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INFORMATION NOTE
on the Court's case-law

NOTE D'INFORMATION
sur la jurisprudence de la Cour

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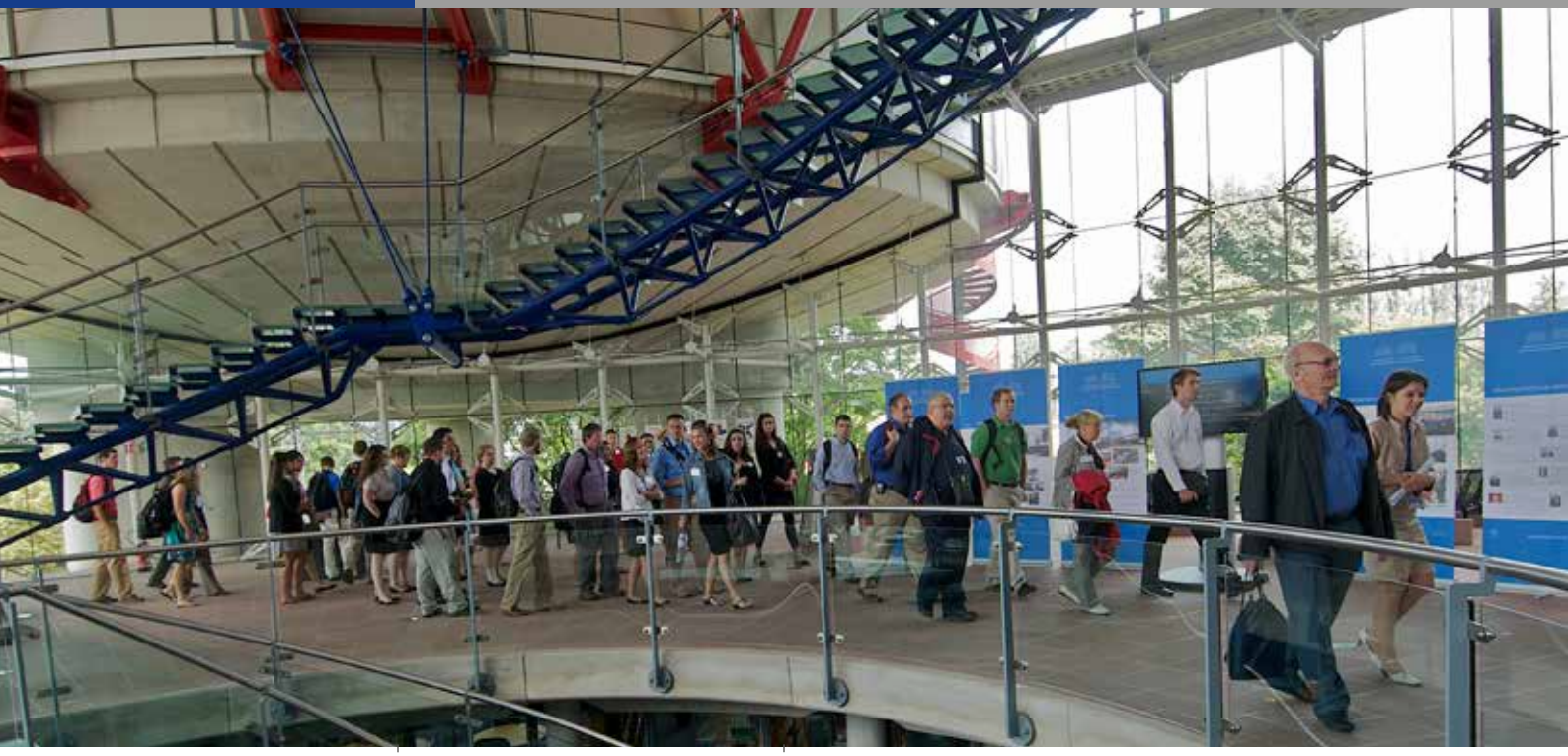

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Tagayeva and Others/et autres – Russia/Russie, 26562/07 et al., judgment/arrêt 13.4.2017 [Section I]

Facts – The case arose out of a terrorist attack on a school in Beslan, North Ossetia (Russia) in September 2004 that resulted in the deaths of some 334 civilians, including 186 children, who had been taken hostage. Shortly after 9 a.m. on 1 September 2004 a group of heavily armed terrorists entered the courtyard of the school during a traditional ceremony to mark the opening of the academic year and forced over 1,100 of those present into a ground-floor gymnasium, which they proceeded to rig with explosive devices. Some sixteen male hostages were killed later that day. On 3 September a series of three explosions ripped through the gymnasium where the hostages were being held, causing multiple casualties, either during the explosions or resulting fire, or when they were shot when attempting to escape. State forces then stormed the building. Before the European Court the applicants alleged breaches of Article 2 in relation to the positive obligations to protect life and to investigate, the planning and control of the operation and the use of lethal force.

Law – Article 2

(a) *Positive obligation to prevent threat to life* – At least several days in advance the authorities had had sufficiently specific information about a planned terrorist attack in the area targeting an educational facility on 1 September. The intelligence information had likened the threat to previous major attacks undertaken by Chechen separatists, which had resulted in heavy casualties. A threat of that kind clearly indicated a real and immediate risk to the lives of the potential target population. The authorities had had a sufficient level of control over the situation and could have been reasonably expected to undertake measures within their powers that could reasonably be expected to have avoided, or at least mitigated, that risk. Although some measures had been taken, in general the preventive measures could be characterised as inadequate. The terrorists had been able to successfully gather, prepare, travel to and seize their target, without encountering any preventative security arrangements. No single sufficiently high-level structure had been responsible for the handling of the situation, evaluating and allocating resources, creating a defence for the vulnerable target group and ensuring effective containment of the threat and communication with the field teams. The Russian authorities had failed to take measures which, when judged reasonably, could have prevented or minimised the known risk.

Conclusion: violation (unanimously).

(b) *Procedural obligation* – The cause of death of the majority of the victims had been established on the basis of external examinations of the bodies only. No additional examinations had been carried out, for example, to locate, extract and match external objects such as metal fragments, shrapnel and bullets. On several occasions the relatives of those who had lost lives at the school had requested that the bodies of the victims be exhumed and additional enquiries performed in order to reach more specific conclusions about the causes of their deaths, but no such requests were granted. A third of the victims had died of causes that could not be established with certainty, in view of extensive burns. Such a high proportion of unestablished deaths seemed striking. The location of the hostages' bodies in the school had not been marked or recorded with any precision. The absence of such basic information as the place of the victims' deaths had contributed to the ambiguity concerning the circumstances in which they had occurred. An individualised description of their location and a more in-depth examination of the remains should have served as a starting point for many of the important conclusions drawn in the course of the investigation. Failure to ensure this basis for subsequent analysis constituted a major breach of the requirements of an effective investigation.

The investigation had failed to properly secure, collect and record evidence at the school building. That had resulted in a report being drawn up that was incomplete in many important respects. There existed a credible body of evidence pointing at the use of indiscriminate weapons by State agents in the first hours of the storming. That evidence had not been fully assessed by the investigation. The lack of objective and impartial information about the use of such weapons constituted a major failure by the investigation to clarify that key aspect of the events

and to create a ground for drawing conclusions about the authorities' actions in general and individual responsibility. The investigation's conclusion that no one among the hostages had been injured or killed by the lethal force used by the State agents was untenable. Coupled with incomplete forensic evidence on the causes of death and injuries, deficiencies in the steps to secure and collect the relevant evidence from the site, any conclusions reached about the criminal responsibility of State agents in that respect were without objective grounds and were thus inadequate.

Conclusion: violation (unanimously).

(c) *Planning and control of the operation* – The absence of a single coordinating structure tasked with centralised handling of the threat, planning, allocating resources and securing feedback with the field teams, had contributed to the failure to take reasonable steps that could have averted or minimised the risk before it materialised. That lack of coordination was repeated during later stages of the authorities' response. The leadership and composition of the body that was responsible for the handling of the crisis was officially determined approximately thirty hours after it had started. Such a long delay in setting up the key structure that was supposed to prepare and coordinate the responses to the hostage-taking had not been explained. Even once it had been set up its configuration was not respected. The absence of formal leadership of the operation had resulted in serious flaws in the decision-making process and coordination with other relevant agencies. No plan for a rescue operation was prepared and communicated to the responsible services until two and a half days after the unfolding of the crisis. No sufficient provision had been made for forensic work, body storage and autopsy equipment. It was unclear when and how the most important decisions had been taken and communicated with the principal partners, and who had taken them.

Conclusion: violation (five votes to two).

(d) *Use of lethal force* – Overall, the evidence established a prima facie claim that State agents had used indiscriminate weapons while the terrorists and hostages were intermingled. Presumptions could be drawn from the co-existence of that evidence and the absence of a proper fact-finding into the cause of death and the circumstances of the use of arms. Despite that lack of individual certainty, the known elements of the case allowed the Court to conclude that the use of lethal force by the State agents had contributed, to some extent, to the casualties among the hostages. After the first explosions in the gymnasium and the opening of fire by the terrorists on the escaping hostages, the risk of massive human loss became a reality, and the authorities had had no choice but to intervene by force. The decision to resort to the use of force by the State agents was justified in the circumstances.

Operational command should have been able to take rapid and difficult decisions about the means and methods to employ so as to eliminate the threat posed by the terrorists as soon as possible. Apart from the danger presented by the terrorists the commanders had to consider the lives of over 1,000 people held hostage, including hundreds of children. The acute danger of the use of indiscriminate weapons in such circumstances should have been apparent to anyone taking such decisions. All relevant factors should have been weighed up and carefully pondered over in advance, and the use of such weapons, if unavoidable in the circumstances, should have been subject to strict supervision and control at all stages to ensure that the risk to the hostages was minimised. The security forces had used a wide array of weapons, some of them extremely powerful and capable of inflicting heavy damage upon the terrorists and hostages, without distinction.

The primary aim of the operation should have been to protect lives from unlawful violence. The massive use of indiscriminate weapons stood in flagrant contrast with that aim and could not be considered compatible with the standard of care prerequisite to an operation of that kind involving the use of lethal force by State agents. Such use of explosive and indiscriminate weapons, with the attendant risk for human life, could not be regarded as absolutely necessary in the circumstances.

Furthermore, the domestic legal framework had failed to set out the most important principles and constraints of the use of force in lawful anti-terrorist operations, including the obligation to protect everyone's life by law, as required by the Convention. Coupled with wide-ranging immunity for any harm caused in the course of anti-terrorism operations, that situation had resulted in a dangerous gap in regulating situations involving deprivation of life. Russia had failed to set up a framework of a system of adequate and effective safeguards against arbitrariness and abuse of force.

Conclusion: violation (five votes to two).

Article 13: All the applicants had received State compensation as victims of the terrorist attack. The authorities' choice to allocate compensation on the basis of the degree of damage suffered, regardless of the outcome of the criminal investigation, appeared

to be victim-based and thus justified. Efforts had been made to commemorate the grief and help the entire community of Beslan reconstruct after the devastating events. Those measures had to be seen as part of general measures aiming to benefit all those who had been affected by the events.

What appeared to be of special importance under Article 13, apart from the compensation mechanisms, was access to information and thus the establishment of truth for the victims of the violations alleged, as well as ensuring justice and preventing impunity for the perpetrators. In addition to the criminal investigation into the terrorist act, a number of other proceedings had taken place. The trial of the one terrorist captured alive had resulted in his conviction and life imprisonment; two sets of criminal proceedings against police officers had resulted in them being charged and put on trial and there had been extensive and detailed studies of the events by members of the parliamentary commissions of the North Ossetian Parliament and State Duma. Those reports had played an important role in collecting, organising and analysing the scattered information on the circumstances of the use of lethal force by State agents and ensured access by the applicants, and the public in general, to knowledge about aspects of the serious human-rights violations that would have otherwise remained inaccessible. In that sense, their work could be regarded as an aspect of effective remedies aimed at establishing the knowledge necessary to elucidate the facts, distinct from the State's procedural obligations under Articles 2 and 3 of the Convention.

Conclusion: no-violation (six votes to one).

Article 46: The Court set out a variety of both individual and general measures to be taken under Article 46, including further recourse to non-judicial means of collecting information and establishing the truth, public acknowledgement and condemnation of violations of the right to life in the course of security operations, and greater dissemination of information and better training for police, military and security personnel in order to ensure strict compliance with the relevant international legal standards. The prevention of similar violations in the future had also to be addressed in the appropriate legal framework, in particular by ensuring that the national legal instruments pertaining to large-scale security operations and the mechanisms governing cooperation between military, security and civilian authorities in such situations were adequate, and by clearly formulating the rules governing the principles and constraints of the use of lethal force during security operations, reflecting the applicable international standards.

Article 41: Awards ranging between EUR 3,000 and EUR 50,000 to each of the applicants in respect of non-pecuniary damage; claims in respect of pecuniary damage dismissed.

(See also *Finogenov and Others v. Russia*, 18299/03 and 27311/03, 20 December 2011, Information Note 147; and, more generally, the Factsheet on the Right to life)

Effective investigation/Enquête effective – Positive obligations (procedural aspect)/ Obligations positives (volet procédural)

Failure of Turkish and Cypriot authorities to cooperate in murder investigation: *violations*

Défaut de coopération entre les autorités turques et les autorités chypriotes dans le cadre d'une enquête pour homicide : *violations*

Güzelyurtlu and Others/et autres – Cyprus and Turkey/Chypre et Turquie, 36925/07, judgment/arrêt 4.4.2017 [Section III]

Facts – The applicants were close relatives of three Cypriot nationals of Turkish-Cypriot origin who were found dead with gunshot wounds in the Cypriot-Government-controlled area of the island in 2005. Criminal investigations were immediately opened by both the Cypriot authorities and by the Turkish (including the "TRNC") authorities. However, although eight suspects were identified by the Cypriot authorities and were arrested and questioned by the "TRNC" authorities, both investigations reached a stalemate and the files were held in abeyance pending further developments. Although the investigations remained open nothing concrete was done after 2008. The Turkish Government were still waiting for all the evidence in the case to be handed over so they could try the suspects, while the Cypriot investigation came to a complete halt following the return by Turkey of extradition requests by the Cypriot authorities. Efforts made through the good offices of the United Nations Peacekeeping Force in Cyprus (UNFICYP) proved fruitless due to the respondent States' persistence in maintaining their positions.

In the Convention proceedings, the applicants complained of a violation of Article 2 by both the Cypriot and Turkish authorities on account of their failure to conduct an effective investigation into the deaths and to cooperate in the investigation.

Law – Article 2 (*procedural aspect*): As the applicants' relatives' deaths had taken place in the territory controlled by the Republic of Cyprus and under that

State's jurisdiction, a procedural obligation arose in respect of Cyprus to investigate the deaths. Turkey's procedural obligation was also engaged as the suspected killers were within Turkey's jurisdiction, either in the "TRNC" or in mainland Turkey, and the Turkish and "TRNC" authorities had been informed of the crime and Red Notices concerning the suspects had been published. Indeed, the "TRNC" authorities had instituted their own criminal investigation and their courts had criminal jurisdiction over individuals who had committed crimes anywhere on the island of Cyprus.

The applicants' complaint under Article 2 was twofold concerning the conduct of the respective investigations by the Cypriot and Turkish authorities and the failure of the respondent Governments to cooperate with each other.

(a) *Conduct of the investigations* – Both respondent States had taken a significant number of investigative steps promptly. The Court perceived no shortcomings that might call into question the overall adequacy of the investigations in themselves. However, there was no need to make a finding under Article 2 on this matter in view of the Court's findings regarding the question of cooperation between the two States.

(b) *Procedural obligation to cooperate* – In circumstances where, as in the instant case, the investigation of an unlawful killing unavoidably implicated more than one State, this entailed an obligation on the part of the respondent States concerned to cooperate effectively and take all reasonable steps necessary to this end in order to facilitate and realise an effective investigation into the case overall. Such a duty was in keeping with the effective protection of the right to life as afforded by Article 2 and was also consistent with the position taken by the relevant Council of Europe instruments which mandated inter-governmental cooperation in order to prevent and combat transnational crimes more effectively and to punish the perpetrators.

The nature and scope of the cooperation required inevitably depended on the circumstances of the individual case. The Court had no competence to determine whether the respondent States had complied with their obligations under the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters and it was not for the Court to indicate which measures the authorities should have taken in order for the respondent States to comply with their obligations most effectively. The Court's role was to verify that the measures actually taken were appropriate and sufficient in the circumstances and to determine to what extent a minimum effort was possible and should have been made.

It was clear from all the material before the Court, including the UN Secretary-General's report of 27 May 2005 on the UN operation in Cyprus, that the respondent Governments were not prepared to make any compromise on their positions and find middle ground. That position arose from political considerations which reflected the long-standing and intense political dispute between the Republic of Cyprus and Turkey. Although the respondent States had had the opportunity to find a solution and come to an agreement under the brokerage of UNFICYP, they had not used that opportunity to the full. Any suggestions – such as meetings on neutral territory between the police authorities, the questioning of the suspects through "the video recording interview method" in the UN buffer zone, the possibility of an *ad hoc* arrangement or trial at a neutral venue, the exchange of evidence, and dealing with the issue on a technical services level – that had been made in an effort to find a compromise solution were met with downright refusal on the part of the authorities. While a number of bi-communal working groups and technical committees had been set up, none appeared to have taken up the case with the purpose of furthering the investigation.

As a result of the respondent States' failure to cooperate, their respective investigations had remained open and nothing had been done for more than eight years. The passage of time had inevitably eroded the amount and quality of evidence available and was liable to compromise the chances of the investigation being completed. It also prolonged the ordeal for the members of the family.

In the present, ultimately straightforward, case a considerable amount of evidence had been collected and eight suspects had quickly been identified, traced and arrested. The failure to cooperate directly or through UNFICYP had resulted in their release. If there had been cooperation, in line with the procedural obligation under Article 2, criminal proceedings may have ensued against one or more of the suspects or the investigation may have come to a proper conclusion.

Conclusions: violation by Turkey (unanimously); violation by Cyprus (five votes to two).

Article 41: EUR 8,500 each in respect of non-pecuniary damage.

(See also *Rantsev v. Cyprus and Russia*, 25965/04, 7 January 2010, Information Note 126)

Effective investigation/Enquête effective

Lack of effective investigation into murder of journalist critical of the Government: *violation*

Absence d'enquête effective sur le meurtre d'un journaliste qui était critique vis-à-vis du gouvernement : *violation*

Huseynova – Azerbaijan/Azerbaïdjan, 10653/10, judgment/arrêt 13.4.2017 [Section V]

Facts – The applicant's husband, Mr Elmar Huseynov, was a prominent independent journalist in Azerbaijan. In March 2005 he was shot dead on his way home from work. Criminal proceedings were instituted and two Georgian nationals were identified as suspects. The Georgian authorities refused to extradite them from Georgia to Azerbaijan. In the Convention proceedings the applicant complained under Article 2 that her husband had been murdered by State agents and that the domestic authorities had failed to carry out an adequate and effective investigation.

Law – Article 2 (*substantive aspect*): There was no evidence enabling the Court to find beyond reasonable doubt that the applicant's husband had been murdered by State agents or that the State was behind his murder. Nor was there any evidence before the Court indicating that the domestic authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the applicant's husband and had failed to protect his right to life.

Conclusion: no violation (unanimously).

Article 2 (*procedural aspect*): International instruments such as the European Convention on Extradition and the 1993 Minsk Convention, to which both States were parties, clearly provided for the transfer of the criminal case to the Georgian authorities in order for the murder charge to be prosecuted in Georgia. Indeed, the Georgian authorities had expressly referred to that possibility in their reply to the extradition request. There was no evidence that the Azerbaijani authorities had examined such a possibility.

Even though the applicant had been granted victim status in the investigation, the investigating authorities had constantly denied her access to the case file. The relevant domestic law provided no right of access, a situation the Court found to be unacceptable. That situation had deprived the applicant of the opportunity to safeguard her legitimate interests and prevented any scrutiny of the investigation by the public.

Regard being had to the overall factual context of the case, the applicant's allegations that the killing of her husband was related to his activities as a journalist were not at all implausible. The magazine that he had operated independently had a reputation of being strongly critical of the Azerbaijani Government and the opposition; its publication or dissemination had been interfered with by the Azerbaijani authorities; and over thirty civil and criminal proceedings had been brought against him. It was apparent that his murder could have a chilling effect on the work of other journalists in the country. In such circumstances, there had been every reason for the investigating authorities to explore with particular diligence whether the murder, which appeared to have been carefully planned, could have been linked to his journalistic activities.

The Azerbaijani authorities had failed to carry out an adequate and effective investigation into the circumstances surrounding the killing of the applicant's husband.

Conclusion: violation (unanimously).

Article 41: EUR 20,000 in respect of non-pecuniary damage.

ARTICLE 3

Degrading treatment/Traitement dégradant

Minor held in handcuffs and underwear at police station for two and a half hours and subsequently placed in cell with adults: *violation*

Mineur menotté en sous-vêtements au commissariat de police pour au moins deux heures et demie et placé dans une cellule avec des adultes : *violation*

Zherdev – Ukraine, 34015/07, judgment/arrêt 27.4.2017 [Section V]

Facts – The applicant, a sixteen-year-old boy, was interviewed at a police station in connection with a murder investigation. He was left in his underwear for several hours and subsequently placed in a cell with adults.

Law – Article 3 (*substantive aspect*): The applicant was left handcuffed in just his underwear at the police station for at least two and a half hours. The authorities clearly had a valid reason for taking his clothes which could have provided physical proof of his involvement in the crime. However, even if there was no conclusive evidence before the Court that the

authorities had intended to humiliate or debase him, the applicant was a minor and there was no explanation for their failure to provide him with replacement clothes or some other covering sooner and to keep him handcuffed in that state for at least two and a half hours. The applicant reported that the incident had left a particularly strong impression on him in view of the possibility that he might be charged with a sex offence and thus exposed to a risk of rape in prison.

The fact that the applicant, a minor facing the criminal-justice system for the first time, was left handcuffed and almost without clothes for at least two and a half hours in a state of uncertainty and vulnerability could be considered of itself to raise an issue under Article 3. Moreover, his placement, in violation of domestic law, with adult detainees for the following three days must have contributed to his feelings of fear, anguish, helplessness and inferiority, and so diminished his dignity.

The applicant had thus been subjected to "degrading" treatment.

Conclusion: violation (unanimously).

Article 41: EUR 8,000 in respect of non-pecuniary damage.

The Court also found unanimously a violation of the procedural aspect of Article 3, a violation of Article 5 § 3 in view of the length of the applicant's detention and no violation of Article 6 §§ 1 and 3 regarding the fairness of the criminal proceedings against him.

(See also *Bouyid v. Belgium* [GC], 23380/09, 28 September 2015, Information Note 188; and *Lyalyakin v. Russia*, 31305/09, 12 March 2015, Information Note 183)

ARTICLE 5

Article 5 § 1

Lawful arrest or detention/Arrestation ou détention régulières

Detention with a view to expulsion of vulnerable asylum-seeker with mental-health issues: *no violation*

Détention, en vue de l'expulsion d'un demandeur d'asile, vulnérable en raison de son état de santé mentale : *non-violation*

Thimothawes – Belgium/Belgique, 39061/11, judgment/arrêt 4.4.2017 [Section II]

(See Article 5 § 1 (f) below/Voir l'article 5 § 1 f) ci-dessous, page 15)

Procedure prescribed by law/Voies légales

Serious defect in legal representation in proceedings for compulsory admission to psychiatric hospital: *violation*

Défaillance grave du représentant légal du requérant dans le cadre d'une procédure d'internement d'office en hôpital psychiatrique : *violation*

V.K. – Russia/Russie, 9139/08, judgment/arrêt 4.4.2017 [Section III]

Facts – The applicant was compulsorily admitted to a psychiatric hospital following a hearing at which he was represented by a court-appointed lawyer. According to the court order, the lawyer stated that she considered "inpatient treatment to be reasonable". In the Convention proceedings, the applicant complained under Article 5 § 1, *inter alia*, that the court-appointed lawyer had not followed his instructions, but had instead effectively consented to his admission to hospital against his will.

Law – Article 5 § 1: From the documents in the case file it appeared that the participation of the applicant's court-appointed lawyer in the hearing was limited to stating that the placement of the applicant in hospital was "reasonable". The applicant, in respect of whom no legal guardian had been appointed, had presumably enjoyed full legal capacity at the hearing and so had been entitled to instruct his lawyer to act in any lawful way he considered coherent with his interests. While the court-appointed lawyer might have concluded that it was in her client's best interests to undergo treatment, any effort on her part to serve the interests of justice and discharge the duty to the court should not have resulted in an unconditional endorsement of the hospital's proposal without any reference to the applicant's position. Her conduct could not, therefore, be reconciled with the requirements of effective representation.

The domestic courts, as the ultimate guardians of fairness in the domestic proceedings, had done nothing to rectify that serious defect in the applicant's legal representation. Indeed, the first-instance court had referred to the court-appointed lawyer's consent as one of the factors for the applicant's admission to hospital while the appellate court had not considered the applicant's arguments on that

issue sufficient for an annulment of the first-instance court's decision.

Accordingly, in view of the flagrant defect in the applicant's legal representation and the manifest failure of the domestic courts to consider that defect worthy of consideration, the proceedings leading to the applicant's involuntary admission to hospital had not been fair and proper as required by Article 5 of the Convention.

Conclusion: violation (unanimously).

Article 41: EUR 1,500 in respect of non-pecuniary damage.

Article 5 § 1 (f)

Prevent unauthorised entry into country/ Empêcher l'entrée irrégulière sur le territoire – Expulsion

Detention with a view to expulsion of vulnerable asylum-seeker with mental-health issues: *no violation*

Détention, en vue de l'expulsion d'un demandeur d'asile, vulnérable en raison de son état de santé mentale : *non-violation*

Thimothawes – Belgium/Belgique, 39061/11, judgment/arrêt 4.4.2017 [Section II]

En fait – Le requérant, demandeur d'asile, fut détenu en vue de son expulsion. Devant la Cour européenne, il fait valoir que les mesures de détention n'ont pas été mises en œuvre de bonne foi car elles ont été appliquées de façon automatique sans que les autorités n'en aient apprécié individuellement la nécessité. Or, en raison de son état de santé psychologique, il était vulnérable, ce qui aurait dû amener ces dernières à effectuer un examen individuel de sa situation pour évaluer s'il était nécessaire de le détenir et déterminer si la détention était adaptée.

En droit – Article 5 § 1 f) : Il ne saurait être reproché aux autorités belges de ne pas en avoir tenu compte des troubles mentaux du requérant car elles n'en avaient pas connaissance quand a été prise la décision le 1er février 2011 de le détenir dans le centre de transit de l'aéroport en vue de l'empêcher de pénétrer irrégulièrement sur le territoire belge.

Le requérant a, dès les premières semaines de sa détention, eu recours aux services de soutien psychologique du centre de transit puis du centre fermé. Il ne s'est toutefois prévalu de ses problèmes de santé pour la première fois que dans sa requête de mise en liberté introduite le 6 avril 2011. À partir de ce moment-là, les autorités ne pouvaient plus ignorer la situation du requérant.

Cependant la mesure de détention du 5 mai 2011 ne contenait pas de référence aux circonstances propres du requérant. À l'instar des deux autres décisions de privation de liberté et, conformément au prescrit de la loi sur les étrangers, la décision du 5 mai 2011 se limitait à se référer au fait que le requérant a tenté de pénétrer sur le territoire sans satisfaire aux conditions et qu'il a demandé à la frontière à être reconnu comme réfugié, d'une part, et que le maintien dans un lieu déterminé est estimé nécessaire afin de garantir le refoulement éventuel, d'autre part.

Les décisions successives de privation de liberté étaient ainsi formulées de manière laconique et stéréotypée, et ne permettaient pas au requérant de connaître les raisons justifiant concrètement sa détention.

Cela étant dit, cette circonstance n'a pas empêché les juridictions compétentes d'exercer leur contrôle, fût-il limité à un contrôle de légalité, en tenant compte des exigences de la jurisprudence de la Cour relative à l'article 5 § 1 f) et des circonstances particulières du requérant.

De plus, pour pouvoir conclure à une violation de l'article 5 § 1, le requérant aurait dû établir qu'il était dans une situation particulière qui pouvait *prima facie* conduire à la conclusion que sa détention n'était pas justifiée. Or la seule santé mentale du requérant n'était pas, en l'espèce, de nature à pouvoir conduire à une telle conclusion : le requérant a bénéficié d'une attention particulière dans les deux centres fermés où il a séjourné et les rapports établis par les services de soutien psychologique n'ont pas fait état de contre-indication à la détention.

Eu égard à ce constat, il ne saurait être considéré que la mesure de détention n'était pas adaptée à son état de santé mentale ni que les autorités auraient été tenues de chercher des mesures moins restrictives à sa détention.

Enfin eu égard aux circonstances de la cause, qui ont impliqué la mise en œuvre d'une procédure de rapatriement vers la Turquie, puis d'une procédure de refoulement vers l'Égypte, ainsi que l'examen de deux demandes d'asile, la durée de la détention ne peut être considérée comme étant excessive.

Conclusion : non-violation (cinq voix contre deux).

(Voir la fiche thématique Migrants en détention)

Expulsion

Detention of illegal immigrant for two months despite his partner's pregnancy: *inadmissible*

Détention administrative de plus de deux mois dans un centre fermé d'un migrant sans papiers malgré la grossesse de sa compagne: *irrecevable*

Muzamba Oyaw – Belgium/Belgique, 23707/15, decision/décision 28.2.2017 [Section II]

En fait – Le requérant, ressortissant congolais, fut détenu dans un centre fermé pour illégaux, alors que sa compagne, ressortissante belge, était enceinte de ses œuvres d'environ sept mois et vivait une grossesse difficile.

Le requérant soutient que sa privation de liberté dans un centre fermé pour illégaux par les autorités belges était illégale et arbitraire. Il se plaint aussi que sa détention administrative en vue de son rapatriement a porté atteinte à sa vie familiale et privée.

En droit – Article 5 § 1 f) : Si l'article 5 § 1 f) n'implique pas que la détention doive être considérée comme raisonnablement nécessaire, un test de nécessité de la détention peut être requis par la législation nationale, visée par cette disposition. Tel est le cas en droit belge suite à la transposition de la directive 2008/115/CE du Parlement européen et du Conseil (« la directive Retour »).

La détention du requérant a été motivée par l'office des étrangers (« l'OE ») en août 2014 par son séjour illégal, le fait qu'il n'était pas en possession des documents requis, ainsi que le non-respect de l'ordre de quitter le territoire précédent.

Aussi l'OE, ignorant la situation familiale difficile du requérant lors de sa mise en détention, ne peut pas se voir reproché de ne pas en avoir tenu compte lors de son placement en détention.

Cela étant dit, cette circonstance n'a pas empêché les juridictions compétentes d'exercer leur contrôle, fût-il limité à un contrôle de légalité, en tenant compte des exigences de la jurisprudence de la Cour relative à l'article 5 § 1 f) et des circonstances particulières liées au requérant.

Ainsi, l'examen de la situation personnelle du requérant a par après conduit à l'ordre de sa mise en liberté par la chambre du conseil en septembre 2014. Si la chambre des mises en accusation, sur appel de l'État, a ensuite ordonné le maintien en détention du requérant, elle a aussi examiné la situation familiale du requérant, ainsi que les conditions justifiant une ingérence de l'autorité publique au regard de l'article 8 § 2 de la Convention dans la vie familiale du requérant, supposant que celle-ci était établie. Or la juridiction considéra que l'ingérence litigieuse était prévue par la loi sur les étrangers, poursuivait le but de contrôle de l'entrée et du séjour des étrangers sur le territoire de l'État belge, et était nécessaire en raison des sérieuses raisons de croire que le requérant n'obtempérait pas à l'ordre de quitter le territoire qui lui avait été notifié. La chambre des mises en accusation souligna explicitement que toute mesure alternative demeurait vaine. En effet, plusieurs ordres de quitter le territoire avaient été précédemment notifiés au requérant, et celui-ci avait confirmé son souhait de continuer à séjourner en Belgique et de ne pas retourner au Congo à l'audience. Ainsi, les juridictions compétentes ont procédé à un examen suffisant de la nécessité de la détention du requérant, condition imposée par le droit interne.

La décision de privation de liberté d'octobre 2014 a respecté les prescrits de la loi sur les étrangers, et était étroitement liée au motif de détention, à savoir la procédure d'expulsion du requérant. En effet, l'OE avait entrepris toutes les démarches nécessaires en vue de l'éloignement du requérant et celles-ci étaient poursuivies avec toute la diligence requise.

Enfin, la durée totale de la détention du requérant n'a pas été excessive. La détention a duré 2 mois et 19 jours et a abouti à la libération du requérant en novembre 2014, soit bien avant l'expiration du délai légal.

Eu égard à ce qui précède, la Cour estime que la détention du requérant constituait une détention « régulière » au sens de l'article 5 § 1 f) de la Convention.

Conclusion : irrecevable (défaut manifeste de fondement).

Article 8 : Les autorités belges ont reconnu implicitement et *a posteriori* une vie familiale entre le requérant, sa compagne et l'enfant en libérant le requérant à la date de l'accouchement de sa compagne.

Le fait d'enfermer le requérant dans un centre fermé pour illégaux, en causant ainsi une séparation entre celui-ci et sa compagne enceinte de ses œuvres, peut s'analyser comme une « ingérence » dans l'exercice effectif de sa vie familiale, prévue par la loi, et ayant comme but légitime la défense de l'ordre.

Les autorités belges pouvaient raisonnablement considérer que le requérant présentait un risque de se soustraire au contrôle des autorités belges de sorte que son placement dans un centre fermé

afin de poursuivre son éloignement ait pu paraître justifié par un besoin social impérieux. De plus, des alternatives à la détention ont été envisagées par les juridictions internes.

La vie familiale du requérant s'est développée à une époque où il savait que sa situation au regard des règles d'immigration était telle que le maintien de cette vie familiale en Belgique revêtirait un caractère précaire. Par ailleurs, dans le cadre de son recours à l'encontre de la mesure d'éloignement, la vie familiale invoquée par le requérant a fait l'objet d'une analyse approfondie par le Conseil du contentieux des étrangers, sans apparence d'arbitraire ou de manifestement déraisonnable dans son appréciation. Aussi, la compagne du requérant a bénéficié d'un suivi médical et a pu maintenir des contacts avec ce dernier lors de sa détention. Enfin, la durée totale de la détention du requérant a été de 2 mois et 19 jours, et n'a donc pas dépassé le délai légal, et l'intéressé a finalement été libéré à la date de l'accouchement de sa compagne.

Eu égard à l'ensemble de ces éléments, les mesures de privation de liberté n'étaient pas disproportionnées et il ne saurait être reproché aux autorités belges de ne pas avoir ménagé un juste équilibre entre les intérêts en présence en mettant le requérant en détention administrative en vue de son expulsion.

Conclusion : irrecevable (défaut manifeste de fondement).

Article 5 § 4

Review of lawfulness of detention/Contrôle de la légalité de la détention

Alleged inability to challenge lawfulness of pre-trial detention owing to application of temporary secrecy regime in money laundering investigation: *no violation*

Incapacité présumée de défier la légalité d'une détention provisoire en raison de l'application du régime provisoire de secret dans une enquête de blanchiment d'argent : *non-violation*

Podeschi – San Marino/Saint-Marin, 66357/14, judgment/arrêt 13.4.2017 [Section I]

Facts – The applicant, a politician, was arrested and detained on remand for a year and four months on suspicion of money laundering. Before the European Court, he complained, *inter alia*, that contrary to Article 5 § 4 of the Convention he had repeatedly been denied access to documentation he needed to see to be able to challenge his detention, but which had been classified under the temporary secrecy regime applicable in certain investigations.[1]

Law – Article 5 § 4: Certain materials had been classified because of the need to further the investigation and to avoid compromising measures planned by the investigators in connection with a suspected money laundering racket.

There was no doubt that money laundering directly threatened the rule of law, so there was a strong public interest in keeping certain police methods secret and conducting criminal investigations efficiently. That by itself constituted sufficient justification for the imposition of some restrictions on the adversarial nature of proceedings in connection with Article 5 § 4.

The applicant or his legal advisers had been able effectively to participate in court proceedings concerning his continued detention and had repeatedly made submissions at different levels of jurisdiction.

The law concerning the temporary secrecy regime was circumscribed as reasons of an "exceptional nature" were required and the regime could usually only last for the time strictly necessary and was subject to maximum time-limits. In the light of the strong countervailing public interest in combatting money laundering, the safeguards in place could not, *a priori*, be considered insufficient.

Turning to the facts of the applicant's case, the domestic courts did not appear to have based themselves in their decisions on essential documentation which had been not available to the applicant. Nor did it emerge from the facts that any of the elements not disclosed to the applicant had formed the basis of the domestic courts' decisions in relation to their reasonable suspicion or were specifically referred to in those decisions. It followed that the applicant could still have challenged the existence of reasonable suspicion against him, in particular the grounds and elements on which the charges were based, on the basis of the information in his possession, as he had done on various occasions.

As to the fear that the applicant would tamper with evidence or reoffend, the facts mentioned by the domestic court in its decision had been sufficiently

1. Article 5 of Law no. 93/2008 concerning criminal procedural rules and the confidentiality of criminal investigations enabled an inquiring judge to apply the temporary secrecy regime where for specific reasons of an exceptional nature the investigation could not be carried out successfully otherwise.

detailed to enable the applicant to contest them as being a basis for his detention. Furthermore, the fear of tampering with evidence was not solely based on the applicant's behaviour while in detention, but also on his prior behaviour and his capacity to manipulate the truth. In the complex and serious sphere of money laundering, which implied an ability to conceal funds of illegal origin and subsequently to surreptitiously reintroduce them into the legal financial system, a general risk of tampering with evidence, or reoffending, flowing from the very nature of organised crime, could exist. Further, a reference that had been made to the applicant's behaviour while in detention, without the evidence being disclosed to the applicant, was only a supplementary argument to a corollary ground of detention, unrelated to the unabated reasonable suspicion. In view of the foregoing, the fact that in a decision of September 2014 the authorities had partly relied on elements which were not included in the applicant's case-file did not suffice in itself to find a breach of Article 5 § 4.

Conclusion: no violation (unanimously).

The Court also found unanimously no violation of Article 3 in respect of conditions of the applicant's detention and no violation of Article 5 § 3 concerning the length of the applicant's pre-trial detention.

ARTICLE 6

Article 6 § 1 (civil)

Civil rights and obligations/Droits et obligations de caractère civil –
Access to court/Accès à un tribunal

Inability to challenge expulsion from association in the civil courts: *violation*

Impossibilité de contester devant les juridictions civiles l'expulsion d'un membre d'une association : *violation*

Lovrić – Croatia/Croatie, 38458/15, judgment/arrêt 4.4.2017 [Section II]

Facts – The applicant was a member of a hunting association. In 2012 a general meeting adopted a resolution expelling him from that association. The applicant brought a civil action which was declared inadmissible on the grounds that the matter was outside the jurisdiction of the courts. In the proceedings before the European Court the applicant complained that he had been unable to challenge that decision before judicial authorities.

Law – Article 6 § 1

(a) *Admissibility* – Article 6 § 1 secured to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. That right extended only to disputes over civil rights and obligations which could be said to be recognised under domestic law, irrespective of whether such rights were protected under the Convention. The dispute had to be genuine and serious; it might relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings had to be directly decisive for the right in question.

Croatian law afforded judicial protection to members' rights stemming from the statute of the association to which they belonged. The right to be a member of an association was a right of a civil nature, concomitant to the right to freedom of association, and Article 6 § 1 applied to proceedings concerning expulsion from an association. It was evident that the proceedings the applicant complained of concerned a genuine and serious dispute over his freedom of association, in particular over his right to remain a member of the association in question, and that the outcome of those proceedings was directly decisive for the right and the freedom in question.

Conclusion: admissible (majority).

(b) *Merits* – The restriction on the applicant's right of access to court pursued the legitimate aim of respect for the autonomy of associations. The organisational autonomy of associations constituted an important aspect of their freedom of association protected by Article 11. In particular, associations had to be able to wield some power of discipline, even to the point of expulsion, without fear of outside interference. However, freedom of association and, consequently, the organisational autonomy of associations, were not absolute. State interference with the internal affairs of associations could not be completely excluded. In particular, an association had to be held to some minimum standard in expelling a member. In such cases the scope of judicial review could be restricted in order to respect the organisational autonomy of associations. However, the applicant, who contested his expulsion from the association, had been completely denied access to court.

Conclusion: violation (six votes to one).

Article 41: No claim made. The most appropriate form of redress would be to reopen the proceedings.

(See *APEH Üldözötteinek Szövetsége and Others v. Hungary*, 32367/96, 5 October 2000, Information Note 23)

Fair hearing/Procès équitable

Failure by divorce court adequately to ensure proceedings had been served on respondent: *violation*

Mesures insuffisantes prises par un tribunal pour s'assurer que la partie défenderesse avait reçu signification de la demande de divorce : *violation*

Schmidt – Latvia/Lettonie, 22493/05, judgment/arrêt 27.4.2017 [Section V]

Facts – The applicant separated from her husband with whom she had been living in Riga (Latvia) and moved to the couple's former residence in Hamburg (Germany). Unbeknown to the applicant, her husband subsequently brought divorce proceedings in Latvia. He informed the divorce court that he did not know her current address. After an initial failed attempt to serve the divorce papers on the applicant at the couple's Riga address, the divorce court effected service through two notifications in the Latvian Official Gazette. Unaware of the proceedings, the applicant did not attend the hearing and the divorce was pronounced in her absence. In the Convention proceedings, she complained under Article 6 § 1 that she had been denied a fair hearing.

Law – Article 6 § 1: Comparative law research concerning service procedures in thirty-one Council of Europe member States indicated that plaintiffs were required to indicate the defendant's address. Where the address was unknown, reasonable efforts had to be made to establish it, with the onus in certain States being on the domestic courts and in others on the plaintiff or another party such as a prosecutor, bailiff or special representative. The Court emphasised however that, regardless of which approach was chosen, the domestic authorities had to act with due diligence to ensure that defendants were informed of proceedings against them and given the opportunity to appear before the courts and defend themselves.

Latvian law did not require the domestic courts to take reasonable steps to establish the defendant's place of residence of their own motion. Nor were they or any other person or official required to verify whether any, let alone sufficient, steps for identifying the defendant's address had been taken by the plaintiff, or to provide safeguards in a situation where the plaintiff had no interest in establishing the defendant's place of residence or was concealing such information from the court. The Court emphasised that the important task of informing defendants of proceedings brought against them could not be left to the plaintiff's discretion. In addition, domestic courts must test the veracity of information submitted to them by a plaintiff. In the instant case, however, despite several indicators that the husband was aware of the applicant's place of residence, the divorce court had not attempted to verify the truthfulness of the information he had provided. The divorce proceedings had thus been incompatible with the requirements of a fair trial.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

Article 6 § 1 (criminal/pénal)

Fair hearing/Procès équitable

Absence of effective judicial procedure for determining whether evidence held by prosecution should be disclosed to defence: *violation*

Absence d'une procédure judiciaire effective qui eût permis de déterminer si des éléments détenus par le procureur devaient être communiquées à la défense : *violation*

Matanović – Croatia/Croatie, 2742/12, judgment/arrêt 4.4.2017 [Section II]

Facts – The applicant, a public official, was placed under special surveillance during an investigation into alleged corruption. Following his trial with a number of other accused, he was convicted of various offences and sentenced to eleven years' imprisonment. The evidence against him included recordings of conversations made during the special surveillance operation. In the Convention proceedings, the applicant alleged, *inter alia*, that he had been denied a fair trial (Article 6 § 1 of the Convention) because he had not been given access to the original recordings and because some of the recordings had not been disclosed to him at all on the grounds that they were not relevant to his case and touched upon the private lives of third parties.

Law – Article 6 § 1 (*non-disclosure and use of evidence obtained by special investigative measures*): The applicant's complaints of procedural unfairness related to his impaired access to three main categories of evidence obtained by the use of secret surveillance measures.

The first category concerned surveillance recordings submitted in evidence and relied upon for the applicant's conviction. The Court noted that the applicant had had access to transcripts of the recordings commissioned by the investigating judge and the trial court and prepared by an expert whose independence and impartiality were never called into question. The recordings were played back at the trial, the applicant was given an ample opportunity to compare the transcripts against the played material and his objections concerning the discrepancies between the transcripts and the recordings were duly attended to and further expert reports were commissioned in order to clarify those discrepancies. The applicant had also availed himself of the opportunity to question the validity of the evidence at issue and the domestic courts had given thorough answers to his objections. The applicant had never contested that the recorded conversations took place or challenged the authenticity of the recordings. The Court therefore concluded that there had been no unfairness as regards the recordings falling into the first category.

The second category concerned recordings of the applicant and the other accused that were not relied upon for the applicant's conviction. As regards this category, the Court noted that, despite being given access to sufficiently detailed reports on his conversations with third parties, the applicant had failed to make any specific argument concerning the possible relevance of the evidence at issue at any point during the domestic proceedings. The Court was thus not able to conclude that his alleged impossibility to access the recordings belonging to this category was of itself sufficient to find a breach of his right to a fair trial. Nevertheless, in its assessment of the overall fairness of the proceedings, it would remain mindful of this restriction on the applicant's defence rights.

The third category of evidence was comprised recordings concerning other individuals who were not ultimately prosecuted and were not relied on in the applicant's conviction. The applicant was denied access to any information on the grounds that they he had no right of access to the recordings as they were not relevant to his case and touched upon the private lives of others. However, no procedure was put in place which would allow the competent court to assess, upon the applicant's application, their relevance to the case, specifically whether they contained such particulars as could enable the applicant to exonerate himself or to have his sentence reduced or whether they bore relevance to the admissibility, reliability and completeness of the evidence adduced during the proceedings. The Supreme Court's finding that the State Attorney had been in a position to make a selection of the evidence to be used in the proceedings was at variance with the Court's case-law according to which a procedure whereby the prosecuting authorities themselves attempt to assess what may be relevant, without any further procedural safeguards for the rights of the defence, cannot comply with the requirements of Article 6 § 1.

It was therefore evident that, in view of the deficient procedure for the disclosure of the evidence under consideration, the applicant had not been in a position to form a specific argument as to the relevance of the evidence in question and to have the competent court examine his application in the light of his right to effectively prepare his defence. He was thus prevented from having a procedure whereby it could be established whether the evidence in the possession of the prosecution that had been excluded from the file might have reduced his sentence or put into doubt the scope of his alleged criminal activity.

Conclusion: violation (unanimously).

Article 41: EUR 1,500 in respect of non-pecuniary damage (four votes to three); claim in respect of non-pecuniary damage dismissed.

The Court also held, unanimously, that there had been no violation of Article 8 of the Convention and no violation of Article 6 § 1 with regard to the applicant's plea of entrapment.

Article 6 § 1 (disciplinary/disciplinaire)

Independent and impartial tribunal/Tribunal indépendant et impartial

Alleged procedural irregularities in proceedings for removal of judges from office: *relinquishment in favour of the Grand Chamber*

Vices de procédure allégués dans des procédures de révocation de juges : *dessaisissement au profit de la Grande Chambre*

Andriy Denisov – Ukraine, 76639/11 [Section V]

The applicants, who were members of the Ukrainian judiciary, were dismissed from their posts as judges, or in one case president, of domestic courts on the basis of facts established by the High Council of Justice. They challenged their dismissals before the Higher Administrative Court but to no avail.

In the Convention proceedings, all the applicants complain under Article 6 that their dismissal proceedings were unfair as their dismissals were not considered by an independent and impartial tribu-

nal. Certain applicants further complain of (i) unfair restrictions on their right of access to court, (ii) the length of the domestic proceedings, (iii) a failure to comply with the Convention requirements relating to legal certainty, equality of arms, a "tribunal established by law" and a public hearing, and (iv) that the decisions in their cases were unlawful and not properly reasoned or substantiated.

Some of the applicants also complain that their private lives were substantially affected by their dismissals (Article 8 of the Convention).

On 25 April 2017 a Chamber of the Court decided to relinquish jurisdiction in favour of the Grand Chamber.

ARTICLE 8

Respect for private life/Respect de la vie privée – Positive obligations/Obligations positives

Legal requirements for rectification of civil status for transgender persons: *violation; no violations*

Conditions légales d'un changement d'état civil pour les personnes transgenres : *violation ; non-violations*

A.P., Garçon and/et Nicot – France, 79885/12 et al., judgment/arrêt 6.4.2017 [Section V]

En fait – Les requérants sont des personnes transgenres. Entre 2007 et 2009, ils demandèrent en justice la rectification du sexe et du prénom indiqués sur leur acte de naissance.

De façon générale, les tribunaux les déboutèrent au motif qu'ils n'avaient pas prouvé de façon certaine avoir subi le traitement médical et chirurgical nécessaire pour parvenir à une conversion sexuelle irréversible.

Pour le deuxième requérant, les tribunaux retinrent en outre que celui-ci n'avait pas établi la réalité du syndrome transsexuel. Pour le premier requérant, le tribunal s'attacha plus particulièrement au fait que l'intéressé avait refusé de se soumettre à une expertise médicale de vérification de son intimité, qui avait été ordonnée au motif de l'incomplétude des preuves fournies.

En 2012 et 2013, la Cour de cassation rejeta leurs pourvois. Devant la Cour européenne, les requérants dénoncent ces conditions (qui découlaient du droit alors en vigueur) comme attentatoires à la vie privée ou dégradantes.

En droit – Article 8 : La Cour estime que les griefs sont à examiner sous l'angle des obligations positives de l'État en matière de garantie du respect de la vie privée.

a) *Sur la condition d'irréversibilité de la transformation de l'apparence* (deuxième et troisième requérants) – Par-delà l'ambiguïté regrettable des termes formels de la loi (exigence d'une transformation irréversible de l'« apparence »), le droit positif français assujettissait bien la reconnaissance de l'identité sexuelle des personnes transgenres à la réalisation d'une opération stérilisante ou d'un traitement qui, par sa nature et son intensité, entraînait une très forte probabilité de stérilité.

i. *Marge d'appréciation de l'État* – Bien qu'il n'y ait pas consensus entre les États membres sur la condition de stérilité et que des intérêts publics soient en jeu, les éléments suivants amènent à considérer que l'État défendeur ne disposait ici que d'une marge d'appréciation restreinte :

– au cœur-même des présentes requêtes se trouvent des aspects essentiels de l'identité intime des personnes, si ce n'est de leur existence : d'une part, l'intégrité physique (dès lors qu'il est question de stérilisation) ; d'autre part, l'identité sexuelle ;

– au surplus, la condition litigieuse a disparu du droit positif de onze États parties entre 2009 et 2016, dont la France, et des réformes dans ce sens sont débattues dans d'autres États parties. Cela montre qu'une tendance vers son abandon, basée sur une évolution de la compréhension du transsexualisme, se dessine en Europe ces dernières années ;

– par ailleurs, de nombreux acteurs institutionnels européens et internationaux de la promotion et de la défense des droits humains ont très nettement pris position en faveur de l'abandon du critère de stérilité, antérieurement ou concomitamment aux arrêts rendus par la Cour de cassation en l'espèce.

ii. *Mise en balance des intérêts* – Certes, la préservation du principe de l'indisponibilité de l'état des personnes, la garantie de la fiabilité et de la cohérence de l'état civil et, plus largement, l'exigence de sécurité juridique, relèvent de l'intérêt général.

Cependant, le droit positif français de l'époque pertinente mettait les personnes concernées devant un dilemme insoluble : soit subir malgré elles une opération ou un traitement stérilisants, et renoncer au plein exercice de leur droit au respect de leur intégrité physique ; soit renoncer à la reconnaissance de leur identité sexuelle et donc au plein exercice de ce même droit.

Aux yeux de la Cour, subordonner la reconnaissance de l'identité sexuelle des personnes transgenres à la réalisation d'une opération ou d'un traitement stérilisants – ou qui produit très probablement un effet de cette nature – qu'elles ne souhaitent pas subir, revient à conditionner le plein exercice de leur droit au respect de leur vie privée consacré par l'article 8 à la renonciation au plein exercice de leur droit au respect de leur intégrité physique, garanti non seulement par cette disposition mais aussi par l'article 3 de la Convention.

Il y a donc eu rupture du juste équilibre à ménager entre l'intérêt général et les intérêts des personnes concernées.

Conclusion : violation (six voix contre une).

b) *Sur la condition de réalité du syndrome transsexuel* (deuxième requérant) – Le requérant soutient que le transgénérisme n'est pas une maladie et que la psycho-pathologisation des identités de genre est un facteur de stigmatisation. Tel était aussi le sens d'un avis émis en 2013 par la Commission nationale consultative des droits de l'homme (CNCDH).

i. *Marge d'appréciation de l'État* – Bien qu'un aspect important de l'identité des personnes transgenres soit en cause puisqu'il s'agit de la reconnaissance de leur identité sexuelle, les éléments suivants conduisent à conclure que les États parties conservent une large marge d'appréciation quant à la décision d'y poser la condition d'un psychodiagnostic préalable :

– il y a à l'heure actuelle une quasi-unanimité à cet égard parmi les États parties dans lesquels la reconnaissance juridique de l'identité de genre des personnes transgenres est possible ;

– le « transsexualisme » figure au chapitre 5, relatif aux « troubles mentaux et du comportement », de la classification internationale des maladies publiée par l'Organisation mondiale de la santé (CIM-10 ; n° F64.0) ;

– contrairement à la condition de stérilité, l'obligation d'un psychodiagnostic ne met pas directement en cause l'intégrité physique des individus ;

– surabondamment, il n'apparaît pas qu'il y ait sur ce point des prises de position d'acteurs européens et internationaux de promotion et de défense des droits fondamentaux aussi tranchées que sur la condition de stérilité.

ii. *Mise en balance des intérêts* – Selon la haute autorité française de la santé (2009), l'exigence d'un diagnostic de dystrophie du genre s'inscrit dans le cadre d'une démarche de « diagnostic différentiel » visant à donner aux médecins l'assurance, en amont du traitement endocrinologique ou chirurgical, que la souffrance du patient ne provient pas d'autres causes.

Cette exigence tend ainsi à préserver les intérêts des personnes concernées, en faisant en sorte qu'elles ne s'engagent pas erronément dans un processus de changement légal de leur identité.

En cela, du reste, les intérêts du requérant se confondent partiellement avec l'intérêt général attaché à la préservation du principe de l'indisponibilité de l'état des personnes, de la fiabilité et de la cohérence de l'état civil, et de la sécurité juridique, dès lors que cette exigence est également favorable à la stabilité des modifications du sexe à l'état civil.

Compte tenu de sa large marge d'appréciation, en retenant le motif litigieux pour rejeter la demande du requérant, l'État défendeur a maintenu un juste équilibre entre les intérêts concurrents.

Conclusion : non-violation (unanimité).

c) *Sur l'obligation de subir un examen médical* (premier requérant) – Le requérant, qui avait fait le choix de subir une opération de conversion sexuelle à l'étranger, soutenait devant le juge interne qu'il remplissait en conséquence les conditions requises par le droit positif pour obtenir un changement d'état civil. L'expertise litigieuse, qui visait à établir si cette allégation était exacte, a donc été décidée par un juge dans le cadre de l'administration de la preuve, domaine dans lequel la Cour reconnaît aux États parties une très large marge de manœuvre.

Rien ne permet de considérer que la décision était entachée d'arbitraire. Le code de procédure civile conférait aux tribunaux un pouvoir souverain d'appréciation pour ordonner toute mesure d'instruction, y compris des expertises, lorsqu'ils ne disposent pas d'éléments suffisants pour statuer. Et le tribunal a indiqué avec précision les raisons pour lesquelles il jugeait insuffisants les éléments produits ; en conséquence de quoi, il a désigné des experts relevant de trois spécialités différentes et complémentaires, auxquels il a confié une mission détaillée.

Partant, même si l'expertise médicale ordonnée impliquait un examen de l'intimité génitale, l'ampleur de l'ingérence mérite d'être relativisée. En retenant le motif litigieux pour rejeter la demande du requérant, l'État a maintenu un juste équilibre entre les intérêts concurrents.

Conclusion : non-violation (unanimité).

Article 41 : constat de violation suffisant en lui-même pour le préjudice moral.

(Voir la fiche thématique Identité de genre)

ARTICLE 9

Freedom of religion/Liberté de religion

Married couple's joint liability to church tax on account of wife's membership of church: *no violation*

Couple marié assujetti conjointement à l'impôt ecclésial au titre de l'appartenance de l'épouse à une paroisse : *non-violation*

Klein and Others/et autres – Germany/Allemagne, 10138/11 et al., judgment/arrêt 6.4.2017 [Section V]

Facts – The first applicant's wife was a member of the Protestant Church, which under German law was a public-law entity authorised to levy church taxes. The first applicant was not himself a member of the Church. For the tax assessment period of 2008 the couple opted for a joint tax assessment. They received a tax bill which included a special church fee (a form of church tax) for the first applicant's wife of EUR 2,220. Since the wife's income was below the minimum taxable amount that sum was calculated as a proportion of her living expenses, which in turn were calculated on the basis of the spouses' joint income. The amount of EUR 2,220 was offset against a tax reimbursement owed to the first applicant leaving a balance in his favour of EUR 1,203.

Before the European Court, the first applicant complained, *inter alia*, under Article 9 of the Convention that he had been compelled to pay the special church fee levied on his wife without himself being a member of that church.

Law – Article 9: The situation brought about by the German legislation whereby the first applicant was subjected to his wife's financial obligations towards her church without himself being a member of it constituted an interference with the negative aspect (the right not to be compelled to be involved in religious activities against one's will) of the applicant's rights under Article 9 of the Convention. That interference was prescribed by law and pursued the legitimate aim of guaranteeing the rights of churches and religious communities under German law to levy church taxes.

Taking into account the wide margin of appreciation left to Contracting States with regard to the definition of the relations between churches and the State the domestic authorities had adduced relevant and sufficient reasons to justify the tax authorities' offsetting the claims of the Protestant Church on his wife against the first applicant's reimbursement claims, without, in the first place, obtaining the first applicant's consent to such a calculation. The Court so found for the following reasons.

(i) It was the decision of the first applicant and his spouse to make a joint tax declaration which had led to the two separate tax claims being handled together in administrative terms. The administrative mechanism could have been undone by applying for a settlement notice.[1]

(ii) There was nothing to indicate that applying for a settlement notice would have caused the first applicant any financial burden, taken up much of his time or entailed any further consequences.

(iii) As regards the first applicant's argument that the tax bill contained no information on available remedies for the offsetting, the Convention did not guarantee, as such, the right to be informed of available domestic remedies.

Conclusion: no violation (unanimously).

ARTICLE 11

Form and join trade unions/Fonder et s'affilier à des syndicats

Refusal based on statute to recognise trade union as representing staff: *no violation*
Large-scale dismissals of train-union members resulting in absence of union representation for company employees: *violation*

Refus fondé sur la loi de rendre un syndicat représentatif : *non-violation*
Licenciements massifs des adhérents d'un syndicat aboutissant à une désyndicalisation des employés de l'entreprise concernée : *violation*

Tek Gıda İş Sendikası – Turkey/Turquie, 35009/05, judgment/arrêt 4.4.2017 [Section II]

1. Under German law, either spouse can file an objection against that part of the tax bill which applies to them. If the special church fee has been offset against a tax reimbursement due to the spouse who is not a member of a church that spouse can apply for a settlement notice in accordance with Article 218 of the Fiscal Code and thus have the possibility to be repaid the offset amount.

En fait – Ayant eu un nombre suffisant d'adhérents sur les trois usines que comprenaient une société, le syndicat requérant fut déclaré représentatif par le ministère du Travail et de la Sécurité sociale en mai 2004 pour représenter les salariés dans les négociations collectives au regard du critère nécessitant l'adhésion de « la majorité des salariés d'une entreprise ». Cependant la société contesta cette reconnaissance.

En décembre 2004, le tribunal du travail fit droit à la demande de la société en se basant sur un rapport d'expertise qui démontrait qu'en prenant en compte l'ensemble des salariés de l'entreprise employeur, à savoir ceux des trois usines mais aussi ceux du siège de la société, le syndicat requérant ne disposait pas d'un nombre suffisant d'adhérents. Les recours du syndicat requérant n'aboutirent pas.

Peu après, la société licencia les 40 salariés syndiqués au syndicat requérant pour raisons économiques ou pour insuffisances professionnelles. En mars 2004, ces derniers saisirent les tribunaux de travail pour licenciement abusif et sollicitèrent leur réintégration dans la société.

Entre juillet et décembre 2004, les divers tribunaux du travail donnèrent gain de cause aux salariés licenciés estimant que ces derniers avaient été licenciés en raison de leur adhésion à un syndicat. Ils ordonnèrent à la société de les réintégrer et que, à défaut, celle-ci devait verser à chaque salarié licencié une indemnité pour licenciement abusif d'un montant correspondant à un an de salaire.

La société ne réintégra aucune des personnes licenciées et leur versa l'indemnité ordonnée. En 2005, le syndicat requérant ne comptait plus aucun adhérent au sein de la société.

En droit – Article 11

a) *Quant au refus de reconnaître au syndicat requérant la représentativité indispensable pour négocier des accords collectifs* – L'annulation par les juridictions civiles de la représentativité du syndicat requérant constituait une ingérence dans l'exercice de la liberté syndicale de celui-ci.

L'interprétation de la loi faite par les juridictions civiles, selon laquelle les activités complémentaires à l'activité principale d'une entreprise (en l'espèce, l'administration et les activités de recherche et de commercialisation) relèvent du même secteur d'activité que l'activité principale (en l'espèce, l'industrie agroalimentaire) n'était ni arbitraire ni manifestement déraisonnable. Dans ces circonstances, les conditions exigeant que, pour bénéficier de la représentativité dans une entreprise, un syndicat justifiât de l'adhésion d'au moins la moitié du nombre total des salariés de l'entreprise étaient prévues par la loi.

Les juridictions nationales avaient certainement pour but celui d'assurer la défense des droits des travailleurs par des syndicats puissants.

Le refus de reconnaître la représentativité du syndicat requérant n'était pas définitif, et il ne valait que tant que le nombre d'adhérents du syndicat requérant n'avait pas atteint la majorité simple des salariés de l'entreprise.

Par ailleurs, les décisions judiciaires incriminées ne faisaient pas obstacle, en principe, au droit pour le syndicat requérant de chercher à persuader l'employeur, par des moyens autres que les négociations collectives, d'écouter ce qu'il a à dire au nom de ses membres, tout en essayant d'atteindre un nombre plus important d'adhérents parmi les salariés dans l'ensemble de l'entreprise.

Enfin, la thèse du syndicat requérant, selon laquelle les salariés du siège social ne devaient pas être considérés comme relevant du secteur de l'industrie agroalimentaire, aurait pu avoir pour effet d'affaiblir considérablement la possibilité de ces salariés de se syndicaliser.

Dans ces circonstances, la méthode de comptage pour déterminer le nombre de salariés représentant la majorité au sein de l'entreprise incriminée par le syndicat requérant ne touchait pas le cœur même de l'activité syndicale, mais relevait plutôt d'un aspect secondaire. Les décisions judiciaires en cause avaient pour finalité de ménager un juste équilibre entre les intérêts concurrents de la collectivité et du syndicat requérant, et, de ce fait, elles relevaient de la marge d'appréciation de l'État quant à la manière d'assurer tant la liberté syndicale en général que la possibilité pour le syndicat requérant de protéger les intérêts professionnels de ses membres.

Conclusion : non-violation (unanimité).

b) *Quant à la désyndicalisation alléguée de la société par le biais d'un licenciement des membres du syndicat requérant* – Il y a eu une ingérence dans l'exercice par le syndicat requérant, en tant qu'entité distincte de ses membres, de son droit à mener des activités syndicales et des négociations collectives. L'ingérence litigieuse était conforme à la loi telle qu'interprétée par les tribunaux du travail. Par ailleurs, en reconnaissant à l'employeur la possibilité de choisir entre la réintégration des salariés abusivement licenciés ou le versement à ceux-ci d'une indemnité, la législation en cause et les décisions des tribunaux y rela-

tives visaient à éviter des tensions sur les lieux de travail et à protéger ainsi les droits d'autrui et défendre l'ordre public.

La société, en optant pour le versement d'indemnités, a empêché le syndicat requérant de s'organiser en son sein. Ce choix a eu pour conséquence la désyndicalisation de l'ensemble des salariés de la société et la perte pour le syndicat requérant de tous ses adhérents.

Cette perte s'analysait pour le syndicat requérant en une restriction touchant le cœur même de son activité syndicale, ce qui impliquait que les autorités nationales disposaient d'une marge d'appréciation plus restreinte et nécessitait une justification plus étoffée s'agissant de la proportionnalité de l'ingérence. Or rien dans le dossier ne montre que les juridictions civiles impliquées dans l'affaire, lorsqu'elles ont accordé comme indemnités pour licenciement abusif les montants minimums autorisés par la loi, aient procédé à un examen attentif quant à l'effet dissuasif de pareilles indemnités, en prenant en compte par exemple le faible niveau des salaires des employés licenciés et/ou la grande puissance financière de l'entreprise employeur.

Le refus de l'employeur de réintégrer les salariés licenciés et l'octroi d'indemnités insuffisantes pour dissuader l'employeur de procéder à des licenciements abusifs n'enfreignaient pas la loi, telle qu'elle a été interprétée par les décisions judiciaires intervenues en l'espèce. Ainsi, la loi y relative, telle qu'appliquée par les tribunaux, n'imposait pas de sanctions suffisamment dissuasives pour l'employeur qui, en procédant à des licenciements massifs abusifs, a réduit à néant la liberté du syndicat requérant de tenter de convaincre des salariés de s'affilier. Par conséquent, ni le législateur ni les juridictions intervenues en l'espèce n'ont rempli leur obligation positive d'assurer au syndicat requérant la jouissance effective de son droit de chercher à persuader l'employeur d'écouter ce qu'il a à dire au nom de ses membres et, en principe, de son droit de mener des négociations collectives avec lui. Il s'ensuit que le juste équilibre à ménager entre les intérêts concurrents du syndicat requérant et de la société dans son ensemble n'a pas été respecté.

Conclusion : violation (unanimité).

Article 41 : 10 000 EUR pour préjudice moral.

ARTICLE 13

Effective remedy/Recours effectif

Special importance of compensation and access to information under Article 13: *no violation*

Importance particulière de la réparation et de l'accès aux informations au regard de l'article 13 : *non-violation*

Tagayeva and Others/et autres – Russia/Russie, 26562/07 et al, judgment/arrêt 13.4.2017 [Section I]

(See Article 2 above/Voir l'article 2 ci-dessus, page 9)

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies/Épuisement des voies de recours internes

Requirement to use remedy introduced by Ališić Implementation Acts in Serbia and Slovenia: *inadmissible*

Obligation de faire usage d'un recours instauré par les « lois d'application Ališić » en Serbie et en Slovénie : *irrecevable*

Muratović – Serbia/Serbie, 41698/06, decision/décision 21.3.2017 [Section III]
Hodžić – Slovenia/Slovénie, 3461/08, decision/décision 4.4.2017 [Section IV]

Facts – Prior to the dissolution of the Socialist Federal Republic of Yugoslavia ("SFRY"), Mr Muratović had deposited foreign currency in the Tuzla branch of Investbanka and Mr Hodžić in the Sarajevo branch of Ljubljanska Banka Ljubljana. Before the European Court they complained that they had been unable to withdraw their savings.

On 16 July 2014 the Grand Chamber adopted a pilot judgment[1] regarding "old" foreign-currency savings in the foreign branches of Investbanka and Ljubljanska Banka Ljubljana. It found a breach of Article 13 and Article 1 of Protocol No. 1 in respect of Serbia and Slovenia and held that both States should make all necessary arrangements, including legislative amendments, to allow relevant persons to recover

1. *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], 60642/08, 16 July 2014, Information Note 176.

their savings. Both Serbia and Slovenia subsequently introduced legislation intended to implement the requirements of the *Ališić* judgment.[1] Under the legislation they each undertook to pay all unpaid "old" foreign-currency savings of citizens of other SFRY successor States deposited in their banks, as well as all such savings of their own citizens in foreign branches of their banks, together with accrued interest up until a cut-off date. In order that the actual amounts due could be assessed, those concerned had to lodge a request for verification by a set date (23 February 2018 for Serbia, 31 December 2017 for Slovenia).

Law – Article 35: An assessment of whether domestic remedies had been exhausted was normally carried out with reference to the date on which the application was lodged with the Court. However, that rule was subject to exceptions. Among such exceptions were situations where, following a pilot judgment on the merits in which the Court found a systemic violation of the Convention, the respondent State had made available a specific remedy to redress at the domestic level grievances of persons in a similar situation.

The implementing legislation in both States met the criteria set out in the pilot judgment. Consequently, and as it was justified to apply the exception to the principle on exhaustion of domestic remedies, the present applicants and all others in their position had to use the remedy introduced by that legislation, namely, a request for verification. Should they do so within the specified time-limits and ultimately be unsuccessful, it would be open to them to lodge a fresh application with the Court within a period of six months from the date on which the final domestic decision was taken. The Court pointed out that it was ready to change its approach as to the potential effectiveness of the remedy in question, should the practice of the domestic authorities show, in the long run, that savers were being refused on formalistic grounds, that verification proceedings were excessively long or that domestic case-law was not in compliance with the requirements of the Convention. Any such future review would involve determining whether the national authorities had applied the implementing legislation in a manner that was in conformity with the pilot judgment and the Convention standards in general.

Conclusion: inadmissible (failure to exhaust domestic remedies).

1. In Serbia, the Ališić Implementation Act ("*Zakon o regulisanju javnog duga Republike Srbije po osnovu neisplaćene devizne* štednje *građana položene kod banaka* čije *je sedište na teritoriji Republike Srbije i njihovim filijalama na teritorijama bivših republika SFRJ*"), which entered into force on 30 December 2016; and in Slovenia, the Act on the Implementation of the judgment of the European Court of Human Rights in the case no. 60642/08 ("*Zakon o načinu izvršitve sodbe evropskega sodišča za* človekove *pravice v zadevi* številka *60642/08*"), which entered into force on 4 July 2015.

Article 35 § 3 (a)

Manifestly ill-founded/ Manifestement mal fondée

Alleged lack of legal certainty as regards individual importation of cannabis-based medication: *inadmissible*

Défaut de sécurité juridique allégué concernant l'importation à titre privé de médicaments à base de cannabis : *irrecevable*

A.M. and/et A.K. – Hungary/Hongrie, 21320/15 and/et 35837/15, decision/décision 4.4.2017 [Section IV]

Facts – The applicants, who both had serious health conditions which they submitted could be alleviated by cannabis-based medication, complained under Article 8 of the Convention that domestic legislation providing a legal avenue for requesting individual permission to import such medication lacked legal certainty.

Law – Article 35 § 3 (a): The marketing of cannabis-based medication was not authorised in Hungary and possession and use of cannabis remained illegal. However, under domestic law a person wishing to use a medication which had no marketing authorisation could apply – on the basis of a medical prescription issued by a doctor – for an individual import licence.

The applicants had failed to show that their doctors or any other medical professionals were of the opinion that their respective conditions required or were suitable for treatment with cannabis-based medication. Instead, they submitted a number of articles and medical studies containing information about the potential benefits of cannabis-based products. While it was not the Court's function to speculate on what would be the best course of treatment for the applicants' respective medical conditions, it nonetheless considered that their use of any other medicinal products – including those based on cannabis derivatives – would have to be based on an individualised medical finding rather than on general research conclusions or a mere belief on the part of the applicants that a medicine available elsewhere could alleviate their symptoms.

The applicants had not indicated whether treatment using cannabis-based medication had ever been discussed with their doctors or refused by them. Nor did they provide anything to indicate that either of them had ever tried to avail themselves of the legal procedure available in Hungary with a view to obtaining such medication lawfully. No evidence had been adduced to show that any doctor in Hungary had ever been prosecuted for prescribing cannabis-based medication or had ever refused to do so for fear of prosecution. The Court could not infer that the legislative avenue existing in Hungarian law was inaccessible, not foreseeable in its effects or was formulated in such a way as to create a chilling effect on doctors wishing to prescribe such medication.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 37

Striking out applications/Radiation du rôle

Settlement plan for paying war damages implemented general measures indicated: *struck out*

Un plan de règlement des indemnités pour dommages de guerre a permis l'exécution des mesures générales indiquées : *radiation du rôle*

Knežević and Others/et autres – Bosnia and Herzegovina/Bosnie-Herzégovine, 15663/12, decision/décision 14.3.2017 [Section V]

Facts – In 2009 in *Čolić and Others v. Bosnia and Herzegovina*, the European Court held that the failure to comply with final domestic judgments awarding war damages had breached Article 6 of the Convention and Article 1 of Protocol No. 1 and, in view of the large number of other similar cases, invited the respondent State to take general measures to solve the problem.

In 2012 the Republika Srpska introduced a settlement plan which envisaged the enforcement of final judgments ordering payment of war damages within thirteen years of 2013 and the payment of EUR 50 in respect of non-pecuniary damage. In 2013 the enforcement time frame was extended to twenty years. In 2015 in *Đurić and Others v. Bosnia and Herzegovina* the European Court examined the adequacy of the 2012 settlement plan and considered the proposed time frame of twenty years to be too long in the light of the lengthy delays which had already occurred. The Court indicated, *inter alia*, that the respondent State should amend the settlement plan and a more appropriate enforcement interval should be introduced, such as that initially adopted in 2012.

In the Convention proceedings the applicants complained about the non-enforcement of the final domestic judgment awarding them war damages.

Law – Article 37: A new settlement plan of 15 September 2016 provided for the enforcement of final judgments within thirteen years of 2016. The Court considered that the respondent State had implemented the general measures indicated in *Đurić and Others* in conformity with the Convention. That was also the opinion of the Committee of Ministers, which had considered the revised settlement plan to provide a global solution to the problem of non-enforcement of domestic court decisions relating to war damages.

The final judgment in the applicants' favour would be enforced in accordance with the new settlement plan and they would also receive compensation for non-pecuniary damage suffered on account of delayed enforcement. In view of that, the Court concluded that the matter had been resolved for the purposes of Article 37 § 1 (b) and found that further examination of the application was no longer justified. There were no special circumstances which required the continued examination of the case.

Conclusion: struck out.

(See *Čolić and Others v. Bosnia and Herzegovina*, 1218/07 et al., 10 November 2009; and *Đurić and Others v. Bosnia and Herzegovina*, 79867/12 et al., 20 January 2015, Information Note 181)

ARTICLE 46

Pilot judgment – General measures/Arrêt pilote – Mesures générales

Respondent State to take measures to resolve problems relating to conditions of detention in prisons and police cells

État défendeur tenu de prendre des mesures générales afin de résoudre des problèmes liés aux conditions de détention dans les prisons et les locaux de la police

Rezmiveș and Others/et autres – Romania/Roumanie, 61467/12 et al., judgment/arrêt 25.4.2017 [Section IV]

En fait – Depuis les premiers en 2007-2008, le nombre d'arrêts constatant la violation de l'article 3

de la Convention par la Roumanie à raison de conditions de détention inadéquates dans les prisons ou les locaux de la police n'a cessé de croître. La plupart des affaires concernaient, comme la présente, le surpeuplement carcéral et divers aspects matériels récurrents (mauvaise hygiène, ventilation et éclairage insuffisants, installations sanitaires non fonctionnelles, nourriture insuffisante ou inadéquate, accès limité aux douches, présence de rats, cafards, poux, etc.).

Dans l'arrêt *Iacov Stanciu c. Roumanie* (35972/05, 24 juillet 2012), le constat d'un problème structurel sous-jacent a conduit la Cour à suggérer, sur le fondement de l'article 46 de la Convention, des mesures générales visant à améliorer les conditions matérielles dans les prisons roumaines et à offrir des recours adéquats.

En droit – La Cour conclut à l'unanimité à la violation de l'article 3 de la Convention en raison des mauvaises conditions de détention des quatre requérants. Elle alloue 3 000 EUR chacun aux premier et quatrième requérants et 5 000 EUR chacun aux deuxième et troisième requérants pour préjudice moral.

Article 46 : La persistance du caractère structurel du problème identifié en 2012 et l'afflux de requêtes corrélatif justifient l'application de la procédure de l'arrêt pilote.

a) *Mesures à caractère général* – Compte tenu de l'importance et de l'urgence du problème identifié et de la nature fondamentale des droits en question, il est nécessaire que des mesures à caractère général soient mises en œuvre dans un délai raisonnable. Le gouvernement roumain devra fournir dans les six mois (une fois l'arrêt définitif) un calendrier précis pour la mise en œuvre des mesures générales appropriées, qu'il lui appartiendra de définir concrètement sous le contrôle du Comité des Ministres. Deux types d'actions sont identifiés.

i. *Diminuer le surpeuplement et améliorer les conditions matérielles de détention* – Le taux d'occupation de l'ensemble des établissements pénitentiaires roumains varie entre 149 % et 154 %. La majorité des arrêts les plus récents concernent des requérants purgeant leur peine dans un espace vital de moins de 3 m^2, voire moins de 2 m^2.

Lorsqu'un État n'est pas en mesure de garantir à chaque détenu des conditions de détention conformes à l'article 3 de la Convention, la Cour l'encourage à réduire le nombre des personnes incarcérées, par l'usage de sanctions non privatives de liberté et un recours aussi réduit que possible à la détention provisoire. Diverses recommandations ont aussi été formulées par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT), le Comité des Ministres, ou le Comité européen pour les problèmes criminels (CDPC) dans son Livre blanc sur le surpeuplement carcéral.

Pour ce qui concerne la détention avant condamnation, la Cour fait observer que les dépôts attachés aux commissariats de police n'étant destinés qu'à accueillir des personnes pour de très courtes durées, les autorités internes doivent s'assurer que les prévenus soient transférés dans une prison à l'issue de leur garde à vue. Il convient également d'encourager le recours aux mesures alternatives à la détention provisoire.

Quant à la détention après condamnation, selon la Recommandation Rec(99)22 du Comité des Ministres, la création de places de détention supplémentaires n'est pas, en principe, une solution durable pour remédier au surpeuplement carcéral. De plus, des fonds sont déjà nécessaires pour rénover les lieux de détention existants. Parmi les pistes à explorer, la Cour suggère : la diversification des peines alternatives à la détention ; l'assouplissement des conditions de la renonciation à l'application d'une peine, de l'ajournement du prononcé d'une peine, ou de l'octroi de la liberté conditionnelle ; ainsi qu'un fonctionnement satisfaisant du service de probation.

ii. *Offrir des voies de recours*

Volet préventif – Malgré les efforts des tribunaux et des autorités, il est difficile d'imaginer une possibilité effective pour les détenus bénéficiant d'une décision favorable d'obtenir le redressement de leur situation sans une amélioration générale des conditions de détention dans les prisons roumaines.

Volet compensatoire – Les tribunaux n'opèrent actuellement que dans le cadre d'un régime de responsabilité subjective, impliquant la preuve d'une faute de l'auteur du dommage. Or, en matière de mauvaises conditions de détention, la charge de la preuve ne doit pas constituer un fardeau excessif. En outre, les mauvaises conditions de détention ne sont pas nécessairement le résultat de défaillances imputables à l'administration pénitentiaire, mais ont le plus souvent pour origine des facteurs plus complexes, comme des problèmes de politique pénale.

La Cour encourage donc la mise en place d'un recours compensatoire spécifique (comme dans *Varga et autres c. Hongrie*, 14097/12 et al., 10 mars 2015, Note d'information 183). Une remise de peine peut constituer une compensation valable, à condi-

tion : que la remise soit explicitement octroyée pour réparer la violation de l'article 3 de la Convention ; et que son impact sur le quantum de la peine soit mesurable.

b) *Sort des affaires similaires* – Dans l'attente, la Cour ajournera l'examen des requêtes non communiquées ayant pour objet unique ou principal le surpeuplement carcéral et les mauvaises conditions de détention dans les prisons et les dépôts attachés aux commissariats de police en Roumanie (sans préjudice de la possibilité de rayer du rôle ou déclarer irrecevables celles qui devraient l'être).

Conclusion : État défendeur tenu de fournir un calendrier d'action dans les six mois ; ajournement de l'examen par la Cour des affaires similaires (unanimité).

(Voir les fiches thématiques Arrêts pilotes et Conditions de détention et traitement des détenus)

Execution of judgment – General measures/
Exécution de l'arrêt – Mesures générales
Execution of judgment – Individual measures/
Exécution de l'arrêt – Mesures individuelles

Respondent State required to take measures to ensure adequate legal framework for use of lethal force during security operations

État défendeur tenu de prendre des mesures en vue de mettre en place un cadre juridique adéquat réglementant le recours à la force létale pendant les opérations de sécurité

Tagayeva and Others/et autres – Russia/Russie, 26562/07 et al, judgment/arrêt 13.4.2017 [Section I]

(See Article 2 above/Voir l'article 2 ci-dessus, page 9)

ARTICLE 1 OF PROTOCOL No. 1 / DU PROTOCOLE N° 1

Control of the use of property/Réglementer l'usage des biens

Sale of applicant's house at public auction to enforce judgment debt of EUR 124: *violation*

Vente aux enchères de la maison du requérant en vue de régler une créance de 124 EUR reconnue par une décision de justice : *violation*

Vaskrsić – Slovenia/Slovénie, 31371/12, judgment/arrêt 25.4.2017 [Section IV]

Facts – The applicant's home was seized and sold at public auction for half its market value in order to enforce a judgment debt amounting to some EUR 124 after he repeatedly failed to respond to demands for payment. In the Convention proceedings he complained of a violation of Article 1 of Protocol No. 1.

Law – Article 1 of Protocol No. 1: The interference with the applicants' right to peaceful enjoyment of his possessions was prescribed by law and pursued the legitimate aim of protecting the creditors and the purchaser of the house. The measure was, however, manifestly disproportionate.

So finding, the Court noted that the debt the creditor had enforced through the sale of the applicant's house was low (around EUR 500 when interest and enforcement expenses were taken into account). The house was sold for half its market value without the domestic court considering any alternative measures. This was despite the fact that (i) the applicant appeared to be employed and to have a monthly income, (ii) the creditor had in fact in the interim requested enforcement through the attachment of the applicant's salary and bank account, and (iii) another creditor had already successfully enforced a much higher debt through the attachment of the applicant's bank account.

While the Court attached great importance to securing effective enforcement proceedings for creditors, in the present case it had not been shown that the judicial sale of the applicant's house had been necessary. In view, in particular, of the low value of the debt and the lack of consideration of other suitable and less onerous measures by the domestic authorities, the respondent State had failed to strike a fair balance between the aim pursued and the measure employed in the enforcement proceedings against the applicant.

Conclusion: violation (unanimously).

Article 41: EUR 77,000 in respect of pecuniary damage (comprising (i) the difference between the market value of the applicant's house and the price achieved at auction and (ii) default interest) and EUR 3,000 in non-pecuniary damage.

PENDING GRAND CHAMBER / GRANDE CHAMBRE PENDANTES

Relinquishments/Dessaisissements

Andriy Denisov – Ukraine, 76639/11, 25.4.2017 [Section V]

(See Article 6 § 1 (disciplinary) above/Voir l'article 6 § 1 (disciplinaire) ci-dessus, page 20)

OTHER JURISDICTIONS AND BODIES / AUTRES JURIDICTIONS ET ORGANES

International Court of Justice (ICJ)/Cour internationale de Justice (CIJ)

Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of all Forms of Racial Discrimination – Request for the Indication of Provisional Measures

Application de la Convention internationale pour la répression du financement du terrorisme et de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale – Demande d'indication de mesures provisoires

Ukraine – Russian Federation/Fédération de Russie, General List No. 166/Rôle général n° 166, order/ordonnance 19.4.2017

On 16 January 2017 the Government of Ukraine filed an application with the International Court of Justice (ICJ) alleging violations by the Russian Federation of the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999 (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (CERD). They also requested provisional measures.

In its order of 19 April 2017 the ICJ concluded that the conditions required for the indication of provisional measures in respect of the rights alleged on the basis of the ICSFT had not been met and that the issue of the risk of irreparable prejudice and urgency arose only in relation to the provisional measures sought with regard to the CERD.

Certain rights in question, in particular, the political, civil, economic, social and cultural rights stipulated in Article 5 of the CERD were of such a nature that prejudice to them was capable of causing irreparable harm. The available information indicated that Crimean Tatars and ethnic Ukrainians in Crimea remained vulnerable. Thus, for example, in its Report on the human rights situation in Ukraine (16 May to 15 August 2016) the Office of the United Nations High Commissioner for Human Rights (OHCHR) had acknowledged that the ban on the *Mejlis*[1] appeared to deny the Crimean Tatars the right to choose their representative institutions, while the report of the Organisation for Security and Co-operation in Europe (OSCE) Human Rights Assessment Mission on Crimea (6 to 18 July 2015) found that education in and of the Ukrainian language was disappearing in Crimea as a result of pressure on school administrations, teachers, parents and children.

The ICJ therefore considered that the conditions for indicating provisional measures in respect of the CERD were met. With regard to the situation in Crimea, the Russian Federation should, in accordance with its obligations under the CERD:

(a) refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis* (thirteen votes to three);

(b) ensure the availability of education in the Ukrainian language (unanimously).

In addition, both State parties should refrain from any action which might aggravate or extend the dispute or make it more difficult to resolve (unanimously).

Inter-American Court of Human Rights (IACtHR)/ Cour interaméricaine des droits de l'homme

Sterilisation without informed consent

Stérilisation en l'absence de consentement éclairé

Case of *I.V. v. Bolivia*/Affaire *I.V. c. Bolivie*, Series C No. 329/Série C n° 329, Judgment/Arrêt 30.11.2016

[This summary was provided courtesy of the Secretariat of the Inter-American Court of Human Rights. It relates only to the merits and reparations aspects of the judgment. A more detailed, official abstract (in Spanish only) is available on that Court's website: www.corteidh.or.cr.]

Facts – On 1 July 2000 the applicant, Ms I.V., was sterilised after a caesarean delivery by a tubal ligation performed in the Women's Hospital of La Paz, Bolivia. She alleged that she was not informed or consulted prior to the sterilisation procedure and only found out about the permanent loss of her reproductive capacity upon being told by a doctor the day after the surgery. The State rejected these claims, stating that she had consented verbally during the procedure and that the aim had been to protect her health

1. A self-governing body with quasi-executive functions.

and ultimately her life against a potential risk if she became pregnant again in the future. Despite the claims presented by the applicant, no one was found responsible in disciplinary, administrative or criminal proceedings for the sterilisation performed without her informed consent.

Law

(a) *Articles 4(1) (Right to Life) and 5(1) (Right to Personal Integrity) of the American Convention on Human Rights (ACHR) in conjunction with Article 1(1) (Obligation to Respect and Ensure Rights) thereof, and Article 7 of the Inter-American Convention on The Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará")* – Informed consent is an essential aspect of medical practice which is based on respect for autonomy and freedom of choice in each person's life plan. It is not only an ethical duty, but also a binding legal obligation of the medical personnel, which forms part of good medical practice and expertise (*lex artis*) in order to guarantee accessible and acceptable health services. Consent consists of a decision to willingly submit to a medical act. It must (i) be obtained prior to any medical act, the only exception being when an emergency or life threatening situation occurs and consent cannot be obtained; (ii) be given in a free, voluntary and autonomous manner; and (iii) be full and informed. Informed consent is linked to the right to access information in the health field because a patient can only give free and informed consent after obtaining adequate, complete, reliable, comprehensible and accessible information which he or she must have fully understood. In sterilisation cases consent can only be given by the woman concerned; thus, the authorisation of a partner or other party should not be requested.

The Inter-American Court acknowledged that freedom and autonomy of women with regard to sexual health matters had been historically limited, restricted or denied as a result of negative and harmful gender stereotypes. Such stereotypes could impact and affect access to women's sexual and reproductive health information, as well as the process and manner in which consent was obtained. The phenomenon of sterilisation without informed consent was the product of historical inequities between men and women and affected women disproportionally because of their socially assigned reproductive role and responsibility for contraception.

In the instant case the Inter-American Court found that (i) even though general regulations on informed consent existed, the State had not adopted preventive measures to secure the applicant's right to make her own decisions regarding her reproductive health and to choose contraceptive measures better adjusted to her life plan; (ii) her sterilisation was not an urgent surgery or emergency procedure; (iii) the doctor had failed to comply with the duty to obtain prior, free, full and informed consent; (iv) the fact that the applicant was under the pressure, stress and vulnerability of a patient undergoing surgery had not allowed for the manifestation of free and full will and had thus prevented valid consent; and (v) the authorisation signed by the applicant's husband for the caesarean section did not count as valid authorisation for the tubal ligation. Consequently, the applicant had been sterilised without her informed consent.

Conclusion: violation (unanimously).

(b) *Article 5(1) and (2) (Prohibition of torture or cruel, inhuman, or degrading treatment) of the ACHR, in conjunction with Article 1(1) thereof* – The Inter-American Court recalled that the international community had progressively acknowledged that torture and ill-treatment could take place in other contexts of custody, domination or control in which the victim was defenceless, such as in the field of health services. After due consideration of the intensity of the suffering endured by the applicant, the Court established that her sterilisation without her consent constituted, in the particular circumstances of the case, cruel, inhuman and degrading treatment.

Conclusion: violation (unanimously).

(c) *Articles 8(1) (Right to a Fair Trial) and 25(1) (Right to Judicial Protection) of the ACHR, in conjunction with Articles 1(1) thereof and 7(b), (c), (f) and (g) of the Convention of Belém do Pará* – Concerning access to justice, the Inter-American Court held that if prior, free, full and informed consent is a requirement for a sterilisation to be in accordance with international standards, then authorities should guarantee legal remedies in cases where consent was not appropriately obtained in order to provide reparation to victims. The State had not complied with its obligation to guarantee, without discrimination, the right to access to justice in the present case.

Conclusion: violation (unanimously).

(d) *Reparations*: The Inter-American Court established that the judgment constituted *per se* a form of reparation and ordered the State to: (i) provide free, immediate, adequate and effective medical and psychological or psychiatric treatment to the applicant, especially in sexual and reproductive health matters; (ii) publish the judgment and its official summary; (iii) perform an act to acknowledge the State's

international responsibility; (iv) design a publication or brochure including accessible and clear information regarding the reproductive and sexual rights of women with specific mention of the requirement of prior, free, full and informed consent; (v) incorporate a continuing education programme on topics such as informed consent, gender discrimination, stereotypes and violence against women for medical students, doctors and all personnel working in health and social security; and (vi) pay pecuniary and non-pecuniary damages, as well as costs and expenses.

United Nations Human Rights Committee (CCPR)/Comité des droits de l'homme des Nations unies (CCPR)

Proposed transfer Under Dublin Regulations of vulnerable asylum-seeker and two children to Italy without proper assurances regarding conditions in which they would be received

Transfert envisagé vers l'Italie au titre des règlements de Dublin d'une demandeuse d'asile et de ses deux enfants en l'absence d'assurances adéquates concernant leurs conditions d'accueil dans ce pays

Rezaifar – Denmark/Danemark, Communication No./ n° 2512/2014, 10.3.2017

Facts – The author of the communication was an Iranian national and two of her three children (a son aged three and a daughter aged eighteen at the time of submission of the communication). Her oldest son lived in Italy.

The author had fled Iran through Greece in 2008 with her former husband and her two oldest children, due to her husband's political activities. The family was granted international protection in Italy in 2008. They stayed for the first three months in an asylum centre and were then provided with a dwelling. The author's former husband became addicted to narcotics and she and her children were subjected to domestic violence. They became impoverished and the author was forced by her former husband to prostitute herself. After the birth of their younger son, the author left him. She suffered from bipolar disorder and depression and in 2009 was diagnosed with cervical cancer. The operation was eventually financed by some of her friends but she was unable to afford post-surgery treatment. The author's youngest son suffered from heart disease, which required regular examination and control.

The author arrived in Denmark in July 2012 and applied for asylum. In October 2012 the Italian authorities accepted Denmark's request to accept the family back to Italy, in accordance with the Dublin Regulations. However, due to the living conditions for asylum seekers in Italy, the Danish Ministry of Justice reviewed the decision and determined that the application should be processed in Denmark for humanitarian reasons, in particular because of the age of the author's youngest child. In March 2014 the author's asylum application was rejected. The Immigration Service recognised that the author was to be regarded as a person in need of protection but deemed that Italy should serve as her first country of asylum. Her appeal was rejected.

Before the Human Rights Committee the author complained that by forcibly returning her and her two children to Italy, the State party would violate their rights under Article 7 of the International Covenant for Civil and Political Rights (ICCPR), (prohibition against torture or cruel, inhuman or degrading treatment or punishment). She argued that her family unit was particularly vulnerable and, based on her prior experience in Italy and the available general information available, claimed that she and her children faced a real risk of homelessness and destitution with limited access to necessary medical care. In support of her arguments she cited the European Court of Human Rights' cases of *M.S.S. v. Belgium and Greece*[1] and *Mohammad Hussein and Others v. the Netherlands and Italy*.[2]

Law – Article 7 ICCPR: The Committee noted the various reports submitted by the author highlighting the lack of available place in the reception facilities in Italy for asylum seekers and returnees under the Dublin Regulations and in particular, the author's submission that returnees, like her, who had already been granted a form of protection and benefited from the reception facilities when they were in Italy, were no longer entitled to accommodation in the reception centres for asylum seekers.

The Committee noted the reference made by Denmark to the decision of the European Court of Human Rights in *Mohammed Hussein and Others v. the Netherlands and Italy* according to which, although the situation in Italy had shortcomings, it had not disclosed a systemic failure to provide support or facilities catering for asylum seekers. However, the Committee considered that the State party had not adequately taken into account the information provided by the author, based on her personal circumstances and past experience.

1. *M.S.S. v. Belgium and Greece* [GC], 30696/09, 21 January 2011, Information Note 137.

2. *Mohammad Hussein and Others v. the Netherlands and Italy* (dec.), 27725/10, 2 April 2013, Information Note 162.

State parties had to give sufficient weight to the real and personal risk a person might face if deported and it was incumbent upon them to undertake an individualised assessment. The State party had failed to take into due consideration the special vulnerability of the author and her children. Notwithstanding her formal entitlement to subsidiary protection in Italy, the author, who had been severely mistreated by her spouse, had faced great difficulty, and had not been able to provide for herself and her children, including for their medical needs, in the absence of any assistance from the Italian authorities.

Denmark had also failed to seek effective assurances from the Italian authorities that the author and her two children would be received in conditions compatible with their status as asylum seekers entitled to temporary protection and guarantees under Article 7 of the Covenant. In particular, Denmark had failed to request that Italy undertake (a) to renew the author's residence permit and to issue permits to her children; and (b) to receive the author and her children in conditions adapted to the children's age and the family's vulnerable status, which would enable them to remain in Italy.

Conclusion: transfer of author and her two children to Italy without proper assurances would constitute a violation.

Article 2(1) ICCPR: Denmark required to proceed to a review of the author's claim, taking into account its obligations under the ICCPR, the Committee's views and the need to obtain proper assurances from Italy.

COURT NEWS / DERNIÈRES NOUVELLES DE LA COUR

Film on the ECHR: 9 new versions/Film sur la CEDH : 9 nouvelles versions

The film presenting the Court is now available in Albanian, Catalan, Czech, Estonian, Hungarian, Portuguese, Russian, Serbian and Ukrainian. This film explains how the Court works, describes the challenges faced by it and shows the scope of its activity through examples from the case-law.

The videos are available on the Court's Internet site (www.echr.coe.int – The Court) and its YouTube channel (https://www.youtube.com/user/EuropeanCourt).

Le film de présentation de la Cour est désormais disponible en albanais, catalan, estonien, hongrois, portugais, russe, serbe, tchèque et ukrainien. Cette vidéo explique le fonctionnement de la Cour, rappelle les enjeux auxquels elle doit faire face et démontre l'étendue de son domaine d'activité à travers des exemples d'affaires.

Les vidéos sont accessibles à partir du site internet de la Cour (www.echr.coe.int – La Cour) ou de sa chaîne YouTube (https://www.youtube.com/user/EuropeanCourt).

RECENT PUBLICATIONS / PUBLICATIONS RÉCENTES

Case-Law Guides/Guides sur la jurisprudence

As part of its series on the case-law relating to particular Convention Articles the Court has recently published a Case-Law Guide on Article 4 of protocol No. 7 (right not to tried or punished twice). Translation into French is pending.

Updates to 30 April 2017 of the following guides have also just been published: Guide on Article 7 of the Convention (no punishment without law) in French (translation into English pending) and Guide on Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) in English and French.

Moreover, the Guide on the civil limb of Article 6 of the Convention (right to a fair trial) has just been translated into Azerbaijani.

All Case-Law Guides can be downloaded from the Court's Internet site (www.echr.coe.int – Case-law).

Konvensiyanin 6-ci maddəsi üzrə təlimat – Mülki hüquqi aspekt (aze)

Guide on Article 4 of Protocol No. 4 (eng)

Guide on Article 4 of Protocol No. 7 (eng)

Guide sur l'article 7 de la Convention (fre)

Guide sur l'article 4 du Protocole n° 4 (fre)

Dans le cadre de sa série sur la jurisprudence par article de la Convention, la Cour vient de publier un Guide sur l'article 4 du Protocole n° 7 (droit à ne pas être jugé ou puni deux fois). Une traduction vers le français de ce guide, disponible pour le moment uniquement en anglais, est en cours.

En outre, les guides suivants viennent d'être mis à jour au 30 avril 2017 : Guide sur l'article 7 de la Convention (pas de peine sans loi) en français (traduction vers l'anglais en cours) et Guide sur l'article 4 du Protocole n° 4 (interdiction des expulsions collectives d'étrangers) en anglais et en français.

Par ailleurs, le Guide sur le volet civil de l'article 6 de la Convention (droit à un procès équitable) vient d'être traduit en azerbaïdjanais.

Tous les guides sur la jurisprudence peuvent être téléchargés à partir du site internet de la Cour (www.echr.coe.int – Jurisprudence).

CPT Annual Report 2016/Rapport annuel 2016 du CPT

The Annual Report of the European Committee of the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 2016 has just been published. Among other matters it addresses in the report, the CPT urges the 47 Council of Europe member States to use remand detention only as a measure of last resort and to provide remand prisoners with adequate detention conditions. The Report can be downloaded from the Internet site of the Council of Europe (www.coe.int – CPT).

-ooOoo-

Le rapport annuel du Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) pour l'année 2016 vient de paraître. Parmi les points soulevés, le Comité exhorte les 47 États membres du Conseil de l'Europe à n'imposer la détention provisoire qu'en dernier recours et à offrir aux prévenus des conditions de détention satisfaisantes. Le rapport peut être téléchargé à partir du site internet du Conseil de l'Europe (www.coe.int – CPT).

Annual Report 2016 on the execution of judgments of the Court/Rapport annuel 2016 sur l'exécution des arrêts de la Cour

The Committee of Ministers' Tenth Annual Report on the supervision of the execution of judgments of the European Court of Human Rights has just been published. It can be downloaded from the Internet site of the Council of Europe (www.coe.int – Execution of judgments of the Court).

-ooOoo-

Le dixième rapport annuel du Comité des Ministres sur sa surveillance de l'exécution des arrêts de la Cour européenne des droits de l'homme vient de paraître. Il peut être téléchargé à partir du site internet du Conseil de l'Europe (www.coe.int – Exécution des arrêts de la Cour).

Commissioner for Human Rights/Commissaire aux droits de l'homme

On 6 April 2017 Mr Nils Muižnieks, the Commissioner for Human Rights, published his Activity Report 2016 which will be presented to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe in the coming months. This report can be downloaded from the Internet site of the Council of Europe (www.coe.int – Commissioner for Human Rights).

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the member States. The activities of this institution focus on three major, closely related areas: country visits and dialogue with national authorities and civil society; thematic studies and advice on systematic human rights work; and awareness-raising activities.

-ooOoo-

Le 6 avril 2017, M. Nils Muižnieks, Commissaire aux droits de l'homme, a publié son rapport d'activité 2016 qui sera présenté au Comité des Ministres et à l'Assemblée parlementaire du Conseil de l'Europe dans les prochains mois. Ce rapport peut être téléchargé à partir du site internet du Conseil de l'Europe (www.coe.int – Commissaire aux droits de l'homme).

Pour rappel, le Commissaire aux droits de l'homme est une instance non judiciaire, indépendante et impartiale, créée en 1999 par le Conseil de l'Europe. Sa mission est de promouvoir la sensibilisation aux droits de l'homme et leur respect dans les États membres. Ses activités s'articulent autour de trois grands axes étroitement liés : des visites dans les pays et un dialogue avec les autorités nationales et la société civile ; un travail thématique et de conseil sur la mise en œuvre systématique des droits de l'homme ; et des activités de sensibilisation.