ANNUAL REPORT

European Court *of* Human Rights **2022**

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

ANNUAL REPORT

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English edition

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Table of contents

Foreword

There is no doubt that 2022 will be remembered as a dark year for Europe and for the world, one in which the return of war on our continent had a truly devastating effect. For over seventy years, the European system for the protection of human rights has relied on respect for a certain number of values, not least democracy and the rule of law.

When those values are no longer upheld, when they are flouted, we see that the very worst can unfold. That is what happened on 24 February last, when one member State of the Council of Europe, the Russian Federation, invaded another, Ukraine.

The human tragedy that continues to play out in the eastern part of our continent has inevitably had repercussions for the entire Council of Europe and for the Court, its independent and autonomous judicial branch.

On 16 March 2022 the Committee of Ministers of the Council of Europe decided that Russia was no longer a member of the Organisation. In a Resolution adopted by the Plenary on 22 March, the Court spelled out the legal consequences of the cessation of membership, explaining

that it remained competent, pursuant to the "residual" jurisdiction conferred by Article 58 §§ 2 and 3 of the European Convention on Human Rights, to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention, provided that they had occurred up to 16 September 2022. On that date, Russia ceased to be a High Contracting Party to the European Convention and the judge elected in respect of Russia ceased to hold office.

By exercising its residual jurisdiction, the Court bears witness to the fact that a State may not take advantage of its expulsion from an international organisation in order to evade its responsibilities in the event of a Convention violation. This is all the more vital given that many of the pending cases are of great significance in terms of Russia's responsibility under international law.

Events linked to the war in Ukraine did not prevent the Court from continuing to fulfil its mission and process the thousands of cases brought before it.

The Court was extremely active throughout 2022, ruling on some 39,570 applications. The number of applications giving rise to a judgment in 2022 was 4,168, of which 3,554 were decided by a Committee of three judges. Single-judge formations dealt with almost 30,600 applications. At the close of 2021, 70,150 applications were pending. By the end of 2022, the figure was around 74,650.

Of the pending cases, 74% concern five countries: Türkiye, with approximately 20,100 applications, making it, since 1 August 2022, the highest case-count country; the Russian Federation, with around 16,750 applications; Ukraine (10,400); Romania (4,800); and Italy, with approximately 3,550 applications pending.

There has been a 15% increase since 1 January 2022 in the number of pending applications assigned to a Chamber (35,100). The number of pending applications assigned to a Committee also rose by 9% (34,800). Lastly, the number of pending applications assigned to a single judge fell by 38% to around 4,750.

Almost 10,200 pending applications concern conflicts between different member States. These are complex cases requiring particular efforts, notably in terms of staff deployment, and which justified the setting-up of a dedicated unit within the Court to deal with them.

Of the total number of pending applications, some 23,850 have been identified as priority cases. Many of these are, in reality, repetitive, in so far as the legal principles applicable are already well established. However, they raise important issues under, for example, Article 3 of

the Convention and thus concern questions relating to human dignity, justifying their priority status.

Since 2021 the Court has deployed a new, more targeted case-processing strategy aimed at processing cases that are legally complex and often sensitive, known as "impact" cases. Impact cases do not concern the core rights protected by Articles 2 or 3 of the Convention, with the result that the Court had been taking, on average, five to six years to process them, owing to a shortage of resources and their lower priority. However, some of these cases raise issues of considerable relevance for the State concerned and for the Convention system as a whole, such that it is vital to deal with them more expeditiously.

The new strategy is based on three principles: first, rapidly identifying the cases in question; secondly, monitoring them; and, lastly, simplifying their processing.

Today, just under two years after the strategy was launched, it is time to take stock. The figures speak for themselves. On 1 January 2022, of the 21,486 pending applications in category IV, 528 had been identified as "impact" cases. One year later, 429 of the 26,527 category IV applications pending have been identified as such. In 78% of these cases, notice of the application has already been given to the respondent Governments. From January 2021 to date, 551 "impact" cases have been examined: 187 of these applications resulted in a judgment; 41 were declared inadmissible or struck out, and 323 were notified to the respondent Government.

By definition, the number of "impact" cases cannot exceed a few hundred. However, these are cases that unquestionably require expeditious processing and the new case-processing model was thus an essential step in enabling the Court to fulfil its vital role, as emphasised by the member States in several intergovernmental declarations during the Interlaken process.

Impact cases concern a wide variety of topics, all of them crucial. This year we have seen, among many others, judgments in impact cases on sexual harassment in the workplace (*C. v. Romania*[1]); wheelchair access to public buildings (*Arnar Helgi Lárusson v. Iceland*[2]); judges' freedom of expression (*Żurek v. Poland*[3]); shortcomings of a national minority voting system (*Bakirdzi and E.C. v. Hungary*[4]); and the failure to implement swift

1. *C. v. Romania*, no. 47358/20, 30 August 2022.
2. *Arnar Helgi Lárusson v. Iceland*, no. 23077/19, 31 May 2022.
3. *Żurek v. Poland*, no. 39650/18, 16 June 2022.
4. *Bakirdzi and E.C. v. Hungary*, no. 49636/14, 10 November 2022.

and comprehensive desegregation measures in an elementary school (*X and Others v. Albania*[5]).

The Court witnessed other significant developments in 2022. On 1 February 2022, pursuant to Protocol No. 15 to the European Convention on Human Rights, the time-limit for applying to the Court was shortened to four months from the date of the final domestic decision. The new time-limit applies only to applications in respect of which the final domestic decision was taken on or after 1 February 2022.

One of the most important aspects of the Court's work is its dialogue with the superior courts, which it continued to strengthen throughout 2022.

A cornerstone of that dialogue is the advisory-opinion mechanism provided by Protocol No. 16 to the Convention, which allows the Court to issue advisory opinions at the request of the highest domestic courts. Whereas, prior to 2022, the Court had only ruled on two such requests, three opinions were adopted in 2022: one concerning the legislation on impeachment, at the request of the Supreme Administrative Court of Lithuania; another on limitation periods in relation to torture, at the request of the Armenian Court of Cassation; and a third on differences in treatment in national hunting legislation, at the request of the French *Conseil d'État*. In November 2022 the Court accepted a request from the Finnish Supreme Court for an advisory opinion on the procedural rights of a biological mother in adoption proceedings. These developments are an encouraging sign for the advisory-opinion procedure, which in 2023 will see the fifth anniversary of its entry into force.

In 2022 the Court also had a number of bilateral exchanges with the highest European and international courts. These included the Court of Justice of the European Union, the Court of Justice of the European Free Trade Association, the Inter-American Court of Human Rights and the African Court on Human and People's Rights. Equally, we continued to engage with our judicial counterparts in Council of Europe member States. In 2022 we held meetings in Strasbourg with the President of the French Court of Cassation, the French Constitutional Council, the Presidents of the Constitutional Court and Supreme Court of Armenia, the Supreme Court of Iceland, and a high-level delegation of family-law judges from the United Kingdom; abroad, meetings were held with the courts of Bosnia and Herzegovina, Finland, Georgia, Iceland, Ireland, Lithuania, Norway and the United Kingdom.

5. *X and Others v. Albania*, nos. 73548/17 and 45521/19, 31 May 2022.

As to the Superior Courts Network, in 2022 it reached the remarkable figure of 103 courts from forty-four States. We are particularly pleased to have welcomed the Court of Justice of the European Union as an observer to our network, which has now been running for over seven years.

On 18 October last the Court launched an external version of its knowledge-sharing platform, which is now available to the public. This platform is designed to further strengthen the subsidiary role of the European Convention, as it seeks to enhance the integration of the Court's case-law into national legal systems, thereby emphasising the fact that primary responsibility for the protection of Convention rights lies with the national authorities. Making the platform available to the outside world is also an important example of the Court's strategy to enhance its external communication. A modern court, and especially an international one, must constantly strive to explain its case-law and its topical relevance in as transparent a manner as possible. That is also the aim of the videos on the Court's case-law that were produced in 2022, a policy that will continue in 2023.

I invite you now to read the 2022 Annual Report. As is customary, it sets out the landmark judgments of the past year. Once again, these testify to the diversity of acts and omissions alleged to violate the Convention brought before the Court and the variety of issues raised. The report also highlights the large number of eminent legal figures who visited the Court in 2022, demonstrating the recognised importance of the Court's role in maintaining democratic stability and security and restoring peace in Europe.

All these achievements and meetings spur us on to continue with our mission, even and especially in these turbulent times. That is the course which my fellow judges and I have set for ourselves in the coming year.

Síofra O'Leary
President of the European Court
of Human Rights

Chapter 1

Speeches

Solemn Hearing, 24 June 2022

Robert Spano
President of the
European Court
of Human Rights

Madam President of the Hellenic Republic, Presidents of the Constitutional Courts and Supreme Courts, Mr Chairman of the Ministers' Deputies, dear Ambassador of Ireland, Mr President of the Parliamentary Assembly, Excellencies, ladies and gentlemen,

Thank you for attending this solemn hearing of the European Court of Human Rights.

For the second time, we are gathering at an unusual time of the year, since the health situation at the end of January prevented us from meeting.

However, my colleagues and I were very keen to maintain the tradition and to hold a hearing in 2022.

In a moment, I will make the customary speech, and our speaker for 2022, Ms Dunja Mijatović, Council of Europe Commissioner for Human Rights, will take the floor. But first, I would like to address our guest of honour.

Madam President of the Hellenic Republic,

Your presence with us this evening makes this hearing exceptional. For many reasons, it seems only natural that you should be present.

First of all, you come from the country which invented democracy, the only political model envisaged by the European Convention on Human Rights and one which we constantly defend in our case-law. I will come back to the theme of democracy later in my speech.

Secondly, you are here among your peers, since before assuming the high office of Head of State, you were the first woman to chair the Greek Supreme Administrative Court.

This was in recognition of a prestigious career as a lawyer, during which you distinguished yourself in particular by fighting for environmental protection and in combating discrimination, for example with regard to children.

It is therefore your former colleagues, the presidents of the superior courts of the Council of Europe member States, who surround you today.

Finally, the apogee of your career is that you are the first woman in the history of Greece to become President of the Republic.

Your election was not only an acknowledgment of your outstanding legal skills, but also a step towards a new era of equality.

In taking office, you stated that you "aspire to a society that respects rights, under the Constitution, the European Charter of Fundamental Rights and the European Convention on Human Rights". Our Court was particularly touched by this.

Madam President of the Republic,

This is a historic moment. We are all aware of that.

By taking the floor in this hearing room, you are marking in the most solemn way Greece's support for the European system of human rights protection.

Your presence among us is a great honour and a great joy. We look forward to hearing from you now.

* * *

Esteemed guests,

Your presence here this evening demonstrates your commitment to our joint European human rights project. A project which is needed now more than ever.

We meet here in Strasbourg at a transformative moment in our European history, a moment when the relative peace and security which we have taken for granted on our continent has been shattered by Russia's war in Ukraine.

When we celebrated the 70th anniversary of the European Convention in Athens in November 2020 we highlighted that the Convention constituted one of the greatest peace projects in human history.

I firmly believe that the work of the Council of Europe and its judicial control mechanism, the European Court of Human Rights, has contributed to stability, security and peace in Europe and will continue to do so. While it is often said that the Court is the "jewel in the crown", the crown must remain strong for the jewel to continue to shine.

It was therefore of immense importance that the Council of Europe reacted with speed, determination and clarity from the beginning of the war. Moreover, the Court has not remained a powerless witness to the shocking events.

Indeed, the Court immediately granted a number of important interim measures against the Russian Federation in the days and weeks following the invasion.

Furthermore, the Plenary Court, having regard to the decisions of the Committee of Ministers and the Parliamentary Assembly and in unison with those bodies, acted on the Russian Federation's expulsion from the Organisation and declared in its Resolution of 22 March this year that, as from 16 September 2022, the Russian Federation would cease to be a High Contracting Party to the Convention.

It flows from this Resolution that the Court will continue to have jurisdiction to deal with applications concerning actions and omissions by the Russian Federation which may constitute a violation of the Convention, provided they occurred before that date.

It should be made clear that the Resolution states that it is without prejudice to the consideration of any legal issue, related to the expulsion, which may arise in the exercise by the Court of its competence under the Convention to consider cases brought before it.

In the coming months the Court will have to determine the most appropriate course of action for processing the approximately 17,000 cases against Russia which remain on the Court's docket, as well as possibly numerous other cases lodged as a result of the war in Ukraine. This will take time, and expectations need to be realistic. The challenge for the Court's work is unprecedented. Continued political and financial support from all stakeholders is vital.

As for the Court's statistics more generally, we currently have approximately 72,000 pending applications, which represents an 11% increase

from this time last year. Three countries account for almost 64% of these applications: Russia, Türkiye and Ukraine.

* * *

Dear guests,

It is customary for the President of the Court at the solemn hearing to highlight some of the most important judgments delivered by the Court during the previous year.

In 2021 the Grand Chamber of the Court delivered twelve judgments and one decision. It also ruled for the first time on a request for an advisory opinion under the Council of Europe Convention on Human Rights and Biomedicine (the Oviedo Convention).

Let me begin by saying a few words about the inter-State rulings delivered by the Grand Chamber in 2021.

The judgment in *Georgia v. Russia (II)*[1] concerned the jurisdiction of the attacking or invading State during the active combat phase of hostilities; the relationship between Convention law and international humanitarian law in the context of an armed conflict; the duty to investigate deaths occurring during the active combat phase; the definition of administrative practice; and the application of Article 2 of Protocol No. 4 to internally displaced persons.

In this inter-State application, the Georgian Government made a series of complaints concerning the armed conflict between Russia and Georgia in August 2008. The Court examined two phases of the impugned events separately, namely those before and those after the ceasefire agreement of 12 August 2008. It held that the events which had occurred during the active phase of the hostilities (8-12 August) did not fall within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention, whereas the events which occurred after the ceasefire and the cessation of the hostilities did fall within its jurisdiction. On the merits, the Court found that there had been an administrative practice contrary to Articles 2, 3, 5 and 8 of the Convention, Article 1 of Protocol No. 1 and Article 2 of Protocol No. 4; a violation of the procedural limb of Article 2; and a failure to comply with the obligation to cooperate with the Court under Article 38 of the Convention.

In the inter-State application *Ukraine v. Russia* (re *Crimea)*[2] the Ukrainian Government made a series of complaints about the events of 27 February 2014 to 16 August 2015, in the course of which the region of Crimea, including the city of Sevastopol, was purportedly integrated

1. *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021.
2. *Ukraine v. Russia* (re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.

into the Russian Federation. In its decision, the Grand Chamber held that the impugned facts fell within the "jurisdiction" of the Russian Federation within the meaning of Article 1. It also addressed the "jurisdiction" of a respondent State in the context of a purported "annexation" of territory from one Contracting State to another and clarified the standard of proof applicable at the admissibility stage to the question of jurisdiction.

With fifteen pending inter-State cases and approximately 10,500 associated individual applications, inter-State work remains a very challenging part of the Court's work and has implications for our authority and legitimacy moving forward. Indeed, at the beginning of this year, the Court held a hearing on admissibility in yet another important inter-State case, that of *Ukraine and the Netherlands v. Russia*, concerning events in eastern Ukraine, including the downing of flight MH17.

The next two Grand Chamber cases I would like to highlight are the landmark judgments in *Big Brother Watch and Others v. the United Kingdom*[3] and *Centrum för rättvisa v. Sweden*[4]. Both cases concerned the bulk interception of cross-border communications and safeguards against abuse, and in addition *Big Brother Watch and Others* concerned the receipt of intelligence from foreign intelligence services.

In both judgments, delivered on the same day, the Court importantly concluded that bulk interception regimes were, in principle, permissible under the Convention. However, it set out the fundamental safeguards required of these regimes under the "private life" provision of the Convention. In particular, the Court found that at the domestic level, the supervision and review process had to be subject to "end-to-end" safeguards. In the *Big Brother Watch and Others* case, the Court also developed Convention requirements for the protection of confidential journalistic material. Moreover, the Court defined the safeguards to ensure compliance with the Convention in respect of the receipt of intelligence from foreign intelligence services.

It is of importance to highlight the fact that in its judgments the Court paid a great deal of attention to the work and specific findings of the national authorities and the domestic courts engaged in intelligence work. These cross-references are an important part of our dialogue and the best way in which we can understand and balance the competing concerns at play.

To conclude this overview of cases in 2021, I will mention two particularly important Chamber cases, as they concern one of the most

3. *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, 25 May 2021.

4. *Centrum för rättvisa v. Sweden* [GC], no. 35252/08, 25 May 2021.

fundamental aspects of the rule of law, namely the independence of the judiciary and, more specifically, the conditions of appointment of judges and the development of their careers.

In *Xero Flor w Polsce sp. z o.o. v. Poland*[5], the Court dealt with a complaint concerning the alleged invalidity of the appointment of a Constitutional Court judge. It held that there had been a violation of Article 6 § 1 as regards the applicant company's right to a "tribunal established by law" on account of the presence on the bench of the Constitutional Court of the judge in question, whose election it found to have been vitiated by grave irregularities.

In *Reczkowicz v. Poland*[6] the Court found that the procedure for appointing judges had been unduly influenced by the legislative and executive powers. This amounted to a fundamental irregularity which adversely affected the whole process and compromised the legitimacy of the Disciplinary Chamber of the Supreme Court, which had examined the applicant's case. This Chamber was not therefore a "tribunal established by law" within the meaning of the European Convention.

More recently, I should also note that the Court delivered its first Grand Chamber judgment on the judicial reforms in Poland in the case of *Grzęda v. Poland*[7], which I am sure will be elaborated upon further by my successor in office in next year's speech at the Court's solemn hearing to mark the opening of the judicial year.

All of these cases follow on from the very important Grand Chamber judgment in the case of *Guðmundur Andri Ástráðsson v. Iceland*[8] from 2020.

These judgments on the independence of the judiciary, which concern a growing number of countries, alert us to a worrying regression in the rule of law. It bears repeating that sometimes courts, whether at the domestic or the international level, find themselves in the spotlight, praised by some quarters and criticised by others. The European Court of Human Rights is no exception and recent events have provided clear examples. Let us be clear. The rule of law is based on a very simple and important premise: those who are entrusted with wielding governmental power must themselves be circumscribed by the law and it is the role of the courts to state what the law is if a dispute arises. When it comes to the European Court of Human Rights, this is the logic of the system to which the member States have signed up, based on their own

5. *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021.
6. *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021.
7. *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022.
8. *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, 1 December 2020.

sovereign choice. The Court has demonstrated in recent years an acute awareness of the role of national authorities under the principle of subsidiarity, but sometimes the Court's rulings must draw a line in the sand. Indeed, that is the whole point of why the system was put in place more than seventy years ago. This role can be unpopular with the government in question or even sometimes with the majority of a country's population, if the outcome is not to their liking. But this is inherent in the work of a human rights court which is tasked with verifying the Convention-compliance of the use of governmental power.

Ladies and gentlemen,

A Europe in which the separation of powers has been eroded by those in power;

A Europe where sustained public expressions of hostility or outright refusals to abide by court judgments are commonplace;

A Europe where judges are simply unable to do their jobs independently and impartially for fear of reprisals or attacks resulting in unfettered governmental power:

This is a Europe in which the rule of law is at risk of disappearing. This is a Europe in which we will no longer be free, as recent events have once again shown us.

* * *

Dear guests,

As has been said, dialogue between the Court and national courts is part of our DNA. Today I would like to update you briefly on two pillars of that dialogue: our Superior Courts Network and requests for advisory opinions under Protocol No. 16.

We have a truly outstanding figure of 102 courts from forty-five States which are now active members of our network. I am particularly pleased to have welcomed the Court of Justice of the European Union, which recently joined as an observer.

The other pillar of dialogue with national courts is Protocol No. 16. This Protocol, which came into force in 2018, extended the jurisdiction of the Court to give advisory opinions at the request of the highest national courts.

What is the state of play so far in relation to these advisory requests?

The Court has adjudicated four such requests so far: one on the question of surrogacy and legal recognition[9], another on the interpretation

9. *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], request no. P16-2018-001, French Court of Cassation, 10 April 2019.

of a provision of a domestic Criminal Code in the light of Article 7 of the Convention[10], the third concerning legislation on impeachment[11], and the fourth on the statute of limitations and torture[12]. One request was not accepted by a panel of the Grand Chamber, and one is currently pending, having been submitted by the French *Conseil d'État*.

The advisory opinion procedure under Protocol No. 16 is still at the development stage within the Court, as well as within the relevant national superior courts already participating in the procedure. It will take some time for the system to become fully efficient and operational in all its essential elements. The Court is committed to being able to process these requests in a sufficiently quick manner so as to enable you, the highest domestic courts, to resume your own decision-making on the cases in question.

* * *

Dear guests,

The time has come for me to hand over to our guest of honour. This evening we welcome Ms Dunja Mijatović, the Council of Europe's Commissioner for Human Rights.

Her mandate goes to the heart of the functioning of the Convention system. Her country work, thematic monitoring and awareness-raising assist member States on their own journey towards human rights compliance.

Her insights following country visits are sometimes translated into third-party observations which provide a precious contribution to the work of the Court.

I would like to commend her courage, dynamism and energy in defending our common European values. Commissioner Mijatović, dear Dunja, the floor is yours.

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10. *Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law* [GC], request no. P16-2019-001, Armenian Constitutional Court, 29 May 2020.

11. *Advisory opinion on the assessment, under Article 3 of Protocol No. 1 to the Convention, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings* [GC], request no. P16-2020-002, Lithuanian Supreme Administrative Court, 8 April 2022.

12. *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, 26 April 2022.

Dunja Mijatović
Council of Europe's Commissioner for Human Rights

President Spano, President of the Hellenic Republic, Distinguished Judges, Excellencies, ladies and gentlemen,

As Commissioner for Human Rights, I attach crucial importance to dialogue with the Court. There have been many occasions on which I have had the honour to come to this room (but also to address this Court remotely by taking part in the first digital hearing in the history of this institution). It is always a special feeling to be present in the place where decisions are taken on matters which not only bear great importance for the individuals concerned but also reflect topical issues with which democratic societies are confronted, and that is why it is an immense honour to have been invited to deliver an address at today's solemn hearing. I see this invitation as a sign of particular attention to the current human rights challenges, but also a result of the continuous dialogue that has been established between our institutions. I consider it a good example of synergies that, each within its own mandate, contribute to the good functioning and sustainability of the Convention system.

It is perhaps not an exaggeration to say that the need for this system today is as pressing as it was when it was established more than seventy years ago. Back then, the leaders of European countries took the foresighted decision to create a system for the collective enforcement of human rights with the aim of safeguarding individuals from State abuse

and newly established democracies from the risks of backsliding into totalitarianism. We should not forget this.

When the Convention was adopted, our continent looked very different. The death penalty was widely legal and operative. Hundreds of thousands of Europeans were still waiting to be repatriated or resettled after the Second World War, while thousands of new refugees were escaping through the Iron Curtain. In several countries homosexuality was criminalised.

If today's picture looks much better, it is largely thanks to the Convention system and the Court's dynamic and evolutive interpretation doctrine that has been instrumental in applying a text adopted in 1950 in the light of major societal changes which have happened in the past seven decades. No wonder then that the Convention, its Protocols, the Court and the whole human rights protection system that the Council of Europe has established have become a lodestar for those pursuing justice, dignity and equality.

But success stories, too, come with obstacles to overcome: the Convention system has been repeatedly attacked and delegitimised in some European countries; key judgments of this Court have still not been implemented; and States often fail or do not even try to address the structural problems that deprive people of their Convention rights.

In the long run, the non-enforcement of Convention rights and the disregard of basic principles of international law can lead to deleterious consequences.

The case of the Russian Federation stands out in Europe as one of the worst examples of disregard for human rights. Today's hearing takes place in extraordinary circumstances for the values our Organisation represents. Exactly four months ago, Russia started a brutal military attack on Ukraine, which has caused terrible human suffering to millions of people. Many thousands were ruthlessly killed, including hundreds of children, and millions of people saw their lives turned upside down.

I could see for myself the traces of the atrocities committed in Ukraine during my visit at the beginning of May. In Kyiv, Irpin, Bucha and Borodyanka I listened to shocking stories of extrajudicial executions, violence and destruction.

The current situation is the tragic epilogue of years of departing from agreed human rights standards. For years, the government of the Russian Federation has ignored judgments of this Court and recommendations from our Organisation, including my Office. The unresolved impunity for the grave human rights violations stemming from the war in Chechnya, the brutal internal repression of dissent and free expression and now

this ruthless aggression against Ukraine and its people are painful illustrations of what can happen when a State disregards international law and order and ignores human rights standards and the common rules established to guarantee international peace.

It is an extreme case, hardly comparable with other situations in our member States. There are, however, signs of an increasing lack of compliance with the most basic human rights standards of our Organisation in member States, which requires serious attention and more resolute action on the part of States within the collective system of our Organisation.

One worrying trend I have observed during my mandate as Commissioner is the erosion of the rule of law in a growing number of our member States. I think we all agree that without full respect of the rule of law, it is not possible to protect human rights.

The erosion of the rule of law manifests itself when governments refuse to abide by court decisions, undermine public confidence in the judiciary, violate judicial independence, weaken judicial bodies, pressure individual judges, and reduce parliaments to a rubber-stamp.

Invariably, it goes hand in hand with a hardening of governments against the standards set in the Convention and by the institutions of the Council of Europe.

Standards on freedom of expression, freedom of association and freedom of assembly are a case in point. As part of my mandate, I work constantly with human rights defenders, civil society and the press. Their reality is far from reassuring.

The case of Osman Kavala is emblematic. He has been in detention in Türkiye for the past almost fifty-six months despite a judgment of this Court from 2019, as well as nine decisions and one interim resolution by the Committee of Ministers of the Council of Europe. His case shows the wrongs and unfair treatment that individuals may face when the judiciary provides tools for repression instead of remedies against it. It also shows the limits of what an international system can achieve. In the end, the ultimate responsibility for upholding human rights norms lies with States.

Just last week this Court issued its judgment in the case of *Ecodefence and Others v. Russia*[1] – a long-awaited one which is also very important for civil society.

Non-execution of judgments sometimes affects not only individual applicants, including human rights defenders, but also the broader

1. *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022.

democratic fabric of a society. For almost thirteen years now, the judgment of this Court in the case against Bosnia and Herzegovina in *Sejdić and Finci*[2] has remained a dead letter, mainly because of a lack of political will. The non-implementation of that judgment and of others like *Zornić*[3], *Šlaku*[4] and *Pilav*[5] dealing with the discriminatory nature of the country's electoral system is one of the factors that sustain a status quo based on the ethnic divisions that represent a constant threat to peace and stability in Bosnia and Herzegovina.

Judgments of this Court on individual complaints as well as more broadly those which reveal systemic problems set the record straight and give visibility and recognition to victims. These judgments are also an authoritative counterweight to the forces that seek to evade justice by discrediting the international system of human rights protection and by adopting laws that stifle dissent as well as individual and associative rights.

I have observed other systemic problems that illustrate the hardening of certain governments against the spirit and the letter of the Convention: fixing these problems is primarily the member States' responsibility. Everyone should be able to seek and receive justice at home, in line with the subsidiarity principle. Recourse to an international court should be seen for what it is – essentially a failure by a State to provide proper national remedies.

But we all have our role to play. As an institution enshrined in the Convention since the entry into force of Protocol No. 14 in 2010, I share the responsibility to help make Convention rights a reality for all.

The Convention has been a permanent reference point in my work, be it in my country monitoring, thematic work or third-party interventions before this Court. As an *amicus curiae*, my role is obviously not to provide this Court with a specific assessment of a case before it. However, as stressed in the explanatory report to Protocol No. 14, the Commissioner's work and experience may

> help enlighten the Court on certain questions, particularly in cases which highlight structural or systemic weaknesses in the respondent or other High Contracting Parties.

These elements, and the protection of the "general interest" to which the explanatory report to Protocol No. 14 also refers, are my compass

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2. *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, ECHR 2009.
3. *Zornić v. Bosnia and Herzegovina*, no. 3681/06, 15 July 2014.
4. *Šlaku v. Bosnia and Herzegovina* [Committee], no. 56666/12, 26 May 2016.
5. *Pilav v. Bosnia and Herzegovina*, no. 41939/07, 9 June 2016.

when selecting the cases on which, as a friend of this Court, I submit observations. So far, I have made sixteen *amicus curiae* interventions. Most of them have dealt with harassment of human rights defenders, the denial of migrants' rights, gender inequality and limitations to women's rights. They have also covered several countries, including Azerbaijan, Croatia, Denmark, France, Italy, Moldova, Poland, Portugal, Romania, the Russian Federation, Spain, Sweden and Türkiye.

Much has been said about the Convention as a living instrument. Therefore, I will not dwell on this aspect. Suffice to say here that this Court's dynamic and evolutive interpretation has made the Convention system a source of inspiration within Europe and beyond.

Such a dynamic and evolutive interpretation has brought a contemporary reading of the rights protected and of the obligations of the High Contracting Parties, also in the face of new challenges emerging in society. Particularly noteworthy in this context is the role of this Court in assessing the compliance with the Convention of measures adopted during the COVID-19 pandemic by several High Contracting Parties which was discussed at your seminar this afternoon.

If new challenges in society put the evolutive interpretation of the Convention to the test, old ones pose a more existential threat to the Convention system. I refer here to situations in which a High Contracting Party violates the right to individual applications or refuses to recognise the binding nature of judgments and the obligation to execute them.

Here too the Court has been able to adapt and defend foundational principles. I consider of particular importance, for example, the Court's principled case-law in terrorism-related cases where it reaffirmed the duty States have to comply with their Convention obligations even when this may lead to unpopular decisions. In the same line, the Court's role in the protracted non-compliance with its judgments by States represents a bulwark against arbitrariness.

The Court has also been innovative in addressing emerging challenges and exploring new avenues, like the reinforcement of the dialogue between courts, including the Superior Courts Network, and in giving a voice to NGOs and civil society, which are often the first in bringing human rights violations to light.

This is all important and has already been stressed.

What I think should be stressed more is the role of the Convention as a life-saving instrument. Here I would like to provide a few examples from my field work that show the impact that the Convention system can have on people's lives.

In November 2021 I was in Poland to assess the human rights situation of asylum-seekers and migrants on the border with Belarus. Late one night, I accompanied human rights defenders in the border areas and witnessed how a group of asylum-seekers, who had been stranded in the cold and wet woods for many weeks and pushed back to Belarus many times, could finally safely leave the woods thanks to the protective guarantee of the Court's interim measures. It is evident to me – and has also been stressed by many activists and lawyers helping asylum-seekers that I have spoken with – that for many of these people, the Court's interim measures were the only protection from an immediate return across the border. These people would have otherwise been left in freezing conditions and without access to even the most basic humanitarian assistance, and possibly subjected to severe ill-treatment at the hands of the Belarusian authorities.

Several of the interim measures addressed to the Government of Greece urging the protection of the health, life and physical integrity of asylum-seekers held in several reception facilities were equally life-saving. Having been in such reception facilities in Lesbos, Samos, and Corinth, I cannot but attest to the importance of your decisions.

I do not have the slightest doubt that interim measures have saved many human lives across our continent.

These are some examples that speak for the ability of this Court to interpret the Convention in the light of emerging problems and the potential of the Convention system to remain a life-saving instrument. These aspects must be protected. We all have a role in that: the Court, monitoring bodies, my Office. But the primary responsibility rests on the shoulders of all the States Parties' institutions: the executive, the legislative and the judiciary.

I think this message resonates with the President of the Hellenic Republic, Ms Katerina Sakellaropoulou, whom I am happy to see among us today. Madam President, you took a clear stance on several occasions on the need to protect human rights and the rule of law to ensure a healthy democracy. Such messages coming from high-level State officials are crucial to influence the commitment of State authorities to render the Convention rights practical and effective at the national level. Because for all the international mechanisms that we may have to protect human rights, the reality is that the best human rights protection is one which happens at the national level.

To their credit, member States had foresight in establishing the Convention and its mechanisms over the past seventy-three years. They have enriched the Convention with additional Protocols, they

have created a mechanism which is unique in the world through which individuals, NGOs or groups of individuals can hold States accountable. Thanks to Protocol No. 14 and the adoption of Rule 9 by the Committee of Ministers, States gave my office *motu proprio* access to the Court and the possibility to intervene in the process of the execution of judgments. With Protocol No. 16, they laid down the basis for a more harmonised integration of human rights law at the national level through the possibility for the Court of giving advisory opinions to the highest courts and tribunals of Contracting Parties. This has huge potential to reinforce both the principle of subsidiarity and the role of national judges in protecting the rights of the Convention.

The challenge now is how to enforce this unique system of collective responsibility to improve human rights protection. I think that one of the main steps that member States should take is to remove obstacles which impede or slow down the implementation of judgments.

The problem of non-implementation or cherry-picking Court judgments is one stark illustration of the faltering commitment to upholding human rights standards in many of our member States. The failure to implement some of the interim measures ordered by this Court is also part of this trend. At the root of this problem lies a misplaced belief by politicians that they enjoy a higher democratic legitimacy than the judiciary. This often results in the adoption of legislation which is not aligned with international or even national jurisprudence, the dismantling or the control of democratic institutions and the subordination of human rights standards to a State's interest. Such trends undermine the democratic fabric of our societies, and must be reversed.

I have said this on other occasions, and I think it is worth repeating it in this room of justice: States should no longer procrastinate in realising human rights for all.

They should recommit to the values and norms of our Organisation. State authorities – and I include here the three branches of power – should become more robust defenders of human rights and of the collective system put in place to protect, promote and fulfil them.

I see in particular four areas where States should intervene.

One crucial step is to embed the standards of our Organisation and the case-law of this Court into national legislation, jurisprudence and practice.

The prevention of violations and the provision of effective remedies at the national level is another key area of intervention. To this end, the independence and impartiality of the judiciary should be respected and

reinforced and cooperation with national human rights institutions, NGOs and civil society improved.

National judges should be front-line actors in giving effect to Convention rights. They should be supported – not constrained – in this endeavour. In this sense, following the tabling of the Bill of Rights bill by the United Kingdom government earlier this week, I cannot but feel concerned at the restrictions it appears to entail on the national judges' ability to interpret the Convention rights as ordinary judges, and to take this Court's case-law fully into account while preserving it as a living instrument. The adverse impact of this on individual access to Convention rights and on the principle of subsidiarity must also be mentioned in this context.

Thirdly, I see the need for increased awareness and education about the standards of the Convention system, both among the public and legal practitioners. This is particularly important at the present juncture because the shorter time available to lodge a complaint introduced by Protocol No. 15 may complicate the exercise of the right to individual applications, which carries the risk of reducing the effectiveness of the Convention system.

Lastly, I think that member States should make better use of the tools of the Organisation to exert the necessary pressure to ensure respect for democracy, human rights and the rule of law by their peers.

Mr President,

Reaching the conclusion of my intervention, I would like to quote you when, in a recent speech given in Oslo, you said:

> Bringing rights home is an integral part of the system itself and we should embrace it and attempt to make this transformative change as smooth as possible.

This is the key to giving effective meaning to the Convention system.

Mr President, ladies and gentlemen,

The key principles of the Convention system, in particular respect for human rights for all and the guarantees provided by a solid rule of law, are the lifeblood of our democracy. They are not an abstract concept, but indispensable nutrients of just and thriving societies.

The Council of Europe and its Court are the main protectors and promoters of this system. It is therefore necessary that member States, both within their borders and as part of a community, strengthen their commitment to the founding values and institutions of our Organisation and to the universal protection of human rights.

The Convention system stems from the vision and courage of leaders who understood that defining common European norms and applying them at the national level was the best antidote for oppression.

The times of those leaders were not easier than ours. Our task is not bigger than theirs. It is now our turn to give renewed impetus to the ambition of safeguarding a system "based upon justice and international cooperation".

Katerina Sakellaropoulou
President of the Hellenic Republic

President of the European Court of Human Rights, members of the Court, Excellencies, ladies and gentlemen,

It is a great honour and joy to be here today and address the European Court of Human Rights. My personal interest and perception of the utmost importance of the Convention has arisen during my long career as a judge and President of the Greek Council of State. As the President of the Hellenic Republic, I am very pleased to confirm that the bonds between my country and the Council of Europe remain strong and undisputed.

Greece ratified the European Convention on Human Rights initially in 1953 and finally in 1974, after the end of the dictatorship of the colonels. The famous "Greek case" was a decisive moment for the protection of human rights and accordingly the shaping of policies and standards. The withdrawal of Greece highlighted the value of freedom and as a result the delegitimisation of the junta, at home and abroad, was accelerated. At the beginning of the post-dictatorship era, which in Greece is called "Metapolitefsi", the judicial reception and interpretation of the Convention was reluctant, to say the least. The Greek legal order and the judicial system were not acquainted with the normative status and context of the Convention. Nonetheless, progressively the European Convention turned into a valuable tool for understanding not only European law and human rights doctrines, but also the meaning of our own constitution.

Moreover, it has been recognised as a part of our ordinary language and common legal discourse, mostly after the individual complaint mechanism was set up. During those years, distinguished Greek legal scholars served the Court and Greek controversial cases made the headlines. The Convention's case-law has proved to be a force for the reform of national legislation and domestic law in general. In particular, concerning Greece, religious liberty, property rights, and fair-trial guarantees have been more effectively safeguarded thanks to the implementation of the Court's judgments. Applying the Convention has also led to constitutional change: an interpretative statement has been added to Article 4 recognising conscientious objectors, following on from the relevant decision. Article 57 of the Greek Constitution has been amended in order to comply with another significant judgment of the Court regarding the professional activity of members of parliament. The Convention has enhanced national respect of minorities' rights and identities, promoting and imposing inclusive policies such as the extension of the cohabitation pact to same-sex couples. Furthermore, constant and interactive dialogue between the European and national authorities has ensured a greater involvement of national courts in the Convention system. Thus, conventionality control has become a significant part of the actual judicial review, so as to prevent human rights violations and comply with European Convention standards. Taking into account the Strasbourg case-law is an essential obligation of the courts and of national authorities.

The concept that the European Convention on Human Rights is a dynamic text and a living instrument has been a crucial feature of Strasbourg's case-law from the very start. Evolutive interpretation is inherent to the Court's role and legitimacy. Furthermore, this fundamental idea reflects the progress and depth of the European social contract. The Convention and the Court's decisions establish our common ground, exceeding the boundaries of the law and forging our European culture and way of life, without effacing national identities or underestimating the fair balance between cosmopolitanism and patriotism. The conciliation of realism and idealism seems to be the major and most demanding task of the legislature, the executive and the courts.

The consecutive crises of the last decade have challenged the protection of human rights and redefined the concept of general interest and the doctrine of the margin of appreciation, as well as the fundamental principle of "democratic society". According to the recent annual report of the Committee of Ministers of the Council of Europe, the human rights protection system faces several challenges, with more complex cases coming to the Court and governments finding it increasingly difficult to

respond quickly to judgments. The departure of Russia from the Council of Europe will have consequences, while emphasising the prominence of the Convention. The COVID-19 pandemic not only severely exposed public health but also the limits of democracy and the rule of law. On the one hand, the serious interference with our freedoms and the derogation of some member States from the Convention demonstrate the emergency of the crisis-law, a change of paradigm which is rather pessimistic for the future of human rights. On the other hand, the preservation, from a republican point of view, of public health as a common good captures the vital and urgent need to guarantee social coherence. The pressure on rights and the extreme recent circumstances, in other words, the atypical or formal state of necessity, impose legislative and judicial pragmatism. However, our common values and beliefs, freedom, equality and solidarity, shall not be undermined nor marginalised. The *Vavřička and Others*[1] judgment was seminal as regards national litigation in respect of mandatory vaccination and the Court proved a true leader in this matter, underlining the notion of social solidarity in favour of the vulnerable. Also, with regard to the most recent acts of invasion committed by Russia against its neighbouring countries, the Court rose to the occasion again, issuing interim measures against Russia regarding the war in Ukraine.

Today, the European *acquis* of the rule of law is widely contested, even within the European frontiers. The Secretary General of the Council of Europe has warned us about this "democratic backsliding". New authoritarian and populist regimes are targeting freedom of expression and judicial independence and oppose the foundations of liberal democracy in the name of the majoritarian principle. The Court has developed significant case-law concerning the impartiality and independence of justice. The same applies to the migration issue, where the Court has highlighted the obligation of the States to respect the Convention and the principle of *non-refoulement*.

Ladies and gentlemen,

Ensuring and consolidating democracy and the rule of law in times of crisis is not a purely procedural matter. Facing the new challenges will require the preservation of our essential and common values, the core of our European way of life and of our mutual understanding that continues to make Europe a privileged region of our planet. It is in the inexhaustible legacy of our founding fathers, here in Strasbourg, that we find the power and vitality of our common destiny.

Thank you.

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1. *Vavřička and Others v. the Czech Republic* [GC], nos. 47621/13 and 5 others, 8 April 2021.


LES DROITS DE L'HOMME
SELON
LE CHAT
(DE PHILIPPE GELUCK)
TOUS LES HOMMES ONT LE DROIT D'AVOIR DES DROITS
ARTICLE 2
ARTICLE 3
ARTICLE 4
ARTICLE 6
ARTICLE 8
ARTICLE 10
ARTICLE 12
ARTICLE 13
ARTICLE 14


La France
et la
Cour européenne
des droits de l'homme
France
and the
European Court
of Human Rights


ROLV RYSSDAL
PRESIDENT OF THE EUROPEAN COURT OF HUMAN RIGHTS
PRÉSIDENT DE LA COUR EUROPÉENNE DES DROITS DE L'HOMME
1985 - 1998

Chapter 2

Case-law overview

This overview[1] contains a selection by the Jurisconsult of the most interesting cases from 2022.

In 2022 the Grand Chamber delivered nine judgments, one decision and three advisory opinions.

Under Article 3, the Grand Chamber dealt with three cases concerning extradition. In *Khasanov and Rakhmanov* it clarified the scope and nature of the risk assessment under Article 3 in removal cases, as well as the methodology for cases brought by members of vulnerable groups allegedly exposed to systematic ill-treatment. In *Sanchez-Sanchez* the Grand Chamber clarified whether the Convention compliance of a life sentence in a third country requesting extradition is to be assessed by reference to all of the standards which apply to serving life prisoners in the Contracting States (as set out in *Vinter and Others*). In the decision in *McCallum* the Grand Chamber confirmed its approach of distinguishing between the substantive obligation under Article 3 and the related procedural safeguards, the latter not being applicable in the extradition context.

In *Grzęda* the Grand Chamber considered a novel issue: the applicability of Article 6 § 1 (civil limb) to a dispute arising out of the premature termination of the term of office of a member of a judicial council (the National Council of the Judiciary) while he still remained a serving judge. In doing so, it developed and clarified the first and the second conditions of the Vilho Eskelinen test. The Grand Chamber also had regard to the overall context of the reforms of the judicial system, finding that, as a result, the judiciary had been exposed to interference by the executive and legislative powers, and its independence and adherence to rule-of-law standards had been substantially weakened.

1. The overview is drafted by the Directorate of the Jurisconsult and is not binding on the Court.

Under the criminal limb of Article 6 § 1, in *Vegotex International S.A* the Grand Chamber clarified the criteria for assessing the compelling nature of the general-interest grounds which are advanced to justify the use of retrospective legislation designed to influence the judicial determination of a dispute in a tax-related case.

Under Article 10, in *NIT S.R.L. v. the Republic of Moldova* the Grand Chamber developed its case-law on pluralism in the media when dealing, for the first time, with restrictions imposed on a broadcaster with the aim of enabling diversity in the expression of political opinion and enhancing the protection of the free-speech interests of others.

In *Beeler* the Grand Chamber clarified, for the purposes of the applicability of Article 14, the relevant criteria to be applied to circumscribe what falls within the ambit of Article 8, under its "family life" aspect, in the sphere of social welfare benefits. Also under Article 14, in *Savickis and Others* the Grand Chamber dealt with the justification of a difference in treatment based on nationality, in the context of the restoration of a State's independence after unlawful occupation and annexation.

In *H.F. and Others v. France* the Grand Chamber ruled, for the first time, on the existence of a jurisdictional link between a State and its "nationals" in respect of a complaint under Article 3 § 2 of Protocol No. 4, and examined the scope of this provision, including with regard to the extent of procedural obligations of the State in the context of a refusal to repatriate.

The Grand Chamber also delivered its second judgment in an infringement procedure (*Kavala*), finding that Türkiye had failed to abide by the Court's final judgment explicitly indicating, under Article 46, the need for an applicant's immediate release. In this connection, the Grand Chamber clarified certain matters concerning the roles of, and the institutional balance between, the Court and the Committee of Ministers of the Council of Europe.

The Grand Chamber also delivered three advisory opinions in response to requests under Protocol No. 16 to the Convention. In response to a request from the Armenian Court of Cassation (P16-2021-001), the Grand Chamber addressed aspects of its Article 3 and Article 7 case-law with regard to the applicability of statutes of limitations to the prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture. In response to a request from the French *Conseil d'Etat* (P16-2021-002), the Grand Chamber clarified aspects of the practical application of the non-discrimination rule enshrined in Article 14. In response to a request

from the Lithuanian Supreme Administrative Court (P16-2020-002), the Grand Chamber identified the limits of advisory opinions as regards issues relating to the execution of the Court's judgments. It also clarified the requirements and criteria relevant for the assessment of whether the ban preventing an impeached former member of parliament to stand for election to the *Seimas* had become disproportionate for the purposes of Article 3 of Protocol No. 1.

The Court sitting in Chamber formation also delivered a number of judgments which were interesting in terms of the development of its case-law.

Under Article 2, the Court applied, for the first time, the Osman positive obligation to take preventive operational measures to protect migrants during a sea rescue operation (*Safi and Others*). It also examined, for the first time, whether an act of euthanasia was compliant with the Convention (*Mortier*). Under Article 3, the Court addressed the issue of the repeat victimisation of a rape victim (*J.I. v. Croatia*).

Under Article 6 (criminal limb), the Court clarified the nature and scope of the privilege against self-incrimination in the context of proceedings for the imposition of a tax fine (*De Legé*). The Court also clarified the applicability of Article 7 to conversion, upon a prisoner's transfer, of a foreign reducible life sentence into a *de facto* irreducible one (*Kupinskyy*).

Under Article 8, the Court examined, for the first time, a complaint about age-assessment procedures for migrants requesting international protection and claiming to be minors (*Darboe and Camara*), and a complaint about sexual harassment in the workplace (*C. v. Romania*).

As to freedom of expression, the Court clarified the factors relevant for assessing whether the protection of Article 10 extends to a given act or conduct prohibited by law (*Kotlyar*) and whether the measures aimed at protecting the reputational interests of a public body can be regarded as pursuing a "legitimate aim" under Article 10 § 2 (*OOO Memo*). Under Article 11, the Court addressed a new question, namely the applicability of this provision to a strike conducted by individual employees, outside the framework of official trade-union action (*Barış and Others*).

As regard the prohibition of discrimination, in *Arnar Helgi Larusson* the Court ruled, for the first time, that a complaint about a lack of accessibility of public buildings by disabled persons fell within the ambit of "private life", and examined, under Article 14 in conjunction with Article 8, whether the State had fulfilled its positive obligations in this respect. The Court also examined from this standpoint the allegations of racial profiling during an identity check (*Muhammad*, *Basu*).

In its case-law, the Court considered the interactions between the Convention, on the one hand, and EU law and case-law of the Court of Justice of the European Union, on the other, in cases concerning, among other things, the intervention of the legislature influencing the judicial outcome of a dispute in a tax-related case (*Vegotex International S.A.*), sexual harassment in the workplace (*C. v. Romania*), age-assessment procedures for migrants requesting international protection (*Darboe and Camara*) and reforms of the Polish judicial system (*Grzęda*).

In various cases the Court also noted the interactions between the Convention and international/European law, for example, in cases concerning allegations of racial profiling during an identity check (*Basu*) and the refusal to repatriate nationals held with their young children in Kurdish-run camps in Syria after the fall of the so-called "Islamic State" (*H.F. and Others v. France*). The Court referred in particular to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (*Beeler*), the Vienna Convention on Consular Relations (*H.F. and Others v. France*), the International Convention on the Rights of the Child (*Darboe and Camara*, *H.F. and Others v. France*), the International Covenant on Civil and Political Rights (*H.F. and Others v. France*), the UN Convention on the Rights of Persons with Disabilities (*Arnar Helgi Larusson*), and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the European Social Charter (*C. v. Romania*, *Barış and Others*). The Court also relied on the work of the Venice Commission (*Grzęda*), ECRI (*Basu*), the UN Human Rights Committee (*Basu*, *Mortier*, *H.F. and Others v. France*) and the International Law Commission (*H.F. and Others v. France*).

It should also be noted that in many areas the Court developed its case-law on positive obligations that have to be fulfilled by member States under the Convention, in particular in the areas of euthanasia (*Mortier*), the protection of migrants during a sea rescue operation (*Safi and Others*), age-assessment procedures for migrants requesting international protection and claiming to be minors (*Darboe and Camara*), protection against sexual harassment in the workplace (*C. v. Romania*), accessibility of public buildings (*Arnar Helgi Larusson*), a refusal to repatriate (*H.F. and Others v. France*), and the investigation into allegations of racial profiling during an identity check (*Basu*, *Muhammad*).

Lastly, the Court ruled on the breadth of the margin of appreciation that should be afforded to States Parties to the Convention, for example in the areas of euthanasia (*Mortier*), the observance of political pluralism in the media (*NIT S.R.L.*), accessibility of public buildings (*Arnar Helgi*

Larusson), and a difference in treatment based exclusively on nationality in the context of the restoration of a State's independence (*Savickis and Others*).

JURISDICTION AND ADMISSIBILITY

Jurisdiction of States (Article 1)

The judgment in *H.F. and Others v. France*[2] concerned jurisdiction, the scope of the right to enter national territory and procedural obligations in the context of a refusal to repatriate.

In 2014 and 2015, the applicants' daughters, who were French nationals, left France for Syria with their partners, where they gave birth to children. Since 2019, after the military fall of the so-called Islamic State (ISIS), they have reportedly been detained, with their children, in camps run by the Syrian Democratic Forces ("the SDF"), a local force fighting against ISIS and dominated by the Kurdish militia. The applicants unsuccessfully sought urgent repatriation of their daughters and grandchildren. The domestic courts refused to accept jurisdiction on the grounds that the requests concerned the conduct by France of its international relations.

The applicants complained under Article 3 of the Convention and Article 3 of Protocol No. 4. The Court held that the applicants' family members were outside of the jurisdiction of France as regards the complaint under Article 3 (alleged ill-treatment in the camps). The jurisdiction of France was established in respect of the complaint under Article 3 of Protocol No. 4, the Grand Chamber finding a breach of that provision.

The Grand Chamber judgment is noteworthy in that the Court has, for the first time, ruled on the existence of a jurisdictional link between a State and its "nationals" in respect of a complaint under Article 3 § 2 of Protocol No. 4.

(i) The Court first clarified that the fact that Article 3 § 2 of Protocol No. 4 (unlike Article 1 of the Convention) applies only to nationals was not sufficient to establish the extraterritorial exercise of jurisdiction by a State. Secondly, the refusal to grant the applicants' request had not formally deprived their family members of the right to enter France or prevented them from doing so: they were physically unable to reach the French border (since they were being held in Syrian camps) and France neither exercised "effective control" over the relevant territory

2. *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, 14 September 2022.

nor had any "authority" or "control" over them. In this regard, relying on the preparatory work and other international instruments, the Court clarified that the right to enter was not limited to nationals already on the territory of the State concerned or under its effective control, but it also had to benefit those nationals outside of the State's jurisdiction. Further, if Article 3 § 2 of Protocol No. 4 were to apply only to nationals who arrived at the national border or who had no travel documents, it would be deprived of effectiveness in the contemporary context of increasing globalisation/international mobility which is presenting new challenges in terms of security and defence in the fields of diplomatic and consular protection, international humanitarian law and international cooperation.

From this perspective, the Court did not therefore exclude that certain circumstances relating to the situation of individuals who wished to enter the State of which they were nationals, might give rise to a jurisdictional link with that State. Such circumstances would necessarily depend on the specific features of each case and might vary considerably from one case to another. In the instant case, the following special features enabled the Court to establish France's jurisdiction in respect of the complaint raised under Article 3 § 2 of Protocol No. 4: repatriation had been sought officially and the requests referred to a real and immediate threat to the lives and health of the applicants' family members, including extremely vulnerable young children; the impossibility for them to leave the camps without the assistance of the French authorities; and the willingness of the Kurdish authorities to hand them over to France.

(ii) With regard to Article 3 of the Convention, the Court found that neither the French nationality of the applicants' family members, nor the mere decision of the French authorities not to repatriate them had the effect of bringing them within the scope of France's jurisdiction as regards the ill-treatment to which they were subjected in Syrian camps under Kurdish control. Such an extension of the Convention's scope found no support in the case-law. First, the mere fact that decisions taken at national level have had an impact on the situation of persons residing abroad is not such as to establish the jurisdiction of the State concerned over them outside its territory. Secondly, neither domestic nor international law required the State to act on behalf of its nationals and to repatriate them. Moreover, the Convention did not guarantee the right to diplomatic or consular protection. Thirdly, and in spite of the stated desire of local non-State authorities that the States concerned should repatriate their nationals, France would have to negotiate with

them as to the principle and conditions of any such operation and to organise its implementation, which would inevitably take place in Syria.

"CORE" RIGHTS

Right to life (Article 2)

Obligation to protect life

The judgment in *Safi and Others v. Greece*[3] concerned the application of the Osman obligations to a sea rescue operation.

On 20 January 2014 a fishing boat transporting twenty-seven migrants sank in the Aegean Sea, off the island of Farmakonisi. The applicants were on board the fishing boat, which capsized as the Greek coastguard tried to tow it. The sinking of the boat resulted in the death of eleven people, including close relatives of the applicants. The applicants complained under Articles 2, 3 and 13 of the Convention.

The Court found, in the first place, a violation of the procedural limb of Article 2 of the Convention on account of the ineffective investigation into the fatal accident. Secondly, while noting that it could not, in the absence of an effective investigation, express a position on several details of the rescue operation or on the question of whether there had been an attempt to push the applicants back towards Turkish waters as alleged, the Court concluded, having regard to certain facts which were undisputed or otherwise established, that the Greek authorities had failed to comply with the duty under Article 2 to take preventive operational measures to protect the individuals whose lives were at risk. The Court found, thirdly, a violation of Article 3 on account of the treatment which some of the applicants experienced following their arrival on the island of Farmakonisi.

The judgment is noteworthy in that it concerns the application, for the first time, of the positive obligation set out in *Osman v. the United Kingdom*[4] to take preventive operational measures to protect migrants during a sea rescue operation.

The duty to take preventive operational measures under Article 2 of the Convention being one of means, not of result, the Court emphasised that the coastguard could not be expected to succeed in rescuing everyone whose life was at risk at sea. The captain and crew of a vessel involved in a sea rescue operation often had to make difficult and quick

3. *Safi and Others v. Greece*, no. 5418/15, 7 July 2022.
4. *Osman v. the United Kingdom*, 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII.

decisions and such decisions were, as a rule, at the captain's discretion. However, it had to be demonstrated that these decisions were inspired by the essential effort to secure the right to life of the persons in danger.

Having regard to a number of omissions and delays in the manner in which the rescue operation was conducted and organised, the Court found that the authorities had not done all that could reasonably be expected of them to provide all the applicants and their relatives with the level of protection required. The respondent State had not therefore fulfilled their positive protective obligation, and the Court concluded that there had been a violation of the substantive limb of Article 2 of the Convention.

The judgment in *Mortier v. Belgium*[5] concerned the euthanasia authorised by law and carried out on a patient experiencing mental suffering.

The applicant's mother had been living with diagnosed chronic depression for about forty years. Two months after she had submitted a formal request to that effect, a doctor carried out her euthanasia. No breaches of the Euthanasia Act were found either by a specialised review board or in a criminal investigation.

The applicant complained under Articles 2 and 8 of the Convention. The Court found no violation of Article 2 under its substantive head, considering that the legislative framework governing the pre-euthanasia procedure had provided for sufficient substantive and procedural safeguards and that the act in question had been performed in compliance with the law. However, it found a violation of Article 2 under its procedural head, as a result of the lack of independence of a specialised review board and the excessive length of the criminal investigation. The Court also considered that neither the specific act of euthanasia nor the applicant's lack of involvement in the process had breached his Article 8 rights. In particular, the legislature could not be reproached for obliging doctors to respect the patient's wishes concerning contact with family members, or for imposing on them a duty of confidentiality and medical secrecy.

The judgment is noteworthy because the Court examined, for the first time, whether an act of euthanasia was compliant with the Convention. It clarified the nature and scope of the positive obligations (substantive and procedural) of a State under Article 2 in this very specific context, where euthanasia had been requested by a patient experiencing mental

5. *Mortier v. Belgium*, no. 78017/17, 4 October 2022.

rather than physical suffering, and whose death would not otherwise have occurred in the short term.

(i) The Court first addressed the question whether such an act could, in certain circumstances, be carried out without contravening Article 2. Referring to its end-of-life case-law (*Lambert and Others v. France*[6]; *Pretty v. the United Kingdom*[7]; and *Haas v. Switzerland*[8]), the Court had regard, in this context, to the right to respect for private life, guaranteed by Article 8, and to the concept of personal autonomy which it encompassed. The right of an individual to decide how and when his or her life should end was one aspect of the right to respect for private life. The decriminalisation of euthanasia was intended to give individuals a free choice to avoid what in their view would be an undignified and distressing end to life. Human dignity and human freedom constituted the very essence of the Convention. The Court concluded that, while it was not possible to derive a right to die from Article 2, the right to life enshrined therein could not be interpreted as prohibiting *per se* the conditional decriminalisation of euthanasia. However, in order to be compatible with Article 2, that decriminalisation had to be accompanied by suitable and sufficient safeguards to prevent abuse and thus secure respect for the right to life.

(ii) The Court went on to find that any complaint alleging that an act of euthanasia had breached Article 2 had to be examined under the head of the State's positive obligations to protect the right to life. In view of the complexity of this area and the lack of a European consensus, States had to be afforded a margin of appreciation, which, however, was not unlimited.

(iii) With regard to the substantive positive obligations at stake, the Court examined whether there was a legislative framework for pre-euthanasia procedures which met the requirements of Article 2, and whether it had been complied with in the particular circumstances of the case. In the Court's view, such a legislative framework had to ensure that the patient's decision to seek an end to his or her life had been taken freely and in full knowledge of the facts. Where the legislature had chosen not to provide for independent prior review of a specific act of euthanasia, the Court would look more carefully into the question of substantive and procedural safeguards. In addition, the law had to provide for enhanced safeguards surrounding the decision-making process in the case of a request by a patient experiencing mental rather

6. *Lambert and Others v. France* [GC], no. 46043/14, ECHR 2015 (extracts).
7. *Pretty v. the United Kingdom*, no. 2346/02, ECHR 2002-III.
8. *Haas v. Switzerland*, no. 31322/07, ECHR 2011.

than physical suffering, and whose death would not otherwise occur in the short term. For example, in this case the Court attached particular importance to the time that had to be allowed between the written request and the act of euthanasia (at least one month, under Belgian law), to the obligation for the principal doctor to consult other doctors (two other doctors, under Belgian law), and to the requirement that the various doctors consulted had to be independent. In the Court's view, the positive obligations arising under Article 2 meant that the condition of the independence of the doctors consulted presupposed not only a lack of hierarchical or institutional connection, but also formal and practical independence both between the various doctors consulted and *vis-à-vis* the patient. In the present case, the Court also observed that the law in question had been subjected to several thorough reviews, both prior to enactment by the *Conseil d'État* and subsequently by the Constitutional Court. It concluded that the legislative framework in question had ensured the protection of the patient's right to life, as required by Article 2, and that the euthanasia had been carried out in accordance with that framework.

(iv) As regards the procedural positive obligations in this area, the Court's examination focused on whether the subsequent review mechanism afforded all the safeguards required by Article 2. It clarified that the requirement of an effective official investigation also applied in cases where an act of euthanasia that had been performed was the subject of a criminal complaint lodged by a relative of the deceased, plausibly indicating the existence of suspicious circumstances. In this connection the applicable principles had been set out in *Nicolae Virgiliu Tănase v. Romania*[9]. As to the need for a criminal investigation in such cases, the Court considered that this was not generally required where death had resulted from euthanasia carried out under legislation which permitted such an act, while rendering it subject to strict conditions. The competent authorities would be required, however, to open an investigation enabling the facts to be established and, where appropriate, those responsible to be identified and punished, where there was a criminal complaint by a relative of the deceased indicating the existence of suspicious circumstances, as in the present case.

In the Court's view, where there was no prior but only a subsequent review of euthanasia, that review had to be carried out in a particularly rigorous manner in order to comply with the obligations laid down in Article 2 of the Convention. The requirement of independence was of

9. *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 165-71, 25 June 2019.

the utmost importance. In the present case, the Court analysed the subsequent review by the board responsible for verifying compliance with the procedure and conditions laid down by the Euthanasia Act. The Court noted that the law did not prevent the doctor who had performed the euthanasia from sitting on the board and voting on whether his or her own acts were compatible with the substantive and procedural requirements of domestic law. The Court considered that the fact of leaving it to the sole discretion of the member concerned to remain silent when he or she had been involved in the euthanasia under review could not be regarded as sufficient to ensure the independence of the board. In view of the crucial role played by the review board, the system of review had not guaranteed its independence, regardless of any real influence the doctor concerned might have had on the board's decision in the present case.

Prohibition of torture and inhuman or degrading treatment and punishment (Article 3)

Effective investigation

The judgment in *J.I. v. Croatia*[10] concerned the duty to effectively investigate serious threats against a rape victim by her abuser and the protection from repeat victimisation and intimidation.

The applicant's father, B.S., was convicted and imprisoned on several counts of rape and incest against her. During his prison leave, he allegedly threatened through their relatives to kill the applicant. The applicant contacted the police on several occasions, including after seeing B.S. at a bus station. On none of those occasions did the police start a criminal investigation, although a serious threat by a family member was a criminal offence subject to public prosecution under domestic law. The applicant's complaint about the police's conduct resulted in an unsuccessful internal inquiry at the Ministry of the Interior. Her complaint before the Constitutional Court was dismissed.

The applicant complained to this Court about the alleged failure by the authorities to protect her from intimidation and repeat victimisation by B.S. and to effectively investigate the alleged threats. In the Court's view, owing to the fear of further abuse and retaliation by B.S., the applicant had been subjected to inhuman treatment within the meaning of Article 3 of the Convention. The Court found a violation of this provision on account of the authorities' failure to conduct an effective

10. *J.I. v. Croatia*, no. 35898/16, 8 September 2022 (not final).

investigation into her allegations of a serious threat to her life. While the Court also declared admissible the applicant's complaint about the authorities' further failure to protect her from repeat victimisation and intimidation, it decided against a separate examination on the merits of this aspect.

The judgment is noteworthy in that it concerns a novel factual scenario: the applicant – a highly traumatised victim of rape and domestic violence – indirectly received death threats from her abuser, who, while serving his sentence, had been granted prison leave. This appears to be one of the rare cases where the Court has explicitly addressed the issue of repeat victimisation (*Y. v. Slovenia*[11]). While focusing on the effectiveness of the domestic investigation, the Court considered it in the light of the need to protect the applicant from intimidation and repeat victimisation.

In this context, the Court reiterated the authorities' duty to take a comprehensive view of a given case as a whole, including the domestic violence to which a victim has previously been exposed (*Tunikova and Others v. Russia*[12]). The Court noted that the applicant had had to live in constant fear and uncertainty for a prolonged period of time, owing to the authorities' dismissive attitude towards her allegations. In a case such as the present one, where the authorities had been well aware of the applicant's particular vulnerability on account of her sex, ethnic origin (Roma) and past traumas, the Court emphasised that they should have reacted promptly and efficiently to her criminal complaints in order to protect her, not only from the carrying out of the alleged threat to her life, but also from intimidation and repeat victimisation.

Extradition

The judgment in *Khasanov and Rakhmanov v. Russia*[13] concerned the scope and nature of the risk assessment in removal cases, as well as the methodology for cases brought by members of vulnerable groups allegedly exposed to systematic ill-treatment.

The applicants, nationals of Kyrgyzstan, faced extradition to that country where they were wanted on charges of aggravated misappropriation of funds (first applicant) and several counts of

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11. *Y. v. Slovenia*, no. 41107/10, § 104, ECHR 2015 (extracts). See also *Mraović v. Croatia* (no. 30373/13, § 49, 14 May 2020), which was subsequently referred to the Grand Chamber, which decided to strike it out of its list of cases (*Mraović v. Croatia* (striking out) [GC], no. 30373/13, 9 April 2021).
12. *Tunikova and Others v. Russia*, nos. 55974/16 and 3 others, § 116, 14 December 2021.
13. *Khasanov and Rakhmanov v. Russia* [GC], nos. 28492/15 and 49975/15, 29 April 2022.

aggravated robbery, destruction of property and murder (second applicant). The applicants complained that in the event of their extradition they would face a real risk of ill-treatment because they belonged to a vulnerable ethnic group – the Uzbek minority. These allegations were dismissed in the proceedings concerning their extradition and refugee status. The applicants' extradition was stayed on the basis of an interim measure granted by the Court under Rule 39 of the Rules of Court. In 2019, a Chamber of the Court found that there would be no violation of Article 3 if the applicants were extradited. The Grand Chamber endorsed this conclusion.

The Grand Chamber judgment is noteworthy in that the Court clarified matters relating to the risk assessment under Article 3 in the context of removals, in particular: the level of scrutiny required in extradition cases; the scope of the assessment and specific methodology to be applied in cases concerning members of a targeted vulnerable group; and the nature of, and the material point in time for, such an assessment. The judgment also provided a useful summary of the Court's case-law principles in this area.

(i) The Court underlined that, in extradition cases, a Contracting State's obligation to cooperate in international criminal matters was subject to the obligation also on that State to respect the absolute nature of the prohibition under Article 3 of the Convention. Therefore, any claim of a real risk of treatment contrary to that provision must be subjected to the same level of scrutiny regardless of the legal basis for the removal.

(ii) As to the scope of the assessment in removal cases, the Court clarified that its examination is not limited to an applicant's specific claims but may cover all three groups of risks, namely: (a) those arising from the general situation in the destination country; (b) those stemming from the alleged membership of a targeted vulnerable group; and (c) those linked to the individual circumstances of the applicant.

(a) As to the general situation, regard must be had, where relevant, to whether there is a general situation of violence existing in the destination country. The existence of such a situation would not normally, in itself, entail a violation of Article 3 in the event of a removal to the country in question, unless the level of intensity of the violence was sufficient to conclude that any removal to that country would necessarily breach that provision. The Court would adopt such an approach only in the most extreme cases (*Sufi and Elmi v. the United Kingdom*[14]);

14. *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 218, 28 June 2011.

(b) With regard to claims of systematic ill-treatment of members of a vulnerable group, the Court emphasised that the assessment of such claims was different from the assessment of the other two groups of risk, and explained its methodology for the examination of such cases. In the first place, the Court has to examine whether the existence of a group systematically exposed to ill-treatment, falling under the "general situation" part of the risk assessment, has been established. Applicants belonging to an allegedly targeted vulnerable group should not describe the general situation in a given country but the existence of a practice or of a heightened risk of ill-treatment for the group of which they claim to be members. As a next step, they should establish their individual membership of the group concerned, without having to demonstrate any further individual circumstances or distinguishing features (*J.K. and Others v. Sweden*[15]).

(c) As to the risks stemming from an applicant's individual circumstances, the Court may examine these particularly in cases where, despite a possible well-founded fear of persecution in relation to certain risk-enhancing circumstances, it cannot be established that a given group was systematically exposed to ill-treatment. In such cases, the applicants are under an obligation to demonstrate the existence of further special distinguishing features which would place them at a real risk of ill-treatment, and a failure to demonstrate such individual circumstances will lead the Court to find no violation of Article 3 of the Convention.

(iii) The Court also confirmed the material point in time for the risk assessment in cases where an applicant has not already been removed: in line with the *ex nunc* principle, it must be that of the Court's consideration of the case. A full and present-day evaluation is therefore required where it is necessary to take into account information that has come to light after the final decision by the domestic authorities was taken. The primary purpose of the *ex nunc* principle is to serve as a safeguard in cases where a significant amount of time has passed between the adoption of the domestic decision and the consideration of an applicant's Article 3 complaint by the Court and therefore where the situation in the receiving State might have developed (deteriorated or improved).

(iv) Importantly, the Court emphasised the factual nature of the risk assessment in this context and confirmed the competence of the Chambers of the Court in this respect:

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15. *J.K. and Others v. Sweden* [GC], no. 59166/12, §§ 103-05, 23 August 2016.

> 107. ... Any finding in such cases regarding the general situation in a given country and its dynamic as well as the finding as to the existence of a particular vulnerable group, is in its very essence a factual *ex nunc* assessment made by the Court on the basis of the material at hand.
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> 108. ... Accordingly, any examination of whether there has been an improvement or a deterioration in the general situation in a particular country amounts to a factual assessment and it is amenable to revision by the Court in the light of changing circumstances. There is therefore nothing to preclude such a re-examination of the general situation from being carried out by a Chamber in a judgment dealing with an individual case.

(v) Applying the above principles, the Court examined the applicants' up-to-date situation against all three groups of risks and not only through the prism of their membership of an allegedly vulnerable ethnic group. In its view, the relevant material did not support a finding that the general situation in Kyrgyzstan had either deteriorated, as compared to the previous assessments, or reached a level calling for a total ban on removals to that country. Considering the situation of ethnic Uzbeks there, the Court noted its previous findings (2012-16) of a targeted and systematic practice of ill-treatment against this group. However, recent reports no longer provided a basis for such a conclusion. Turning, finally, to the applicants' individual circumstances, the Court found that they had failed to demonstrate the existence of ulterior political or ethnic motives behind their prosecution in Kyrgyzstan or further special distinguishing features which would expose them to a real risk of ill-treatment. In sum, substantial grounds had not been shown for believing that the applicants would face a real risk of being subjected to treatment contrary to Article 3 in the event of their extradition to Kyrgyzstan.

The judgment in *Sanchez-Sanchez v. the United Kingdom*[16] concerned the assessment of life sentences in an extradition context.

The applicant is a Mexican national currently being detained in the United Kingdom. He faces extradition to the United States of America (USA) where he is wanted on federal charges of drug dealing and trafficking. In accordance with the US Sentencing Guidelines, these offences have a sentence range of life imprisonment. The applicant appealed unsuccessfully to the High Court against his extradition.

16. *Sanchez-Sanchez v. the United Kingdom* [GC], no. 22854/20, 3 November 2022.

Before the Court, the applicant complained under Article 3 and the Grand Chamber (upon relinquishment) found that the applicant's extradition to the USA would not be in violation of this provision: the applicant had not adduced evidence showing that he ran a real risk of a sentence of life imprisonment without parole.

The Grand Chamber judgment is noteworthy in that the Court clarified that the Convention compliance of a life sentence in a third country requesting extradition is not to be assessed by reference to all of the standards which apply to serving life prisoners in the Contracting States. In so far as they comprise procedural safeguards, the principles set out in *Vinter and Others v. the United Kingdom*[17] in respect of the domestic context are not applicable in the extradition one. The Court therefore developed an adapted approach for the latter context, comprising a two-stage test.

(i) In *Trabelsi v. Belgium*[18], the Court applied the Vinter and Others criteria to an extradition context. It found that the applicant's extradition would violate Article 3 because none of the procedures provided for in the requesting State amounted to a review mechanism focused on the rehabilitation of life prisoners and requiring the national authorities to ascertain, after the passage of a certain period of time, that their continued detention could still be justified on legitimate penological grounds. In the present judgment, the Court overruled *Trabelsi* for the following reasons. In the first place, the Grand Chamber emphasised that *Vinter and Others* was not an extradition case and that it was important to distinguish the extradition and the domestic contexts: in the latter context, the applicant's legal position is known whereas the former requires a more complex risk assessment, especially where an applicant has not yet been convicted and a tentative prognosis will inevitably be characterised by a very different level of uncertainty. Secondly, the Court distinguished between two components of the Vinter and Others standard: the substantive obligation (to ensure that a life sentence does not over time become a penalty incompatible with Article 3) and the related procedural safeguards (*Vinter and Others*, cited above, §§ 120-22, and *Murray v. the Netherlands*[19]: the time frame, criteria and conditions for the requisite review, as well as its nature and scope). The latter are not ends in themselves but serve, in their observance by Contracting States, to avoid a breach of the former. Further, while the

17. *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts).

18. *Trabelsi v. Belgium*, no. 140/10, ECHR 2014 (extracts).

19. *Murray v. the Netherlands* [GC], no. 10511/10, §§ 99-104, 26 April 2016.

domestic system is known, it may prove unduly difficult for domestic authorities deciding on extradition requests to scrutinise the relevant law and practice of a third State to assess its degree of compliance with these procedural safeguards. Indeed, this would be an over-extensive interpretation of the responsibility of a Contracting State in such a context. Lastly, a finding of a violation of Article 3 (owing to the lack of a Convention-compliant review mechanism in the requesting State) could entail a risk that a person facing very serious charges would never stand trial. However, an identical finding in the domestic context would not undermine the legitimate penological purposes of incarceration as it would not result in early release of the life prisoner concerned. The Court concluded that the availability of the procedural safeguards afforded to serving "whole life prisoners" in the legal system of the requesting State was not a prerequisite for compliance by the sending Contracting State with Article 3. Indeed, Contracting States are not to be held responsible under the Convention for deficiencies in the safeguards in the system of a third State. While the procedural safeguards are better suited to a domestic context, the substantive guarantee, the essence of the Vinter and Others case-law, is readily transposable to the extradition context.

(ii) The Court went on to develop an adapted approach for the extradition context, which comprises two stages. As regards the first stage, the Court addressed the question which had not been examined in the judgment in *Trabelsi*: in particular, it must be established whether the applicant has adduced evidence capable of proving that there are substantial grounds for believing that, if extradited and convicted, there is a real risk of a sentence of life imprisonment without parole. In this regard, the burden is on the applicant to demonstrate that such a penalty would be imposed (*López Elorza v. Spain*[20], and *Findikoglu v. Germany*[21]). Such a risk will more readily be established if the applicant faces a mandatory sentence of life imprisonment. If the said risk is established under the first limb of the inquiry, the second limb will focus on the substantive guarantee of the Vinter and Others standard: the relevant authorities of the sending State must establish, prior to authorising extradition, that there exists in the requesting State a mechanism of sentence review which allows those competent authorities to consider whether any changes in the life prisoner are so significant and that such progress towards rehabilitation has been made during the sentence as to mean that continued detention can no longer be justified on legitimate penological grounds. In other words, it must

20. *López Elorza v. Spain*, no. 30614/15, 12 December 2017.

21. *Findikoglu v. Germany* (dec.), no. 20672/15, 7 June 2016.

be ascertained whether, as from the moment of sentencing, there is a review mechanism in place allowing the consideration of the prisoner's progress towards rehabilitation, or any other ground for release, based on his or her behaviour or other relevant personal circumstances. The Court emphasised that the prohibition of Article 3 ill-treatment remained absolute, including in the extradition context, and a distinction could not be drawn between the domestic and extraterritorial contexts as regards the minimum level of severity required to meet the Article 3 threshold.

(iii) The present judgment is also interesting as regards the manner in which the Court applied the first limb of the above test to a situation where the applicant did not face a mandatory sentence of life imprisonment. In the Court's view, he had to demonstrate that, in the event of his conviction, there existed a real risk that a sentence of life imprisonment without parole would be imposed without due consideration of all the relevant mitigating and aggravating factors (*López Elorza*, and *Findikoglu*, both cited above). While the Court took as its starting-point the assessment carried out by the national courts, it eventually examined the evidence submitted in this respect, having found the domestic findings inconclusive. The Court could not base its assessment on the likely sentence the applicant would receive if he were to plead guilty. However, it considered relevant the following factors: the sentencing statistics, the scope of the sentencing judge's discretion, the opportunity for the applicant to offer evidence regarding any mitigating factors, the sentences given to his co-conspirators, as well as the applicant's right to appeal against any sentence imposed. The Court reiterated that there were many factors that contributed to the imposition of a sentence and, prior to extradition, it was impossible to address every conceivable scenario that might arise. On the facts, the applicant had not adduced evidence of any defendants with similar records to himself who had been found guilty of similar conduct and had been sentenced to life imprisonment without parole. There was thus no need for the Court to proceed to the second stage of the new test.

The decision in *McCallum v. Italy*[22] also concerned life sentences in the extradition context.

The applicant is an American national. She was a fugitive for several years, sought by the United States of America (USA) in relation to the

22. *McCallum v. Italy* (dec.) [GC], no. 20863/21, 21 September 2022.

murder of her husband (State of Michigan). In 2020 she was arrested in Italy and the US authorities requested her extradition. The Italian courts granted the request, rejecting her argument that her extradition would be contrary to Article 3 since, if convicted, she would face life imprisonment without parole, this being the prescribed sentence for first-degree murder under the laws of Michigan. She had also argued that the power of the State Governor to grant her early release was not sufficient to eliminate the risk as this power was a purely discretionary one. The applicant then complained under Article 3 to the Court, raising the same arguments. Under Rule 39 of the Rules of Court, the Court indicated to the Italian Government that the applicant should not be extradited for the duration of the proceedings before it. Subsequently, the US embassy in Rome informed the Italian authorities that the Prosecuting Attorney in Michigan had given a commitment to try the applicant on the lesser charge of second-degree murder. The Diplomatic Note clarified that, if convicted of this charge, the applicable penalty would be imprisonment for life, or any term of years in the court's discretion, and that in either case the applicant would be eligible for parole. The Court then lifted the Rule 39 interim measure and the applicant was extradited. The Grand Chamber (relinquishment) rejected the application as manifestly ill-founded: there was no real risk of the applicant receiving an irreducible life sentence in the event of conviction on the charges now pending against her.

The Grand Chamber decision is noteworthy in two respects. In the first place, the Court confirmed its position on Diplomatic Notes set out in *Harkins and Edwards v. the United Kingdom*[23]. Secondly, the Court proceeded on the basis of the distinction between the substantive obligation and the related procedural safeguards that derived from Article 3 when it came to the issue of life sentences in the extradition context, in accordance with the approach adopted in the case of *Sanchez-Sanchez v. the United Kingdom*[24].

(i) The Court reiterated that Diplomatic Notes carried a presumption of good faith and that, in extradition cases, it was appropriate that that presumption be applied to a requesting State which had a long history of respect for democracy, human rights and the rule of law, and which had long-standing extradition arrangements with Contracting States (*Harkins and Edwards*, cited above, a case concerning the USA, the same

23. *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012.
24. *Sanchez-Sanchez v. the United Kingdom* [GC], no. 22854/20, 3 November 2022 – see summary above.

requesting State as in the instant case). The Court therefore considered it justified to proceed on the basis that the applicant could now only be tried on the charges indicated in the Diplomatic Note and specified in the new extradition decree issued by the Italian Minister of Justice. Further, referring to Article 26 of the Vienna Convention on the Law of Treaties, the Court observed that if, following her extradition, the original charges against the applicant were to be revived, that would not be compatible with the duty of good faith performance of treaty obligations. It also took note of the Italian Government's position that, under the applicable bilateral treaty, the USA was bound to respect its undertaking.

(ii) The Court noted that the applicant faced at most the prospect of life imprisonment with eligibility for parole, if convicted of the reduced charges. However, she had submitted that such a sentence had to be regarded as "irreducible" within the meaning of the Court's case-law, on account of the role of the Governor of Michigan in the parole system in that State, which she argued was a decisive one. The Court observed that this argument related to the issue of procedural safeguards, and not to the substantive obligation, which was the essence of the Vinter and Others standard (*Vinter and Others v. the United Kingdom*[25]). However, as stipulated in *Sanchez-Sanchez* (cited above), the availability of procedural safeguards for "whole life prisoners" in the legal system of the requesting State was not a prerequisite for compliance by the requested Contracting State with Article 3 of the Convention.

In any event, having taken note of the relevant legislative provisions, the Court was not persuaded that the applicant's understanding of the Michigan system was correct. As provided in Michigan Compiled Laws, a prisoner's release on parole was at the discretion of the parole board. While the Governor of Michigan did indeed enjoy a broad power of executive clemency, he or she was not involved in the parole procedure. Nor did the relevant legal provisions empower the Governor to overrule the grant of parole to a prisoner. An appeal against the grant of parole lay to the competent circuit court.

The Court further reiterated that an applicant who alleged that their extradition would expose them to a risk of a sentence that would constitute inhuman or degrading punishment bore the burden of proving the reality of that risk (*Sanchez-Sanchez*, cited above). In the instant case, the applicant had not discharged that burden.

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25. *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts).

PROCEDURAL RIGHTS

Right to a fair hearing in civil proceedings (Article 6 § 1)

Applicability

The judgment in *Grzęda v. Poland*[26] concerned the applicability of Article 6 § 1 to the premature termination, following a legislative reform, of a judge's term of office as a member of the National Council of the Judiciary (NCJ).

The applicant is a judge of the Supreme Administrative Court. In 2016, he was elected by an assembly of judges for a four-year term as a member of the NCJ. Subsequently, and in the context of wide-scale judicial reform, the relevant legislation was amended to the effect that judicial members of the NCJ were to be elected by Parliament (the *Sejm*), that is, no longer by judges, and that the terms of office of the NCJ's judicial members elected on the basis of the previous provisions would continue until the beginning of the term of office of its new members. In 2018 the *Sejm* elected fifteen new members of the NCJ and the applicant's term of office was therefore prematurely terminated *ex lege*.

The applicant complained that he had been denied access to a court to contest this measure. The Grand Chamber considered that, at the time of his election, there had been in domestic law an arguable right for a judge elected to the NCJ to serve a full term of office and the new legislation constituted the object of a genuine and serious dispute over that right. Further, applying the test developed in *Vilho Eskelinen and Others v. Finland*[27], the Grand Chamber left open the first condition (whether domestic law expressly excluded access to a court) since, in any event, its second condition had not been met: such an exclusion could not be justified on objective grounds in the State's interest. Article 6 § 1 was therefore applicable under its civil head.

The judgment is noteworthy in that the Court considered a novel issue: the applicability of Article 6 § 1 to a dispute arising out of the premature termination of the term of office of a member of a judicial council while he still remained a serving judge. In doing so, the Court developed the first condition of the Vilho Eskelinen test and, as regards the second condition, the Court clarified the relevance of considerations relating to judicial independence where a case concerns not a judge's

26. *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022.
27. *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, ECHR 2007-II.

principal professional activity (adjudicating role), but other official functions (such as membership of a judicial council).

(i) Regarding the first condition of the Vilho Eskelinen test, the Court noted that it was deliberately strict and was satisfied only in very rare cases where domestic law contained an explicit exclusion of access to a court. As the two conditions of the test are cumulative, where the first one is not met, that suffices to find Article 6 applicable, without considering the second one. The Court, however, considered that a straightforward application of the first condition would not be entirely suitable in all situations. It was therefore prepared to accept that it could be regarded as fulfilled where, even without an express provision to this effect, it had been clearly shown that domestic law excluded access to a court for the type of dispute concerned: in other words, where the exclusion in question was of an implicit nature, in particular where it stemmed from a systemic interpretation of the applicable legal framework or the whole body of legal regulation.

(ii) The Court also clarified the factors relevant for the second condition of the Vilho Eskelinen test. In the first place, for national legislation excluding access to a court to have any effect under Article 6 § 1 in a particular case, it must be compatible with the rule of law. This means that such an exclusion must, in principle, be based on an instrument of general application, rather than target specific persons (in the instant case, judicial members of the NCJ elected under the previous regulation). Secondly, where the dispute in issue concerns a judge, due account must be taken of the necessity to safeguard the independence of the judiciary, which is a prerequisite for the proper functioning of the Convention system and the upholding of the rule of law. In this connection, the Court clarified that judicial independence had to be understood in an inclusive manner and apply not only to a judge in his or her adjudicating role, but also to his or her other official functions that were closely connected with the judicial system. Considering specifically a judge's membership in a judicial council, the Court attached weight to the role of such a body (responsible for the selection of judges) in safeguarding judicial independence. For a judicial council to be able to perform this role, the State's authorities should be under an obligation to ensure its independence from the executive and legislative powers in order to safeguard the integrity of the judicial appointment process. However, the removal, or threat of removal, of a council's judicial member during his or her term of office has the potential to adversely affect his or her personal independence and, by extension, the council's mission. In this regard, the Court reiterated its case-law concerning the

special role in society of the judiciary as the guarantor of justice. Just as this consideration weighed heavily in cases concerning access to a court for judges in matters concerning their status or career (*Gumenyuk and Others v. Ukraine*[28], and *Bilgen v. Turkey*[29]), the Court considered it should also apply as regards the tenure of judges, such as the applicant, who were elected to serve on judicial councils, in view of the particular role played by the latter. As concerns the NCJ, the Court observed that its independence had been undermined as a result of the fundamental change in the manner of electing its judicial members (by the *Sejm* instead of by the assemblies of judges), considered jointly with the early termination of the terms of office of the previous judicial members. It followed that the applicant's exclusion from access to a court to assert an arguable civil right closely connected with the protection of judicial independence could not be justified on objective grounds in the interest of a State governed by the rule of law. Article 6 § 1 was therefore applicable.

Access to a court

The judgment in *Grzęda v. Poland*[30] concerned the premature termination, following a legislative reform, of a judge's term of office as a member of the National Council of the Judiciary.

The applicant complained that he had been denied access to a court to contest this measure. The Grand Chamber found that the lack of judicial review had impaired the very essence of the applicant's right of access to a court, in breach of Article 6 § 1.

The Court considered that procedural safeguards, similar to those that should be available in cases of dismissal or removal of judges, should likewise be available where a judge was removed from his position as a member of a judicial council. In assessing any justification for excluding access to a court with regard to membership of judicial governance bodies, it was necessary to take into account the strong public interest in upholding the independence of the judiciary and the rule of law. In this connection, the Court had regard to the overall context of the reforms of the judicial system, starting with the grave irregularities in the election of judges to the Constitutional Court in 2015, then the remodelling of the NCJ and the setting-up of new chambers in the Supreme Court, extending the Minister of Justice's control over the courts and increasing his role in matters of judicial discipline. Referring to prior judgments

28. *Gumenyuk and Others v. Ukraine*, no. 11423/19, 22 July 2021.
29. *Bilgen v. Turkey*, no. 1571/07, 9 March 2021.
30. *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022.

(*Xero Flor w Polsce sp. z o.o. v. Poland*[31]; *Reczkowicz v. Poland*[32]; *Dolińska-Ficek and Ozimek v. Poland*[33]; and *Broda and Bojara v. Poland*[34]), relevant analysis by the Court of Justice of the European Union, the Polish Supreme Court and the Supreme Administrative Court, the Court found that, as a result, the judiciary had been exposed to interference by the executive and legislative powers, and its independence and adherence to rule-of-law standards had been substantially weakened. While the present case involved a number of domestic constitutional issues, the Court emphasised that, under the Vienna Convention on the Law of Treaties, a State could not invoke its domestic law, including the Constitution, as justification for its failure to respect its international-law commitments and to comply with the rule of law.

Right to a fair hearing in criminal proceedings (Article 6 § 1)

Fairness of the proceedings

The judgment in *Vegotex International S.A. v. Belgium*[35] concerned the assessment of the compelling nature of the grounds for the intervention of the legislature which influenced the judicial outcome of a dispute in a tax-related case.

The tax authorities corrected a tax return filed by the applicant company and applied a penalty on the amount due. The applicant brought proceedings to challenge this decision. In 2000 the tax authorities issued a summons to pay which, in accordance with standard administrative practice, served to interrupt the limitation period before the tax debt became time-barred. While the applicant's case was pending at first instance, the Court of Cassation ruled against this practice and adopted new case-law (on 10 October 2002) with retroactive effect which resulted in the limitation period not being interrupted and in the tax debt possibly becoming time-barred. In 2004, while the applicant's case was pending on appeal, the legislature intervened to reverse this development and to restore the previous administrative practice by means of a law[36] that was immediately applicable to pending proceedings. This law was then

31. *Xero Flor w Polsce sp. z o.o. v. Poland*, no. 4907/18, 7 May 2021.
32. *Reczkowicz v. Poland*, no. 43447/19, 22 July 2021.
33. *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, 8 November 2021.
34. *Broda and Bojara v. Poland*, nos. 26691/18 and 27367/18, 29 June 2021.
35. *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, 3 November 2022.
36. The Miscellaneous Provisions Act of 9 July 2004, section 49 *in fine*.

applied to the applicant's case by the Court of Cassation. The domestic courts eventually upheld the 50% surcharge in respect of one part of the tax imposed and, with regard to the remainder, reduced the surcharge to 10% of the tax deemed to be payable.

The applicant company complained under Article 6 § 1. In 2020, a Chamber of the Court found no violation of this provision as the legislature's intervention in the proceedings had been driven by compelling grounds of general interest. Upon referral, the Grand Chamber endorsed this conclusion.

The Grand Chamber judgment is noteworthy in two respects. In the first place, the Court clarified the criteria for assessing the relevance and the compelling nature of general-interest grounds which are advanced to justify the use of retrospective legislation designed to influence the judicial determination of a dispute to which the State is a party. Secondly, the judgment highlights the specificity of such an assessment in a case where the guarantees of Article 6 do not apply with their full stringency, such as a tax-related case which differs from the hard core of criminal law.

(i) When examining the relevance of the general-interest grounds advanced by the respondent Government, the Court observed as follows. In the first place, while the State's financial interests alone do not, in principle, justify the retrospective application of legislation, the Court did not exclude the relevance of the question of whether the financial stability of the State was threatened (however, no such threat was apparent in the present case). Secondly, by their nature, legislative initiatives regulate situations in general and abstract terms, such that the reasons that motivated the legislature do not lose their legitimacy merely because they may not be relevant in respect of each of the persons potentially affected. Thirdly, the Court confirmed that in a State governed by the rule of law, the legislature could amend legislation in order to correct an interpretation of the law given by the judiciary, subject however to compliance with the legal rules and principles which were binding even on the legislature. In this connection, the Court referred to its well-established case-law principles concerning interference by the legislature with the administration of justice (*Zielinski and Pradal and Gonzalez and Others v. France*[37], and *Scoppola v. Italy (no. 2)*[38]) and confirmed their applicability in a tax-related case. The Court further observed that, in exceptional circumstances, retrospective

37. *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 9 others, ECHR 1999-VII.

38. *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, 17 September 2009.

legislation might be justified, especially in order to interpret or clarify an older legislative provision (*Hôpital local Saint-Pierre d'Oléron and Others v. France*[39]), to fill a legal vacuum (*OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*[40]) or to offset the effects of a new line of case-law (*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*[41]). In the present case, the Court accepted as relevant the objectives of combating large-scale tax fraud, avoiding arbitrary discrimination between taxpayers and restoring legal certainty by offsetting the effects of the relevant judgment of the Court of Cassation and re-establishing the settled administrative practice.

(ii) The Court went on to assess the compelling nature of the above relevant grounds. It noted that it would consider them as a whole and on the basis of the following criteria:

(a) Whether or not the line of case-law overturned by the legislative intervention in question had been settled. In its judgment of 10 October 2002, the Court of Cassation had ruled for the first time on the specific issue of whether the demand for payment had interrupted the limitation period in a valid manner. Its position did not correspond to the settled administrative practice, reflected in the predominant case-law of the lower courts in the matter. This judgment had not only a significant impact on cases in which the tax assessment had been disputed, but also a retrospective effect on all the pending proceedings concerned (the Court of Cassation not being empowered to limit the temporal effects of its judgments).

(b) The manner and timing of the enactment of the legislation. Shortly after the delivery of the impugned judgment, the legislature clearly signalled its intention not to allow its effects to continue over time and enacted the legislation relatively quickly to this end (over a year and a half thereafter).

(c) The foreseeability of the legislature's intervention. The Court observed at the outset that limitation periods served the purpose of ensuring legal certainty, as did the principle of the non-retroactivity of criminal law. In the Court's view, the legislature's intervention had sought to restore, rather than to undermine, legal certainty by re-establishing

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39. *Hôpital local Saint-Pierre d'Oléron and Others v. France*, nos. 18096/12 and 20 others, 8 November 2018.

40. *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, nos. 42219/98 and 54563/00, 27 May 2004.

41. *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, *Reports of Judgments and Decisions* 1997-VII.

the previous well-settled practice. This practice, which resulted in the interruption of the limitation period, was followed in the applicant company's case. The legislature's intervention could not therefore be said to have put an end to any legitimate expectation as to the limitation period that existed when the applicant had commenced proceedings. As regards the unexpected development in the case-law of the Court of Cassation, it could not have had binding force for the legislature. It could thus have given rise to a hope, rather than an expectation, to benefit from the resulting "windfall".

(d) The scope of the legislation and its effects. The Court has recently held that the revival of criminal responsibility after the expiry of a limitation period was incompatible with the overarching principles of legality and foreseeability enshrined in Article 7 (*Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture*[42]). Nevertheless, the Grand Chamber distinguished the present case from the situation described in the above advisory opinion, even though the legislature's intervention had made it possible to continue with a "prosecution". While the limitation period could have been considered to have expired following the unexpected development in the case-law of the Court of Cassation, that fact had not yet been established by a judicial decision, still less one with *res judicata* effect. Furthermore, unlike in *Antia and Khupenia v. Georgia*[43], the limitation period had not expired either when the tax surcharge was imposed, or when the applicant had challenged it in the court of first instance. Lastly, the present case did not concern Article 7, but Article 6, and the latter's guarantees would not necessarily apply with their full stringency in a tax-related case.

In sum, the legislature's intervention had been foreseeable and justified on compelling grounds of general interest.

The judgment in *De Legé v. the Netherlands*[44] concerned the privilege against self-incrimination in the context of the proceedings for the imposition of a tax fine.

On the basis of information obtained from their Belgian counterparts on bank accounts held by residents of the Netherlands with a bank

42. *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, 26 April 2022.

43. *Antia and Khupenia v. Georgia*, no. 7523/10, 18 June 2020.

44. *De Legé v. the Netherlands*, no. 58342/15, 4 October 2022 (not final).

("the Bank") in Luxembourg, the Dutch Tax and Customs Administration identified the applicant as an account holder. The Tax Inspector then requested the applicant to declare any foreign bank accounts held during a certain period of time and to submit copies of all relevant bank statements. The applicant, however, invoked the privilege against self-incrimination informing them that "in the given circumstances" the request for information would not be complied with. The Tax Inspector then issued the relevant tax adjustments and imposed tax fines. The applicant's objections thereto were dismissed, as were his appeals. In the meantime, in intervening civil summary injunction proceedings, pending which the objection proceedings were adjourned, the provisional measures judge ordered the applicant, on pain of penalty payments, to disclose all information concerning bank accounts held abroad and to provide the required documents. In compliance with this order, the applicant submitted two forms indicating that he had held a bank account at the Bank in Luxembourg as well as bank statements and portfolio summaries relating to that account.

The applicant complained about a breach of his right to protection against self-incrimination and the Court found no violation of Article 6 § 1 of the Convention.

The judgment is noteworthy because the Court clarified the nature and scope of the privilege against self-incrimination concerning, in particular, coercion used to obtain documents for tax proceedings in which fines were imposed on an applicant.

On the basis of a comprehensive overview of its case-law, the Court devised the following approach to be applied in this context:

– In order for an issue to arise from the perspective of the privilege against self-incrimination: (a) there must be some form of coercion or compulsion exerted on the person concerned; and (b) the person must be subject to existing or anticipated criminal proceedings – that is to say, a "criminal charge" within the autonomous meaning of Article 6 § 1 –, or incriminating information compulsorily obtained outside the context of criminal proceedings is used in a subsequent criminal prosecution. These are the two prerequisites for the applicability of the privilege against self-incrimination (see, for instance, *Eklund v. Finland*[45]).

– Where these prerequisites are met, it is necessary to determine whether the use of evidence obtained by coercion/compulsion should nevertheless be considered as falling outside the scope of protection of the privilege against self-incrimination. When methods of coercion

45. *Eklund v. Finland* (dec.), no. 56936/13, § 51, 8 December 2015.

are used with the aim of having an accused person answer questions or make testimonial statements, either orally or in writing, the privilege against self-incrimination applies. The privilege does not, however, extend to the use in criminal proceedings of materials obtained from an accused, through methods of coercion, when these materials have an existence independent of his or her will (the Saunders exception, *Saunders v. the United Kingdom*[46]).

– In this connection, where the use of documentary evidence obtained under threat of penalties is concerned, such use does not fall within the scope of protection of the privilege against self-incrimination where the authorities are able to show that the compulsion is aimed at obtaining specific pre-existing documents – namely, documents that have not been created as a result of the very compulsion for the purpose of the criminal proceedings – which documents are relevant for the investigation in question and of whose existence those authorities are aware. This excludes "fishing expeditions" by the authorities (see, for instance, *Funke v. France*[47]).

– However, regardless of whether or not the authorities are aware of the existence of documentary or other material evidence, if this has been obtained by methods in breach of Article 3 of the Convention, its use will always fall within the scope of the privilege against self-incrimination (*Jalloh v. Germany*[48]).

– Finally, if the prerequisites for the applicability of the privilege against self-incrimination are met, and the use of evidence obtained through coercion or compulsion falls within the scope of protection of that privilege, it is necessary to examine whether the procedure extinguished the "very essence" of the privilege, that is to say, to determine the manner in which the overall fairness of the proceedings was affected. For this purpose, it will be necessary to have regard, in turn, to the following factors: the nature and degree of compulsion used to obtain the evidence; the existence of any relevant safeguards in the procedure; and the use to which any material so obtained is put (*O'Halloran and Francis v. the United Kingdom*[49]).

On the facts of the case, the Court found that the two prerequisites for the applicability of the privilege against self-incrimination were met:

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46. *Saunders v. the United Kingdom*, 17 December 1996, § 69, *Reports of Judgments and Decisions* 1996-VI.

47. *Funke v. France*, 25 February 1993, § 44, Series A no. 256-A.

48. *Jalloh v. Germany* [GC], no. 54810/00, ECHR 2006-IX.

49. *O'Halloran and Francis v. the United Kingdom* [GC], nos. 15809/02 and 25624/02, § 55, ECHR 2007-III.

the applicant was required to provide the bank documents on pain of penalties, and those documents were relevant for the proceedings imposing a tax fine on the applicant. However, they were pre-existing documents and the authorities were aware of their existence. Moreover, no issue of Article 3 of the Convention arose in the present case. The compulsion in question did not therefore fall within the scope of protection of the privilege against self-incrimination. This was sufficient for the Court to find no violation of Article 6 § 1 of the Convention.

Other rights in criminal proceedings

No punishment without law (Article 7)

In response to the request submitted by the Armenian Court of Cassation under Protocol No. 16 to the Convention, the Court delivered its advisory opinion[50] on 26 April 2022, which concerned the applicability of statutes of limitation to the prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture.

In *Virabyan v. Armenia*[51], the Court found that the applicant had been subjected to torture and that the authorities had failed to carry out an effective investigation, in violation of Article 3. In the context of the supervision of the execution of this judgment by the Committee of Ministers under Article 46 § 2 (not as yet closed), new criminal proceedings were instituted and charges were brought against the police officers implicated in Mr Virabyan's ill-treatment (Article 309 § 2 of the Criminal Code). The trial court found that the defendants had committed an offence under that provision, but held that they were exempt from criminal responsibility by virtue of the ten-year limitation period provided in Article 75 § 1 (3) of the Criminal Code, which had expired in 2014. This decision was upheld by the Court of Appeal. The prosecutor lodged an appeal on points of law with the Court of Cassation, seeking for it to determine whether the ten-year limitation period was applicable or whether the proceedings in issue were covered by the exception set out in Article 75 § 6 of the Criminal Code, according to which no limitation period could apply to certain types of offences (crimes against peace and humanity or those for which international

50. *Advisory opinion on the applicability of statutes of limitation to the prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, 26 April 2022. See also under Article 1 of Protocol No. 16 (Advisory opinions) below.

51. *Virabyan v. Armenia*, no. 40094/05, 2 October 2012.

treaties to which Armenia is a Party prohibit the application of limitation periods).

In this context, the Court of Cassation requested the Court to give an advisory opinion on the following question:

> Would non-application of statutes of limitation for criminal responsibility for torture or any other crimes equated thereto by invoking the international law sources be compliant with Article 7 of the European Convention, if the domestic law provides for no requirement for non-application of statutes of limitation for criminal responsibility?

(i) In this, its fourth, advisory opinion under Protocol No. 16, the Court provided a useful summary of its case-law relating to limitation periods under Article 3 of the Convention. The Court reiterated, in particular, that the prohibition of torture had achieved the status of *jus cogens* or a peremptory norm in international law (*Al-Adsani v. the United Kingdom*[52]). In cases concerning torture or ill-treatment inflicted by State agents, criminal proceedings ought not to be discontinued on account of a limitation period and the manner in which the limitation period is applied has to be compatible with the requirements of the Convention. It is thus difficult to accept inflexible limitation periods admitting of no exceptions (*Mocanu and Others v. Romania*[53]). Moreover, the Court observed that it had found a violation of the procedural aspect of Article 3 in cases where the application of limitation periods had been caused by the failure of the authorities to act promptly and with due diligence; in cases where prosecutions had become time-barred owing to the inadequate characterisation by the domestic authorities of acts of torture or other forms of ill-treatment as less serious offences, leading to shorter limitation periods and allowing the perpetrator to escape criminal responsibility; and on account, chiefly, of the absence of appropriate provisions in the national law capable of adequately punishing acts amounting to torture. In that connection, the Court has already held that the fact that the offences in question were subject to a statute of limitations was "a circumstance which in itself [sat] uneasily with its case-law concerning torture or other ill-treatment".

(ii) Furthermore, the Court addressed the issue of possible conflict between the States' positive obligations under Article 3 and the

52. *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, §§ 60-61, ECHR 2001-XI.

53. *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 326, ECHR 2014 (extracts).

guarantees provided for in Article 7, notably in the process of the execution of its judgments. The Court confirmed its usual approach whereby it would be unacceptable for national authorities to compensate for the failure to discharge their positive obligations under Article 3 at the expense of the guarantees of Article 7, one of which was that the criminal law must not be construed extensively to an accused's detriment (*Kononov v. Latvia*[54], and *Del Río Prada v. Spain*[55]). In particular, and for the purposes of the present advisory opinion, the Court noted that it did not follow from the current state of the Court's case-law that a Contracting Party was required under the Convention not to apply an applicable limitation period and thereby effectively to revive an expired limitation period.

In this connection, the Court reiterated that, in the context of the reopening of proceedings, there might be situations where it was *de jure* or *de facto* impossible to reopen criminal investigations into the incidents giving rise to the applications being examined by the Court. Such situations may arise, for example, in cases in which the alleged perpetrators were acquitted and could not be put on trial for the same offence (which would be in conflict with the *ne bis in idem* principle set out in Article 4 of Protocol No. 7), or in cases in which the criminal proceedings had become time-barred on account of the statute of limitations set out in the national legislation. Indeed, the reopening of criminal proceedings that had been terminated on account of the expiry of the limitation period may raise issues concerning legal certainty and may thus have a bearing on a defendant's rights under Article 7 (*Taşdemir v. Turkey*[56]).

(iii) The Court went on to clarify whether the revival of a prosecution in respect of a criminal offence which is time-barred is compatible with the guarantees enshrined in Article 7 of the Convention. To this end, the Court provided a summary of its case-law concerning the requirements of legal certainty and foreseeability under this provision. It also reiterated the purposes served by limitation periods, in particular, ensuring legal certainty and finality and preventing infringements of the rights of defendants, which might be impaired if courts were required to decide on the basis of evidence which might have become incomplete because of the passage of time (*Coëme and Others v. Belgium*[57]). The Court further

54. *Kononov v. Latvia* [GC], no. 36376/04, § 185, ECHR 2010.
55. *Del Río Prada v. Spain* [GC], no. 42750/09, § 78, ECHR 2013.
56. *Taşdemir v. Turkey* (dec.), no. 52538/09, § 14, 12 March 2019.
57. *Coëme and Others v. Belgium*, nos. 32492/96 and 4 others, § 146, ECHR 2000-VII.

deduced from the relevant case-law that where criminal responsibility had been revived after the expiry of a limitation period, it would be deemed incompatible with the overarching principles of legality (*nullum crimen, nulla poena sine lege*) and foreseeability enshrined in Article 7 (*Antia and Khupenia v. Georgia*[58]). On this basis, the Court concluded that

> where a criminal offence under domestic law was subject to a statute of limitations and became time-barred so as to exclude criminal responsibility, Article 7 would preclude the revival of a prosecution in respect of such an offence on account of the absence of a valid legal basis. To hold otherwise would be tantamount to accepting "the retrospective application of the criminal law to an accused's disadvantage".

(iv) In the present context, the Court was presented with a situation where the requesting court had to determine whether to apply a ten-year limitation period (Article 75 § 1 (3) of the Criminal Code) or an exception whereby no limitation period was to apply, in particular, to certain types of offences envisaged by international treaties (Article 75 § 6 of the Criminal Code). In other words, the Court was asked to clarify whether it would be compatible with the defendants' rights under Article 7 if the domestic courts were to refrain from applying the limitation period applicable in their case pursuant to the international rules, including Article 3 of the Convention, relating to the prohibition of torture and other forms of ill-treatment and the requirement to punish such acts. The question so framed implicitly recognises the hierarchy of laws in the Armenian domestic system as enunciated particularly in Article 5 § 3 of the Armenian Constitution, which stipulates that, in the event of a conflict between international treaties ratified by Armenia and Armenian laws, the provisions of the international treaties are to apply. Relying on the principle of subsidiarity, the Court replied as follows:

> [I]t is first and foremost for the national court to determine, within the context of its domestic constitutional and criminal-law rules, whether rules of international law having legal force in the national legal system, in the present instance pursuant to Article 5 § 3 of the Constitution ..., could provide for a sufficiently clear and foreseeable legal basis within the meaning of Article 7 of the Convention to conclude that the criminal offence in question is not subject to a statute of limitations.

58. *Antia and Khupenia v. Georgia*, no. 7523/10, §§ 38-43, 18 June 2020.

The judgment in *Kupinskyy v. Ukraine*[59] concerned the applicability of Article 7 to the conversion, upon a prisoner's transfer, of a foreign reducible life sentence into a *de facto* irreducible one.

In 2002, the applicant, a Ukrainian national, was sentenced in Hungary to life imprisonment with the possibility of seeking release on parole after serving twenty years. In 2007 he was transferred to Ukraine to serve his sentence. The Ukrainian courts recognised the sentence imposed by the Hungarian courts. From 2016 to 2021 the Ukrainian courts refused several requests for release on parole on the ground that the applicant was serving his sentence in accordance with Ukrainian legislation which did not provide for release on parole for life prisoners. The applicant appealed unsuccessfully. In September 2021, the Constitutional Court of Ukraine declared the Criminal Code provision concerning release on parole unconstitutional in so far as it did not apply to life prisoners.

The applicant complained under Articles 3 and 7. The Court found a violation of Article 3, applying its reasoning in *Petukhov v. Ukraine (no. 2)*[60]. The applicant's situation had not changed with the judgment of the Constitutional Court because the relevant rules to implement the release on parole of life prisoners had not been established. The Court also found a violation of Article 7: by denying the applicant the real possibility of seeking release on parole, the domestic authorities had converted his original reducible sentence into a *de facto* and *de jure* irreducible life sentence and had, therefore, changed the scope of the original punishment to the applicant's detriment, by imposing a heavier penalty.

The judgment is noteworthy in that the Court clarified that Article 7 was applicable in a case where a foreign reducible life sentence was converted, upon a prisoner's transfer, into an irreducible one by the authorities of the administering State. In the Court's view, such a conversion amounted to a significant change of the scope of the imposed "penalty" going well beyond a mere measure of the "execution" or "enforcement" of a "penalty" which would not attract the applicability of Article 7 (*Del Río Prada v. Spain*[61]).

The Court has constantly held that a change in a regime for release on parole, either in the domestic context or as a result of the transfer of prisoners, belongs exclusively within the domain of the execution of a sentence, thereby excluding the application of Article 7 (*Kafkaris v.*

59. *Kupinskyy v. Ukraine*, no. 5084/18, 10 November 2022 (not final).

60. *Petukhov v. Ukraine (no. 2)*, no. 41216/13, 12 March 2019.

61. *Del Río Prada v. Spain* [GC], no. 42750/09, §§ 83 and 89, ECHR 2013.

Cyprus[62]; *Grava v. Italy*[63]; and *Ciok v. Poland*[64]). In particular, in the context of the transfer of prisoners, the Court has confirmed this approach where the prospects of release on parole were less favourable, or the relevant rules were stricter, in the administering State than in the sentencing State (*Szabó v. Sweden*[65]; *Csoszánszki v. Sweden*[66]; and *Müller v. the Czech Republic*[67]).

However, unlike the above-noted cases, which concerned the terms for granting parole in the State to which the prisoner had been transferred, the instant case raised an issue concerning the unavailability of parole as a matter of law in the State concerned.

The crucial point in the Court's analysis was whether the sentences imposed by a foreign trial court and imposed as a result of the conversion by the administering State differed as to their scope.

In this connection, the Court reiterated the principle set out in *Del Río Prada* (cited above, § 89) to the effect that Article 7 § 1 would be deprived of any useful effect if its guarantees did not extend to the measures redefining or modifying the scope of a sentence imposed by the trial court, *ex post facto* and to the detriment of the convicted person.

The Court considered that irreducible and reducible life sentences differed as to their scope. The difference had been significant enough for this Court to find the former sentence incompatible with the requirements of the Convention (*Vinter and Others v. the United Kingdom*[68], and *Petukhov (no. 2)*, cited above), and the latter sentence compatible (*Hutchinson v. the United Kingdom*[69]). Such distinction reinforces the importance of the ground of rehabilitation, which is central to European penal policy.

The Court further observed that, while the Hungarian legislation differentiated between, and provided for both, reducible and irreducible life sentences, the Hungarian courts had explicitly decided to impose on the present applicant a reducible life sentence and not an irreducible one. Upon the applicant's transfer to Ukraine, the manner in which his penalty had been converted ultimately modified the scope thereof, resulting in a change of regime to parole not being available at all.

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62. *Kafkaris v. Cyprus* [GC], no. 21906/04, § 142, ECHR 2008.
63. *Grava v. Italy*, no. 43522/98, § 51, 10 July 2003.
64. *Ciok v. Poland* (dec.), no. 498/10, § 34, 23 October 2012.
65. *Szabó v. Sweden* (dec.), no. 28578/03, ECHR 2006-VIII.
66. *Csoszánszki v. Sweden* (dec.), no. 22318/02, 27 June 2006.
67. *Müller v. the Czech Republic* (dec.), no. 48058/09, 6 September 2011.
68. *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, ECHR 2013 (extracts).
69. *Hutchinson v. the United Kingdom* [GC], no. 57592/08, 17 January 2017.

Article 7 was therefore found to be applicable in the present case (and, as noted above, to have been violated).

OTHER RIGHTS AND FREEDOMS

Right to respect for one's private and family life, home and correspondence (Article 8)

Applicability

The judgment in *Darboe and Camara v. Italy*[70] concerned the applicability of Article 8 to age-assessment procedures for migrants requesting international protection and claiming to be children.

The case concerned the procedural rights of a migrant requesting international protection and claiming to be a minor, in particular in respect of the procedure for determining his or her age. The applicant submitted that he had declared the fact that he was a minor and orally expressed his intention to apply for international protection shortly after his arrival in Italy. He was provided with a healthcare card by the local health authority, indicating a date of birth according to which he was 17 years of age. After his initial placement in a centre for foreign unaccompanied children, the applicant was transferred to a reception centre for adults. A month later an X-ray examination of his wrist and hand was carried out, based on which the applicant was considered to be an adult. Following a request by the applicant and an exchange of submissions, the Court indicated to the Government, under Rule 39 of the Rules of Court, to transfer the applicant to facilities where his reception conditions as an unaccompanied minor could be ensured: he was transferred thereto four days later.

The applicant complained under Articles 3, 8 and 13 of the Convention.

The Court found, in the first place, a violation of Article 8 on account of the authorities' failure to act with the necessary diligence to comply with their positive obligation to protect the applicant as an unaccompanied minor requesting international protection. Secondly, the Court found a violation of Article 3 on account of the length and conditions of the applicant's stay in the reception centre for adults. Thirdly, the Court found a violation of Article 13 (in conjunction with Articles 3 and 8), since the applicant had not been afforded an effective remedy under

70. *Darboe and Camara v. Italy*, no. 5797/17, 21 July 2022.

Italian law by which to lodge his complaints under Articles 3 and 8 of the Convention.

The judgment is noteworthy in that it is the first time that the Court has examined, under Article 8 of the Convention, a complaint about age-assessment procedures for migrants requesting international protection and claiming to be minors.

As regards the applicability of Article 8 the Court considered that the age of a person was a means of personal identification and that the procedure to assess the age of an individual alleging to be a minor, including its procedural safeguards, was essential in order to guarantee to him or her all the rights deriving from his or her status as a minor. It also emphasised the importance of age-assessment procedures in the migration context. Determining whether an individual was a minor was the first step to recognising his or her rights and putting into place all the necessary care arrangements. If a minor were wrongly identified as an adult, serious measures in breach of his or her rights might be taken.

Positive obligations

The judgment in *Darboe and Camara v. Italy*[71] concerned the procedural rights of a migrant requesting international protection and claiming to be a minor, in particular in respect of the procedure for determining his or her age.

The applicant submitted that he had declared the fact that he was a minor and orally expressed his intention to apply for international protection shortly after his arrival in Italy. He was provided with a healthcare card by the local health authority, indicating a date of birth according to which he was 17 years of age. After his initial placement in a centre for foreign unaccompanied children, the applicant was transferred to a reception centre for adults. A month later an X-ray examination of his wrist and hand was carried out, based on which the applicant was considered to be an adult. Following a request by the applicant and an exchange of submissions, the Court indicated to the Government, under Rule 39 of the Rules of Court, to transfer the applicant to facilities where his reception conditions as an unaccompanied minor could be ensured: he was transferred thereto four days later.

The applicant complained under Articles 3, 8 and 13 of the Convention.

The Court found, in the first place, a violation of Article 8 on account of the authorities' failure to act with the necessary diligence to comply with

71. *Darboe and Camara v. Italy*, no. 5797/17, 21 July 2022.

their positive obligation to protect the applicant as an unaccompanied minor requesting international protection. Secondly, the Court found a violation of Article 3 on account of the length and conditions of the applicant's stay in the reception centre for adults. Thirdly, the Court found a violation of Article 13 (in conjunction with Articles 3 and 8), since the applicant had not been afforded an effective remedy under Italian law by which to lodge his complaints under Articles 3 and 8 of the Convention.

The judgment is noteworthy in that it is the first time that the Court has examined, under Article 8 of the Convention, a complaint about age-assessment procedures for migrants requesting international protection and claiming to be minors.

When examining the merits of the applicant's complaint, the Court emphasised that it was not its task to speculate on whether or not the applicant was a minor at the time of his arrival in Italy: it was, however, satisfied that he did declare that he was a minor at some point after his arrival. Consequently, it examined whether the domestic authorities accorded the applicant the procedural rights stemming from his status as an unaccompanied minor requesting international protection, which it considered to have come into play in two respects: (i) his representation; and (ii) the provision of adequate information during the age-assessment process.

(i) The Court found that the authorities' failure to promptly appoint a legal guardian or representative for the applicant prevented him from duly and effectively submitting an asylum request.

(ii) Although the applicant had stated that he was a minor, he was placed in an overcrowded reception centre for adults for more than four months because the authorities failed to apply the presumption of minority (which presumption the Court deemed to be an inherent element of the protection of the right to respect for private life of a foreign unaccompanied individual claiming to be a minor), and because of shortcomings in the procedural guarantees afforded to him in the age-assessment process (he was not provided with information as to the type of age-assessment procedure he was undergoing and its possible consequences; he was not provided with a copy of the medical report, which failed to indicate a margin of error; and no judicial decision or administrative measure concluding that the applicant was of adult age was issued, which made it impossible for him to lodge an appeal).

While the assessment of an individual's age might be a necessary step in the event of doubt as to his or her minor status, the Court considered that sufficient procedural guarantees had to accompany the procedure.

Such safeguards included the appointment of a legal representative or guardian, access to a lawyer, and the informed participation in the age-assessment procedure of the person whose age was in doubt. In this connection, the Court welcomed that the guarantees put in place by EU and international law had gone further to ensure a holistic and multidisciplinary age-assessment procedure. It noted, moreover, that the negative impact on the applicant's right to personal development, and to establish and develop relationships with others, could have been avoided if he had been placed in a specialised centre or with foster parents.

The judgment in *C. v. Romania*[72] concerned protection against sexual harassment in the workplace.

The applicant made a criminal complaint about sexual harassment in the workplace. A prosecutor examined the applicant (who described the acts carried out by her manager, X, which had taken place over a period of more than two years), as well as X and other witnesses. The prosecutor was given recordings made by the applicant of her interactions with her manager. A decision not to prosecute and to end the investigation was taken after two years, because the acts in question had not been committed with the degree of criminal liability required by law. A court confirmed the dismissal of the applicant's complaint: while it found that the manager had asked for sexual favours from her, it considered that she had not felt threatened in her sexual freedom or humiliated, elements required by domestic law for the acts to constitute a criminal offence. Once the matter was reported to X's employer, the steps taken were limited to hearing the parties (including a confrontation between the applicant and X) and instructing the applicant to go to the police. When given a choice to continue working for the same employer or to resign, the applicant chose the latter option.

The Court found a violation of Article 8 (private life/personal integrity) on account of the authorities' failure to comply with their positive obligation to protect the applicant as an alleged victim of sexual harassment, despite existing protective domestic laws.

The judgment is noteworthy in that it is the first time that the Court has examined, under Article 8 of the Convention, a complaint specifically about sexual harassment in the workplace[73].

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72. *C. v. Romania*, no. 47358/20, 30 August 2022.

73. See *Špadijer v. Montenegro*, no. 31549/18, 9 November 2021, as regards the obligation to protect employees against bullying in the workplace.

(i) As regards the applicability of Article 8 to an attack on a person's private life, the Court applied the level of seriousness test. While the authorities confirmed that the acts in question (which had taken place) were not considered sufficiently severe to be of a criminal nature under domestic law, the Court considered that those acts, which concerned the applicant's psychological integrity and sexual life, had reached the threshold required for Article 8 to come into play.

(ii) On the merits, the Court clarified that the facts of the case fell within the category of an act in respect of which it had already found that an adequate protective legal framework did not always require a specific criminal-law provision: it therefore first examined the employer's response to the allegations of sexual harassment by an employee. In this regard, the Court emphasised that the impossibility of assessing whether any mechanisms had been put in place by the employer primarily to deal with sexual harassment in the workplace may itself run counter to the requirements of Article 8 of the Convention. Noting, in any event, that the applicant's complaint focused on the alleged deficient response of the authorities to her criminal complaint, the Court went on to examine whether the applicant's right to personal integrity had been sufficiently protected by those criminal proceedings which had resulted in (a) confirmation that X had asked the applicant for sexual favours at work; and (b) a final decision that the acts in question did not meet the requirements provided for by the criminal law to constitute a criminal offence.

In concluding that the State had breached its positive obligations under Article 8 in this specific situation, the Court referred to significant flaws in the investigation and decisions, namely:

(a) the specific context of sexual harassment, and the inherent difficulty for the victims to prove their allegations, was not taken into account. X's relationship of power and the subordination of the victim, as well as the alleged threats he made against her, were not considered and assessed;

(b) the psychological consequences of the alleged harassment on the applicant were not analysed by a specialist, and whether any reasons existed for her to make false accusations was not verified; and

(c) insensitive/irreverent statements by X about the applicant were extensively reproduced in the prosecutor's decision, a stigmatisation of the victim which may be seen as contrary to Article 8. The principle according to which the need for a confrontation with the victim must be carefully weighed against the need to protect the victim's dignity and sensitivity was not respected. Referring to international standards, which

require the protection of the rights and interests of victims along with the effective punishment of perpetrators, the Court therefore criticised a failure by the investigating authorities to protect the applicant from secondary victimisation.

Freedom of expression (Article 10)

Applicability

The judgment in *Kotlyar v. Russia*[74] concerned the applicability of Article 10 to a protest in the form of the deliberate submission of false information to authorities in breach of criminal law.

The applicant, a human rights defender, provided legal advice and social assistance to persons who had decided to move to Russia from other republics of the former Soviet Union. In particular, she was a vocal critic of the deficiencies in the legal framework and its practical implementation, which had prevented immigrants from accessing State benefits or applying for Russian citizenship. In protest against the residence registration system and on compassionate grounds, the applicant submitted false information to the authorities in respect of hundreds of non-Russian nationals seeking such registration: she certified that they were all living in her flat, whereas they were actually living elsewhere. She was convicted on this account and appealed unsuccessfully.

The applicant complained that the criminal proceedings against her had sought to stifle her freedom to express an opinion on a systemic social problem, in breach of Article 10, her actions constituting a form of civil disobedience. The Court found that the conduct for which the applicant had been sanctioned did not amount to an expressive act. As she had been held liable for breaching a generally applicable law that had not been designed to suppress, nor had it had the effect of interfering with, any "communicative activity" on her part, the conduct for which she had been sanctioned did not fall within the ambit of Article 10. Her complaint was therefore declared inadmissible as being incompatible *ratione materiae* with the provisions of the Convention.

The judgment is noteworthy in that the Court clarified the factors relevant for assessing whether the protection of Article 10 extends to a given act or conduct prohibited by law. The Court carried out a two-tier analysis: in the first place, it examined the specific law that had been infringed; and secondly, it considered the nature of the impugned act.

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74. *Kotlyar v. Russia*, nos. 38825/16 and 2 others, 12 July 2022.

(i) As to the specific law that had been breached, the Court focused on the following characteristics: whether it was a generally applicable law; whether it had been designed to suppress freedom of expression; and, generally, what the legitimate aims pursued were.

The residence registration law, which the present applicant was found to have infringed, was a law of general application. It did not target the exercise of freedom of expression as such or any specific form of expression. It went no further than requiring that the information about a person's place of residence be truthful and accurate, so that the authorities could, among other purposes, reliably calculate how many public services were needed in each area and ensure that official correspondence was properly addressed and delivered. Providing untrue information about the place of residence impeded the achievement of those legitimate aims and the authorities could take measures to counteract such conduct by introducing administrative or criminal sanctions. The law made it an offence to provide deliberately false information in official applications for neutral regulatory purposes and the Court found nothing unusual or unreasonable in that approach.

(ii) In order to determine whether the law in question had had the effect of interfering with the applicant's freedom of expression, the Court analysed whether it had been infringed in a manner related to the exercise thereof. In other words, the Court considered the nature of the applicant's actions.

To this end, the Court relied upon and clarified two key elements, as set out in *Murat Vural v. Turkey*[75]: the expressive character of the act or conduct seen from an objective point of view, and the purpose or intention of the person performing the act or engaging in the conduct in question.

– In the Court's view, for an activity to be expressive in objective terms, it should be communicative and aimed at a broader public. However, the deliberate provision of false information to the authorities was devoid of such features and therefore did not amount to an expressive act. In this connection, the Court contrasted the instant case and *Gough v. the United Kingdom*[76], where public nudity had been recognised as a form of expression.

– As to the applicant's purpose, the Court noted the sincerity of her belief as regards the wrongfulness of the residence regulations and of her intention to convey a message of protest in this regard. The applicant had indeed used a variety of means to raise awareness of the issues faced

75. *Murat Vural v. Turkey*, no. 9540/07, 21 October 2014.

76. *Gough v. the United Kingdom*, no. 49327/11, 28 October 2014.

by immigrants, including seeking to draw the authorities' attention to those issues, making statements to the media, giving interviews and publishing open letters. The Court has previously accepted that a protest taking the form of impeding the activities of which applicants disapprove may constitute an expression of opinion within the meaning of Article 10 (*Steel and Others v. the United Kingdom*[77], and *Hashman and Harrup v. the United Kingdom*[78], involving protests against hunting by disrupting organised hunts and against the enlargement of a motorway by breaking into a construction site, respectively). However, it considered there to be a significant difference between being sanctioned for offering some form of resistance to the lawful activities of others and actively engaging in criminally reprehensible conduct by making false representations to the authorities. In the instant case, the Court was therefore unable to accept that the applicant's intention to protest released her from the duty to obey the law and conferred an objectively expressive character on the breach committed, all the more so as she had not been prevented by any repressive measures from bringing her views to the public's attention.

In the Court's view, protest motives are insufficient *per se* to bring a criminally reprehensible act within the ambit of Article 10. However, where such an act pursues the purpose of preparing material for a communicative activity, it may fall within the scope of this provision. The Court referred in this respect to cases where the applicants had been held responsible for criminally reprehensible acts that had formed part of an investigation undertaken while gathering material for a planned publication or broadcast (*Erdtmann v. Germany*[79], where the applicant had carried a knife onto an aeroplane to prepare a television documentary about airport security flaws; *Salihu and Others v. Sweden*[80], where the applicant had illegally purchased a firearm to investigate how easy it was to do so; and *Brambilla and Others v. Italy*[81], where the applicants had illegally intercepted police communications). The Court distinguished the instant case from this case-law: the applicant had not claimed that she had committed the residence-regulation offences as part of an investigation into any official abuse or for the purposes of preparing material that was to be published.

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77. *Steel and Others v. the United Kingdom*, 23 September 1998, *Reports of Judgments and Decisions* 1998-VII.
78. *Hashman and Harrup v. the United Kingdom* [GC], no. 25594/94, ECHR 1999-VIII.
79. *Erdtmann v. Germany* (dec.), no. 56328/10, 5 January 2016.
80. *Salihu and Others v. Sweden* (dec.), no. 33628/15, 10 May 2016.
81. *Brambilla and Others v. Italy*, no. 22567/09, 23 June 2016.

Freedom of expression

The judgment in *OOO Memo v. Russia*[82] concerned the question of whether the measures aimed at protecting the reputational interests of a public body can be regarded as pursuing a "legitimate aim" under Article 10 § 2.

A regional administration (the executive body of a constituent entity of the Russian Federation) brought successful civil defamation proceedings against an online media outlet – the applicant company – which was ordered to publish a retraction of several statements made in an article criticising the actions of the administration.

The applicant company complained under Article 10 that the impugned measure had not pursued any legitimate aim because public authorities could not claim to enjoy any "business reputation". The Court found a breach of this provision, considering that the defamation proceedings had indeed not pursued any of the legitimate aims thereunder.

The judgment is noteworthy in that the Court clarified matters concerning the question of whether the ambit of the "protection of the reputation ... of others" aim in Article 10 § 2 extends to public bodies, and, more specifically, to bodies of the executive vested with State powers.

(i) In the first place, the Court explained in what circumstances it was appropriate to examine in greater detail the question of whether the impugned interference was in pursuance of the legitimate aim of "protection of the reputation ... of others", where the interests of a public body were involved. While the Court generally deals with the question of legitimate aim summarily and with a degree of flexibility (*Merabishvili v. Georgia*[83]), and focuses on the assessment of the proportionality of the interference, including in this particular context (*Lombardo and Others v. Malta*[84]; *Romanenko and Others v. Russia*[85]; and *Margulev v. Russia*[86]), the Court attached significance to the risks for democracy stemming from court proceedings instituted with a view to limiting public participation. With this in mind, the Court outlined two factors warranting a stricter, more detailed examination of the existence of the above-mentioned legitimate aim: the existence of a dispute between the parties in

82. *OOO Memo v. Russia*, no. 2840/10, 15 March 2022.
83. *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 297 and 302, 28 November 2017.
84. *Lombardo and Others v. Malta*, no. 7333/06, § 50, 24 April 2007.
85. *Romanenko and Others v. Russia*, no. 11751/03, § 39, 8 October 2009.
86. *Margulev v. Russia*, no. 15449/09, § 45, 8 October 2019.

this regard and the power imbalance between the claimant and the defendant in the domestic proceedings.

(ii) In some cases about the reputational interests of public bodies, the Court had been prepared to assume that the aim of the "protection of the reputation" was "legitimate" (*Romanenko and Others*, cited above, § 39; *Savva Terentyev v. Russia*[87]; *Freitas Rangel v. Portugal*[88]; and *Goryaynova v. Ukraine*[89]). At the same time, a mere institutional interest did not necessarily attract the same level of guarantees as that accorded to "the protection of the reputation ... of others" within the meaning of Article 10 § 2 (*Margulev*, cited above, § 45, and *Kharlamov v. Russia*[90]). The Court had also stressed that the limits of permissible criticism were wider with regard to a public authority than in relation to a private citizen, or even a politician (*Margulev*, § 53, and *Lombardo*, § 54, both cited above).

(iii) In the instant case, the Court clarified the matter by distinguishing between two types of public body: on the one hand, public entities that engaged in direct economic activities and, on the other, bodies of the executive vested with State powers.

As to the former, the Court observed that public or State-owned corporations engaged in competitive activities in the marketplace relied on their good reputation to attract customers with a view to making a profit. In this respect, the Court reiterated its earlier findings recognising a legitimate "interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good" (*Steel and Morris v. the United Kingdom*[91], and *Uj v. Hungary*[92]).

However, those considerations were inapplicable to the latter, a body of the executive vested with State powers which did not engage as such in direct economic activities but was funded by taxpayers and existed to serve the public. By virtue of its role in a democratic society, the interests of such a body in maintaining a good reputation differed from the reputational interests of natural persons and of legal entities, whether private or public, that competed in the marketplace. In particular, the interests of a public authority were indissociable from the need to prevent abuse of power or corruption of public office by

87. *Savva Terentyev v. Russia*, no. 10692/09, § 60, 28 August 2018.
88. *Freitas Rangel v. Portugal*, no. 78873/13, § 48, 11 January 2022.
89. *Goryaynova v. Ukraine*, no. 41752/09, § 56, 8 October 2020.
90. *Kharlamov v. Russia*, no. 27447/07, § 29, 8 October 2015.
91. *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II.
92. *Uj v. Hungary*, no. 23954/10, § 22, 19 July 2011.

subjecting its activities to close scrutiny, not only of the legislative and judicial authorities but also of public opinion, and shielding bodies of the executive from media criticism would run counter to this objective in so far as it might seriously hamper freedom of the media. Allowing executive bodies to bring defamation proceedings against members of the media would place an excessive and disproportionate burden on the latter and would have an inevitable chilling effect (*Dyuldin and Kislov v. Russia*[93], and *Radio Twist a.s. v. Slovakia*[94]).

(iv) In view of the specific features and role of a public authority, the Court set forth a new general rule to the effect that civil defamation proceedings brought in its own name by a legal entity that exercises public power may not be regarded to be in pursuance of the legitimate aim of "the protection of the reputation ... of others" under Article 10 § 2 of the Convention. However, this general rule did not apply to individual members of a public body, who could be "easily identifiable": they may be entitled to bring defamation proceedings in their own individual name. The Court drew inspiration from *Thoma v. Luxembourg*[95] and *Lombardo and Others* (cited above) to indicate the factors that would make individual members of a public body "easily identifiable": the nature of the allegations made against them, the limited number of officials working in a given public body and the scale of its operations (notably in terms of the size of the population concerned by its activities).

(v) On the facts of the case, the Court found that the claimant in the domestic defamation proceedings was the highest body of the regional executive. It was hardly conceivable that it had had an interest in protecting its commercial success and viability. Nor could it be said that its members had been "easily identifiable". In any event, the defamation case had been brought on behalf of the legal entity and not of its individual members. Accordingly, the civil defamation proceedings instituted by the regional administration against the applicant media company had not pursued any of the legitimate aims enumerated in Article 10 § 2 of the Convention.

Freedom of the press

The judgment in *NIT S.R.L. v. the Republic of Moldova*[96] concerned the statutory obligation on broadcasters to observe political pluralism.

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93. *Dyuldin and Kislov v. Russia*, no. 25968/02, § 43, 31 July 2007.
94. *Radio Twist a.s. v. Slovakia*, no. 62202/00, § 53, ECHR 2006-XV.
95. *Thoma v. Luxembourg*, no. 38432/97, § 56, ECHR 2001-III.
96. *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, 5 April 2022.

The applicant company had a television channel (NIT) which it broadcast nationally. In 2009, following a change of government, NIT became a platform for criticism of the government and the promotion of the Party of the Communists (PCRM – the only opposition party at the material time). It was sanctioned for repeated and serious breaches of the statutory requirement to ensure political balance and pluralism, including for: broadcasting distorted news items; favouring the PCRM and covering its opponents (including the government) in a negative light without giving them a platform to reply; and using aggressive journalistic language (comparing one leader of the other political parties to "Hitler", and referring to all of the leaders as "criminals, "bandits", "crooks" and "swindlers"). In 2012 their broadcasting licence was revoked.

The applicant company relied on Article 10 and Article 1 of Protocol No. 1. The Court found no violation of either of these provisions. In its view, Moldova's licensing system was capable of contributing to the quality and balance of programmes and was thus consistent with the third sentence of Article 10 § 1. The manner in which the regulatory framework was designed did not exceed the State's margin of appreciation, the news reporting in issue did not warrant the enhanced protection afforded to press freedom, and the revocation of the licence was considered to be justified, exempt of political motivation, accompanied by adequate safeguards and proportionate to the legitimate aims pursued.

The Grand Chamber judgment is noteworthy in that the Court developed its case-law on pluralism in the media. In particular, the Court dealt, for the first time, with restrictions imposed on a broadcaster with the aim of enabling diversity in the expression of political opinion and enhancing the protection of the free-speech interests of others in the audiovisual media (existing standards had been elaborated in the context of unjustified State interferences with an applicant's Article 10 rights in breach of the principle of pluralism). In this regard, the Court clarified the interrelationship between the internal and external aspects of media pluralism, the scope of the margin of appreciation afforded to States, and the level of scrutiny applicable to restrictions in this area. It also outlined the factors for assessing a regulatory framework and its application.

(i) While previous cases were concerned with the external aspect of media pluralism[97], in the present case the Court considered its

97. Concerning issues such as the existence of a variety of outlets, each with a different point of view, and the concentration of media in the hands of too few, such as a monopoly, duopoly, etc., see *Manole and Others v. Moldova*, no. 13936/02, ECHR 2009 (extracts); *Centro*

internal aspect (obligation on broadcasters to present different political views in a balanced manner, without favouring a particular party or movement). The Court clarified that both aspects had to be considered in combination with each other, rather than in isolation. This meant that in a national licensing system involving a certain number of broadcasters with national coverage, what might be regarded as a lack of internal pluralism in the programmes offered by one broadcaster might be compensated for by the existence of effective external pluralism. However, it is not sufficient to provide for the existence of several channels. What was required was to guarantee the diversity of overall programme content, reflecting as far as possible the variety of opinions in society. Having surveyed different approaches in member States to achieve this objective, the Court was of the view that Article 10 did not impose a particular model.

(ii) The Court further clarified that the States' margin of discretion, in determining the means of ensuring political pluralism in the area of licensing audiovisual media, should be wider than normally afforded to restrictions on freedom of the press to report on matters of public interest or political opinion, which traditionally called for a strict scrutiny. However, that discretion would be narrower depending on the nature and seriousness of any restriction on editorial freedom. In particular, the severity of the present sanction imposed on a media company called for closer scrutiny by the Court and for a narrower margin of appreciation.

(iii) As to assessing the relevant regulatory framework and its application in the concrete circumstances of a given case, the Court will analyse whether the effects they have produced, seen as a whole, are compatible with the guarantees of Article 10 and have been attended by effective safeguards against arbitrariness and abuse. The fairness of proceedings and procedural guarantees afforded are factors of particular relevance for the proportionality assessment, especially where the impugned measures are severe.

(iv) Considering specifically the obligation on broadcasters to observe the principle of political balance and pluralism, as enshrined in domestic law, the Court based its analysis on the following factors:

– the scope and generality of the obligation (in the instant case, it extended only to news bulletins, concerned all broadcasters and did not require them to give an equal amount of airtime to all political parties, but to offer an opportunity to comment or reply);

Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, ECHR 2012; and *Informationsverein Lentia and Others v. Austria*, 24 November 1993, Series A no. 276.

– the degree of external pluralism (it was quite limited in the present case; the existence of four other TV broadcasters with nationwide coverage was insufficient to call into question the strictness of the internal pluralism policy);

– the domestic media context (following the post-2001 election of the PCRM as the only governing party and the ensuing media situation, which had been criticised in *Manole and Others v. Moldova*[98], the authorities had been under a strong positive obligation to put in place legislation ensuring the transmission of accurate and balanced news and information reflecting the full range of political opinions); and

– the existence of safeguards to secure the independence of a media regulator and its protection from undue government influence and political pressures (such as the rules on its structure and the selection, appointment and functioning of its members).

(v) When assessing the proportionality of the impugned licence revocation, which was the most severe sanction under domestic law that had immediate effect, the Court attached particular importance to the fairness of the proceedings and the procedural safeguards, including: the public nature of, and the representation of the NIT at, the meetings of the media regulator; the ability to submit comments on the monitoring findings, to challenge the media regulator's decision before the competent courts and to ask for a stay of execution; and the provision of reasons by the courts when dismissing such a request and, generally, the thoroughness of the judicial review.

The Court also had regard to the following elements: the gravity and persistence of NIT's transgressions and its defiant attitude despite a series of previous milder sanctions; the considerable impact of NIT's news bulletins broadcast nationwide; and the remaining possibilities for NIT to broadcast on the Internet, to pursue other income-generating activities and to reapply for a licence one year after its revocation.

Freedom of assembly and association (Article 11)

Applicability

The decision in *Barış and Others v. Turkey*[99] concerned the applicability of Article 11 to dismissal based on participation in unofficial strike action.

The applicants, company employees, were dismissed for having stopped working throughout a period of strike action which had

98. *Manole and Others v. Moldova,* no. 13936/02, ECHR 2009 (extracts).

99. *Barış and Others v. Turkey* (dec.), nos. 66828/16 and 31 others, adopted on 14 December 2021 and delivered on 27 January 2022.

not been initiated by a trade union, but instead by a large number of employees who had resigned *en masse* from their previous trade union, in which they had no longer had confidence. Many of their number, including the applicants, decided to join another trade union. The purpose of their action was to protest against the procedure by which the previous (recognised) trade union had negotiated the collective-bargaining agreement concluded with the employer, and against the pressure allegedly exerted by the employer to join this trade union, or to remain in it. The applicants challenged their dismissal before the courts, but without success. According to the facts as established by the Court of Cassation, their dismissal had been based on participation in a strike that was not part of trade-union action, rather than on their wish to leave the trade union in question and join another one.

The Court declared the application inadmissible (incompatible *ratione materiae*), on the grounds that the disputed procedure did not come within the scope of Article 11 of the Convention.

The decision is noteworthy in that the Court addressed a new question, namely the applicability of Article 11 to a strike conducted by individual employees, outside the framework of official trade-union action.

The cases which the Court has examined to date concerned actions that had always been initiated by a trade union, whether they involved strike action or actions comparable to it (*Karaçay v. Turkey*[100]; *Dilek and Others v. Turkey*[101]; and the case-law summarised in *Association of Academics v. Iceland*[102]). In its settled case-law, the Court has considered strike action as an important and powerful tool available to trade unions in order to defend the professional instruments of their members (*Schmidt and Dahlström v. Sweden*[103]; *Wilson, National Union of Journalists and Others v. the United Kingdom*[104]; and *Hrvatski liječnički sindikat v. Croatia*[105]). While the Court recognises, in principle, that the protection of Article 11 extends to this tool of trade-union action, it has, however, never accepted that a strike that is called not by a trade union, but by a trade union's members, or even non-members, is also entitled to the same protection. In the present decision, the Court clarified that it is

100. *Karaçay v. Turkey*, no. 6615/03, 27 March 2007.

101. *Dilek and Others v. Turkey*, nos. 74611/01 and 2 others, 17 July 2007.

102. *Association of Academics v. Iceland* (dec.), no. 2451/16, 15 May 2018.

103. *Schmidt and Dahlström v. Sweden*, 6 February 1976, § 36, Series A no. 21.

104. *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96 and 2 others, § 45, ECHR 2002-V.

105. *Hrvatski liječnički sindikat v. Croatia*, no. 36701/09, § 49, 27 November 2014.

specifically as a tool in the arsenal of trade unions that the right to strike is protected by Article 11. In other words,

> ... strike action is, in principle, protected by Article 11 only in so far as it is called by trade-union organisations and considered as being effectively – and not only presumed to be – part of trade-union activity.

In this connection, the Court referred to the case-law of the European Committee on Social Rights, which has found that reserving the right to strike to trade unions is compatible with Article 6 § 4 of the European Social Charter, provided that setting up a trade union is not subject to excessive formalities.

On this basis, and for the purpose of examining the applicability of Article 11 to the present case, the Court focused its attention on one particular aspect of the case, namely the applicants' negative right to freedom of association, having regard, in particular, to their wish to leave the trade union in question and the related allegations of pressure from their employer. However, as follows from the analysis by the Court of Cassation and the Constitutional Court, all of the measures taken by the employer were related to the employees' failure to resume working, and were not based on their membership, or non-membership, of a specific trade union. In addition, the conditions for membership of the trade union were not at all the subject matter of the strike action in which the applicants took part. Thus, the question of whether or not the applicants had the possibility to leave a trade union and to join another trade union did not seem to be in issue in the present case.

In the light of all these factors, the Court concluded that the applicants could not effectively claim a right to the freedom of association that is protected under Article 11, in so far as they had not been dismissed:

– for having taken part in a demonstration organised by a trade union;

– for having asserted professional rights as part of the activities of a trade union;

– for having withdrawn from a specific trade union; or

– for having chosen not to join a specific trade union.

Prohibition of discrimination (Article 14)

Article 14 taken in conjunction with Article 8

The judgment in *Arnar Helgi Lárusson v. Iceland*[106] concerned a lack of wheelchair access to two public buildings, cultural and social, in the

106. *Arnar Helgi Lárusson v. Iceland*, no. 23077/19, 31 May 2022.

applicant's place of residence and the State's positive obligations in this regard.

The applicant, a wheelchair user, unsuccessfully brought proceedings with a view to improving the accessibility of arts and cultural centres in his town. The domestic courts noted that the municipality had worked towards improving such access further to domestic legislation which had taken into account the State's international obligations under the United Nations Convention on the Rights of Persons with Disabilities (CRPD): the municipality had devised and put into action a strategy to improve access to some of its buildings within its wide margin of appreciation as to the prioritisation of such projects and the allocation of funds available.

The applicant complained under Article 14 in conjunction with Article 8 (private life) about the inaccessibility of those two public buildings which had led to him being unable to attend cultural and arts events therein and put him on an uneven footing with other inhabitants of the town. The Court found that there had been no violation of the Convention.

The judgment is noteworthy in that, for the first time, a complaint about a lack of accessibility of public buildings for disabled persons was considered to fall within the ambit of "private life", allowing the Court to go on to examine, under Article 14 in conjunction with Article 8, whether the State had fulfilled its positive obligations, given international standards, to take sufficient measures to correct factual inequalities impacting on the applicant's equal enjoyment of his right to private life.

(i) Distinguishing the applicant's case from prior cases (*Botta v. Italy*[107]; *Zehnalová and Zehnal v. the Czech Republic*[108]; and *Glaisen v. Switzerland*[109]) and finding that the present lack of wheelchair access did fall within the "ambit" of "private life" and Article 8, the Court: (i) stressed that the applicant had clearly identified two particular public buildings playing an important part in local life, the lack of access to which had hindered him attending a substantial part of the cultural activities, social events and parties offered by his community; (ii) underlined European and international standards to the effect that people with disabilities should be enabled to fully integrate into society and have equal opportunities for participation in the life of the community; and (iii) considered that the situation in issue was liable to affect the applicant's rights to personal development and to establish and develop

107. *Botta v. Italy*, 24 February 1998, *Reports of Judgments and Decisions* 1998-I.

108. *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V.

109. *Glaisen v. Switzerland* (dec.), no. 40477/13, 25 June 2019.

relationships with the outside world, thereby falling within the "ambit" of Article 8.

(ii) As to whether there had been discrimination due to a lack of positive measures by the State, the Court specified, first, that a certain threshold is required for the Court to find that such a difference in treatment is significant. Secondly, it clarified that the States' margin of appreciation is a wide one as regards a lack of access to public buildings in the context of the right to respect for private and family life. Thirdly, as Article 14 had already been read in the light of the requirements of the CRPD, the Court extended its previous considerations, regarding "reasonable accommodation" which people with disabilities are entitled to expect, to their social and cultural life, by reference to Article 30 of the CRPD which requires that such persons are guaranteed the opportunity to take part on an equal basis with others in cultural life. Lastly, the relevant test to be applied was whether the State had made the "necessary and appropriate modifications and adjustments" to accommodate and facilitate persons with disabilities, like the applicant, which did not impose "a disproportionate or undue burden" on the State.

(iii) When applying the above principles, the Court had regard to the following factors:

– the considerable efforts already made following a parliamentary resolution to improve accessibility of public buildings in the municipality, having regard to the available budget and the necessary protection of the old buildings in question;

– the priority which had been given to educational and sports facilities, as regards improvements already made, which was neither arbitrary nor unreasonable; and

– the resulting general commitment of the State to work towards the gradual realisation of universal access in line with the relevant international materials (Recommendation Rec(2006)5 of the Council of Europe[110] and the CRPD).

In the circumstances and having regard to the positive obligation to reasonably accommodate the applicant, requiring the State to put in place further measures would amount to imposing a "disproportionate or undue burden" on it. The applicant's lack of access to the two buildings in question did not therefore amount to a discriminatory failure by the State to take sufficient measures to correct factual inequalities in order to enable the applicant to exercise his right to private life on an equal basis with others.

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110. Recommendation Rec(2006)5 of the Council of Europe to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

The judgment in *Beeler v. Switzerland*[111] concerned the question of whether a complaint relating to a welfare benefit fell within the ambit of "family life".

After the death of his wife, the applicant left employment in order to look after their children full time, and was therefore paid a "widower's pension". In accordance with the domestic law, the right to receive that pension ended when his youngest daughter reached the age of majority. At that time, he was not yet eligible for an old-age pension and, since he had not been employed for over sixteen years, he claimed that he was unable to find a job. He unsuccessfully argued that the termination of his widower's pension was discriminatory because the relevant law did not deprive widows of their entitlement to such a pension even after their youngest child had reached adulthood.

The applicant complained under Article 14 taken in conjunction with Article 8. The Government stated that welfare benefits, such as the one in issue, ordinarily fell within the scope of Article 1 of Protocol No. 1 (which had not been ratified by Switzerland) and not within that of Article 8. A Chamber of the Court (2020) found that the complaint fell within the ambit of Article 8, rendering Article 14 applicable and the Grand Chamber reached the same conclusion (on different grounds). Like the Chamber, the Grand Chamber also found a violation of Article 14 (in conjunction with Article 8): no "very strong" or "particularly weighty and convincing" reasons had been shown to justify the difference of treatment on grounds of sex. In particular, there was no reason to believe that the applicant would have less difficulty returning to employment than a woman in a similar situation or that the end of the pension payments would have less impact on him than on a widow in comparable circumstances.

The Grand Chamber judgment is noteworthy in that the Court has clarified, for the purposes of the applicability of Article 14, the relevant criteria to be applied to circumscribe what falls within the ambit of Article 8, under its "family life" aspect, in the sphere of welfare benefits.

(i) In the vast majority of cases concerning entitlement to welfare benefits, the Court carried out its analysis primarily under Article 1 of Protocol No. 1 (or Article 14 in conjunction with Article 1 of Protocol No. 1) rather than under Article 8. The Court found that its case-law had sufficient maturity and stability to provide a clear definition of the threshold required for the applicability of Article 1 of Protocol No. 1,

111. *Beeler v. Switzerland* [GC], no. 78630/12, 11 October 2022.

including in this particular sphere. In this regard, the Court reiterated and summarised the relevant principles set out in *Béláné Nagy v. Hungary*[112].

(ii) The Court acknowledged that there was less clarity as regards the scope of Article 8 in the sphere of welfare benefits. While the concept of "family life" within the meaning of Article 8 also covered (in addition to social, moral and cultural relations) certain material interests which had necessary pecuniary consequences, there were fewer cases in which complaints concerning welfare benefits had been examined by the Court under Article 8 alone. In this connection, the Court emphasised that Article 8 alone could not be interpreted as imposing any positive obligations on the State in the social security sphere, and it did not guarantee the right to a welfare benefit.

(iii) At the same time, the Court observed that the scope of Article 14, read in conjunction with Article 8, could be more extensive than that of Article 8 read alone. Indeed, where a State created a right to a welfare benefit, thus going beyond its obligations under Article 8, it could not, in the application of that right, take discriminatory measures within the meaning of Article 14. The Court therefore analysed the factors capable of bringing the facts of a case of this kind within the ambit of Article 8, as they transpired from the more numerous cases where complaints concerning welfare benefits had been examined under Article 14 of the Convention in conjunction with Article 8.

(iv) The analysis of the relevant case-law revealed inconsistencies in defining the factors which trigger the applicability of Article 14 read in conjunction with Article 8. In particular, there were three different approaches. According to the first, applicability transpired from a combination of circumstances involving the granting of parental leave and a related allowance, both measures aimed at enabling one of the parents to remain at home to look after children. In the applicants' specific situation, such measures had necessarily affected the way in which their family life had been organised. In other words, a close link between the allowance associated with parental leave and the enjoyment of family life was considered necessary (*Konstantin Markin v. Russia*[113]; *Petrovic v. Austria*[114]; and *Topčić-Rosenberg v. Croatia*[115]). The second approach, which had guided the Chamber in the instant case, was based on the hypothesis that the fact of granting or refusing the benefit was liable to affect the way in which family life was organised

112. *Béláné Nagy v. Hungary* [GC], no. 53080/13, §§ 70-74 and 86-89, 13 December 2016.
113. *Konstantin Markin v. Russia* [GC], no. 30078/06, §§ 129-30, ECHR 2012 (extracts).
114. *Petrovic v. Austria*, 27 March 1998, *Reports of Judgments and Decisions* 1998-II.
115. *Topčić-Rosenberg v. Croatia*, no. 19391/11, 14 November 2013.

(*Di Trizio v. Switzerland*[116], and *Belli and Arquier-Martinez v. Switzerland*[117]). The third approach consisted of a legal presumption to the effect that, in providing the benefit in question, the State was displaying its support and respect for family life (*Dhahbi v. Italy*[118]; *Weller v. Hungary*[119]; *Fawsie v. Greece*[120]; *Okpisz v. Germany*[121]; *Niedzwiecki v. Germany*[122]; and *Yocheva and Ganeva v. Bulgaria*[123]).

(v) In order to redress the above inconsistency, the Court decided to no longer follow the second and third approaches above. Indeed, there was a need to avoid the excessive extension of the ambit of Article 8: while all financial benefits generally had a certain effect on the way in which the family life of the person concerned was managed, that fact alone could not suffice to bring them all within that ambit. In this regard, the Court bore in mind that the interests secured under Article 1 of Protocol No. 1 and Article 8 were different, even though their respective spheres of protection intersected and overlapped. This led the Court to stick to the first of the above approaches, taking the judgment in *Konstantin Markin* (cited above) as the main reference. Accordingly, for Article 14 to be applicable in this specific context, the Court clarified that

> the subject matter of the alleged disadvantage must constitute one of the modalities of exercising the right to respect for family life as guaranteed by Article 8 of the Convention, in the sense that the measures seek to promote family life and necessarily affect the way in which it is organised.

The Court further specified a range of factors relevant for determining the nature of the benefit in question, in particular: the aim of the benefit, as determined by the Court in the light of the legislation concerned; the criteria for awarding, calculating and terminating the benefit as set forth in the relevant statutory provisions; the effects on the way in which family life is organised, as envisaged by the legislation; and the practical repercussions of the benefit, given the applicant's individual circumstances and family life throughout the period during which the benefit is paid. These factors are to be examined as a whole.

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116. *Di Trizio v. Switzerland*, no. 7186/09, 2 February 2016.
117. *Belli and Arquier-Martinez v. Switzerland*, no. 65550/13, 11 December 2018.
118. *Dhahbi v. Italy*, no. 17120/09, 8 April 2014.
119. *Weller v. Hungary*, no. 44399/05, 31 March 2009.
120. *Fawsie v. Greece*, no. 40080/07, 28 October 2010.
121. *Okpisz v. Germany*, no. 59140/00, 25 October 2005.
122. *Niedzwiecki v. Germany*, no. 58453/00, 25 October 2005.
123. *Yocheva and Ganeva v. Bulgaria*, nos. 18592/15 and 43863/15, 11 May 2021.

In the present case, the Court found, in the first place, that the pension in issue sought to promote family life by enabling a surviving parent to look after children without having to engage in an occupation, and, secondly, that receipt of the pension had necessarily affected the way in which the applicant's family life had been organised throughout the relevant period. The facts of the case therefore fell within the ambit of Article 8, rendering Article 14 of the Convention applicable.

The judgment in *Basu v. Germany*[124] concerned allegations of racial profiling during an identity check.

Police officers carried out an identity check on the applicant, a German national of Indian origin, and his daughter on a train which had just passed the border from the Czech Republic into Germany. When asked about the reasons for it, the officers said it was a random check and that cigarettes were frequently smuggled on that train. They confirmed, however, that there had not been any specific suspicion in respect of the applicant in this regard. The administrative courts declined to examine the merits of the applicant's complaint that the impugned check had only been carried out because of his dark skin colour.

The applicant complained under Article 14, read in conjunction with Article 8, and the Court found a violation of this provision.

The judgment is noteworthy in two respects. In the first place, the Court clarified the criteria by which to assess whether an identity check, allegedly based on physical or ethnic motives, falls within the ambit of Article 8 under its "private life" aspect, thus triggering the applicability of Article 14. Secondly, the Court clarified the scope of the procedural obligation in this context[125].

(i) The Court clarified that not every identity check of a person belonging to an ethnic minority would fall within the ambit of Article 8. Opting for a consequence-based approach (*Denisov v. Ukraine*[126]), the Court specified that in order to do so, such a check must attain the necessary threshold of severity so as to fall within the ambit of "private life". That threshold is only attained if the person concerned has an arguable claim that he or she may have been targeted on account

124. *Basu v. Germany*, no. 215/19, 18 October 2022.

125. This issue is also examined in *Muhammad v. Spain* (no. 34085/17, 18 October 2022 (not final) – see below), which also deals with questions concerning the standard and burden of proof to be applied in this context.

126. *Denisov v. Ukraine* [GC], no. 76639/11, §§ 110-14, 25 September 2018.

of specific physical or ethnic characteristics. In other words, for that threshold to be met, the Court requires a certain level of substantiation for allegations of this kind. Such an arguable claim may exist where the person concerned submits that he or she or persons having the same characteristics were the only person or persons subjected to a check and where no other grounds for the check were apparent, or where any explanations given by the officers carrying out the check disclosed specific physical or ethnic motives. In this connection, drawing upon its case-law concerning an identity check accompanied by a detailed search (*Gillan and Quinton v. the United Kingdom*[127]), the Court observed that the public nature of the check might have an effect on a person's reputation and self-respect.

Turning to the facts, the Court analysed how the applicant had substantiated both his racial-profiling allegations and the repercussions of the impugned check on his private life. As to the former, the applicant pointed out that, of the persons present in different compartments of the train carriage, he and his daughter had been the only persons with a dark skin colour and the only persons who had been subjected to the check. Furthermore, the explanations given by the police officer did not disclose any other objective grounds for targeting the applicant. As to the latter, the applicant argued that the identity check under such conditions had made him feel stigmatised and humiliated. In the Court's view, the applicant had substantiated his argument that the impugned check had had sufficiently serious consequences for his right to respect for his private life. The identity check in question therefore fell within the ambit of Article 8, rendering Article 14 applicable.

(ii) Regarding the procedural obligation in this context, the Court clarified that the authorities' duty to investigate the existence of a possible link between racist attitudes and a State agent's act, even of a non-violent nature, was to be considered as implicit in their responsibilities under Article 14 when examined in conjunction with Article 8. The Court reached this conclusion on the basis of two considerations. In the first place, relying on the findings of the European Commission against Racism and Intolerance (ECRI) and the UN Human Rights Committee, the Court considered it essential to ensure protection from stigmatisation and to prevent the spread of xenophobic attitudes, so as to avoid protection against racial discrimination becoming theoretical and illusory in the context of non-violent acts falling to be examined

127. *Gillan and Quinton v. the United Kingdom*, no. 4158/05, ECHR 2010 (extracts).

under Article 8. Secondly, the Court drew on its case-law on racially induced violence (*B.S. v. Spain*[128]; *Boacă and Others v. Romania*[129]; *Burlya and Others v. Ukraine*[130]; and *Sabalić v. Croatia*[131]) to outline the scope of the procedural obligation in this regard. In particular, State authorities have an obligation to take all reasonable measures to identify whether there were racist motives and to establish whether or not ethnic hatred or prejudice may have played a role in the events. The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of racially induced violence. For an investigation to be effective, the institutions and persons responsible for carrying it out must be independent of those targeted by it: this means not only a lack of any hierarchical or institutional connection, but also practical independence. The Court reiterated that, generally, the duty to investigate served to ensure accountability through appropriate criminal, civil, administrative and professional avenues, the State enjoying a margin of appreciation as to the manner in which to organise its system to ensure compliance (*F.O. v. Croatia*[132]).

In the instant case, the Court found that the State authorities had failed to comply with their duty to take all reasonable measures to ascertain through an independent body whether or not a discriminatory attitude had played a role in the identity check. Indeed, in view of the hierarchical and institutional connections between the investigating authority and the State agent which had carried out the impugned identity check, the investigations could not be considered independent. The domestic courts had failed to take the necessary evidence and, in particular, to hear the witnesses who had been present during the identity check. They had dismissed the applicant's action on formal grounds, considering that he had not had a legitimate interest in a decision on the lawfulness of his identity check.

In the absence of an effective investigation into the applicant's arguable claim, the Court was unable to make a finding on the substantive aspect of his complaint, namely, on whether he had been subjected to the identity check on account of his ethnic origin.

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128. *B.S. v. Spain*, no. 47159/08, 24 July 2012.
129. *Boacă and Others v. Romania*, no. 40355/11, 12 January 2016.
130. *Burlya and Others v. Ukraine*, no. 3289/10, 6 November 2018.
131. *Sabalić v. Croatia*, no. 50231/13, 14 January 2021.
132. *F.O. v. Croatia*, no. 29555/13, 22 April 2021.

The judgment in *Muhammad v. Spain*[133] also concerned allegations of racial profiling during an identity check.

The applicant and his friend, both Pakistani nationals, were stopped by the police while walking on a street in a tourist area in which pickpocketing was relatively common. The applicant was asked for his identification. He submitted that one of the officers acknowledged that the applicant had been checked because of the colour of his skin and that they would not have stopped a "German", a submission contested by the police. According to the police report, the applicant was approached only in response to his provocative and insolent attitude. The applicant was arrested and taken to a police station where he was given an administrative fine for having refused to identify himself and displaying a lack of respect towards authority. While the domestic legal framework provided both a criminal and an administrative remedy in respect of racial discrimination, the applicant had recourse only to the administrative procedure. His State liability claim was dismissed on the ground that he had not properly substantiated his allegation that the identity check had been discriminatory.

The applicant complained under Article 14 read in conjunction with Article 8. The Court found that the identity check in question fell within the ambit of Article 8: it had necessarily affected the applicant's private life and would have been sufficient to affect his psychological integrity and ethnic identity. Article 14 was therefore applicable. The Court went on to find no violation of the procedural limb of Article 14 (in conjunction with Article 8): the State had not failed to comply with its obligation to investigate the existence of racist motives behind the check in issue (the domestic courts had assessed the evidence before them and the applicant had been able to challenge their decisions, which had been sufficiently reasoned and motivated). The Court also found no violation of the substantive limb of Article 14 (in conjunction with Article 8): it did not find it established that racist attitudes had played a role in the applicant's identity check by the police and his arrest.

The judgment is noteworthy in three respects. In the first place, the Court clarified the criteria by which to assess whether an identity check allegedly based on physical or ethnic motives, falls within the ambit of Article 8 under its "private life" aspect, thus triggering the applicability of Article 14. Secondly, the Court clarified the scope of the procedural obligation in this context[134]. Thirdly, the Court indicated the approach

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133. *Muhammad v. Spain*, no. 34085/17, 18 October 2022 (not final).

134. These two issues are also examined in *Basu v. Germany* (no. 215/19, 18 October 2022 – see above). For ease of reference, those developments are described in detail only in the

to be followed with regard to the standard and burden of proof in the context of allegations of racial profiling.

Regarding the last point, the Court reiterated its usual principle *affirmanti incumbit probatio*, noting that the burden of proof shifted to the Government only once an applicant had shown a difference of treatment (*D.H. and Others v. the Czech Republic*[135]).

The Court further referred to the following principle, as set out in *Nachova and Others v. Bulgaria*[136]: when it is alleged that a certain act of discrimination was motivated by racial prejudice, the Government cannot be required to prove the absence of a particular subjective attitude on the part of the person/persons concerned.

Turning to the instant case, the Court noted that the applicant had relied heavily on the fact that nobody else belonging to the "majority Caucasian population" had been stopped on the same street immediately before, during or after his identity check. This, however, could not be taken as an indication *per se* of any racial motivation behind the request for him to show his identity document. The applicant had not shown any surrounding circumstances which could suggest that the police had been carrying out identity checks motivated by animosity against citizens who shared the applicant's ethnicity, or which could give rise to the presumption required to reverse the burden of proof at the domestic level as to the existence of any racial or ethnic profiling. The applicant's friend, also Pakistani, had not been arrested and both the police and the Government had denied that he had also been requested to identify himself. There was no reason for the Court to depart from the domestic courts' conclusion that it had been the applicant's attitude, and not his ethnicity, that had caused the police officers to stop him and perform an identity check.

The applicant had submitted reports by a number of organisations, including intergovernmental bodies, expressing concerns regarding the occurrence of racially motivated police identity checks. The Court, however, did not find them sufficient to shift the burden of proof to the Government, as in cases concerning indirect discrimination (*D.H. and Others v. the Czech Republic*, cited above).

In sum, the Court was unable to find that the requirement on the applicant to identify himself on the street had been motivated by racism.

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summary of that case.

135. *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 177-78, ECHR 2007-IV.

136. *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 157, ECHR 2005-VII.

Article 14 taken in conjunction with Article 1 of Protocol No. 1

The judgment in *Savickis and Others v. Latvia*[137] concerned the justification for a difference in treatment based on nationality, in the context of the restoration of a State's independence after unlawful occupation and annexation.

Following the restoration of Latvia's independence, a new system of occupational retirement pensions was put in place, which allowed for periods of employment accrued outside its territory to be counted towards the pension for Latvian nationals. Since the applicants were "permanently resident non-citizens", their years of service outside Latvia during the Soviet era were not taken into account for the calculation of their pensions. In *Andrejeva v. Latvia*[138], the Court found this difference of treatment to amount to a breach of Article 14 taken in conjunction with Article 1 of Protocol No. 1. Several of the present applicants unsuccessfully applied to have their pensions recalculated. In 2011 the Constitutional Court declared the impugned rule compatible with the Constitution and the Convention, drawing a clear distinction between the case in *Andrejeva* and the applicants' case: while Ms Andrejeva had resided in the territory of Latvia over the disputed periods, the applicants had worked outside it before establishing any legal ties with Latvia. In this connection, the Constitutional Court relied on the doctrine of State continuity, which had informed the setting-up of the system of retirement pensions. According to this doctrine, while Latvian statehood had *de facto* been lost as a result of aggression (1940), it had nevertheless remained in place *de jure* throughout the five decades of unlawful occupation and annexation on the part of the former Soviet Union: Latvia was not therefore the successor of the rights and obligations of the USSR. The Grand Chamber (upon relinquishment) considered the above arguments to amount to "very weighty reasons" justifying the contested difference in treatment. It found no violation of Article 14 in conjunction with Article 1 of Protocol No. 1, thus reaching a different conclusion from that in the *Andrejeva* case.

This Grand Chamber judgment is an example of judicial dialogue with a national superior court. It is also noteworthy for the manner in which the Court assessed the justification for the difference in treatment based on nationality in the specific context of the restoration of the State's independence after decades of unlawful occupation and annexation. Of particular interest are the factors relevant for

137. *Savickis and Others v. Latvia* [GC], no. 49270/11, 9 June 2022.

138. *Andrejeva v. Latvia* [GC], no. 55707/00, ECHR 2009.

determining the appropriate scope of the margin of appreciation, as well as the significance given to personal choice concerning legal status or citizenship in matters relating to financial benefits.

(i) The Court drew a clear distinction between the context of State succession and the specific context in issue, thus agreeing with the Constitutional Court that Latvia was not obliged to assume the responsibilities of the USSR upon the restoration of its independence. Indeed, having undergone unlawful occupation and subsequent annexation, a State is not required to assume the public-law obligations accrued by the illegally established public authorities of the occupying or annexing power. Latvia was thus neither automatically bound by such obligations based on the Soviet period nor obliged to undertake those emanating from obligations of the occupying or annexing State. In this connection, the Court accepted the legitimacy of the aim of safeguarding the constitutional identity of the State and avoiding retrospective approbation of the consequences of the immigration policy practised in the period of unlawful occupation and annexation of the country. In the Court's view, the preferential treatment accorded to those possessing Latvian citizenship in respect of past periods of employment performed outside Latvia was in line with this legitimate aim.

(ii) While the justification of a difference in treatment based exclusively on nationality requires "very weighty reasons", thus indicating a narrow margin, the Court clarified the application of this principle in a field where a wide margin is, and must be, granted to the State in formulating general measures (notably of economic and social policy). In particular, even the assessment of what may constitute "very weighty reasons" for the purposes of the application of Article 14 may have to vary in degree depending on the context and circumstances. In the instant case, the Court carried out this assessment against the background of a wide margin of appreciation and eventually concluded that the grounds relied upon by the Latvian authorities could be deemed to amount to "very weighty reasons". The Court based its analysis on the following factors.

In the first place, the Court reiterated its case-law acknowledging that there may be valid reasons for giving special treatment to those whose link with a country stemmed from birth within it or who otherwise had a special link with a country (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*[139]). The Court had previously accepted a difference in treatment based on nationality for reasons relating to the date from

139. *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, Series A no. 94.

which the applicants had developed ties with the respondent State (*British Gurkha Welfare Society and Others v. the United Kingdom*[140]).

Secondly, drawing upon *Bah v. the United Kingdom*[141], the Court accepted that, in the context of a difference in treatment based on nationality, there may be certain situations where the element of personal choice linked with the legal status in question may be of significance, especially where privileges, entitlements and financial benefits were at stake. The status of "permanently resident non-citizens" had been devised as a temporary instrument so that the individuals concerned could obtain Latvian or another citizenship. However, despite the considerable time frame available to the applicants, it did not appear that any of them had ever tried to obtain Latvian citizenship or that they had been met with obstacles in doing so. Even though naturalisation depends on the fulfilment of certain conditions and may require certain efforts, the question of legal status is largely a matter of personal aspiration rather than an immutable situation.

Thirdly, the Court attached weight to the particular context of the difference in treatment in issue, holding that it warranted a substantial degree of deference to be afforded to the Government. The complex policy choices made by the Latvian legislature were directly linked to the specific historical, economic and demographic circumstances, including the severe economic difficulties, prevailing in the wake of the restoration of Latvia's independence and during its transition from a totalitarian regime to a democracy. In particular, the special status of "permanently resident non-citizens" had been created with a view to addressing the consequences of five decades of unlawful occupation and annexation.

Fourthly, the Court took note of the temporal scope of the preferential treatment in issue: it only concerned past periods of employment completed outside Latvia prior to the restoration of independence and the introduction of the pension scheme. The Court also endorsed the manner in which the Constitutional Court had distinguished the present case from that in *Andrejeva*: the disputed periods had been completed before the applicants settled in, or established any other links with, Latvia.

Finally, the impugned difference in treatment neither left the applicants without social cover (such as basic pension benefits unrelated to employment history), nor entailed any deprivation, or other loss, of benefits based on financial contributions.

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140. *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, 15 September 2016.

141. *Bah v. the United Kingdom*, no. 56328/07, § 47, ECHR 2011.

In response to the request submitted by the French *Conseil d'État* under Protocol No. 16 to the Convention, the Court delivered its advisory opinion[142] on 13 July 2022, which concerned the difference in treatment between landowner associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and those set up after that date.

A legislative amendment passed in France in 2019 allowed certain landowners – who had come together in an association before the date of creation of an approved municipal hunters' association (*Association communale de chasse agréée* – "ACCA") in their municipality and whose land (total area) attained the minimum threshold defined by law – to withdraw from that ACCA and to recover the exclusive hunting rights on their lands, whereas landowners meeting the same minimum total area threshold but whose association had been set up after the establishment of the ACCA did not have that right. The ACCAs were created in 1964 by a law known as the "*Loi Verdeille*". According to that law, the right to hunt belongs to the owner on his or her land: however, the creation of an ACCA results in the pooling of hunting grounds within the municipality, so that the members of the association can hunt throughout the common area thus formed. Under certain conditions the owners of landholdings attaining, in a single block, a specified minimum area may object to the inclusion of their land in the ACCA's hunting grounds or request its removal therefrom (*Chassagnou and Others v. France*[143], and *Chabauty v. France*[144]). A federation of private foresters applied to the *Conseil d'État* for judicial review of the legislative amendment of 2019, arguing that the difference in treatment between associations of landowners set up before and after the date of creation of the ACCA was disproportionate and contrary to Article 14 read in conjunction with Article 1 of Protocol No. 1. The *Conseil d'État* then requested this Court to give an advisory opinion on the following question:

> What are the relevant criteria for assessing whether a difference in treatment established by law, … pursues, with regard to the prohibitions laid down by Article 14 of the Convention in conjunction with Article 1 of the First Additional Protocol, an aim of public interest based on objective and rational criteria, in relation

142. *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, French *Conseil d'État*, 13 July 2022. See also under Article 1 of Protocol No. 16 (Advisory opinions) below.

143. *Chassagnou and Others v. France* [GC], nos. 25088/94 and 2 others, §§ 11-15 and 35-53, ECHR 1999-III.

144. *Chabauty v. France* [GC], no. 57412/08, §§ 18-23, 4 October 2012.

> to the aims of the law establishing it which, in this case, aims to prevent the disorderly practice of hunting and to promote rational management of the game heritage, in particular by encouraging the practice of hunting on territories of a sufficiently stable and large area?

In this, its fifth, advisory opinion under Protocol No. 16, the Court provided useful guidance/clarification on aspects of the practical application of the non-discrimination rule enshrined in Article 14 of the Convention.

(i) The advisory opinion is noteworthy in that the Court had, for the first time, the opportunity to assess the compatibility with Article 14 of a provision in which an old (usually more advantageous and lenient) rule continues to apply to some existing situations while a new (usually stricter rule) applies to all future cases. Although raising this as a preliminary question of its own motion, the Court did not give a clear answer whether such a temporal criterion was covered by the expression "other status" contained in Article 14. It reiterated its previous case-law according to which the words "other status" might encompass criteria other than "personal characteristics" in the narrow sense (innate or inherent in the person, *Molla Sali v. Greece*[145]) and declared that a difference in treatment based on the date of creation of a legal entity, as in the present case, could not be excluded *a priori* from the scope of Article 14. However, the temporal criterion also referred indirectly to the size of the land and thus to "property", on the basis of which discrimination is expressly prohibited by Article 14 (*Chassagnou and Others*, §§ 95-98, and *Chabauty*, § 27, both cited above).

(ii) The Court also gave several valuable indications as regards the concept of "analogous or relevantly similar situations" and the applicable burden of proof for the purposes of Article 14. It held that a domestic court might require that the person who claims to be a victim of discrimination demonstrate, having regard to the particular nature of his complaint, that he or she was in an analogous or similar (comparable) situation to that of other persons having received more favourable treatment. The relevant elements to be taken into account for that purpose are the area in which the alleged discrimination takes place, the aim of the impugned provision and the context in which the alleged discrimination is occurring. The assessment can only be based on objective and verifiable elements, and the comparable situations must be considered as a whole, avoiding isolated or marginal aspects

145. *Molla Sali v. Greece* [GC], no. 20452/14, § 134, 19 December 2018.

which would make the entire analysis artificial. Since the existence of an "analogous situation" does not imply that the categories compared are identical, it is necessary to determine, with regard to the nature of the complaint, whether the objectively relevant similarities between both situations predominate over the differences. Finally, the Court specified that the criterion of the "aim pursued by the legislature", while entirely relevant at the stage of the analysis of the "legitimate and reasonable" nature of the difference in treatment, could deprive Article 14 of its substance if applied for the purposes of comparison between two situations, as it would then suffice for the legislature to adopt laws placing the two elements to be compared in different situations with regard to the objective pursued, to prevent any review of the compatibility of these situations with the Convention.

(iii) As regards the "legitimate aim" pursued by the impugned difference in treatment, the Court gave some indications as to the respective general weight of the values and interests invoked by the parties in proceedings involving environmental policies. It emphasised that the right to hunt on one's own land or on the land of others was not protected, as such, by any provision of the Convention or its Protocols. On the other hand, the protection of the environment undoubtedly corresponds to the "general interest" for the purposes of the Convention, even if no provision of the Convention is specifically intended to ensure the general protection of the environment (among others, *Yaşar v. Romania*[146]; *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*[147]; and *Kristiana Ltd. v. Lithuania*[148]).

(iv) As to the proportionality of the difference in treatment, the Court also reiterated the principle according to which the possible existence of alternative and less severe solutions cannot, in itself, be a decisive argument in favour of the disproportionate and unreasonable nature of the means chosen by the domestic legislature to achieve the legitimate aim. As long as the State does not exceed the limits of its margin of appreciation and the means applied are in line with the legitimate aims pursued by the law, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way (*James and Others v. the United Kingdom*[149]).

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146. *Yaşar v. Romania*, no. 64863/13, 26 November 2019.

147. *O'Sullivan McCarthy Mussel Development Ltd v. Ireland*, no. 44460/16, § 109, 7 June 2018.

148. *Kristiana Ltd. v. Lithuania*, no. 36184/13, §§ 104-05, 6 February 2018.

149. *James and Others v. the United Kingdom*, 21 February 1986, Series A no. 98.

(v) Finally, the Court emphasised the need to include in the assessment of proportionality under Article 14 the overall impact of the impugned provision on the persons concerned, namely, whether the effects of the difference in treatment may turn out to be offset, or at least mitigated, by certain rights or advantages reserved for the aggrieved party (for example, the fact that the landowner associations set up after the ACCA continue to derive benefits from maintaining their membership in the ACCA system even if they do not benefit from the right to withdraw from this system; *mutatis mutandis*, *Chabauty*, cited above, § 55).

Right to free elections (Article 3 of Protocol No. 1)

Stand for election

In response to the request submitted by the Lithuanian Supreme Administrative Court under Protocol No. 16 to the Convention, the Court delivered its advisory opinion[150] on 8 April 2022, which concerned the assessment of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings.

In 2014, as a result of impeachment proceedings, Ms N.V. was removed from her position as a member of the *Seimas* owing to her non-participation without an excuse in the *Seimas*'s meetings (she had fled Lithuania as a result of pending criminal proceedings). In 2020 the Central Electoral Commission refused to register her as a candidate in the upcoming *Seimas* elections because of the statutory ban on standing for election after removal from office in impeachment proceedings. In its 2011 judgment in *Paksas v. Lithuania*[151], this Court held that the permanent and irreversible nature of such a ban was disproportionate and a breach of Article 3 of Protocol No. 1. The execution of that judgment is still pending before the Committee of Ministers. Ms N.V. challenged the decision of the Central Electoral Commission before the Supreme Administrative Court, which requested this Court to give an advisory opinion on the following questions:

> 1. Does a Contracting State overstep the margin of appreciation conferred to it by Article 3 of Protocol No. 1 to the Convention, if it does not guarantee the compatibility of the national law with the

150. *Advisory opinion on the assessment, under Article 3 of Protocol No. 1, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings* [GC], request no. P16-2020-002, Lithuanian Supreme Administrative Court, 8 April 2022. See also under Article 1 of Protocol No. 16 (Advisory opinions) below.

151. *Paksas v. Lithuania* [GC], no. 34932/04, ECHR 2011 (extracts).

> international obligations arising from the provisions of Article 3 of Protocol No. 1 to the Convention, which results in preventing a person, who has been removed from office of a Member of the *Seimas* under the impeachment proceedings, from implementing their "passive" right to elections for six years?
>
> In case of affirmative response, could such situation be justified by the complexity of the existing circumstances, directly related to providing an opportunity to the legislative body to align the national provisions of the constitutional level with the international obligations?
>
> 2. What are the requirements and criteria implied by Article 3 of Protocol No. 1 to the Convention, which determine the scope of the application of the principle of proportionality, and which the national court should take into account and verify whether they are complied with in the existing situation at issue?
>
> In such situation, when assessing the proportionality of a general prohibition restricting the exercise of the rights provided for in Article 3 of Protocol No. 1 to the Convention, should not only the introduction of the time-limit, but also the circumstances of each individual case, related to the nature of the office from which a person has been removed and the act which resulted in impeachment, be held crucial?

(i) In this, its third, advisory opinion under Protocol No. 16, the Court identified the limits of advisory opinions as regards issues relating to the execution of the Court's judgments.

In particular, the Court understood the first question to essentially be asking whether the Supreme Administrative Court should take into account the difficulties encountered by the Lithuanian authorities in executing the *Paksas* judgment. The Court also had regard to the most recent decision of the Committee of Ministers: the Deputies noted the Government's initial intention to await delivery of the present advisory opinion of the Court before proceeding with the execution of the *Paksas* judgment and to resume their examination after delivery. In this respect, the Court stressed that Protocol No. 16 had not been envisaged as an instrument to be used in the context of execution. The Court also noted recent developments within the *Seimas* as regards the constitutional amendment process: the draft amendment (replacing the permanent ban with a ten-year one) would be scheduled for a second voting during the *Seimas*'s spring session. Taking all these elements into account, the

Court decided that it was not appropriate to give an answer to the first question.

(ii) Without prejudice to any legislative initiatives by the *Seimas* to remedy the problem created by the failure to execute the *Paksas* judgment, the Court answered the second question from the perspective of the requesting court, in keeping with the object and purpose of Protocol No. 16. In this regard, the Court clarified the requirements and criteria relevant for the assessment of whether, in the concrete circumstances of a given case, the ban preventing an impeached former member of parliament to stand for election to the *Seimas* had become disproportionate for the purposes of Article 3 of Protocol No. 1.

In this connection and with regard specifically to the facts relating to the present opinion, the Court reiterated its finding in *Paksas* according to which, in assessing the proportionality of a general measure restricting the exercise of the rights guaranteed by Article 3 of Protocol No. 1, decisive weight should be attached to the existence of a time-limit and the possibility of reviewing the measure in question. The need for such a possibility was linked to the fact that the assessment of that issue must have regard to the evolving historical and political context in the State concerned. Furthermore, while States enjoyed considerable latitude to establish in their constitutional order rules governing the status of parliamentarians, these rules should not be such as to exclude some persons or groups of persons from participating in the political life of a country and in the choice of the legislature (*Aziz v. Cyprus*[152]). The Court also reiterated that, with the passage of time, general restrictions on electoral rights become more difficult to justify, thus requiring restrictive measures to be individualised (*Ādamsons v. Latvia*[153]). On this basis, the Court went on to clarify that the reference in *Paksas* to the weight to be attached to the existence of a time-limit and the possibility of reviewing the ban in question was not necessarily to be understood as requiring these two elements to be combined. Nor did it specify whether the time-limit applicable in a given case should be set in the abstract or on a case-by-case basis. What mattered in the end was for the ban in question to remain proportionate within the meaning of the *Paksas* judgment. This could be achieved by way of an appropriate legislative framework or judicial review of the duration, nature and extent of a ban applicable to the person concerned.

The Court developed a number of substantive and procedural requirements for a determination of the appropriate and proportionate

152. *Aziz v. Cyprus*, no. 69949/01, § 28, ECHR 2004-V.

153. *Ādamsons v. Latvia*, no. 3669/03, § 125, 24 June 2008.

length of a ban precluding an impeached person from being eligible for a given function. In the first place, it should be based on an individualised assessment, having regard to the particular circumstances of the person concerned. Secondly, it should have regard to the specific circumstances applicable at the time of the review. In this context, the findings in *Paksas* that a lifelong disqualification was a disproportionate restriction did not, in itself, imply that a decision to ban a person from standing for election, at the time of such a refusal, would necessarily amount to a disproportionate restriction: whether that was the case would depend on the assessment to be performed. Lastly, the relevant procedure should be surrounded by sufficient safeguards designed to ensure respect for the rule of law and protection against arbitrariness, including the need for an independent body as well as for the person concerned to be heard by the latter and to be provided with a reasoned decision.

Having regard to the primary purpose of the impeachment and the subsequent ban – to protect parliamentary institutions – the Court specified the relevant criteria for the proportionality assessment:

> [They] should be objective in nature and allow relevant circumstances connected not only with the events which led to the impeachment of the person concerned but also – and primarily – with the functions sought to be exercised by that person in the future, to be taken into account in a transparent way. They should therefore be identified mainly from the perspective of the requirements of the proper functioning of the institution of which that person sought to become a member, and indeed of the constitutional system and democracy as a whole in the State concerned.

This comes down to evaluating the objective impact which that person's potential membership of the institution concerned would have on the latter's functioning, having regard to such considerations as the past and contemporary behaviour of the person who has been removed from office in impeachment proceedings, the nature of the wrongdoing which led to impeachment, and – more importantly – the institutional and democratic stability of the institution concerned, the nature of the latter's duties and responsibilities, and the likelihood of the person having the potential to significantly disrupt the functioning of that institution or indeed of democracy as a whole in the State concerned. Aspects such as that person's loyalty to the State, encompassing his or her respect for the country's Constitution, laws, institutions and independence, may also be relevant in this respect (*Tănase v. Moldova*[154]).

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154. *Tănase v. Moldova* [GC], no. 7/08, §§ 166-67, ECHR 2010.

Prohibition of collective expulsion of nationals (Article 3 of Protocol No. 4)

Right to enter national territory

The judgment in *H.F. and Others v. France*[155] concerned jurisdiction, the scope of the right to enter national territory and procedural obligations in the context of a refusal to repatriate.

In 2014 and 2015, the applicants' daughters, who were French nationals, left France for Syria with their partners, where they gave birth to children. Since 2019, after the military fall of the so-called Islamic State (ISIS), they have reportedly been detained, with their children, in camps run by the Syrian Democratic Forces ("the SDF"), a local force fighting against ISIS and dominated by the Kurdish militia. The applicants unsuccessfully sought urgent repatriation of their daughters and grandchildren. The domestic courts refused to accept jurisdiction on the grounds that the requests concerned the conduct by France of its international relations.

The applicants complained under Article 3 of the Convention and Article 3 of Protocol No. 4. The Court held that the applicants' family members were outside of the jurisdiction of France as regards the complaint under Article 3 (alleged ill-treatment in the camps). The jurisdiction of France was established in respect of the complaint under Article 3 of Protocol No. 4, the Grand Chamber finding a breach of that provision.

The Grand Chamber judgment is noteworthy in that the Court has, for the first time, ruled on the existence of a jurisdictional link between a State and its "nationals" in respect of a complaint under Article 3 § 2 of Protocol No. 4, and has examined the scope of this provision, including with regard to the extent of procedural obligations of the State in the context of a refusal to repatriate.

(i) As regards a jurisdictional link and Article 3 of Protocol No. 4, the Court first clarified that the fact that this Article (unlike Article 1 of the Convention) applies only to nationals was not sufficient to establish the extraterritorial exercise of jurisdiction by a State. Secondly, the refusal to grant the applicants' request had not formally deprived their family members of the right to enter France or prevented them from doing so: they were physically unable to reach the French border (since they were being held in Syrian camps) and France neither exercised "effective

155. *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, 14 September 2022.

control" over the relevant territory nor had any "authority" or "control" over them. In this regard, relying on the preparatory work and other international instruments, the Court clarified that the right to enter was not limited to nationals already on the territory of the State concerned or under its effective control, but it also had to benefit those nationals outside of the State's jurisdiction. Further, if Article 3 § 2 of Protocol No. 4 were to apply only to nationals who arrived at the national border or who had no travel documents, it would be deprived of effectiveness in the contemporary context of increasing globalisation/international mobility which is presenting new challenges in terms of security and defence in the fields of diplomatic and consular protection, international humanitarian law and international cooperation.

From this perspective, the Court did not therefore exclude that certain circumstances relating to the situation of individuals who wished to enter the State of which they were nationals, might give rise to a jurisdictional link with that State. Such circumstances would necessarily depend on the specific features of each case and might vary considerably from one case to another. In the instant case, the following special features enabled the Court to establish France's jurisdiction in respect of the complaint raised under Article 3 § 2 of Protocol No. 4: repatriation had been sought officially and the requests referred to a real and immediate threat to the lives and health of the applicants' family members, including extremely vulnerable young children; the impossibility for them to leave the camps without the assistance of the French authorities; and the willingness of the Kurdish authorities to hand them over to France.

(ii) The Court went on to clarify the meaning and scope of the right to enter national territory under Article 3 § 2 of Protocol No. 4 in the following particular respects: (a) the application of Article 3 § 2 of Protocol No. 4 does not exclude situations where the national has either voluntarily left the national territory and is then denied the right to re-enter or where the person has never even set foot in the country concerned; (b) while the right to enter is an absolute one, there may be room for implied limitations, where appropriate, in the form of exceptional temporary measures (for example, the context of the COVID-19 pandemic); (c) it cannot be ruled out that informal or indirect measures which *de facto* deprive a national of the effective enjoyment of his or her right to return may, depending on the circumstances, be incompatible with this provision; (d) as regards the implementation of

the right to enter, the scope of any positive obligations would inevitably vary, depending on the diverse situations in the Contracting States and the choices to be made in terms of priorities and resources, and they must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities.

(iii) The Court clarified that there was no general right to repatriation on the basis of the right to enter national territory: it noted the potential risk, if such a right were to be instituted, of recognising an individual right to diplomatic protection which would be incompatible with international law and the discretionary power of States.

(iv) At the same time, in the Court's view, Article 3 § 2 of Protocol No. 4 may impose a positive obligation on the State where, in view of the specificities of a given case, a refusal to take any action would leave the national concerned in a situation comparable, *de facto*, to that of an exile. In order to assess the existence of, and compliance with, any such obligations in a repatriation context, the Court developed a two-tier test: in the first place, it will ascertain whether there are exceptional circumstances (such as extraterritorial factors directly threatening the life and physical well-being of a child in a situation of extreme vulnerability); and, secondly, it will address the question of whether the decision-making process was surrounded by appropriate safeguards against arbitrariness. This presupposes a review mechanism before an independent – not necessarily judicial – body through which it can be ascertained, on the basis of the relevant evidence, that there is no arbitrariness in any of the grounds for the impugned decision. Such review should enable the applicant to be made aware, even summarily, of these grounds. It should also ensure that due account is taken of a child's best interests, particular vulnerability and specific needs.

The Court went on to find that the present case disclosed such exceptional circumstances: the family members of the applicants had been in a humanitarian emergency and a legal vacuum; there was no prospect of their daughters being tried in Syria; and the Kurdish authorities, as well as international organisations, had repeatedly called on States to repatriate their nationals. However, the examination of the repatriation requests had not been surrounded by appropriate safeguards against arbitrariness, notably given the absence of a formal decision and the jurisdictional immunity raised by the domestic courts. France had therefore failed to comply with its procedural obligations under Article 3 of Protocol No. 4 to the Convention.

BINDING FORCE AND EXECUTION OF JUDGMENTS (ARTICLE 46)

Infringement proceedings

The judgment in *Kavala v. Türkiye*[156] is the second judgment in an infringement procedure for failure to abide by the Court's final judgment explicitly indicating the need for an applicant's immediate release.

In its first *Kavala* judgment[157], the Court found, *inter alia*, a violation of Article 5 § 1, taken separately and in conjunction with Article 18: the applicant's pre-trial detention was not justified by any "reasonable suspicion" but rather was based on the mere exercise of Convention rights by a human rights defender, and that it had, moreover, pursued the ulterior purpose of silencing him. It further indicated under Article 46 that the respondent State had "to secure his immediate release". Since he was not released, in 2022 the Committee of Ministers ("the CM") brought infringement proceedings in accordance with Article 46 § 4. In the Government's view, the *Kavala* judgment had been executed in full since the applicant was no longer detained on the basis of any of the charges which the Court had examined (Articles 309 and 312 of the Criminal Code ("the CC")): between 9 March 2020 and 25 April 2022, he had been placed in pre-trial detention on a new charge (Article 328 of the CC) and thereafter he was detained on a new ground, namely, to serve a life prison sentence following his conviction under Article 312 of the CC.

Applying the general principles set out in *Ilgar Mammadov v. Azerbaijan*[158], the Grand Chamber found that Türkiye had failed to fulfil its obligation under Article 46 § 1. As to the new charge under Article 328, there were striking similarities, or even complete duplication, between the facts invoked in this respect and those already scrutinised in the first judgment. However, a mere reclassification of the same facts could not in principle modify the basis for the Court's conclusions. The conviction under Article 312 had also been based on those same facts. Importantly, the finding of a violation of Article 5 § 1, read separately and in conjunction with Article 18, had vitiated any action resulting from the charges relating to those facts. In the absence of other relevant and sufficient circumstances capable of demonstrating that Mr Kavala had been involved in criminal activity, any measure, especially one depriving

156. *Kavala v. Türkiye* (infringement proceedings) [GC], no. 28749/18, 11 July 2022.

157. *Kavala v. Turkey*, no. 28749/18, 10 December 2019.

158. *Ilgar Mammadov v. Azerbaijan* (infringement proceedings) [GC], no. 15172/13, 29 May 2019.

him of his liberty, on grounds pertaining to the same factual context, had entailed a prolongation of the violations found and a breach of Article 46 § 1.

The Grand Chamber judgment is noteworthy in that the Court confirmed the general principles relating to infringement proceedings (see the first judgment of this kind, *Ilgar Mammadov*, cited above) and it also clarified certain matters concerning the roles of, and the institutional balance between, the Court and the CM: the nature of the CM's right to launch such proceedings; the role of the explicit indication in the initial judgment of individual measures under Article 46; the need for the applicant to lodge a new application with the Court in respect of the State's failure to execute the Court's initial judgment; and the possibility of a parallel examination by the Court and the CM of the domestic proceedings triggered by that judgment.

(i) The Government argued that the institution of the infringement proceedings by the CM had not been justified by any "exceptional circumstances" (as provided for by the CM Rules and the Explanatory Report to Protocol No. 14). It had, moreover, amounted to a breach of the Convention system, in so far as it had interfered in the ongoing domestic criminal proceedings. The Court responded that the criterion of "exceptional circumstances" was intended to indicate that the CM should apply a high threshold before launching this procedure, which had to be viewed therefore as a measure of last resort (notably, in cases where the CM considered that the other means of securing the execution of a judgment had ultimately proved unsuccessful and were no longer adapted to the situation). At the same time, the Court stressed that infringement proceedings were not intended to upset the fundamental institutional balance between the Court and the CM. The right to initiate a referral was a "procedural prerogative" falling within the CM's responsibility. Consequently, where this procedure was duly initiated, it was not the Court's task to express a view on the desirability of such a decision by the CM. Having received the CM's request, the Court was required to make a definitive legal assessment of the question of compliance with the judgment in question.

(ii) In contrast to the judgment in *Ilgar Mammadov*, the first *Kavala* judgment contained an explicit indication under Article 46, namely that Mr Kavala be released immediately. The Court clarified the role of such indications. On the one hand, according to its settled case-law, the ultimate choice of the measures to be taken to execute a judgment remains with the States under the supervision of the CM. On the other, by its very nature the violation found may not leave any real choice as

to the measures required to remedy it. This is particularly true where the case concerns detention that the Court has found to be manifestly unjustified under Article 5 § 1, in that there is an urgent need to put an end to the violation in view of the importance of the fundamental right to liberty and security. This observation is all the more valid where, as in the present case, the violation originated in detention that was also held to be contrary to Article 18. In consequence, the fact of giving indications under Article 46, as in the present case, enables the Court, in the first place, to ensure as soon as it delivers its judgment that the protection afforded by the Convention is effective and to prevent continued violation of the rights in issue and, subsequently, assists the CM in its supervision role. Such indications also enable and require the State concerned to put an end, as quickly as possible, to the violation of the Convention found by the Court.

(iii) The Government also argued that Mr Kavala should have lodged a new application with the Court about his continued detention after the initial judgment, having exhausted the domestic remedies. In the first place, the Court noted that pleas of inadmissibility were not relevant in the context of infringement proceedings. Secondly, the Court reconfirmed that it was for the CM to supervise and assess the specific measures to be taken in order to ensure the maximum possible reparation for the violations found by the Court. The question of compliance by the High Contracting Parties with its judgments fell outside the Court's jurisdiction if it was not raised in the context of the "infringement procedure" provided for in Article 46 §§ 4 and 5 of the Convention. The fact that Mr Kavala had not lodged a new application to the Court therefore had no fundamental bearing for the purpose of its examination of whether Türkiye had complied with its obligation under Article 46 § 1.

(iv) In connection with the domestic implementation process, it was observed that the Court and the CM, in the context of their different duties, might be required to examine, even simultaneously, the same domestic proceedings without upsetting the fundamental institutional balance between them. The Court reiterated in this regard that Article 46 did not preclude its examination and that it had competence to entertain complaints in follow-up cases, for example where the domestic authorities had carried out a fresh examination of a case in the implementation of one of the Court's judgments, whether by reopening the proceedings (*Emre v. Switzerland (no. 2)*[159], and *Hertel*

159. *Emre v. Switzerland (no. 2)*, no. 5056/10, 11 October 2011 (extracts).

v. Switzerland[160]) or by initiating an entirely new set of proceedings (*United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*[161], and *Liu v. Russia (no. 2)*[162]); the same applied when the "new issue" resulted from the continuation of the violation found by the Court (*Ivanţoc and Others v. Moldova and Russia*[163]).

ADVISORY OPINIONS (ARTICLE 1 OF PROTOCOL No. 16)

In response to the request submitted by the Lithuanian Supreme Administrative Court under Protocol No. 16 to the Convention, the Court delivered its advisory opinion[164] on 8 April 2022. It concerns the assessment of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings.

In response to the request submitted by the Armenian Court of Cassation under Protocol No. 16 to the Convention, the Court delivered its advisory opinion[165] on 26 April 2022, which concerned the applicability of statutes of limitations to the prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture.

In response to the request submitted by the French *Conseil d'État* under Protocol No. 16 to the Convention, the Court delivered its advisory opinion[166] on 13 July 2022, which concerned the difference in treatment between landowner associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and those set up after that date.

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160. *Hertel v. Switzerland*, 25 August 1998, *Reports of Judgments and Decisions* 1998-VI.

161. *The United Macedonian Organisation Ilinden – PIRIN and Others v. Bulgaria (no. 2)*, nos. 41561/07 and 20972/08, 18 October 2011.

162. *Liu v. Russia (no. 2)*, no. 29157/09, 26 July 2011.

163. *Ivanţoc and Others v. Moldova and Russia*, no. 23687/05, 15 November 2011.

164. *Advisory opinion on the assessment, under Article 3 of Protocol No. 1, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings* [GC], request no. P16-2020-002, Lithuanian Supreme Administrative Court, 8 April 2022. See also under Article 3 of Protocol No. 1 (Stand for election) above.

165. *Advisory opinion on the applicability of statutes of limitation to the prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, 26 April 2022. See also under Article 7 (No punishment without law) above.

166. *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021-002, French *Conseil d'État*, 13 July 2022. See also under Article 14 taken in conjunction with Article 1 of Protocol No. 1 above.

Chapter 3

Sharing Convention knowledge

With the launch of a new public platform (ECHR-KS) in October the Court scaled up its knowledge-sharing activities by providing full Convention analysis as well as weekly updates of the latest Convention case-law developments. The Court seeks especially to provide national courts with the tools to adjudicate Convention issues at home, thereby reinforcing the subsidiary nature of the Convention system. In addition, the Superior Courts Network (SCN) grew to 103 members in 44 of the 46 Council of Europe member States.

The Court's knowledge-sharing and other outreach activities are aimed at improving the accessibility and understanding of key Convention principles and standards at national level, in order to give full expression to the principle of subsidiarity as laid down in the Preamble to the Convention. Indeed, one of the overarching themes of the Interlaken reform process (2010-2020) was defining and optimising subsidiarity, it being agreed that responsibility for ensuring human rights protection is one shared between national authorities and the Strasbourg Court.

In this latter regard, it is of course the case that the Convention is embedded in the domestic legal order of all Council of Europe member States. Moreover, Protocol No. 16 allows the highest national courts and tribunals to request advisory opinions from the Court. As well as the key Convention requirements to exhaust domestic remedies and to have access to such remedies (Articles 13 and 35 of the Convention), the Strasbourg Court itself also articulates subsidiarity through concepts developed in its substantive case-law, including by tailoring the margin of appreciation according to context; by conducting a process-based review placing the national court's analysis at the centre of its own assessment; and by interpreting substantive rights as requiring an adequate domestic process and assessment.

JUDICIAL DIALOGUE

Superior Courts Network

The SCN is an operational-level structure for sharing Convention case-law knowledge and know-how, in a privileged space and through mutually beneficial activities with the superior national courts. By the end of 2022, the SCN had grown to 103 member courts in 44 Council of Europe member States (from a total of 46 member States), this year's newcomers being the Supreme Court of Estonia, the Constitutional Court of Lithuania, the Supreme Court of Finland, the Supreme Administrative Court of Finland, the Joint Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba (the Netherlands) and the Appellate Court of the Brčko District of Bosnia and Herzegovina.

Moreover, through an exchange of letters between the respective Presidents, the Inter-American Court of Human Rights joined the Network as an observer. It was preceded, in 2021, by the Court of Justice of the European Union.

The core objective in creating the SCN was to provide concrete operational support to the superior national jurisdictions, each and every one of whom may be considered to act as "Strasbourg judges" when faced with litigation concerning Convention rights. If the Interlaken reform process underlined the clear vision of shared responsibility for the implementation of the Convention, the Court's purpose in creating the SCN was to provide the national courts with the practical toolbox to facilitate their work in this regard.

Prior to October 2022, the dedicated SCN platform offered member courts access to a privileged version of the now external knowledge-sharing platform (ECHR-KS) while it was being adapted for the public roll-out. Going forward, member courts will continue to retain the added value of access to a more privileged and complete version of the KS platform than the one recently externalised.

In addition to the above, the SCN will continue to provide targeted knowledge and know-how to its member courts by hosting case-law webinars and providing case-law materials typically focused on issues pending before national jurisdictions, thereby ensuring that the relevant Convention case-law is provided at the crucial stage to the primary Convention actors. The SCN platform also hosts a collection of more than 600 legal databases from 44 member States, a resource of considerable value to member courts.

The sixth annual Focal Points Forum included a case-law session on the topic of domestic violence and a know-how session on the topic

of judicial communication, and the 2022 webinars focused on the rights of the child and the reopening of national judicial proceedings. The interactive, multilateral and multilingual nature of these events, accompanied by supporting documents, continued to reinforce the relevance of the SCN to member courts.

The Registry continued to assist member courts by responding to formal requests for case-law information. Such assistance is limited to providing a non-analytical list of case-law references, which ensures that the requesting domestic court has the full picture of potentially relevant case-law when deciding any case before it.

Furthermore, the Registry organised regular web-based training sessions on how to research the Court's case-law, with over 260 participants benefiting from these.

Knowledge-sharing within the SCN is a two-way street, as member courts provide valued assistance to the Strasbourg Court's comparative work. National practices or trends, and any growing consensus in the member States, can be key reference points in certain Convention cases. Once the relevant ECHR judgment has been delivered, the national contributions obtained for that case are compiled and made available to SCN member courts. Over the years the Strasbourg Court has received almost 1,400 such contributions.

The SCN platform has also become a place for informal and *ad hoc* exchanges between national courts, who seek more and more opportunities for informal exchanges on their own judicial experiences and problem-solving.

Looking ahead, the SCN is currently setting up a structured network of Focal Points within the monitoring and standard-setting bodies of the Council of Europe. While their input will directly enrich the knowledge-sharing platforms and the SCN webinars, member courts will also gain direct access to those specialised bodies and to their expertise. The overall aim is to ensure that the SCN provides a curated gateway for member courts to other bodies of knowledge and to other specialised fora of discussion and development.

Finally, transmission of know-how will be scaled up further through informal exchanges under a new Visiting Professionals Scheme, whereby member courts may benefit from a visit to the Court in Strasbourg on subjects tailored to their specific needs in areas such as case-processing, document and knowledge management and related IT systems and development.

Cooperation between regional human rights courts

In 2018 the Court, together with the African Court of Human and Peoples' Rights and the Inter-American Court of Human Rights (which now has observer status in the SCN), adopted the San José Declaration and established a Permanent Forum of Institutional Dialogue which was to meet every two years. The sister courts also publish a Joint Law Report, covering their leading case-law of the preceding year.[1]

In 2022 the African Court of Human and Peoples' Rights paid a working visit to Strasbourg for a rich exchange of best practices in various fields such as case and knowledge management, drafting and execution of judgments. The Registrars of the three courts also met to discuss common challenges.

SHARING THE KNOWLEDGE

The external knowledge-sharing platform

As noted above, 2022 saw the launch of the Court's external knowledge-sharing platform. ECHR-KS provides detailed contextualised case-law analysis on all of the key Convention subjects, Article by Article as well as through the optic of transversal themes such as the environment, terrorism, data protection, immigration and prisoners' rights. It also filters into the platform key commentaries, doctrine and other publications, and offers links to key texts and standards from other relevant international bodies. Crucially, it is not a static system: the case-law analytical content is updated every week and, importantly, it is managed so as to expand and provide analysis on new case-law issues as they emerge.[2]

Since its internal launch in 2018, the Knowledge Sharing platform has transformed the Court's access to its own case-law and it has become a crucial tool by which to ensure the coherence and quality of future case-law. It quickly became evident that access to this platform would be just as useful for the work of the superior courts at national level, faced as they often are with referencing several sources of law and case-law. More conceptually, in terms of subsidiarity, the rationale was that national courts should be as well-equipped as the Strasbourg Court in order to fulfil their Convention role. Consequently, a year after

1. Available at: Regional Human Rights Courts (coe.int).
2. Available at: ECHR Knowledge Sharing – Gateway homepage – ECHR-KS – Knowledge Sharing (coe.int).

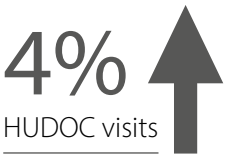
its launch internally, a version of the KS platform was opened to SCN member courts.

Such was the usage by and positive feedback from SCN members, that the Court began work to create a fully public version of the platform in the official languages, English and French. The ECHR-KS launch on 18 October 2022 was a milestone in the Court's programme implemented jointly with the Council of Europe Directorate of Human Rights and Rule of Law (DG1). This programme, partly funded by voluntary contributions from France, Ireland and the Human Rights Trust Fund, is also seeking to make ECHR-KS available in non-official languages, which would be a game changer for the Convention system, since one of the main problems for a correct interpretation of the Court's case-law at domestic level remains the language barrier.

Selection of key cases

The Bureau of the Court identifies those judgments and decisions it considers to be of particular importance for each quarter, for example because they make a significant contribution to the development of the Court's case-law, deal with a new problem of general interest or entail a new interpretation or clarification of principles. Cases in this category will always be made available in both official languages. The selected cases are listed at the end of this chapter and may also be found by referring to the quarterly and annual lists available on the Court's website[3] or by selecting "Key cases" in the "Importance" filter in HUDOC.

The HUDOC-ECHR case-law database



HUDOC-ECHR (hudoc.echr.coe.int) exists in a total of eight languages (English, French, Bulgarian, Georgian, Russian, Spanish, Turkish and Ukrainian). An Armenian user interface has been completed and will be launched in early 2023. Further language versions are under consideration.[4]

The largest of the nine HUDOC sites, HUDOC-ECHR now contains over 187,000 documents. The number of visits to the site increased by 4% in 2022 (5,962,612 visits compared with 5,732,743 visits in 2021).

Over 35,000 translations in 34 languages (other than English and French) have now been made available in HUDOC-ECHR – 18.7% of

3 Under Case-law/Judgments and decisions/Selection of key cases/Key cases.

4. FAQs, manuals and video tutorials on HUDOC are available on the Court's website under Case-law/Judgments and decisions/HUDOC database.

its total content – making it the first port of call for legal professionals across Europe and beyond.[5] The language-specific filter allows for rapid searching of these translations, including in free text.

In its 2021 Recommendation, the Committee of Ministers acknowledged "the central contribution of the HUDOC databases in ensuring the continued effectiveness of the Convention system as well as the challenges faced by national authorities and other actors who do not have access to these systems or do not know the official languages of the Council of Europe".[6]

Case-law translations programme

35,000 translations

34 languages

The Registry maintains a standing invitation to courts, ministries, judicial training centres, associations of legal professionals, non-governmental organisations and other partners to offer, for inclusion in HUDOC, any case-law translations to which they have the rights. A significant number of partners continue to support the Court's work and the implementation of the Convention at national level by offering to translate select judgments, decisions and advisory opinions as well as publications, factsheets, legal summaries, country profiles and the like. These are then shared with the Court so as to be made available either on its website or in HUDOC. The Registry also references, on the Court's website, third-party websites or databases hosting translations of the Court's case-law, and welcomes suggestions for the inclusion of further sites of this kind.[7]

The same is true for case-law guides and other ECHR-KS material in the context of the development of the platform in non-official languages.

Jurisconsult's *Overview of the case-law*

The Jurisconsult's *Overview of the case-law* provides valuable insight into the most important judgments and decisions delivered by the Court each year, setting out the salient aspects of the Court's findings and

5. The translations are published with a disclaimer, since the only authentic language version of a judgment, decision or advisory opinion is in one or both of the Court's official languages.

6. Recommendation CM/Rec(2021)4 of the Committee of Ministers to member States on the publication and dissemination of the European Convention on Human Rights, the case law of the European Court of Human Rights and other relevant texts.

7. More information can be found on the Court's website under Case-law/Judgments and decisions/Case-law translations/Existing translations/External online collections of translations; scroll down to see the list of third-party sites.

their relevance to the evolution of its case-law. The annual version of the *Overview* can be consulted in this Annual Report. Both the annual and interim versions (the latter is published halfway through the year) can also be downloaded separately from the Court's website.

Case-law Information Note

The Case-law Information Note played a key role in the dissemination of the Court's case-law from its inception in 1998, compiling as it did the legal summaries of cases delivered during the preceding month. While the actual publication was discontinued with the launch of ECHR-KS, individual summaries can still be accessed either via ECHR-KS or HUDOC-ECHR. The summaries are published on HUDOC, in principle on the day of delivery of the relevant judgment, decision or opinion. Third-party translations into non-official languages are also available in some cases.

Handbooks on European law

2022 saw an updated edition of the Handbook on European law relating to the rights of the child, published in cooperation with the EU Fundamental Rights Agency (FRA) and the Council of Europe's Children's Rights Division. Additional translations of other handbooks were made available throughout the year. All handbooks and language editions are available on the Court's website under Case-law/Other publications.

Library

In 2022 approximately 3,600 bibliographic references were added to the library's online catalogue, bringing the number of records held in this database to more than 63,000.

The catalogue, which is accessible from the library's webpages on the Court's website, is an important resource for references to secondary literature on the Convention, case-law and Articles, and it was consulted around 170,000 times in the course of the year.

While visiting the Court on 24 June, the President of the Hellenic Republic, Katerina Sakellaropoulou, dedicated the freedom of expression shelves to the memory of the late Professor Stavros Tsakyrakis, a Greek jurist and academic of constitutional law.

TRAINING OF LEGAL PROFESSIONALS

Judges and Registry staff continued to share their expertise through case-law training sessions held remotely and at the Court. In organising

the training sessions, the Court maintained its long-standing collaboration with France's *Conseil d'État*, Court of Cassation and *École nationale de la magistrature*.

The Court held training sessions for EU judges and prosecutors in partnership with the European Judicial Training Network.

Some sessions were conducted by video-conference in the light of the public-health situation at the time.

In 2022 the Visitors' Unit held 33 training sessions, of one to three days each, for legal professionals from 13 of the 46 member States.

GENERAL OUTREACH

Factsheets and Country Profiles

In 2022 the Press Unit prepared three new Factsheets on the Court's case-law concerning cannabis-based medication, climate change and racial profiling. More than 60 Factsheets are now available in English and French, many of which have been translated into German, Greek, Italian, Polish, Romanian, Spanish and Turkish with the support of, among others, the States concerned and national human rights institutions. These Factsheets provide the reader with a rapid overview of the most relevant cases concerning a particular topic and are regularly updated to reflect the development of the case-law.

The Press Unit has also prepared Country Profiles covering each of the 46 Council of Europe member States. These Profiles, which are updated regularly, provide general and statistical information on each State, as well as summaries of the most noteworthy cases.

The Press Unit published three Questions and Answers (Q&As) on Article 46, repatriation and the Court's infringement procedure. These are useful for helping the press quickly understand and explain concepts linked to related cases.

The Factsheets and Country Profiles can be viewed on, and downloaded from, the Court's website under Press/Press Service/Factsheets and Press/Press Service/Country Profiles. Q&As are available under Press/Press Service/Questions & Answers on cases and themes.

Public relations

2022 saw further development of the Court's communication activities. As regards the Court's website (www.echr.coe.int), the number of visits in 2022 reached about 3,049,100. Updated on a daily basis, it saw the addi-

tion of new pages (Knowledge Sharing (ECHR-KS); All about the ECHR; and Presidency of the Court, following the election of Judge Síofra O'Leary as President). In 2022, all the documents concerning Rule 39 interim measures were updated, in 35 languages. The Applicants pages, designed to help individuals in their dealings with the Court, were added to and amended, particularly following the entry into force of the new time-limit for applying to the Court introduced by Protocol No. 15.

9,253,515
number of visits to all the websites

an increase of **7.9%**

As to publications, after the Russian Federation ceased to be a State Party to the Convention on 16 September 2022, the Court updated the following publications: "The Court in brief"; "The ECHR in 50 questions"; "Questions and answers"; and "The European Convention – a living instrument".

As in previous years the Court published its "Facts and figures" document for 2021 and the "Overview 1959-2021". The series of documents "The ECHR in facts and figures by State" was supplemented by publications concerning the countries which held the Chairmanship of the Committee of Ministers in 2022, namely Italy, Ireland and Iceland. This publication series, which covers 15 countries, was also updated.

In addition, the Court further expanded its multimedia activities in 2022, publishing several series of videos on its website and on social media, including "All about ..."; "One judge, three questions"; and "Official visits".

As regards social media, the twitter.com/ECHR_CEDH and YouTube accounts were added to regularly in the light of current events. The number of subscribers to the Twitter account increased by 30% in 2022, while the YouTube account saw an increase of 13%.

7,700
visitors

228
information visits

33
training sessions

Visits

In 2022 the Visitors' Unit organised 228 information visits for 5,472 visitors from the legal community and welcomed about 7,700 visitors in total.

KEY CASES

List approved by the Bureau following recommendation by the Jurisconsult of the Court

Cases are listed alphabetically by respondent State. By default, all references are to Chamber judgments. Grand Chamber cases, whether judgments or decisions, are indicated by "[GC]". Decisions are indicated by "(dec.)". Chamber judgments that are not yet "final" within the meaning of Article 44 of the Convention are marked "(not final)".

BELGIUM	*Mortier v. Belgium*, no. 78017/17, 4 October 2022
	Vegotex International S.A. v. Belgium [GC], no. 49812/09, 3 November 2022
CROATIA	*J.I. v. Croatia*, no. 35898/16, 8 September 2022 (not final)
DENMARK	*Mørck Jensen v. Denmark*, no. 60785/19, 18 October 2022
FRANCE	*Bouton v. France*, no. 22636/19, 13 October 2022
	C.E. and Others v. France, nos. 29775/18 and 29693/19, 24 March 2022
	Drelon v. France, nos. 3153/16 and 27758/18, 8 September 2022
	H.F. and Others v. France [GC], nos. 24384/19 and 44234/20, 14 September 2022
GERMANY	*Basu v. Germany*, no. 215/19, 18 October 2022
GREECE	*Safi and Others v. Greece*, no. 5418/15, 7 July 2022
ICELAND	*Arnar Helgi Lárusson v. Iceland*, no. 23077/19, 31 May 2022
ITALY	*Darboe and Camara v. Italy*, no. 5797/17, 21 July 2022
	McCallum v. Italy (dec.) [GC], no. 20863/21, 21 September 2022
LATVIA	*Savickis and Others v. Latvia* [GC], no. 49270/11, 9 June 2022
REPUBLIC OF MOLDOVA	*NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, 5 April 2022
NETHERLANDS	*De Legé v. the Netherlands*, no. 58342/15, 4 October 2022 (not final)
POLAND	*Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022
ROMANIA	*C. v. Romania*, no. 47358/20, 30 August 2022
RUSSIA	*Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022
	Khasanov and Rakhmanov v. Russia [GC], nos. 28492/15 and 49975/15, 29 April 2022
	OOO Memo v. Russia, no. 2840/10, 15 March 2022

SPAIN	*Muhammad v. Spain*, no. 34085/17, 18 October 2022 (not final)
SWITZERLAND	*Beeler v. Switzerland* [GC], no. 78630/12, 11 October 2022
TÜRKIYE	*Barış and Others v. Turkey* (dec.), nos. 66828/16 and 31 others, 14 December 2021
	Kavala v. Türkiye (infringement proceedings) [GC], no. 28749/18, 11 July 2022
UKRAINE	*Kupinskyy v. Ukraine*, no. 5084/18, 10 November 2022 (not final)
UNITED KINGDOM	*Sanchez-Sanchez v. the United Kingdom* [GC], no. 22854/20, 3 November 2022


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

Chapter 4

Judicial activities

For more information go to www.echr.coe.int under Statistics.

74,650
pending applications

increase of 6%

358
judgments

delivered by Chambers

796
judgments

delivered by Committees of three judges

30,585
applications

declared inadmissible or struck out by single judges

9
judgments

delivered by the Grand Chamber

7
oral hearings

held by the Grand Chamber

4,703
applications

declared inadmissible or struck out by Committees

5
cases

relinquished to the Grand Chamber

4
cases

referred to the Grand Chamber

113
applications

declared inadmissible or struck out by Chambers

1 application

declared inadmissible by the Grand Chamber

3 advisory opinions

delivered by the Grand Chamber

1 advisory-opinion request

pending before the Grand Chamber

COMPOSITION OF THE COURT

At 1st December 2022, in order of precedence, from left to right

Síofra O'LEARY Ireland President	Georges RAVARANI Luxembourg Vice-President	Marko BOŠNJAK Slovenia Vice-President
Gabriele KUCSKO-STADLMAYER Austria	Pere PASTOR VILANOVA Andorra	Arnfinn BÅRDSEN Norway
Krzysztof WOJTYCZEK Poland	Faris VEHABOVIĆ Bosnia and Herzegovina	Egidijus KŪRIS Lithuania
Iulia Antoanella MOTOC Romania	Branko LUBARDA Serbia	Yonko GROZEV Bulgaria
Carlo RANZONI Liechtenstein	Mārtiņš MITS Latvia	Armen HARUTYUNYAN Armenia
Stéphanie MOUROU-VIKSTRÖM Monaco	Alena POLÁČKOVÁ Slovak Republic	Pauliine KOSKELO Finland
Georgios SERGHIDES Cyprus	Tim EICKE United Kingdom	Lətif HÜSEYNOV Azerbaijan
Jovan ILIEVSKI North Macedonia	Jolien SCHUKKING Netherlands	Péter PACZOLAY Hungary
Lado CHANTURIA Georgia	María ELÓSEGUI Spain	Ivana JELIĆ Montenegro
Gilberto FELICI San Marino	Darian PAVLI Albania	Erik WENNERSTRÖM Sweden
Raffaele SABATO Italy	Saadet YÜKSEL Türkiye	Lorraine SCHEMBRI ORLAND Malta
Anja SEIBERT-FOHR Germany	Peeter ROOSMA Estonia	Ana Maria GUERRA MARTINS Portugal
Mattias GUYOMAR France	Ioannis KTISTAKIS Greece	Andreas ZÜND Switzerland
Frédéric KRENC Belgium	Diana SÂRCU Republic of Moldova	Kateřina ŠIMÁČKOVÁ Czech Republic
Davor DERENČINOVIĆ Croatia	Mykola GNATOVSKYY Ukraine	
Marialena TSIRLI Greece Registrar	Abel CAMPOS Portugal Deputy Registrar	

COMPOSITION OF THE SECTIONS

At 1st December 2022, in order of precedence

section 1

Marko BOŠNJAK President
Péter PACZOLAY Vice-President
Krzysztof WOJTYCZEK
Alena POLÁČKOVÁ
Lətif HÜSEYNOV
Ivana JELIĆ
Gilberto FELICI
Erik WENNERSTRÖM
Raffaele SABATO
Renata DEGENER Registrar
Liv TIGERSTEDT Deputy Registrar

section 2

Arnfinn BÅRDSEN President
Jovan ILIEVSKI Vice-President
Egidius KŪRIS
Pauliine KOSKELO
Saadet YÜKSEL
Lorraine SCHEMBRI ORLAND
Frédéric KRENC
Diana SÂRCU
Davor DERENČINOVIĆ
Hasan BAKIRCI Registrar
Dorothee von ARNIM Deputy Registrar

section 3

Pere PASTOR VILANOVA President
Georgios SERGHIDES Vice-President
Yonko GROZEV
Jolien SCHUKKING
Darian PAVLI
Peeter ROOSMA
Ioannis KTISTAKIS
Andreas ZÜND
Milan BLASKO Registrar
Olga CHERNISHOVA Deputy Registrar

section 4

Gabriele KUCSKO-STADLMAYER President
Tim EICKE Vice-President
Faris VEHABOVIĆ
Iulia Antoanella MOTOC
Branko LUBARDA
Armen HARUTYUNYAN
Anja SEIBERT-FOHR
Ana Maria GUERRA MARTINS
Andrea TAMIETTI Registrar
Ilse FREIWIRTH Deputy Registrar

section 5

Georges RAVARANI President
Carlo RANZONI Vice-President
Síofra O'LEARY
Mārtiņš MITS
Stéphanie MOUROU-VIKSTRÖM
Lado CHANTURIA
María ELÓSEGUI
Mattias GUYOMAR
Kateřina ŠIMÁČKOVÁ
Mykola GNATOVSKYY
Victor SOLOVEYTCHIK Registrar
Martina KELLER Deputy Registrar

THE PLENARY COURT 28 November 2022, from left to right

FRONT ROW

Iulia Antoanella Motoc, Egidijus Kūris, Krzysztof Wojtyczek, Arnfinn Bårdsen, Gabriele Kucsko-Stadlmayer, Georges Ravarani, Síofra O'Leary, Marko Bošnjak, Pere Pastor Vilanova, Faris Vehabović, Branko Lubarda, Yonko Grozev, María Elósegui

MIDDLE ROW

Marialena Tsirli, Kateřina Šimáčková, Mārtiņš Mits, Ivana Jelić, Pauliine Koskelo, Ana Maria Guerra Martins, Lado Chanturia, Jolien Schukking, Lətif Hüseynov, Andreas Zünd, Alena Poláčková, Armen Harutyunyan, Tim Eicke, Gilberto Felici, Anja Seibert-Fohr, Darian Pavli, Abel Campos

BACK ROW

Lorraine Schembri Orland, Mattias Guyomar, Stéphanie Mourou-Vikström, Saadet Yüksel, Georgios Serghides, Jovan Ilievski, Ioannis Ktistakis, Peeter Roosma, Mykola Gnatovskyy, Péter Paczolay, Davor Derenčinović, Raffaele Sabato, Frédéric Krenc, Diana Sârcu

Chapter 5

Procedural innovations

THE TIME-LIMIT FOR APPLYING

From 1 February 2022 the time-limit for submitting an application to the European Court of Human Rights was reduced from six months to four months from the final domestic judicial decision.

Reason

- The change to the time-limit for applying to the Court arises out of Protocol No. 15 to the European Convention on Human Rights, which has been signed and ratified by all the member States of the Council of Europe.
- The development of swifter communications technology, along with time-limits of similar length being in force in the member States, provided arguments in favour of reducing the time-limit.

How it works

- This new time-limit is not retroactive: it does not apply to applications in which the final domestic decision was taken prior to 1 February 2022. In other words, it only applies to applications in which the final domestic decision was given from 1 February 2022 onwards.
- It was considered that the reduction in the time-limit for submitting an application to the Court should apply only after a period of six months following the entry into force of the Protocol, in order to allow potential applicants to become fully aware of the new deadline. Furthermore, the new time-limit will not have retroactive effect, since it is specified in the final sentence of paragraph 3 of Article 8 that it does not apply to applications in respect of which the final decision within the meaning of Article 35, paragraph 1, of the Convention was taken prior to the date of entry into force of the new rule.

RELINQUISHMENT OF JURISDICTION TO THE GRAND CHAMBER

Article 30 of the Convention has been amended such that the parties may no longer object to relinquishment of a case by a Chamber in favour of the Grand Chamber.

Purpose

- This measure is intended to contribute to consistency in the case-law of the Court, which had indicated that it intended to modify Rule 72 of its Rules of Court so as to make it obligatory for a Chamber to relinquish jurisdiction where it envisages departing from settled case-law. Removal of the parties' right to object to relinquishment will reinforce this development.

Expected outcome

- The removal of this right also aims to accelerate proceedings before the Court in cases which raise a serious question affecting the interpretation of the Convention or the Protocols thereto or a potential departure from existing case-law.

In practice

- The idea is that the Chamber will consult the parties on its intentions and that it would be preferable for the Chamber to narrow down the case as far as possible, including by finding inadmissible any relevant parts of the case before relinquishing it.
- This change is being made in the expectation that the Grand Chamber will in future give more specific indications to the parties of the potential departure from existing case-law or serious question of interpretation of the Convention or the Protocols thereto.

CESSATION OF THE MEMBERSHIP OF RUSSIA

In accordance with the plenary Court Resolution of 22 March 2022, the Russian Federation ceased to be a High Contracting Party to the European Convention on Human Rights on 16 September 2022. In accordance with the plenary Court's Resolution taking formal notice of this fact, the office of a judge in the Court with respect to the Russian Federation also ceased to exist.

Consequences

Under the Resolution on the consequences of the cessation of membership of Russia to the Council of Europe in light of Article 58 of the Convention, adopted by the Court on 22 March 2022:

- the Court remains competent to deal with applications directed against Russia in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred before 16 September 2022;
- the suspension of the examination of all applications against Russia pursuant to the decision of the President of the Court of 16 March 2022 was lifted with immediate effect;
- the Resolution is without prejudice to the consideration of any legal issue, related to the consequences of the cessation of Russia's membership to the Council of Europe, which may arise in the exercise by the Court of its competence under the Convention to consider cases brought before it.

In practice

The Court has decided to take a number of measures to be applied in all cases concerning Russia owing to the disruption to the postal service since the beginning of March 2022. They may be summarised as follows:

- The Court will register new cases and may proceed with a preliminary examination of their admissibility and merits but will not invite the Russian Government to submit observations unless it is possible to use the Court's service for communicating electronically with an applicant's representative (eComms).
- There will be no general extension of the time-limit (Article 35 of the Convention) for lodging an application with the Court.
- Where the case file is ready for examination, decisions and judgments will continue to be adopted.
- If it is possible to use eComms, time-limits will continue to be fixed in the usual way. If not, no new time-limits will be fixed and all time-limits already running in pending cases will be suspended until further notice.
- Incoming correspondence will be processed in the usual way. If it is possible to use eComms, outgoing correspondence will also be processed in the usual way; if not, it will be suspended until further notice.

THE ECHR RULE 39 SITE

Since 3 October 2022 applicants can lodge requests for interim measures with the European Court of Human Rights under Rule 39 of the Rules of Court electronically via the ECHR Rule 39 Site (r39.echr.coe.int).

Reason

- Applicants and the Registry of the Court have experienced difficulties in sending and receiving requests for interim measures by fax. The development of a swift communication technology method for lodging urgent requests was considered necessary.

Aim

- The new website aims to enable applicants to introduce their requests for interim measures in a digital format and to facilitate the Court's processing of those requests. It is an alternative to lodging the requests by fax or by post, although both of these methods remain possible.

How it works

- Applicants and/or their representatives create accounts by using their email addresses in order to access this new tool for lodging their requests and subsequent communication with the Court. Requirements concerning the information and documents to be included in requests for interim measures can be found on the ECHR Rule 39 Site and the Court's website.

Chapter 6

Statistics

A glossary of statistical terms (Understanding the Court's statistics) and further statistics are available on www.echr.coe.int under Statistics.

Allocated applications*	2022	2021	+/–
Total	**45,500**	44,250	3%

Communicated applications	2022	2021	+/–
Total	**6,822**	10,629	– 36%

Decided applications	2022	2021	+/–
Total	**39,570**	36,093	10%
by judgment delivered	**4,168**	3,131	33%
by decision (inadmissible/struck out)	**35,402**	32,962	7%

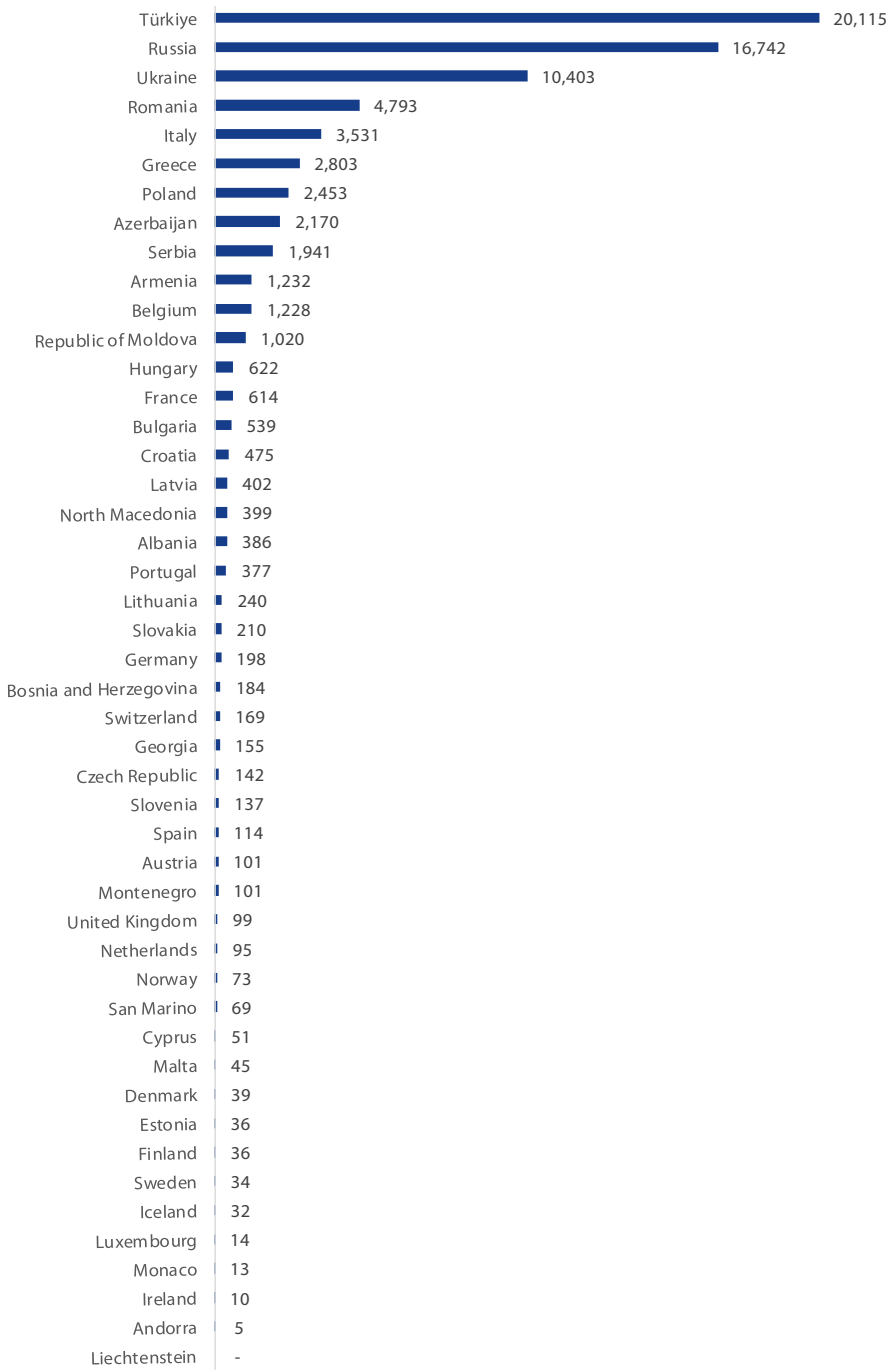
Pending applications*	31/12/22	01/01/22	+/–
Total	**74,650**	70,150	6%
Chamber and Grand Chamber	**35,100**	30,600	15%
Committee	**34,800**	31,850	9%
Single-judge formation	**4,750**	7,700	– 38%

Pre-judicial applications*	31/12/22	01/01/22	+/–
Total	**6,250**	8,700	– 28%

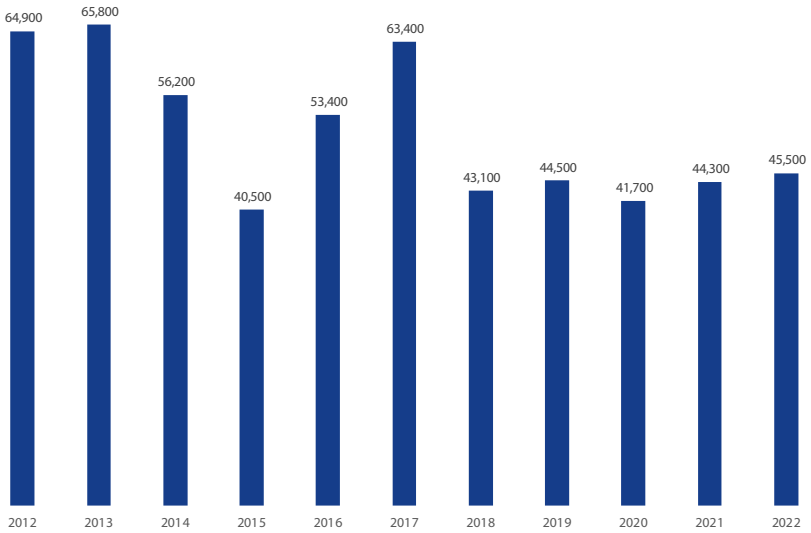
Applications disposed of administratively	2022	2021	+/–
Total	**14,400**	16,400	– 12%

* Round figures [50]

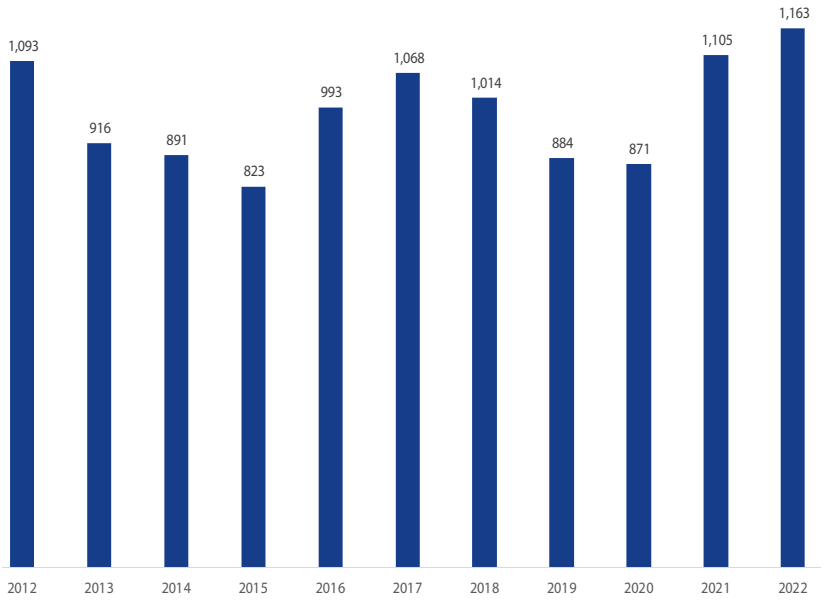
PENDING CASES (BY STATE)



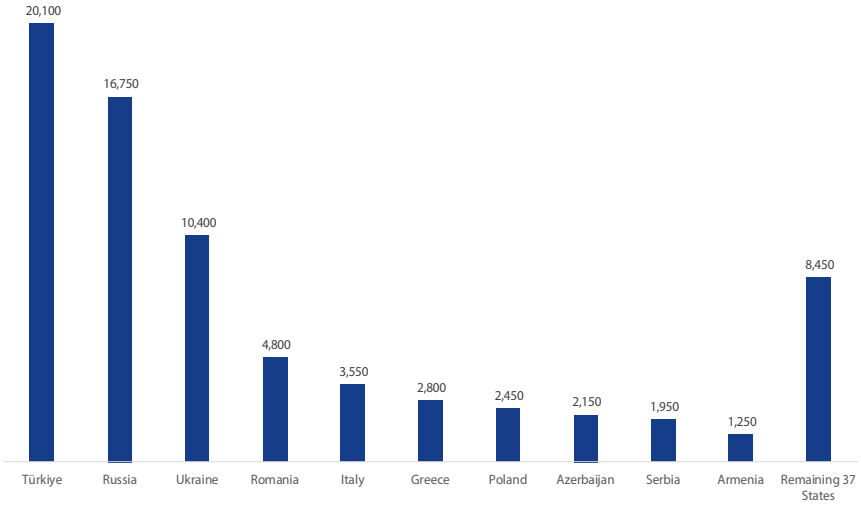
ALLOCATED APPLICATIONS (2012-22)



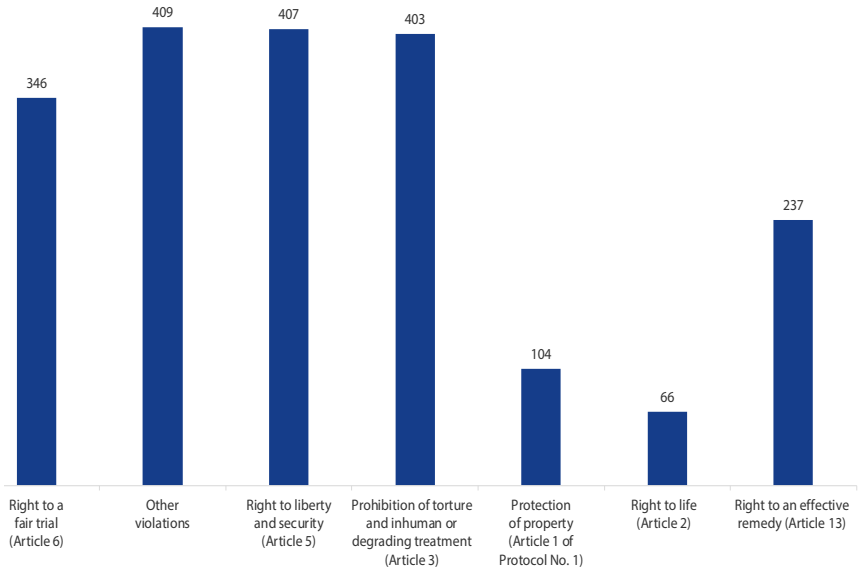
JUDGMENTS (2012-22)



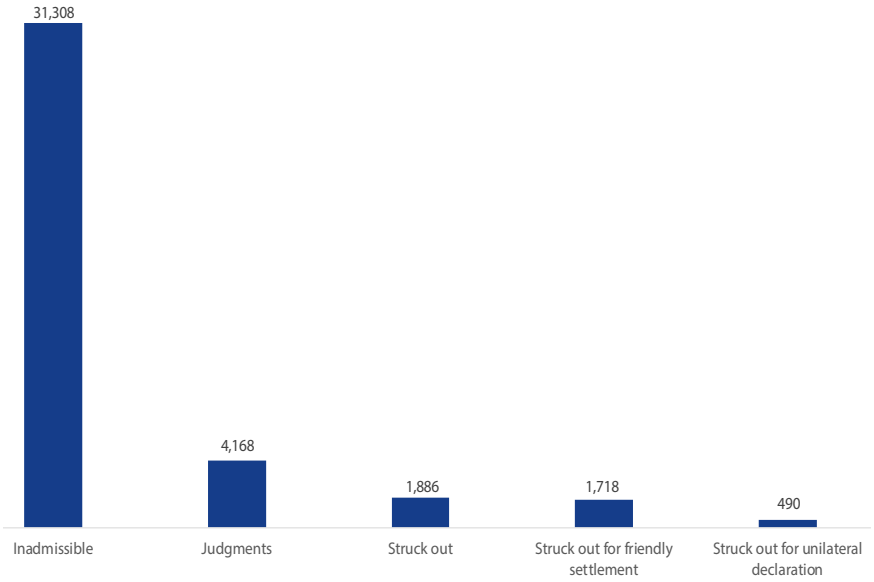
PENDING CASES (MAIN STATES)



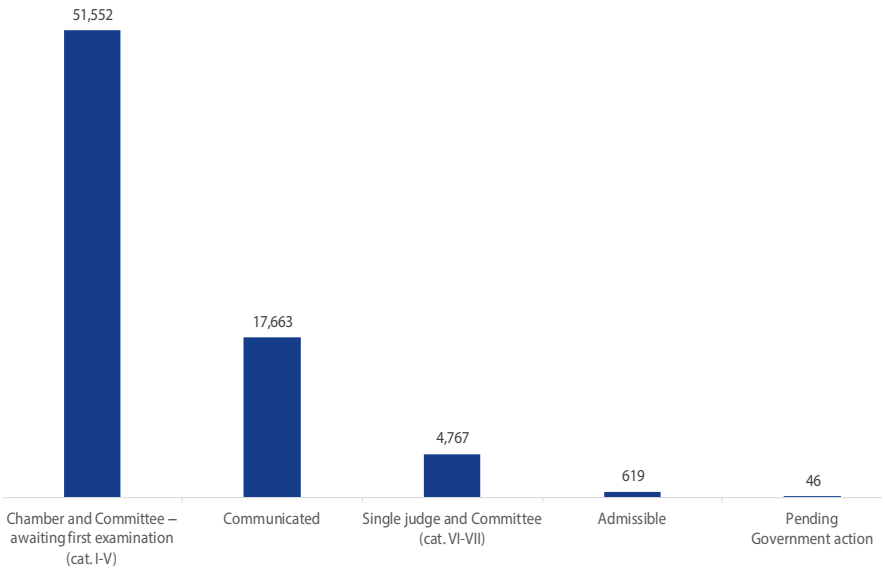
VIOLATIONS BY SUBJECT MATTER



DECIDED APPLICATIONS



COURT'S WORKLOAD



ALLOCATED APPLICATIONS BY STATE AND BY POPULATION (2019-22)

State	Applications allocated to a judicial formation				Population (1,000)				Allocated/population (10,000)			
	2019	2020	2021	2022	1.1.2019	1.1.2020	1.1.2021	1.1.2022	2019	2020	2021	2022
Albania	88	76	75	85	2,862	2,846	2,830	2,794	0.31	0.27	0.27	0.30
Andorra	6	11	11	10	76	77	77	80	0.79	1.43	1.43	1.25
Armenia	148	213	134	111	2,965	2,960	2,963	2,961	0.50	0.72	0.45	0.37
Austria	199	215	222	254	8,859	8,901	8,933	8,979	0.22	0.24	0.25	0.28
Azerbaijan	397	525	425	389	9,981	10,067	10,119	10,156	0.40	0.52	0.42	0.38
Belgium	139	124	155	1,169	11,455	11,522	11,555	11,631	0.12	0.11	0.13	1.01
Bosnia and Herzegovina	1,784	870	784	407	3,492	3,492	3,287	3,231	5.11	2.49	2.39	1.26
Bulgaria	750	608	623	597	7,000	6,951	6,917	6,839	1.07	0.87	0.90	0.87
Croatia	712	615	698	886	4,076	4,058	4,036	3,879	1.75	1.52	1.73	2.28
Cyprus	45	55	52	43	876	888	896	905	0.51	0.62	0.58	0.48
Czech Republic	300	381	331	309	10,650	10,694	10,495	10,517	0.28	0.36	0.32	0.29
Denmark	59	63	67	97	5,806	5,823	5,840	5,873	0.10	0.11	0.11	0.17
Estonia	121	128	113	141	1,325	1,329	1,330	1,332	0.91	0.96	0.85	1.06
Finland	131	120	91	170	5,518	5,525	5,534	5,548	0.24	0.22	0.16	0.31
France	693	638	764	831	67,013	67,320	67,657	67,843	0.10	0.09	0.11	0.12
Georgia	131	130	120	150	3,723	3,717	3,728	3,689	0.35	0.35	0.32	0.41
Germany	584	569	574	535	83,019	83,167	83,155	83,237	0.07	0.07	0.07	0.06
Greece	344	658	912	1,947	10,724	10,719	10,679	10,604	0.32	0.61	0.85	1.84
Hungary	950	1,036	1,086	1,267	9,773	9,769	9,731	9,689	0.97	1.06	1.12	1.31
Iceland	40	28	21	30	357	364	369	376	1.12	0.77	0.57	0.80
Ireland	37	42	35	28	4,904	4,964	5,006	5,060	0.08	0.08	0.07	0.06
Italy	1,454	1,497	1,610	1,931	60,360	59,641	59,236	58,983	0.24	0.25	0.27	0.33
Latvia	233	414	268	272	1,920	1,908	1,893	1,876	1.21	2.17	1.42	1.45
Liechtenstein	6	9	8	1	38	39	39	39	1.58	2.31	2.05	0.26

State	Applications allocated to a judicial formation				Population (1,000)				Allocated/population (10,000)			
	2019	2020	2021	2022	1.1.2019	1.1.2020	1.1.2021	1.1.2022	2019	2020	2021	2022
Lithuania	396	398	429	360	2,794	2,794	2,796	2,806	1.42	1.42	1.53	1.28
Luxembourg	23	29	30	35	614	626	635	645	0.37	0.46	0.47	0.54
Malta	35	40	62	19	494	514	516	521	0.71	0.78	1.20	0.36
Republic of Moldova	635	523	630	642	2,685	2,644	2,627	2,604	2.36	1.98	2.40	2.47
Monaco	8	3	8	8	38	38	39	39	2.11	0.79	2.05	2.05
Montenegro	427	218	381	295	622	622	621	618	6.86	3.50	6.14	4.77
Netherlands	400	386	248	198	17,282	17,407	17,475	17,591	0.23	0.22	0.14	0.11
North Macedonia	262	275	394	367	2,077	2,076	2,069	1,837	1.26	1.32	1.90	2.00
Norway	102	99	116	131	5,328	5,367	5,391	5,425	0.19	0.18	0.22	0.24
Poland	1,834	1,628	2,889	2,146	37,973	37,958	37,840	37,654	0.48	0.43	0.76	0.57
Portugal	188	261	260	335	10,277	10,296	10,298	10,352	0.18	0.25	0.25	0.32
Romania	2,656	2,994	2,971	3,302	19,414	19,329	19,202	19,038	1.37	1.55	1.55	1.73
Russia	12,782	8,923	9,432	6,077	143,667	143,667	143,667	143,667	0.89	0.62	0.66	0.42
San Marino	10	6	18	56	35	35	35	34	2.86	1.71	5.14	16.47
Serbia	2,160	1,836	1,993	3,289	6,964	6,927	6,872	6,797	3.10	2.65	2.90	4.84
Slovak Republic	300	289	460	479	5,450	5,458	5,460	5,435	0.55	0.53	0.84	0.88
Slovenia	210	180	234	287	2,081	2,096	2,109	2,107	1.01	0.86	1.11	1.36
Spain	606	440	614	718	46,937	47,333	47,399	47,433	0.13	0.09	0.13	0.15
Sweden	209	174	157	162	10,230	10,327	10,379	10,452	0.20	0.17	0.15	0.15
Switzerland	279	278	273	257	8,544	8,606	8,670	8,737	0.33	0.32	0.31	0.29
Türkiye	7,274	9,104	9,548	12,551	82,004	83,155	83,614	84,680	0.89	1.09	1.14	1.48
Ukraine	3,991	4,271	3,721	1,914	45,246	45,246	45,246	45,246	0.88	0.94	0.82	0.42
United Kingdom	344	301	210	240	66,647	67,025	68,134	67,509	0.05	0.04	0.03	0.04
TOTAL	**44,482**	**41,681**	**44,257**	**45,528**	**834,175**	**836,287**	**837,399**	**837,348**	**0.53**	**0.50**	**0.53**	**0.54**

The Council of Europe member States had a combined population of approximately 837 million inhabitants on 1 January 2022. The average number of applications allocated per 10,000 inhabitants was 0.54 in 2022. Sources on 01.01.2022: Internet sites of Eurostat ("Population and social conditions" database) and of the Population Division of the United Nations Department of Economic and Social Affairs.

VIOLATIONS BY ARTICLE AND BY STATE (2022)

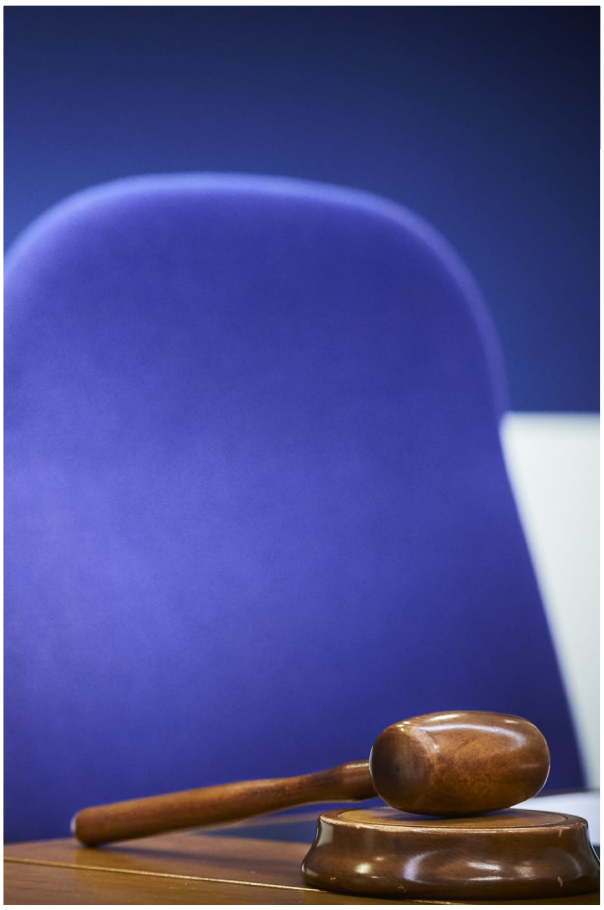
	Total of judgments	At least one violation	No violation	Friendly settlements / striking-out	Other judgments [1]	Right to life Art. 2	Lack of effective investigation Art. 2	Prohibition of torture [2] Art. 3	Inhuman / degrading treatment Art. 3	Lack of effective investigation Art. 3	Conditional violations [3] Art. 2/3	Prohibition of slavery / forced labour Art. 4	Right to liberty and security Art. 5	Right to a fair trial [2] Art. 6	Length of proceedings Art. 6	Non-enforcement Art. 6	No punishment without law Art. 7	Respect for private and family life [2] Art. 8	Freedom of thought, conscience, religion Art. 9	Freedom of expression Art. 10	Freedom of assembly and association Art. 11	Right to marry Art. 12	Right to an effective remedy Art. 13	Prohibition of discrimination Art. 14	Protection of property P. 1-1	Right to education P. 1-2	Right to free elections P. 1-3	Right not to be tried / punished twice P. 7-4	Other Articles of the Convention
Albania	8	7	1							1				2	1	1		1											1
Andorra																													
Armenia	21	21				5	5		6	4			7	2	1			2	1		1		3	1	1				1
Austria	4	2	2											1	1														
Azerbaijan	23	22	1				1		1				9	5	1	1		2		1	2				3				2
Belgium	13	13					1							7	1			2		1				1					
Bosnia and Herzegovina	10	10												1	2	3		1		1					3				1
Bulgaria	27	25	2			1			1	2			2	3		1		7	1				2	2	10		2		
Croatia	32	26	6						4	2			1	8	1	1		2			1				6			1	
Cyprus	5	3	2											1	1					1									
Czech Republic	10	6	4							2			1	1											2				
Denmark	4	1	3															1											
Estonia	4	2	1		1													1						1					
Finland																													
France	25	19	6						3		2			4	1	1		3	1	2			1		2				2
Georgia	11	11					1		2	2				6		1		1			2			2	1				
Germany	4	1	3																					1					
Greece	22	21	1			1	1		2	1				4	2	5		2		2			7	2	3			1	
Hungary	35	35							8				30	1	15			2					14	1	1				1
Iceland	3	1	2											1															
Ireland	1		1																										
Italy	27	25	2			1	3		3	2			2	4	2	3		10					5		2				1
Latvia	8	5	3				1							3				2			1		1						
Liechtenstein																													

	Total of judgments	At least one violation	No violation	Friendly settlements / striking-out	Other judgments [1]	Lack of effective investigation	Right to life	Prohibition of torture [2]	Inhuman / degrading treatment	Lack of effective investigation	Conditional violations [3]	Prohibition of slavery / forced labour	Right to liberty and security	Right to a fair trial [2]	Length of proceedings	Non-enforcement	No punishment without law	Respect for private and family life [2]	Freedom of thought, conscience, religion	Freedom of expression	Freedom of assembly and association	Right to marry	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried / punished twice	Other Articles of the Convention
								Art. 2	Art. 2	Art. 3	Art. 3	Art. 3	Art. 2/3	Art. 4	Art. 5	Art. 6	Art. 6	Art. 6	Art. 7	Art. 8	Art. 9	Art. 10	Art. 11	Art. 12	Art. 13	Art. 14	P. 1-1	P. 1-2	P. 1-3	P. 7-4	
Lithuania	14	9	5	0	0					5	1	1								1	1								1
Luxembourg	1	1	0	0	0										1														
Malta	13	11	2	0	0							1				1			2					6		7				
Republic of Moldova	34	31	2	0	1	1	2		7	7				6	10		1		4						1	8			1	
Monaco	0	0	0	0	0																								
Montenegro	3	3	0	0	0										1	2													
Netherlands	1	0	1	0	0																								
North Macedonia	6	4	2	0	0										2						1				1				
Norway	5	1	4	0	0														1										
Poland	34	30	4	0	0				4	1	1			9	5	7			5		2			11		1			5
Portugal	9	7	2	0	0		1		2										1		3								
Romania	81	72	5	3	1	1	3		37	2					10	1	1		6		5				1	8			1	1
Russian Federation	384	374	6	2	2	14	13	6	198	18	2			195	88	2	4	1	98	6	25	49		119	6	12		2	3	17
San Marino	2	2	0	0	0										1	1													
Serbia	12	10	1	1	0									2			5		1							5			1	1
Slovak Republic	13	12	0	0	1	1	1							2	3	3			3					2		1				
Slovenia	4	4	0	0	0										2	1										1				
Spain	13	9	4	0	0		1								4				4		1								
Sweden	3	0	3	0	0																								
Switzerland	7	7	0	0	0							1			2				1		1	1			1				
Türkiye	80	73	5	0	2	1	1		6	3				27	16		3	1	4	1	8	6		2	1	20		3		1
Ukraine	144	141	1	0	2		5	1	51	8	1			114	21	45		1	7		2	1		64	1	6		4		11
United Kingdom	4	2	2	0	0										3										1	1				
Sub-total		1,059	89	6	10	26	40	7	340	56	9			407	223	92	31	3	176	11	57	64		237	24	104		11	8	46
Total [4]		**1,163**																											

VIOLATIONS BY ARTICLE AND BY STATE (2022)

This table has been generated automatically, using the conclusions recorded in the metadata for each judgment contained in HUDOC, the Court's case-law database.

1. Other judgments: just satisfaction, revision, preliminary objections and lack of jurisdiction.
2. Figures in this column may include conditional violations.
3. Cases in which the Court held there would be a violation of Article 2 and/or 3 if the applicant was removed to a State where he/she was at risk.
4. One judgment is against more than 1 State: Republic of Moldova and Russian Federation.



Chapter 7

The year in pictures

07.04 | OFFICIAL VISIT TO THE VATICAN

On 7 April 2022 President Robert Spano paid an official visit to the Vatican, where he was granted an audience with His Holiness Pope Francis. During the visit, President Spano met Cardinal Pietro Parolin, Secretary of State. President Spano was accompanied by Raffaele Sabato, judge elected in respect of Italy, and Patrick Titiun, Head of the Private Office of the President.

22.04 | OFFICIAL VISIT TO ITALY

On 22 April 2022 President Robert Spano paid an official visit to Italy. On that occasion, he met Sergio Mattarella, President of the Republic. During the visit, President Spano also met Giuliano Amato, President of the Constitutional Court. He gave a lecture at the University of La Sapienza on the rights of vulnerable people. President Spano was accompanied by Raffaele Sabato, judge elected in respect of Italy, and Patrick Titiun, Head of the Private Office of the President.

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28-29.04 | OFFICIAL VISIT TO LITHUANIA

On 28 and 29 April 2022 President Robert Spano paid an official visit to Lithuania. On that occasion, he met Gitanas Nausėda, President of the Republic. During the visit, President Spano also met Evelina Dobrovolska, Minister of Justice, Danutė Jočienė, President of the Constitutional Court, Sigita Rudėnaitė, Chairperson of the Judicial Council, and members of parliament. He was accompanied by Egidijus Kūris, judge elected in respect of Lithuania, and Abel Campos, Deputy Registrar of the Court.

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5-6.05 | OFFICIAL VISIT TO FINLAND

On 5 and 6 May 2022 President Robert Spano paid an official visit to Finland. During the visit, he met Anna-Maja Henriksson, Minister of Justice, Pekka Haavisto, Minister of Foreign Affairs, and Tatu Leppänen, President of the Constitutional Court. President Spano also gave the keynote speech at the Lawyers' Day event in Helsinki entitled "Lawyers as the Guardians of the Rule of Law in Europe". He was accompanied by Pauliine Koskelo, judge elected in respect of Finland, and Hasan Bakırcı, Section Registrar.

11-12.05 | OFFICIAL VISIT TO NORWAY

On 11 and 12 May 2022 President Robert Spano paid an official visit to Norway. He was granted an audience with His Royal Highness Crown Prince Haakon of Norway. During the visit, President Spano met Jonas Gahr Støre, Prime Minister, Emilie Enger Mehl, Minister of Justice and Public Security, Eivind Vad Petersson, State Secretary, Ministry of Foreign Affairs, and had a working meeting with judges of the Supreme Court of Norway, led by Chief Justice Toril Marie Øie. President Spano was accompanied by Arnfinn Bårdsen, judge elected in respect of Norway, and Marialena Tsirli, Registrar of the Court.

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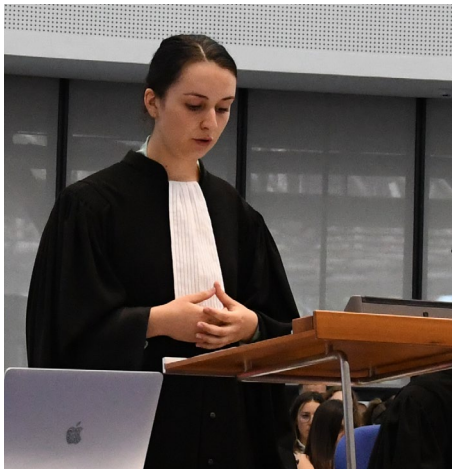
11-13.05 | MOOT COURT

A team from the University of Oxford was declared winner of the 10th edition of the European Moot Court Competition in English on the European Convention of Human Rights. 19 university teams from 12 countries took part in the competition from 11 to 13 May 2022 to win a fictitious case related to natural disasters and environmental protection.

This competition is organised jointly by the Council of Europe and the European Law Students Association (ELSA).

10.06 | FIFTH SCN FOCAL POINTS FORUM

The 5th SCN Forum took place on Friday 10 June 2022, in a hybrid format. Attended by 93 persons from 73 member courts, the Forum included a case-law session on the topic of domestic violence and a know-how session on the topic of judicial communication.



17.06 | RENÉ CASSIN COMPETITION

The René Cassin competition is the oldest competition consisting of mock legal proceedings in French and based on the European Convention on Human Rights. Open to students of law and political science in Europe, it is organised by the University of Strasbourg Faculty of Law and the René Cassin Foundation with the support of the Court, the Council of Europe and numerous local and national partners.

23.06 | VISIT BY THE PRESIDENT OF THE SUPREME COURT OF UKRAINE

On 23 June 2022 Vsevolod Kniaziev, President of the Supreme Court of Ukraine, was received by President Robert Spano. Ganna Yudkivska, judge elected in respect of Ukraine, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

23.06 | PRESIDENTS OF THE CONSTITUTIONAL COURT AND OF THE COURT OF CASSATION OF ARMENIA

On 23 June 2022 Arman Dilanyan, President of the Constitutional Court of Armenia, and Lilit Tadevosyan, President of the Court of Cassation of Armenia, visited the Court and were received by President Robert Spano. Armen Harutyunyan, judge elected in respect of Armenia, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

23.06 | VISIT BY H.M. KING WILLEM-ALEXANDER OF THE NETHERLANDS

His Majesty King Willem-Alexander of the Netherlands paid an official visit to the Court on 23 June 2022 and was received by President Robert Spano. Jolien Schukking, judge elected in respect of the Netherlands, and Marialena Tsirli, Registrar of the Court, also attended the meeting.








Maria

24.06 | OPENING OF THE JUDICIAL YEAR

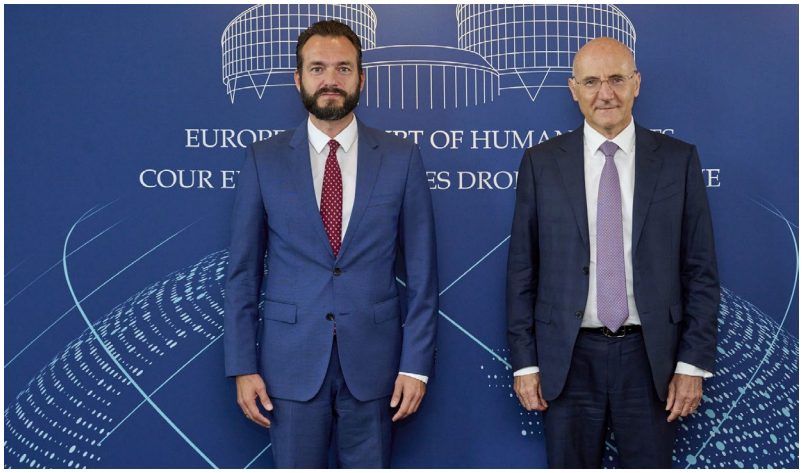
A solemn hearing took place at the Court on 24 June 2022. It was preceded by a seminar on Human rights protection in the time of the pandemic: new challenges and new perspectives.

During the solemn hearing, the President of the Hellenic Republic, Katerina Sakellaropoulou, the President of the Court, Robert Spano, and the Council of Europe Commissioner for Human Rights and keynote speaker, Dunja Mijatović, addressed representatives of the superior courts of the Council of Europe member States, and local, national and international authorities.

24.06 | LIBRARY: DEDICATION CEREMONY

A ceremony to dedicate the freedom of expression shelves to Professor Tsakyrakis took place in the Court's library on 24 June 2022, in the presence of Katerina Sakellaropoulou, President of the Hellenic Republic.

The exhibition includes bibliographies about Greek personalities linked with the Court and on the theme of freedom of expression, along with a selection of Greek books.



06.09 | VISIT BY THE FIRST PRESIDENT OF THE COURT OF CASSATION OF FRANCE

On 6 September 2022 Christophe Soulard, First President of the Court of Cassation of France, was received by President Robert Spano. Síofra O'Leary, Vice-President and judge elected in respect of Ireland, Mattias Guyomar, judge elected in respect of France, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

12.09 | VISIT BY THE SECRETARY OF STATE TO THE MINISTER FOR EUROPE AND FOREIGN AFFAIRS OF FRANCE, WITH RESPONSIBILITY FOR EUROPE

On 12 September 2022 Laurence Boone, Secretary of State to the Minister for Europe and Foreign Affairs of France, with responsibility for Europe, was received by President Robert Spano. Síofra O'Leary, Vice-President and judge elected in respect of Ireland, Mattias Guyomar, judge elected in respect of France, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

22.09 | VISIT BY A DELEGATION FROM THE FRENCH CONSTITUTIONAL COUNCIL

On 22 September 2022 Laurent Fabius, President of the French Constitutional Council, accompanied by a delegation made up of Michel Pinault, Corinne Luquiens, Jacques Mézard, François Pillet, Alain Juppé, Jacqueline Gourault, François Seners and Véronique Malbec, members, Jean Maïa, Secretary General, and Laurent Neyret, Head of Office, visited the Court and were received by President Robert Spano.

29-30.09 | VISIT BY A DELEGATION FROM THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

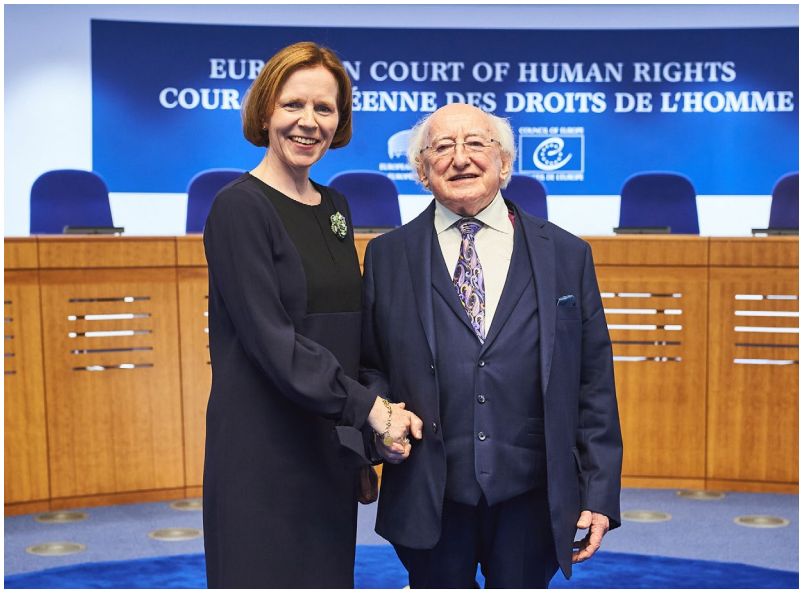
On 29 and 30 September 2022 a delegation of the African Court on Human and Peoples' Rights, headed by its President, Imani Daud Aboud, visited the Court and was received by Jon Fridrik Kjølbro, Vice-President of the Court and judge elected in respect of Denmark, and Síofra O'Leary, President-elect of the Court and judge elected in respect of Ireland. The visiting judges took part in round-table discussions with a number of judges of the Court as well as members of the Registry including Marialena Tsirli, Registrar of the Court, and Abel Campos, Deputy Registrar of the Court.

10.10 | OFFICIAL VISIT BY THE PRESIDENT OF THE SWISS CONFEDERATION

On 10 October 2022 Ignazio Cassis, Federal Councillor, President of the Swiss Confederation, paid an official visit to the Court and was received by President Robert Spano and Síofra O'Leary, President-elect of the Court. Andreas Zünd, judge elected in respect of Switzerland, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

11.10 | OFFICIAL VISIT BY THE PRESIDENT OF IRELAND

On 11 October 2022 Michael D. Higgins, President of Ireland, paid an official visit to the Court and was received by President Robert Spano and Síofra O'Leary, President-elect of the Court and judge elected in respect of Ireland. Marialena Tsirli, Registrar of the Court, also attended the meeting.



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14.10 | OFFICIAL VISIT TO UNITED KINGDOM

On 14 October 2022 a delegation of five judges from the Court, led by President Robert Spano, visited the United Kingdom's Supreme Court in London. Bilateral discussions took place with judges from the United Kingdom's superior courts including the Deputy President of the Supreme Court of the United Kingdom, the Lord Chief Justice of England and Wales, the Lady Chief Justice of Northern Ireland, the Lord Justice Clerk of Scotland, two justices of the Supreme Court of the United Kingdom and the President of the King's Bench of England and Wales.

18.10 | KNOWLEDGE SHARING PLATFORM OF THE COURT (ECHR-KS)

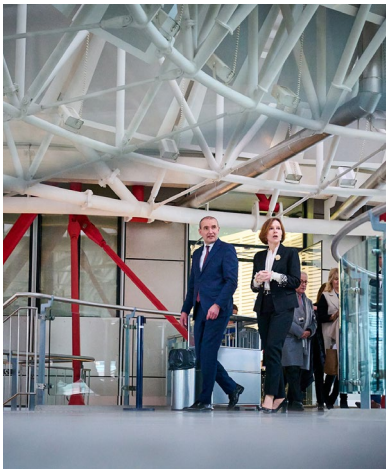
The launch of the Knowledge Sharing platform of the Court (ECHR-KS) took place on 18 October 2022. Now accessible to the public, ECHR-KS is an intuitive platform which provides detailed and up-to-date analysis of the Court's case-law.

10.11 | OFFICIAL VISIT TO PARIS

On 10 November 2022 President Síofra O'Leary paid an official visit to Paris. On that occasion, she was received by Christophe Soulard, First President of the Court of Cassation, Didier-Roland Tabuteau, Vice-President of the Council of State, Gérard Larcher, President of the Senate, and Yael Braun-Pivet, President of the National Assembly. Mattias Guyomar, judge elected in respect of France, and Patrick Titiun, Head of the Private Office of the President, also attended the meeting.

7.12 | OFFICIAL VISIT BY THE PRESIDENT OF ICELAND

On 7 December 2022 Guðni Th. Jóhannesson, President of Iceland, paid an official visit to the Court and was received by President Síofra O'Leary. Marialena Tsirli, Registrar of the Court, also attended the meeting.



The Annual Report of the European Court of Human Rights provides information on the organisation, activities and case-law of the Court.

This Report contains a foreword by the President, an outline of the events that marked the year, the speeches delivered at the opening of the judicial year, an overview of the case-law, the year's judicial activities and the statistical data and tables of violations of Articles of the European Convention on Human Rights by member State.

The Report presents the Court's recent procedural innovations and provides an update on its knowledge-sharing and outreach programmes, notably the Superior Courts Network.

The Court's Annual Reports and other materials about the work of the Court and its case-law are available to download from the Court's website (www.echr.coe.int).

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

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

COUNCIL OF EUROPE
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