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

COUNCIL OF EUROPE
75
1949 - 2024
CONSEIL DE L'EUROPE

Case-law overview

English edition

Layout: ECHR

Contents

General issues

72 International Humanitarian Law
Principle of "lawfulness"

Jurisdiction and admissibility

74 Jurisdiction of States (Article 1)
75 Admissibility (Articles 34 and 35)
Victim status and *Locus standi* in climate change cases (Article 34)
Exhaustion of domestic remedies (Article 35 § 1)
Jurisdiction to deal with cases against Russia

"Core" rights

80 Right to life (Article 2)
Enforced disappearances
81 Prohibition of slavery and forced labour (Article 4)
Positive obligations
82 Right to liberty and security (Article 5)
Lawful arrest or detention (Article 5 § 1)

Procedural rights

84 Right to a fair hearing in civil proceedings (Article 6 § 1)
Access to a court
Access to a court in climate change cases
86 Presumption of innocence (Article 6 § 2)
88 Defence rights (Article 6 § 3)
Defence through legal assistance (Article 6 § 3 (c))

Other rights and freedoms

89 Right to respect for one's private and family life, home and correspondence (Article 8)
Positive obligations regarding the mitigation of the effects of climate change
Private life: applicability
Private life
Private life and home
97 Freedom of thought, conscience and religion (Article 9)
Freedom of religion
98 Prohibition of discrimination Article 14)
Article 14 taken in conjunction with Article 2
99 General prohibition of discrimination (Article 1 of Protocol No. 12)
100 Protection of property (Article 1 of Protocol No. 1)
Enjoyment of possessions
102 Freedom of movement (Article 2 of Protocol No. 4)
Freedom of movement

Other Convention provisions

104 Derogation in time of emergency (Article 15)
105 Restrictions not prescribed by the Convention (Article 18)

Inter-State cases

Index of cases

General issues[1]

International Humanitarian Law

Principle of "lawfulness"

The Grand Chamber judgment in the inter-State case of *Ukraine v. Russia (re Crimea)*[2] concerned numerous violations of the Convention and its Protocols in the region of Crimea during the events in the course of which the region of Crimea (including the city of Sevastopol) had been purportedly integrated into the Russian Federation, as well as of some subsequent events. The Ukrainian Government maintained that the Russian Federation was responsible for administrative practices resulting in numerous human rights violations, those practices being part of a large, interconnected campaign of political repression implemented by Russia, aimed at stifling any political opposition.

The temporal and territorial scope of application no. 20958/14 was limited to the period from 27 February 2014 to 26 August 2015 and to the territory of Crimea, whereas application no. 38334/18 had no such temporal limitations. The applicant Government had not requested adjudication of the individual cases to which it had referred but rather had requested that they be treated as evidence of an administrative practice in breach of the Convention. Accordingly, individual complaints of alleged Convention violations were outside the scope of the case.

In its decision on admissibility[3], the Grand Chamber had held that the impugned facts targeted by application no. 20958/14 fell within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention; it had dismissed the respondent Government's preliminary objections, and had declared admissible the applicant Government's complaints about alleged administrative practices contrary to Articles 2, 3, 5, 6, 8, 9, 10 and 11 of the Convention, Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4, as well as Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and Article 2 of Protocol No. 4 to the Convention. The Grand Chamber had later held a hearing on the merits of application no. 20958/14 and on the admissibility and merits of application no. 38334/18 (regarding *inter alia* the treatment of "Ukrainian political prisoners" in Crimea, other parts of Ukraine, the Russian Federation, and Belarus).

In the present judgment, the Grand Chamber declared admissible the complaint concerning the transfer of prisoners from Crimea to Russia, which had also been raised in application no. 20958/14,

1. This overview was drafted by the Directorate of the Jurisconsult and is not binding on the Court.
2. *Ukraine v. Russia (*re *Crimea)* [GC], nos. 20958/14 and 38334/18, 25 June 2024. See also under Article 35 (Jurisdiction to deal with cases against Russia), Article 2 (Right to life - Enforced disappearances), Article 18 (Restrictions not prescribed by the Convention) and Article 33 (Inter-State cases) below.
3. *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.

notice of which had in the meantime been given to the Russian Federation, and found a violation of the Convention and its Protocols in respect of each of the admissible complaints in that application. It also declared application no. 38334/18 partly admissible and partly inadmissible. On the merits of that application, the Grand Chamber found a violation of Articles 3, 5, 6, 7, 8, 10, and 11 of the Convention, as well as of Article 18 in conjunction with Articles 5, 6, 8, 10, and 11. It also reserved the question of just satisfaction and indicated, in accordance with Article 46 of the Convention, that the respondent State should take every measure to secure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to prisons in Russia.

The Grand Chamber judgment is novel and important as the Court laid out, for the first time, the approach to be followed to solve the general issue of "lawfulness" as required by various provisions of the Convention, in cases such as this, where a respondent State exercising "effective control" over an area outside its internationally recognised territory replaces the existing valid laws of that area with its own laws. The Court considered that its previous case-law solutions in similar situations (such as in *Loizidou v. Turkey*[4]; *Mozer v. the Republic of Moldova and Russia*[5]; *Ilaşcu and Others v. Moldova and Russia*[6]; and *Mamasakhlisi and Others v. Georgia and Russia*[7]) could not be applied in the present case as they concerned either the "law" of internationally unrecognised entities not reflecting any legal and judicial tradition compatible with the Convention, or the continued application of a pre-existing domestic law valid in the area in question. By contrast, the present case concerned the application in Crimea of the law of the Russian Federation (or the "law" of the local authorities, as its derivative) which completely replaced the previously applicable and valid Ukrainian law after the date of signature of the "Accession Treaty" between Russia and the "Republic of Crimea". As the facts of the present case fell within the scope of both the Convention and international humanitarian law (IHL), and since the Court was called upon to interpret the Convention in the light of the relevant provisions of IHL, the general issue of "lawfulness" was solved by reference to the latter. As it had already done in the admissibility decision, the Court reiterated that it did not have jurisdiction to define Crimea's status under international law and that that issue was outside the scope of the case. However, it referred to the rules of IHL defining the obligations of an occupying State (The Hague Regulations of 1907[8] and the Fourth Geneva Convention of 1949[9]), which clearly provided that there was an obligation to maintain the laws in force in the "occupied" territory and to not modify, suspend or replace them with the "occupier's" own legislation, unless in the following three exceptional situations: (i) the need of the occupying power to remove any direct threat to its own security; (ii) the duty of the occupying power to discharge its duties under the Geneva Convention; or (iii) the necessity to ensure the "orderly government" of the occupied territory. As it had not been proven that any of those exceptional situations existed, the Court concluded that Russian law in Crimea could not be regarded as "law" within the meaning of the Convention and any administrative practice based on that law was not "lawful" or "in accordance with the law". The same was true in respect of the acts of the "Russian courts" operating in Crimea after 18 March 2014 (the date of signature of the "Accession Treaty"), as those "courts" could not be regarded as "established by law" for the purposes of Article 6 § 1 of the Convention.

---

4. *Loizidou v. Turkey* (merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI.
5. *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, 23 February 2016.
6. *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII.
7. *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, 7 March 2023.
8. Convention (IV) respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.
9. Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949.

Jurisdiction and admissibility

Jurisdiction of States (Article 1)

The Grand Chamber decision in *Duarte Agostinho and Others v. Portugal and 32 Others*[10] concerned the positive obligations of a Contracting State in the area of climate-change mitigation, as well as the admissibility of the related complaints.

The application had been lodged by several Portuguese nationals living in Portugal, without their having had attempted to make use of any domestic legal remedies. The applicants alleged a violation of several Articles of the Convention given the existing and future impacts of climate change, imputable to their home country and to thirty-two other States, specifically concerning heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their homes.

The Court declared the application inadmissible. It held that the applicants did fall under the jurisdiction of Portugal (the territorial ground) but not under the jurisdiction of any of the other respondent States, none of the grounds for extraterritorial jurisdiction defined by the case-law of the Court being applicable in the circumstances of the case (in respect of Ukraine the application had been expressly withdrawn and therefore struck out from the list of cases). As to Portugal, it was found that the applicants had failed to exhaust domestic remedies despite the existence of a comprehensive system of prima facie effective legal avenues in the national legal order.

The Grand Chamber decision is noteworthy in that:

(i) The Court examined, for the first time, the applicability of its case-law on extraterritorial jurisdiction to complaints regarding climate change. As it was clear that the applicants' complaints did not correspond to any of the circumstances which in earlier cases had given rise to a finding of extraterritorial jurisdiction under Article 1 of the Convention, the Court examined whether there were valid grounds for developing the existing case-law on extraterritorial jurisdiction on the basis of a number of "exceptional circumstances" and "special features" put forward by the applicants. Noting the specific characteristics of climate-change cases as explained in the judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*[11] and the arguments raised by the applicants, the Court nevertheless concluded that those elements could not in themselves serve as a basis for creating, by way of judicial interpretation, a novel ground for extraterritorial jurisdiction or as a justification for expanding the existing ones. It rejected the applicants' argument that the jurisdiction of a State should depend on the content of its positive obligations given the gravity of the impact of climate change on Convention rights and expressly refused to extend the Contracting Parties' extraterritorial jurisdiction based on a proposed criterion of "control over the applicants' Convention interests" in the field of climate change, for the reason that this would lead to an untenable level of uncertainty for States and entail an unlimited expansion of the States' Convention responsibilities towards persons practically anywhere in the world.

10. *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], no. 39371/20, 9 April 2024. See also under Article 34 (Victim status and *Locus standi*) and Article 35 § 1 (Exhaustion of domestic remedies) below.

11. *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024.

The Court also rejected the applicants' argument that the extraterritorial jurisdiction of other EU Member States might stem from the fact that they also enjoyed EU citizenship through their Portuguese nationality.

(ii) Regarding the alleged jurisdiction of the respondent States other than the applicants' territorial state (Portugal), the Court refused the invitation by the applicants to apply the "*exceptional circumstances*" ground mentioned in *M.N. and Others v. Belgium*[12], specifying that, in the latter case, it had not established the existence of extraterritorial jurisdiction of the respondent State nor had it intended to define a distinct jurisdictional test, the assessment of any "exceptional circumstances" being ultimately one of effective authority or control over the applicants, in line with the established case-law.

Admissibility (Articles 34 and 35)

Victim status and *Locus standi* in climate change cases (Article 34)

The Grand Chamber judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*[13] and the decisions in *Duarte Agostinho and Others v. Portugal and 32 Others*[14] and *Carême v. France*[15] concerned the same core issue, namely, the positive obligations of a Contracting State in the area of climate-change mitigation and the admissibility of the related complaints.

In the first case (*Verein KlimaSeniorinnen Schweiz and Others,* cited above), a Swiss association of elderly women concerned about the consequences of global warming on their living conditions and health and four individual women complained that the domestic authorities were not taking sufficient action to mitigate the effects of climate change. Their action before the superior Swiss courts had been dismissed as they had not been deemed sufficiently and directly affected by the alleged failings. The second case (*Duarte Agostinho and Others*, cited above) had been lodged by several Portuguese nationals who lived in Portugal, without their having had attempted to use any domestic legal remedies, and who alleged a violation of several Articles of the Convention given the existing and future impacts of climate change, imputable to their home country and to thirty-two other States, specifically concerning heatwaves, wildfires and smoke from wildfires, which had affected their lives, well-being, mental health and the amenities of their homes. The applicant in the third case (*Carême*, cited above) was the former mayor of a French municipality, Grande-Synthe, who alleged that France had failed to take sufficient steps to mitigate climate change and that that failure had entailed a violation of his rights under Articles 2 and 8 of the Convention, owing, in particular, to the risk of climate-change-induced flooding to which the respective municipality would be exposed in the future.

The principles developed by the Grand Chamber led to different conclusions in each case. In *Verein KlimaSeniorinnen Schweiz and Others* (cited above), the Court found that the four individual applicants did not fulfil the victim-status criteria for the purposes of Article 34 of the Convention. As to the association, the Court held that the special feature of climate change as a common concern of humankind and the need to promote intergenerational burden-sharing rendered it appropriate to make allowance for recourse to legal action by associations in the context of climate change. However, in order to observe the exclusion of general public-interest complaints (*actio popularis*) under the Convention, an association had to comply with a number of conditions outlined in the judgment, conditions which were found to have been met in the present case.

Conversely, the Court declared the two remaining applications inadmissible. In *Duarte Agostinho and Others* (cited above) it held that the

12. *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, § 113, 5 May 2020.

13. *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024. See also under Article 6 § 1 (Access to a court) and Article 8 (Positive obligations) below.

14. *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], no. 39371/20, 9 April 2024. See also under Article 1 (Jurisdiction of States) above and Article 35 § 1 (Exhaustion of domestic remedies) below.

15. *Carême v. France* (dec.) [GC], no. 7189/21, 9 April 2024.

applicants did fall under the jurisdiction of Portugal (the territorial ground) but not under the jurisdiction of any other of the respondent States, none of the grounds for extraterritorial jurisdiction defined by the case-law of the Court being applicable in the circumstances of the case (in respect of Ukraine the application had been expressly withdrawn and therefore struck out from the list of cases). As to Portugal, it was found that the applicants had failed to exhaust domestic remedies despite the existence of a comprehensive system of prima facie effective legal avenues in the national legal order. In the third case, *Carême* (cited above), the applicant's complaints were found to be incompatible *ratione personae* with the Convention, as the applicant had left Grande-Synthe and did not have any property or other relevant link to it. In addition, Article 34 of the Convention did not allow him to lodge an application on behalf of the municipality in his capacity as its former (or even current) mayor.

The Grand Chamber judgment and decisions indicate numerous case-law developments. Thus, in *Verein KlimaSeniorinnen Schweiz and Others* (cited above):

(i) The Court introduced a new concept of "intergenerational burden-sharing" in its case-law relating to climate change. It noted that, while the legal obligations arising for States under the Convention extended to those individuals currently alive, it was clear that future generations were likely to bear an increasingly severe burden of the consequences of the present failures and omissions to combat climate change. Intergenerational burden-sharing thus took on particular importance in that context. By their commitment to the United Nations Framework Convention on Climate Change the State Parties had undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind.

The Court referred to "intergenerational burden-sharing" as a factor for recognising recourse to legal action by associations and, more specifically, for their standing before the Court in the context of climate change. In particular, given the special feature of climate change as a common concern of humankind and the urgency of combating its adverse effects, the Court considered it appropriate, in that specific context, to acknowledge the importance of recognising legal action by associations for the purpose of seeking the protection of the human rights of not only those actually affected, but also of those at risk of being affected, by the adverse effects of climate change, instead of exclusively relying on proceedings brought by each individual on his or her own behalf.

(ii) The Court emphasised the necessity to make, and to maintain, the distinction between the victim status of individuals and the legal standing (*locus standi*) of associations who were acting on behalf of persons whose Convention rights were alleged to have been violated.

(a) As to victim status under Article 34 of the Convention in the context of complaints concerning climate change, the Court saw no reason to call into question the principle that an association could not rely on health considerations or nuisances and problems associated with climate change which could only be encountered by natural persons. As to the latter acting as individual applicants, the Court held that they needed to show that they were personally and directly affected by governmental action or inaction in the light of two key criteria: (a) high intensity of exposure of the applicant to the adverse effects of climate change; and (b) a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm. The Court emphasised that the threshold for establishing victim status in climate change cases had to be especially high, the Convention not admitting general public-interest complaints (*actio popularis*). Whether an applicant met that threshold in a particular case would depend on a careful assessment of the concrete circumstances of the case such as the prevailing local conditions and individual specificities and vulnerabilities. The Court's assessment would also include, but not necessarily be limited to, considerations relating to: the nature and scope of the applicant's Convention complaint; the actuality/remoteness and/or probability of the adverse effects of climate change in time; the specific impact on the applicant's life, health or well-being; the magnitude and duration of the harmful effects; the scope of the risk (localised or general); and the nature of the applicant's vulnerability.

(b) As to the legal standing (*locus standi*) of associations, the Court considered that the specific considerations relating to climate change weighed in favour of recognising the possibility for associations, subject to certain conditions, to have standing before the Court to represent the individuals whose rights were, or would allegedly be, affected. The Court set down the following criteria for an association to be recognised as having *locus standi* to lodge an application about an alleged failure by a Contracting State to take

adequate measures to protect individuals against the adverse effects of climate change: (a) it had to be lawfully established in the jurisdiction concerned or have standing to act there; (b) it had to be able to demonstrate that it pursued a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) it had to be able to demonstrate that it could be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who were subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention, having due regard to such factors as the purpose for which the association had been established, that it was of a non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance and whether on the whole, in the particular circumstances of a case, the grant of such standing was in the interests of the proper administration of justice. The Court also specified that the standing of an association would not be subject to a separate requirement of showing that those on whose behalf the case had been brought would themselves have met the victim-status requirements for individuals in the climate-change context (see as summarised in the previous point).

Conversely, in the third case, *Carême* (cited above), applying the general principles on the victim status of natural persons in the context of complaints under Articles 2 and 8 concerning climate change as defined in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (cited above) and summarised above, the Court stressed the need to strictly delineate the *actio popularis* protection – not permitted in the Convention system – from situations where there was indeed a pressing need to ensure an applicant's individual protection from the harm which the effects of climate change might have on the enjoyment of their human rights. The applicant in the present case did not fulfil the victim status criteria, irrespective of the status he relied on, namely that of a citizen or former resident of Grande-Synthe. Moreover, and as to the applicant's argument that he had complained to the Court as the former mayor of Grande-Synthe, the Court referred to its well-established case-law according to which decentralised authorities that exercised public functions, regardless of their autonomy *vis-à-vis* the central organs – which applied to regional and local authorities including municipalities – were considered to be "governmental organisations" with no standing to apply to the Court under Article 34 of the Convention.

Exhaustion of domestic remedies (Article 35 § 1)

The Grand Chamber decision in *Duarte Agostinho and Others v. Portugal and 32 Others*[16] concerned the positive obligations of a Contracting State in the area of climate-change mitigation, as well as the admissibility of the related complaints.

The application had been lodged by several Portuguese nationals who lived in Portugal, without their having had attempted to use any domestic legal remedies. The applicants alleged a violation of several Articles of the Convention given the existing and future impacts of climate change, imputable to their home country and to thirty-two other States, specifically concerning heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their homes.

The Court declared the application inadmissible. It held that the applicants did fall under the jurisdiction of Portugal (the territorial ground) but not under the jurisdiction of any other of the respondent States, none of the grounds for extraterritorial jurisdiction defined by the case-law of the Court being apllicable in the cicumstances of the case (in respect of Ukraine the application had been expressly withdrawn and therefore struck out from the list of cases). As to Portugal, it was found that the applicants had failed to exhaust domestic remedies despite the existence of a comprehensive system of prima facae effetive legal avenues in the national legal order.

The Grand Chamber decision is noteworthy in that the Court found it difficult to accept the

16. *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], no. 39371/20, 9 April 2024. See also under Article 1 (Jurisdication of States) and Article 34 (Victim status and *Locus standi*) above.

applicants' vision of subsidiarity according to which it should have ruled on the issue of climate change before the opportunity had been given to the courts of the respondent States to do so. That stood in sharp contrast to the principle of subsidiarity underpinning the Convention system as a whole, and, most specifically, the rule of exhaustion of domestic remedies. The Court was not a court of first instance; it did not have the capacity, nor was it appropriate to its function as an international court, to adjudicate on large numbers of cases which required the finding of basic facts which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions.

Jurisdiction to deal with cases against Russia

The Grand Chamber judgment in the inter-State case of *Ukraine v. Russia (re Crimea)*[17] concerned numerous violations of the Convention and its Protocols in the region of Crimea during the events in the course of which the region of Crimea (including the city of Sevastopol) had been purportedly integrated into the Russian Federation, as well as of some subsequent events. The Ukrainian Government maintained that the Russian Federation was responsible for administrative practices resulting in numerous human rights violations, those practices being part of a large, interconnected campaign of political repression implemented by Russia, aimed at stifling any political opposition.

The temporal and territorial scope of application no. 20958/14 was limited to the period from 27 February 2014 to 26 August 2015 and to the territory of Crimea, whereas application no. 38334/18 had no such temporal limitations. The applicant Government had not requested adjudication of the individual cases to which it had referred but rather had requested that they be treated as evidence of an administrative practice in breach of the Convention. Accordingly, individual complaints of alleged Convention violations were outside the scope of the case.

In its decision on admissibility[18], the Grand Chamber had held that the impugned facts targeted by application no. 20958/14 fell within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention, it had dismissed the respondent Government's preliminary objections, and had declared admissible the applicant Government's complaints about alleged administrative practices contrary to Articles 2, 3, 5, 6, 8, 9, 10 and 11 of the Convention, Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4, as well as Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and Article 2 of Protocol No. 4 to the Convention. The Grand Chamber had later held a hearing on the merits of application no. 20958/14 and on the admissibility and merits of application no. 38334/18 (regarding *inter alia* the treatment of "Ukrainian political prisoners" in Crimea, other parts of Ukraine, the Russian Federation, and Belarus).

In the present judgment, the Grand Chamber declared admissible the complaint concerning the transfer of prisoners from Crimea to Russia, which had also been raised in application no. 20958/14, notice of which had in the meantime been given to the Russian Federation, and found a violation of the Convention and its Protocols in respect of each of the admissible complaints in that application. It also declared the application no. 38334/18 partly admissible and partly inadmissible. On the merits of that application, the Grand Chamber found a violation of Articles 3, 5, 6, 7, 8, 10, and 11 of the Convention, as well as of Article 18 in conjunction with Articles 5, 6, 8, 10, and 11. It also reserved the question of just satisfaction and indicated, in accordance with Article 46 of the Convention, that the respondent State should take every measure to secure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to prisons in Russia.

The Grand Chamber judgment is important in that the Court restated the principles regarding its own jurisdiction applicable when dealing with individual cases against the Russian Federation, which had recently been defined by a Chamber in *Pivkina and Others v. Russia*[19]. The acts or omissions in question might (i) occur up until the

17. *Ukraine v. Russia (*re *Crimea)* [GC], nos. 20958/14 and 38334/18, 25 June 2024. See also under International Humanitarian Law (Principle of "lawfulness") above and under Article 2 (Right to life - Enforced disappearances), Article 18 (Restrictions not prescribed by the Convention) and Article 33 (Inter-State cases) below.

18. *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.

19. *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 Others, §§ 46-54, 6 June 2023.

termination date of 16 September 2022, when Russia had ceased to be a Contracting Party to the Convention; (ii) occur after the termination date; or (iii) span the termination date. Whereas for the first category the Court had jurisdiction to deal with the respective complaints, any application concerning acts and omissions from the second category was incompatible *ratione personae* with the provisions of the Convention. With respect to the third category, the Court reiterated that, in order to establish its temporal jurisdiction, it was essential to identify, in each specific case, the exact time of the alleged interference, considering both the impugned facts and the scope of the Convention right alleged to have been violated. In cases where the interference had occurred before the termination date but the failure to remedy it had occurred after that date, it was the date of the interference that had to be retained for determining the Court's temporal jurisdiction. Thus, concerning application no. 38334/18, the Court established, also with respect to the administrative practices, that it had jurisdiction beyond the termination date in respect of a detention which had started before that date on account of the continuous effect of the detention order.

"Core" rights

Right to life (Article 2)

Enforced disappearances

The Grand Chamber judgment in the inter-State case of *Ukraine v. Russia (re Crimea)*[20] concerned numerous violations of the Convention and its Protocols in the region of Crimea during the events in the course of which the region of Crimea (including the city of Sevastopol) had been purportedly integrated into the Russian Federation, as well as of some subsequent events. The Ukrainian Government maintained that the Russian Federation was responsible for administrative practices resulting in numerous human rights violations, those practices being part of a large, interconnected campaign of political repression implemented by Russia, aimed at stifling any political opposition.

The temporal and territorial scope of application no. 20958/14 was limited to the period of 27 February 2014 to 26 August 2015 and to the territory of Crimea, whereas application no. 38334/18 had no such temporal limitations. The applicant Government had not requested adjudication of the individual cases to which it had referred but had rather requested that they be treated as evidence of an administrative practice in breach of the Convention. Accordingly, individual complaints of alleged Convention violations were outside the scope of the case.

In its decision on admissibility[21], the Grand Chamber had held that the impugned facts targeted by application no. 20958/14 fell within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention; it had dismissed the respondent Government's preliminary objections, and had declared admissible the applicant Government's complaints about alleged administrative practices contrary to Articles 2, 3, 5, 6, 8, 9, 10 and 11 of the Convention, Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4, as well as Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and Article 2 of Protocol No. 4 to the Convention. The Grand Chamber had later held a hearing on the merits of application no. 20958/14 and on the admissibility and merits of application no. 38334/18 (regarding, *inter alia,* the treatment of "Ukrainian political prisoners" in Crimea, other parts of Ukraine, the Russian Federation, and Belarus).

In the present judgment, the Grand Chamber declared admissible the complaint concerning the transfer of prisoners from Crimea to Russia, which had also been raised in application no. 20958/14, notice of which had in the meantime been given to the Russian Federation, and found a violation of the Convention and its Protocols in respect of each of the admissible complaints in that application. It

20. *Ukraine v. Russia (re Crimea)* [GC], nos. 20958/14 and 38334/18, 25 June 2024. See also under International Humanitarian Law (Principle of "lawfulness") and Article 35 (Jurisdiction to deal with cases against Russia) above and under Article 18 (Restrictions not prescribed by the Convention) and Article 33 (Inter-State cases) below.

21. *Ukraine v. Russia (re Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.

also declared the application no. 38334/18 partly admissible and partly inadmissible. On the merits of that application, the Grand Chamber found a violation of Articles 3, 5, 6, 7, 8, 10, and 11 of the Convention, as well as of Article 18 in conjunction with Articles 5, 6, 8, 10, and 11. It also reserved the question of just satisfaction and indicated, in accordance with Article 46 of the Convention, that the respondent State should take every measure to secure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to prisons in Russia.

The Grand Chamber judgment is important as the Court held that, when determining the existence of an administrative practice of enforced disappearances contrary to Article 2 of the Convention, the overall examination should not be confined only to those individuals who had ultimately remained unaccounted for. Even though the presumption of death applied only to those individuals, the Court considered that the following factors were of particular importance in the overall context of a large number of instances of irregular deprivation of liberty and the relatively short period during which the abductions had taken place: the abductions had been perpetrated by persons whose acts had entailed the responsibility of the respondent State; the fact that the victims had been predominantly pro-Ukrainian activists, journalists and Crimean Tatars who had been perceived as opponents to the events that had unfolded in Crimea at the time; the fact that the abductions had followed a particular pattern and had been used as a means to intimidate and persecute such individuals in the enforcement of a global strategy of the respondent State to suppress the existing opposition in Crimea to the Russian "occupation". In the present case, there had been forty-three documented cases of disappearances but only eight of those abducted were still missing and their whereabouts and fate remained unknown; most of the individuals concerned had been released soon after they had gone missing. Nevertheless, the Court considered that there had been "sufficiently numerous" instances of abduction to amount to a pattern or system ("repetition of acts") which was itself life-threatening to engage the applicability of Article 2 as regards that administrative practice. Moreover, the respondent State's prosecuting authorities had systematically refused to carry out an effective investigation into credible allegations of enforced disappearance.

Prohibition of slavery and forced labour (Article 4)

Positive obligations

The judgment in the case of *F.M. and Others v. Russia*[22] concerned the State's failure to protect female migrant workers in an irregular situation from human trafficking and servitude and to investigate the crimes committed against them.

The applicants were several women who had been brought to Russia from their home countries (Kazakhstan and Uzbekistan) and exploited in convenience stores for periods ranging from six months to ten years. Their identity documents had been seized and they had been forced to perform unpaid hard work for abnormally excessive hours, without respite or days off. No employment contracts had been signed, and the applicants' status as foreign migrant workers had not been regularised. They had been confined in the stores under close surveillance in appalling conditions and had been subjected to violence (beatings resulting in serious injuries, rapes, forced pregnancies, forced abortion, and the removal of children born in captivity). The applicants had eventually managed to escape or had been released. In response to criminal complaints lodged by the applicants with the help of NGOs, the domestic authorities had conducted preliminary inquiries which had resulted in decisions not to open a criminal investigation.

The applicants complained that the authorities had failed to protect them from trafficking, exploitation and violence and, in particular, had failed to adopt an adequate legislative framework, to take operational measures and to conduct an effective criminal investigation. The Court found

22. *F.M. and Others v. Russia*, nos. 71671/16 and 40190/18, 10 December 2024. See also under Article 14 (Prohibition of discrimination) below.

that the applicants had been victims of cross-border trafficking and servitude and that the respondent State had failed to fulfil its positive (substantive and procedural) obligations to protect them, contrary to Article 4 of the Convention.

(i) The judgment is noteworthy as it is the first in which the Court has acknowledged "servitude" outside of a domestic context. In particular, the Court defined the treatment to which the applicants had been subjected as "cross-border trafficking in human beings" and "servitude". As to the former, it referred to the international definition of human trafficking[23], finding ample evidence to conclude that all three constituent elements of that crime ("action", "means", and "purpose") had been present. As to "purpose", the applicants had been "at the least" subjected to "forced labour" and, in addition, they had been obliged to live in their employers' property without any opportunity to alter their situation, feeling that it had been permanent and unlikely to change. That had also amounted to "servitude" within the meaning of Article 4 (compare *Siliadin v. France*[24], and *C.N. and V. v. France*[25], both concerning *domestic* servitude).

(ii) Two other elements of the judgment can be highlighted:

(a) The Court identified, it would appear for the first time, a violation of all three positive obligations under Article 4 (legislative and administrative framework; adequate operational measures to protect; and effective investigation (compare *Siliadin v. France* (cited above, § 148) and *S.M. v. Croatia*[26], concerning the criminal-law framework and effectiveness of the investigation);

(b) The Court emphasised the need to implement, in domestic criminal law, the international definition of human trafficking, noting the provisions of the updated legislative guide on the Palermo Protocol to the effect that consent to intended exploitation should not be used to defend or excuse the crime and has no bearing on whether or not trafficking in persons has occurred, and that the consent of a child is irrelevant as children are considered to lack capacity to consent.

Right to liberty and security (Article 5)

Lawful arrest or detention (Article 5 § 1)

The judgment in *Aydın Sefa Akay v. Türkiye*[27] concerned the arrest and pre-trial detention of a judge of an international court who, by virtue of the statute of that court, enjoyed diplomatic immunity, and the searches of his house and person.

The applicant, a Turkish national and a career diplomat, was a judge serving at the United Nations International Residual Mechanism for Criminal Tribunals ("the Mechanism") and had been working remotely on a case from his home in Istanbul. Shortly after the 2016 attempted military *coup d'état* in Türkiye a criminal investigation had been opened against employees of the Ministry of Foreign Affairs suspected of being involved in an armed terrorist organisation, FETÖ/PDY (considered by the authorities to be behind the coup attempt). In the course of that investigation, the applicant had been arrested, subjected to a body search and placed in pre-trial detention. The police had also conducted a search of his house and seized, *inter alia*, computers, mobile phones and two books allegedly proving the applicant's connection with FETÖ/PDY. The applicant had been found guilty of being a member of an armed terrorist organisation and sentenced to seven years and six months' imprisonment. Throughout the criminal proceedings, he had repeatedly and unsuccessfully claimed diplomatic immunity as a judge of the Mechanism (Article 29 of the Statute of the Mechanism adopted by Security Council Resolution 1966 (2010)). Despite a *note verbale* from the UN Office of Legal Affairs and an order by the President of the Mechanism to

23. Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)..

24. *Siliadin v. France*, no. 73316/01, §§ 120 and 129, ECHR 2005-VII.

25. *C.N. and V. v. France*, no. 67724/09, §§ 79 and 94, 11 October 2012.

26. *S.M. v. Croatia* [GC], no. 60561/14, § 346, 25 June 2020.

27. *Aydın Sefa Akay v. Türkiye*, no. 59/17, 23 April 2024. See also under Article 8 (Private life and home) and Article 15 (Derogation in time of emergency) below.

cease all legal proceedings against the applicant and ensure his release, the Turkish authorities and courts had relied on the Statute, the Convention on the Privileges and Immunities of the UN and the Vienna Convention on Diplomatic Relations, to conclude that the applicant had not enjoyed absolute immunity but only functional immunity limited to acts performed within the scope of his functions as a judge and that, in any event, he could not assert immunity before the authorities of the State which he represented or of which he was a national. That interpretation had ultimately been confirmed by the Constitutional Court.

The Court found a violation of Article 5 § 1 of the Convention. It considered that the domestic courts' interpretation of the applicant's diplomatic immunity had not been foreseeable nor in keeping with the requirements of the principle of legal certainty under Article 5 § 1, as the ordinary reading of the relevant international treaty provisions, officially confirmed by the President of the Mechanism (acting on behalf of the Secretary General of the UN) and the UN Office of Legal Affairs, made it safe to consider that the applicant did in fact enjoy full diplomatic immunity including when working remotely in accordance with the framework for the operation of the Mechanism. Moreover, the legal uncertainty had been aggravated by the considerable delay in assessing his diplomatic immunity. Lastly, the Court held that the applicant's pre-trial detention could not be justified under Article 15 of the Convention (notice had been given by Türkiye under that provision). Finally, the Court dismissed the applicant's request, under Article 46 of the Convention, for his immediate release.

The judgment is noteworthy for a number of reasons. In particular the Court:

– found, for the first time, that the principles defined in its case-law about the independence of the national judiciary, an independent guarantor of justice and the rule of law, must apply *mutatis mutandis to* international judges and courts, their independence being equally a *conditio sine qua non* for the proper administration of justice;

– found it did not have jurisdiction to pass formal judgment on the applicant's diplomatic immunity as such, exploring rather whether the domestic courts' stance met the requirements of foreseeability and legal certainty for the purposes of Article 5 § 1 of the Convention. In that regard, the Court emphasised that, in general, the principle of legal certainty could be compromised if domestic courts introduced exceptions in their case-law which ran counter to the wording of the applicable statutory provisions or adopted an extensive interpretation negating procedural safeguards afforded by law to protect members of the judiciary from interference. The Court found that the applicant appeared to have been entitled to full diplomatic immunity, including the inviolability of his person and private residence and being shielded from any form of arrest or detention, under international law;

– held that the issue of the diplomatic immunity of an arrested person had to be assessed swiftly and thoroughly, any undue delay being incompatible with Article 5 § 1 because it rendered futile any protection that might be afforded by virtue of that immunity;

– declared, for the purposes of immunity, that the scope of privileges and immunities of a diplomatic envoy wass not fully transposable to a judge of an international court since the ultimate aim in the latter context was to protect the independence of the judiciary including *vis-à-vis* their State of nationality.

Procedural rights

Right to a fair hearing in civil proceedings (Article 6 § 1)

Access to a court

The Grand Chamber judgment in *Fabbri and Others v. San Marino*[28] concerned the non-adjudication of civil claims in criminal proceedings, owing to the inaction of the investigating authorities, and leading to the alleged offences becoming time-barred.

The applicants were injured parties in two unrelated sets of criminal proceedings. The investigating judge assigned to their cases had not taken any investigative steps whatsoever and the charges had became time-barred and the criminal cases discontinued.

The applicants complained under Article 6 § 1 of the Convention that, owing to the authorities' inaction, their right of access to a court had been breached as their civil claims had not been adjudicated in the criminal proceedings. As to the first two applicants, the Grand Chamber found that, since they had failed to ask for the formal status of "civil party" in accordance with the domestic law, they had not demonstrated the importance they had attached to securing their right to financial reparation for any damage sustained: the proceedings in respect of those two applicants had not thus involved the determination of a "civil right" so that Article 6 did not apply in their case (inadmissible as incompatible *ratione materiae*). Conversely, the third applicant (a minor at the material time) had made such a formal request (a declaration lodged by his mother on his behalf): in addition, the criminal proceedings had affected the civil component because a request to join the proceedings as a civil party impeded the introduction or pursuance of any civil proceedings in parallel, until the criminal proceedings had come to an end and therefore they prevailed over any civil proceedings. Article 6 was thus applicable to the proceedings in the third applicant's case. On the merits, the Grand Chamber found no violation of Article 6 § 1 in respect of the third applicant. The authorities had not committed any procedural irregularity in discontinuing the case but there had been a dysfunction in the domestic system (inaction of the investigating authorities which had led to around 800 cases being discontinued). However, neither that applicant himself, nor his parents on his behalf, had pursued his interests diligently, bringing the civil claim very late in the course of the proceedings. He could have initiated separate civil proceedings, either at the time of the alleged offence, or after its discontinuance, that latter avenue still being open at the moment of the examination of the case by the Grand Chamber. In those circumstances, the Court concluded that the very essence of the third applicant's right had not been impaired such that it could not be said that he had been denied access to a court for the determination of his civil rights.

The judgment is important in that the Grand Chamber clarified the relevant criteria, allowing

28. *Fabbri and Others v. San Marino* [GC], nos. 6319/21 and 2 others, 24 September 2024.

for a coherent and calibrated approach to both the applicability and the merits of Article 6 as regards civil claims for damages lodged within the framework of criminal proceedings.

(i) As to the applicability of Article 6 § 1, while neither Article 6 § 1 nor any other Convention provision could be interpreted as compelling Contracting Parties to enable civil claims to be made in criminal proceedings, if a State provides for such a possibility (which the comparative material shows is the case in most Contracting Parties), the following requirements must be met for Article 6 § 1 to apply in its civil limb:

(a) the applicant must have a substantive civil right (such as compensation for damage sustained) recognised under domestic law;

(b) the domestic legislator must have endowed the victim of a criminal offence with a procedural right of action to pursue that civil right, and at the relevant stage of, the judicial criminal proceedings complained of;

(c) the victim of an alleged crime must have clearly demonstrated the importance he or she attached to securing the civil right at issue notwithstanding the fact that criminal courts might have jurisdiction, by relying on that right via the appropriate channel, in accordance with the tenets of the domestic legal framework. In particular:

– where domestic law provided for a formal status of "civil party" in criminal proceedings, Article 6 would apply only if, and from the time when, the applicant had lodged a formal request to obtain such status, even if it had not yet been decided upon;

– in domestic systems having more flexible and less formalistic approaches, Article 6 would apply if, and from the moment when, the applicant's pursuance of a civil right had been made clear, in the light of the tenets of that domestic system;

– nevertheless, the Court may still consider that the steps undertaken by an applicant to rely on and/or pursue the civil right at issue were prima facie invalid procedurally or substantively, or that it had been inappropriate or even abusive for the applicant to have attempted to bring such claims through the criminal avenue, such as would be the case, for example, if the matter at issue was merely of a civil nature, or if statutory limitation periods or any relevant time-limits applicable at that stage had already expired;

(d) the civil right being pursued in the criminal proceedings should not have been actively (in other words, proceedings were not suspended) pursued in parallel, before some other court, and must not have been decided or settled elsewhere;

(e) the criminal proceedings should be decisive for the civil right in issue (they should affect the civil component) and that requirement could be considered as met, for example, in the following situations:

– there was an obligation on the judge to determine the civil claim, in whole or in part, or the judge has done so in practice;

– criminal proceedings prevailed over any civil proceedings, either in the sense that those criminal proceedings would bring to an end or suspend any already pending civil proceedings (or disallow an applicant from introducing and pursuing any civil proceedings in parallel); or in the sense that the determination of the civil claim was bound by the findings in the criminal proceedings.

(ii) As to the merits of an access to court complaint in the framework of criminal proceedings:

(a) as a rule, the discontinuance of criminal proceedings meaning that a civil claim could not be determined therein, did not result in a violation of the right of access to a court if it were based on lawful grounds which were applied neither arbitrarily nor unreasonably, and if the applicant had had *ab initio* an alternative avenue of redress capable of determining the civil claim at issue;

(b) however, in the exceptional circumstances that the lawful discontinuance had been the result of a serious dysfunction of the domestic system (such as, for example, the authorities' total inaction), the Court, after having assessed the applicant's behaviour, might be called upon to examine the availability of any other avenue open to him or her, so as to determine whether the very essence of the right had been impaired. In particular:

– if the discontinuance was only partly the result of a serious dysfunction of the domestic system and if the applicant had contributed to that outcome (for example, by means of inaction, negligence, or bad faith), it suffices that he or she had another avenue of redress, either *ab initio* or after the discontinuance, to find that the essence of the right had not been impaired (that being without prejudice to any complaint concerning the length of proceedings, which would be subject to a separate examination according to the relevant criteria defined by the Court's case-law);

– exceptionally, when the serious dysfunction of the domestic system had been the sole or decisive reason leading to the discontinuance, it would be open to the Court to find that the applicant had a legitimate expectation of having those claims

determined through that avenue irrespective of any other available remedy *ab initio*, and that, on the specific facts before it, it would not have been reasonable to expect him or her to pursue any available civil remedy after the discontinuance. In that case, the Court would conclude that the State had failed to satisfy its obligation to provide the applicant with effective access to a court as the very essence of that right had been impaired.

Access to a court in climate change cases

The Grand Chamber judgment in *Verein Klima-Seniorinnen Schweiz and Others v. Switzerland*[29] concerned the positive obligations of a Contracting State in the area of climate-change mitigation and the admissibility of the related complaints.

The applicants, a Swiss association of elderly women concerned about the consequences of global warming on their living conditions and health, and four individual women, complained that the domestic authorities were not taking sufficient action to mitigate the effects of climate change. Their action before the superior Swiss courts had been dismissed as they had not been deemed sufficiently and directly affected by the alleged failings.

The Court found that Article 6 § 1 of the Convention was applicable to the applicant association's complaint, in so far as it concerned the effective implementation of the mitigation measures under existing law, and that that provision had been violated.

Regarding Article 6 § 1 (civil) of the Convention, the judgment is important as the Court noted that, while the general principles concerning the applicability of that provision prevailed in the present climate change context, their application might need to take into account the specificities of climate change litigation. The Court highlighted, in particular, the role of legal cases brought by associations in the climate-change context as a means through which the Convention rights of those affected by climate change, including those at a distinct representational disadvantage, could be defended and through which they could seek to obtain adequate corrective action for alleged failures and omissions on the part of the authorities. Furthermore, in the light of the principles of shared responsibility and subsidiarity, the Court emphasised the key role which domestic courts played in climate-change litigation and highlighted the importance of access to justice in that field.

Presumption of innocence (Article 6 § 2)

The Grand Chamber judgment in *Nealon and Hallam v. the United Kingdom*[30] concerned the refusal to award compensation for a miscarriage of justice, following the quashing of the applicants' criminal convictions as "unsafe".

The case was a follow-up to *Allen v. the United Kingdom*[31]. The criminal convictions of both applicants had been quashed by the Court of Appeal (Criminal Division) on the grounds that they were "unsafe", in the light of new evidence which had emerged. The applicants then applied for compensation for "a miscarriage of justice" (section 133(1) of the Criminal Justice Act 1998, "the Act"). The initial statutory test under section 133(1) had required that a new or newly discovered fact showed beyond reasonable doubt that there had been a miscarriage of justice (without giving a statutory definition of that term). Following the Grand Chamber's judgment in *Allen* (cited above) in 2014, the Act had been amended to insert a new section 133(1ZA) which defined a "miscarriage of justice" as occurring "if and only if a new or newly discovered fact shows beyond reasonable doubt that the person did not commit the offence". The applicants' applications had been refused by the Secretary of State for Justice ("the Justice Secretary") as they did not satisfy that test.

The applicants complained under Article 6 § 2 of the Convention that the rejection of their compensation claims had breached their right to

29. *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024. See also under Article 34 (Victim status and *Locus standi*) above and under Article 8 (Positive obligations) below.

30. *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, 11 June 2024.

31. *Allen v. the United Kingdom* [GC], no. 25424/09, ECHR 2013.

be presumed innocent. The Grand Chamber found that the link between the outcome of the criminal proceedings and the subsequent compensation proceedings was sufficient to render Article 6 § 2 applicable (as it had done in *Allen* (cited above, §§ 106-08), but that there had been no violation of that Article. The analysis carried out by the Justice Secretary had focused solely on the specific nature and effect of the new or newly discovered fact resulting in the quashing of the conviction, and the refusal of compensation had not imputed criminal guilt to the applicants by reflecting an opinion that they were guilty, to the criminal standard, of committing the criminal offence nor had it suggested that the criminal proceedings should have been determined differently.

The Grand Chamber judgment is important in several respects.

(i) As to the applicability of Article 6 § 2, the Court considered that, even if a decision-maker's focus in compensation proceedings was on the impact of the new or newly discovered fact on the applicant's acquittal or discontinuance, rather than on his or her guilt or innocence in general, that was enough to declare that Article applicable if the decision-maker was also required to engage in an evaluation of the evidence in the criminal file.

(ii) Specifically concerning the reimbursement of legal costs and claims for compensation by former accused persons, the Court expressly declared what had been tacitly admitted in *Allen*, namely, that it was no longer necessary or desirable to maintain the distinction between acquittals and discontinuances of proceedings, affording a higher level of protection to persons who had been acquitted by a final judgment (developed in the Court's case-law following the judgment in *Sekanina v. Austria*[32]). It considered that, while at first glance a discontinuance might not appear to have the same exonerating effect as an acquittal, on closer inspection the reality was far more nuanced: criminal proceedings might be discontinued because there was simply not enough evidence to prosecute; on the other hand, if there was ample evidence to prosecute or even to convict, discontinuance or acquittal might be on a pure technicality. Moreover, the significance of a discontinuance might vary between individual cases and also between different legal systems. The Court also noted that the distinction between a discontinuance and a final acquittal on the merits had not been applied with respect to other categories of similar cases, namely involving civil compensation claims lodged by victims and cases concerning disciplinary proceedings. Consequently, the Court ruled that henceforth, regardless of the nature of the subsequent linked proceedings, and regardless of whether the criminal proceedings had ended in an acquittal or a discontinuance, the decisions and reasoning of the domestic decision-makers in those subsequent linked proceedings would violate Article 6 § 2 if they amounted to the imputation of criminal liability to an applicant, that was, reflected an opinion that he or she was guilty to the criminal standard of the commission of a criminal offence.

(iii) The Court emphasised that Article 6 § 2, as such, did not guarantee a person whose criminal conviction had been quashed a right to compensation; that Article 3 of Protocol No. 7 did not constitute a form of *lex specialis* excluding the application of Article 6 § 2 to claims for compensation for a miscarriage of justice; that it could not be interpreted as creating a right to such compensation against Contracting States that had not ratified Protocol No. 7; and that Article 3 of Protocol No. 7 did not define "miscarriage of justice", leaving that definition to each Contracting State.

(iv) The Court clarified that Article 6 § 2 in its wider aspect – going beyond the boundaries of given criminal proceedings and protecting legally innocent individuals from being treated by public officials and authorities as though they were guilty of an offence - protected innocence in the eyes of the law (i.e., not being guilty to the criminal standard) and not a presumption of factual innocence. Therefore, in cases involving a refusal of compensation for a miscarriage of justice, such a refusal would breach Article 6 § 2 only if it actually imputed criminal liability to the applicant. In particular, to find in the negative that it could not be shown to the very high standard of proof of beyond reasonable doubt that an applicant had not committed an offence – by reference to a new or newly discovered fact or otherwise – was not tantamount to a positive finding that he or she had not committed the offence.

32. *Sekanina v. Austria*, 25 August 1993, Series A no. 226-A.

Defence rights (Article 6 § 3)

Defence through legal assistance (Article 6 § 3 (c))

The judgment in *Bogdan v. Ukraine*[33] concerned the validity of a waiver of the right to a lawyer signed by a person addicted to drugs and suffering from withdrawal symptoms.

The applicant had been invited to the police station to be questioned on suspicion of burglary. He had written and signed a note stating that he was waiving his right to a lawyer and that that decision was not as a result of any financial hardship. Later the same day an investigator had conducted an on-site reconstruction of the event, in which the applicant had participated. The day after, he was formally arrested. Several weeks later, a local addiction treatment centre informed the investigating authority that the applicant was suffering from a mental disorder, owing to opioid and amphetamine addiction. However, even before that information had come to light, while the applicant had been in police custody, an ambulance had been called for him eleven times as a result of his severe symptoms of drug withdrawal. When the case had come to trial, the applicant had been assigned a legal aid lawyer at his own request. At the end of the trial, he had been found guilty of theft aggravated by burglary and sentenced to six years' imprisonment. The conviction had been based primarily on evidence gathered in the absence of a lawyer, despite the applicant's objection that his waiver of the right to counsel had been signed in the absence of a lawyer and that both the waiver and the on-site reconstruction had taken place while he was suffering from withdrawal symptoms. The petition for extraordinary review of the judgment was rejected on the grounds that, in the specific circumstances of the case, the waiver had been valid under domestic law.

The Court found a violation of Article 6 §§ 1 and 3 (c) of the Convention. It assessed the overall fairness of the proceedings in the light of the criteria defined by its case law (*Ibrahim and Others v. the United Kingdom*[34] and *Beuze v. Belgium*[35]) and concluded that the domestic courts had failed to sufficiently address the key issues in the case, namely the applicant's mental state during the on-site reconstruction, the validity of his waiver of the right to a lawyer, and the impact of that waiver on the fairness of the trial as a whole. Among the additional factors taken into account by the Court was that the applicant had been in unrecorded detention when he had signed the waiver and that domestic law in principle excluded the acceptance of waivers from persons suffering from mental disorders owing to addiction.

The judgment is noteworthy in that the Court declared, for the first time, that drug withdrawal symptoms constituted a form of vulnerability which might, in principle, cast doubt on the validity of a waiver of the right to a lawyer and which imposed upon the domestic courts a duty to establish, in a convincing manner, whether, despite that vulnerability, the waiver of legal assistance had been voluntary and valid in the specific circumstances of each case.

33. *Bogdan v. Ukraine*, no. 3016/16, 8 February 2024.
34. *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, § 274, 13 September 2016.
35. *Beuze v. Belgium* [GC], no. 71409/10, § 150, 9 November 2018.

Other rights and freedoms

Right to respect for one's private and family life, home and correspondence (Article 8)

Positive obligations regarding the mitigation of the effects of climate change

The Grand Chamber judgment in *Verein Klima-Seniorinnen Schweiz and Others v. Switzerland*[36] concerned the positive obligations of a Contracting State in the area of climate-change mitigation and the admissibility of the related complaints.

The applicants, a Swiss association of elderly women concerned about the consequences of global warming on their living conditions and health, and four individual women, complained that the domestic authorities were not taking sufficient action to mitigate the effects of climate change. Their action before the superior Swiss courts had been dismissed as they were not deemed sufficiently and directly affected by the alleged failings.

The Court found that the four individual applicants did not fulfil the victim-status criteria for the purposes of Article 34 of the Convention. As to the association, the Court held that the special feature of climate change as a common concern of humankind and the need to promote intergenerational burden-sharing rendered it appropriate to make allowance for recourse to legal action by associations in the context of climate change. However, in order to observe the exclusion of general public-interest complaints (*actio popularis*) under the Convention, an association had to comply with a number of conditions outlined in the judgment, conditions which were found to have been met in the present case. The Court also held that Article 8 was applicable to the case as it encompassed a right of individuals to effective protection by State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life. Finding that Switzerland had failed to comply with its positive obligations under Article 8 by not acting in time and in an appropriate manner to devise and implement relevant legislation and other measures, it concluded that there had consequently been a violation of Article 8 of the Convention.

The Court emphasised that it could deal with human rights issues arising as a result of climate change only within the limits of the exercise of its competence under Article 19 of the Convention. Measures designed to combat climate change and its adverse effects required legislative action both in terms of the policy framework and in various sectoral fields. Such action necessarily depended on democratic decision-making. The remit of domestic courts and of the Court was complementary to those democratic processes.

36. *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, 9 April 2024. See also under Article 34 (Victim status and *Locus standi*) and Article 6 § 1 (Access to a court) above.

The Court also noted that, in recent times, there had been an evolution of scientific knowledge, social and political attitudes and legal standards concerning the necessity of protecting the environment, including in the context of climate change. Environmental degradation had created, and was capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. Given the material at its disposal, the Court proceeded with its assessment by taking it as a matter of fact that there were sufficiently reliable indications that anthropogenic climate change existed, that it posed a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States were aware of it and capable of taking measures to effectively address it and that the relevant risks were projected to be lower if the rise in temperature was limited to 1.5 °C above pre-industrial levels.

(i) The Court introduced a new concept of "intergenerational burden-sharing" in its case-law relating to climate change. It noted that, while the legal obligations arising for States under the Convention extended to those individuals currently alive, it was clear that future generations were likely to bear an increasingly severe burden of the consequences of the present failures and omissions to combat climate change. Intergenerational burden-sharing thus took on particular importance in that context. By their commitment to the *United Nations Framework Convention on Climate Change*, the State Parties had undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind.

The Court referred to "intergenerational burden-sharing" as a factor for recognising recourse to legal action by associations and, more specifically, for their standing before the Court in the context of climate change. In particular, given the special feature of climate change as a common concern for humankind and the urgency of combating its adverse effects, the Court considered it appropriate, in that specific context, to acknowledge the importance of recognising legal action by associations for the purpose of seeking the protection of the human rights of not only those actually affected, but also of those at risk of being affected, by the adverse effects of climate change, instead of exclusively relying on proceedings brought by each individual on his or her own behalf.

(ii) The Court also specified the conditions under which Articles 2 and 8 of the Convention applied to complaints of State action or inaction in the context of climate change. For Article 2 to apply, it had to be determined that there was a "real and imminent" risk to life, understood as referring to a serious, genuine and sufficiently ascertainable threat to life of a specific applicant, containing an element of material and temporal proximity of the threat to the impugned harm. As to Article 8, the Court declared, for the first time, that it had to be seen as encompassing a right for individuals to effective protection by State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life. However, whether Article 8 rights were indeed at stake and whether that provision applied in each case was subject to similar criteria to those set out above concerning the victim status of individuals or the standing of associations and the Court would always answer that question on a case-by-case basis.

(iii) As to the margin of appreciation applicable in the climate change context, the Court drew a distinction between the scope of the margin as regards, on the one hand, the State's commitment to the necessity of combating climate change and its adverse effects and the setting of the requisite aims and objectives in that respect and, on the other hand, the choice of means designed to achieve them. As to the former, the nature and gravity of the threat and the general consensus as to the stakes involved in ensuring the overarching goal of effective climate protection called for a reduced margin of appreciation for the States. As to the latter, namely the choice of means, the margin of appreciation had to be wide.

(iv) The Court defined, for the first time, the scope of the positive obligations binding the States under Article 8 in the context of climate change. For that purpose, it distinguished three types of measures: mitigation measures, adaptation measures, and procedural safeguards, all being, in principle, required for the assessment of whether the State remained within its margin of appreciation. Concerning the *mitigation* measures, the Court would examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, had had due regard to the need to: (a) adopt general measures specifying a target timeline for achieving carbon neutrality in line with the overarching goal for national and/or global climate-change mitigation commitments; (b) set out intermediate carbon emissions reduction targets and pathways that were deemed capable, in principle, of meeting the overall national reduction goals within the relevant

time frames; (c) provide evidence showing whether they had duly complied, or were in the process of complying, with the relevant targets; (d) keep those targets updated with due diligence and based on the best available evidence; and (e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures. The Court's assessment of whether the above requirements had been met would, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone would not necessarily entail a finding of a violation. Furthermore, the above-noted mitigation measures had to be supplemented by *adaptation* measures aimed at alleviating the most severe or imminent consequences of climate change: they had to be put in place and effectively applied in accordance with the best available evidence and consistent with the general structure of the State's positive obligations in this context. Finally, the following two types of *procedural* safeguards were to be taken into account: (a) the relevant information and especially the conclusions of relevant studies held by public authorities had to be made available to the public and, in particular, to those who might be affected by the regulations and measures in question or the absence thereof; and (b) there had to be procedures through which the views of the public could be taken into account in the decision-making process.

(v) As to the individual and general measures under Article 46 of the Convention, the Court considered that it was unable to make sufficiently detailed or prescriptive indications, owing to the complexity and the nature of the issues involved. It therefore left it to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State, the adoption of measures aimed at ensuring that the domestic authorities had complied with Convention requirements, as clarified in the judgment.

Private life: applicability

The decision in *Dian v. Denmark*[37] concerned the applicability of Article 8 of the Convention to begging.

The applicant, a Romanian national, had been found guilty of begging in a pedestrian street in Copenhagen. He had been sentenced to twenty days' imprisonment (that sentence had taken into account his previous conviction for begging) and the money found on his person had been confiscated.

The Court concluded that Article 8 of the Convention did not apply to the facts of the case and that the complaint was therefore incompatible *ratione materiae* with the Convention.

The decision is important in that it circumscribes the scope of the judgment in *Lacatus v. Switzerland*[38], applying the principles and criteria set out in that judgment to the particular circumstances of the case and, in contrast to *Lacatus* (cited above), concluding that Article 8 was not applicable.

(i) The Court clarified that it had not previously concluded that there was a right to beg, as such, under Article 8 of the Convention. It explained that, if a person's economic and social situation was so inhuman and precarious that his or her human dignity had been severely compromised and if begging was a means for him or her to rise above that situation, then the right to call on others for assistance through begging went to the very essence of the rights protected by Article 8 of the Convention. Those specific circumstances would be determined on a case-by-case basis.

(ii) The Court further found that the burden of proof, as to the existence of a precarious and vulnerable situation, lay with the applicant.

(iii) The Court examined the two criteria developed in *Lacatus* (cited above), namely the gravity of the applicant's economic and social situation and the extent of the ban on begging. The Court found, firstly, that the applicant had not really depended on begging to ensure his survival or to protect his human dignity (the Court noted, *inter alia*, that he had been able to travel several times between Romania and Denmark, had income from selling newspapers and collecting bottles as well as through begging, and that he had sent money to Romania regularly, where he also had a house). The Court was thus not convinced that the applicant lacked sufficient means of subsistence or that begging had been his only option to ensure his own survival or that, by the act of begging, he had adopted a particular way of life in order to

37. *Dian v. Denmark* (dec.), no. 44002/22, 21 May 2024.
38. *Lacatus v. Switzerland*, no. 14065/15, 19 January 2021.

rise above an inhumane and precarious situation and thus protect his human dignity. Secondly, the ban in question had not been absolute but had been limited to some designated places and areas. The circumstances of the present case were not therefore such as to trigger the applicability of Article 8 of the Convention.

Private life

The judgment in *Dániel Karsai v. Hungary*[39] concerned an absolute ban on assisted suicide.

The applicant suffered from amyotrophic lateral sclerosis (an uncurable progressive neurodegenerative disease). Before the Court, he alleged a violation of his right to respect for private life, enshrined in Article 8 of the Convention, because of his inability to avail himself of assisted suicide or voluntary euthanasia (hereinafter collectively referred to as "physician-assisted dying" or "PAD"), such practices being illegal and subject to criminal liability under Hungarian law. He also claimed to be a victim of discrimination prohibited by Article 14 of the Convention, because the law did not provide him with the option to hasten his death, while providing it to terminally ill patients on life support who could benefit from a refusal or withdrawal of life-sustaining intervention ("RWI", which was allowed in Hungary or in the majority of other Contracting States).

The Court found no violation of Article 8. It concluded that, given the very complex and sensitive ethical nature of the issue at stake and the lack of a European consensus in this area (while there was a growing trend towards the legalisation of PAD, the majority of member States continued to prohibit and prosecute any assistance for suicide, including PAD), the Hungarian authorities had not overstepped their wide margin of appreciation in balancing, on the one hand, the applicant's right to personal autonomy guaranteed by Article 8 and, on the other, the interest in, *inter alia*, protecting the lives of vulnerable individuals at risk of abuse and the morals of society with regard to the value of human life. The Court also found no violation of Article 14, considering that the difference in treatment of the two respective groups of terminally ill patients was objectively and reasonably justified.

The judgment is noteworthy for the following reasons:

(i) The Court reaffirmed its conclusion in the case of *Mortier v. Belgium*[40], according to which Article 2 could not be interpreted as *per se* prohibiting a conditional decriminalisation of any form of PAD, provided that such decriminalisation was accompanied by appropriate and sufficient safeguards to prevent abuse and to thus secure respect for the right to life. It was, in the first place, for the national authorities to assess whether PAD could be provided within their jurisdiction in compliance with that requirement.

(ii) The Court examined the applicant's complaint under Article 8 in the light of both the negative and positive obligations of the respondent State, considering them to be intertwined, without clearly separating them in the specific circumstances of the case. More emphasis was placed on the positive obligation with respect to the provision of PAD at home and on the negative obligation when considering the prohibition which applied to access to PAD abroad, even if the Court noted that the latter could not be entirely separated from the positive aspect.

(iii) The Court focused on the deep ethical and societal implications of PAD, agreeing that the impugned criminal ban pursued the legitimate aims of, *inter alia*, protecting the lives of vulnerable individuals at risk of abuse, maintaining the medical profession's ethical integrity and protecting the morals of society as a whole with regard to the meaning and value of human life;

(iv) The Court refused to admit that the existential suffering of a terminally ill patient could, as such, create an obligation for the State under Article 8 to legalise PAD;

(v) The Court emphasised that the heightened state of vulnerability of a terminally ill patient warranted a fundamentally humane approach, necessarily including palliative care which was guided by compassion and high medical standards;

(vi) The Court did not consider that criminal liability for an act of assisted suicide committed abroad, a practice that was not unusual among the Contracting States, would make the alleged interference disproportionate; and

39. *Dániel Karsai v. Hungary*, no. 32312/23, 13 June 2024.
40. *Mortier v. Belgium*, no. 78017/17, §§ 137-41, 4 October 2022.

(vii) The Court emphasised that, unlike PAD, RWI was inherently connected to the right to free and informed consent to medical interventions, widely recognised in Europe, endorsed by the medical profession, and expressly guaranteed by the Oviedo Convention of 1997[41].

The Grand Chamber judgment in *Pindo Mulla v. Spain*[42] concerned the decision-making procedure to ensure respect for personal autonomy in the medical context.

The applicant, an Ecuadorian national, was a Jehovah's Witness. Given her religious beliefs, she had signed, at various times, documents (an advance medical directive accessible through a national register, a continuing power of attorney and an informed consent document) confirming her refusal of blood transfusions in all healthcare situations. Despite those documents, she had received blood transfusions during emergency surgery, performed to save her life. The doctors had acted pursuant to a judicial decision authorising them to take all surgical measures necessary to safeguard her life and physical integrity. That decision had been based on scarce information made available to a duty judge by fax from the relevant doctors, as they had awaited the applicant's transfer from a hospital in which she had initially received treatment and following their telephone exchange with a physician on board the ambulance transporting the applicant. The information essentially related to the applicant's faith, the gravity of her health condition and her having verbally rejected all types of treatment. The applicant's subsequent attempts to have the duty judge's decision set aside in court proceedings had been rejected.

The applicant complained under Articles 8 and 9 of the Convention that being given blood transfusions, despite her previously express refusal of such treatment, had violated her right to respect for her private life and to freedom of conscience and religion. The Court considered the case from the standpoint of Article 8, read in the light of Article 9, and found a violation of that provision.

The judgment is noteworthy in that the Court considered, for the first time, how the State's obligations - on the one hand, to safeguard the lives and physical integrity of patients and, on the other, to respect the personal autonomy of patients - were to be reconciled in an emergency situation. The Court drew on general case-law principles as to the duties of the State in the public health sphere and relied on relevant provisions of the Oviedo Convention, ratified by Spain. In particular:

(i) The applicant had chosen to challenge the decision of the duty judge before the domestic courts, since she saw that decision as the 'legal harm' that had been done to her. Having been argued on that basis domestically, the Court found that the decision of the duty judge should be considered to be the interference about which the applicant complained.

(ii) The Court defined the scope of its assessment of the necessity of the interference as focusing on the operation of the decision-making process in the case, with due regard to the legal and factual context in which the interference had occurred. In that connection, the Court emphasised that:

(a) in the ordinary health care context, a competent adult patient had the right to refuse, freely and consciously, medical treatment notwithstanding the very serious, even fatal, consequences that such a decision might have;

(b) in an emergency situation, where the right to life would also be in play along with an individual's right to decide autonomously on medical treatment: firstly, a decision to refuse life-saving treatment had to be made freely and autonomously by a person with the requisite legal capacity who was conscious of the implications of such a decision; secondly, it had also to be ensured that such a decision – the existence of which had to be known to the medical personnel – was applicable in the circumstances, in the sense that it was clear, specific and unambiguous in refusing treatment and represented the current position of the patient on the matter; and lastly, where doubts existed regarding any of those said aspects, "reasonable efforts" ought to be made to dispel those doubts or uncertainty surrounding the refusal of treatment and, where despite such efforts it was impossible to establish to the extent necessary the patient's will, it was the duty to protect such a patient's life by providing essential care, that should prevail; and

(c) the Contracting States had considerable discretion as regards advance medical directives and similar instruments in the medical sphere. Whether

41. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETC No. 164).

42. *Pindo Mulla v. Spain* [GC], no. 15541/20, 17 September 2024.

to give binding legal effect to such instruments, and the related formal and practical modalities, came within their margin of appreciation.

(iii) On the facts of the case, the Court observed that a well-developed domestic framework for ensuring that respect for patient autonomy had been in place and the applicant had relied on that framework to make clear her refusal of blood transfusions.

However, its practical operation and implementation had proved deficient. In particular, it remained unexplained why the doctors in the receiving hospital had seemingly not been informed about the applicant's written refusal of blood transfusions (in particular, her advance medical directive), with the result that the information submitted by them to the duty judge had been incomplete. In the Court's view, the absence of that information had had a determinative effect on the decision-making in relation to the applicant's care and could only be regarded as a significant one. That information had also been inaccurate inasmuch as it had been stated that the applicant had been rejecting "all types of treatment" and that her refusal had been "verbal". As a result, the duty judge had been left with an inadequate factual basis on which to take a decision. Whilst clearly addressing the importance of protecting the right to life, that decision had considered to a lesser extent the importance of respecting the patient's right to decide autonomously on medical treatment. The Court noted with concern that the relevant decision had not adverted at all to the issue whether the applicant still retained sufficient capacity to be able to decide, in the required form and in the time still available, on the treatment that she would accept or not. In effect, the decision had transferred the power to decide, as from the moment it had been given, from the applicant to the doctors without her knowledge. Moreover, neither the question of the omission of essential information concerning the documenting of the applicant's wishes, nor the one concerning her decision-making capacity at the relevant time, had been addressed in an adequate manner in the subsequent proceedings which the applicant had brought in an attempt to have the duty judge's decision reviewed.

The Court therefore concluded that the domestic legal system, and more specifically the decision-making process, as it had operated in this case, had not afforded sufficient respect for the applicant's personal autonomy, which she had wished to exercise to observe her religion.

The judgment in the case of *M.A. and Others v. France*[43], concerned the Law of 13 April 2016 "to strengthen the fight against the prostitution system and provide support to prostituted individuals" and Articles 611-1 and 225-12- 1 of the Criminal Code.

The applicants, who had habitually engaged in prostitution in a lawful manner, complained about the creation of the offence of purchasing sexual relations, including between consenting adults in a private location. Four of the two hundred and sixty-one applicants had brought proceedings before the courts, but without success. In particular, the Constitutional Council, to which a request for a preliminary ruling on constitutionality ("QPC") had been referred, had examined the provisions of the Criminal Code in question in the light of the right to respect for private life, the right to personal autonomy and the right to sexual freedom. The *Conseil d'État* had found, having regard to the public-interest aims that they pursued, that those provisions had not amounted to an excessive interference with the right to respect for private life under Article 8 of the Convention.

Before the Court, the applicants had relied on Articles 2, 3 and 8 of the Convention. The Court considered it more appropriate to examine the complaints under Article 8, with a view to addressing the complex phenomenon as a whole. After reviewing the applicants' arguments in detail and the comprehensive framework introduced by the contested legislation, it held that there had been no violation of Article 8, noting in particular that the legislature's choice had been intended to bring about far-reaching societal changes, the effects of which would become fully apparent only over time, that the French authorities had struck a fair balance between the competing interests at stake, and that the respondent State had not overstepped its margin of appreciation.

The judgment is noteworthy in that the Court examined, for the first time, whether a legislative choice made by a Member State in relation to the legal framework governing prostitution within its territory was compatible with Article 8 of the Convention. In particular, the Court defined the scope of the State's margin of appreciation in that area, which raised highly sensitive moral and

43. *M.A. and Others v. France*, no. 63664/19 and 4 others, 25 July 2024.

ethical questions and gave rise to different, often conflicting, views; it assessed the proportionality of the measure in question and ruled on the balance struck at national level between the interests at stake, in the context of a long and in-depth process that had led to enactment of the particular text by the French legislature.

Several points are worth highlighting:

(i) The Court considered that the creation of the offence of purchasing sexual relations amounted to an interference with the applicants' right to respect for their private life, and with their right to personal autonomy and sexual freedom, given that the law in question created a situation which affected them directly (*M.A. and Others v. France*).[44]

(ii) The Court accepted the various legitimate aims referred to by the respondent Government, reiterating that it had already found prostitution to be incompatible with the rights and dignity of the human person where that activity was forced (*V.T. v. France*[45]), and had emphasised the importance of combatting prostitution and human-trafficking networks, and the obligation on State parties to the Convention to protect victims (see, in particular, *Rantsev v. Cyprus and Russia*[46] and *S.M. v. Croatia*[47]).

(iii) The Court had regard to the degree of consensus at European and international level. It noted that there was no common ground, either among the member States of the Council of Europe, or even within the various international organisations examining the issue, on how best to approach prostitution. It noted that recourse to the general and absolute criminalisation of the purchase of sexual acts as a means of combatting human trafficking was currently the subject of heated debate, giving rise to wide differences of opinion at both European and international level, without a clear position emerging. Accordingly, the Court considered that in this area the respondent State had to be afforded a wide margin of appreciation, which was, however, not unlimited.

(iv) The Court emphasised that the criminalisation of the purchase of sexual relations was part of a comprehensive approach intended to combat prostitution, provided for in a law enacted at the close of a long and complex legislative process. It noted that the parliamentary reports had revealed differences between the various viewpoints and positions in the area, that the phenomenon of prostitution was diverse, complex and evolving, and that none of the public policies adopted to date in the other States had been immune to controversy. Conscious of the difficulties and differing opinions, the French legislature had therefore made a choice which resulted from careful parliamentary scrutiny of all the cultural, social, political and legal aspects of the set of measures put in place to regulate an eminently complex phenomenon, which raised highly sensitive moral and ethical issues (compare *Animal Defenders International v. the United Kingdom*[48]).

(v) In the particular context, the Court relied, in particular, on the following principles: (a) in matters of general policy, on which opinions within a democratic society could reasonably differ widely, the role of the domestic policy-maker was to be given special weight (*S.A.S. v. France*[49]). This was especially important when a social question was at issue (for example, *Y v. France*[50] and *Baret and Caballero v. France*[51]); (b) it was not the Court's task to substitute its own assessment for that of the competent national authorities in deciding on the most appropriate policy for regulating the practice of prostitution. Rather, the Court examined whether, in striking the particular balance that they had, the French authorities had remained within their wide margin of appreciation in this area (*S.H. and Others v. Austria*[52] and *Vavřička and Others v. the Czech Republic*[53]).

---

44. *M.A. and Others v. France* (dec.), nos. 63664/19 and 4 others, 27 June 2023.
45. *V.T. v. France*, no. 37194/02, § 25, 11 September 2007.
46. *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 283-88, ECHR 2010 (extracts).
47. *S.M. v. Croatia* [GC], no. 60561/14, § 306, 25 June 2020.
48. *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, ECHR 2013 (extracts).
49. *S.A.S. v. France* [GC], no. 43835/11, §§ 129 and 154, ECHR 2014 (extracts).
50. *Y v. France*, no. 76888/17, § 74, 31 January 2023.
51. *Baret and Caballero v. France* , nos. 22296/20 and 37138/20, § 84, 14 September 2023.
52. *S.H. and Others v. Austria* [GC], no. 57813/00, § 106, ECHR 2011.
53. *Vavřička and Others v. the Czech Republic* [GC], no. 47621/13 and 5 Others, § 310, 8 April 2021.

Private life and home

The judgment in *Aydın Sefa Akay v. Türkiye*[54] concerned the arrest and pre-trial detention of a judge of an international court who, by virtue of the statute of that court, enjoyed diplomatic immunity, and the searches of his house and person.

The applicant, a Turkish national and a career diplomat, was a judge serving at the United Nations International Residual Mechanism for Criminal Tribunals ("the Mechanism") and had been working remotely on a case from his home in Istanbul. Shortly after the 2016 attempted military *coup d'état* in Türkiye a criminal investigation had been opened against employees of the Ministry of Foreign Affairs suspected of being involved in an armed terrorist organisation, FETÖ/PDY (considered by the authorities to be behind the coup attempt). In the course of that investigation, the applicant had been arrested, subjected to a body search and placed in pre-trial detention. The police had also conducted a search of his house and seized, *inter alia*, computers, mobile phones and two books allegedly proving the applicant's connection with FETÖ/PDY. The applicant had been found guilty of being a member of an armed terrorist organisation and sentenced to seven years and six months' imprisonment. Throughout the criminal proceedings, he had repeatedly and unsuccessfully claimed diplomatic immunity as a judge of the Mechanism (Article 29 of the Statute of the Mechanism adopted by Security Council Resolution 1966 (2010)). Despite a *note verbale* from the UN Office of Legal Affairs and an order by the President of the Mechanism to cease all legal proceedings against the applicant and ensure his release, the Turkish authorities and courts had relied on that Statute, the Convention on the Privileges and Immunities of the UN and the Vienna Convention on Diplomatic Relations, to conclude that the applicant had not enjoyed absolute immunity but only functional immunity limited to acts performed within the scope of his functions as a judge and that, in any event, he could not assert immunity before the authorities of the State which he represented or of which he was a national. That interpretation had ultimately been confirmed by the Constitutional Court.

The Court found a violation of both Article 5 § 1 and Article 8 of the Convention. It considered that the domestic courts' interpretation of the applicant's diplomatic immunity had not been foreseeable nor in keeping with the requirements of the principle of legal certainty, as the ordinary reading of the relevant international treaty provisions, officially confirmed by the President of the Mechanism (acting on behalf of the Secretary General of the UN) and the UN Office of Legal Affairs, had made it safe to consider that the applicant did in fact enjoy full diplomatic immunity including when working remotely in accordance with the framework for the operation of the Mechanism. Moreover, the legal uncertainty had been aggravated by the considerable delay in assessing his diplomatic immunity. The Court therefore found that the interference with the applicant's rights had lacked a proper legal basis. Lastly, the Court held that the interference with the applicant's rights under Article 8 could not be justified under Article 15 of the Convention (notice had been given by Türkiye under that provision).

The judgment is noteworthy for a number of reasons:

(i) The Court found, for the first time, that the principles defined in its case-law about the independence of the national judiciary, an independent guarantor of justice and the rule of law, had to apply *mutatis mutandis* to international judges and courts, their independence being equally a *conditio sine qua non* for the proper administration of justice.

(ii) The Court held that it did not have jurisdiction to pass formal judgment on the applicant's diplomatic immunity as such, exploring rather whether the domestic courts' stance had met the requirements of foreseeability and legal certainty for the purposes of Article 8 § 2 of the Convention. In that regard, the Court emphasised that, in general, the principle of legal certainty might be compromised if domestic courts introduced exceptions into their case-law which ran counter to the wording of the applicable statutory provisions or adopted an extensive interpretation negating procedural safeguards afforded by law to protect members of the judiciary from interference.

(iii) The Court found that the applicant appeared to have been entitled to full diplomatic immunity, including the inviolability of his person and private residence and being shielded from any form of arrest or detention, under international law;

54. *Aydın Sefa Akay v. Türkiye*, no. 59/17, 23 April 2024. See also under Article 5 § 1 (Lawful arrest or detention) above and under Article 15 (Derogation in time of emergency) below.

(iv) The Court declared that, for the purposes of immunity, the scope of privileges and immunities of a diplomatic envoy was not fully transposable to a judge of an international court since the ultimate aim in the latter context was to protect the independence of the judiciary including *vis-à-vis* their State of nationality.

Freedom of thought, conscience and religion (Article 9)

Freedom of religion

The judgment in *Executief van de Moslims van België and Others v. Belgium*[55] concerned the obligation of prior stunning of animals in the context of ritual slaughter.

The Belgian law on animal protection and welfare had initially provided, except in cases of *force majeure* or necessity, that a vertebrate could not be put to death without having been anaesthetised or stunned; however, that requirement had not applied to forms of slaughter prescribed by religious rites. Then in 2017 and 2018 respectively, the Flemish Region and Walloon Region amended the provisions in question and removed the religious exemption from the law. However, they replaced it by an obligation to use a different method for ritual slaughter, namely that of reversible non-lethal stunning. The religious exemption continued to apply in the Region of Bruxelles-Capitale because the local Parliament had rejected a proposal to abolish it. The Belgian Constitutional Court, hearing challenges to the relevant Walloon and Flemish decrees, put several questions to the Court of Justice of the European Union (CJEU) for a preliminary ruling. In a judgment of 17 December 2020[56], that court found that the relevant provisions of EU law, including Article 10 of the Charter of Fundamental Rights concerning freedom of thought, conscience and religion, did not preclude national legislation requiring a process of reversible non-lethal stunning. The Constitutional Court subsequently confirmed the constitutionality of the decrees, finding that the complaints relying on freedom of religion and the principles of equality and non-discrimination were unfounded.

The applicants before the Court were Belgian Muslim organisations and several Muslim or Jewish Belgian nationals who claimed to be victims of an interference with their freedom of religion. They also complained of discrimination. The Court found that those applicants who lived in the Bruxelles-Capitale Region, where the decrees in question did not apply, lacked standing and their complaints were inadmissible. On the merits, it accepted that there had been an interference with the applicants' freedom of religion under Article 9 but considered that it had pursued the legitimate aim of "public morals", which encompassed animal welfare. Having regard to the margin of appreciation afforded to the State in such matters, and the quality and substance of the parliamentary debate, together with the two-tier judicial review (CJEU and Constitutional Court), together with the fact that the applicants could still procure meat from animals slaughtered according to Muslim and Jewish precepts without being stunned, whether from the Brussels region or abroad, the Court found that the interference was not disproportionate. Lastly it held that there had been no discrimination prohibited by Article 14 of the Convention.

The judgment is noteworthy for the following reasons:

(i) As to the facts, this was the first case to be examined by the Court in which the question of religious exemptions from an obligation of prior stunning of animals had formed the gravamen of the complaints under Article 9 (unlike in the case of *Cha'are Shalom Ve Tsedek v. France*[57], which had concerned a denial of a permit authorising ritual slaughter in line with the strict practices of an Orthodox Jewish association and where that question had arisen only indirectly).

(ii) The Court explained that the "living instrument" doctrine, which guided the

55. *Executief van de Moslims van België and Others v. Belgium*, nos. 16760/22 and 8 others, 13 February 2024.

56. Judgment of the Court of Justice of the European Union of 17 December 2020 in *Centraal Israëlitisch Consistorie van België and Others*, C-336/19, EU:C:2020:1031.

57. *Cha'are Shalom Ve Tsedek v. France* [GC], no. 27417/95, ECHR 2000-VII.

interpretation of the Convention, concerned not only the rights and freedoms that were guaranteed but also the grounds justifying any restrictions that might be relied upon, having regard to the developments in society and norms since the Convention had been drafted.

(iii) The Court stated for the first time that animal welfare could be attached to "public morals", one of the exhaustively enumerated legitimate aims under Article 9 of the Convention. To reach that conclusion it first relied on the increasing significance of animal welfare considerations in Europe and, more specifically, in the two Belgian regions concerned, and secondly on the fact that it had found in a previous case that prevention of animal suffering could justify interference with an Article 11 right (freedom of assembly and association) on the basis of the protection of morals (*Friend and Others v. the United Kingdom*[58], concerning fox hunting). The Court explained that the protection of public morals, within the meaning of Article 9 § 2, could not be understood as only concerning the protection of human dignity in inter-personal relations; even though the Convention secured, under Article 1, its rights and freedoms in respect of people only, it could be interpreted as promoting the absolute observance of rights and freedoms without regard to animal suffering.

(iv) The Court also acknowledges in its judgment that, unlike EU law, which saw animal welfare as an objective of general interest (Article 13 of the Treaty on the Functioning of the European Union), its protection was not expressly provided for under the Convention. In that type of case, therefore, to examine the proportionality of an interference it was not a matter of weighing in the balance two rights of equal value in the light of the Convention but of assessing whether the interference was justified in its principle and whether it was proportionate in terms of protecting public morals, having regard to the authorities' margin of appreciation, which could not be narrow in scope.

Prohibition of discrimination Article 14)

Article 14 taken in conjunction with Article 2

The judgment in the case of *F.M. and Others v. Russia*[59] concerned the State's failure to protect female migrant workers in an irregular situation from human trafficking and servitude and to investigate the crimes committed against them.

The applicants were several women who had been brought to Russia from their home countries (Kazakhstan and Uzbekistan) and exploited in convenience stores for periods ranging from six months to ten years. Their identity documents had been seized and they had been forced to perform unpaid hard work for abnormally excessive hours, without respite or days off. No employment contracts had been signed, and the applicants' status as foreign migrant workers had not been regularised. They had been confined in the stores under close surveillance in appalling conditions and had been subjected to violence (beatings resulting in serious injuries, rapes, forced pregnancies, forced abortion, and the removal of children born in captivity). The applicants had eventually managed to escape or had been released. In response to criminal complaints lodged by the applicants with the help of NGOs, the domestic authorities had conducted preliminary inquiries which had resulted in decisions not to open a criminal investigation.

The applicants complained that the authorities had failed to protect them from trafficking, exploitation and violence and, in particular, had failed to adopt an adequate legislative framework, to take operational measures and to conduct an effective criminal investigation. The Court found that the applicants had been victims of cross-border trafficking and servitude and that the respondent State had failed to fulfil its positive (substantive and procedural) obligations to protect them contrary to Article 4 of the Convention. The Court also found a violation of Article 14 (in conjunction with Article 4) as the authorities' inaction had reflected a discriminatory attitude towards the applicants as

58. *Friend and Others v. the United Kingdom* (dec.), nos. 16072/06 and 27809/08, § 50, 24 November 2009.

59. *F.M. and Others v. Russia*, nos. 71671/16 and 40190/18, 10 December 2024 (not final). See also under Article 4 (Prohibition of slavery and forced labour) above.

women who were foreign workers with an irregular immigration status.

The judgment is noteworthy as the Court applied substantially the same principles applied under Article 14 in conjunction with Articles 2 and 3 regarding gender-based domestic violence (see, *Volodina v. Russia*[60], and *Tkhelidze v. Georgia*[61]) to find, it would also appear for the first time, a violation of Article 14 combined with Article 4 of the Convention. The domestic authorities' inaction in honouring their positive obligations under Article 4 had amounted to repeatedly condoning trafficking, labour exploitation and the related gender-based violence and had reflected a discriminatory attitude towards the applicants as women who were foreign workers with an irregular immigration status.

General prohibition of discrimination (Article 1 of Protocol No. 12)

The judgment in *Ferrero Quintana v. Spain*[62] concerned the imposition of an age limit of 35 for a public competition to fill several positions in the police force (*Ertzaintza*) of the Autonomous Community of the Basque Country.

The applicant, who had been provisionally authorised to take part in that competition even though he was over the age-limit in question, had successfully completed the various tests but had been not recruited on account of his age.

Before the Court, the applicant had argued that the medical examinations and physical aptitude tests he had undergone had confirmed that he was physically able to hold the position in question and that he had therefore been the subject of discrimination on grounds of age, which constituted a violation of Article 1 of Protocol No. 12. The Court found that the applicant had been in an analogous situation to individuals under the age of 35 wishing to take part in the same competition and that he had therefore been treated differently on the ground of his age, which constituted "other status" within the meaning of the Article relied on. However, in view of the wide margin of appreciation the national authorities enjoyed in establishing the rules of admission to public-sector employment (which included admission to employment in police forces), that difference in treatment pursued a legitimate aim and was justified. As to the purpose of the impugned measure, the Court noted that its aim had not been to exclude him but rather to ensure the proper functioning of the police force in question. In that connection, the Court referred to the judgment of the Court of Justice of the European Union (CJEU) in the *Salaberria Sorondo* case[63] which concerned a different candidate taking part in the same competition as that complained of in the present case and found that the concern to ensure the operational capacity and proper functioning of police services constituted a legitimate objective within the meaning of Article 4(1) of directive 2000/78/CE, which established a general framework for equal treatment in employment and occupation within the European Union. As to whether the justification provided had been objective and reasonable, the Court recognised that the reasons put forward by the national authorities, in particular the need to ensure and maintain the long-term functional capacity of the autonomous police force, had been relevant and sufficient, and that the impugned measure had not gone beyond what had been necessary to achieve the aim set out above. Since the margin of appreciation afforded to States in that area had not been overstepped, there had been no violation of Article 1 of Protocol No. 12. The judgment is noteworthy because it provided important clarification as to the manner in which the prohibition of discrimination was to be applied to differences in treatment on grounds of age with regard to admission to public-sector employment in general and to positions as a police officer in particular.

(i) The Court confirmed its finding that age might constitute "other status" for the purposes of Article 14 of the Convention (and therefore also of Article 1 of Protocol No. 12) although it had not, to date, suggested that discrimination on grounds of age should be equated with other

60. *Volodina v. Russia*, no. 41261/17, §§ 109-14, 9 July 2019.
61. *Tkhelidze v. Georgia*, no. 33056/17, §§ 51 and 60, 8 July 2021.
62. *Ferrero Quintana v. Spain*, no. 2669/19, 26 November 2024 (not final).
63. Judgment of the Court of Justice of the European Union of 15 November 2016 in the case of *Salaberria Sorondo,* C-258/15, EU:C:2016:873.

"suspect" grounds of discrimination (see *Carvalho Pinto de Sousa Morais v. Portugal*[64]). In general, the Court clarified that that not all differences in treatment on grounds of age could be regarded as invidious kinds of discrimination (contrast *Timichev v. Russia*[65], where the issue had been racial discrimination); nor did they all have the same relative importance for the individual interest at stake. With regard to the particular circumstances of the case, the Court emphasised two factors: first, the applicant was not a member of a vulnerable group; second, he had taken part in a competition in order to become a public-sector employee, not to assert a fundamental right explicitly recognised by the Convention. In those circumstances, the Court afforded the State a wide margin of appreciation in such matters.

(ii) The Court accepted that age was a relevant factor in determining a person's physical aptitude. The duties of officers of the police force in question were not administrative in nature, but operational or executive, requiring particular physical aptitude. Thus, physical shortcomings that interfered with the performance of those duties were liable to have significant consequences not only for the police officers themselves and for third parties, but also for the maintenance of public order. The Court concluded that possessing certain physical capacities could be regarded as an essential and decisive professional requirement for the performance of the police duties to which the applicant had sought admission.

(iii) As to alleged discrimination on the ground of age with regard to admission to a position requiring particularly robust physical capabilities, the Court took the view that the question whether someone possessed such capabilities had to be assessed dynamically, taking into consideration the years of service the officer would be required to complete after recruitment, and not in a static manner, solely at the time of the recruitment competition. It was therefore legitimate that the State might wish to ensure that these physical capabilities were maintained for a maximum number of years of service.

(iv) The Court also accepted the Government's argument as to the need to ensure a balanced age distribution within the police and thereby avoid a situation where there was a very high concentration of staff in the upper age brackets, as this factor had a considerable impact on the operational nature of a police force. In other words, it might be appropriate, by way of measures such as the one in question, to ensure that a sufficient number of "young" officers were present to carry out tasks involving greater physical exertion. In general, such questions of internal organisation fell within the Contracting States' margin of appreciation.

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

Enjoyment of possessions

The judgment in *The J. Paul Getty Trust and Others v. Italy*[66] concerned a confiscation order to recover a cultural object legally belonging to a Contracting State but illegally purchased and exported to a non-Contracting State.

In 1964 Italian fishermen in the Adriatic Sea had discovered a bronze statue known as "Victorious Youth" (also referred to as the "Athlete of Fano" or the "Lysippus of Fano") dating back to the Classical Greek period. It had ultimately been bought by the J. Paul Getty Trust ("the Trust"), a non-profit legal entity registered in the United States of America ("the US"). The statue had been taken to the US and put on display in a museum. Since 1977 the Italian authorities had made several unsuccessful attempts to recover the statue. In 2007 enforcement proceedings had been initiated in Italy, resulting in a confiscation order. The Court of Cassation held that the statue was part of Italy's cultural heritage protected by Italian law and rightfully belonging to the Italian State; it had been unlawfully exported from Italy and then purchased by the Trust without due diligence in inquiring into its origins; and, in those circumstances and in accordance with the case-law of the Constitutional Court, a confiscation order could be issued against a person not involved

64. *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, § 45, 25 July 2017.
65. *Timichev v. Russia*, nos. 55762/00 and 55974/00, § 56, ECHR 2005-XII.
66. *The J. Paul Getty Trust and Others v. Italy*, no. 35271/19, 2 May 2024.

in the criminal offence even if there had been no criminal conviction and even if the relevant offence had become statute-barred, provided that a "lack of vigilance" could be ascertained. A procedure of recognition and enforcement of the confiscation measure, which had been initiated in the US at the request of the Italian authorities, was still pending in its first phase. Before the Court, the applicants (the Trust and fourteen members of its board of trustees) alleged a violation of their right to peaceful enjoyment of possessions guaranteed by Article 1 of Protocol No. 1.

The Court found that the Trust – unlike the individual trustees – could claim to be a "victim" of the alleged violation. On the merits, it held that Italy had not overstepped its margin of appreciation and that there had been no violation of Article 1 of Protocol No. 1. In that connection the Court took into account the State's wide margin of discretion as to the "general interest" concerning the preservation of cultural heritage, the strong consensus in international and European law with regard to the need to protect cultural objects from unlawful exportation and to return them to their country of origin, the Trust's own negligent conduct, as well as the very exceptional legal vacuum in which the domestic authorities had found themselves at the material time.

The judgment is noteworthy in several respects, both in terms of the reasoning and the result.

(i) Adopting the approach used in extradition cases (*Stephens v. Malta (no. 1)*[67]; *Toniolo v. San Marino and Italy*[68]; *Vasiliciuc v. the Republic of Moldova*[69]; and *Gilanov v. the Republic of Moldova*[70]), the Court defined a general principle applicable to international legal and judicial cooperation. An act initiated by a requesting State on the basis of its own domestic law and followed up by the requested State in response to its treaty obligations could be attributed to the requesting State even if the act had been, or was intended to be, executed by the requested State. The confiscation order, to be executed in the US, could therefore be attributed to Italy.

(ii) While the autonomous meaning of the term "possessions", within the meaning of Article 1 of Protocol No. 1, was not limited to ownership, it was also not necessarily applicable to any type of "possession" (as understood in civil law). That assessment was to be carried out on a case-by-case basis establishing the existence of a genuine proprietary interest on the basis of criteria such as the duration of possession and recognition of the possessor's standing before the domestic courts.

(iii) Given the specificity and complexity of the legal situation in question – the protection of cultural heritage and the recovery of an unlawfully exported cultural object through a measure implying a dispute over the ownership rights of the current possessor – the Court found it unnecessary to rule on whether the alleged interference fell under either of the two special clauses of Article 1 of Protocol No. 1 ("deprivation of possessions" or "control of the use of property"), since the general rule enshrined in the first sentence of that Article was certainly applicable.

(iv) Finally and importantly, in assessing the lawfulness and proportionality of the impugned measure, the Court directly relied on the global legal context and, notably, on the evolution of international law in the field of the protection of cultural objects. Accordingly, it considered that the lack of a time-limit for actions aimed at recovering stolen or unlawfully exported cultural objects could not, of itself, lead to the conclusion that the interference in question was unforeseeable or arbitrary: on the contrary, it appeared to be a distinctive feature of several States (including within the Council of Europe) and might be justified by the need to give the domestic authorities considerable latitude in this particular area. Furthermore, one of the crucial factors to determine whether the respondent State had acted within its margin of appreciation was the fact that, initially, its authorities had to operate in a legal vacuum as there were no binding international legal instruments in force at the time when the object had been purchased and exported by the Trust which would have allowed the Italian authorities to recover it or, at the very least, to obtain the full cooperation of the foreign domestic authorities. In that regard, the Court stressed that, nowadays in a similar scenario, the domestic authorities would be under a duty to strictly comply with the time-limits and procedures laid down in any applicable provisions of international treaties and EU law.

67. *Stephens v. Malta (no. 1)*, no. 11956/07, §§ 50-54, 21 April 2009.
68. *Toniolo v. San Marino and Italy*, no. 44853/10, § 56, 26 June 2012.
69. *Vasiliciuc v. the Republic of Moldova*, no. 15944/11, §§ 21-25, 2 May 2017.
70. *Gilanov v. the Republic of Moldova* no. 44719/10, §§ 41-44, 13 September 2022.

Freedom of movement (Article 2 of Protocol No. 4)

Freedom of movement

The judgment in *Domenjoud v. France*[71] concerned home-curfew measures taken in the context of a state of emergency declared in France in response to terrorist attacks on 13 November 2015, following which France had exercised its right of derogation under Article 15 of the Convention.

The applicants were two brothers who had been placed under home curfew for sixteen days by order of the Minister of the Interior. The orders had been based on "white note" memos from the intelligence services, indicating that (i) the applicants had belonged to radical far-left political groups, (ii) they had been involved in violent acts in the past, and (iii) there was a risk that they would take part in "highly violent protest activities" in the context of the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change ("COP21"), which had been set to start in Paris some days later. The measures had included obligations for the applicants to report three times a day to a police station and not to leave their homes at night. The applicants had lodged various appeals against the home-curfew measures with the administrative courts but had been unsuccessful. In particular, a preliminary question on constitutionality (*question prioritaire de constitutionnalité*) had been referred to the Constitutional Council, which had found that the placement under home curfew, as provided for in the Law of 3 April 1955 on states of emergency and applied in the present case, had amounted neither to a deprivation of liberty nor to a disproportionate interference with freedom of movement.

Before the Court, the applicants alleged that there had been a violation of Article 5 of the Convention and Article 2 of Protocol No. 4. The Court found that Article 5 did not apply to the measures in issue and that the related complaint was therefore incompatible *ratione materiae* with the Convention. Under Article 2 of Protocol No. 4, however, it found no violation of that provision in respect of the first applicant, but a violation in respect of the second. It considered that his placement under home curfew had not fully met the substantive and procedural requirements of that provision, nor had the measure been covered by the French derogation under Article 15 of the Convention.

The judgment is noteworthy for the following reasons.

(i) Regarding the foreseeability of the legal basis of a measure restricting freedom and applied in the context of a state of emergency, the Court was called upon for the first time to examine a situation where an individual measure had been ordered for reasons that differed from those justifying the general state of emergency (in the present case, the threat of Islamist terrorism). In that regard, the judgment was a development on the cases *Pagerie v. France*[72] and *Fanouni v. France*[73] where the link had been clear and evident. In the present case, the Court specified that a state-of-emergency law could not be used by the domestic authorities to adopt measures restricting freedoms where they had no link to the circumstances that had justified the enactment of that legislation. However, it accepted that in an emergency situation the domestic authorities might be obliged to make operational choices in order to meet the full range of their responsibilities. There could therefore be an indirect link between the aim pursued when declaring a state of emergency, and the justification for measures taken on the basis thereof, provided that the link was strong enough to eliminate any possibility of abuse. In addition, the Court sought to ensure that that protection against arbitrariness had been effective in the circumstances of the present case, and in particular that the existence of an adequate link between the measures and the framework of the state of emergency had been reviewed.

(ii) The judgment confirmed the findings in *Pagerie* and *Fanouni* (cited above, §§ 206-07 and §§ 60-61, respectively) with regard to the principles governing how administrative courts should take into account "white notes" – unsigned and often undated memos containing neither the name of the person who had drafted them nor the sources

71. *Domenjoud v. France*, nos. 34749/16 and 79607/17, 16 May 2024. See also under Article 15 (Derogation in time of emergency) below.
72. *Pagerie v. France*, no. 24203/16, §§ 178-91, 19 January 2023.
73. *Fanouni v. France*, no. 31185/18, §§ 49-51, 15 June 2023

of their information. The Court did not exclude the use of such documents but emphasised the need for adequate procedural safeguards. In the present case, it found appropriate the safeguards generally provided for in domestic law, namely that, firstly, such memos had to be subject to adversarial proceedings, secondly, the administrative courts had a duty to review the accuracy and precision of their content, by ascertaining whether they contained precise and detailed facts and whether or not those facts were seriously disputed, and thirdly the administrative courts had investigative powers to perform that review. However, the Court carried out a separate examination into whether those safeguards had been complied with in the individual case of each applicant.

Other Convention provisions

Derogation in time of emergency (Article 15)

The judgment in *Aydın Sefa Akay v. Türkiye*[74] concerned the arrest and pre-trial detention of a judge of an international court who, by virtue of the statute of that court, enjoyed diplomatic immunity, and the searches of his house and person.

The applicant, a Turkish national and a career diplomat, was a judge serving at the United Nations International Residual Mechanism for Criminal Tribunals ("the Mechanism") and had been working remotely on a case from his home in Istanbul. Shortly after the 2016 attempted military *coup d'état* in Türkiye a criminal investigation had been opened against employees of the Ministry of Foreign Affairs suspected of being involved in an armed terrorist organisation, FETÖ/PDY (considered by the authorities to be behind the coup attempt). In the course of that investigation, the applicant had been arrested, subjected to a body search and placed in pre-trial detention. The police had also conducted a search of his house and seized, *inter alia*, computers, mobile phones and two books allegedly proving the applicant's connection with FETÖ/PDY. The applicant had been found guilty of being a member of an armed terrorist organisation and sentenced to seven years and six months' imprisonment. Throughout the criminal proceedings, he had repeatedly and unsuccessfully claimed diplomatic immunity as a judge of the Mechanism (Article 29 of the Statute of the Mechanism adopted by Security Council Resolution 1966 (2010)). Despite a *note verbale* from the UN Office of Legal Affairs and an order by the President of the Mechanism to cease all legal proceedings against the applicant and ensure his release, the Turkish authorities and courts had relied on that Statute, the Convention on the Privileges and Immunities of the United Nations and the Vienna Convention on Diplomatic Relations, to conclude that the applicant had not enjoyed absolute immunity but only functional immunity limited to acts performed within the scope of his functions as a judge and that, in any event, he could not assert immunity before the authorities of the State which he represented or of which he was a national. That interpretation had ultimately been confirmed by the Constitutional Court.

The Court found a violation of both Article 5 § 1 and Article 8 of the Convention. It considered that the domestic courts' interpretation of the applicant's diplomatic immunity had not been foreseeable nor in keeping with the requirements of the principle of legal certainty under Article 5 § 1, as the ordinary reading of the relevant international treaty provisions, officially confirmed by the President of the Mechanism (acting on behalf of the Secretary General of the UN) and the UN Office of Legal Affairs, had made it safe to consider that the applicant had in fact enjoyed full diplomatic immunity including when working remotely in accordance with the framework for the operation of the Mechanism. Moreover, the legal uncertainty had been aggravated by the considerable delay in assessing his diplomatic immunity. Lastly, the Court held that the applicant's pre-trial detention could not be justified under Article 15 of the Convention (notice had been given by Türkiye under that provision).

74. *Aydın Sefa Akay v. Türkiye*, no. 59/17, 23 April 2024. See also under Article 5 § 1 (Lawful arrest or detention) and Article 8 (Private life and home) above.

The judgment is novel as the Court extended, for the first time, the caveat of "*other obligations under international law*", within the meaning of Article 15, to obligations arising from diplomatic immunity.

The judgment in *Domenjoud v. France*[75] concerned home-curfew measures taken in the context of a state of emergency declared in France in response to terrorist attacks on 13 November 2015, following which France had exercised its right of derogation under Article 15 of the Convention. The applicants were two brothers who had been placed under home curfew for sixteen days by order of the Minister of the Interior. The orders had been based on "white note" memos from the intelligence services, indicating that (i) the applicants belonged to radical far-left political groups, (ii) they had been involved in violent acts in the past, and (iii) there was a risk that they would take part in "highly violent protest activities" in the context of the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change ("COP21"), which had been set to start in Paris some days later. The measures included obligations for the applicants to report three times a day to a police station and not to leave their homes at night. The applicants had lodged various appeals against the home-curfew measures with the administrative courts but had been unsuccessful. In particular, a preliminary question on constitutionality (*question prioritaire de constitutionnalité*) had been referred to the Constitutional Council, which had found that the placement under home curfew, as provided for in the Law of 3 April 1955 on states of emergency and applied in the present case, had amounted neither to a deprivation of liberty nor to a disproportionate interference with freedom of movement.

Before the Court, the applicants alleged that there had been a violation of Article 5 of the Convention and Article 2 of Protocol No. 4. The Court found that Article 5 did not apply to the measures in issue and that the related complaint was therefore incompatible *ratione materiae* with the Convention. Under Article 2 of Protocol No. 4, however, it found no violation of that provision in respect of the first applicant, but a violation in respect of the second. It considered that his placement under home curfew had not fully met the substantive and procedural requirements of that provision, nor had the measure been covered by the French derogation under Article 15 of the Convention.

Insofar as Article 15 § 1 of the Convention is concerned, the judgment is noteworthy in that the Court assessed whether the derogating measures had been strictly required in the light of the reasons for the derogation, as they had been clearly set out, without transposing to that assessment the moderate level of review that it had established under Article 2 of Protocol No. 4. In the present case, the Court considered that the measure in issue had not been strictly necessary to fulfil the aim of combatting terrorism, as pursued by the exercise of the right to derogation.

Restrictions not prescribed by the Convention (Article 18)

The Grand Chamber judgment in the inter-State case of *Ukraine v. Russia (re Crimea)*[76] concerned numerous violations of the Convention and its Protocols in the region of Crimea during the events in the course of which the region of Crimea (including the city of Sevastopol) had been purportedly integrated into the Russian Federation, as well as of some subsequent events. The Ukrainian Government maintained that the Russian Federation was responsible for administrative practices resulting in numerous human rights violations, those practices being part of a large, interconnected campaign of political repression implemented by Russia, aimed at stifling any political opposition.

The temporal and territorial scope of application no. 20958/14 was limited to the period from 27 February 2014 to 26 August 2015 and to the territory of Crimea, whereas application no. 38334/18 had no such temporal limitations. The applicant Government had not requested an adjudication of the individual cases to which it

75. *Domenjoud v. France*, nos. 34749/16 and 79607/17, 16 May 2024. See also under Article 2 of Protocol No. 2 (Freedom of movement) above.

76. *Ukraine v. Russia (*re *Crimea)* nos. 20958/14 and 38334/18, 25 June 2024. See also under International Humanitarian Law (Principle of "lawfulness"), Article 35 (Jurisdication to deal with cases against Russia) and Article 2 (Right to life - Enforced Disappearances) above and under Article 33 (Inter-State cases) below.

had referred but rather had requested that they be treated as evidence of an administrative practice in breach of the Convention. Accordingly, individual complaints of alleged Convention violations were outside the scope of the case.

In its decision on admissibility[77], the Grand Chamber had held that the impugned facts targeted by application no. 20958/14 fell within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention; it had dismissed the respondent Government's preliminary objections, and declared admissible the applicant Government's complaints about alleged administrative practices contrary to Articles 2, 3, 5, 6, 8, 9, 10 and 11 of the Convention, Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4, as well as Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and Article 2 of Protocol No. 4 to the Convention. Later, the Grand Chamber held a hearing on the merits of application no. 20958/14 and on the admissibility and merits of application no. 38334/18 (regarding *inter alia* the treatment of "Ukrainian political prisoners" in Crimea, other parts of Ukraine, the Russian Federation, and Belarus).

In the present judgment, the Grand Chamber declared admissible the complaint concerning the transfer of prisoners from Crimea to Russia, which had also been raised in application no. 20958/14, notice of which had in the meantime been given to the Russian Federation, and found a violation of the Convention and its Protocols in respect of each of the admissible complaints in that application. It also declared the application no. 38334/18 partly admissible and partly inadmissible. On the merits of that application, the Grand Chamber found a violation of Articles 3, 5, 6, 7, 8, 10, and 11 of the Convention, as well as of Article 18 in conjunction with Articles 5, 6, 8, 10, and 11. It also reserved the question on just satisfaction and indicated, in accordance with Article 46 of the Convention, that the respondent State must take every measure to secure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to prisons in Russia.

The Grand Chamber judgment is novel in that it clearly defines the applicability of Article 18 in conjunction with Articles 6 and 7 (for the approaches to date see *Navalnyy and Ofitserov v. Russia*[78]; *Navalnyye v. Russia*[79]; and *Khodorkovskiy and Lebedev v. Russia*[80]). As to Article 6, the Court confirmed that Convention provisions allowed for both explicit and implicit restrictions. Moreover, having regard to its extensive case-law on the matter, the Court found that the rights protected under Article 6 were guarantees with reference to which fundamental abuses by a State might be likely to manifest themselves. Article 18 was thus applicable in conjunction with Article 6. Conversely, the situation was not the same in relation to Article 7. Given the non-derogable nature of its guarantees, the Court considered that Article 18 could not apply in conjunction with it, so that that complaint (Article 18 in conjunction with Article 7) was found to be incompatible *rationae materiae* with the Convention.

---

77. *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.
78. *Navalnyy and Ofitserov v. Russia*, nos. 46632/13 and 28671/14, § 129, 23 February 2016.
79. *Navalnyye v. Russia*, no. 101/15, §§ 88-89, 17 October 2017.
80. *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 897-909, 25 July 2013.

Inter-State cases

Administrative practice

The Grand Chamber judgment in the inter-State case of *Ukraine v. Russia (re Crimea)*[81] concerned numerous violations of the Convention and its Protocols in the region of Crimea during the events in the course of which the region of Crimea (including the city of Sevastopol) had beeen purportedly integrated into the Russian Federation, as well as of some subsequent events. The Ukrainian Government maintained that the Russian Federation was responsible for administrative practices resulting in numerous human rights violations, those practices being part of a large, interconnected campaign of political repression implemented by Russia, aimed at stifling any political opposition.

The temporal and territorial scope of application no. 20958/14 was limited to the period from 27 February 2014 to 26 August 2015 and to the territory of Crimea, whereas application no. 38334/18 had no such temporal limitations. The applicant Government had not requested adjudication of the individual cases to which it had referred but rather had requested that they be treated as evidence of an administrative practice in breach of the Convention. Accordingly, individual complaints of alleged Convention violations were outside the scope of the case.

In its decision on admissibility[82], the Grand Chamber had held that the impugned facts targeted by application no. 20958/14 fell within the "jurisdiction" of the Russian Federation within the meaning of Article 1 of the Convention; it had dismissed the respondent Government's preliminary objections, and declared admissible the applicant Government's complaints about alleged administrative practices contrary to Articles 2, 3, 5, 6, 8, 9, 10 and 11 of the Convention, Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4, as well as Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and Article 2 of Protocol No. 4 to the Convention. The Grand Chamber had later held a hearing on the merits of application no. 20958/14 and on the admissibility and merits of application no. 38334/18 (regarding *inter alia* the treatment of "Ukrainian political prisoners" in Crimea, other parts of Ukraine, the Russian Federation, and Belarus).

In the present judgment, the Grand Chamber declared admissible the complaint concerning the transfer of prisoners from Crimea to Russia, which had also been raised in application no. 20958/14, notice of which had in the meantime been given to the Russian Federation, and found a violation of the Convention and its Protocols in respect of each of the admissible complaints in that application. It also declared application no. 38334/18 partly admissible and partly inadmissible. On the merits of that application, the Grand Chamber found a violation of Articles 3, 5, 6, 7, 8, 10, and 11 of the Convention, as well as of Article 18 in conjunction with Articles 5, 6, 8, 10, and 11. It also reserved the question of just satisfaction and indicated, in accordance with Article 46 of the Convention, that the respondent State should take every measure to secure, as soon as possible, the safe return of the relevant prisoners transferred from Crimea to prisons in Russia.

---

81. *Ukraine v. Russia (*re *Crimea)* [GC], nos. 20958/14 and 38334/18, 25 June 2024. See also under Article 35 (Jurisdiction to deal with cases against Russia), Article 2 (Right to life - Enforced disappearances), Article 18 (Restrictions not prescribed by the Convention) above.
82. *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.

The Grand Chamber judgment is important as Court held that, when determining the existence of an administrative practice of enforced disappearances contrary to Article 2 of the Convention, the overall examination should not be confined only to those individuals who had ultimately remained unaccounted for. Even though the presumption of death applied only to those individuals, the Court considered that the following factors were of particular importance in the overall context of a large number of instances of irregular deprivation of liberty and the relatively short period during which the abductions took place: the abductions were perpetrated by persons whose acts entailed the responsibility of the respondent State; the fact that the victims were predominantly pro-Ukrainian activists, journalists and Crimean Tatars who were perceived as opponents to the events that had unfolded in Crimea at the time; the fact that the abductions followed a particular pattern and were used as a means to intimidate and persecute such individuals in the enforcement of a global strategy of the respondent State to suppress the existing opposition in Crimea to the Russian "occupation". In the present case, there had been 43 documented cases of disappearances but only eight of those abducted are still missing and their whereabouts and fate remain unknown; most of the individuals concerned had been released soon after they had gone missing. Nevertheless, the Court considered that there had been "sufficiently numerous" instances of abduction to amount to a pattern or system ("repetition of acts") which was itself life-threatening to engage the applicability of Article 2 as regards that administrative practice: moreover, the respondent State's prosecuting authorities had systematically refused to carry out an effective investigation into credible allegations of enforced disappearance.

Index of cases

A

Aydın Sefa Akay v. Türkiye, no. 59/17, 23 April 2024 **82** • **96** • **104**

B

Bogdan v. Ukraine, no. 3016/16, 8 February 2024 **88**

C

Carême v. France (dec.) [GC], no. 7189/21, 9 April 2024 **75**

D

Dániel Karsai v. Hungary, no. 32312/23, 13 June 2024 **92**

Dian v. Denmark (dec.), no. 44002/22, 21 May 2024 **91**

Domenjoud v. France, nos. 34749/16 and 79607/17, 16 May 2024 **102** • **105**

Duarte Agostinho and Others v. Portugal and 32 Others (dec.) [GC], no. 39371/20, 9 April 2024 **74** • **75** • **77**

E

Executief van de Moslims van België and Others v. Belgium, nos. 16760/22 and 8 others, 13 February 2024 **97**

F

Fabbri and Others v. San Marino [GC], nos. 6319/21 and 2 others, 24 September 2024 **84**

Ferrero Quintana v. Spain, no. 2669/19, 26 November 2024 **99**

F.M. and Others v. Russia, nos. 71671/16 and 40190/18, 10 December 2024 **81** • **98**

M

M.A. v. France, no. 63664/19 and 4 others, 25 July 2024 **94** • **95**

N

Nealon and Hallam v. the United Kingdom [GC], nos. 32483/19 and 35049/19, 11 June 2024 **86**

P

Pindo Mulla v. Spain [GC], no. 15541/20, 17 September 2024 **93**

T

The J. Paul Getty Trust and Others v. Italy, no. 35271/19, 2 May 2024 **100**

U

Ukraine v. Russia (re Crimea) nos. 20958/14 and 38334/18, 25 June 2024 **72** • **78** • **80** • **105** • **106** • **107**

V

Verein KlimaSeniorinnen schweiz and Others v. Switzerland [GC], no. 53600/20, 9 April 2024 **74** • **75** • **86** • **89**