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This factsheet does not bind the Court and is not exhaustive

# Terrorism and the European Convention on Human Rights

**Article 15 (derogation in time of an emergency) of the [European Convention on Human Rights](#):** “In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under the Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with other obligations under international law.”

This provision enables a State to unilaterally derogate from some of its obligations to the European Convention on Human Rights in certain exceptional circumstances and has been used by certain member States in the context of terrorism<sup>1</sup>.

**Example of cases in which the European Court of Human Rights addressed derogations:**

**[Lawless v. Ireland \(no. 3\)](#)**

1 July 1961

Derogation entered by Ireland in 1957 following terrorist violence connected to Northern Ireland. The applicant, suspected of being a member of the IRA (“Irish Republican Army”), alleged that he had been detained without trial between July and December 1957 in a military detention camp situated in the territory of the Republic of Ireland.

**[Ireland v. the United Kingdom](#)** (see below, page 2)

18 January 1978

Derogation entered by the United Kingdom in respect of its rule in Northern Ireland in the early 1970s and renewed on a number of occasions.

**[Brannigan and McBride v. the United Kingdom](#)** (see below, page 16)

26 May 1993

Further derogation submitted by the United Kingdom in 1989 in respect of Northern Ireland.

**[Aksoy v. Turkey](#)** (see below, page 2)

18 December 1996

Derogations made by the Turkish Government in respect of south-east Turkey due to disturbances between the security forces and members of the PKK (Workers’ Party of Kurdistan), a terrorist organisation.

**[A. and Others v. the United Kingdom \(application no. 3455/05\)](#)** (see below, page 15)

19 February 2009 (Grand Chamber)

Derogation submitted by the United Kingdom in 2001 after the September 11 terrorist attacks in the United States.

<sup>1</sup>. See the factsheet on [“Derogation in time of emergency”](#).

## (Suspected) terrorists

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### Issues under Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the Convention

#### Conditions of detention

Article 15 (derogation in time of emergency) of the European Convention on Human Rights makes it clear that some measures are not permissible whatever the emergency. For example, Article 3 (prohibition of inhuman and degrading treatment or torture) of the Convention is an absolute non-derogable right.

#### Ireland v. the United Kingdom

18 January 1978<sup>2</sup>

From August 1971 until December 1975 the United Kingdom authorities exercised a series of “extrajudicial” powers of arrest, detention and internment in Northern Ireland. The case concerned the Irish Government’s complaint about the scope and implementation of those measures and in particular the practice of psychological interrogation techniques (wall standing, hooding, subjection to noise and deprivation of sleep, food and drink) during the preventive detention of those detained in connection with acts of terrorism.

The Court, finding the methods to have caused intense physical and mental suffering, held that there had been a **violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention in the present case. It further held that there had been **no violation of Articles 5** (right to liberty and security) **or 14** (prohibition of discrimination) of the Convention.

#### Aksoy v. Turkey

18 December 1996

The applicant complained in particular that his detention in 1992 on suspicion of aiding and abetting PKK (Workers’ Party of Kurdistan) terrorists was unlawful and that he had been tortured (“Palestinian hanging” i.e. stripped naked, with arms tied together behind back, and suspended by arms).

The Court, considering that the treatment inflicted to the applicant had been of such a serious and cruel nature that it could only be described as torture, held that there had been a **violation of Article 3** (prohibition of torture) of the Convention. It also found a **violation of Article 5** (right to liberty and security) and a **violation of Article 13** (right to an effective remedy) of the Convention in the present case.

#### Martinez Sala v. Spain

2 November 2004

Shortly before the Olympic Games in Barcelona, the applicants, who were suspected of being sympathisers of a Catalan independence movement, were arrested by *Guardia Civil* officers in connection with an investigation into terrorist offences. They complained in particular that they had been subjected to physical and mental torture and to inhuman and degrading treatment on their arrest and while in custody in Catalonia and at the Guardia Civil headquarters in Madrid. They further alleged that the investigations by the domestic authorities had not been effective or thorough.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention concerning the allegations of ill-treatment in custody, and found a **violation of Article 3** on account of the failure to hold an effective official investigation into the allegations.

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<sup>2</sup>. See also the [judgment](#) (revision) of 20 March 2018.

### Öcalan v. Turkey

12 May 2005 (Grand Chamber)

This case concerned, among others, the conditions of the transfer from Kenya to Turkey and the subsequent detention on the island of İmralı of Abdullah Öcalan, former leader of the PKK (Kurdistan Workers' Party), an illegal organisation, who had been sentenced to death for activities aimed at bringing about the secession of part of Turkish territory. The applicant complained in particular that the conditions in which he was detained at İmralı Prison amounted to inhuman treatment.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention concerning the conditions of the applicant's detention at İmralı Prison. While concurring with the [European Committee for the Prevention of Torture's](#) recommendations that the long-term effects of the applicant's relative social isolation should be attenuated by giving him access to the same facilities as other high security prisoners in Turkey, the Court found that the general conditions in which the applicant was being detained had not reached the minimum level of severity required to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention.

See also the [Öcalan v. Turkey \(no. 2\)](#) judgment of 18 March 2014, summarised below.

### Ramirez Sanchez v. France

4 July 2006 (Grand Chamber)

Better known as "Carlos the Jackal" and viewed during the 1970s as the most dangerous terrorist in the world, the applicant complained about his solitary confinement for eight years following his conviction for terrorist-related offences.

The Court held that there had been **no violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention on account of the length of time the applicant had spent in solitary confinement. While sharing the [European Committee for the Prevention of Torture's](#) concerns about the possible long-term effects of the applicant's isolation, the Court nevertheless considered that, having regard in particular to his character and the danger he posed, the conditions in which the applicant was held during the period under consideration had not reached the minimum level of severity necessary to constitute inhuman or degrading treatment within the meaning of Article 3 of the Convention.

The Court further found in this case a **violation of Article 13** (right to an effective remedy) of the Convention, on account of the lack of a remedy in French law that would have allowed the applicant to contest the decision to prolong his detention in solitary confinement.

### Frérot v. France

12 June 2007

A former member of the extreme left armed movement "Action directe", the applicant, convicted in 1995 to 30 years' imprisonment for – among other offences – terrorism, complained about strip searches in prison.

The Court held that there had been a **violation of Article 3** (prohibition of degrading treatment) of the Convention, noting in particular that the feeling of arbitrariness, the feelings of inferiority and anxiety often associated with it, and the feeling of a serious encroachment on one's dignity undoubtedly prompted by the obligation to undress in front of another person and submit to a visual inspection of the anus, added to the other excessively intimate measures associated with strip-searches, led to a degree of humiliation which exceeded that which was inevitably a concomitant of the imposition of body searches on prisoners. Moreover, the humiliation felt by the applicant had been aggravated by the fact that on a number of occasions his refusal to comply with these measures had resulted in his being taken to a disciplinary cell.

The Court further held that there had been a **violation of Article 8** (right to respect for correspondence) of the Convention in this case, in respect of the refusal, on the basis of a ministerial circular, to forward a prisoner's letter to a fellow prisoner, and a **violation**

**of Article 13** (right to an effective remedy), in respect of the lack of domestic remedy enabling a prisoner to challenge a refusal to forward correspondence.

### **Öcalan v. Turkey (no. 2)**

18 March 2014

The applicant, the founder of the PKK (Kurdistan Workers' Party), an illegal organisation, complained mainly about the irreducible nature of his sentence to life imprisonment, and about the conditions of his detention (in particular his social isolation and the restrictions on his communication with members of his family and his lawyers) in the prison on the island of İmralı. He also complained of restrictions on his telephone communications, on his correspondence and on visits from his relatives and lawyers.

The Court held that there had been **a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as to the conditions of the applicant's detention up to 17 November 2009 and that there had been **no violation of Article 3** as regards the conditions of his detention during the period subsequent to that date. On the one hand, in view of a certain number of aspects, such as the lack of communication facilities that would have overcome the applicant's social isolation, together with the persisting major difficulties for his visitors to gain access to the prison, the Court found that the conditions of detention imposed on the applicant up to 17 November 2009 had constituted inhuman treatment. On the other hand, having regard in particular to the arrival of other detainees at the İmralı prison and to the increased frequency of visits, it came to the opposite conclusion as regards his detention subsequent to that date.

The Court also held that there had been **a violation of Article 3** as regards the applicant's sentence to life imprisonment without any possibility of conditional release, finding that, in the absence of any review mechanism, the life prison sentence imposed on the applicant constituted an "irreducible" sentence that amounted to inhuman treatment.

The Court further held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, considering that in view of the Turkish Government's legitimate fear that the applicant might use communications with the outside world to contact members of the PKK, the restrictions on his right to respect for private and family life had not exceeded what was necessary for the prevention of disorder or crime.

### **Pending applications**

#### **Amin and Ahmed v. the United Kingdom (no. 6610/09 and no. 326/12)**

Applications communicated to the UK Government on 10 July 2012

The applicants were arrested and detained in Pakistan in 2004 before being deported to the United Kingdom, where they were tried and convicted of involvement in terrorism. The applicants complain that the Pakistani authorities tortured them in detention and that British agents were complicit in these acts, knowing that the applicants were being tortured. They also complain about the unfairness of the subsequent criminal proceedings in the United Kingdom as at the trial certain materials were withheld from the defence on ground of public interest immunity.

The Court gave notice of the applications to the UK Government and put questions to the parties under Articles 3 (prohibition of torture, of inhuman or degrading treatment) and 6 § 1 (right to a fair trial) of the Convention.

#### **Aarrass v. Belgium (no. 16371/18)**

Application communicated to the Belgian Government on 18 June 2018

This case concerns a Belgian Moroccan national who was arrested on 1 April 2008 in Melilla (Spain) following an international arrest warrant issued by the Moroccan authorities and is wanted by the Moroccan authorities in order to be tried for the following offences: association and collaboration with terrorists groups or organisations, and carrying out terrorist attacks that would undermine public order.

The Court gave notice of the application to the Belgian Government and put questions to the parties under Article 1 (obligation to respect human rights) and Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

### **Ill-treatment allegedly sustained while held incommunicado in police custody**

#### **Etxebarria Caballero v. Spain and Ataun Rojo v. Spain**

7 October 2014

Arrested by the police and placed in secret police custody in the context of judicial investigations concerning, in particular, their alleged membership of the terrorist organisation ETA, the applicants notably complained that there had been no effective investigation by the Spanish authorities into their complaint about the ill-treatment that they had allegedly sustained while being held in secret police custody.

In both cases, the Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account the lack of an effective investigation into the applicants' allegations of ill-treatment. The Court emphasised in particular that the effective investigations that had been required in the light of the applicants' position of vulnerability had not been conducted. It again stressed the importance of adopting measures to improve the quality of forensic medical examinations of persons being held incommunicado. It also endorsed the recommendations made by the European Committee for the Prevention of Torture concerning both the safeguards to be put in place in such cases and the very principle of detaining a person incommunicado in Spain. In the absence of sufficient evidence, the Court further held that there had been **no violation of Article 3** concerning the ill-treatment alleged by the first applicant. It wished however to point out that this inability to conclude "beyond reasonable doubt" that ill-treatment had indeed occurred resulted, to a large extent, from the Spanish authorities' failure to carry out an in-depth and effective investigation.

#### **Beortequi Martinez v. Spain**

31 May 2016

This case concerned the alleged failure to investigate an allegation by the applicant that he was ill-treated by four Guardia Civil officers while detained incommunicado in police custody on suspicion of belonging to a terrorist organisation.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention on account of the investigation conducted by the national authorities, and **no violation of Article 3** as regards the applicant's allegation of ill-treatment during his arrest and in police custody. The Court found in particular that there had not been a thorough and effective investigation into the applicant's allegations of ill-treatment during his incommunicado detention in police custody. As a result of the lack of a thorough and effective investigation by the national authorities, the Court did not have enough evidence to determine whether the applicant had been subjected to treatment attaining the minimum level of severity to fall within the scope of Article 3. The Court also reiterated the importance of adopting the measures recommended by the European Committee for the Prevention of Torture with a view to improving the quality of forensic medical examinations of individuals held incommunicado in police custody and urged the Spanish authorities to draw up a clear code of conduct for officers responsible for supervising such individuals as to the procedures for questioning them and for ensuring their physical integrity.

#### **Portu Juanenea and Sarasola Yarzabal v. Spain**

13 February 2018

This case concerned allegations of ill-treatment sustained by the applicants when they were arrested in 2008 by officers of the Guardia Civil and at the beginning of their incommunicado police custody.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, in its substantive and procedural aspects. It noted in particular that the injuries described in the certificates presented by the applicants had been caused while they were in the hands of the Guardia Civil. Furthermore, neither the domestic authorities nor the Spanish Government had provided any convincing or credible arguments which could serve to explain or justify the injuries sustained by the applicants. The Court thus found that the injuries described had to be attributed to the State. In addition, since the applicants had not alleged that the injuries in question had had any consequences for them in the long term, and in the absence of any conclusive evidence about the aim of the treatment, the Court was of the view that the treatment sustained by the applicants could not be characterised as torture. That being said, it was sufficiently serious to be regarded as inhuman and degrading treatment. The Court then observed that the Supreme Court had confined itself to dismissing the applicants' version without considering whether the use of physical force by the officers during their arrest had been strictly necessary and proportionate, or whether the most serious injuries subsequently sustained by the first applicant were attributable to the officers responsible for his detention and supervision. Those omissions had prevented the domestic court from establishing the facts and all the circumstances as fully as it should have done.

### **Risk of ill-treatment in case of deportation / extradition**

Where there is a real risk of ill-treatment in another state, the obligation not to send an individual to that state is an absolute one; it cannot be claimed that public interest reasons for deporting or extraditing an individual outweigh the risk of ill-treatment on the individual's return, regardless of the offence or conduct.

#### **Chahal v. the United Kingdom**

15 November 1996

The applicant, an advocate of the Sikh separatist cause who was served with a deportation order on grounds of national security, alleged that he faced a real risk of ill-treatment if he were to be deported to India.

The Court held that there **would be a violation of Article 3** (prohibition of inhuman and degrading treatment) **if the deportation order to India were to be enforced**. The Court was not satisfied by the assurances given by the Indian Government.

#### **Shamayev and Others v. Georgia and Russia**

12 April 2005

This case concerned in particular the alleged risk of ill-treatment if a decision adopted two years before to extradite a Russian national of Chechen origin to Russia – on the ground that he was a terrorist rebel who had taken part in the conflict in Chechnya – were to be enforced. The extradition order made against him had been suspended but could be enforced when the proceedings concerning his refugee status ended.

The Court held that there **would be a violation** by Georgia **of Article 3** (prohibition of inhuman or degrading treatment) of the Convention **if the decision to extradite** the application in question to Russia **were to be enforced**. Having regard to the material placed before it, the Court considered in particular that the assessments on which the decision to extradite the applicant had been founded two years before no longer sufficed to exclude all risk of ill-treatment prohibited by the Convention being inflicted on him. The Court noted in particular the new extremely alarming phenomenon of persecution and killings of persons of Chechen origin who had lodged applications with it.

#### **Saadi v. Italy**

28 February 2008 (Grand Chamber)

This case concerned the risk of ill-treatment if the applicant were to be deported to Tunisia, where he claimed to have been sentenced in absentia in 2005 to 20 years' imprisonment for membership of a terrorist organisation.



The Court observed that it could not underestimate the danger of terrorism and noted that States were facing considerable difficulties in protecting their communities from terrorist violence. However, that should not call into question the absolute nature of Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention. In the present case, there were substantial grounds for believing that there was a real risk that the applicant would be subjected to treatment contrary to Article 3 if he were to be deported to Tunisia. The Court further noted that the Tunisian authorities had not provided the diplomatic assurances requested by the Italian Government. Lastly, even if the Tunisian authorities had given the diplomatic assurances, that would not have absolved the Court from the obligation to examine whether such assurances provided a sufficient guarantee that the applicant would be protected against the risk of treatment. Consequently, the Court found that the **decision to deport** the applicant to Tunisia **would breach Article 3 if it were enforced**.

### **Daoudi v. France**

3 December 2009

The applicant, an Algerian national, was arrested and convicted in France in the context of an operation to dismantle a radical Islamist group affiliated to al-Qaeda and suspected of having prepared a suicide attack on the United States Embassy in Paris.

In the circumstances of the case, and having regard in particular to the applicant's background, who was not only suspected of having links with terrorism, but had been convicted of serious crimes in France of which the Algerian authorities were aware, the Court was of the opinion that it was likely that were he to be deported to Algeria the applicant would become a target for the Department for Information and Security (DRS). It consequently held that the **decision to deport** the applicant to Algeria **would amount to a violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention if it were implemented.

See also: **H.R. v. France (no. 64780/09)**, judgment of 22 September 2011.

### **Beghal v. France**

6 September 2011 (decision on the admissibility)

The applicant, convicted in France for terrorist activities, alleged that he would be at risk of ill-treatment if returned to Algeria.

The Court declared the application **inadmissible** (manifestly ill-founded). It found that, given the ongoing criminal proceedings against the applicant in France and his temporary detention, he no longer ran any proximate or imminent risk of being removed from the country.

### **Omar Othman v. the United Kingdom**

17 January 2012

The applicant, Omar Othman (also known as Abu Qatada), challenged his removal to Jordan where he had been convicted in his absence on various terrorism charges.

The Court found that **there would be** no risk of ill-treatment, and **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, **if the applicant were deported** to Jordan. It noted in particular that the United Kingdom and Jordanian Governments had made genuine efforts to obtain and provide transparent and detailed assurances to ensure that the applicant would not be ill-treated upon his return to Jordan. In addition, the assurances would be monitored by an independent human rights organisation in Jordan, which would have full access to the applicant in prison.

The Court found, however, that, **if the applicant were deported** to Jordan, there **would be a violation of Article 6** (right to a fair trial) of the Convention, given the real risk of the admission of evidence obtained by torture at his retrial<sup>3</sup>. This conclusion reflects the international consensus that the use of evidence obtained through torture makes a fair trial impossible.

<sup>3</sup>. It was the first time that the Court found that an expulsion would be in violation of Article 6 (right to a fair trial) of the Convention.

The Court also found in this case that there had been **no violation of Article 3 taken in conjunction with Article 13** (right to an effective remedy) of the Convention and that **there would be no violation of 5** (right to liberty and security) of the Convention **if the applicant were deported** to Jordan.

### **Babar Ahmad and Others v. the United Kingdom**

10 April 2012

This case concerned six alleged international terrorists – Babar Ahmad, Syed Tahla Ahsan, Mustafa Kamal Mustafa (known more commonly as Abu Hamza), Adel Abdul Bary, Khaled Al-Fawwaz, and Haroon Rashid Aswat – who have been detained in the United Kingdom pending extradition to the United States of America.

The Court held that **there would be no violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention as a result of conditions of detention at ADX Florence (a “supermax” prison in the United States) **if the five first applicants were extradited** to the United States. The Court also found that there would be **no violation of Article 3** as a result of the length of their possible sentences if these five applicants were extradited to the United States. The Court further decided to **adjourn** the examination of complaints made by Haroon Rashid Aswat, who suffers from schizophrenia, and to examine them at a later date under a new application number (see below).

### **Aswat v. the United Kingdom**

16 April 2013 (*see also, below, the decision on the admissibility of 6 January 2015*)

The applicant, who is detained in the United Kingdom, complained that his extradition to the United States of America would amount to ill-treatment, in particular because the detention conditions (a potentially long period of pre-trial detention and his possible placement in a “supermax” prison) were likely to exacerbate his condition of paranoid schizophrenia.

While the Court held that the applicant’s **extradition** to the United States **would be in violation of Article 3** (prohibition of inhuman and degrading treatment) of the Convention, it was solely on account of the current severity of his mental illness and not as a result of the length of his possible detention there.

### **Aswat v. the United Kingdom**

6 January 2015 (decision on the admissibility)

In a judgment of April 2013 (see above), the European Court of Human Rights had held that the applicant’s extradition from the United Kingdom to the United States of America would be in violation of Article 3 of the Convention. Following a set of specific assurances given by the US Government to the Government of the UK regarding the conditions in which he would be detained in the US before trial and after a possible conviction, the applicant was eventually extradited to the United States in October 2014. The applicant complained that the assurances provided by the US Government did not respond to the risks identified by the Court in its judgment of April 2013 and that his extradition would therefore be in breach of Article 3 of the Convention.

The Court found that the concerns raised in its judgment of April 2013 had been directly addressed by the comprehensive assurances and additional information received by the Government of the UK from the US Government. It therefore considered the applicant’s complaint to be manifestly ill-founded pursuant to Article 35 (admissibility criteria) of the Convention and declared the application **inadmissible**.

### **X v. Germany (no. 54646/17)**

7 November 2017 (decision on the admissibility)

This case concerned the expulsion from Germany to Russia of a Russian national, who was born in Dagestan and grew up in Germany, suspected of being willing to participate in terrorist attacks. The applicant complained, in particular, that his removal to Russia would expose him to the risk of being tortured, placed under surveillance, detained or subjected to a forced disappearance.



The Court declared the application **inadmissible**. Like the domestic courts, it found in particular that there were no substantial grounds for believing that the applicant, if deported to Moscow, would be exposed to a real risk of being subjected to treatment contrary to Article 3 (prohibition of torture and of inhuman or degrading treatment) of the Convention as he had no connection with the conflicts in the Northern Caucasus. Moreover, the Court saw no reason to depart from the domestic courts' decisions, which had carefully weighed all the evidence and had made a comprehensive assessment of the applicant's case. It therefore held that that part of the applicant's complaint had to be rejected as manifestly ill-founded.

### **Saidani v. Germany**

4 September 2018 (décision sur la recevabilité)

This case concerned the deportation of a applicant, a Tunisian national, from Germany to Tunisia because he was deemed to be a potential offender who posed a threat to national security (so-called "Gefährder"), based on his activities for "Islamic State". The applicant complained in particular that he faced the risk of death penalty in connection with terrorism charges and that that penalty would neither be commuted into a life sentence nor be reducible.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found in particular that there was a real risk that the death penalty would be imposed on the applicant in Tunisia. However, this penalty would *de facto* constitute a life sentence since there was a moratorium on carrying out executions, which had been respected since 1991. The Court also saw no reason to depart from the domestic court's findings that there was a possibility to review a life sentence with a view to subsequent release and that there was a clear mechanism for it in Tunisian law and practice.

### **A.M. v. France (no. 12148/18)**

29 April 2019

This case concerned the planned deportation to Algeria of the applicant, an Algerian national, after he was convicted in France in 2015 for participating in acts of terrorism and was permanently banned from French territory. The applicant complained that his deportation to Algeria would expose him to a risk of inhuman or degrading treatment.

The Court held that, if the decision to deport the applicant to Algeria was enforced, there would be **no violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, finding that the general situation in Algeria as regards the treatment of individuals linked to terrorism did not in itself preclude the applicant's deportation. Agreeing with the conclusion of the French courts, it considered that their assessment had been appropriate and sufficiently substantiated by domestic data and information from other reliable and objective sources. In the present case, the Court took the view that there were no serious, proven grounds to believe that if he were returned to Algeria the applicant would run a real risk of being subjected to treatment in breach of Article 3 of the Convention.

**Cases in which the State concerned extradited/deported suspected terrorists despite the Court's indication under Rule 39 (interim measures) of the Rules of Court not to do so until further notice:**

### **Mamatkulov and Askarov v. Turkey**

4 February 2005 (Grand Chamber)

This case concerned the extradition to Uzbekistan in 1999 of two members of an opposition party in Uzbekistan suspected of the explosion of a bomb in that country as well as an attempted terrorist attack on the President of the Republic.

Although the Court had on 18 March 1999 indicated to the Turkish Government, under Rule 39 (interim measures) of the Rules of Court, that "it was desirable in the interests of the parties and the proper conduct of the proceedings before the Court not to extradite the applicants to Uzbekistan until the Court had had an opportunity to examine the application further at its forthcoming session on 23 March", on 19 March 1999, the

Turkish Cabinet had issued a decree for the applicants' extradition and they were handed over to the Uzbek authorities on 27 March 1999. In a judgment of 28 June 1999 the High Court of the Republic of Uzbekistan later found the applicants guilty of the offences as charged and sentenced them to 20 and 11 years' imprisonment respectively.

In the light of the material before it, the Court was not able to conclude that substantial grounds had existed on the date the applicants were extradited for believing that they faced a real risk of treatment proscribed by Article 3 (prohibition of inhuman or degrading treatment) of the Convention. Consequently, **no violation of Article 3** of the Convention could be found. Having regard to the material before it, the Court further concluded that, by failing to comply with the interim measures indicated under Rule 39 of the Rules of Court, Turkey had been **in breach of** its obligations under **Article 34** (effective exercise of right of individual application) of the Convention.

### **Ben Khemais v. Italy**

24 February 2009

Sentenced in Tunisia in his absence to ten years' imprisonment for membership of a terrorist organisation, the applicant had been extradited to Tunisia on account of his role in the activities of Islamic extremists. Although in March 2007, pursuant to Rule 39 (interim measures) of the Rules of Court, the Court had indicated to the Italian Government that it was desirable, in the interests of the parties and of the smooth progress of the proceedings before the Court, to stay the order for the applicant's deportation pending a decision on the merits, the applicant was deported to Tunisia in June 2008.

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, on account of the applicant's deportation to Tunisia. It further found a **violation of Article 34** (right of individual petition) of the Convention regarding Italy's failure to comply with the measure indicated under Rule 39 of the Rules of Court.

See also: **Trabelsi v. Italy**, judgment of 13 April 2010; **Toumi v. Italy**, judgment of 5 April 2011; and **Mannai v. Italy**, judgment of 27 March 2012.

### **Labsi v. Slovakia**

15 May 2012

This case concerned the expulsion of an Algerian man, convicted in France of preparing a terrorist act, from Slovakia following his unsuccessful asylum request. The applicant was expelled to Algeria in April 2010, despite the fact that the Court had issued an interim measure in 2008, under Rule 39 of its Rules of Court, to the effect that he should not be extradited to Algeria before the final outcome of his asylum case before the Slovakian Constitutional Court.

The Court held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment), **Article 13** (right to an effective remedy) and **Article 34** (right of individual petition) of the Convention. It found in particular that terrorist suspects faced a serious risk of ill-treatment in Algeria at the relevant time and that the applicant's expulsion, in disregard of an interim measure issued by the Court, had prevented it from properly examining his complaints.

### **Trabelsi v. Belgium**

4 September 2014

This case concerned the extradition, which had been effected despite the indication of an interim measure by the Court, under Rule 39 of the Rules of Court, of a Tunisian national from Belgium to the United States, where he is being prosecuted on charges of terrorist offences and is liable to life imprisonment.

The Court held that the applicant's extradition to the United States entailed a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It considered that the life sentence to which the applicant was liable in the United States was irreducible inasmuch as US law provided for no adequate mechanism for reviewing this type of sentence, and that it was therefore contrary to the provisions of Article 3.

The Court also held that there had been a **violation of Article 34** (right of individual application) of the Convention: the failure of the Belgian State to observe the suspension of extradition indicated by the Court had irreversibly lowered the level of protection of the rights secured under Article 3 of the Convention, which the applicant had attempted to uphold by lodging his application with the Court, and had interfered with his right of individual application.

**M.A. v. France (no. 9373/15)**

1 February 2018

This case concerned the expulsion to Algeria of an Algerian national convicted in France of involvement in a terrorist organisation. The applicant alleged in particular that by handing him over to the Algerian authorities, in breach of an interim measure indicated by the Court, the French Government had failed in its obligations under Article 34 (right of individual application) of the Convention.

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, finding that, at the time of the removal to Algeria of the applicant, whose conviction for terrorist offences had been known to the Algerian authorities, there had been a real and serious risk that he would face treatment contrary to Article 3. The Court also held that there had been a **violation of Article 34** (right of individual application) of the Convention. In this respect, it observed in particular that the French authorities had prepared the applicant's expulsion to Algeria in such a way that it had taken place only seven hours after the applicant had been informed of it. In so doing they had deliberately created a situation whereby the applicant would have great difficulty in submitting a request for an interim measure to the Court, and had lowered the level of protection under Article 3 of the Convention.

**A.S. v. France (no. 46240/15)**

19 April 2018

This case concerned the expulsion to Morocco of a Moroccan national who had been convicted in France of conspiracy to carry out terrorist acts, and who had previously been deprived of his French nationality for the same reason. The applicant alleged in particular that he had been expelled to Morocco despite the fact that in that country he had risked being subjected to ill-treatment. He also submitted that by expelling him to Morocco in breach of an interim measure indicated by the Court, France had failed in its obligations under Article 34 (right of individual application) of the Convention.

The Court held that there had been **no violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, noting in particular that Morocco had adopted general measures to prevent risks of torture and inhuman and degrading treatment. Furthermore, despite his release and his contacts with a lawyer, the applicant had failed to present any evidence, such as medical certificates, to show that his conditions of detention in Morocco had exceeded the requisite severity threshold for a violation of Article 3. The Court held, however, that there had been a **violation of Article 34** (right of individual application) of the Convention. In this respect, it noted in particular that the expulsion order had not been served on the applicant until more than one month after the decision had been taken, and that he had been immediately taken to the airport for expulsion to Morocco. The applicant had therefore not had sufficient time to request that the Court suspend the decision, even though the French authorities had taken it a long time previously. Moreover, the expulsion had rendered nugatory any finding of a violation of the Convention because the applicant had been expelled to a country which was not bound by the latter and in which he claimed that he was liable to be subjected to treatment which it prohibited.

## Secret “rendition” operations

### El-Masri v. “The former Yugoslav Republic of Macedonia”

13 December 2012 (Grand Chamber)

This case concerned the complaints of a German national of Lebanese origin that he had been a victim of a secret “rendition” operation during which he was arrested, held in isolation, questioned and ill-treated in a Skopje hotel for 23 days, then transferred to CIA (Central Intelligence Agency) agents who brought him to a secret detention facility in Afghanistan, where he was further ill-treated for over four months.

The Court found the applicant’s account to be established beyond reasonable doubt and held that “The former Yugoslav Republic of Macedonia” had been responsible for his torture and ill-treatment both in the country itself and after his transfer to the United States authorities in the context of an extra-judicial “rendition”.

The Court held that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, on account of the inhuman and degrading treatment to which the applicant had been subjected while being held in a hotel in Skopje, on account of his treatment at Skopje Airport, which amounted to torture, and on account of his transfer into the custody of the United States authorities, thus exposing him to the risk of further treatment contrary to Article 3. The Court also found a **violation of Article 3** on account of the failure of “The former Yugoslav Republic of Macedonia” to carry out an effective investigation into the applicant’s allegations of ill-treatment.

The Court further held that there had been a **violation of Article 5** (right to liberty and security) of the Convention, on account of the applicant’s detention in the hotel in Skopje for 23 days and of his subsequent captivity in Afghanistan, as well as on account of the failure to carry out an effective investigation into his allegations of arbitrary detention.

Lastly, the Court found a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 13** (right to an effective remedy) of the Convention.

### Al Nashiri v. Poland and Husayn (Abu Zubaydah) v. Poland

24 July 2014

These two cases concerned allegations of torture, ill-treatment and secret detention of two men suspected of terrorist acts. Both applicants submitted that they had been held at a CIA “black site” in Poland. They maintained in particular that Poland had knowingly and intentionally enabled the CIA to hold them in secret detention in the Stare Kiejkuty facility, for six and nine months, respectively, without any legal basis or review and without any contact with their families. They complained that Poland had knowingly and intentionally enabled their transfer from Polish territory despite the real risk of further ill-treatment and incommunicado detention, allowing them to be transferred to a jurisdiction where they would be denied a fair trial. Finally, they complained that Poland had failed to conduct an effective investigation into the circumstances surrounding their ill-treatment, detention and transfer from the Polish territory.

Having regard to the evidence before it, the Court came to the conclusion that the applicants’ allegations that they had been detained in Poland were sufficiently convincing. The Court found that Poland had cooperated in the preparation and execution of the CIA rendition, secret detention and interrogation operations on its territory and it ought to have known that by enabling the CIA to detain the applicants on its territory, it was exposing them to a serious risk of treatment contrary to the Convention.

In both cases, the Court held that Poland had **failed to comply with** its obligation under **Article 38** (obligation to furnish all necessary facilities for the effective conduct of an investigation) of the Convention. It further held, in both cases, that there had been a **violation of Article 3** (prohibition of torture and inhuman or degrading treatment) of the Convention, in both its substantive and procedural aspects, a **violation of Article 5** (right to liberty and security), a **violation of Article 8** (right to respect for private and

family life), a **violation of Article 13** (right to an effective remedy) and a **violation of Article 6 § 1** (right to a fair trial) of the Convention. As regards the first applicant, the Court lastly held that there had been a **violation of Articles 2** (right to life) **and 3 taken together with Article 1** (abolition of the death penalty) **of Protocol No. 6** to the Convention.

### Nasr and Ghali v. Italy

23 February 2016

This case concerned the “extraordinary rendition” – the abduction by CIA agents, with the cooperation of Italian nationals – of Egyptian imam Abu Omar, and his transfer to Egypt, followed by his secret detention there for several months. The applicant complained in particular of his abduction with the participation of the Italian authorities, the ill-treatment endured during his transfer and detention, the impunity enjoyed by the persons responsible on grounds of State secrecy, and the failure to enforce the sentences passed on the convicted US nationals owing to the refusal of the Italian authorities to request their extradition. Lastly, he and his wife – the second applicant – complained of a violation of their right to respect for private and family life, given that the first applicant’s abduction and detention had resulted in their forcible separation for more than five years.

The Court held, with regard to the *first applicant*, that there had been a violation of Article 3 (prohibition of torture and inhuman or degrading treatment), a **violation of Article 5** (right to liberty and security), a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 13** (right to an effective remedy) **read in conjunction with Articles 3, 5 and 8** of the Convention. With regard to the *second applicant*, it held that there had been a **violation of Article 3** (prohibition of inhuman or degrading treatment), **of Article 8** (right to respect for private and family life) and **of Article 13** (right to an effective remedy) **read in conjunction with Articles 3 and 8**. In particular, having regard to all the evidence in the case, the Court found it established that the Italian authorities were aware that the first applicant had been a victim of an extraordinary rendition operation which had begun with his abduction in Italy and had continued with his transfer abroad. In the present case the Court held that the legitimate principle of “State secrecy” had clearly been applied by the Italian executive in order to ensure that those responsible did not have to answer for their actions. The investigation and trial had not led to the punishment of those responsible, who had therefore ultimately been granted impunity.

### Abu Zubaydah v. Lithuania

31 May 2018

This case concerned the applicant’s allegations that Lithuania had let the United States Central Intelligence Agency (CIA) transport him onto its territory under the secret extraordinary rendition programme and had allowed him to be subjected to ill-treatment and arbitrary detention in a CIA detention “black site”. He also complained that Lithuania had failed to carry out an effective investigation into his allegations.

In this case the Court had no access to the applicant as he was still being held by the US authorities in very restrictive conditions so it had to establish the facts from various other sources. In particular, it gained key information from a US Senate Committee report on CIA torture which was released in December 2014. It also heard expert witness testimony. The Court held that in the applicant’s case there had been **violations of Article 3** (prohibition of torture) of the Convention, because of the Government’s failure to effectively investigate his allegations and because of its complicity in the CIA’s actions that had led to ill-treatment, as well as **violations of Article 5** (right to liberty and security), **Article 8** (right to respect for private life), **and Article 13** (right to an effective remedy) **in conjunction with Article 3**. The Court noted in particular that Lithuania had hosted a secret CIA prison between February 2005 and March 2006, that the applicant had been detained there, and that the domestic authorities had known the CIA would subject him to treatment contrary to the Convention. Lithuania had also permitted him to be moved to another CIA detention site in Afghanistan, exposing him to



further ill-treatment. The Court therefore that the applicant had been within Lithuania's jurisdiction and that the country had been responsible for the violations of his rights under the Convention. The Court further recommended that Lithuania conclude a full investigation of the applicant's case as quickly as possible and, if necessary, punish any officials responsible. It lastly held that the country also had to make further representations to the United States to remove or limit the effects of the violations of his rights.

### **Al Nashiri v. Romania**

31 May 2018

The applicant in this case was facing capital charges in the US for his alleged role in terrorist attacks. The case concerned his allegations that Romania had let the United States Central Intelligence Agency (the CIA) transport him under the secret extraordinary rendition programme onto its territory and had allowed him to be subjected to ill-treatment and arbitrary detention in a CIA detention "black site". He also complained that Romania had failed to carry out an effective investigation into his allegations.

In this case the Court had no access to the applicant as he was still being held by the US authorities in very restrictive conditions so it had to establish the facts from various other sources. In particular, it gained key information from a US Senate report on CIA torture which was released in December 2014. It also heard expert witness testimony. The Court held that in the applicant's case there had been **violations of Article 3** (prohibition of torture) of the Convention, because of the Romanian Government's failure to effectively investigate the applicant's allegations and because of its complicity in the CIA's actions that had led to ill-treatment. The Court also held that there had been **violations of Article 5** (right to liberty and security), **Article 8** (right to respect for private life), **and Article 13** (right to an effective remedy) **in conjunction with Articles 3, 5 and 8**. Lastly, it held that there had been **violations of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention, **and Articles 2** (right to life) **and 3** of the Convention **taken together with Article 1** (abolition of the death penalty) **of Protocol No. 6** to the Convention because Romania had assisted in the applicant's transfer from its territory in spite of a real risk that he could face a flagrant denial of justice and the death penalty. The Court noted in particular that Romania had hosted a secret CIA prison, which had the code name, Detention Site Black, between September 2003 and November 2005, that the applicant had been detained there for about 18 months, and that the domestic authorities had known the CIA would subject him to treatment contrary to the Convention. Romania had also permitted him to be moved to another CIA detention site located either in Afghanistan (Detention Site Brown) or in Lithuania (Detention Site Violet), thus exposing him to further ill-treatment. The Court therefore found that the applicant had been within Romania's jurisdiction and that the country had been responsible for the violation of his rights under the Convention. It further recommended that Romania conclude a full investigation into the applicant's case as quickly as possible and, if necessary, punish any officials responsible. The Court lastly held that the country should also seek assurances from the United States that the applicant would not suffer the death penalty.

### **Pending application**

#### **al-Hawsawi v. Lithuania (no. 6383/17)**

Application communicated to the Lithuanian Government on 30 January 2019

This case concerns the applicant's allegations that Lithuania has let the United States Central Intelligence Agency (CIA) transport him onto its territory under the secret extraordinary rendition programme and has allowed him to be subjected to ill-treatment and arbitrary detention in a CIA detention "black site".

The Court gave notice of the application to the Lithuanian Government and put questions to the parties under Articles 1 (obligation to respect human rights), 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 5 (right to liberty and security),



6 (right to a fair trial), 8 (right to respect for private and family life) and 13 (right to an effective remedy) of the Convention and under Article 1 (abolition of the death penalty) of Protocol No. 6 to the Convention.

## Issues under Article 5 (right to liberty and security) of the Convention

### Existence of reasonable suspicion (Art. 5 § 1 (c))

Article 5 (right to liberty and security) of the Convention does not permit the detention of an individual for questioning merely as part of an intelligence gathering exercise (there must be an intention, in principle at least, to bring charges).

#### Fox, Campbell and Hartley v. the United Kingdom

30 August 1990

The applicants were arrested in Northern Ireland by a constable exercising a statutory power (since abolished) allowing him to arrest for up to 72 hours anyone he suspected of being a terrorist.

The Court held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the evidence provided was insufficient to establish that there had been an objectively determined “reasonable suspicion” for the arrests.

#### Murray v. the United Kingdom

28 October 1994

The first applicant had been arrested on suspicion of collecting money for the Provisional Irish Republican Army (IRA).

#### O’Hara v. the United Kingdom

16 October 2001

The applicant, a prominent member of Sinn Fein, had been arrested on account of suspected involvement in a murder committed by the IRA.

In both cases, the Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicants’ arrests on suspicion of terrorism had been part of pre-planned operations based on evidence or intelligence information of terrorist activity and had met the standard of “honest suspicion on reasonable grounds”.

## Indefinite detention

### A. and Others v. the United Kingdom (n° 3455/05)

19 February 2009 (Grand Chamber)

The 11 applicants complained about their detention in high security conditions under a statutory scheme which permitted the indefinite detention of non-nationals certified by the Secretary of State as suspected of involvement in terrorism.

The Court found that the applicants’ detention had **not** reached the high threshold of inhuman and degrading treatment for which a **violation of Article 3** of the Convention could be found.

It further held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention – in respect of all the applicants, except two who had elected to leave the United Kingdom – since the applicants had not been detained with a view to deportation and since, as the House of Lords had found, the derogating measures which permitted their indefinite detention on suspicion of terrorism had discriminated unjustifiably between nationals and non-nationals.

The Court also found in this case a **violation of Article 5 § 4** (right to have lawfulness of detention decided by a court) of the Convention in respect of four of the applicants, because they had not been able effectively to challenge the allegations against them, and, and a **violation of Article 5 § 5**, in respect of all the applicants, except the two who had elected to leave the United Kingdom, on account of the lack of an enforceable right to compensation for the above violations.

## Right to be brought promptly before a judge or other officer authorised by law to exercise judicial power

An arrested person is to be brought “promptly” before a judge or other office, the “clock” beginning to tick at the point of arrest.

### Brogan and Others v. the United Kingdom

29 November 1988

The four applicants, who were suspected of terrorism, were arrested by the police in Northern Ireland and, after being questioned for periods ranging from four days and six hours to six days, sixteen hours and a half, were released without being charged or brought before a magistrate.

The Court held that there had been a **violation of Article 5 § 3** (right to liberty and security) of the Convention, finding that the requirement of “promptness” could not be stretched to a delay of four days and six hours or more.

### Brannigan and McBride v. the United Kingdom

26 May 1993

In this case, the two applicants, who were IRA suspects, were arrested by the police in Northern Ireland and kept in police custody for six days, fourteen hours and thirty minutes, and four days, six hours and twenty-five minutes, respectively. They both complained in particular that they had not been brought promptly before a judge.

The Court held that there had been **no violation of Article 5 § 3** (right to liberty and security) of the Convention. The detention of the applicants for periods longer than in the *Brogan and Others* case (see above) did not breach the Convention as the United Kingdom had made a valid emergency derogation under Article 15 of the Convention (see above, page 1).

## Reasonableness of pre-trial detention

### Grubnyk v. Ukraine

17 September 2020<sup>4</sup>

This case concerned the applicant’s arrest and detention in connection with various terrorism offences in Odessa in 2015. The applicant complained in particular of various rights infringements regarding his arrest and the extension of his remand. He also complained that the wording of his initial pre-trial detention order had breached his right to be presumed innocent.

The Court held that there had been **no violation of Article 5 §§ 2 and 3** (right to liberty and security) of the Convention concerning the applicant’s complaints about not being informed promptly of the reasons for his arrest and about bail not being available to him by law because he was accused of terrorism offences. The Court found in particular that, in the specific circumstances of the applicant’s case, the domestic courts had provided sufficient reasons for his pre-trial detention given that he had been suspected of a bomb attack at a time of great tension in Odessa and in the context of defendants in other previous high-profile cases having fled once released. However, it noted with satisfaction that the Constitutional Court of Ukraine had since decided to declare unconstitutional the law on bail, invoked in the applicant’s case, which in some cases had limited the domestic courts’ ability to issue properly reasoned detention orders. The Court held, however, that there had been two **violations of Article 5 § 1** of the Convention, because the applicant’s arrest had been carried out without a prior court decision and had not actually been recorded until the next day. Lastly, the Court held that there had been a **violation of Article 6 § 2** (presumption of innocence) of the Convention in the applicant’s case, because the initial pre-trial detention order against him had stated that he was guilty of a particularly “grave offence” while, at the time, he had merely been suspected and not convicted of any terrorism offence.

<sup>4</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

## Right to be tried within reasonable time

### Chraidi v. Germany

26 October 2006

In 1990, an arrest warrant was issued against the applicant (a stateless person residing in Lebanon), accused of having prepared, with others, the bomb attack of a discotheque in Berlin in 1986 in order to kill members of the American armed forces. During this attack three persons had been killed and 104 persons had been seriously injured. In 1996 the applicant was extradited to Germany from Lebanon and held in detention. In November 2001 he was convicted of aiding and abetting murder, attempted murder and causing an explosion. The applicant complained, in particular, about the excessive length of his detention on remand which lasted approximately five and-a-half years.

The Court held that there had been **no violation of Article 5 § 3** (right to be tried within reasonable time) of the Convention, finding that, in the exceptional circumstances of the present case, the length of the applicant's detention could be regarded as reasonable. The Court observed in particular that the case had concerned a particularly complex investigation and trial into large-scale offences which had been committed in the context of international terrorism. It also noted that States combating terrorism may be faced with extraordinary difficulties. The Court therefore accepted the reasons given by the German courts for the applicant's continued detention and took the view that the competent judicial authorities could not be said to have displayed a lack of special diligence in handling his case.

### Berasategi v. France, Esparza Luri v. France, Guimon Ep. Esparza v. France, Sagarzazu v. France and Soria Valderrama v. France

26 January 2012

The five cases concerned the length of the pre-trial detention, which had been extended several times, of prisoners accused of belonging to the terrorist organisation ETA.

In these five cases the Court held that there had been a **violation of Article 5 § 3** (right to be tried within reasonable time) of the Convention. Noting in particular that on the face of it, pre-trial detention of between four years and eight months and five years and ten months appeared to be unreasonable and there had to be particularly compelling reasons for it, it considered, on the basis of the elements in its possession, that the judicial authorities had not acted with all the requisite promptness.

## Right to take proceedings to challenge lawfulness of detention (Art. 5 § 4)

Sher and Others v. the United Kingdom (see also below, under "Prevention of terrorism", "Issues under Article 8 (right to respect for private and family life) of the Convention")

20 October 2015

This case concerned the arrest and detention of the applicants, three Pakistani nationals, in the context of a counterterrorism operation. The applicants were detained for 13 days, before ultimately being released without charge. During that period they were brought twice before a court with warrants for their further detention being granted. They were then taken into immigration detention and have since voluntarily returned to Pakistan. They complained in particular about the hearings on requests for prolongation of their detention because certain evidence in favour of their continued detention had been withheld from them and that one such hearing had been held for a short period in closed session.

The Court held that there had been **no violation of Article 5 § 4** of the Convention. It observed in particular that the UK authorities had suspected an imminent terrorist attack and had launched an extremely complex investigation aimed at thwarting it. Reiterating that terrorism fell into a special category, it found that Article 5 § 4 could not be used to prevent the use of a closed hearing or to place disproportionate difficulties in the way of police authorities in taking effective measures to counter terrorism. In the applicants' case, the threat of an imminent terrorist attack and national security considerations had justified restrictions on the applicants' right to adversarial

proceedings concerning the warrants for their further detention. Moreover, there had been sufficient safeguards against the risk of arbitrariness in respect of the proceedings for warrants of further detention, in the form of a legal framework setting out clear and detailed procedural rules.

### **Right to have lawfulness of detention decided speedily by a court (Art. 5 § 4)**

#### **M.S. v. Belgium (no. 50012/08)**

31 January 2012

This case concerned the extension of periods of detention while awaiting removal from Belgian territory in respect of an Iraqi national – who was suspected in particular of having links with the terrorist association Al-Qaeda – having served his sentence. Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), the applicant complained that he had been returned to Iraq. He further alleged that his first period of detention in a closed transit centre from October 2007 to March 2009, and his second period of detention in a closed transit centre from April 2010 until his return to Iraq in October 2010, had been arbitrary and the decision as to the lawfulness of his detention had not been made speedily.

As regards the first period of detention, the Court considered that the applicant had not benefited from the right to a speedy decision on the lawfulness of his detention and concluded that there had been a **violation of Article 5 § 4** of the Convention. The Court further held that there had been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in respect of the first period of detention in a closed transit centre from 29 May 2008 to 4 March 2009, placement of the applicant in a closed transit centre on 2 April 2010 and measures to extend his detention after 24 August 2010.

As far as the applicant's complaint under Article 3 was concerned, the Court reiterated that Article 3 prohibited in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct, and even in the most difficult circumstances such as the fight against terrorism. In the circumstances of the case, it held that there had been a **violation of Article 3** of the Convention in respect of the return of the applicant to Iraq.

### **Issues under Article 6 (right to a fair trial) of the Convention**

#### **Heaney and McGuinness v. Ireland**

21 December 2000

The two applicants were arrested on suspicion of serious terrorist offences. After having been cautioned by police officers that they had the right to remain silent, they were requested under section 52 of the Offences Against the State Act 1939 to give details about their movements at the time of the relevant offences. The applicants complained that section 52 of the 1939 Act violated their rights to silence and against self-incrimination and inverted the presumption of innocence.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) **and 6 § 2** (presumption of innocence) of the Convention. It found that the security and public order concerns invoked by the Irish Government could not justify a provision which extinguishes the very essence of the applicants' rights to silence and against self-incrimination guaranteed by Article 6 § 1 of the Convention. Moreover, given the close link with the presumption of innocence guaranteed by Article 6 § 2, there had also been a violation of that provision.

#### **Salduz v. Turkey**

27 November 2008 (Grand Chamber)

The applicant, a minor at the time, was arrested on suspicion of participating in an illegal demonstration in support of the imprisoned leader of the PKK and accused of hanging an illegal banner from a bridge. He was subsequently convicted of aiding and abetting the PKK. The case concerned restriction on the applicant's right of access to a lawyer while

in police custody for an offence falling under the jurisdiction of the state security courts, regardless of age.

The Court held in particular that there had been a **violation of Article 6 § 3 (c)** (right to legal assistance of one's own choosing) **in conjunction with Article 6 § 1** (right to a fair hearing) of the Convention, on account of the applicant's lack of legal assistance while he was in police custody.

### **El Haski v. Belgium**

25 September 2012

This case concerned the arrest and conviction of a Moroccan national for participating in the activities of a terrorist group. The applicant complained in particular that his right to a fair trial had been violated because some of the statements used in evidence against him had allegedly been obtained in Morocco by means of treatment contrary to Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention.

The Court held that there had been a **violation of Article 6** (right to a fair trial) of the Convention. Unlike the Belgian courts, the Court found that because of the context in which the statements had been taken, in order to make the criminal court exclude them as evidence it sufficed for the applicant to demonstrate the existence of a "real risk" that the statements concerned had been obtained using treatment contrary to Article 3. Article 6 of the Convention therefore required the domestic courts not to admit them as evidence without first making sure they had not been obtained by such methods. However, in rejecting the applicant's request to exclude the statements the Court of Appeal simply noted that he had provided no "concrete proof" capable of shedding "reasonable doubt" on the evidence.

### **Abdulla Ali v. the United Kingdom**

30 June 2015

This case concerned the applicant's complaint that, because of extensive adverse media coverage, the criminal proceedings against him for conspiring in a terrorist plot to cause explosions on aircraft using liquid bombs had been unfair. Following a first trial in his case which had resulted in his conviction on a charge of conspiracy to murder, there had been extensive media coverage, including reporting on material which had never been put before the jury. A retrial was subsequently ordered in respect of the more specific charge of conspiracy to murder by way of detonation of explosive devices on aircraft mid-flight (on which the jury at the first trial had been unable to reach a verdict) and the applicant argued that it was impossible for the retrial to be fair, given the impact of the adverse publicity. His argument was rejected by the retrial judge and he was convicted at the retrial. He was sentenced to life imprisonment with a minimum term of 40 years.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that it had not been shown that the adverse publicity had influenced the jury to the point of prejudicing the outcome of the proceedings and rendering the applicant's trial unfair. It observed in particular that the applicable legal framework in the United Kingdom for ensuring a fair trial in the event of adverse publicity had provided appropriate guidance for the retrial judge. It further found that the steps taken by the judge were sufficient. Thus, he considered whether enough time had elapsed to allow the prejudicial reporting to fade into the past before the retrial commenced and recognised the need to give careful jury directions on the importance of impartiality and of deciding the case on the basis of evidence led in court only. He subsequently gave regular and clear directions, to which the applicant did not object. The fact that the jury subsequently handed down differentiated verdicts in respect of the multiple defendants in the retrial proceedings supported the judge's conclusion that the jury could be trusted to be discerning and follow his instructions to decide the case fairly on the basis of the evidence led in court alone.



### Ibrahim and Others v. the United Kingdom

13 September 2016 (Grand Chamber)

On 21 July 2005 four bombs were detonated on the London transport system but failed to explode. The perpetrators fled the scene and a police investigation immediately commenced. The first three applicants were arrested on suspicion of having detonated three of the bombs. The fourth applicant was initially interviewed as a witness in respect of the attacks but it subsequently became apparent that he had assisted one of the bombers after the failed attack and, after he had made a written statement, he was also arrested. All four applicants were later convicted of criminal offences. The case concerned the temporary delay in providing the applicants with access to a lawyer, in respect of the first three applicants, after their arrests, and, as regards the fourth applicant, after the police had begun to suspect him of involvement in a criminal offence but prior to his arrest; and the admission at their subsequent trials of statements made in the absence of lawyers.

The Court held that there had been **no violation of Article 6 §§ 1 and 3 (c)** (right to a fair trial and right to legal assistance) of the Convention in respect of the three first applicants and that there had been a **breach of those provisions** in respect of the fourth applicant. In respect of the three first applicants the Court was convinced that, at the time of their initial police questioning, there had been an urgent need to avert serious adverse consequences for the life and physical integrity of the public, namely further suicide attacks. There had therefore been compelling reasons for the temporary restrictions on their right to legal advice. The Court was also satisfied that the proceedings as a whole in respect of each of the first three applicants had been fair. The position with regard to the fourth applicant, who also complained about the delay in access to a lawyer, was different. He was initially interviewed as a witness, and therefore without legal advice. However, it emerged during questioning that he had assisted a fourth bomber following the failed attack. At that point, according to the applicable code of practice, he should have been cautioned and offered legal advice. However, this was not done. After he had made a written witness statement, he was arrested, charged with, and subsequently convicted of, assisting the fourth bomber and failing to disclose information after the attacks. In his case, the Court was not convinced that there had been compelling reasons for restricting his access to legal advice and for failing to inform him of his right to remain silent. It was significant that there was no basis in domestic law for the police to choose not to caution him at the point at which he had started to incriminate himself. The consequence was that he had been misled as to his procedural rights. Further, the police decision could not subsequently be reviewed as it had not been recorded and no evidence had been heard as to the reasons behind it. As there were no compelling reasons, it fell to the UK Government to show that the proceedings were nonetheless fair. In the Court's view they were unable to do this and it accordingly concluded that the overall fairness of the fourth applicant's trial had been prejudiced by the decision not to caution him and to restrict his access to legal advice.

### Ramda v. France

19 December 2017

The applicant, an Algerian national, was extradited from the United Kingdom to France on charges related to a series of terrorist attacks in 1995 in France. He complained about an alleged error in the reasoning of the judgment delivered by a special bench of the Assize Court of Appeal which convicted him. He also complained about a violation of the *ne bis in idem* principle owing to his criminal conviction despite his previous final conviction by the ordinary criminal courts.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention. It found in particular that the applicant in the present case had benefited from sufficient safeguards to enable him to understand his conviction by the special bench of the Assize Court of Appeal, considering that in view of the combined consideration of the three closely reasoned committal orders, the debates during the hearings of the applicant, as well as the many detailed questions put to the Assize Court,



he could not claim not to know the reasons for his conviction. The Court also held that there had been **no violation of Article 4** (right not to be tried or punished twice) **of Protocol No. 7** to the Convention, finding that the applicant had not been prosecuted or convicted in the framework of the criminal proceedings for facts which had been substantially the same as those of which he had been finally convicted under the prior summary proceedings. The Court reiterated in particular that it was legitimate for the Contracting States to take a firm stance against persons involved in terrorist acts, which it could in no way condone, and that the crimes of complicity in murder and attempted murder of which the applicant had been convicted amounted to serious violations of the fundamental rights under Article 2 (right to life) of the Convention, in respect of which States are required to pursue and punish the perpetrators, subject to compliance with the procedural guarantees of the persons concerned, as was the situation for the applicant in the present case.

### **Gulamhussein and Tariq v. the United Kingdom**

3 April 2018 (decision on the admissibility)

This case concerned the withdrawal of the applicants' security clearances on the grounds of their being associated with terrorism, leading to their dismissal from their jobs as civil servants. The first applicant complained about the Security Vetting Appeal Panel procedure while the second one alleged that the Employment Tribunal procedure had breached his rights to an adversarial hearing, equality of arms and a reasoned decision. The Court declared the applications **inadmissible** as being manifestly ill-founded. It found in particular that even though some of the proceedings had been held in "closed" session because they referred to classified information, the applicants had been provided with proper safeguards for their rights to a fair trial, including by being provided with special advocates who could attend those closed hearings.

### **Otegi Mondragon and Others v. Spain**

6 November 2018

This case concerned the applicants' complaint of bias on the part of the panel of the first instance court which had convicted them for being members of the ETA organisation. The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention. It found in particular that the first applicant in the case had previously won an appeal against a conviction on different ETA-related charges because the presiding judge had shown a lack of impartiality, which had contaminated the whole panel in that case and had led to a retrial. The same panel, including the judge who had presided in the earlier trial, had convicted all five applicants in a second set of proceedings on different charges a year later. The applicants had thus had objectively justified fears that these judges lacked impartiality in their case.

### **Murtazaliyeva v. Russia**

18 December 2018 (Grand Chamber)

This case concerned the complaint of the applicant, a Russian national and an ethnic Chechen, about the overall unfairness of criminal proceedings brought against her for preparing a terrorist attack. The applicant alleged in particular that the fairness of the proceedings against her had been undermined as she had not been able to see or effectively examine the surveillance videotapes shown during the trial as she had not been able to see the screen in the courtroom. She had also not been allowed to question in court a police officer whose actions, in her opinion, could be considered as police incitement, and that she had not been able to call and examine the two attesting witnesses, who could have clarified her allegations concerning the planting of the explosives in her bag.

The Grand Chamber held that there had been **no violation of Article 6 §§ 1 and 3 (b)** (right to a fair trial / preparation of defence) of the Convention as regards the applicant allegedly being unable to view a videotape during her trial. It found in particular that it was not clear in what way it had not been possible for the applicant to see the video, but that in any event that had not hindered a fair trial: her goal had been to check

the accuracy of the transcripts of the tape, which had been possible by listening to the audio recording. The Grand Chamber also held that there had been **no violation of Article 6 §§ 1 and 3 (d)** (right to a fair trial / examination of witnesses) of the Convention as regards the domestic courts' refusal to call two attesting witnesses to testify during the trial. After revising its case-law principles on the calling and examining of defence witnesses, the Court found in particular that the defence had not made it clear why those two witnesses' testimony would strengthen her case, the domestic courts had given sufficient reasons for their decisions, and the lack of their statements in court had not undermined the overall fairness of the proceedings. Lastly, the Grand Chamber declared a complaint under **Article 6 §§ 1 and 3 (d)** about the courts' failure to call another witness, a police officer, to testify at the trial **inadmissible** as being ill-founded, finding that the applicant had effectively waived her right to examine him.

### **Grubnyk v. Ukraine**

17 September 2020<sup>5</sup>

See above, under "Issues under Article 5 (right to liberty and security) of the Convention", "Reasonableness of pre-trial detention".

### **Pending applications**

#### **Sassi v. France and Benchellali v. France (nos. 10917/15 and 10941/15)**

Applications communicated to the French Government on 4 April 2018

The applicants, former prisoners of Guantánamo Bay, complain of a number of breaches of the right to a fair trial and the defence rights in their case.

The Court gave notice of the applications to the French Government and put questions to the parties under Article 6 (right to a fair trial) of the Convention.

## **Issues under Article 7 (no punishment without law) of the Convention**

### **Del Río Prada v. Spain**

21 October 2013 (Grand Chamber)

This case concerned the postponement of the final release of a person convicted of terrorist offences, on the basis of a new approach – known as the "Parot doctrine" – adopted by the Spanish Supreme Court after she had been sentenced. The applicant complained that the Supreme Court's departure from the case-law concerning remissions of sentence had been retroactively applied to her after she had been sentenced, thus extending her detention by almost nine years. She further alleged that she had been kept in detention in breach of the requirements of "lawfulness" and "a procedure prescribed by law".

The Court held that there had been a **violation of Article 7** (no punishment without law) of the Convention. It considered in particular that the applicant could not have foreseen either that the Spanish Supreme Court would depart from its previous case-law in February 2006, or that this change in approach would be applied to her and would result in the date of her release being postponed by almost nine years – from 2 July 2008 until 27 June 2017. The applicant had therefore served a longer term of imprisonment than she should have served under the Spanish legal system in operation at the time of her conviction. Accordingly, it was incumbent on the Spanish authorities to ensure that she was released at the earliest possible date. The Court also held that since 3 July 2008 the applicant's detention had not been lawful, in **violation of Article 5 § 1** (right to liberty and security) of the Convention. It lastly held, **under Article 46** (binding force and execution of judgments) of the Convention, that Spain was to ensure that the applicant was released at the earliest possible date.

<sup>5</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

### Arrozpide Sarasola and Others v. Spain

23 October 2018

This case concerned the calculation of the maximum length of prison terms to be served in Spain by members of the terrorist organisation ETA and the question whether time already served in France should be taken into account. The applicants complained in particular of what they saw as the retrospective application of new Supreme Court case-law and of a new law which had come into force after their conviction, which they submitted had extended the actual length of their sentences.

The Court observed in particular that the decisions of the Spanish Supreme Court had not changed the maximum length of the total term of imprisonment, which had always been set at thirty years. The discrepancies between the various courts concerned as to the possibility of combining sentences had lasted for only about ten months, until the adoption by the Supreme Court of its leading judgment, which had settled the matter in the negative. The solutions adopted in the applicants' cases had merely followed the judgment of the plenary formation of the Supreme Court. There had thus been **no violation of Article 7** (no punishment without law) of the Convention.

### Aquirre Lete v. Spain and four other applications

9 July 2019 (decision on the admissibility)

This case concerned the issue of taking account of prison sentences already served in France – five Spanish nationals convicted of terrorist offences in France and Spain – for the purposes of calculating the maximum length of the relevant sentences in Spain. The first four applicants complained more particularly of what they saw as the retroactive application of new Supreme Court case-law and about a new law which had come into force after their convictions and which they considered to have extended the length of their prison terms.

The Court declared the applications **inadmissible** as being manifestly ill-founded. It noted in particular that the decisions given by the *Audencia Nacional* and the Spanish Supreme Court had not modified the maximum period for prison sentences in Spain, retaining a thirty-year term for each of the applicants. It also observed that at the material time Spanish law had not taken reasonable account of prison terms already served in France. In the present case, the Court found that, given that the decisions in question had not led to any modification of the sentences imposed, the impugned prison terms could not be considered unforeseeable or unauthorised by law for the purposes of the Convention.

## **Issues under Article 8 (right to respect for private and family life) of the Convention**

### **Deprivation of citizenship**

#### K2 v. the United Kingdom (no. 42387/13)

7 February 2017 (decision on the admissibility)

The applicant in this case was suspected of taking part in terrorism-related activities in Somalia. In 2010, the Secretary of State for the Home Office deprived him of his UK citizenship and barred him from re-entering the country. The applicant claimed that these decisions had violated his right to respect for private and family life and had been discriminatory. He also argued that he could not properly make his case from abroad, because of fears that his communications could be intercepted by Sudanese counter-terrorism authorities that would then harm him.

The Court declared the application **inadmissible** as being manifestly ill-founded. On the first point, although an arbitrary denial or revocation of citizenship might in some circumstances raise an issue under Article 8 (right to respect for private life) of the Convention, because of its impact on the private life of an individual, the Court found that no such issue arose in the present case. The Home Secretary at the time had acted swiftly and diligently, and in accordance with the law. The Court also noted that the

applicant had had a statutory right to appeal and access to judicial review but the UK courts had rejected his claims after giving them a comprehensive and thorough examination. Lastly, though some of the case against the applicant had been kept secret for security reasons, his special advocate had had access to this information, and the nature of the case was broadly known to the applicant. On the second point, the Court held that Article 8 of the Convention could not be interpreted so as to impose an obligation on States to facilitate the return of every person deprived of citizenship in order for them to pursue an appeal against that decision. The UK court had rejected the applicant's claims about not being able to argue his case from abroad, and the Court did not consider itself in a position to call into question that finding. Furthermore, the UK court had adopted a cautious approach to the case given the absence of instructions from the applicant, but still found conclusive evidence that he had been engaged in terrorism-related activities. In any case, it was the applicant who had originally chosen to leave the country. Finally, the Court noted that the applicant would not be left stateless by the loss of UK citizenship (as he had Sudanese citizenship), and the interference to his private and family life caused by the deprivation of citizenship was limited. In these circumstances, the deprivation of citizenship had been lawful under Article 8 of the Convention.

### **Ghoumid and Others v. France**

25 June 2020<sup>6</sup>

This case concerned five individuals, formerly having dual nationality, who were convicted of participation in a criminal conspiracy to commit an act of terrorism. After serving their sentences they were released in 2009 and 2010, then stripped of their French nationality in October 2015. The applicants argued in particular that the revocation of their nationality had breached their right to respect for their private life. They added that their loss of nationality was a "disguised punishment" constituting a sanction for conduct in respect of which they had already been convicted and sentenced in 2007 by the Paris Criminal Court.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention, finding that the decision to deprive the applicants of French nationality had not had disproportionate consequences for their private life. It reiterated in particular the point, already made in a number of judgments, that terrorist violence constituted in itself a serious threat to human rights. As the applicants already had another nationality, the decision to deprive them of French nationality had not had the effect of making them stateless. In addition, loss of French nationality did not automatically entail deportation from France, but if such a measure were to be decided against them they would have the appropriate remedies by which to assert their rights. The Court further observed that deprivation of nationality under Article 25 of the French Civil Code was not a criminal sanction, within the meaning of **Article 4 of Protocol No. 7** (right not to be tried or punished twice) of the Convention, and that this provision was therefore **inapplicable**.

### **Pending applications**

#### **El Aroud v. Belgium (no. 25491/18) and Soughir v. Belgium (no. 27629/18)**

Applications communicated to the Belgian Government on 5 November 2018

This case concerns the removal of the applicants' Belgian nationality following their conviction for acts related to terrorism. The applicants complain in particular that they were deprived of two levels of jurisdiction relating to the decision to strip them of their citizenship.

The Court gave notice of the applications to the Belgian Government and put questions to the parties under Article 2 (right of appeal in criminal matters) of Protocol No. 7 to the Convention and under Article 6 § 1 (right to a fair trial within a reasonable time) and Article 8 (right to respect for private life) of the Convention.

<sup>6</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

## Return of bodies of terrorists for burial

### Sabanchiyeva and Others v. Russia

6 June 2013

This case concerned the Russian authorities' refusal to return the bodies of Chechen insurgents to their families. The applicants complained in particular about the authorities' refusal to return to them their relatives' bodies under terrorism legislation.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) and a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 8** of the Convention. It found that the automatic refusal to return the bodies to their families had not struck a fair balance between, on the one hand, the legitimate aim of preventing any disturbance which could have arisen during the burials as well as protecting the feelings of the relatives of the victims of terrorism and, on the other hand, the applicants' right to pay their last respects at a funeral or at a grave. The Court fully acknowledged the challenges faced by a State from terrorism but found that the automatic refusal to return the bodies had contravened the authorities' duty to take into account the individual circumstances of each of the deceased and those of their family members. In the absence of such an individualised approach, the measure had appeared to switch the blame from the deceased for their terrorist activities on to the applicants.

The Court further held that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention as concerned the conditions in which the bodies of the applicants' relatives had been stored for identification, and **no violation of Article 38 § 1 (a)** (obligation to provide necessary facilities for the examination of the case) of the Convention.

See also: [Abdulayeva v. Russia](#), [Kushtova and Others v. Russia](#), [Arkhestov and Others v. Russia](#), and [Zalov and Khakulova v. Russia](#), judgments of 16 January 2014.

## Issues under Article 2 (right of appeal in criminal matters) of Protocol No. 7 to the Convention

### Pending applications

#### [El Aroud v. Belgium \(no. 25491/18\)](#) and [Soughir v. Belgium \(no. 27629/18\)](#)

Applications communicated to the Belgian Government on 5 November 2018

See above, under "Issues under Article 8 (right to respect for private and family life) of the Convention", "Deprivation of citizenship".

## Issues under Article 4 (right not to be tried or punished twice) of Protocol No. 7 to the Convention

### [Ramda v. France](#)

19 December 2017

See above, under "Issues under Article 6 (right to a fair trial) of the Convention".

### [Ghoumid and Others v. France](#)

25 June 2020<sup>7</sup>

See above, under "Issues under Article 8 (right to respect for private and family life) of the Convention", "Deprivation of citizenship".

<sup>7</sup>. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).



## Victims of terrorist acts

States are under the obligation to take the measures needed to protect the fundamental rights of everyone within their jurisdiction against terrorist acts<sup>8</sup>.

### Issues under Article 2 (right to life) of the Convention

#### Finogenov and Others v. Russia

20 December 2011

This case concerned the siege in October 2002 of the “Dubrovka” theatre in Moscow by Chechen separatists and the decision to overcome the terrorists and liberate the hostages using gas.

The Court found that there had been **no violation of Article 2** (right to life) of the Convention concerning the decision to resolve the hostage crisis by force and use gas. It further held that there had been a **violation of Article 2** concerning the inadequate planning and implementation of the rescue operation, and a violation of the same provision concerning the ineffectiveness of the investigation into the allegations of the authorities’ negligence in planning and carrying out the rescue operation as well as the lack of medical assistance to hostages.

#### Tagayeva and Others v. Russia

13 April 2017

This case concerned the September 2004 terrorist attack on a school in Beslan, North Ossetia (Russia). For over fifty hours heavily armed terrorists held captive over 1,000 people, the majority of them children. Following explosions, fire and an armed intervention, over 330 people lost their lives (including over 180 children) and over 750 people were injured. The applicants (409 Russian nationals) had either been taken hostage and/or injured in the incident, or were family members of those taken hostage, killed or injured. They made allegations of a range of failings by the Russian State in relation to the attack. All of the applicants maintained that the State had failed in its obligation to protect the victims from the known risk to life, and that there had been no effective investigation into the events. Some also submitted that many aspects of the planning and control of the security operation had been deficient, and that the deaths had been the result of an indiscriminate and disproportionate use of force by the authorities.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention, arising from a failure to take preventive measures. It noted in particular that the authorities had been in possession of sufficiently specific information of a planned terrorist attack in the area, linked to an educational institution. Nevertheless, not enough had been done to disrupt the terrorists meeting and preparing; insufficient steps had been taken to prevent them travelling on the day of the attack; security at the school had not been increased; and neither the school nor the public had been warned of the threat. The Court also found that there had been a **violation of the procedural obligation under Article 2**, primarily because the investigation had not been capable of leading to a determination of whether the force used by the State agents had or had not been justified in the circumstances. The Court further held that there had been a further **violation of Article 2**, due to serious shortcomings in the planning and control of the security operation. The command structure of the operation had suffered from a lack of formal leadership, resulting in serious flaws in decision-making and coordination with other relevant agencies. The Court also found that there had been a **violation of Article 2** arising from the use of lethal force by security forces. In the absence of proper legal rules, powerful weapons such as tank cannon, grenade launchers and flame-throwers had been used on the school. This had contributed to the casualties among the hostages and had not been compatible with the requirement under Article 2 that lethal

<sup>8</sup> See the [Revised Guidelines on the protection of victims of terrorist acts](#), adopted by the Committee of Ministers of the Council of Europe on 19 May 2017.



force be used “no more than [is] absolutely necessary”. Taking into account the compensation already afforded to the victims in Russia and various domestic procedures that had been aimed at establishing the circumstances of the events, the Court further held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention. Lastly, under **Article 46** (binding force and implementation of judgments) of the Convention, the Court indicated the need for a variety of measures aimed at drawing lessons from the past, raising awareness of applicable legal and operational standards, and deterring similar violations in the future. It also held that the future requirements of the pending investigation into the incident must be determined with regard to the Court’s conclusions about investigation’s failures to date.

### **Romeo Castaño v. Belgium**

9 July 2019

In this case the applicants complained that their right to an effective investigation had been breached as a result of the Belgian authorities’ refusal to execute the European arrest warrants issued by Spain in respect of N.J.E., the individual suspected of shooting their father, who was murdered in 1981 by a commando unit claiming to belong to the terrorist organisation ETA. The Belgian courts had held that N.J.E.’s extradition would infringe her fundamental rights under Article 3 (prohibition of inhuman or degrading treatment) of the Convention.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention under its procedural aspect (effective investigation). Observing, firstly, that a risk to the person whose surrender was requested of being subjected to inhuman or degrading treatment could constitute a legitimate ground for refusing to execute a European arrest warrant and thus for refusing the cooperation requested, it noted, however, that the finding that such a risk existed had to have a sufficient factual basis. In the present case, the Court found, in particular, that the scrutiny performed by the Belgian courts during the surrender proceedings had not been sufficiently thorough for it to find that the ground they relied on in refusing to surrender N.J.E., to the detriment of the applicants’ rights, had had a sufficient factual basis. Among other things, the Belgian authorities had not sought to identify a real and individual risk of a violation of N.J.E.’s Convention rights or any structural shortcomings with regard to conditions of detention in Spain. However, the Court stressed that the finding of a violation did not necessarily imply that Belgium was required to surrender N.J.E. to the Spanish authorities. It was the lack of sufficient factual support for the refusal to surrender her that had led the Court to find a violation of Article 2 of the Convention. That in no way lessened the obligation for the Belgian authorities to verify that N.J.E. would not run a risk of treatment contrary to Article 3 of the Convention if she were surrendered to the Spanish authorities.

## **Issues under Article 6 (right to a fair trial) of the Convention**

### **Association SOS Attentats and de Boëry v. France**

4 October 2006 (Grand Chamber – decision on the admissibility)

The first applicant is an association whose members are victims of terrorist acts. The sister of the second applicant was one of the 170 victims, who included many French nationals, killed in the terrorist attack in 1989 against an aircraft, operated by the French company UTA, which exploded in flight above the Tenere desert. Relying in particular on Article 6 § 1 (right to a fair trial) of the Convention, the applicants submitted, among other things, that the French Court of Cassation’s ruling that Colonel Gaddafi was entitled to sovereign immunity had infringed their right of access to a court. After the application had been lodged, a new fact was brought to the European Court of Human Rights’ attention: on 9 January 2004 an agreement was signed between the Gaddafi International Foundation for Charity Associations, the families of the victims and the Bank for Official Deposits, under which the families of the 170 victims would each receive one million US dollars in exchange for “waiving the right to bring any kind of civil

or criminal proceedings before any French or international court based on the explosion on board the aircraft”.

The Court had to determine whether, as the French Government alleged, the signing of the 2004 agreement was such as to lead it to decide to strike the application out of its list of cases in application of Article 37 § 1 (striking out) of the Convention.

The conclusion of the 2004 agreement, the latter’s terms and the fact that the second applicant had obtained a judgment on the question of the responsibility of six Libyan officials were circumstances which, taken together, led the Court to consider that **it was no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention**. As no other element regarding respect for human rights as guaranteed by the Convention required that the application be examined further, the Court decided to **strike it out of the list**.

### Cevikel v. Turkey

23 May 2017

This case concerned proceedings brought by the applicant to obtain compensation for damage she alleged to have sustained from acts of terrorism or counter-terrorism measures in a village where she had lived. The applicant complained of the length of the proceedings in question.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial within a reasonable time) of the Convention, finding that the length of the impugned proceedings had been excessive and had not met the reasonable time requirement. It noted in particular that the proceedings before the administrative courts had lasted for about two years and two months, and the proceedings in the Constitutional Court about one year and four months, so they had not been particularly excessive in length. However, while acknowledging the compensation commission’s heavy workload and the appropriateness of the measures adopted by the authorities to remedy this problem, the Court found that those efforts had remained insufficient, since the commission had only started dealing with the applicant’s request after about two years and ten months.

### Larrañaga Arando and Others v. Spain and Martínez Agirre and Others v. Spain

25 June 2019 (decisions on the admissibility)

According to reports from the Ministry of the Interior, relatives of the applicants were killed between 1979 and 1985 by terrorist groups, while they were living in France. Both cases concerned the applicants’ complaints under Article 6 § 2 (presumption of innocence) of the Convention about being refused State compensation for the killing of their relatives. They complained in particular that the domestic authorities had refused them compensation for reasons which had breached their relatives’ right to the presumption of innocence as they had been found to have been members of ETA, which was a criminal offence under Spanish law.

The Court declared the applications **inadmissible**, finding that the provision of the Convention the applicants had relied on (Article 6 § 2) did not apply to their cases. In particular, there had been no link between any criminal charge brought in Spain against the applicants’ relatives for membership of ETA and the administrative authorities’ and courts’ decisions to refuse to pay further State compensation for their deaths.

## Prevention of terrorism

All measures taken by States to fight terrorism must respect human rights and the principle of the rule of law, while excluding any form of arbitrariness, as well as any discriminatory or racist treatment, and must be subject to appropriate supervision<sup>9</sup>.

<sup>9</sup>. See the [Guidelines on human rights and the fight against terrorism](#), adopted by the Committee of Ministers of the Council of Europe on 11 July 2002, II.

## Right to life and use of force by the State in self-defence or defence of another

Article 2 § 2 (right to life) of the Convention justifies the use of force in self-defence only if it is “absolutely necessary”.

### McCann and Others v. the United Kingdom

27 September 1995

Three members of the Provisional IRA, suspected of having on them a remote control device to be used to explode a bomb, were shot dead on the street by SAS (Special Air Service) soldiers in Gibraltar. The applicants, who are representatives of their estates, alleged that the killing of the deceased by members of the security forces constituted a violation of Article 2 (right to life) of the Convention.

The Court held that there had been a **violation of Article 2** (right to life) of the Convention because the operation could have been planned and controlled without the need to kill the suspects.

### Armani Da Silva v. the United Kingdom

30 March 2016 (Grand Chamber)

This case concerned the fatal shooting of a Brazilian national mistakenly identified by the police as a suicide bomber. The applicant, his cousin, complained that the State had not fulfilled its duty to ensure the accountability of its agents for his death because the ensuing investigation had not led to the prosecution of any individual police officer.

The Court held that there had been **no violation of Article 2** (right to life – investigation) of the Convention. Having regard to the proceedings as a whole, it found that the UK authorities had not failed in their obligations under Article 2 of the Convention to conduct an effective investigation into the shooting of the applicant’s cousin which was capable of identifying and – if appropriate – punishing those responsible. In particular, the Court considered that all aspects of the authorities’ responsibility for the fatal shooting had been thoroughly investigated. Both the individual responsibility of the police officers involved and the institutional responsibility of the police authority had been considered in depth by the Independent Police Complaints Commission, the Crown Prosecution Service, the criminal court and the Coroner and jury during the Inquest. The decision not to prosecute any individual officer was not due to any failings in the investigation or the State’s tolerance of or collusion in unlawful acts; rather, it was due to the fact that, following a thorough investigation, a prosecutor had considered all the facts of the case and concluded that there was insufficient evidence against any individual officer to prosecute.

## Prohibition of inhuman or degrading treatment

### Dulaş v. Turkey

30 January 2001

The applicant submitted that in November 2003 gendarmes had carried out a search in her village and set fire to the houses, including hers. After the departure of the gendarmes, the village was left in ruins and villagers were forced to leave. According to the Turkish Government, the operation in this case concerned an investigation into the kidnapping and killing of teachers and an imam by the PKK (Kurdish Workers’ Party), a terrorist organisation.

The Court found in particular that the destruction of the applicant’s home and possessions by security forces amounted to inhuman treatment **contrary to Article 3** (prohibition of inhuman or degrading treatment) of the Convention. It held that, even in the most difficult of circumstances, such as the fight against organised terrorism and crime, the Convention prohibits in absolute terms treatment contrary to this provision. Noting the circumstances in which the applicant’s home and possessions had been destroyed as well as her personal circumstances, the Court considered that the destruction of the applicant’s home and possessions by security forces must have caused

her suffering of sufficient severity to categorise the acts complained of as inhuman. Moreover, having established that security forces were responsible for the destruction of the applicant's home and possessions, the Court also held that there had been a **violation of Article 8** (right to respect for home) of the Convention and a **violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention.

See also: [Bilgin v. Turkey](#), judgment of 16 November 2000.

## Interferences with the exercise of the right to respect for private and family life, home and correspondence

### [Klass and Others v. Germany](#)

6 September 1978

In this case the applicants, five German lawyers, complained about legislation in Germany empowering the authorities to monitor their correspondence and telephone communications without obliging the authorities to inform them subsequently of the measures taken against them.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention. It found that, due to the threat of sophisticated forms of espionage and terrorism, some legislation granting powers of secret surveillance was, under exceptional conditions, "necessary in a democratic society" in the interests of national security and/or the prevention of disorder or crime.

### [Içyer v. Turkey](#)

12 January 2006 (decision on the admissibility)

This case concerned the question of the effectiveness of the remedy before the commission set up under the Law on Compensation for Losses resulting from Terrorism. The applicant complained in particular under Article 8 (right to respect for private and family life, and home) of the Convention, and Article 1 (protection of property) of Protocol No. 1 to the Convention, that the Turkish authorities had refused to allow him to return to his home and land after he was evicted from his village in late 1994 on account of terrorist activities in the region.

The Court declared the application **inadmissible**, finding in particular that there was no longer any obstacle preventing the applicant from returning to his village. Furthermore, it also appeared that the applicant was entitled to claim compensation under the new Compensation Law of 27 July 2004, before the relevant compensation commission, for the damage he allegedly sustained as a result of the authorities' refusal to allow him to gain access to his possessions.

See also the decisions on the admissibility of 28 June 2011 in the cases [Akbayır and Others v. Turkey](#), [Fidanten and Others v. Turkey](#), [Bingöbalı and 54 other applications v. Turkey](#) and [Boğuş and 91 other applications v. Turkey](#).

### [Gillan and Quinton v. the United Kingdom](#)

12 January 2010

This case concerned the police power in the United Kingdom, under sections 44-47 of the Terrorism Act 2000, to stop and search individuals without reasonable suspicion of wrongdoing.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It considered that the powers of authorisation and confirmation as well as those of stop and search under sections 44 and 45 of the 2000 Act were neither sufficiently circumscribed nor subject to adequate legal safeguards against abuse. They were not, therefore, "in accordance with the law".

### [Nada v. Switzerland](#)

12 September 2012 (Grand Chamber)

The Swiss Federal Taliban Ordinance was enacted pursuant to several UN Security Council Resolutions. It had the effect of preventing the applicant, an Egyptian national, from entering or transiting through Switzerland due to the fact that his name had been

added to the list annexed to the UN Security Council’s Sanctions Committee of persons suspected of being associated with the Taliban and al-Qaeda. The applicant had been living in an Italian enclave of about 1.6 square kilometres surrounded by the Swiss Canton of Ticino and separated from the rest of Italy by a lake. He claimed that the restriction made it difficult for him to leave the enclave and therefore to see his friends and family, and that it caused him suffering due to his inability to receive appropriate medical treatment for his health problems. He further found it difficult to remove his name from the Ordinance, even after the Swiss investigators had found the accusations against him to be unsubstantiated.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention, and a **violation of Article 13** (right to an effective remedy) **taken in conjunction with Article 8**. It observed in particular that Switzerland could not simply rely on the binding nature of the Security Council resolutions, but should have taken all possible measures, within the latitude available to it, to adapt the sanctions regime to the applicant’s individual situation. Furthermore, the applicant did not have any effective means of obtaining the removal of his name and therefore no remedy in respect of the violations of his rights. Lastly, the Court declared **inadmissible** the applicant’s complaints **under Article 5** (right to liberty and security) of the Convention, finding, like the Swiss Federal Court, that the applicant had not been “deprived of his liberty” within the meaning of Article 5 § 1 by the measure prohibiting him from entering and transiting through Switzerland.

**Sher and Others v. the United Kingdom** (see also above, under “(Suspected) terrorists”, “Issues under Article 5 (right to liberty and security) of the Convention”)

20 October 2015

This case concerned the arrest and detention of the applicants, three Pakistani nationals, in the context of a counterterrorism operation. The applicants complained in particular about the search of their homes during their detention.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life and home) of the Convention. It found in particular that the fight against terrorism and the urgency of the situation had justified a search of the applicants’ homes pursuant to a search warrant framed in relatively broad terms. Moreover, there had been sufficient safeguards against the risk of arbitrariness in respect of the search warrants, which had been issued by a judge, without the applicants suggesting that there had been no reasonable grounds for doing so.

**Szabó and Vissy v. Hungary**

12 January 2016

This case concerned Hungarian legislation on secret anti-terrorist surveillance introduced in 2011. The applicants complained in particular that they could potentially be subjected to unjustified and disproportionately intrusive measures within the Hungarian legal framework on secret surveillance for national security purposes (namely, “section 7/E (3) surveillance”). They notably alleged that this legal framework was prone to abuse, notably for want of judicial control.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It accepted that it was a natural consequence of the forms taken by present-day terrorism that governments resort to cutting-edge technologies, including massive monitoring of communications, in pre-empting impending incidents. However, the Court was not convinced that the legislation in question provided sufficient safeguards to avoid abuse. Notably, the scope of the measures could include virtually anyone in Hungary, with new technologies enabling the Government to intercept masses of data easily concerning even persons outside the original range of operation. Furthermore, the ordering of such measures was taking place entirely within the realm of the executive and without an assessment of whether interception of communications was strictly necessary and without any effective remedial measures, let alone judicial ones, being in place. The Court further held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 8**,



reiterating that Article 13 could not be interpreted as requiring a remedy against the state of domestic law.

### **Beghal v. the United Kingdom**

28 February 2019

This case concerned the use of counter-terrorism legislation, namely Schedule 7 of the Terrorism Act 2000, giving police and immigration officers the power to stop, search and question passengers at ports, airports and international rail terminals. The applicant had been stopped and questioned when she arrived at East Midlands Airport in January 2011 following a visit to her husband, who was in prison in France for terrorism offences. She complained about the police powers under Schedule 7 of the counter-terrorism legislation.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It found that the legislation in force at that time had not been sufficiently circumscribed nor were there adequate legal safeguards against abuse. In particular, people could be subjected to examination for up to nine hours and compelled to answer questions, without being formally detained or having access to a lawyer. In reaching that conclusion the Court did not consider amendments since made to the legislation. In particular, as of 2014, border officials have been required to take a person into detention if they wish to examine him or her for longer than an hour, to only commence questioning after the arrival of a solicitor, and to release those being questioned after six hours.

### **Guimon v. France**

11 April 2019

This case concerned the refusal to allow the applicant, an active member of ETA until her arrest in 2003 and who was imprisoned in Rennes for terrorist offences, to travel to a funeral parlour in Bayonne to pay her last respects to her deceased father.

The Court held that there had been **no violation of Article 8** (right to respect for private and family life) of the Convention, finding that the French State had not exceeded the margin of appreciation afforded to it in this area and that the refusal to grant the applicant's request had not been disproportionate and had pursued legitimate aims. It noted in particular that the authorities had rejected the request on the grounds, firstly, of the applicant's criminal profile – she was serving several prison sentences for terrorist offences and continued to assert her membership of ETA – and, secondly, because it was impossible to organise a reinforced security escort within the time available.

## **Interferences with freedom of religion**

### **Güler and Uğur v. Turkey**

2 December 2014

This case concerned the applicants' conviction for propaganda promoting a terrorist organisation on account of their participation in a religious service organised on the premises of a political party in memory of three members of an illegal organisation (the PKK) who had been killed by security forces. The applicants alleged that their conviction had been based on their participation in a religious service which had consisted in a simple public manifestation of their religious practice. They also submitted that their conviction had not been sufficiently foreseeable, having regard to the wording of the Anti-Terrorism Act.

The Court considered that the prison sentence imposed on the applicants amounted to an interference with their right to freedom to manifest their religion, irrespective of the fact that the persons in memory of whom the service had been held had been members of an illegal organisation or that the service had been held on the premises of a political party where symbols of the illegal organisation had been displayed. It held that in the present case there had been a **violation of Article 9** (right to freedom of thought, conscience and religion) of the Convention, finding that the interference in question had



not been “prescribed by law” in so far as the domestic-law provision on which it had been based had not met the requirements of clarity and foreseeability.

### **Pending application**

#### **Sydikova and Orlov v. Russia (no. 41260/17)**

Application communicated to the Russian Government on 30 August 2017

The applicants are followers of a Japanese religious cult founded in 1984 which was held responsible for several poisonous gas attacks in Tokyo in 1995. They unsuccessfully sought to file an appeal against a decision of the Supreme Court of Russia in 2016, in *ex parte* proceedings, pronouncing the cult to be a terrorist organisation and banning its activities in Russia.

The Court gave notice of the application to the Russian Government and put questions to the parties under Article 9 (freedom of conscience) and Article 13 (right to an effective remedy) of the Convention.

### **Issues relating to freedom of expression**

#### **Purcell and Others v. Ireland**

16 April 1991 (decision of the European Commission of Human Rights<sup>10</sup>)

#### **Brind v. the United Kingdom**

9 May 1994 (decision of the Commission)

In these cases the applicants complained under Article 10 (freedom of expression) of the Convention about orders/notices restraining the broadcasting of interviews/reports of interviews and any words spoken by a person representing or supporting terrorist organisations such as the IRA.

The Commission declared the two cases **inadmissible**. In the first case, it found that the order was consistent with the objective of protecting national security and preventing disorder and crime; in the second case, it found that the requirement that an actor’s voice be used to broadcast interviews was a limited interference, and that it could not be said that the interference with the applicants’ freedom of expression had been disproportionate to the aim sought to be pursued.

#### **Association Ekin v. France**

17 July 2001

This case concerned the ban on the circulation of a book on the Basque culture.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. Finding in particular that there was nothing in the book’s content suggesting incitement to violence or separatism, it held that the interference with the applicant’s freedom of expression had not been “necessary in a democratic society”.

#### **Falakaoğlu and Saygılı v. Turkey**

19 December 2006

In this case, the applicants’ complained about their criminal conviction, under the Prevention of Terrorism Act, for having published press articles designating State agents as targets for terrorist organisations.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. Considering that the reasons given by the Turkish courts could not be regarded in themselves as sufficient to justify the interference with the applicants’ right to freedom of expression, it found that the applicants’ convictions had been disproportionate to the aims pursued and were therefore not “necessary in a democratic society”.

<sup>10</sup>. Together with the European Court of Human Rights and the Committee of Ministers of the Council of Europe, the European Commission of Human Rights, which sat in Strasbourg from July 1954 to October 1999, supervised Contracting States’ compliance with their obligations under the European Convention on Human Rights. The Commission ceased to exist when the Court became permanent on 1<sup>st</sup> November 1998.

See also, among others: [Bayar and Gürbüz v. Turkey](#), judgment of 27 November 2012; [Belek and Özkurt v. Turkey](#), judgment of 13 July 2013; [Belek and Özkurt v. Turkey \(no. 2\)](#), [Belek and Özkurt v. Turkey \(no. 3\)](#), [Belek and Özkurt v. Turkey \(no. 4\)](#), [Belek and Özkurt v. Turkey \(no. 5\)](#), [Belek and Özkurt v. Turkey \(no. 6\)](#) and [Belek and Özkurt v. Turkey \(no. 7\)](#), judgments of 17 June 2014.

### [Leroy v. France](#)

2 October 2008

The applicant, a cartoonist, complained about his conviction for complicity in condoning terrorism, following the publication of a drawing which concerned the attacks of 11 September 2001.

The Court held that there had been **no violation of Article 10** (right to freedom of expression) of the Convention. Having regard to the modest nature of the fine imposed on the applicant and the context in which the impugned drawing had been published, it found that the measure imposed on the applicant had not been disproportionate to the legitimate aim pursued.

### [Ürper and Others v. Turkey](#)

20 October 2009

In this case, the applicants complained about the suspension of the publication and dissemination of their newspapers, considered propaganda in favour of a terrorist organisation.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. It found in particular that less draconian measures could have been envisaged by the Turkish authorities, such as confiscation of particular issues of the newspapers or restrictions on the publication of specific articles. By having suspended entire publications, however briefly, the authorities had restricted unjustifiably the essential role of the press as a public watch-dog in a democratic society.

See also, among others: [Turgay and Others v. Turkey](#), judgment of 15 June 2010; [Gözel and Özer v. Turkey](#), judgment of 6 July 2010; [Aslan and Sezen v. Turkey](#) and [Aslan and Sezen v. Turkey \(no. 2\)](#), judgments of 17 June 2014.

### [Belek and Velioğlu v. Turkey](#)

6 October 2015

This case concerned the applicants' conviction by a State Security Court for publishing an article in a daily newspaper containing a statement by an illegal armed organisation. The applicants maintained in particular that their criminal conviction and the ban on publication of the newspaper amounted to a violation of their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention. Paying particular attention to the language used in the article in question and to the context of its publication, and taking into account the difficulties linked to the fight against terrorism, it noted in particular that the text, taken as a whole, had not contained any call for violence, armed resistance or insurrection and had not amounted to hate speech, which was the main factor to be taken into consideration. The Court examined the grounds for the applicants' conviction and found that they could not be regarded as sufficient to justify the interference with their right to freedom of expression.

### [Müdür Duman v. Turkey](#)

6 October 2015

This case concerned the complaint by a local leader of a political party that his conviction on account of illegal pictures and publications found in the office of his party had amounted to an unjustified interference with his right to freedom of expression.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention, finding that the applicant's conviction had been

disproportionate to the aims pursued, namely the need to protect public order and to prevent crime as part of the fight against terrorism. It noted, in particular, that although the applicant had denied any knowledge of the material found in his office, his conviction constituted an interference with his rights under Article 10. Moreover, the reasons given by the Turkish courts for convicting and sentencing the applicant could not be considered relevant and sufficient to justify the interference with his right to freedom of expression. In particular, the applicant's conduct could not be construed as support for unlawful acts and there was no indication that the material in question advocated violence, armed resistance or an uprising.

### **Bidart v. France**

12 November 2015

This case concerned the obligation imposed on the applicant, the former leader of the Basque separatist organisation *Iparretarrak*, in the context of his release on licence, to refrain from disseminating any work or audio-visual production authored or co-authored by him concerning the offences of which he had been convicted, and from speaking publicly about those offences.

The Court held that there had been **no violation of Article 10** (right to freedom of expression) of the Convention. It noted in particular that the impugned measure was limited in time and concerned only the offences committed by the applicant. He had also been able to have the measure reviewed by the courts. The Court therefore found that, in imposing on the applicant, in the context of his release on licence, an obligation to refrain from disseminating any work or audio-visual production authored or co-authored by him concerning, in whole or in part, the offences of which he had been convicted, and from speaking publicly about those offences, the French courts had not overstepped their margin of appreciation.

### **Döner and Others v. Turkey**

7 March 2017

At the time of the events giving rise to the present application, the 20 applicants lived in Istanbul and their children attended different public elementary schools. The case concerned the criminal proceedings brought against them for aiding and abetting the PKK (Workers' Party of Kurdistan), after they had submitted petitions requesting that their children be taught in Kurdish. They maintained in particular that they had been subjected to criminal proceedings for using their constitutional right to file a petition, despite the absence of any provisions in domestic law criminalising such conduct.

The Court held that there had been a **violation of Article 10** (right to freedom of expression) of the Convention, finding that the interference in question had not been "necessary in a democratic society". It stressed in particular that, while it did not underestimate the difficulties to which the fight against terrorism gave rise, that fact alone did not absolve the national authorities from their obligations under Article 10 of the Convention. Accordingly, although freedom of expression could be legitimately curtailed in the interests of national security, territorial integrity and public safety, those restrictions still had to be justified by relevant and sufficient reasons and respond to a pressing social need in a proportionate manner. In the instant case, however, the Court found that the relevant State authorities had failed to use as a basis for the measures an acceptable assessment of the relevant facts and to apply standards that were in conformity with the principles embodied in Article 10 of the Convention.

### **Stomakhin v. Russia**

9 May 2018

This case concerned the applicant's conviction and sentence to five years in jail for newsletter articles he had written on the armed conflict in Chechnya, which the domestic courts said had justified terrorism and violence and incited hatred.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that some of the articles had gone beyond the bounds of acceptable criticism and had amounted to calls for violence and the

justification of terrorism. Other statements, however, had been within acceptable limits of criticism. Overall, there had not been a pressing social need to interfere with the applicant's rights by penalising him for some of his comments and the harshness of the penalty had violated his rights.

### Roj TV A/S v. Denmark

17 April 2018 (decision on the admissibility)

This case concerned the applicant company's conviction for terrorism offences by Danish courts for promoting the Kurdistan Workers' Party (PKK) through television programmes broadcast between 2006 and 2010. The domestic courts found it established that the PKK could be considered a terrorist organisation within the meaning of the Danish Penal Code and that Roj TV A/S had supported the PKK's terror operation by broadcasting propaganda. It was fined and its licence was withdrawn. The applicant company complained that its conviction had interfered with its freedom of expression.

The Court declared the application **inadmissible** as being incompatible *ratione materiae* with the provisions of the Convention. It found in particular that the television station could not benefit from the protection afforded by Article 10 (freedom of expression) of the Convention as it had tried to employ that right for ends which were contrary to the values of the Convention. That had included incitement to violence and support for terrorist activity, which had been in violation of Article 17 (prohibition of abuse of rights) of the Convention. Thus the complaint by the applicant company did not attract the protection of the right to freedom of expression.

### Tuğluk and Others v. Turkey

4 September 2018 (decision on the admissibility)

The applicants, who are lawyers, were temporarily barred by the judicial authorities from representing their client Abdullah Öcalan to ensure that they would not transmit their client's statements to the press. Accounts of their visits were published in the following days in certain newspapers, where they were seen as conveying their client's opinions on the current situation or as giving instructions to the PKK (Kurdistan Workers' Party).

The Court declared the application **inadmissible** as being manifestly ill-founded, finding that the sanction imposed on the applicants, which in fact had had no repercussion for the applicants' professional activities *vis-à-vis* their clients other than Abdullah Öcalan, had constituted a non-disproportionate response to their actions, since their conduct had contravened the rules governing their office. It noted in particular that the measures taken by the Turkish authorities had sought to prevent the applicants from exploiting their visits to their client in order to establish communication between him and his former armed organisation, and they had met a pressing social need, namely to prevent any violent or terrorist acts.

### Ali Gürbüz v. Turkey

12 March 2019

This case concerned seven sets of criminal proceedings brought against the applicant for publishing, in his daily newspaper, statements by the leaders of organisations characterised as terrorist under Turkish law. He was acquitted after proceedings which had lasted between five and over seven years, without having been remanded in custody. He submitted in particular that the proceedings in question had put pressure on him as a media professional on account of their duration and in spite of his acquittal at the end of each set of proceedings.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the fact that the numerous sets of criminal proceedings against the applicant had been prolonged for a considerable length of time, on the basis of serious criminal charges, had not met a pressing social need, had not been proportionate to the legitimate aims pursued (protection of national security and territorial integrity) and had not been necessary in a democratic society. The Court noted in particular that the opening of those proceedings could be seen as a reaction by the authorities intended to suppress, under the criminal law, the publication of statements

by leaders of organisations characterised as terrorist under Turkish law, without having regard to their content, even though they could be regarded as contributing to a public debate on questions of general interest. The Court explained, in that connection, that enforcement measures automatically taken against media professionals, without considering their intentions or the public's right to be informed of other views on a conflict situation, could not be reconciled with the freedom to receive or impart information or ideas.

### **Hatice Çoban v. Turkey**

29 October 2019

This case concerned the criminal conviction of the applicant – who, at the material time, was a member of the board of the Party for a Democratic Society (DTP, *Demokratik Toplum Partisi*) – for disseminating propaganda in favour of a terrorist organisation on account of a speech she had given during a “World Peace Day” demonstration held by the DTP. The applicant argued that the criminal proceedings against her had been unfair and had breached her right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It reiterated in particular that the fairness of proceedings and the procedural guarantees afforded were factors to be taken into account when assessing the proportionality of an interference with freedom of expression. In the present case, it found that the Turkish courts had not addressed the relevant arguments raised by the applicant, who had challenged the reliability and accuracy of the main item of evidence used in support of her conviction. The Court of Cassation had endorsed the Assize Court's findings in a summary fashion, without giving any further consideration to the arguments submitted by the applicant in her appeal on points of law. The domestic courts had therefore not performed their task of weighing up the various interests at stake for the purposes of Article 10 of the Convention.

### **Özer v. Turkey (no. 3)**

11 February 2020

This case concerned criminal proceedings brought against the applicant, the owner and editor of a magazine, over an article published in the magazine. The applicant was prosecuted and convicted of the criminal offence of providing propaganda for a terrorist organisation. He complained of an infringement of his right to freedom of expression on account of the criminal proceedings brought against him.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the Turkish authorities had failed to conduct an appropriate analysis having regard to all the criteria set out and implemented by the Court in cases concerning freedom of expression, and that the Turkish Government had not demonstrated that the impugned measure had met a pressing social need, had been proportionate to the legitimate aims pursued and had been necessary in a democratic society. The Court noted in particular that the domestic courts had not taken account of all the principles established in its case-law, given that their assessment of the case had not answered the question of whether the impugned passages of the article in question could – having regard to their content, context and capacity to lead to harmful consequences – be considered as comprising incitement to the use of violence, armed resistance or rebellion, or as amounting to hate speech.

## **Issues relating to freedom of assembly and association**

### **United Communist Party of Turkey and Others v. Turkey**

30 January 1998

This case concerned the dissolution of the United Communist Party of Turkey (“the TBKP”) and the banning of its leaders from holding similar office in any other political party.

The Court held that there had been a **violation of Article 11** (freedom of assembly and association) of the Convention. It found that the dissolution had not been “necessary in a



democratic society”, noting in particular that there was no evidence that the TBKP had been responsible for terrorism problems in Turkey.

See also: [Socialist Party and Others v. Turkey](#), judgment of 25 May 1998; [Case of Freedom and Democracy Party \(ÖZDEP\) v. Turkey](#), judgment (Grand Chamber) of 8 December 1999; [Yazar and Others v. Turkey](#), judgment of 9 April 2002.

### [Herri Batasuna and Batasuna v. Spain](#)

30 June 2009

This case concerned the dissolution of the political parties “Herri Batasuna” and “Batasuna”. The applicants complained that an organic law on political parties enacted by the Spanish Parliament in 2002 was not accessible or foreseeable, was applied retrospectively and had no legitimate aim; they also considered that the measure imposed on them could not be considered necessary in a democratic society and compatible with the principle of proportionality.

The Court held that the applicants’ projects had been in contradiction with the concept of “a democratic society” and had entailed a considerable threat to Spanish democracy.

The Court held that there had been **no violation of Article 11** (freedom of assembly and association) of the Convention. With regard in particular to the proportionality of the dissolution measure, the fact that the applicants’ projects were in contradiction with the concept of “a democratic society” and entailed a considerable threat to Spanish democracy led the Court to hold that the sanction imposed on the applicants had been proportional to the legitimate aim pursued, within the meaning of Article 11 § 2 of the Convention.

### [Gülcü v. Turkey](#)

19 January 2016

This case concerned in particular the conviction and detention of a minor for two years for membership of the PKK (Kurdish Workers’ Party), an illegal armed organisation, after he participated in a demonstration held in Diyarbakır in July 2008 and threw stones at police officers. He was also convicted of disseminating propaganda in support of a terrorist organisation and resistance to the police. The applicant complained about this conviction for having participated in a demonstration and alleged that the combined sentence imposed on him had been disproportionate.

The Court held that there had been a **violation of Article 11** (freedom of assembly and association) of the Convention. It first of all noted that, even if the applicant had been convicted of an act of violence against police officers, there was nothing to suggest that when joining the demonstration, he had had any violent intentions. Furthermore, it took issue with the fact that the domestic courts had failed to provide any reasons for his conviction of membership of the PKK or of disseminating propaganda in support of a terrorist organisation. Moreover, it also noted the extreme severity of the penalties – a total of seven years and six months’ imprisonment – imposed on the applicant, only 15 years old at the time of the incident, sentences that he partly served for a period of one year and eight months, after having been detained pending trial for almost four months. The Court therefore concluded that, given the applicant’s young age, the harshness of the sentences imposed was disproportionate to the legitimate aims of preventing disorder and crime and the protection of the rights and freedoms of others.

## Issues relating to protection of property

### [Dulaş v. Turkey](#)

30 January 2001

See above, under “Prevention of terrorism”, “Prohibition of inhuman or degrading treatment”.

### [İçyer v. Turkey](#)

12 January 2006 (decision on the admissibility)

See above, under “Prevention of terrorism”, “Interferences with the exercise of the right



to respect for private and family life, home and correspondence”.

## Issues relating to right to free elections

### [Etxeberria and Others v. Spain and Herritarren Zerrenda v. Spain](#)

30 June 2009

Both cases concerned the disqualification from standing for election imposed on the applicants on account of their activities within the political parties that had been declared illegal and dissolved. In the first case, the applicants alleged in particular that they had been deprived of the possibility of standing as candidates in the elections to the Parliament of Navarre and to represent the electorate, which had hindered the free expression of the opinion of the people in the choice of the legislature; in the second case, the applicant complained in particular that he had been barred from standing as a candidate in the elections to the European Parliament and that he had been deprived of the possibility of standing in elections to the European Parliament and representing the electors.

In both cases, considering that the impugned restrictions had been proportionate to the legitimate aim pursued, and, in the absence of any element of arbitrariness, that they had not infringed the free expression of the opinion of the people, the Court held that there had been **no violation of Article 3** (right to free elections) **of Protocol No. 1** to the Convention. It further held, in both cases, that there had been **no violation of Article 10** (right to freedom of expression), and **no violation of Article 13** (right to an effective remedy) of the Convention.

## Procedural safeguards relating to expulsion of aliens

### [Muhammad and Muhammad v. Romania](#)

15 October 2020 (Grand Chamber)

This case concerned proceedings as a result of which the applicants, Pakistani nationals living lawfully in Romania, were declared undesirable and deported. The applicants complained that they had not been afforded due procedural safeguards and had not been able to defend themselves effectively in the proceedings. More specifically they alleged that they had not been notified of the actual accusations against them, whilst they did not have access to the documents in the file.

The Court held that there had been a **violation of Article 1** (procedural safeguards relating to expulsion of aliens) **of Protocol No. 7** to the Convention finding that, having regard to the proceedings as a whole and taking account of the margin of appreciation afforded to the States in such matters, the limitations imposed on the applicants’ enjoyment of their rights under Article 1 of Protocol No. 7 had not been counterbalanced in the domestic proceedings such as to preserve the very essence of those rights. It noted in particular that the applicants had received only very general information about the legal characterisation of the accusations against them, while none of their specific acts which allegedly endangered national security could be seen from the file. Nor had they been provided with any information about the key stages in the proceedings or about the possibility of accessing classified documents in the file through a lawyer holding authorisation to consult such documents.

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