty

Same as matter submitted to other procedure • Procedure of international investigation or settlement • Tribunal established by the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (“the Dayton Agreement”) • Composition, competence, funding and transitional role of the Human Rights Chamber • Domestic character of human rights tribunal set up by international treaty

Jeličić v. Bosnia and Herzegovina
(dec.), 2005-XII (extracts)

Article 35 § 3 (a)

COMPETENCE *RATIONE TEMPORIS*

Alleged violation based on facts which occurred prior to ratification of the Convention

Ratione temporis • Admissibility of jurisdiction objection raised only before Grand Chamber • Temporal jurisdiction where alleged violation occurred during domestic court proceedings • Instantaneous act • *Res judicata* • Non-retroactivity of treaties • General rules of international law • Alleged violation based on facts which occurred prior to ratification of the Convention

Blečić v. Croatia [GC], 2006-III

Court’s temporal jurisdiction in respect of disappearances that had occurred

some thirteen years before the respondent State recognised the right of individual petition

Competence *ratione temporis* • Court's temporal jurisdiction in respect of disappearances that had occurred some thirteen years before the respondent State recognised the right of individual petition • "Detachable obligation" • Continuing nature of disappearances • Absence of requirement of temporal proximity to found jurisdiction in disappearance cases

Varnava and Others v. Turkey [GC], 2009-V

Court's temporal jurisdiction in respect of deaths that occurred fifty-eight years before the Convention came into force in the respondent State

Competence *ratione temporis* • Court's temporal jurisdiction in respect of deaths that occurred fifty-eight years before the Convention came into force in the respondent State • Procedural obligation to conduct effective investigation • Absence of "genuine connection" between deaths and entry into force of Convention in respect of respondent State • Criteria relevant to determination whether real and effective protection of guarantees and underlying Convention values nevertheless constitute sufficient basis for recognising connection • Serious crimes under international law • Inapplicability of "Convention values" exception to events which occurred prior to adoption of Convention in 1950

Janowiec and Others v. Russia [GC], 2013-V

***Ratione temporis* – Four years between the triggering event and the Convention's entry into force in respect of Romania**

Ratione temporis • Four years between the triggering event and the Convention's entry into force in respect of Romania • Relatively short lapse of time, less than ten years and less than the time periods in issue in similar cases examined by the Court • Majority of the proceedings and most important procedural measures carried out after the critical date

Mocanu and Others v. Romania [GC], 2014-V (extracts)

Jurisdiction *ratione temporis* – Refusal of jurisdiction by Supreme Administrative Court on the basis of legislation enacted prior to acceptance of the right of petition

Jurisdiction *ratione temporis* • Refusal of jurisdiction by Supreme Administrative Court on the basis of legislation enacted prior to acceptance of the right of petition

Potocka and Others v. Poland, 2001-X

Court's temporal jurisdiction in respect of newborn baby who had allegedly

died/gone missing over ten years before the respondent State recognised the right of individual petition

Competence *ratione temporis* • Court's temporal jurisdiction in respect of newborn baby who had allegedly died/gone missing over ten years before the respondent State recognised the right of individual petition • Continuing situation

Zorica Jovanović v. Serbia, 2013-II

Competence *ratione temporis* – Court decision concerning events pre-dating ratification of the Convention

Competence *ratione temporis* • Court decision concerning events pre-dating ratification of the Convention • Court decision indissociable from events at issue • Instantaneous act not giving rise to continuing situation

Jovanović v. Croatia (dec.), 2002-III

Remedies for reopening of proceedings which have terminated in a final decision

Remedies for reopening of proceedings which have terminated in a final decision • Discretionary supervisory review • Extraordinary remedy • Introduction of new remedy with transitional provisions allowing final and binding court decisions to be challenged • Remedy akin to request for reopening of proceedings • *Res judicata*

Kozak v. Ukraine (dec.), 2002-X

ABUSE OF THE RIGHT OF APPLICATION

Obligation of Members of Parliament to swear an oath on the Gospels

Abuse of the right of petition • Announcement of intention to lodge an application

Buscarini and Others v. San Marino [GC], 1999-I

Failure to inform the Court of applicant's death during proceedings concerning her ability to obtain substance permitting her to commit suicide

Abuse of right of application • Failure to inform the Court of applicant's death during proceedings concerning her ability to obtain substance permitting her to commit suicide • Role of representative before the Court • Obligation to communicate information concerning the very core of the application • Important new developments • Sufficiently clear intention to mislead the Court

Gross v. Switzerland [GC], 2014-IV

Applications containing numerous offensive remarks about the Court and its Registry

Abuse of the right of application • Applications containing numerous offensive remarks about the Court and its Registry

Duringer and Others v. France (dec.), 2003-II (extracts)

Failure by applicant to inform Court of execution in full of a judicial decision whose non-execution he alleged in his complaint to the Court

Abusive application • Failure by applicant to inform Court of execution in full of a judicial decision whose non-execution he alleged in his complaint to the Court • Untrue facts • Applicant's conduct in concealing relevant developments

Kerechashvili v. Georgia (dec.), 2006-V (extracts)

Article 35 § 3 (b)

NO SIGNIFICANT DISADVANTAGE

Domestic proceedings aimed at the recovery of allegedly stolen goods worth 350 euros

No significant disadvantage • Domestic proceedings aimed at the recovery of allegedly stolen goods worth 350 euros • Pecuniary and sentimental value of goods at issue • Domestic proceedings concerning a question of principle for applicant

Giuran v. Romania, 2011-III (extracts)

Reduction of prison sentence in length-of-criminal-proceedings case

No significant disadvantage • Reduction of prison sentence in length-of-criminal-proceedings case • Abundant case-law of European Court on the length of criminal proceedings • Case duly examined by national court

Gagliano Giorgi v. Italy, 2012-II (extracts)

Complaint concerning inability to recover judgment debt worth less than one euro

No significant disadvantage • Complaint concerning inability to recover judgment debt worth less than one euro • Minimum level of severity • Criteria relevant to determination of severity of violation • Negligible pecuniary loss • Absence of compelling reasons of public order (*ordre public*) requiring an examination on the merits • Case duly considered by a domestic tribunal

Korolev v. Russia (dec.), 2010-V

ARTICLE 37**Article 37 § 1****STRIKING OUT APPLICATIONS****Continued examination of application following death of applicant and in the absence of heirs wishing to pursue the application**

Striking out of the list of cases • Death of applicant • Absence of heirs wishing to pursue application • Victim • Transfer of claims on death of applicant • Purpose of Convention system • Elucidation, safeguarding and development of standards of protection • Importance of issue for Contracting States • Continued examination of application required by respect for human rights

Karner v. Austria, 2003-IX

Continued examination of application following compulsory liquidation of applicant bank

Victim • Application lodged by former directors of bank in liquidation • Need to interpret Article 34 in a practical and effective manner • Continued examination of application following compulsory liquidation of applicant bank • Continued examination required by respect for human rights • Issue transcending interests of applicant bank • Nature of allegations • Striking out liable to undermine the essence of legal persons' right of application to the Court

Capital Bank AD v. Bulgaria, 2005-XII (extracts)

Unilateral declaration by respondent Government during just-satisfaction proceedings

Striking out applications • Unilateral declaration by respondent Government during just-satisfaction proceedings • Uncertainty of claim in respect of anticipated income • Offer of equitable compensation • Continued examination not justified

Megadat.com SRL v. Moldova
(just satisfaction – striking out), 2011-III

Closure of pilot-judgment procedure after domestic measures to remedy systemic problem were found to be satisfactory

Striking out applications • Matter resolved • Closure of pilot-judgment procedure after domestic measures to remedy systemic problem were found to be satisfactory • Object and purpose of pilot-judgment procedure • Possibility of Court declining to

examine new cases where Convention issue resolved at domestic level • Possibility of restoring application to list if domestic measures prove ineffective

E. G. v. Poland (dec.), 2008-IV (extracts)

Article 37 § 1 (b)

MATTER RESOLVED

Deprivation of a substantial portion of compensation claimed through effect of retrospective legislation (just satisfaction and striking out)

Cases struck out • Terms of agreement between the parties with a view to settlement of dispute

Draon v. France (just satisfaction – striking out) [GC], 2006-IX
Maurice v. France (just satisfaction – striking out) [GC], 2006-IX

Revision of an international agreement and *ex gratia* payment to applicants who were unable to have their complaint examined by a domestic court

Friendly settlement • Revision of an international agreement and *ex gratia* payment to applicants who were unable to have their complaint examined by a domestic court • Matter resolved

Danell and Others v. Sweden (friendly settlement), 2006-I

Refusal of Parliament, on death of a member of Parliament, to appoint as his replacement the candidate who had come second on his party's list – matter resolved

Matter resolved • Refusal of Parliament, on death of a member of Parliament, to appoint as his replacement the candidate who had come second on his party's list • Quashing of Parliament's decision • Expression of regret by Government • Payment of compensation and legal costs

Spišák v. Slovakia (dec.), 2000-XII

Risk of ill-treatment in event of extradition – matter resolved on account of refusal of State requesting extradition to accept conditions

Matter resolved • Risk of ill-treatment in event of extradition • Refusal of State requesting extradition to accept conditions

Bilasi-Ashri v. Austria (dec.), 2002-X

Implementation of general measures to remedy defects in housing legislation following pilot judgment and availability of redress at domestic level

Implementation of general measures to remedy defects in housing legislation following pilot judgment • Domestic scheme of redress for past prejudice • Matter resolved

Association of Real Property Owners in Łódź and Others v. Poland (dec.), 2011-II (extracts)

Article 37 § 1 (c)

CONTINUED EXAMINATION NOT JUSTIFIED

Question whether an application may be struck out on the basis of a unilateral declaration by the Government

Striking out applications • Question whether an application may be struck out on the basis of a unilateral declaration by the Government • Confidentiality of statements made in the context of friendly settlement negotiations • Factors relevant to assessment of whether it is appropriate to strike out a case on the basis of a unilateral declaration • Nature of complaints • Question whether issues previously examined by the Court • Measures taken to execute previous judgments • Extent to which facts in dispute and existence of prima facie evidence • Scope of admissions and proposed measures of redress

Tahsin Acar v. Turkey (preliminary issue) [GC] , 2003-VI

Striking out – Circumstances, taken together, justifying discontinuation of examination of the application

Striking out • Continued examination of the application not justified • Circumstances, taken together, justifying discontinuation of examination of the application • Signature of an agreement between the applicants and an entity distinct from the respondent State • Agreement on payment in exchange for waiver of any action • Refusal to sign the waiver • Wide discretion enjoyed by the Court in identifying grounds justifying striking out under Article 37 § 1 (c) • Conditions to be fulfilled for application of Article 37 § 1

SOS Attentats and de Boëry v. France (dec.) [GC], 2006-XIV

Striking out – unilateral declaration by Government in absence of agreement on terms of friendly settlement

Striking out • Shooting by security forces • Absence of agreement on terms of

friendly settlement • Unilateral declaration by Government expressing regret for death resulting from use of excessive force, undertaking to take measures to ensure respect for the right to life and offering compensation • Objection of applicant to striking out

Akman v. Turkey (striking out), 2001-VI

Case struck out of the list – Expulsion order set aside

Continued examination not justified • Case struck out of the list • Any other reason • Expulsion order set aside • No risk of expulsion

Kalantari v. Germany (striking out), 2001-X

Effect of unilateral declaration by Government following unsuccessful friendly-settlement negotiations

Civil proceedings • Reasonable time • Effect of unilateral declaration by Government following unsuccessful friendly-settlement negotiations • Undertaking to pay non-pecuniary damage and costs and expenses in line with jurisprudential standards • Continued examination not justified

Van Houten v. the Netherlands (striking out), 2005-IX

Cross-examination of rape victim by the accused – matter resolved

Continued examination not justified • Cross-examination of rape victim by the accused • *Ex gratia* payment and payment of costs • Amendment of law • Assessment of costs by the Court

J.M. v. the United Kingdom (dec.), 2000-X

Friendly settlement in domestic proceedings containing a pledge by the applicant to withdraw his application pending before the Court

Striking out • Friendly settlement in domestic proceedings containing a pledge by the applicant to withdraw his application pending before the Court • Waiver of a Convention right • Guarantees • Clear and unequivocal undertaking of the applicant to withdraw his application • Compensation received by the applicant in the context of a friendly settlement • Continued examination of the application no longer justified

Zu Leiningen v. Germany (dec.), 2005-XIII

Article 37 § 2

Request to restore application to list after striking out

Restoration of application to list of cases • Request to restore application to list after

striking out • Striking out • Applicant represented before the Court • Diligence expected of applicant

Schneider v. Germany (dec.), 2004-XI

ARTICLE 38

EXAMINATION OF THE CASE

Examination of the case – disappearance following detention by security forces and effectiveness of subsequent investigation

Examination of the case • Effective conduct of investigation • Failure to provide access to custody records • Failure to facilitate attendance of witnesses

Çakıcı v. Turkey [GC], 1999-IV

Examination of the case – murder by unidentified perpetrators and effectiveness of subsequent investigation

Examination of the case • Effective conduct of investigation • Failure to provide all documentation pertaining to investigation • Failure to facilitate attendance of witnesses

Tanrıkulu v. Turkey [GC], 1999-IV

Refusal on grounds of national security to provide copy of domestic-court decision to discontinue criminal investigation into Katyn massacre

Furnish all necessary facilities • Refusal on grounds of national security to provide copy of domestic-court decision to discontinue criminal investigation into Katyn massacre • Requirement of independent review in adversarial proceedings of need to classify information as secret where fundamental human rights at stake • Absence of any meaningful scrutiny of executive decision not to declassify information concerning investigation into serious historical human rights violation

Janowiec and Others v. Russia [GC], 2013-V

Government refusal to comply with Court request for disclosure of classified materials

Obligation to furnish all necessary facilities • Government refusal to comply with Court request for disclosure of classified materials • Refusal of disclosure based on national law • Provisions of Rules of Court for securing confidentiality

Georgia v. Russia (I) [GC], 2014-IV (extracts)

Examination of the case – unsolved killing of journalist whose requests for protection had not been taken seriously by the authorities

Examination of case • Effective conduct of investigation • Failure to comply with obligation to ensure appearance of witnesses

Kılıç v. Turkey, 2000-III

Examination of the case – disappearance following detention by security forces and effectiveness of subsequent investigation

Examination of the case • Effective conduct of investigation • Failure to provide access to custody records • Failure to facilitate attendance of witnesses

Timurtaş v. Turkey, 2000-VI

Refusal of gendarmes to give evidence to delegates of the European Commission of Human Rights in the presence of the applicant's representatives

Obligation to furnish all necessary facilities • Refusal of gendarmes to give evidence to delegates of the European Commission of Human Rights in the presence of the applicant's representatives • Death in custody • Obligation to give due notice of and sufficient reasons for request for security measures during taking of evidence • Alleged risk of applicant's representatives giving description of witnesses to terrorists

Aktaş v. Turkey, 2003-V (extracts)

Non-appearance of witnesses summoned to give evidence on behalf of Government

Examination of the case • Obligation of State to furnish all necessary facilities • Non-appearance of witnesses summoned to give evidence on behalf of Government • Relevance of evidence for assessment of facts • Absence of satisfactory explanation for non-appearance • Drawing of adverse inferences

İpek v. Turkey, 2004-II (extracts)

Government's failure to submit documentary evidence relevant to the killing of civilians during military operation

Examination of the case • Obligation of State to furnish all necessary facilities • Failure to submit documentary evidence • Relevance of evidence for assessment of facts • Absence of explanation for non-submission • Drawing of inferences

Akkum and Others v. Turkey, 2005-II (extracts)

Necessary facilities for effective conduct of investigation by the Court

Necessary facilities for effective conduct of investigation by the Court • Refusal to authorise contact with applicants • Domestic proceedings pending

Shamayev and Others v. Georgia and Russia, 2005-III

Failure by the Government to furnish evidence in their possession and of two State agents to appear at hearing before the Court's delegates

Examination of the case • Failure by the Government to furnish evidence in their possession • Failure of two State agents to appear at hearing before the Court's delegates • Lack of satisfactory explanation for their absence • Importance of evidence to the establishment of the facts • Adverse inferences drawn from the State's failure to comply

Taniş and Others v. Turkey, 2005-VIII

Government's repeated failure to submit documents requested by the Court

Examination of the case • Disappearances • Government's repeated failure to submit documents requested by the Court • Establishment of facts • Furnish all necessary facilities • Failure to comply with obligations under Article 38

Imakayeva v. Russia, 2006-XIII (extracts)

ARTICLE 39

FRIENDLY SETTLEMENT

Friendly settlement – alleged ill-treatment

Friendly settlement • Alleged ill-treatment of Danish national detained in Turkey • Friendly settlement of inter-State case providing for *ex gratia* payment and expression of regret by the respondent Government for the ill-treatment inflicted, provision of assistance in police training by the applicant Government and establishment of a continuous dialogue

Denmark v. Turkey (friendly settlement), 2000-IV

ARTICLE 41

JUST SATISFACTION

Reparation for non-pecuniary damage sustained by a company

Just satisfaction • Non-pecuniary damage • Reparation for non-pecuniary damage

sustained by a company • Existence of precedents in the Court's case-law and the practice of the Committee of Ministers under the former Convention system • Interpretation of the Convention governed by the effectiveness rule • Heads of claim other than for pecuniary damage open to a company • Inconvenience and uncertainty caused by the length of proceedings

Comingersoll S.A. v. Portugal [GC], 2000-IV

Just satisfaction – unlawful occupation of premises by local authority

Pecuniary damage • *Restitutio in integrum* • Loss of earnings • Method of calculation of loss of earnings due to inability to operate business • Non-pecuniary damage • Relevance of age and state of health • Costs and expenses • Contingency fee agreement • Assessment of required number of lawyers and hours of work • Equitable assessment

Iatridis v. Greece (just satisfaction) [GC], 2000-XI

Just satisfaction – return of a property nationalised under communist regime

Pecuniary damage • *Restitutio in integrum* • Value of a property aligned with price on property market with a view to compensation if *restitutio in integrum* impossible • Return of nationalised property • Partial return of the property in dispute and complementary compensation • Non-pecuniary damage • Costs and expenses

Brumărescu v. Romania (just satisfaction) [GC], 2001-I

Compensation awarded following use of domestic remedy open to victims of excessively long proceedings

Just satisfaction • Expropriation compensation inadequate • Assessment of pecuniary damage • Excessive length • Assessment of non-pecuniary damage in light of Court-established criteria and characteristics of domestic remedy

Scordino v. Italy (no. 1) [GC], 2006-V

Cocchiarella v. Italy [GC], 2006-V

Musci v. Italy [GC], 2006-V (extracts)

Deprivation of a substantial portion of compensation claimed through effect of retrospective legislation (just satisfaction and striking out)

Just satisfaction • Deprivation of a substantial portion of compensation claimed through effect of retrospective legislation • Pecuniary damage • Agreement between the parties • Compensation

Draon v. France (just satisfaction – striking out) [GC], 2006-IX

Maurice v. France (just satisfaction – striking out) [GC], 2006-IX

Award for unlawful detention resulting from bona fide attempt to reconcile conflicting interests in public emergency

Just satisfaction • Award for unlawful detention resulting from bona fide attempt to reconcile conflicting interests in public emergency • Reduction in award

A. and Others v. the United Kingdom [GC], 2009-II

Award in respect of pecuniary damage incurred by the applicants as a result of unlawful removal from the Register of Permanent Residents

Just satisfaction • Pecuniary damage • Award in respect of pecuniary damage incurred by the applicants as a result of unlawful removal from the Register of Permanent Residents • Compensation for loss of past income • Compensation for loss of future income • Multi-layered causal link

Kurić and Others v. Slovenia (just satisfaction) [GC], 2014-I

Compensation for expropriation based on equitable considerations

Just satisfaction • Compensation for expropriation based on equitable considerations • Pecuniary damage • Non-pecuniary damage • Expropriation not declared incompatible with the principle of legality • Compensation not aiming at total elimination of consequences of interference with applicants' property rights • Amount of compensation not based on full market value of expropriated property

Vistiņš and Perepjolkins v. Latvia (just satisfaction) [GC], 2014-I

Period of thirteen years between delivery of principal judgment and examination of just-satisfaction claims

Award to State applicant party in respect of its missing and enclaved citizens in northern Cyprus

Just satisfaction • Admissibility • Passage of time • Period of thirteen years between delivery of principal judgment and examination of just-satisfaction claims • Duty to act without undue delay • Adjournment ordered by Court • Absence of waiver • Absence of prejudice to legitimate procedural interests

Applicability of Article 41 to inter-State cases • Non-pecuniary damage • Award to State applicant party in respect of its missing and enclaved citizens in northern Cyprus • Criteria applicable to determination of damage • Claims by State in respect of violations of basic human rights of sufficiently precise and objectively identifiable groups of people

Cyprus v. Turkey (just satisfaction) [GC], 2014-II

Just satisfaction – Discharge of homosexuals from the armed forces

Non-pecuniary damage • Discharge of homosexuals from the armed forces • Intrusive character of investigation • Effect of discharge on careers and prospects • Absolute nature of prohibition based on innate personal characteristics • Psychological and emotional effects of discharge • Pecuniary damage • Inherently uncertain character of damage flowing from loss of employment • Equitable assessment of loss • Difficulties of transferring from military to civilian environment • Loss of prospects • Loss of pension rights • Costs and expenses • Duplication of work

Smith and Grady v. the United Kingdom (just satisfaction), 2000-IX

Just satisfaction – Protracted inability to recover possession of a flat

Just satisfaction • Pecuniary damage • Protracted inability to recover possession of a flat • Remedy available under domestic law to claim compensation from a tenant

Lo Tufo v. Italy, 2005-III

Just satisfaction – failure by authorities to intervene regarding manifest shortcomings of officially assigned lawyers

Conviction at end of trial that had failed to comply with requirements of Article 6 • Appropriate means of redressing violation • Retrial or reopening of case

Sannino v. Italy, 2006-VI

Just satisfaction – Court's approach when concurrent claim for compensation pending before domestic courts

Just satisfaction • Non-pecuniary damage • Court's approach when concurrent claim for compensation pending before domestic courts • Repetitive case • Greater importance of Article 46 in comparison with Article 41 • General measures • Domestic mechanism for providing compensation • Claim under Article 41 not ready for decision

Salah v. the Netherlands, 2006-IX (extracts)

Respondent State required to pay the applicant a sum towards the cost of having surgery performed abroad should it fail to pass the requisite legislation

Just satisfaction • Pecuniary damage • Respondent State required to pass necessary legislation within three months of the Court's judgment becoming final • Respondent State required to pay the applicant a sum towards the cost of having surgery performed abroad should it fail to pass the requisite legislation • Award for non-pecuniary damage

L. v. Lithuania, 2007-IV

Authorities' persistent failure to enforce domestic judgments in the applicant's favour without delay despite previous finding of violation by the Court in his case

Just satisfaction • Non-pecuniary damage • Increased award • Authorities' persistent failure to enforce domestic judgments in the applicant's favour without delay despite previous finding of violation by the Court in his case • Practice incompatible with the Convention

Burdov v. Russia (no. 2), 2009-I

ARTICLE 43

REFERRAL TO THE GRAND CHAMBER

Scope of case referred to the Grand Chamber

Referral to the Grand Chamber • Scope of case referred to the Grand Chamber

K. and T. v. Finland [GC], 2001-VII

ARTICLE 46

BINDING FORCE AND EXECUTION OF JUDGMENTS

Refusal by a territorial entity to comply with a judgment acquitting the applicant issued by the central authority

Execution of judgments of the Court • States' freedom of choice as to the manner of execution of a judgment of the Court • Cases in which the measures required to remedy a violation are self-evident • Respondent State required to secure the applicant's release in order to remedy the violations

Assanidze v. Georgia [GC], 2004-II

Impediments to satisfaction of claim for compensation in respect of property abandoned as a result of boundary changes at the end of the Second World War

Execution of judgment • Systemic nature of violation • Obligation of State to adopt general measures in order to avoid overburdening Convention system • Obligation of State to remove impediments to satisfaction of claims

Broniowski v. Poland [GC], 2004-V

Person convicted *in absentia* with no knowledge of prosecution and charges

Execution of the Court's judgments • Retrial or reopening of the proceedings

Sejdovic v. Italy [GC], 2006-II

Compensation awarded following use of domestic remedy open to victims of excessively long proceedings

Execution of judgment • General measures • Judgment revealing structural problem in domestic legal order

Scordino v. Italy (no. 1) [GC], 2006-V

Cocchiarella v. Italy [GC], 2006-V

Musci v. Italy [GC], 2006-V (extracts)

Ineffectiveness of domestic remedies in respect of excessive length of judicial proceedings

Abide by judgment • Unnecessary to indicate general measures for execution of judgment • Bill introducing a remedy for preventing procedural delays

Sürmeli v. Germany [GC], 2006-VII

Inability of landlord to recover possession or obtain adequate rent from tenants

Execution of judgment • Systemic nature of violation • Pilot-judgment procedure • Relevance of potential inflow of future cases • Malfunctioning of Polish housing legislation • Combination of restrictions on landlords' rights • General measures • Obligation to secure mechanism maintaining fair balance between interests of landlords and of the community

Hutten-Czapska v. Poland [GC], 2006-VIII

Respondent State invited to examine merits of applicant's asylum application in keeping with Convention

Execution of judgment • Individual measures • Respondent State invited to examine merits of applicant's asylum application in keeping with Convention • No expulsion before completion of examination

M.S.S. v. Belgium and Greece [GC], 2011-I

Respondent State required to set up compensation scheme guaranteeing appropriate redress for the "erased"

Pilot judgment • General measures • Respondent State required to set up

compensation scheme guaranteeing appropriate redress for the “erased” • Appropriate redress • Introduction of *ad hoc* compensation scheme

Kurić and Others v. Slovenia [GC], 2012-IV (extracts)

Failure to adopt and implement general measures within one year from the date of principal judgment

Measures of a general character • Pilot judgment • Systemic problem • Binding force and execution of judgments • Obligation to introduce and implement *ad hoc* domestic compensation scheme • Failure to adopt and implement general measures within one year from the date of principal judgment • Prevention of accumulation of repetitive cases

Kurić and Others v. Slovenia (just satisfaction) [GC], 2014-I

Respondent State required to take general measures to ensure independent representation for mentally disabled persons

Execution of judgment • General measures • Respondent State required to take general measures to ensure independent representation for mentally disabled persons

Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], 2014-V

Notice of prosecution allegedly not received by person convicted *in absentia*

Execution of the Court’s judgments • Reopening of a trial

Somogyi v. Italy, 2004-IV

Respondent State encouraged to amend existing range of remedies or add new ones so as to secure effective redress for violations of the right to a trial within a reasonable time

Abide by judgment • Systemic problem • Inadequate legislation and inefficiency in the administration of justice • Measures of a general character • Supervision by Committee of Ministers • Respondent State encouraged to amend existing range of remedies or add new ones so as to secure effective redress for violations of the right to a trial within a reasonable time

Lukenda v. Slovenia, 2005-X

Failure to establish an adequate procedure for providing compensation under restitution legislation

Execution of a judgment • Measures of general character • Failure to establish an

adequate procedure for providing compensation under restitution legislation • State called upon to take appropriate statutory, administrative and budgetary measures to remove obstacles to the award of compensation

Driza v. Albania, 2007-V (extracts)

Non-enforcement of court judgments – Practice incompatible with the Convention

Execution of judgment • Measures of a general character • Pilot-judgment procedure • Systemic nature of violation • Practice incompatible with the Convention • Respondent State required to introduce an effective remedy securing redress for non-enforcement or delayed enforcement of judgments and to grant redress to all victims in pending cases of this kind • Adjournment of proceedings on new applications

Burdov v. Russia (no. 2), 2009-I

Respondent State required to take measures to enable serving prisoners to vote

Execution of a judgment • Pilot-judgment procedure • Measures of a general character • Respondent State required to take measures to enable serving prisoners to vote • Undermining of Convention system by lengthy delay in introducing remedial legislation • Procedure for dealing with comparable cases

Greens and M.T. v. the United Kingdom, 2010-VI (extracts)

Respondent State required to reform the system of judicial discipline

Execution of judgment • Respondent State required to reform the system of judicial discipline • Measures of a general character • Individual measures • Respondent State required to secure applicant's reinstatement to the post of judge of the Supreme Court at the earliest possible date

Oleksandr Volkov v. Ukraine, 2013-I

Respondent State required to take tangible remedial measures to protect applicant from existing risks to his life and health in foreign jurisdiction

Execution of judgment • Individual measures • Respondent State required to take tangible remedial measures to protect applicant from existing risks to his life and health in foreign jurisdiction • General measures • Respondent State required to ensure without delay the lawfulness of State action in extradition and expulsion cases and the effective protection of potential victims

Savridin Dzhurayev v. Russia, 2013-III (extracts)

Respondent State required to take all necessary and appropriate measures to

ensure expeditious compliance with procedural requirements of Article 2 in cases concerning killings by the security forces in Northern Ireland

Execution of judgment • Individual measures • Measures of a general character • Respondent State required to take all necessary and appropriate measures to ensure expeditious compliance with procedural requirements of Article 2 in cases concerning killings by the security forces in Northern Ireland

McCaughey and Others v. the United Kingdom, 2013-IV

Slovenia and Serbia to allow within one year all persons in the applicants' position to recover their "old" foreign-currency savings under the same conditions as their nationals

Pilot judgment • Execution of judgment • Systemic problem • General measures • Legislative amendments • Slovenia and Serbia to allow within one year all persons in the applicants' position to recover their "old" foreign-currency savings under the same conditions as their nationals

Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia, 2014-IV

Refusal to order retrial following a finding by the European Court of Human Rights of a violation of the right to a fair hearing

Execution of judgment • Refusal to order retrial following a finding by the European Court of Human Rights of a violation of the right to a fair hearing • Referral of case to Court of Appeal • Absence of determination of new criminal charge • Safety of conviction based on evidence admitted in contravention of the right to a fair hearing • Absence of retrospective effect of legislative amendment • Role of the Committee of Ministers in supervising execution of judgments • Lack of Court's jurisdiction to order retrial

Lyons and Others v. the United Kingdom (dec.), 2003-IX

ARTICLE 47

ADVISORY OPINIONS

Scope of the Court's competence to give an advisory opinion

Advisory opinion • Scope of the Court's competence to give an advisory opinion • Request of the Committee of Ministers for an advisory opinion • Coexistence of the CIS Convention on Human Rights and the European Convention on Human Rights • Legal question concerning the interpretation of the Convention • Question

which the Court might have to consider in consequence of proceedings instituted in accordance with the Convention

Decision on the competence of the Court to give an advisory opinion [GC], 2004-VI

ARTICLE 48

ADVISORY JURISDICTION OF THE COURT

Scope of the Court's competence to give an advisory opinion

Advisory jurisdiction of the Court • Scope of the Court's competence to give an advisory opinion

Decision on the competence of the Court to give an advisory opinion [GC], 2004-VI

ARTICLE 56

TERRITORIAL APPLICATION

Exclusion of Gibraltar from European parliamentary elections

Territorial application • Local requirements • Gibraltar

Matthews v. the United Kingdom [GC], 1999-I

Right to vote in elections to New Caledonian Congress refused on account of ten-year residence rule

Local requirements • New Caledonia

Py v. France, 2005-I (extracts)

Responsibility of the States – No declaration by Portugal regarding the territory of Macao

Territorial extension • Declaration accepting competence • No declaration by Portugal regarding the territory of Macao

Yonghong v. Portugal (dec.), 1999-IX

Absence of a declaration under Article 56 extending Protocol No. 1 to an overseas territory

Territorial application • Absence of a declaration under Article 56 extending Protocol No. 1 to an overseas territory • Effective control principle • Distinction

between that principle and system of declarations in respect of overseas territories • Interpretation • Limitations on evolutive interpretation • Declarations in respect of only a part of Convention and its Protocols

Quark Fishing Ltd v. the United Kingdom (dec.), 2006-XIV

ARTICLE 57

RESERVATIONS

Reservation – Expulsion of family from Latvia on basis of treaty providing for withdrawal of Russian troops

Reservation • Expulsion of family from Latvia on basis of treaty providing for withdrawal of Russian troops • Treaty obligation pre-dating ratification of the Convention • “Quasi-reservation” • Presumed conformity of laws with Convention at time of ratification

Slivenko v. Latvia (dec.) [GC], 2002-II

Effect of expiry of reservation

Reservations • Reservation in respect of Article 5 § 3 • Validity of reservation • Effect of expiry of reservation

Jėčius v. Lithuania, 2000-IX

Austrian reservation in respect of Article 6 as regards public hearings in administrative proceedings

Reservation • Austrian reservation in respect of Article 6 • Exclusion of public hearings in administrative proceedings • Absence of brief statement of the law

Eisenstecken v. Austria, 2000-X

Reservation – Russia’s reservation to Article 5

Reservation • Russia’s reservation to Article 5 • Inapplicability of reservation to length of detention on remand

Kalashnikov v. Russia, 2002-VI

Reservation not to extend beyond provisions expressly cited by the State

Reservations • Applicability • Laws then in force • Reservation not to extend beyond provisions expressly cited by the State

Dacosta Silva v. Spain, 2006-XIII

Latvian reservation concerning laws on immovable property reform

Reservation • Latvian reservation concerning laws on immovable property reform • Examination of reservation's validity • Reservation of a general character • Reservation relating to a series of pieces of legislation • Brief statement of the law concerned

Kozlova and Smirnova v. Latvia (dec.), 2001-XI

Liechtenstein's reservation concerning public hearings and public pronouncement of judgments

Reservations • Reservation by Liechtenstein concerning the right to a hearing and public pronouncement of judgments in certain proceedings • Nature and wording of reservation

Steck-Risch and Others v. Liechtenstein (dec.), 2004-II

ARTICLE 1 OF PROTOCOL NO. 1

POSSESSIONS

Right of pre-emption exercised by the State over a painting bought under a contract of sale signed eleven years earlier, but not declared in the proper form

Possessions • Applicant with a proprietary interest recognised in domestic law until the exercise of a right of pre-emption, a measure falling into the category of acts of expropriation

Beyeler v. Italy [GC], 2000-I

Possessions – Expropriation pre-dating entry into force of Convention

Possessions • Expropriation pre-dating entry into force of Convention • Absence of continuing situation • Absence of legitimate expectation

Prince Hans-Adam II of Liechtenstein v. Germany [GC], 2001-VIII

Loss of homes and property by persons displaced in the context of the Nagorno-Karabakh conflict

Positive obligations • Loss of homes and property by persons displaced in the context of the Nagorno-Karabakh conflict • Armenia's failure to take measures to secure property rights of Azerbaijani citizens displaced in the context of the Nagorno-Karabakh conflict • Possessions • Flexible approach regarding the evidence in respect of loss of property and home in situations of international or

internal armed conflict • Right of use in respect of land under Soviet law • Peaceful enjoyment of possessions • Access to property impossible • Lack of compensation • Necessity to establish easily accessible property-claims mechanism operating with flexible evidentiary standards • Assistance provided to internally displaced Armenians incapable of exempting the State from its obligations towards Azerbaijanis who also fled the conflict

Chiragov and Others v. Armenia
[GC], 2015-III

Loss of homes and property by persons displaced in the context of the Nagorno-Karabakh conflict

Positive obligations • Loss of homes and property by persons displaced in the context of the Nagorno-Karabakh conflict • Azerbaijan's failure to take measures to secure property rights of an Armenian citizen displaced in the context of the Nagorno-Karabakh conflict • Possessions • Flexible approach regarding evidence of loss of property and home in situations of international or internal armed conflict • Right of use in respect of land under Soviet law • Peaceful enjoyment of possessions • Denial of access to property justified by safety considerations • Lack of compensation • Necessity to establish easily accessible property-claims mechanism operating with flexible evidentiary standards • Assistance provided to internally displaced Azerbaijanis incapable of exempting State from obligations towards Armenians who also fled the conflict

Sargsyan v. Azerbaijan [GC], 2015-IV

Failure to obtain restitution of land confiscated under the communist regime

Possessions • Existing possession • Legitimate expectation of obtaining enjoyment of a right • Failure to obtain restitution of land confiscated under the communist regime • Instantaneous act not producing a continuing situation

Malhous v. the Czech Republic
(dec.) [GC], 2000-XII

Conditions of compensation, after German reunification, for expropriations in GDR and Soviet Occupied Zone of Germany

Possessions • Conditions of compensation, after German reunification, for expropriations in GDR and Soviet Occupied Zone of Germany • Wide margin of appreciation • Expropriations before entry into force of the Convention • Not a continuing situation • Legitimate expectation • Exceptional context: reunification of Germany

Von Maltzan and Others v. Germany
(dec.) [GC], 2005-V

Unlawfulness recorded and demolition ordered several decades after construction of house without planning permission

Possessions • Unlawfulness recorded and demolition ordered several decades after construction of house without planning permission • Control of the use of property • Knowledge and tolerance by the State of building in issue • Legitimate expectation • Proprietary interest sufficiently great and established • General interest • Proportionality • Wide margin of appreciation • Legitimate aim of environmental protection • Acceptable restrictions on property rights • Fair balance to be struck between individual and collective rights • No provision for regularising building within forested area • Offence not subject to limitation

Hamer v. Belgium, 2007-V (extracts)

Abolition of exclusive rights of audience before courts of appeal

Possessions • Abolition of exclusive rights of audience before courts of appeal • Lawful basis • General interest • Absence of arbitrariness • Proportionality

Wendenburg and Others v. Germany (dec.), 2003-II (extracts)

Property transaction subject to conditions precedent ultimately not satisfied

Possessions • Property transaction subject to conditions precedent ultimately not satisfied • Investment made to secure future financial gain • No “legitimate expectation” of being able to complete property development project

Mirailles v. France (dec.), 2003-XI (extracts)

Refusal of heir’s claim for restitution of property confiscated in 1945

Possessions • Refusal of heir’s claim for restitution of property confiscated in 1945 • “Legitimate expectation” • Deprivation of property • Court’s competence *ratione temporis*

Des Fours Walderode v. the Czech Republic (dec.), 2004-V

Fine imposed by an administrative authority for failing to comply with terms of planning permission

Possessions • Interference • Prescribed by law • Margin of appreciation • General interest • Fine imposed by an administrative authority for failing to comply with terms of planning permission • Substantial alteration to original project through relocation of the building • Fine equal to 100% of the value of the works • Impact of deterrent measure proportionate to interests at stake

Valico S.r.l. v. Italy (dec.), 2006-III

Striking off Bar Council roll of lawyer who was made a permanent civil servant

Possessions • Clientele • Interference • Control of use of property • Provided for by law • Public interest • Striking off Bar Council roll of lawyer who was made a permanent civil servant • Independence of profession of lawyer • Proper administration of justice • Proportionality • Margin of appreciation • Reasonableness of justification by domestic courts • Limited scope of interference

Lederer v. Germany (dec.), 2006-VI

Decision, with effect *ex nunc*, to cease paying applicant allowance initially awarded by mistake

Possessions • Legitimate expectation • Decision, with effect *ex nunc*, to cease paying applicant allowance initially awarded by mistake • Entitlement based on mistaken decision • Control of use of property • Interference • Provided for by law • In public interest • Proportionality • Margin of appreciation • Non-arbitrary interpretation of domestic law • State free to determine scope of laws governing benefits • No obligation to reimburse sums wrongfully received

Chroust v. the Czech Republic (dec.), 2006-XV

POSSESSIONS AND PEACEFUL ENJOYMENT OF POSSESSIONS

Impediments to satisfaction of claim for compensation in respect of property abandoned as a result of boundary changes at the end of the Second World War

Peaceful enjoyment of possessions • Impediments to satisfaction of claim for compensation in respect of property abandoned as a result of boundary changes at the end of Second World War • Possessions • “Right to credit” recognised by domestic courts • Scope and nature of right • Examination of right in light of general rule of peaceful enjoyment of possessions • Positive duties and interference • Fair balance of competing interests • Lawfulness of interference • Legitimate aims arising out of major socio-economic transition • Relevance of number and value of compensation claims • Margin of appreciation • Effect of legislative and practical measures on possibility of satisfying claims • Destruction of essence of right • Legal extinction of right • Disproportionate individual burden

Broniowski v. Poland [GC], 2004-V

Refusal of claim for restitution of confiscated coins, on the ground of failure to show their whereabouts

Peaceful enjoyment of possessions • Possessions • Refusal of claim for restitution of confiscated coins, on the ground of failure to show their whereabouts • Conditions

for restitution of property • “Existing possessions” • Notion of claim constituting an “asset” • Notion of “legitimate expectation” • Lack of arbitrariness in court decisions • Claim insufficiently established

Kopecký v. Slovakia [GC], 2004-IX

Deaths and destruction of property as a result of dangerous activities

Peaceful enjoyment of possessions • Possessions • Explosion at industrial site causing destruction of house built unlawfully on publicly owned land • Applicability • Dwelling built and occupied without title • Authorities’ tacit approval • Substantive pecuniary interest • Interference with property resulting from the State’s failure to act • Positive obligations • Obligation on the State to take positive steps to protect property

Öneryıldız v. Turkey [GC], 2004-XII

Setting aside of a trade mark registration

Peaceful enjoyment of possessions • Setting aside of a trade mark registration • Possessions • Intellectual property • Applicability • Conditional nature of rights attached to applications for registration of a trade mark • Proprietary rights • Interference • Limits on Court’s jurisdiction to review national courts’ interpretation of domestic law • Absence of indisputable and intentional retrospective legislative intervention • Absence of arbitrariness or manifest unreasonableness

Anheuser-Busch Inc. v. Portugal [GC], 2007-I

Loss of registered land by application of the law on adverse possession

Peaceful enjoyment of possessions • Loss of registered land by application of the law on adverse possession • Applicability • Possessions • Interference • Operation of statute of limitations • Control of the use of property • Legitimate aim in the general interest • Legal certainty and finality • Margin of appreciation • Consensus among member States • Proportionality • Foreseeability of consequences of failure to act • Minimal action required to stop time running • Procedural guarantees • Irrelevance of value of land or of absence of right to compensation • Fair balance of competing interests

J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom [GC], 2007-III

Exclusion of non-nationals from right to claim restitution of property

Peaceful enjoyment of possessions • Exclusion of non-nationals from right to claim

restitution of property • Possessions • Legitimate expectation • Claim dependent on fulfilment of condition

Gratzinger and Gratzingerova v. the Czech Republic (dec.) [GC], 2002-VII

Entitlement to compensation for property abandoned as a result of boundary changes after the Second World War

Peaceful enjoyment of possessions • Possessions • Entitlement to compensation for property abandoned as a result of boundary changes after the Second World War • Entitlement recognised in domestic law • Jurisdiction *ratione temporis* • Entitlement vested in individual at time of ratification of Protocol No. 1 and still subsisting

Broniowski v. Poland (dec.) [GC], 2002-X

Prolonged delay in execution of court judgments by State authorities

Peaceful enjoyment of possessions • Prolonged delay in execution of court judgments by State authorities • Possessions • Final and binding judgment • Interference • Absence of justification for non-execution of court judgments

Burdov v. Russia, 2002-III

Refusal to reimburse VAT payments made under legislation that was incompatible with a European directive

Peaceful enjoyment of possessions • Refusal to reimburse VAT payments made under legislation that was incompatible with a European directive • Possessions • Claim • Legitimate expectation • Interference • Fair balance • General interest • Strict interpretation of the “classification of remedies” rule • Refusal by the *Conseil d’État* to give effect to a directly applicable provision of Community law • Proportionality

S.A. Dangeville v. France, 2002-III

Employer’s inclusion of waiters’ tips in the calculation of their minimum wage

Possessions • Peaceful enjoyment of possessions • Employer’s inclusion of waiters’ tips in the calculation of their minimum wage • Lack of arbitrariness or unreasonableness in conclusion of domestic courts • Legitimate expectation

Nerva and Others v. the United Kingdom, 2002-VIII

Administrative decision affecting property claims, without reassessment of the situation after a significant lapse of time

Peaceful enjoyment of possessions • Administrative decision affecting property claims, without reassessment of the situation after a significant lapse of time •

Possessions • Disputed ownership of property • Acceptance of *locus standi* in domestic proceedings • Obligation to reassess situation • Absence of right to compensation • Fair balance

Papastavrou and Others v. Greece, 2003-IV

Prolonged delay by State authorities in execution of court judgments

Peaceful enjoyment of possessions • Prolonged delay by State authorities in execution of court judgments • Final and binding judgments • Restitution of property • Judgments ordering payment of compensation and/or eviction of occupants • Possessions • Interference • Absence of justification for failure to comply with a court judgment

Prodan v. Moldova, 2004-III (extracts)

Refusal to allow villagers to return to their properties on security grounds

Peaceful enjoyment of possessions • Refusal to allow villagers to return to their properties on security grounds • Alleged forcible eviction of villagers by security forces • Possessions • Absence of title deeds • Villagers living in their own houses or their fathers' houses and deriving income from economic activities • Interference • Proportionality • Maintenance of security • Length of period during which access to property hindered • Deprivation of means of livelihood • Inadequacy of measures taken by the authorities to remedy situation of displaced persons

Doğan and Others v. Turkey, 2004-VI (extracts)

Reduction in value of guarantor's claim against principal debtor as a result of debt adjustment

Peaceful enjoyment of possessions • Reduction in value of guarantor's claim against principal debtor as a result of debt adjustment • Possessions • Claim recognised under domestic law • Interference • Debt adjustment • Public interest • General interest • Transfer of property from one individual to another • Socio-economic policies • Excessive individual burden • Assumption of financial risk • Procedural guarantees • Precarious nature of claim

Bäck v. Finland, 2004-VIII

Failure to enforce final judgment ordering authorities to provide the applicant with a State flat under a social tenancy agreement

Possessions • Enforcement proceedings • Claim to a "social tenancy agreement" sufficiently established to constitute a "possession" • Peaceful enjoyment of possessions •

Interference • Failure to enforce final judgment ordering authorities to provide the applicant with a State flat under a social tenancy agreement

Malinovskiy v. Russia, 2005-VII (extracts)

Non-enforcement of a final judgment on account of limited budgetary resources

Peaceful enjoyment of possessions • Non-enforcement of a final judgment on account of limited budgetary resources • Possessions • Final and binding judgment • Interference • Foreseeability • Absence of legal provisions justifying the non-execution of the court judgment

Amat-G Ltd and Mebaghishvili v. Georgia, 2005-VIII

Refusal to pay interest for delay in refunding tax unduly paid

Peaceful enjoyment of possessions • Possessions • Refusal to pay interest for delay in refunding tax unduly paid • Late-payment interest • Fair balance

Eko-Elda AVEE v. Greece, 2006-IV

Destruction of property caused by natural disaster

Possessions • Peaceful enjoyment of possessions • Destruction of property caused by natural disaster • Positive obligations • Margin of appreciation • Duty to take reasonable steps to protect possessions • Absence of causal link • Scope of procedural obligations • Alternatives to judicial response • Compensation • Factors determining level of compensation • Fair balance

Budayeva and Others v. Russia, 2008-II (extracts)

Refusal to reimburse election expenses

Peaceful enjoyment of possessions • Possessions • Refusal to reimburse election expenses • Obligation to repay an advance on the lump-sum reimbursement of election expenses

Cheminade v. France (dec.), 1999-II

Private bank prevented from carrying on part of its activity (winding up of estates) owing to lack of licence required by Legal Advisers Act

Peaceful enjoyment of possessions • Possessions • Clientele • Lack of interference with right to peaceful enjoyment of possessions • No “right” because licence surrendered • Control of use of property • General interest • Private bank prevented from carrying on part of its activity (winding up of estates) owing to lack of licence required by Legal Advisers Act • Proportionality • Margin of appreciation

Hoerner Bank GmbH v. Germany (dec.), 1999-V

Eviction of serviceman from quarters belonging to State

Peaceful enjoyment of property • Property • Landlord and tenant • Quarters belonging to State • Eviction by State • Eviction of serviceman from quarters belonging to State • Right to live in a specific property

J.L.S. v. Spain (dec.), 1999-V

Revocation of a professional appointment made in the GDR during the transitional period preceding Germany's reunification

Peaceful enjoyment of possessions • Possessions • Clientele • Control of the use of property • Provided for by law • General interest • Proportionality • Revocation of a professional appointment • Exceptional context: reunification of Germany • Checks on possible abuses due to the transitional period

Olbertz v. Germany (dec.), 1999-V

Disbarment of a lawyer who had previously served as a criminal court judge in the GDR

Peaceful enjoyment of possessions • Possessions • Clientele • Disbarment of a lawyer who had previously served as a criminal court judge in the GDR • Loss of clientele and income • Control of the use of property • Provided for by law • General interest • Proportionality • Preserving the public's confidence in lawyers • Exceptional context: reunification of Germany • Balance between the applicant's economic interests and the general interest

Döring v. Germany (dec.), 1999-VIII

Absence of compensation for loss of business resulting from prohibition on handguns

Peaceful enjoyment of possessions • Possessions • Goodwill • Loss of future income and profit • Control of the use of property • General interest • Regulation of firearms • Absence of compensation for loss of business resulting from prohibition on handguns • Proportionality • Individual and excessive burden • Balance between business interests and the general interest

Ian Edgar (Liverpool) Ltd v. the United Kingdom (dec.), 2000-I

Effects on private debts of bilateral agreements between States definitively settling such debts

Peaceful enjoyment of possessions • Possessions • Debt • General interest • Fair balance • Effects on private debts of bilateral agreements between States definitively settling such debts • Bonds issued by Russian State before 1914 • Franco-Russian

agreements on final settlement of mutual debts • Arrangements for compensation of holders of Russian bonds • Partial compensation • Risks linked to financial operation

Abrial and Others v. France (dec.), 2001-VI

Reduction in the early retirement pension of a GDR national under the German Unification Treaty

Peaceful enjoyment of possessions • Reduction in the early retirement pension of a GDR national under the German Unification Treaty • Possessions • Pension • Right to payment of a pre-retirement pension • Interference • Exceptional background to German reunification • Proportionality

Lenz v. Germany (dec.), 2001-X

Inability to withdraw amounts indexed to savings deposits

Peaceful enjoyment of possessions • Possessions • Inability to withdraw amounts indexed to savings deposits • Right to withdraw initial deposits with interest • No existing entitlement

Gayduk and Others v. Ukraine (dec.), 2002-VI

Refusal to grant litigants leave to bring proceedings against a foreign State to enforce recovery of final debt

Peaceful enjoyment of possessions • Possessions • Refusal to grant litigants leave to bring proceedings against a foreign State to enforce recovery of final debt • State immunity • Interference • Provided for by law • Public interest • Preservation of relations between two sovereign States • Proportionality • Balance between general interest and individual interest

Kalogeropoulou and Others v. Greece and Germany (dec.), 2002-X

Enactment of retrospective legislation during proceedings

Peaceful enjoyment of possessions • Possessions • Repayment of contributions wrongly paid under Community law • Enactment of retrospective legislation during proceedings • Margin of appreciation • General interest • Financing of fund • Fair balance

EEG-Slachthuis Verbist Izegem S.A. v. Belgium (dec.), 2005-XII

Refusal to return an estate located on the territory of the former German Democratic Republic

Peaceful enjoyment of possessions • Possessions • Refusal to return an estate located

on the territory of the former German Democratic Republic • Agreement between Denmark and the former German Democratic Republic • Vienna Convention on the Law of Treaties • Interpretation by German courts in harmony with object and purpose of the Agreement • Legitimate expectation • Incompatibility *ratione materiae*

Melchior v. Germany (dec.), 2006-II

Constitutional Court's decision depriving applicant of his pre-emption right over nationalised flats

Possessions • Peaceful enjoyment of possessions • Pre-emption right over nationalised flats • Enforceable claim • Legitimate expectation • Constitutional Court's decision depriving applicant of his pre-emption right over nationalised flats • Prospects of benefiting from pre-emption right depended on condition beyond applicant's control

Gavella v. Croatia (dec.), 2006-XII (extracts)

PEACEFUL ENJOYMENT OF POSSESSIONS

Refusal of authorities to return property to tenant after eviction order quashed

Peaceful enjoyment of possessions • Landlord and tenant • Eviction by the State • Refusal of authorities to return property to tenant after eviction order quashed • Lawfulness of interference

Iatridis v. Greece [GC], 1999-II

Right of pre-emption exercised by the State over a painting bought under a contract of sale signed eleven years earlier, but not declared in the proper form

Peaceful enjoyment of possessions • Right of pre-emption exercised over a painting bought under a contract signed eleven years earlier, but not declared in the proper form • Examination under the general rule enunciated in Article 1 of Protocol No. 1 on account of the legal and factual complexity of the case • Interference • Prescribed by law • Lack of clarity in the statute and latitude afforded to the relevant authorities in determining whether fair balance had been struck • Legitimate aim • Control of market in works of art for purposes of protecting cultural and artistic heritage • Margin of appreciation in determining what is in general interest • Fair balance • Conduct of the parties • Lack of transparency on the part of the applicant • Obligation on the authorities to act in good time, appropriately and with consistency • Unjust enrichment derived by authorities from uncertainty created

to the applicant's detriment • Disproportionate and excessive burden borne by the applicant

Beyeler v. Italy [GC], 2000-I

Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War

Peaceful enjoyment of possessions • Claim for compensatory land in respect of property abandoned as a result of boundary changes following the Second World War • Grand Chamber principal judgment finding a violation of Article 1 of Protocol No. 1 • Dysfunction affecting the protection of the right of property in the national legal order • Systemic problem • Friendly settlement • Measures of a general character • Legislative amendments • Removal of obstacles to the exercise of the "right to credit" of Bug River claimants • Individual measures • Matter resolved • Striking out of application

Broniowski v. Poland (friendly settlement) [GC], 2005-IX

Failure to pay final compensation for nationalised property

Enjoyment of possessions • Property • Debt • Nationalisation • Compensation • Failure to pay final compensation for nationalised property • Margin of appreciation • Economic and social policy • Public interest • Proportionality • Special and excessive burden • Relevance of delay in payment of compensation • Legal certainty

Almeida Garrett, Mascarenhas Falcão and Others v. Portugal, 2000-I

Repeated prohibitions on building

Peaceful enjoyment of possessions • Interference • Repeated prohibitions on building • Regional development • Margin of appreciation • General interest • Balance between general interest and right to peaceful enjoyment of possessions • Prolonged state of uncertainty • No possibility of compensation • Individual and excessive burden

Elia S.r.l. v. Italy, 2001-IX

Lack of compensation following expropriation

Peaceful enjoyment of possessions • Interference • Lack of compensation following expropriation • Applicants debarred, at advanced stage of lengthy proceedings, from relying on their right to compensation for expropriation • Balance between private interest and public interest

Yagtzilar and Others v. Greece, 2001-XII

Discrepancy between assessment of market value of property for the purpose of expropriation and assessment of market value for the purpose of taxation

Peaceful enjoyment of possessions • Discrepancy between assessment of market value of property for the purpose of expropriation and assessment of market value for the purpose of taxation • Deprivation of property • Expropriation • Interference • Lawfulness of interference with property rights • Public interest • Adequacy of compensation for expropriation • Margin of appreciation • Procedural requirements • Reasonable relationship between compensation and value of property • Secure the payment of taxes • General interest • Discrepancies in assessment of value of property in different proceedings • Combined effect of separate interferences • Legitimate expectation of consistency • Absence of sufficient explanation for discrepancy in assessment of market value of property

Jokela v. Finland, 2002-IV

Executive intervention in the judicial process

Peaceful enjoyment of possessions • Interference • Cases that could not be classified in any specific category • Examination in the light of the general rule • Direct link between the unfairness of the proceedings and the right to the peaceful enjoyment of possessions • Permanent state of uncertainty • Fair balance

Sovtransavto Holding v. Ukraine, 2002-VII

No right to restitution of property situated in the German Democratic Republic that had been transferred after the border was opened

Peaceful enjoyment of possessions • No right to restitution of property situated in the German Democratic Republic that had been transferred after the border was opened • Possessions • Interference • Statutory basis • General interest • Exceptional background: German reunification • Proportionality • Lack of duress, although the period following German reunification had been a time of considerable legal uncertainty • No disproportionate burden • Fair balance between private interests and the general interest

Wittek v. Germany, 2002-X

Loss of disability pension entitlements as a result of legislative amendments

Peaceful enjoyment of possessions • Loss of disability pension entitlements as a result of legislative amendments • Interference • Proportionality • Differential treatment in comparison with other disability pensioners • Excessive and disproportionate burden • Margin of appreciation

Kjartan Ásmundsson v. Iceland, 2004-IX

Non-execution of judgments awarding salary arrears to employees of a State-owned company

Peaceful enjoyment of possessions • Non-execution of judgments awarding salary arrears to employees of a State-owned company

Mykhaylenky and Others v. Ukraine, 2004-XII

Delays in enforcing judgments awarding judicial benefits and salary arrears to judges

Peaceful enjoyment of possessions • Interference • Legitimate public interest • Proportionality • Delays in enforcing judgments awarding judicial benefits and salary arrears to judges • Delay incompatible with the need to ensure judges' ability to exercise their functions independently and impartially • Prolonged uncertainty

Zubko and Others v. Ukraine, 2006-VI (extracts)

Requisition of building for government use and imposition of quasi-lease agreement lasting sixty-five years

Peaceful enjoyment of possessions • Requisition of building for government use and imposition of quasi-lease agreement lasting sixty-five years • Control of the use of property • General interest • Proportionality • Lengthy lease yielding very low rent • Excessive individual burden

Fleri Soler and Camilleri v. Malta, 2006-X

Transfer to State of money in dormant bank accounts owing to operation of statutory limitation period

Peaceful enjoyment of possessions • Transfer to State of money in dormant bank accounts owing to operation of statutory limitation period • Agreement between the parties subject to application of the law • Legitimate aim • Public interest • Termination of legal relationships created in distant past whose existence has become uncertain • Individuals placed at disadvantage • Requirement for banks to inform holders of dormant bank accounts when limitation period due to expire • Affording opportunity to stop time running • Fair balance between interests at stake • Proportionality

Zolotas v. Greece (no. 2), 2013-I (extracts)

Forfeiture of applicant's bail notwithstanding his acquittal

Peaceful enjoyment of possessions • Forfeiture of applicant's bail notwithstanding his acquittal • General interest • Ensuring proper conduct of criminal proceedings • Fighting and preventing crime • Proportionality • Conduct of criminal proceedings

significantly hampered by applicant's failure to comply with bail conditions • Applicant's staying out of country for several years without maintaining regular contact with trial court • Forfeiture of bail ordered after full adversarial proceedings and careful judicial scrutiny

Lavrechov v. the Czech Republic, 2013-III

Inability to recover “old” foreign-currency savings following dissolution of former Socialist Federal Republic of Yugoslavia

Peaceful enjoyment of possessions • Inability to recover “old” foreign-currency savings following dissolution of former Socialist Federal Republic of Yugoslavia • Lawfulness • Legitimate aim • Fair balance • Wide margin of appreciation

Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia, 2014-IV

Failure of State to maintain purchasing power of sums deposited in a housing savings account

Peaceful enjoyment of possessions • Investments • Housing savings account • Failure of State to maintain purchasing power of sums deposited in a housing savings account • Refusal of housing grant to investor due to new conditions • Economic constraints on State

Rudzińska v. Poland (dec.), 1999-VI

Refusal to grant permanent residence to foreign national owning a house in the country concerned

Peaceful enjoyment of possessions • Refusal to grant residence permit to foreign national owning a house in the country concerned • Absence of right of foreign property-owner to reside permanently in the country concerned • Alternative possibilities of access to property

Ilić v. Croatia (dec.), 2000-X

No compensation in full for repatriated French nationals dispossessed of their property

Peaceful enjoyment of possessions • No compensation in full for repatriated French nationals dispossessed of their property • Expropriation • Jurisdiction *ratione personae* • Property • Debt • No right to compensation from the French State

Teytaud and Others v. France (dec.), 2001-I

Confiscation of possessions of person suspected of belonging to criminal

organisation, pursuant to statutory presumption that they are proceeds of unlawful activities

Peaceful enjoyment of possessions • Interference • Confiscation of possessions of person suspected of belonging to criminal organisation pursuant to statutory presumption that they are proceeds from unlawful activities • Deprivation of property • Control of use of property • General interest • Prevent unlawful use in a way dangerous to society of possessions not proved to have been lawfully acquired • Fight against mafia-type organised crime • Margin of appreciation • Problem of public concern warranting measures of control • Presumption of fact or of law • Statutory presumption that possessions of person suspected of belonging to criminal association are proceeds from unlawful activities • Procedure offering adequate opportunity to submit arguments

Arcuri and Others v. Italy (dec.), 2001-VII

Confiscation of assets acquired by prominent GDR officials through abuse of authority

Peaceful enjoyment of possessions • Confiscation of assets acquired by prominent GDR officials through abuse of authority • Control of the use of property • Provided for by law • General interest • Proportionality • Distinction between assets to which applicants have lawful title and assets acquired unlawfully • Exceptional context: reunification of Germany • Balance between applicants' interests and general interest of German society • Legislation on convertible funds

Honecker and Others v. Germany (dec.), 2001-XII

Imposition of restrictions on withdrawals from foreign-currency savings accounts

Peaceful enjoyment of possessions • Imposition of restrictions on withdrawals from foreign-currency savings accounts • Interference • Control of the use of property • Margin of appreciation in implementing economic policy • Economic situation • Public interest • Proportionality • Limited possibilities for using frozen savings • Payment of interest on frozen savings • Issuing of redeemable government bonds

Trajkovski v. the former Yugoslav Republic of Macedonia (dec.), 2002-IV

Forfeiture of money believed to be intended for use in drug trafficking

Peaceful enjoyment of possessions • Forfeiture of money believed to be intended for use in drug trafficking • Control of use of property • Legal basis for interference • General interest in combating drug trafficking • Proportionality • Fair balance between competing interests • Margin of appreciation • Statutory limits on

discretion of authorities • Judicial supervision • Burden of proof placed on defence • Adversarial proceedings

Butler v. the United Kingdom (dec.), 2002-VI

Procedure for processing claims for compensation at the enforcement stage

Peaceful enjoyment of possessions • Procedure for processing claims for compensation at the enforcement stage • Dispute over date from which the victims' compensation award should bear default interest • Calculation of compensation in individual cases • Application of domestic legislation by the relevant courts • Extent of the State's obligation to pay interest

Fernández-Molina González and Others v. Spain (dec.), 2002-IX

Donation from GDR political party placed under administration of Trust Agency after German reunification

Peaceful enjoyment of possessions • Donation from GDR political party placed under administration of Trust Agency after German reunification • Interference • Control of use of property • Prescribed by law • General interest • Proportionality • Political-party assets of questionable origin returned or used in public interest • Exceptional circumstances of German reunification • Balance between individual's interests and general interest

Islamische Religionsgemeinschaft e.V. v. Germany (dec.), 2002-X

No prior communication of Government Commissioner's submissions and impossibility of replying to them at hearing before the Conseil d'État

Peaceful enjoyment of possessions • Public interest • Works related to land consolidation project, aimed at general improvement of re-parcelled land • Proportionality

G.L. and S.L. v. France (dec.), 2003-III (extracts)

Refusal to return to its owner a vehicle seized from persons who had hired it and used it for the illegal transport of clandestine immigrants

Peaceful enjoyment of possessions • Refusal to restore to its owner a vehicle seized from persons who had hired it and used it for the illegal transport of clandestine immigrants • Interference • Control of the use of property • General interest • Prohibiting use of a possession unlawfully and in a manner prejudicial to the community • Legitimate aim • Prevention of clandestine immigration • Margin of appreciation • Presumption of fact or law • Crime-prevention policy • Procedure affording an adequate opportunity of putting one's case • Proportionality

Yildirim v. Italy (dec.), 2003-IV

Interpretation by arbitration tribunal of clause in contract

Peaceful enjoyment of possessions • Interpretation by arbitration tribunal of clause in contract • Arbitration clause • No arbitrariness • No interference by public authorities with right to peaceful enjoyment of possessions

Transado-Transportes Fluviais do Sado, S.A. v. Portugal (dec.), 2003-XII

Refusal by authorities to execute decision ordering restitution of a building housing an embassy

Peaceful enjoyment of possessions • Refusal by authorities to execute decision ordering restitution of a building housing an embassy • Public interest • State immunity • Safeguarding of relations between two sovereign States • Claimant with valid title to disputed property • Balance between general and individual interest

Manoilescu and Dobrescu v. Romania and Russia (dec.), 2005-VI

Forfeiture of police officer's pension for serious offences

Peaceful enjoyment of possessions • Interference • Forfeiture of police officer's pension for serious offences • Disciplinary measure • Discretionary measure • Procedural protection afforded to the applicant during the forfeiture proceedings • Legal basis for interference • Margin of appreciation • Proportionality • Damage caused by such behaviour to the reputation of the police • Fair balance

Banfield v. the United Kingdom (dec.), 2005-XI

Changes in social security legislation following social developments and resulting in the reduction of benefits payable to existing beneficiaries

Peaceful enjoyment of possessions • Interference • Public interest • Proportionality • Changes in social security legislation following social developments and resulting in the reduction of benefits payable to existing beneficiaries • Reduction of widow's pension • Large number of beneficiaries concerned • Transitional provisions intended to ease the effects of new legislation • Original legislation conceived as safeguard against poverty

Goudswaard-van der Lans v. the Netherlands (dec.), 2005-XI

Levies imposed on farm cooperatives under Community law for exceeding milk quotas

Peaceful enjoyment of possessions • Levies imposed on farm cooperatives under Community law for exceeding milk quotas • Legitimate aim • General interest • Effective international cooperation • Policy to stabilise milk market of direct benefit to applicants • No manifest deficiency in the protection of Convention rights

capable of rebutting the presumption of protection of those rights by Community law

Coopérative des agriculteurs de la Mayenne and Coopérative laitière Maine-Anjou v. France (dec.), 2006-XV (extracts)

DEPRIVATION OF PROPERTY

Irrebuttable presumption of benefit accruing from expropriation

Deprivation of property • Amount of compensation for expropriation • Proportionality • No right under Convention to full compensation • Irrebuttable presumption of benefit offsetting compensation claim • Individual and excessive burden

Papachelas v. Greece [GC], 1999-II

Quashing of a final judicial decision, already executed, whereby a property nationalised under the communist regime had been returned to owner

Possessions • Deprivation of possessions • Quashing of a final judicial decision, already executed, whereby a property nationalised under the communist regime had been returned to owner • No public interest justifying non-return of an unlawfully nationalised property • Proportionality • Individual and excessive burden

Brumărescu v. Romania [GC], 1999-VII

Expropriation, without compensation, of property belonging to former King and royal family

Deprivation of property • Expropriation, without compensation, of property belonging to former King and royal family • Possessions • Examination of nature of ownership of royal property • Legal basis for deprivation of property • Constitutionality of law • Public interest • Transition from monarchy to republic • Absence of compensation for expropriation

Former King of Greece and Others v. Greece [GC], 2000-XII

Obligation to transfer property without compensation after reunification of Germany

Deprivation of property • Obligation to transfer property without compensation after reunification of Germany • Provided for by law • Public interest • Lack of compensation • Uncertainties inherent in transitional period between two regimes • Complex issues arising during transition to democratic regime • Reasons of social justice • Exceptional context: reunification of Germany • Fair balance • Legislation relating to liquidation of land reform

Jahn and Others v. Germany [GC], 2005-VI

Compensation on account of a disability

Deprivation of possessions • Compensation on account of a disability • Possessions • Claim for damages • Immediate application of a law to pending proceedings • Loss of a substantial portion of damages claimed, through the operation of retrospective legislation • Public interest • Fair balance • Individual and excessive burden

Maurice v. France [GC], 2005-IX

Compensation awarded following use of domestic remedy open to victims of excessively long proceedings

Deprivation of property • Expropriation • In the public interest • Compensation arrangements • Fair balance • Insufficient amount of expropriation compensation • Isolated expropriation • Expropriation compensation far below market value of property

Scordino v. Italy (no. 1) [GC], 2006-V

Cocchiarella v. Italy [GC], 2006-V

Musci v. Italy [GC], 2006-V (extracts)

Compensation on account of a disability

Deprivation of possessions • Compensation on account of a disability • Possessions • Claim for damages • Immediate application of a law to pending proceedings • Loss of a substantial portion of damages claimed, through the operation of retrospective legislation • Public interest • Fair balance • Individual and excessive burden

Maurice v. France (just satisfaction – striking out) [GC], 2006-IX

Completion of illegal works by authorities on land owned by the applicants amounted to a transfer of property

Deprivation of possessions • Completion of illegal works by authorities on land owned by the applicants amounted to a transfer of property • *De facto* expropriation • Failure to return land despite retrospective orders quashing authorities' resolutions to take possession of and build on land • Unlawful interference

Belvedere Alberghiera S.r.l. v. Italy, 2000-VI

***De facto* expropriation by the authorities without compensation**

Deprivation of property • *De facto* expropriation by the authorities without compensation • Transfer of property without compensation formalised by decision of final appellate court • *De facto* expropriation • Requirement of lawfulness • Interference unforeseeable • Protection afforded by right to compensation rendered ineffective • Arbitrary interference

Carbonara and Ventura v. Italy, 2000-VI

Amount of compensation for expropriation

Deprivation of property • Expropriation • Compensation • Amount of compensation for expropriation • Reasonable relationship between the amount of compensation and the true value of the property • Evidence to show the existence of a reasonable relationship

Platakou v. Greece, 2001-I

Length of time since property was expropriated not taken into account in assessment of compensation due

Deprivation of property • Expropriation • Length of time since property was expropriated not taken into account in assessment of compensation due • Public interest • Accommodation of refugees • Amount of compensation for expropriation • Fair balance

Malama v. Greece, 2001-II

Failure of authorities to return property

Deprivation of possessions • Failure of authorities to return property • Possessions • Applicant's substantive interest in view of relevant law and facts • Conduct of State authorities • Public interest • Fair balance • Individual and excessive burden borne by applicant

Zwierzyński v. Poland, 2001-VI

Dispossession in favour of owner expropriated under communist regime

Deprivation of possessions • Dispossession in favour of owner expropriated under communist regime • Legal basis • Public interest • Fair balance • Proportionality • Importance of personal and social situation of dispossessed persons • Purchasers in good faith should not bear burden of responsibility rightfully incumbent on State which confiscated possessions • Compensation • Amount of compensation essentially corresponding to property's purchase price fixed nearly thirty years earlier • Impossible to assert right to alternative accommodation in domestic courts • Applicants deprived of their only property and home • Individual and excessive burden

Pincová and Pinc v. the Czech Republic, 2002-VIII

Obligation to return land without compensation after it had been acquired in good faith by a gift made freely and for equivalent consideration

Deprivation of property • Obligation to return land without compensation after it had been acquired in good faith by a gift made freely and for equivalent consideration • Statutory basis • Public interest • Lawful expropriation • Fair balance • Lack

of compensation • No possibility of obtaining a review in individual cases involving transfers of land under the Communist regime in special circumstances • Disproportionate burden on the applicants

Zvolský and Zvolská v. the Czech Republic, 2002-IX

Demolition of house built on jointly owned land without the consent of all joint owners, while proceedings concerning division of ownership pending

Deprivation of property • Demolition of house built on jointly owned land without the consent of all joint owners, while proceedings concerning division of ownership pending • Public interest • Measures in pursuit of social or economic policies without direct benefit to the community • Effective functioning of a system of joint ownership • Fair balance • Conflicting positions of different authorities • Limited interest of joint owners

Allard v. Sweden, 2003-VII

Presumption of benefit accruing from expropriation

Deprivation of property • Amount of compensation for expropriation • Proportionality • Presumption of benefit accruing from expropriation • Obligation on owner to show absence of benefit • Procedure ensuring overall assessment of consequences of expropriation • Fair balance between general and individual interest

Efstathiou and Michailidis & Co. Motel Amerika v. Greece, 2003-IX

Sale of nationalised property by State before settlement of dispute relating to nationalisation

Deprivation of property • Sale of nationalised property by State before settlement of dispute relating to nationalisation • Annulment of nationalisation • Property right recognised with retrospective effect • Partial restitution of property • Issue of lawfulness not settled • Discrimination • Lack of compensation • Breach of fundamental principles • Disproportionate and excessive burden

Străin and Others v. Romania, 2005-VII

Deprivation of ownership of coastal land and demolition of partially built hotel without compensation

Deprivation of possessions • Deprivation of ownership of coastal land and demolition of partially built hotel without compensation • In the public interest • Fair balance

N.A. and Others v. Turkey, 2005-X

Nationalised assets returned retrospectively but sold by the State to third parties

Deprivation of property • Nationalised assets returned retrospectively but sold by the State to third parties • Impossibility for the owner to recover his property, sold by the State to a third party in breach of a judicial decision • Presumption of purchaser's good faith • Basis in law • Whether there was a "possession" • Positive obligations • Return and sale of nationalised property • Question of public interest • Obligation on the authorities to take timely, correct and consistent action • General climate of lack of legal certainty and security • Fair balance

Păduraru v. Romania, 2005-XII (extracts)

Drastic reduction in value of shareholding in a bank as a result of measures taken by a Board of Receivers to deal with threatened insolvency

Deprivation of property • Drastic reduction in value of shareholding in a bank as a result of measures taken by a Board of Receivers to deal with threatened insolvency • Possessions • Company shares • Victim • *Locus standi* • Shareholder • Measures prejudicial to shareholders' rights but of benefit to the company • Drastic reduction in value of shareholding amounting to deprivation of property • Lawfulness of measure • Interests of a bank's customers compatible with notion of public interest • Fair balance

Olczak v. Poland (dec.), 2002-X

Refusal to return property which had been nationalised during the Soviet regime

Possessions • Deprivation of property • Refusal to return property which had been nationalised during the Soviet regime • Bona fide acquisition by new owner • Statutory amendments aimed at avoiding further injustices and affording due protection to rights of new property owners • Asset • Sufficiently established and enforceable claim • Compensation amount not challenged at domestic level • Proportionality

Pöder and Others v. Estonia (dec.), 2005-VIII

Forced relocation of Inughuit in Greenland in the 1950s

Peaceful enjoyment of possessions • Deprivation of property • Forced relocation of Inughuit in Greenland in the 1950s • Relocation of applicants from native village and prohibition on hunting • Instantaneous act • Incompatibility *ratione temporis* • Compensation granted and various measures taken by Danish courts and government • Fair balance struck

Hingitaq 53 and Others v. Denmark (dec.), 2006-I

CONTROL OF THE USE OF PROPERTY

Landowners opposed to hunting unable to obtain exemption from statutory obligation to transfer hunting rights over their land to their local municipal hunters' association and to join the association

Control of the use of property • Landowners opposed to hunting unable to obtain exemption from statutory obligation to transfer hunting rights over their land to their local municipal hunters' association • Interference • General interest • Proportionality • Disproportionate burden

Chassagnou and Others v. France [GC], 1999-III

Staggering of police assistance to enforce eviction orders

Control of the use of property • Landlord and tenant • System of suspending and staggering enforcement of eviction orders • General interest • Public order • Margin of appreciation • Balance between property rights and general interest • Procedural guarantees

Immobiliare Saffi v. Italy [GC], 1999-V

Impounding of a leased aircraft pursuant to United Nations sanctions regime and regulation of the Council of the European Communities

Control of the use of property • Impounding of a leased aircraft pursuant to United Nations sanctions regime and regulation of the Council of the European Communities • General interest • Compliance with international legal obligations • Legal basis for the impoundment • Foreseeability of powers to impound • Absence of discretion • Substantive guarantees and control mechanisms • Protection of fundamental rights by Community law equivalent to that of the Convention system, unless the presumption to that effect is rebutted

Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], 2005-VI

Inability of landlord to recover possession or obtain adequate rent from tenants

Control of the use of property • Inability of landlord to recover possession or obtain adequate rent from tenants • Lawfulness of interference • Legitimate aim • Social protection of tenants • Fair balance • Limitations on landlords' rights • Absence of freely negotiated lease • Rent control • Rent not covering maintenance costs • Combination of restrictions impairing very essence of right of property • Exceptionally difficult and socially sensitive issues caused by acute housing shortage • Fair distribution of social and financial burden • Disproportionate burden on one particular social group

Hutten-Czapska v. Poland [GC], 2006-VIII

Obligation to demolish, at owners' expense and without compensation, a house lawfully acquired but situated on maritime public property

Applicability • Obligation to demolish, at owners' expense and without compensation, a house lawfully acquired but situated on maritime public property • Precarious and revocable private occupancy • No right *in rem* • Public land inalienable and imprescriptible • Lack of legitimate expectation • Long period of occupancy vesting in applicant a proprietary interest in peaceful enjoyment of house amounting to a possession • Control of use of property • General interest • Legal basis for refusal to renew authorisations • Legitimate aim • Broad margin of appreciation regarding regional planning and environmental conservation policies • Tolerance of ongoing occupancy without uncertainty regarding legal status of the possession • Consistent and strict application of the law • Firm coastal management policy • Principle of non-compensation known to owners • Proportionality

Depalle v. France [GC], 2010-III

Confiscation order based on statutory assumptions as to origins of assets

Peaceful enjoyment of possessions • Possessions • Confiscation order in respect of proceeds of criminal offence • Interference • Control of the use of property • Proportionality • Importance of aim pursued

Phillips v. the United Kingdom, 2001-VII

Imposition of restrictions on fishing in order to protect fish stocks

Control of the use of property • Imposition of restrictions on fishing in order to protect fish stocks • Possessions • Fishing rights acquired by virtue of lease from State • Right not completely extinguished • Payment of compensation

Posti and Rahko v. Finland, 2002-VII

Effects of inordinately lengthy bankruptcy proceedings on the bankrupt

Control of the use of property • Bankruptcy proceedings • Prohibition on the bankrupt's administering or dealing with his property • General interest • Margin of appreciation • Effects of inordinately lengthy bankruptcy proceedings on the bankrupt • Proportionality • Balance between the general interest and the individual interest

Luordo v. Italy, 2003-IX

Failure by new landlords to comply with certain formalities, resulting in an obligation to keep tenants for several years without receiving rent

Control of the use of property • General interest • Return of nationalised property •

Failure by new landlords to comply with certain formalities, resulting in an obligation to keep tenants for several years without receiving rent • Protection of tenants during housing crisis inherited from communist regime • Provided for by law • Foreseeability • Incomplete and imprecise emergency legislation • Proportionality • Margin of appreciation • Fair balance to be struck between competing interests • Individual and excessive burden

Radovici and Stănescu v. Romania, 2006-XIII (extracts)

Arbitrary seizure for over a year of ship and its cargo on suspicion of arms smuggling

Peaceful enjoyment of possessions • Control of the use of property • Arbitrary seizure for over a year of ship and its cargo on suspicion of arms smuggling • Proportionality • Protection from arbitrariness

Islamic Republic of Iran Shipping Lines v. Turkey, 2007-V

Invalidation of an Internet service provider's operating licences for purely formal breach of regulations

Control of the use of property • Invalidation of an Internet service provider's operating licences for purely formal breach of regulations • Interference • Proportionality • Severity and retrospective effect of the measure • No detriment caused by applicant company's breach • Inconsistent conduct of the authorities • Lack of procedural safeguards • Judicial review tainted with formalism and arbitrariness • Discriminatory treatment • Margin of appreciation • Absence of genuine and consistent policy considerations • Individual and excessive burden

Megadat.com SRL v. Moldova, 2008-III

Vehicle used by third party to commit a criminal offence forfeited by its owner pursuant to a court order and returned only on payment

Control of the use of property • Vehicle used by third party to commit a criminal offence forfeited by its owner pursuant to a court order and returned only on payment • Forfeiture of property belonging to third parties • Availability of a judicial remedy for third parties • Fair balance • Margin of appreciation

C.M. v. France (dec.), 2001-VII

Restrictions on development around a historic monument

Control of use of property • Restrictions on development around a historic monument • Constraints resulting from listing of a building as a historic monument for

properties within its field of view • General interest • Protection of national cultural heritage • Margin of appreciation • Proportionality • Fair balance

SCEA Ferme de Fresnoy v. France (dec.), 2005-XIII (extracts)

ARTICLE 2 OF PROTOCOL NO. 1

RIGHT TO EDUCATION

Prohibition on a student wearing the Islamic headscarf at university

Right to education • Applicability to higher education • Prohibition on a student wearing the Islamic headscarf at university • Restriction on right to education • Reasonable relationship of proportionality • Essence of right not impaired

Leyla Şahin v. Turkey [GC], 2005-XI

Closure of schools teaching in Latin script and harassment of pupils wishing to be educated in their national language

Right to education • Right of access to educational institutions • Right to be educated in one's national language • Respect for parents' religious and philosophical convictions • Closure of schools teaching in Latin script and harassment of pupils wishing to be educated in their national language • Absence of legitimate aim • Positive obligations • Considerable efforts by territorial State to provide alternative solutions • Responsibility of State in effective control for policies and actions of subordinate local administration

Catan and Others v. the Republic of Moldova and Russia [GC], 2012-V (extracts)

Elementary schooling unlawfully interrupted after children's Chechen father considered to be no longer resident in a republic of the Russian Federation

Right to education • Interference • Prescribed by law • Elementary schooling unlawfully interrupted after children's Chechen father considered to be no longer resident in a republic of the Russian Federation

Timishev v. Russia, 2005-XI

Annulment of the applicant's results in university admission exams given his poor results in previous years

Right to education • Institutions of higher education • Annulment of the applicant's results in university admission exams given his poor results in previous years • Lack of legal basis for Higher Education Council's broad discretion to annul results •

Legitimate expectation of a place at university if entrance requirements satisfied • No evidence or accusation of cheating • Arbitrariness

Mürsel Eren v. Turkey, 2006-II

Legislation making admission to State and private university courses in medicine and dentistry conditional on passing entrance examination with numerus clausus

Right to education • Legislation making admission to State and private university courses in medicine and dentistry conditional on passing entrance examination with *numerus clausus* • Legitimate aim of achieving high levels of professionalism • General interest • Proportionality • Margin of appreciation • Capacity and resource potential of universities • Society's need for particular profession • Need to prevent arbitrary admission to or exclusion from universities and to guarantee equal treatment • Need to ensure assimilation of each successful candidate into labour market and to avoid unemployment • Possibility to resit entrance examination • Possibility to apply for other courses or to study abroad

Tarantino and Others v. Italy, 2013-II (extracts)

Refusal to enrol remand prisoner in prison school

Right to education • Refusal to enrol remand prisoner in prison school • Effective access to existing educational establishments • Foreseeability • Legitimate aim • Proportionality

Velyo Velev v. Bulgaria, 2014-III (extracts)

Minimum age requirement for attending Koranic study classes

Education • Minimum age requirement for attending Koranic study classes • Legislation on religious education • Protection of minors • Absence of indoctrination

Ciftçi v. Turkey (dec.), 2004-VI

Prohibition on students wearing the Islamic headscarf in State-funded religious secondary schools

Right to education • Proportionality • Prohibition on students wearing the Islamic headscarf in State-funded religious secondary schools • Wearing of Islamic headscarf by pupils incompatible with the principle of secularism • School rules • General measures applicable to all pupils • Neutrality of secondary education

Köse and Others v. Turkey (dec.), 2006-II

RESPECT FOR PARENTS' RELIGIOUS AND PHILOSOPHICAL CONVICTIONS

Refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools

Right to education • Respect for parents' religious and philosophical convictions • Refusal to grant full exemption from instruction in Christianity, religion and philosophy in State primary schools • Positive obligations • State's obligation to safeguard pluralism and objectivity in State schools • Place of Christianity in national history and tradition • Preponderant weight of Christianity in curriculum • Margin of appreciation • Practical and effective rights • Limited effectiveness and practical difficulties of partial-exemption arrangement • Risk of undue exposure of parents' private life

Folgerø and Others v. Norway [GC], 2007-III

Crucifix displayed in State-school classrooms

Respect for parents' religious and philosophical convictions • Crucifix displayed in State-school classrooms • Religious symbol • Respondent State's margin of appreciation • Lack of European consensus • Preponderant visibility of majority religion in schools • No indoctrination • Passive symbol • No compulsory lessons about Christianity • School open to other religions • Parental right to enlighten and advise own children

Lautsi and Others v. Italy [GC], 2011-III (extracts)

Closure of schools teaching in Latin script and harassment of pupils wishing to be educated in their national language

Right to education • Right of access to educational institutions • Right to be educated in one's national language • Respect for parents' religious and philosophical convictions • Closure of schools teaching in Latin script and harassment of pupils wishing to be educated in their national language • Absence of legitimate aim • Positive obligations • Considerable efforts by territorial State to provide alternative solutions • Responsibility of State in effective control for policies and actions of subordinate local administration

Catan and Others v. the Republic of Moldova and Russia [GC], 2012-V (extracts)

Father's refusal to allow his daughter to attend sex-education classes at her State school

Respect for parents' religious convictions • Respect for parents' philosophical convictions • Father's refusal to allow daughter to attend sex-education classes at her State school • Sex-education classes in State schools • Teaching in State schools •

Content of curriculum • Objective and pluralistic teaching • No indoctrination • Existence of private schools

Jiménez Alonso and Jiménez Merino v. Spain (dec.), 2000-VI

Prohibition on students wearing the Islamic headscarf in State-funded religious secondary schools

Respect for parents' religious beliefs • Principle of secularism • Notification of consequences of failing to comply with the rules • Lack of disciplinary measures

Köse and Others v. Turkey (dec.), 2006-II

Refusal to grant children exemption from compulsory primary-school attendance for religious reasons

Right to education • Respect for parents' religious convictions • Refusal to grant children exemption from compulsory primary-school attendance for religious reasons • Absence of consensus among Contracting States with regard to compulsory primary-school attendance • Margin of appreciation • Proportionality • General interest of society in the integration of minorities and in avoiding the emergence of parallel societies • Parents free to educate their children outside school hours

Konrad v. Germany (dec.), 2006-XIII

Compulsory secular ethics classes with no possibility of exemption for State secondary-school pupils

Respect for parents' religious convictions • Compulsory secular ethics classes with no possibility of exemption for State secondary-school pupils • Principles of pluralism and objectivity • Neutral classes giving equal weight to different beliefs and convictions • Margin of appreciation • Non-existence of a right not to be exposed to convictions contrary to one's own • Freedom to learn about one's religion

Appel-Irrgang and Others v. Germany (dec.), 2009-IV

ARTICLE 3 OF PROTOCOL NO. 1

RIGHT TO FREE ELECTIONS

Exclusion of Gibraltar from European parliamentary elections

Vote • European Parliament • Exclusion of Gibraltar from European parliamentary elections • Choice of the legislature • Transfer of powers to supranational organ •

Examination of whether European Parliament is a “legislature” • Margin of appreciation in choice of electoral system

Matthews v. the United Kingdom [GC], 1999-I

Disenfranchisement of a suspected member of the Mafia

Elections • Disenfranchisement of suspected member of the Mafia • Proportionality

Labita v. Italy [GC], 2000-IV

Exclusion of convicted prisoners from voting in parliamentary and local elections

Vote • Exclusion of convicted prisoners from voting in parliamentary and local elections • General and automatic disenfranchisement of convicted prisoners under domestic legislation • Length of sentence or gravity of the offence not relevant for the ban on the right to vote to come into play • Large group of prisoners barred from voting • Legitimate aim of the legislation • Proportionality of the measure • Margin of appreciation

Hirst v. the United Kingdom (no. 2) [GC], 2005-IX

Disqualification from standing in parliamentary elections on account of active participation in a political party, given the latter’s involvement in an attempted *coup d’état*

Stand for election • Disqualification from standing in parliamentary elections on account of active participation in a political party, given the latter’s involvement in an attempted *coup d’état* • Dispute as to historical events • Protection of democracy • Fair balance between requirements of defence of democratic society and protection of individual rights • Applicable criteria for the purpose of Article 3 of Protocol No. 1 • Principle of the rule of law • National security • Proportionality • Specificity of political and historical context which led to enactment of statutory restriction • Transition from totalitarian society to democracy • State’s broad margin of appreciation • Legislation defining in detail the scope and conditions of application of restriction • Scope of jurisdiction of national courts • Imputability of political party’s acts to its leaders and members unless they distance themselves from it

Ždanoka v. Latvia [GC], 2006-IV

Representation of political parties in Parliament conditional upon obtaining a very high percentage of the votes cast nationally

Free expression of the opinion of the people • Choice of the legislature • Representation of political parties in Parliament conditional upon obtaining a very high percentage of the votes cast nationally • Legitimate aim of avoiding excessive and

debilitating fragmentation of Parliament • Lack of a European consensus • Assessment of the electoral threshold in the light of the electoral system and the political context • Strategies developed by parties to attenuate negative effects of the high threshold • Role of the Constitutional Court • Proportionality • Lowering of the electoral threshold recommended

Yumak and Sadak v. Turkey [GC], 2008-III

Inability of persons with multiple nationality to stand as candidates in parliamentary elections

Stand for elections • Inability of persons with multiple nationality to stand as candidates in parliamentary elections • Loyalty to the State • Proportionality • European consensus • Historico-political context of the electoral reform • Margin of appreciation • General restrictions on electoral rights more difficult to justify with passage of time • Existence of other means of protecting State's laws, institutions and national security • Detrimental impact of the electoral reform on the opposition • Changes to electoral legislation introduced shortly before elections

Tănase v. Moldova [GC], 2010-III

Permanent disqualification of former President from standing for election to Parliament following removal from office

Standing for election • Permanent disqualification of former President from standing for election to Parliament following removal from office • Right to free elections applicable only to election of the legislature • Interference • Preservation of democratic order • Exclusion from any office requiring an oath under the Constitution • Electoral rights not affected by impeachment in other Council of Europe member States • Proportionality • Measure unlimited in time and not subject to review • Permanent disqualification from standing for election • Law in question influenced by circumstances

Paksas v. Lithuania [GC], 2011-I (extracts)

Lack of legislation governing arrangements enabling nationals resident abroad to exercise their voting rights in parliamentary elections from their place of residence

Vote • Free expression of the opinion of the people • Lack of legislation governing arrangements enabling nationals resident abroad to exercise their voting rights in parliamentary elections from their place of residence • Facilitating exercise of voting rights by expatriates • Not mandatory for States • Lack of European consensus concerning arrangements for exercise of this right • Wide margin of appreciation • Optional provision of the Constitution in place for thirty-five years • Failure of attempts to implement legislation for lack of political agreement • Similarity of

interests between expatriates and residents not sufficient to call legal situation into question • General rules unable to take account of each individual situation • Disruption to financial, family and professional lives not disproportionate in this case

Sitaropoulos and Giakoumopoulos v. Greece [GC], 2012-II

Candidate struck out of list of candidates for election to Latvian parliament for insufficient command of official language

Standing as candidate in elections • Candidate struck out of list of candidates for election to Latvian parliament for insufficient command of official language • Parliamentary elections • Implied limitations on right to stand for election • Practical and effective rights • Legitimate aim • Proportionality • Constitutional rules • National characteristics • Margin of appreciation regarding criteria for declaring candidates for election to parliament ineligible • Safeguards against arbitrary decisions declaring candidates ineligible • Margin of appreciation regarding choice of a national parliament's working language • Requirement of high level of knowledge of official language as condition of eligibility • Examination of fairness and legality of procedures for assessing linguistic competence

Podkolzina v. Latvia, 2002-II

MPs removed from office on account of the dissolution of their party by Constitutional Court

Right to stand for election • Right of an elected candidate to sit as a member of parliament • MPs removed from office on account of the dissolution of their party by Constitutional Court • Dissolution of a political party • Member of parliament prohibited from engaging in his political activities • Opposition MP • Proportionality • Nature and severity of penalty • Sovereign power of electorate

Sadak and Others v. Turkey (no. 2), 2002-IV

Refusal to register Turkish Cypriot in Greek-Cypriot electoral roll

Right to vote • Refusal to register Turkish Cypriot in Greek-Cypriot electoral roll • Choice of legislature • Parliamentary elections • Exclusion of persons or groups of persons from participation in political life • Absence of legislation resolving problems ensuing from ineffective constitutional provisions

Aziz v. Cyprus, 2004-V

Delay in implementing disenfranchisement as automatic consequence of imposition of a preventive measure

Right to vote • Delay in implementing disenfranchisement as automatic consequence

of imposition of preventive measure • Choice of the legislature • Parliamentary elections • Regional elections • Competence and powers of regional councils

Vito Sante Santoro v. Italy, 2004-VI

Refusal to register candidate in parliamentary election

Right to stand for elections • Eligibility • Condition and proof of residence • Margin of appreciation • Safeguards against arbitrariness

Mehnychenko v. Ukraine, 2004-X

Right to vote in elections to New Caledonian Congress refused on account of ten-year residence rule

Right to vote • Right to vote in elections to New Caledonian Congress refused on account of ten-year residence rule • Legislature • New Caledonian Congress • Examination of role played in overall legislative process • Choice of legislature • Length-of-residence requirement • Margin of appreciation

Py v. France, 2005-I (extracts)

Personal and professional restrictions arising out of entry of person's name in bankruptcy register

Electoral rights • Bankruptcy proceedings • Suspension of bankrupt's electoral rights • Prohibition on occupying public-sector posts • Interference • Aim pursued • Punitive nature of restrictions

Campagnano v. Italy, 2006-IV

Refusal to register candidate for parliamentary elections as he had failed to pay an electoral deposit exceeding his annual income

Stand for election • Refusal to register candidate for parliamentary elections as he had failed to pay an electoral deposit exceeding his annual income • State's margin of appreciation • Development of sufficiently representative political currents • State's participation in the campaign costs of registered candidates • Deposit system subject to scrutiny by the legislature and the judiciary • Possibility for a candidate to have recourse to external funding • Electoral deposit of relatively low amount • Proportionality

Sukhovetskyi v. Ukraine, 2006-VI

Immediate application during current parliamentary term of provision disqualifying those engaging in professional activities from sitting as MPs

Free expression of the opinion of the people • Choice of legislature • Immediate

application during current parliamentary term of provision disqualifying those engaging in professional activities from sitting as MPs • Disqualification from sitting as an MP • Principle of legitimate expectation • Lack of pressing ground which could have justified the immediate application of the absolute disqualification

Lykourazos v. Greece, 2006-VIII

Arbitrary invalidation of votes obtained by the leading candidate in several electoral divisions of a parliamentary constituency, resulting in victory for his opponent

Right to free elections • Free expression of opinion of people • Choice of the legislature • Arbitrary invalidation of votes obtained by the leading candidate in several electoral divisions of a parliamentary constituency, resulting in victory for his opponent • Review of outcome of elections by electoral commissions and courts • Proportionality • Arbitrariness • Extent and impact of breaches of electoral law on outcome of the vote • Particular caution required from authorities when domestic law lacks clarity • Failure to address issues of conflicting legal provisions and credibility of various actors in the elections • Margin of appreciation

Kovach v. Ukraine, 2008-I

Voting procedures in parliamentary election in a “post-revolutionary” political context

Free expression of the opinion of the people • Stand for election • Voting procedures in parliamentary election in a “post-revolutionary” political context • Introduction of an active system of voter registration shortly before the election, aimed at remedying the problem of chaotic electoral rolls • Universality and equality of the vote • Effectiveness of the right to stand for election contingent upon the fair exercise of the right to vote • Authorities’ diligent conduct within tight deadlines • Wide margin of appreciation • Independence and impartiality of electoral bodies • Checks and balances between different State powers within a body of electoral administration • No evidence of abuse of power or electoral fraud adduced to back up a complaint of a pro-presidential majority in electoral commissions at all levels • Disenfranchisement • Principle of universal suffrage • Positive obligations • Failure to resort to investigative measures in view of allegations of voting irregularities • Failure to take reasonable measures to ensure fresh polls were conducted in two electoral districts following annulment of initial results

Georgian Labour Party v. Georgia, 2008-IV

Post-electoral dispute concerning parliamentary representation of a national minority

Standing as candidate in elections • Post-electoral dispute concerning parliamentary

representation of a national minority • Lack of clarity of election law • Lack of sufficient guarantees of impartiality of the bodies responsible for examining electoral disputes • Insufficient judicial review of the application of electoral rules

Grosaru v. Romania, 2010-II

Right to vote refused to a citizen living abroad

Right to vote • National living abroad • Referendums • Parliamentary elections • Right to vote refused to a citizen living abroad

Hilbe v. Liechtenstein (dec.), 1999-VI

Failure to hold valid elections of municipal council and mayor

Right to free elections • Choice of the legislature • Failure to hold valid elections of municipal council and mayor • Examination of whether municipal council and mayor exercise legislative powers

Cherepkov v. Russia (dec.), 2000-I

Election dispute relating to refusal to declare list of candidates eligible for municipal elections

Standing for election • Choice of legislature • Election dispute relating to refusal to declare list of candidates eligible for municipal elections • Legislative power • Municipal elections • Examination of question whether municipal councils exercise legislative powers

Salleras Llinares v. Spain (dec.), 2000-XI

Minimum proportion of votes required to qualify for seats in legislative assembly

Free expression of opinion of the people • Minimum proportion of votes required to qualify for seats in legislative assembly • Choice of the legislature • Autonomous legislative assembly • Choice of electoral system

Federación Nacionalista Canaria v. Spain (dec.), 2001-VI

Legislature – Regional and provincial elections

Elections • Legislature • Regional and provincial elections • Constitutional structure of State • Italian provinces not invested with legislative power • Power to make regulations only

Vito Sante Santoro v. Italy (dec.), 2003-I (extracts)

Refusal of application to stand as candidate in presidential election

Right to stand for election • Choice of the legislature • Legislature • Refusal of application to stand as candidate in presidential election • Examination of powers attached to office of President

Boškoski v. the former Yugoslav Republic of Macedonia (dec.), 2004-VI

Constituency boundaries for election of members of parliament

Free expression of the opinion of the people • Constituency boundaries for election of members of parliament • Choice of the legislature • Failure to review boundaries • Legitimate time frame for boundary review • Wide margin of appreciation

Bompard v. France (dec.), 2006-IV

ARTICLE 2 OF PROTOCOL NO. 4

FREEDOM OF MOVEMENT

Imposition of special surveillance measures on a suspected member of the Mafia after his acquittal

Liberty of movement • Interference • In accordance with law • Maintenance of *ordre public* • Prevention of crime • Necessary in a democratic society • Imposition of special surveillance measures on suspected member of the Mafia after his acquittal

Labita v. Italy [GC], 2000-IV

Seizure and non-restitution of applicant's passport in criminal proceedings against third parties

Freedom of movement • Seizure and non-restitution of applicant's passport in criminal proceedings against third parties • Interference • Circumstances external to impugned measure • Restriction on freedom of movement • Necessary in democratic society • Requirements of criminal investigation

Baumann v. France, 2001-V

Order excluding individual from specified area for fourteen days

Freedom of movement • Order excluding individual from specified area for fourteen days • Restriction • In accordance with law • Discretionary power of Burgomaster • Accessibility of law • Accessibility of primary legislation and published case-law • Foreseeability • Issuing of warning enabling individual to regulate conduct •

Maintenance of ordre public • Prevention of crime • Necessary in a democratic society • Emergency situation • Proportionality

Oliveira v. the Netherlands, 2002-IV

Prohibition on a bankrupt's moving away from his place of residence

Freedom of movement • Bankruptcy proceedings • Prohibition on a bankrupt's moving away from his place of residence • Protection of the rights and freedoms of others • Rights and interests of the creditors • Effects of inordinately lengthy bankruptcy proceedings on the bankrupt • Proportionality

Luordo v. Italy, 2003-I

Chechen prevented from crossing administrative border between two republics of the Russian Federation

Freedom of movement • Restriction • Prescribed by law • Chechen prevented from crossing administrative border between two republics of the Russian Federation • Oral instruction not to admit anyone of Chechen origin • Order held to be unlawful by domestic authority

Timishev v. Russia, 2005-XII

Withdrawal of suspect's passport for over a decade pending outcome of criminal proceedings

Freedom of movement • Freedom to leave a country • Withdrawal of suspect's passport for over a decade pending outcome of criminal proceedings • Protection of public order • Proportionality

Földes and Földesné Hajlik v. Hungary, 2006-XII

Long-term prohibition on travel abroad imposed on person having had access to State secrets

Freedom of movement • Freedom to leave country • Long-term prohibition on travel abroad imposed on person having had access to State secrets • Unqualified restriction on international travel • Interference • Prescribed by law • Necessary in a democratic society • National security

Bartik v. Russia, 2006-XV

Ban on travelling abroad following breach of immigration rules of a third-party State

Freedom to leave a country • Ban on travelling abroad following breach of

immigration rules of a third-party State • Necessary in a democratic society • Proportionality • Respondent State not directly affected by the offence • Blanket, indiscriminate and automatic ban • Authorities' failure to justify the ban and to examine the applicant's individual circumstances • Limited scope of judicial review

Stamose v. Bulgaria, 2012-VI

Prohibition on leaving the country on account of failure to make maintenance payments

Freedom to leave a country • Prohibition on leaving the country on account of failure to make maintenance payments • Necessary in a democratic society • Protection of the interests of children • Automatic application of the measure • Failure to take account of international instruments on recovery of maintenance • No limitation as to the scope or duration of the measure

Battista v. Italy, 2014-VI

FREEDOM TO CHOOSE RESIDENCE

Refusal to register residence under internal registration procedure

Freedom to choose residence • Refusal to register residence under internal registration procedure • Applicability • Lawfully within the territory • Interference • Exposure to administrative penalties and fines • In accordance with law • Failure by authorities to elucidate legal requirements • Failure to have regard to authoritative judicial ruling

Tatishvili v. Russia, 2007-I

ARTICLE 3 OF PROTOCOL NO. 4

PROHIBITION OF EXPULSION OF NATIONALS

Expulsion of family from Latvia on basis of treaty providing for withdrawal of Russian troops

Expulsion of nationals • Expulsion of family from Latvia on basis of treaty providing for withdrawal of Russian troops • Notion of "national" • Determination of nationality with reference to national law

Slivenko v. Latvia (dec.) [GC], 2002-II

ARTICLE 4 OF PROTOCOL NO. 4**COLLECTIVE EXPULSION****Return of migrants intercepted on high seas to country of departure**

Prohibition of collective expulsions of aliens • Return of migrants intercepted on high seas to country of departure • Extraterritorial application • Removal of aliens to third State carried out outside national territory • Exercise of State's extraterritorial jurisdiction in the form of collective expulsion of aliens • No procedures to identify and examine individual situations of applicants

Hirsi Jamaa and Others v. Italy [GC], 2012-II

Collective expulsion of Georgian nationals by Russian authorities

Prohibition of collective expulsion of aliens • Collective expulsion of Georgian nationals by Russian authorities from October 2006 to January 2007 • Meaning of "collective expulsion" • Absence of reasonable and objective examination of each individual case • Coordinated policy of arresting, detaining and expelling Georgian nationals • Administrative practice

Georgia v. Russia (I) [GC], 2014-IV (extracts)

Collective expulsion

Prohibition of collective expulsion of aliens • Reasonable and objective examination of the particular circumstances of each of the aliens facing expulsion • Lack of sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account

Čonka v. Belgium, 2002-I

Risk of deportation via a grouped flight to remove illegal aliens

Prohibition of collective expulsion of aliens • Risk of deportation via a grouped flight to remove illegal aliens • Individual examination of the applicant's situation

Sultani v. France, 2007-IV (extracts)

Single decision refusing asylum to a couple

Prohibition of collective expulsion of aliens • Reasonable and objective examination of the particular case of each individual alien of a group • Single decision refusing

asylum to a couple • Single decision taken as a consequence of applicants' own conduct

Berisha and Haljiti v. the former Yugoslav Republic of Macedonia (dec.), 2005-VIII (extracts)

ARTICLE 1 OF PROTOCOL NO. 7

PROCEDURAL SAFEGUARDS RELATING TO EXPULSION OF ALIENS

Deportation and ten-year exclusion order on grounds of national security

Procedural guarantees on deportation of aliens • Deportation and ten-year exclusion order on grounds of national security • Emergency deportation • In accordance with law • Foreseeability • Guarantees against abuse • Challenge to deportation • Re-examination of deportation decision • Purely formal judicial review • Communication of deportation order at hearing • Refusal by court to allow adjournment

Lupsa v. Romania, 2006-VII

Expulsion in absence of judicial decision despite contrary requirement in domestic law

Expulsion of alien • Lawfully resident • Decision reached in accordance with law • Expulsion in absence of judicial decision despite contrary requirement in domestic law

Bolat v. Russia, 2006-XI (extracts)

ARTICLE 2 OF PROTOCOL NO. 7

RIGHT TO APPEAL IN CRIMINAL MATTERS

Defendants tried *in absentia* deprived of the right to appeal to the Court of Cassation

Review of conviction and sentence • Appeal to the Court of Cassation • Defendants tried *in absentia* deprived of the right to appeal to the Court of Cassation

Krombach v. France, 2001-II

Obligation to surrender to custody on day before hearing in Court of Cassation or else forfeit right to appeal

Review of a conviction and sentence • Appeal on points of law • Forfeiture of applicant's right to appeal on points of law against an assize court judgment

Papon v. France, 2002-VII

Conviction without examination of merits of case following plea bargain

Right to a fair trial • Fair hearing • Criminal proceedings • Plea bargaining • Conviction without examination of merits of case following plea bargain • Guilty plea • *Nolo contendere* • Waiver of procedural rights • Procedural safeguards • Waiver of right to examination of case on the merits • Voluntary entry into agreement • Judicial review of plea bargain • Accusations supported by prima facie evidence • Right of appeal in criminal matters • Scope of right where conviction based on plea bargain • Margin of appreciation • Waiver of right to ordinary appellate review • Absence of arbitrary restriction falling foul of requirement of reasonableness

Natsvlishvili and Togonidze v. Georgia, 2014-II (extracts)

Applicant dissuaded from lodging an appeal against conviction since any appeal would have delayed his release

Right of appeal in criminal matters • Review of conviction • Applicant dissuaded from lodging an appeal against conviction since any appeal would have delayed his release

Ruslan Yakovenko v. Ukraine, 2015-II

Limited scope of review of conviction

Review of conviction • Limited scope of review of conviction • Plea of nullity (*Nichtigkeitsbeschwerde*) • Review of conviction by Supreme Court limited to procedural defects

Pesti and Frodl v. Austria (dec.), 2000-I

Review of convictions • Limited scope • Appeals to the Court of Cassation • Review of convictions by the Court of Cassation limited to points of law

Loewenguth v. France (dec.), 2000-VI

Right to review by higher tribunal – Body dealing with case at first instance not regarded as tribunal under domestic law

Right to appeal in criminal matters • Body dealing with case at first instance not regarded as tribunal under domestic law • Autonomous interpretation of “tribunal” • Financial Markets Board • Body with full jurisdiction • Review by *Conseil d’État* of all aspects of a case

Didier v. France (dec.), 2002-VII

ARTICLE 3 OF PROTOCOL NO. 7

COMPENSATION FOR WRONGFUL CONVICTION

Inability of victim of miscarriage of justice to claim compensation in respect of non-pecuniary damage

Compensation • Convicted • Inability of victim of miscarriage of justice to claim compensation in respect of non-pecuniary damage • Compensation according to the law or the practice of the State concerned • Distress and loss of enjoyment of life

Poghosyan and Baghdasaryan v. Armenia, 2012-III

Compensation following reversal of a criminal conviction in the light of a change in political regime

Compensation for wrongful conviction • Compensation following reversal of a criminal conviction in the light of a change in political regime • Applicability • New or newly discovered facts • Reversal of a criminal conviction based on reassessment of evidence that had been used in the original proceedings

Bachowski v. Poland (dec.), 2010-V (extracts)

ARTICLE 4 OF PROTOCOL NO. 7

NON BIS IN IDEM

Administrative conviction and subsequent criminal prosecution in respect of substantially the same facts

Right not to be tried or punished twice • Administrative conviction and subsequent criminal prosecution in respect of substantially the same facts • Penal procedure • Criminal offence • Classification of offence in domestic law • Nature of offence • Severity of penalty • Harmonised definition of “same offence” • Offence arising from identical or substantially the same facts • Effect of acquittal on victim status

Sergey Zolotukhin v. Russia [GC], 2009-I

Conviction for war crimes of a soldier who had previously been granted an amnesty

Right not to be tried or punished twice • Conviction for war crimes of a soldier who had previously been granted an amnesty • Growing tendency in international law not to accept the granting of amnesties in respect of grave breaches of human rights

Marguš v. Croatia [GC], 2014-III (extracts)

Enforcement of an order for imprisonment in default of payment of a customs fine imposed in addition to a prison sentence for the same offence

Non bis in idem • Sentence for criminal offence and customs offence arising out of the same facts • Imprisonment in default in cases involving customs offences • Single act caught by various statutory definitions (*concoeurs idéal de qualifications*)

Göktan v. France, 2002-V

Application for supervisory review of final acquittal

Non bis in idem • Application for supervisory review of final acquittal • Final acquittal • Time-limit for requesting supervisory review • Liability to be tried again • Distinction between second prosecution or trial and resumption of previous proceedings • Effect of supervisory review

Nikitin v. Russia, 2004-VIII

Conviction for tax evasion after tax penalties had been imposed for the same matter

Right not to be tried or punished twice (*non bis in idem*) • Conviction for tax evasion after tax penalties had been imposed for the same matter • Constitutive elements of an offence

Ponsetti and Chesnel v. France (dec.), 1999-VI

Double prosecution

Right not to be tried or punished twice • *Non bis in idem* principle • Double prosecution • Prohibition of double prosecution • Scope of prohibition of double prosecution • Case of person ultimately not convicted • Double prosecution brought in error • Teleological interpretation of a Protocol to the Convention

Zigarella v. Italy (dec.), 2002-IX

Decision by administrative authority to suspend the applicant's driving licence following his conviction for a traffic offence

Non bis in idem • Decision by administrative authority to suspend the applicant's driving licence following his conviction for a traffic offence • Meaning of "criminal proceedings" • Withdrawal of licence direct and foreseeable consequence of conviction • Severity of measure • Withdrawal did not amount to new criminal proceedings • Sufficiently close connection between withdrawal and conviction

Nilsson v. Sweden (dec.), 2005-XIII

Successive convictions for offences arising out of a single incident

Right not to be tried or punished twice • Conviction • Successive convictions for offences arising out of a single incident • Separate and successive acts • Essential elements of offences • Material differences relating to timing, identity of the victim and degree of seriousness

Aşçı v. Austria (dec.), 2006-XV

ARTICLE 1 OF PROTOCOL NO. 12

GENERAL PROHIBITION OF DISCRIMINATION

Ineligibility of members of certain minority communities for political office

General prohibition of discrimination • Race • Ineligibility of members of certain minority communities for political office • Presidential elections • “Right set forth by law”

Sejdić and Finci v. Bosnia and Herzegovina [GC], 2009-VI

ARTICLE 44 § 3 OF THE RULES OF COURT

STRIKING OUT AND RESTORATION TO THE LIST

Expulsion order set aside

Costs and expenses • Case struck out of the list

Kalantari v. Germany (striking out), 2001-X

ARTICLE 80 § 1 OF THE RULES OF COURT

REQUEST FOR REVISION OF A JUDGMENT

Documents of purportedly decisive influence acquired by applicants after delivery of the Court’s judgment

Request for revision • Facts unknown to the Court and which could not reasonably have been known to applicants prior to delivery of original judgment • Documents of purportedly decisive influence acquired by applicants after delivery of the Court’s judgment

McGinley and Egan v. the United Kingdom (revision), 2000-I