[Extract - Annual Report 2011 of the European Court of Human Rights]

SHORT SURVEY OF THE MAIN JUDGMENTS AND DECISIONS DELIVERED BY THE COURT IN 2011[1]

Introduction

In 2011 the Court delivered a total of 1,157 judgments, compared with 1,499 judgments delivered in 2010. In fact, in 2011 a greater number of applications were resolved by a decision.

875 judgments were delivered by Chambers and 269 by Committees of three judges. 13 judgments on the merits were delivered by the Grand Chamber. 1,860 applications were declared inadmissible or struck out of the list by Chambers.

In 2011, 46.6% of all judgments delivered by a Chamber were categorised as being of high or medium importance in the Court's case-law database (HUDOC)[2]. All Grand Chamber judgments are of high-level importance in HUDOC. In 2011, those judgments classed as importance level 1 or 2 represented 36.39% of all judgments delivered during the year, a slight increase when compared with the figure of 32.5% from the previous year. As to the rest, 736 judgments concerned so-called "repetitive" cases with a low level of importance (level 3).

The majority of decisions published in 2011 in the Court's case-law database concerned so-called "repetitive" cases.

Jurisdiction and admissibility

Obligation to respect human rights (Article 1)

Extra-territorial acts by a State Party to the Convention may engage its responsibility under the Convention in exceptional circumstances. One such exception is where a Contracting State exercises public powers normally exercised by a sovereign government, on the territory of another State. The case of *Al-Skeini and Others v. the United Kingdom*[3] concerned acts which took place during the occupation of Iraq, in a

1. This is a selection of judgments and decisions which either raise new issues or important matters of general interest, establish new principles or develop or clarify the case-law.
2. Level 1 = High importance – judgments which the Court considers make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.
Level 2 = Medium importance – judgments which do not make a significant contribution to the case-law but nevertheless do not merely apply existing case-law.
Level 3 = Low importance – judgments with little legal interest: those applying existing case-law, friendly settlements and striking-out judgments (unless these have a particular point of interest).
3. [GC], no. 55721/07, 7 July 2011, to be reported in ECHR 2011.

province in which the United Kingdom, as an occupying power, had responsibility for maintaining security. The deaths of civilians during security operations conducted by the British forces between May and November 2003 in that province were found to fall within the United Kingdom's "jurisdiction" within the meaning of Article 1 of the Convention. The United Kingdom was therefore under an obligation to conduct an investigation meeting the requirements of Article 2 of the Convention into these events which, although they occurred outside its territory, fell within its "jurisdiction" in view of the exceptional circumstances of the case.

In the case of *Al-Jedda v. the United Kingdom*[1], the Court examined whether the internment of an individual in Iraq, ordered by the British forces which were stationed there at the time with the authorisation of the United Nations Security Council, was the responsibility of the United Nations or of the Contracting State. It analysed in particular the wording of the United Nations Security Council Resolutions defining the security regime applicable during the period in question. In this case, the applicant's internment between October 2004 and December 2007 in a detention facility in Basrah, controlled exclusively by British forces, was found to fall within the United Kingdom's territorial jurisdiction.

Admissibility conditions

Right of individual petition (Article 34)

Persons who were not themselves "victims" of an alleged violation of the Convention have been accorded standing by the Court in the past in the specific situations outlined in the decision in *Nassau Verzekering Maatschappij N.V. v. the Netherlands*[2]. This decision establishes the principle that the right of individual petition is not a proprietary right, nor is it transferable as if it were. Hence, the right of application before the Court cannot be transferred by means of a deed of assignment.

Application substantially the same as a matter that has already been submitted to another procedure of international investigation or settlement (Article 35 § 2 (b))

Does the fact that an individual has previously lodged "infringement proceedings" against a member State before the European Commission make a similar application to the Court inadmissible? The judgment in *Karoussiotis v. Portugal*[3] answered this question in the negative, finding that a similar application to this Court was not inadmissible on those grounds. The Court found that, in ruling on an individual's complaint, the European Commission did not constitute another "procedure of

1. [GC], no. 27021/08, 7 July 2011, to be reported in ECHR 2011.
2. (dec.), no. 57602/09, 4 October 2011.
3. No. 23205/08, 1 February 2011, to be reported in ECHR 2011.

international investigation or settlement" within the meaning of Article 35 § 2 (b) of the Convention.

Absence of significant disadvantage (Article 35 § 3 (b))

This was the first full year of application of this new admissibility criterion, which came into force on 1 June 2010. Under Article 35 § 3 (b) of the Convention as amended by Protocol No. 14, an application is to be declared inadmissible where the applicant has not suffered significant disadvantage, if respect for human rights as defined in the Convention and the Protocols thereto does not require an examination of the application on the merits, and if the case has been duly considered by a domestic court. The Court may apply Article 35 § 3 (b) of its own motion even where the application is not inadmissible under a different provision of Article 35 (*Ştefănescu v. Romania*[1]).

The Court applied this new admissibility criterion in several rulings. The violation of a right, however real from a purely legal standpoint, must attain a minimum threshold of severity to justify examination by an international court; this threshold must be assessed on a case-by-case basis in the light of all the circumstances of the case.

The decision in *Ştefănescu* (cited above) was the first in which the damage alleged was non-pecuniary and the Court referred to the amount claimed in the domestic courts in assessing whether the applicant had suffered significant disadvantage.

In *Giuran v. Romania*[2], the Court introduced new factors to be considered in applying this admissibility criterion, namely the applicant's emotional attachment to the property in question and the fact that the matter submitted to the domestic courts was a matter of principle for him.

"Core" rights

Right to life (Article 2)

The case of *Giuliani and Gaggio v. Italy*[3] concerned the death of the applicants' son and brother while he was taking part in clashes surrounding a G8 summit. The judgment given by the Grand Chamber clarified the notion of the use of force made "absolutely necessary" "in defence of any person from unlawful violence" within the meaning of Article 2 § 2 (a) of the Convention. In this case, the person in question had been killed during a sudden and violent attack which posed an imminent and serious threat to the lives of three law-enforcement *carabinieri*. The Grand Chamber reiterated States' positive obligation to

1. (dec.), no. 11774/04, 12 April 2011.
2. No. 24360/04, 21 June 2011, to be reported in ECHR 2011.
3. [GC], no. 23458/02, 24 March 2011, to be reported in ECHR 2011.

take the necessary measures to protect life, particularly with regard to the legal and administrative framework defining the limited circumstances in which force could be used, in order to reduce the adverse consequences. The Convention provided no basis for concluding that law-enforcement officers should not be entitled to use lethal weapons to counter attacks such as the one in question. The Grand Chamber further reiterated States' obligations with regard to the organisation and planning of policing operations.

The obligation to conduct an effective and independent investigation for the purposes of Article 2 continues to apply even in difficult circumstances such as armed conflict. The judgment in *Al Skeini and Others* (cited above) extended this obligation to a Contracting State occupying a foreign and hostile region in the immediate aftermath of invasion and war, where there had been a breakdown in infrastructure. The Court acknowledged that this created practical difficulties for the investigating authorities of the occupying State. In such circumstances, the procedural duty under Article 2 had to be applied realistically, to take account of the specific problems faced by the investigators. Nonetheless, the fact that the State concerned was in occupation meant that it was particularly important that the investigating authority should be, and should be seen to be, operationally independent of the military chain of command. An investigation into the death of civilians carried out by an authority which was hierarchically separate from the soldiers implicated, but which was not independent from the military chain of command, was held to be in breach of Article 2.

The Court is aware of the difficulties faced by States in protecting their populations against terrorist violence. The judgment in *Finogenov and Others v. Russia*[1] (not final) concerned a situation in which the use of force in response to a terrorist hostage-taking was found to comply with Article 2. The Court examined in particular the circumstances in which the hostages had been evacuated and provided with medical assistance in the course of a rescue operation involving the use of gas inside an occupied building.

In its *Haas v. Switzerland*[2] judgment, the Court held that Article 2 obliged the national authorities to prevent an individual from ending his or her life unless the decision to do so was taken freely and in full knowledge of the facts. The right to life obliged States to put in place a procedure apt to ensure that a decision to end one's life did in fact reflect the free will of the party concerned. A patient who wished to commit suicide had sought permission to obtain a lethal drug without a prescription, by way of derogation from the legislation. The Court took

1. Nos. 18299/03 and 27311/03, 20 December 2011, to be reported in ECHR 2011.
2. No. 31322/07, 20 January 2011, to be reported in ECHR 2011.

the view that requiring a medical prescription, issued on the basis of a thorough psychiatric assessment, constituted a satisfactory solution.

Prohibition of torture and inhuman or degrading treatment (Article 3)

The general issue of the *refoulement* of asylum-seekers under the European Union's Dublin II Regulation was examined in *M.S.S. v. Belgium and Greece*[1]. The Grand Chamber stressed Contracting States' obligations under Article 3 of the Convention.

Regarding the conditions of detention of asylum-seekers, the Court did not underestimate the burden which the increasing influx of migrants and asylum-seekers placed on the States which formed the external borders of the European Union, or the difficulties involved in the reception of these persons on their arrival at major international airports. However, having regard to the absolute character of Article 3, this could not absolve a State of its obligations under that provision.

With regard to the European asylum system, the Court stated that, when they applied the Dublin II Regulation, States must make sure that the intermediary country's asylum procedure afforded sufficient guarantees to avoid an asylum-seeker being removed, directly or indirectly, to his or her country of origin without any evaluation, from the standpoint of Article 3, of the risks he or she faced.

The conditions to which an asylum-seeker had been subjected for months, living on the streets in a situation of extreme deprivation, unable to meet his most basic needs, in fear of being attacked and robbed and with no prospect of any improvement in his situation, had resulted in suffering which the Court held to be contrary to Article 3.

In its judgment in *Kashavelov v. Bulgaria*[2], the Court agreed with the European Committee for the Prevention of Torture that there was no justification for routinely handcuffing a prisoner in a secure environment. The case concerned a prisoner serving a life sentence who, over a thirteen-year period, had been handcuffed whenever he was outside his cell, even when taking his daily exercise. The Court observed that the authorities had not pointed to any specific incidents in which the applicant had tried to flee or harm himself or others. It concluded that he had been subjected to degrading treatment.

The case of *Đurđević v. Croatia*[3] is the first concerning violence in school. The Court did not rule out the possibility that a member State might be held responsible under Article 3 and/or Article 8. While it was aware of the seriousness of the problem of violence in schools, it set

1. [GC], no. 30696/09, 21 January 2011, to be reported in ECHR 2011.
2. No. 891/05, 20 January 2011.
3. No. 52442/09, 19 July 2011, to be reported in ECHR 2011.

certain limits: for the State's obligations under Articles 3 and 8 to be triggered, the allegations of violence had to be specific and detailed as to the place, time and nature of the acts complained of. In this case, the complaint concerning the bullying of one of the applicants by his fellow pupils would have needed to be more specific.

In some cases, the attitudes of hospital medical staff gave rise to findings of a violation of Article 3:

In the case of *R.R. v. Poland*[1], the Court found for the first time that the attitude of hospital medical staff, which had caused acute anguish to a pregnant woman, amounted to treatment contrary to Article 3. The woman in question complained of the deliberate refusal of doctors opposed to abortion to carry out in good time the necessary genetic tests to which she was legally entitled, after preliminary tests had revealed a malformation of the foetus. Despite the statutory obligation of the health professionals to acknowledge and address her concerns, she had to endure six weeks of painful uncertainty concerning the health of the foetus. By the time the foetal abnormality was confirmed, the legal time-limit for carrying out an abortion had expired. The Court found that the applicant's suffering had reached the threshold of severity required for a violation of Article 3.

The Court found a violation of the fundamental rights of a twenty-year-old Roma woman on account of her sterilisation in a public hospital after the birth of her second child, in circumstances which deprived her of any possibility of giving her informed consent. The Court stressed patients' right to autonomy (*V.C. v. Slovakia*[2] judgment (not final)).

In its judgment in *Hristovi v. Bulgaria*[3] (not final), the Court clarified an aspect of the procedural limb of Article 3. If the authorities were obliged to deploy masked police officers in order to carry out an arrest, the officers had to display an anonymous means of identification such as a number or a letter, so that they could be identified and questioned in the event of a challenge to the manner in which the operation had been conducted. Excluding certain kinds of psychological trauma inflicted by State agents from the scope of the criminal-law provisions resulted in those responsible being able to escape accountability and was therefore unacceptable. The Court expressed serious reservations about deploying masked and armed police officers to carry out an arrest at the family home, where it was highly unlikely that the security forces would encounter armed resistance.

1. No. 27617/04, 26 May 2011, to be reported in ECHR 2011.
2. No. 18968/07, 8 November 2011, to be reported in ECHR 2011.
3. No. 42697/05, 11 October 2011.

A violation of Article 3 on account of conditions of detention was found to have been aggravated by the fact that it came after an earlier judgment in which the Strasbourg Court had found a violation and had strongly urged the respondent State to release the persons concerned (*Ivanțoc and Others v. Moldova and Russia*[1] judgment (not final)).

Prohibition of slavery and forced labour (Article 4)

In the absence of a sufficient degree of consensus in Europe on the issue of the affiliation of working prisoners to the retirement-pension scheme, obligatory work performed by prisoners without their being affiliated to the scheme is to be regarded as "work required to be done in the ordinary course of detention" within the meaning of Article 4 § 3 (a) of the Convention. Thus, in *Stummer v. Austria*[2], the Grand Chamber ruled that the work performed by the applicant did not constitute "forced or compulsory labour" within the meaning of Article 4 § 2.

Right to liberty and security (Article 5)

Lawful detention

In its judgment in *Al-Jedda* (cited above), the Court assessed the compatibility with Article 5 § 1 of the indefinite internment without charge of the applicant by one of the occupying powers in Iraq on the ground that he represented a security risk. The respondent Government argued unsuccessfully that their obligations under Article 5 § 1 were displaced by the obligations arising out of a United Nations Security Council Resolution.

The continuing detention of the applicants after a judgment of the Strasbourg Court finding that their detention had been arbitrary and strongly urging the respondent State to release them immediately gave rise to an "aggravated" violation of Article 5 of the Convention in *Ivanțoc and Others* (cited above).

Length of pre-trial detention

In principle, neither Article 5 § 3 nor any other provision of the Convention creates a general obligation for a Contracting State to take into account the length of a period of pre-trial detention undergone in another State. The Court spelled this out for the first time in its judgment in *Zandbergs v. Latvia*[3] (not final).

1. No. 23687/05, 15 November 2011.
2. [GC], no. 37452/02, 7 July 2011, to be reported in ECHR 2011.
3. No. 71092/01, 20 December 2011.

Review of the lawfulness of detention

In *S.T.S. v. the Netherlands*[1], an appeal on points of law lodged by the applicant against the decision refusing his request for release was declared inadmissible as being devoid of interest since the applicant had been released in the meantime. The Court's judgment finding a violation of Article 5 § 4 is important: even after being released, former prisoners may well still have a legal interest in the determination of the lawfulness of their detention, for instance in order to assert their right to compensation under Article 5 § 5.

Procedural rights

Right to a fair hearing (Article 6)

Divergences in the rulings of two different and independent Supreme Courts in the same country were examined by the Court for the first time in the Grand Chamber judgment in *Nejdet Şahin and Perihan Şahin v. Turkey*[2]. The Court had already established certain principles in cases concerning divergences of interpretation within a single hierarchical judicial structure. However, as the legal context in issue in this case was different, those principles could not be transposed to it. Responsibility for the consistency of their decisions lay primarily with the domestic courts and any intervention by the Court should therefore remain exceptional. Divergences might be tolerated when the domestic legal system was capable of accommodating them. In any case, the core principle of legal certainty had to be respected.

In the *Al-Khawaja and Tahery v. the United Kingdom*[3] judgment, the Grand Chamber explored at length the use during a criminal trial of evidence taken from witnesses who are absent because they have died or owing to fear. The Grand Chamber stressed that, in a criminal trial, the accused must have a real chance of defending himself by being able to challenge the case against him. The Court considered that, as a general rule, witnesses should give evidence during the trial and all reasonable efforts had to be made to secure their attendance. Thus, when witnesses did not attend to give live evidence, the judicial authority had a duty to enquire whether that absence was justified. Where a conviction was based solely or decisively on the evidence of absent witnesses, the Court had to subject the proceedings to the most searching scrutiny. The Court specified the criteria which should be applied in order to ensure the overall fairness of the proceedings in question from the standpoint of Article 6 § 1 read in conjunction with Article 6 § 3 (d). In every case in which an issue concerning the fairness of the proceedings arose in

1. No. 277/05, 7 June 2011, to be reported in ECHR 2011.
2. [GC], no. 13279/05, 20 October 2011.
3. [GC], nos. 26766/05 and 22228/06, 15 December 2011, to be reported in ECHR 2011.

relation to the evidence of an absent witness, the Court had to ascertain whether there were sufficient counterbalancing factors to compensate for the difficulties caused by the admission of such evidence and thus permit a fair and proper assessment of its reliability.

Right to an effective remedy (Article 13)

The Grand Chamber judgment in *M.S.S. v. Belgium and Greece* (cited above) concerned the existence of effective guarantees capable of protecting asylum-seekers against arbitrary *refoulement*. The Court had already stressed the importance of conducting proceedings swiftly in cases concerning ill-treatment by State agents. It added that this was all the more necessary in a case where the person concerned had lodged a complaint under Article 3 in the event of his deportation, had no procedural guarantee that the merits of his complaint would be given serious consideration at first instance, statistically had virtually no chance of being offered any form of protection and lived in a state of precariousness that the Court found to be contrary to Article 3.

Civil and political rights

Right to respect for private and family life and correspondence (Article 8)

Applicability

The judgment in *Haas* (cited above) concerned a particularly sensitive issue, namely a patient's desire to commit suicide. The right of an individual to decide how and when to end his own life, provided he was in a position to make up his own mind in that respect and to take the appropriate action, was found to be one aspect of his right to respect for his "private life".

The Court considered that denying a person citizenship could, in addition to its impact on family life, raise an issue under Article 8 because of the impact on "private life", which embraced some aspects of social identity (*Genovese v. Malta*[1] judgment (not final)).

The right of couples to have recourse to medically assisted procreation techniques in order to conceive a child was found to attract the protection of Article 8, as this choice was an expression of private and family life (*S.H. and Others v. Austria*[2] judgment).

Private and family life

In *Haas* (cited above), a patient wished to commit suicide without pain and without risk of failure. To this end, he sought permission to

1. No. 53124/09, 11 October 2011.
2. [GC], no. 57813/00, 3 November 2011, to be reported in ECHR 2011.

obtain a lethal substance without a medical prescription by way of derogation from the legislation. The Court observed that the great majority of member States appeared to place more weight on the protection of an individual's life than on the right to end one's life. Accordingly, States had a wide margin of appreciation in this sphere.

Three important judgments concerning individuals' health and physical integrity highlighted States' positive obligations in this regard:

The Court stressed the importance for pregnant women of having timely access to information on the health of the foetus, making it possible to determine whether the conditions for lawful abortion were met. The judgment in *R.R. v. Poland* (cited above) concerned a mother-to-be whose foetus was thought to have an abnormality. States had to provide effective mechanisms enabling pregnant women to have access to ante-natal diagnostic services, which are of crucial importance in making an informed decision as to whether or not to seek an abortion. States were obliged to organise their health services so as to ensure that effective exercise of the freedom of conscience of medical personnel in a professional context did not prevent patients from obtaining access to services to which they were legally entitled. The Court considered that the domestic provisions regulating the availability of lawful abortion should be formulated in such a way as to alleviate the "chilling effect" on doctors when deciding whether the conditions for lawful abortion had been met in an individual case.

As part of their positive obligation to ensure respect for private and family life, States had to put in place effective legal safeguards to protect reproductive health. The Court delivered its first judgment concerning sterilisation in the case of *V.C. v. Slovakia* (cited above), concerning a woman of Roma origin. Owing to the absence, at the time of the applicant's sterilisation, of safeguards giving special consideration to her reproductive health as a Roma woman, the State had failed to comply with its positive obligations.

The case of *Georgel and Georgeta Stoicescu v. Romania*[1] concerned a serious public-health issue and a real threat to public safety. Where a phenomenon had reached such a degree of severity in terms of public health and safety, the State's obligation to protect private life came into play. Article 8 obliged States to take the appropriate measures to protect individuals and provide redress. The Court noted, in particular, that stray dogs continued to be a major scourge in the country's cities, with thousands of people being bitten each year. Accordingly, it found a violation on account of the authorities' failure to protect a woman attacked by a pack of stray dogs.

1. No. 9718/03, 26 July 2011.

Medical science, and in particular infertility treatment involving medically assisted procreation techniques, was at the centre of the judgment in *S.H. and Others v. Austria* (cited above). This case concerned the prohibition under the Artificial Procreation Act of ovum donation for the purpose of artificial procreation and sperm donation for the purpose of *in vitro* fertilisation. In the Court's view, this field, which was subject to particularly dynamic development in science and law, had to be kept under ongoing review by the Contracting States. The Convention always had to be interpreted and applied in the light of current circumstances.

Correspondence

The judgment in *Mehmet Nuri Özen and Others v. Turkey*[1] added to the Court's case-law concerning the monitoring of prisoners' correspondence. Here, the Court dealt with a new aspect of potential importance to prisoners who are members of national minorities. Requiring prisoners to obtain in advance, at their own expense, translations of letters written in their native language, which was not understood by the prison staff responsible for checking the contents, was held to be in breach of Article 8. The Court found that this practice "resulted in a whole category of private correspondence of which prisoners might wish to take advantage being automatically excluded from the protection of that provision".

Freedom of conscience and religion (Article 9)

Applicability

Article 9 does not make express reference to the right to conscientious objection. However, opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9. This is the Court's position following its Grand Chamber judgment in *Bayatyan v. Armenia*[2]. The question whether and to what extent opposition to military service falls within the scope of Article 9 must be addressed in the light of the specific circumstances of each case.

Freedom to manifest one's religion or beliefs

The case of *Bayatyan* (cited above) concerned a Jehovah's Witness who refused to perform military service because of his genuinely held religious beliefs. As no provision was made for the alternative civilian service he requested, he had to serve a term of imprisonment instead.

1. Nos. 15672/08 et al., 11 January 2011.
2. [GC], no. 23459/03, 7 July 2011, to be reported in ECHR 2011.

Almost all the member States of the Council of Europe which had ever had or still had compulsory military service had introduced alternatives to such service in order to reconcile the possible conflict between individual conscience and military obligations. Accordingly, a State which had not done so enjoyed only a limited margin of appreciation and had to advance convincing and compelling reasons to justify any interference. In particular, it had to demonstrate that the interference corresponded to a "pressing social need".

Democracy required a balance to be achieved which ensured the fair and proper treatment of people from minorities and avoided any abuse of a dominant position. Thus, respect on the part of the State towards the beliefs of a minority religious group (like the Jehovah's Witnesses) by providing them with the opportunity to serve society as dictated by their conscience was apt to ensure cohesive and stable pluralism and promote religious harmony and tolerance in a democratic society.

The conviction of the applicant had been in direct conflict with the official policy of reform and legislative change being implemented in the country concerned at the material time in pursuance of its international commitments as a member State of the Council of Europe and had not been necessary in a democratic society.

Freedom of expression (Article 10)

The dismissal of trade unionists following publication of a cartoon and articles considered insulting to two other employees and a manager was the subject of the Grand Chamber judgment in *Palomo Sánchez and Others v. Spain*[1]. This is an important judgment as regards the scope of freedom of expression in the context of labour relations.

The case was examined from the standpoint of Article 10 read in the light of Article 11, since the applicants' trade-union membership had not played a decisive role in their dismissal for serious misconduct. The Court held that the members of a trade union had to be able to express to their employer their demands by which they sought to improve the situation of workers in their company. However, a clear distinction had to be made between criticism and insult and the latter might, in principle, justify sanctions. The content of the impugned articles and cartoon had overstepped the limits of admissible criticism in labour relations. Although the matter had been one of general interest for the workers, the use of offensive cartoons and expressions, even in the context of labour relations, was not justified. The Court stressed that, in order to be fruitful, labour relations had to be based on mutual trust. This did not imply an absolute duty of loyalty towards the employer or

1. [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, 12 September 2011, to be reported in ECHR 2011.

a duty of discretion to the point of subjecting the worker to the employer's interests. Nevertheless, certain manifestations of the right to freedom of expression that might be legitimate in other contexts were not legitimate in that of labour relations. An attack on the respectability of individuals by using grossly insulting or offensive expressions in the professional environment was, on account of its disruptive effects, particularly serious and capable of justifying severe sanctions. The Court held in this case that there had been no violation of Article 10 read in the light of Article 11.

The decision in *Donaldson v. the United Kingdom*[1] is the first ruling concerning a ban on the wearing of emblems by prisoners. The Court considered that some emblems, when displayed publicly in prison, could be a source of disturbances. Political and cultural emblems had many levels of meaning which could only fully be understood by persons with an in-depth understanding of their historical background. The Court therefore accepted that Contracting States must enjoy a wide margin of appreciation in assessing which emblems could potentially inflame existing tensions if displayed publicly by a prisoner. This margin of appreciation clearly had to go hand in hand with supervision by the Court.

In its judgment in *Otegi Mondragon v. Spain*[2], the Court examined the compatibility with Article 10 of the criminal conviction of a politician for insulting the King. The Court took the view that the principles laid down in its case-law concerning republican systems "[were] in theory also valid for a monarchical system". The imposition of a prison sentence for an offence committed in the area of political discussion was compatible with freedom of expression only in exceptional cases, such as hate speech or incitement to violence, where there had been a serious infringement of other fundamental rights.

The judgment in *RTBF v. Belgium*[3] dealt for the first time with a preventive measure in the sphere of television broadcasting. The case concerned a temporary ban on broadcasting a television documentary, imposed by the urgent-applications judge at the request of an individual named in the programme, pending the decision in a case concerning him. Prior restraints on broadcasting required a particularly strict legal framework, ensuring both tight control over the scope of bans and effective judicial review. News was a perishable commodity and to delay its publication, even for a short period, might well deprive it of all its interest. In this case, the legislative framework, taken together with the case-law of the courts, did not fulfil the condition of foreseeability required by the Convention.

1. (dec.), no. 56975/09, 25 January 2011.
2. No. 2034/07, 15 March 2011, to be reported in ECHR 2011.
3. No. 50084/06, 29 March 2011, to be reported in ECHR 2011.

Article 10 is to be interpreted as imposing a positive obligation on States to create an appropriate legislative framework to ensure effective protection of journalists using material obtained from the Internet. This principle was articulated for the first time in the judgment in *Editorial Board of* Pravoye Delo *and Shtekel v. Ukraine*[1]. Some journalists were ordered to pay damages for having reproduced an anonymous letter that was held to be defamatory, taken from the Internet (and accompanied by a comment in which the editors indicated the source and distanced themselves from the text). The journalists were also ordered to publish a retraction and an apology, although the law made no provision for the latter. The Court concluded that the penalties imposed had not been "in accordance with the law" as required by the second paragraph of Article 10, in the absence of rules governing the reproduction by journalists of publications obtained from the Internet. Legislation on the publication of information from the Internet had to take account of the specific features of that technology, in order to safeguard and promote the rights and freedoms at stake.

The judgment in *Uj v. Hungary*[2] concerned the scope of freedom of the press when weighed against the right to a good reputation. The Court acknowledged the distinction between a company's commercial reputation and an individual's reputation, finding that, whereas damage to the latter could have repercussions on a person's dignity, an attack on the commercial reputation of a company lacked a moral dimension.

For the first time, the Court applied the criteria established in its *Guja v. Moldova*[3] judgment, which concerned a public servant, to private-sector employees reporting unlawful or criminal conduct by their employer. The Court found that a criminal complaint brought by the applicant against her employer, alleging shortcomings in the workplace, amounted to the signalling of illegal conduct or wrongdoing and thus attracted the protection of Article 10. Likewise, her subsequent dismissal, upheld by the domestic courts, constituted interference with the exercise of her right to freedom of expression. This judgment, in the case of *Heinisch v. Germany*[4], recognised that the protection of the business reputation and interests of a company specialising in health care was subject to limits. Those interests were outweighed by the public interest in being informed of shortcomings in the provision of institutional care for the elderly.

1. No. 33014/05, 5 May 2011, to be reported in ECHR 2011.
2. No. 23954/10, 19 July 2011.
3. [GC], no. 14277/04, 12 February 2008, to be reported in ECHR 2008.
4. No. 28274/08, 21 July 2011, to be reported in ECHR 2011.

Freedom of assembly and association (Article 11)

For the first time, the Court addressed the issue of State interference in the internal organisation of a political party in the absence of any complaint by members of the party, and that of the dissolution of a party owing to the insufficient number of members and regional branches. The party in question had been dissolved on the ground that it had fewer than 50,000 members and fewer than 45 regional branches with over 500 members each, in breach of the Political Parties Act. The Court referred, *inter alia*, to the work of the Council of Europe's Venice Commission (*Republican Party of Russia v. Russia*[1]).

Prohibition of discrimination (Article 14)

The Grand Chamber judgment in *Stummer* (cited above) concerned a prisoner who had worked for long periods while in prison, between the 1960s and 1990s. He complained of the fact that prisoners who worked were not affiliated to the retirement-pension scheme provided for by the General Social Security Act. In addition to the grounds explicitly mentioned, Article 14 also prohibited discrimination based on "other status", a category which covered prisoners. Prisoners who worked were in a situation "relevantly similar" to that of ordinary employees.

In *Kiyutin v. Russia*[2], the Court considered that the expression "other status" also covered a person's state of health, including his or her HIV-positive status. This judgment stated that persons living with HIV/AIDS constituted a vulnerable group in society and that States' margin of appreciation was narrow where they were concerned. Refusing to grant residence permits to persons living with HIV/AIDS did not reflect an established European consensus and had little support among the Council of Europe member States. Accordingly, the national authorities had to provide very compelling reasons for imposing such a restriction. In this case the Court found, on various grounds, that the State had exceeded its narrow margin of appreciation by refusing the applicant's residence application because he was HIV-positive.

The judgment in *Ponomaryovi v. Bulgaria*[3] concerned the obligation for certain categories of aliens to pay school fees in order to have access to State secondary schools. The Court reiterated that very weighty reasons would have to be put forward before it could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention. The right to education, which was indispensable to the furtherance of human rights, was directly protected by the Convention. It was a very particular type of public service, which benefited not only those who used it but also society as a whole, which

1. No. 12976/07, 12 April 2011.
2. No. 2700/10, 10 March 2011, to be reported in ECHR 2011.
3. No. 5335/05, 21 June 2011, to be reported in ECHR 2011.

needed to integrate minorities if it was to be democratic. Secondary education played an increasing role in social and professional integration. Indeed, in a modern society, having no more than basic knowledge and skills constituted a barrier to successful personal and professional development. The Court therefore took the view that the proportionality of national restrictions of this kind affecting State secondary education had to be subjected to closer scrutiny.

With regard to the allocation of social housing, when supply was not sufficient to meet demand, it was legitimate for the national authorities to lay down certain criteria, provided such criteria were not arbitrary or discriminatory. A distinction could justifiably be made on the basis of immigration status between persons applying for social housing. The judgment in *Bah v. the United Kingdom*[1] concerned legislation aimed at the fair allocation of a scarce resource by the authorities between different categories of claimants. The authorities had refused to grant priority to an application for social housing made by an immigrant whose minor son had been granted entry to the country on condition that he would not have recourse to public funds.

The Court also considered that a difference in the arrangements applied to convicted prisoners and prisoners awaiting trial with regard to family visits and access to television programmes had to have an objective and reasonable justification (*Laduna v. Slovakia*[2] judgment (not final)). In this regard, the imposition of more restrictive arrangements on prisoners awaiting trial – who were presumed innocent – compared with convicted prisoners was found to be disproportionate. The Court held that there had been a violation of Article 14 in conjunction with Article 8.

Right to education (Article 2 of Protocol No. 1)

The Grand Chamber judgment in *Lautsi and Others v. Italy*[3] dealt with the sensitive subject of religion in State schools. The Court found that the decision whether crucifixes should be present in classrooms was, in principle, a matter falling within the State's margin of appreciation, particularly in the absence of any European consensus. However, this margin of appreciation went hand in hand with supervision by the Court, whose task was to ensure that the presence of crucifixes did not amount to a form of indoctrination. In the Court's view, while a crucifix was above all a religious symbol, there was no evidence that the display of such a symbol on classroom walls might have an influence on pupils. It was understandable that individuals might see in the display of crucifixes in the classrooms of the State school attended by their

1. No. 56328/07, 27 September 2011, to be reported in ECHR 2011.
2. No. 31827/02, 13 December 2011, to be reported in ECHR 2011.
3. [GC], no. 30814/06, 18 March 2011, to be reported in ECHR 2011.

children a lack of respect on the State's part for their right to ensure the children's education and teaching in conformity with their own philosophical convictions. Nevertheless, that subjective perception was not sufficient to establish a breach of Article 2 of Protocol No. 1.

The case of *Ali v. the United Kingdom*[1] concerned the temporary exclusion of a pupil from a secondary school. The judgment is important because of the Court's finding that, to be compatible with the right to education, the exclusion of a pupil has to comply with the principle of proportionality. The Court listed the factors to be taken into consideration and addressed the issue of alternative education for excluded pupils.

Right to free elections (Article 3 of Protocol No. 1)

The Grand Chamber judgment in *Paksas v. Lithuania*[2] concerned the disqualification from parliamentary office of a former President who was removed from office for committing a gross violation of the Constitution and breaching the constitutional oath. A State might well consider such acts to be a particularly serious matter requiring firm action when committed by a person holding an office such as that of President. However, the applicant's permanent and irreversible disqualification from standing for election as a result of a general provision was not a proportionate means of satisfying the requirements of preserving the democratic order. The Court noted in that regard that Lithuania's position on the matter constituted an exception in Europe.

Protection of property (Article 1 of Protocol No. 1)

Peaceful enjoyment of possessions

The Grand Chamber judgment in *Stummer* (cited above) concerned the issue of the affiliation of working prisoners to the retirement-pension scheme. The Court observed that the Contracting States had a wide margin of appreciation in this sphere, and that it would intervene only where it considered the legislature's policy choice to be manifestly without reasonable foundation. This is a complex issue which the Court sees as one feature in the overall system of prison work and prisoners' social cover. When defining the breadth of the margin of appreciation in relation to prisoners' social cover, a relevant factor may be the existence or non-existence of common ground between the laws of the Contracting States.

1. No. 40385/06, 11 January 2011.
2. [GC], no. 34932/04, 6 January 2011, to be reported in ECHR 2011.

Just satisfaction (Article 41)

The case of *Megadat.com SRL v. Moldova*[1] was the first in which the Court accepted a unilateral declaration from the Government aimed at settling the question of just satisfaction after it had been reserved. The Court stated that there was nothing to prevent a respondent State from submitting a unilateral declaration at that stage, which it would examine in the light of the general principles applicable in respect of Article 41 of the Convention.

Binding force and execution of judgments (Article 46)

In *M.S.S. v. Belgium and Greece* (cited above), concerning an Afghan asylum-seeker in Greece, the Court, stressing the urgent need to put a stop to the violations of Articles 13 and 3 of the Convention, considered it incumbent on Greece, without delay, to proceed with an examination of the merits of the applicant's asylum request that met the requirements of the Convention and, pending the outcome of that examination, to refrain from deporting the applicant.

In its judgment in *Gluhaković v. Croatia*[2], the Court held that the respondent State must secure effective contact between the applicant and his daughter at a time which was compatible with the applicant's work schedule and on suitable premises. This was the first time that the Court indicated to a State under Article 46 the measures to be taken with regard to the right to respect for family life, on an exceptional basis and in view of the urgent need to put an end to a violation of Article 8.

The judgment in *Emre v. Switzerland (no. 2)*[3] (not final) concerned an application to reopen proceedings made by the applicant following a judgment by the Strasbourg Court finding a Convention violation. The Court reiterated the binding nature of its judgments for the purposes of Article 46 § 1 and the importance of executing them effectively, in good faith and in keeping with the "letter and the spirit" of the judgment. In this case, the domestic courts had substituted their own interpretation for that of the Court, without providing a thorough and persuasive reassessment of the arguments put forward by the Court in its judgment. For the first time the Court found, both in its reasoning and in the operative part of the judgment, that there had been a violation of a substantive provision of the Convention – in this case, Article 8 – in conjunction with Article 46.

1. (just satisfaction – striking out), no. 21151/04, 17 May 2011, to be reported in ECHR 2011.
2. No. 21188/09, 12 April 2011.
3. No. 5056/10, 11 October 2011.

Striking out (Article 37)

The Court struck out a number of applications relating to a systemic problem at national level identified in a 2006 pilot judgment. Determining whether the issue raised by a pilot case has been resolved is not merely a matter of assessing the redress offered to the applicant and the solutions adopted in the particular case. The Court's assessment necessarily encompasses the measures applied by the State aimed at resolving the general underlying defect identified in the domestic legal order. The Court assessed the "global solutions" adopted by the respondent State and the compensation mechanism made available at national level. The Court declared the pilot-judgment procedure closed (decision in *Association of Real Property Owners in Łódź v. Poland*[1]).

Restrictions on rights and freedoms for a purpose other than those prescribed (Article 18)

The judgment in *Khodorkovskiy v. Russia*[2] clarified the standard of proof applied where an applicant alleged that the State authorities had made use of their power for a purpose other than those defined in the Convention. The standard of proof in such cases was very exacting. To assert that the whole legal machinery of the State had been misused from beginning to end in blatant disregard of the Convention was a very serious claim which required incontrovertible and direct proof.

1. (dec.), no. 3485/02, 8 March 2011, to be reported in ECHR 2011.
2. No. 5829/04, 31 May 2011.