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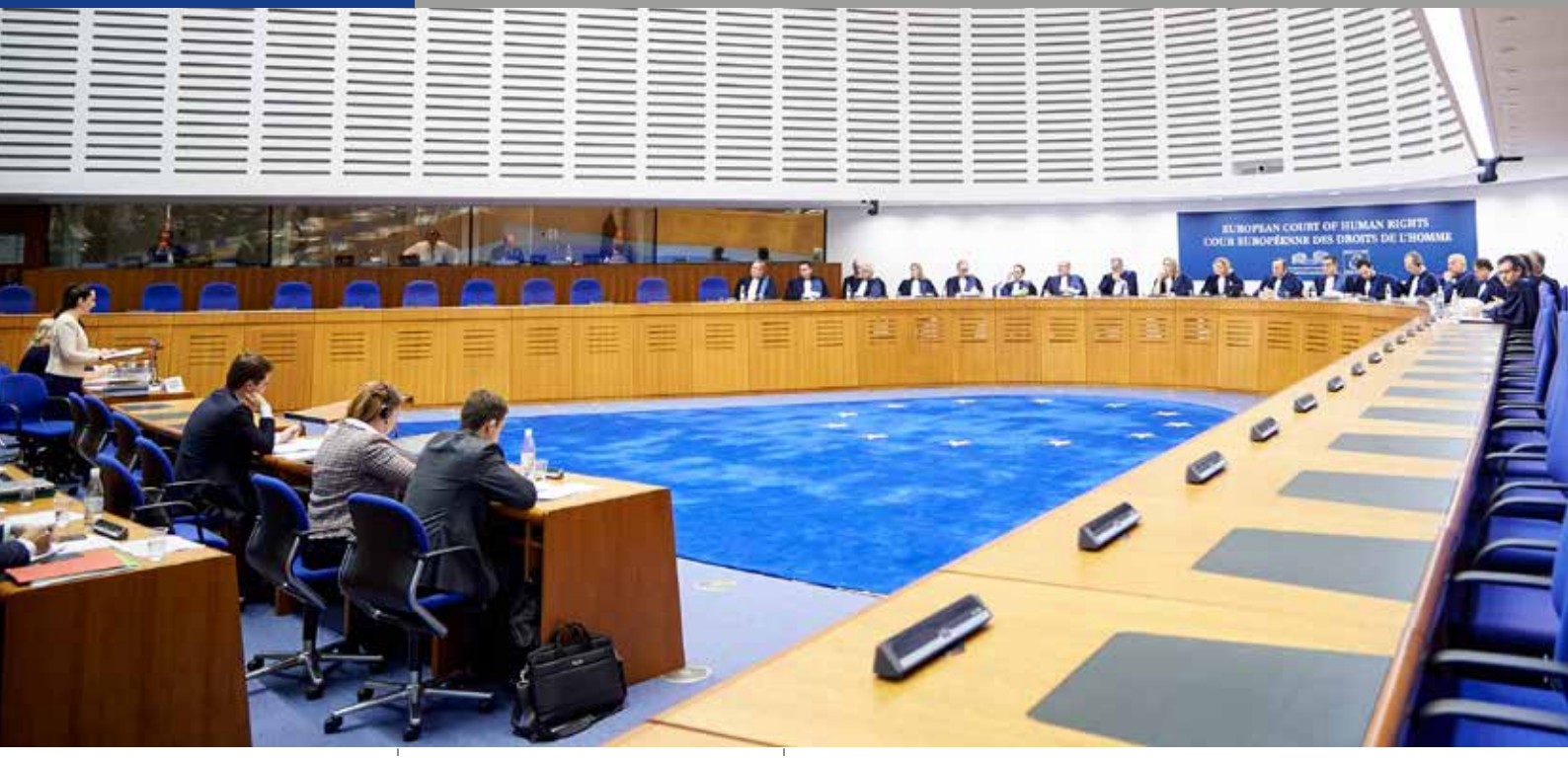
December
2020
Décembre

# INFORMATION NOTE
## on the Court's case-law

# NOTE D'INFORMATION
## sur la jurisprudence de la Cour




The Court's monthly round-up of case-law, news and publications

Le panorama mensuel de la jurisprudence, de l'actualité et des publications de la Cour

**European Court of Human Rights**

**Cour européenne des droits de l'homme**

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

COUNCIL OF EUROPE
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The Information Note contains legal summaries of the cases examined during the month in question which the Registry considers to be of particular interest. The summaries are drafted by Registry's lawyers and are not binding on the Court. They are normally drafted in the language of the case concerned. The translation of the legal summaries into the other official language can be accessed directly through hyperlinks in the Note. These hyperlinks lead to the HUDOC database, which is regularly updated with new translations. The PDF version of the Note may be downloaded at www.echr.coe.int/NoteInformation/en.

Legal summaries published in the Case-Law Information Notes are also available in HUDOC, under "Legal Summaries" in the Document Collections box. The HUDOC database is available free-of-charge through the Court's Internet site (http://hudoc.echr.coe.int). It provides access to the case-law of the European Court of Human Rights (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the former European Commission of Human Rights (decisions and reports), and to the resolutions of the Council of Europe's Committee of Ministers.

An annual index provides an overview of the cases that have been summarised in the monthly Information Notes. The annual index is cumulative; it is regularly updated.

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La Note d'information contient les résumés d'affaires dont le greffe de la Cour a indiqué qu'elles présentaient un intérêt particulier. Les résumés sont rédigés par des juristes du greffe et ne lient pas la Cour. Ils sont en principe rédigés dans la langue de l'affaire concernée. Les traductions des résumés vers l'autre langue officielle de la Cour sont accessibles directement à partir de la Note d'information, au moyen d'hyperliens pointant vers la base de données HUDOC qui est alimentée au fur et à mesure de la réception des traductions. La version PDF de la Note peut être téléchargée à l'adresse suivante : www.echr.coe.int/NoteInformation/fr.

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Un index annuel récapitule les affaires résumées dans les Notes d'information. L'index est cumulatif pour chaque année ; il est régulière-ment édité.



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Photos: Council of Europe

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- La Cour suprême slovaque a adressé à la Cour européenne des droits de l'homme une demande d'avis consultatif sur l'indépendance du mécanisme en vigueur pour l'examen des plaintes contre la police, en cause dans une affaire actuellement pendante en Slovaquie

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## ARTICLE 1

### Responsibility of States/Responsabilité des États
### Jurisdiction of States/Juridiction des États

**Allegations of failure by the 33 Signatory States to the 2015 Paris Agreement to comply with their commitments in order to limit climate change: *case communicated***

**Allégations du non-respect par 33 États signataires de l'Accord de Paris de 2015 de leurs engagements afin de contenir le réchauffement climatique : *affaire communiquée***

*Duarte Agostinho and Others/et autres – Portugal and 32 other States/ et 32 autres États*, 39371/20, Communication 13.11.2020 [Section IV]

English translation of the summary – Version imprimable

L'affaire porte sur les émissions de gaz à effet de serre émanant de 33 États contractants qui participeraient au réchauffement climatique et se manifestant, entre autres, par des pics de chaleurs qui impacteraient les conditions de vie et la santé des requérants.

Les requérants se plaignent entre autres du non-respect par ces 33 États de leurs engagements pris dans le cadre de l'Accord de Paris sur le climat de 2015 (COP21) de contenir l'élévation de la température moyenne de la planète nettement en dessous de 2o C par rapport aux niveaux préindustriels et de poursuivre l'action menée pour limiter l'élévation de la température à 1,5o C par rapport aux niveaux préindustriels, étant entendu que cela réduirait sensiblement les risques et les effets du changement climatique. Les requérants mettent à la charge des États signataires l'obligation d'adopter des mesures pour réglementer d'une manière adéquate leurs contributions au changement climatique.

Les requérants estiment que les États membres se partagent la responsabilité présumée en matière de changement climatique et que l'incertitude quant au « partage équitable » de cette contribution entre les États membres ne peut jouer qu'en faveur des requérants.

Ils soulignent l'urgence absolue pour agir en faveur du climat et estiment qu'il est urgent dans ce contexte que la Cour reconnaisse la responsabilité partagée des États et absolve les requérants de l'obligation d'épuiser les voies de recours internes dans chaque État membre.

Affaire communiquée sous les articles 1, 34, 2, 3, 8 et 14 de la Convention et 1 du Protocole n° 1.

## ARTICLE 2

### Positive obligations (substantive aspect)/ Obligations positives (volet matériel)

**Allegations of failure by the 33 Signatory States to the 2015 Paris Agreement to comply with their commitments in order to limit climate change: *case communicated***

**Allégations du non-respect par 33 États signataires de l'Accord de Paris de 2015 de leurs engagements afin de contenir le réchauffement climatique : *affaire communiquée***

*Duarte Agostinho and Others/et autres – Portugal and 32 other States/ et 32 autres États*, 39371/20, Communication 13.11.2020 [Section IV]

(See Article 1 above/ Voir l'article 1 ci-dessus, page 10)

## ARTICLE 3

### Positive obligations (substantive aspect)/ Obligations positives (volet matériel)

**Allegations of failure by the 33 Signatory States to the 2015 Paris Agreement to comply with their commitments in order to limit climate change: *case communicated***

**Allégations du non-respect par 33 États signataires de l'Accord de Paris de 2015 de leurs engagements afin de contenir le réchauffement climatique : *affaire communiquée***

*Duarte Agostinho and Others/et autres – Portugal and 32 other States/ et 32 autres États*, 39371/20, Communication 13.11.2020 [Section IV]

(See Article 1 above/ Voir l'article 1 ci-dessus, page 10)

## ARTICLE 5

### Article 5 § 1 (f)

### Extradition

**Authorities' lack of diligence in determining admissibility of extradition of applicant to his country of origin despite refugee status granted by another EU member State: *violation***

**Manque de diligence des autorités dans l'examen de la recevabilité de l'extradition du requérant vers son pays d'origine malgré le statut de réfugié**

**qui lui avait été accordé par un autre État membre de l'UE : *violation***

*Shiksaitov – Slovakia/Slovaquie*, 56751/16 and/et 33762/17, Judgment/Arrêt 10.12.2020 [Section I]

Traduction française du résumé – Printable version

*Facts* – The applicant, a Russian national of Chechen origin, was granted refugee status in Sweden on grounds of his political opinions. An international arrest warrant had been issued against him on account of alleged acts of terrorism committed in Russia. While travelling, he was apprehended at the Slovak border as a person appearing on Interpol's list of wanted persons. He was later arrested and held in detention while the Slovak authorities conducted a preliminary investigation into the matter, followed by detention in view of extradition to Russia. In November 2016, the Supreme Court found his extradition to be inadmissible in light of his refugee status. He was released and administratively expelled to Sweden.

*Law* – Article 5 § 1 (f):

(a) *The applicant's initial apprehension and arrest*

The applicant had been apprehended in order that he could be taken to the border police station, as his name had been found on the international list of wanted persons. He had been arrested the next day after the authorities had verified that he had still been the subject of an international search and that Russia had confirmed that an extradition request would be sent in good time. Those measures had served the purpose of arresting a person "against whom action is being taken with a view to extradition", within the meaning of Article 5 § 1 (f). Indeed, at that point in time the fact that the applicant had refugee status had not been known to the Slovak authorities. This phase of the applicant's deprivation of liberty therefore disclosed no appearance of any arbitrariness.

(b) *The applicant's further detention*

The applicant's further allegations under Article 5 § 1 (f) concerned the period of preliminary detention, and the period of detention pending extradition. Both detention orders had been issued in compliance with the relevant provisions of the domestic law.

(i) *Alleged failure to give due consideration to the applicant's recognition as a refugee in Sweden*

The Court has consistently held that the detention of a person for the purpose of extradition was rendered unlawful and arbitrary by the existence of circumstances that under domestic law excluded the extradition of that person. However, in contrast, it could not be asserted in the instant case that the applicant's extradition had been completely banned.

The applicant had been granted refugee status in Sweden – not in Slovakia. Such a decision was extraterritorially binding in that an award of refugee status by Sweden, as one of the State Parties to the 1951 Geneva Convention, could be called into question by Slovakia only in exceptional circumstances giving rise to the appearance that the beneficiary of the decision in question manifestly fell within the terms of the exclusion provision of Article 1F of the 1951 Convention and therefore did not meet the requirements of the definition of a refugee contained therein. Thus there might be situations where information which came to light in the course of extradition proceedings concerning a recognised refugee might warrant a review of his or her status.

It had been legitimate for the Slovak courts to examine whether an exclusion provision might be applicable in respect of the applicant – all the more so given that it had been established that the Swedish authorities had not checked the Interpol database during the asylum proceedings in respect of the applicant and had not examined the nature of the criminal charge brought against him in Russia. In so doing, the Slovak authorities had had to consider all the circumstances of the applicant's individual case. Given that the requesting State was the country in which the applicant had been persecuted (presumably because of his and his brother's political activities), any evidence presented by it had to be treated with great caution when establishing whether or not the extradition request was based on fabricated charges or whether the crime giving rise to that request could be categorised as "non-political" within the meaning of Article 1F of the 1951 Convention and Article 12 § 2 (b) of Directive 2011/95/EU. Furthermore, since the Slovak authorities had initially concluded that the act amounted to a "non-political" offence, they had been obliged to examine whether the extradition might be precluded for other reasons, such as, in the instant case, insufficient evidence in support of the allegations made against the applicant.

The Slovak authorities therefore could not be blamed for having carried out the preliminary investigation, despite the applicant having been previously granted refugee status in Sweden. It could be regarded as being intrinsic to actions "taken with a view to extradition". While the applicant's extradition to Russia had eventually been declared inadmissible, this could not itself retroactively affect the lawfulness of the detention pending examination of the extradition request.

(ii) *Whether the whole duration of detention was justified under Article 5 § 1 (f)*

The salient issue was there whether it could be said that action had been taken with a view to the applicant's extradition throughout the whole duration of his detention and consequently, whether it had been justified under Article 5 § 1 (f).

The applicant's overall detention in view of his extradition had lasted one year, nine months and eighteen days (from 15 January 2015 to 2 November 2016). The authorities had been aware as far back as 16 January 2015 that the applicant had been granted asylum in Sweden, which had been rapidly confirmed by Interpol in Stockholm. The first effort on the part of the Slovak authorities to establish the circumstances surrounding the applicant's refugee status had been made in late January 2015. By mid-February, the authorities had received an extradition request from their Russian counterparts. However, following the applicant's hearing in March 2015, it had taken six months for the prosecutor to ask the Regional Court to allow the applicant's extradition to Russia. More than three further months had elapsed before a hearing was held in January 2016, but which had been adjourned. In September 2016, a new hearing had been held, at which the extradition was authorised.

Lastly, while the Supreme Court had ruled in March 2015 that the exclusion provision of Article 12 § 2 (b) of Directive 2011/95/EU had been applicable to the applicant (given that he was suspected of having committed a serious non-political crime, which prevented Slovakia from accepting and applying the refugee status conferred on him by Sweden), in its decision of 2 November 2016 another chamber of the same court had reached the opposite conclusion – even though no new information had become available in the meantime. More importantly, information about the applicant's refugee status (which had constituted the main reason for the decision of 2 November 2016), as well as documents relating to his criminal prosecution in Russia (which had allowed for an assessment – for the purposes of the applicability of the relevant exclusion clauses – of the political/non-political nature of his acts) had been available to the Slovak authorities since February 2015.

In the light of the above, the authorities had not proceeded in an active and diligent manner when gathering all necessary information and adjudicating legal challenges raised by the case at hand. Nothing had prevented the courts from reaching a final decision on the admissibility of the applicant's extradition much earlier than they in fact had done. The grounds for the applicant's detention therefore had not remained valid for the whole period concerned.

*Conclusion*: violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 5 § 5, on the basis that the applicant had not had an enforceable right to compensation for the violation of his rights under Article 5 § 1.

Article 41: EUR 8,500 in respect of non-pecuniary damage. Claim in respect of pecuniary damage dismissed.

(See also *Eminbeyli v. Russia*, 42443/02, 26 February 2009; *M. and Others v. Bulgaria*, 41416/08, 26 July 2011, Information Note 143)

# ARTICLE 6

## Article 6 § 1 (civil)

### Fair hearing/Procès équitable

**Inadequate judicial review of the dismissal of an employee of a public institute, under an emergency legislative decree, on account of his presumed ties to a terrorist organisation: *violation***

**Contrôle juridictionnel inadéquat du licenciement d'un employé d'un institut public, en vertu d'un décret-loi d'état d'urgence, pour ses liens présumés avec une organisation terroriste : *violation***

*Pişkin – Turkey/Turquie*, 33399/18, Judgment/Arrêt 15.12.2020 [Section II]

(See Article 8 below/ Voir l'article 8 ci-dessous, page 22)

## Article 6 § 1 (criminal/pénal)

### Criminal charge/Accusation en matière pénale

**EUR 6,200 fine without possible imprisonment for defence counsels' non-attendance at hearing not "criminal", despite absence of an upper statutory limit on its amount: *inadmissible***

**Caractère non pénal, malgré l'absence de plafond légal pour ce genre de sanction, d'une amende de 6 200 EUR, non convertible en une peine d'emprisonnement, infligée à des avocats pour non-comparution à une audience : *irrecevable***

*Gestur Jónsson and/et Ragnar Halldór Hall – Iceland/Islande*, 68273/14 and 68271/14, Judgment/Arrêt 22.12.2020 [GC]

Traduction française du résumé – Printable version

*Facts* – The applicants are lawyers. During a criminal trial in which they were defending the accused (and with the latter's consent), the applicants requested that their appointment as defence counsel be revoked. However, the court refused. At a hearing in which the accused, defended by a new lawyer, were sentenced, the applicants did not appear. The court then fined the applicants *in absentia* approximately EUR 6,200 each for contempt of court and for causing unnecessary delays in the proceedings. They appealed unsuccessfully up to the Supreme Court.

In a judgment of 30 October 2018 (see Information Note 222), a Chamber of the Court found, unanimously, that there had been no violation of Articles 6 § 1 or 7. The case was referred to the Grand Chamber at the applicants' request.

*Law* – Article 6 § 1 : The Icelandic government had invited the Grand Chamber to hold that Article 6 was inapplicable under its criminal limb. This had to be determined by applying the three *Engel* criteria:

(a) *The first criterion: the legal classification of the offence in domestic law*

It did not appear from the Supreme Court's reasoning that it regarded *offences* of the type in question as being classified as criminal under national law. The offence in question was set out in a chapter, entitled "Procedural fines", of the Criminal Procedure Act and not in any provision of the General Penal Code, or in specialised criminal law in other statutes. These provisions were also very similar to those contained in the Civil Procedure Act. The examination of such conduct did not generally require the involvement of the State Prosecutor and a fine was to be levied by the court sitting in a case on its own motion.

It had therefore not been demonstrated that the offence had been classified as "criminal" under domestic law. However, the first of the *Engel* criteria was of relative weight and served only as a starting point.

(b) *The second criterion: the nature of the offence*

The fine imposed on each of the applicants had been on account of an offence provision which addressed a specific category of people possessing a particular status, namely that of a "State Prosecutor, defence counsel or legal advisor". It did not appear that the provision applied outside that circle of people. It was for the court sitting in the particular proceedings in which the misconduct had occurred to examine of its own motion whether the misconduct fell foul of the relevant section.

The Court had frequently referred to the fact that the specific status of lawyers gives them a central position in the administration of justice, and that their special role entails a number of duties. Regard also had to be attached to the fact that rules enabling the court to sanction disorderly conduct in proceedings before it were a common feature of the legal systems of Contracting States, and derived from the indispensable power of a court to ensure the proper and orderly functioning of its own proceedings. Measures ordered by courts under such rules were more akin to the exercise of disciplinary powers than to the imposition of a punishment for commission of a criminal offence.

The Supreme Court had considered that the applicants' deliberate refusal to appear at the scheduled hearing had entailed a severe violation of their professional duties in their capacity as defence counsel in a criminal case. The fact that they had totally ignored the judge's lawful decisions, leaving him with no option but to discharge them and to appoint others in their place, had caused a major delay in the case. However, the Supreme Court had not specifically referred to the nature of the applicants' misconduct as a reason for considering it to be criminal.

Despite the seriousness of the breach of professional duties in question, it was not clear whether the applicants' offence was to be considered criminal or disciplinary in nature. It was therefore necessary to examine the matter under the third criterion.

(c) *The third criterion: the nature and degree of severity of the penalty*

Whilst the Supreme Court had not specifically referred to the offence as being classified as "criminal" under domestic law (the first *Engel* criterion), or to the nature of the applicant's misconduct as a reason for considering it "criminal" (the second criterion) it had held that the fines imposed on them had been "by nature a penalty" (thus seemingly relying on the third criterion). It had had regard to the absence in the relevant contempt-of-court provisions of "any particular ceiling" on the amount of fines and to the amount of fines imposed on the applicants, which it had found to be "high". Holding that Article 6 was applicable under its criminal limb, the Supreme Court had therefore proceeded to review the issue of compliance with this provision.

Nonetheless, when it came to interpreting the scope of the concept of "crime" in the autonomous sense of Article 6, the Court had to appraise the matter for itself. That said, nothing prevented the Contracting States from adopting a broader interpretation entailing a stronger protection of the rights and freedoms in question within their respective domestic legal systems.

It particular, the kind of misconduct for which the applicants had been held liable could not be sanctioned by imprisonment, in contrast to previous contempt-of-court cases in which Article 6 was found applicable, notably on account of this third criterion (*Kyprianou* and *Zaicevs*). Moreover, the fines at issue could not be converted into deprivation of liberty in the event of non-payment, which had been an important consideration in other cases. In addition, the fines had not been entered on the applicants' criminal record.

Albeit high, the size of the fines imposed and the absence of an upper statutory limit did not suffice for the Court to deem the severity and nature of the sanction as "criminal" in the autonomous sense of Article 6 (see *Müller-Hartburg v. Austria*, 47195/06, 19 February 2013, where the size of the potential fine - approximately EUR 36,000 -, though having a punitive effect, had not been so severe as to bring the matter within the "criminal" sphere; see, similarly, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 55391/13 and 2 others, 6 November 2018, where the maximum penalty had been ninety day-fines and the fine imposed on the applicant twenty day-fines, which had allegedly corresponded to EUR 43,750; compare also with the scale of the fines at issue in *Mamidakis v. Greece*, 35533/04, 11 January 2007, *Grande Stevens and Others v. Italy*, 18640/10 and 4 others, 4 March 2014, and *Produkcija Plus Storitveno podjetje d.o.o. v. Slovenia*, 47072/15, 23 October 2018, where the Court had considered that the penalties applied had been criminal in nature).

(d) *Overall*

The proceedings in question had not involved the determination of a "criminal charge" within the meaning of Article 6 and this provision did not apply to those proceedings under its criminal limb. The applicants' complaint was therefore incompatible *ratione materiae* with the Convention provisions.

*Conclusion*: Inadmissible.

In light of the foregoing, the Court also held that the complaint under Article 7 was incompatible *ratione materiae*, for reasons of consistency in the interpretation of the Convention, and declared it inadmissible.

(See also *Engel and Others v. The Netherlands*, 5100/71 and others, 8 June 1976; *Kyprianou v Cyprus* [GC], 73797/01, 15 December 2005, Information Note 82; *Zaicevs v. Latvia*, 65022/01, 31 July 2007, Information Note 99)

## Impartial tribunal/Tribunal impartial
## Fair hearing/Procès equitable

**Insufficient procedural safeguards for participation in trial of jurors with security clearance from same body investigating the applicant: *violation***

**Garanties procédurales insuffisantes concernant la participation à un procès de jurés titulaires d'une habilitation de sécurité émanant du même organe d'enquête que le requérant : *violation***

*Danilov – Russia/Russie,* 88/05, Judgment/Arrêt 1.12.2020 [Section III]

Traduction française du résumé – Printable version

*Facts* – The applicant, a renowned physicist, was convicted by jury for high treason, in the form of disclosing to foreign nationals State secret information related to space studies. The applicant appealed unsuccessfully, *inter alia* in relation to the impartiality of a number of jurors with security clearance, as well as his inability to examine experts who had prepared reports used by the prosecution as evidence.

*Law* –

(a) *Article 6 § 1: Impartiality of jurors with security clearance*

The applicant's complaints in respect of jurors with security clearance did not contain allegations of actual subjective bias on their part, and thus fell to be examined under the objective test of impartiality.

The applicant and the Government had disagreed in their assessment of the probability that four out of twelve (one third) of the selected jurors – those with security clearance – could have been selected randomly. The Court considered it doubtful that such a considerable part of the Russian population, in so far as a jury panel might be deemed to be representative of it, had security clearance, and thus access to State secrets.

The applicant's concerns about being judged by jurors with security clearance had not related to the lack of a general legislative prohibition on such people acting as jurors, but rather the participation of such jurors in his particular case. As the applicant had been accused of treason for having disclosed a State secret, the case against him had been investigated by the Federal Security Service (FSB). People

with security clearance, which was necessary for holding certain jobs, had to pass a special verification procedure carried out by the FSB. Furthermore, the FSB continued to monitor people with security clearance and their compliance with the obligation not to disclose State secrets. Having security clearance did not automatically imply the lack of impartiality. However, taking into account that the applicant had been indicted by the FSB for treason for having disclosed a State secret, his fear that jurors with security clearance might, at least to some extent, be influenced by partial considerations, appeared sufficiently serious to have warranted a concrete examination by the presiding judge.

However, the applicant's objections to jurors with security clearance participating in his particular case had been dismissed in general terms, without considering the nature and the subject matter of the trial, and on purely formal grounds (namely, that the applicable legislation had not provided for security clearance being a reason to generally disqualify somebody from jury service). Thus, the national courts had failed to take sufficient steps to check that the trial court had been established as an impartial tribunal within the meaning of Article 6 and had not offered sufficient guarantees to dispel any doubts in this regard.

In sum, the applicant's doubts as to the impartiality of the trial court in his criminal case had been objectively justified, in view of the participation of jurors with security clearance, and those doubts had not been dispelled by any procedural safeguards.

*Conclusion*: violation (unanimously).

(b) *Article 6 §§ 1 and 3 (d): Cross-examination of experts*

The term "witnesses" under Article 6 § 3 (d) has an autonomous meaning which also includes expert witnesses. However, the role of an expert witness can be distinguished from that of an eyewitness, who must give to the court his personal recollection of a particular event. In analysing whether the appearance in person of an expert at the trial was necessary, the Court would therefore be primarily guided by the principles enshrined in the concept of a "fair trial" under Article 6 § 1, and in particular by the guarantees of "adversarial proceedings" and "equality of arms". That being said, some of the Court's approaches to the examination in person of "witnesses" under Article 6 § 3 (d) were no doubt relevant in the context of the examination of expert evidence, and might be applied, *mutatis mutandis*, with due regard to the difference in their status and role (see *Avagyan v. Armenia*, 1837/10, 22 November 2018; *Khodorkovskiy and Lebedev v. Russia* (no. 2), 42757/07 and 51111/07, 14 January 2020).

In the present case, eight reports had been prepared by ten experts at the request of the prosecution during the pre-trial investigation, and those reports had been relied upon by the prosecution in its bill of indictment and then by the court in its judgment.

The expert reports concerned not only technical matters, but also the issue of whether the relevant information constituted a State secret. The appeal court had noted that the nature of the information (its constituting a State secret) formed one of the two essential elements of the offence of treason by disclosure of a State secret, the offence of which the applicant had been accused. Furthermore, it had held that that matter was a legal one, and thus not one for the jury to determine. Lastly, under Russian law, the justification for categorising information as a State secret could be determined only by experts. Therefore, the expert opinions in question had been of crucial relevance for the case in which the applicant had been found guilty of high treason by disclosure of a State secret.

While the applicant had been notified that the expert reports had been requested and had had an opportunity to study them, he had not had an opportunity to put additional questions to the experts, suggest alternative experts or participate in the expert examinations and provide them with his comments, as guaranteed by the applicable law. The applicant had also lacked other opportunities to confront those expert witnesses and challenge their credibility and conclusions during the investigation stage.

In such circumstances, the trial court had had to carefully consider the defence's application to question those experts at the hearing. Instead, the presiding judge had decided that it was unnecessary to hear the experts in person because their written opinions had been clear and he did not require any clarification or additional information from them. Even if there had been no major inconsistencies in the reports, questioning the experts might have revealed possible conflicts of interests, the insufficiency of the material at their disposal, or flaws in the methods of examination (see *Khodorkovskiy and Lebedev v. Russia*, 11082/06 and 13772/05, 25 July 2013, Information Note 165).

The applicant's concerns about the credibility of the experts and their conclusions were not unjustified. On three occasions the Regional Court had remitted the applicant's case for further investigation or rectification, owing to persisting issues with expert opinions and the use of those opinions in the bill of indictment. Furthermore, the experts had no relevant or sufficient expertise in the relevant area

of physics. Lastly, on several occasions the applicant had attempted to bring to the national courts' attention the alternative opinions of leading scientists who supported his position that the information divulged did not contain any State secrets.

There was also no valid reason why the experts had been prevented from testifying before the judge at least in camera while giving the applicant an opportunity to cross-examine them.

In conclusion, the refusal to allow the applicant to cross-examine the expert witnesses whose reports had later been used against him had been capable of substantially affecting his fair-trial rights, in particular the guarantees for "adversarial proceedings" and "equality of arms".

*Conclusion*: violation (unanimously).

The Court also found a violation of Article 38 on account of the State's failure to submit requested documents.

Article 41: EUR 21,000 in respect of non-pecuniary damage.

(See also *AlKhawaja and Tahery v. the United Kingdom* [GC], 26766/05 and 22228/06, 15 December 2011, Information Note 147; *Hanif and Khan v. the United Kingdom*, 52999/08 and 61779/08, 20 December 2011, Information Note 147; *Schatschaschwili v. Germany* [GC], 9154/10, 15 December 2015, Information Note 191; Guide on Article 6 of the European Convention on Human Rights: Right to a fair trial (criminal limb))

## Tribunal established by law/Tribunal établi par la loi

**Participation of judge whose appointment was vitiated by undue executive discretion without effective domestic court review and redress: *violation***

**Participation d'une juge dont la nomination avait été viciée par une influence injustifiée de l'exécutif en l'absence de contrôle juridictionnel et de redressement effectifs : *violation***

*Guðmundur Andri Ástráðsson – Iceland/Islande*, 26374/18, Judgment/Arrêt 1.12.2020 [GC]

Traduction française du résumé – Printable version

*Facts* – The newly-established Court of Appeal, which became operational in 2018, rejected the applicant's appeal against his criminal conviction. The applicant complained that one of the judges on the bench, A.E., had been appointed in breach of the procedures laid down in domestic law. The Supreme Court acknowledged that the judge's appointment had been irregular. Firstly, by replacing four of the candidates – whom the Evaluation Committee had considered to be amongst the fifteen best qualified – with four others, including A.E. – who had not made it to the top fifteen – without carrying out an independent evaluation of the facts or providing adequate reasons for her decision, the Minister of Justice had breached domestic law. Secondly, the Parliament had not held a separate vote on each individual candidate, as required by domestic law, but instead voted in favour of the Minister's list *en bloc*. The Supreme Court held, however, that these irregularities could not be considered to have nullified the appointment, and that the applicant had received a fair trial. In a judgment of 12 March 2019 (see Information Note 227) a Chamber of the Court found, by five votes to two, that there had been a violation the right to a tribunal "established by law". For these purposes, the decisive test was whether there had been a "flagrant" breach of domestic law. The case was referred to the Grand Chamber at the Government's request.

*Law* – Article 6 § 1: The task of the Grand Chamber was limited to determining the *consequences* of the breaches of domestic law, notably whether Judge A.E.'s participation had deprived the applicant of the right to be tried by a "tribunal established by law". The case provided it with an opportunity to refine and clarify the meaning to be given to the concept of a "tribunal established by law", notably by considering how its individual components should be interpreted so as to best reflect its purpose and to ensure that the protection it offers is truly effective. The Grand Chamber also analysed its relationship with the other "institutional requirements" (those of independence and impartiality).

(a) Scope of the requirement of a "tribunal established by law"

1. *"Tribunal"*: A "tribunal" is characterised by its judicial function and must also satisfy a series of requirements, such as independence, in particular of the executive, impartiality, duration of its members' terms of office. In addition, it was inherent in the very notion of a "tribunal" that it be composed of judges selected on the basis of merit through a rigorous process to ensure that the most qualified candidates – both in terms of technical competence and moral integrity – were appointed. The higher a tribunal was placed in the judicial hierarchy, the more demanding the applicable selection criteria should be. Nonprofessional judges could be subject to different selection criteria, particularly regarding the requisite technical competencies.

2. *"Established"*: Having regard to its fundamental implications for the proper functioning and the legitimacy of the judiciary in a democratic State governed by the rule of law, the process of appointing judges necessarily constituted an inherent element of the concept of "establishment" of a court or tribunal "by law". While the Court's relevant case-law had so far predominantly concerned breaches of domestic rules directly regulating the competence of a tribunal, or having immediate effects on its composition, there had been some precedent pointing in that direction, such as the case of *Ilatovskiy v. Russia* (6945/04, 9 July 2009). Furthermore, such an approach also found support in the purpose of the "established by law" requirement: reflecting the principle of the rule of law, it sought to protect the judiciary against unlawful external influence, from the executive in particular. The process of appointment of judges might be open to such undue interference and therefore called for strict scrutiny. The said requirement moreover encompassed any provision of domestic law including, in particular, provisions concerning the independence of the members of a court. It was thus evident that breaches of the law regulating the judicial appointment process might render the participation of the relevant judge in the examination of a case "irregular". Finally, there was also a considerable consensus in this respect among the States surveyed.

3. *"By law"*: The nature and scope of the cases that had so far come before the Court had mostly called for a determination as to whether a court overseeing a case had any legal basis and whether the domestic law requirements had been complied with in the constitution and functioning of that court. However, the requirement of a "tribunal established by law" also meant a "tribunal established in accordance with the law". That requirement in no way sought to impose uniformity in practices of the member States. The mere fact that the executive had decisive influence on appointments might not as such be considered to detract from it. The concern here related solely to ensuring that the relevant domestic law on judicial appointments was couched in unequivocal terms, to the extent possible, so as not to allow arbitrary interferences, including by the executive.

4. *Close interrelationship between the requirements of "independence", "impartiality" and "tribunal established by law"*: The examination under the "tribunal established by law" requirement must not lose sight of the common purpose shared with the guarantees of "independence" and "impartiality", namely that of upholding the fundamental principles of the rule of law and the separation of powers. It thus had to systematically enquire whether the alleged irregularity in a given case was of such gravity as to undermine the aforementioned fundamental principles and to compromise the independence of the court in question. "Independence" referred, in this connection, to the necessary personal and institutional independence that was required for impartial decision making, and characterised both (i) a state of mind, which denotes a judge's imperviousness to external pressure as a matter of moral integrity, and (ii) a set of institutional and operational arrangements – involving both a procedure by which judges can be appointed in a manner that ensures their independence and selection criteria based on merit –, which must provide safeguards against undue influence and/or unfettered discretion of the other state powers, both at the initial stage of the appointment of a judge and during the exercise of his or her duties.

(b) The threshold test

The Grand Chamber endorsed the logic and the general substance of the "flagrant breach" test introduced by the Chamber, developing it further (below). In order to avoid ambiguity, however, it decided not apply the same concept. While the Contracting States should be afforded a certain margin of appreciation, the following criteria, taken cumulatively, provided a solid basis to guide the Court – and ultimately the national courts – in the assessment as to whether the irregularities in a given judicial appointment procedure were of such gravity as to entail a violation of the right to a tribunal established by law, and whether the balance between the competing principles has been struck fairly and proportionately in the particular circumstances of a case.

1. *The first step of the test*: There must, in principle, be a *manifest* breach of the domestic law, in the sense that the breach must be objectively and genuinely identifiable as such. The Court would in general cede to the national courts' interpretation as to whether there had been a breach of the domestic law, unless the breach was "flagrant" – that is, unless the national courts' findings could be regarded as arbitrary or manifestly unreasonable. However, the absence of a manifest breach did not as such rule out the possibility of a violation of the right to a tribunal established by law. There might be circumstances where a judicial appointment procedure that was seemingly in compliance with the relevant domestic rules nevertheless produced results that were incompatible with the object and purpose of that Convention right. In such circumstances, the Court must also pursue its examination under the second and third limbs of the test.

2. *The second step of the test*: The breach in question had to be assessed in the light of the object

and purpose of the requirement of a "tribunal established by law", namely to ensure the ability of the judiciary to perform its duties free of undue interference and thereby to preserve the rule of law and the separation of powers. Therefore, only those breaches that relate to the fundamental rules of the procedure for appointing judges – that is, breaches that affect the *essence* of the right to a "tribunal established by law" – were likely to result in a violation of that right (for instance, the appointment of a person as judge who had not fulfilled the relevant eligibility criteria – or breaches that might otherwise undermine the purpose and effect of the "established by law" requirement, as interpreted by the Court). Regard should be had, in this respect, to the purpose of the law breached, that is, whether it sought to prevent any undue interference by the executive with the judiciary. Accordingly, breaches of a purely technical nature that had no bearing on the legitimacy of the appointment process must be considered to fall below the relevant threshold.

3. *The third step of the test*: The review conducted by national courts, if any, as to the legal consequences – in terms of an individual's Convention rights – of a breach of a domestic rule on judicial appointments played a significant role in determining whether such breach amounted to a violation of the right to a "tribunal established by law", and thus formed part of the test itself. Such review must be carried out on the basis of the relevant Convention standards, adequately weighing in the balance the competing interests at stake. In particular, a balance had to be struck to determine whether there was a pressing need – of a substantial and compelling character – justifying the departure from the principles of legal certainty and irremovability of judges, as relevant, in the particular circumstances of a case. Where the domestic review had been Convention-compliant and the necessary conclusions had been drawn, the Court would need strong reasons to substitute its assessment for that of the national courts.

The absence of a specific time-limit before which an irregularity in the appointment procedure could be challenged would not in practice have the effect of rendering the appointments open to challenge indefinitely. With the passage of time, the preservation of legal certainty would carry increasing weight in relation to the individual litigant's right to a "tribunal established by law" in the balancing exercise that must be carried out. Account had also to be taken of the evidential difficulties that would arise with the passage of time and of the relevant statutory timelimits that might be applicable in domestic law to challenges of such nature.

(c) Application of the test to the circumstances of the present case

1. *Whether there was a manifest breach of the domestic law* – Given the findings of the Supreme Court of Iceland, the first condition of the test was clearly satisfied.

2. *Whether the breaches of the domestic law pertained to a fundamental rule of the procedure for appointing judges* – There had been a grave breach of a fundamental rule of the national judicial appointment procedure, especially seen in the light of its main aim: namely, to limit the influence of the executive (by involving an independent Evaluation Committee) and thereby to strengthen the independence of the judiciary in Iceland.

In relation to the *breaches committed by the Minister*, the latter had failed to explain why she had picked one candidate over another, as required under domestic law. All four of the candidates added by her had scored more points in judicial experience than the four removed. However, in the original list prepared by the Evaluation Committee, there had been candidates who had scored even lower in judicial experience than the four removed, who the Minister had nevertheless decided to keep. Similarly, among the candidates who had not been recommended by the Committee, there were those who had scored higher in judicial experience than the four eventually chosen by the Minister. While the Minister purportedly had also had regard to subjective factors, such as "success" in career, there had been no explanation as to how she had measured it. The Minister's actions were of such a nature as to prompt objectively justified concerns that she had acted out of political motives : the applicant's allegations regarding the political connections between the Minister and the husband of the impugned judge could not be ignored; moreover, the Minister was a member of one of the political parties composing the majority in the coalition Government, by whose votes alone her proposal had been adopted in Parliament. This was sufficient to taint the legitimacy and transparency of the whole procedure.

In relation to the *shortcomings in the procedure before Parliament*, not only had it failed to demand that the Minister provide objective reasons for her proposals, but it had not complied with the special voting rules, which had undermined its supervisory role as a check against the exercise of undue executive discretion. Accordingly, the applicant's belief that Parliament's decision had been driven primarily by party political considerations might not be considered to be unwarranted.

3. *Whether the allegations regarding the right to a "tribunal established by law" were effectively reviewed and redressed by the domestic courts* – The Supreme Court had failed to carry out a Conventioncompliant assessment and had had no regard to the question of whether the object of the safeguard enshrined in the concept of "established by law" had been achieved.First, even though that court had had the power to address and remedy the effects of the aforementioned irregularities, it had failed to draw the necessary conclusions from its own findings. The emphasis it had placed on the mere fact that that the appointments had become official, suggested an acceptance, or even a resignation, that it had had no real say over the matter thereafter. The Supreme Court had mainly focused on the question whether the irregularities had had any actual implications for Judge A.E.'s independence or impartiality, a question which had no direct bearing on the assessment of a separate issue regarding the "tribunal established by law" requirement. Secondly, the Supreme Court had not responded to any of the applicant's very specific and highly pertinent arguments and allegations in that latter respect (see above). It was therefore not clear from its judgment why the impugned procedural breaches had not been of such a nature as to compromise the lawfulness of the appointment of A.E. and, consequently, of her subsequent participation in the applicant's case. Thirdly, as regards the balance that should have been struck by the Supreme Court, while the passage of a certain period of time might in principle tip the balance in favour of "legal certainty", that was not the case on the present facts. The appointment of A.E. and the other three candidates in question had been contested immediately after the finalisation of the relevant procedure and the impugned irregularities had been established even before they had taken office.

The restraint displayed – and the failure to strike the right balance between preserving the principle of legal certainty on the one hand, and upholding respect for the law on the other – had not been specific to the instant case, but had been the Supreme Court's settled practice. This practice posed problems for two main reasons. First, it undermined the significant role played by the judiciary in maintaining the checks and balances inherent in the separation of powers. Second, having regard to the significance and the implications of the breaches in question, and to the fundamentally important role played by the judiciary in a democratic State governed by the rule of law, the effects of such breaches might not justifiably be limited to the individual candidates who had been wronged by nonappointment, but necessarily concerned the general public.

4. *Overall*: The applicant had been denied his right to a "tribunal established by law", on account of the participation in his trial of a judge whose appointment procedure had been vitiated by grave irregularities that had impaired the very essence of the right at issue.

*Conclusion*: violation (unanimously).

The Court found that the question as to whether the same irregularities had also compromised the independence and impartiality of the same tribunal did not require further examination.

Article 46: The finding of a violation in the present case could not as such be taken to impose on the respondent State an obligation under the Convention to reopen all similar cases that had since become *res judicata* in accordance with Icelandic law.

Article 41: A finding of a violation was sufficient just satisfaction in the present case.

## Article 6 § 1 (administrative/ administratif)

### Independent and impartial tribunal/ Tribunal indépendant et impartial

**Sufficient judicial review of sanctions imposed after defective procedure conducted by administrative authority with consecutive roles of investigation and adjudication: *no violation***

**Contrôle judiciaire suffisant des sanctions imposées à l'issue d'une procédure défaillante par une autorité administrative exerçant consécutivement des fonctions d'enquête et de jugement : *non-violation***

*Edizioni Del Roma Società Cooperativa A.R.L and/ et Edizioni Del Roma S.R.L. – Italy/Italie*, 68954/13 and/et 70495/13, Judgment/Arrêt 10.12.2020 [Section I]

English translation of the summary – Version imprimable

*En fait* – Des sanctions pécuniaires qui furent infligées par l'autorité italienne de régulation des télécoms (« l'AGCOM ») aux sociétés requérantes, qui exerçaient des activités dans le domaine de l'édition et qui, à la suite de ces sanctions, perdirent les financements publics dont elles bénéficiaient dans ce cadre, ce qui provoqua la faillite de l'une d'entre elles.

*En droit* – Article 6 § 1 :

Les sanctions pécuniaires infligées aux requérantes ont un caractère pénal, de sorte que l'article 6 § 1 trouve à s'appliquer, en l'occurrence, sous son volet pénal.

a) *Sur la question de savoir si la procédure devant l'AGCOM a été équitable et si l'AGCOM était un tribunal indépendant et impartial* :

Le règlement de l'AGCOM prévoit une certaine séparation entre les organes chargés des enquêtes et l'organe compétent pour se prononcer sur l'existence ou non d'une infraction et l'application de sanctions. C'est le responsable de la procédure qui formule les accusations et qui mène les enquêtes, dont les résultats sont résumés dans un rapport contenant des conclusions et des propositions quant aux sanctions à appliquer, et la décision finale quant aux sanctions devant être appliquées revient exclusivement à la commission.

Cependant, le responsable de la procédure et la commission ne sont que des branches d'un même organe administratif, agissant sous l'autorité et la supervision d'un même président. À cet égard, le Gouvernement n'a prouvé ni l'existence de garde-fous au sein des différents départements ni la nature formelle de l'une ou l'autre des fonctions du président. Pour la Cour, ceci s'analyse en un exercice consécutif de fonctions d'enquête et de jugement au sein d'une même institution ; or en matière pénale un tel cumul n'est pas compatible avec l'exigence d'impartialité voulue par l'article 6 § 1.

Enfin la procédure devant l'AGCOM n'a pas satisfait à toutes les exigences de l'article 6, notamment en ce qui concerne l'égalité des armes entre l'accusation et la défense, et la tenue d'une audience publique permettant une confrontation orale.

Le constat de non-conformité de la procédure devant l'AGCOM avec les principes du procès équitable ne suffit pourtant pas pour conclure à la violation de l'article 6 en l'espèce.

b) *Sur la question de savoir si les requérantes ont eu accès à un tribunal doté de la plénitude de juridiction* :

Les décisions de l'AGCOM, autorité administrative, ont été soumises au contrôle ultérieur d'organes judiciaires de pleine juridiction, le tribunal administratif régional puis le Conseil d'État, ayant tenu des audiences publiques.

*Conclusion* : non-violation (unanimité).

(Voir aussi *Grande Stevens et autres c. Italie*, 18640/10 et al., 4 mars 2014, Note d'information 172).

## Article 6 § 3 (d)

### Examination of witnesses/Interrogation des témoins

**Failure of domestic court to carefully examine request to cross-examine expert witnesses despite crucial relevance of their evidence: *violation***

**Défaut d'examen sérieux par le juge interne d'une demande tendant au contre-interrogatoire d'experts malgré la pertinence cruciale de leurs déclarations : *violation***

*Danilov – Russia/Russie*, 88/05, Judgment/Arrêt 1.12.2020 [Section III]

(See Article 6 § 1 above/Voir l'article 6 § 1 ci-dessus, page 14)

## ARTICLE 8

### Respect for private life/Respect de la vie privée
### Expulsion

**Sound reasons justifying deportation for five years of adult foreign national born in Switzerland, following criminal conviction, under legislation imposing expulsion: *no violation***

**Raisons solides justifiant l'expulsion pour cinq ans, d'un adulte étranger né en Suisse, suite à sa condamnation pénale, en application d'une loi prévoyant l'expulsion obligatoire : *non-violation***

*M.M. – Switzerland/Suisse*, 59006/18, Judgment/Arrêt 8.12.2020 [Section III]

English translation of the summary – Version imprimable

*En fait* – Le requérant, ressortissant espagnol né en 1980 en Suisse, a été expulsé du territoire suisse vers l'Espagne pour une durée de cinq ans, durée minimale prévue par le code pénal, à la suite de sa condamnation à une peine privative de liberté de douze mois assortie d'un sursis pour avoir commis des actes à caractère sexuel sur une mineure et consommé des stupéfiants.

*En droit* – Article 8 :

L'expulsion du requérant, adulte de quarante ans et sans enfants, se prévalant de son intégration dans le pays hôte, est une ingérence dans son droit au respect de la vie privée. Elle était prévue par la loi et visait « la défense de l'ordre » et la « prévention des infractions pénales ».

À titre liminaire, dans le domaine des expulsions d'étrangers criminels, l'article 66a du code pénal, concrétisation du résultat d'une votation populaire, n'introduit pas, malgré son intitulé « expulsion obligatoire », un automatisme d'expulsion des étrangers criminels condamnés pour des infractions sans contrôle judiciaire de la proportionnalité de la mesure. Cela serait incompatible avec l'article 8

de la Convention. L'interprétation donnée par le Tribunal fédéral à la clause de rigueur permet *a priori* une application conforme à la Convention. Et en vertu de la clause de rigueur, le juge doit tenir compte, en procédant à la pesée des intérêts, de « la situation particulière de l'étranger qui est né ou qui a grandi en Suisse ». Il s'ensuit qu'en la matière l'analyse doit se faire au cas par cas selon les critères établis par la Cour.

Le requérant, né en 1980 et ayant commis ses infractions en 2017, n'était donc pas adolescent.

La peine prononcée (douze mois avec un sursis de trois ans) est relativement légère. Elle est cependant plus élevée, par exemple, que celle (cinq mois et demi au total, assortie d'un sursis) qui avait été prononcée dans l'affaire *Shala c. Suisse*, 52873/09, 15 novembre 2012. Dans cette affaire, la Cour avait estimé que, malgré la relative faiblesse de la peine prononcée, l'expulsion du territoire suisse pour une durée de dix ans n'avait pas emporté violation de l'article 8. En l'espèce est en jeu l'expulsion du requérant du territoire suisse pour une durée de cinq ans seulement, qui représente la sanction minimale prévue par l'article 66a du code pénal.

Le requérant a passé l'intégralité de sa vie en Suisse. La Cour doit donc s'assurer que les tribunaux internes ont avancé des raisons très solides pour justifier l'expulsion.

Le Tribunal fédéral a pris en considération le fait que les infractions en question étaient graves, que le requérant avait porté atteinte à un bien juridique particulièrement important, à savoir l'intégrité sexuelle d'une mineure, et qu'il s'était ainsi attaqué de manière très grave à la sécurité et à l'ordre public. Le requérant avait manifesté un mépris certain pour l'ordre juridique suisse, ayant été par le passé condamné à trois reprises. Les juges fédéraux ont également évalué le risque de récidive en tenant compte de l'intérêt du requérant pour les filles prépubères, qui ressortait notamment des nombreuses photographies de jeunes filles âgées de dix à douze ans trouvées sur son téléphone, ainsi que des recherches à caractère pédophile effectuées avec cet appareil.

En outre, le tribunal de police a retenu contre le requérant un degré élevé de culpabilité et il a renoncé à diminuer la responsabilité pénale de celui-ci à raison de sa consommation d'alcool et de stupéfiants le jour des faits. L'intéressé n'est pas parvenu à expliquer les faits commis à l'égard de l'enfant autrement que par sa consommation de stupéfiants et d'alcool. De même, il ne semblait pas avoir une réelle volonté d'identifier les mécanismes qui l'avaient conduit à agir de la sorte et ne semblait avoir mis aucune stratégie en place pour gérer les situations à risque.

Le requérant s'est rendu coupable à deux reprises d'actes à caractère sexuel au préjudice d'une mineure. Partant, on ne saurait parler d'un « acte isolé ». Il est vrai que ses autres antécédents judiciaires n'ont aucun rapport avec la pédophilie et ne constituent pas des infractions graves. Mais ils révélaient un certain mépris de l'ordre juridique suisse.

En ce qui concerne le laps de temps écoulé depuis l'infraction et la conduite du requérant pendant cette période, le requérant se conduisait plutôt bien depuis la commission des infractions. Il respectait les entretiens fixés, il s'investissait dans son activité occupationnelle, il se présentait régulièrement au centre de prévention et il semblait bénéficier d'un cadre adéquat qui lui permettait d'évoluer positivement, même s'il devait encore consentir des efforts.

Quant à la situation familiale du requérant, il est majeur, célibataire, n'a pas d'enfants et vit seul. Son père est décédé. Sa mère vit en Suisse, mais il n'a pas de relations avec elle ni avec d'autres membres de sa famille. De même, le requérant ne pouvait se prévaloir de liens sociaux, culturels, familiaux ou professionnels particuliers. Ses perspectives de réinsertion sociale semblaient plutôt sombres dès lors que l'intéressé, alors âgé de trente-huit ans, n'avait jamais exercé d'activité professionnelle et ne disposait d'aucune formation. L'activité occupationnelle ou le suivi entrepris auprès du centre de prévention ne pouvaient passer pour dénoter une quelconque volonté d'intégration en Suisse.

Pour ce qui est de la solidité des liens du requérant avec l'Espagne, l'intéressé avait une certaine connaissance de la langue espagnole et il avait dans ce pays de la famille éloignée.

En ce qui concerne enfin les circonstances particulières de l'affaire, le requérant n'a jamais évoqué devant les juridictions internes des éléments d'ordre médical qui auraient pu faire obstacle à son éloignement du territoire suisse.

En résumé, les juridictions cantonales et le Tribunal fédéral ont effectué un examen sérieux de la situation personnelle du requérant et des différents intérêts en jeu. Elles disposaient donc d'arguments très solides pour justifier l'expulsion du requérant du territoire Suisse pour une durée limitée. Par conséquent, l'ingérence était proportionnée au but légitime poursuivi et ainsi nécessaire dans une société démocratique au sens de l'article 8 § 2.

*Conclusion* : non-violation (unanimité).

(Voir aussi *Üner c. Pays-Bas* [GC], 46410/99, 18 octobre 2006, Note d'information 90 ; *Maslov c. Autriche* [GC], 1638/03, 23 juin 2008, Note d'information 109).

## Respect for private life/Respect de la vie privée

**Inadequate judicial review of the dismissal of an employee of a public institute, under an emergency legislative decree, on account of his presumed ties to a terrorist organisation: *violation***

**Contrôle juridictionnel inadéquat du licenciement d'un employé d'un institut public, en vertu d'un décret-loi d'état d'urgence, pour ses liens présumés avec une organisation terroriste : *violation***

*Pişkin – Turkey/Turquie*, 33399/18, Judgment/Arrêt 15.12.2020 [Section II]

English translation of the summary – Version imprimable

*En fait* – Le requérant a été licencié de son poste d'expert à l'Agence du développement (ci-après l'agence), pour ses liens présumés avec une organisation terroriste considérée par les autorités nationales comme l'instigatrice du coup d'état du 15 juillet 2016, en vertu du décret-loi d'état d'urgence no 667 (ci-après décret-loi).

Le requérant se plaint de son licenciement et du contrôle juridictionnel subséquent.

*En droit* –

Article 6 § 1 : Le volet civil, et non pas pénal, de cette disposition s'applique au cas d'espèce.

a) *La procédure relative à la résiliation du contrat de travail :*

Le contrat de travail du requérant a été résilié par une décision de son employeur, qui s'est référé au décret-loi d'état d'urgence, et non aux dispositions du code du travail régissant la résiliation pour un motif valable, ayant des exigences procédurales non respectées en l'espèce. Le décret-loi autorisait la révocation des fonctionnaires et des employés de la fonction publique selon une procédure simplifiée, n'exigeant pas la moindre procédure contradictoire ; et aucune garantie procédurale spécifique n'était prévue. Il suffisait que l'employeur considérât que l'employé appartenait, était affilié ou était lié aux structures illégales définies dans le décret-loi sans même fournir une motivation sommaire et individualisée.

b) *Le contrôle juridictionnel :*

i. L'objet du litige :

Le requérant n'a pu que demander aux juridictions nationales la présentation des éléments de fait ou d'autres éléments susceptibles de justifier la considération de son employeur et ainsi contester la vraisemblance, la véracité et la fiabilité de ces éléments. Dès lors, il incombait aux juridictions de se pencher sur toutes les questions de fait et de droit pertinentes pour le litige porté devant elles afin d'offrir au requérant, un contrôle juridictionnel effectif de la décision de l'employeur.

ii. Les caractéristiques de la procédure judiciaire :

Rien dans le dossier ne permet de conclure que le processus décisionnel devant les juridictions nationales n'a pas satisfait aux exigences du contradictoire et de l'égalité des armes.

iii. La motivation des décisions judiciaires :

Les juridictions nationales ont rejeté le recours du requérant, estimant que la résiliation du contrat de travail devait être considérée comme une résiliation valable prise sur le fondement du décret-loi, sans considérer la résiliation pour un « motif juste », au sens du code du travail.

En outre, les juridictions nationales ont uniquement examiné si le licenciement avait été décidé par l'organe compétent et si l'acte en cause avait une base légale. Elles ne sont jamais penchées sur la question de savoir si la résiliation du contrat de travail du requérant pour ses liens présumés avec une structure illégale était justifiée par le comportement de l'intéressé ou par d'autres éléments ou informations pertinents. De plus, les moyens du requérant n'ont pas été dûment examinés par les juridictions saisies. En adoptant une décision d'irrecevabilité sommaire, la Cour constitutionnelle n'a procédé à aucune analyse des questions de droit et de fait.

Les conclusions des juridictions internes ne témoignent pas de l'examen approfondi et sérieux des moyens du requérant, du fondement de leur raisonnement sur les éléments de preuve présentés par celui-ci et d'avoir valablement motivé le rejet des contestations de l'intéressé. Les défaillances relevées ont placé l'intéressé dans une situation de net désavantage par rapport à son adversaire.

c) *Conclusion* :

Alors que, d'un point de vue théorique, les juridictions nationales disposaient de la pleine juridiction pour statuer sur le litige opposant le requérant et l'administration, elles ont renoncé à la compétence leur permettant d'examiner toutes les questions de fait et de droit pertinentes pour le litige dont elles étaient saisies. Dès lors le requérant n'a pas effectivement été entendu par les juridictions internes, lesquelles ne lui ont pas assuré son droit à un procès équitable.

Concernant l'article 15 de la Convention, même si des procédures telles que celles ayant été mises en œuvre par le décret-loi pouvaient être

admises comme étant justifiée au regard des circonstances très particulières de l'état d'urgence, ce décret-loi n'apportait aucune limitation au contrôle juridictionnel à exercer par les tribunaux internes après la résiliation du contrat de travail des intéressés. Vu l'importance de l'enjeu pour les droits des justiciables garantis par la Convention, lorsqu'un décret-loi d'état d'urgence ne contient pas de formule claire et explicite excluant la possibilité d'un contrôle judiciaire des mesures prises pour son exécution, il doit toujours être compris comme autorisant les juridictions de l'État défendeur à effectuer un contrôle suffisant pour permettre d'éviter l'arbitraire. Dans ces circonstances, le manquement aux exigences d'une procédure équitable ne saurait être justifié par la dérogation de la Turquie.

*Conclusion* : violation (unanimité).

Article 8 :

a) *Applicabilité* :

Il n'existe pas le moindre élément laissant suggérer que la résiliation du contrat de travail en question résultait de manière prévisible des propres actions du requérant. Ce dernier a perdu son emploi, c'est-à-dire son moyen de subsistance. La Cour se doit d'accorder du poids à l'argument du requérant qui se plaignait de s'être retrouvé étiqueté dans la société en tant que « terroriste » et de ce fait stigmatisé : les employeurs n'osent pas lui proposer un emploi en raison du fait que cette mesure était fondée sur le décret-loi. Par conséquent, il existe bel et bien des répercussions sur ses possibilités de nouer et de maintenir des relations, y compris de nature professionnelle, ainsi que des conséquences lourdes sur sa réputation professionnelle et sociale. Partant, l'article 8 trouve à s'appliquer en l'espèce.

b) *Fond* :

La résiliation du contrat de travail du requérant, a été prise non pas par une autorité étatique, mais par une agence locale de développement. En dépit de son statut de personne morale de droit public, cette agence n'exerçait pas des prérogatives de puissance publique. Et le contrat de travail du requérant était régi par le code du travail. Cela étant, le licenciement était fondée sur l'article 4 § 1 g) du décret-loi, qui astreignait l'employeur à résilier le contrat de travail de ses employés lorsqu'il considérait que ceuxci avaient des liens avec une structure illégale. Par conséquent, il pourrait être vu comme une obligation découlant dudit décret-loi, qui dépasse largement le cadre juridique régissant le contrat de travail en question. Par ailleurs, la responsabilité des autorités serait engagée si les faits litigieux résultaient d'un manquement de leur part à garantir au requérant la jouissance d'un droit consacré par l'article 8 de la Convention. Dans ces conditions, le licenciement du requérant, motivé par ses liens présumés avec une structure illégale, peut être considéré comme une ingérence dans le droit de l'intéressé au respect de sa vie privée. L'ingérence était prévue par la loi et poursuivait plusieurs buts légitimes à savoir la protection de la sécurité nationale, la défense de l'ordre et la prévention des infractions pénales.

En ce qui concerne la question de savoir si le processus décisionnel ayant conduit au licenciement du requérant était entouré des garanties contre l'arbitraire, celui-ci était très sommaire. La décision n'était étayée par aucune autre motivation que la simple référence aux termes de l'article 4 § 1 g) du décret-loi, qui prévoyait le licenciement des employés considérés comme appartenant, affiliés ou liés à une structure illégale. Or une telle indication a un caractère vague et incertain. L'employeur du requérant n'a pas précisé la nature des activités de l'intéressé qui pouvaient justifier ses liens avec une structure illégale. Au cours de la procédure devant les juridictions nationales, aucun reproche concret n'a été expressément formulé.

Les considérations relatives au devoir de loyauté des fonctionnaires sont *mutatis mutandis* applicables en l'espèce, compte tenu de la fonction des agences de développement. La Cour peut accepter, à l'exemple de ce qu'elle a constaté au regard de l'article 6 de la Convention ci-dessus, que la procédure simplifiée, instaurée par le décret-loi permettant de licencier les fonctionnaires ou les autres employés de la fonction publique, pouvait être considérée comme étant justifiée au regard des circonstances très particulières de la situation apparue au lendemain de la tentative de coup d'État du 15 juillet 2016, eu égard au fait que les mesures prises pendant l'état d'urgence étaient soumises à un contrôle juridictionnel.

En ce qui concerne le caractère approfondi du contrôle juridictionnel de la mesure en question, la Cour est disposée à admettre que l'appartenance à des structures ayant une organisation interne de type militaire ou établissant un lien de solidarité rigide et incompressible entre leurs membres ou encore poursuivant une idéologie contraire aux règles de la démocratie, élément fondamental de « l'ordre public européen », pourrait poser un problème pour la sécurité nationale et la défense de l'ordre lorsque les membres de ces entités sont appelés à remplir des fonctions publiques.

Par conséquent, l'indication par l'administration publique ou par d'autres organismes opérant

dans le domaine de la fonction publique de ce qui constitue une menace pour la sécurité nationale a naturellement un poids important. Les tribunaux nationaux doivent pourtant pouvoir sanctionner les cas où l'invocation de cette notion n'a aucun fondement raisonnable dans les faits ou dénote une interprétation arbitraire.

En l'espèce la Cour ne dispose pas réellement des moyens de se prononcer sur la considération des autorités nationales ayant constitué le fondement du licenciement du requérant. En effet, bien que cette mesure était fondée sur la prétendue existence de liens entre l'intéressé et une structure illégale, les décisions judiciaires internes n'éclairent en rien les critères ayant servi de base pour justifier la considération de l'employeur du requérant et déterminer la nature exacte des faits reprochés à l'intéressé. Les juridictions internes ont admis, sans procéder à un examen approfondi de la mesure en cause, dont les répercussions étaient pourtant importantes sur le droit au respect de la vie privée du requérant, que ladite considération avait constitué un motif valable pour décider la résiliation du contrat de travail de l'intéressé. Elles ont donc failli à déterminer quelles raisons concrètes avaient justifié la résiliation du contrat de travail du requérant. Par conséquent, le contrôle juridictionnel de l'application de la mesure litigieuse n'a donc pas été adéquat en l'espèce.

Les arguments avancés par le Gouvernement sont pertinents mais non suffisants pour démontrer que l'ingérence dénoncée était « nécessaire dans une société démocratique ». En particulier le requérant n'a pas joui du degré minimal de protection contre l'arbitraire.

*Conclusion* : violation (unanimité).

Article 41 : 4 000 EUR pour préjudice moral ; pas de somme pour le dommage matériel.

(Voir aussi *Vilho Eskelinen et autres c. Finlande* [GC], 63235/00, 19 avril 2007, Note d'information 96 ; *Fazliyski c. Bulgarie*, 40908/05, 16 avril 2013, Note d'information 162 ; *Al-Dulimi et Montana Management Inc. c. Suisse* [GC], 5809/08, 21 juin 2016, Note d'information 197 ; *Denisov c. Ukraine* [GC], 76639/11, 25 septembre 2018, Note d'information 221).

## Respect for private life/Respect de la vie privée

**Unjustified dismissal of Serbian ethnic origin teacher for failing to use standard Croatian in class, considered unable to adapt due to pre-retirement age: *violation***

**Licenciement injustifié d'un professeur d'origine serbe au motif qu'il ne s'exprimait pas en croate standard et qu'il était considéré comme incapable de s'adapter, étant proche de la retraite : *violation***

*Mile Novaković – Croatia/Croatie*, 73544/14, Judgment/Arrêt 17.12.2020 [Section I]

Traduction française du résumé – Printable version

*Facts* – The applicant, a former teacher of Serbian ethnic origin, was dismissed from his post at a secondary school in Eastern Slavonia (Croatia), for failing to use the standard Croatian language when teaching. He was 55 at the time and had given 29 years of service. He appealed unsuccessfully against the dismissal. Upon his death, his heirs continued the application before the Court on his behalf.

*Law* – Article 8:

(a) *Applicability of Article 8*

The direct reason for the applicant's dismissal had been that he had used the Serbian language in his daily work as a teacher, as well as his alleged inability to adapt his language of instruction to the requirements of his post due to his age. The language used by an individual necessarily formed part of that person's ethnic identity, which constitutes an essential aspect of an individual's private life. Moreover, a person's age formed part of a person's physical identity. Both had been underpinning reasons for the impugned measures. Article 8 was therefore applicable to the facts of the present case under the Court's reasons-based approach (*Denisov v. Ukraine*).

(b) *Whether there was a justified interference with Article 8*

The applicant's dismissal from work amounted to an interference with his right to respect for private life. It had been in accordance with the law and pursued the legitimate aim of the "protection of the rights of others", namely, the right of the pupils attending the school to an education in the Croatian language. The question was whether the interference had been "necessary in a democratic society".

Domestic law allowed for education in languages of national minorities, in accordance with the relevant international-law standards, which obliged the respondent State to promote, among other things, the preservation of languages of national minorities. In that connection, the expected language of instruction at the school at the material time had not been a clear-cut issue. The domestic courts had had difficulties in establishing in which language the applicant had been expected to teach. While under domestic law, as a general rule, all schools had to provide classes in the Croatian

language, in view of the specificity of the peaceful reintegration process in the region, certain schools in Eastern Slavonia at that time had been providing classes in minority languages, including Serbian. At the school in question, an oral directive stating that all classes should be taught exclusively in the Croatian language had been given only a month before the relevant inspection, which had triggered the applicant's dismissal.

The inspection had been performed only with regard to teachers of Serbian ethnic origin, following an anonymous complaint by pupils of Croatian origin. No teachers of Croatian origin had been subjected to an inspection in order to establish whether their use of language during their classes had been appropriate, or whether they had complied with other statutory regulations in the performance of their teaching duties. While the pupils' complaint had been lodged only against teachers of Serbian origin, in the specific post-war context of the region at the material time, singling out a certain group of persons on the basis of language, which was closely related to their ethnic origin, could justifiably raise an issue of compatibility with the prohibition of discrimination guaranteed by both the Convention and the Constitution of the Republic of Croatia.

While not undermining the importance of the government's pursued aim (protecting the right of pupils to receive an education in the Croatian language), and its importance in the specific context of the region at that time, no alternatives to dismissal which would have allowed the applicant to align his teaching with the legislation in force had ever been contemplated.

First, the domestic legal provisions regulating education inspections provided for the possibility of an order for the teacher to correct the irregularities in their work within a certain period of time. Nothing in the inspector's decision in the applicant's case justified why she had chosen instead to apply the stricter measure of prohibiting him from performing his work altogether, which had interfered with his rights in a significant manner.

Second, under domestic labour law, in cases of dismissal for personal reasons, an employer was obliged to provide the employee with additional education or training for another post, unless it could be proved that such education or retraining would be futile. It was striking that the possibility of offering additional education or training had been simply rejected by the school purely on grounds of the applicant's age and years of service. Moreover, neither the school nor domestic courts had provided a detailed and convincing explanation as to why the applicant's age would have been an insurmountable impediment to him adjusting his teaching plan so that he could teach in the standard Croatian language, even though the burden of proof had been on the employer.

When relying on reasons such as age or inability of retraining of an employee, in order to avoid any appearance of arbitrariness, the employer and competent national authorities had to provide adequate and convincing reasons for any such conclusion. However, the domestic authorities had failed to do so, in the context of a newly adopted standard at the school. Given the undeniable proximity of the two languages concerned, and the fact that the applicant had lived and worked in Croatia for most of his professional life, it was difficult to understand why the option of providing him with additional training in the standard Croatian language had not been further explored.

Bearing in mind in particular the specific post-war context of the Eastern Slavonia region at the material time, the foregoing was sufficient to conclude that the applicant's dismissal from work had not corresponded to a pressing social need, nor had it been proportionate to the aim pursued.

*Conclusion*: violation (six votes to one).

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

(See also *Travaš v. Croatia*, 75581/13, 4 October 2016, Information Note 200; *Denisov v. Ukraine* [GC], 76639/11, 25 September 2018, Information Note 221)

## Respect for private life/Respect de la vie privée

**Disproportionate and arbitrary annulment of citizenship for omitting information about siblings when applying ten years earlier: *violation***

**Caractère disproportionné et arbitraire de la déchéance de la nationalité du requérant au motif qu'il avait omis, à l'époque où il avait demandé celle-ci dix ans auparavant, d'indiquer des renseignements sur ses frères et sœurs : *violation***

*Usmanov – Russia/Russie*, 43936/18, Judgment/Arrêt 22.12.2020 [Section III]

Traduction française du résumé – Printable version

*Facts* – The applicant, who was born in Tajikistan, settled in Russia with his wife and children and obtained Russian citizenship. Ten years later, after discovering that the applicant had omitted information about his siblings when applying for citizenship, the authorities annulled his citizenship and passports (an "internal" and "travel" passport),

leaving him without identity documents. They also imposed an entry ban, preventing him from entering Russia, and administratively removed him from the territory. The applicant appealed unsuccessfully.

*Law* – Article 8:

In determining whether the annulment of the applicant's citizenship constituted an interference with his rights under Article 8, the Court noted the existence of various approaches to the examination of the issue and followed the consequence-based approach (*Denisov v. Ukraine* [GC]). It examined (i) what the consequences of the impugned measure had been for the applicant and then (ii) whether the measure in question had been arbitrary.

(i) *Consequences for the applicant*

The decision to annul the applicant's Russian citizenship had deprived him of any legal status in Russia. He had been left without any valid identity documents. As found in the Court's earlier case-law, Russian citizens had to prove their identity unusually often in their everyday life, even when performing such mundane tasks as exchanging currency or buying train tickets, and the internal passport was also required for more crucial needs, such as finding employment or receiving medical care. Failure to possess a valid identity document was also punishable by a fine. Furthermore, the annulment of the applicant's citizenship had been a precondition for the imposition of the entry ban on him and the decision to remove him from Russian territory. The annulment therefore had amounted to an interference with his Article 8 rights.

(ii) *Whether the measure was arbitrary*

The revocation or annulment of citizenship as such was not incompatible with the Convention. To assess whether Article 8 had been breached in the present case, the Court had to examine the lawfulness of the impugned measure, accompanying procedural guarantees and the manner in which the domestic authorities had acted.

The annulment had its basis in provisions of domestic law. However the Court was not satisfied by the clarity of these provisions, nor by the procedural safeguards of the domestic law in force at the material time.

To meet the requirements of the Convention, a law should be formulated in clear terms. If a person's citizenship might be annulled or revoked for submitting false information or concealing information by that person, the law should specify the nature of that information. While conferring on the migration authorities the right to annul Russian citizenship, under the relevant domestic law, the authorities had not been required to give a reasoned decision specifying the factual grounds on which it had been taken, like the surrounding circumstances, such as the nature of the missing information, the reason for not submitting it to the authorities, the time elapsed since obtaining citizenship, the strength of the ties which the person concerned had with a country, his or her family situation or other important factors. In particular, they had not been required to explain why the failure by the applicant to indicate the full number of his siblings had been relevant for obtaining Russian citizenship. It had not been explained whether the migration authorities could have refused to grant the applicant Russian citizenship if the facts about his siblings had been known by them. The migration authorities and domestic courts had dismissed the applicant's argument that the missing information had not been important for obtaining Russian citizenship as irrelevant.

According to the Government, after it had been established that the information submitted by the applicant had been incomplete, the authorities had had no other choice but to annul his citizenship, irrespective of other important factors. It had also not been shown that the national courts had to consider the aforementioned factors in proceedings. In the applicant's case, the District Court had considered that the argument about his strong ties with Russia had been irrelevant.

It followed that the legal framework in force at the material time had fostered an excessively formalistic approach to the annulment of Russian citizenship and had failed to give the individual adequate protection against arbitrary interference. The subsequent improvement of the applicable legislation could not change that conclusion, because the amendments had had no effect on the applicant's situation.

(iii) *Overall*

The Government had not demonstrated why the applicant's failure to submit information about some of his siblings had been of such gravity as to justify the deprivation of Russian citizenship several years after the applicant had obtained it. In the absence of a balancing exercise which the domestic authorities had been expected to perform, the impugned measure was grossly disproportionate to the applicant's omission.

*Conclusion*: violation (unanimously).

The Court also held, unanimously, that there had been a violation of Article 8 on account of the decision to expel the applicant from Russian territory.

Article 41: EUR 162 in respect of pecuniary damage and EUR 10,00 in respect of non-pecuniary damage.

(See also *Denisov v. Ukraine* [GC], 76639/11, 25 September 2018, Information Note 221)

## Respect for private life/Respect de la vie privée
## Respect for home/Respect du domicile

**Insufficient measures taken to remedy noise and other nuisances emanating from police station situated under applicant's home: *violation***

**Caractère insuffisant des mesures prises pour remédier aux nuisances sonores et autres provenant du commissariat situé sous le domicile du requérant : *violation***

*Yevgeniy Dmitriyev – Russia/Russie*, 17840/06, Judgment/Arrêt 1.12.2020 [Section III]

Traduction française du résumé – Printable version

*Facts* – The applicant's apartment was situated above a basement occupied by the local police station and by temporary detention cells. The applicant complained to various bodies about the noise and other nuisances emanating from the station and cells, before selling and moving out of the property in 2008.

*Law* – Article 8:

(a) *Applicability of Article 8 to the present case*

The Court had to determine whether the nuisance caused by the day-to-day activities of the police station had attained the minimum level of severity required for it to constitute an interference under Article 8.

The applicant had not submitted any direct evidence to show that the noise in his flat had exceeded acceptable levels. However, an inspection report issued by the State-controlled consumer protection agency had indicated the State authorities' failure to comply with applicable domestic regulations on noise specifically, and on other nuisances generally. Furthermore, the domestic court, having heard the applicant and the witnesses, had determined that the applicant's right to peaceful rest had been breached by the activities of the police station and the noise emanating from the detention cells. It followed from the case file that the State authorities themselves had admitted that the police station had been located in a building which was not designated for housing it. Lastly, even though it did not appear from the case material that the applicant's health was endangered at the relevant time, over the course of thirteen years the applicant had suffered day and night from activities of the police station and the poor sanitary maintenance of its premises. Accordingly, the disturbance, resulting from housing of the police station in the residential building had had a compound and lasting effect on the applicant's private life and enjoyment of his home.

(b) *Whether there was a justified interference*

The day-to-day activities of the police station in the present case had directly interfered with the applicant's rights under Article 8 and the interference therefore had to be justified, for which the State authorities enjoyed a wide margin of appreciation (see Hatton and Others v. the United Kingdom [GC], 36022/97, 8 July 2003, Information Note 55). However, the measures ordered by the domestic authorities had either been insufficient, not been applied in a timely and effective manner, or not been taken at all.

In particular, as far back as 1996 the applicant had alerted the authorities to the problems in his residential building caused by the activities of the police station. However, even though the head of the local police department had admitted that the police station was housed in a building "not designated for such purpose", no further action in this connection had been taken, the applicant having been informed that the relocation of the police station was not in fact possible. Furthermore, the authorities had failed to react in any way to a collective complaint brought by the applicant and his neighbours in May 2000.

In September 2000, the domestic court had acknowledged a violation of the applicant's right to peaceful rest owing to the presence of the police station in his residential building. However, there had been significant delays in the enforcement proceedings, which had only prolonged the applicant's suffering from the noise and other nuisances. The Court was mindful of the difficulties and time delays which were typically encountered by the authorities in finding and allocating relevant resources and securing the necessary funding for such public projects. However, it had taken authorities almost seven years from the day on which the judgment had been issued merely to approve the project and the corresponding budget for the construction of a new police station. No information had been received on the reasons for that delay, on whether any inter-agency work and negotiations had been carried out in this respect in the meantime or whether any temporary solution could have been proposed pending the final resolution of the problem. In the absence of a reasonable explanation from the Government, that process had taken an unconscionably long time, which had rendered the measures taken by the State authorities ineffective and incapable of effectively protecting the applicant's rights.

Lastly, even if the Government were correct in stating that the placement of the police station in the basement of the applicant's residential building had been lawful at the time of its construction, in 2006 the State authorities had been made aware by one of their own organs that they were in violation of the sanitary norms and regulations applicable at the time; yet no real action had been taken in order to reduce the nuisances from which the applicant suffered, and the process of relocation of the police station mandated by the domestic court as a solution had been unduly protracted until 2008. This situation had continued for thirteen years in respect of the applicant and had resulted in the applicant's having considered himself obliged to sell his flat in 2008 and move to another flat which he had bought with his own finances.

In these circumstances, the State had not succeeded in striking a fair balance between the interest of the local community in benefiting from the protection of public peace and security and the effective implementation of laws by the police force, and the applicant's effective enjoyment of his right to respect for his private life and his home.

*Conclusion*: violation (unanimously).

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

(See also *Hatton and Others v. the United Kingdom* [GC], 36022/97, 8 July 2003, Information Note 55; *Moreno Gómez v. Spain*, 4143/02, 16 November 2004, Information Note 69; *Cuenca Zarzoso v. Spain*, 23383/12, 16 January 2018 and the Factsheet on Environment and the European Convention on Human Rights)

## Respect for correspondence/Respect de la correspondance

**Insufficient legal framework and safeguards for protecting data subject to legal professional privilege during police seizure of smart phone and search of its mirror image copy: *violation***

**Caractère insuffisant du cadre juridique et des garanties mises en place pour protéger les données relevant du secret professionnel des avocats dans le cadre de la saisie d'un smartphone et de recherches dans la copie de son contenu : *violation***

*Saber – Norway/Norvège*, 459/18, Judgment/Arrêt 17.12.2020 [Section V]

Traduction française du résumé – Printable version

*Facts* – The applicant was a possible victim of an alleged crime. As part of the investigation, the police seized the applicant's smart phone and captured a mirror image copy of it, which they wished to search.

The phone contained correspondence between the applicant and his lawyers, meaning that some of the content was subject to legal professional privilege (LPP) and therefore exempt from the search under domestic law. Through applying domestic law provisions on search and seizure by analogy, there was initial agreement that the data on the mirror image copy had to be sifted through by the City Court and any LPP data removed, before the police could search the remainder. However, in a subsequent decision of the Supreme Court, which did not involve the applicant, it was determined that procedures relating to surveillance data were applicable instead.

In light of that decision, the City Court abandoned its filtering procedure and sent the mirror image copy back to the police, who examined the data.

*Law* – Article 8:

The search of the applicant's smart phone and/or the mirror image copy of it had entailed an interference with his right to respect for his correspondence. Moreover, the search had been carried out towards the applicant in his capacity of being the aggrieved party in the pertinent investigation.

While the interference had a formal basis in law, the Court had to determine whether the law was "compatible with the rule of law"; namely, whether it was sufficiently foreseeable. The Court made three observations in this regard:

1. The proceedings relating to the filtering of LPP in cases such as the present one had lacked a clear basis in the Code of Criminal Procedure right from the outset, which had rendered them liable to such disputes.

2. The actual form of the proceedings could hardly have been foreseeable to the applicant, given that they had effectively been reorganised following the decision of the Supreme Court.

3. Most importantly, subsequent to the Supreme Court's decision, no clear and specific procedural guarantees had been in place to prevent LPP from being compromised by the search of the mirror image copy of the applicant's phone. The Supreme Court had not given any instructions as to how the police were to carry out the task of filtering LPP, apart from indicating that search words should be decided upon in consultation with counsel; even though the claim lodged for LPP in the instant case had been undisputedly valid, the mirror image copy had effectively just been returned to the police for examination without any practical

procedural scheme in place for that purpose. A report by the police had described the deletion of data in the applicant's case, but it had not described any clear basis or form for the procedure either.

There had indeed been procedural safeguards in place relating to searches and seizures in general; however, the Court's concern was the lack of an established framework for the protection of LPP in cases such as the present one. In its decision, the Supreme Court had also pointed to the lack of provisions suited to situations where LPP data formed part of breaches of digitally stored data, and had indicated that it would be natural to regulate the exact issue that had arisen in the instant case by way of formal provisions of law. The issue that arose in the instant case had not as such been owing to the Supreme Court's findings, rather it had originated in the lack of appropriate regulations.

The Court had no basis to decide whether or not LPP had actually been compromised in his case. Nor was it necessary to consider whether or under what circumstances credible claims for LPP in respect of specific data carriers entailed that they must be sent to a court or another third-party independent of the police and prosecution, in order to have any data covered by LPP deleted before the latter may proceed to search the data carriers. Instead, the lack of foreseeability in the instant case, due to lack of clarity in the legal framework and the lack of procedural guarantees relating concretely to the protection of LPP, had already fallen short of the requirements flowing from the criterion that the interference must be in accordance with the law.

*Conclusion*: violation (six votes to one).

Article 41: Finding of violation constitutes sufficient just satisfaction.

(See also *Laurent v. France*, 28798/13, 24 May 2018, Information Note 218)

## Positive obligations/Obligations positives

**Possibility of civil proceedings and supplementary measures providing adequate redress for women subjected to symphysiotomies, in light of time elapsed: *inadmissible***

**Possibilité que des procédures civiles et d'autres mesures puissent offrir à des femmes ayant subi une symphysiotomie une réparation adéquate, compte tenu du laps de temps écoulé : *irrecevable***

*K.O'S. – Ireland/Irlande*, 61836/17, Decision/Décision 10.11.2020 [Section V]

*W.M. – Ireland/Irlande*, 61872/17, Decision/Décision 10.11.2020 [Section V]

*L.F. – Ireland/Irlande*, 62007/17, Decision/Décision 10.11.2020 [Section V]

Traduction française du résumé – Printable version

*Facts* – The applicants had undergone symphysiotomies in Irish maternity wards during the 1960s – a procedure which involves partially cutting through the joint uniting the pubic bones, so as to enlarge the capacity of the pelvis. According to the applicants, they only became aware that they had undergone the procedure in the early 2010s.

All initially brought civil claims before the domestic courts against the hospitals which had treated them. A civil remedy existed at the domestic level, whereby applicants could contend that the symphysiotomy performed on them could not have been justified in any circumstances prevailing at the relevant time. *L.F.* voluntarily reformulated her claim in this way, in order to avoid the risk of it being struck out by the High Court. However, it was rejected, as the court did not consider that the symphysiotomy performed on her could not have been justified in any circumstances. Following the outcome of other cases before the Supreme Court, including *L.F.*'s (refusal of leave to appeal), *W.M.* and *K.O'S.* abandoned their proceedings, believing that they had no prospect of success.

*Law* – Article 8:

(a) *Access to effective proceedings to claim compensation for damage*

The applicants complained of the failure to provide access to effective proceedings allowing them to claim compensation for damage.

There had been no suggestion that the applicants had been at fault for the delay in bringing their claims. Nevertheless, in view of the passage of significant amounts of time since the symphysiotomies had been performed, their claims would have inevitably posed considerable problems, both for the hospitals in defending themselves, and for the domestic courts, in ensuring that the "equality of arms" principle had been fully respected in the proceedings before them. The position adopted by the Irish courts in *L.F.* (in the application of the more exacting standard of whether there had been no justification whatsoever for the performance of a symphysiotomy in the individual case) was one which had been reasonably open to them. Most witnesses, and in particular medical personnel who had performed the procedure in *L.F.* were either deceased or their whereabouts unknown. As such, by virtue of the fact of hearing

*L.F.*'s reformulated claim alone, the State could not be said to have exceeded the margin of appreciation afforded to it in ensuring that its positive obligation under Article 8 had been met. Similarly for *W.M.* and *K.O'S*, even if the applicants had been required to reformulate their complaints in order to avoid them being struck out, this fact alone could not lead to a violation.

Further, in *L.F.*, the High Court had given careful consideration to the prevailing medical standards at the time of the procedure, before finding that the symphysiotomy performed on the applicant could have been clinically justified at the time. It would appear from this that the same careful consideration would have been given to their specific circumstances, had *W.M.* and *K.O'S.* brought such claims.

*W.M.* and K.*O'S.* had abandoned their claims in light of the advice of counsel, and what they thought had been their limited chances of success and the potential costs of proceeding. However, by abandoning the proceedings, the medical evidence central to judicial determinations of their claims had never been assessed or tested.

Further, at no stage at domestic level had *L.F.* called into question the adequacy of the reformulated and narrower basis on which she had decided to pursue her claim. Nor had *W.M.* or *K.O'S.* sought at any time to argue before domestic courts that that the judgments in other cases (including *L.F.*) had violated their Convention rights because they had been precluded from making any effective complaints about their symphysiotomies. If they had considered that the formulation of civil claims had itself given rise to a violation, it had been open, and indeed it would normally have been incumbent upon them, to challenge that.

(b) *Other measures of redress*

*L.F.* and *W.M.* further complained that there had never been an independent and thorough investigation into the practice of symphysiotomy in Ireland from the 1940s to the 1980s. In the absence of bad faith of the doctors involved, the Court has found that the positive obligation to set up an official judicial system does not necessarily require the provision of anything other than a remedy in the civil courts to be obtained. This was so even in cases concerning a medical practice which affected a significant number of individuals.

Regarding the very specific, historic circumstances of the present case, it was difficult to accommodate the applicants' complaints within the Court's existing case-law on the requirement to investigate. Viewed by the obstetric standards which now prevailed, as well as the fact that the relevant legal standard of care and medical practice generally have evolved in the intervening decades, it was clear that symphysiotomies such as that performed on the applicants, given the physical and psychological trauma they might entail, might rarely be considered justified. However, the Court had to assess any related State responsibility without losing sight of the facts and standards which had prevailed when the impugned medical procedures had been performed. In *L.F.*, that is what the domestic courts had done and it was not possible for the Court to refute their position in relation to the standards of practice and medicine in the respondent State at the relevant time, and as regards the justification or therapeutic necessity for the procedure in the applicant's case.

The State had not remained inactive in the face of considerable controversy which, in recent years, had surrounded the use of symphysiotomies in Irish maternity wards during the second half of the twentieth century. The Health Service Executive had put in place a support system for women who had undergone such procedures, and a report had been commissioned to appraise the practice, comprised of both academic research and interviews with individuals directly involved. A non-statutory review had been conducted with the aim of finding closure for women who had undergone the procedure, and an *ex gratia* payment scheme had been implemented, which had been subject to a report on its operation.

While the report on the operation of the scheme had been met by some concern and criticism, it was not for the Court to judge it or to speculate on whether sections of it should have been expressed in a different manner. The report's key findings had been based on an individual assessment of almost 600 applications to the scheme.

As to the *ex gratia* payment scheme itself, while it did not provide for a fully individualised assessment of non-pecuniary damage, its value lay in the fact it had allowed those women who had not wanted to bring civil proceedings, or whose claims might not have succeeded, to obtain redress for the perceived injury, without having to take the risk, or accept the burden, or pursuing a claim through the courts. The burden of proof required was much lower than would have been the case in legal proceedings and applicants were assisted in the location of their records and in meeting some of the legal costs incurred. It had remained open to those who considered that they had a good prospect of obtaining a higher award through the civil courts not to apply to the scheme or to decline an award offered thereunder.

(c) *Overall*

The Court had great sympathy with the plight of the applicants and the other women who only had become cognisant of the fact that they had undergone a symphysiotomy several decades after the event. However, regarding *K.O'S*, the Court could not simply ignore or abandon the exhaustion rule and deny a national legal order the opportunity to address Convention arguments later raised before the Court.

With regard to *L.F.* and *W.M.*, it would have been next to impossible for the domestic courts to conduct any meaningful – and, from the point of view of the defendant hospitals, fair – inquiry into whether the procedures had been performed with their full and informed consent. In those circumstances, where the actions complained of had not been directly attributable to the State or any of its agents, the possibility of bringing civil proceedings, which were able to establish whether the procedure had been unjustified when judged by the relevant practice standards in a complainant's specific case, supplemented by the other measures taken by the State, had sufficed to meet any obligations that the State may have been under to provide redress.

*Conclusion* : inadmissible (failure to exhaust domestic remedies; manifestly ill-founded).

Article 3: The applicant *K.O'S*. had argued that the State knew or ought to have known that symphysiotomies were being performed in certain maternity hospitals and that the respondent State had therefore breached its positive obligation to protect women from a procedure which in her view amounted to inhuman and degrading treatment.

However, she had brought a civil claim for damages only against the hospital. It would have been possible for her to have joined the State and/or its agents as defendants to the claim and argued that it had failed to protect her from the hospital's negligence and/or its breach of its duty of care, but she had not done so. A substantive complaint of this type was of an entirely different nature to that pursued against the hospital and it could not even arguably be said to have been raised by the applicant in substance in her civil claim for damages. Nor had such a complaint had not been examined by the domestic courts in other cases. As such, nothing that had been said by the domestic courts in previous cases could have predetermined or had any impact whatsoever on the prospects of success of a substantive complaint relating to a violation of Article 3 of the Convention against the State by the applicant. In these circumstances, the Court did not need to deal with the question whether a positive obligation under Article 3 might arise in the circumstances of the case

*Conclusion*: inadmissible (failure to exhaust domestic remedies).

(See also *Allen v. Ireland* (dec.), 37053/18, 19 November 2019)

## Positive obligations/Obligations positives

**Allegations of failure by the 33 Signatory States to the 2015 Paris Agreement to comply with their commitments in order to limit climate change: *case communicated***

**Allégations du non-respect par les 33 États signataires de l'Accord de Paris de 2015 de leurs engagements afin de contenir le réchauffement climatique : *affaire communiquée***

*Duarte Agostinho and Others/et autres – Portugal and 32 other States/ et 32 autres États*, 39371/20, Communication 13.11.2020 [Section IV]

(See Article 1 above/ Voir l'article1 ci-dessus, page 10)

# ARTICLE 10

## Freedom of expression/Liberté d'expression

**Unforeseeable lifting member of parliament's immunity and pre-trial detention on terrorist charges for political speeches: *violation***

**Levée imprévisible de l'immunité d'un député et détention provisoire de celui-ci basée sur des accusations de terrorisme liées à des discours politiques : *violation***

*Selahattin Demirtaş (no. 2) – Turkey/Turquie*, 14305/17, Judgment/Arrêt 22.12.2020 [GC]

(See Article 3 of Protocol No. 1 below/Voir l'article 3 du Protocole n° 1 ci-dessous, page 40)

## Freedom of expression/Liberté d'expression

**Fair balance struck in imposing code-of-conduct penalty on judge for publishing unsubstantiated allegations calling into question moral and professional integrity of a fellow judge: *no violation***

**Juste équilibre ménagé dans le cas de sanctions pour infraction au code de déontologie infligées à une juge dont les allégations non fondées avaient**

**mis en cause l'intégrité morale et professionnelle d'une collègue : *non-violation***

*Panioglu – Romania/Roumanie*, 33794/14, Judgment/Arrêt 8.12.2020 [Section IV]

Traduction française du résumé – Printable version

*Facts* – The applicant, a judge in the Bucharest Court of Appeal, wrote an article about the President of the Court of Cassation. It was published in a national newspaper and on an internet news site, with the byline noting her name and profession. The judges' section of the Superior Council of the Judiciary (SJCSM) subsequently held that the article had breached the Code of Conduct for Judges and Prosecutors. The applicant appealed unsuccessfully up to the Court of Cassation.

*Law* – Article 10:

(a) *Whether there was an interference prescribed by law and pursuing a legitimate aim*

The SJCSM's decision, which had subsequently been confirmed by the Court of Cassation's final judgment had interfered with the applicant's freedom of expression. The interference had been based on the Code of Conduct and the relevant provision had been accessible. It had further pursued the legitimate aim of protecting the rights and reputation of others and of maintaining the authority of the judiciary. In order for the interference to be considered as "prescribed by law", the Court had to determine whether the provision in question had fulfilled the precision and foreseeability requirements.

The relevant provision in the Code provided that judges were prohibited from expressing an opinion with regard to the moral and professional integrity of their colleagues. In regarding the points made in the applicant's article as falling thereunder, the interpretation of the domestic courts did not appear arbitrary or unpredictable. They had considered implicitly that the concept of "colleague" had included judges who worked in other courts than the one the applicant was working, which had been consistent with their approach in a subsequent case. Although the Court of Cassation had later found that the concept of "colleague" had not been defined with sufficient precision, the mere fact that a legal provision was capable of more than one construction did not necessarily mean that it did not meet the requirement of foreseeability. Moreover, the Court of Cassation's judgment had been delivered years after the proceedings against the applicant had ended with a final court judgment.

While there had been very few cases in which the provision had been applied, this would not have rendered the domestic authorities' application unpredictable or arbitrary. The impugned legal provision had been enacted to cover the conduct of judges, who formed a specific and restricted group, more specifically, opinions expressed by them about the integrity of other colleagues. At the time of the impugned events, the legal provision in question had been in force for several years and the applicant, who was a professional judge and who had extensive experience in the field, could not have claimed to be ignorant of its content. As a result, had she had doubts about the exact scope of the provision in question, she could have refrained from publishing the article.

(b) Whether the interference was necessary in a democratic society

The ultimate aim of the applicant's article had been to raise questions about the role public prosecutors had had during the communist regime and about the aptness of a person who had occupied such a position for reforming a modern justice system and ensuring its proper functioning. The article had been written in the context of a larger publ*ic debate about legislation concerning the lustration of the prosecu*tion service. The article had not concerned Judge L.D.S's private life, but rather her professional activity and rise to the highest judicial position in the country. The applicant's article had therefore concerned matters of general interest regarding the functioning and the reform of the justice system. Moreover, an officer of the court might as such be subject to criticism within the permissible limits and not only in a theoretical and general manner, and might be subject to wider limits of acceptable criticism than ordinary citizens, particularly bearing in mind that her occupation of a very visible public office (namely that of President of the Court of Cassation).

As to the content of the impugned article, the national authorities had held that the applicant had breached the Code because of the intended meaning of her article and the expressions used. In addition, they had been of the view that her article had breached her duty of discretion and that her statements had not been value judgments but had conveyed specific aspects and a clear and unequivocal personal opinion concerning the moral and professional integrity of the President of the Court of Cassation. The article might have caused a reasonable observer to doubt these qualities of the person targeted, and had been detrimental to the reputation of the judicial system and the dignity, independence and impartiality of the judiciary.

Taking into account the overall tone and wording of the article, as well as the scope of the rhetorical questions concerning L.D.S.'s professional activity and rise, the article had actually contained allegations of specific conduct by prosecutors, in general, and L.D.S. in particular. The article had therefore suggested to the public that L.D.S. had behaved in an immoral and unlawful manner, and had been likely to lead it to believe that these were established and incontrovertible facts. However, this had not been supported by any of the information relied upon by the applicant in her submissions.

In that context and as a judge, the applicant should have been aware and mindful of the risks involved in publishing her article and the impact it could have had both on Judge L.D.S.'s professional life. It could therefore be expected that she should show restraint in exercising her freedom of expression in all cases where the authority and impartiality of the judiciary were likely to be called into question.

Concerning the proportionality of the penalty, the decision of the code-of conduct proceedings was permanently included in the applicant's professional file and would be taken into account in her professional appraisal. During a competition for promotion to the Court of Cassation, the Judicial Investigation Unit (IJ) had relied on the aforementioned decision in producing a negative report concerning the applicant's professional integrity, which suggested that the penalty had been relevant and affected the assessment of the applicant's applications for promotion. However, the IJ had not only taken into account the code-of-conduct penalty in producing its report and the applicant did not seem to be prevented by the penalty either from applying to participate or from actually participating in promotion competitions. Even if the decision may have had a certain "chilling effect" on the exercise of the applicant's freedom of expression, it had not been excessive in the circumstances of the present case.

In light of the foregoing, and the particular importance that the Court attached to the position held by the applicant, the domestic authorities had struck a fair balance between the competing rights and interests.

*Conclusion*: no violation (unanimously).

The Court's finding was without prejudice to the applicant's decision to pursue the administrative proceedings she had initiated, seeking to have the provision of the Code struck down.

(See also *Di Giovanni v. Italy*, 51160/06, 9 July 2013; *Baka v. Hungary* [GC], 20261/12, 23 June 2016)

# ARTICLE 11

## Freedom of peaceful assembly/Liberté de réunion pacifique

**Police failure to ensure LGBTI event disrupted by counter-demonstrators proceeded peacefully, in breach of State's positive obligations: *violation***

**Manquement des forces de l'ordre à l'obligation positive de garantir la tenue paisible d'une manifestation LGBTI, perturbée par des contre-manifestants : *violation***

*Berkman – Russia/Russie*, 46712/15, Judgment/Arrêt 1.12.2020 [Section III]

Traduction française du résumé – Printable version

*Facts* – The applicant had attempted to take part in a public meeting to mark Coming Out Day (an annual LGBTI awareness day), which was disrupted by counter-demonstrators. She was arrested, removed from the site of the event and detained at a police station for four hours. Administrative proceedings against her were terminated for lack of evidence of her guilt. Afterwards, she appealed unsuccessfully, complaining *inter alia* that the police had failed to ensure that the meeting proceeded peacefully.

*Law* – Article 11, taken alone and in conjunction with Article 14:

The authorities had not banned the public meeting in support of the LGBTI community, where the applicant had intended to participate, and being aware of the risks associated with the event they had dispatched a considerable number of police officers to the scene of the demonstration.

Those police officers had arrived several hours before the envisaged event. At some point, counter-demonstrators equipped with whips had appeared at the venue. They had been ostensibly hostile to the planned event. Nothing suggests that any reaction from the police had followed. The officers, who outnumbered counter-demonstrators several times, had neither warned the latter against obstructing the meeting nor attempted to secure a safe perimeter for the participants in Coming Out Day. As a result of police inaction, the applicant and other participants had been unable to find a place for the event at the square which had been occupied by counter demonstrators.

The police had not interfered immediately when the counter-demonstrators had started bullying the participants in Coming Out Day by verbally attacking and pushing them. The officers had not taken any steps to de-escalate the tension between

the two groups. They had stepped in belatedly, only when a real risk of inflicting bodily injuries had appeared.

The passive conduct of the police officers at the initial stage, the apparent lack of any preliminary measures (such as official public statements promoting tolerance, monitoring of the activity of homophobic groups, or arrangement a channel of communication with the organisers of the event) and subsequent arrests on account of the alleged administrative offences demonstrated that the police officers had been concerned only with the protection of public order during the event and that they had not considered it necessary to facilitate the meeting. The domestic courts which had examined the applicant's case had shared the same narrow view on the State's positive obligations under the Convention.

The Court was unsatisfied with such approach. The participants of a demonstration must be able to hold it without having to fear that they will be subjected to physical violence by their opponents. Genuine, effective freedom of peaceful assembly could not, therefore, be reduced to a mere duty on the part of the State not to interfere.

The State's compliance with their positive obligations had to be assessed in the light of the subject matter of the assembly. Those obligations had been of paramount importance in the present case, because the applicant as well as other participants in Coming Out Day had belonged to a minority. They held views that were unpopular in Russia and therefore were vulnerable to victimisation, particularly given the history of public hostility towards the LGBTI people in Russia. When assessed against that background, the discriminatory overtones of the incident and the level of vulnerability of the applicant, who had publicly positioned herself with the target group of the sexual prejudice, had been particularly apparent. Indeed, during the conflict, the homophobic connotation of the counter-demonstrators' speech and their conduct had been evident to the authorities. However, it had not been duly addressed.

Accordingly, the authorities had failed to duly facilitate the conduct of the planned event by restraining homophobic verbal attacks and physical pressure by counter-demonstrators. As a result of the passive attitude of the police authorities, the participants of the event fighting against discrimination on the grounds of sexual orientation had themselves become the victims of homophobic attacks which the authorities had not prevented or adequately managed.

*Conclusion*: violation (unanimously).

The Court also found, unanimously, a violation of Article 5 § 1 on account of the applicant's unlawful arrest; a violation of Article 11 in respect of the State's negative obligations on account of the applicant's prevention from participating in the event through her arrest; and no violation of Article 14 taken in conjunction with negative obligations under Article 11.

Article 41: EUR 10,000 in respect of non-pecuniary damage.

(See also *Identoba and Others v. Georgia*, 73235/12, 12 May 2015, Information Note 185; *Beizaras and Levickas v. Lithuania*, 41288/15, 14 January 2020, Information Note 236; Guide on Article 11 of the European Convention on Human Rights: Freedom of assembly and association and the Factsheet on Sexual orientation issues)

## ARTICLE 14

### Discrimination (Articles 2, 3 and/ et 8)

**Allegations of failure by the 33 Signatory States to the 2015 Paris Agreement to comply with their commitments in order to limit climate change: *case communicated***

**Allégations du non-respect par 33 États signataires de l'Accord de Paris de 2015 de leurs engagements afin de contenir le réchauffement climatique : *affaire communiquée***

*Duarte Agostinho and Others/et autres – Portugal and 32 other States/ et 32 autres États*, 39371/20, Communication 13.11.2020 [Section IV]

(See Article 1 above/ Voir l'article1 ci-dessus, page 10)

### Discrimination (Article 11)

**Police failure to ensure LGBTI event disrupted by counter-demonstrators proceeded peacefully, in breach of State's positive obligations: *violation***

**Manquement des forces de l'ordre à l'obligation positive de garantir la tenue paisible d'une manifestation LGBTI, perturbée par des contre-manifestants : *violation***

*Berkman – Russia/Russie*, 46712/15, Judgment/ Arrêt 1.12.2020 [Section III]

(See Article 11 above/Voir l'article 11 ci-dessus, page 33)

## Discrimination (Article 1 of Protocol No. 1)

**Calculation of state pensions for permanently resident non-citizens excluding periods of employment accrued in other former USSR states: *relinquishment in favour of the Grand Chamber***

**Calcul des pensions d'État pour des non-citoyens résidents permanents excluant les périodes de travail cumulées dans d'autres États de l'ex-URSS : *dessaisissement au profit de la Grande Chambre***

*Savickis and others/et autres – Latvia/Lettonie*, 49270/11, [Section V]

Traduction française du résumé – Printable version

The applicants were born in different territories of the Soviet Union and came to Latvia at a later date, when it was one of the Soviet Socialist Republics of the Soviet Union. Upon their retirement, the applicants' years of service outside Latvia were not included in the overall period of employment, for the purpose of calculating their pensions.

All but the third applicant brought unsuccessful complaints before the administrative court. All five applicants subsequently complained to the Constitutional Court, arguing that the law on state pensions was incompatible with the constitutional prohibition of discrimination and with relevant Convention rights. The Constitutional Court admitted that the legislator had established different principles in respect of Latvian nationals and "non-citizens", and that these two groups were treated differently when calculating the overall period of employment. However, it drew a clear distinction between *Andrejeva v. Latvia* [GC] (55707/00, 18 February 2009, Information Note 116) and the present case, as Ms Andrejeva had resided in the territory of Latvia over the disputed periods. Having examined, *inter alia*, the question of State continuity, and noting that Latvia was not the successor of the rights and obligations of the Soviet Union, it found that the difference had objective and reasonable grounds.

The applicants complain under Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property). They allege that the only reason for the refusal to include the periods of employment accrued outside Latvia during Soviet times was in fact based on the fact that they did not have Latvian nationality.

On 1 December 2020 a Chamber of the Court relinquished jurisdiction in favour of the Grand Chamber.

# ARTICLE 18

## Restriction for unauthorised purposes/ Restrictions dans un but non prévu

**Member of parliament prevented from discharging his duties as a result of his prolonged pre-trial detention, for the purpose of stifling pluralism: *violation***

**Parlementaire empêché d'exercer son mandat par son maintien prolongé en détention provisoire dans le but d'étouffer le pluralisme : *violation***

*Selahattin Demirtaş (no. 2) – Turkey/Turquie*, 14305/17, Judgment/Arrêt 22.12.2020 [GC]

(See Article 3 of Protocol No. 1 below/Voir l'article 3 du Protocole n° 1 ci-dessous, page 40)

# ARTICLE 33

## Inter-State application/Requête interétatique

**Lack of jurisdiction to examine inter-State application vindicating the rights of a legal entity which does not qualify as "non-governmental"**

**Défaut de compétence pour connaître d'une requête interétatique défendant les droits d'une personne morale ne pouvant être qualifiée de « non gouvernementale »**

*Slovenia/Slovénie – Croatia/Croatie*, 54155/16, Decision/Décision 18.11.2020 [GC]

Traduction française du résumé – Printable version

*Facts* – The Ljubljana Bank (*Ljubljanska Banka*) is a legal entity which was nationalised by the Slovenian State. It was not able to collect debts owed by debtors in Croatia, allegedly due to inaction on the part of the Croatian courts and other authorities, and through the imposition of various other legal obstacles.

In the earlier case of *Ljubljanska Banka D.D. v. Croatia* (dec.), the Court found that the bank in question was not a "non-governmental" organisation under Article 34 and therefore had no standing to lodge an individual complaint with the Court. The Slovenian Government subsequently lodged an inter-State application against Croatia with regard to the bank's inability to collect debts, complaining of multiple violations of the Convention.

*Law* – Article 33:

(a) *Whether the Court may examine an objection concerning compatibility with Article 33 at the admissibility stage*

On the one hand, an inter-State application could be rejected as inadmissible pursuant to Article 35 only for a failure to exhaust domestic remedies and to comply with the six-month time-limit: the other admissibility criteria were reserved for the post-admissibility stage to be examined on the merits of the case. On the other hand, the wording of Articles 33 and 35 could not be construed as preventing the Court from establishing already at the admissibility stage, under general principles governing the exercise of jurisdiction by international tribunals, whether it had any competence at all to deal with the matter laid before it. In other words, the Court could reject an inter-State application without declaring it admissible if it was clear, from the outset, that it was wholly unsubstantiated or otherwise lacked the requirements of a genuine allegation in the sense of Article 33 of the Convention. Such an approach was also consistent with the principle of procedural economy.

In the present case, the key preliminary issue raised – whether the Court might examine an inter-State application vindicating the rights of a legal entity which was *prima facie* not "non-governmental" – fell outside the scope of any of the admissibility criteria set out in Article 35. Firstly, the question could not be equated with the criterion of the compatibility of the application *ratione personae*. The Slovenian government was undoubtedly entitled to submit an inter-State application under Article 33; moreover, they did not have to be in any way – even directly – aggrieved by the alleged violations. It had also never been asserted that these alleged violations had not been attributable to the authorities of the respondent High Contracting Party. Furthermore, even if the key preliminary question raised by the case was directly linked to the subject-matter of the application, it could not be equated with the issue of compatibility *ratione materiae* either, since this admissibility criterion had always been understood as exclusively referring to the material contents of the rights guaranteed by the Convention and its Protocols.

They key issue was therefore a matter which went to the Court's jurisdiction within the meaning of Article 32, rather than a question of admissibility in the narrow sense of that term. In fact, the question whether the Convention as a human rights treaty can create fundamental rights for State-owned and State-run entities went beyond the boundaries of the Convention mechanism and touched upon a general issue of international law, especially in the light of the universally recognised specific nature of human rights treaties.

In sum, there was a genuine dispute as to the Court's jurisdiction within the meaning of Article 32 § 2, which could be adjudicated at any stage of the proceedings. The Court did not need to declare the present case admissible in order to be able to consider that key issue.

(b) *Whether Article 33 allows an applicant government to vindicate the rights of an organisation which is not "non-governmental" for the purposes of Article 34*

The applicant Government had suggested that different criteria should apply to individual and inter-State applications and that the only legal entities excluded from the benefit of the inter-State mechanism under Article 33 would be State institutions in the narrow sense of the word, forming a constituent part of the respective State and exercising public power on its behalf. Other legal entities which would not qualify as "non-governmental" under Article 34 would still be able to have their rights vindicated by a Contracting State by means of an inter-State application.

The Court was not persuaded by this approach for three reasons:

1. It was a well-established principle of interpretation of the Convention that it must be read as a whole and that its Articles should be construed in a way to promote internal consistency and harmony between its provisions. This applied not just to the substantive provisions of the Convention, but also to the jurisdictional and procedural provisions – in this case, to Articles 1, 33 and 34.

2. The Court took into account the specific nature of the Convention as an instrument for the effective protection of human rights, expressed in both Article 1 and the Convention's Preamble and universally recognised in international law. The logic of a human rights treaty was that the contracting states did not have any interest of their own and did not pursue their individual advantages. According to the very nature of the Convention, even in an inter-State case, it was always the individual, and not the State, who was directly or indirectly and primarily "injured" by a violation. In other words, only individuals, groups of individuals and legal entities which qualified as "non-governmental organisations" within the meaning of Article 34 could be rights-bearers under the Convention, but not a Contracting State or any other legal entity which had to be regarded as a governmental organisation.

3. Turning to the specific purpose of Article 33, there were two basic categories of inter-State

complaints: those pertaining to general issues with a view to protecting the public order of Europe, and those where the applicant State denounced violations by another Contracting Party of the basic human rights of one or more clearly identified or identifiable persons. The present application - aimed at protecting the interests of one concrete legal entity in precisely circumscribed sets of legal proceedings, and claiming just satisfaction on its behalf – belonged to the latter category. However, if just satisfaction was afforded in an inter-State case, it should always be for the benefit of individual victims and not for the benefit of the State. If the Court were to find a violation in a case brought by a State under Article 33 on behalf of an entity lacking sufficient institutional and operational independence from it, and awarded a sum of money as just satisfaction, then the eventual final beneficiary of the Court's judgment would be that same State and no one else.

The Court also recalled that the conditions of admissibility of various complaints before the Court might differ from those applicable before the European Union Courts. Therefore, the applicant Government's reference to their judgments could not have a dispositive bearing on the interpretation of Article 34.

In light of the foregoing, Article 33 did not allow an applicant Government to vindicate the rights of a legal entity which would not qualify as a "non-governmental organisation" and therefore would not be entitled to lodge an individual application under Article 34.

(c) *Whether the Court may examine the application on the basis of Article 33*

Concerning the bank's status under Article 34, the Court saw no reason to depart from its findings in *Ljubljanska Banka D.D. v Croatia* (dec.).

Even if Ljubljana Bank was a separate legal entity which did not participate in the exercise of governmental powers, it was owned by the Slovenian Sate, which had disposed of its assets as it had seen fit, and was controlled by a Slovenian government agency. It had neither customers nor active shareholders other than the State. Moreover, in *Ališić and Others v. Bosnia and Herzegovina et al*, the Court had held the Slovenian State responsible for the debt of the respective local branch of the Ljubljana Bank towards two of the applicants. Although those findings had been made in a different context, that was an important criterion in the context of determining whether a legal entity might be considered "non-governmental".

Ljubljana Bank did not enjoy sufficient institutional and operational independence from the State and was therefore not a "non-governmental organisation" for the purposes of Article 34. As such, it had no standing to lodge an individual application. Accordingly, Article 33 did not empower the Court to examine an inter-State application alleging a violation of any Convention right in respect of that legal entity.

*Conclusion*: lack of jurisdiction to take cognisance of the application.

(See also *Cyprus v. Turkey* (Just Satisfaction) [GC], 25781/94, 12 May 2014, Information Note 174; *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], 60642/08, 16 July 2014, Information Note 176; *Ljubljanska Banka D.D. v. Croatia* (dec.), 29003/07, 12 May 2015)

## ARTICLE 34

### Victim/Victime

**Lack of jurisdiction to examine inter-State application vindicating the rights of a legal entity**

**which does not qualify as "non-governmental"**

**Défaut de compétence pour connaître d'une requête interétatique défendant les droits d'une personne morale ne pouvant être qualifiée de « non gouvernementale »**

Slovenia/Slovénie – Croatia/Croatie, 54155/16, Decision/Décision 18.11.2020 [GC]

(See Article 33 above/Voir l'article 33 ci-dessus, page 35)

### Victim/Victime

**Allegations of failure by the 33 Signatory States to the 2015 Paris Agreement to comply with their commitments in order to limit climate change: *case communicated***

**Allégations du non-respect par 33 États signataires de l'Accord de Paris de 2015 de leurs engagements afin de contenir le réchauffement climatique : *affaire communiquée***

*Duarte Agostinho and Others/et autres – Portugal and 32 other States/ et 32 autres États*, 39371/20, Communication 13.11.2020 [Section IV]

(See Article 1 above/ Voir l'article1 ci-dessus, page 10)

## ARTICLE 35

### Article 35 § 2 (b)

#### Matter already submitted to another international procedure/Requête déjà soumise à une autre instance internationale

**Complaint to specialised Committee of the Inter-Parliamentary Union not similar to Convention mechanism: *preliminary objection dismissed***

**Plainte auprès d'un comité spécialisé de l'Union interparlementaire non similaire au mécanisme de la Convention : *exception préliminaire rejetée***

*Selahattin Demirtaş (no. 2) – Turkey/Turquie*, 14305/17, Judgment/Arrêt 22.12.2020 [GC]

(See Article 3 of Protocol No. 1 below/Voir l'article 3 du Protocole n° 1 ci-dessous, page 40)

## ARTICLE 1 OF PROTOCOL No. 1/ DU PROTOCOLE NO 1

#### Possessions/Biens

**Refusal to compensate the former owners or to reassign to them land that had been expropriated and subsequently privatised, after 30 years of use in the public interest: *inadmissible***

**Refus d'indemniser les anciens propriétaires ou de leur rétrocéder les terrains expropriés et par la suite privatisés, après 30 ans d'utilisation dans l'intérêt général : *irrecevable***

*SOCIETE ANONYME ÇİFTÇİLER and/et Ceyhun GÖKSUN and Others/et autres – Turkey/Turquie,* 62323/09 et 64965/09, Decision/Décision 24.11.2020 [Section II]

English translation of the summary – Version imprimable

*En fait* – Dans les années 1970, les terrains appartenant aux requérants furent expropriés dans le but de réaliser des équipements publics. Les indemnités correspondant à la valeur des biens furent versées aux intéressés. Puis dans les années 2000, les autorités décidèrent de privatiser un terrain public incluant partiellement les biens qui avaient appartenus aux requérants. Le montant de la vente fut affecté à la construction de nouveaux équipements routiers.

Les requérants initièrent plusieurs actions pour se voir rétrocéder le bien à des conditions favorables et/ou verser la plus-value réalisée par la vente. Les tribunaux rejetèrent ces actions au motif que le droit national n'imposait pas à l'administration l'obligation de restituer les biens expropriés qui après avoir été utilisé conformément au motif d'expropriation n'étaient plus affectés à celui-ci.

*En droit* – Article 1 du Protocole no 1 :

Les requérants fondent leurs prétentions sur deux moyens qui, tout en étant proches en apparence, soulèvent des questions juridiques nettement distinctes.

Le premier moyen concerne la proportionnalité d'une expropriation lorsque le bien exproprié ne reçoit pas pendant une longue période la destination d'utilité publique qui avait légitimée la privation de propriété.

La Cour a déjà indiqué dans sa jurisprudence, dont les arrêts *Motais de Narbonne c. France*, 48161/99, 2 juillet 2002 et *Beneficio Cappella Paolini c. Saint-Marin*, 40786/98, 13 juillet 2004, Note d'information 66, qu'était constitutif d'une violation de l'article 1 du Protocole no 1, l'écoulement d'un laps de temps notable entre la prise d'une décision portant expropriation d'un bien et la réalisation concrète du projet d'utilité publique fondant l'expropriation. Dans un tel cas, l'expropriation peut avoir pour effet de priver l'individu concerné d'une plus-value générée par le bien en cause. Si cette privation spécifique ne repose pas sur une raison légitime tenant de l'utilité publique, l'individu concerné peut subir une charge additionnelle, incompatible avec l'article 1 du Protocole no 1. Dans ces affaires, les terrains expropriés n'avaient jamais été utilisés malgré l'écoulement d'une période relativement longue et c'est ce défaut d'utilisation qui avait eu pour effet de priver les anciens propriétaires de la plus-value que pouvait générer les biens. Les requérants avaient perçu des indemnités qui correspondaient à la valeur de leur bien au moment de l'expropriation, mais qui étaient inférieures à celles qui auraient pu être perçues si les expropriations avaient eu lieu au moment où les équipements allaient être effectivement réalisés.

De telles conditions sont totalement absentes dans le cas d'espèce. En effet, les équipements publics envisagés ont commencé à être réalisés sur les biens en cause sans délai après leur expropriation. Les requérants ont donc obtenu les indemnités correspondant à la valeur de leurs biens au moment où ceux-ci ont été effectivement affectés à la réalisation de l'intérêt public ayant servi de fondement à leur expropriation, de sorte que l'on ne saurait faire état d'une quelconque perte de plus-value entre le moment de l'expropriation et celui de l'affectation, ces deux moments étant les mêmes. Les requérants ne peuvent donc passer pour avoir supporté une charge ayant rompu le juste équilibre.

La circonstance que le bien ait cessé de recevoir la destination prévue après trente ans d'utilisation n'a aucune incidence sur cette question. En effet, l'article 1 du Protocole no 1 ne prévoit pas une obligation de restitution ou d'indemnisation au bénéfice des anciens propriétaires lorsqu'un bien régulièrement exproprié cesse d'être utilisé dans l'intérêt général après l'avoir été pendant un certain temps. Cela est d'autant plus vrai lorsque la période d'utilisation est aussi longue qu'en l'espèce.

Cependant, même si la Convention n'impose pas une telle obligation, les autorités nationales demeurent libres de prévoir dans leur réglementation interne un droit à restitution des biens expropriés et de l'assortir des conditions qu'elles estiment adéquates. Un tel droit peut, dans certaines circonstances, constituer un intérêt patrimonial protégé par la Convention. Le second moyen des requérants consiste précisément à affirmer que le droit interne leur avait octroyé un tel droit, lequel constituerait selon eux une « espérance légitime » au sens de la jurisprudence *Kopecký c. Slovaquie* [GC], 44912/98, 28 septembre 2004, Note d'information 67.

À l'époque des faits si le code d'expropriation prévoyait une procédure de restitution des biens expropriés ne recevant plus la destination prévue, la jurisprudence constante n'y voyait pas une obligation pour l'administration expropriante mais simplement une possibilité.

Et même si la jurisprudence aurait été fluctuante, la Cour ne peut conclure à l'existence d'une espérance légitime, dont la reconnaissance aurait nécessité une jurisprudence constante posant le principe d'une obligation de restitution. À cet égard, une espérance légitime doit reposer sur une jurisprudence établie et l'on ne peut conclure à l'existence d'une espérance légitime lorsqu'il y a controverse sur la façon dont le droit interne doit être interprété et appliqué et que les arguments du requérant à cet égard sont en définitive rejetés par les juridictions nationales.

Dans ces conditions, dans le contexte de leur demandes de rétrocession ou d'indemnisation, les requérants n'avaient pas un « bien » au sens de la première phrase de l'article 1 du Protocole no 1. Par conséquent, les garanties de cette disposition ne trouvent pas à s'appliquer en l'espèce.

*Conclusion*: irrecevable (incompatibilité *ratione materiae*).

(Voir aussi *Malhous c. République tchèque* (déc.) [GC], 33071/96, 13 décembre 2000, Note d'information 26 ; *Radomilja et autres c. Croatie* [GC], 37685/10 et 22768/12, 20 mars 2018, Note d'information 206).

## Positive obligations/Obligations positives

**Allegations of failure by the 33 Signatory States to the 2015 Paris Agreement to comply with their commitments in order to limit climate change: *case communicated***

**Allégations du non-respect par 33 États signataires de l'Accord de Paris de 2015 de leurs engagements afin de contenir le réchauffement climatique : *affaire communiquée***

*Duarte Agostinho and Others/et autres – Portugal and 32 other States/ et 32 autres États,* 39371/20, Communication 13.11.2020 [Section IV]

(See Article 1 above/ Voir l'article1 ci-dessus, page 10)

# ARTICLE 2 OF PROTOCOL No. 1/ DU PROTOCOLE N° 1

## Right to education/Droit à l'instruction

**Proportionate ban, reviewed by domestic court, on detainee who was suspected of terrorism taking university exams during state of emergency: *inadmissible***

**Interdiction proportionnée, contrôlée par le juge interne, pour une personne soupçonnée de terrorisme de passer des examens universitaires en situation d'état d'urgence : *irrecevable***

*Uzun – Turkey/Turquie*, 37866/18, Decision/ Décision 10.11.2020 [Section II]

Traduction française du résumé – Printable version

Facts – The applicant, who at the relevant time was in pre-trial detention on suspicion of belonging to a terrorist organisation, had been enrolled in a higher-education distance-learning programme. Following declaration of a state of emergency in 2016, legislative decrees were passed which *inter alia* prohibited prisoners detained or convicted in connection with a terrorist offence from sitting any kind of examination. The applicant appealed unsuccessfully.

Law – Article 2 of Protocol No. 1: The ban on the applicant being able to sit his university exams had represented an interference with his right to education under Article 2 of Protocol No. 1. It had had a legal basis and pursued the legitimate aims of maintaining order and security in prisons. The Court had to determine whether the interference had been "necessary", with regard to the normal and reasonable requirements of detention and to the breadth of the margin of appreciation afforded

to the national authorities in regulating prisoners' access to education.

The restriction in the present case had been a limited one, which had lasted just under two years. The provision in question had imposed a restriction solely for the duration of the state of emergency. As the state of emergency had been lifted in July 2018, the restriction in question had ceased to apply on that date and the applicant had been authorised to sit his examinations.

Although the restriction had applied automatically, it had not been a general prohibition imposed on all detainees and convicted prisoners, irrespective of the nature of the offence with which they had been charged. The restriction had concerned only one specific category of prisoners, namely those who had been detained or convicted in respect of terrorist offences. In this respect, the present case was to be distinguished from cases concerning prohibitions which affected a group of people generally, automatically and indiscriminately, based solely on the fact that they were serving a prison sentence, irrespective of the length of the sentence and irrespective of their individual circumstances (see *Hirst v. the United Kingdom (no. 2)* [GC], 74025/01, 6 October 2005, Information Note 79). The legislature had made the application of the measure conditional on the nature of the offence committed (*Scoppola v. Italy (no. 3)* [GC], 126/05, 22 May 2012, Information Note 152).

The contested restriction had also been reviewed by the Constitutional Court in the context of numerous individual applications, including that of the applicant. The Constitutional Court had carefully examined the compatibility of this measure with the Constitution and the Convention. To that end, it had broadly based its analysis on the principles laid down by the Court in its case-law and had examined the proportionality of the contested interference in the light of the criteria established by its case-law (see *Mehmet Reşit Arslan and Orhan Bingöl v. Turkey*, 47121/06 and 2 others, 18 June 2019, Information Note 230); it had provided an explanation in its decision, with extended reasoning. Although the Constitutional Court's reasoning had not shown that the applicant's personal situation had been specifically taken into account, this might be accepted in the light of the background to the adoption of the restriction in question. It thus had taken into consideration the sudden and exponential increase, after the attempted *coup d'état*, of the number of persons placed in detention on terrorism-related grounds, an increase which had been accompanied by a decrease in the numbers of prison staff responsible for supervising prisoners. This extraordinary situation might have rendered it difficult in practice to organise participation of the applicant and other detainees in educational programmes they had been enrolled in.

Those were relevant and acceptable considerations, including with regard to the applicant's personal circumstances, which had followed logically from the principle that the State must strike a balance between, on the one hand, the educational needs of those under its jurisdiction and, on the other, its limited capacity to accommodate them.

The contested restriction had to also be assessed in the context of higher education. The State's margin of appreciation in this domain increased with the level of education, in inverse proportion to the importance of that education for those concerned and for society at large.

Lastly, it had not been established that this period of restriction had constituted a significant obstacle to the applicant's ability to complete his studies. Nor had he alleged that he had been obliged to complete his university studies within a given period of time. The applicant had been able to re-enrol in the university and sit his exams. He continued his studies, apparently without any further hindrance.

Accordingly, the contested restriction had been neither arbitrary nor unreasonable, and had been necessary and proportionate.

*Conclusion*: inadmissible (manifestly ill-founded).

(See *Velyo Velev v. Bulgaria*, 16032/07, 27 May 2014, Information Note 174; see also Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights - Right to education and Guide on the case-law of the European Convention of Human Rights – Prisoners' rights)

## ARTICLE 3 OF PROTOCOL No. 1/ DU PROTOCOLE N° 1

### Free expression of the opinion of the people/Libre expression de l'opinion du peuple

**Member of parliament excluded from parliamentary proceedings as a result of his prolonged pre-trial detention without sufficient justification: *violation***

**Député tenu à l'écart des travaux parlementaires par son maintien prolongé en détention provisoire sans justification suffisante : *violation***

*Selahattin Demirtaş (no. 2) – Turkey/Turquie*, 14305/17, Judgment/Arrêt 22.12.2020 [GC]

Traduction française du résumé – Printable version

*Facts* – The applicant was an elected member of the National Assembly and one of the co-chairs of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party. On 20 May 2016, an amendment to the Constitution was adopted whereby parliamentary immunity was lifted in all cases where requests for its lifting had been transmitted to the National Assembly prior to the date of adoption of the amendment. This reform, encouraged by the President of Turkey, had its origin in clashes in Syria between Daesh and the forces of an organisation with links to the PKK, the occurrence of serious violence in Turkey in 2014 and 2015, in the wake of the breakdown of negotiations aimed at resolving the "Kurdish question". The applicant, active in his speeches and statements on these events, was one of 154 parliamentarians (including 55 HDP members) affected by the constitutional amendment. In November 2016 he was arrested on suspicion of membership of an armed terrorist organisation and inciting others to commit a criminal offence. Further to an additional investigation (concerning the afore-noted outbreak of violence), the applicant remains in detention awaiting trial. His parliamentary mandate expired on 24 June 2018.

In a judgment of 20 November 2018 (see Information Note 223) a Chamber of the Court held in particular, that there had been a violation of Articles 5 § 3, 18 (in conjunction with Article 5 § 3) and Article 3 of Protocol No. 1. It found that there had been no violation of Article 5 §§ 1 and 4 and did not consider it necessary to examine the case under Article 10. The case was referred to the Grand Chamber at the request of both parties.

*Law*

(a) *Preliminary objection under Article 35 § 2 (b)*

The Court had to examine, for the first time since the Commission decision of *Lukanov v. Bulgaria*, whether a complaint to the Committee on the Human Rights of Parliamentarians of the Inter-Parliamentary Union (the IPU Committee) might be regarded as "another procedure of international investigation or settlement". This term denoted institutions and procedures set up by States, thus excluding non-governmental organisations. However, even if a given mechanism had not been set up by a non-governmental organisation, that did not automatically mean that it qualified as such as "another procedure". In that context, the main purpose of the Court's examination was to determine whether the procedure before that body might be treated as similar, in its procedural aspects and potential effects, to the right of individual application provided for in Article 34 and whether it satisfied the following criteria. The relevant mechanism had to be public, international and judicial or quasi-judicial. The latter point necessarily implied that the examination carried out by the body in question was clearly defined in scope and limited to certain rights and standards based on a legal instrument or a "framework" by which States had authorised the body to consider and determine complaints brought against them. This was especially relevant in the context of analysing the similarities between such a mechanism and the Court. In the absence of a legal instrument that effectively delimited the powers of a particular body, it would be more difficult for the Court to ascertain the nature and functions of that body and the member States' obligations. The mechanism in question had to further afford the institutional and procedural safeguards, such as independence and impartiality, in accordance with Article 6, and an adversarial procedure enabling each party to be informed of and to reply to the other party's submissions. The parties also had to be informed of the measures and decisions taken. A body of this kind had to respect the parties' right to participate in the proceedings, for example by submitting observations. In addition, the body had to respond to individual applications by making its decisions public and stating reasons for them. Furthermore, it had to be able to determine the State's responsibility under the legal instrument on which its examination was based and to afford legal redress capable of putting an end to the alleged violation.

It was not the role of the IPU Committee to adjudicate on disputes between an individual and a State. As per its Rules and Practices, the Committee did not seek to review the observance of a State's obligations under a specific legal instrument, but rather to prevent possible violations, put an end to ongoing ones, and/or promote Sate action to offer effective redress for violations by fostering a dialogue with the authorities. The Committee could not therefore be said to offer a judicial or quasi-judicial procedure similar to the one set up by the Convention.

*Conclusion*: preliminary objection dismissed.

(b) *Article 10*

There had been an interference with the applicant's right to freedom of expression through a combination of measures, namely the lifting of the applicant's parliamentary immunity, his initial and continued pre-trial detention, and the criminal proceedings brought against him on the basis of evidence comprising his political speeches. The interference also had a basis in law which was accessible: namely, the constitutional amendment and provisions of the Criminal code relating to terrorism charges. The question was whether, in

particular, the interpretation and application of domestic law had been foreseeable at the time of the speeches by the applicant that had led to his prosecution.

(i) Parliamentary immunity

Article 83 of the Constitution conferred two types of parliamentary immunity on members of parliament: non-liability and inviolability. The former protected their freedom of expression in so far as they could not be subjected to judicial proceedings on account of votes cast and views expressed within the National Assembly, or their repetition or dissemination outside the Assembly, unless the Assembly decided otherwise at a sitting held on proposal by the Bureau. Non-liability was absolute, permitted of no exception, did not allow any investigative measures, and continued to protect members of parliament even after the end of their term of office. Repeating a political speech outside the National Assembly could not be construed as being limited to repeating the same words that were used in Parliament.

The impugned constitutional amendment had not amended Article 83, in so far as it concerned non-liability. The members of parliament affected by the amendment had continued to enjoy legal protection on that account. It had therefore been the task of the national authorities, and in particular the domestic courts, to determine first of all whether the applicant's political speeches had been covered by that parliamentary non-liability. The applicant had argued to this effect from the start of his pre-trial. However, the Court was struck by the lack of analysis of the applicant's argument on this point by the domestic courts at all levels.

Even assuming that the impugned speeches had not been covered by non-liability, the constitutional amendment raised an issue in itself, in terms of foreseeability. Parliamentary inviolability shielded elected representatives from any arrest, detention or prosecution during their term of office without the consent of the National Assembly. However, following the amendment, political statements by members of parliament had become punishable under criminal law, without availability of the safeguards against applications to lift their immunity provided for under Articles 83 and 85 of the Constitution. In particular, the National Assembly was no longer required to perform an individual assessment of the situation of each of the members of parliament concerned. While it had maintained the regime of immunity, it had, at the same time, made it inapplicable to certain identifiable members of parliament on the basis of general and objective wording. The Court therefore fully subscribed to the Venice Commission's clear finding that this one-off unprecedented *ad homines* amendment had been aimed expressly at specific statements by members of parliament, particularly those of the opposition, and thus had been a "misuse of the constitutional amendment procedure".

A member of parliament could not reasonably have expected that such a procedure would be introduced during their term of office, thereby undermining the freedom of expression of members of the national assembly. Having regard to the wording of Article 83 and its interpretation (or lack thereof) by the national courts, the interference had not been foreseeable.

(ii) The terrorism-related offences

The applicant's pre-trial detention had been ordered and extended on the basis of his speeches for terrorism-related offences, in particular for forming or leading an armed terrorist organisation and membership of such an organisation (Article 314 of the Criminal Code). The Court was mindful of the difficulties linked to preventing terrorism and formulating anti-terrorism criminal laws. Member States inevitably had recourse to somewhat general wording, the application of which depended on its practical interpretation by the judicial authorities. When interpreting the law in that context, the national courts had to give the individual adequate protection against arbitrary interferences.

The Criminal Code did not define the elements of the offences, which had been set out in the case-law of the Court of Cassation. In the present case, the national judicial authorities had adopted a broad interpretation of the offences. The political statements in which the applicant had expressed his opposition to certain government policies or merely mentioned that he had taken part in the Democratic Society Congress – a lawful organisation – had been held sufficient to constitute acts capable of establishing an active link between the applicant and an armed organisation. The national courts had not taken into account the requirements developed by the Court of Cassation, including the "continuity, diversity and intensity" of the applicant's acts, or whether he had committed offences within the hierarchical structure of the terrorist organisation in question. The range of acts that might have justified the applicant's pre-trial detention in connection with the serious offences in question were so broad that the content of the offences punishable under Article 314, coupled with its interpretation by the domestic courts, did not afford adequate protection against arbitrary interference by the national authorities. Such a broad interpretation could not be justified where it entailed equating the exercise of the right to freedom

of expression with belonging to, forming or leading an armed terrorist organisation, in the absence of any concrete evidence of such a link.

*Conclusion*: violation (sixteen votes to one).

(c) *Article 3 of Protocol No. 1*

(i) General principles

The right to free elections was not restricted simply to the opportunity to take part in parliamentary elections; the person concerned was also entitled, once elected, to sit as a member of parliament. The rule of parliamentary immunity was crucial to this guarantee. The Court had yet to rule on a complaint under Article 3 of Protocol No. 1 concerning the effects of the pre-trial detention of an elected member of parliament on the performance of their parliament duties. The imposition of a measure depriving a member of parliament or a candidate in parliamentary elections of his liberty did not automatically constitute a violation of that Article. Nevertheless, in view of the importance in a democratic society of the right to liberty and security of a member of parliament, the domestic courts had to show, while exercising their discretion, that in ordering a person's initial and/or continued pre-trial detention, they had weighed up all those relevant interests, including the freedom of expression of political opinions by the members of parliament concerned. An important element in this balancing exercise was whether the charges had a political basis. A remedy had to be offered by which a member of parliament could effectively challenge the measure and have their complaints examined on the merits. The Court's role was then to review the decisions of the national courts from the standpoint of the Convention, without taking the place of the relevant domestic authorities.

(ii) Application to the case

As a result of his pre-trial detention, the applicant had been prevented from taking part in his activities of the legislature for more than one and a half years. Although he had retained his seat and could put questions in writing, the exercise of his rights under Article 3 of Protocol No. 1 had been interfered with.

The interdependence between Article 10 and Article 3 of Protocol No. 1 was particularly pronounced in the case of democratically elected representatives who had been kept in pre-trial detention for expressing their political opinions. It was particularly important to protect the freedom of expression of representatives of the people, especially of members of the opposition. The Court would always conduct a strict review to verify that freedom of expression remained secured, while keeping in mind its possible limits, notably to prevent direct or indirect calls for violence. From this standpoint, the Court considered that where the detention of a member of parliament could not be deemed compatible with the requirements of Article 10 (as in the present case), it would also breach Article 3 of Protocol No. 1. Moreover, the Court's finding that there had been no reasonable suspicion that the applicant had committed an offence, as required by Article 5 § 1 (see below), was equally relevant for the purposes of Article 3 of Protocol No. 1. While, as a general rule, the duration of pre-trial detention must be as short as possible, those considerations applied *a fortiori* to the detention of members of parliament, who represented their electorate, drew attention to their concerns and defended their interests.

If a State provided for parliamentary immunity from prosecution and from deprivation of liberty, the domestic courts had to first ensure that the member of parliament concerned had not been entitled to parliamentary immunity for the acts of which they had been accused. In the present case, however, and as seen, the domestic courts had not carried out such an examination, thus failing to comply with their procedural obligations under Article 3 of Protocol No. 1. Nor had it been shown that they had carried out the requisite balancing exercise, weighing up the competing interests. The Constitutional Court had not examined whether the offences in question had been directly linked to the applicant's political activities. The judicial authorities had not effectively taken into account the fact that the applicant was not only a member of parliament but also one of the leaders of the political opposition, whose performance of his parliamentary duties had called for a high level of protection. Furthermore, it had not been explained why the imposition of an alternative measure to detention would have been insufficient in the applicant's case. The fact that it had been effectively impossible for the applicant to take part in the activities of the National Assembly on account of his pre-trial detention constituted an unjustified interference with the free expression of the opinion of the people and with his own right to be elected and to sit in Parliament. The detention was therefore incompatible with the very essence of the right under Article 3 of Protocol No. 1.

*Conclusion*: violation (unanimously).

(d) *Article 18 (in conjunction with Article 5)*

The Court had to examine whether the applicant's pre-trial detention, in the absence of reasonable suspicion and in breach of Article 5, had in fact pursued an ulterior purpose. The Court noted the following factors: the measures to lift parliamentary immunity had only been taken after elections

in which the ruling part had lost its majority in the National Assembly; the only ones who had actually been affected by the constitutional amendment had been members of the opposition parties; the applicant's detention had not been an isolated example, but on the contrary, seemed to follow a certain pattern; the timing of the applicant's detention had meant that he had been deprived of his liberty in particular during two crucial campaigns (a referendum on significant constitutional reform and a presidential election); the circumstances surrounding the applicant's return to pre-trial detention, in which an order was made in relation to a separate criminal investigation on the day of his release; and findings of other Council of Europe bodies on the independence of the judicial system in Turkey and the tense political climate which had created an environment capable of influencing certain national court decisions – especially during the state of emergency, when hundreds of judges were dismissed, and particularly in relation to criminal proceedings instituted against dissenters. These factors enabled the Court to conclude that the purposes put forward by the authorities for the applicant's pre-trial detention had merely been a cover for an ulterior motive: namely, that of stifling pluralism and limiting freedom of political debate.

*Conclusion*: violation (sixteen votes to one).

The Court also held, respectively by fifteen votes to two and sixteen votes to one, that there had been violations of Article 5 §§ 1 and 3, on account of a lack of reasonable suspicion that the applicant had committed a criminal offence necessitating his initial and continued pre-trial detention. Further, it considered that a compensation claim under Article 141 § 1 (a) and (d) of the Code of Criminal Procedure could not be regarded as an effective remedy in respect of either the alleged lack of reasonable suspicion that an individual has committed an offence, or the alleged lack of relevant and sufficient reasons to justify pre-trial detention for the purposes of Article 5 §§ 1 and 3. The Court also found, by sixteen votes to one, that there had been no violation of Article 5 § 4 regarding the compliance with the "speediness" requirement by the Constitutional Court, in line with the reasoning of the Chamber and in light of the specific circumstances of the case.

Article 46: Respondent State to take all necessary measures to secure the applicant's immediate release.

Article 41: EUR 3,500 in respect of pecuniary damage; EUR 25,000 in respect of non-pecuniary damage.

(See also *Lukanov v. Bulgaria*, 21915/93, Commission decision of 12 January 1995)

## PROTOCOL No. 16/PROTOCOLE N° 16

### Advisory opinions/Avis consultatifs

**The Supreme Court of Slovakia has asked the European Court of Human Rights to provide an advisory opinion on the independence of the current mechanism for investigating complaints against the police, a question at issue in a case which is still ongoing at the domestic level.**

**La Cour suprême slovaque a adressé à la Cour européenne des droits de l'homme une demande d'avis consultatif sur l'indépendance du mécanisme en vigueur pour l'examen des plaintes contre la police, en cause dans une affaire actuellement pendante en Slovaquie**

*Advisory opinion requested by the Supreme Court of Slovakia/Avis consultatif demandé par la Cour suprême slovaque, P16-2020/001*

Press release – Communiqué de presse

**The Supreme Administrative Court of Lithuania has asked the European Court of Human Rights to provide an advisory opinion on impeachment legislation, a question which is at issue in a case currently pending in Lithuania.**

**La Cour administrative suprême de Lituanie a adressé à la Cour européenne des droits de l'homme une demande d'avis consultatif sur la législation relative à l'*impeachment*, en cause dans une affaire actuellement pendante en Lituanie.**

*Advisory opinion requested by the Supreme Administrative Court of Lithuania/Avis consultatif demandé par la Cour administrative suprême de Lituanie, P16-2020/002*

Press release – Communiqué de presse

## GRAND CHAMBER (PENDING)/ GRANDE CHAMBRE (EN COURS)

### Relinquishment/Dessaisissement

*Savickis and others/et autres – Latvia/Lettonie*, 49270/11, [Section V]

(See Article 14 above/Voir l'article 14 ci-dessus, page 35)

# OTHER JURISDICTIONS/ AUTRES JURIDICTIONS

## European Union – Court of Justice (CJEU) and General Court/Union européenne – Cour de justice (CJUE) et Tribunal

**A national collective agreement may reserve to mothers alone an additional maternity leave**

**Une convention collective nationale peut réserver aux seules mères un congé supplémentaire de maternité**

*Syndicat CFTC – CPAM de Moselle and Others*, C-463/19, Judgment/Arrêt 18.11.2020

Press release – Communiqué de presse

**In the context of the civil war in Syria, there is a strong presumption that refusal to perform military service there is connected to a reason which may give rise to entitlement to recognition as a refugee**

**Dans le contexte de la guerre civile en Syrie, il existe une forte présomption que le refus d'y effectuer le service militaire est lié un à un motif qui peut ouvrir droit à la reconnaissance de la qualité de réfugié**

*EZ – Bundesrepublik Deutschland*, C-238/19, Judgment/Arrêt 19.11.2020

Press release – Communiqué de presse

## Inter-American Court of Human Rights (IACtHR)/Cour interaméricaine des droits de l'homme

**States' obligations regarding work conditions and dangerous activities**

**Obligations des États concernant les conditions de travail et les activités dangereuses**

*Case of the Employees of the Santo Antônio de Jesus Fireworks Factory and their family members – Brazil/ Brésil,* Series C No. 407/Série C n° 407, Judgment/ Arrêt 15.07.2020

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

[Le présent résumé a été fourni gracieusement (en anglais uniquement) par le Secrétariat de la Cour interaméricaine des droits de l'homme. Il porte uniquement sur les questions de fond et de réparation traitées dans l'arrêt. Un résumé officiel plus détaillé (en espagnol uniquement) est disponible sur le site web de cette cour : www.corteidh.or.cr.]

*Facts* – The events of the case took place in a fireworks factory located in the state of Bahia, Brazil. The vast majority of the workers were afro-Brazilian women and girls living in poverty and with low level of education. They had been informally hired and were on very low wages. Additionally, several children were working in the factory even though Brazilian Law prohibited child labour in this kind of activity.

On 11 December 1998 the factory exploded. Sixty people died and six were injured. Among those dead were fifty-nine women – nineteen of whom were girls – and one boy. Among the survivors were three adult women, two boys and one girl. Four of the deceased women were pregnant. None of the survivors received adequate medical treatment to recover from the accident.

Even though the Ministry of Army and the municipality had authorised the factory to operate, no inspection had been conducted by the state authorities to supervise the working conditions, despite the dangerous activities that were carried out in the factory and the risks involved.

*Law* –

(a) Articles 4(1) (right to life), 5(1) (right to humane treatment), 19 (rights of the child) in conjunction with article 1(1) (Obligation to respect and guarantee rights) of the American Convention on Human Rights. The Court established that states must regulate, supervise and inspect dangerous activities which involve significant risks to the life and integrity of people within their jurisdiction, as a means to protect and preserve these rights. (The judgment refers to ECHR case-law, according to which, the obligation to safeguard the right to life implies the duty of the State to establish a legal framework designed to provide effective dissuasion against threats to such a right, and that this obligation applies indisputably in the context of dangerous activities. See Öneryildiz v. Turkey, no. 48939/99). The Court found that, in this case, the State had classified the manufacture of fireworks as a dangerous activity and, in fact, had regulated the conditions under which it should be carried out. Thus, the manufacture of fireworks required prior registration, strict permits and inspection. These permits were granted. Despite this, the State had not carried out any inspection before the explosion. The Court found that this negligence by the State led to a violation of Article 4 of the American Convention, the right to life, applicable to the sixty people who lost their lives, and Article 5 of the Convention, the right to humane treatment, for the six injured survivors.

*Conclusion*: violation (unanimously).

(b) Articles 26 (progressive development), 19 (rights of the child), 24 (right to equal protection) and 1(1) (Obligation to respect and guarantee rights without any discrimination) of the ACHR. The Court concluded that the State had the obligation to ensure working conditions that would guarantee safety, health and hygiene and prevent employment injuries, which is especially relevant when it comes to activities that involve significant risks. The Court found that the employees of the fireworks factory neither received instructions on safety measures nor were provided with protective equipment. It also found that they were working under precarious, unhealthy and unsafe conditions that did not meet the minimum safety standards, nor would prevent or avoid workplace accidents.

The Court also found that several children were working in the factory to the extent that nineteen girls and one boy had died as a result of the accident. Among the survivors, one was a girl and two were boys. It recalled that, under the American Convention and the Convention on the Rights of the Child, children are entitled to special protection measures, including protection from work that may interfere with their education or affect their health and development.

Finally, the Court established that the victims were involved in patterns of structural and intersectional discrimination, since they were in a situation of structural poverty, and the very vast majority of them were Afro-Brazilian women and girls, some of them pregnant, who had no other economic alternative. The Court concluded that the confluence of these factors had allowed the installation and operation of the factory, without inspection of either the dangerous activity or the health and safety conditions in the workplace, and had led the victims to accept a job that put their lives and their integrity and those of their children at risk. Furthermore, the Court concluded that the State had not adopted measures aimed at guaranteeing material equality regarding their right to work.

*Conclusion*: violation (six votes to one).

(c) Article 8 (right to a fair trial) and 25 (right to judicial protection) of the ACHR. The Court found that, following the explosion, criminal and administrative proceedings had been initiated, as well as several civil and labour proceedings. However, at the time of the judgement, only the administrative proceedings and some of the civil and labour proceedings had been concluded, yet they had not been completed executed. The other complaints were still pending after more than eighteen years since the events. The Court concluded that the judicial proceedings had violated the applicants' right to a fair trial and the right to judicial protection.

*Conclusion*: violation (unanimously).

(d) Articles 5(1) (right to humane treatment) of the ACHR. The Court found the State responsible for the violation of the right to human treatment of one hundred family members of those who died in the explosion and those who survived it.

*Conclusion*: violation (unanimously).

(e) Reparations – The Court established that its judgment constitutes, in itself, a form of reparation. Additionally, the Court ordered the State: (i) to continue the criminal proceedings, civil compensation proceedings and labour proceedings with due diligence and within a reasonable timeframe; (ii) to provide medical, psychological and psychiatric treatment as required by the victims; (iii) to publish the official summary of the Judgment in the Official Gazette and in a newspaper with wide national circulation, and the full Judgment on an official website of the State of Bahia and the Federal Government, and to produce a radio and television broadcast presenting the summary of the Judgment; (iv) to carry out an act of recognition of international responsibility; (v) to implement a systematic policy of periodic inspections of fireworks factories; (vi) to design and implement a socio-economic development programme for the population of Santo Antônio de Jesus; and (vii) to pay pecuniary and non-pecuniary damages, as well as costs and expenses.

## COURT NEWS/DERNIÈRES NOUVELLES DE LA COUR

### Online book launch event / Lancement de livre en ligne

An online book launch event (Vienna and Strasbourg) of the updated FRA and CoE Handbook on European law relating to aslyum, borders and immigration (2020 Edition) (see below) took place on 17 December 2020. Keynote speeches were given by Gabriele Kucsko-Stadlmayer, Judge of the European Court of Human Rights and Lars Bay Larsen, Judge of the Court of Justice of the European Union.

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Un événement de lancement de livre en ligne (Vienne et Strasbourg) du manuel actualisé de la FRA et du CdE sur le droit européen relatif à l'asile, aux frontières et à l'immigration (édition 2020) (voir ci-dessous) a eu lieu le 17 décembre 2020. Des discours liminaires ont été prononcés par Gabriele Kucsko-Stadlmayer, juge de la Cour européenne

des droits de l'homme et Lars Bay Larsen, juge à la Cour de justice de l'Union européenne.

## RECENT PUBLICATIONS/ PUBLICATIONS RÉCENTES

### Joint publication ECHR-FRA / Publication conjointe CEDH-FRA

The Court and FRA (European Union Agency for Fundamental Rights) have released an update of their Handbook on European law relating to asylum, borders and immigration in English, French, German and Italian.


La Cour et la FRA ont publié une version mise à jour du Manuel de droit européen en matière d'asile, de frontières et d'immigration en anglais, français, allemand et italien.

### Factsheet Independence and impartiality of the judicial system / Fiche thématique sur l'indépendance et l'impartialité du système judiciaire

The new thematic factsheet Independence and impartiality of the judicial system has been prepared and published by the Council of Europe Department for the Execution of Judgments of ECHR. It sets out examples of measures adopted and reported by States in the context of the execution of the European Court's judgments with a view to safeguarding and reinforcing the independence and impartiality of the national judicial systems.

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La nouvelle fiche thématique sur l'Indépendance et l'impartialité du système judiciaire a été préparée et publiée par le Service de l'exécution des arrêts de la CEDH du Conseil de l'Europe. Elle présente des exemples de mesures adoptées et rapportées par les États dans le cadre de l'exécution des arrêts de la Cour européenne en vue de garantir et de renforcer l'indépendance et l'impartialité des systèmes judiciaires nationaux.

### Joint Law Report 2019 by/par AfCHPR, ECHR and/et IACHR

This report is the product of the cooperation of the African Court on Human and Peoples' Rights, the European Court of Human Rights and the Inter-American Court of Human Rights that have built a solid judicial dialogue.


Publié en anglais, ce rapport est le fruit de la coopération de la Cour africaine des droits de l'homme et des peuples, de la Cour européenne des droits de l'homme et de la Cour interaméricaine des droits de l'homme, qui ont établi un solide dialogue judiciaire.

### Case-Law Guides: new translations/Guides sur la jurisprudence: nouvelles traductions

The Court has recently published translations into **Arabic** (Case-law guide on Prisoners' rights), **Armenian** (Case-law guides on Articles 5, 6 (criminal), 7, 4 of Protocol No. 7, and the Guidelines – Protocol No. 16), **Turkish** (case-law guides on Articles 4, 6 (civil), 7, 9, 11, 15, 17, 3 of Protocol No. 1, 4 of Protocol No. 4, Prisoners' Rights, Terrorism) and **Ukrainian** (Case-law guides on Articles 5 et 6 (criminal)) of some Case-Law Guides. All Case-Law Guides can be downloaded from the Court's website.

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La Cour vient de publier des traductions en **arabe** (Guide sur les Droits des prisonniers), **arménien** (Guides sur les Articles 5, 6 (pénal), 7, 4 du Protocole n° 7, et les Lignes directrices - Protocole n° 16), **turc** (Guides sur les Articles 4, 6 (civil), 7, 9, 11, 15, 17, 3 du Protocole n° 1, 4 du Protocole n° 4, Droits des prisonniers, le Terrorisme) et **ukrainien** (Guides sur les Articles 5 et 6 (pénal)) de certains Guides sur la jurisprudence. Tous les guides sur la jurisprudence peuvent être téléchargés à partir du site web de la Cour.