[Extract - Annual Report 2012 of the
European Court of Human Rights]

Short survey of the main judgments and decisions delivered by the Court in 2012[1]

Introduction

In 2012 the Court delivered a total of 1,093 judgments, compared with 1,157 judgments delivered in 2011. In fact, in 2012 a greater number of applications were resolved by a decision.

861 judgments were delivered by Chambers and 206 by Committees of three judges. 26 judgments were delivered by the Grand Chamber. Approximately 1,300 applications were declared inadmissible or struck out of the list by Chambers, and some 3,150 by Committees.

In 2012, 41% of all judgments delivered by a Chamber were categorised as being of medium importance or higher in the Court's case-law database (HUDOC).[2] All Grand Chamber judgments are of at least high-level importance in HUDOC.

The majority of decisions published in 2012 in the Court's case-law database concerned so-called "repetitive" cases.

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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. **Importance Level**: This field in HUDOC can be used to make searches of judgments, decisions and/or advisory opinions classified by level of importance.
Cases are divided into four categories, the highest level of importance being Case Reports, followed by levels 1, 2 and 3. The classification by levels 1, 2 and 3 remains provisional until the Bureau has decided whether a case should appear in the Court's official reports series.
Case Reports: Judgments, decisions and advisory opinions delivered since the inception of the new Court in 1998 which have been published or selected for publication in the Court's official *Reports of Judgments and Decisions*. The selection from 2007 onwards has been made by the Bureau of the Court following a proposal by the Jurisconsult.
Judgments of the former Court (published in Series A and *Reports of Judgments and Decisions*) and cases published in the former Commission's series Decisions and Reports have not been included in the Case Reports category and are therefore classified by levels 1, 2 and 3 only.
1 = High importance: All judgments, decisions and advisory opinions not included in the Case Reports which make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.
2 = Medium importance: Other judgments, decisions and advisory opinions which, while not making a significant contribution to the case-law, nevertheless go beyond merely applying existing case-law.
3 = Low importance: Judgments, decisions and advisory opinions of limited legal interest, namely judgments and decisions that simply apply existing case-law, friendly settlements and striking-out judgments (unless raising a particular point of interest).

Jurisdiction and admissibility

Obligation to respect human rights (Article 1)

The Grand Chamber reiterated the general principles governing the concept of "jurisdiction":

– in relation to events occurring on the high seas on board vessels flying the flag of a State Party to the Convention, the crews of which were composed exclusively of military personnel of that State (*Hirsi Jamaa and Others v. Italy*[1]);

– in relation to events occurring on a part of the national territory over which the State did not exercise effective control, following its approach in *Ilaşcu and Others v. Moldova and Russia*[2] *(Catan and Others v. the Republic of Moldova and Russia*[3]);

– in relation to the exercise of "effective control" by a State over an area situated outside the national territory, even though agents of that State were not directly involved in the acts complained of by the applicants (ibid.).

Thus, the Court found that the facts in issue in *Catan and Others*, cited above, fell within the "jurisdiction" of two member States within the meaning of Article 1 of the Convention.

The case of *Djokaba Lambi Longa v. the Netherlands*[4] was the first concerning the detention in the United Nations Detention Unit in The Hague of a witness called by the International Criminal Court (ICC). The Court considered that persons detained on the territory of a Contracting State on the authority of an international criminal tribunal, under arrangements entered into with a State not party to the Convention, did not fall within the "jurisdiction" of the Contracting State.

In its judgment in *El-Masri v. "the former Yugoslav Republic of Macedonia"*[5], the Court stressed that a Contracting State was to be regarded as responsible under the Convention for acts performed by foreign officials on its territory with the acquiescence or connivance of its authorities.

1. [GC], no. 27765/09, ECHR 2012.
2. [GC], no. 48787/99, ECHR 2004-VII.
3. [GC], nos. 43370/04, 8252/05 and 18454/06, ECHR 2012.
4. (dec.), no. 33917/12, ECHR 2012.
5. [GC], no. 39630/09, ECHR 2012.

Admissibility conditions

Right of individual petition (Article 34)

The Court considered that the criteria governing victim status had to be applied in a flexible manner (*Aksu v. Turkey*[1]). An applicant of Roma origin felt personally offended by expressions used to describe the Roma community, which he considered to be demeaning. Remarks aimed at an ethnic group could cause offence to one of its members even if he or she was not targeted personally. In this case the domestic courts had recognised that the applicant had standing to bring proceedings and had examined the case on the merits. Accordingly, the Court accepted that the applicant had victim status before it on account of the alleged breach of his right to respect for his private life, although he had not been targeted directly by the impugned remarks.

The judgment in *Kurić and Others v. Slovenia*[2] dealt with the issue of "adequate" and "sufficient" redress at domestic level for an alleged violation of the Convention; this was dependent on all the circumstances of the case, regard being had, in particular, to the nature of the violation at stake.

In this case concerning Article 8 the Grand Chamber considered, unlike the Chamber, that the acknowledgment of the violations by the national authorities and the issuance of permanent residence permits did not constitute "appropriate" and "sufficient" redress at the national level. The Court based its findings on the characteristics of the case, which created widespread human rights concern (resulting from the "erasure" of the applicants' names from the Slovenian Register of Permanent Residents). It stressed the lengthy period of insecurity and legal uncertainty experienced by the applicants and the gravity of the consequences of the impugned situation for them.

Exhaustion of domestic remedies (Article 35 § 1)

The Court reiterated that it had to take realistic account not only of the existence of formal remedies in the legal system of the State concerned but also of the general legal and political context in which they operated, as well as the personal circumstances of the applicants *(Kurić and Others*, cited above). In this case in particular, the Constitutional Court had noted the existence of a general problem and had adopted leading decisions ordering general measures. However, the domestic authorities had subsequently failed to comply with those decisions over a long period.

Six-month time-limit (Article 35 § 1)

In calculating the time-limit, the Court held that a non-working day should be taken into account as the day of expiry. Compliance with the

1. [GC], nos. 4149/04 and 41029/04, ECHR 2012.
2. [GC], no. 26828/06, ECHR 2012.

six-month time-limit had to be assessed in accordance with Convention criteria, independently of domestic rules and practice. With regard to procedure and time-limits, the need for legal certainty prevailed. For their part, applicants needed to be alert with regard to observance of the relevant procedural rules (*Sabri Günes v. Turkey*[1]).

In a judgment concerning an applicant's detention pending trial which was broken down into several non-consecutive periods (*Idalov v. Russia*[2]), the Court clarified its case-law on the application of the six-month rule (see Article 5 § 3 below).

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

This criterion is designed to enable the Court to deal swiftly with frivolous applications in order to concentrate on its core task of affording legal protection at European level of the rights guaranteed by the Convention and its Protocols. The Court applied this criterion in a case concerning the length of criminal proceedings (*Gagliano Giorgi v. Italy*[3]). For the first time, it considered that the reduction of the prison sentence imposed on an accused "at least compensated for or substantially reduced the disadvantage normally caused by the excessive length of proceedings". It therefore concluded that the applicant had not suffered any "significant disadvantage" with regard to his right to be tried within a reasonable time.

"Core" rights

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

The case of *El-Masri*, cited above, concerned a foreign national suspected of terrorist offences who was held in solitary confinement for twenty-three days in an extraordinary place of detention outside any judicial framework, and his subsequent extra-judicial transfer from one State to another for the purposes of detention and interrogation outside the normal legal system. The Court reiterated that the prosecuting authorities must endeavour to undertake an adequate investigation into allegations of a breach of Article 3 in order to prevent any appearance of impunity and to maintain public confidence in their adherence to the rule of law.

The responsibility of the respondent State was engaged on account of the transfer of the applicant into the custody of the US authorities despite the existence of a real risk that he would be subjected to ill-treatment following his transfer outside the territory.

1. [GC], no. 27396/06, 29 June 2012.
2. [GC], no. 5826/03, 22 May 2012.
3. No. 23563/07, ECHR 2012.

Expulsion

The disembarkation on the Libyan coast of migrants intercepted on the high seas by a member State was the subject of the judgment in *Hirsi Jamaa and Others*, cited above. The operation had been aimed at preventing landings of irregular migrants along the Italian coast. The difficulties of policing Europe's southern borders in the context of the phenomenon of migration by sea could not absolve a member State of its obligations under Article 3.

The Court reiterated States' obligations arising out of international refugee law, including the *non-refoulement* principle, which was also enshrined in the Charter of Fundamental Rights of the European Union. The applicants had run a real risk of being subjected to treatment contrary to Article 3 in Libya.

This transfer of foreign nationals to Libya had also placed them at risk of arbitrary repatriation to their countries of origin (Eritrea and Somalia), in breach of Article 3. The indirect removal of an alien left the State's responsibility intact, and that State was required to ensure that the intermediary country offered sufficient guarantees against arbitrary *refoulement*, particularly where that State was not a party to the Convention. When the applicants were transferred to Libya, the Italian authorities had known or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin.

The *Othman (Abu Qatada) v. the United Kingdom*[1] judgment recapitulated the Court's case-law on diplomatic assurances, in a case concerning the proposed expulsion of an alien prosecuted for terrorist offences in his country of origin. The Court examined the content and scope of the assurances given by the destination State, in order to determine whether they were sufficient to protect the applicant against the real risk of ill-treatment on his return.

In *Popov v. France*[2], the detention for fifteen days of two very young children with their parents in a holding centre for aliens pending their removal from the country gave rise to a violation of Article 3. The Court stressed that the extreme vulnerability of children was the decisive factor and took precedence over the status of illegal immigrant. In this case, the length of the period of detention and the conditions of confinement, which were unsuited to the extreme vulnerability of the children, had been bound to have a damaging effect on them.

The case of *S.F. and Others v. Sweden*[3] raised a new issue: that of the risk to which foreign nationals might be exposed in their country of

1. No. 8139/09, ECHR 2012.
2. Nos. 39472/07 and 39474/07, 19 January 2012.
3. No. 52077/10, 15 May 2012.

origin on account of their activities in the host country, given that migrants could continue to champion national dissident causes after fleeing the country.

The case concerned fears on the part of Iranian nationals of being subjected to treatment contrary to Article 3 if they were deported to Iran, given their political activities in Sweden, notably the reporting of human rights violations in their country of origin. The Court took account of the extent and visibility of the applicants' political and human rights activities in Sweden and the risk that activists would be identified by the Iranian authorities in the event of their expulsion to Iran.

Prison

Where allegations are made of overcrowding in prison, the State authorities alone have access to information to corroborate or refute them. The documents they produce must be found to be sufficiently reliable. Failing this, the allegations will be deemed to be credible (*Idalov,* cited above). In this case, the overcrowding was such that the applicant's detention did not conform to the minimum standard of three square metres per person established by the Court's case-law.

In the same case the Court held that a prisoner had been subjected to inhuman and degrading treatment because of the overcrowding of the vans transferring him to the courthouse and the conditions in which he had been held at the court on hearing days (ibid.).

Prohibition of slavery and forced labour (Article 4)

The *C.N. and V. v. France*[1] judgment centred on children forced to work as unpaid domestic help. The case concerned two young orphaned sisters from Burundi who were obliged to carry out household and domestic chores without remuneration. The sisters, aged ten and sixteen, had been taken in by relatives in France who threatened them with expulsion to their country of origin. Among other things, the Court clarified the concepts of "forced or compulsory labour" and "servitude" within the meaning of the first and second paragraphs of Article 4.

The judgment made clear the distinction between "forced labour" and work which could reasonably be expected in the form of help from a family member or person sharing accommodation. "Servitude" constituted a particular category of forced or compulsory labour or, put another way, an "aggravated" form thereof. The essential factor that distinguished servitude from forced or compulsory labour for the purposes of Article 4 of the Convention was the victims' feeling that their condition was immutable and that the situation was unlikely to

1. No. 67724/09, 11 October 2012.

change. It was sufficient for this feeling to be based on objective circumstances created or perpetuated by the persons responsible.

The Court also reiterated the State's positive obligation to put in place an appropriate legislative and administrative framework in order to combat servitude and forced labour effectively.

In *C.N. v. the United Kingdom*[1] the Court stressed that domestic slavery constituted a specific offence, distinct from trafficking and exploitation of human beings.

Right to liberty and security (Article 5)

The Court pointed out that Article 5 could apply in expulsion cases (*Othman (Abu Qatada),* cited above). A Contracting State would be in violation of Article 5 if it removed an applicant to a State where he or she would be at real risk of a flagrant breach of the rights protected under that Article. However, as with Article 6, a very high threshold applied in such cases.

A flagrant breach of Article 5 would occur only if, for example, the receiving State arbitrarily detained an applicant for many years without any intention of bringing him or her to trial. It might also occur if an applicant would be at risk of being imprisoned for a substantial period in the receiving State, as a result of being convicted after a manifestly unfair trial.

The *El-Masri* judgment applied these principles in relation to the Macedonian authorities, which had handed over into the custody of CIA agents a German national suspected of terrorist offences who was subsequently detained in Afghanistan, although they must have been aware that he ran a real risk of being subjected to a flagrant violation of his rights under Article 5. The Court held that, in this case, the applicant's abduction and detention by CIA agents amounted to "enforced disappearance" as defined in international law. The respondent State was held responsible for the violation of Article 5 to which the applicant had been subjected after being removed from its territory, during the entire period of his captivity in Afghanistan.

Furthermore, while on the territory of the respondent State, the applicant had been placed in solitary confinement in a hotel without any court intervention or any entry being made in the custody records. The Grand Chamber found it "wholly unacceptable that in a State subject to the rule of law a person could be deprived of his or her liberty in an extraordinary place of detention outside any judicial framework". The applicant had been held in unacknowledged detention in complete disregard of the safeguards enshrined in Article 5 of the Convention;

1. No. 4239/08, 13 November 2012.

this constituted "a particularly grave violation" of his right to liberty and security under that provision.

Deprivation of liberty (Article 5 § 1)

The Grand Chamber expanded upon the circumstances in which a measure was to be regarded as a "deprivation of liberty", thus attracting the protection of Article 5:

– *Stanev v. Bulgaria*[1] concerned the placement in an institution of an adult who lacked legal capacity;

– *Creangă v. Romania*[2], meanwhile, related to a summons to appear at the premises of the prosecution service for questioning in connection with a criminal investigation. In this case, the Court also ruled on the burden of proof with regard to deprivation of liberty.

– The case of *Austin and Others v. the United Kingdom*[3] dealt for the first time with the containment of members of the public within a police cordon during a demonstration taking place in dangerous conditions. The Court held that crowd-control measures should not be used by national authorities to stifle or discourage protest. Police cordons should be imposed and maintained on public-order grounds only in situations where it was necessary in order to prevent serious injury or damage.

The Grand Chamber laid down some markers concerning restrictions on freedom of movement in public places (*Austin and Others*, cited above). Its judgment reviewed commonly occurring restrictions in contemporary societies which, in some circumstances, had to be distinguished from "deprivations of liberty" for the purposes of Article 5 § 1. However, the use of crowd-control techniques could, in particular circumstances, give rise to a deprivation of liberty in breach of Article 5 § 1. In each case, account had to be taken of the specific context in which the techniques were deployed, as well as the police's duty to maintain order and protect the public. Given the new challenges they now faced, the police must be allowed to fulfil their operational duties, provided they complied with the principle of protecting the individual from arbitrariness.

Lawful detention (Article 5 § 1)

States have a duty to afford vulnerable individuals effective protection against arbitrary detention. The Court's judgment in *Stanev*, cited above, underlined the responsibility of the national authorities with regard to the placement in a psychiatric institution of an adult declared partially incapacitated. In the Court's view, it was essential to assess at

1. [GC], no. 36760/06, ECHR 2012.
2. [GC], no. 29226/03, 23 February 2012.
3. [GC], nos. 39692/09, 40713/09 and 41008/09, ECHR 2012.

regular intervals whether the person's condition continued to justify his or her confinement.

The case of *X v. Finland*[1] concerned the forced administration of medication in treating a person confined to a psychiatric hospital. The case centred on the protection of individuals confined to psychiatric institutions against arbitrary interference with their right to liberty. Forced administration of treatment had to be based on a procedure prescribed by law which afforded proper safeguards against arbitrariness. In particular, the person had to be able to bring proceedings for review of the need for his or her continued treatment. An independent psychiatric opinion on the continuation of treatment against a patient's will – issued by a psychiatrist from outside the institution where the person was confined – also had to be available.

In the *Creangă* judgment, cited above, the Court reiterated its settled case-law according to which, in cases of deprivation of liberty, it was particularly important to comply with the general principle of legal certainty. National law had to clearly define the conditions in which deprivation of liberty was authorised and the application of the law must be foreseeable.

Where individuals' liberty was concerned, the fight against the scourge of corruption could not justify recourse to arbitrariness and areas of lawlessness in places where people were deprived of their liberty (ibid.).

In its decision in *Simons v. Belgium*[2], the Court answered in the negative the question whether there was a "general principle" implicit in the Convention whereby all persons deprived of their liberty must have the possibility of being assisted by a lawyer from the start of their detention. In the Court's view, this was a principle inherent in the right to a fair trial[3], which was based specifically on Article 6 § 3, rather than a general principle which by definition was overarching in nature. Accordingly, the impossibility under the law for accused persons deprived of their liberty to be assisted by a lawyer from the start of their detention was not sufficient to render the detention in question contrary to Article 5 § 1.

In *James, Wells and Lee v. the United Kingdom*[4], the Court dealt for the first time with the issue of programmes in prison to address offending behaviour. The case concerned the rehabilitative courses offered to prisoners serving indeterminate sentences for the protection of the public. The judgment is significant as it establishes benchmarks with

1. No. 34806/04, ECHR 2012.
2. (dec.), no. 71407/10, 28 August 2012.
3. See *Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008, and *Dayanan v. Turkey*, no. 7377/03, 13 October 2009.
4. Nos. 25119/09, 57715/09 and 57877/09, 18 September 2012.

regard to the rehabilitative part of sentences being served by offenders considered a danger to the public.

In the Court's view, where a prisoner was in detention solely on the grounds of the risk he posed to the public, regard had to be had to the need to encourage his rehabilitation. In the applicants' case, this meant that they had to be given reasonable opportunities to undertake courses aimed at addressing their offending behaviour and the risks they posed to society. However, very lengthy periods of time had elapsed before the applicants had even been able to embark on the rehabilitative part of their sentences, despite the clear instructions in force.

The finding of a violation of Article 5 § 1 was made in respect of the applicants' continuing detention following the expiry of their minimum term ("tariff") and until steps had been taken to provide them with access to appropriate rehabilitative courses.

Length of detention pending trial (Article 5 § 3)

In a judgment concerning an applicant's detention pending trial which was broken down into several non-consecutive periods (*Idalov*, cited above), the Court clarified its case-law on the application of the six-month rule (Article 35 § 1).

That rule was to be applied separately to each period of detention pending trial[1]. Therefore, once at liberty, an applicant was obliged to bring any complaint he or she might have before the Court within six months of the date of actual release. Periods of pre-trial detention which ended more than six months before an applicant lodged a complaint with the Court could not be examined. However, where such periods formed part of the same set of criminal proceedings, the Court, when assessing the reasonableness of the detention for the purposes of Article 5 § 3, could take into consideration the fact that an applicant had previously spent time in custody pending trial.

The Grand Chamber observed that, in order to comply with Article 5 § 3, the judicial authorities had to justify the length of a period of detention pending trial by addressing specific facts and considering alternative "preventive measures", and could not rely essentially and routinely on the gravity of the criminal charges (ibid.).

Speedy review of lawfulness of detention (Article 5 § 4)

Where an individual's liberty is at stake, the Court applies very strict standards in assessing the State's compliance with the requirement of speedy review of the lawfulness of detention under Article 5 § 4 (*Idalov*, cited above).

1. Compare with the judgment in *Solmaz v. Turkey*, no. 27561/02, 16 January 2007.

Right to take proceedings (Article 5 § 4)

The lawfulness of the placement in detention pending deportation of children accompanying their parents is a new issue, dealt with in the judgment in *Popov,* cited above. While the law did not provide for children themselves to be taken into detention in such circumstances, the children concerned found themselves in a legal void preventing them from exercising the remedy available to their parents in order to obtain a decision on the lawfulness of their detention (no removal orders or orders for placement in a holding centre for aliens pending deportation were issued in respect of children). They were therefore deprived of the protection required by the Convention, in breach of Article 5 § 4.

Prohibition of collective expulsion of aliens (Article 4 of Protocol No. 4)

In the case of *Hirsi Jamaa and Others*, cited above, the applicants had not been on the territory of the respondent State when they were expelled, having been intercepted at sea while fleeing their country. The Court therefore examined for the first time the issue of the applicability of Article 4 of Protocol No. 4 to the removal of aliens to a third State, carried out outside national territory.

European States were faced with a new challenge in the form of irregular immigration by sea. The removal of aliens carried out in the context of interceptions on the high seas by the authorities of a State in the exercise of their sovereign authority, the effect of which was to prevent migrants from reaching the borders of the State or even to push them back to another State, constituted an exercise of jurisdiction within the meaning of Article 1 of the Convention which engaged the responsibility of the State in question under Article 4 of Protocol No. 4.

In this case, the transfer of the applicants to Libya by Italian military personnel had been carried out without any examination of each individual situation. No identification procedure had been carried out by the Italian authorities, who had merely embarked the applicants onto their military ships and then disembarked them in Libya. The applicants' removal had therefore been of a collective nature, in breach of Article 4 of Protocol No. 4. This is the second judgment in which the Court has found a violation of that Article, after its judgment in *Čonka v. Belgium*[1].

1. No. 51564/99, ECHR 2002-I.

Procedural rights

Right to a fair trial (Article 6)

Applicability (Article 6 § 1)

Is Article 6 § 1 applicable to prisoners' requests for leave of absence (in this case prison leave)? This question was examined in the *Boulois v. Luxembourg* judgment[1]. The prisoner concerned had applied for leave in order to complete administrative formalities and look for work. The Court noted that in the domestic legal system concerned individuals could not claim, on arguable grounds, to possess a "right" within the meaning of Article 6. Other member States took a variety of approaches regarding the status of prison leave and the arrangements for granting it. In more general terms, the Court reaffirmed the legitimate aim of progressive social reintegration of persons sentenced to imprisonment.

Access to court (Article 6 § 1)

The case of *Stanev*, cited above, dealt with the procedural rights of persons declared to be partially lacking legal capacity. In principle, any person declared to be incapacitated had to have direct access to a court in order to seek the restoration of his or her legal capacity, and there was a trend in European countries to that effect. Furthermore, the international instruments for the protection of people with mental disorders attached growing importance to granting such persons as much legal autonomy as possible.

The *Segame SA v. France*[2] judgment concerned a system of tax fines set by law as a percentage of the unpaid tax. The applicant complained that the courts were unable to vary the fine in proportion to the seriousness of the accusations made against a taxpayer (it was set at a fixed rate of 25%). However, the Court acknowledged that the particular nature of tax proceedings implied a requirement of effectiveness, necessary in order to preserve the interests of the State. Furthermore, tax disputes did not form part of the "hard core" of criminal law for Convention purposes.

Fairness of the proceedings (Article 6 § 1)

The Court held for the first time that there would be a flagrant denial of justice in the event of the applicant's expulsion, on account of the real risk that evidence obtained through torture of third parties would be admitted at his trial in the third country of destination *(Othman (Abu Qatada)*, cited above).

The admission of torture evidence was manifestly contrary not just to the provisions of Article 6 of the Convention but to the most basic international standards of a fair trial, and would make the whole trial

1. [GC], no. 37575/04, ECHR 2012.
2. No. 4837/06, ECHR 2012.

immoral and illegal. It would therefore amount to a flagrant denial of justice if such evidence were admitted in a criminal trial. The Court did not exclude that similar considerations might apply in respect of evidence obtained by other forms of ill-treatment falling short of torture. Since the establishment of the principle in its 1989 judgment in *Soering v. the United Kingdom*[1], this is the first case in which the Court has held that an applicant's expulsion would amount to a violation of Article 6.

A denial of justice occurs where a person convicted *in absentia* is unable subsequently to obtain a new judgment by a court after being given an opportunity to answer the charges. This settled case-law applies also where a person is declared guilty not in his absence but after his death (*Lagardère v. France*[2]).

Adversarial proceedings (Article 6 § 1)

The *Eternit v. France*[3] decision supplemented the case-law on medical confidentiality and employment law. An employer complained of being unable to gain access to medical documents establishing the work-related nature of an employee's illness.

The Court ruled that an employee's right to respect for medical confidentiality and an employer's right to adversarial proceedings had to coexist in such a way that the essence of neither was impaired. This balance was achieved where the employer contesting the work-related nature of an illness could request the court to appoint an independent medical expert to whom the documents constituting the employee's medical file could be given and whose report, drawn up in accordance with the rules of medical confidentiality, had the purpose of providing clarification to the court and the parties. The fact that an expert report was not ordered in every case in which the employer requested it, but only where the court considered itself insufficiently informed, was compatible with the Convention.

Presumption of innocence (Article 6 § 2)

The impact of a pre-trial detention measure on an individual's employment contract was the subject of the decision in *Tripon v. Romania*[4]. The applicant was dismissed following his placement in pre-trial detention, and hence before being finally convicted, as the Labour Code made it possible to dismiss employees who were placed in pre-trial detention for more than sixty days.

In this case, the applicant's dismissal had therefore been based on an objective factor, namely his prolonged absence from work, rather than

1. 7 July 1989, § 113, Series A no. 161.
2. No. 18851/07, 12 April 2012.
3. (dec.), no. 20041/10, 27 March 2012.
4. (dec.), no. 27062/04, 7 February 2012.

on considerations linked to his guilt. The State was free to make that legislative choice, particularly if the legislation provided sufficient safeguards against arbitrary or abusive treatment of the employee concerned. In view of the various safeguards in place, which it listed in its decision, the Court accepted that placement in pre-trial detention for a certain length of time and on those objective grounds could justify dismissal even in the absence of a final criminal conviction.

The extension of the scope of Article 6 § 2 to the compensation proceedings in a case because of their link to the criminal proceedings was dealt with in *Lagardère,* cited above. The civil court had found a person guilty posthumously although the criminal proceedings against him had been extinguished on his death and the criminal courts had made no finding of guilt against him while he was alive. The Court held that there had been a violation of Article 6 § 2.

Defence rights (Article 6 § 3)

In *Idalov*, cited above, all the evidence, including the witness testimony, had been examined in the absence of the accused, who had been ejected from the courtroom for improper conduct. The removal of an accused from the courtroom during his criminal trial and his exclusion throughout the taking of evidence amounted to a breach of Article 6 unless it had been established that he had waived unequivocally his right to be present at his trial. Hence, exclusion for improper conduct had to be attended by certain safeguards: it had first to be established that the accused could reasonably have foreseen what the consequences of his ongoing conduct would be, and he had to be given an opportunity to compose himself. Failing that, and notwithstanding his disruptive behaviour, it could not be concluded unequivocally – as required by the Convention – that the applicant had waived his right to be present at his trial.

Right to an effective remedy (Article 13)

The case of *Hirsi Jamaa and Others*, cited above, concerned Somalian and Eritrean migrants travelling from Libya who were arrested at sea and then returned to Libya on Italian military ships. The applicants alleged that they had not had an effective remedy under Italian law by which to assert their complaints concerning their removal to the third country.

The Court reiterated the importance of guaranteeing anyone subject to a removal measure, the consequences of which were potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the domestic procedures and to substantiate their complaints. The applicants had been deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent

authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced. There had therefore been a violation of Article 13 taken in conjunction with those two Articles.

The judgment in *De Souza Ribeiro v. France*[1] concerned the expulsion of foreign nationals, alleged to be in breach of their right to respect for their private and family life (Article 8). The applicant had been deported less than an hour after applying to the domestic court of first instance. This had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. While the Court acknowledged the importance of swift access to a remedy, this should not go so far as to constitute an obstacle or unjustified hindrance to making use of it, or take priority over its practical effectiveness. Although States had to take steps to combat illegal immigration, Article 13 did not permit them to deny applicants access in practice to the minimum procedural safeguards needed to protect them against arbitrary expulsion. There had to be genuine intervention by the court.

The Court held that there had been a violation of Article 13 in conjunction with Article 8. An effective possibility had to exist of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality.

The effectiveness of a remedy for the purposes of Article 13 also required that the person concerned should have access to a "remedy with automatic suspensive effect" when expulsion exposed him or her to a real risk of a violation of Article 2 or 3 of the Convention; that requirement also applied to complaints under Article 4 of Protocol No. 4.

Right not to be tried or punished twice (Article 4 of Protocol No. 7)

The judgment in *Marguš v. Croatia*[2] (not final) concerned the conviction of a member of the armed forces prosecuted for war crimes who had previously been granted an amnesty. The Court observed that granting amnesty in respect of "international crimes" – which included crimes against humanity, war crimes and genocide – was increasingly considered to be prohibited by international law. The amnesty granted to the applicant in respect of acts which were characterised as war crimes against the civilian population amounted to a "fundamental defect in the proceedings" for the purposes of the second paragraph of Article 4

1. [GC], no. 22689/07, ECHR 2012.
2. No. 4455/10, 13 November 2012.

of Protocol No. 7, justifying the reopening of the proceedings. There had therefore been no breach of that provision.

Civil and political rights

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

Applicability

In the Court's view, any negative stereotyping of a group, when it reached a certain level, was capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. Negative stereotyping of this kind could be seen as affecting the private life of members of the group (*Aksu,* cited above). In this case, an applicant of Roma origin had criticised a publication which, he claimed, constituted an attack on the identity of the Roma community and thus an infringement of his private life.

Article 8 was found to be applicable to parental leave and the corresponding allowances since they promoted family life and necessarily affected the way in which it was organised (*Konstantin Markin v. Russia*[1]).

The case of *Hristozov and Others v. Bulgaria*[2] (not final) concerned the refusal to allow terminally ill cancer patients to obtain an unauthorised experimental drug. In the Court's view, a regulatory restriction on patients' capacity to choose their medical treatment, with a view to possibly prolonging their lives, fell within the scope of "private life".

Private life

Media coverage of the private life of well-known figures involves competing interests. Two Grand Chamber judgments dealt with the balancing of the right to freedom of expression and the right to respect for one's private life. In these judgments, the Court recapitulated the relevant criteria in relation to this important issue.

In cases requiring such a balancing exercise, the Court considered that the outcome of the application should not, in theory, vary according to whether it was lodged with the Court under Article 8 of the Convention, by the person who was the subject of the article, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserved equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases.

1. [GC], no. 30078/06, ECHR 2012.
2. Nos. 47039/11 and 358/12, ECHR 2012.

The case of *Von Hannover (no. 2) v. Germany*[1] concerned the protection of a celebrity's right to the protection of her image (after she had been photographed without her knowledge), set against the press's right to freedom of expression when publishing photographs showing scenes from an individual's private life. It was important, among other things, to determine whether the photograph had been published for entertainment purposes. In order to decide whether it contributed to a debate of general interest, the photograph in question had been considered in the light of the accompanying articles (and not in isolation).

The judgment in *Axel Springer AG v. Germany*[2] concerned the publication of press articles on the arrest and conviction of a well-known television actor. The application, which was lodged under Article 10 (see below), also raised issues in relation to Article 8, in particular the scope of protection of private life when weighed against the public interest in being informed about criminal proceedings.

The *Aksu* judgment, cited above, examined from the standpoint of Article 8 remarks on the subject of the Roma community which were alleged by one of the members of that community to be demeaning. This case differed from previous cases brought by members of the Roma community which had raised issues of ethnic discrimination. The Court's examination focused on the State's positive obligations and the margin of appreciation of the domestic courts.

The Court sought to ascertain whether the national courts had weighed the right of a member of the Roma community to respect for his private life against a university professor's freedom to publish the findings of his academic research into that community. This balancing of competing fundamental rights guaranteed by Articles 8 and 10 had to be carried out in accordance with the criteria set out in the Court's settled case-law.

The Grand Chamber reiterated that the vulnerable position of Roma meant that special consideration had to be given to their needs and their different lifestyle, both in the relevant regulatory framework and in reaching decisions in particular cases.

The applicant, of Roma origin, also claimed to be the victim of negative stereotypes contained in some dictionaries. Here, the target group was a relevant factor. Thus, in a dictionary aimed at pupils, more diligence was required when giving the definitions of expressions which were part of daily language but which might be construed as humiliating or insulting.

1. [GC], nos. 40660/08 and 60641/08, ECHR 2012.
2. [GC], no. 39954/08, 7 February 2012.

The Court examined for the first time the issue of consensual incest from the standpoint of Article 8 (*Stübing v. Germany*[1]). This case concerned a man's sentencing to a prison term for his incestuous relationship with his younger sister, with whom he had several children. The Court noted the absence of consensus among the Contracting States, the majority of which imposed criminal sanctions on consensual incest between brother and sister, and the absence of a general trend towards decriminalising such acts. It observed that all the legal systems surveyed, including those which did not treat incest as a criminal offence, prohibited brothers and sisters from marrying. It found to be legitimate the reasons given by the German Federal Constitutional Court, namely the protection of morals, the need to protect the structure of the family and accordingly of society as a whole, and the need to protect sexual self-determination.

The Court examined for the first time a system of urban risk areas in which civil liberties could be restricted. Anyone in those areas could be subjected to a preventive body search by police looking for weapons.

The Court took into consideration the legal framework in which the search system operated and the variety of authorities involved. It further noted the tangible results achieved in terms of combating violent crime. Given the legal framework and the system's effectiveness, the domestic authorities had been entitled to consider that the public interest outweighed the disadvantage caused by the interference with private life (*Colon v. the Netherlands*[2] decision).

For the first time, the Court examined on the merits the issue of access for terminally ill cancer patients to an unauthorised experimental treatment (*Hristozov and Others*, cited above). The medicine in question, which had not been clinically tested, was not authorised in any country but was allowed in some countries for compassionate use. The Court observed that there was a clear trend in the Contracting States towards allowing, under certain exceptional conditions, the use of unauthorised medicinal products. However, in the Court's view, that emerging consensus was not based on settled principles in the law of the Contracting States, nor did it appear to extend to the precise manner in which the use of such products should be regulated. Accordingly, States' margin of appreciation was wide, especially with regard to the detailed rules they laid down with a view to achieving a balance between the competing public and private interests.

1. No. 43547/08, 12 April 2012.
2. (dec.), no. 49458/06, 15 May 2012.

Family life

The judgment in *Van der Heijden v. the Netherlands*[1] concerned the obligation for an individual to give evidence against her cohabiting partner in criminal proceedings. The case raised two competing public interests: the prosecution of serious crime and the protection of family life from interference by the State. Despite being in a stable family relationship with her partner for several years, the applicant was not dispensed from the obligation to give evidence against him in the criminal proceedings against him, as the State had opted to reserve testimonial privilege to partners in formally recognised unions. The Court noted the States' margin of appreciation in that regard.

States that made provision in their legislation for testimonial privilege were free to limit its scope to marriage or registered partnerships. The legislature was entitled to confer a special status on marriage or registration and not to confer it on other *de facto* types of cohabitation. The Court stressed the importance of the interest in prosecuting serious crime.

The case of *Popov*, cited above, concerned the delicate issue of detention of under-age migrants in a closed centre with a view to their deportation. The Court emphasised the "child's best interests" in that context. There was broad consensus, particularly in international law, that the children's interests were paramount in all decisions concerning them. The Court therefore departed from the precedent established in *Muskhadzhiyeva and Others v. Belgium*[2], on the ground that "the child's best interests could not be confined to keeping the family together"; the authorities had to "take all the necessary steps to limit as far as possible the detention of families with children".

The Court noted that there had been no risk that the applicants would abscond. However, no alternative to detention had been considered, such as a compulsory residence order or placement in a hotel. In the absence of any reason to suspect that the parents and their baby and three-year-old child would seek to evade the authorities, their detention for a period of two weeks in a closed facility was held to be contrary to Article 8.

The judgment in *Trosin v. Ukraine*[3] concerned the very severe restrictions on family visits imposed on life prisoners. There was no justification for an automatic restriction on the number of visits per year without any opportunity of assessing its necessity in the light of each prisoner's particular situation. The same applied to the restriction on the

1. [GC], no. 42857/05, 3 April 2012.
2. No. 41442/07, § 98, 19 January 2010.
3. No. 39758/05, 23 February 2012.

number of adults allowed per visit, the lack of privacy and the exclusion of any physical contact between prisoners and their relatives.

Private and family life

The Court held that "particularly serious reasons" must exist before restrictions on the family and private life of military personnel, especially those relating to "a most intimate part of an individual's private life", could satisfy the requirements of Article 8 § 2. Such restrictions were acceptable only where there was a real threat to the armed forces' operational effectiveness. The respondent Government's assertions as to the existence of such a risk had to be substantiated by specific examples (*Konstantin Markin*, cited above).

The judgment in *Kurić and Others*, cited above, concerned persons deprived of permanent resident status in Slovenia (the "erased" persons) following the country's independence, and the serious consequences for them of the removal of their names from the Register of Permanent Residents. The Court held that the interference in issue had lacked sufficient legal basis. However, its examination did not end there. Noting the particular circumstances of the case and taking account of the far-reaching repercussions of the impugned measure, the Court further examined whether the interference had pursued a legitimate aim and had been proportionate.

Private life and correspondence

The case of *Michaud v. France*[1] dealt with the confidentiality of lawyer-client relations and legal professional privilege, against the background of the incorporation into domestic law of a European Union directive concerning money laundering. A lawyer complained of the obligation for members of the profession to report any "suspicions" they might have concerning their clients, on pain of disciplinary sanctions. Regarding the protection of fundamental rights afforded by the European Union, the Court had held in *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*[2] that it was in principle equivalent to that of the Convention system. For the first time, the Court held that this presumption did not apply in the case before it. The case concerned the transposition of a European directive – as opposed to the adoption of a European regulation – and the domestic court had refused to submit a request to the Court of Justice in Luxembourg for a preliminary ruling on the issue whether the obligation for lawyers to report their suspicions was compatible with Article 8 of the Convention. That question had never previously been examined by the Court of Justice, either in a preliminary ruling delivered in the context of another case,

1. No. 12323/11, ECHR 2012.
2. [GC], no. 45036/98, ECHR 2005-VI.

or in the context of one of the various actions open to the European Union's Member States and institutions. Hence, the supervisory machinery provided for by European Union law had not come into play.

Legal professional privilege was of great importance, and constituted one of the fundamental principles on which the administration of justice in a democratic society was based. It was not, however, inviolable. It was necessary to weigh its importance against the importance for the member States of combating the laundering of the proceeds of unlawful activities, themselves likely to be used in financing criminal activities, particularly in the spheres of drug trafficking and international terrorism.

Freedom of thought, conscience and religion (Article 9)

In 2011[1], the Court had occasion to revisit its case-law on the applicability of Article 9 to conscientious objectors. The judgment in *Savda v. Turkey*[2] concerned the objections to military service raised on grounds of conscience by a pacifist who did not rely on any religious beliefs. A further characteristic of this case was the absence of a procedure for review by the national authorities of the applicant's request to be recognised as a conscientious objector. In the Court's view, in the absence of such a procedure, the obligation to carry out military service was such as to entail "a serious and insurmountable conflict" with an individual's conscience or his deeply and genuinely held beliefs.

There was therefore an obligation on the State authorities to provide conscientious objectors with an effective and accessible procedure enabling them to have established whether they were entitled to conscientious-objector status, in order to preserve their interests protected by Article 9.

Freedom of expression (Article 10)

The case of *Axel Springer AG*, cited above, concerned an injunction prohibiting a newspaper from reporting on the arrest and conviction of a well-known actor. The Grand Chamber listed the criteria governing the balancing of the right to freedom of expression and the right to respect for private life. In principle, the task of assessing how well a person was known to the public fell primarily to the domestic courts, especially where that person was mainly known at national level. The Court examined whether the actor had been sufficiently well known to qualify as a public figure. The judgment examined the scope of the "legitimate expectation" that his private life would be effectively protected.

1. *Bayatyan v. Armenia* [GC], no. 23459/03, ECHR 2011.
2. No. 42730/05, 12 June 2012.

Other aspects explored by the judgment included the means by which the journalist had obtained the information, the accuracy of the information, the extent to which the press itself had preserved the actor's anonymity and the content and form of the impugned articles, including the use of "expressions which, to all intents and purposes, were designed to attract the public's attention".

In the case of *Centro Europa 7 S.r.l. and Di Stefano v. Italy*[1], a private television company had been granted a licence for nationwide television broadcasting but was unable to broadcast because no frequencies had been allocated to it by the authorities. The situation had deprived the licence of all practical purpose since the activity it authorised had been impossible to carry out in practice. The Grand Chamber reiterated the general principles governing media pluralism.

In particular, it was necessary to ensure effective pluralism in this very sensitive sector so as to guarantee diversity of overall programme content, reflecting the variety of opinions encountered in the society concerned.

In addition to its negative duty of non-interference, the State had a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism in the media. It was not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audiovisual market: it was necessary in addition to allow effective access to the market.

A sufficiently precise legal framework was a particularly important requirement in cases concerning the conditions of access to the audiovisual market. Any shortcomings on the part of the State which resulted in reduced competition in the audiovisual sector would be in breach of Article 10.

The judgment in *Mouvement raëlien suisse v. Switzerland*[2] concerned the scope of the right to use public space to conduct poster campaigns. In the Court's view, individuals did not have an unconditional or unlimited right to the extended use of public space, especially in relation to facilities intended for advertising or information campaigns. With regard to freedom of expression there was little scope for restrictions on political speech. However, States had a wide margin of appreciation in regulating speech in commercial matters and advertising.

Hence, the examination by the local authorities of the question whether a poster in the context of a campaign that was not strictly political satisfied certain statutory requirements – for the defence of

1. [GC], no. 38433/09, ECHR 2012.
2. [GC], no. 16354/06, ECHR 2012.

interests as varied as, for example, the protection of morals, road-traffic safety or the preservation of the landscape – fell within the margin of appreciation afforded to States. The authorities therefore had a certain discretion in granting authorisation in this area.

In this case the interference by the public authorities had been limited to prohibiting the display of posters in public areas. The Court acknowledged the necessity of protecting health and morals and the rights of others and preventing crime. The applicant association had been able to continue to disseminate its ideas through its website and through other means such as the distribution of leaflets in the street or in letter boxes. Where they decided to restrict fundamental rights, the authorities had to choose the means that caused the least possible prejudice to the rights in question.

The case of *Vejdeland and Others v. Sweden*[1] concerned the applicants' conviction for "agitation against a national or ethnic group" following the distribution to young pupils of leaflets worded in a manner offensive to homosexuals. This judgment is noteworthy as it is the first time that the Court has applied the principles relating to speech offensive to certain social groups in the context of speech against homosexuals. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour.

In *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*[2], the Court held that Article 10 included freedom to receive and impart information and ideas in any language which afforded the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. Article 10 protected not only the substance of the ideas and information expressed but also the form in which they were conveyed, irrespective of the language in which they were expressed.

The freedom to receive and impart information or ideas forms an integral part of the right to freedom of expression. For the first time, the Court dealt with the blocking of a website which had the collateral effect of barring access to the entire "Google Sites" domain and all the websites hosted on it (*Ahmet Yıldırım v. Turkey*[3] (not final)). The blocking of the websites was the result of a preventive measure taken in the context of criminal proceedings against another individual, unconnected to the applicant's site.

The Court considered that "the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information; it provides essential tools for taking part in activities and discussions concerning political issues or matters of public

1. No. 1813/07, 9 February 2012.
2. No. 20641/05, ECHR 2012.
3. No. 3111/10, ECHR 2012.

interest". It held that the domestic courts should have had regard to the fact that such measures – which rendered large amounts of information inaccessible – had a considerable impact on the rights of Internet users and a substantial collateral effect. The Court found a violation of Article 10.

Freedom of assembly and association (Article 11)

The *Eğitim ve Bilim Emekçileri Sendikası* judgment, cited above, concerned proceedings to have a trade union of education-sector employees dissolved on the grounds that its statutes defended teaching in a mother tongue other than Turkish. The union was eventually forced to delete the relevant references from its statutes in order to avoid being dissolved.

In the Court's view, the principle defended by the trade union, whereby the individuals making up Turkish society could be taught in their native languages other than Turkish, was not contrary to fundamental democratic principles. It observed that nothing in the impugned article of the union's statutes could be considered as a call to violence, insurrection or any other form of denial of democratic principles; this was an essential factor to be taken into account. Even assuming that the national authorities had been entitled to consider that teaching in a mother tongue other than Turkish promoted a minority culture, the existence of minorities and different cultures in a country was a historical fact that a democratic society had to tolerate and even protect and support according to the principles of international law. The Court held that there had been a violation of Article 11.

Right to marriage (Article 12)

The judgment in *V.K. v. Croatia*[1] (not final) concerned divorce proceedings the length of which was found to be unreasonable from the standpoint of Article 6 § 1. For the first time, the Court held that the failure of the national authorities to conduct divorce proceedings effectively left the petitioner in a state of prolonged uncertainty, thus constituting an unreasonable restriction on the right to marry. It took into account, among other considerations, the fact that the applicant had a well-established intention to remarry, as well as the circumstances of the divorce proceedings (the agreement of the spouses to get divorced, the possibility for the courts to take an interim decision and the urgent nature of the proceedings in domestic law).

Prohibition of discrimination (Article 14)

The exclusion of male military personnel from the right to parental leave, accorded to female personnel, raised an important question of

1. No. 38380/08, 27 November 2012.

general interest from the standpoint of Article 14 read in conjunction with Article 8. In its judgment in *Konstantin Markin*, cited above, the Court ruled on this issue for the first time. The Grand Chamber observed the way in which contemporary European societies had evolved in relation to the question of equality between the sexes with regard to parental leave. The traditional distribution of gender roles in society could not justify the exclusion of men, including servicemen, from the entitlement to parental leave.

In the specific context of the armed forces certain restrictions linked to the importance of the army for the protection of national security might be justifiable, provided they were not discriminatory. It was possible to accommodate legitimate concerns about the operational effectiveness of the army and yet afford military personnel of both sexes equal treatment in the sphere of parental leave, as the example of numerous European countries demonstrated. The relevant comparative-law materials indicated that, in a substantial number of member States, both servicemen and servicewomen were entitled to parental leave. Conversely, a general and automatic restriction applied to a group of people on the basis of their sex – such as the exclusion of male military personnel alone from entitlement to parental leave – was incompatible with Article 14. The prohibition of sex discrimination was of fundamental importance; the right not to be discriminated against on account of sex could not be waived.

The case of *Gas and Dubois v. France*[1] concerned the refusal by the courts of an application by a woman living in a same-sex couple for a simple adoption order in respect of her partner's child, conceived in Belgium via anonymous donor insemination. The reason given for the refusal was that the transfer of parental responsibility to the adoptive parent would deprive the biological mother of all rights in relation to her child and would be against the child's interests, since the biological mother intended to continue raising her.

In the Court's view, the case differed fundamentally from that of *E.B. v. France*[2], which related to the handling of an application for authorisation to adopt a child made by a single homosexual, since French law allowed single persons to adopt. The Court observed that the legal situation of same-sex couples was not comparable to that of married couples for the purposes of second-parent adoption (same-sex marriage is prohibited under French law). Same-sex couples were not treated differently compared with unmarried heterosexual couples, whether or not the latter were in a civil partnership, as the latter would likewise be refused a simple adoption order. The Court held that there had been no violation of Article 14 in conjunction with Article 8.

1. No. 25951/07, ECHR 2012.
2. [GC], no. 43546/02, 22 January 2008.

The case of *Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*[1] dealt for the first time with the issue of direct State funding of political parties. The Court defined certain principles regarding systems of public funding for parties based on a minimum level of representation.

The case concerned the refusal to grant public funding to a political party which was not represented in Parliament, on the grounds that it had not attained the minimum level of electoral support required by law. The Court did not find any violation of Article 14 read in conjunction with Article 3 of Protocol No. 1. It noted the very low level of representation of the applicant party and the compensatory effect of other elements of public support available to it, such as tax exemption on various items of income and allocation of broadcasting time during electoral campaigns.

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

The judgment in *Centro Europa 7 S.r.l. and Di Stefano,* cited above, reiterated the principles underlying the concept of "possessions" within the meaning of the Convention. The case concerned the granting of a broadcasting licence to a television company whose operations were delayed because no broadcasting frequencies were allocated to it (see Article 10 above).

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

The case of *Catan and Others,* cited above, concerned the forced closure of schools linked to the language policy of the separatist regime, and harassment by the authorities after the schools reopened. There was no evidence to suggest that such measures pursued a legitimate aim. The Grand Chamber stressed the fundamental importance of primary and secondary education for each child's personal development and future success, and reaffirmed the right to be taught in one's national language.

With regard to the acts of a separatist regime not recognised by the international community, the Court examined the question of State responsibility for the infringement of the right to education: the responsibility of the State on whose territory the events occurred, and that of the State which ensured the survival of the administration by virtue of its ongoing military and other support. In the case of the latter State, which had exercised effective control over the administration during the period in question, the fact that it had not intervened directly or indirectly in the regime's language policy did not prevent its responsibility from being engaged.

1. No. 7819/03, ECHR 2012.

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

The case of *Sitaropoulos and Giakoumopoulos v. Greece*[1] concerned the place from which citizens living abroad could exercise the right to vote in parliamentary elections. The specific question raised was whether the Convention required Contracting States to put in place a system allowing expatriates to exercise voting rights from abroad.

In general terms, Article 3 of Protocol No. 1 did not provide for the implementation by Contracting States of measures to allow expatriates to exercise their right to vote from their place of residence. Furthermore, as the law currently stood, no obligation or consensus to that effect could be derived either from the relevant European and international law or from the comparative survey of national systems. As to those member States that allowed voting from abroad, there was a wide variety of approaches with regard to the conditions of exercise. The Court summarised its case-law concerning restrictions on the exercise of expatriate voting rights based on the criterion of residence.

The issue of restrictions on convicted prisoners' voting rights was raised again before the Grand Chamber in the case of *Scoppola v. Italy (no. 3)*[2]. The principles articulated in the 2005 judgment in *Hirst v. the United Kingdom (no. 2)*[3] were reaffirmed. The Grand Chamber ruled that a prohibition on the right to vote could be ordered by a judge in a specific decision or could result from the application of the law. What was important was to ensure that the judge's decision or the wording of the law complied with Article 3 of Protocol No. 1 and, in particular, that the system was not excessively rigid.

In this case the Court stressed the legislature's concern to adjust the application of the measure to the particular circumstances of the case in hand, taking into account such factors as the gravity of the offence committed and the conduct of the offender. The duration of the measure was also adjusted to the sentence imposed and thus, indirectly, to the gravity of the offence. Accordingly, the prohibition on the right to vote under the system in question did not have the general, automatic and indiscriminate character that had led the Court to find a violation of Article 3 of Protocol No. 1 in *Hirst*.

The judgment in *Communist Party of Russia and Others v. Russia*[4] concerned the media coverage of a general-election campaign. This was the first judgment by the Court dealing directly with the coverage of a national electoral campaign by the major broadcasting media; the coverage had been condemned as unfair by opposition parties and

1. [GC], no. 42202/07, ECHR 2012.
2. [GC], no. 126/05, 22 May 2012.
3. [GC], no. 74025/01, ECHR 2005-IX.
4. No. 29400/05, 19 June 2012.

candidates. The Court clarified States' positive obligations in this sphere and the scope of their margin of appreciation.

Right to compensation for a miscarriage of justice (Article 3 of Protocol No. 7)

The *Poghosyan and Baghdasaryan v. Armenia*[1] judgment was the first in which the Court examined on the merits a complaint under Article 3 of Protocol No. 7 and found a violation of that provision. The case concerned the failure to provide compensation to an accused who had been wrongly sentenced to fifteen years' imprisonment and had spent approximately five and a half years in detention before being considered to have been acquitted.

The Court held that compensation was due even where the law or practice of the State concerned made no provision for it. Furthermore, the victim of a judicial miscarriage was entitled to compensation not only for the pecuniary damage caused by the wrongful conviction, but also for any non-pecuniary damage such as distress, anxiety, inconvenience and loss of enjoyment of life.

Execution of judgments (Article 46)

Pilot judgments[2]

One of the fundamental implications of the pilot-judgment procedure is that the Court's assessment of the situation complained of in a "pilot" case necessarily extends beyond the sole interests of the individual applicants and requires it to examine that case also from the perspective of the general measures that need to be taken in the interest of other potentially affected persons (*Kurić and Others,* cited above).

Even if only a few similar applications are currently pending before the Court, in the context of systemic, structural or similar violations the potential inflow of future cases is also an important consideration in terms of preventing the accumulation of such repetitive cases on the Court's docket (ibid.).

The *Ananyev and Others v. Russia*[3] judgment applied the pilot-judgment procedure in the context of inhuman and degrading conditions of detention of persons awaiting trial. The Court has pointed out in a large number of its judgments that remand in custody should

1. No. 22999/06, ECHR 2012.
2. According to Rule 61 § 1 of the Rules of Court: "The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications."
3. Nos. 42525/07 and 60800/08, 10 January 2012.

be the exception rather than the norm and should be applied only as a last resort.

Stressing the fundamental nature of the right not to be subjected to inhuman or degrading treatment, the Court decided not to adjourn the examination of similar applications pending before it. It emphasised that adjournment was a possibility rather than an obligation under Rule 61 § 6 of the Rules of Court.

In *Ümmühan Kaplan v. Turkey*[1] the Court decided to apply the pilot-judgment procedure to cases concerning the length of proceedings. It identified a structural and systemic problem in the domestic legal system which was incompatible with Articles 6 § 1 and 13 of the Convention. Within the time-limit specified in the judgment, the respondent State was to put in place an effective domestic remedy providing adequate and effective redress in respect of excessively lengthy proceedings.

General measures

The case of *Aslakhanova and Others v. Russia*[2] (not final) concerned abductions and disappearances in the Northern Caucasus in breach of Articles 2, 3, 5 and 13 of the Convention. The Court observed that the situation complained of resulted from systemic problems at national level, for which there was no effective domestic remedy and which required the prompt implementation of comprehensive and complex measures. In the reasoning of its judgment the Court referred to the measures to be taken with regard to the situation of the victims' families and the effectiveness of the investigations, and urged the respondent State to submit a strategy to the Committee of Ministers without delay.

Individual measures

In *Hirsi Jamaa and Others*, cited above, the Court held that there was a risk of ill-treatment in Libya and of arbitrary repatriation. It ruled that the respondent Government was to take all possible steps to obtain assurances from the Libyan authorities that the applicants would not be subjected to treatment incompatible with Article 3 of the Convention or arbitrarily repatriated.

The case of *Sampani and Others v. Greece*[3] (not final) was the first in which Article 46 was applied in relation to education. After finding that there had been discrimination against Roma children, the Court invited the respondent State to take action to provide schooling for them.

1. No. 24240/07, 20 March 2012.
2. Nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, 18 December 2012.
3. No. 59608/09, 11 December 2012.

Striking out (Article 37)

Further examination of an application concerning an important question of general interest serves to elucidate, safeguard and develop the standards of protection of human rights. Raising those standards and extending human rights jurisprudence throughout the community of the Convention States forms part of the purpose of the Convention system (*Konstantin Markin*, cited above).