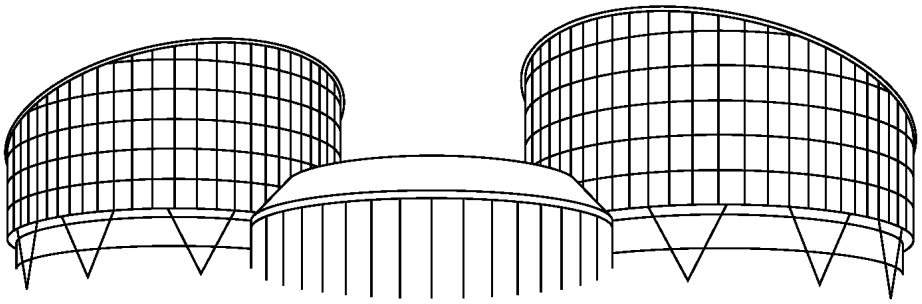

EUROPEAN COURT OF HUMAN RIGHTS

COUR EUROPÉENNE DES DROITS DE L'HOMME

1 July 2021

Judicial Seminar 2021

The Rule of Law and Justice in a digital age

Background Document

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Introduction

Technological advances in the last years have had a profound effect on all aspects of daily life including the workings of our court systems. During the pandemic, electronic communication has allowed the judiciary to continue operating to a large extent in an almost normal way. Digital justice provides real opportunities to improve the quality and efficiency of justice, however, it also may constitute a potential risk to the rule of law and the protection to human rights. The goal of the Judicial Seminar is to discuss the emerging issues which are particularly topical for judges and the courts.

Within the topic of digital justice and the rule of law, four sub-themes have been highlighted for discussion during the Judicial Seminar: the use of Artificial Intelligence in the judiciary and in particular in judicial decision-making (I); Access to justice during the pandemic (II); the judiciary and the use of social media (III), and privacy and digital technologies (IV). The purpose of the background paper is to highlight the Court's existing case-law, or the relevant Council of Europe standards, on the themes that will be discussed during the Seminar.

While there is no single definition of Artificial Intelligence which has been accepted by the scientific community, the term is generally used to describe computer-based systems that can perceive and derive data from their environment, and then use statistical algorithms to process that data in order to produce results intended to achieve pre-determined goals[1]. Increasingly powerful and influential artificial intelligence applications can be found in many spheres of human activity including policing and the justice system. Non-human elements in judicial decision-making may create opportunities for improving efficiency, but also some risks. The background paper provides a selection, together with short summaries, of the most relevant and recent policy documents, recommendations, declarations, guidelines and other legal instruments of the Council of Europe which has been active in this field for a decade.

The second theme relates to the pandemic and the subsequent challenges which have arisen for the working of courts and judges. National lockdowns to protect the health and safety of the population have necessarily affected in some way access to court. Accordingly, access to justice by alternative means, often through online services such as remote hearings and videoconferences, have been explored by most Council of Europe Member States in 2020. Online services ensure that the public service of justice continues. This section of the background document focuses on the existing case-law of the European Court of Human Rights on access to a court and the extent of possible restrictions, as well as recently communicated cases directly or indirectly related to the pandemic.

The third theme of the Judicial Seminar will deal with the use of social media by the judiciary. The huge expansion of social media, its often criticised power, and its importance for communication in the last decade raises important issues under freedom of expression

[1] "Justice by algorithm – the role of artificial intelligence in policing and criminal justice systems", Report by the PACE Committee on Legal Affairs, 1 October 2020, Doc. 15156.

for the judiciary, including the duty of judicial discretion and restraint under Article 10 of the European Convention on Human Rights and the right to a fair hearing under Article 6.

Finally, the fourth theme relates to privacy and digital technology, a sensitive matter in the field of tension of between freedom of expression and the right to the respect of private life, between personal freedoms and the protection of security. This background document sets out the Court's case-law on monitoring by technological means; video surveillance; the collection of private data; telecommunication surveillance and bulk interception and online activities. The protection of one's reputation on the internet is also addressed.

The digital environment has introduced a multitude of new challenges for courts and judges and the pandemic has accelerated that change. While embracing new technology for the purposes of a well-functioning and impartial judiciary, respect for the rule of law and human rights remains must be ensured. The aim of this year's Judicial Seminar is to explore some of these themes together through exchanging experiences and best practices.

I. The use of Artificial Intelligence in the judiciary and in particular in judicial decision-making

The Council of Europe began working on the theme of Artificial Intelligence a decade ago and has intensified its efforts in the last five years. During this period a number of policy documents, recommendations, declarations, guidelines and other legal instruments have been issued by various Council of Europe bodies or committees on the theme[2]. A selection of the most recent of those documents has been made for the purposes of this background document focusing on the work of the Committee of Ministers, including the recently established inter-government Ad Hoc Committee on Artificial Intelligence (CAHAI); the Parliamentary Assembly; the Commissioner for Human Rights and the European Commission for the Efficiency of Justice (CEPEJ). A short summary of the document is provided as well as the hyperlink. These Council of Europe bodies and committees are working on finding the right balance between technological development and human rights protection.

- **Feasibility study on AI legal standards adopted by the CAHAI**, on 17 December 2020
- **Set of Resolutions and Recommendations adopted by the Parliamentary Assembly of the Council of Europe, examining the opportunities and risks of AI for democracy, human rights and the rule of law**, October 2020

  - The need for democratic governance of artificial intelligence, Resolution 2341

  - Preventing discrimination caused by the use of artificial intelligence, Resolution 2343

  - Justice by algorithm – The role of artificial intelligence in policing and criminal justice systems, Resolution 2342

  - Artificial intelligence in health care: medical, legal and ethical challenges ahead, Resolution 2185

  - Artificial intelligence and labour markets: friend or foe?, Resolution 2345

  - Legal aspects of 'autonomous' vehicles, Resolution 2346

  - The brain-computer: new rights and new threats to fundamental freedoms?, Resolution 2344

- **Recommendation of the Committee of Ministers to member States on the human rights impacts of algorithmic systems** (CM/Rec(2020)1)

  The member States of the Council of Europe must ensure that any design, development and ongoing deployment of algorithmic systems occur in compliance with human rights and fundamental freedoms. When algorithmic systems have the potential to create an adverse human rights impact for an individual, for a particular group or for the population at large, including effects on democratic processes or the rule of law, these impacts engage State obligations and private sector responsibilities with regard to human rights.

  The Committee of Ministers recommends the government of member States in particular to: (i) review their legislative frameworks and policies and practices with respect to procurement, design, development and ongoing deployment of algorithmic systems; (ii)

[2] https://www.coe.int/en/web/artificial-intelligence/work-in-progress#01EN

ensure through appropriate regulatory and supervisory frameworks related to algorithmic systems, that private sector actors engaged in the design, development and ongoing deployment of such system comply with the applicable laws and fulfil their responsibilities to respect human right; (iii) engage in regular, inclusive and transparent consultation, co-operation and dialogue with all relevant stakeholders; (iv) prioritise the building of expertise in public and private institutions involved in integrating algorithmic systems into multiple aspects of societies with a view to effectively protecting human rights; (v) encourage the implementation of effective and tailored media, information and digital literacy programmes; and (vi) take account of the environmental impact of the development of large-scale digital services.

- **Recommendation of the Commissioner for Human Rights: "Unboxing AI: 10 steps to protect human rights"**, May 2019

  This Recommendation on AI and human rights provides guidance on the way in which the negative impact of AI systems on human rights can be prevented or mitigated. It is addressed at member states, but the principles concern anyone who significantly influences the development, implementation or effects of an AI system.

  (i) Member states should establish a legal framework that sets out a procedure for public authorities to carry out a human rights impact assessment on AI systems; (ii) State use of AI systems should be governed by open procurement standards, applied in a transparently run process, in which all relevant stakeholders are invited to provide input; (iii) Member states should facilitate the effective implementation of human rights standards in the private sector; (iv) the use of an AI system in any decision-making process that has a meaningful impact on a person's human rights needs to be identifiable and transparent; (v) Member States should establish a legislative framework for independent and effective oversight over the human rights compliance of the development, deployment and use of AI systems by public authorities and private entities; (vi) discrimination risks must be prevented and mitigated with special attention for groups that have an increased risk of their rights being disproportionately impacted by AI; (vii) the development, training, testing and use of AI system that rely on the processing of personal data must fully secure a person's right to respect for private and family life; (viii) Member states should take into account the full spectrum of international human rights standards that may be engaged by the use of AI, in particular regarding freedom of expression, freedom of assembly and association, and the right to work; (ix) Member states must establish clear lines of responsibility for human rights violations that may arise at various phases of an AI system lifecycle; and (x) the knowledge and understanding of AI should be promoted in government institutions, independent oversight bodies, national human rights structures, the judiciary and law enforcement, and with the general public.

- **Declaration of the Committee of Ministers on the manipulative capabilities of algorithmic processes** (Decl(13/02/2019)1)

  Technology is an ever growing presence in our daily lives and prompts users to disclose their relevant, including personal, data voluntarily and for comparatively small awards of personal convenience. Public awareness, however, remains limited regarding the extent to which everyday devices collect and generate vast amounts of data. These data are used to train machine-learning technologies to prioritise search results, to predict and shape personal preferences, to alter information flows, and, sometimes, to subject individuals to behavioural experimentation.

  The Committee of Ministers draws attention to the growing threat to the right of human beings to form opinions and take decisions independently of automated systems, which emanates from advanced digital technologies. Attention should be paid particularly to their capacity to use personal and non-personal data to sort and micro-target people, to identify

individual vulnerabilities and exploit accurate predictive knowledge, and to reconfigure social environments in order to meet specific goals and vested interests.

- **Guidelines on Artificial Intelligence and Data Protection** (T-PD(2019)01)

  These Guidelines provide a set of baseline measures that governments, AI developers, manufacturers, and service providers should follow to ensure that AI applications do not undermine the human dignity and the human rights and fundamental freedoms of every individual, in particular with regard to the right to data protection: (i) the protection of the right to data protection of personal data is essential when developing and adopting AI applications that may have consequences on individuals and society; (ii) AI development relying on the processing of personal data should be based on the principles of Convention 108+; (iii) an approached focused on avoiding and mitigating the potential risks of processing personal data is a necessary element of responsible innovation in the field of AI; (iv) a wider view of the possible outcomes of data processing should be adopted; (v) AI applications must at all times fully respect the rights of data subjects; and (vi) AI applications should allow meaningful control by data subjects over the data processing and related effects on individuals and on society.

- **European Ethical Charter on the use of artificial intelligence (AI) in judicial systems and their environment** (CEPEJ(2018)14)

  The Charter provides a framework of five principles for public and private stakeholders responsible for the design and deployment of artificial intelligence tools and services that involve the processing of judicial decisions and data: (i) principle of respect for fundamental rights: ensuring that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights; (ii) principle of non-discrimination: preventing the development or intensification of any discrimination between individuals or groups of individuals; (iii) principle of quality and security: using certified sources and intangible data with models elaborated in a multi-disciplinary manner, in a secure technological environment; (iv) principle of transparency, impartiality and fairness: making data processing methods accessible and understandable, authorise external audits; and (v) principle 'under user control': precluding a prescriptive approach and ensuring that users are informed actors and in control of the choices made.

- **Recommendation of the Committee of Ministers to member States on guidelines to respect, protect and fulfil the rights of the child in the digital environment** (CM/Rec(2018)7)

  These Guidelines provide a set of ground rules which can assist states in providing the necessary basis for looking after children's best interests in the world of the digital environment, in particular: (i) review their legislation, policies and practices; (ii) ensure that the recommendation is translated and disseminated as widely as possible among competent authorities and stakeholders; (iii) require business enterprises to meet their responsibility to respect the rights of the child in the digital environment and to take implementing measures, and encourage them to co-operate with relevant State stakeholders, civil society organisations and children; (iv) co-operate with the Council of Europe by creating, implementing and monitoring strategies and programmes that respect, protect and fulfil the rights of the child in the digital environment; and (v) examine the implementation of this recommendation every five years at least.

- **Recommendation of the Parliamentary Assembly of the Council of Europe about Technological convergence, artificial intelligence and human rights** (Rec2102(2017))

  The convergence between nanotechnology, biotechnology, information technology and cognitive sciences and the speed at which the applications of new technologies are put on the market have consequences not only for human rights and the way they can be exercised,

but also for the fundamental concept of what characterises a human being. In this light, the Assembly considers that it is necessary to implement, in particular: (i) strengthening transparency, regulation by public authorities and operators' accountability; (ii) a common framework of standards to be complied with when a court uses artificial intelligence; (iii) the need for any machine, any robot or any artificial intelligence artefact to remain under human control; and (iv) the recognition of new rights in terms of respect for private and family life.

II. Access to justice during and after the pandemic (an exchange of views - human rights restrictions, procedures adopted, lessons learned)

Following the unexpected and unprecedented spread of the pandemic, both in time and in space, and the ensuing worldwide health crisis, Governments of the Member States were facing enormous challenges and dilemmas on how to handle that situation. From a human rights perspective, they had to balance between their positive obligation to protect their citizens health, safety and well-being and their negative obligation not to disproportionately interfere with their citizens' freedoms. The situation led some Member States to use derogatory notifications under Article 15 of the Convention as regards their compliance with their obligations under the Convention, but many of these States have since withdrawn their derogations.

II. 1. Access to justice – A perspective on substantive aspects of human rights restrictions

The topic of the access to justice during and after the pandemic, in its broader meaning, would involve an examination of the compatibility of the actions taken by Member States, or even lack of action, with the domestic and conventional standard of human rights protection and the judicial mechanism of protection in that respect.

In a different context, the Court has already dealt with certain (substantive) issues that are also of relevance to the current situation, such as prevention of spreading infectious diseases, quarantine, etc.

While the Court´s case-law does not acknowledge a "right to health" under the Convention, it has established a number of positive obligations concerning health under Articles 2 and 8, in particular concerning a preventive regulatory framework, including its effective functioning by necessary measures to ensure implementation, supervision and enforcement (see, *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 186-196, 19 December 2017; *Vasileva v. Bulgaria*, no. 23796/10, §§ 63-69, 17 March 2016; *İbrahim Keskin v. Turkey*, no. 10491/12, §§ 61-68, 27 March 2018). In *Lopes de Sousa Fernandes,* the Court has accepted that, in very exceptional circumstances the responsibility of the State under the substantive limb of Article 2 of the Convention may be engaged in respect of the acts and omissions of health-care providers. Such exceptional circumstances could arise in a specific situation where an individual patient's life is knowingly put in danger by denial of access to life-saving emergency treatment (see, for example, *Mehmet Şentürk and Bekir Şentürk v. Turkey*, no. 13423/09, ECHR 2013) or where a systemic or structural dysfunction in hospital services results in a patient being deprived of access to life-saving emergency treatment and the authorities knew about or ought to have known about that risk and failed to undertake the necessary measures to prevent that risk from materialising putting the patient's life in

danger (see, for example, *Asiye Genç v. Turkey*, no. 24109/07, 27 January 2015, that concerned a prematurely born baby's death in an ambulance, a few hours after birth, following the baby's transfer between hospitals without being admitted for treatment, and *Aydoğdu v. Turkey*, no. 40448/06, 30 August 2016, that concerned the death of a prematurely born baby, who suffered from a respiratory disorder, because of manifest lack of coordination between health-care professionals coupled with structural deficiencies in the Izmir hospital system).

The existence of an obligation to act to protect life and physical integrity will necessarily be relevant in judging the compatibility of restrictions that might be imposed on other rights and freedoms. Thus, Article 5(1)(e) specifies that the prevention of the spreading of infectious diseases is one of the grounds for which a person may be deprived of his or her liberty (see, in particular, *Enhorn v. Sweden*, no. 56529/00, 25 January 2005). In *Enhorn*, the Court found that the compulsory isolation of the applicant was not a last resort in order to prevent him from spreading the HIV virus after less severe measures had been considered and found to be insufficient to safeguard the public interest. Moreover, by extending over a period of almost seven years the order for the applicant's compulsory isolation, with the result that he had been placed involuntarily in a hospital for almost one and a half years in total, the authorities had failed to strike a fair balance between the need to ensure that the HIV virus did not spread and the applicant's right to liberty.

As regards the individuals placed under the State's responsibility who contracted an infectious disease (tuberculosis) as an apparent consequence of the authorities' failure to eradicate or prevent the spread of the disease, the Court has held constantly that this fact in itself would not imply a violation of Article 3, provided that the applicants received treatment for it (see for individuals placed in detention *Pyatkov v. Russia*, 61767/08, § 73, 13 November 2012 and *Demir v. Turkey* (dec.), no. 58402/09, 10 January 2017 concerning conscripts during compulsory military service).[3] Furthermore, the protection of health is a legitimate aim for which restrictions can be imposed by the authorities on the rights to respect for private and family life, freedom to manifest one's religion or beliefs, freedom of expression and freedom of assembly and association, under Articles 8-11 ECHR and freedom to choose one's residence or to leave any country, including one's own under Article 2 of Protocol No. 4 ECHR.

The Court has already examined the imposition of a quarantine preventing one family member from visiting another, raising compliance with the right to respect for family life under Articles 8 (*Kuimov v. Russia*, 32147/04, 8 January 2009). In *Kuimov*, a part of the applicant's complaint concerning lack of access to his daughter who has been removed due

[3] Note also *Baroncea and Balan v. Romania* ((dec.), no. 66592/16 and 25457/18, adopted on 17/11/2020, not yet published) in which the applicants complained that they had contracted tuberculosis while serving their prison sentences and that the relevant prison authorities had failed to ensure appropriate conditions of detention to prevent the spread of such a contagious disease, without any issues being raised as to the inadequacy or ineffectiveness of the medical treatment offered during detention. Taking note of the possibility to claim damages under tort law before civil courts, of which benefited also the first applicant, the Court rejected the application directly for loss of victim status (1st applicant) and non-exhaustion of domestic remedies (2nd applicant).

to the parents' opposition to necessary medical treatment concerned a two-month restriction of access to the foster home where the girl had been placed, due to an influenza quarantine. The applicant was allowed to come and see his daughter through the glass window on a weekly basis. Taking into account the State's margin of appreciation and that the restriction did not last an unreasonably long time, the Court held that there was no violation of Article 8.

II. 2. Applications lodged with Court relating to the pandemic

The Court has already received applications relating to the pandemic.

Since the first weeks of the pandemic the Court received requests concerning for application of provisional measures on the basis of Rule 39 of the Rules of Court. Almost 300 such requests concerning the consequences of the pandemic on Convention rights have been examined by mid-June 2020, many of which concerned individuals placed in detention and migrants in hotspots.

Moreover, a number of the applications lodged with the Court on the basis of Article 34 of the Convention concerned alleged restrictions to the rights and freedoms protected under the Convention. The Court has communicated several such applications to respondent Governments: *Communauté genevoise d'action syndicale v. Switzerland*, no. 21881/20, restrictions to the freedom of manifestation by the Swiss General Council in the context of the pandemic; *Hafeez v. UK*, no. 14198/20, risk of life imprisonment without parole and inadequate conditions of detention due to pandemic in case of extradition of an elderly person with health issues to the USA; *Spinu v. Romania*, no 29443/20, refusal of the domestic authorities to authorize the applicant, detained in a prison, to continue to participate to his church mass outside the prison building, because such activities were not absolutely necessary and assistance in that respect have been interrupted during the health crisis; *Association d'Obédiance ecclésiastique orthodoxe v. Greece*, no. 52104/20, restrictions to the freedom of religion and the right of access to court to contest measures adopted by the authorities suspending the collective practice of religious rites between 16 March and 16 May, which included Easter; *Avagyan v. Russia*, no. 36911/20, conviction and fine of a private individual for disseminating untrue information on the Internet through online comments on social media alleging non-existence of the pandemic in Krasnodar region; *TOROMAG S.R.O. and Others v. Slovakia* (41217/20 and 4 other cases) closure of the applicants' business (fitness centers) by virtue of measures adopted in spring 2020 by the Slovak Public Health Authority to prevent the spreading of the virus; *Magdić v. Croatia*, no. 17578/20, restrictions to the applicant's right to freedom of religion, freedom of peaceful assembly and freedom of movement due to measures taken by the authorities during the pandemic; *Kokhlov v. Cyprus*, no. 53114/20, unlawful ongoing deprivation of liberty pending extradition and length of appeal proceedings, the extradition being later on suspended *sine die* because of the pandemic; *Riela v. Italy*, no. 17378/20, *Faia v. Italy*, no. 17222/20, *Vlamis and Others v. Greece*, 29655/20 and 4 others, *Maratsis and Others v. Greece* ,30335/20, *Fenech v. Malta* (no. 19090/20, Committee decision, 23 March 2021) and *Bah v the Netherlands*, no. 35751/20. All these cases concerned alleged absence of necessary measures by the authorities to protect the applicants' life and state of health in detention

and/or the incompatibility between their state of health and the conditions of detention in the context of the pandemic and of their vulnerability and/or their multiple diseases.

The Court has also adopted a number of decisions in respect of cases in which applicants alleged an interference with their Convention rights in the context of the pandemic.

The case *Le Mailloux v. France* (no. 18108/20, Committee decision, 3 December 2020) concerned the applicant's objections to the handling by the French State of the Covid 19 health crisis. Invoking Articles 2,3, 8 and 10 of the Convention, the applicant complained in particular of restrictions on access to diagnostic tests, preventive measures and specific types of treatment, and interference in the private lives of individuals who, according to him, were dying of the virus on their own. The Court observed that the applicant was complaining about the measures taken by the French State to curb the propagation of the Covid-19 virus among the whole population of France, but had not shown how he was personally affected. The Court found that the application amounted to an *actio popularis* and the applicant could not be regarded as a victim, within the meaning of Article 34 of the Convention, of the alleged violations. The application was thus incompatible with the Convention and had to be rejected as inadmissible.

In *Terhes v. Romania* (no. 49933/20, 13 April 2021), the applicant complained that the general lockdown introduced in Romania between 16 March and 14 May 2020 had constituted a deprivation of liberty contrary to Article 5 § 1 e) of the Convention, given that no movement outside the home was permitted, except in a certain number of exhaustively listed circumstances and on production of a document attesting to valid reasons for leaving home, and that persons breaching the regulations were liable to a fine. The Court noted that the pandemic was liable to have very serious consequences not just for health, but also for society, the economy, the functioning of the State and life in general, and the situation should therefore be characterised as an "exceptional and unforeseeable context". The impugned measure had remained in place for fifty-two days. It was a general measure imposed on the whole population through legislation enacted by the various authorities in Romania. The applicant had been free to leave his home for various reasons and could go to different places, at whatever time of day the situation required. He had not been subject to individual surveillance by the authorities and did not claim to have been forced to live in a cramped space, nor had he been deprived of all social contact. Accordingly, in view of its degree of intensity, the measure in question could not be equated with house arrest. Furthermore, the applicant had not explained in concrete terms how the measure had affected him nor described specifically his personal experience of lockdown. In view of all these considerations, the Court held that the level of intensity of the restrictions on the applicant's freedom of movement had not been such that the general lockdown ordered by the authorities could be deemed to constitute a deprivation of liberty within the meaning of Article 5 § 1. The application was thus incompatible *ratione materiae* with the Convention and had to be rejected as inadmissible.

In *Fenech v. Malta* (Committee decision, cited above) the applicant, remanded in custody, complained under Article 5 § 1 (c) and Article 5 § 3 of the Convention that the emergency measures put in place in the context of the pandemic and their execution had not been

clearly defined and foreseeable. In particular with respect to arguments related to the impact of the pandemic, the Court observed that the suspension of the relevant committal proceedings in this case due to the pandemic did not exceed three months and that it could not be said that the applicant's detention in that period, during which the emergency measures were in place, was not for the purposes of bringing him before the competent legal authority. There was also no indication that these proceedings were not being actively pursued before the emergency measures were put in place or afterwards; the duty of special diligence was thus observed. Moreover, this temporary suspension was due to the exceptional circumstances surrounding a global pandemic which, as held by the Constitutional Court in that case, justified such lawful measures in the interest of public health, as well as that of the applicant. That part of the application was therefore manifestly ill-founded and rejected as inadmissible by the Court.

II. 3. Access to justice – A perspective on restrictions concerning procedural rights. Access to court and fair trial

Examining the question of the access to justice during and after the pandemic from the standpoint of safeguarding *procedural rights* in times of a pandemic, it is relevant to identify the practical and legal obstacles encountered in guaranteeing access to court and a fair trial in this particular context. It is relevant to note in that respect the judicial oversight effectively available to those particularly affected by the pandemic and the measures taken by the authorities in order to maintain such access to justice despite restrictions measures, such as lockdown, travel bans, temporary closure of access to court buildings and/or limitation/interruption of services and activities related to or facilitating access to justice (i.e. from legal assistance to postal services, hearings in the form of videoconferences, decision making by electronic communication and NGOs' activities in prisons and migrant camps).

In a different context, but relevant to the current situation, the Court has already developed case-law on issues such as effective notification of a hearing, sufficient time to prepare, opportunity to attend a hearing, legal assistance, etc. In this context, the Court has reiterated and applied in the circumstances of each case the principle that the Convention is intended to guarantee rights that are practical and effective and not those that are theoretical or illusory (see, among many other authorities, *Cudak v. Lithuania* [GC], no. 15869/02, § 58, ECHR 2010).

It was held by the Court that the right to a public hearing would be devoid of substance if a party to a case were not apprised of a hearing in such a way as to have an opportunity to attend it, should he or she decide to exercise the right to appear that is established in the domestic law (see *Yakovlev v. Russia*, no. 72701/01, § 21, 15 March 2005).

As regards notifications of proceedings and service of decisions in the context of procedural rights protected by Article 6 of the Convention, the Court held that Article 6 § 1 cannot be construed as conferring on litigants the right to obtain a specific form of service of court documents, such as by registered post (see *Kolegovy v. Russia*, no. 15226/05, § 40, 1 March 2012; *Perihan and Mezopotamya Basın Yayın A.Ş. v. Turkey*, no. 21377/03, § 39, 21 January 2014; and *Avotiņš v. Latvia* [GC], no. 17502/07, § 119, ECHR 2016). Nonetheless, the Court

considered that in the interests of the administration of justice a litigant should be notified of a court hearing in such a way as to not only have knowledge of the date, time and place of the hearing, but also to have enough time to prepare his or her case and to attend the court hearing (see *Kolegovy*, cited above, § 40, and the cases cited therein, and *Ažd*ajić *v. Slovenia*, no. 71872/12, § 48, 8 October 2015; see also *Vyacheslav Korchagin v. Russia*, no. 12307/16, §§ 64-65, 28 August 2018).

Moreover, as regards the right to a fair trial and effective legal assistance when the applicant's participation to the hearings in criminal proceedings against him is limited to videoconference, the Court has held that while such participation was not, as such, contrary to the right to a fair trial, arrangements had to be made for the applicants to follow the proceedings, to be heard without technical impediments, and to communicate in an effective and confidential manner with their lawyer (*Sakhnovskiy v. Russia* (GC), no. 21272/03, 2 November 2010). In *Sakhnovskiy*, the applicant had been able to communicate with the lawyer for only fifteen minutes, immediately before the start of the hearing. The Court held that given the complexity and seriousness of the case, the time allotted had clearly not been sufficient for the applicant to discuss the case and make sure that the lawyer's knowledge of the case and legal position were appropriate. Moreover, it was questionable whether communication by video link, installed and operated by the State, had offered sufficient privacy. The applicant might legitimately have felt ill at ease when he discussed his case with the lawyer. The Court noted that the Government had not explained why it had been impossible to make different arrangements for the applicant's legal assistance and held it has been a violation of Article 6 §§ 1 and 3 c) of the Convention.

II. 4. Procedural measures adopted by the ECtHR during the pandemic

On 16 March 2020, in response to the aggravation of the sanitary crisis and to the restrictions, including lockdown, taken by a number of Member States, the Court issued a press release informing the public about the maintenance of its essential activities, including the handling of priority cases and the examination of urgent requests for interim measures under Rule 39 of the Rules of Court. The six-month time-limit for the lodging of applications, under Article 35 of the European Convention on Human Rights, has been suspended for a total duration of three months.

The Court has continued to hold hearings, which are customarily organized in Grand Chamber cases and more exceptionally in other Chamber cases, and to preserve their public character. While the physical presence of the public at the hearings was not possible due to sanitary restrictions and to the fact that the building of the Court was closed to all external visitors, webcast of the hearings – available since 2007 – continued to be ensured, making the entirety of the hearings available to the public the afternoon of the very day of the hearings. The Court has adopted 'Guidelines on hearings by videoconference', which allow the President of the Grand Chamber or of the Chamber to decide to conduct these proceedings through videoconference technology, depending on the sanitary conditions prevailing in Europe, and in particular in the Court's host State and in the States where the parties to a case are based. Hearings by videoconference are conducted in accordance with the relevant provisions of the Rules of Court. In order to preserve the public character of

hearings by videoconference (Article 40 of the Convention, Rule 63 of the Rules of Court), the proceedings are recorded and are made available for viewing on the Court's website in the usual way (not live streaming).

Lessons learned

Likewise the ECtHR, it appears that the judiciaries in the Member States have quickly taken necessary steps, developed appropriate strategies and explored new methods on how to cope with the practical and legal obstacles identified. That included, even during (partial) lockdown of courts, maintaining as much as possible the public service of justice and access to justice by alternative means (ex. online services, access to updated information through court websites and other means of communication). In maintaining access to justice, special attention and priority have been given to vulnerable categories (victims of domestic violence, individuals in detention on remand etc).

The European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe has issued in June 2020 a statement concerning the 'Lessons learned and challenges faced by the judiciary during and after the Covid-19 pandemic', providing member States with guidance in a period of crisis that impacts the public service of justice[4].

On 10 July 2020 the Court organised a webinar for the members of the Superior Courts Network entitled "Adapting judicial systems to the COVID-19 pandemic and its potential impact on the right to a fair trial." Speakers from the Court and from the Network's member courts discussed the procedural and practical measures taken to adapt to this unprecedented situation, and the applicable norms under Article 6 (right to a fair trial) of the Convention.

Exchange of those strategies and methods could contribute to enhancing access to court and fair trial all over Europe and better prepare judiciary both at the ECtHR level and within the Member States to future challenges.

III. The judiciary and the use of social media (by courts and judges)

New challenges in the digital environment

The last 10-15 years have witnessed the creation and massive expansion of social media, which allow to share content or to participate in social networking and include platforms such as Facebook, Twitter, WhatsApp, YouTube, Internet forums, webcasts and blogs. Social media have clearly modified the manner in which way dozens of millions of people communicate with each other, by allowing their users to quickly access, frequently update, and instantly share and exchange information, ideas, pictures, videos or react to such publications by comments or even mere 'likes' and emojis. The violent attack on the US Capitol on 6 January 2021 has triggered vast criticism of these platforms´ power and discussions on their responsibility for the spread of hate speech, incitement to violence and conspiracy theories.

[4] https://rm.coe.int/declaration-en/16809ea1e2

The interrelated freedoms of communication, expression and association are at the heart of any free, democratic society based on the rule of law. The particularity of social media is that, by enabling participation in social networking, it creates also opportunities and risks in the quick and massive sharing of information, and potentially distortion of it, on various topics that may include matters of general interest as well as aspects related to private life.

The use of social media by the courts and judges has become a particularly actual topic, that is of interest to the Council of Europe institutions (see the Venice Commission contribution of 29 April 2019 to the Guidelines drafted by the UNODC Global Judicial Integrity Network[5]). The relationship between the use of social media by judges and the protection of human rights gives the European Court of Human Rights the opportunity to confront the case-law already developed with respect to a number of rights and freedoms, among which freedom of expression and respect for private life, to the test of the expansion of social media networking.

Duty of discretion and restraint

It is useful to recall that, referring in particular to the effect of Article 10 in relation to judicial actors, the European Court of Human Rights' case-law shows it is twofold. On the one hand, members of the judiciary appear as primary actors who, under Article 10, exercise their right to freedom of expression but are also bound by a duty of discretion and restraint. On the other hand, members of the judiciary are addressees of expressions from other actors, inside and outside of the courtroom. Therefore, while as civil servants they lay themselves open to public scrutiny and are also expected to show wider tolerance for criticism, they are offered special protection against destructive attacks, particularly to maintain the authority and the impartiality of the judiciary.

The particular task of the judiciary in society requires judges to observe a duty of discretion (*Morice v. France* [GC], § 128). The Court has reiterated that it can be expected of them that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called in question (*Wille v. Liechtenstein* [GC], § 64; *Kayasu v. Turkey*, § 92). The judges' duty of discretion pursues a specific aim: the speech of judges, unlike that of lawyers, is received as the expression of an objective assessment which commits not only the person expressing himself or herself, but also, the entire justice system (*Morice,* cited above., § 168). As the guarantor of justice, the judiciary must enjoy public confidence to be successful in carrying out its duties (see also *Baka v. Hungary* [GC], § 164, and *Guđmundur Ándri Ástrađsson v. Iceland* [GC], § 283).

Certainly, having regard in particular to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, any interference with the freedom of expression of a judge, in particular those holding a higher position in the judiciary, calls for close scrutiny on the part of the Court (*Wille v. Liechtenstein* [GC], § 64; *Baka v. Hungary* [GC], § 165; *Harabin v. Slovakia* (dec.)).

[5] https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2019)003-e

Questions concerning the functioning of the justice system fall within the public interest, the debate of which generally enjoys a high degree of protection under Article 10 (*Baka v. Hungary* [GC], § 165). Issues relating to the separation of powers can involve very important matters in a democratic society which the public has a legitimate interest in being informed about and which fall within the scope of political debate (*ibid.* § 165). However, even if an issue under debate has political implications, this is not in itself sufficient to prevent a judge from making a statement on the matter (*ibid.*§ 165; *Wille v. Liechtenstein* [GC], § 67).

For its assessment of proportionality, the Court must take account of the circumstances and overall background against which the statements in question were made. It must look at the impugned interference in the light of the case as a whole, attaching particular importance to the office held by the applicant, his statements and the context in which they were made and the reaction thereto (*Baka v. Hungary* [GC], § 166; *Wille v. Liechtenstein* [GC], § 63). The Court also takes into account the fairness of proceedings and the procedural guarantees afforded to the applicant when assessing the proportionality of an interference with the freedom of expression guaranteed by Article 10 (*Baka v. Hungary* [GC], §§ 161, 174).

In assessing respect to the impartiality of the judiciary guaranteed by Article 6 § 1 of the Convention, the Court held that even appearances may be of a certain importance, or in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (*Denisov v. Ukraine* [GC], no. 76639/11, § 63, 25 September 2018). The appearances and the image that the judges convey may play a significant role in guaranteeing the fairness of the proceedings. With respect to the cases which they deal with, judicial authorities, in the exercise of their adjudicatory function, are required to exercise maximum discretion in order to preserve their image as impartial judges (*Olujić v. Croatia*, no. 22330/05, § 59).

This duty of discretion should dissuade them from making use of the press, even when provoked, to clarify aspects concerning pending cases, in order to avoid any risk of employing expressions that may imply they had already formed an unfavourable view of the cases they have to decide upon (*Buscemi v. Italy*, no. 29569/95, §§ 67-68, ECHR 1999-VI). A duty of restraint should also prevent judges from expressing criticism towards fellow public officers and, in particular, other judges (*Di Giovanni v. Italy*, no. 51160/06, § 71). Moreover, increased vigilance is to be shown by public officials, including judges, in exercising their right to freedom of expression in the context of on-going investigations, especially where those officials are themselves responsible for conducting investigations involving information covered by an official secrecy clause designed to ensure the proper administration of justice (*Poyraz v. Turkey*, §§ 76-78).

Professional ethics and private life

These principles apply mutatis mutandis to Article 8 of the Convention. In this regard, the Court held that, in order for Article 8 of the Convention to be applicable to the measure complained about, it has to had serious negative consequences for the aspects constituting the applicant's "private life", namely his/her "inner circle", opportunities to establish and develop relationships with others, or reputation. In a case concerning the applicant's dismissal from the position of president of a court of appeal, without his removal from the

post of judge, given that neither the reasons for the applicant's dismissal were linked to nor that the consequences of that measure affected his "private life" within the meaning of Article 8, the Court found that this Article was not applicable (*Denisov v. Ukraine* [GC], no. 76639/11, §§ 118-134, 25 September 2018). However, in the case of *Özpınar v. Turkey* (no. 20999/04, 19 October 2010), in which the applicant was dismissed from her function as a judge not merely for professional reasons, but also because of allegations about her private life, the Court concluded that the investigation into her professional and personal life, as well as her resulting dismissal, could be seen as an interference with her right to respect for private life. The Court acknowledged that a judge's duty to observe professional ethics may impinge to a certain extent upon his or her private life. This may occur, for example, where his or her conduct impairs the image or reputation of the judicial institution. However, in this case the Court found that the applicant's dismissal and the significant incidence on her career was disproportionate to the legitimate aim pursued, also taking into account the lack of guarantees in the relevant procedure and the reasoning relied upon in the domestic decisions.

ECtHR case law on the judge's use of social media

While the ECtHR has already decided a number of cases concerning protection of Convention human rights in the context of usage of the social media, it has yet to decide cases that directly concern the use of social media by judges themselves. The Court has already communicated a few cases that concern directly the judges' actions or opinions in the specific environment of the social media and decided a case concerning the use of social media by a judge's family.

The case of *Kozan v. Turkey* (no. 16695/19) concerns the sanction of reprimand imposed on the applicant, a judge at the material time, by the Superior Council of the Judiciary (SCJ) because of the publication by the applicant of a press article on a closed Facebook group of which all members were magistrates. The case has been communicated by the Court on 5 July 2019 under Article 10 of the Convention, among other provisions, with specific emphasis being put in the questions on the content on the press article, the nature of the Facebook group and the State's margin of appreciation in view of the applicant's duties and responsibilities related to his professional activity and judicial status.

The case of *Chaves Fernandes Figueiredo v. Switzerland* (no. 55603/18) concerns the question of whether the friendship on a social media website (Facebook) between a judge and one of the parties to the trial can constitute a ground for challenge and constitute an infringement of the judge's duty of impartiality guaranteed by Article 6 § 1 of the Convention. The complaint lodged by the applicant with the Court after the rejection on the domestic level of his request for annulment of the acts accomplished by the judge concerned has been communicated by the Court on 28 August 2019.

In *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia* (16812/17) a judge´s wife had published Facebook posts which had conveyed negative views of the television channel and its Director General. The Court held that the requirement of judicial impartiality cannot prevent a judge´s family expressing their views on issues affecting society. However, it cannot be excluded that such activities of close family members might, in

certain circumstances, adversely affect the perception of the judge´s impartiality. In the case at hand the Court considered that, from the standpoint of an objective observer, the judge sufficiently distanced himself from the opinions which his wife published on Facebook (§ 344).

IV. Privacy and digital technology (judges and witnesses)

Private life

As the Court has consistently held, the concept of private life extends to aspects relating to personal identity, such as a person's name, photo, or physical and moral integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private life (*Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, § 95, 7 February 2012). Furthermore, the concept of "private life" is a broad term not susceptible to exhaustive definition, which covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of a person's identity, such as gender identification and sexual orientation, name or elements relating to a person's right to their image. It covers personal information which individuals can legitimately expect should not be published without their consent (*Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012).

Monitoring by technological means

Private life considerations may arise, once any systematic or permanent record comes into existence of material from the public domain. It is for this reason that files gathered by security services on a particular individual fall within the scope of Article 8, even where the information has not been gathered by any intrusive or covert method (*P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 57, 25 September 2001).

Video surveillance of public places

The disclosure to the media for broadcast use of video footage of an applicant whose suicide attempt was caught on surveillance television cameras was found to be a serious interference with the applicant's private life, notwithstanding that he was in a public place at the time (*Peck v. the United Kingdom*, no. 44647/98, §§ 57-63, 28 January 2003).

Online activities

Information associated with specific dynamic IP addresses facilitating the identification of the author of such activities constitutes, in principle, personal data which are not accessible to the public. To use such data may therefore fall within the scope of Article 8 (*Benedik v. Slovenia*, no. 62357/14, §§107-108, 24 April 2018).

Surveillance and the collection of private data by agents of the State

In the case of persons arrested or under criminal prosecution, the Court has held on various occasions that the recording of a video in the law enforcement context or the release of the applicants' photographs by police authorities to the media constituted an interference with their right to respect for private life. The Court has found violations of Article 8 where police made applicants' photographs from the official file available to the press without their consent (*Khuzhin and Others v. Russia*, no. 13470/02, 23 October 2008, §§ 115-118; *Sciacca v. Italy*, no. 50774/99, §§ 29-31, ECHR 2005-I; *Khmel v. Russia*, no. 20383/04, 12 December 2013, § 40; *Toma v. Romania*, §§ 90-93), and where the posting of an applicant's photograph on the wanted board was not in accordance with domestic law (*Giorgi Nikolaishvili v. Georgia*, no. 37048/04, 13 January 2009, §§ 129-131).

In *Gaughran v. the United Kingdom*, no. 45245/15, 13 February 2020, the applicant's custody photograph was taken on his arrest; it was to be held indefinitely on a local database for use by the police and the police were able to apply facial recognition and facial mapping techniques to it. Therefore, the Court found that the taking and retention of the applicant's photograph amounted to an interference with the right to one's image (§ 70). It went on to find that the interference was not necessary in a democratic society (§ 97). However, the Court found that the five-year retention of a photograph of a repeat offender did not constitute a violation of Article 8 because the duration of the retention was limited, the domestic courts had conducted an individualised assessment of whether it was likely that the applicant might reoffend in the future and there existed the possibility of review of the necessity of further retention of the data in question (*P.N. v. Germany*, 74440/17, 11 June 2020, §§ 76-90). In addition, the Court found that the taking and retention of a photograph of a suspected terrorist without her consent was not disproportionate to the legitimate terrorist-prevention aims of a democratic society (*Murray v. the United Kingdom*, 28 October 1994, § 93).

Telecommunication surveillance and bulk interception

The Court has held that where a State institutes secret surveillance, the existence of which remains unknown to the persons being controlled with the effect that the surveillance remains unchallengeable, individuals could be deprived of their Article 8 rights without being aware and without being able to obtain a remedy either at the national level or before the Convention institutions (*Klass and Others v. Germany*, 6 September 1978, § 36, Series A no. 28). This is especially so in a climate where technological developments have advanced the means of espionage and surveillance, and where the State may have legitimate interests in preventing disorder, crime, or terrorism (ibid., § 48). An applicant can claim to be the victim of a violation occasioned by the mere existence of secret surveillance measures or of legislation permitting such measures, if certain conditions are satisfied (*Roman Zakharov v. Russia* [GC], no. 47143/06, §§ 171-172, ECHR 2015). In that case, the Court found the Kennedy approach was best tailored to the need to ensure that the secrecy of surveillance measures did not result in the measures being effectively unchallengeable and outside the supervision of the national judicial authorities and of the Court (*Kennedy v. the United Kingdom*, no. 26839/05, § 124, 18 May 2010). The mere existence of legislation which allows

a system for the secret monitoring of communications entails a threat of surveillance for all those to whom the legislation may be applied (*Weber and Saravia v. Germany* (dec.), no. 54934/00, § 78, ECHR 2006-XI).

The Grand Chamber of the Court dealt with the question bulk interception and cross border communications as well as safeguards against abuse in *Centrum för rättvisa v. Sweden*, no. 35252/08, 25 May 2021 and *Big Brother Watch and Others v. the United Kingdom*, nos. 58170/13 and 2 others, 25 May 2021. In the first case, the applicant, a non-governmental organisation, considered that there was a risk that its communications through mobile telephones and mobile broadband had been or would be intercepted and examined by way of signals intelligence. While the Chamber found no violation of Article 8, the Grand Chamber found a violation of this Article of the Convention.

In *Big Brother Watch* the applicants, legal and natural persons, complained about the scope and magnitude of the electronic surveillance programmes operated by the respondent Government of which they considered they had been likely affected. In 2018 a Chamber of the Court found that the regimes for bulk interception and obtaining data from communications service providers had violated Articles 8 and 10 of the Convention. It found no violation of Article 8 in respect of the receipt of intelligence from foreign governments.

The Grand Chamber also found a breach of Articles 8 and 10 in respect of the regimes for bulk interception and acquisition of communications data and no breach of both provisions as regards the receipt of intelligence from foreign intelligence services.

Protection of one's reputation: defamation

A person's right to protection of his or her reputation is encompassed by Article 8 as being part of the right to respect for private life (*Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007). However, Article 8 cannot be relied on in order to complain of a loss of reputation which is the foreseeable consequence of one's own actions. In *Gillberg v. Sweden* [GC], no. 41723/06, 3 April 2012, §§ 67-68, the applicant maintained that a criminal conviction in itself affected the enjoyment of his "private life" by prejudicing his honour and reputation. However this line of reasoning was not accepted by the Court (see also, inter alia, *Sidabras and Džiautas v. Lithuania*, nos. 55480/00 and 59330/00, ECHR 2004-VIII, § 49; *Mikolajová v. Slovakia*, no. 4479/03, 18 January 2011, § 57; *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, ECHR 2017, § 76). A criminal conviction in itself does not amount to an interference with the right to respect for "private life" and this also relates to other misconduct entailing a measure of legal responsibility with foreseeable negative effects on "private life" (*Denisov v. Ukraine* [GC], no. 77639/11, 25 September 2018, § 98). By contrast, in *Vicent Del Campo v. Spain*, no. 25527/13, 6 November 2018, the applicant was not a party to proceedings, unaware of them and was not summoned to appear. Nevertheless, the judgment in those proceedings referred to him by name and to details of harassment he allegedly committed. The Court noted that this could not be considered to be a foreseeable consequence of his own doing and that it was not supported by any cogent reasons. Hence, the interference was disproportionate (§§ 39-42 and 48-56).

Protection of one's reputation: The role of the press

Although the press must not overstep certain bounds, regarding in particular protection of the reputation and rights of others (*Kaboğlu and Oran v. Turkey*, nos. 1759/08, 50766/10 and 507882/10, 30 October 2018, § 74), its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, which the public has a right to receive, including reporting and commenting on court proceedings (*Axel Springer AG v. Germany* [GC], § 79). The Court has also stressed the importance of the proactive role of the press as a "public watchdog", namely to reveal and bring to the public's attention information capable of eliciting such interest and of giving rise to such a debate within society (*Couderc and Hachette Filipacchi Associés v. France* [GC], §§ 89 and 114; *Magyar Helsinki Bizottság v. Hungary* [GC], § 165; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 126). When covering certain events, journalists have the duty to show prudence and caution (*Couderc and Hachette Filipacchi Associés,* § 140).

The Convention cannot be interpreted to require individuals to tolerate being publicly accused of criminal acts by Government officials, who are expected by the public to possess verifiable information concerning those accusations, without such statements being supported by facts (*Jishkariani v. Georgia*, no. 18925/09, 20 September 2018, § 59-62).

Protection of one's reputation: the impact of the Internet

In *Egill Einarsson v. Iceland*, no. 24703/15, 7 November 2017, a well-known figure in Iceland had been the subject of an offensive comment on Instagram, an online picture-sharing application, in which he had been called a "rapist" alongside a photograph. The Court held that a comment of this kind was capable of constituting interference with the applicant's private life in so far as it had attained a certain level of seriousness (§ 52). It pointed out that Article 8 was to be interpreted to mean that even where they had prompted heated debate on account of their behaviour and public comments, public figures should not have to tolerate being publicly accused of violent criminal acts without such statements being supported by facts (§ 52).

In the context of the Internet, the Court has emphasised that the test of the level of seriousness is important (*Tamiz v. the United Kingdom* (dec.), no. 3877/14, §§ 80-81). After all, millions of Internet users post comments online every day and many of these users express themselves in ways that might be regarded as offensive or even defamatory. However, the majority of comments are likely to be too trivial in character, and/or the extent of their publication is likely to be too limited, for them to cause any significant damage to another person's reputation. In this particular case, the applicant complained that his reputation had been damaged as a result of comments on a blog. In deciding whether that threshold had been met, the Court was inclined to agree with the national courts that while the majority of comments about which the applicant complained were undoubtedly offensive, in large part they were little more than "vulgar abuse" of a kind – albeit belonging to a low register of style – which was common in communication on many Internet portals. Furthermore, many of the comments complained of, which made more

specific – and potentially injurious – allegations would, in the context in which they were written, likely be understood by readers as conjecture which should not be taken seriously.

As regards third-party comments on a blog, the Court has emphasised that Article 8 encompasses a positive obligation on the Contracting States to ensure the effective protection of the right to respect for reputation to those within their jurisdiction (*Pihl v. Sweden* (dec.), no. 74742/14, § 28; see also *Høiness v. Norway*,no. 43624/14).

In *Dallas v. the United Kingdom*, no. 38395/12, 11 February 2016, the applicant was a juror sitting in a criminal trial. She had conducted research on the Internet and shared prejudicial information about the defendant with her fellow jurors. The applicant was found guilty of contempt of court by the national court. She contested the accessibility and foreseeability of the law of contempt of court, relying in particular on Article 7 § 1. The Court found that the test for contempt of court applied in the applicant's case had been both accessible and foreseeable.

S.W. v. the United Kingdom, no. 87/18, 22 June 2021, concerned accusations of professional misconduct made by a Family Court judge in the course of a fact-finding hearing in which the applicant, a social work, had given evidence as a professional witness. The Court found a violation of Article 8 and Article 13 read together with Article 8. She complained that she had received no notice of the findings of the Family Court until the oral judgment given at the conclusion of her hearing and that the national courts were unable to award her damages for the alleged breach of her right to respect for her private life.