



# KEY CASES

## 2018



List of cases recommended  
by the Jurisconsult and  
approved by the Bureau

### **European Court of Human Rights**

March 2019

## NOTE ON CITATION

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Cases are listed by reference to the relevant Convention Articles and alphabetically by applicant and by respondent State.

By default, all references are to Chamber judgments. Grand Chamber cases, whether judgments or decisions, are indicated by “[GC]”. Decisions are indicated by “(dec.)”.

Chamber judgments that are not yet “final” within the meaning of Article 44 of the Convention are marked “(not final)”. In the event that any such judgment is accepted for referral to the Grand Chamber in accordance with Article 43, it will not be included in the present list.

For information on the manner of citing the Court’s case-law, please see [here](#).

### Article 44 § 2

The judgment of a Chamber shall become final

- (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or
- (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
- (c) when the panel of the Grand Chamber rejects the request to refer under Article 43.

### Article 43

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

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# Cases by Article

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## ARTICLE 5

### Article 5 § 1

#### PROCEDURE PRESCRIBED BY LAW | LAWFUL ARREST OR DETENTION

Refusal by trial court to release applicant despite Constitutional Court's finding detention to be unlawful (context of Article 15 derogation): *violation*

**Şahin Alpay v. Turkey, no. 16538/17, 20.3.2018**

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### Article 5 § 1 (c)

#### REASONABLY NECESSARY TO PREVENT OFFENCE

Detention of football supporters for approximately eight hours without charge, with a view to preventing violence: *no violation*

**S., V. and A. v. Denmark [GC], nos. 35553/12 and 2 others, 22.10.2018**

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### Article 5 § 1 (e)

#### PERSONS OF UNSOUND MIND

Subsequent preventive detention of convicted murderer on basis of psychiatric assessments that he continued to pose a danger: *no violation*

**Ilseher v. Germany [GC], nos. 10211/12 and 27505/14, 4.12.2018**

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### Article 5 § 4

#### SPEEDINESS OF REVIEW

Sixteen months for examination of application to Constitutional Court raising new complex questions relating to state of emergency: *no violation*

**Şahin Alpay v. Turkey, no. 16538/17, 20.3.2018**

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## ARTICLE 6

### Article 6 § 1 (civil)

#### ACCESS TO COURT

Absence of universal jurisdiction of civil courts in torture cases: *Article 6 applicable; no violation*

**Naït-Liman v. Switzerland [GC], no. 51357/07, 15.3.2018**

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## **ACCESS TO COURT**

Alleged excessively formalistic interpretation of procedural rules (*ratione valoris* admissibility threshold): *no violation*

**Zubac v. Croatia [GC], no. 40160/12, 5.4.2018**

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## **Article 6 § 1 (civil | disciplinary)**

### **CIVIL RIGHTS AND OBLIGATIONS | INDEPENDENT AND IMPARTIAL TRIBUNAL**

Method of appointing arbitrators to the Court of Arbitration for Sport: *Article 6 § 1 applicable; no violation*

**Mutu and Pechstein v. Switzerland, nos. 40575/10 and 67474/10, 2.10.2018**

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## **Article 6 § 1 (criminal)**

### **FAIR HEARING | EQUALITY OF ARMS**

Lawyer not permitted to conduct his own defence in criminal proceedings: *no violation*

**Correia de Matos v. Portugal [GC], no. 56402/12, 4.4.2018**

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### **FAIR HEARING**

No provision for legal assistance during questioning by police and investigating judge in initial phase of criminal proceedings: *violation*

**Beuze v. Belgium [GC], no. 71409/10, 9.11.2018**

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## **Article 6 § 3 (a)**

### **INFORMATION IN LANGUAGE UNDERSTOOD**

Failure to provide interpretation of criminal proceedings and documentation in a language of which the accused had a sufficient command: *violation*

**Vizgirda v. Slovenia, no. 59868/08, 28.8.2018**

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## **Article 6 § 3 (c)**

### **DEFENCE THROUGH LEGAL ASSISTANCE**

Lawyer not permitted to conduct his own defence in criminal proceedings: *no violation*

**Correia de Matos v. Portugal [GC], no. 56402/12, 4.4.2018**

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### **DEFENCE THROUGH LEGAL ASSISTANCE**

No provision for legal assistance during questioning by police and investigating judge in initial phase of criminal proceedings: *violation*

**Beuze v. Belgium [GC], no. 71409/10, 9.11.2018**

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## Article 6 § 3 (d)

### EXAMINATION OF WITNESSES

Inability of defence in criminal proceedings to question witnesses: *no violation*

**Murtazaliyeva v. Russia [GC], no. 36658/05, 18.12.2018**

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## Article 6 § 3 (e)

### FREE ASSISTANCE OF INTERPRETER

Failure to provide interpretation of criminal proceedings and documentation in a language of which the accused had a sufficient command: *violation*

**Vizgirda v. Slovenia, no. 59868/08, 28.8.2018**

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## Article 6 § 1 (administrative | disciplinary)

### FAIR HEARING | PUBLIC HEARING

Lack of public hearing and limited extent of review by the Supreme Court over disciplinary decisions of the High Council of the Judiciary: *violation*

**Ramos Nunes de Carvalho e Sá v. Portugal [GC], nos. 55391/13 and 2 others, 6.11.2018**

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### INDEPENDENT AND IMPARTIAL TRIBUNAL

Alleged lack of independence and impartiality of the Supreme Court owing to the dual role of its President and the careers of its judges, linked to the High Council of the Judiciary: *no violation*

**Ramos Nunes de Carvalho e Sá v. Portugal [GC], nos. 55391/13 and 2 others, 6.11.2018**

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### NULLA POENA SINE LEGE

Compulsory confiscation of “unlawfully developed” land, regardless of any criminal liability: *violation; no violation*

**G.I.E.M. S.r.l. and Others v. Italy [GC], nos. 1828/06 and 2 others, 28.6.2018**

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### HEAVIER PENALTY | RETROACTIVITY

Subsequent preventive detention of convicted murderer on basis of psychiatric assessments that he continued to pose a danger: *no violation*

**Ilmseher v. Germany [GC], nos. 10211/12 and 27505/14, 4.12.2018**

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### POSITIVE OBLIGATIONS

Failure to ensure fourteen-year old girl was looked after while her parents were held in police custody: *violation; no violation*

**Hadzhieva v. Bulgaria, no. 45285/12, 1.2.2018**

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### RESPECT FOR PRIVATE LIFE

Dismissal for using work computer to store large volume of pornographic material: *no violation*

**Libert v. France, no. 588/13, 22.2.2018**

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### RESPECT FOR PRIVATE LIFE

Dismissal of judge from the position of President of appeal court for failure to properly perform administrative duties: *Article 8 not applicable; inadmissible*

**Denisov v. Ukraine [GC], no. 76639/11, 25.9.2018**

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### RESPECT FOR PRIVATE LIFE | POSITIVE OBLIGATIONS

Refusal to oblige media to anonymise online archive material about a crime at the request of its perpetrators in view of their imminent release: *no violation*

**M.L. and W.W. v. Germany, nos. 60798/10 and 65599/10, 28.6.2018**

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### RESPECT FOR PRIVATE AND FAMILY LIFE

Exhumation, in the context of criminal proceedings, of the remains of deceased persons against the wishes of their families: *violation*

**Solska and Rybicka v. Poland, nos. 30491/17 and 31083/17, 20.9.2018**

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### RESPECT FOR PRIVATE AND FAMILY LIFE | POSITIVE OBLIGATIONS

Burial of a victim of a criminal act without taking reasonable steps to inform his relatives: *violation*

**Lozovyie v. Russia, no. 4587/09, 24.4.2018**

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### 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 Sportspersons’ Associations and Unions (FNASS) and Others v. France, nos. 48151/11 and 77769/13, 18.1.2018**

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**Şahin Alpay v. Turkey, no. 16538/17, 20.3.2018**

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### FREEDOM OF EXPRESSION

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**E.S. v. Austria, no. 38450/12, 25.10.2018**

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### FREEDOM OF EXPRESSION

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**Magyar Jeti Zrt v. Hungary, no. 11257/16, 4.12.2018**

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Political activist repeatedly arrested and prosecuted for administrative offences related to the unlawfulness of public gatherings: *violation*

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**Şahin Alpay v. Turkey, no. 16538/17, 20.3.2018**

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**Navalnyy v. Russia [GC], nos. 29580/12 and 4 others, 15.11.2018**

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### INTER-STATE APPLICATION

Alleged new fact of no decisive influence on findings in the original judgment: *request for revision dismissed*

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### Article 35 § 1

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**Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, 20.3.2018**

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### Article 46 § 2

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**Navalnyy v. Russia [GC], nos. 29580/12 and 4 others, 15.11.2018**

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## ARTICLE 1 OF PROTOCOL No. 1

### POSSESSIONS

Claims to ownership of socially owned property through adverse possession: *no violation*

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### PEACEFUL ENJOYMENT OF POSSESSIONS

Compulsory confiscation of “unlawfully developed” land, regardless of any criminal liability: *violation*

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### PEACEFUL ENJOYMENT OF POSSESSIONS

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**Lekić v. Slovenia [GC], no. 36480/07, 11.12.2018**

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### **CONTROL OF THE USE OF PROPERTY**

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### **CONTROL OF THE USE OF PROPERTY**

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## **RULE 80 OF THE RULES OF COURT**

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Alleged new fact of no decisive influence on findings in the original judgment: *request for revision dismissed*

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