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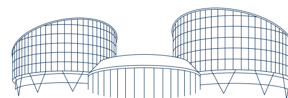

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COUR EUROPÉENNE DES DROITS DE L'HOMME

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ARTICLE 3

Inhuman or degrading treatment

Conditions of detention in asylum hotspot facilities established under the EU-Turkey Statement: *no violation*

J.R. and Others v. Greece, 22696/16, judgment 25.1.2018 [Section I]

Facts – On 20 March 2016 an agreement on migration between the member States of the European Union and Turkey, entitled the "EU-Turkey Declaration", entered into force. It provided, under certain conditions, for the return of irregular migrants from Greece to Turkey.

On 21 March 2016 the three applicants, Afghan nationals, arrived on the island of Chios, where they were arrested and placed in the Vial "hotspot" facility (a migrant reception, identification and registration centre). The police chief ordered their detention pending removal to prevent them absconding. On 4 April 2016 their wish to apply for asylum was registered. On 19 April 2016 the director of the Vial centre restricted their freedom of movement with effect from 15 April and for a period of 15 days. Vial became a semi-open facility on 21 April.

The applicants complained in particular about the arbitrary nature of their detention and the conditions in the Vial centre.

Law

Article 5 § 1: The authorities had acted in good faith as regards the applicants' detention, which had the main aim of guaranteeing their removal. It also sought to prevent them from remaining illegally in Greece and to ensure their identification and registration for the implementation of the EU-Turkey Declaration.

The decisions of 19 April 2016 ordering a restriction of the applicants' freedom of movement for 15 days from 15 April 2016 had not been notified to the applicants because the authorities had not been able to locate them inside the centre. In any event, it was converted to a semi-open centre on 21 April 2016, thus allowing residents to go out during the day and only obliging them to stay there at night.

The applicants had been detained for one month. Such a period could not in principle be regarded as excessive for the completion of administrative formalities.

Lastly, while an asylum application suspended the enforcement of the removal measure, it did not suspend the detention; domestic law only required that the asylum application be examined with absolute priority. The applicants had been released one month and ten days after expressing their wish to apply for asylum and one month after their registration.

Thus the applicants' detention was not arbitrary and could not be considered not "lawful" within the meaning of Article 5 § 1 (f) of the Convention.

Conclusion: no violation (unanimously).

Article 3 (*substantive limb*): The facts of the present case occurred at a time when Greece was experiencing an exceptional and sudden increase in migration which created organisational, logistical and structural difficulties for the Greek authorities. A number of NGOs who visited the Vial centre confirmed that the situation there was chaotic. The Court noted that, in the case of *Khlaifia and Others v. Italy* ([GC], 16483/12, 15 December 2016, Information Note 202), the Grand Chamber had decided that in the light of the situation of extreme difficulty faced by the Italian authorities at the time, the conditions in the reception centre had not attained a threshold of seriousness such as to be characterised as inhuman or degrading.

In that connection the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which had twice visited the "hotspots" on the northern Aegean islands in 2016, was not particularly critical about the conditions in the Vial centre. It had reserved its main criticism for problems related to medical care in the centre and hospital, to the inadequate information available on the rights of detainees and asylum-seekers, to the lack of legal assistance, and to the poor quality of drinking water and food. Those problems were not such as to have an excessively harmful effect on the applicants under Article 3 of the Convention. Moreover, neither the CPT, nor the NGOs, nor the parties, had provided information on the alleged overcrowding in the centre, by indicating, for example, the number of square metres generally available in the containers or in the container occupied by the applicants.

In addition, the applicants had only been detained for a short period of thirty days; and the Vial centre in which they had been placed on 21 March 2016 became a semi-open facility on 21 April 2016, thus allowing them to go out during the day.

In those circumstances, the threshold of seriousness for the detention to be characterised as inhuman or degrading had not been attained.

Conclusion: no violation (unanimously).

The Court also found unanimously that there had been a violation of Article 5 § 2 because, even supposing that the applicants had received an information brochure, its content had not been such as to enlighten them sufficiently either to the reasons for their arrest or to the remedies available to them.

The Court further found, unanimously, that there had been no violation of Article 34, given that there had been no evidence that the police interview with one of the applicants had been aimed at coercing him into withdrawing or changing his application to the Court or at otherwise impeding the applicants in the effective exercise of their right of individual petition, or that the interview had had such an effect. The authorities of the respondent State could not therefore be regarded as having hindered the applicants' effective exercise of their right of individual petition.

Article 41: EUR 650 to each applicant in respect of non-pecuniary damage.

Inhuman or degrading treatment

Conditions of detention in prison, during transportation and at court hearings: *communicated*

Sukachov v. Ukraine, 14057/17 [Section IV]

The applicant, who has been in pre-trial detention since 2012, complains under Article 3 of the Convention that the conditions of his detention in prison, during transportation and at court hearings have been inhuman and degrading. He complains in particular of overcrowding, poor sanitation and hygiene, a lack of ventilation and natural light, and of being confined to his cell for twenty-three hours a day. He also complains under Article 13 of a lack of effective remedies in the domestic law.

The question of the conditions of detention in Ukraine has been considered in a number of previous cases before the Court (see, for example, *Nevmerzhitsky*, *Andrey Yakovenko*, *Logvinenko*, *Isayev* and *Melnik*) and the Committee of Ministers of the Council of Europe has considered, pursuant to Article 46 § 2 of the Convention, measures adopted by the Ukrainian Government with a view to complying with the Court's judgments. At its 1288th meeting held on 6-7 June 2017 the Ministers' Deputies observed that it was increasingly clear from the Court's judgments that the issues raised are structural in nature. In its questions to the parties in the instant case, the Court invited submissions regarding the suitability of the case for the pilot-judgment procedure and regarding any measures the Government have taken to resolve any structural problem that might exist at the national level.

Communicated under Articles 3 and 13 of the Convention.

(See also *Nevmerzhitsky v. Ukraine*, 54825/00, 5 April 2005, Information Note 74; *Melnik v. Ukraine*, 72286/01, 28 March 2006, Information Note 84; *Isayev v. Ukraine*, 28827/02, 28 May 2009; *Logvinenko v. Ukraine*, 13448/07, 14 October 2010; and *Andrey Yakovenko v. Ukraine*, 63727/11, 13 March 2014)

ARTICLE 5

ARTICLE 5 § 1 (a)

After conviction

Prison sentence belatedly replaced by psychiatric detention beyond initial duration, on the basis of outdated medical assessment and without transfer to suitable premises: *violation*

Kadusic v. Switzerland, 43977/13, judgment 9.1.2018 [Section III]

Facts – In 2005 the applicant was sentenced to eight years' imprisonment. In 2007 the sentence was upheld on appeal. In 2012, following revision of the judgment, the portion of the sentence still to be served was suspended and replaced by an "institutional therapeutic measure" in view of the applicant's mental health problems. The applicant consistently refused to follow the psychiatric treatment provided for. He argued (i) that his continuing detention beyond the initial period of imprisonment imposed was unlawful; (ii) that a heavier penalty had been applied retroactively (in so far as the legal basis for the measure complained of was an Article of the Criminal Code that entered into force in 2007); and (iii) that the revision of the judgment had breached the *ne bis in idem* principle.

Law

Article 5 § 1 of the Convention: The Court ruled out the application of Article 5 § 1 (c) at the outset, and

also found sub-paragraphs (a) and (e) to be inapplicable for the following reasons.

The 2005 judgment convicting the applicant had not provided for any therapeutic measures, either in an institution or in the community. In so far as the 2012 judgment had replaced the original judgment, or at least suspended execution thereof, the applicant's detention from 22 August 2012 had no longer been covered by the original judgment.

Under Swiss law, institutional therapeutic measures could be applied, by means of a revision of the original judgment, where relevant new facts had come to light. The Court was prepared in principle to accept that the proceedings for revision of the earlier judgment, in the course of which the measure complained of was imposed, could constitute a causal link between that measure and the original sentence. However, that causal link could eventually be severed if the person's continued detention was based on grounds that were incompatible with the initial objectives. In order to ascertain whether the detention in question had been arbitrary, it was therefore necessary in this case to take account of factors that appeared to fall more within the scope of sub-paragraph (e).

Firstly, while the order of events and the considerable length of time that had elapsed were not in themselves decisive, the Court noted that the measure in question had been ordered more than seven years after the applicant's initial conviction and only seven months before his planned release.

Secondly, the measure in question had been ordered by the Court of Appeal almost three years and eleven months after the first expert medical report establishing that the applicant had mental health problems, in 2008, and two years and two months after the additional report written in 2010. That gap in time appeared excessive (the more recent reply by the second expert to the Court of Appeal in 2012, a few months before the measure, concerning the more limited issue of the institutions that would be suitable for the applicant, was not relevant in that regard).

Thirdly, the second expert had referred in that reply to two prisons that had therapy services within the meaning of the relevant Article of the Criminal Code. However, the applicant had not been transferred there and instead had remained in his original place of detention. Hence, he was not being treated in an appropriate setting, despite the fact that domestic law actually stipulated that the measure was to be lifted if no suitable institution could be found. The fact that the applicant had refused to undergo any psychiatric treatment did not justify holding him in an inappropriate place of detention for years.

In sum, the measure complained of, which had been imposed only when the applicant was close to completing his original sentence and which remained in force to date, had been based on expert assessments that were not sufficiently recent and left the applicant, more than four and a half years after the expiry of his prison sentence, in an institution that was manifestly unsuited to his condition.

Hence, since it was incompatible with the aims of the original sentence, the applicant's detention on the basis of the 2012 judgment could not be covered by sub-paragraph (a) of Article 5 § 1.

Since the criteria for the applicability of sub-paragraph (e) were similar, it too was inapplicable for essentially the same reasons.

Conclusion: violation (unanimously).

Article 7 of the Convention: In the present case the Federal Supreme Court had noted that, even assuming that institutional therapeutic measures were to be regarded as penalties, the measures provided for by the earlier legislation (in force at the time of the applicant's offences) had been just as stringent as those under the new legislation (in force since 1 January 2007), since the competent court had even then been authorised to order psychiatric detention in the case of a convicted person who represented a serious danger to others.

The applicant had not provided any convincing reasons to doubt that finding, nor had he claimed that revision of the original decision would not have been possible under the earlier procedural provisions, laid down by cantonal law.

Conclusion: no violation (unanimously).

Article 4 of Protocol No. 7: Article 4 of Protocol No. 7 to the Convention expressly stated that it did not prevent the reopening of the case if "new or newly discovered" facts were liable to affect the outcome of the case.

The Federal Supreme Court had noted that the serious psychiatric illness from which the applicant suffered had already been present, but had not been diagnosed, at the time of the original judgment. Under the Criminal Code, a therapeutic

measure could be ordered in such cases by means of revision of the original judgment.

There was no reason to doubt that the applicant's mental illness had constituted a newly discovered fact, or that the revision of the judgment had been in accordance with the law and criminal procedure of the respondent State.

Conclusion: no violation (unanimously).

Article 41: EUR 20,000 for non-pecuniary damage.

ARTICLE 5 § 1 (e)

Persons of unsound mind

Psychiatric detention of convicted prisoner beyond initial sentence, on the basis of outdated medical assessments and without transfer to adequate premises: *violation*

Kadusic v. Switzerland, 43977/13, judgment 9.1.2018 [Section III]

(See Article 5 § 1 (a) above, page 8)

ARTICLE 5 § 1 (f)

Expulsion

Detention for 30 days in asylum hotspot facilities established under the EU-Turkey Statement: *no violation*

J.R. and Others v. Greece, 22696/16, judgment 25.1.2018 [Section I]

(See Article 3 above, page 7)

ARTICLE 5 § 4

Review of lawfulness of detention

Inability to obtain review of order revoking release on licence: *violation*

Etute v. Luxembourg, 18233/16, judgment 30.1.2018 [Section IV]

Facts – In November 2010 the applicant was sentenced by the Court of Appeal to a thirty-month prison term for a drugs offence. He served part of his sentence before being released on licence in March 2013. The agreement reached in that connection between the Attorney General's representative and the applicant set out various conditions to be met, including not frequenting drug users and not committing any offence. The agreement stated that, if those conditions were not met, the applicant's licence would be revoked and he would have to serve the remainder of his sentence.

In October 2015 the applicant's detention was ordered in connection with a further drugs offence and he was remanded in custody.

In November 2015 the Attorney General's representative revoked the licence on the grounds that the applicant, having been made the subject of a detention order, no longer complied with the conditions of the 2013 agreement.

Law – Article 5 § 4: The applicant's release on licence had interrupted the execution of the sentence imposed in 2010. The time spent on licence had not been deducted from the length of the sentence.

The applicant's recall to prison in November 2015 to serve the portion of his sentence remaining to be served when he had been released on licence had been based on a fresh decision, namely the decision to revoke his licence. This had resulted solely from the finding that the applicant no longer fulfilled the conditions of his release on licence, and in particular the conditions stipulating that he must not commit any further offences and must no longer frequent drug users. In those circumstances, the issue of compliance with the applicant's licence conditions had been decisive for the lawfulness of his detention from November 2015 onwards. This had been a new issue concerning the applicant's recall to prison, arising out of the revocation of his licence. Accordingly, the domestic legal system had been required to afford the applicant access to a judicial remedy satisfying the requirements of Article 5 § 4 of the Convention, in order for that issue to be determined.

Under the Criminal Code, decisions concerning release on licence were taken by the Attorney General. According to the Court's case-law, however, a public prosecutor could not be regarded as a "court" satisfying the requirements of Article 5 § 4.

The legislation to date made no provision for lodging an appeal in order to challenge the lawfulness of a decision to revoke a licence.

These considerations were sufficient for the Court to conclude that, from the point at which his licence had been revoked in November 2015, the applicant had not had a judicial remedy enabling him, as required by Article 5 § 4, to obtain a review of the lawfulness of his detention in that connection and, if it was found to be unlawful, to be released.

Conclusion: violation (unanimously).

Article 41: finding of a violation sufficient in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *Ivan Todorov v. Bulgaria*, 71545/11, 19 January 2017, Information Note 203)

ARTICLE 6

ARTICLE 6 § 1 (CIVIL)

Fair hearing, independent and impartial tribunal

Dispute over ownership of shares in television broadcasting company: *communicated*

Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, 16812/17 [Section V]

(See Article 1 of Protocol No. 1 below, page 30)

ARTICLE 6 § 1 (ADMINISTRATIVE)

Determination

Existence of dispute (contestation) in administrative liquidation proceedings from moment creditor requests inclusion of his claim on list of creditors: *Article 6 applicable*

Cipolletta v. Italy, 38259/09, judgment 11.1.2018 [Section I]

Facts – The applicant ran a business and claimed to be the creditor of a State-regulated company which was placed in "administrative liquidation" (a specific domestic procedure) under the administration of a liquidator.

In June 1985 the liquidator informed the applicant about the opening of the procedure and the verification of claims against the company. As the applicant's claim had not been registered, in July 1985 he sent the liquidator a request to be listed as a creditor. In August 1985 the liquidator filed the list of claims, still without that of the applicant. In September 1986 the applicant lodged an objection to the list of claims.

In a judgment of April 1997 the District Court, having found that the applicant and the liquidator had signed an agreement recognising the existence of a claim, upheld the applicant's objection and amended the list of claims accordingly.

In December 2010 the liquidation procedure was still pending.

Law – Article 6 § 1

(a) *Applicability* – In the present case the Court had to adjudicate on the applicability of Article 6 of the Convention to the "administrative liquidation" procedure.

The Court saw fit to adopt a new approach, in order to harmonise its case-law as to the guarantees secured to creditors, whether in the context of an ordinary insolvency procedure or in that of the special procedure of "administrative liquidation", and thus regardless of the nature of the debtor.

The Court thus noted that, beyond any difference in domestic classification between the ordinary insolvency procedure and "administrative liquidation", the creditors in both cases relied for the recovery of their debts on a third party who would verify the existence of the claims and make payments against the assets.

As regards insolvency procedures in general, the Court had always held that there was a dispute from the point where the creditor filed a claim.

As to the "administrative liquidation" procedure, the Court noted that it was from the first notice by the liquidator concerning the verification of the insolvent company's debts that a creditor could apply for a claim to be added to the list.

Looking at the actual impact of this step in the context of the impugned procedure, the Court took the view that a genuine and serious dispute as to a civil right would thus arise from the time when that application was filed by the creditor. In the present case, the claim had been based on a bill of exchange. Article 6 § 1 was therefore applicable.

(b) *Merits* – While acknowledging the complexity of insolvency procedures, the length of the procedure in question, about twenty-five years and six months, had been excessive and did not meet the "reasonable time" requirement under Article 6 § 1 of the Convention.

Conclusion: violation (six votes to one).

The Court also found, by six votes to one, that there had been a violation of Article 13 on account of the lack of a domestic remedy by which the applicant could have complained about the failure to have his case heard within a reasonable time.

Article 41: EUR 24,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See also *F.L. v. Italy*, 25639/94, Commission decision of 12 April 1996; and *Gorou v. Greece (no. 2)* [GC], 12686/03, 20 March 2009, Information Note 117)

Access to court

Domestic authorities' failure to comply with interim court order restraining demolition of residential property: *violation*

Sharxhi and Others v. Albania, 10613/16, judgment 11.1.2018 [Section I]

Facts – The applicants were owners of flats and shops in a residential and service building. On 3 November 2013, without prior notice, officials of the National Constructions and Urban Planning Inspectorate, supported by the police, surrounded the residence, cordoned it off with yellow police tape and prevented the residents from entering their flats. The applicants lodged a claim with the District Court, which on 7 November 2013 issued an interim order restraining demolition. On 27 November 2013 the Council of Ministers issued a decision ordering the expropriation of the residence in the public interest and awarding compensation to the residents. The residence was demolished between 4 and 8 December 2013. The proceedings regarding the level of compensation were stayed in January 2015 by the Supreme Court.

Before the European Court the applicants complained that, as a result of the authorities' disregard of an administrative court injunction, there had been a breach of Article 6 § 1. They also complained under Article 1 of Protocol No. 1 of an interference with the peaceful enjoyment of their possessions and under Article 13 of the Convention of the lack of an effective domestic remedy.

Law

Article 6 § 1 of the Convention: The execution of a judgment given by a court – including a judgment given in interim proceedings – was to be regarded as an integral part of the "trial" for the purposes of Article 6. The right of access to a court guaranteed under that Article would be rendered illusory if a Contracting State's legal system allowed a final binding judicial decision or an interlocutory order made pending the outcome of a final decision to remain inoperative to the detriment of one party. That principle was of even greater importance in the context of administrative proceedings concerning a dispute whose outcome was decisive for a litigant's civil rights.

It was not in dispute that Article 6 § 1 was applicable to the interim proceedings. The interim order, directed to any official body, had been issued with a view to preventing any possible demolition of the applicants' building and was to remain in place until a decision had been given on the merits of the case. Before the domestic courts could decide on the merits of the case, the Council of Ministers decided that the residence should be expropriated in the public interest and the building had been demolished. Therefore, the enforcement of the interim order and the outcome of the main proceedings became redundant. The domestic courts at all levels observed that the Albanian authorities had failed to comply with the interim order. The national authorities had failed to comply in practice with the interim order thus depriving Article 6 § 1 of any useful effect.

Conclusion: violation (unanimously).

Article 13 in conjunction with Article 6 § 1 of the Convention: The applicants complained that the authorities had failed to enforce the interim measure, which had made it impossible for them to have the merits of their case properly examined. The principle of the rule of law which Contracting States undertook to respect when they ratified the Convention encompassed the duty to ensure that the competent authorities enforced judicial remedies when granted. There was no effective remedy in Albania in respect of the non-enforcement of final decisions and length of proceedings at the material time. Other than making a declaratory finding of a breach where final court decisions were not enforced, the Constitutional Court was unable to offer any means of redress to remedy the situation. In such circumstances, there had been no effective remedy available to the applicants in respect of the non-enforcement of the interim order.

Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 (*seizure of the building*): The applicants had been refused access to their properties for a period of one month and thus had effectively lost complete control over their properties and the opportunity to use and enjoy them. The continuous denial of access with the purpose of demolishing the residence constituted an interference with the peaceful enjoyment of their pos-

sessions, which interference was not lawful under domestic law because the authorities had disregarded the interim order issued by the domestic courts.

Conclusion: violation (unanimously).

Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 (*seizure of the building*): The applicants had not been awarded any compensation by the domestic courts concerning the seizure of the building. They had not therefore had any effective remedy at their disposal for the purposes of Article 13 of the Convention.

Conclusion: violation (unanimously).

Article 1 of Protocol No. 1 (*expropriation and demolition of the property*): The demolition of the building had deprived the applicants of any future possibility of enjoying their properties. In those circumstances, there had been an interference with their property rights in the form of a "deprivation" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. Legitimate concerns arose about the adequacy of a procedure whereby the authorities could decide, in such a short time, to expropriate the applicants' properties in the public interest and immediately proceed with the demolition. In their decisions the domestic courts had concluded that both the authorities' failure to comply with the interim order and the demolition of the residence had been unlawful. The whole procedure on the applicants' expropriation had been carried out hastily and was manifestly not in accordance with domestic law.

Conclusion: violation (unanimously).

Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1 (*expropriation and demolition of the property*): The case regarding the level of compensation had been pending before the Supreme Court since 2014. In January 2015 the Supreme Court stayed the proceedings without giving any reasons. The applicants had still not been compensated. A delay of four years in paying compensation to the applicants, who had lost their homes and belongings, could not be considered effective. The applicants had thus been denied an effective remedy for the alleged breach of their rights under Article 1 of Protocol No. 1.

Conclusion: violation (unanimously).

Article 41: EUR 7,800 each to the first and second applicants and 13,000 each to the remaining 17 applicants in respect of non-pecuniary damage; EUR 13,098,600 jointly to all applicants in respect of pecuniary damage.

The Court also found violations of Article 8, as regards the applicants' right to respect for their home on account of the seizure and surrounding of the building, and of Article 13 in conjunction with Article 8 on account of the lack of an effective remedy in that regard.

ARTICLE 6 § 2

Presumption of innocence

Dismissal of school caretaker for misconduct while he was still awaiting criminal trial in respect of same incident: *no violation*

Güç v. Turkey, 15374/11, judgment 23.1.2018 [Section II]

Facts – The applicant, a school caretaker employed at the Public Education Centre, was taken into police custody on suspicion of child molestation, after being caught in an allegedly indecent position with a primary school pupil. He was subsequently charged with sexual abuse, sexual assault and unlawful detention of a minor. While the criminal proceedings were still pending he was dismissed following a disciplinary investigation by Ministry of Education inspectors which found that the applicant had engaged in "shameful and disgraceful conduct that [was] incompatible with the civil service". The applicant's appeal to the administrative court was dismissed.

In the Convention proceedings, the applicant alleged that his dismissal and the reasoning employed by the administrative courts when reviewing it were incompatible with Article 6 § 2 of the Convention.

Law – Article 6 § 2: The Court reiterated that the Convention does not preclude that an act may give rise to both criminal and disciplinary proceedings, or that two sets of proceedings may be pursued in parallel. In that respect even exoneration from criminal responsibility does not, as such, preclude the establishment of civil or other forms of liability arising out of the same facts on the basis of a less strict burden of proof.

In the present case the Court was called upon to determine whether the disciplinary and administrative authorities had, through their reasoning or the language used in their decisions, allowed doubt to

be cast on the applicant's innocence even though he had not been found guilty by a criminal court.

The disciplinary investigation was carried out by two inspectors who established the facts independently by taking statements and examining a counsellors' report on the pupil's psychological and social stage of development. There was nothing in the disciplinary report to suggest that the inspectors had drawn premature inferences from the criminal proceedings pending against the applicant. At the end of their investigation, and on the basis of a less strict burden of proof, they formed the strong impression that the applicant had subjected the pupil to harassment. In the opinion of the Court, the use of the term "harassment" did not in itself present a problem, as the term is not used solely in connection with criminal-law actions, but also in contexts where a person's private sphere, including his or her bodily integrity, is violated by non-consensual physical or verbal contact. The disciplinary authorities did not comment on whether the harassment could also be classified as sexual harassment within the meaning of the criminal law. Furthermore, in the Court's view the fact that the authorities noted that the incident had aroused suspicion against the applicant meant that they had taken account of the need to maintain public confidence in the education system and to dispel any appearance of tolerance of suspicious acts against minors. Against this background, the disciplinary investigation had not overstepped the bounds of its civil jurisdiction in such a way as to violate the applicant's right to be presumed innocent in the parallel criminal proceedings.

As regards a reference the administrative court had made to a statement given in the criminal proceedings, the Court noted that a civil court's reliance on a statement made or evidence produced in criminal proceedings was not itself incompatible with Article 6 § 2 of the Convention so long as such reliance did not result in the civil court commenting on the defendant's criminal responsibility or drawing inappropriate conclusions therefrom. On the facts, the Court considered that the statement alone (which referred to rumours that the applicant had previously engaged in indecent behaviour in other schools where he had worked) did not amount to an imputation of criminal guilt to the applicant. It also noted that the administrative court had not commented on whether the applicant should be found guilty on the charges in the criminal proceedings

The language used in the disciplinary and administrative proceedings had thus been compatible with the requirements of Article 6 § 2.

Conclusion: no violation (unanimously).

Presumption of innocence

Offences for which the criminal proceedings had been discontinued taken into account in sentencing process: *no violation*

Bikas v. Germany, 76607/13, judgment 25.1.2018 [Section V]

Facts – The applicant had been convicted of four counts of coercion to engage in sexual activity and sentenced to six years' imprisonment. Before the European Court he alleged that the presumption of innocence had been violated as the court, when setting his sentence, had taken into consideration further offences of which he had not been convicted.

Law – Article 6 § 2

(a) *Admissibility* – The applicant had initially been "charged", for the purposes of Article 6 § 2, with committing a large number of offences, including at least fifty further counts of coercion to engage in sexual activity, given that he had been indicted and tried in the proceedings before the Regional Court for those offences. In a decision taken on the last day of the trial, the Regional Court had provisionally discontinued the criminal proceedings for those offences under Article 154 of the Code of Criminal Procedure. Under that provision, the proceedings could be provisionally discontinued as the penalty which might have resulted from prosecution for those fifty offences was not considered as being particularly significant in addition to the penalty which the applicant could expect for the remaining four counts of coercion to engage in sexual activity. Under German case-law that discontinuation did not exclude, however, their consideration as an aggravating element in the sentencing process for a conviction if their existence had been sufficiently established. The applicant had been warned that those counts of coercion could be taken into account at the sentencing stage for the remaining four counts. The Regional Court did so in its sentencing procedure. In its judgment, the Regional Court amply evaluated the evidence concerning the fifty further offences and repeatedly stated that it was convinced that they had taken place.

In those circumstances, at the time when the Regional Court took into account the fifty further incidents of coercion to engage in sexual activity, the applicant still had to be considered as notified of an allegation that he had committed further counts of coercion to engage in sexual activity and thus as being "charged" with, *inter alia*, the fifty further offences at issue. Article 6 § 2, which applied first and foremost in the context of pending criminal proceedings, was therefore applicable in the proceedings at issue.

(b) *Merits* – In defining the requirements for compliance with the presumption of innocence the Court had drawn a distinction between cases where a final acquittal judgment had been handed down and those where criminal proceedings had been discontinued. In cases concerning statements made after an acquittal had become final the Court had considered that the voicing of suspicions regarding an accused's innocence was no longer admissible. In contrast, the presumption of innocence would only be violated in cases concerning statements after the discontinuation of criminal proceedings if, without the accused's having previously been proved guilty according to law and, in particular, without his having had an opportunity to exercise the rights of the defence, a judicial decision concerning him reflected an opinion that he was guilty. A judicial decision might reflect that opinion even in the absence of any formal finding of guilt; it sufficed that there was some reasoning suggesting that the court regarded the accused as guilty.

In cases concerning compliance with the presumption of innocence, the language used by the decision maker would be of critical importance in assessing the compatibility of the decision and its reasoning with Article 6 § 2. Regard had to be had, in that respect, to the nature and context of the particular proceedings in which the impugned statements had been made. The provisional discontinuation of the proceedings in respect of, in particular, the fifty further events had taken place on the last day of the trial, following seventeen days of taking of evidence, and on the same day as that on which the judgment had been delivered. All the applicant's defence rights had been observed during the trial. At the moment of the provisional discontinuation of the proceedings, for reasons of procedural economy, the applicant had been warned that the said events might be used during sentencing.

The judgment focusing on four events and taking into account, when measuring out the sentence, fifty further offences described the facts established during the entire time span during which the alleged offences had taken place. The Regional Court stated several times in the judgment that it was convinced that the other fifty events had taken place, but that it was not possible to provide specificity as regards the exact place and time of all these events. The Regional Court thus rendered a judgment in which it explicitly convicted the accused of four counts of coercion to engage in sexual activity. While the four incidents were explicitly mentioned in the operative part of the judgment, the other fifty incidents were described in the reasoning of the judgment and were taken into account as an aggravating element in determining the penalty.

The Regional Court could accordingly be said to have applied, pursuant to domestic law, high, but different standards of proof for the determination of the applicant's guilt in respect of those incidents. While for the first four incidents the court had all the elements to define the crimes as offences in the procedural sense, for fifty further incidents in respect of which it discontinued the proceedings it was convinced that the accused was guilty, but could not indicate the exact time and place at which the incidents took place owing to the victim's speech disorder. In that context the Court took into account that the other fifty incidents were, as stated by the Regional Court, indeed similar and closely linked: they all related to the same type of offences, i.e. coercion to engage in sexual activity; they had been committed on the same victim within a certain period, with precisely the same intention of sexual abuse. That supported the finding that in such a case, against the background that the occurrence of the acts had been proven beyond reasonable doubt, it was not necessary to determine the exact time and place of every committed act. Thereby, the courts had fulfilled the requirements which had been established in the domestic courts' case-law regarding the assessment of evidence in accordance with the particularities of serial offences in the field of sexual abuse.

The applicant had been found guilty, in substance, of the fifty further offences, to which a different standard of proof had been applied. That standard of proof was sufficient, under domestic law, for taking those offences into account in the sentencing process, but not for formally convicting the applicant thereof. The standard of proof necessary

for finding a person guilty of an offence was for the national authorities to determine. The Court therefore considered that the applicant in the present case was also proved guilty, in accordance with the standards which were and could be fixed by domestic law, of the fifty further incidents in question and that the presumption of innocence was therefore rebutted.

Finally, the Court took into account the States' positive obligation under Articles 3 and 8, in particular with respect to sexual offences, to safeguard the individual's physical integrity. Further, it does not overlook that the German courts' case-law authorising the domestic courts to take into account, in the sentencing process, further acts, was both transparent and served the useful purpose of procedural economy.

Conclusion: no violation (unanimously).

(See also *Allen v. the United Kingdom* [GC], 25424/09, 12 July 2013, Information Note 165; and *Vulakh and Others v. Russia*, 33468/03, 10 January 2012, Information Note 148)

ARTICLE 6 § 3 (d)

Examination of witnesses

Conviction based on co-accused's statements with no possibility of confrontation: *violation*

Kuchta v. Poland, 58683/08, judgment 23.1.2018 [Section IV]

Facts – In 2006 a number of individuals, including the applicant, received criminal convictions for fraudulently purchasing mobile telephones at preferential rates. Their guilt was established largely on the basis of statements by the principal defendant, P.N., a telephone sales agent, who had confessed to the police that he had organised the fraud using a similar method for all the defendants, indicating that they had all been aware of the illegality of their contracts. At his request, P.N. had been exempted from appearing at the trial. Consequently, his statements had merely been read out in open court without any possibility for the other defendants to put questions to him.

Law – Article 6 §§ 1 and 3 (d): The case-law principles concerning the use of statements by an absent witness applied by analogy to the statements of an absent co-defendant.

The present case had to be distinguished from that of *Riahi v. Belgium* (65400/10, 14 June 2016) where the absent witness had first been interviewed by the police and then by the investigating judge: here, the absent co-defendant had only been questioned by the police and never by a prosecutor or judge.

The national courts had taken the view that the examination in open court of the person who had given the impugned statement was not necessary for the establishment of the truth. It was true that he had the status of defendant and had exercised his rights under the Code of Criminal Procedure. Even if he had been summoned to the hearing, he might well have exercised his right to remain silent. In those circumstances his appearance at the trial would not have guaranteed the possibility of obtaining additional information from him.

However, it was not apparent from the reasoning of the domestic judgments, (a) whether the impugned statements had been regarded as decisive or (b) whether the courts had examined in depth the question of the consequences of P.N.'s absence for the establishment of the truth or the existence of safeguards to counterbalance the disadvantages for the applicant's defence.

(a) *The weight of the impugned statements in the applicant's conviction* – The courts had indicated that they had based the conviction on the entire body of evidence in the case file, taken as a whole. However, in the Court's view it was undeniable that P.N.'s statements had played a decisive role in the applicant's conviction.

To be sure, in order to demonstrate that the offence attributed to the applicant had been perpetrated and to ascertain his degree of guilt, the courts had been required to establish criminal intent and an awareness, on his part, of the unlawfulness of the acts in question. The statements made by the other defendants on this point had not been unequivocal and they had not all shown explicitly that all the accused had acted in full awareness or with the same degree of criminal intent. As the sole eye-witness of the offences, P.N. was in fact the only one who could shed light on these issues. None of the other evidence admitted by the national courts could settle the question of the applicant's criminal intent to any greater extent, as it merely corroborated the impugned statements.

(b) *The existence of counterbalancing procedural safeguards* – Neither a judge nor the applicant himself had been able to observe P.N. during his interview in order to assess his credibility.

While the courts had examined this credibility in the light of the other evidence available, there was nothing in the file to show that they had attached less weight to it on account of the defence's inability to question P.N. or because the judges had nor seen or heard him. However rigorous it might be, scrutiny by the trial judge was nevertheless an imperfect means of ascertaining the credibility of such a statement, since it did not have the benefit of the information that could be gleaned through a confrontation in open court between the accused and the accuser.

As to the fact that the relevant provisions of the Code of Criminal Procedure had granted P.N. certain specific rights, including the right to refuse to make any statements or to answer certain questions without having to provide explanations, this was certainly important for the assessment of the overall fairness of the proceedings, but nevertheless not decisive.

In the Court's view, the possibility of challenging the incriminating statement by adducing evidence or calling witnesses was not capable of counterbalancing the fact that the applicant had not had, at any stage of the proceedings, an opportunity to test the sincerity or reliability of the witness by challenging his testimony.

The fact that the applicant had not made any request for that purpose during the trial at first instance did not alter that finding, because at that stage he had not been assisted by a professional.

In sum, the applicant had not had a sufficient or appropriate opportunity to challenge statements which constituted the decisive evidence against him in his conviction.

Conclusion: violation (unanimously).

Article 41: EUR 2,000 in respect of non-pecuniary damage.

(For the relevant principles and criteria, see *Al-Khawaja and Tahery v. the United Kingdom* [GC], 26766/05 and 22228/06, 15 December 2011, Information Note 147; and *Schatschaschwili v. Germany* [GC], 9154/10, 15 December 2015, Information Note 191)

ARTICLE 7

Heavier penalty

Prison sentence subsequently replaced by psychiatric detention: *no violation*

Kadusic v. Switzerland, 43977/13, judgment 9.1.2018 [Section III]

(See Article 5 § 1 (a) above, page 8)

ARTICLE 8

Respect for private and family life, respect for home

Requirement for elite athletes in "target group" to keep authorities informed of their whereabouts for purposes of random drug testing: *no violation*

National Federation of Sports Associations and Unions (FNASS) and Others v. France, 48151/11 and 77769/13, judgment 18.1.2018 [Section V]

Facts – The applicants were the Fédération Nationale des associations et des syndicats Sportifs (FNASS), the Syndicat National des Joueurs de Rugby (Provale), the Union Nationale des Footballeurs Professionnels (UNFP), the Association des Joueurs Professionnels de Handball (AJPH), and the Syndicat National des Basketteurs (SNB), together with ninety-nine professional handball, football, rugby and basketball players, and one international cyclist classified as a high-level athlete.

The applicants complained in particular that an obligation to notify information on their whereabouts, so that unannounced anti-doping tests could be carried out, pursuant to the 14 April 2010 Government Order No. 2010-379 on the health of athletes, bringing the Sports Code into line with the principles of the World Anti-Doping Code, had breached their rights under Article 8 of the Convention. The athletes, who had been selected as part of a testing pool, had to provide, at the beginning of every quarter, detailed and up-dated information on their daily whereabouts, including at weekends. They were also required, for each day of the quarter, to specify a one-hour slot between 6 a.m. and 9 p.m. when they would be available for unannounced testing at the location indicated. Such testing could take place when they were not in competition or training and therefore even at home. Failure to comply with each of those obligations would be regarded as an infringement. Three infringements over a consecutive period of eighteen months would entail a sanction.

Law – Article 8: Even though it was foreseeable for high-level athletes, this requirement of

transparency and availability sufficed for the obligations complained of to be regarded as impacting on the quality of their private life and also entailed consequences for the enjoyment of their family life and their way of life. The intimate environment where the athletes carried on their private life, i.e. the privacy of their home, was also undermined by the whereabouts requirements.

The obligation in question represented an interference with the applicants' rights under Article 8 § 1, being in accordance with the law, which sought to address questions of "health", and not only the health of professionals, but also that of amateurs and in particular youth. It thus had the legitimate aim of protecting "the rights and freedoms of others". Indeed, the use of prohibited substances to gain an advantage over other athletes unfairly eliminated competitors of the same level who did not have recourse to them, dangerously encouraging amateurs and especially young people to follow suit in order to enhance their performance, and thus deprived spectators of the fair competition which they legitimately expected.

While the applicants did not regard doping as a threat to health, there was a broad consensus among medical, governmental and international authorities in favour of denouncing and combating the dangers caused by doping for the physical and mental health of athletes. And the fact that their health could be harmed by factors other than the taking of such substances, in view of the intensity and high level of competitions, was an additional reason to protect those concerned from the dangers of doping, rather than reducing the need for anti-doping prevention. Moreover, anti-doping prevention was a question of public health in professional sports and for the benefit of all athletes. As the conduct of high-level athletes was likely to have a significant influence over youth, that was further justification for the requirements imposed on those athletes while they were registered for the testing pool.

There were common European and international views on the need for unannounced testing, which was made possible partly through the whereabouts mechanism, as shown in various international instruments, which reflected a continuous development of the applicable norms and principles. There were, however, differences in organisation between the member States of the European Union. It fell within the margin of appreciation of the States to decide on the measures necessary to resolve, in their respective legal systems, the concrete problems raised by doping control, in the light of the complex scientific, legal and ethical questions raised. France, which had ratified the UNESCO's International Convention against Doping in Sport, was one of the European States which had brought its domestic law almost entirely into conformity with the principles of the World Anti-Doping Code as regards the whereabouts requirement imposed on athletes.

As to the need to strike a balance, the Order of 14 April 2010 had set a one-year term of validity for registration in the testing pool. Without excluding renewals, following a fair hearing of the athlete concerned, that provision constituted an improvement in the procedural safeguards available to those selected.

The athletes might feel obliged, for practical reasons, to give their home or a holiday residence as their whereabouts at weekends and during holidays, with the possibility of being tested there. Such a situation interfered with their right to the peaceful enjoyment of their home and negatively affected their private and family life. Nevertheless, those whereabouts were established "at their request and according to a given time-frame", and they were required to ensure the efficiency of anti-doping tests. The checks in question were thus very different from those under the supervision of the courts, which were intended for the establishment of offences and might entail seizures, which by definition would undermine the essence of the right to respect for one's home.

The Order of 14 April 2010, as codified in the Sports Code, and the decisions of the French Anti-doping Agency, had laid down a framework within which athletes were able to challenge their selection for the testing pool, including through an appeal to a court. It also allowed them to foresee and adopt the necessary conduct in relation to the places and times arranged for the testing, as a missed test was limited to their absence at the time and place they themselves had indicated. Lastly, they had the possibility of challenging any sanctions before the Administrative Court.

The applicants alleged that the tests to which they were subjected were inefficient. However, while positive results were admittedly rare, this could be explained, at least in part, by the dissuasive effect of anti-doping prevention. Directly concerned, as they

were, by a scourge that was particularly prevalent in the circles of high-level competition, to which they had risen, they had to bear their fair share of the constraints that were inherent in the measures needed to counter the problem. Similarly, the allegedly endemic nature of doping in the world of sport could not call into question the legitimacy of prevention efforts but, on the contrary, justified the desire of the public authorities to succeed in those efforts.

The applicants had not demonstrated that testing limited to training grounds, while respecting times reserved for private life, would have sufficed to fulfil the objectives set by the national authorities in keeping up with developments in increasingly sophisticated doping methods, and in dealing with the very short time-frame within which prohibited substances could be detected. In the light of the dangers established in the case and the difficulties encountered in reducing them efficiently, the whereabouts requirements imposed in accordance with the above-mentioned norms of international law had to be regarded as justified.

Without underestimating the impact of those requirements on the applicants' private life, the general interest reasons which made them necessary were of considerable importance and justified the restrictions on their rights under Article 8 of the Convention. To reduce or remove the obligations of which they complained would be capable of increasing the dangers of doping for their health and for that of the whole sports community, running counter to the European and international consensus on the need for unannounced testing. The respondent State had struck a fair balance between the different interests at stake.

Conclusion: no violation (unanimously).

(See also the Factsheet on Sport and ECHR and, under Article 10 of the Convention (freedom of expression), *Ressiot and Others v. France*, 15054/07 and 15066/07, 28 June 2012)

Respect for private and family life

Compulsory sex education in public schools for four to eight-year-olds: *inadmissible*

A.R. and L.R. v. Switzerland, 22338/15, decision 19.12.2017 [Section III]

Facts – In 2011 the first applicant and her seven-year-old daughter unsuccessfully submitted a request for the girl to be exempted from "sex education classes" in the second year of primary school. The classes were mandatory for children of between 4 and 8 under a directive of the Cantonal Education Department. The two applicants appealed to the Federal Court, which dismissed their appeal on the merits, while finding that Articles 8 and 9 of the Convention were applicable. The first applicant argued that the sex education was premature and that its mandatory nature interfered with the parents' role in educating their children.

Law

Article 8: The Court had never expressly found that Article 8 § 1 applied to the parents' right to provide for their children's education, which was mainly protected by Article 2 of Protocol No. 1 to the Convention (a Protocol not ratified by Switzerland), the *lex specialis* in such matters. It had always confined itself to interpreting Article 2 § 1 of that Protocol in the light of Articles 8 to 10 of the Convention.

This did not necessarily mean, however, that Article 8 § 1 could not be applied in the present case. By referring to "family life", its very wording suggesting more than mere cohabitation between parents and children, and could also extend to the freedom and duty of parents to educate and raise their children. Nor did the Court rule out that the education of a child, in so far as it constituted one of the fundamental aspects of a parent's identity, could be part of the parent's "private life".

However, even supposing that Article 8 was applicable to the first applicant's complaint, the complaint was manifestly ill-founded for the following reasons.

The interference in question was "in accordance with the law", as the Federal Constitution provided for a mandatory curriculum in State schools and the Cantonal curriculum clearly indicated that "Life and Earth Sciences" included health education and that the latter covered sex education. Sex education sought to protect the health of children. In the Court's view, since sexual abuse posed a real threat to the physical and mental health of children, against which they had to be protected at all ages, society undeniably had a particular interest in providing such education to very young children. This was all the more important as such children did not live in isolation, but were exposed to a whole range of external influences and information (including in the media), which might raise legitimate questions in their minds and which made it necessary to

ensure that they were confronted, in a supervised manner, with the subject in question. The interference thus pursued legitimate aims.

As to whether the interference was necessary in a democratic society, the Court noted that, in order to interpret Article 8, it could take into consideration the principles arising from Article 2 of Protocol No. 1, even though that Protocol was not applicable to Switzerland (for a similar approach under Article 9 of Convention, see for example *Osmanoğlu and Kocabaş v. Switzerland*, no. 29086/12, 10 January 2017, Information Note 203).

The first applicant had not complained about the existence of sex education classes as such but only the fact that they were dispensed to children of between 4 and 8.

The Court was not unaware of the fact that the such young children were particularly sensitive and open to outside influence or that their relationship with their parents was of particular importance in those crucial years for their development. Moreover, Article 5 of the United Nations Convention on the Rights of the Child established a link between the evolving capacities of the child and the parents' freedom to give the child direction and guidance that States were bound to respect. It was thus appropriate to grant a particularly high level of protection to the parental education of young children. The complaint thus warranted an in-depth examination.

That being said, the protection of parental education provided for in Article 5 of the Convention on the Rights of the Child was not an end in itself, but always had to be conducive to the child's well-being.

That finding could be derived from the very text and spirit of the UN Convention, since it assigned to education the role of protecting children against all forms of physical or mental violence, injury or abuse, "including sexual abuse" (Article 19) and to prepare them for "responsible life in a free society" (Article 29 (d)).

These were the aims pursued by the school sex education in the Canton concerned, without there being any indoctrination of the pupils. The first applicant had not in fact alleged that the sex education lessons sought to influence the sexual morals of children. According to the very wording of the directive adopted by the education authority, school sex education could not serve to impose any social control or standardisation. There was nothing to suggest that the State authorities had disregarded this requirement.

As to the proportionality of the impugned refusal, the following reasons led the Court to find that, even assuming that Article 8 was applicable in respect of the first applicant, the Swiss authorities had not overstepped their margin of appreciation.

First, the national authorities had recognised the paramount importance of the right of parents to provide for their children's sex education. The directive itself expressly recognised the parents' "important role" and stated that the school's role was merely to "complement" the sex education provided by parents. Moreover, it stated that the complementary nature of the classes derived from the fact that they were not systematic. The authorities had amended the directive in 2011 by introducing recommendations emphasising the non-systematic nature of the lessons, the teachers' task being limited to "reacting to children's questions and actions". In the present case – where the child had not actually attended any sex education classes –, there was no doubt that these recommendations had been followed.

Secondly, the argument that sex education lessons risked forcing information about sexuality onto children who had not yet spontaneously raised the subject seemed to overlook the dynamics at play in a primary-school class: the idea of responding to questions on sexual matters only when children asked such questions was not feasible in terms of actual teaching practice.

Thirdly, the competent authorities had dealt with the sensitive subject of sex education with due seriousness. By providing in a detailed manner, in the above-mentioned directive and recommendations, for sex education lessons adapted to the age and gender of the children, the Swiss authorities had shown significant equanimity in relation to the various interests at stake. In the case of the applicants, the cantonal authorities and domestic courts had given well-reasoned judgments, taking into account the child's interest while recognising the paramount role of parents in their children's education, including sex education.

Conclusion: inadmissible (manifestly ill-founded).

Article 9: The Court did not find it necessary to decide on the applicability of Article 9 of the Convention to the question of sex education, as the

complaint had not been substantiated (the first applicant had merely referred, in a quite abstract manner, to the fundamental, ethical and moral values of the human person which she said were related to sex education, but without explaining in practical terms what values or how they would be affected by participation in sex education lessons).

In any event, a violation of that Article could be ruled out essentially for the same reasons as those given in respect of Article 8.

Article 9 § 1 did not grant parents who adhered to a particular religion or philosophy the right to refuse the participation of their children in public teaching which might run counter to their ideas; it merely prevented the State from indoctrinating children through such teaching. It transpired from the Court's findings under Article 8 that the competent authorities had not pursued such an aim and that they had respected the complementary nature of school sex education in relation to the education in such matters that was provided within the family.

Conclusion: inadmissible (manifestly ill-founded).

The Court also declared inadmissible the complaint under Article 14 taken together with Articles 8 and 9 of the Convention, mainly for non-exhaustion of domestic remedies.

Respect for private life

Covert video surveillance of supermarket cashiers by employer: *violation*

López Ribalda and Others v. Spain, 1874/13, judgment 9.1.2018 [Section III]

Facts – The applicants worked as supermarket cashiers. In order to investigate economic losses, their employer installed surveillance cameras consisting of both visible, of which the applicants were given notice, and hidden cameras, of which they were not. The applicants were dismissed following video footage showing them stealing items. Before the European Court, the applicants argued, *inter alia*, that the covert video surveillance ordered by their employer had violated their right to privacy protected by Article 8.

Law – Article 8: The covert video surveillance of employees in their workplace had to be considered as a considerable intrusion into their private life. It entailed a recorded and reproducible documentation of their conduct at their workplace, which, being obliged under the employment contract to perform the work in that place, they could not evade. The applicants' "private life" was therefore concerned by these measures.

Although the purpose of Article 8 was essentially to protect the individual against arbitrary interference by the public authorities, it did not merely compel the State to abstain from such interference: in addition to that primarily negative undertaking, there might be positive obligations inherent in an effective respect for private life. Those obligations might involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. Therefore, the Court had to examine whether the State, in the context of its positive obligations under Article 8, had struck a fair balance between the applicants' right to respect for their private life and both their employer's interest in the protection of its organisational and management rights concerning its property rights, as well as the public interest in the proper administration of justice.

The covert video surveillance was carried out after losses had been detected by the shop supervisor, raising an arguable suspicion of theft committed by the applicants as well as other employees and customers. The visual data obtained entailed the storage and processing of personal data, closely linked to the private sphere of individuals. That material was thereby processed and examined by several persons working for the applicants' employer (among others, the union representative and the company's legal representative) before the applicants themselves were informed of the existence of the recordings.

The legislation in force at the time of the events contained specific provisions on personal data protection. As acknowledged by the domestic courts, the applicants' employer did not comply with the obligation to inform the data subjects of the existence of a means of collecting and processing their personal data, as prescribed in the domestic legislation. In addition, the Government had specifically acknowledged that the employees had not been informed of the installation of covert video surveillance zoomed in on the cash desks or of their rights under the Personal Data Protection Act.

Despite that, the domestic courts had considered that the measure had been justified (in that there had been reasonable suspicions of theft), appropriate to the legitimate aim pursued, and necessary and proportionate, since there had been no other

equally effective means of protecting the employer's rights which would have interfered less with the applicants' right to respect for their private life.

The situation in the present case differed from that in the Court's decision in *Köpke v. Germany*. In the present case, the legislation in force clearly established that every data collector had to inform the data subjects of the existence of a means of collecting and processing their personal data. In a situation where the right of every data subject to be informed of the existence, aim and manner of covert video surveillance was clearly regulated and protected by law, the applicants had a reasonable expectation of privacy. Further, in the present case and unlike in *Köpke*, the covert video surveillance did not follow a prior substantiated suspicion against the applicants and was consequently not aimed at them specifically, but at all the staff working on the cash registers, over weeks, without any time limit and during all working hours. In *Köpke* the surveillance measure had been limited in time – it was carried out for two weeks – and only two employees had been targeted by the measure. In the present case, however, the decision to adopt surveillance measures was based on a general suspicion against all staff in view of the irregularities which had previously been revealed by the shop manager.

Consequently, the Court could not share the domestic courts' view on the proportionality of the measures adopted by the employer with the legitimate aim of protecting the employer's interest in the protection of its property rights. The video surveillance carried out by the employer, which took place over a prolonged period, did not comply with the requirements stipulated in the relevant legislation, and, in particular, with the obligation to previously, explicitly, precisely and unambiguously inform those concerned about the existence and particular characteristics of a system collecting personal data. The rights of the employer could have been safeguarded, at least to a degree, by other means, notably by previously informing the applicants, even in a general manner, of the installation of a system of video surveillance and providing them with the information prescribed in the Personal Data Protection Act.

Having regard to the foregoing, and notwithstanding the respondent State's margin of appreciation, the domestic courts had failed to strike a fair balance between the applicants' right to respect for their private life under Article 8 of the Convention and their employer's interest in the protection of its property rights.

Conclusion: violation (six votes to one).

Article 41: EUR 4,000 each in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

The Court also held, unanimously, that there had been no violation of Article 6 § 1, in particular, as regards the use of evidence obtained in breach of Article 8.

(See also *Bărbulescu v. Romania* [GC], 61496/08, 5 September 2017, Information Note 210; and *Köpke v. Germany* (dec.), 420/07, 5 October 2010, Information Note 134)

ARTICLE 9

Freedom of conscience

Compulsory sex education in public schools for four to eight-year-olds: *inadmissible*

A.R. and L.R. v. Switzerland, 22338/15, decision 19.12.2017 [Section III]

(See Article 8 above, page 19)

ARTICLE 10

Freedom of expression

Dismissal of civil servant for writing article encroaching on his employers' statutory mission to identify possible Securitate collaborators: *no violation*

Catalan v. Romania, 13003/04, judgment 9.1.2018 [Section IV]

Facts – In 2000 the applicant was recruited by the National Council for the Study of *Securitate* Archives ("the CNSAS") and in 2001 he published in a tabloid-type newspaper an article about the collaboration with the *Securitate* of certain leaders of the Romanian Orthodox Church. The CNSAS decided to dismiss him for breaching his duty of reserve. Pointing out that he had not been writing in his capacity as a civil servant, he challenged the relevance of those grounds but was unsuccessful.

Law – Article 10: The applicant's dismissal had constituted an interference with his right to freedom of expression. The interference was prescribed by law

(namely by Article 45 (g) of the CNSAS rules governing the relationship of loyalty and trust between the CNSAS and its officials, and section 41 of Law no. 188/1999, which obliged civil servants to refrain from any act capable of causing damage to their employer). Having regard to the domestic context and to the time of the publication in question, the applicant could reasonably have expected that his remarks would have a negative impact on the image of his employer and, accordingly, that they would fall foul of those provisions.

The measure pursued two legitimate aims: to prevent the disclosure of confidential information and to protect the rights of others. As to the first, even if the applicant had obtained the information disclosed in his article prior to his recruitment by the CNSAS, under the law it was for the CNSAS, on the basis of the information contained in the *Securitate* files compiled during the Communist regime, to decide whether the label of collaborator could be given to the various categories of people who had public duties, including the leaders of legally recognised religious denominations. As to the protection of the rights of others, the interference sought to protect the rights of the CNSAS by penalising conduct that was capable of undermining the authority of the public institutions.

As to whether the interference was "necessary in a democratic society", the Court first observed that the applicant was a civil servant bound by a duty of loyalty and discretion. The present case thus raised a separate issue from those relating to the obligations of journalists, where the breached duty of confidentiality would be that of a third party and not the journalists themselves, or cases concerning whistleblowing by employees about unlawful conduct or acts witnessed at work, involving the disclosure of information or documents of which they had knowledge in the course of their duties. Here the applicant's remarks did not concern the activity of the CNSAS. The applicant had rather sought to provide the public, in his capacity as historian, with information about the collaboration of religious leaders with the *Securitate*.

Further, the Court took the view that the reasons provided by the CNSAS and the domestic courts in imposing the sanction on the applicant had been relevant and sufficient in respect of the two legitimate aims identified.

(a) *First aim: to prevent the disclosure of confidential information* – The applicant's duty of reserve could not be superseded by any interest that the public might have in questions arising from the application of the law on access to *Securitate* archives. On the contrary, the risk of manipulating public opinion on the basis of a reduced number of documents from a file added more weight to the duty of loyalty towards the CNSAS, whose role and duty it was to provide the public with reliable and trustworthy information.

In reaching that conclusion, the Court noted in particular as follows:

(i) It fell within the statutory remit of the CNSAS to determine the question of the collaboration with the *Securitate* of individuals exercising public duties.

(ii) The applicant's dismissal had been decided after a disciplinary procedure, ensuring a fair hearing and with a right of appeal to the domestic courts.

(iii) Even though the applicant had alleged that his aim was to inform the public about a matter of general interest, a number of factual elements cast doubt on his conduct. Being published in a tabloid-type newspaper, his remarks were not made in an academic context; even before the CNSAS had verified the documents in question the applicant had presented his comments as if they were the established truth, with the risk of conveying a distortion of reality to public opinion; lastly, the remarks were not an immediate or off-the-cuff reaction in a rapid and spontaneous verbal exchange, but written claims published with the benefit of prior reflection.

(b) *Second aim: the protection of the rights of others* – The applicant had chosen not to criticise publicly the manner in which his employer had or had not assumed its statutory role, but to substitute his own opinion for that of his employer and to make disclosures that fell within the institution's remit. Even though the applicant had not, in the offending article, made reference to his capacity as an official of the CNSAS, he could not have been unaware of the impact of its publication for his employer. In addition, the press had not been unaware that he was a CNSAS official and had widely relayed his comments. Consequently, his statement could easily have been perceived by the public as the official position of the CNSAS or, at least, as emanating from that institution. This interpretation of the duties arising from his status as civil servant was not unreasonable, since it was in the interest of the CNSAS to distance itself from its employee, in order

to preserve the public's trust in that institution's ability to handle a sensitive question for Romanian society.

Lastly, as to the proportionality of the sanction, even though the dismissal had been a very harsh measure, having regard to the applicant's post, the CNSAS had legitimately been able to take the view that his public stance on a sensitive subject falling within the field of his research, had irretrievably undermined the trust that had to be maintained in their employer-employee relationship. Moreover, subsequent to his dismissal the applicant had been reinstated into the civil service, being appointed to a teaching post. Therefore, the applicant's dismissal from the civil service had not been a disproportionate sanction.

Conclusion: no violation (unanimously).

Freedom of expression

NGO held liable for infringement of politician's personality rights for describing speech as "verbal racism": *violation*

GRA Stiftung gegen Rassismus und Antisemitismus v. Switzerland, 18597/13, judgment 9.1.2018 [Section III]

Facts – In November 2009 the youth wing of the Swiss People's Party held a demonstration concerning a public initiative to support the prohibition of the building of minarets in Switzerland. Following the demonstration, the applicant, a non-governmental organisation which promoted tolerance and condemned all types of racially motivated discrimination, posted an entry on its website, quoting a speech given by a young politician during the demonstration and describing his words as "verbal racism". The politician in question filed a claim for the protection of his personality rights. The High Court concluded that the politician's speech had not been racist and ordered the impugned article be removed from the applicant's website and replaced with the court's judgment. The applicant's appeal was unsuccessful.

Before the European Court the applicant organisation alleged, in particular, that the civil courts had violated its right to freedom of expression.

Law – Article 10: The domestic courts' finding against the applicant organisation constituted an interference with its right to freedom of expression. That interference had been prescribed by law and pursued a legitimate aim. The question was whether the interference had been "necessary in a democratic society".

When assessing the impugned statements, it was important to bear in mind the general background of the ongoing political debate in which the relevant statements had been made. Both the speech and the applicant organisation's article concerned a topic of intense public debate in Switzerland at the material time: the popular initiative against the construction of minarets which had been widely reported in national and international media. The initiative had ultimately been accepted by a referendum on 29 November 2009 and the ban had been included in the Swiss Constitution.

The politician in question had been elected president of a local branch of the youth wing of a major political party in Switzerland. His speech was clearly political and had been made in the framework of support for his party's political goals, which at that time were to promote the initiative. Consequently, the politician had willingly exposed himself to public scrutiny by stating his political views and therefore had to show a higher degree of tolerance towards potential criticism of his statements by those who did not share his views. The applicant organisation had reproduced his speech, which had already been published on the political party's own website, calling it "verbal racism". The Federal Supreme Court had held that classifying the speech as "verbal racism" had been a mixed value judgment which had had no factual basis because the speech had not been racist. In particular, the Federal Supreme Court held that for the average reader the statements did not come across as belittling Muslims, but as merely defending Christianity as the Swiss guiding culture.

A distinction had to be made between statements of fact and value judgments. The requirement to prove the truth of a value judgment was impossible to fulfil and infringed freedom of opinion itself, which was a fundamental part of the right secured by Article 10. Where a statement amounted to a value judgment, the proportionality of any interference might depend on whether there existed a sufficient "factual basis" for the impugned statement. In order to distinguish between a factual allegation and a value judgment it was necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest might,

on that basis, constitute value judgments rather than statements of fact.

The Court concluded that the applicant's classification of the speech as "verbal racism" constituted a value judgment as it contained the applicant organisation's own comment on the statements. It could not be said that classifying the speech as "verbal racism" when it supported an initiative which had already been described by various organisations as discriminatory, xenophobic or racist, could be regarded as devoid of any factual basis[1]. The applicant had never suggested that the statements fell within the scope of the criminal offence of racial discrimination under the Swiss Criminal Code. In fact, in its arguments before the national authorities and the Court, the applicant organisation had stressed the need to be able to describe an individual's statement as racist without necessarily implying criminal liability.

The impugned description could not be understood as a gratuitous personal attack on or insult to the politician. The applicant organisation had not referred to his private or family life, but to the manner in which his political speech had been perceived. As a politician expressing his view publicly on a very sensitive topic, he must have known that his speech might cause a critical reaction among his political opponents. In view of the foregoing, the impugned categorisation of his statement as "verbal racism" could hardly be said to have had harmful consequences for his private or professional life. The sanction imposed, however mild, might have had a "chilling effect" on the exercise of the applicant organisation's freedom of expression as it may have discouraged it from pursuing its statutory aims and criticising political statements and policies in the future.

The domestic courts had not given due consideration to the principles and criteria laid down by the Court's case-law for balancing the right to respect for private life and the right to freedom of expression. They had thus exceeded the margin of appreciation afforded to them and failed to strike a reasonable balance of proportionality between the measures restricting the applicant organisation's right to freedom of expression and the legitimate aim pursued.

Conclusion: violation (unanimously).

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

(See also *Magyar Helsinki Bizottság v. Hungary* [GC], 18030/11, 8 November 2016, Information Note 201; and *Couderc and Hachette Filipacchi Associés v. France* [GC], 40454/07, 10 November 2015, Information Note 190)

Freedom of expression

Fine imposed on political party for making available to voters a mobile telephone application allowing them to share anonymous photographs of their ballot papers: *violation*

Magyar Kétfarkú Kutya Párt v. Hungary, 201/17, judgment 23.1.2018 [Section IV]

Facts – In 2016 a referendum related to the European Union's migration relocation plan was held in Hungary. Just prior to the referendum, the applicant, a political party, had made available to voters a mobile telephone application which they could use to anonymously upload and share with the public photographs of their ballot papers. Following complaints by a private individual to the National Election Commission, the applicant was fined for infringing the principles of fairness and secrecy of elections.

Before the European Court the applicant complained that the imposition of the fine had breached its right to freedom of expression as provided in Article 10.

Law – Article 10: The mobile phone application had been developed by the applicant precisely for voters to share, by information and communication technologies, opinions through anonymous photographs of invalid ballot papers. The application thus possessed a communicative value and so constituted expression on a matter of public interest, protected by Article 10. Consequently the fine had interfered with the applicant's right to freedom of expression. The question before the Court was whether that interference had pursued a legitimate aim.

The Government argued that the aim of the measure taken against the applicant was to ensure the orderly conduct of the voting procedure and secure the proper use of ballot papers and so to "protect the rights of others". The *Kúria*

1. See, for example, the ECRI's 2009 report on Switzerland and a 2014 UN Committee on the Elimination of Racial Discrimination report.

(Supreme Court) had emphasised that voters' identities could not be discovered through the anonymously uploaded photographs and that although posting photographs of the ballot papers on the mobile telephone application had constituted an infringement of the principle of the proper exercise of rights, it had had no repercussion on the fair conduct of the elections. The Court saw no reason to hold otherwise and was satisfied that the applicant's conduct was not conducive to any prejudice in respect of the secrecy or fairness of the referendum. While it was true that the domestic authorities had established that the use of the ballot papers for any other purpose than casting a vote infringed section 2(1)(e) of the Act on Electoral Procedure, the Government had not convincingly established any link between that principle of domestic law and the aims exhaustively listed in paragraph 2 of Article 10. The sanction imposed on the applicant therefore did not meet the requirements of Article 10 § 2 of the Convention.

Conclusion: violation (unanimously).

Article 41: no claim made in respect of non-pecuniary damage; EUR 330 in respect of pecuniary damage.

Freedom of expression

Dispute over ownership of shares in television broadcasting company: *communicated*

Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, 16812/17 [Section V]

(See Article 1 of Protocol No. 1 below, page 30)

ARTICLE 13

Effective remedy

Domestic authorities' failure to comply with interim court order restraining demolition of residential property: *violation*

Sharxhi and Others v. Albania, 10613/16, judgment 11.1.2018 [Section I]

(See Article 6 § 1 (administrative) above, page 12)

Effective remedy

Decision to hold defence counsel in contempt of court for criticising the prosecutor and expert witnesses: *violation*

Čeferin v. Slovenia, 40975/08, judgment 16.1.2018 [Section IV]

Facts – The applicant acted as defence counsel in a murder trial. He was fined for contempt of court in two separate sets of proceedings for criticising the expert witnesses and the public prosecutor in his oral and written submissions. In the Convention proceedings, he applicant complained of a violation of his right to freedom of expression.

Law – Article 10: The fines imposed on the applicant for contempt of court amounted to an interference with his freedom of expression, which interference was prescribed by law (section 78(1) of the Criminal Procedure Act) and pursued the legitimate aim of maintaining the authority of the judiciary and protecting the reputation and rights of participants in the proceedings.

As to whether the interference had been necessary in a democratic society, the Court found that the domestic courts had not furnished relevant and sufficient reasons to justify the restriction of the applicant's freedom of expression and so had failed to strike, on the basis of the criteria laid down in the Court's case-law, the right balance between, on the one hand, the need to protect the authority of the judiciary and the reputation of the participants in the proceedings and, on the other, the need to protect the applicant's freedom of expression.

In reaching that conclusion, the Court had regard to the following factors.

(a) The applicant had made the impugned remarks in his capacity as an advocate for a defendant charged with three murders. His remarks were thus made in a forum where his client's rights were naturally to be vigorously defended. Moreover, they were confined to the courtroom, as opposed to the criticism of a judge voiced in, for instance, the media. In both sets of contempt proceedings, the domestic courts had failed to put the applicant's remarks in the context and form in which they were expressed.

(b) The domestic courts did not appear to have afforded increased protection to the impugned statements directed at the public prosecutor's actions. Yet the rule that the limits of acceptable criticism could in some circumstances be wider with regard to civil servants than in relation to private individuals applied *a fortiori* to the criticism of the public prosecutor by the accused, Likewise, given that they were acting in their official capacity

and having regard to the potential impact of their opinions on the outcome of the criminal proceedings the expert witnesses should have tolerated criticism of the performance of their duties.

(c) The impugned remarks could not be construed as gratuitous personal attacks or be taken to have had the sole intention of insulting the experts, the public prosecutor or the court. Nor could they *a priori* be considered to have been baseless. In particular, they had a basis in the facts the applicant had put forward with a view to challenging the credibility of the experts and the non-disclosure of lie-detector test results. Whether those facts were sufficient to justify the impugned statements was a matter which should have been properly considered by the domestic courts.

(d) Most of the impugned remarks were expressed orally, yet there was no indication that the sitting judges had reacted to the criticism. Moreover, it was striking that the applicant had not been afforded any opportunity to explain or defend himself before the fines were imposed on him. In that connection, the Court stressed the duty of the courts and the presiding judge to direct proceedings in such a manner as to ensure the proper conduct of the parties and above all the fairness of the trial – rather than to examine in subsequent proceedings the appropriateness of a party's statements in the courtroom.

Conclusion: violation (six votes to one).

Article 41: EUR 2,400 in respect of non-pecuniary damage; EUR 800 in respect of pecuniary damage.

(See also *Nikula v. Finland*, 31611/96, 21 March 2002, Information Note 40; *Kyprianou v. Cyprus* [GC], 73797/01, 15 December 2005, Information Note 82; and *Morice v. France* [GC], 29369/10, 23 April 2015, Information Note 184)

Effective remedy

State's alleged failure to enforce final judgment against private debtor: *no violation*

Ciocodeică v. Romania, 27413/09, judgment 16.1.2018 [Section IV]

Facts – The applicant complained under Articles 6 and 13 of the Convention and Article 1 of Protocol No. 1 that the State had failed to effectively assist her in enforcing a final judgment in her favour and that she did not have an effective remedy in that regard.

Law – Article 13: The Court had already examined complaints, similar to the applicant's, brought by applicants alleging that the Romanian State had failed to effectively assist them in obtaining enforcement of the final domestic judgments given in their favour against private parties. In a narrow majority of such cases the Court had found a violation of Article 6, holding that the State authorities (mainly the bailiff service) had failed to act diligently and in due time in order to assist the applicants in having their judgments enforced. However, in other cases dealing with enforcement proceedings in which the debtor was a private party, the Court had found either that the State's obligations prescribed by Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 had been complied with, or that the applicants themselves had not manifested sufficient diligence in pursuing their complaints.

The respondent State had implemented a series of significant legislative amendments, mainly concerning the (i) enforcement procedure regulated by the new Code of Civil Procedure, which had entered into force on 15 February 2013, (ii) the public legal-aid system, amended in 2008, and (iii) the legal framework regulating bailiffs' activities, including the implementation in 2014 of the bailiffs' indemnity fund. All these amendments aimed to improve the enforcement mechanism in general. The domestic case-law provided by the Government, as well as the legal opinions expressed by a consistent number of domestic courts across the country concerning the sufficiency and efficiency of the means made available to creditors of private parties for enforcing outstanding judgments were reliable evidence as to the improvement of the enforcement mechanism overall.

The new legislative provisions expressly prescribed that the State or other relevant authorities had to support bailiffs in providing necessary information or assistance in the enforcement procedure, when required. If they failed to do so, they were liable to a fine or to pay compensation for the damage caused by the delayed enforcement. At the same time, enforcement proceedings were more easily accessible to creditors following the improvements brought to the public legal-aid system. Furthermore, enforcement proceedings were to be conducted within stricter and shorter time-limits, while the fines that might be imposed by the courts on non-compliant authorities had increased in amount. The law also provided safeguards against abuse or bad faith on the part of debtors or bailiffs,

who were discouraged from circumventing the existing procedures by excessive use of suspension of the enforcement proceedings or of unfounded objections to enforcement.

Accordingly, the Government could be deemed to have fulfilled their duty to review the situation and had provided sufficient evidence in its domestic case-law to show that effective remedies had been introduced and/or had become more easily available to creditors in their attempts to have their judgments enforced.

In the instant case, the Court found on the facts that the applicant had failed to make proper use of the more appropriate remedies relevant to her case and through her inaction had allowed the enforcement proceedings to become time barred.

Conclusion: no violation (unanimously).

The Court also held, unanimously, that there had been no violation of Article 6 of the Convention or of Article 1 of Protocol No. 1, considering that the applicant had not put forward any fact or argument capable of persuading it to conclude that the state authorities had failed to do what could reasonably have been expected of them to enforce the impugned court decision.

(See also *Foundation Hostel for Students of the Reformed Church and Stanomirescu v. Romania*, 2699/03 and 43597/07, 7 January 2014, Information Note 170)

Effective remedy

Fine imposed on commercial company for running clothing advertisements depicting religious figures: *violation*

Sekmadienis Ltd. v. Lithuania, 69317/14, judgment 30.1.2018 [Section IV]

Facts – The applicant company was fined the equivalent of EUR 580 by the State Consumer Rights Protection Authority for breaching Article 4 § 2 (1) of the Law on Advertising for running an advertising campaign violating public morals. The campaign took the form of a series of advertisements showing models in designer wear with captions reading "Jesus, what trousers!", "Dear Mary, what a dress!" and "Jesus [and] Mary, what are you wearing!". The applicant company's appeals to the domestic courts were dismissed.

Law – Article 10: The fine imposed on the applicant company constituted an interference with its right to freedom of expression, which interference pursued the legitimate aims of protecting morals arising from the Christian faith and the right of religious people not to be insulted on the grounds of their beliefs.

The Court held that it was unnecessary to determine whether the interference was prescribed by law as, in any event, it had not been necessary in a democratic society.

Firstly, the advertisements (which created an unmistakable resemblance between the persons depicted and religious figures) were not intended to contribute to any public debate concerning religion or any other matters of general interest, so the national authorities' margin of appreciation was correspondingly broader.

Secondly, the advertisements did not on their face appear to be gratuitously offensive or profane or to incite hatred on the grounds of religious belief or attack a religion in an unwarranted or abusive manner. Accordingly, it was for the domestic courts to provide relevant and sufficient reasons why the advertisements were nonetheless contrary to public morals.

Thirdly, the reasons provided by the domestic courts and other authorities could not be considered relevant and sufficient as (i) the authorities had not sufficiently explained why the reference to religious symbols in the advertisements was offensive or why a lifestyle which was "incompatible with the principles of a religious person" would necessarily be incompatible with public morals; (ii) the authorities had not addressed the applicant company's argument that the names of Jesus and Mary in the advertisements had been used not as religious references but as emotional interjections common in spoken Lithuanian, thereby creating a comic effect; (iii) even though all the domestic decisions referred to "religious people", the only religious group which had been consulted in the domestic proceedings had been the Roman Catholic Church, despite the presence of various other Christian and non-Christian religious communities in Lithuania; and (iv) even assuming the Government were right in suggesting that the advertisements must have been considered offensive by the majority of the Lithuanian population who shared the Christian faith, it would be incompatible with the underlying values of the Convention if the exercise of Conven-

tion rights by a minority group were made conditional on its being accepted by the majority.

In sum, the domestic authorities had failed to strike a fair balance between, on the one hand, the protection of public morals and the rights of religious people, and, on the other, the applicant company's right to freedom of expression. The wording of their decisions demonstrated that the authorities had given absolute primacy to protecting the feelings of religious people, without adequately taking into account the applicant company's right to freedom of expression.

Conclusion: violation (unanimously).

Article 41: EUR 580 in respect of pecuniary damage.

ARTICLE 14

Discrimination (Article 1 of Protocol No. 1)

Lower ranking of certain employee claims under insolvency laws: *inadmissible*

Acar and Others v. Turkey, 26878/07 and 32446/07, decision 12.12.2017 [Section II]

(See Article 1 of Protocol No. 1 below, page 30)

Discrimination (Article 2 of Protocol No. 1)

Failure to conduct concrete individual assessment of disabled student's needs regarding access to university premises: *violation*

Enver Şahin v. Turkey, 23065/12, judgment 30.1.2018 [Section II]

Facts – During his studies the applicant had an accident which left his lower limbs paralysed. In 2007 he formally requested the university to carry out the necessary alterations and work to make the teaching premises accessible. The university replied that it did not have sufficient funds to carry out the work in the short term, and offered him the assistance of a support person. In 2010 the Administrative Court dismissed an appeal by the applicant, citing, among other grounds, the fact that the building in question had been constructed before the entry into force of the technical guidelines for the assistance of disabled persons, and the fact that architectural measures would be implemented "as funds allowed" (although no specific proposal had yet been made to that effect).

Law – Article 14 of the Convention read in conjunction with Article 2 of Protocol No. 1: Notwithstanding the authorities' margin of appreciation, the Court was unable to accept that the issue of access to the university buildings could be left unresolved pending the availability of the full amount needed in order to complete all the major alteration works required by law. Where the fulfilment of an undertaking under the Convention called for positive measures on the part of the State, the latter could not simply remain passive.

Article 14 of the Convention had to be read in the light of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), under the terms of which discrimination on the basis of disability included all forms of discrimination, "including denial of reasonable accommodation". This was defined as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".

While it was not the Court's task to define such "reasonable accommodation" – which could take various forms, both physical and non-physical – the national authorities nevertheless had to be particularly attentive in the choices they made in this sphere, in view of the particular vulnerability of the persons affected.

It was true that the university had not rejected the applicant's requests outright, but had offered him the assistance of a support person. However, although the international-law instruments recognised the provision of forms of human assistance among the measures to be considered, the offer made by the university did not come into that category, as there was nothing in the case file to demonstrate that it had been preceded by an assessment of the applicant's actual needs and an honest appraisal of the potential impact on his safety, dignity and independence. Even though the applicant had not been adversely affected in this way, the authorities had disregarded the paramount importance of affording persons with a disability the possibility to live independently and fully develop their sense of dignity and self-worth. These concepts were at the heart of the CRPD and the Council of Europe recommendations, and dignity and personal autonomy also occupied an important position in the Court's case-law, particularly

concerning Article 8 of the Convention, with which Article 2 of Protocol No. 1 had some affinity.

In also remaining silent on these points, the Administrative Court had given insufficient consideration to the fair balance to be struck between the applicant's interests and any competing interests.

Conclusion: violation (six votes to one).

Article 41: EUR 10,000 for non-pecuniary damage.

(See also *Çam v. Turkey*, 51500/08, 23 February 2016, Information Note 193; and the Factsheet on Persons with disabilities and the ECHR)

ARTICLE 18

Restriction for unauthorised purposes

Dispute over ownership of shares in television broadcasting company: *communicated*

Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, 16812/17 [Section V]

(See Article 1 of Protocol No. 1 below)

ARTICLE 1 OF PROTOCOL No. 1

Peaceful enjoyment of possessions

Demolition of residential property: *violation*

Sharxhi and Others v. Albania, 10613/16, judgment 11.1.2018 [Section I]

(See Article 6 § 1 (administrative) above, page 12)

Peaceful enjoyment of possessions

Dispute over ownership of shares in television broadcasting company: *communicated*

Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, 16812/17 [Section V]

The first applicant (Rustavi 2 Broadcasting Company Ltd – "Rustavi 2") is a popular national television channel in Georgia and the second applicant (TV Company Sakartvelo Ltd – "TV Sakartvelo") is a media company owned by the third and fourth applicants, who are private individuals.

The 2012 parliamentary election in Georgia resulted in a victory for the Georgian Dream Coalition (GDC) over the outgoing government that had been formed by the United National Movement (UNM). The applicants allege that both during and after a highly polarised campaign the GDC and its leaders voiced threats against political opponents, with Rustavi 2 being a primary target.

In 2015, K.K., a previous owner of Rustavi 2, brought a civil action against all four applicants alleging that he had been coerced into selling his shares many years earlier by high-ranking State officials when the former UNM government was still in power. K.K. was granted interim injunctions freezing Rustavi 2's assets and shares and TV Sakartvelo's assets. The injunctions were upheld on appeal. In the main proceedings, to which only the second, third and fourth applicants were party, the Georgian Supreme Court, sitting as the final court of appeal and deciding the case anew, held that K.K. had been coerced into selling his shares in breach of Article 85 of the Civil Code and that the sale agreements should be set aside.

In the Convention proceedings, the first applicant complains under Articles 6 § 1, 10 and 18 of the Convention and under Article 1 of Protocol No. 1 that the continued application of the interim injunction freezing its company assets was arbitrary, disproportionate and represented a hidden attempt to silence the television channel. The first applicant also complains under Article 6 § 1 of a lack of impartiality and independence in the injunction proceedings before the Supreme Court. The second, third and fourth applicants make similar complaints (under Article 6 § 1 and 18 of the Convention and under Article 1 of Protocol No. 1) in respect of the main proceedings.

Communicated under Articles 6 § 1, 10 and 18 of the Convention and under Article 1 of Protocol No. 1.

Peaceful enjoyment of possessions, deprivation of property

Lower ranking of certain employee claims under insolvency laws: *inadmissible*

Acar and Others v. Turkey, 26878/07 and 32446/07, decision 12.12.2017 [Section II]

Facts – Under section 206 of the Enforcement and Bankruptcy Act (Law no. 2004), on an insolvency the work-related claims of employees accrued within the year prior to the opening of the insolvency proceedings were considered priority claims and ranked ahead of work related claims not accrued within that period. In the Convention proceedings, the applicants complained in particular about the

non-priority ranking of their work related claims falling outside the one-year reference period.

Law

Article 1 of Protocol No. 1: To the extent the applicants' complaints could be taken to concern the applicable legislative framework as such and its effect on their rights under Article 1 of Protocol No. 1, the ranking of creditors was a common feature of Contracting States' domestic systems, being designed to strike a balance between competing creditors and broader public interests in the face of a bankrupt debtor who does not have sufficient assets to satisfy the claims of all its creditors. The complexity of insolvency proceedings calls naturally for regulation by the State in order to ensure equal and fair treatment of creditors that are in analogous or similar situations and, since they are in principle better placed than the international judge to appreciate what is "in the public interest", the national authorities enjoy a wide margin of appreciation in this field.

As to proportionality, in many Contracting States priority was accorded to workers' claims for debts up to a certain amount or covering a specific period in the distribution of the debtor employer's assets. The provisions of Turkey's insolvency legislation that gave a first-ranking priority to workers' claims over ordinary claims, but after secured creditors and the expenses of the administration, corresponded to the level of protection required by ILO Convention no. 95 on Protection of Wages 1949 as well as ILO Convention no. 173 on Protection of Workers' Claims (Employer's Insolvency) 1992. Furthermore, the reference period of one year for such claims to be accorded priority could not be regarded as unreasonably short, especially in comparison to the minimum three-month period provided for in ILO Convention no. 173. For the period falling outside the one year reference period, the presumption that creditors could make use of regular enforcement proceedings could be regarded as justification for not granting such claims priority.

Conclusion: inadmissible (manifestly ill-founded).

Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1: The Court had doubts over whether the situation complained of by the applicants was analogous or relevantly similar to that of other workers whose claims accrued within the one-year period prior to insolvency because, unlike such other workers, the applicants had had a window of opportunity to enforce their claims individually by starting regular enforcement proceedings against the debtor before it was declared insolvent. However, even assuming that the situation was analogous or relevantly similar, the difference in treatment was, for the reasons explained in relation to the complaint under Article 1 of Protocol No. 1, objectively and reasonably justified.

Conclusion: inadmissible (manifestly ill-founded).

ARTICLE 4 OF PROTOCOL No. 4

Prohibition of collective expulsion of aliens

Group of migrants immediately taken back to neighbouring country's territory after climbing border fences: *case referred to the Grand Chamber*

N.D. and N.T. v. Spain, 8675/15 and 8697/15, judgment 3.10.2017 [Section III]

In August 2014 a group of about 80 sub-Saharan migrants, including the applicants, attempted to enter Spain by scaling the barriers surrounding the town of Melilla, a Spanish enclave on the North African coast. Having climbed the fences, they were arrested by members of the *Guardia Civil*, who handcuffed them and returned them to the other side of the border without conducting an identification procedure or providing an opportunity to explain their personal situation.

Orders for expulsion were subsequently issued against the applicants, who had succeeded *in re*-entering Spain illegally. Their administrative appeals, and the asylum application lodged by one of them, were dismissed.

By a judgment of 3 October 2017 (see Information Note 211), a Chamber of the Court:

– dismissed the preliminary objections raised by the Government as to the jurisdiction of the respondent State, the applicants' victim status and the exhaustion of domestic remedies;

– concluded, unanimously, that there had been a violation of Article 4 of Protocol No. 4, in the absence of any examination of each of the applicants' individual situations, and of Article 13 of the Convention taken together with the same Article.

On 29 January 2018 the case was referred to the Grand Chamber at the Government's request.

ARTICLE 4 OF PROTOCOL No. 7

Right not to be tried or punished twice

Prison sentence subsequently replaced by psychiatric detention by way of revision of initial sentencing judgment: *no violation*

Kadusic v. Switzerland, 43977/13, judgment 9.1.2018 [Section III]

(See Article 5 § 1 (a) above, page 8)

GRAND CHAMBER (PENDING)

Referrals

N.D. and N.T. v. Spain, 8675/15 and 8697/15, judgment 3.10.2017 [Section III]

(See Article 4 of Protocol No. 4 above, page 31)

OTHER JURISDICTIONS

Court of Justice of the European Union (CJEU)

Use of psychological tests to assess reality of asylum seeker's alleged homosexuality

F v. Bevándorlási és Állampolgársági Hivatal, C-473/16, judgment 25.1.2018 (Third Chamber)

In the context of a dispute between a Nigerian national and the Hungarian Office for Immigration ("the Office") following the dismissal of the former's asylum application, the national court dealing with the case referred two questions to the CJEU for a preliminary ruling on the interpretation of Article 4 of Directive 2011/95/EU on the criteria to be met to qualify for international protection[2] ("the Directive"), in the light of the Charter of Fundamental Rights of the European Union.

In support of his application, the asylum seeker claimed that he feared he would be persecuted in his country of origin on account of his homosexuality. In dismissing his application in October 2015, the Office noted that although his statements were not essentially contradictory, a psychologist's expert report, comprising several personality tests – namely the 'Draw-A-Person-In-The-Rain' test and the Rorschach and Szondi tests – had not confirmed the alleged sexual orientation.

As the asylum seeker had challenged these tests on the basis both of their reliability and their compliance with fundamental rights, the referring court wished to know:

(1) whether the Directive precluded a forensic psychologist's expert opinion based on projective personality tests from being sought and evaluated in order to assess the plausibility of an individual's alleged sexual orientation (excluding any physical examination or questions about sexual habits); and, if so,

(2) whether there existed any possibility of examining, by expert methods, the credibility of the allegations of persecution on account of sexual orientation.

The second question (examined first) – Sexual orientation was a characteristic which was capable of proving an applicant's membership of a particular social group, where the group of persons whose members shared the same sexual orientation was perceived by the surrounding society as being different. However, it was immaterial whether the applicant actually possessed the characteristic linked to the membership of that group, provided that such a characteristic was attributed to him by the perpetrator of the persecution. Accordingly, it was not always necessary to assess the credibility of the applicant's sexual orientation.

Moreover, while the Directive did not exclude the use of expert reports, the procedures for such expert reports had to be consistent with fundamental rights. In particular, it was for the competent authorities to adapt their methods of assessing statements and documentary or other evidence having regard to the specific features of each category of application for international protection. Where necessary, the competent authority had also to take account of the explanation provided regarding a lack of evidence, and of the applicant's general credibility. It followed that the determining authority could not base its decision solely on the conclusions of an expert's report and that that authority could not, *a fortiori*, be bound by those conclusions.

2. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

The CJEU concluded, in essence, that the Directive did not preclude the administrative authority or the courts from ordering that an expert's report be obtained in the context of assessing the facts and circumstances relating to an applicant's declared sexual orientation, provided (i) that the procedures for such a report were consistent with fundamental rights; (ii) that those authorities did not base their decision solely on the conclusions of the expert's report; and (iii) that they were not bound by those conclusions when assessing the applicant's statements.

The first question – Even if the performance of the psychological tests on which an expert's report was based was formally conditional upon the consent of the person concerned, that consent was not necessarily given freely, in view of the pressure represented by the potential consequences for his or her future of a possible refusal to undergo such tests. In those circumstances, the preparation and use of a psychologist's expert report constituted an interference with that person's right to respect for his private life. Such interference had to remain proportionate to the general-interest objective pursued: to determine the applicant's actual need for international protection.

However, irrespective of the doubts that had been expressed as to the scientific reliability of those expert reports, their impact on the applicant's private life seemed disproportionate to the aim pursued, taking into account: (i) the fact that such expert reports related to intimate aspects of his life; and (ii) the Yogyakarta Principles on the application of international human-rights law in relation to sexual orientation and gender identity, which specified, in particular (principle 18), that no one could be forced to undergo any form of psychological testing on account of his or her sexual orientation or gender identity.

Thus, the seriousness of the interference exceeded that entailed by an assessment of the applicant's statements or recourse to a psychologist's expert report having a purpose other than that of establishing sexual orientation.

Furthermore, such an expert report could not be considered essential for the purpose of confirming an applicant's statements. Firstly, a personal interview conducted by the personnel of the determining authority was such as to contribute to the assessment of those statements; however, the staff of that authority had, in particular, to have appropriate skills to assess applications for international protection based on a fear of persecution on grounds of sexual orientation. Secondly, the conclusions of such a report were, in any event, approximate in nature and were therefore of only limited interest for the purpose of assessing the statements of an applicant for international protection, in particular where those statements were not contradictory.

The CJEU concluded in essence that, read in the light of the right to respect for private life, the Directive precluded the preparation and use, in order to assess the veracity of a claim made by an applicant for international protection concerning his sexual orientation, of a psychologist's expert report, the purpose of which was, on the basis of projective personality tests, to provide an indication of that applicant's sexual orientation.

Inter-American Court of Human Rights (IACtHR)

Investigation of enforced disappearances under the special jurisdiction for the demobilisation of illegal armed groups

Case of Vereda La Esperanza v. Colombia, Series C No. 341, judgment 31.8.2017

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

Facts – "La Esperanza" is a rural settlement in Colombia located in a geographical area of strategic and economical importance where various armed actors operated at the time of the events in 1996. The case concerned the enforced disappearance of 12 persons and the arbitrary deprivation of life of another person by a paramilitary group with the cooperation of the Army. The Inter-American Court determined State responsibility for the acquiescence of the law-enforcement officials and the support they had provided to the paramilitary group, specifically, by facilitating raids on the rural settlement. The victims of those events were perceived as sympathisers or collaborators with the "guerrilla" groups that operated in the region. Investigations were launched following the events and are still pending. Two persons that lodged complaints concerning the events subsequently disappeared in similar circumstances. Several members of the paramilitary group, who demobilised under Law 975 of 2005, have appeared before the "Justice and Peace" jurisdiction.

Law

(a) *Articles 8(1) (right to fair trial) and 25 (right to judicial protection), in conjunction with Article 1(1) (obligation to respect and guarantee rights without discrimination) of the American Convention on Human Rights (ACHR) and Article III of the Inter-American Convention on Forced Disappearance of Persons* – The Inter-American Court emphasised the special nature of the "Justice and Peace" jurisdiction regulated by Law 975. Defendants who seek to benefit from the provision must provide a complete and truthful confession about the criminal acts committed as a member of the illegal armed group. They must provide information on the factual circumstances and about all the participants in the execution of the crimes. In addition, the Court examined the length of the proceedings. It analysed four elements: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities; and (d) the impact on the legal situation of the person involved in the proceedings. The Court determined that the length of the proceedings (in excess of 12 years) was due to the extreme complexity of the case, in the context of a massive demobilisation process of members of armed groups. This process had translated into a significant number of judicial actions concerning thousands of victims of criminal acts which had had to be investigated simultaneously by the judicial authorities. Therefore, the Court found no violation of the judicial guarantee of a reasonable time.

The Court noted that prior to the year 2000 the crime of enforced disappearance was not established in law. Therefore, the investigation was carried out under the crime of homicide. The Court held that, regardless of the *nomen iuris* charged, the investigation was oriented to the determination of the factual circumstances of the case and some elements of the crime of enforced disappearance had been investigated. Moreover, the Criminal Cassation Chamber had later allowed the Office of the Prosecutor to reclassify the charges for some of the defendants under the concept of "flexible legality". The Court thus concluded that there was no State responsibility in this aspect.

The Inter-American Court considered, in order to guarantee the effectiveness of the investigation, that the State must provide all the necessary means to protect the justice operators, investigators, witnesses and relatives of the victims from harassment and threats, whose purpose is to hinder the proceedings. Therefore, in relation to the two complainants who had disappeared during the course of the proceedings the Court found that the State had failed to adopt adequate protective measures for those participating in the proceedings.

The Inter-American Court also stated that the relatives of victims of serious human rights violations have the right to know the truth. In cases of enforced disappearance, the right to know the whereabouts of disappeared victims constitutes an essential component of this right. The Court held that although falling within the scope of the right of access to justice, it also constitutes an autonomous right with its violation potentially affecting different rights contained in the ACHR, depending on the context and particular circumstances of the case. While the Court recognised the efforts by the State to locate the whereabouts of the disappeared victims in the instant case, it was noted that 20 years after the facts the whereabouts of the victims remained unknown. Thus, bearing in mind that uncertainty about the whereabouts of their loved ones is one of the main sources of mental and moral suffering of the relatives, the State was found to be responsible for the violation of the right to know the truth.

Additionally, the Court stated that the need to use the rationalisation mechanism of criminal action known as "prioritisation" was in accordance with the mechanism established by different international entities. In addition, the Court could not act as a fourth-instance body and it was not its role to decide on the suitability of one "prioritisation" mechanism established at the domestic level compared to another. Such analysis would only be appropriate when there may be notorious or flagrant breaches of the domestic legislative provisions which violate the duty of due diligence or judicial guarantees protected by the ACHR. Such a situation was not present in the instant case as the criteria for prioritisation were set out clearly, therefore, no violation was established.

Conclusion: no violation and violation (unanimously).

(b) *Reparations* – The Inter-American Court established that the judgment constituted *per se* a form of reparation and ordered the State to: (i) continue and conduct the ongoing investigation and criminal proceedings; (ii) conduct a thorough search to

determine the whereabouts of the victims whose fate were still unknown; (iii) publish the judgment and its official summary; (iv) perform an act to acknowledge the State's international responsibility; (v) provide medical, psychological and/or psychiatric treatment to the victims that request it; (vi) erect a monument in the memory of the persons disappeared and executed; (vii) provide scholarships for public university studies for the siblings of the victims that request it; and (viii) pay compensation in respect of pecuniary and non-pecuniary damage, as well as costs and expenses.

COURT NEWS

Elections

During its Winter Session held from 22 to 26 January 2018, the Parliamentary Assembly of the Council of Europe elected María Elósegui Ichaso as judge at the Court in respect of Spain. Her nine-year term in office will commence no later than three months after her election.

Press conference

The Court held its annual press conference on 25 January 2018. The President of the Court, Guido Raimondi, took stock of the year 2017. He referred in particular to the increase in the number of new cases, but said that a large number of applications had been declared inadmissible for failure to exhaust domestic remedies. In that connection he reiterated the importance of the principle of subsidiarity, which requires applicants to exhaust national remedies before applying to the Court.

Webcast (original version) available on the Court's Internet site (www.echr.coe.int – Press).

Opening of the Judicial Year 2018

The official opening of the Court's Judicial Year took place on 26 January 2018. Some 300 senior judicial figures from European States took part in a seminar on the theme "The authority of the judiciary".

Following the seminar, President Guido Raimondi and Koen Lenaerts, President of the Court of Justice of the European Union, addressed an audience of about 350 at the solemn hearing.

Videos of the seminar and of the ceremony and more information are available on the Court's Internet site (www.echr.coe.int – The Court – Events).

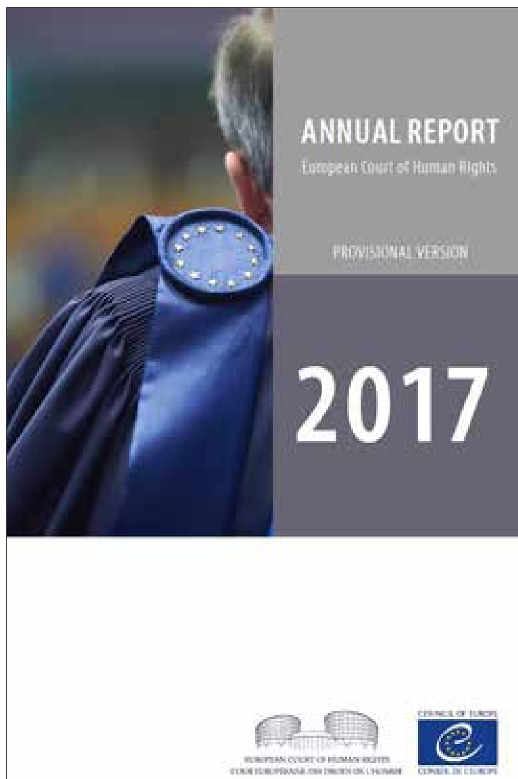
2018 Václav Havel Human Rights Prize

The Parliamentary Assembly of the Council of Europe (PACE), in partnership with the Vaclav Havel Library and the Charta 77 Foundation, has just issued a call for nominations for the 2018 Václav Havel Human Rights Prize, which will be awarded on 9 October next in Strasbourg. Individuals or non-governmental institutions active in the defence of human rights can be nominated for the Prize. The deadline for submitting nominations is 30 April 2018. More information on the Council of Europe's Internet site (www.coe.int – PACE).

RECENT PUBLICATIONS

Annual Report 2017 of the Court

On 25 January 2018 the Court issued its Annual Report for 2017 at the press conference preceding the opening of its judicial year. This report contains a wealth of statistical and substantive information such as the Jurisconsult's overview of the main judgments and decisions delivered by the Court in 2017. It is available on the Court's Internet site (www.echr.coe.int – The Court).



Statistics for 2017

The Court's statistics for 2017 are now available. All related information can be found on the Court's Internet site (www.echr.coe.int – Statistics), including the annual table of violations for each country and the Analysis of Statistics 2017, which provides an overview of developments in the Court's caseload in 2017, such as pending applications and different aspects of case processing, and also country-specific information.

Case-Law Guides: updates

Updates at 31 December 2017 of several Guides in English and French have just been published. All Case-Law Guides can be downloaded from the Court's Internet site (www.echr.coe.int – Case-law).

Guide on Article 1 of the Convention (obligation to respect human rights)

Guide on Article 4 of the Convention (prohibition of slavery and forced labour)

Guide on Article 7 of the Convention (no punishment without law)

Factsheets

The Court has issued a series of five new factsheets on its case-law on the following themes:

- access to the Internet and the freedom to receive and impart information;
- deprivation of citizenship;
- legal professional privilege; and
- accompanied and unaccompanied migrant minors in detention.

All the Court's factsheets, in English, French and some non-official languages, are available for downloading from the Court's Internet site (www.echr.coe.int – Press).

Country profiles

The 47 *Country profiles* containing data and information, broken down by individual State, on significant cases considered by the Court or currently pending before it, have been updated as at 1 January 2018. All country profiles can be downloaded from the Court's Internet site (www.echr.coe.int – Press).

Commissioner for Human Rights

On 25 January 2018 Mr Nils Muižnieks, the Commissioner for Human Rights, published his Activity Report 2017 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).

Extract from the foreword: "If the European human rights system is to have a future, we need to ensure that [the] young people see themselves as Europeans with a stake in the system, as democrats with the knowledge, skills, values and competencies needed to breathe life into stagnant democracies, recognise human rights backsliding when it occurs and take the necessary remedial action. We owe it to them to make sure they have the democratic options we have for so long enjoyed, but which are rapidly narrowing in so many places."

The Information Note, compiled by the Court's Case-Law Information and Publications Division, contains summaries of cases examined during the month in question which the Registry considers as being of particular interest. The summaries are not binding on the Court.

In the provisional version the summaries are normally drafted in the language of the case concerned, whereas the final single-language version appears in English and French respectively. The Information Note may be downloaded at www.echr.coe.int/NoteInformation/en. For publication updates please follow the Court's Twitter account at twitter.com/echrpublication.

The HUDOC database is available free-of-charge through the Court's Internet site (http://hudoc.echr.coe.int/sites/eng). It provides access to the case-law of the European Court of Human Rights (Grand Chamber, Chamber and Committee judgments, decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), the European Commission of Human Rights (decisions and reports) and the Committee of Ministers (resolutions).

ENG

www.echr.coe.int

The European Court of Human Rights is an international court set up in 1959 by the member States of the Council of Europe. It rules on individual or State applications alleging violations of the rights set out in the European Convention on Human Rights of 1950.

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE