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METALLA v. Albania (no. 19646/20)

Article 8 – Dismissal of a judge through vetting process

SUBJECT MATTER OF THE CASE

The case concerns the transitional vetting process by the Independent Qualification Commission (IQC) and the Special Appeal Chamber (SAC) (see Xhoxhaj v. Albania, no. 15227/19, 9 February 2021; Besnik Cani v. Albania, no. 37474/20, 4 October 2022; Sevdari v. Albania, no. 40662/19, 13 December 2022; Nikëhasani v. Albania, no. 58997/18, 13 December 2022; and Thanza v. Albania, no. 41047/19, 4 July 2023).

The applicant had been a judge since 2001, most recently, at the Tirana Court of Appeal. The IQC dismissed him from office under the first component of the transitional vetting process (assessment of assets, section 61 (3) of the Vetting Act). By a majority decision on 30 October 2019, the SAC amended the IQC's findings and upheld the dismissal from office, also referring to section 61 (5) of the Vetting Act (conduct undermining the public trust in the justice system).

QUESTIONS TO THE PARTIES

Has there been a violation of Article 8 of the Convention on account of the applicant's dismissal from office? Specifically:

(a) Was it foreseeable to the applicant that his brother (E.M.) was to be treated as "other related person" with "a relationship of interest" (lidhje interesi) under the Vetting Act (see Sevdari v. Albania, no. 40662/19, § 75, 13 December 2022)?

(b) Was the dismissal proportionate and necessary in a democratic society to achieve the legitimate aims of the vetting process, as required by Article 8 § 2 of the Convention (see, for applicable principles, Xhoxhaj v. Albania, no. 15227/19, §§ 359-413, 9 February 2021), in particular on account of:

- the SAC's findings related to E.M. and the applicant's failure to substantiate that E.M. had had enough funds to acquire in 2008 a flat offered as collateral for the applicant's soft loan in 2011?

- the SAC's finding that the applicant had made allegedly fictitious or simulated transactions aimed at obtaining a State-supported soft loan? Was the applicant afforded an adequate opportunity to contest the claim/ conclusion that his conduct had "undermined the public trust in the justice system"? Was it convincingly established that his actions in 2011-12 had violated specific legal or ethical requirements in force at the relevant time, including Rule 15 of the Code of Judicial Ethics (2006) (see Xhoxhaj, cited above, §§ 387 and 410)?

ZELA v. Albania (no. 55595/17)

Article 6 §1 – Constitutional Court complaint dismissed as time-barred after a prior constitutional complaint had been dismissed without prejudice as a result of a tied vote amongst the judges.

SUBJECT MATTER OF THE CASE

On 26 December 2012 the Tirana District Court dismissed the applicant's civil claim concerning his father's property, on the grounds that it was unfounded. On 24 October 2013 and 11 July 2014, that decision was upheld by the Court of Appeal and the Supreme Court, respectively.

On 30 September 2015, the Constitutional Court, in a formation of eight out of nine judges, dismissed without prejudice the applicant's constitutional complaint as a result of a tied vote. The applicant was informed of the possibility, under section 74 of the Constitutional Court Act, to lodge a fresh complaint at a later time.

On 15 November 2016 the Constitutional Court dismissed the applicant's second constitutional complaint on the grounds of it being submitted outside the two years' time limit.

Relying on Article 6 § 1 of the Convention the applicant complained that his right of access to the Constitutional Court, as well as his right to a reasoned decision by the Supreme Court were violated.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular,

(a) Has there been a violation of the applicant's right of access to a court on account of the dismissal of his second constitutional complaint? In particular, was the Constitutional Court's interpretation of the applicable time-limits justified in the circumstances of the case (see, mutatis mutandis, Shkalla v. Albania, no. 26866/05, §§ 48-51, 10 May 2011, and Hasan Tunç and Others v. Turkey, no. 19074/05, §§ 32-33, 31 January 2017)?

(b) Was the decision of the Supreme Court sufficiently reasoned (see Zayidov v. Azerbaijan (no. 2), no. 5386/10, § 91, 24 March 2022)? Did it carry out a substantive examination of the legal grounds relied on in the applicant's appeal on points of law (see Pişkin v. Turkey, no. 33399/18, §§ 149-51, 15 December 2020)?

TASHI v. Albania (no. 1351/19)

Article 6 § 1 - Article 13 - Article 1 of Protocol No. 1 – non-enforcement of zoning decision in favor of applicant on the legality of a wall surrounding house

SUBJECT MATTER OF THE CASE

On 12 March 2010 the Tirana District Court allowed the applicant's father claim against the Tirana Construction and Urban Planning Inspectorate (the Construction Inspectorate). It found that the wall surrounding his house was not an illegal construction, annulled the decision to demolish it, and obligated the Construction Inspectorate to rebuild the wall.

On 15 June 2011 the Tirana District Court issued an enforcement writ for that decision. On 1 July 2011 the applicant's father initiated enforcement proceedings, through the bailiff's office.

On 26 February 2015, the Supreme Court left in force the 2010 District Court's decision as to the annulment of the Construction Inspectorate's decision, but decided to award pecuniary compensation to the applicant's father instead of the obligation to rebuild the wall.
That decision was not executed. In 2017 the applicant and other heirs decided to build the wall themselves, under the supervision of the bailiff's office.

On 2 October 2018 the applicant and other heirs were fined by the National Construction and Urban Planning Inspectorate and a second decision to demolish the wall was issued. On 17 October 2018 the wall was demolished again.

The applicant's father died on 5 February 2015 and she is his lawful heir.
The applicant complains under Article 6 § 1 and Article 13 of the Convention, as well as Article 1 of Protocol No. 1 to the Convention that the decision in favour of her father has not been enforced, and the wall was demolished a second time.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of her civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular:

(a) Has there been a violation of Article 6 § 1 of the Convention due to the failure to enforce the Supreme Court's decision of 26 February 2015 (see Burdov v. Russia (no. 2), no. 33509/04, § 66, ECHR 2009, and Sharxhi and others v. Albania, no. 10613/16, § 92, 11 January 2018)?

(b) Did the decision of 2 October 2018 to fine the applicant and to demolish the wall a second time constitute an infringement of the principle of legal certainty, taking in consideration the decision of the Tirana District Court of 12 March 2010 (see Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, § 238, 1 December 2020, and Okyay and Others v. Turkey, no. 36220/97, § 73, ECHR 2005-VII)?

2. Has there been a violation of the applicant's right to peaceful enjoyment of her possessions because of the non-enforcement of the Supreme Court's decision in her father's favour, contrary to the requirements of Article 1 of Protocol No. 1 to the Convention (see Fuklev v. Ukraine, no. 71186/01, §§ 90-91, 7 June 2005, and Bushati and Others v. Albania, no. 6397/04, §§ 93-94, 8 December 2009)?

3. Did the applicant have at her disposal an effective domestic remedy for her complaints under Article 6 of the Convention and Article 1 of Protocol No. 1, as required by Article 13 of the Convention (see Sharxhi and Others v. Albania, no. 10613/16, §§ 84-85, 11 January 2018)?

BITRAJ v. Albania (no. 10024/17)

Article 6 – murder trial in absentia despite request of being personally present during proceedings

SUBJECT MATTER OF THE CASE

The applicant was found guilty of murder in conspiracy with others and of unlawful possession of firearms, and sentenced to 25 years' imprisonment.

During the retrial before the Court of Appeal, the applicant who was living in Italy, was represented by a lawyer chosen by his family. On 16 June 2014 he submitted a request to be personally present during the judicial proceedings, but the request was not taken into account.

On 4 August 2016 the Constitutional Court, in a formation of seven out of nine judges (two of the judges recused themselves), dismissed without prejudice the applicant's complaint because it could not reach the required five judge majority. The applicant was informed of the possibility, under section 74 of the Constitutional Court Act, to lodge a fresh complaint at a later time.

Relying on Article 6 of the Convention the applicant complains of violation of his right to a fair trial, of access to a court, equality of arms, to defend himself in person, to be presumed innocent, to a reasoned decision by the Court of Appeal and of the principle of legal certainty.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 of the Convention? In particular:

(a) Has there been a breach of the applicants' right of access to a court on account of the Constitutional Court's failure to reach the five-judge majority on any of the complaints (see Marini v. Albania, no. 3738/02, §§ 118-23, 18 December 2007)?

(b) Was the principle of equality of arms respected in the criminal proceedings against the applicant (see Borisova v. Bulgaria, no. 56891/00, §§ 47-48, 21 December 2006, and Topić v. Croatia, no. 51355/10, §§ 40-49, 10 October 2013)?

(c) Was the applicant able to defend himself, as required by Article 6 § 3 (c) of the Convention (see Zana v. Turkey judgment of 25 November 1997, Reports 1997-VII, p. 2539, § 10)?

(d) Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case, on the account of lack of sufficient evidence (see, for relevant general principles, Poletan and Azirovik v. the former Yugoslav Republic of Macedonia, no. 26711/07 and 2 others, §§ 63-64, 12 May 2016, with further references)?

(e) Did the Court of Appeal give sufficient reasons for dismissing the applicant's appeal, as required by Article 6 § 1 of the Convention (see Ajdarić v. Croatia, no. 20883/09, § 51, 13 December 2011, and Rostomashvili v. Georgia, no. 13185/07, § 59, 8 November 2018)?

BIÇAKU v. Albania (no. 45354/16)

Article 6 – article 8 – home search – criminal conviction for exploitation of prostitution

SUBJECT MATTER OF THE CASE

The applicant was found guilty of exploitation of prostitution in aggravating circumstances and sentenced to seven years' imprisonment.
On 19 May 2016 the Constitutional Court, in a formation of six out of nine judges (three of the judges recused themselves), dismissed without prejudice the applicant's constitutional complaint because it could not reach the required five-judge majority. The applicant was informed of the possibility, under section 74 of the Constitutional Court Act, to lodge a fresh complaint at a later time.

Relying on Article 6 §§ 1, 2, 3 (a) and (d) of the Convention the applicant complains that there has been a breach of his rights of access to a court, equality of arms, to be presumed innocent, to examine witnesses, to a defence, to be informed of the nature of the accusation, to a trial within a reasonable time, and to a reasoned decision by the Supreme Court, and of the principle of legal certainty.

The applicant further complains, under Article 8 in conjunction with Article 6 § 1 of the Convention, that the allegedly illegal search of his home affected his right to respect for his home.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 of the Convention? In particular:
(a) Has there been a breach of the applicants' right of access to a court and to have a reasoned judgment on account of the Constitutional Court's failure to reach the five-judge majority on any of the complaints (see Marini v. Albania, no. 3738/02, §§ 118-23, 18 December 2007)?
(b) Was the principle of equality of arms respected in the criminal proceedings against the applicant (see Borisova v. Bulgaria, no. 56891/00, §§ 47-48, 21 December 2006, and Topić v. Croatia, no. 51355/10, §§ 40-49, 10 October 2013)?
(c) Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case, on the account of allegedly being convicted based only on the witness statements

(see, for relevant general principles, Poletan and Azirovik v. the former Yugoslav Republic of Macedonia, no. 26711/07 and 2 others, §§ 63-64, 12 May 2016, with further references)?

(d) Was the applicant able to examine the prosecution witnesses as required by Article 6 §§ 1 and 3 (d) of the Convention (see Al-Khawaja and Tahery v. the United Kingdom [GC], nos. 26766/05 and 22228/06, §§ 118-47, ECHR 2011; Schatschaschwili v. Germany [GC], no. 9154/10, §§ 100-31, ECHR 2015; and Süleyman v. Turkey, no. 59453/10, §§ 61-66, 17 November 2020)? Has there been a violation of Article 6 § 3 (d) of the Convention on account of the use of the statements given by two foreign nationals during the police inquiry (see Trampevski v. the former Yugoslav Republic of Macedonia, no. 4570/07, § 44, 10 July 2012)?

(e) Was the applicant informed in sufficient detail of the nature and cause of the accusation against him, as required by Article 6 § 3 (a) of the Convention, given that he was tried and convicted in absentia (see Sejdovic v. Italy [GC], no. 56581/00, § 90, ECHR 2006-II)?

(f) Has there been a violation of the principle of legal certainty on account of the Decision of the General Prosecutor of 16 October 2003 for the resumption of investigation which had already been concluded in 2000 (see Nikitin v. Russia, no. 50178/99, §§ 55-57, ECHR 2004-VIII)?

(g) Did the Supreme Court give sufficient reasons for dismissing the applicant's appeal on points of law, as required by Article 6 § 1 of the Convention (see Ajdarić v. Croatia, no. 20883/09, § 51, 13 December 2011, and Rostomashvili v. Georgia, no. 13185/07, § 59, 8 November 2018)?

(h) Was the length of the criminal proceedings in the present case, which began in 2000 and ended in 2015, in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention (see Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII)?

2. Has there been a violation of the applicant's right to respect for his home, contrary to Article 8 of the Convention, on account of the search of his home undertaken on 6 June 2000 (see Dragan Petrović v. Serbia, no. 75229/10, §§ 69-73, 14 April 2020)?

RJEPAJ v. Albania (no. 56514/21)

Article 6 §1 – article 1 Protocol No. 1 – non-enforcement of judgement against insurer awarding compensation for damages in car accident

SUBJECT MATTER OF THE CASE

The application concerns issues under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention related to the non-enforcement of the Tirana District Court's judgment of 4 December 2013, awarding the applicant compensation by the Albanian Insurance Bureau, for damages suffered as a result of a car accident.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all available domestic remedies in respect of his complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about the alleged non-enforcement of the decision (compare Smagilov v. Russia (dec.), no. 24324/05, §§ 41-52, 13 November 2014)? In particular, was the applicant required to file an action under Article 399/1 et seq. of the Code of Civil Procedure for securing the enforcement of the judgments and/or for claiming compensation in respect of any pecuniary or non-pecuniary damage caused by the delays in enforcing those judgments (see Bara and Kola v. Albania, nos. 43391/18 and 17766/19, § 119, 12 October 2021)? The parties are asked to provide examples of the relevant case-law of domestic courts.

2. Without prejudice to Question 1, has there been a violation of Article 6 § 1 of the Convention because the judgment awarding compensation to the applicant has not been enforced (see Burdov v. Russia (no. 2), no. 33509/04, § 66, ECHR 2009, and Sharxhi and others v. Albania, no.10613/16, § 92, 11 January 2018)?

3. Has there been a violation of the applicant's right to peaceful enjoyment of his possession because of the non-enforcement of the judgment in his favour, contrary to the requirements of Article 1 of Protocol No. 1 to the Convention (see Fuklev v. Ukraine, no. 71186/01, §§ 90-91, 7 June 2005, and Bushati and Others v. Albania, no. 6397/04, §§ 92-94, 8 December 2009)?

YEDIGARYAN v. Armenia (no. 18350/18)

Article 6 – Fair hearing in criminal trial

SUBJECT MATTER OF THE CASE

The applicant was convicted of robbing and killing (together with his associates) a sales manager of a diamond trading company in the United Arab Emirates ("the UAE"). On 23 January 2014 the applicant, together with his two associates, was arrested in Yerevan pursuant to an international search warrant issued by the UAE authorities. The request on the applicant's extradition was rejected since he had Armenian citizenship and, upon the request of the UAE authorities, the applicant was prosecuted in accordance with the Armenian Code of Criminal Procedure ("the CCP"). The indictment against the applicant was based for the most part on the evidence gathered in the UAE and transmitted to Armenia on a USB drive, including, among other things, the following:

- the witness statement of M.A.I. (its English translation provided to the Armenian authorities) who had been questioned by the UAE police, according to which he had delivered coffee to the victim's office and had seen the applicant and H.M. (who was one of the applicant's co-accused in the proceedings) examining diamonds not long before the imputed crime.

- Records of two identification parades according to which the witness had identified the applicant and H.M. by their photos. It appears from the two records in question (their English translations provided to the Armenian authorities) that during the identification parade held on 18 February 2014 the witness had stated with hesitation that he had seen precisely the applicant and H.M.. The next day a second identification parade was held when the witness was shown other photos (presumably extracted from video surveillance recordings) during which he had confirmed having had seen the applicant and H.M.

- The results of the forensic fingerprint examination (carried out in the UAE) of the applicant's fingerprints, which had apparently been taken upon his entry into the detention centre and provided to the UAE authorities by the Armenian authorities, which had established that some fingerprints discovered at the crime scene had belonged to the applicant.

- The results of the forensic DNA test (apparently also carried out in the UAE) which had shown that the applicant's blood sample was matching with the blood traces found at the crime scene.

- The copies of closed-circuit television ("CCTV") recordings of the buildings surrounding the victim's office showing two men (who were identified as the applicant and H.M. during the investigation) entering the diamond trading company's office and leaving it.

During the trial the applicant requested to be provided with the fingerprints found at the crime scene, as well as the digital video recorder ("the DVR") device and the adhesive tape (used for suffocating the victim) found at the crime scene on which fingerprints had been discovered. It appears that this request was forwarded to the UAE authorities which responded through Interpol that the available evidence, including the photos of the fingerprints and of other evidence found at the crime scene as well as the results of the forensic examinations had been already transmitted to Armenia while the fingerprints were being kept by the Dubai police. As for the DVR device, it had not been connected to any camera

and had not recorded anything on the day of the crime. They also informed that the witnesses, with the exception of one (not M.A.I.), had refused to testify before the trial court.

The applicant also requested the trial court to order a forensic audio-visual examination of the CCTV recordings in order to clarify whether the interruptions in the recordings had resulted from editing and, if so, whether the deleted parts contained the images of other persons; also whether the images of persons appearing in the available recordings could be matched with the faces of the accused. The trial court rejected that request on the grounds that such an examination could only be conducted on the basis of the original recordings which had not been provided to the Armenian authorities. The court stated that in any event there was other evidence showing the applicant's presence in the victim's office.

The applicant objected against the use against him of the evidence gathered in the UAE. In particular, as regards the identification parade, he claimed that it had been carried out in breach of Article 221 § 1 of the CCP in force at the material time, according to which, prior to the identification parade the investigator would ask the witness about the appearance and features of the person to be identified whereas M.A.I. had not described the applicant's features by which he would recognise him. Furthermore, prior to the identification parade M.A.I. had stated that he had not focused on the faces of the persons in the victim's office and he was not sure whether he would recognise them. As for the forensic fingerprint examination, the applicant claimed that it also had been carried out in breach of the requirements of domestic law. Thus, according to Article 253 of the CCP in force at the material time, the investigator had to make a reasoned decision in order to take samples from a person for examination. That procedure was to be done in the presence of an expert or a specialist and the taken samples had to be packed and stamped. His fingerprints had not been taken according to that procedure. Instead, some fingerprints had been sent to the UAE authorities from the detention centre and he could not be sure whose fingerprints had actually been sent.

On 26 January 2017 the trial court convicted the applicant mainly on the basis of the evidence described above, including the results of forensic fingerprint and DNA examinations, the (edited) CCTV recordings, the witness statement of M.A.I. and the records of both identification parades, as well as the evidence against H.M. (the diamonds and adhesive tape found in his bag at the airport upon his arrival to Armenia, his driver's licence found at the crime scene, his initial confession to the Armenian authorities to have committed the imputed crime on his own which he later retracted and so on). As to the argument that the applicant's fingerprints had been obtained in an unlawful manner, the trial court found that, although the given evidence had been taken in breach of the CCP requirements, it was not the sole and decisive evidence against the applicant. As for the use of the statements of absent witnesses, including of M.A.I., and the records of the identification parades, it stated that, although the right to confrontation had not been secured, the given witness statements were not the sole and decisive evidence against the applicant in that his guilt had sufficiently been proven by the evidence produced by the prosecution.

The applicant appealed arguing inter alia that the evidence gathered from the crime scene, namely the fingerprints, traces of blood, the DVR device and the adhesive tape, as well as the original (unedited) CCTV recordings had not been examined during the trial thereby depriving the defence of the possibility to challenge that evidence. He also complained of the failure to secure the appearance of the witnesses, who had testified against him.

On 28 July 2017 the Criminal Court of Appeal rejected the applicant's appeal endorsing the trial court's reasoning in full. The applicant's appeal on points of law was declared inadmissible for lack of merit by the Court of Cassation on 27 September 2017 (decision served on 5 October 2017).

The applicant complains under Article 6 §§ 1 and 3 (d) of the Convention of the overall fairness of the proceedings and the lack of an opportunity to examine the witness M.A.I., whose statement had carried a decisive weight in his conviction, at any stage of the proceedings.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 §§1 and 3 (d) of the Convention? In particular:

(a) Did the applicant have a reasonable opportunity to challenge the authenticity of the evidence on which his conviction was based, including the results of the forensic DNA and fingerprint examinations and the video surveillance recordings obtained through CCTV, and to oppose its use (see Laska and Lika v. Albania, nos. 12315/04 and 17605/04, §§ 57-72, 20 April 2010; Horvatić v. Croatia, no. 36044/09, §§ 76-87, 17 October 2013; and Budak v. Turkey, no. 69762/12, §§ 68-91, 16 February 2021)?

(b) Were the applicant's rights guaranteed by Article 6 §§ 1 and 3 (d) of the Convention breached due to fact that he was not able to obtain the attendance and examination of witness M.A.I. at his trial (see Schatschaschwili v. Germany [GC], no. 9154/10, §§ 100-31, ECHR 2015)?

The Government are invited to submit the following: (a) a copy of the record of the examination of the crime scene, (b) information regarding the relevant UAE legislation on taking evidence, in particular from the crime scene, (c) a copy of the record on collection of the applicant's blood samples for the purpose of a forensic DNA examination and a copy of the ensuing forensic expert report.

GRIGORYAN v. Armenia (no. 13534/19)

Article 2 – Article 3 – Refusal for ill detained person to seek treatment in France

SUBJECT MATTER OF THE CASE

The applicant[1] was a well-known military commander and a political figure in Armenia. On 16 June 2018 he was arrested on charges of aggravated embezzlement and possession of illegal weapons. The applicant suffered from a number of serious illnesses, including second type diabetes, right lung cancer in remission, right side hydrothorax (accumulation of fluid in the pleural cavity), chronic brain ischemic disease and other illnesses.

On 13 July 2018, while the applicant was still in pre-trial detention, the applicant's private doctors in Armenia and France (he had been operated for cancer in Paris back in 2013 and had been under medical supervision of his doctors in France thereafter) recommended that he underwent certain advanced medical examinations that were allegedly not available in Armenia. Subsequently the same doctors, supported by the applicant's other private doctors in Armenia and France, reiterated that his adequate medical treatment was impossible without the said examinations and that his condition could have fatal consequences, if not treated properly which was not being done in Armenia due to the lack of new technologies and medication. The doctors also stated that the applicant's stay at the detention facility was incompatible with his state of health and called for his urgent hospitalisation in France.

[1] Mr Grigoryan died after the introduction of the application before the Court. After his death, his daughter requested to pursue the application in his stead. However, for ease of reference, Mr. Grigoryan will be referred to as "the applicant" throughout this text.

Between July 2018 and January 2019 five medical panels were convened to determine the state of the applicant's health. Their conclusion was that the applicant's treatment could be organised by means of outpatient medical care and that there was no need for the examinations recommended by the applicant's doctors. Subsequent medical panels convened after January 2019 noted a deterioration of the applicant's health and recommended inpatient treatment.

A number of times throughout his detention the applicant was transferred to civilian hospitals for medical examinations and inpatient treatment, including to receive emergency care.

According to the conclusion of an inter-agency medical commission of 18 October 2019, although there was potential risk to the applicant's life due to diabetes in decompensation stage, his state of health was still compatible with detention.

On 15 January 2020 – following sharp deterioration of his health – the applicant was released from detention under a written undertaking not to leave his place of residence. The applicant's repeated requests seeking authorisation to receive medical treatment in France were rejected by the authorities.

On 14 November 2020 – following a further sharp deterioration of the applicant's health and his placement in emergency care – his lawyer requested the trial court to allow his urgent hospitalisation in France. On 19 November 2020, while that request was pending, the applicant passed away in the hospital.

After the applicant's death, his daughter, Ms Arpenik Grigoryan, requested to pursue the application.

The applicant complained about the authorities' refusal to allow his hospitalisation in France at his family's expense despite his life-threatening medical condition and the unavailability of the necessary medical treatment in Armenia. He also complained that his medical condition had been incompatible with detention and that the lack of adequate medical assistance in detention had resulted in dangerous progression of his illnesses.

QUESTIONS TO THE PARTIES

Were the applicant's rights guaranteed under Articles 2 and 3 of the Convention violated in the present case? In particular:

a) Considering the authorities' refusal to allow the applicant to travel to France for potentially life-saving medical examinations and treatment, was the deterioration of his state of health during and after his detention in breach of those provisions?

b) During the entire duration of his detention, was the applicant provided with requisite medical assistance, in accordance with his state of health (see Blokhin v. Russia [GC], no. 47152/06, §§ 135-38, 23 March 2016; Ashot Harutyunyan v. Armenia, no. 34334/04, §§ 101-16, 15 June 2010; and Davtyan v. Armenia, no. 29736/06, §§ 78-90, 31 March 2015)?

c) Was the applicant's state of health compatible with his detention (see Mouisel v. France, no. 67263/01, §§ 38-42, ECHR 2002-IX; Aleksanyan v. Russia, no. 46468/06, §§ 133-58, 22 December 2008; and Contrada v. Italy (no. 2), no. 7509/08, §§ 75-85, 11 February 2014)?

The Government are requested to clarify whether an autopsy was ordered to determine the cause of the applicant's death and, if so, submit a copy of the ensuing autopsy report.

ARTSRUNI v. Armenia and SHALUNTS v. Armenia (nos. 8363/19 and 20876/20)

Article 3 – Refusal to release early persons whose death penalty had been commuted to life imprisonment

SUBJECT MATTER OF THE CASES

Application no. 8363/19

The applicant was sentenced to death penalty in 1996 which was commuted to life imprisonment after the entry into force of the Criminal Code of 2003 which abolished the death penalty. According to the relevant provisions of the Criminal Code and the Penitentiary Code, as in force at the material time, persons sentenced to life imprisonment could be eligible for early conditional release after having served at least twenty years of their term.

On 12 July 2017, when the applicant had served almost twenty-three years of his term, the Independent Commission on Early Conditional Release ("the Commission") issued a negative conclusion as regards his early release. On 1 December 2017 the Shirak Regional Court ("the Regional Court") upheld the Commission's position on the grounds that the applicant had been subjected to three disciplinary penalties, had not been rewarded, had been maintaining the relationship with his family mainly by telephone and that the Commission's conclusion regarding his early conditional release had been given in accordance with the procedure prescribed by law. The court's decision also mentioned that the applicant had participated in educational programs, was a Ph.D. student, was indifferent towards criminal subculture, felt remorse for the committed offence and did not have interpersonal conflicts.

The applicant lodged an appeal, arguing that the Regional Court had failed to properly substantiate its decision, which was based on abstract notions failing to properly assess his "positive characteristics" given by the prison administration (for which he had been granted an additional visit as a reward); his efforts towards rehabilitation, including his university studies, participation in a number of educational and cultural programmes, assistance with technical work in the prison and the availability of a place for him to live after release. According to the applicant, the only negative point in his file which was relied on by the court was the fact that he had been imposed three disciplinary sanctions in 2006, 2009 and 2013 in relation to the possession of a mobile phone and an internet distribution device. However, three penalties in more than twenty years could not as such justify his further continued detention. The applicant claimed that none of almost three dozen life prisoners in Armenia, had been granted early conditional release after having served twenty years of term, which meant that it was de facto unavailable for them.

On 9 April 2018 the Criminal Court of Appeal upheld the Regional Court's decision and found that the applicant had not met the criteria for early conditional release laid down in the law. In his appeal on points of law the applicant added that by relying on his extinguished penalties as a ground for rejection, the courts had created an obstacle that he could never overcome to be granted early conditional release. On 5 September 2018 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

The applicant complains under Article 3 of the Convention that his life imprisonment is de facto irreducible despite the de jure possibility of early conditional release.

Application no. 20876/20

The applicant was sentenced to death penalty in 1996 which was commuted to life imprisonment after the entry into force of the Criminal Code of 2003 which abolished the death penalty.

On an unspecified date (between the end of 2018 and the beginning of 2019) the prison administration issued a report concluding that the applicant was eligible for early conditional release and lodged a court request seeking his release. It stated in particular that the applicant had felt remorse for the committed crime, had a negative attitude towards the criminal sub-culture, was going to the gym, had lost his mother and wife, had a minor daughter with a disability under his care and had a serious health problem.

On 4 April 2019 Yerevan Court of General Jurisdiction rejected the request referring to the gravity of the crimes that the applicant had been convicted for, to two disciplinary penalties imposed on him in 2010 for the possession of a mobile phone, to the failure to compensate the damage suffered by the victims, as well as to the applicant's personality and his "behaviour throughout imprisonment". The applicant unsuccessfully challenged that decision complaining of de facto irreducibility of his life sentence. On 12 November 2019 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

On 19 October 2022 the Probation Service issued a report (in line with the procedure after the entry into force of the new Penitentiary Code), according to which, although the applicant had demonstrated positive behaviour throughout his imprisonment (the applicant had a negative attitude towards criminal sub-culture, had participated in rehabilitation events organised in the prison and was working there, had partly compensated the damage suffered by the victims etc.), the likelihood of him committing a new crime once at large was high. The Probation Service did not recommend granting the applicant early conditional release since he had been convicted for grave crimes, had been subjected to three disciplinary penalties (two in 2010 and one in 2019) for having been found in possession of a mobile phone, had not fully compensated the inflicted damage, started to participate in sport activities in prison only from 2018 and in the re-socialisation programs only from 2019 after being denied early release and most of the victims' family members objected to his release.

At the same time, on 3 November 2022 the prison administration issued a positive report as regards the applicant's early conditional release and on 11 November 2022 submitted a corresponding request to the court. On 31 May 2023 the Kotayk Regional Court rejected the request essentially endorsing the reasons given in the Probation Service's report of 19 October 2022. In doing so, it emphasised the gravity of the crimes committed by the applicant and stated that his early conditional release "would not serve the goals of the punishment". The applicant appealed complaining of de facto irreducibility of his life sentence and the lack of reasoning in the court decisions. On 2 October 2023 his appeal on points of law was declared inadmissible by the Court of Cassation for lack of merit.

The applicant complains under Article 3 of the Convention that his life imprisonment is de facto irreducible despite the de jure possibility of early conditional release.

QUESTIONS TO THE PARTIES

Can it be said that the applicants' life imprisonment is de facto reducible, as required by Article 3 of the Convention? In particular:

(a) have the applicants had access to a review mechanism requiring the competent authorities to assess, based on rules having sufficient degree of clarity and certainty and on the basis of objective, pre-established criteria, whether, while serving their sentences, they had changed and progressed to such an extent that continued detention could no longer be justified on legitimate penological grounds

(see Vinter and Others v. the United Kingdom [GC], nos. 66069/09 and 2 others, §§ 107-109, 119-22 and 128, 9 July 2013, and Murray v. the Netherlands [GC], no. 10511/10, §§ 99-100, 113-27, 26 April 2016)?

(b) if so, was that review surrounded by sufficient procedural guarantees, including the right to a reasoned decision (see Kafkaris v. Cyprus [GC], no. 21906/04, § 105, 12 February 2008, and Murray, cited above, § 100)?

(c) have the applicants been offered an adequate possibility of rehabilitation in order to have a realistic "prospect of early release" (see Kafkaris, cited above, § 89; Vinter and Others, cited above, §§ 110-18 and 127, 9 July 2013; and Murray, cited above, §§ 101-104)?

The Government are invited to submit statistical information on the use of the review mechanism in question prior to the proceedings at issue in the present cases, including the number of persons sentenced to life imprisonment who have been granted early conditional release since 10 February 2005 (the date of the entry into force of the Penitentiary Code in force at the material time).

The Government are also invited to submit the conclusion of the Independent Commission on Early Conditional Release of 12 July 2017 in application no. 8363/19 and the applicants' personal files, including any characteristics given by the prison administration.

GHAZARYAN v. Armenia (no. 56889/17)

Article 3 – article 5 §3 -article 6 §1 – poor detention conditions – length of pre-trial detention – length of criminal proceedings

SUBJECT MATTER OF THE CASE

The applicant was charged by the Russian authorities with a number of offences and was declared wanted. On 15 June 2013 he voluntarily turned himself in to the Armenian authorities. On the same date the same charges were brought against him and he was detained by a court order in Armenia. The applicant was placed in the Nubarashen Remand Prison. The applicant alleges that the cells where he was kept, which measured between 27.5 and 29.9 sq. m., accommodated between 11-15 inmates at various times. He further alleges poor hygiene, humidity, presence of insects and foul smell in the cells and lack of availability of proper shower facilities. It appears that the applicant's case went to trial on 15 January 2014. On 10 June 2016 the applicant lodged an application for release with the trial court, arguing that his detention was lengthy and unjustified, which was dismissed by the trial court and the court of appeal on 6 September and 6 October 2016 respectively, on the ground of the gravity of the charges against the applicant. On 8 July 2019 the trial court found the applicant partially guilty. On 11 September 2019 the applicant was released from detention while his appeal was pending. On 1 July 2020 the Court of Appeal acquitted the applicant.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention? Did the material conditions of the applicant's detention, in particular the personal space available in the cell and the sanitary conditions, amount to inhuman or degrading treatment? (see Muršić v. Croatia [GC], no. 7334/13, §§ 99-141, 20 October 2016

2. Was the length of the applicant's pre-trial detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention (see Muradkhanyan v. Armenia, no. 12895/06, §§ 80-86,

5 June 2012)? In particular, did the courts provide “relevant and sufficient” reasons for the applicant’s continued detention (see Ara Harutyunyan v. Armenia, no. 629/11, §§ 48 et seq., 20 October 2016) and did the authorities show due diligence in the conduct of the proceedings?

3. Was the length of the criminal proceedings in the present case in breach of the “reasonable time” requirement of Article 6 § 1 of the Convention? (see Grigoryan v. Armenia, no. 3627/06, §§ 126-32, 10 July 2012)

POPOVIC v. Austria (no. 16530/23)

Article 6 – Article 8 – Article 13 – Article 35 – Criminal conviction based on data from communication device hacked by the FBI

SUBJECT MATTER OF THE CASE

The application concerns the Austrian authorities’ use in criminal proceedings of communication data intercepted by a third state from the applicant’s phone and his subsequent conviction for aggravated drug trafficking and money laundering as a member of a criminal organisation.

On an unspecified date, the Vienna Public Prosecutor’s Office began investigating the applicant after having received from the United States Federal Bureau of Investigation (hereinafter “FBI”) communication and meta data from the applicant’s phone. The applicant had used an encrypted phone equipped with the messaging app ANOM. As subsequently established by the Vienna Regional Criminal Court (hereinafter “the Regional Court”), the messaging app ANOM had been developed by the FBI. ANOM phones could be used to send messages to other phones running the same app. They were distributed among criminal networks and touted as fully secure from interception. The FBI, however, had been able to decrypt and read messages exchanged via the app.

In June 2021 the applicant was arrested and later indicted. In the main hearing before the Regional Court, the applicant’s lawyer requested the court to disregard the messages exchanged via ANOM, arguing that they had been obtained unlawfully and their consideration as evidence would thus be inadmissible according to Article 140 of the Austrian Code of Criminal Procedure (Strafprozessordnung – hereinafter “CCP”). This provision stipulates, inter alia, that “results” (Ergebnisse) within the meaning of Article 134 of the CCP of an investigative measure, such as the surveillance of messages (Überwachung von Nachrichten), may only be used as evidence, and will otherwise be null and void, if the measure was lawfully ordered by the Public Prosecutor and authorised by a court. The Regional Court dismissed the request. It held that Austrian authorities had neither acted as agents provocateurs nor were the FBI’s investigations initiated at the request or with the assistance of Austrian law enforcement authorities. The messages provided by the FBI did therefore not constitute “results” within the meaning of Article 134 of the CCP. Their use as evidence did consequently not violate Article 140 § 1 of the CCP.

On 21 June 2022 the applicant was convicted of aggravated drug trafficking and money laundering as a member of a criminal organisation and sentenced to seven years and six months in prison. The conviction was largely based on the intercepted messages which had been provided by the FBI.

On 18 January 2023 the Supreme Court dismissed the applicant’s plea of nullity. It confirmed, inter alia, that the provisions of the CCP on the collection and use of evidence were not applicable to activities of foreign authorities if they had not been conducted at the request or with the assistance of Austrian law enforcement authorities.

Relying on Article 6 of the Convention, the applicant claims that the proceedings and his conviction were unfair as the only evidence on which his conviction was based had been obtained unlawfully and in breach of Article 8 of the Convention. Under Article 8 of the Convention, he complains that surveillance measures without any initial suspicion were not in accordance with the law and that the surveillance measures and the preservation of data were disproportionate. He further alleges a violation of Article 13 of the Convention, arguing that he did not have at his disposal any effective domestic remedies to complain against the impugned surveillance measures.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

In particular, did the applicant invoke before domestic courts the rights on which he now wishes to rely before the Court, at least in substance and in compliance with the formal requirements laid down in domestic law (see Elçi and Others v. Turkey, nos. 23145/93 and 25091/94, §§ 604-605, 13 November 2003)?

Having regard to the applicant's complaints, would a complaint under Article 140 §1 (1)(d) of the Federal Constitution (Bundes-Verfassungsgesetz) have constituted an effective remedy within the meaning of Article 35 § 1 of the Convention?

The applicant is also requested to provide copies of: (i) the bill of indictment, (ii) his objection against the bill of indictment (Einspruch gegen die Anklageschrift), (iii) the Vienna Court of Appeal's decision on the objection, (iv) his fundamental rights complaint (Grundrechtsbeschwerde) to the Supreme Court, (v) the Supreme Court's decision on the complaint, and (vi) the Vienna Court of Appeal's decision on his appeal against the sentence (Entscheidung über die Berufung).

2. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention?

3. Has there been an interference with the applicant's right to respect for his private and family life, home or correspondence, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary within the meaning of Article 8 § 2?

4. Did the applicant have at his disposal an effective domestic remedy for his Convention complaints, as required by Article 13 of the Convention?

BOURSHALLI v. Austria (no. 9791/20)

Article 6 – Article 35 – Further questions regarding Palestinian with Stateless nationality status who was questioned in German, in absence of a lawyer

The facts and complaints in this case have been summarised in the Court's Subject matter of the case and Questions to the parties, which is available in HUDOC.*

FURTHER QUESTIONS TO THE PARTIES

Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

Did the applicant have available to him an effective remedy within the meaning of this provision to challenge the use of the protocols of the police interrogation allegedly obtained in contravention of his rights under Article 6 §§ 1 and 3 (c) and (e) of the Convention, including of his right to be informed of these rights?

In particular, having regard to the Supreme Court's decision of 23 July 2019 (11 Os 41/19t-8), was a request not to have the interrogation protocols featured in the trial an effective remedy within the meaning of this provision?

*** SUBJECT MATTER OF THE CASE**

The application concerns the confession of the asylum-seeking applicant, a stateless Palestinian who grew up in an UNWRA refugee camp in Syria and only speaks Arabic, in police custody in the absence of a lawyer.

The applicant was arrested on 14 June 2016 on suspicion of having been a member of a terrorist organisation which participated in the Syrian armed conflict. On 14 and 15 June 2016 he was interrogated by the police with the help of interpreter B. The applicant was given a pre-printed form in German which notified him, without further explanations, about his right to remain silent and his right to legal advice and about the possibility that his statements could be used against him in court. The form did not include information on how to obtain free legal aid or on opportunities to contact defence counsel free of charge. The applicant signed a pre-printed phrase in German that he waived his right to contact a lawyer. The police claimed that it was the interpreters' task to translate this form. During the second day of interrogation, which was neither filmed or audiotaped, interpreter B. reported that the applicant confessed that he had shot and killed twenty to thirty severely injured persons in Syria. The applicant signed the interrogation protocol but alleges that interpreter B. had not translated it back to him. In a hearing before the investigating judge the next day, the applicant withdrew the confession. At the end of the hearing, conducted with the help of another interpreter, he stated that he did not have the financial means for a lawyer and that he wished to be appointed a legal aid defence counsel.

The applicant was first convicted in 2017, but the judgment was quashed by the Supreme Court. A new trial was held before the Innsbruck Regional Court, sitting as an assize court with a lay jury, on 10 and 11 December 2018. The applicant denied having committed any killings. The court heard as witnesses three Syrian friends of the applicant, the four police officers who had interrogated him, interpreter B., as well as R. Gh., the person who had informed the authorities that the applicant was allegedly a former fighter. It did not question the police officers on the conditions of informing the applicant of his right to a defence counsel and his waiver. Interpreter B. stated that the applicant had confessed the killings and that he had translated back the draft protocol to him. In a short note, the jury explained that their guilty verdict was based on the applicant's confession during the police interrogation. The applicant received a life sentence.

The applicant lodged a plea for nullity with the Supreme Court arguing, inter alia, that the trial had not been fair because the waiver of his right to a defence counsel during the police interrogation was invalid as he had not been offered the opportunity to contact emergency legal services and had not understood the consequences of his decision, particularly in light of the fact that the interpreter had not been reliable. The Supreme Court rejected the plea on 23 July 2019 without addressing the complaint concerning the lack of a defence counsel during the police interrogation. On 12 September 2019 the Innsbruck Court of Appeal rejected the applicant's appeal concerning the sentence.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the applicant able to defend himself through legal assistance, as required by Article 6 § 3 (c) of the Convention? Was the applicant afforded free legal assistance, within the meaning of Article 6 § 3 (c) of the Convention? Did the interests of justice require such assistance (see Zdravko Stanev v. Bulgaria, no. 32238/04, § 38, 6 November 2012; Salduz v. Turkey [GC], no. 36391/02, § 55, ECHR 2008)? Was the applicant informed by the police about opportunities to contact a defence counsel and to be appointed a legal aid counsel and about his right to remain silent (see Beuze v. Belgium [GC], no. 71409/10, §§ 129-30, 9 November 2018; Ibrahim and Others v. the United Kingdom [GC], nos. 50541/08 and 3 others, §§ 270-73, 13 September 2016)? Did the applicant's waiver to defence counsel comply with the Court's standard of "knowing and intelligent waiver" (see Simeonovi v. Bulgaria [GC], no. 21980/04, § 115, 12 May 2017; Türk v. Turkey, no. 22744/07, §§ 48-53, 5 September 2017; Pishchalnikov v. Russia, no. 7025/04, § 77, 24 September 2009)?

2. Was the applicant afforded the free and effective assistance of an interpreter, within the meaning of Article 6 § 3 (e) of the Convention?

AMIRASLAN and 2 others v. Azerbaijan (no. 18543/23)

Article 5 – article 11 – article 13 – Detention of peaceful protestors without documentation

SUBJECT MATTER OF THE CASE

The applications concern the applicants' arrests and detentions by police officers for several hours without any documentation when they were participating in peaceful assemblies. Based on these allegations the applicants lodged complaints with the prosecuting authorities which rejected them, finding that the applicants' arrests and detentions were lawful since they had participated in unauthorised assemblies. The domestic courts also rejected their complaints and upheld the reasoning given by the prosecuting authorities.

The applicants complain under Article 5 § 1 and Articles 11 and 13 of the Convention that their rights to liberty and freedom of peaceful assembly were violated and that they had no effective domestic remedy at their disposal.

QUESTIONS TO THE PARTIES

1. Were the applicants arrested and deprived of their liberty in breach of Article 5 § 1 of the Convention? In particular, did their deprivation of liberty fall within one of the sub-paragraphs of this provision? Were the applicants' arrests and detentions in accordance with a procedure "prescribed by law"?

2. Has there been an interference with the applicants' freedom of peaceful assembly, within the meaning of Article 11 § 1 of the Convention? If so, was this interference prescribed by law and necessary in terms of Article 11 § 2?

3. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 5 of the Convention concerning their deprivation of liberty by the police, as required by Article 13 of the Convention?

4. Did the applicants have at their disposal an effective domestic remedy for their complaints under Article 11 of the Convention concerning the interference with their right to freedom of peaceful assembly, as required by Article 13 of the Convention?

HAJIYEV and ALIKHANOVA v. Azerbaijan (nos. 37562/23 and 37578/23)

Article 5 – Article 8 – Arbitrary pre-trial detention of activist

SUBJECT MATTER OF THE CASE

The applicant in application no. 37562/23, Mr Bakhtiyar Hajiyev (the first applicant), is a well-known civil society activist and lived together with the applicant in application no. 37578/23, Ms Shalala Alikhanova (the second applicant).

The present applications concern the pre-trial detention of the first applicant, as well as the search and seizure carried out within the framework of the criminal proceedings instituted against the first applicant.

Relying on Articles 5 and 18 of the Convention, the first applicant complains that his arrest and detention were unlawful because there was no reasonable suspicion that he had committed a criminal offence and that his Convention rights were restricted for purposes other than those prescribed in the Convention. He also claims that the domestic courts failed to justify the application of the preventive measure of remand in custody in his respect. Furthermore, the first applicant complains under Articles 8 and 18 of the Convention that the search and seizure carried out in his home and car within the framework of the criminal proceedings instituted against him violated his Convention rights.

Relying on Article 8 of the Convention, the second applicant complains that the search and seizure carried out in her home within the framework of the criminal proceedings instituted against the first applicant violated her Convention rights.

QUESTIONS TO THE PARTIES

Questions in respect of application no. 37562/23:

1. Was the first applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? In particular, was his detention compatible with Article 5 § 1 (c) in terms of being justified and based on a reasonable suspicion?

2. Did the domestic courts give sufficient and relevant reasons for the first applicant's detention for the purposes of Article 5 § 3 of the Convention? Did they consider alternative measures to his continued detention?

3. Has there been an interference with the first applicant's right to respect for his private life and home, within the meaning of Article 8 § 1 of the Convention, on account of the search and seizure carried out in his home and vehicle? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

4. Were the restrictions imposed by the State in the present application, purportedly pursuant to Articles 5 and 8 of the Convention, applied for a purpose other than those envisaged by those provisions, contrary to Article 18 of the Convention?

Questions in respect of application no. 37578/23:

5. Has there been an interference with the second applicant's right to respect for her private life and home, within the meaning of Article 8 § 1 of the Convention, on account of the search and seizure carried out in her home? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

ALIYEV v. Azerbaijan (no. 12514/21)

Article 6 – Article 8 – Conviction and seizure of mobile phones

SUBJECT MATTER OF THE CASE

The application concerns the applicant's conviction for breach of lockdown rules relating to the Covid-19 pandemic under Article 211 of the Code of Administrative Offences (administrative detention of one month) and the seizure of his two mobile phones by the prosecuting authorities for an indefinite period of time in the absence of any official decision.

The applicant complains under Article 6 of the Convention that the domestic courts failed to provide reasons for their decisions and that he was not provided with free legal assistance after his arrest and in the proceedings before the first-instance court. The applicant also complains that the seizure of his mobile phones by the prosecuting authorities following his arrest constituted a violation of Article 8 of the Convention.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the applicant's right to a reasoned judgment respected?

2. Was the applicant afforded free legal assistance, within the meaning of Article 6 § 3 (c) of the Convention?

3. Has there been an interference with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention on account of the seizure of his mobile phones by the prosecuting authorities? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

MAMMADOV and SHAMURADOV v. Azerbaijan (nos. 21262/22 and 6979/23)

Article 8 – restrictions on contact with family members in pre-trial detention

SUBJECT MATTER OF THE CASE

The present applications concern the restrictions imposed by the prosecuting authorities on the applicants' right to visits by, and telephone conversations with, their family members and the outside world, while detained in the pre-trial detention facility.

Relying on Article 8 of the Convention, the applicants complain that the restrictions imposed on them were unjustified and disproportionate.

QUESTION TO THE PARTIES

Has there been an interference with the applicants' right to respect for their private and family life or correspondence, within the meaning of Article 8 § 1 of the Convention, on account of the restrictions placed on their rights by the corresponding decisions of the prosecuting authorities?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see Mirgadirov v. Azerbaijan and Turkey, no. 62775/14, §§ 115-25, 17 September 2020; Bogusław Krawczak v. Poland, no. 24205/06, § 112, 31 May 2011; and Andrey Smirnov v. Russia, no. 43149/10, § 38, 13 February 2018)?

BABAYEV v. Azerbaijan (no. 9932/21)

Article 5 – article 6 – article 8 – article 10 – conviction for disseminating opposition interview – seizure of phone – summary reasoning by courts

SUBJECT MATTER OF THE CASE

The application concerns administrative proceedings against the applicant, an opposition activist, who was charged with an administrative offence under Article 388-1.1.1 (dissemination on the internet of information restricted by law) of the Code of Administrative Offences and sentenced to one month's administrative detention. According to the applicant the police seized and retained his mobile phone at the time of arrest.

By a judgment of 22 April 2020, the Surakhani District Court, in a very brief manner, referring to a police report and case material (not available in the case file), held that the applicant had committed the abovementioned offence. The court did not make it clear in its judgment what information disseminated by the applicant had been unlawful. In his appeal, the applicant argued that he had not disseminated any prohibited information and that he had been convicted for having shared on his Facebook account an interview of an opposition leader and a statement of a former military serviceman published by the Azadliq newspaper. By a final judgment of 5 May 2020, the Baku Court of Appeal upheld the lower court's judgment. The final judgment also lacked information about the alleged unlawful content disseminated by the applicant.

Relying on Articles 5, 6, 8 and 10 of the Convention, the applicant complains of the alleged unfairness of the domestic proceedings and of a violation of his right to freedom of expression. He also complains that the domestic authorities seized and retained his mobile phone and accessed it without having any lawful grounds.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention? In particular, were the principle of equality of arms and the applicant's right to a reasoned decision respected?

2. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2? Was the sanction imposed on the applicant proportionate to the aims pursued?

3. Has there been an interference with the applicant's right to respect for his private life and correspondence, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 in pursuit of a legitimate aim?

The parties are requested to submit copies of all documents relating to the administrative proceedings, and the original text and a translation into English or French of the impugned unlawful information disseminated by the applicant which led to his administrative conviction.

ABDULLAYEV and ABDULLAYEVA v. Azerbaijan (no. 20683/21)

Article 6 – article 10 – article 18 – article 1 Protocol No 1 – conviction of former politician and his mother for allegedly political reasons – retaliation for releasing a critical music video after migrating to Germany – extradition to Azerbaijan by Türkiye – condemned by UN Working Group on Arbitrary Detention Opinion no. 48/2020

SUBJECT MATTER OF THE CASE

The application concerns criminal proceedings against a businessman and former politician (the first applicant) and his mother (the second applicant).

The first applicant was a member of the National Assembly from 2005 until 2007, when his parliamentary immunity was lifted following his involvement in a physical altercation with another member of parliament during a parliamentary debate. In 2007 the first applicant was convicted of deliberate infliction of physical harm and hooliganism and sentenced to a conditional sentence of two years' imprisonment (see Abdullayev v. Azerbaijan, no. 6005/08, 7 March 2019, for more detail).

In 2013 the first applicant moved to Germany. According to him, when in Germany, he released a music video critical of the Azerbaijani authorities. In the same year criminal proceedings were instituted against the applicants in Azerbaijan under the charges of illegal entrepreneurship, tax evasion and other offences allegedly committed when running their family business. A court order on the first applicant's arrest was issued in the framework of those proceedings and an Interpol Red Notice was issued based on a request of the Azerbaijani law-enforcement authorities. Following this, still in 2013, the applicant applied for and was granted political asylum in Germany. In 2014 Interpol cancelled the Red Notice.

It appears that in 2016 the second applicant also left Azerbaijan, having allegedly illegally crossed the State border by using another person's passport. In connection with this incident, she was later charged with the criminal offence of illegal border crossing and the first applicant and several other persons, including border guards, were charged with complicity in this offence.

In April 2018 the applicants went for a vacation in Türkiye, where the first applicant was arrested by the Turkish law-enforcement authorities and was handed over to the Azerbaijani authorities. Following a trial involving a total of nine defendants charged with complicity in several criminal offences, including both applicants, on 1 October 2019 the Baku Military Court convicted the applicants of, inter alia, illegal entrepreneurship, money laundering in large amounts, tax evasion in large amounts, abuse of power, service forgery and illegal border crossing. The first applicant was sentenced to six years' imprisonment and the second applicant to a fine in the amount of 4,000 Azerbaijani manats. The court also granted the tax authorities' claims against the applicants in respect of unpaid taxes and ordered confiscation of multiple real properties and various other assets belonging to them. Following a series of appeals, by a final decision of 14 October 2020 the Supreme Court upheld the applicants' convictions and sentences.

In the meantime, on 26 August 2020 the UN Working Group on Arbitrary Detention issued Opinion no. 48/2020, finding that both Türkiye and Azerbaijan had breached a number of provisions of the Universal Declaration of Human Rights and the ICCPR in respect of the first applicant, requesting both States to take steps to remedy the situation, and considering that the appropriate remedy would be for Azerbaijan to release the first applicant immediately and for both Azerbaijan and Türkiye to afford him an enforceable right to compensation and reparations.

Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complain of the alleged unfairness of the criminal proceedings against them, the alleged lack of independence and impartiality of the trial court, and the alleged unlawfulness of the confiscation measures applied to their assets. They also complain under Article 10 of the Convention that their criminal conviction was linked to the exercise by the first applicant of his freedom of expression. Lastly, they complain under Article 18 of the Convention, in conjunction with all of the above-mentioned Convention provisions, that their rights were restricted for purposes other than those prescribed under the Convention.

QUESTIONS TO THE PARTIES

1. In respect of the first applicant, Mr Huseyn Abdullayev, does the application concern matters which are essentially the same as those which were submitted to the UN Working Group on Arbitrary Detention? Can the proceedings before that institution be considered as another procedure of international investigation or settlement, within the meaning of Article 35 § 2 (b) of the Convention? Does the application contain relevant new information as compared to the matters submitted to that institution?

2. Did the applicants have a fair hearing in the determination of the criminal charges against them, in accordance with Article 6 § 1 of the Convention? Was there a breach of the applicants' right to a reasoned decision, in particular in respect of their arguments that the prescription periods for the criminal offences with which they were charged had expired?

3. Was the Baku Military Court which dealt with the applicants' case independent and impartial, as required by Article 6 § 1 of the Convention?

4. Has there been an interference with the applicants' freedom of expression, within the meaning of Article 10 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2 in pursuit of a legitimate aim?

5. Were the applicants deprived of their possessions in the public interest, and in accordance with the conditions provided for by law and in accordance with the principles of international law, within the meaning of Article 1 of Protocol No. 1? If so, was that deprivation necessary to control the use of property in accordance with the general interest or to secure the payment of penalties? Did that deprivation impose an excessive individual burden on the applicants?

6. Were the restrictions imposed by the State in the present case, purportedly permitted under Articles 6 and 10 of the Convention and Article 1 of Protocol No. 1 to the Convention, applied for a purpose other than those envisaged by those provisions, contrary to Article 18 of the Convention?

RAHIMOV v. Azerbaijan (no. 9249/18)

Article 3 – article 6 – article 10 – journalist sentenced for criminal libel – ill-treated by police upon arrest – unfair trial

SUBJECT MATTER OF THE CASE

The application concerns criminal defamation proceedings against the applicant, a journalist. In 2016 online news websites published articles authored by the applicant accusing a businessman (G.) and a high-ranking State official (F.) of tax evasion, fraud and corruption, following which G. instituted criminal proceedings against him and several other persons under the procedure of private prosecution. On 25 November 2016 the Sumgayit City Court convicted the applicant of the criminal offence under Article 147.2 of the Criminal Code (libel by accusation of having committed a serious or especially serious criminal offence) and sentenced him to one year's imprisonment. The court ordered his immediate arrest in the courtroom. He was initially detained for three days at a police department and then transferred to a detention facility. According to the applicant, while at the police department, he was subjected to ill-treatment, allegedly on F.'s instructions or with his knowledge.

Following an appeal by the applicant, on 1 March 2017 the Sumgayit Court of Appeal upheld his conviction, but changed the sentence to nine months' corrective work. Given that, by that point, the applicant had already been imprisoned for over three months, the court, having held one day of imprisonment as an equivalent to three days of corrective work, found that the sentence had been served by him in full. The applicant was released. The appellate court's judgment was upheld by the Supreme Court on 10 October 2017.

In the meantime, the applicant lodged a criminal complaint concerning his ill-treatment at the police department. On 25 January 2017 the Sumgayit City Prosecutor's Office refused to institute criminal proceedings on the ground of lack of evidence. Following a series of appeals, on 16 August 2017 the Sumgayit Court of Appeal upheld the decision of the prosecuting authority.

Relying on Articles 3, 6 and 10 of the Convention, the applicant complains that he was subjected to ill-treatment and that there was no effective investigation into his complaints in this regard, that the criminal defamation proceedings were unfair, and that his right to freedom of expression was breached.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to torture or inhuman or degrading treatment, in breach of Article 3 of the Convention? Having regard to the procedural protection from torture or inhuman or degrading treatment (see paragraph 131 of Labita v. Italy [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

2. Did the applicant have a fair hearing in the determination of the criminal charge against him, in accordance with Article 6 § 1 of the Convention? In particular, were the principle of equality of arms and the applicant's right to a reasoned judgment respected? Was the applicant afforded adequate time and facilities to prepare his defence, as required by Article 6 § 3 (b) of the Convention?

3. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention? If so, was the interference prescribed by law and necessary in terms of Article 10 § 2 in pursuit of a legitimate aim? Were the sanctions imposed on the applicant proportionate to the aims pursued?

The parties are requested to provide copies of all the medical records relevant to the case, including any medical records made at the police department and the detention facilities where the applicant was detained, the forensic report of 19 January 2017 and any other forensic reports.

GURBANOV v. Azerbaijan (no. 12716/18)

Article 11 – article 13 – refusal of government to authorise funding of democracy NGO by U.S.A. embassy

SUBJECT MATTER OF THE CASE

The application concerns refusals by the Ministry of Justice to register a grant agreement.
The applicant is a founder of the non-governmental organisation "the Institute of Democratic Initiatives" (founded on 5 November 2013 – "the NGO"), a civil society activist and a government critic. The NGO was not registered due to the authorities' refusal to do so (the Court found a violation of Article 11 on this ground in its judgment Abdullayev and Others v. Azerbaijan, [Committee], nos. 69466/14 and 12 others, 20 May 2021).

On 4 September 2014 the applicant signed a grant agreement in his own name with a donor (namely, the Embassy of the United States of America). The grant agreement in question was about awareness-raising about free and fair elections and was to be implemented in the framework of the Institute of Democratic Initiatives.

The applicant applied to the Ministry of Justice to register the grant agreement but, by a letter of 18 September 2014, the Ministry refused to register the grant agreement, indicating certain deficiencies allegedly contained in the submitted documents and returned those documents to the applicant.

The applicant's second, third and fourth requests to register the grant agreement, following rectifications in compliance with the indications made by the Ministry each time, were refused by the Ministry in the same manner by its letters of 29 September, 17 October and 12 November 2014 respectively.

The Ministry of Justice did not reply to the applicant's fifth request submitted in November 2016.
The applicant lodged a complaint against the Ministry of Justice arguing that its actions (or inaction) had been unlawful and asking the courts to order the Ministry to register the grant agreement.

During the court proceedings the Ministry of Justice alleged that it had refused to grant the applicant's fifth registration request by a letter of 5 December 2016. The Ministry argued that the refusal had been lawful because the grant agreement in question had expired, as its implementation had been intended within the period from 15 September 2014 to 15 September 2015.

The courts dismissed the applicant's complaint, finding nothing unlawful in the actions of the Ministry of Justice.
Invoking Article 11 of the Convention, the applicant complains that, by failing to register the grant agreement, the domestic authorities breached his right to freedom of association.
The applicant also complains under 13 of the Convention that his right to an effective remedy was breached because the domestic courts failed to address his arguments and grant his requests aimed at adducing evidence.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's freedom of association within the meaning of Article 11 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 11 § 2?

2. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 11, as required by Article 13 of the Convention?

MAMMADLI v. Azerbaijan (no. 9893/21)

Article 6 – article 10 – conviction for failure to comply with police order- order concerned invitation to come to the police officer to account for insulting comment directed at police officers on Facebook – applicant is opposition member

SUBJECT MATTER OF THE CASE

The applicant is an opposition activist. The present application concerns his administrative conviction for "failure to comply with a lawful order of a police officer" under Article 535.1 of the Code of Administrative Offences (CAO).

According to the relevant police report available in the case file, the applicant was "invited" to a police station to write an explanatory note (izahat) about an allegedly insulting comment directed at police officers that he had posted under a video shared by another individual on Facebook. However, he refused to follow the police officers to the police station and thus "disobeyed their order".

By a judgment of 29 June 2020, the Zardab District Court found that the applicant had committed the administrative offence under Article 535.1 of the CAO and fined him in the amount of 200 Azerbaijani manats. By a final judgment of 4 August 2020, the Shaki Court of Appeal upheld the judgment of the first-instance court.

Relying on Articles 6 and 10 of the Convention, the applicant complains of the alleged unfairness of the domestic proceedings and of a violation of his right to freedom of expression.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the applicant's right to a reasoned decision respected?

2. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention? If so, was the interference prescribed by law and necessary in terms of Article 10 § 2 in pursuit of a legitimate aim?

The parties are requested to submit the original text and a translation into English or French of the applicant's allegedly insulting comment that he had posted on Facebook which led to his administrative conviction.

AHMED v. Bulgaria (no. 34018/22)

Article 3 - Article 5 – Article 34 – compensation for unlawful detention

SUBJECT MATTER OF THE CASE

The application concerned the administrative detention of the applicant, an Iraqi national, for the purposes of enforcing a deportation order. The applicant was detained at the specialised centre for the temporary detention of foreign nationals located in Busmantsi, near Sofia, from 22 March 2019 to 20 January 2020.

In a judgment of 9 January 2020, the Supreme Administrative Court annulled the detention order on the grounds that the legal requirements had not been met, noting in particular that the competent authorities had not established the existence of a risk of absconding or a realistic prospect of implementing the removal order.

The applicant brought an action under Article 1 of the State Liability Act to claim compensation for the damage suffered as a result of his unlawful detention and the poor conditions in which he was held. His action was finally dismissed by a ruling of the Supreme Administrative Court on 6 April 2022, which held that the claimant had not established, firstly, that the conditions of his detention were contrary to the law and applicable regulations and, secondly, that there was a causal link between the administrative act that had been annulled and the alleged non-material damage.

Under Article 5 §§ 1 and 5 of the Convention, the applicant complained that he had not received compensation for his detention, the irregularity of which had been recognised by the domestic courts. Under Article 3 of the Convention, he complained of the poor material conditions in which he had been detained and the humiliation he had suffered at the hands of the detention centre staff.

QUESTIONS TO THE PARTIES

1. Do the conditions of the applicant's detention in the Busmantsi specialised temporary holding centre for foreigners amount to inhuman or degrading treatment contrary to Article 3 of the Convention (see Khlaifia and Others v. Italy [GC], no. 16483/12, §§ 158-169, 15 December 2016)?

2. Can the applicant still claim to be a victim, within the meaning of Article 34 of the Convention, of the alleged violation of Article 5 § 1, once the domestic courts have recognised the unlawful nature of his administrative detention?

3. Did the rejection of the applicant's application for compensation for his detention, which he considered to be contrary to Article 5 § 1, constitute a violation of Article 5 § 5 of the Convention (see Dzhabarov and Others v. Bulgaria, nos. 6095/11 and 2 others, §§ 82-86, 31 March 2016)?

KOFFI v. Bulgaria (no. 95/24)

Article 3 – article 14 – Failure to investigate racist motivation of assault

SUBJECT MATTER OF THE CASE

The application concerns the authorities' alleged failure to effectively investigate the perpetrators (several unidentified private individuals) of an assault on the applicant, who is of Ivory Coast origin and British nationality, allegedly committed with racist motivation. The applicant also complains that the authorities did not put in place adequate operational measures with a view to preventing the attack. The case raises issues under Article 3 and Article 14 in conjunction with Article 3 of the Convention. The applicant also invokes Article 13 of the Convention.

Specifically, in the evening of 29 September 2018 the applicant, who was peaceful walking with two acquaintances, was attacked in the street in the immediate vicinity of the Ministry of the Interior's headquarters in Sofia, by what would appear to have been a sizeable group of football fans roaming about in the streets after the end of a football match. He was allegedly repeatedly hit and kicked on the face and body, as a result of which he drifted in and out of consciousness, sustained numerous wounds, had two front teeth kicked off, needed a transplant to his face and suffered from strong pain and lasting fear thereafter.

An investigation was opened on the following day, into the offence of causing medium bodily harm (Article 129 § 2 of the Criminal Code). On 5 October 2018 the applicant's lawyer asked that the applicant be granted leave to join the (pre-trial) criminal proceedings as a civil party. The investigation was subsequently modified in respect of the offence investigated, the prosecutor having found that it

corresponded to medium bodily harm inflicted out of hooligan motivation (Article 131 § 1 (12) of the Criminal Code).

The prosecutor twice suspended the investigation (decisions of July 2020 and December 2021). The Sofia District Court each time (in September 2020 and December 2021) quashed the suspension and remitted the case for further investigative measures, indicating the major omissions and directing that they be redressed (by spelling out the investigative acts that needed to be carried out). The prosecution did not proceed as instructed by the court; the prosecutors also did not carry out those same investigative acts when they were requested by the applicant's lawyer (decision of July 2021).

In September 2022 the applicant's lawyer wrote to the prosecution, prompting them to investigate more diligently and speedily; she received a reply the same month, in essence stating that the investigation was in process and that - once it was completed - the applicant and his lawyer would be duly informed of all steps undertaken and would be given an opportunity to see all materials collected in the case. The applicant's lawyer further wrote to the district prosecutor and the Prosecutor General in February 2023, enquiring about whether the court's instructions to the prosecution had been complied with and also about the time-frame of their expected completion. The applicant received no reply. On 30 March 2023 the Office of the Supreme Prosecution of Cassation sent a reply on half a page. The letter indicated that, while no grounds for imposing disciplinary sanctions on the supervising prosecutors had been established, it has been recommended to examine whether there were grounds for seeking disciplinary sanctions in respect of the investigating police officers since the investigation had been ineffective at times.

In October 2023 the applicant's lawyer brought a claim for damages against the State authorities, under section 2(b) of the State and Municipalities Responsibility for Damage Act, seeking compensation for damage caused by the excessive length of the criminal proceedings which the applicant had joined as a civil party.

No further information is available on file in terms of developments in either set of proceedings.

QUESTIONS TO THE PARTIES

1. Having regard to the procedural protection from ill-treatment, even when inflicted by private persons (see, among many other authorities, Beganović v. Croatia, no. 46423/06, § 70, 25 June 2009), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

2. Have the authorities taken all reasonable steps to investigate any possible racist motivation behind the attack on the applicant, as required by Article 14 of the Convention, read in conjunction with Article 3 (see, among other authorities, Abdu v. Bulgaria, no. 26827/08, §§ 44-46 , 11 March 2014, and Škorjanec v. Croatia, no. 25536/14, §§ 53 and 57, 28 March 2017)?

3. Have the authorities put in place adequate preventive operational measures to mitigate the risk of attacks in the context of football fans' violence? The Government are requested to submit information concerning the legislative and administrative framework for the deterrence against such violence and to comment on whether at the material time it was being effectively implemented.

TRIFONOV v. Bulgaria (no. 57872/19)

Article 8 - Search and seizure of lawyer's office – alleged lack of effective domestic remedies

SUBJECT-MATTER OF THE CASE

The application concerned the search and seizure of a lawyer's office, the alleged lack of effective domestic remedies in that regard and the authorities' refusal to allow the applicant to obtain copies of the documents relating to the bugging. The applicant relied on Articles 8, 13 and 34 of the Convention.

QUESTIONS TO THE PARTIES

1. Did the search of the applicant's lawyer's office at 45 Georgi Dimitrov Street, Karnobat, and the seizure of the computers and documents found there constitute interference with his right to respect for his private life, home and correspondence within the meaning of Article 8 § 1 of the Convention? If so, were the interferences with the exercise of those rights prescribed by law and necessary within the meaning of Article 8 § 2 (see Iliya Stefanov v. Bulgaria, no. 65755/01, §§ 34-45, 22 May 2008)?

2. Did the applicant have at his disposal, as required by Article 13 of the Convention, an effective domestic remedy through which he could have pursued his complaint of a violation of Article 8 of the Convention (see Posevini v. Bulgaria, no. 63638/14, §§ 83-87, 19 January 2017)?

3. Did the State in the present case hinder the effective exercise of the right of individual petition within the meaning of Article 34 of the Convention as a result of the authorities' refusal to provide the applicant with copies of the documents relating to his wiretap in the criminal proceedings against him (see Naydyon v. Ukraine, no. 16474/03, §§ 58-69, 14 October 2010)?

POLITOV v. Bulgaria (no. 23157/22)

Article 3 – ineffective investigation into reported assault

SUBJECT MATTER OF THE CASE

The application concerns the applicant’s complaint under Article 3 of the Convention (he also relies on Article 13) that the authorities failed to carry out an effective investigation into his complaint that he had sustained a wound on his nose and a traumatic oedema with bruising as a result of an assault by a private individual, X, on 7 April 2014 while performing his duties as an official of the municipality.

Specifically, having opened a criminal investigation against X in May 2014, the Plovdiv District Prosecutor terminated the proceedings on 12 July 2017, considering that the facts corresponded to the privately prosecutable offence of inflicting minor bodily injuries. Upon the applicant’s appeal, on 20 October 2017 the Plovdiv District Court quashed the termination and remitted the case to the prosecution for investigation into the publicly prosecutable offence of inflicting bodily injury on an official. The prosecution suspended the proceedings on five occasions and the court quashed the suspensions each time. Ultimately, on 16 November 2021 the Plovdiv District Prosecutor terminated the criminal proceedings, since the absolute limitation period for a privately prosecutable offence had lapsed on 7 October 2021.

In the meantime, the applicant had obtained compensation in the amount of 400 euros at the end of separate civil proceedings which he had brought against the perpetrator (final judgment of 18 March 2020 of the Plovdiv Regional Court).

QUESTION TO THE PARTIES

Bearing in mind the applicant's complaint and having regard to the procedural protection under Article 3 of the Convention (see, among others, X and Others v. Bulgaria [GC], no. 22457/16, § 177 and 184-90, 2 February 2021; Stoev and Others v. Bulgaria, no. 41717/09, § 42, 11 March 2014, and Kosteckas v. Lithuania, no. 960/13, § 40, 13 June 2017), was the investigation conducted in the present case by the domestic authorities effective in accordance with the above provisions?

The Government are invited to submit to the Court the whole file of the proceedings opened into the applicant's complaint.

MIHAYLOVA v. Bulgaria (no. 43728/22)

Article 3 – article 8 – ineffective investigation into reported assault

SUBJECT MATTER OF THE CASE

The application concerns the authorities' alleged failure to effectively investigate and bring to justice the perpetrators (two private individuals, X and Y) of an attack on the applicant's physical integrity that had caused her several injuries on the head. It raises issues under Articles 3 and 8 of the Convention.

In August 2018 the applicant complained to the prosecutor of having been beaten, in March 2018, by X and Y in an attempt to kill her. Criminal proceedings were opened into her complaint but, in a decision of 13 February 2019, the competent district prosecutor suspended the these proceedings, finding that only a privately prosecutable offence of light bodily harm had been committed. In September 2020 the prosecutor terminated the criminal proceedings.

In the meantime, following the prosecutor's indication, the applicant had brought private prosecution proceedings in court. In a final decision of 9 July 2021, the Omurtag District Court terminated the private prosecution proceedings and remitted the case back to the public prosecution, for investigation into the offence of hooliganism (Article 325 § 1 of the Criminal Code) which was publicly prosecutable.

On 10 December 2021 the district prosecutor refused to open criminal proceedings. The applicant appealed before the regional prosecutor, who confirmed that decision on 2 August 2022. The latter found that, for so long as the September 2020 decision terminating the criminal proceedings was not invalidated, it represented an obstacle to opening new criminal proceedings into the same offence. That decision further stated that the possibility to open criminal proceedings into a publicly-prosecutable offence under Article 325 § 1 of the Criminal Code had been extinguished, since the limitations period for starting such proceedings had expired.

QUESTION TO THE PARTIES

Bearing in mind the applicant's complaint and having regard to the procedural protection under Article 3 and/or Article 8 of the Convention (see, among others, X and Others v. Bulgaria [GC], no. 22457/16, § 177 and 184-90, 2 February 2021; Kosteckas v. Lithuania, no. 960/13, § 40, 13 June 2017, and, mutatis mutandis, Valiulienė v. Lithuania, no. 33234/07, §§ 72-7 and 87, 26 March 2013), was the investigation conducted in the present case by the domestic authorities effective in accordance with the above provisions?

The Government are invited to submit to the Court the whole file of the different proceedings opened into the applicant's complaint.

KOSTOVA v. BULGARIA (no. 10637/22)

Article 3 – article 1 Protocol No. 1– ineffective investigation into reported assault

SUBJECT MATTER OF THE CASE

The application chiefly concerns the applicant's complaint under the procedural limb of Article 3 of the Convention (she also relies on Article 13) of the ineffective criminal investigation into her complaint about having been assaulted by a private individual, X, causing her haematomas on the upper lip, left upper arm and right forearm, as well as recurring dizziness and balance problems. In particular, she claims that the prosecution and the courts alike failed to act promptly on her complaint, which led to the expiry of the relevant limitations period. She also complains under Article 1 of Protocol No. 1 to the Convention that she had been made to bear the costs of X in those proceedings.

The applicant was assaulted in her home on 28 June 2016 and the following day she complained to the authorities. On 17 August 2016 the Sofia District Prosecutor refused to open criminal proceedings, considering that the alleged offence had to be characterised as an infliction of minor bodily injuries, which was privately prosecutable. It would appear that the applicant was not notified of that refusal until September 2018, when she enquired about developments in the proceedings. In October 2018 she appealed before the higher prosecutor who confirmed the refusal in November 2018.

Also in October 2018, the applicant brought private criminal proceedings against X in court. On 17 September 2020 the Sofia District Court sentenced X to a suspended sentence of 4-months imprisonment, having found her guilty of causing the applicant minor bodily injuries.

Upon X's appeal, in a judgment of 12 March 2021 the Sofia City Court terminated the proceedings as the absolute limitation period had lapsed and ordered the applicant to pay around 800 euros (EUR) in costs to X. The applicant appealed on points of law but the Supreme Court of Cassation dismissed her appeal on 30 August 2021. The applicant was further ordered to pay EUR 750 in costs incurred by X in the latter proceedings.

QUESTIONS TO THE PARTIES

1. Bearing in mind the applicant's complaint and having regard to the procedural protection under Article 3 of the Convention (see, among others, X and Others v. Bulgaria [GC], no. 22457/16, § 177 and 184-90, 2 February 2021; Stoev and Others v. Bulgaria, no. 41717/09, § 42, 11 March 2014, and Kosteckas v. Lithuania, no. 960/13, § 40, 13 June 2017), was the investigation conducted in the present case by the domestic authorities effective in accordance with the above provisions?
2. Has there been a violation of the applicant's right to peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1, on account of the fact that the domestic courts ordered her to reimburse the defendant for the costs of those proceedings (see, mutatis mutandis, National Movement Ekoglasnost v. Bulgaria, no. 31678/17, §§ 70-1 and 83-4, 15 December 2020, with further references, and Musa Tarhan v. Turkey, no. 12055/17, §§ 72-3, 23 October 2018)?

PINTAR v. Croatia (no. 6386/23)

Article 6 – no opportunity to question victim and expert witness *a charge* in trial for lewd acts against child

SUBJECT MATTER OF THE CASE

The application concerns criminal proceedings against the applicant in which he was found guilty of having committed lewd acts against a child and sentenced to one year's imprisonment.
The applicant's conviction was based on, inter alia, the victim's statement given before the investigating judge, the video of which was played at the trial hearing, and a combined psychiatric and psychological expert report concerning the state of the victim's health and her ability to provide a credible testimony. The report was obtained at the investigative stage and prepared by an expert specialised in psychology and an expert specialised in psychiatry. Due to the former expert being ill at the time of the trial, only the latter expert was questioned at the hearing, at which occasion she stated that she was unable to respond to a question pertaining to the "psychological assessment" (psihološka obrada), posed by the defence. The applicant's request that the victim be questioned at the trial was rejected in view of the opinion of the expert specialised in psychiatry that having to provide another testimony would cause her further traumatisation.

The applicant complains, relying on Article 6 of the Convention, that he did not have a fair trial in that he was not afforded an opportunity to question either the victim or the expert witness specialised in psychology.

QUESTION TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was his right to examine witnesses, including expert witnesses, secured in the criminal proceedings against him, as required by Article 6 §§ 1 and 3 (d) of the Convention (see Paić v. Croatia, no. 47082/12, §§ 26-54, 29 March 2016; Rosin v. Estonia, no. 26540/08, §§ 50-63, 19 December 2013; Kartoyev and Others v. Russia, nos. 9418/13 and 2 others, §§ 74-78, 19 October 2021; Danilov v. Russia, no. 88/05, §§ 108-121, 1 December 2020; and Matytsina v. Russia, no. 58428/10, §§ 168-181, 27 March 2014)?

PALASKA v. Croatia (no. 46785/22)

Article 6 §1 – Article 1 Protocol No. 1 – rejection of request for disability allowance – alleged ineffective appreciation of evidence

SUBJECT MATTER OF THE CASE

The application concerns administrative proceedings in which the applicant unsuccessfully asked to be granted a disability allowance.

The applicant is a person suffering from multiple health issues. In 2016 he applied to be granted a disability allowance. The administrative authorities' experts issued expert reports concluding that his health condition did not warrant the awarding of a disability allowance. The applicant challenged their findings before the Rijeka Administrative Court, which first accepted the applicant's proposal to conduct an independent expert assessment of his health condition, but then held that obtaining the independent expert report was not necessary given that the applicant had meanwhile been granted another social allowance (care and assistance allowance), which meant that he could not be granted the disability allowance.

The High Administrative Court dismissed the applicant's subsequent appeal on the ground that in any event the applicant had not managed to put to doubt the findings of the administrative authorities' experts and that there was thus no need to conduct an independent expert assessment.

Before the Court the applicant complains, under Article 6 § 1 of the Convention, about a breach of his right of access to a court concerning his request for a disability allowance. He submits that the Rijeka Administrative Court did not examine the conclusions of the administrative authorities' experts regarding his health condition and his related entitlement to a disability allowance, merely on account of the fact that he had meanwhile been awarded the care and assistance allowance.

He further complains, under Article 6 § 1 of the Convention, that the administrative authorities' experts never examined him in person and that their reports were never forwarded to him.

He lastly complains, under Article 1 of Protocol No. 1 to the Convention, that the domestic authorities unjustifiably deprived him of his entitlement to a disability allowance, which is of a significantly higher monthly amount than the care and assistance allowance which was granted to him.

QUESTIONS TO THE PARTIES

1. Did the applicant have access to a court in the determination of his request to be granted the disability allowance, as required by Article 6 § 1 of the Convention? In particular, were the limitations on access to a court justified in the applicant's case? In particular, did they pursue a legitimate aim, and was there a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 89, 29 November 2016, and Naït-Liman v. Switzerland [GC], no. 51357/07, § 115, 15 March 2018)?

2. Did the applicant have a fair hearing, as guaranteed by Article 6 § 1 of the Convention? In particular, did he have an effective opportunity to participate in the proceedings concerning his request for a disability allowance and were the principles of equality of arms and adversarial hearing respected as regards the commissioning and obtaining of the expert reports (see Letinčić v. Croatia, no. 7183/11, § 50, 3 May 2016; Matytsina v. Russia, no. 58428/10, § 169, 27 March 2014, and Mantovanelli v. France, 18 March 1997, § 33, Reports of Judgments and Decisions 1997-II)?

3. Did the applicant's claim for a disability allowance amount to a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention (compare Carson and Others v. the United Kingdom [GC], no. 42184/05, § 64, ECHR 2010)? If so, did the domestic authorities' decisions dismissing his claim amount to an interference with his right to the peaceful enjoyment of his possessions? If so, was that interference in accordance with the conditions provided for by law, did it pursue a legitimate aim and did it satisfy the requirement of proportionality, as required by Article 1 of Protocol No. 1?

ORDULJ v. Croatia (no. 5899/23)

Article 5 - lack of a speedy judicial review of request for conditional release from juvenile detention

SUBJECT MATTER OF THE CASE

The application concerns the domestic courts' examination of the possibility of the applicant's conditional release from juvenile detention.

The applicant served a two years' prison sentence on the basis of a final judgment. Under the domestic law, the competent court was to examine ex officio, two months before the applicant would have served two thirds of his sentence, whether he could be granted conditional release. To that end, the applicant, who also had the right to lodge a request with the court to be considered for conditional release, lodged such a request with the Split County Court. His request was examined and granted only six months later.

The applicant instituted civil proceedings against the State, seeking compensation for the damage sustained by judicial malpractice. He argued that the Split County Court had not only failed to timely decide on his request for conditional release from juvenile detention due to several procedural errors, but also failed to comply with its obligation to examine the possibility of conditional release of its own motion, all of which resulted in him being detained excessively long. His claim was finally dismissed by the domestic courts as unfounded. In particular, the appellate court considered that the relevant domestic provision on conditional release from juvenile detention was not entirely clear and that thus the Split County Court could not be held accountable for misinterpreting it. In any event there was no guarantee that the applicant would have been granted the conditional release had the matter been examined six months earlier.

The applicant complains, relying on Article 5 of the Convention, about the lack of a speedy judicial review of his request for conditional release, arguing that as a result of the failure of the domestic courts to respect the relevant statutory time-limit he was kept in juvenile detention six months longer than necessary.

QUESTIONS TO THE PARTIES

1. Having regard to the domestic courts' alleged failure to respect the statutory time-limit for examining the possibility of the applicant's conditional release from juvenile detention, was his continued detention in compliance with Article 5 § 1 of the Convention? In particular, was his detention lawful and not arbitrary (see Del Río Prada v. Spain [GC], no. 42750/09, §§ 126-132, ECHR 2013, and H.W. v. Germany, no. 17167/11, §§ 74-91, 19 September 2013)?

2. Was Article 5 § 4 of the Convention applicable to the situation in the present case? In particular, did the domestic law provide for a mandatory review of the need for the applicant's continued detention (see Kafkaris v. Cyprus (dec.), no. 9644/09, §§ 58-62, 21 June 2011)? If so, could it be said that the grounds justifying the applicant's deprivation of liberty were susceptible to change with the passage of time? Which circumstances would have been relevant for granting a conditional release?

3. If Article 5 § 4 of the Convention was applicable to the situation in the present case, did the length of the proceedings, by which the applicant sought to challenge the lawfulness of his detention, comply with the "speed" requirement thereof (see Mooren v. Germany [GC], no. 11364/03, §§ 106-107, 9 July 2009)?

The parties are invited to submit to the Court references to the relevant domestic provisions and judicial practice, where available.

MIOČIĆ v. Croatia (no. 10014/23)

Article 6 §1 – Article 1 Protocol NO 1 – excessive length and insufficient amount of compensation for unduly impounded car 25 years ago

SUBJECT MATTER OF THE CASE

The application concerns civil proceedings which the applicant instituted against the State in 2000 seeking compensation for the damage she had sustained when in 1996 her car had been unduly impounded in the minor-offence proceedings against her concerning a customs offence, and subsequently sold in 1998.

In 2016, the first-instance court awarded the applicant compensation in the amount corresponding to the value of the car on the day when it had been impounded, as determined by the court expert. Moreover, she was awarded the statutory interest accrued on that amount from the day of the adoption of the first-instance judgment, while the remaining part of her claim concerning the statutory interest accrued on that amount from the day when the car had been impounded was dismissed. That judgment was upheld by the second-instance court on 14 March 2017. On 7 February 2018 the Supreme Court dismissed the applicant's appeal on points of law, and by a decision of 13 October 2022, received by her representative on 26 October 2022, the Constitutional Court dismissed her subsequent constitutional complaint.

The applicant complains, under Article 1 of Protocol No. 1 to the Convention, that she was not fully compensated for the value of the property she had been deprived of. Under Article 6 § 1 of the Convention, she complains about the excessive length of the proceedings for compensation.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicant's right to the peaceful enjoyment of her possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention? In particular, having regard to the amount of compensation awarded to the applicant, did the sale of her car constitute a disproportionate interference with her property (compare Guiso-Gallisay v. Italy (just satisfaction) [GC], no. 58858/00, §§ 103-105, 22 December 2009; Schembri and Others v. Malta, no. 42583/06, §§ 35-46, 10 November 2009; and Gashi v. Croatia, no. 32457/05, § 41, 13 December 2007)?

2. Was the length of the proceedings in the present case in the period after 14 March 2013 in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention (see, for example, Frydlender v. France [GC], no. 30979/96, § 43, ECHR 2000-VII)?

MAGOSÁNYI v. Croatia (no. 19603/23)

Article 13 – article 2 Protocol No. 4 – lack of re-examination of restraining order imposed for domestic violence

SUBJECT MATTER OF THE CASE

The application concerns minor-offence proceedings against the applicant and his former spouse on charges of domestic violence. In the course of those proceedings, by a decision which became final on 20 December 2022, the domestic courts imposed on the applicant a precautionary measure in the form of a restraining order, prohibiting him from approaching his former spouse and her child within 50 metres, entering their place of residence and making or maintaining direct or indirect contact with them. The measure remained in force until 8 November 2023 when it was terminated ex lege following the applicant's acquittal.

The applicant complains, under Article 13 of the Convention and Article 2 of Protocol No. 4 thereto, about the lack of regular re-examination of the measure contrary to the domestic law.

QUESTIONS TO THE PARTIES

1. Did the domestic courts' decision imposing on the applicant a precautionary measure in the form of a restraining order constitute a restriction on his freedom of movement guaranteed by Article 2 § 1 of Protocol No. 4 to the Convention (compare Kurt v. Austria [GC], no. 62903/15, § 183, 15 June 2021)?

2. If so, has there been a violation of the applicant's right to liberty of movement guaranteed by Article 2 § 1 of Protocol No. 4 (see Pagerie v. France, no. 24203/16, §§ 177 and 195, 19 January 2023; and Villa v. Italy, no. 19675/06, §§ 45-53, 20 April 2010)?

3. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 2 § 1 of Protocol No. 4, as required by Article 13 of the Convention (see, mutatis mutandis, Riener v. Bulgaria, no. 46343/99, §§ 138-143, 23 May 2006)?

JOŠILO v. Croatia (no. 14685/23)

Article 5 §§1, 4 – article 6 – time limit and legal basis of pre-trial detention pending extradition

SUBJECT MATTER OF THE CASE

The application concerns the applicant's detention pending extradition, which was ordered concurrently with his pre-trial detention.
On 5 July 2022 the applicant, a national of Bosnia and Herzegovina, was arrested in Croatia. On 7 July 2022 a one-month pre-trial detention was ordered against the applicant in Croatia on suspicion of having committed a forgery. By a number of consecutive decisions, the applicant's pre-trial detention was extended until 5 January 2023, when it was terminated because the maximum statutory period for it had expired.

On 28 July 2022, while the applicant was in pre-trial detention, the Croatian authorities ordered his detention on the basis of an arrest warrant issued by Bosnia and Herzegovina ("the requesting state") in order to try the applicant in that country. According to the decision of 28 July 2022, the requesting state was given a 40-day time-limit, starting from the day of adoption of the decision, to submit an extradition request with accompanying documents, failing which the applicant would be released. It was also stated that, after the receipt of the extradition request, detention pending extradition could last for the entire duration of the extradition proceedings, until the expiry of the time-limit for the execution of the decision on extradition. It was lastly stated that extradition detention would start to run from the moment of termination of the applicant's pre-trial detention.

According to the applicant, the 40-day time-limit expired on 6 September 2022. Since the requesting state had not submitted an extradition request by that date, on 7 September 2022 he submitted a motion that his detention pending extradition be terminated. On 30 September 2022 the requesting state submitted the extradition request. On 28 November 2022 the applicant submitted a motion that his detention pending extradition be revoked, arguing that the extradition request had been submitted after the expiry of the 40-day time-limit and that there no longer existed a legal basis for the detention in question.

On 5 January 2023 (the day when the applicant's pre-trial detention was terminated, see above), the Rijeka County Court dismissed the applicant's requests of 7 September and 28 November 2022 that his extradition detention be terminated/revoked. In particular, it held that the relevant time-limits set by the decision of 28 July 2022, including the 40-day time-limit to submit the extradition request with accompanying documents, started to run only after the termination of the applicant's pre-trial detention. The applicant's appeal against the latter decision was dismissed and, on the day of lodging his application with the Court, he was still in extradition detention.

The applicant complains, relying on Article 5 §§ 1 and 4 and Article 6 of the Convention, about the unlawfulness of his detention as of 5 January 2023 and about the lack of diligence in the conduct of the

domestic authorities, who failed to timely examine his requests of 7 September and 28 November 2022 that his extradition detention be terminated/revoked.

QUESTIONS TO THE PARTIES

1. Has the applicant's detention pending extradition been in compliance with Article 5 § 1 (f) of the Convention? In particular, has the applicant's detention as of 5 January 2023 been lawful and not arbitrary? Have the extradition proceedings been conducted with due diligence (see J.N. v. the United Kingdom, no. 37289/12, §§ 74-86, 19 May 2016, and Komissarov v. the Czech Republic, no. 20611/17, §§ 45-47, 3 February 2022)?

2. Having regard to the fact that the applicant's requests of 7 September and 28 November 2022 to terminate/revoke his extradition detention were examined only after his pre-trial detention had been terminated, was the length of the proceedings by which the applicant sought to challenge the lawfulness of his detention pending extradition in compliance with the "speed" requirement of Article 5 § 4 of the Convention (see Mooren v. Germany [GC], no. 11364/03, § 106, 9 July 2009)?

The parties are invited to submit to the Court references to the relevant domestic provisions and case-law, where available.

BROZ v. Croatia (no. 29497/22)

Article 6 §1 – Article 14 – dismissal from police service upon physical injury – put on disability pension instead of transferred to a sedentary position

SUBJECT MATTER OF THE CASE

The application concerns the allegation of the applicant that he had been discriminated against on the basis of his disability.

The applicant was a police officer. In 2016 the competent authority established that he was entitled to a disability pension due to his incapacity to continue performing the duties of a police officer as a result of an injury. That decision stated that the applicant was able to perform full time any other sedentary job for which he was qualified.

According to section 120(1) of the Police Act, the applicant's police service was terminated ex lege as soon as the decision entitling him to a disability pension became enforceable.

The applicant challenged the said decision before the administrative courts complaining about discrimination, and claiming that he had been entitled to be transferred to another post within the civil service adapted to his abilities in accordance with section 131a of the Civil Servants Act in force at the material time, section 41 of the Labour Act, as well as Directive 2000/78/EC. He also requested for a question to be referred to the Court of Justice of the European Union, and compared his situation to that of police officers who become members of a political party and who were then transferred to another post within the civil service since police officers could not be members of political parties.

The administrative courts dismissed the applicant's claims, finding that his dismissal had been lawful, that he had failed to show that he had been discriminated against by public authorities and that section 120(1) of the Police Act had been enacted at the time of the harmonisation of the Croatian legislation with European Union law, so no issue arose in that respect either.
The applicant's subsequent constitutional complaint was declared inadmissible for being manifestly ill-founded by a decision served on his lawyer on 23 February 2022.

The applicant complains, relying on Articles 6 § 1 and 14 of the Convention, that he was discriminated against on the basis of his disability in that he had never been offered another post suitable to his abilities, as required both by national and EU law. He also maintains that the domestic court decisions had been arbitrary and unreasoned as regards the decisive points.

QUESTIONS TO THE PARTIES

1. Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, were the court judgments in his case arbitrary or manifestly unreasonable (see Anđelković v. Serbia, no. 1401/08, §§ 24 and 27, 9 April 2013)? Were they sufficiently reasoned (see Tarvydas v. Lithuania, no. 36098/19, §§ 47 and 52, 23 November 2021)?

2. Has the applicant suffered discrimination on the ground of his disability, contrary to Article 1 of Protocol No. 12 to the Convention?

3. Does the applicant belong to a particularly vulnerable group in society, whose members have suffered considerable discrimination in the past? If so, what were the "very weighty reasons" for the restrictions in question on his fundamental rights (see, mutatis mutandis, Alajos Kiss v. Hungary, no. 38832/06, § 42, 20 May 2010, and Horváth and Kiss v. Hungary, no. 11146/11, § 128, 29 January 2013)?

BELEČETIĆ and BELEČETIĆ v. Croatia (no. 12671/23)

Article 6§1 – article 1 Protocol No. 1 – refusal to increase disabled veteran social allowance upon worsening of his condition

SUBJECT MATTER OF THE CASE

The application concerns administrative proceedings in which the applicants' predecessor, a disabled war veteran, asked for a reassessment of his health condition and related increase in his social insurance allowance.

In 2011 the applicants' husband and father was granted the status of a disabled war veteran of the second group and awarded a disability allowance.

In 2015 he applied for a reassessment of his health condition, which had in the meantime deteriorated, and asked to be granted the status of a disabled war veteran of the first group. Notably, pursuant to a relevant domestic provision, if the illnesses of a disabled war veteran had caused such damage to the body that he or she was no longer able to perform basic bodily functions without assistance, the person in question was to be granted the status of a disabled war veteran of the first group.

The applicants' predecessor died seven months after lodging the request and the applicants took over the proceedings.

The expert reports commissioned by the administrative authorities established that the health condition of the applicants' predecessor had deteriorated to complete paralysis of both upper and lower limbs with complications in breathing and swallowing but held that he could not be granted the status of a disabled war veteran of the first group. In so concluding, the expert report commissioned by the second-instance administrative authority referred to the instruction of the Ministry of War Veterans

issued on 17 December 2018, without indicating its content. The case file shows that the experts first had issued another opinion, which they however set aside after receiving the Ministry's instruction of 17 December 2018.

Relying on the expert reports, the administrative authorities dismissed the applicants' predecessor's request to be granted the status of a disabled war veteran of the first group. The Zagreb Administrative Court confirmed the administrative authorities' decision. The High Administrative Court held that the applicants had failed to propose to the Zagreb Administrative Court to obtain an expert report by a permanent court expert in order to challenge the conclusions of the administrative authorities' experts.

Before the Court the applicants complain, under Article 6 § 1 of the Convention, about the unfairness of the administrative proceedings. They submit that the Zagreb Administrative Court failed to obtain a report by a permanent court expert as expressly proposed by them in their action for judicial review; that the High Administrative Court wrongly held that they had never proposed to obtain such a report, and that the decision in the proceedings was ultimately based on the instruction of the Ministry of War Veterans issued on 17 December 2018, which was not disclosed to them.

The applicants also complain that the domestic authorities' refusal to grant their predecessor the status of a disabled war veteran of the first group was unlawful and thus in breach of Article 1 of Protocol No. 1 to the Convention.

QUESTIONS TO THE PARTIES

1. Did the applicants have a fair hearing, in accordance with Article 6 § 1 of the Convention? In particular:

(a) Did the domestic courts conduct a proper examination of the applicants' submissions, arguments, and proposals to obtain evidence (see Perez v. France [GC], no. 47287/99, § 80, ECHR 2004-I)?

(b) Were the principles of adversarial hearing and equality of arms respected as regards the Ministry of War Veterans' instruction of 17 December 2018 (see Krčmář and Others v. the Czech Republic, no. 35376/97, §§ 39 and 42, 3 March 2000; Van Orshoven v. Belgium, no. 20122/92, § 41, 25 June 1997, and Lobo Machado v. Portugal [GC], no. 15764/89, § 31, 20 February 1996) and the expert evidence (see Letinčić v. Croatia, no. 7183/11, § 50, 3 May 2016; Matytsina v. Russia, no. 58428/10, § 169, 27 March 2014, and Mantovanelli v. France, 18 March 1997, § 36, Reports of Judgments and Decisions 1997-II)?

2. Did the applicants' predecessor's claim amount to a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention (see Carson and Others v. the United Kingdom [GC], no. 42184/05, § 64, ECHR 2010)? If so, did the domestic authorities' decisions dismissing their predecessor's claim amount to an interference with the applicants' right to the peaceful enjoyment of their possessions? If so, was that interference in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1?

BARBA v. Croatia (no. 6354/23)

Article 1 Protocol No. 1 – no interests on disability pension for veteran after reassessment of his initially established disability level

SUBJECT MATTER OF THE CASE

The application concerns statutory default interest on monthly instalments of disability benefit.

In particular, by a decision of the Ministry of Defence of 23 January 1997 the applicant was granted the status of a disabled war veteran with 50% disability, and a corresponding amount of a disability benefit (invalidnina) from 1 June 1996.

The applicant challenged this decision before the Administrative Court. As a result, the Ministry eventually, by a decision of 11 May 2005, granted him the status of a disabled war veteran with 80% disability, and a corresponding amount of the disability benefit from 1 June 1996.
The difference between the levels of the benefit established by the first and the second decision was paid to the applicant. However, he was never paid statutory default interest accrued on each monthly instalment. He therefore brought a civil action against the State seeking payment of that interest.

The domestic courts dismissed his claim, finding that the State's debt to the applicant had been established only with the Ministry's second decision, of 11 May 2005. That debt had been immediately paid to him, including the difference between the levels of the benefit established by the first and the second decision. The State had thus never been in default which would have justified awarding him statutory default interest.

Before the Court the applicant complains under Article 1 of Protocol No. 1 to the Convention that the domestic courts' refusal to award him statutory default interest was in breach of his right to the peaceful enjoyment of his possessions.

QUESTION TO THE PARTIES

Was the domestic courts' refusal to award the applicant statutory default interest on the retroactively increased monthly instalments of his disability benefit in breach of his right to the peaceful enjoyment of his possessions guaranteed by Article 1 of Protocol No. 1 to the Convention (see Čakarević v. Croatia, no. 48921/13, §§ 50-53, 26 April 2018 and the cases cited therein)?

KORETSKA v. Cyprus (no. 38449/22)

Article 5 §1 (f) – article 5§4 – detention awaiting extradition to Ukraine – duration of habeas corpus proceedings

SUBJECT MATTER OF THE CASE

The application concerns the applicant's detention between 18 June 2020 and 6 October 2022 for the purpose of her extradition to Ukraine to stand trial. Following an order for her extradition issued on 18 June 2020 (no. 3/2019) the applicant filed a habeas corpus application (no. 71/2020) which was dismissed by the Limassol District Court. The applicant lodged an appeal (no. 231/2020) on 13 August 2020 which was dismissed by the Supreme Court on 14 June 2022. On 26 July 2022 she was informed that her extradition was suspended for two months due to the ongoing military conflict in Ukraine. On 7 September 2022 she was informed of a further two-month suspension on the same grounds. According to the Ministry of Justice, the two countries were discussing a new extradition date. The applicant sought a second habeas corpus application (no. 140/22) which was successful on 6 October 2022. The Supreme Court (first instance jurisdiction) considered that the applicant's detention was no longer justified because no new date had been set for her extradition and because the suspension of the extradition had been based on an uncertain and volatile situation with no foreseeable end-date.
The applicant complains under Article 5 § 1 (f) of the Convention that she was unlawfully and arbitrarily deprived of her liberty because of unjustified delays in effectuating her extradition. She further complains under Article 5 § 4 of the Convention of the length of the habeas corpus appeal proceedings (no. 231/2020).

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of her liberty in breach of Article 5 § 1 (f) of the Convention? In particular, have the authorities conducted the extradition proceedings with the requisite due diligence (see Khlaifia and Others v. Italy [GC], no. 16483/12, §§ 88-91, 15 December 2016, and A. and Others v. the United Kingdom [GC], no. 3455/05, § 164, ECHR 2009)?

2. Did the applicant have at her disposal an effective procedure by which she could challenge the lawfulness of her detention, as required by Article 5 § 4 of the Convention? In particular, did the length of the habeas corpus appeal proceedings (no. 231/2020), by which the applicant sought to challenge the lawfulness of her detention, comply with the "speediness" requirement of Article 5 § 4 of the Convention (see Ilnseher v. Germany [GC], nos. 10211/12 and 27505/14, §§ 251-56, 4 December 2018; Khlaifia and Others, cited above, §§ 128-31, 15 December 2016, and Khokhlov v. Cyprus, no. 53114/20, § 77, 13 June 2023)?

CHRYSANTHOU and Others v. Cyprus (no. 56336/22)

Article 2 – Article 8 – exposure to carcinogens and nuisance of unlicensed shoe factory – no damages awarded

SUBJECT MATTER OF THE CASE

The application concerns the exposure of the applicants or their deceased relatives to dichloromethane ('DCM'), a substance classified at the material time as "probably carcinogenic to humans." DCM was used and emitted by a shoe factory operating until 2009 – without the necessary building permit as of 1976 – in the residential area where the applicants lived or worked and which allegedly led to the creation of a cluster of cancers in the area. The applicants also alleged that the factory caused them nuisance due to the emission of foul odours and excessive noise.

All applicants filed civil actions with the Nicosia District Court seeking damages for a violation of their right to life and their right to respect for their private and family life. The actions concerning sixteen of them were joined and on 29 December 2017 the first instance court found that the cluster of cancers in the area was epidemiologically connected to the uncontrolled emission of dichloromethane from the shoe factory and that the factory caused "private nuisance" to the applicants. Damages were granted to those applicants on these bases. On 21 December 2022 the Supreme Court reversed that finding on appeal considering that a causal link ("medical aetiology") between each individual cancer case and the emission of DCM had not been established. With regards to nuisance, the Supreme Court upheld the first instance finding but did not grant any damages to the applicants as it considered that private nuisance was not a civil tort actionable per se under domestic law. In the light of the judgment of the Supreme Court, the remaining six applicants withdrew their still pending civil actions.

Relying on Articles 2 and 8 of the Convention, the applicants complain that the State failed to protect them from dangerous exposure to dichloromethane. They further allege that the Supreme Court did not carry out an adequate assessment of their complaints under the same Articles as it applied standards which were not in conformity with the principles embodied in the Convention.

QUESTIONS TO THE PARTIES

1. Have all the applicants exhausted domestic remedies in respect of their complaints under Articles 2 and 8 of the Convention in relation to the specific circumstances of the case (compare with Chakkas and Others v. Cyprus (dec.), no. 43331/09, § 24, 20 October 2015, and see Pavlov and Others v. Russia, no. 31612/09, § 56, 11 October 2022)?

2. Did all applicants have locus standi to lodge the application before the Court? Can indirect victim status be claimed by all applicants and therefore is the application compatible ratione personae with the provisions of the Convention with respect to all the applicants, as required by Article 34 (see Micallef v. Malta [GC], no. 17056/06, §§ 44-51, ECHR 2009; Nassau Verzekering Maatschappij N.V. v. the Netherlands (dec.), no. 57602/09, § 20, 4 October 2011, and Fairfield and Others v. the United Kingdom (dec.), no. 24790/04, ECHR 2005-VI)?

Reference is made to the Supreme Court's observations with regards to the third and fourth applicants, Kyriaki Constantinidou and Grigoris Grigoriou respectively, initiating domestic proceedings on behalf of their children and allegedly not substantiating the place of residence of the deceased father of the third applicant, Kypros Constantinides.

The applicants are requested to provide the Court with documentation specifying the place of residence of the father of the third applicant, Kypros Constantinides, at the material time and prior to his death.

3. Is Article 2 of the Convention applicable in the present case (see Öneryıldız v. Turkey [GC], no. 48939/99, § 71, ECHR 2004-XII; Brincat and Others v. Malta, nos. 60908/11 and 4 others, § 101, 24 July 2014, and Budayeva and Others v. Russia, nos. 15339/02 and 4 others, § 130, ECHR 2008 (extracts))?

4. Have the Government discharged their positive obligations under Articles 2 and/ or 8 of the Convention, with regards to taking all reasonable and appropriate preventive measures to protect the right to life or the right to private and family life of the applicants (see Öneryıldız v. Turkey, cited above, § 90, and Budayeva and Others v. Russia, cited above, § 133)?

(a) Specifically, did the operation of the shoe factory in a residential area have a negative impact on the health of the people living or working in its proximity and did the use of dichloromethane have a negative impact on the health of workers inside the factory?

(b) Was the factory operating in accordance with the legal framework in place at the material time, particularly with regards to obtaining all necessary building and operational permits?

(c) Can it be said that the Government knew or ought to have known about the dangers of dichloromethane at the material time?

The Government are requested to submit all relevant information concerning the legislative and administrative framework regarding prevention from exposure to dichloromethane and to comment on whether at the material time it was being effectively implemented.

The Government are requested to submit documentation and observations regarding any information disseminated or warning given to the applicants in relation to any risk they were facing, according to whether they were residents, workers in the area or workers in the factory (see Öneryıldız v. Turkey, cited above, §§ 90 and 108; Brincat and Others v. Malta, cited above, §§ 101 and 113-114; Kolyadenko and Others v. Russia, nos. 17423/05 and 5 others, §§ 159, 177, 181-182 and 185, 28 February 2012, and Budayeva and Others v. Russia, cited above, §§ 132 and 152-155).

5. Did the Government discharge their procedural obligations, if any, under Article 2 of the Convention (see Öneryıldız v. Turkey, cited above, § 91, and Budayeva and Others v. Russia, cited above, § 138) or under Article 8 of the Convention (see Taşkın and Others v. Turkey, no. 46117/99, §

119, ECHR 2004-X, and Hatton and Others v. the United Kingdom [GC], no. 36022/97, § 128, ECHR 2003-VIII)?

6. With regards to the alleged nuisance suffered by the applicants, can it be said that this constituted a sufficiently severe detriment giving rise to a positive obligation of the State under Article 8 of the Convention (see Fadeyeva v. Russia, no. 55723/00, §§ 69 and 88, ECHR 2005-IV, and Guerra and Others v. Italy, 19 February 1998, § 57, Reports of Judgments and Decisions 1998-I)?

If so, have the Government taken all reasonable and adequate measures to protect the applicants' right to respect for their private and family lives, within the margin of appreciation afforded to them under Article 8 of the Convention? Have the Government struck a fair balance between the competing interests of the applicants and the community as a whole (see Hatton and Others v. the United Kingdom, cited above, § 98; Pavlov and Others v. Russia, cited above, §§ 61-63 and López Ostra v. Spain, 9 December 1994, § 51, Series A no. 303-C)?

M. v. Czech Republic (no. 36622/21)

Article 3 – Article 8 – Article 13 – Inadequacy of sexual assault investigation

SUBJECT OF THE CASE

The application concerns sexual assaults experienced by the second applicant at the age of thirteen, the alleged inadequacy of the investigation conducted in this case, the protection of the applicants' interests (the victim and her mother) and their involvement in the criminal proceedings against the perpetrator, as well as their right to respect for family life.

The second applicant was the victim of sexual abuse by a man sixteen years older than her when she was thirteen. Following a criminal complaint lodged by her mother, the first applicant, in 2019, criminal proceedings were initiated against the perpetrator, which led to a criminal settlement in December 2020. Under this settlement, the assailant was found guilty of sexual abuse for having had several sexual relations, consensual on both sides, with the second applicant.

Furthermore, finding a conflict of interest between the applicants, the court appointed a guardian for the second applicant and did not entertain the request of the representative chosen by the first applicant to qualify the offence as serious sexual abuse and rape (on the grounds that consent was excluded from a child of thirteen and there had been abuse of her inability to defend herself). The first applicant was denied the status of civil party in the criminal proceedings and was not permitted to participate in the hearing. Her constitutional appeal against this decision, as well as the constitutional appeal filed on behalf of the first applicant against the decision appointing the guardian, were dismissed for manifest lack of grounds in April 2021 (no. I. ÚS 424/21) and January 2021 (no. IV. ÚS 1/21), respectively.

Invoking Articles 3, 8, and 13 of the Convention, the applicants complain about the lack of an effective investigation into the sexual assaults suffered by the second applicant, that the authorities did not take into account her vulnerability and the psychological factors specific to her case, and that they did not have an effective remedy in this regard.

Under Articles 6, 8, and 13 of the Convention, the first applicant additionally complains that the authorities failed in their duty to preserve the bonds between her and her daughter, inter alia, by questioning her assistance and that of her chosen representative by appointing a guardian for the

second applicant, and by denying her the status of civil party as well as the opportunity to participate in the hearing.

QUESTIONS TO THE PARTIES

1. Can the first applicant claim to be a victim, within the meaning of Article 34, of an alleged violation of Articles 3 and 8 of the Convention concerning the effectiveness of the investigation conducted in this case (see M.P. and Others v. Bulgaria, no. 22457/08, §§ 96-100, 15 November 2011, and A and B v. Croatia, no. 7144/15, §§ 88-91, 20 June 2019)?
2. Examined in particular in the light of the case M.C. v. Bulgaria (no. 39272/98, ECHR 2003-XII), were the investigation into the sexual assaults suffered by the second applicant at the age of thirteen and the subsequent criminal proceedings deficient to the extent that they amounted to a violation of the positive obligations incumbent on the State under Articles 3 and 8 of the Convention (see, for example, C.A.S. and C.S. v. Romania, no. 26692/05, 20 March 2012, and G.U. v. Turkey, no. 16143/10, 18 October 2016)?

In particular:

i) Did the authorities sufficiently investigate and assess, in light of the circumstances, whether the second applicant, a minor, had consented to the sexual relations with M.P., who was sixteen years older, voluntarily and of her own free will?

ii) Did the authorities duly consider the factors that might have influenced the second applicant in her account of the facts, notably the nature of her relationship with M.P., the vulnerability due to her age and level of maturity, and the specific psychological factors related to cases of sexual abuse of minors (see, mutatis mutandis, C.A.S. and C.S. v. Romania, cited above)?

iii) Was the investigation sufficiently thorough and did it properly take into account the interests of the second applicant as a minor victim of sexual abuse (see, for example, C.A.S. and C.S. v. Romania, cited above, N.D. v. Slovenia, no. 16605/09, 15 January 2015, and M. and M. v. Croatia, no. 10161/13, ECHR 2015 (extracts))?

3. Was there an interference with the first applicant's right to respect for family life, within the meaning of Article 8 § 1 of the Convention, particularly when she was denied the status of civil party in the criminal proceedings? If so, was the interference in the exercise of this right necessary, within the meaning of Article 8 § 2?
4. Did the applicants have, as required by Article 13 of the Convention, an effective domestic remedy through which they could raise their complaints regarding the alleged breach of the Convention?

ŠPERLICH v. Czech Republic and 2 other applications (no. 26867/21)

Article 6 §1 – alleged lack of access to court for inappropriate dismissal of complaint by Constitutional Court

SUBJECT MATTER OF THE CASES

The applicants were parties to different civil proceedings before the domestic courts. They lodged appeals on points of law which the Supreme Court dismissed after an examination on the merits.

Referring to its plenary opinion no. Pl. ÚS-st. 45/16 of 28 November 2017, the Constitutional Court dismissed the applicants' respective constitutional appeals (nos. I. ÚS 2892/20, I. ÚS 83/23 and III. ÚS 644/23), holding that they had to be rejected (i) in respect to the decisions of the Supreme Court as manifestly ill-founded since the latter had duly dismissed the applicants' appeals on points of law on procedural grounds, and (ii) in respect to the decisions of the lower courts for non-exhaustion of available remedies since the applicants had failed to duly challenge them before the Supreme Court.

Relying on Article 6 § 1, the applicants mainly complain about the lack of access to the Constitutional Court. In their view the Constitutional Court erred by not having reviewed the decisions of the lower courts, given that they had duly exhausted the appeals on points of law.

QUESTIONS TO THE PARTIES

Did the applicants have access to the Constitutional Court for the determination of their civil rights and obligations in accordance with Article 6 § 1 of the Convention? In particular, did the partial rejection on formal grounds of their respective constitutional appeals result from an omission imputable to the Constitutional Court (see, mutatis mutandis, Adamíček v. the Czech Republic, no. 35836/05, 12 October 2010, and Crites and Rabinovitz v. the Czech Republic [Committee], no. 54651/20, 20 June 2024)?

NOVÁK v. The Czech Republic (no. 6656/24)

Article 8 – refusal to change custody arrangement following unilateral change of children's residence by mother

SUBJECT MATTER OF THE CASE

The application concerns the appellate court's refusal, in April 2013, to upheld the first-instance court's judgment on shared custody of the applicant's children, despite the children's mother behaviour - that the applicant had unsuccessfully tried to prevent by requesting interim measures - consisting of having unilaterally decided to change the children's place of residence and exercise their de facto exclusive custody.

The appellate court indeed considered that, although both parents were clearly able to care for the children (born in 2014 and 2018), circumstances have significantly changed since the first-instance court decision on shared custody given that the children had adapted to their new environment in which they had lived since eight months and wanted to stay with their mother. The applicant was granted contact rights every second week-end and during holidays.

The Constitutional Court dismissed a constitutional appeal by the applicant as manifestly ill-founded, holding that the appellate court had taken account of relevant elements and convincingly explained why a shared custody was not a suitable option in the specific circumstances of the case (decision no. IV. ÚS 2049/23 of 17 October 2023).

Relying on Article 8 of the Convention the applicant complains that his right to respect for his family life has been breached as a result of the appellate court's decision validating the mother's wrongful conduct and limiting his contact with his children.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his family life, within the meaning of Article 8 § 1 of the Convention?

2. If so, was that interference in accordance with the law, necessary and proportionate in terms of Article 8 § 2? Were the reasons put forward by the appellate court relevant and respectful of the children's best interest and did the decision-making process provide the applicant with the requisite protection of his interests (see, mutatis mutandis, C. v. Finland, no. 18249/02, 9 May 2006; Prodělalová v. the Czech Republic, no. 40094/08, 20 December 2011; and Z.J. v. Lithuania, no. 60092/12, 29 April 2014)?

KARIČKOVÁ v. The Czech Republic (no. 7411/24)

Article 3 – article 14 – allegedly racially motivated attack on Roma applicant by members of the football ultras group - lack of effective investigation

SUBJECT MATTER OF THE CASE

The application concerns a light injury (contusion of tibia) sustained by the applicant, who is of Roma origin, during a conflict between a group of tourists, later identified as members of a football ultras group (hereinafter "ultras members"), and members of Roma community on 23 July 2021. The applicant was allegedly hit in her shin by a hard object resembling a piece of brick thrown by an ultras member.

The applicant's criminal complaint was set aside by the police in 2022. This decision was subsequently upheld by two levels of prosecution authorities.

The Constitutional Court dismissed the applicant's constitutional appeal as manifestly ill-founded (no. II. ÚS 3314/22). It held that (i) the conflict had been situational and apparently provoked by one of the members of the Roma community, (ii) the authorities had duly investigated possible racist motivation behind the conflict and concluded that, in the light of all available evidence, it could not be established, (iii) racist insults had been used by both sides to the conflict, and (iv) the gravity of the applicant's injury did not warrant criminal prosecution of any person and did not engage her right to effective investigation.

Relying on Article 3 in conjunction with Article 14, the applicant complains that the domestic authorities violated her right to effective investigation. She also asserts that they failed to duly consider and respond to the fact that the attack on her had been, at least partly, racially motivated.

QUESTIONS TO THE PARTIES

1. Having regard to the procedural protection from inhuman or degrading treatment, even if such treatment is administered by private individuals, was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention (see M. and Others v. Italy and Bulgaria, no. 40020/03, § 100, 31 July 2012)?

2. Have the authorities taken all reasonable steps to investigate any possible racist motivation behind the alleged attack on the applicant, as required by Article 14 of the Convention, read in conjunction with Article 3 (see Abdu v. Bulgaria, no. 26827/08, §§ 44-46, 11 March 2014, and Balázs v. Hungary, no. 15529/12, §§ 47 to 76, 20 October 2015)?

BLAŽOVÁ v. The Czech Republic and 2 other applications (no. 1161/21)

Article 6 – article 8 – article 13 – undercover GPS-tracking and wire tapping

SUBJECT MATTER OF THE CASES

In November 2016 the Slovak authorities issued requests for mutual assistance, pursuant to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (ETS 30) and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01), in the context of criminal proceedings brought against the applicant's partner and his brother on suspicion of kidnapping a person in Slovakia and murdering and concealing the victim's body in the Czech Republic. On the basis of the requests for mutual assistance, the Czech authorities decided to employ several undercover measures, consisting in particular of (i) GPS car tracking (application no. 1161/21) and (ii) use of listening and recording devices inside cars (applications nos. 13473/21 and 15980/21), to be carried out between November 2016 and May 2017.

Similar undercover measures were in parallel authorised by the Slovak authorities on the territory of Slovakia. Those form the subject matter of an application against Slovakia currently pending before the Court (no. 7747/21).

The cars at issue were used by the persons under investigation but also by the applicant. She allegedly learned of the undercover measures for the first time on 22 January 2020. The applicant challenged them before the Czech Constitutional Court in three separate constitutional appeals which were, however, rejected as having been lodged outside the one-year statutory time limit (decisions no. IV. ÚS 815/20 of 15 June 2020, no. II. ÚS 832/20 of 1 September 2020 and no. II. ÚS 845/20 of 15 September 2020).

The applicant complains that the undercover measures employed by the Czech authorities unlawfully and arbitrarily interfered with her right to respect for private life and that she did not have any effective remedy under Czech law to challenge these measures.

The applicant relies on Articles 6, 8 and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Was there an interference with the applicant's right to respect for her private life, under paragraph 1 of Article 8 of the Convention, on account of (i) the use of listening and recording devices in the cars (VIN: WAUZZZ4F27N120439 and VIN: WBAFV71010C774403) authorised for the period from 14 November 2016 to 14 March 2017 and from 12 December 2016 to 9 May 2017 respectively, and (ii) the GPS tracking of the car (VIN: WAUZZZ4F27N120439) authorised for the period from 12 November 2016 to 12 March 2017?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention?

2. Did the applicant have at her disposal an effective domestic remedy for her complaints under Article 8, as required by Article 13 of the Convention?

MORTENSEN v. Denmark (no. 16756/24)

Article 10 – Defamation fine for calling politician a Nazi

SUBJECT MATTER OF THE CASE

By a High Court judgment, which became final on 7 February 2024, the applicant was convicted of defamation for having written in a post on Twitter (now X), that the controversial leader of a political party, P., "is allowed to be a Nazi ... [whereas another person was convicted for calling a police officer

an idiot]”. The applicant was sentenced to 10 day-fines of 1,000 Danish Kroner (DKK) each, and ordered to pay compensation to P. in the amount of DKK 30,000.

The applicant complained that the High Court judgment was in violation of his rights under Article 10 of the Convention.

QUESTION TO THE PARTIES

Has there been a violation of the applicant’s right to freedom of expression, contrary to Article 10 of the Convention (see, amongst others, Brosa v. Germany, no. 5709/09, 17 April 2014 and Balaskas v. Greece, no. 73087/17, 5 November 2020)?

M.S. v. Denmark (no. 20848/24)

Article 8 - Expulsion of Somali national born in Denmark following conviction for drug offence and conspiracy to escape custody

SUBJECT MATTER OF THE CASE

The applicant is a Somali national. He was born in Denmark. By a High Court judgment which became final on 4 April 2024, the applicant was convicted of drug offences and of conspiracy to escape lawful custody. He was sentenced to 3 years’ imprisonment and his expulsion from Denmark was ordered, with a 6-year re-entry ban.

The applicant complained that the order expelling him from Denmark was in violation of Article 8 of the Convention.

QUESTIONS TO THE PARTIES

1. Having regard, in particular, to the fact that the applicant was sentenced to 3 years’ imprisonment, would the order to expel him from the country with a 6-year re-entry ban be in breach of Article 8 of the Convention (see, for example, Abdi v. Denmark, no. 41643/19, 14 September)?

2. Should weight be given, in the proportionality test under Article 8 of the Convention, to whether the applicant has any prospect of re-entering the country after the expiry of the re-entry ban? In the affirmative, are his prospects of being re-admitted to Denmark after the six-year re-entry ban “purely theoretical” (see, among others, Savran v. Denmark [GC], no. 57467/15, § 200, 7 December 2021)?

MAKKI v. Denmark (no. 24292/24)

Article 3 – article 5 – article 8 – confinement conditions in psychiatric facility

SUBJECT MATTER OF THE CASE

The applicant, who suffers from schizophrenia, was placed in a high security psychiatric facility (Sikringsafdelingen), where, from 4 March 2019 to 18 October 2022, he was locked up in his patient room. The applicant complained in vain to the Psychiatric Patients’ Complaints Board.

Relying on Articles 3, 5 and 8
of the Convention, the applicant brought compensation proceedings before the courts. By a judgment of 22 November 2023, which became final on 18 April 2024, the High Court found the confinement

lawful, except for the period between 2 and 25 September 2020, for which he was granted compensation.

QUESTION TO THE PARTIES

Was the confinement of the applicant from 4 March 2019 to 18 October 2022 in a locked patient room in a psychiatric hospital in breach of Articles 3, 5 and/or 8 of the Convention (see, inter alia, Munjaz v. the United Kingdom, no. 2913/06, 17 July 2012)?

Z and Others v. Finland (no. 42758/23)

Article 3 – Article 8 – Return of children in International child abduction case

STATEMENT OF FACTS

1. The applicants, who are a father (the first applicant) and two children (the second and third applicants), are Russian nationals who were all born in Russia and currently live in Finland. They were represented before the Court by Mr H. Nevala, a lawyer practising in Kemi.

2. The facts of the case, as submitted by the applicants, may be summarised as follows.

3. The applicants lived in Russia. The first applicant and the children's mother have been separated since the children were three and five years old. The children lived with the mother whereas the first applicant had regular contact with them, and they had occasionally stayed at his home.

4. In September 2022 the first applicant took the children from Russia to Finland without their mother's consent.

5. After arriving in Finland, on 14 September 2022 the first applicant applied for asylum on his own behalf and on behalf of the children. His claim was based on his opposition to the current regime in Russia and the war in Ukraine, which meant that he risked political persecution in Russia.

6. On 23 January 2023 the children's mother instituted proceedings for their return in the Helsinki Court of Appeal under the Hague Convention on the Civil Aspects of International Child Abduction (hereafter "the Hague Convention").

7. The first applicant, relying on Article 13 § 1 (b) of the Hague Convention (see paragraph 23 below), opposed the mother's request, arguing that there was a grave risk that the return of the children to Russia would expose them to psychological harm or place them in an intolerable situation. Specifically, he submitted that the children had been forced to attend a military school in Russia where they had been "brainwashed" by being taught how to use guns and by being exposed to war propaganda. Relying on Article 13 § 2 of the Hague Convention (see paragraph 23 below), he also argued that the children objected to being returned.

8. By a decision of 8 March 2023, the Helsinki Court of Appeal dismissed the mother's request. On the basis of the evidence provided by the parties, it held that there was a grave risk that, if returned to Russia, the children would continue to attend the same military school they had previously attended, which would expose them to psychological harm. It stated that the situation in which underage children handled weapons, even if they were not real weapons, dressed in a military manner and otherwise engaged in activities that could be seen as military, could not be considered appropriate for their development and well-being. Furthermore, based on interviews that child welfare officers had conducted with the children, the court also established that both children objected to being returned to Russia but that only the older child had reached an age and degree of maturity at which it was

appropriate to take account of his views. However, the court did not consider that child's views decisive. What was important was the grave risk that returning the children to Russia would expose them to psychological harm.

9. The mother appealed against that decision to the Supreme Court. She argued that the Court of Appeal had wrongly assessed the evidence regarding the school in question and that it had placed too much weight on the evidence presented by the first applicant. Furthermore, she pointed out that at the hearing in the Court of Appeal she had acknowledged that the children's opinion of the school had changed and that she had therefore expressed her readiness to provide them with a different type of education.

10. In his reply, the applicant reiterated the arguments he had put forward in the Court of Appeal (see paragraph 7 above). In addition, he submitted:

"If returned, [the children] would hardly ever be able to see their father again. The mother and the children's sister will be able to visit the children in Finland, unlike the father, who will not be able to go to Russia."

11. On 16 May 2023 the Supreme Court, with the assistance of child welfare officers and in the absence of the parents, interviewed the older child in order to hear his views on the matter and establish whether they were genuine. On 19 June 2023 an oral hearing was held which both parents attended.

12. By a decision of 27 September 2023, the Supreme Court ordered the return of both children to Russia. The court held that there was no grave risk that if the children were returned they would be treated in a manner contrary to human dignity, exposed to physical or psychological harm or otherwise placed in an intolerable situation, whether because of the school they had attended or for any other reason. In particular, the Supreme Court noted that it had not even been alleged that the children's basic needs would not be met if returned to live with their mother. Nor was it alleged that the children were at risk of being caught up in a war or war zone. It noted that the Russian school system, unlike the Finnish one, contained, at least in some schools, features of military training. It also noted that it was possible that upon their return the children would be treated negatively at school because they had gone to Finland with their father. However, those factors were not such as to reach the threshold of grave risk or to put the children in an intolerable situation. It furthermore observed that the mother had stated that the children would not continue the same type of education and that there was no reason to doubt her statement (see paragraph 9 above).

13. The Supreme Court further found that the older child, who was twelve years old at the time, strongly and genuinely objected to being returned, and that he had attained an age and degree of maturity at which it was appropriate to take account of his views. The younger child, who was ten years old at the time, had also objected to being returned. However, on the basis of the interviews the child welfare officers had conducted with the children (see paragraph 8 above), the Supreme Court considered that he had not reached an age and degree of maturity at which it was appropriate to take account of his views.

14. Furthermore, in making an overall assessment, the Supreme Court gave weight to the fact that the children had lived all their lives in Russia, where they had a sister and other relatives, and that they had not had any ties with Finland before their wrongful removal. The Supreme Court also considered it possible that the older child had not been able to assess the long-term effects of his separation from his mother which might make contact between them more difficult. It observed that the evidence suggested that during the stay in Finland, the younger child had had more contact with his mother, which supported the conclusion that his return was in his best interests.

15. The Supreme Court also held that the children had lived together all their lives and that it was in their best interests not to be separated. While it was true that returning the children to Russia would probably make it more difficult for them to maintain contact with their father, the court concluded that it was in the children's best interests to be returned to Russia where they would continue to live with their mother, with whom they had lived prior to their wrongful removal (see paragraph 3 above).

16. Having regard to the above considerations, the Supreme Court concluded that the children's return to Russia would not disproportionately restrict the first applicant's right to respect for his family life.

17. Subsequently, the first applicant lodged a new request for the annulment of the Supreme Court's decision (see paragraph 12 above), relying on an extraordinary remedy under domestic law permitting the re-examination of a case resolved by final judgment or decision in the event of the emergence of relevant new facts or circumstances capable of calling into question the outcome of that judgment or decision. In this request, the applicant submitted that the mother would hand the children over to a religious sect.

18. In her reply, the mother stated that the children would return home and that the first applicant's allegations were not true.

19. On 27 October 2023 the Supreme Court dismissed the extraordinary request for annulment. It stated that the threshold for such annulment of a final judgment or decision was high, and that the mere reliance on a new fact was not by itself sufficient to justify an annulment.

20. By a decision of 12 December 2023, the Immigration Service granted asylum to all three applicants (see paragraph 5 above). Asylum was granted to the first applicant because there were grounds to believe that in Russia he would be persecuted for his political opinions. The children were granted asylum automatically as the minor children of a father who had been granted asylum. The relevant part of that decision reads as follows:

"In view of the explanations provided in your case and the general and up-to-date information on the situation in your home country, the Immigration Service considers that you have well-founded reasons to fear that you will be persecuted in your home country because of your political opinion within the meaning of section 87(1) of the Aliens Act.

...

As to your children, you have also invoked domestic violence committed by the mother and sister, military schooling, and the brainwashing [by a religious sect leader]. Since it has been held above that the conditions for asylum are met in your case and your children are granted asylum as the minors in your family, it is not necessary to assess these elements in this decision."

21. The first applicant then lodged a second extraordinary request seeking the annulment of the Supreme Court's decision of 27 September 2023 (see paragraph 12 above) on the grounds of new facts. He argued, inter alia, that in the meantime (i) the children had been granted asylum, and (ii) their mother had accepted that the older child would stay in Finland, which meant that the children would be separated if the younger one were returned to Russia.

22. By a decision of 18 January 2024, the Supreme Court dismissed the second extraordinary request for annulment. It stated first that the mother had denied that she had accepted that the older child would stay in Finland. Furthermore, it held that the granting of asylum to the children did not in itself exempt the State from its obligations under the Hague Convention and that the asylum decision in the applicants' case was not a new fact which would have led to a different outcome of the proceedings

for the return of the children, because the children's asylum status had been derived from that of their father, and not based on a risk of harm to the children themselves were they to return to Russia (see paragraph 20 above).

RELEVANT LEGAL FRAMEWORK

A. International law

23. The relevant provisions of the Hague Convention on the Civil Aspects of International Child Abduction, which entered into force in respect of Finland on 1 August 1994 and in respect of Russia on 1 October 2011, reads as follows:

"The States signatory to the present Convention,

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

..."

Article 1

"The objects of the present Convention are –

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."

...

Article 3

"The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State."

Article 4

"The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years."

Article 5

"For the purposes of this Convention –

a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) 'rights of access' shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

..."

Article 11

"The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. ..."

Article 12

"Where a child has been wrongfully removed or retained in terms of Article 3 and at the date of commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child."

Article 13

"Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence."

Article 20

"The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms."

B. Domestic law

24. The relevant provisions of the Act on Child Custody and Right of Access (Laki lapsen huollosta ja tapaamisoikeudesta, Lag angående vårdnad om barn och umgängesrätt, Law no. 361/1983), reads as follows:

Chapter 5

Return of a child under the Hague Convention

Section 30

Return order

"A child present in Finland and wrongfully removed from the State where he or she is habitually resident, or wrongfully not returned to this State, shall be ordered to be returned at once, if the child immediately before the wrongful removal or retention was habitually resident in a State which is a Contracting State to the Convention on the Civil Aspects of International Child Abduction ..."

Section 31

Competent court

"A return order shall be issued, upon application, by the Helsinki Court of Appeal."

Section 32

Wrongful removal and retention

"The removal or retention of a child is deemed wrongful if:

1) it is in breach of rights of custody attributed to a person, an institution or another body, either jointly or alone, under the law of the State where the child was habitually resident immediately before the removal or retention; and

2) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The removal or retention of a child shall not be deemed wrongful, if the holder of the rights referred to in subparagraph 1 ... has consented to it or acquiesced in it either explicitly or implicitly."

Section 33

Rights of custody

“In this chapter, rights of custody mean the right and obligation to take care of matters relating to the person of a child and, in particular, the right to determine the child’s place of residence.”

Section 34

Grounds for the refusal of a return order

“An application for the return of a child may be rejected if:

1) the application has been submitted after one year has elapsed from the date of the wrongful removal or retention of the child and the return of the child would be contrary to his or her best interests;

2) there is a grave risk that the return of the child would expose him or her to physical or psychological harm or otherwise place the child in an intolerable situation; or

3) the court finds that the child objects to being returned and has attained such an age and degree of maturity at which it is appropriate to take his or her views into account.

A child who has attained the age of 16 years cannot be ordered to be returned.

If the child’s habitual residence immediately before the wrongful removal or retention was in a Member State referred to in Article 2(3) of the Brussels IIa Regulation, the provisions of Article 11(4) of the Regulation are also applied to the rejection of an application for return under subparagraph 1 of paragraph 2.”

COMPLAINTS

25. The applicants complain under Article 8 of the Convention that the Supreme Court’s order for the return of the children was in breach of their right to respect for their family life.

26. They also complain under Article 3 of the Convention that the second and third applicants risk being exposed to ill-treatment if returned to Russia.

QUESTIONS TO THE PARTIES

1. Was the Supreme Court’s decision ordering the return of children (the second and third applicants) to Russia pursuant to the Hague Convention on the Civil Aspects of International Child Abduction in breach of the applicants’ right to respect for their family life, guaranteed by Article 8 § 1 of the Convention? In particular, did the Supreme Court strike a fair balance between the competing interests involved, and did it give sufficient reasons as regards the risk that, given the first applicant’s asylum status, his ties with the second and third applicants might be severed if they were to be returned to Russia (see X v. Latvia [GC], no. 27853/09, §§ 92-108, ECHR 2013)?

2. Would the second and third applicants face a risk of being subjected to treatment in breach of Article 3 of the Convention if the Supreme Court’s decision ordering their return to Russia were enforced?

WALDNER v. France (no. 40294/22)

Article 1 protocol no. 1 – Increase of taxable income because of lack of membership of association

SUBJECT OF THE CASE

The application concerns the imposition of an increased taxable income on the applicant, who is a lawyer, for the years 2012 to 2014 on the grounds that he was not a member of an approved management association (Article 158, 7 of the General Tax Code).

Invoking Article 1 of Protocol No. 1, the applicant complains of a disproportionate interference with his right to the peaceful enjoyment of his possessions, which he claims is constituted by the increased tax payment. From the perspective of Article 11 of the Convention and Article 14 of the Convention in conjunction with Articles 1 of Protocol No. 1 and Article 11, he complains of an infringement of his right not to join and of discriminatory taxation.

QUESTION TO THE PARTIES

Has there been an infringement of the applicant's right to respect for his possessions, within the meaning of Article 1 of Protocol No. 1 (Waldner v. France, no. 26604/16, 7 December 2023)?

DORENT v. France (no. 9646/24)

Article 6 - Presumption of Innocence breached in guilty plea procedure

SUBJECT OF THE CASE

The application concerns the alleged infringement of the right to the presumption of innocence in connection with the procedure for a guilty plea sought by the applicant within the context of the criminal proceedings against him.

On 15 November 2013, a judicial investigation was opened at the Paris Court of First Instance for charges of corruption of foreign public officials, organized laundering of this corruption, complicity, and concealment.

The investigations focused on the payment of fees in Togo for the benefit of the country's president, covered by a subsidiary of the Bolloré Group, as well as on the undervaluation of communication fees charged by a company, a subsidiary of the Havas Group, where the applicant was the head of the international division. An additional indictment was issued on 25 April 2018 for other facts of breach of trust.

On 25 April 2018, the applicant was placed under investigation, notably for complicity in breach of trust concerning acts committed in Togo and Guinea-Conakry. Mr. Bolloré, Chairman and CEO of the Bolloré Group, and Mr. Alix, CEO of the group, were also placed under investigation (applications nos. 3815/24 and 6524/24).

On 12 December 2018, Bolloré SA was also placed under investigation, notably for charges of corruption of a foreign public official in Togo and complicity in breach of trust concerning acts committed in Togo and Guinea-Conakry.

On 7 January 2021, the lawyers for the applicant's co-defendants, Messrs. Bolloré and Alix, informed the investigating judge that their clients admitted to the charges and chose to proceed with a guilty plea procedure (CRPC). On 12 January 2021, the applicant's lawyer did the same on behalf of the applicant. On the same day, Bolloré SA also acknowledged its responsibility and sought, as a legal entity, a public interest judicial agreement (CJIP).

On 14 January and 4 February 2021, the National Financial Prosecutor's Office (PNF) requested the transfer of the case file for the implementation of the CRPC and CJIP procedures.

On 5 February 2021, the investigating judge issued a partial dismissal order and referred the case for the implementation of a CRPC for the applicant and a CJIP for Bolloré SA, now called Bolloré SE. According to the applicant, the negotiations with the PNF were part of a joint defence strategy among the various individuals under investigation.

On 11 February 2021, the PNF requested the President of the Paris Court of First Instance to validate the CJIP proposal signed with Bolloré SE, under which the company committed to paying a public interest fine of €12 million and to have the French Anti-Corruption Agency (AFA) assess the effectiveness of its compliance programme for two years, bearing the cost up to €4 million.

The hearing to homologate the CJIP procedures, as well as the CRPC, was scheduled for 26 February 2021. The day before the hearing, President N., who had been involved in the preliminary consultations with the PNF judges, informed the parties of a "personal impediment" preventing him from presiding over the hearing, which was held as planned.

By an initial order on 26 February 2021, the first Vice-President of the Paris Court of First Instance, M.P., validated the CJIP signed with Bolloré SE. She notably justified her decision by citing passages from the letter of 12 January 2021, sent within the framework of the CRPC procedure, in which the applicant's lawyer informed the investigating judge that his client admitted to having committed the alleged offences. Citing the terms used in the investigating judge's order of 5 February 2021, the first Vice-President included this citation using the following formulation:

"[The applicant], placed under investigation for complicity in breach of trust, indicated in a letter of 12 January 2021 that he admitted to the facts and the legal qualification in the following terms: (...)"

She did the same for the applicant's co-defendants, transcribing passages from their letters of 7 January 2021 within the CRPC procedure.

Subsequently, on the same day, she issued orders rejecting the homologation of the CRPC proposals for the applicant and his co-defendants.

The order validating the CJIP was published on the websites of the Ministry of Justice, the Ministry of Budget, and the French Anti-Corruption Agency.

Following the rejection of the CRPC proposals, the criminal proceedings against the applicant and his co-defendants continued on the merits. All documents related to the negotiation procedure, including the letters of 7 and 12 January 2021 from the defence lawyers and the CJIP validation order, were added to the case file.

The applicant filed a request with the Paris Court of Appeal's investigating chamber to annul all documents related to the CRPC procedure and to nullify the criminal proceedings against him.

By a ruling of 21 March 2023, the investigating chamber declared the nullity or removal by cancellation of acts subsequent to the order of 5 February 2021, but not of prior acts, particularly the letters of 7 and 12 January in which the applicant and his co-defendants chose to opt for a CRPC procedure.

The applicant lodged an appeal with the Court of Cassation, notably invoking a breach of his right to the presumption of innocence. He also raised a priority question of constitutionality (QPC).

By a ruling of 27 September 2023, the Court of Cassation found no need to refer the QPC to the Constitutional Council.

Moreover, in its report on the applicant's appeal, the reporting judge noted that many questions remained regarding the implementation of Article 495-14 of the Code of Criminal Procedure (CPP), particularly when the CRPC procedure is decided, as in this case, during a judicial investigation. He also noted that the issue of sanctioning the breach of Article 495-14 of the CPP by the investigating chamber was complex, in addition to the need to examine the regularity of the inclusion of the CJIP validation order in the case file.

The Advocate General concluded that the appeal should be dismissed.

By a ruling of 29 November 2023, after dismissing certain arguments as either irrelevant, given the rejection of the QPC, or inadmissible, as the applicant lacked standing to invoke breaches of the rights of Messrs. Bolloré and Alix, the Court of Cassation held that Article 495-14 of the CPP did not prohibit the transmission of the request for a CRPC and related documents or mentions of documents nor the order of referral in CRPC issued by the investigating judge. However, it considered that it was up to the investigating chamber to order the removal from the file of the applicant's requests of 12 January 2021 and, by cancellation, mentions of related documents. Thus, it quashed, without remand, the appellate court's ruling on this point and ordered the removal of documents or mentions of documents, in the latter case by cancellation, which it listed.

Invoking Article 6 § 2 of the Convention, the applicant complains of a lack of legal safeguards governing the CRPC procedure. He denounces the retention in the judicial file of elements related to the failed CRPC procedure, the insufficient consideration of scenarios where CJIPs and CRPCs are negotiated simultaneously for the same facts involving multiple individuals, and the inability to obtain adequate redress for breaches of the presumption of innocence. He also criticizes the fact that a judicial decision, specifically the order of 26 February 2021 validating the CJIP, widely published and accessible, could state that he admitted the facts and their legal qualification despite the rejection of his CRPC proposal.

QUESTION TO THE PARTIES

In light, first, of the terms of the order validating the CJIP signed between the PNF and Bolloré SE dated 26 February 2021, which reproduces excerpts from the letter sent by the applicant's lawyer to the investigating judge on 12 January 2021 requesting the implementation of the guilty plea procedure (CRPC), and second, of the permanent publication of this order validating the CJIP, in its full version, on the websites of several ministries and public institutions, has the presumption of innocence guaranteed by Article 6 § 2 of the Convention been respected in this case?

PORTES v. France (no. 41249/23)

Article 10 j. 13 – disciplinary measure on member of parliament for edgy tweet – No judicial recourse available

SUBJECT OF THE CASE

The application concerns a disciplinary penalty imposed on a member of parliament.

On 9 February 2023, the applicant, a member of parliament for the 3rd constituency of Seine-Saint-Denis, published on a social network a photograph of himself taken on the sidelines of a demonstration, representing him from the front, wearing his tricolour sash, his foot resting on a ball on which appeared a portrait of the Minister of Labour. The image was accompanied by the following caption:

"Mr Minister @olivierdussopt withdraw your #PensionReform"

On 10 February 2023, the Bureau of the National Assembly proposed to the Parliamentary Assembly to impose a disciplinary penalty of censure with temporary exclusion against him.

During its session on the same day, the National Assembly imposed the proposed disciplinary penalty. As a result, the applicant was deprived of half of his parliamentary allowance for two months and was prohibited from taking part in the work of the Assembly and from reappearing in the Palace of the Assembly for fifteen days.

The applicant filed an application for annulment of this decision for abuse of power.

By a decision of 24 July 2023, the Council of State rejected this application on the following grounds:

"The rules of the National Assembly determine the disciplinary penalties applicable to its members, pronounced, as the case may be, by the President, the Bureau or the Assembly itself. The sanction regime thus provided for by the rules of the National Assembly is part of the status of parliamentarians, the specific rules of which arise from the nature of their functions. This regime is linked to the exercise of national sovereignty by members of Parliament. It follows that, under the French constitutional tradition of separation of powers, it is not for the administrative judge to hear disputes relating to sanctions imposed by the bodies of a parliamentary assembly on its members. The fact that no court may be seised of such a dispute cannot have the consequence of authorising the administrative judge to declare itself competent. Mr Portes cannot, therefore, usefully rely on the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms relating to the right to an effective remedy, which, as interpreted by the European Court of Human Rights, do not, moreover, require that a member of parliament subject to a disciplinary sanction enjoy a right of judicial remedy.

3. It follows from the foregoing that Mr Portes' application can only be dismissed as having been brought before a court which has no jurisdiction to hear it. »

Relying on Article 10 of the Convention, alone and in conjunction with Article 13, the applicant complains of a disproportionate interference with his freedom of expression and the lack of an effective remedy.

QUESTIONS TO THE PARTIES

1. Did the applicant lodge his application within the time-limit set out in Article 35 § 1 of the Convention? In particular, on what date did that time-limit start to run in the present case (Lekić v. Slovenia [GC], no. 36480/07, § 65, 11 December 2018)?

2. Has there been a violation of the applicant's right to freedom of expression, and in particular his right to impart information and ideas, within the meaning of Article 10 of the Convention? In particular, was the disciplinary sanction imposed on him prescribed by law and necessary, within the meaning of Article 10 § 2? Did the applicant benefit from sufficient procedural safeguards (Karácsony and Others v. Hungary [GC], nos. 42461/13 and 44357/13, §§ 133 and 151-161, 17 May 2016)?

3. Did the applicant have at his disposal, as required by Article 13 of the Convention, an effective domestic remedy through which he could have raised his complaint of breach of Article 10?

PANOT v. France (no. 41418/23)

Article 10 j. 13 – disciplinary penalty members of parliament for violating parliamentary rules of conduct – no judicial recourse

SUBJECT MATTER OF THE CASE

The application concerns a disciplinary penalty imposed on a member of parliament.

On 16 March 2023, during a parliamentary session in which the Prime Minister engaged her Government's responsibility with a view to having a bill on the financing of the pension system adopted without a vote in the National Assembly, the applicant and sixty-seven other members of parliament from the "La France insoumise – Nouvelle Union Populaire écologique et sociale" group stood up in the chamber and held up posters bearing the slogan: "64 years old means no!".

During its meeting on 5 April 2023, the Bureau of the National Assembly noted that Article 9 of the General Instruction of the Bureau of the National Assembly, which prohibits the use of placards during the session, had been disregarded, and that the aforementioned sixty-eight members of parliament had caused an uproar. As a result, he issued a disciplinary penalty of a reminder to order against them.

The deputies concerned filed a request for annulment for abuse of power of the decision of 5 April 2023.

By a decision of 24 July 2023, the Council of State rejected this request on the following grounds:

"The rules of the National Assembly determine the disciplinary penalties applicable to its members, pronounced, depending on the case, by the President, the Bureau or the Assembly itself. The sanction regime thus provided for by the rules of the National Assembly is part of the status of parliamentarians, the specific rules of which arise from the nature of their functions. This regime is linked to the exercise of national sovereignty by members of Parliament. It follows that, by virtue of the French constitutional tradition of separation of powers, it is not up to the administrative judge to hear disputes relating to sanctions imposed by the bodies of a parliamentary assembly on its members. The fact that no court can be seized of such a dispute cannot have the consequence of authorising the administrative judge to declare itself competent. [The applicant members of parliament] cannot usefully rely, therefore, on the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms relating to the right to an effective remedy, which, as interpreted by the European Court of Human Rights, do not, moreover, require that a member of parliament subject to a disciplinary sanction enjoy a right of judicial remedy.

It follows from the foregoing that the application (...) can only be dismissed as brought before a court which has no jurisdiction to hear it.

Relying on Article 10 of the Convention, alone and in conjunction with Article 13, the applicant complains of a disproportionate interference with her freedom of expression and the lack of an effective remedy.

QUESTIONS TO THE PARTIES

1. Did the applicant lodge her application within the time-limit set out in Article 35 § 1 of the Convention? In particular, on what date did that time-limit start to run in the present case (Lekić v. Slovenia [GC], no. 36480/07, § 65, 11 December 2018)?

2. Has there been a violation of the applicant's right to freedom of expression, and in particular her right to impart information and ideas, within the meaning of Article 10 of the Convention? In particular, was the disciplinary sanction imposed on her prescribed by law and necessary, within the meaning of Article 10 § 2? Did the applicant benefit from sufficient procedural safeguards (Karácsony and Others v. Hungary [GC], nos. 42461/13 and 44357/13, §§ 133 and 151-161, 17 May 2016)?

3. Did the applicant have at her disposal, as required by Article 13 of the Convention, an effective domestic remedy through which she could have raised her complaint of breach of Article 10?

BERNALICIS v. France (no. 175/24)

Article 10 j. 13 – disciplinary sanction on member of parliament for violating rules of conduct – no possibility of judicial review

SUBJECT OF THE CASE

The application concerns a disciplinary sanction imposed on a member of parliament.

On 20 March 2023, the applicant, a member of parliament for the 2nd constituency of the North, broadcast live videos on a streaming platform during a public session.

After recalling that members of the assembly were prohibited from filming and broadcasting all or part of the public session on social networks, the chair of the session issued a warning to the applicant with an entry in the minutes, this disciplinary sanction entailing the deprivation of a quarter of the parliamentary allowance of the member concerned for one month

The applicant was subsequently heard by the bureau of the National Assembly. On 6 June 2023, he filed a request for the annulment of the sanction imposed on him for abuse of power.

By an order of 1 September 2023, the President of the 10th Chamber of the Council of State dismissed his application as manifestly falling outside the jurisdiction of the administrative court.

Relying on Article 10 of the Convention, alone and in conjunction with Article 13, the applicant complains of a disproportionate interference with his freedom of expression and the lack of an effective remedy.

QUESTIONS TO THE PARTIES

1. Did the applicant lodge his application within the time-limit set out in Article 35 § 1 of the Convention? In particular, on what date did that time-limit begin to run in the present case (Lekić v. Slovenia [GC], no. 36480/07, § 65, 11 December 2018)?

2. Was there a violation of the applicant's right to freedom of expression, and in particular his right to impart information and ideas, within the meaning of Article 10 of the Convention? In particular, was the disciplinary sanction imposed on him prescribed by law and necessary, within the meaning of Article 10 § 2? Did the applicant benefit from sufficient procedural safeguards (Karácsony and Others v. Hungary [GC], nos. 42461/13 and 44357/13, §§ 133 and 151-161, 17 May 2016)?

3. Did the applicant have at his disposal, as required by Article 13 of the Convention, an effective domestic remedy through which he could have raised his complaint of breach of Article 10?

SOCIÉTÉ ÉDITRICE DE MÉDIAPART v. France (no. 38062/22)

Article 6 – article 7 – article 10 – article 14 – refusal to grant digital news company the same VAT reductions as printed media – EU directive required the VAT reductions for traditional media

SUBJECT MATTER OF THE CASE

The application concerns, on the one hand and from the perspective of Articles 6, 7 and 14 of the Convention, the refusal of the national courts to grant the applicant company's request for the application of a reduced rate of value added tax (VAT) and, on the other hand and from the perspective of Article 10, the alleged violation of an infringement of its freedom of expression.

The applicant company, a company publishing a digital news journal and holding a certificate of registration with the Joint Commission for Publications and Press Agencies, was subject to accounting audits following which VAT arrears, together with increases, were requested from it for the period from 1 January 2010 to 30 September 2013 and for the period from 1 October 2013 to 31 March 2014. The tax authorities challenged the application of the reduced VAT rate that the applicant company had applied to its subscriptions allowing access to its online news site, considering that Article 98 of Directive 2006/112/EC of 28 November 2006, providing for a reduced VAT rate for the supply of newspapers and periodicals, also applied to subscriptions for online publications. It imposed penalties on it in the respective amounts of 198,578 euros (EUR) and 1,707,059 EUR.

By a judgment of 22 May 2018, the Paris Administrative Court pronounced the discharge of the penalties imposed in the amount of 40% of the tax adjustment made by the tax authorities on the basis of paragraph a) of Article 1729 of the General Tax Code (CGI).

By a judgment of 12 November 2020, the Paris Administrative Court of Appeal (CAA) remitted the penalties imposed to the applicant company and dismissed the application for annulment of the judgment filed as an incidental action by the applicant company. The CAA considered that the articles of the General Tax Code whose application was contested by the applicant ensured the transposition into domestic law of the unconditional and precise provisions of Directive 2006/112/EC providing that the reduced VAT rate was applicable only to printed newspapers and periodicals, excluding online publications. It also considered that the difference in treatment contested by the company was justified by the fact that the measure in question had to be regarded as making it possible to achieve the objective of the European Union (EU) legislature of establishing with certainty the VAT rate applicable to services provided electronically and to facilitate the management of this tax by taxable persons and national tax administrations. In its appeal, the applicant company raised grounds based on an infringement of the principle of equal treatment provided for in Article 20 of the Charter of Fundamental Rights of the EU (equality before the law) and of media pluralism enshrined in Article 11 of the same Charter (freedom of expression and information). On 30 March 2022, the Council of State declared the applicant company's appeal inadmissible.

Relying on Article 6 of the Convention, the applicant company maintains that its case was not heard fairly by the French courts, since the Government and Parliament had already set themselves the objective of harmonising the VAT rate for different types of press companies at that date.

Under Article 7 of the Convention, the applicant company complains that it was not subject to a law, which it describes as criminal, that was more lenient by the courts, who refused to apply the reduced VAT rate to it in light of the publication of Directive 2018/1713 of 6 November 2018 amending the Directive of 28 November 2006 and subjecting press publications to the same rate, regardless of their paper or electronic medium.

Relying on Article 10, the applicant company maintains that the tax adjustment and the related penalties constituted pressure on an independent press company and thus infringed its freedom of expression.

Under Article 14, it maintains that the courts' refusal to apply the reduced VAT rate to it constituted an infringement of the principle of equal treatment and media pluralism.

QUESTIONS TO THE PARTIES

1. In the light of the "Engel criteria", did the domestic courts rule, in relation to the late payment penalties applied under Article 1729 (a) of the CGI, on the merits of a "criminal charge" brought against the applicant company within the meaning of Article 6 and, consequently, are the provisions of Article 6 applicable to the proceedings in issue under its criminal head (Engel and Others v. the Netherlands, 8 June 1976, §§ 82-83, Series A no. 22; Ferrazzini v. Italy [GC], no. 44759/98, § 29, ECHR 2001 VII; Jussila v. Finland [GC], no. 73053/01, §§ 37-38, ECHR 2006 XIV; and A and B v. Norway [GC] nos. 24130/11 and 29758/11, §§ 136-139 and 148, 15 November 2016).

   If so, was the complaint under Article 6 of the Convention raised in substance before the national courts?

   If so, was the applicant company's case given a fair hearing, as required by Article 6 § 1 of the Convention, taking into account the ongoing reform on the unification of VAT rates for all press publications, regardless of their medium, paper or electronic?

2. In the specific circumstances of the case, does the application of the penalties imposed by the tax authorities, validated by the domestic courts, constitute a "penalty" within the meaning of Article 7 of the Convention (Welch v. the United Kingdom, 9 February 1995, §§ 27-28, Series A no. 307-A, and G.I.E.M. S.R.L. and Others v. Italy [GC], nos. 1828/06 and 2 others, §§ 210-219, 28 June 2018)?
   If so, was such an application imposed on him in violation of Article 7? In particular, was it foreseeable in the light of the ongoing reform?

3. Did the penalty imposed on the applicant company in the tax proceedings constitute an interference with its right to freedom of expression as guaranteed by Article 10 of the Convention?

   If so, did that interference infringe the applicant company's right protected by Article 10 of the Convention? In particular, did it pursue a legitimate aim and was it necessary, within the meaning of Article 10 § 2, in a democratic society?

4. Was the applicant company the victim, in the exercise of its rights guaranteed by the Convention, of discrimination contrary in particular to Article 14 of the Convention taken in conjunction with Article 10 of the Convention?

GOMES v. France (no 38806/23)

Article 1 Protocol No. 1 – de facto expropriation to build highway without compensation

SUBJECT MATTER OF THE CASE

The application concerns the establishment of the public highway on a plot of land belonging to the applicants.

In 1998, the applicants obtained a building permit for three residential buildings on land they had acquired in Saint-Estève. This building permit provided for the free transfer, to the municipality, of a part of their land limited to 10% of its surface area[1] with a view to the subsequent construction of a street running alongside their plot. No formal transfer took place. Work was carried out and the public highway was created partly on the applicants' land. In 2016, the applicants complained of an irregular right of way on their property. In a judgment of 3 December 2018, the Montpellier Administrative Court dismissed the applicants' requests, considering that no irregular right of way could be upheld. By a decision of 5 July 2022, the Marseille Administrative Court of Appeal acknowledged the irregularity of the disputed installation on the applicants' land but dismissed their claims for compensation, ruling that they had not demonstrated that they had suffered moral prejudice, that they had not provided any evidence to establish that they had suffered inconvenience and that the public highway had been built in the general interest while ensuring access to their property. By a decision of 20 June 2023, the Council of State declared the applicants' appeal in cassation inadmissible.

Relying on Article 1 of Protocol No. 1, the applicants complain of a de facto expropriation of part of their land without compensation.

QUESTIONS TO THE PARTIES

"Has there been an infringement of the applicants' right to peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1?" In particular, were the applicants deprived of their property for reasons of public utility and in accordance with the conditions prescribed by law? If so, did that deprivation impose an excessive burden on the applicants in the absence of compensation (see, mutatis mutandis, Guiso-Gallisay v. Italy, no. 58858/00, §§ 82 to 97, 8 December 2005 and Yavuz Özden v. Turkey, no. 21371/10, §§ 75 to 88, 14 September 2021)?

GIE KAUFMAN and BROAD v. France (no. 23645/23)

Article 6 §1 – alleged failure to comply with adversarial principle in administrative tax law proceedings

SUBJECT MATTER OF THE CASE

The application concerns, under Article 6 of the Convention, the alleged failure to comply with the adversarial principle in the context of a legal action brought following an audit by the Union for the Recovery of Social Security and Family Allowances Contributions (URSSAF).

The applicant company is an economic interest group (GIE), a private-law legal entity created to facilitate the economic development of the companies that are members of this group by pooling their resources, whether material or human.

Following an audit covering the years 2008 to 2010, URSSAF notified the applicant company of an adjustment relating in particular to the payment of monthly lump sums for the reimbursement of expenses incurred by employees related to the use of their personal vehicles for business travel.

Contesting this adjustment and requesting full remission of the late payment penalties, the applicant company brought the matter before the amicable appeals committee and then lodged two appeals with the Social Security Court (TASS) in Bobigny.

In a judgment of 10 September 2015, the TASS declared the adjustment made against the applicant company to be partially unfounded and ordered URSSAF to reimburse the social security contributions unduly paid. With regard to URSSAF's request to have the supporting documents that had not been produced during the inspection dismissed, the TASS considered that granting this request would deprive the applicant company of an adversarial judicial debate since the outcome of the proceedings depended on these documents and would constitute a violation of Article 6 § 1 of the Convention.

In a judgment of 29 June 2018, the Court of Appeal (CA) upheld this judgment in all its provisions.

On 19 December 2019, the Court of Cassation partially overturned this judgment and, consequently, on the points annulled, restored the case and the parties to the state they were in before the judgment and referred them back to the Paris CA with a different composition. It noted in particular that having found that, during the inspection operations, the applicant company had not produced the supporting documents necessary to verify the application of the rules for deducting professional expenses, the CA could not request the nullity of this head of recovery.

By a judgment of 3 February 2023, the referring CA overturned the judgment under appeal. With regard to the admissibility of the documents communicated after the audit, it considered that, since, on the one hand, the latter was closed after the adversarial period as defined by the Social Security Code, and, on the other hand, since the applicant company had not provided the elements necessary to verify its application of social legislation during this same procedural phase, no new documents could be submitted to the proceedings before the appeal court.

The applicant company did not appeal to the Court of Cassation, considering that its appeal was doomed to failure, due to the consistent case-law of the Court of Cassation, refusing to rule since the ground of appeal would consist in criticising the referring court of appeal for having ruled in accordance with the indications given by the referring cassation judgment and in the absence of any change in the applicable standards or reversal of case-law in the meantime.

Under Article 6 § 1 of the Convention, the applicant company maintains that by depriving an employer of the possibility of producing, before the courts before which it is contesting the adjustment made by URSSAF, the supporting documents that it was unable to produce to the recovery inspector during the inspection operations, the domestic courts have disregarded the rules of a fair trial.

QUESTIONS TO THE PARTIES

1. What is the last final domestic decision within the meaning of Article 35 § 1 of the Convention? Could an appeal on points of law against the judgment of the referring court of appeal be regarded, in the present case, as an effective remedy to be exhausted or, at least, as an appeal the lodging of which was not a futile initiative (Ünal Tekeli v. Turkey, no. 29865/96, § 38, ECHR 2004-X (extracts), and) or was it clearly doomed to failure (Mocanu and Others v. Romania [GC], nos. 10865/09 and 2 others, § 259, ECHR 2014 (extracts), and Hôpital local Saint-Pierre d'Oléron and Others v. France, nos. 18096/12 and 20 others, § 55, 8 November 2018)? 2. Was the dispute over the applicant company's civil rights and obligations heard fairly, as required by Article 6 § 1 of the Convention?

In particular, was the adversarial principle respected given that the applicant company was unable to produce, before the national courts, the supporting documents enabling the conditions of applicability of the Convention to be verified?

E.F. v. FRANCE and 4 other applications (no. 2070/24)

Article 3 – Article 13 – expulsion of irregular immigrants to Haiti – situation of generalized violence in Haiti – proper assessment of asylum claim

SUBJECT MATTER OF THE CASES

The applications concern the forced removal of the applicants, Haitian nationals, to their country of origin.

The applicants, residing in Guadeloupe in an irregular situation, were arrested between 3 January and 23 February 2024 and placed in an administrative detention centre where they were notified of orders requiring them to leave French territory (hereinafter "OQTF") and prohibiting them from returning and setting the country of destination.

While in detention, they filed asylum applications with the French Office for the Protection of Refugees and Stateless Persons (hereinafter "OFPRA"). After their applications were rejected by the OFPRA, they appealed to the National Court of Asylum Law (hereinafter "CNDA"), with the exception of applicant no. 5 who is still awaiting the OFPRA's decision. Their appeals are currently pending before the CNDA.

They also filed annulment appeals before the administrative court against the orders establishing the OQTF and determining the country of destination, together with interim relief applications (with the exception of applicant no. 2) on the basis of Article L. 521-2 of the Code on the Entry and Residence of Foreigners and the Right to Asylum (CESEDA). The interim relief applications were dismissed, without a hearing, the day after they were registered, while the annulment appeals are still pending.

By decisions taken between 22 January and 15 March 2024, the Court granted the applicants' requests for interim measures under Rule 39 of its Rules of Procedure and instructed the Government not to remove them to Haiti until the 7th day after the Court received the OFPRA decision or, in the event of an appeal against it, until the 7th day after the CNDA decision was received.

Relying on Article 3 of the Convention, they maintain that, given the current situation of generalised violence in Haiti, the implementation of the removal measures taken against them is likely to violate their right not to be subjected to torture or to inhuman and degrading treatment.

The applicants also maintain that their return to Haiti, without a proper examination of the merits of their fears and their asylum claims, would violate Article 13 of the Convention, taken in conjunction with Article 3.

QUESTIONS TO THE PARTIES

1. In the light of the applicants' complaints and the documents submitted, would the applicants be at risk of being subjected to treatment contrary to Article 3 of the Convention if the removal measures to Haiti were implemented?

2. Did the French authorities carry out a careful and rigorous review of their complaints under Article 3 of the Convention (F.G. v. Sweden [GC], no. 43611/11, § 119, 23 March 2016)? In particular, were there factors specific to the applicants' personal situation that characterised the existence or absence of a risk, particularly in the light of the security situation prevailing in Haiti? If so, what were the various factors on which the Government relied in concluding that there was no risk?

3. Did the applicants have at their disposal, as required by Article 13 of the Convention, an effective domestic remedy through which they could have raised their fears that, if they returned to Haiti, they would be exposed to acts contrary to Article 3 of the Convention? Are the annulment actions brought

in Guadeloupe against the orders imposing the OQTF and determining the country of destination effective within the meaning of the Court's case law?

The parties are also invited to produce any new decisions concerning the applicants rendered, where applicable, by the domestic courts, in particular the judgments of the Guadeloupe administrative court ruling on the annulment actions brought by the applicants against the orders imposing the obligation to leave the territory and determining the country of destination, as well as the decisions of the OFPRA and the CNDA taken on their asylum applications.

BENSAID v. France (no 34177/23)

Article 3 – article 14 – Algerian national convicted to life imprisonment for acts of terrorism – de facto impossibility for modification of sentence after repeated refusals to do so – compounding effect of permanent ban from French territory

SUBJECT OF THE CASE

The application concerns, under Article 3 of the Convention, the repeated refusals of the domestic courts to modify the sentence of life imprisonment imposed on the applicant.

On 15 September 1999, the applicant, an Algerian national, was sentenced to a permanent ban from French territory for participating in a criminal association with a view to preparing an act of terrorism committed in Paris in 1995.

On 19 October 2001, the Paris Assize Court of Appeal sentenced him to 30 years of criminal imprisonment, with a security period of 20 years, for attempted terrorism committed in August 1995.

In a judgment of 27 November 2003, the Paris Assize Court of Appeal confirmed the sentence handed down at first instance of life imprisonment, with a security period of 22 years, for acts of terrorism corresponding to three new attacks: that of 25 July 1995 committed at the Saint-Michel RER B station which caused the death of 8 people and injured approximately 150 others, that of 17 October 1995 committed between the Musée-d'Orsay and Saint-Michel stations on the RER C line which injured 26 people, 7 of whom suffered mutilation or permanent disability, and that of 6 October 1995 in the 13th arrondissement, injuring 16 people.

Incarcerated since 6 November 1995, the applicant submitted a request for conditional release, subject to deportation, to the Paris Sentence Enforcement Court on 13 November 2017, a few days after the end of the security period. In the absence of a response, he filed the same request directly with the Sentence Enforcement Division of the Paris Court of Appeal, which rejected it on 25 June 2020, on the grounds that he was legally ineligible for this sentence adjustment.

On 21 October 2021, the Court of Cassation annulled the judgment and sent the case and the parties back for reconsideration. It considered that, since 1 July 2020, the combination of Articles 729-2 and 730-2-1 of the Code of Criminal Procedure allowed foreign nationals, even those convicted of terrorist offences and subject to a measure of removal from French territory, to apply for conditional release.

In a judgment of 31 March 2022 and after re-examining the application, the Sentence Enforcement Chamber found that the applicant was legally eligible for release subject to conditional expulsion, but rejected the application on the merits. With regard to his reintegration project, it considered that the promise of employment presented for an artistic job in Algeria appeared too uncertain and that he could no longer be forced to pay the balance of the sums he still had to pay to the victims and civil

parties, which amounted to almost one million euros if he returned to Algeria. With regard to the elements relating to his personality, his dangerousness and the risks of reoffending, the Chamber noted that all the opinions and expert reports collected converged to note fluctuations in his speech and a persistent dangerousness and concluded that a risk of reoffending could not be ruled out. Finally, it noted that the applicant's release could reactivate the serious disturbance of public order caused at the time of the events, citing the lasting consequences for the many victims more than 25 years later. The Chamber concluded that the conditions for a permanent departure from France, in view of the execution of the financial sentences, the risk of reoffending and the existence of a serious disturbance of public order, were not completely met

On 24 May 2023, the Court of Cassation dismissed the applicant's appeal. She considered that the grounds of the Court of Appeal were neither general nor impersonal but based on the situation of the person concerned and did not allow for prejudging decisions that could subsequently be made depending on how the applicant's situation developed.

Relying on Article 3 of the Convention, the applicant complained that the repeated refusals of conditional release made his sentence de facto irreducible.

Relying on Article 14 taken in conjunction with Article 3, he argued that the courts had failed to take into account his particular situation as a foreigner, which was different from that of persons of French nationality, since it was more difficult for him to find employment and accommodation abroad while being detained in France.

QUESTIONS TO THE PARTIES

1. Having regard to the principles adopted by the Court in this area (Vinter and Others v. the United Kingdom [GC], nos. 66069/09 and 2 others, §§ 104-118 and 122, ECHR 2013 (extracts); Bodein v. France, no. 40014/10, §§ 53-56, 13 November 2014; Murray v. the Netherlands [GC], no. 10511/10, §§ 99-104, 26 April 2016; Hutchinson v. the United Kingdom [GC], no. 57592/08, §§ 42-45, 17 January 2017; and Sanchez-Sanchez v. the United Kingdom [GC], no. 22854/20, §§ 78-82, 3 November 2022), can the life sentence imposed on the applicant for acts of terrorism, combined with a permanent ban from French territory, be considered a de jure and de facto compressible sentence, within the meaning of Article 3 of the Convention?

2. Does French law offer the applicant subject to a ban from French territory "a prospect of release and a possibility of review of his sentence"? Does the applicant have a sentence review procedure allowing the national authorities to examine the progress made towards reform or any other grounds for release based on his conduct or other relevant elements from his personal situation (Hutchinson, cited above, § 43, Vinter and Others, cited above, § 119, and Sanchez-Sanchez, cited above, § 97)?

3. In view of the refusal of the national courts to grant his request for conditional release subject to expulsion, was the applicant a victim of discrimination based on his nationality, in violation of the provisions of Article 14 of the Convention taken in conjunction with Article 3?

KIGURADZE v. Georgia (no. 25784/23)

Article 8 – Article 13 – Refusal to adjudicate defamation lawsuit against MP

SUBJECT MATTER OF THE CASE

The application concerns the domestic courts' refusal to adjudicate on the applicant's defamation lawsuit against a Member of Parliament (MP), on the basis of a legal provision excluding the liability of Members of Parliament in respect of statements made as part of a political debate or while performing their official duties. The applicant had argued that the MP in question had breached his right to reputation by referring to him as a "Russian spy" despite the applicant's having been acquitted of the charge of espionage. The final decision on the discontinuation of the defamation proceedings instituted by the applicant was served on the applicant's representative on 23 February 2023.

The applicant relied on Article 8 of the Convention.

QUESTION TO THE PARTIES

Bearing in mind that the Court is the master of the characterisation to be given in law to the facts of the case (see Radomilja and Others v. Croatia [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018) and having regard to the applicant's submissions before the Court, has there been a violation of Article 8 of the Convention, taken alone or in conjunction with Article 13, on account of the applicant's inability to have the merits of the defamation lawsuit adjudicated at domestic level?

ROMANCHENKO v. Georgia (no. 25401/23)

Article 8 – wire-tapping of phone of lawyer – suspension of time-limit for informing her of this

SUBJECT MATTER OF THE CASE

The application concerns the interception and recording of telephone communications of the applicant, a practising lawyer, and a member of the Georgian Bar Association. The covert investigative measure, which had been authorised by the Tbilisi City Court on 14 January 2021, took place between 14 January and 13 February 2021. On 11 January 2022 the Tbilisi City Court, acting at the request of the prosecutor's office, suspended the time-limit for notifying the applicant about the interception of her telephone conversations. The applicant was eventually informed of the covert investigative measure on 30 January 2023. She filed an appeal alleging that the interception and recording of her telephone communications had been unlawful and disproportionate, and that her private conversations and those covered by legal professional privilege had not been destroyed. Her appeal was rejected by the Tbilisi Court of Appeal on 20 February 2023.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention, in respect of each of her complaints lodged with the Court under Article 8 of the Convention?

2. Has there been an interference with the applicant's right to respect for her private life and correspondence within the meaning of Article 8 § 1 of the Convention?

3. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2? Were there adequate, effective and sufficient safeguards against abuse, arbitrariness and breaches of legal professional privilege? In this connection, did the Georgian law lay down procedures enabling the applicant to challenge the interception, recording and storage of communications involving confidential private-life and client-lawyer information?

OMAROV v. Georgia (no. 25967/23)

Article 6§1 – article 13 – length of labour dispute proceedings

SUBJECT MATTER OF THE CASE

The application concerns the length of a labour dispute which the applicant initiated on 20 June 2016. The proceedings are currently pending before the Supreme Court of Georgia.

Relying on Articles 6 § 1 and 13 of the Convention the applicant complains about the length of the relevant proceedings and the absence of an effective remedy in that respect.

QUESTIONS TO THE PARTIES

1. Is the length of the civil proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?

2. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 6 § 1 of the Convention about the length of the proceedings, as required by Article 13 of the Convention?

KORIDZE v. Georgia (no. 26487/23)

Article 8 – article 13 – wire-tap of journalist's phone in context of third party criminal proceedings – disputed notification of journalist – refusal of access to intercepted communications

SUBJECT MATTER OF THE CASE

The application concerns the interception and recording of telephone communications of the applicant, a journalist, who, at the material time, was the head of the Presidential Clemency Commission. In particular, on 1 February 2022 the applicant learnt from a TV report that back in 2017 his telephone communications had been intercepted and recorded. In reply to his inquiry, the prosecutor's office informed the applicant that his telephone calls had been intercepted and recorded within the context of criminal proceedings that had been initiated on 21 August 2017 into the criminal offence of aggravated fraud. He was informed that the intercepted material had been included as evidence in the relevant criminal case file against third persons and that the applicant had been duly notified in this respect.

On 15 February 2022 the applicant filed a complaint with the Personal Data Protection Service ("PDPS") alleging various breaches of the rules concerning interception, recording, notification, storage, and destruction of the intercepted material. The applicant alleged, among other things, that he had never been notified of his right to challenge as unlawful the court order authorising the interception of his telephone communications; that his request to have access to the relevant case materials had been rejected; and that the intercepted private communications, not related to the ongoing criminal proceedings, had apparently not been destructed. He alleged a violation of his right to private life and correspondence and requested the PDPS to take adequate measures.

In reply, on 9 March 2022 the PDPS stated that, according to the information obtained from the prosecutor's office, on 8 October 2019 the applicant had been notified, via a telephone call from a prosecutor, about the covert investigative measure ordered with respect to him; he had, however, declined the offer of going to the prosecutor's office in order to receive copies of the relevant case materials. The case file contained a record on the respective telephone conversation signed by the

prosecutor. Having regard to the above mentioned record and in view of the fact that more than two months had elapsed since the applicant had been notified of the interception of his telephone conversations, the representative of the PDPS informed the applicant that his complaint could no longer be examined. As far as the destruction of the intercepted material was concerned, the PDPS noted that this issue fell outside its mandate.

On 31 March 2022 the applicant requested the prosecutor's office to provide him with a copy of the court order authorising the interception and recording of his telephone communications along with related case materials, including a copy of the decision concerning the destruction, if any, of the intercepted material. After several reiterated requests, on 28 February 2023 the applicant was informed that his request could not be met since the relevant material, as a part of a criminal case, had been forwarded to a court.

In his several subsequent complaints with the General Prosecutor's Office the applicant reiterated his various grievances concerning the manner his telephone communications had been intercepted and recorded, and requested the initiation of disciplinary and/or criminal proceedings. As it appears from the case file, all of his requests were refused. The internal inquiry conducted within the prosecutor's office had not revealed any disciplinary offences on the part of the public officials involved.
The applicant complains under Articles 8 and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his private life and correspondence within the meaning of Article 8 § 1 of the Convention?

2. If so, was that interference in accordance with the law (referring both to the existence of legal basis as well as to the quality of law) and necessary in terms of Article 8 § 2 of the Convention? Did the domestic system of covert surveillance, as applied by the domestic authorities in the present case, afford adequate and effective safeguards against abuse and arbitrariness (see Roman Zakharov v. Russia [GC], no. 47143/06, ECHR 2015)?

3. Did the applicant have at his disposal effective domestic remedies for his complaints under Article 8, as required by Article 13 of the Convention (see ibid.; see also Drakšas v. Lithuania, no. 36662/04, 31 July 2012; and Ekimdzhiev and Others v. Bulgaria, no. 70078/12, 11 January 2022)? If so, has the applicant exhausted those remedies?

WATAD v. Germany (no. 16013/22)

Article 3 – Article 8 – Syrian citizen placed in housing project injured following a police operation seeking to arrest one of the other people housed in the building – ineffective investigation – transgressed authorisation in warrant

SUBJECT MATTER OF THE CASE

The application mainly concerns the applicant's alleged ill-treatment by police officers and the alleged shortcomings of the ensuing criminal investigation.

The applicant, born in 2000, is a Syrian citizen who fled to Germany as a minor and was placed in a housing project for unaccompanied minor refugees in Berlin where he shared a flat with three other persons.

On 9 May 2018 the police searched the flat. This measure was not directed against the applicant, but a fellow occupant who was suspected of robbery. The search warrant specified that only the suspect's rooms were to be searched. On the basis of a prior information that the suspect was violent and possibly armed, police officers decided to arrest all people that would be present in the flat in order to verify their identity and carry out the search without any disturbance. Early in the morning, several police officers burst through the front door with a ram. Two officers entered the applicant's room, pointed their guns at him and asked him to get out of his bed. When the applicant, who had just woken up in a state of panic and disorientation, did not comply, the officers grabbed him by his arms and legs and pulled him off the bed and onto the floor in order to handcuff him. In doing so, the glass door of a wardrobe opposite the applicant's bed was shattered and pieces of broken glass fell onto the floor, causing several deep and long cuts to the applicant's body. When the officers noticed that the applicant was bleeding profusely, they removed the handcuffs from him and called an ambulance. The applicant spent two days in hospital.

The applicant did not lodge a criminal complaint. On 22 May 2018, after a foundation in charge of the housing project had released in public a statement denouncing the police intervention as disproportionate, the police initiated criminal proceedings of their own motion against the two officers, in particular for bodily harm in the performance of official duties. During the investigation, the police questioned the occupants of the flat and the officers who were present during the search. On 13 December 2019 the Berlin Public Prosecutor's Office discontinued the proceedings due to insufficient evidence to bring charges against the officers. On 23 April 2020 the Berlin Chief Public Prosecutor's Office confirmed the decision. On 9 July 2020 the Berlin Higher Regional Court rejected the applicant's request for a judicial decision. It held that the officers' behaviour had been justified because they could not have been sure whether the applicant had been armed, they had intended to verify his identity and he had not cooperated with them. It dismissed as irrelevant the applicant's arguments pointing to a certain inconsistency in the officers' statements, in particular as to what had caused the glass door to break. On 14 September 2021 the Federal Constitutional Court declined to accept the applicant's constitutional complaint for adjudication, without providing reasons (2 BvR 412/21).

The applicant complained under Article 3 of the Convention that the police officers' behaviour amounted to a degrading treatment and that the domestic authorities had failed to conduct an effective investigation against the officers. He also claimed that the search warrant had not permitted the police to enter his room and that by doing so nevertheless, they had violated his right to respect for his home under Article 8 of the Convention.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to degrading treatment, in breach of the substantive limb of Article 3 of the Convention?

In particular:

(a) Which was the legal basis for the measures taken against the applicant, in particular his arrest?

(b) Having regard to the principles established by the Court notably in its judgment of Bouyid v. Belgium [GC] (no. 23380/09, §§ 88 and 109, ECHR 2015), was the use of force against the applicant strictly necessary in the particular circumstances of the present case, taking into account the applicant's age and vulnerability?

2. Did the domestic authorities carry out a prompt and effective investigation in compliance with the requirements of the procedural limb of Article 3 of the Convention? Having regard to the principles established by the Court (see Bouyid, cited above, §§ 116-23), did the authorities make a serious

attempt to establish the facts and determine whether the force used against the applicant was justified in the circumstances? In particular:

(a) Did the domestic authorities sufficiently examine whether the police had planned the search with enough care and diligence? Did they examine whether the police had prior information which occupant was living in which room of the flat, whether the layout of the flat corresponded to the information which the police had received prior to the search, and at which point in time – before or during the intervention – the police decided to pre-emptively arrest all persons present in the flat?

(b) Would additional investigative measures, such as securing forensic evidence at the scene of the incident, have helped in establishing the facts?

(c) Did the domestic authorities sufficiently examine the alleged inconsistency and/or contradictions in all statements admitted in evidence?

3. Has there been a violation of the applicant's right to respect for his home, contrary to Article 8 of the Convention?

In particular:

(a) Has there been an interference with the applicant's right to respect for his home within the meaning of Article 8 of the Convention?

(b) Was the alleged interference compatible with Article 8 § 2 of the Convention? In particular, what was the legal basis for the police officers to enter and search the applicant's room?

(c) After the police measures had been completed, did the applicant receive a document containing information about the legal basis and the content of these measures? If so, did this document contain instructions on available legal remedies?

PAPAGEORGIOU and PAPAGEORGIOU v. Greece (no. 34581/19)

Article 1 of Protocol no. 1 – Reduced compensation in expropriation case

SUBJECT-MATTER OF THE CASE

The application concerns the manner in which the Court of Cassation ruled on legal costs, including lawyers' fees, in a case concerning an expropriation. In 2004, land belonging to the claimants was expropriated.

In 2011 the Aegean Court of Appeal set the final expropriation compensation (judgment no. 294/2011). In 2014, having failed to receive this compensation, the claimants brought an action before the Chios District Court seeking to compel the State to pay it to them. In 2015, the Court granted the claim (judgment no. 32/2015).

The State appealed.

By judgment no. 37/2017, the Northern Aegean Court of Appeal ordered the State to pay the claimants the expropriation compensation set by judgment no. 294/2011, which amounted to EUR 844,356.25, as well as the legal costs, which amounted to EUR 27,265.09.The State appealed against this judgment to the Court of Cassation. By judgment no. 1630/2018, the Court of Cassation upheld the fifth ground of appeal relating to legal costs. It held that the Court of Appeal had erred in applying Article 18(4) of

Law no. 2882/2001 (Expropriations Code), which provides that in expropriation matters Article 22 of Law no. 3693/1957 is not applicable. In particular, it noted that Article 18(4) of Law no. 2882/2001 applies only to proceedings relating to the determination of provisional and final expropriation compensation and not to proceedings conducted in accordance with ordinary civil procedure, even when their object is the payment of expropriation compensation already determined by the competent court. The Court of Cassation concluded that the Court of Appeal should have applied Article 22 of Law no. 3693/1957 and ordered the State to pay the claimants EUR 600 in legal costs. Invoking Article 1 of Protocol No. 1 to the Convention, the applicants submitted that the Court of Cassation's application of Article 22 of Law no. 3693/1957, which provides for the reimbursement of reduced legal costs when the losing party in a lawsuit is the State, instead of Article 18 § 4 of Law no. 2882/2001, which provides for the reimbursement of full legal costs in expropriation cases, infringed their right to have their property respected, and in particular their right to receive full expropriation compensation.

QUESTION TO THE PARTIES

Did the manner in which the Court of Cassation ruled on legal costs, including lawyers' fees, infringe the applicants' right to respect for their property under Article 1 of Protocol No. 1?

PATELIS v. Greece (no. 26067/19)

Article 13 - Article 1 protocol no. 1 – Compensation for the lessee for destruction of installations on expropriated land

SUBJECT OF THE CASE

The application principally concerns the expropriation of a plot of land leased by the applicant and the destruction, without any compensation, of the facilities that he had erected there in order to run his business. In 2008, the claimant brought an action for damages against the State before the Administrative Court of First Instance on the basis of Article 105 of the Civil Code Accompanying Act. He claimed the sum of 1,865,637.30 euros (EUR) for the destruction of the installations in question and maintained that, through the fault of the State, the said installations had not been registered on the cadastral register and that no expropriation compensation had therefore been fixed for them.

On 2 February 2011, by judgment no. 935/2011, the Administrative Court of First Instance partially upheld the claimant's action and ordered the State to pay him the sum of EUR 342,598.30.On 4 October 2011, the State lodged an appeal. On 12 March 2013, by judgment no. 844/2013, the Athens Administrative Court of Appeal upheld the appeal and dismissed the claimant's action on the grounds that he had no legal interest in bringing it, noting that only the owner of the expropriated land could bring such an action. On 9 July 2013, the claimant appealed to the Council of State. On 27 March 2017, in judgment no. 891/2017, the Council of State, sitting as a five-member panel, held that the lessee of the expropriated land had an interest in bringing an action against the State under Article 105 of the Civil Code Accompanying Act and that such an action was distinct from the actions that he could bring against the owner/lessor under the provisions of the law of obligations. He concluded that the Court of Appeal's reasoning was unfounded because it was based exclusively on the provisions of the Expropriations Code, which deal with a different issue, that of determining expropriation compensation. However, considering the importance of the issue raised, the Conseil d'État decided to refer the case back to its seven-member panel.

On 24 September 2018, by judgment no. 1963/2018, the Council of State, sitting as a panel of seven judges, upheld the judgment of the Court of Appeal and dismissed the appeal. It stated that the lessee of expropriated land, who has no right to compensation under the Expropriations Code, has no interest in bringing an action against the State on the basis of Article 105 of the Civil Code Accompanying Act to obtain compensation for the destruction of installations erected on the expropriated land that had not been recorded on the cadastral register. He explained that this failure to register the installations was not directly prejudicial to the tenant, but to the owner/landlord, with whom the tenant was bound by a private law relationship unrelated to the expropriation. It held that the pecuniary claims of the lessee of an expropriated plot of land for compensation for the indirect damage he suffers as a result of the expropriation do not arise from any possibly illegal omissions on the part of State bodies during the expropriation procedure, but are based on the lease and the conditions under which it was entered into. The Conseil d'Etat noted that these claims are made against the owner/lessor and can be satisfied by virtue of the provisions of the law of obligations, such as, among others, those governing the management of the affairs of others, unjust enrichment, and unlawful acts. He concluded that the property rights of the tenant who might be affected by the expropriation were sufficiently protected by law and that, consequently, Article 1 of Protocol No. 1 could not be regarded as requiring the extension of the interest in bringing proceedings to the interested party.

Invoking Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention, the applicant submitted that he had been deprived of his property because he had received no compensation for the destruction of the installations he had erected on the expropriated land and that he had had no means of redress enabling him to obtain such compensation. Invoking Article 6 § 1 of the Convention, the applicant also complained about the length of the proceedings before the administrative courts.

QUESTIONS TO THE PARTIES

1. Did the destruction without compensation of the installations erected on the land expropriated by the applicant infringe his right to respect for his property within the meaning of Article 1 of Protocol No. 1 to the Convention?

2. Did the applicant have an effective remedy to complain of the alleged violation of Article 1 of Protocol No. 1 to the Convention, as required by Article 13 of the Convention?

3. Having regard to the fact that the proceedings before the domestic administrative courts lasted from 2008 to 2018, was the applicant's case heard within a reasonable time within the meaning of Article 6 § 1 of the Convention (see Vassilios Athanasiou and Others v. Greece, no. 50973/08, 21 December 2010)?

G.K. v. Greece (no. 51519/19)

Article 2 – Article 3 – Article 13 – Pushbacks from Greece to Turkey and ill-treatment by Greek authorities

SUBJECT-MATTER OF THE CASE

The application concerns the alleged pushback of the applicant from Greece to Türkiye, without prior procedure. In particular, the applicant alleges that on April 30, 2019, the Greek authorities carried out her expulsion from the Evros region.

The application concerns Articles 2 and 3 of the Convention and whether the operation in question posed a danger to the applicant's life and physical integrity.

It also concerns Article 3 of the Convention, specifically whether the applicant was subjected to ill-treatment by the Greek authorities, as well as Article 13 of the Convention and the alleged lack of an effective remedy allowing the applicant to complain about the violations of Articles 2 and 3.

The applicant complains that her deportation to Türkiye was not compatible with Article 13 of the Convention, notably because she was unable to apply for asylum in Greece.

The applicant also complains that she was deprived of her liberty in violation of Article 5 § 1 of the Convention.

Finally, the applicant invokes Article 5 § 4 of the Convention and complains that she was detained without official registration, that she did not have an effective remedy available to challenge the legality of her alleged detention, that no procedure was applied, and that she was deported without prior procedure.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies with regard to Articles 2 and 3 of the Convention?
2. Was the applicant's right to life, as guaranteed by Article 2 of the Convention, violated in this case? In particular, did the Greek authorities act in a manner that endangered the applicant's life?
3. Was the applicant subjected, in violation of Article 3 of the Convention, to inhuman or degrading treatment before and during her deportation to Türkiye?
4. Did the applicant have, as required by Article 13 of the Convention, an effective domestic remedy through which she could have raised her complaint regarding the alleged violations of Articles 2 and 3 of the Convention?
5. Was the applicant's deportation to Türkiye compatible with Article 3 of the Convention, taken alone and in combination with Article 13, given her allegations that she was unable to apply for asylum in Greece?
6. Was the applicant deprived of her liberty in violation of Article 5 § 1 of the Convention?
7. Did the applicant have an effective remedy available to challenge the legality of her alleged detention, in accordance with the requirements of Article 5 § 4 of the Convention?

ANTONOPOULOS v. Greece (no. 64003/19)

Article 5 – Article 14 – pre-trial detention – length of detention – length of procedures to challenge its lawfulness

SUBJECT MATTER OF THE CASE

The applicant, a lawyer, was charged in criminal proceedings with, inter alia, participation in a criminal organization. According to an arrest warrant issued on 4 April 2019, the applicant was remanded in custody because he was at risk of committing further offences (arrest warrant no. 3/2019).

On 7 May 2019 the applicant applied to have his pre-trial detention lifted or replaced by alternative measures. On 10 June 2019 that request was rejected (order no. 13/2019). The applicant submits that he was unable to appeal against that order because the charge was supplemented by an additional

document. Subsequently, the charge was supplemented by the offence of attempted extortion. On 12 July 2019 the applicant lodged a second application to lift his pre-trial detention. On 7 August 2019 the investigating judge rejected that request (order no. 23/2019). On 16 August 2019 the applicant appealed against that order.

On 11 October 2019 the Indictments Division of the Athens Court of Appeal (the Indictments Division) accepted the appeal (order no. 1425/2019). The applicant's detention was replaced by alternative measures. The Indictments Division considered that his pre-trial detention was not necessary in order to prevent further offences in the future. It added that the accused 'could and wished to comply with the rules of the legal system' and not re-offend. In the view of the Indictments Division, the applicant's pre-trial detention had not been necessary from the outset, let alone at that stage, having regard to Article 5 § 1 (c) of the Convention.

Invoking Article 5 § 1 (c) of the Convention, the applicant complained in particular that, throughout the period of his pre-trial detention, the conditions had not been fulfilled and that the detention had not been necessary in order to prevent other offences in the future. He added that the domestic courts had not examined either his allegations concerning his age and state of health or his capacity as a lawyer. Invoking Article 14 of the Convention in conjunction with Article 5 § 1 (c), he complained that other defendants had been conditionally released while he had remained in detention.

Under Article 5 § 3, the applicant complained about the length of his pre-trial detention (six months and fourteen days) and the time taken by the investigating judge to respond to his requests for conditional release.

Invoking Article 5 § 4, he complained that the order concerning his release had been published on 11 October 2019, that is, fifty-five days after his appeal had been lodged on 16 August 2019.

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention? Was the applicant discriminated against in the exercise of his rights under the Convention, contrary to Article 14 of the Convention in conjunction with Article 5 § 1?

2. Was the length of the applicant's pre-trial detention compatible with the requirement that he be tried within a 'reasonable time' within the meaning of Article 5 § 3 of the Convention?

3. Was the length of the proceedings during which the applicant sought to challenge the lawfulness of his pre-trial detention compatible with the requirement of 'promptness' in Article 5 § 4 of the Convention?

DYNAMI ZOIS v. Greece (no. 5771/23)

Article 10 – GDPR – data protection – political party fined by data protection authority for obtaining and using addresses of blind people without their consent to send political information in Braille

SUBJECT MATTER OF THE CASE

The application concerns the fine imposed to the applicant association, which is a political party that participated in the Attica regional elections of 2019, for sending political material to blind people, after having obtained their addresses and names from the National Federation of the Blind.

In particular, in May 2019 and prior to the regional elections of 2019, the applicant association sent political material, written in Braille, to blind people in the Attica region. In September 2019, one of the recipients lodged a complaint with the Data Protection Authority, which, after requesting explanations from the applicant association, imposed a fine of 2,000 euros. It held more specifically that the personal data used by the applicant association constituted personal data of special categories within the meaning of Article 9 of the General Data Protection Regulation ("GDPR"). While political communication constituted a legitimate aim for processing personal data, data relating to health could not be processed for that purpose without the subject's consent pursuant to Article 9 § 2 GDPR.

The applicant association lodged an application for annulment against the fine imposed on it, arguing that the matter was very important for blind people's political participation. As grounds for annulment, it put forward that: a) that the Data Protection Authority had erroneously considered that the applicant association's actions fell within the scope of GDPR; b) that the Data Protection Authority had erroneously interpreted and applied Article 4 (7) and (8) GDPR concerning the terms "controller" and "processor"; c) that the Data Protection Authority had erroneously interpreted Article 9 GDPR on processing of special categories of personal data, as the personal data used did not reveal any information on the recipients' health; and d) that the Data Protection Authority had erroneously applied Article 14 GDPR.

The Supreme Administrative Court, by its decision no. 1838/2022, rejected the applicant association's application for annulment and confirmed the decision of the Data Protection Authority.
The applicant association complains under Article 10 of the Convention that the fine imposed was in breach of its right to impart information.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicant association's right to freedom of expression, more specifically its right to impart information, contrary to Article 10 of the Convention? In particular, was the interference with the applicant association's right under Article 10 of the Convention prescribed by law and necessary in terms of Article 10 § 2? Did the domestic courts strike a fair balance between the applicant association's right to freedom of expression as guaranteed by Article 10 of the Convention and other people's right to protection of their personal data? Did the domestic authorities provide relevant and sufficient reasons for the fine imposed on the applicant association, given their interpretation that the address of an individual taken from the registry of National Federation of the Blind constitute personal data of special categories within the meaning of Article 9 GDPR?

POLYCHRONOUDIS v. Greece (no. 41951/19)

Article 6 §1 – procedural mistakes made by court-appointed lawyer results in inadmissibility of appeal

SUBJECT MATTER OF THE CASE

The applicant was a municipal employee of the municipality of Didymoticho. He held a fixed-term contract which ended on 1 November 1999. On 9 November 1999, he applied for permanent employment. After his application was rejected, the applicant brought an action before the Orestiada Regional Court. He argued that his contract should be renewed since it covered fixed and constant needs of the municipality. By judgment no. 24/270/12/2013, the Orestiada Regional Court dismissed the applicant's appeal. By judgment no. 26/2016, the Thrace Court of Appeal, sitting in a three-judge panel, upheld the judgment at first instance. Subsequently, the applicant requested the President of the Court of Cassation to assign a lawyer ex officio under legal aid to perform the necessary acts, in particular to schedule a hearing before the Court of Cassation and to assist the applicant during the

hearing. By his acts nos. 22/2017 and 170/2017, the President of the Court of Cassation granted the applicant legal aid. Between 20 November 2017 and 5 March 2021, the applicant sent a series of letters to the Court of Cassation informing it that the lawyer appointed under legal aid was not carrying out the acts for which he had been assigned ex officio.

Relying on Article 6 § 1 of the Convention, the applicant complains that it was impossible to advance the proceedings before the Court of Cassation and have his appeal examined, due to the failure of the court-appointed lawyer to perform the necessary procedural steps.

QUESTION TO THE PARTIES

Was the applicant's right of access to a court, within the meaning of Article 6 § 1 of the Convention, preserved in a "practical and effective manner" through his lawyer appointed under the national legal aid system (see Siałkowska v. Poland, no. 8932/05, §§ 105-117, 22 March 2007)?

The parties are invited to provide information on the operation of the national legal aid system before the Court of Cassation and on any remedies available to the beneficiary of legal aid in the event of failure of the court-appointed lawyer.

RIGATOU v. Greece (no. 34890/19)

Article 3 – Article 8 – female prisoner with oncological illness – insufficient medical care – presence of male officers during medical procedures – lack of privacy and confidentiality of medical procedures

SUBJECT MATTER OF THE CASE

The applicant is a female prisoner detained at Elaionas prison. She is also applicant in application no. 15330/18 (Rigatou and Others v. Greece) lodged on 23 March 2018 concerning the conditions of detention and medical care in the prison.

Her present application, first introduced by a request under Rule 39 of the Rules of the Court, concerns the alleged irregular provision of medical care as regards her oncology disease, with which she was diagnosed in December 2018. On 4 July 2019 the Court decided not to apply Rule 39 of the Rules of Court.

More specifically, the applicant complains that due to shortage of personnel in the Prison Transfers Division, her transfers to Agios Savvas Hospital, where her follow-up medical appointments were scheduled to take place, were cancelled or delayed and thus her treatment was not adequate.

The applicant further complains about the alleged presence of male prison officers in several of the medical procedures at issue, during some of which she was allegedly forced to remain handcuffed.

With reference to the above and relying on Article 3 of the Convention, the applicant complains that she was not provided with appropriate medical assistance for her oncology disease and that she was subjected to inhuman or degrading treatment. Further, relying on Article 8 of the Convention the applicant complains about lack of privacy and confidentiality of her medical examinations in view of the prison officers' alleged presence.

QUESTIONS TO THE PARTIES

1. Was the medical assistance and treatment provided to the applicant as regards her oncology disease in compliance with the requirements of Article 3 of the Convention?

The parties are requested provide evidence related to the applicant's medical treatment as regards her oncology disease, to specify the dates of the applicant's scheduled medical appointments and her respective transfers and to comment on any delays or rescheduling in her appointments (see, for instance, Nogin v. Russia, no. 58530/08, §§ 81-98, 15 January 2015, Ivko v. Russia, no. 30575/08, §§ 91-112, 15 December 2015, Solopova v. Ukraine, no. 17278/18, §§ 10-13, 27 June 2019, with further references). The parties are further invited comment and provide evidence related to the applicant's claims that she was forced to remain handcuffed during medical examinations (see, for instance, Henaf v. France, no. 65436/01, §§ 47-60, ECHR 2003-XI, Tarariyeva v. Russia, no. 4353/03, §§ 106-111, ECHR 2006-XV (extracts), Filiz Uyan v. Turkey, no. 7496/03, §§ 30-35, 8 January 2009) in the presence of prison officers (see, for instance, Duval v. France, no. 19868/08, §§ 48-53, 26 May 2011).

2. Has there been a violation of the applicant's right to respect for her private life within the meaning of Article 8 § 1 of the Convention in reference to the lack of privacy and confidentiality of medical examinations?

The parties are invited to comment and provide evidence related to the applicant's claim that prison officers were present during her medical examinations (see, for instance, Duval, cited above, §§ 54-55).

VOULIWATCH NON-GOVERNMENTAL ORGANISATION v. Greece (no. 38564/23)

Article 10 – democracy NGO invokes is denied access to information with regard to government contract with private company on creating information material for the public on combatting COVID-19 – alleged violation of right to receive and impart information – invocation of role of public watchdog

SUBJECT MATTER OF THE CASE

The applicant association is a non-governmental organization established in Greece, aiming, inter alia, to the promotion, on national and international level, of the principles and procedures of parliamentary democracy, of the functioning and works of the Greek and European Parliament, and of fundamental democratic principles, such as accountability, transparency and organised dialogue between the elected representatives and citizens.

In March 2020, a contract was signed between the General Secretariat of Information and Communication of the Greek Government and a private company on creating information material for the public on combatting Covid-19. That contract had not followed the general rules on procurement and publication of the conditions but was signed under the special legislation enacted for combatting Covid-19, which authorised, inter alia, the award of public contracts for services of public communication and information in procedure deviating from the general rules on procurement of public contracts.

The applicant association, invoking Article 10 of the Convention and its rights under Directive (EU) 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information, requested certain documents pertaining to the contract and the offer and deliverables submitted by the private company. The General Secretariat of Information and Communication did not reply within twenty days; the applicant association lodged an appeal against the tacit refusal with the National Transparency Authority. As it did not receive any reply to that appeal, it then lodged an application for annulment with the administrative courts, which was granted. The Athens Administrative Court of Appeal remitted the case to the administration.

On 7 June 2022 the National Transparency Authority rejected the applicant association's request on the grounds that the applicant association was equal to any citizen who was interested in the observation of legality, without having a special interest to be granted the information requested, which was commercial data with commercial value linked to their confidential character and did not belong to the category of open data.

The applicant association lodged a new application for annulment with the administrative courts, which was dismissed on the grounds that the right to access to information was also regulated by other legislative provisions, including those concerning commercial confidentiality, and such commercial data was not open data; there was no right of access to commercial confidential data.

The applicant association, invoking its role as "public watchdog", complains under Article 10 of the Convention that the denial of access to the requested information was in breach of its right to receive and impart information.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to receive and impart information within the meaning of Article 10 § 1 of the Convention (see Magyar Helsinki Bizottság v. Hungary [GC], no. 18030/11, §§ 149-80, 8 November 2016)?

2. In the affirmative, was that interference justified under Article 10 § 2 of the Convention, (see Magyar Helsinki Bizottság, cited above, §§ 181-200; Centre for Democracy and the Rule of Law v. Ukraine, no. 10090/16, §§ 104-21, 26 March 2020; and Šeks v. Croatia, no. 39325/20, §§ 60-73, 3 February 2022)?

In particular:

(a) was the interference "prescribed by law"?

(b) did it pursue one or more of the legitimate aims referred to in Article 10 § 2 of the Convention?

(c) was it necessary in a democratic society having regard to the applicant association's social role and the domestic court's reasoning that all the documents requested were covered by confidentiality due to their commercial value (see also Halet v. Luxembourg [GC], no. 21884/18, § 142, 14 February 2023)?

MOYSIDIS v. Greece (no. 4545/19)

Article 6 § 2 - Article 4 § 1 of Protocol No. 7 – administrative fine for fraudulent action by pharmacist left intact despite criminal acquittal on the same facts

SUBJECT MATTER OF THE CASE

The applicant is a pharmacist. By decision no. 997 of 22 August 2011, administrative fines were imposed on him in a total amount of EUR 82,766.61 for seven infringements of the obligations of pharmacists relating to the dispensing of prescriptions for medicine (e.g. lack of the necessary dates or signatures, partially dispensed prescriptions, non-delivery of medicine the costs of which were however charged to the insurer and paid to the pharmacist).

Additionally, criminal proceedings were initiated against the applicant for fraud. By judgment no. 2339 of 7 November 2013 of the Serres Criminal Court of First Instance, the applicant was acquitted.

The applicant lodged a recourse (προσφυγή) against the fines with the administrative courts. He relied on the criminal court's judgment and contended that his final acquittal on the same matter should be binding for the administrative court; and that he should be exempted from the majority of the fines.

The Thessaloniki Court of Appeal, by judgment no. 142/2018, served on the applicant on 5 September 2018, dismissed this recourse. It held that it did not result from the criminal acquittal that the facts which constituted the infringements relating to the dispensing of prescriptions had not taken place. However, it reduced the fines to EUR 74,608.94.

Relying on Article 6 § 2 of the Convention and Article 4 § 1 of Protocol No. 7, the applicant complains of the continuation of proceedings and the confirmation of the fines by the administrative court despite his acquittal in criminal proceedings.

QUESTIONS TO THE PARTIES

1. Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case (see Allen v. the United Kingdom [GC], no. 25424/09, §§ 95-102, ECHR 2013)?

2. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention, with respect to his complaint under Article 4 § 1 of Protocol No. 7? In particular, did the applicant invoke this right before the administrative courts, at least in substance?

3. Did the proceedings relating to the imposition of the administrative fines on the applicant constitute "criminal proceedings" for the purposes of Article 4 § 1 of Protocol No. 7?

4. If so, has the applicant been tried twice for the same offence contrary to Article 4 § 1 of Protocol No. 7 (see A and B v. Norway [GC], nos. 24130/11 and 29758/11, 15 November 2016, and Goulandris and Vardinogianni v. Greece, no. 1735/13, 16 June 2022)? The parties are requested to reply with reference to each one of the administrative infringements.

KISS v. Hungary (no. 55237/21)

Article 5 – Failure to review in a speedy manner

SUBJECT MATTER OF THE CASE

The application concerns alleged procedural irregularities in the proceedings on the prolongation of the applicant's compulsory psychiatric treatment.

The applicant was arrested on suspicion of attempted grievous bodily harm on 14 May 2020. Two days later he was placed in pre-trial detention. On 25 August 2020, based on the findings of an expert psychiatric report, the Buda Central District Court ordered his compulsory psychiatric treatment in the Asylum for the Criminally Insane ("IMEI"). The court found that there was a strong likelihood that the applicant would commit a new criminal offence punishable by imprisonment if released. The court has since prolonged his compulsory treatment on several occasions.

Invoking Article 5 § 4 of the Convention, the applicant complains that he did not receive the prosecutor's motion for the prolongation of his compulsory treatment prior to the court's decision on the matter on 28 January 2021, giving rise to an infringement of the principle of "equality of arms". He further complains that the Court of Appeal, having adopted its decision on 30 April 2021, that is more than three months after the first instance decision, failed to review his appeal in a speedy manner.

QUESTIONS TO THE PARTIES

1. Was the procedure by which the applicant sought to challenge the lawfulness of his detention in conformity with Article 5 § 4 of the Convention? In particular, was the principle of equality of arms

between the applicant and the prosecution respected in the present case (see mutatis mutandis Bandur v. Hungary, no. 50130/12, §§ 82-84, 5 July 2016)?

2. Did the length of the proceedings, by which the applicant sought to challenge the lawfulness of his detention, comply with the "speed" requirement of Article 5 § 4 of the Convention (see Ilnseher v. Germany [GC], nos. 10211/12 and 27505/14, § 256, 4 December 2018, and Piotr Baranowski v. Poland, no. 39742/05, §§ 64-67, 2 October 2007)?

MOLNÁR-FULMER and PINCEHELYI v. Hungary (no. 21715/22)

article 8 – home search of opposition politicians by police to investigate vandalism

SUBJECT MATTER OF THE CASE

The application concerns the search of the applicants' homes carried out by the police on 20 October 2021. The applicants are opposition politicians. On 23 July 2021 they covered with stickers six billboards advertising a national consultation campaign initiated by the Government against "sexual propaganda". On 24 July 2021 the Pécs Police Department opened investigations into vandalism against unknown perpetrators. On 20 October 2021 both applicants were questioned, and the police department issued a warrant to search their flats. The searches were carried out the same day. The applicants objected the searches; their complaint was dismissed by the Pécs Prosecutor's Office and their petition for judicial review was dismissed by the Pécs District Court on 21 December 2021. The investigation against the applicants was discontinued on the same day.
The applicants complain that the search of their homes violated their rights protected by Article 8 of the Convention.

QUESTION TO THE PARTIES

Has there been a violation of the applicants' right to respect for their private life and/or home, contrary to Article 8 of the Convention, on account of the search measure conducted in their homes? In particular, was the interference with the applicants' right to respect for their private life and/or home "necessary in a democratic society" as required by Article 8 of the Convention?

SZELÉNYI v. Hungary (no. 15147/23)

Article 8 – dismissal of constitutional complaint against expanding of "integrity testing" legislation to health care professionals – "integrity testing" allows for the use of a wide range of investigation/surveillance techniques to pre-emptively identify corruption

SUBJECT MATTER OF THE CASE

The application concerns the "integrity testing" (megbízhatósági vizsgálat) under Act no. XXXIV of 1994 on the Police ("the Police Act").

Integrity testing was introduced in Hungary in 2011 to combat corruption and to effectively monitor the fulfilment of professional obligations established by law, work contract or collective agreement. The procedure is governed by Sections 7-7/D of the Police Act. It can be carried out by the National Protective Service (NPS), the internal body of the police responsible for crime prevention and crime investigation. During the integrity testing, the NPS artificially creates life situations that occur or may be assumed to occur in the course of performing the job in question. It is entitled to use certain forms of secret information gathering which do not require judicial authorisation, such as secret observation

of a person, a dwelling, other premises, a public place or a place open for the public, and a vehicle. It can collect information about what has happened and might record it by technical means. The NPS can also obtain information necessary to establish the fact of communication by electronic devices or to identify or locate such devices, without having access to the content of the communications concerned. No disciplinary or regulatory offence proceedings can be brought on the basis of any unlawful conduct discovered during the procedure.

Originally, the measure was targeted primarily at certain law enforcement agencies. With effect of 1 January 2021 an amendment to the Police Act extended the personal scope of integrity testing to, among others, health care professionals by modifying Section 7(1) (b) (bb).

The applicant works as a doctor in a city hospital.
On 28 June 2021 he requested the Constitutional Court to quash the provision of the Police Act which extended the scope of the integrity test to his situation, arguing that it violated his right to respect for private and family life. The Constitutional Court rejected his complaint on 29 November 2022 which decision was served on the applicant on 3 December 2022. It found that the interference complained of served the legitimate aim of creating a transparent and corruption-free health care system, and ensuring citizens' right to health and equal access to health services. The Constitutional Court was of the view that the tools of integrity testing – the creation of artificial life situations and covert surveillance – were the only means of achieving these goals. As to the proportionality of the measure, it essentially held that the State, as the provider of public health services, enjoys a wide margin of appreciation in determining the content of the employment relationship concerning health care professionals. It also took into account that health care professionals were free to decide whether to accept the new form of employment introduced in 2020.
The applicant complains under Article 8 of the Convention that the possibility of being subjected to secret surveillance during integrity testing constitutes an unnecessary and disproportionate interference with his right to respect for private and family life. He argues that the measure has an intimidating effect, does not serve the legitimate aims declared in the Police Act and, even assuming that it does serve a law enforcement purpose, it constitutes a disproportionate interference since it does not require that there be a suspicion of a criminal offence. Furthermore, in his opinion, the legislation does not provide for safeguards against abuse.

QUESTIONS TO THE PARTIES

1. Can the applicant claim to be potential victim for the purposes of Article 34 (see Szabó and Vissy v. Hungary, no. 37138/14, §§ 32-38, 12 January 2016)?

2. Has there been an interference with the applicant's right to respect for private and family life, home or correspondence, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in a democratic society to protect a legitimate aim, as required by Article 8 § 2 of the Convention?

B.A. and others v. Hungary (no. 38303/23)

Article 8 – dismissal of constitutional complaint against expanding of "integrity testing" legislation to people working for department of education and as adoption counsellors – "integrity testing" allows for the use of a wide range of investigation/surveillance techniques to pre-emptively identify corruption

SUBJECT MATTER OF THE CASE
The application concerns the "integrity testing" (megbízhatósági vizsgálat) under Act no. XXXIV of 1994 on the Police ("the Police Act").

Integrity testing was introduced in Hungary in 2011 to combat corruption and to effectively monitor the fulfilment of professional obligations established by law, work contract or collective agreement. The procedure is governed by Sections 7-7/D of the Police Act. It can be carried out by the National Protective Service (NPS), the internal body of the police responsible for crime prevention and crime investigation. During the integrity testing, the NPS artificially creates life situations that occur or may be assumed to occur in the course of performing the job in question. It is entitled to use certain forms of secret information gathering which do not require judicial authorisation, such as secret observation of a person, a dwelling, other premises, a public place or a place open for the public, and a vehicle. It can collect information about what has happened and might record it by technical means. The NPS can also obtain information necessary to establish the fact of communication by electronic devices or to identify or locate such devices, without having access to the content of the communications concerned. No disciplinary or regulatory offence proceedings can be brought on the basis of any unlawful conduct discovered during the procedure.

Originally, the measure was targeted primarily at certain law enforcement agencies. Amendments to the Police Act adopted in 2020 and 2022 extended the personal scope of integrity testing to, among others, all employees of public institutions (költségvetési szervek) managed or supervised by the Minister of the Interior.

The applicants were employed at different public institutions managed by the Ministry of Interior when these amendments came into force. The first applicant worked as an expert at the Educational Authority, while the second and third applicants worked as an adoption counsellor and a child protection guardian in a child protection centre in Budapest. The applicants requested the Constitutional Court to quash the provisions of the Police Act which extended the scope of the integrity test to their situation. They argued that the possibility of secret surveillance through the integrity test violated their right to respect for private and family life. The Constitutional Court rejected the complaint on 6 June 2023 which decision was served on the applicants on 12 June 2023. It found that the interference complained of served the legitimate aim of guaranteeing the right to a fair procedure by public authorities and ensuring the purity in public life and that the tools of integrity testing – the creation of artificial life situations and covert surveillance – were the only means of achieving these goals. As to the proportionality of the measure, it essentially held that the State enjoys a large degree of freedom in determining the content of the employment relationship, having regard to the public tasks carried out by the employees, and may therefore impose additional requirements on them to ensure that the public tasks are performed lawfully and impartially. It also took into account the fact that the employees have the freedom of choice when their employment relationship is established or maintained.

The applicants complain under Article 8 of the Convention that the possibility of being subjected to secret surveillance during integrity testing constitutes an unnecessary and disproportionate interference with their right to respect for private and family life. They argue in particular that integrity testing by the police is an inappropriate tool of exposing breaches of professional obligations and it indiscriminately applies to a disproportionately broad range of government employees, regardless of the potential for corruption or unprofessional conduct.

QUESTIONS TO THE PARTIES

1. Can the applicants claim to be potential victims for the purposes of Article 34 (see Szabó and Vissy v. Hungary, no. 37138/14, §§ 32-38, 12 January 2016)?

2. Has there been an interference with the applicants' right to respect for private and family life, home or correspondence, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in a democratic society to protect a legitimate aim, as required by Article 8 § 2 of the Convention?

NÉMETH v. Hungary (no. 54323/22)

Article 10 - Institution of regulatory offence procedures against protestor that were later dismissed

SUBJECT MATTER OF THE CASE

The application concerns an identity check carried out by the police on the applicant.

On 5 April 2017 the applicant demonstrated on Kossuth Lajos Square, adjacent to Parliament House, against legislative amendments related to higher education which had been adopted by Parliament the day before. She was placing tealight candles on the pavement forming the phrase „I stand with CEU", when two police officers appeared and enquired what she was busy doing. Subsequently, she was called on to produce an identity card. The applicant did not comply but removed the tealight candles and sought to leave the site. Nevertheless, she was halted by the police and, at a repeated request, she presented her identity card. At this time twelve police officers surrounded her.

In May 2017, regulatory offence proceedings were instituted against the applicant, but following her appeal, they were later discontinued on procedural grounds.

In the meantime, the applicant filed a complaint against the police measure, but to no avail. On appeal, on 17 February 2021 the Budapest Police Department found that the measure was lawful, by relying on specific legislation concerning Kossuth Lajos Square, as a protected national place of remembrance, as well as the suspicion of sanitation offence concerning the tealight candles. On 14 December 2021 the Budapest High Court dismissed her action lodged against the police decision. It found that the police measure did not directly affect her right to freedom of expression. On 5 July 2022 the Constitutional Court rejected her constitutional complaint, finding no connection between the applicant's right to freedom of expression and the impugned police measure.

The applicant complains under Article 10 of the Convention that the impugned police measure prevented her from expressing a political opinion, and that the regulatory offence proceedings unduly restricted her rights.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention?

2. If so, was that interference prescribed by law in terms of Article 10 § 2? Furthermore, was that interference "necessary in a democratic society" in terms of Article 10 § 2 in pursuit of a legitimate aim (Tatár and Fáber v. Hungary, nos. 26005/08 and 26160/08, 12 June 2012)?

VENETO BANCA S.P.A. v. Italy (no. 48414/18)

Article 35 – Article 1 protocol 1 – Confiscation of assets – exhaustion of domestic remedies

SUBJECT MATTER OF THE CASE

The application concerns the confiscation of the applicant company's assets, pursuant to Article 187 sexies of Legislative Decree no. 58 of 24 February 1998 ("the Consolidated Finance Act"), in an amount corresponding to the sums invested in an operation which was found to be the result of insider trading.

On 30 December 2009, the National Companies and Stock Exchange Commission (Commissione Nazionale per le Società e la Borsa – "the CONSOB") found Cofito S.p.A. – a company subsequently incorporated by the applicant company – liable for insider trading pursuant to Article 187 quinquies of the Consolidated Finance Act. In addition to a sanction of 1,800,000 euros, the CONSOB confiscated Cofito's assets for an amount of 20,723,324.41 euros.

Cofito appealed to the Turin Court of Appeal and the applicant company, which incorporated Cofito in 2011, pursued the proceedings. The Court of Appeal raised a question of constitutionality that the Constitutional Court declared inadmissible (judgments nos. 186 of 2011 and 252 of 2012). On 17 May 2013, the Turin Court of Appeal rejected the applicant company's appeal and on 6 April 2018 the Court of Cassation confirmed the decision.

The applicant company complains, under Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1, that the confiscation was disproportionate, notably because it concerned the sums invested in the operation and not only its profits, amounting to the considerably lower sum of 1,467,474 euros.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

Following the judgment of the Constitutional Court no. 112 of 2019, did the applicant dispose of an effective remedy to obtain the restitution of part of the confiscated assets?

2. Has there been a violation of Article 1 of Protocol No. 1 to the Convention? Was the confiscation of the applicants' assets, in an amount corresponding to the invested sums, necessary and proportionate to the aim pursued?

RAGAZZONI and Others v. Italy (no. 34322/15)

Article 1 of Protocol No. 1 – Confiscation of proceeds of crimes and damages

SUBJECT MATTER OF THE CASES

The applications concern the combined effect of the confiscation of the price or proceeds of crimes, imposed in the course of criminal proceedings, and the order, issued by the Court of Audit, to pay damages resulting from the same conducts.

The applicants were prosecuted and convicted for several crimes. In the context of criminal proceedings, the domestic courts ordered the confiscation of the price or proceeds of the crimes, pursuant to Articles 240, 322-ter and 640 quater of the Criminal Code.

The applicants were subsequently brought before the Court of Audit in order to determine their liability towards the public administration for the same conducts that had been sanctioned by the criminal courts. In that context, the applicants argued that the confiscated amounts should have been deducted from the damages suffered by the public administration, in order to avoid a duplication of compensation. The Court of Audit, relying on the different nature and purpose of the two measures, rejected the applicants' argument and ordered them to pay damages in full.

More detailed information on the national decisions and on the measures imposed to the applicants are indicated in the appended table.

Invoking Article 1 of Protocol No. 1 to the Convention, the applicants complain that the combined effect of the confiscation and of the damage award resulted in an excessive burden and was disproportionate to the aim of compensating the public administration for the damage suffered.

QUESTION TO THE PARTIES

Has there been a violation of Article 1 of Protocol No. 1 to the Convention? In particular, was the interference with the applicants' assets necessary and proportionate to the aim pursued? Taking into account the prior confiscation of assets, did the damage awards issued by the Court of Audit impose an excessive burden on the applicants?

GILBERTI v. Italy (no. 22456/20)

Article 7 – Unforeseeable conviction for "unnamed disaster"

SUBJECT MATTER OF THE CASE

The application concerns the foreseeability of the applicant's conviction for the offence of unnamed disaster (disastro innominato) by conscious negligence (colpa cosciente) provided for by Articles 434 and 449 of the Criminal Code ("the CC"), which punish as 'unnamed disaster' whoever causes by culpable negligence "another disaster", namely a disaster other than those explicitly provided for by the CC (such as, inter alia, flood, landslide, shipwreck or trainwreck).

Under such provisions in 2012 the applicant, in his capacity of Ceo and manager of a refinery plant, was brought to trial for having failed (between 2001 and 2007) to hinder and prevent the spreading in the area surrounding the refinery of a contamination in the groundwater, mainly caused by leaks in the refinery's sewerage network over the years. On 18 July 2014 the Cremona preliminary hearings judge found him guilty. The conviction was later upheld by the Court of Appeal and the Court of Cassation (by judgment no. 44528 of 25 September 2018, filed with the registry on 31 October 2019). According to the domestic courts, the abovementioned contamination amounted to an environmental disaster (disastro ambientale) which had endangered public safety.

Relying on the domestic case-law at the material time, the applicant alleges of a violation of Article 7 of the Convention, complaining of: (i) the absence of a clear and foreseeable legal basis for his conviction, given the broad definition of the offence of unnamed disaster provided for by Article 434 of the CC; (ii) the unforeseeability of the extensive interpretation adopted by the domestic courts in his case, since the inclusion of the environmental disaster (in the form of a continuing pollution) within the scope of Article 434 of the CC is inconsistent with the features of the offence and was based on a line of case-law posterior to time of the commission of the acts reproached to him.

QUESTIONS TO THE PARTIES

1. In light of the relevant domestic provisions (Articles 434 and 449 of the CC) and of their interpretation by the domestic courts, considering the facts reproached to the applicant, was his conviction for the offence of environmental unnamed disaster by conscious negligence (disastro ambientale innominato) in compliance with Article 7 of the Convention (compare Liivik v. Estonia, no. 12157/05, §§ 99-101, 25 June 2009; Soros v. France, no. 50425/06, § 53 and 59, 6 October 2011; Rohlena v. the Czech Republic [GC], no. 59552/08, §§ 57-58, ECHR 2015; Parmak and Bakır v. Turkey,

nos. 22429/07 and 25195/07, § 62, 3 December 2019, and Tristan v. the Republic of Moldova, no. 13451/15, § 49, 4 July 2023)? In particular:

1.1. Was there a sufficiently clear legal basis for the applicant's conviction, as required by Article 7 § 1 of the Convention? Did the national law at the material time define with sufficient clarity the criminal offence of unnamed disaster (Article 434 of the CC; see Liivik, cited above, § 93)?

1.2. What are the elements of the offence of unnamed disaster set out in Article 434 of the CC and were those elements present in the applicants' case (see Rohlena, cited above, § 57; mutatis mutandis, Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, § 267, 26 September 2023)?

1.3. Were the domestic legal provisions, on the basis of which the applicant was convicted, foreseeable in their application? In that connection, could the domestic courts' interpretation of the offence of unnamed disaster as covering environmental disasters in the form of continuing pollution be reasonably foreseen by the applicant at the time of the acts on which his conviction rested (see, mutatis mutandis, Litschauer, cited above, §§ 31-35; Dragotoniu and Militaru-Pidhorni v. Romania, nos. 77193/01 and 77196/01, § 38, 24 May 2007)?

D'ORIANO and 41 others v. Italy (no. 43204/12)

Article 8 – Article 1 of protocol no. 1 – article 4 of protocol no. 4 – confiscation of assets, disproportionate to lawful income and confiscation of assets of family members who were "fictitious owners"

SUBJECT MATTER OF THE CASE

The applications concern the confiscation of the applicants' assets, ordered by the domestic courts pursuant to Article 24 of Legislative Decree no. 159 of 6 September 2011 (Codice delle leggi antimafia e delle misure di prevenzione, "Decree no. 159/2011"). Some of them also concern the imposition on the applicants of the measure of special police supervision, pursuant to Article 6 of the same decree (see the appended table).

The applicants are either individuals who have been declared socially dangerous in accordance with Article 1 § 1 (a) and/or (b) of Decree no. 159/2011, reproducing the ones enshrined in Article 1 § 1 (1) and (2) of Law no. 1423 of 27 December 1956 (pericolosità generica or "ordinary dangerousness"), or family members or next-of-kin of individuals who have been declared socially dangerous pursuant to the same provision, whose properties were confiscated. As for the former, the domestic courts considered that their assets were disproportionate to their lawful income and that the applicants had failed to demonstrate their lawful origin. As for the latter, the domestic courts considered that the relevant assets were formally owned by the applicants but, in reality, belonged to their socially dangerous relatives (intestazione fittizia or "fictitious ownership") or, in any event, were under their effective control and at their disposal. The courts further observed that such assets were disproportionate to their and their relatives' lawful incomes and that they had failed to demonstrate their lawful origin.

Relying on the Court's judgment in the case of De Tommaso v. Italy ([GC], no. 43395/09, 23 February 2017), all applicants' main complaint, raised under Article 1 of Protocol No. 1 as well as different other provisions of the Convention and its Protocols, concerns the alleged lack of clarity and foreseeability of the legal basis of the contested measures with regard to the identification of the individuals to whom confiscation and special police supervision could be imposed.

The complaints raised by each applicant, and the corresponding questions which the parties are requested to answer, are indicated in the appended table.

QUESTIONS TO THE PARTIES

1. Was the interference with the applicants' peaceful enjoyment of possessions in accordance with the requirements of Article 1 of Protocol No. 1 to the Convention? In particular:

(a) was the interference in accordance with the conditions provided for by the law, as required by Article 1 of Protocol No. 1? In this respect, were provisions (a) and/or (b) of Article 1 § 1 of Decree no. 159/2011 sufficiently precise and clear, foreseeable in their application and consequences, and compatible with the rule of law, in respect of the individuals to whom confiscation of assets as a preventive measure is applicable (see De Tommaso v. Italy [GC], no. 43395/09, § 126, 23 February 2017)?

(b) was the interference proportionate to the aim pursued? In answering the question, the parties are requested to refer, inter alia, to the following points:

(i) whether the nature and severity of the crimes, on which the declaration of social dangerousness has been based, justified the presumption that the applicants' assets were proceeds of unlawful activities (compare Bongiorno and Others v. Italy, no. 4514/07, § 45, 5 January 2010; Gogitidze and Others v. Georgia, no. 36862/05, § 107, 12 May 2015; Telbis and Viziteu v. Romania, no. 47911/15, §§ 74 and 77, 26 June 2018; and Balsamo v. San Marino, nos. 20319/17 and 21414/17, § 91, 8 October 2019);

(ii) whether the domestic authorities made a sufficiently individualised assessment of proportionality between the applicants' assets and their lawful income, in order to identify which pieces of property to confiscate (see, mutatis mutandis, Rummi v. Estonia, no. 63362/09, § 108, 15 January 2015, and Todorov and Others v. Bulgaria, nos. 50705/11 and 6 others, § 221, 13 July 2021; a contrario, Phillips v. the United Kingdom, no. 41087/98, § 53, ECHR 2001-VII; Silickienė v. Lithuania, no. 20496/02, § 68, 10 April 2012; and Gogitidze and Others, cited above, §§ 105-07);

(iii) as regards the cases concerning the intestazione fittizia, whether the domestic authorities showed in a reasoned manner, on the basis of an objective assessment of the factual evidence, that the confiscated assets belonged to the individual declared socially dangerous (see Gogitidze and Others, cited above, § 122, and Balsamo, cited above, §91);

(iv) whether the applicants were afforded a reasonable opportunity to put their argument before the domestic courts and whether the latter duly examined the evidence submitted by the applicants (Telbis and Viziteu, cited above, § 78).

2. Was the interference with the applicants' right to liberty of movement and freedom to choose their residence in accordance with the requirements of Article 2 of Protocol No. 4 to the Convention? In this regard:

(a) Was the interference in accordance with the law? In particular:

(i) were the provisions (a) and/or (b) of Article 1 § 1 of Decree no. 159/2011 sufficiently precise and clear, foreseeable in their application and consequences, and compatible with the rule of law, in respect of the individuals to whom special supervision as a preventive measure is applicable (see De Tommaso, cited above, § 126)?

(ii) were the obligations imposed on account of the measure sufficiently clear and determined (ibid., §§ 119-22)?

(b) Did the domestic authorities strike a fair balance between the demands of the general interests and the applicants' rights?

3. Taking into account the characterisation of the contested measure under domestic law and case-law (compare, inter alia, Court of Cassation, judgments no. 18 of 3 July 1996, no. 57 of 8 January 2006, no. 39204 of 17 May 2013, and no. 4880 of 2 February 2015; contra judgment no. 14044 of 25 March 2013; see also, inter alia, Constitutional Court, judgments no. 21 of 9 February 2012, and no. 24 of 27 February 2019), its nature and purpose, the procedures involved in its imposition and implementation, and its severity, did the confiscation applied to the applicants pursuant to Article 24 of Decree no. 159/2011 amount to a "penalty" within the meaning of Article 7 § 1 of the Convention (compare Arcuri v. Italy (dec.), no. 52024/99, § 2, ECHR 2001-VII; Capitani and Campanella v. Italy, no. 24920/07, § 37, 17 May 2011; Gogitidze and Others, cited above, § 121; and, mutatis mutandis, Balsamo, cited above, § 58 et seq., and contrast with G.I.E.M. S.R.L. and Others v. Italy [GC], nos. 1828/06 and 2 others, §§ 214 et seq., 28 June 2018)?

If so, has there been a violation of Article 7 of the Convention, on account of:

(a) the alleged lack of clarity and foreseeability of the relevant domestic provisions?

(b) the fact that the applicants have not been convicted of any criminal offence?

(c) the retrospective application of the relevant domestic provisions?

4. Has there been an interference with the applicants' right to respect for their home, as guaranteed by Article 8 of the Convention, on account of the fact that the house which constituted their domicile was confiscated?

If so:

(a) was the measure in accordance with the law, within the meaning of the second paragraph of Article 8? In particular, were the provisions (a) and/or (b) of Article 1 § 1 of Decree no. 159/2011 sufficiently precise and clear, foreseeable in their application and consequences, and compatible with the rule of law, in respect of the individuals to whom confiscation of assets as a preventive measure is applicable (see De Tommaso, cited above § 126)?

(b) was the interference necessary in a democratic society and proportionate to the aim pursued (see Aboufadda v. France (dec.), no. 28457/10, § 43, 4 November 2014, and, mutatis mutandis, Ivanova and Cherkezov v. Bulgaria, no. 46577/15, §§ 53-56, 21 April 2016)?

5. Provided that the measure can be considered criminal in nature (see question no. 3), has there been a violation of the ne bis in idem principle, enshrined in Article 4 of Protocol No. 7 to the Convention?

6. Did the decisions of the domestic courts in the preventive proceedings reflect the opinion that the applicants were guilty, notwithstanding the absence of a formal finding of guilt, given that the criminal proceedings were still pending?

If so, has there been a violation of the presumption of innocence, guaranteed by Article 6 § 2 of the Convention (see Allen v. the United Kingdom [GC], no. 25424/09, CEDH 2013, Nealon and Hallam v. the United Kingdom [GC], nos. 32483/19 and 35049/19, §§ 150-169, 11 June 2024, and, mutatis mutandis, Geerings v. the Netherlands, no. 30810/03, § 47, 1 March 2007)?

7. Was the applicants' case decided by an impartial tribunal, as required by Article 6 § 1 of the Convention?

BERSELLI and Others v. Italy (no. 10449/20)

Article 1 protocol no. 1 – Cost of owners of social housing to bear additional costs because of expropriation proceedings

SUBJECT MATTER OF THE CASE

The application concerns the duty of owners of social housing built on expropriated land to cover the subsequent additional costs of expropriation proceedings borne by domestic authorities.

In 1978, the Monterenzio municipality expropriated plots of land in view of the construction of social housing. The former owners of the plots concluded separate expropriation agreements (cessione volontaria) for their transfer to the municipality, thus finalising the expropriation procedure. Pursuant to temporary legislation they received an amount as an advance payment for the expropriation. In the expropriation agreements, it was stipulated that the sums would be adjusted in the light of the final compensation, to be calculated in accordance with a future law establishing new criteria.

Between 1981 and 1986, the municipality sold the expropriated plots to several building companies in charge of the construction of social housing. On various dates, the applicants became owners of houses in the social housing complex built on the expropriated plots.

In 2012, the Bologna Court of Appeal established the adjustments due by the Monterenzio municipality to the former owners of the expropriated plots.

On 29 November 2012, the Monterenzio municipality adopted resolution no. 54 through which the abovementioned adjustments as well as the costs and expenses incurred in the judicial proceedings for its determination be paid by the current owners of the houses built on those plots. The municipality's resolution was based on Article 35 paragraph 12 of Law no. 865 of 22 October 1971 (Law no. 865/1971). According to this provision, which entered into force on 1 January 1997, the municipality's income deriving from the concession or sale of expropriated land must cover all the costs of the expropriation proceedings. The applicants, as current owners of houses built on the expropriated plots, appealed against the municipality's resolution.

The Emilia Romagna Regional Administrative Court rejected the applicants' appeal by judgment no. 909/2014, which was upheld on 17 September 2019 by judgment no. 6192/2019 of the Consiglio di Stato. The domestic courts recalled that Article 35 paragraph 12 of Law no. 865/1971 enshrines the principle of the "balanced budget" (pareggio economico), which application is mandatory. Consequently, any purchase agreement concerning expropriated real estate must be interpreted as automatically including under Article 1339 of the Civil Code a clause burdening the current owner with the possible subsequent additional costs borne by the administration in the expropriation proceedings. These costs include the adjustment of the compensation due to the former owners of the expropriated plots and the costs incurred by the administration in judicial proceedings for its final determination.

The applicants complain that their obligation to pay the additional costs for the expropriation amounts to an unlawful and disproportionate interference with their peaceful enjoyment of possession under Article 1 of Protocol No. 1.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention?

2. In the affirmative, at the time of the conclusion of the purchase agreements by the applicants, did the interference have a basis in "law" within the meaning of Article 1 of Protocol No. 1?

In this respect, the parties are invited to provide information on the applicable law before the entry into force of Article 35 § 12 of the Law no. 865/1971, including relevant case law, if available; and on the applicability of Article 35 § 12 in light of the case-law of the Court of Cassation and of the Consiglio di Stato (see, among others, judgment no. 8635/24 of the Court of Cassation, 2 April 2024).

3. Taking into account the applicable law, the content of the agreements concluded by the municipality and the building companies, and the content of the purchase agreements concluded by the applicants, was it foreseeable that the applicants could be requested to cover additional costs borne by the administration in the expropriation proceedings (Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, §§ 139-43, ECHR 2012, and Lekić v. Slovenia [GC], no. 36480/07, §§ 94-95 and 97, 11 December 2018)?

4. If the interference was lawful, did it impose an excessive individual burden on the applicants (see, Broniowski v. Poland [GC], no. 31443/96, §§ 150-51, ECHR 2004-V)?

REQUEST FOR INFORMATION

The parties are asked to submit the registration notes (note di trascrizione) of the agreements concluded by the municipality and the building companies.

VILLA ALBA S.R.L. v. Italy (no. 15995/20)

Article 6 – Article 13 – Dismissal of administrative appeal against refusal to sign a clause in a public contract

SUBJECT MATTER OF THE CASE

The application concerns an alleged breach of the right of access to a tribunal.

In particular, the applicant is a company operating in agreement (convenzione) with the Lazio Regional Health System. At the moment of the renewal of the agreement with the Region, the applicant company refused to sign a clause which would have implied the waiver of the right to challenge in court the expenditure ceiling in the meanwhile adopted by the Region, with retrospective effects, and the reduction of the budget assigned to it.

The action instituted by the applicant company to challenge the expenditure ceiling and the reduction of the budget was declared inadmissible for lack of legal interest.

The applicant company submitted that the dismissal of his administrative appeal for lack of locus standi had deprived it of its right to effective judicial protection. It relied on Articles 6 § 1 and 13 of the Convention.

QUESTION TO THE PARTIES

Having regard to the fact that the applicant company was challenging expenditure ceilings which had been adopted with retrospective effects, did the decisions of the domestic courts to declare the applicant's appeals inadmissible owing to lack of locus standi entail an arbitrary or disproportionate interference with the right of access to a tribunal, guaranteed by Article 6 § 1 of the Convention (see

Zubac v. Croatia [GC], no. 40160/12, §§ 76-79, 5 April 2018m Posti and Rahko v. Finland, no. 27824/95, § 53, ECHR 2002-VII, Project-Trade d.o.o. v. Croatia, no. 1920/14, § 68, 19 November 2020, Obermeier v. Austria, 28 June 1990, §§ 68-70, Series A no. 179, and, Konkurrenten.no AS v. Norway (dec.), no. 47341/15, § 46, 5 November 2019)?

KEWAIS v. Italy (no. 53610/19)

Article 1 protocol no. 1 – Confiscation of apartment following his conviction for renting it to persons with irregular migration status ("illegal aliens")

SUBJECT MATTER OF THE CASE

The application concerns the confiscation of the applicant's apartment following his conviction for renting it to illegal aliens, on the basis of Article 12, paragraph 5 bis, of Legislative Decree no. 286 of 1998 (the Immigration Act).

Following an acquittal at first instance, the applicant was convicted by the Milan Court of Appeal for renting an apartment, from December 2010 to July 2011, to two illegal aliens upon the payment by each of them of 150 euros per month. The applicant was sentenced to 10 months of detention (suspended) and the apartment was confiscated. On 29 May 2019, the Court of Cassation confirmed that judgment.

The applicant complains, under Article 1 of Protocol No. 1 to the Convention, that the confiscation was disproportionate as the value of the apartment, allegedly amounting to 125,000 euros, was significantly higher than the proceeds of the crime. He further complains of the automatic application of the confiscation, without the possibility for domestic courts to assess its proportionality.

QUESTION TO THE PARTIES

Was the confiscation of the applicant's property necessary and proportionate to the public interest pursued, as required by Article 1 of Protocol No. 1? In particular, the parties are invited to address the following points:

(i) whether, taking into account the purpose of the confiscation, it imposed an excessive burden on the applicant;

(ii) whether the applicant had a reasonable opportunity to put his case to the competent authorities with a view to enabling them to establish a fair balance between the conflicting interests at stake (see, mutatis mutandis, Yaremiychuk and Others v. Ukraine, nos. 2720/13 and 6 others, § 31, 9 December 2021, Andonoski v. the former Yugoslav Republic of Macedonia, no. 16225/08, §§ 37-38, 17 September 2015 and G.I.E.M. S.r.l. and Others v. Italy [GC], nos. 1828/06 and 2 others, § 303, 28 June 2018).

CASCETTA v. Italy (no. 3852/23)

Article 1 protocol no. 1 – Damages because of unlawful consultancy activities academic professor

SUBJECT MATTER OF THE CASE

The application concerns the question whether the domestic provision regulating the activities as "scientific collaboration" and "consultancy" that full-time university professors are allowed to carry out

without the need of any authorisation was sufficiently clear and foreseeable, and, accordingly, compatible with the principle of lawfulness, within the meaning of Article 1 of Protocol No. 1 to the Convention.

The applicant, a full-time university professor, carried out between 2012 and 2015 paid consultancy activities pursuant to section 6 (10) of Law no. 240 of 30 December 2010, which provides that such activities can be undertaken "freely" (liberamente), notably without the need of a prior authorisation, provided that they are "compatible with the institutional commitments" of a full-time university professor (fatto salvo il rispetto dei loro obblighi istituzionali).

On 14 June 2019 the public prosecutor of the Court of Audit (Corte dei Conti) instituted proceedings against the applicant, claiming 871,408.41 euros (EUR) on account of the damages allegedly caused to the public administration. The prosecutor's action was partially upheld by the Court of Audit on 15 September 2022, which found him liable to pay EUR 369,609.10.

The applicant complains under Article 1 of Protocol No. 1 that provision regulating the distinction between activities that he could have undertaken without any authorisation and those that required such an authorisation was not clear and foreseeable, thereby preventing him from properly regulating his future conducts. He relies, in particular: (i) on the vagueness of the text of section 6 (10) of Law no. 240 of 30 December 2010; (ii) on Resolution no. 1208 of 22 November 2017 of the National Anti-Corruption Authority (Agenzia Nazionale Anticorruzione), which observed that the notions of "scientific collaboration" and "consultancy" in that provision were not sufficiently clear and that each university had interpreted those concepts in different ways, thereby establishing contradictory practices; (iii) on the Guidelines of 14 May 2018 of the Ministry of University and Education, which observed that there was conflicting case-law on the subject matter and provided some clarifications. In the applicant's view, the latter guidelines were not sufficient to clarify the relevant provision, and this would be demonstrated by the existence of subsequent conflicting case-law and by the fact that in 2023 the legislature adopted an interpretative provision (norma di interpretazione autentica) aimed at clarifying the meaning of section 6 (10) of Law no. 240 of 30 December 2010. He submits that, had such provision been applied in his case, the Court of Audits would have ruled in his favour.

QUESTION TO THE PARTIES

Was the domestic provision regulating the activities that the applicant was allowed to undertake without any authorisation, as expounded by the relevant domestic practice and case-law, sufficiently clear and foreseeable, as required by the principle of lawfulness, for the purposes of Article 1 of Protocol No. 1 to the Convention (see, mutatis mutandis, Carbonara and Ventura v. Italy, no. 24638/94, § 65, ECHR 2000-VI, Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, § 187, ECHR 2012, Vistiņš and Perepjolkins v. Latvia [GC], no. 71243/01, § 97, 25 October 2012, Lekić v. Slovenia [GC], no. 36480/07, § 97, 11 December 2018, and the case-law cited therein, and Bežanić and Baškarad v. Croatia, nos. 16140/15 and 13322/16, § 63, 19 May 2022)?

The parties are invited:

(i) to provide relevant case-law examples and to clarify whether a jurisprudential conflict persisted after the adoption of the Guidelines of 14 May 2018 of the Ministry of University and Education (taking into account the principles summarised in Žaja v. Croatia, no. 37462/09, §§ 103-104, 4 October 2016);

(ii) to take into account the text of section 9 (2-ter) of Decree Law no. 44 of 22 April 2023, as converted into Law no. 74 of 21 June 2023, which clarified the interpretation to be given to section 6 (10) of Law no. 240 of 30 December 2010.

CANTI and CARIMATI v. Italy (nos. 8528/21 and 10587/21)

Article 6 – Article 7 – (Un)foreseeability of crime of "unnamed disaster"

SUBJECT MATTER OF THE CASE

The applications concern the foreseeability of the applicants' conviction for the offence of unnamed disaster (disastro innominato) by culpable negligence provided for by Articles 434 and 449 of the Criminal Code ("the CC"), which punish as 'unnamed disaster' whoever causes by culpable negligence "another disaster", namely a disaster other than those explicitly provided for by the CC (such as, inter alia, flood, landslide, shipwreck or trainwreck).

In the 60s toxic waste had been massively buried under an industrial site and the industry's water supply had been leaking for years, with the effect of severely contaminating the groundwater in the area. In this connection, the applicants, in their capacity of 'environmental executives' in two companies consecutively operating at the site in subsequent years, were charged of having contributed to the water poisoning by failing to perform the due maintenance of the water supply, omitting to report to the competent authorities the pollution of the groundwater and failing to put in place any adequate measure to eliminate or, at least, contain the pollution.

The Alessandria Assize Court found the applicants guilty of unnamed disaster by culpable negligence, reasoning that the groundwater's pollution amounted to an environmental disaster which had endangered public safety and, since the offence of unnamed disaster should be considered a "continuing criminal offence" (reato permanente), the applicants - albeit not being the authors of the pollution - could be held responsible for their failure to comply with a duty to remediate (bonificare) the site. The conviction was upheld by the Assize Court of Appeal and by the Court of Cassation (judgment no. 13843 of 12 December 2019, filed with the registry on 7 May 2020).

The applicants allege of a violation of Article 7 of the Convention. The applicant in application no. 10587/21 alleges also of a violation of Article 6 § 1 of the Convention. Relying on a domestic practice according to which the offence of unnamed disaster could not be considered as continuing (see, inter alia, Venice District Court's judgment no. 173 of 22 October 2001; Court of Cassation's judgments no. 4675 of 6 February 2007, no. 7941 of 23 February 2015 and no. 47779 of 19 October 2018), they complain of the unforeseeability (i) of the domestic courts interpretation of the offence at hand as a continuing criminal offence, and (ii) of its application in the form of 'environmental disaster' to the conduct of failed remediation of a pollution caused by others.

QUESTIONS TO THE PARTIES

In light of the relevant domestic provisions (Articles 434 and 449 of the CC) and of their interpretation by the domestic courts (see, inter alia, Venice District Court's judgment no. 173 of 22 October 2001; Court of Cassation's judgment no. 4675 of 6 February 2007; Constitutional Court's judgment no. 327 of 30 July 2008 and the subsequent case-law), considering the facts reproached to the applicants, was their conviction for the offence of environmental unnamed disaster by culpable negligence (disastro ambientale innominato) in compliance with Article 7 of the Convention (compare Liivik v. Estonia, no. 12157/05, §§ 99-101, 25 June 2009; Rohlena v. the Czech Republic [GC], no. 59552/08, §§ 57-58, ECHR 2015; Soros v. France, no. 50425/06, §§ 53 and 59, 6 October 2011; Litschauer v. the Republic of Moldova, no. 25092/15, §§ 31-35, 13 November 2018; Parmak and Bakır v. Turkey, nos. 22429/07 and

25195/07, § 73, 3 December 2019, and Tristan v. the Republic of Moldova, no. 13451/15, § 49, 4 July 2023)? In particular:

a) Was the domestic court's interpretation of the offence of unnamed disaster to the facts of the applicants' case consistent with the essence of that offence and could it be reasonably foreseen by the applicants at the material time (compare Parmak and Bakır, cited above, § 67-68; Soros, cited above, § 57; Dragotoniu and Militaru-Pidhorni v. Romania, nos. 77193/01 and 77196/01, § 43, 24 May 2007, and Tristan, cited above, § 59)?

b) What are the elements identifying the commission (consumazione) of the offence of unnamed disaster and were those elements present in the applicants' case (see Rohlena, cited above, § 57; mutatis mutandis, Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, § 267, 26 September 2023)?

The parties are requested to submit the relevant case-law of the Court of Cassation setting out the material elements identifying the commission of the offence of unnamed disaster under Article 434 of the CC.

MATACERA v. Italy (no. 9163/23)

Article 7 – Unforeseeable interpretation of offence "external aiding and abetting"

SUBJECT MATTER OF THE CASE

The application concerns the foreseeability of the applicant's conviction for the offence of aiding and abetting from the outside (concorso esterno) a mafia-type organisation (Articles 416 bis and 110 of the Criminal Code).

At the material time (2011-2012) and as resulting from the interpretation given by the plenary Court of Cassation (judgment no. 33748 of 12 July 2005 'Mannino'), the offence at hand punished the conduct of whomever, without being a member, gave a concrete, specific, conscious and voluntary contribution to a mafia-type organisation, in so far as such contribution aimed at realizing the organisation's program and had an actual impact on its preservation or strengthening.

On 31 October 2018 the district court (later upheld by the court of appeal) convicted the applicant of the offence of concorso esterno and of other offences committed with the aggravating circumstance of having aimed at facilitating the activities of a mafia-type organisation (Section 7 of Law no. 203 of 1991). Throughout the proceedings, the applicant contested that the actions attributed to him constituted the offence of concorso esterno as interpreted by the abovementioned plenary Court of Cassation's judgment no. 33748/2005.

While dismissing the applicant's appeal on points of law, by judgment no. 39774 of 7 May 2022 the Court of Cassation, relying on its most recent case-law (namely, judgments no. 25619 of 25 June 2020 and no. 32902 of 23 June 2021, and plenary's judgment no. 8545 of 19 December 2019) reasoned that the conduct of putting oneself at the mafia-type organisation's disposal was sufficient to commit the offence of concorso esterno, regardless of the impact of such conduct on the realization of the aim pursued by the organisation.

The applicant alleges of a violation of Article 7 of the Convention, arguing (i) that the offence of aiding and abetting from the outside (concorso esterno) a mafia-type organisation is not defined with sufficient clarity in the domestic framework and (ii) that the domestic courts departed from the

principles set out by the plenary Court of Cassation in judgment no. 33748/2005, interpreting them in an unforeseeable extensive manner, to his detriment.

QUESTIONS TO THE PARTIES

1. Was there a sufficiently clear and accessible legal basis for the applicant's conviction, as required by Article 7 § 1 of the Convention? In particular, did the domestic law at the material time define with sufficient precision the criminal offence of aiding and abetting from the outside (concorso esterno) a mafia-type organisation (Articles 416 bis and 110 of the Criminal Code; compare Contrada v. Italy (no. 3), no. 66655/13, § 75, 14 April 2015)?

2. In light of the well-established case-law at the material time (see, inter alia, plenary Court of Cassation's judgment no. 33748 of 12 July 2005) and of the facts reproached to the applicant, was his conviction in compliance with Article 7 (compare Liivik v. Estonia, no. 12157/05, §§ 99-101, 25 June 2009 and Parmak and Bakır v. Turkey, nos. 22429/07 and 25195/07, § 73, 3 December 2019)? In particular:

2.1. What are the elements of the offence of concorso esterno and were

those elements present in the applicants' case (see, mutatis mutandis, Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, § 267, 26 September 2023)?

2.2. Was the interpretation of the offence at hand adopted by the Court of Cassation in 2021 and applied by domestic courts in respect of the applicant reasonably foreseeable for the applicant at the material time? (see Del Río Prada v. Spain [GC], no. 42750/09, §§ 77-80 and 91-93, ECHR 2013; compare Contrada, cited above, § 59 and Dragotoniu and Militaru-Pidhorni v. Romania, nos. 77193/01 and 77196/01, § 44, 24 May 2007)?

DECINI and 2 others v. Italy (no. 42100/18)

Article 6 – Article 8 – Demolition of apartments that were unlawfully erected

SUBJECT MATTER OF THE CASE

The applicants' details are summarised in the appended table.

The applications concern the impending demolition of the applicants' homes and, in particular, the issue whether such a demolition is "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.

On various dates the applicants purchased the apartments located in a building erected by a company. The company had obtained by the municipality the required building permits, but it had also carried out works in partial contravention of permit. In respect of such works it had applied for a building amnesty (condono edilizio).

In 2008 the municipality set aside the building permits, lacking the conditions for their issuance, and in 2013 it also denied the amnesty.

On 25 November 2015 the municipality served the applicants with a notice ordering the demolition of the apartments they had purchased, since they were to be considered as unauthorised constructions.

The applicants brought action before the administrative courts, alleging (among other things) that the apartments were their only homes, and that their demolition would impose a disproportionate burden on them.

The Regional Administrative Court, upheld by the Consiglio di Stato, dismissed the applicants' claim, focusing on the fact that the building in which the apartments were located was an unauthorised construction. The Consiglio di Stato further observed that the applicants failed to appeal against the municipality's denial of amnesty and that, contrary to the applicants' declarations for the purpose of amnesty, the construction had been erected after the relevant date established by the law to benefit of the building amnesty. The relevant domestic decisions are detailed in the appended table.

Relying on Article 8 of the Convention, the applicants complain of the domestic courts' failure to assess the proportionality of the demolition of their homes in the light of their specific situation. In this connection, they further allege that the demolition of the apartments in which they have been living would constitute a disproportionate interference with their right to respect for their home.

Lastly, the applicants allege a violation of Article 6 § 1 of the Convention, arguing that they had a legitimate expectation on the lawfulness of the building, given that they had purchased the apartments in good faith and that the issuance of building permits was mentioned in the notary deeds.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicants' right to respect for their home, within the meaning of Article 8 § 1 of the Convention (see, inter alia, Kaminskas v. Lithuania, no. 44817/18, § 45, 4 August 2020)?

a) If so, is the impeding demolition of the applicants' only home "necessary in a democratic society" within the meaning of Article 8 § 2 (see Ivanova and Cherkezov v. Bulgaria, no. 46577/15, §§ 52-61, 21 April 2016; Ghailan and Others v. Spain, no. 36366/14, §§ 62-64, March 2021, and Simonova v. Bulgaria, no. 30782/16, § 52, 11 April 2023)?

b) Did the domestic authorities carry out an adequate assessment of the necessity and proportionality of the demolition (see Ivanova and Cherkezov, cited above, § 53; Simonova, cited above, § 51, and Alif Ahmadov and Others v. Azerbaijan, no. 22619/14, § 61, 4 May 2023)?

A.C.M.U. and Others v. Italy (no. 9993/24)

Article 3 – Article 8 – Failure to assess specifics of domestic and sexual violence – Failure to assess in due time requests for parental responsibility and moving to France

SUBJECT MATTER OF THE CASE

The applicants are A.C.M.U. (the first applicant), and her underage children, A.P. and M.P, the second and third applicants. All three applicants are French citizens.

On 16 April 2021, the first applicant filed a complaint against G.P., her partner and father of the minors (an Italian citizen), for physical violence, ill-treatment, and sexual violence, specifying that the physical violence had also been committed against the children. She then filed other subsequent complaints for other violent behaviours of G.P.

In May 2021, all three applicants were placed in a foster home. Right after, the first applicant asked the Naples Juvenile Court for sole custody of the minors and the withdrawal of parental responsibility from

G.P., and for authorisation to move with them to France. She also requested that the amount due as maintenance be fixed. On 21 June 2022, the Naples Juvenile Court suspended G.P.'s parental responsibility and all his meetings with the children. In June 2023, the first applicant urgently submitted a new request for authorisation to move to France. The Juvenile Court appointed a guardian for minors who requested the withdrawal of parental responsibility from G.P. and gave a favourable opinion on the removal of the applicants from the foster home and their relocation to France. On 10 May 2024, the Naples Juvenile Court settled the proceedings and, while withdrawing parental responsibility from G.P., acknowledged that the parental responsibility remained "concentrated" on the mother. No decision was taken as regards the further requests (sole custody of the minors, maintenance, removal from the foster home and relocation to France). According to the information submitted by the Italian Government on 2 May 2024 and by the applicants on 27 May 2024, the applicants were still living in the foster home; however, the fact that the first applicant is the sole parent with parental responsibility allows her, at least formally, to take all the decisions in favour of the children.

As regards the criminal proceedings against G.P., in November 2021, the Public Prosecutor asked for the case to be dismissed. Following the first applicant's objection, further investigations were carried out and the indictment was ordered on 12 February 2024. The first hearing of the trial has been set for 17 September 2024.

With reference to Article 8 of the Convention, the applicants complain of the allegedly disproportionate interference with their private and family life, on account of the failure to take decisions on the children's custody and to authorise the applicants to move to France. They also complain of a disproportionate interference in relation to their forced stay in the foster home for 3 years.

The applicants also rely on Article 3 of the Convention in relation to the failure to assess the specifics of a domestic violence's case, the lack of restrictive measures against G.P. and the duration of the criminal proceedings, incompatible with the State's positive obligations in a domestic violence case.

QUESTIONS TO THE PARTIES

1. Have the State authorities complied with their positive obligations enshrined in Articles 3 and 8 of the Convention to protect the applicants from the domestic violence (see De Giorgi v. Italy, no. 23735/19, §§ 67-70, 16 June 2022, and, mutatis mutandis, Kurt v. Austria [GC], no. 62903/15, § 190, 15 June 2021 and Opuz v. Turkey, no. 33401/02, §§ 158-176, ECHR 2009), in particular by ensuring that the applicants received adequate measures of protection?

2. Having regard to the State's procedural obligation (Luca v. the Republic of Moldova, no. 55351/17, § 75, 17 October 2023, M.S. v. Italy, no. 32715/19, §§ 134-139, 7 July 2022, and, mutatis mutandis, M.C. v. Bulgaria, no. 39272/98, §§ 151-153, ECHR 2003-XII) has the investigation in the present case by the domestic authorities been in breach of Articles 3 and 8 of the Convention?

Considering in particular the so-called "red code" provisions ("codice rosso", law no. 69 of 2019), have the authorities assessed and taken into account the specificities of a domestic violence case (De Giorgi, cited above § 81)?

In particular:

a) Has the Public Prosecutor correctly assessed the allegations of domestic violence (J.L. v. Italy, no. 5671/16, §§ 118-122, 134,139-141, 27 May 2021)?

b) Have the investigations been timely, proactive and effective (Talpis v. Italy, no. 41237/14, §§ 104-106 2 March 2017;)?

3. Has there been a violation of the applicants' right to respect of their private and family life, having regard to the State's positive obligation under Article 8 of the Convention?

In particular, having regard to the proceedings before the Juvenile Court and the measure requested by the applicants:

a) Has the Juvenile Court adopted its decisions with due regard to the children's best interests (Strand Lobben and Others v. Norway [GC], no. 37283/13, § 207, 10 September 2019)? Have the decisions been taken in a timely manner, taking due account of the requests made by the first applicant for the sole custody of second and third applicants and of the numerous reports submitted by the court-appointed experts (mutatis mutandis, I.M. and Others v. Italy, no. 25426/20, §§ 113-114,10 November 2022)?

b) Considering the reports of the social services and of the other experts, concerning the repercussions of the stay in the foster home on the second and third applicants, is their placement in the foster home since May 2021 justified on specific grounds (mutatis mutandis, I.M. and Others v. Italy, cited above, § 122)?

PRO.MO.MAR S.R.L. v. Italy (no. 33503/18)

Article 1 protocol no. 1 – increasing annual fees owed to adminstration

SUBJECT MATTER OF THE CASE

The application concerns the increase, during the term of the contract, of the annual fees owed by the applicant company.

On June 13, 2001, the applicant company entered into a concession agreement with the administration for the use of a maritime public domain area for a period of 50 years to build and subsequently manage a tourist port in the city of Scarlino.

In return, it undertook to pay an annual amount of €75,102.44 (subject to adjustment), determined according to the criteria set out in Article 10, paragraph 4, of Law No. 449 of 1997 and Ministerial Decree No. 343 of 1998, as in force at the time. These criteria particularly provided for lower fees for initiatives involving investments in infrastructure that are difficult to remove. Additionally, a regional tax amounting to 15% of the fees was added.

By Article 1, paragraphs 251, 252, and 256, of Law No. 296 of 2006 ("Finance Law"), the legislator repealed the aforementioned provisions and introduced new criteria for determining the fees applicable from January 1, 2007. The new criteria provided for higher fees for the use of spaces occupied by infrastructure that is difficult to remove. Based on this, the municipality of Scarlino required the applicant company to pay fees approximately 450% higher than the previous ones.

The applicant company approached the administrative courts, which raised a question of constitutional legitimacy. By judgment No. 29 of 2017, the Constitutional Court provided a conforming interpretation of the new criteria, stating that the fees should be calculated based on the existing infrastructure before the conclusion of the concession agreement, without considering the improvements made by the concessionaires.

Considering that the decisions made by the municipality of Scarlino were not in accordance with this interpretation, on January 16, 2018, the Council of State annulled the decisions adopted by the municipality.

On April 6, 2018, the municipality set the fees at an amount approximately 175% of the previous amount. This also involved an increase in the regional tax, which was calculated as a percentage of the fees (meanwhile, the tax rate had increased to 25%).

The applicant company complains of a disproportionate interference with its right to respect for its property in violation of Article 1 of Protocol No. 1, due to the increase in fees during the term of the contract. It alleges that as a result of this increase, the profit margin it had anticipated has significantly decreased and believes that the legislative change should have led to a revision of the overall balance of the contract.

QUESTIONS TO THE PARTIES AND REQUEST FOR INFORMATION

1. Considering that the applicant company did not challenge the new determination of the fees, have the domestic remedies been properly exhausted, as required by Article 35 § 1 of the Convention?

2. Does the increase in fees during the term of the contract, in accordance with Law No. 296 of 2006 as interpreted by Judgment No. 29 of 2017 of the Constitutional Court, constitute an interference with the applicant's right to respect for its property under Article 1 of Protocol No. 1?

If so, did it pursue a legitimate aim?

Considering, in particular, its effects on the economic balance of the contract and the applicant company's ability to amortize its investments, did the interference impose an excessive burden on the applicant (see, mutatis mutandis Sàrl Couttolenc Frères v. France, No. 24300/20, §§ 63-81, October 5, 2023)?

Request for Updated Information: The applicant company is invited to provide updated information on the impact of the fee increase on its investment, including – if available – an updated financial forecast.

AYALA FLORES v. Italy (no. 16803/21)

Article 8 – Impeding demolition of house built without permit – relevance of poor economic situation of applicant

SUBJECT MATTER OF THE CASE

The application concerns the impending demolition of an unauthorised building which is alleged to be the applicant's only home and, in particular, the issue whether such a demolition is "necessary in a democratic society" within the meaning of Article 8 § 2 of the Convention.
In the 1990s the applicant's husband erected a small building on the isle of Procida without the requisite permits. On 10 September 1996 the municipality ordered the demolition of the unauthorised building. The order was reiterated in 1998.

On 14 May 2002 the applicant and her husband were convicted, inter alia, of the offence of unlawful construction. The District Court ordered the demolition of the building. The conviction was upheld by the Court of Appeal and became final on 16 October 2003.

On 24 January 2016 the Public Prosecutor sought to enforce the demolition order issued with the conviction. The applicant contested such enforcement with an appeal for the review of the enforcement order (incidente di esecuzione). In her additional written submissions, she relied, among

other things, on Article 8 of the Convention, and alleged that the small building to be demolished was her only home and she was in poor economic conditions.

The District Court dismissed the appeal without replying to the applicant's submission in that respect. She appealed on points of law, reiterating her complaint. By judgment no. 26334 of 2020 (deposited with its registry on 21 September 2020) the Court of Cassation declared such an appeal inadmissible, inter alia, observing that the applicant had failed to demonstrate that her additional written submissions had been deposited with the Court of Appeal's registry and, in any event, that she had failed to substantiate her complaint as regards the invoked right to respect for her home.

Relying on Article 8 of the Convention, the applicant complains of the domestic courts' failure to assess the proportionality of the demolition of her home in the light of her individual situation. In this connection, she further alleges that the demolition of the small building in which, after the death of her husband, she lives alone and in poor economic conditions would constitute a disproportionate interference with her right to respect for her home.

QUESTIONS TO THE PARTIES

1. Did the applicant exhaust the domestic remedies, as required under Article 35 § 1 of the Convention, as regards her complaint under Article 8 of the Convention (Vučković and Others v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014)? In particular, did the applicant sufficiently substantiate before the domestic courts her complaint that the demolition would disproportionately interfere with her right to respect for her home? (compare Ivanova and Cherkezov v. Bulgaria, no. 46577/15, § 53, 21 April 2016; Simonova v. Bulgaria, no. 30782/16, §§ 35-37, 11 April 2023; and Alif Ahmadov and Others v. Azerbaijan, no. 22619/14, §§ 49-53, 4 May 2023)?

2. Has there been an interference with the applicant's right to respect for her home, within the meaning of Article 8 § 1 of the Convention (see, inter alia, Kaminskas v. Lithuania, no. 44817/18, § 45, 4 August 2020)?

2.1. If so, is the impeding demolition of the applicant's only home "necessary in a democratic society" within the meaning of Article 8 § 2 (see Ivanova and Cherkezov, cited above, §§ 52-61; Ghailan and Others v. Spain, no. 36366/14, §§ 62-64, March 2021; and Simonova, cited above, § 52)?

2.2. Did the domestic authorities carry out an adequate assessment of the necessity and proportionality of the demolition (see Ivanova and Cherkezov, cited above, § 53; Simonova, cited above, § 51; and Alif Ahmadov and Others, cited above, § 61)?

SCUDERONI v. Italy (no. 6045/24)

Article 3 – Article 8 – rejection of application for protection order and ineffective criminal investigation following violence and harassment by ex-partner

SUBJECT MATTER OF THE CASE

The application concerns the positive obligations arising from Articles 3 and 8 of the Convention in the context of violence and harassment suffered by the applicant in 2018 during the period in which she separated from her partner. The applicant complained on several occasions to the competent authorities of controlling and coercive behaviour on the part of her ex-partner, resulting in surveillance of her movements, harassment at the couple's home and threats in front of her child. She complains that the civil court rejected her application for a protection order and that the criminal investigation was ineffective. According to her, the domestic courts did not correctly assess the risk of physical and psychological violence against her and the need to protect her.

She also complains that the court acquitted her ex-partner, the acts of domestic violence reported having been considered as simple family disputes, and that the prosecutor did not appeal.

QUESTIONS TO THE PARTIES

1. Has the respondent State complied with its positive obligations under Articles 3 and 8 of the Convention to conduct an effective investigation in order to punish the perpetrator of the violence alleged by the applicant (see, mutatis mutandis, M.S. v. Italy, no. 32715/19, §§ 134-139, 7 July 2022; De Giorgi v. Italy, no. 23735/19, §§ 67-70 and 81, 16 June 2022; and Opuz v. Turkey, no. 33401/02, §§ 158-176, ECHR 2009)?

2. Having regard to the State's procedural obligations under Articles 3 and 8 of the Convention (see M.S. v. Italy, cited above, §§ 134-139 and the citations therein), did the criminal proceedings brought in the present case against the applicant's former partner infringe the above-mentioned Articles, in particular given that the court considered the alleged acts of domestic violence to be mere family disputes and that the prosecutor did not appeal the judgment? 3. Has there been a violation of the applicant's right to respect for her private life, including Article 8 of the Convention, having regard to the positive obligation of States to ensure the establishment and application of an adequate legal framework to provide protection against acts of violence that may be committed by private individuals (see, among other authorities, Buturugă v. Romania, no. 56867/15, §§ 74, 78 and 79, 11 February 2020; Volodina v. Russia (no. 2), no. 40419/19, §§ 48-49, 14 September 2021; Špadijer v. Montenegro, no. 31549/18, § 100, 9 November 2021)? In particular, did the courts seized in the case correctly assess the risk of physical and psychological violence against the applicant and the need to protect her in the context of the proceedings relating to the application for a protection order?

ARCHINÀ v. Italy and 1 other application (nos. 43413/11 and 64883/11)

Article 6 §1 – exclusion of public from criminal hearing against mafioso

SUBJECT MATTER OF THE CASE

The applications concern the confiscation of the applicants' assets as a preventive measure pursuant to Law no. 575 of 31 May 1965.

Mr Commisso was convicted of participation in a mafia-type organisation and of multiple murders, respectively in 1998 and 1999.

In separate set of proceedings for the application of preventive measures initiated in 1993, he was declared socially dangerous in accordance with Article 2 ter (3) of Law no. 575 of 1965 (pericolosità qualificata or "special dangerousness"). On these grounds, the domestic courts ordered the confiscation of his assets, as well as of assets formally belonging to his wife, Ms Archinà, which they considered to be at her husband's disposal. The confiscation became final by Court of Cassation's judgment no. 32540 of 10 May 2011, filed with the registry on 19 August 2011.

The applicants complain of a violation of Article 6 § 1 of the Convention on account of the lack of a public hearing before the District Court and the Court of Appeal.

QUESTION TO THE PARTIES

Was the exclusion of the public from the courtroom in the applicant's case, in accordance with Article 4 of Law no. 1423/1956 and Article 2 ter of Law no. 575/1965, as applicable at the relevant time, compatible with Article 6 § 1 of the Convention (see Bocellari and Rizza v. Italy, no. 399/02, § 41, 13 November 2007; Perre and Others v. Italy, no. 1905/05, § 26, 8 July 2008; Bongiorno and Others v. Italy, no. 4514/07, §§ 27-30, 5 January 2010; Leone v. Italy, no. 30506/07, §§ 26-29, 2 February 2010; and Capitani and Campanella, no. 24920/07, § 26-29, 17 May 2011)?

DELFINO v. Italy (no. 32696/20)

Article 1 Protocol No. 1 – refusal of authorities to backpay wages to prisoners working under a statute limiting their wages that was later declared unconstitutional

SUBJECT MATTER OF THE CASE

In application of section 23 of the Prison Administration Act ("Law no. 354 of 1975") national authorities paid to detainees working in prison 70% of their salaries, the remaining 30% being diverted to an assistance fund for victims of crime (until 1978) and to regional and local authorities (from 1978 to 1986).

By the judgment no. 49 of 1992 the Constitutional Court declared section 23 of Law no. 354 of 1975 unconstitutional, considering that the salary reduction unfairly discriminated detainees against other citizens.

Based on the established case-law at that time (judgment of the Court of Cassation, Labour Section, no. 8055 of 1991), several detainees brought their claims before labour courts. In the context of these proceedings the Ministry of Justice objected that labour courts did not have jurisdiction to hear those claims. Invoking section 69 of Law no. 354 of 1975, as amended by Law no. 663 of 1986, the authorities argued that complaints concerning prisoners' work should fall within the jurisdiction of the judge responsible for the execution of sentences (magistrato di sorveglianza). Labour courts, including the Court of Cassation (see, for example, judgment of the plenary Court of Cassation no. 490 of 1999), upheld this interpretation and rejected the detainees' claims for lack of jurisdiction.

By the judgment no. 341 of 2006 the Constitutional Court declared section 69 of Law no. 354 of 1975 unconstitutional, considering that judicial proceedings before the judge responsible for the execution of sentences in matters concerning prisoners' work did not guarantee the very essence of the right to a fair trial.

After an unsuccessful conciliation attempt in 2006, in 2009 the applicant brought a claim against the Ministry of Justice to request the payment of the amounts retained from 1982 to 1986 in application of section 23 of the Prison Administration Act. Labour courts dismissed his claim at three instances. In particular, by a judgment of 13 March 2014, upheld by the Court of Cassation on 24 October 2019, the Rome Court of Appeal considered the applicant's right to obtain the payment of the contested sums as time-barred, by allowing the Ministry of Justice's objection that the applicant had failed to prove that he had exercised that right within five years from the termination of working activities in prison. With this regard, domestic courts considered that the burden to prove working activities in prison and, in particular, specific periods of work and places of detention from 1986 to the date he requested for the first time the payment (2006) was on the applicant.
The applicant complains that by refusing to pay him the sums unlawfully retained in application of an unconstitutional provision national authorities violated his right under Article 1 of Protocol No. 1 to the Convention.

QUESTIONS TO THE PARTIES

1. Having regard to the judgment of the Constitutional Court no. 49 of 1992, did the applicant have a legitimate expectation, within the meaning of Article 1 of Protocol No. 1 to the Convention, to obtain the payment of the contested sums?

2. If so:
(a) was the domestic authorities' refusal to pay in accordance with the law?
(b) did such refusal strike a "fair balance" between the demands of the general interest of the community and the requirements of the protection of the individuals' fundamental rights (see, for the general principles, Beyeler v. Italy [GC], no. 33202/96, §§ 114 and 120, ECHR 2000-I; Broniowski v. Poland [GC], no. 31443/96, § 151, ECHR 2004-V; and Bērziņš and Others v. Latvia, no. 73105/12, § 90, 21 September 2021)?

The Government are requested to provide examples of final decisions recognising to detainees the payment of the sums retained under section 23 of Law no. 354 of 1975 following its annulment by the judgment of the Constitutional Court no. 49 of 1992.

STASI v. Italy (no. 33868/22)

Article 8 – article 13 – seizure of fiscal documents of accountant representing taxpayers before courts – alleged unlawful warrant

SUBJECT MATTER OF THE CASE

The applicant is a certified accountant who practices as representative of taxpayers in proceedings before domestic tax courts and the Court. The application concerns the access of the Revenue Police (Guardia di finanza) to his professional office, in the context of a tax investigation. The authorisation to have access to, and search, the applicant's office (ordine di accesso, ispezione e verifica; hereafter "warrant") has been adopted pursuant to Articles 52 and 63 of Presidential Decree no. 633 of 1972 and Article 33 of Presidential Decree no. 600 of 1973.

The applicant asked the officers of the Guardia di finanza to clarify the reasons and suspicions on which the access was grounded and highlighted that he practices as representative in proceedings pending before tax courts. The search was suspended but, a few days later, all the fiscal documents concerning the applicant's professional activity in 2019, 2020 and 2021 were seized.

The applicant argues that the warrant at issue is not subject to a direct appeal, pursuant to Article 19 of Decree no. 471 of 1997. It can be challenged only at the end of the tax assessment proceedings, provided that a final administrative act (avviso di accertamento del tributo) has been adopted, and provided that it has been based on information and evidence gathered through the search. He complains under Article 8 of the Convention of the allegedly unlawful and disproportionate search of his professional premise, and, under Articles 8 and 13 of the Convention, of the lack of an effective judicial or independent review of the warrant. In particular, he complains:
- of the lack of an ex ante judicial scrutiny of the lawfulness of the warrant, as the authorisation to access to his office and obtain the documents was adopted by the Guardia di finanza;
- of the absence of any reasonable suspicion that a tax offence had been committed, which might have justified the interference with his rights under Article 8;
- that the search warrant was extremely vague, as it did not indicate the evidence already available to the authorities nor predetermined the scope and purpose of the search, in particular by indicating the items that the authorities expected to find as evidence of the alleged offences being investigated;

- of the absence of special procedural safeguards related to his quality of representative in proceedings pending before domestic tax courts and before the Court; and

- of the lack of an effective remedy to contest the alleged breach of his rights to home and professional life.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his "home" and "private life", within the meaning of Article 8 § 1 of the Convention (see André and Another v. France, no. 18603/03, §§ 36-37, 24 July 2008, and Sabani v. Belgium, no. 53069/15, §§ 46-47, 8 March 2022) and with the applicant's duty of legal confidentiality (see Kruglov and Others v. Russia, nos. 11264/04 and 15 others, § 137, 4 February 2020)?

2. If so, was the interference in conformity with the requirements of Article 8 § 2 of the Convention? In particular:

(a) Was the interference "in accordance with the law" in terms of Article 8 § 2 of the Convention, that is to say, in accordance with a law which was accessible to the applicant, foreseeable in its application and consequences and compatible with the rule of law (see Tortladze v. Georgia, no. 42371/08, § 56, 18 March 2021, and Brazzi v. Italy, no. 57278/11. § 39, 27 September 2018). With regard to the latter condition, did the said law provide some protection against the allegedly arbitrary interferences with the applicant's Article 8 rights (see Ben Faiza v. France, no. 31446/12, § 59, 8 February 2018)? In particular:

(i) Did it establish an ex ante independent or judicial supervision of the warrant, capable of reviewing its lawfulness and/or limiting the investigating authorities discretion to assess the expediency and scope of the search (see Heino v. Finland, no. 56720/09, § 40, 15 February)?

(ii) Did it give the applicant and the authorities an adequate indication as to the circumstances in which, and conditions on which, the authorities are entitled to resort to measures affecting the applicant's Article 8 rights (see Ben Faiza, cited above, § 59, and Budak v. Turkey, no. 69762/12, § 43, 16 February 2021)?

(iii) Did it provide for an ex post facto judicial review of the lawfulness of, and justification for, the warrant (see Kuzminas v. Russia, no. 69810/11, § 24, 21 December 2021, and Gutsanovi v. Bulgaria, no. 34529/10, § 222, 15 October 2013)?

(b) If so, was the interference "necessary in a democratic society" and proportionate to the aim pursued, within the meaning of Article 8 § 2 of the Convention (see, among others, K.S. and M.S. v. Germany, no. 33696/11, § 44, 6 October 2016)? In particular:

(i) Was the warrant sufficiently reasoned and specific in its content? Did it contain an explicit and detailed reference of the offences being investigated and of the evidence already available to the authorities (see Leotsakos v. Greece, no. 30958/13, § 49, 4 October 2018; Modestou v. Greece, no. 51693/13, §§ 45 et seq., 16 March 2017)?

(ii) Was the scope and purpose of the search sufficiently precise and limited, with an indication in the warrant of the items sought as evidence of the offences being investigated (see Modestou, cited above, §§ 46 et seq., and Gutsanovi, cited above, § 224)?

(iii) taking into account Article 12 § 3 (b) of Legislative Decree no. 546 of 1992, which extends the applicability of the legal professional privilege to certified accountants who practice as representatives in proceedings before tax courts, had an independent observer been present during the access to the applicant's professional office in order to ensure that materials subject to professional secrecy would not be removed? If no such observer attended the access to the applicant's professional office, was there a need for such an observer to be present (see Niemietz v. Germany, 16 December 1992, § 37, Series A no. 251-B, Roemen and Schmit v. Luxembourg, no. 51772/99, § 69, ECHR 2003-IV, André and Another, cited above, §§ 41-47, Aleksanyan v. Russia, no. 46468/06, § 214, 22 December 2008 Moulin

v. France, no. 37104/06, § 71 and 73, 23 November 2010, Golovan v. Ukraine, no. 41716/06, §§ 62-63, 5 July 2012, Leotsakos, cited above, § 42, Kruglov and Others, cited above, § 42)?

2. Did the applicant have access to an effective remedy, in accordance with Article 13 of the Convention, in order to challenge the lawfulness of, and justification for, the warrant?

3. Having regard to the circumstances of the case, is such situation indicative of an underlying systemic problem arising from the defective legal framework governing searches carried out in certified accountants' professional office in the context of tax assessment proceedings, which could call for indication of general measures under Article 46 of the Convention?

MARCUCCI v. Italy (no. 13935/22)

Article 6 §2 – article 10 – article 11 – article 2 Protocol No. 4 – number of restrictive preventive measures placed on applicant based on assessment by court as "socially dangerous" and a threat to public order

SUBJECT MATTER OF THE CASE

The application concerns the applicant's placement under special police supervision by the competent domestic court pursuant to Article 6 of Legislative Decree no. 159 of 6 September 2011 (Codice delle leggi antimafia e delle misure di prevenzione, "Decree no. 159/2011").

On 18 June 2019 the applicant was declared socially dangerous pursuant to Article 1 § 1 (c) of Decree no. 159/2011 (pericolosità generica or "ordinary dangerousness") as an individual "who, on the basis of factual evidence, may be regarded as having committed offences ... posing a threat to ... security or public order".

The preventive measure, which became final on 6 September 2021, imposed the following obligations on the applicant for a period of two years: not to leave her domicile without reporting it to the police authority responsible for her supervision; not to associate with persons who had a criminal record and who were subject to preventive or security measures; to lead an honest and law-abiding life; not to return home later than 9 p.m. or to leave home before 7 a.m., except in case of necessity and only after giving notice to the authorities in good time; not to go to public establishments between 6 p.m. and 9 p.m.; not to keep or carry weapons; and not to participate in public assemblies.

The applicant complains under Article 10 of the Convention that the measure arbitrarily and disproportionately affected her right to freedom of expression, since her declaration of social dangerousness has been grounded of conducts which constituted manifestation of her thoughts and ideas.

Relying on Article 11 of the Convention and Article 2 of Protocol No. 4 to the Convention, the applicant further complains of the alleged lack of clarity and foreseeability of the legal basis with regard to individuals to whom the special police supervision, as a preventive measure, is applicable, of the alleged vague and indeterminate content of the obligations imposed on her, and of the disproportionate character of the obligations imposed on her, in particular with regard to the prohibition to participate to public assemblies.

Relying on Article 6 § 2 of the Convention, the applicant complains of an alleged breach of the presumption of innocence. She argues that the domestic courts declared her socially dangerous as a person habitually committing crimes against public security, notwithstanding she had been acquitted in a previous set of criminal proceedings and the other proceedings were still pending.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention?

If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

2. Was the interference with the applicant's right to freedom of peaceful assembly and right to liberty of movement "prescribed by law", within the meaning of the second paragraph of Article 11 of the Convention, and "in accordance with the law", within the meaning of the third paragraph of Article 2 of Protocol No. 4 to the Convention? In particular:

(a) Taking into account the relevant domestic case-law (see, for example, Court of Cassation, judgments no. 21350 of 4 May 2017, and no. 15492 of 19 January 2018), was Article 1 § 1 (c) of Decree no. 159/2011 sufficiently precise, clear and foreseeable in its application and consequences and compatible with the rule of law, with regard to the individuals to whom special police supervision as a preventive measure is applicable (see, mutatis mutandis, De Tommaso v. Italy [GC], no. 43395/09, §§ 117-18 and 126, 23 February 2017)?

(b) If so, was the measure imposed on the applicant compliant with the relevant domestic provision?

(c) Were the obligations imposed on the applicant sufficiently clear and determined (see De Tommaso, cited above, §§ 119-24)?

If so, was the interference "necessary in a democratic society", within the meaning of the second paragraph of Article 11 of the Convention and the third paragraph of Article 2 of Protocol No. 4, and proportionate to the aim pursued?

3. Did the decisions of the domestic courts reflect the opinion that the applicant was guilty of crimes in respect of which she had been previously acquitted or in respect of which the criminal proceedings were still pending?

If so, has there been a violation of the presumption of innocence, guaranteed by Article 6 § 2 of the Convention (see Nealon and Hallam v. the United Kingdom [GC], nos. 32483/19 and 35049/19, §§ 150-69, 11 June 2024; Allen v. United Kingdom [GC], no. 25424/09, CEDH 2013; and Geerings v. the Netherlands, no. 30810/03, § 47, 1 March 2007)?

The Government are requested to provide the entire case file of the domestic proceedings.

ABBAS and Others v. Italy and 1 other application (nos. 57842/22 and 4722/23)

Article 3 – temporary eviction from asylum centre following various incidents – eviction decision suspended and quashed – applicant resettled at centre- complains about living conditions in period before resettlement

SUBJECT MATTER OF THE CASE

The applications concern the applicants' living conditions following their temporary expulsion from a reception centre for asylum seekers ("the CARA").

The applicants were hosted in the Gradisca d'Isonzo CARA. Following various incidents occurred at the CARA on 8 and 9 September 2022, the Prefecture (Prefettura) of Gorizia, on 14 and 15 September 2022, ordered their eviction from the CARA premises pursuant to section 23 § 1 (a) of Decree Law no. 142 of 18 August 2015. The applicants therefore brought an action against the administrative decisions before the Regional Administrative Court ("the RAC") of Friuli Venezia Giulia.

With regard to application no. 57842/22, on 19 October 2022 the RAC ordered the suspension of the effects of the eviction orders. On 10 November 2022, the same RAC quashed the administrative decisions, on the grounds of their inconsistency with the law and awarded each applicant a lump sum of 100 Euros (judgment no. 470/2022). On 14 November 2022, the applicants filed a request for enforcement of the judgment. On 22 December 2022, the applicants lodged with the Court a request for interim measures under Article 39 of the Rules of the Court. On 27 December 2022, the Prefecture of Gorizia ordered that the applicants be relocated in the CARA in compliance with judgment no. 470/2022.

With regard to application no. 4722/23, on 3 November 2022, the RAC issued an analogous order for suspension of the effects of the expulsion order, and on 30 November 2022 quashed the administrative decision (judgment no. 515/2022). On 27 December 2022, the applicant filed a request for enforcement of the judgment. On 26 January 2023, the applicant lodged with the Court a request for interim measures under Article 39 of the Rules of the Court. On 30 January 2023, the Prefecture of Gorizia ordered that the applicant be relocated in the CARA in compliance with judgment no. 515/2022.

The applicants complain under Article 3 of the Convention that, since their eviction from the CARA premises and until relocation, they slept in makeshift beds or in abandoned buildings, had no regular access to food, hygienic services and adequate medical assistance.

QUESTIONS TO THE PARTIES

1. Have the applicants exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

In particular, was the appeal before the Council of State an effective remedy within the meaning of this provision in respect of the applicants' complaint under Article 3 of the Convention?

2. Have the applicants been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention (M.S.S. v. Belgium and Greece [GC], no. 30696/09, § 235-64, 21 January 2011; N.H. and Others v. France, nos. 28820/13 and 2 others, § 163-4, 2 July 2020)?

DINEVIČS v. Latvia (no. 8533/24)

Article 5 – reasonableness and review of pre-trial detention – alleged use of stereotyping

SUBJECT MATTER OF THE CASE

The application concerns the applicant's complaint, in essence, under Article 5 §§ 1 (c) and 3 of the Convention.

On 5 June 2023 the applicant was declared a suspect in criminal proceedings (no. 10870104823) in relation to more than a dozen of charges, including five especially serious criminal offences. On 11 July 2023 an investigating judge ordered his pre-trial detention and ordered the police to find him.

On 13 July 2023 the applicant was located and arrested. By a decision of 31 July 2023 a higher-court judge dismissed the applicant's complaint against his detention order.

Subsequently, the applicant's detention was periodically reviewed by another investigating judge, who extended the applicant's detention by decisions of 13 September, 13 November 2023, 17 January, 19 March and 15 May 2024.

The applicant relies on Article 5 of the Convention. He alleges that the reasons for his initial and continued detention were stereotyped and insufficient and that his request to be released on bail was not properly addressed.

QUESTIONS TO THE PARTIES

1. Was the applicant's initial and continued detention in compliance with Article 5 §§ 1 (c) and 3 of the Convention?

2. In particular, having regard to the Court's case-law (see, Buzadji v. the Republic of Moldova [GC], no. 23755/07, §§ 85-91, 5 July 2016; Bluks Savickis v. Latvia, no. 44570/19, §§ 34-37, 13 June 2024; Hasselbaink v. the Netherlands, no. 73329/16, §§ 67-73, 9 February 2021; and Zherebin v. Russia, no. 51445/09, §§ 49-54, 24 March 2016), did the domestic courts assess the reasonableness of the suspicion against the applicant and did they provide relevant and sufficient reasons for the applicant's initial and continued detention? Did they sufficiently address the applicant's request to be released on bail?

UAB IKI LIETUVA v. Lithuania (no. 38209/23)

Article 6 – Article 8 – Gathering of sensitive information during searches without applicant knowing on which ground – refusal of judicial scrutiny ex post

SUBJECT MATTER OF THE CASE

The case concerns the applicant company's complaints about lack of access to court and breach of privacy.

On 13 April 2023 the Vilnius Regional Administrative Court granted a request by the Competition Council, lodged in administrative case no. I2-8269-596/2023, to allow it to conduct a search at the applicant company's headquarters in Vilnius. The court also ruled that the administrative case materials were not publicly accessible, and only parties to those proceedings could accede to those materials. The search was performed on 18 April 2023. During that search, the Competition Council's officials non-selectively copied and seized information from the applicant company's computers, which included electronic documents, emails, and its employees' messages on the Microsoft Teams programme.

The applicant company then sought to start administrative court proceedings. It noted that it had had no procedural status in the administrative case no. I2-8269-596/2023, in connection with which the search had been authorised. The applicant company underlined that it had had no knowledge of that case or of the grounds on which the search was authorised; no grounds were disclosed in the ruling of 13 April 2023 either. The applicant company considered that the search had been conducted and the materials had been gathered unlawfully, in breach of Article 8 of the Convention. It also considered that it had a right to contest the Competition Council's actions before a court, that right stemming from Article 30 of the Constitution which guarantees the right of access to court, a right which could not be restricted. It further argued that, even if a final decision on the merits by the Competition Council had

not yet been delivered, there should remain a possibility for the applicant company to challenge the Competition Council's officials' procedural actions. The applicant company referred to the Court's judgment in UAB Kesko Senukai Lithuania v. Lithuania, no. 19162/19, 4 April 2023.

By a non-appealable ruling of 13 June 2023 the Vilnius Regional Administrative Court held that the applicant company had not been a party to the administrative case no. I2-8269-596/2023, and therefore could not have access to the materials of that case. On 23 June 2023 the Vilnius Regional Administrative Court refused to accept the applicant company's appeal for examination, on the grounds that the ruling of 13 June 2023 was non-appealable and the applicant had had no procedural status in the administrative case. On 20 September 2023 the Supreme Administrative Court upheld the ruling of 23 June 2023.

In parallel, the applicant company asked the Supreme Administrative Court to reopen the examination of the administrative case no. I2-8269-596/2023, and include the applicant in those proceedings as a third party, so that it could challenge in court the Competition Council's request for a search.

By a ruling of 19 July 2023 the Supreme Administrative Court refused to accept the applicant company's request for examination. The court held that the administrative case no. I2-8269-596/2023 had come to an end by the Vilnius Regional Administrative Court's ruling of 13 April 2023. The latter ruling was not to be considered as a ruling or decision by which the parties' dispute had been ultimately resolved, which was one of the conditions for proceedings to be re-opened.

Under Article 6 § 1 of the Convention the applicant company complains of the fact that the administrative courts had refused to include it in the proceedings so that it could contest the court ruling of 13 April 2023 and/or the lawfulness of the Competition Council's actions, by which a large quantity of commercially sensitive information and private information of the applicant company's employees had been gathered. As a result, in the absence of ex post facto judicial oversight, the applicant company was deprived of a possibility to defend its rights. The applicant company states that while it is rational that the administrative case materials were not accessible to it before the search, the fact that they were also inaccessible after the search amounted to a direct breach of its fundamental right of access to court.

Under Article 8 of the Convention the applicant company further complains that a large amount of its commercially sensitive data and its employees' private information had been gathered and seized during the search.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention under its civil or criminal head applicable to the proceedings in the present case?

If so, did the denial for the applicant company of the right to challenge the judicial decision granting the search and the applicant company's inability to accede to the administrative case materials amount to a violation of its rights under Article 6 § 1 of the Convention (see, mutatis mutandis, Ravon and Others v. France, no. 18497/03, §§ 28, 31 and 33, 21 February 2008, and Compagnie des gaz de pétrole Primagaz v. France, no. 29613/08, § 30, 21 December 2010; see also Société Canal Plus and Others v. France, no. 29408/08, § 40, 21 December 2010)?

2. Has there been an interference with the applicant company's right to respect for its private life, home or correspondence, within the meaning of Article 8 § 1 of the Convention, by the search and seizure of a large amount of the company's commercially sensitive data and its employees' private

information (see UAB Kesko Senukai Lithuania v. Lithuania, no. 19162/19, §§ 109 and 110, 4 April 2023, with further references)?

If so, was the interference in conformity with the requirements of Article 8 § 2 of the Convention: was it "in accordance with the law", did it pursue one or more of the legitimate aims set out in that paragraph and was it "necessary in a democratic society" (ibid, §§ 111-127)?

DAUGĖLA v. Lithuania (no. 39777/23)

Article 6 §1 – supreme court justice challenged criminal conviction for drunk driving – was unable to attend hearing at supreme court level due to medical issues – appeal on points of law rejected in absentio

SUBJECT MATTER OF THE CASE

The application concerns the applicant's complaint that he had not had a fair trial before the Supreme Court. The applicant was a judge of the Supreme Court. On 1 June 2021 the applicant was stopped by the police while driving a car, the police tested the applicant for sobriety, and found him being intoxicated.

By a judgment of 26 April 2022, in criminal proceedings, the Kaunas Regional Court found the applicant guilty of drunk driving, imposed on him a fine of 5,000 euros, barred him from driving for one year and six months, and ordered the confiscation of the applicant's car.

On 9 November 2022 the Court of Appeal dismissed the applicant's appeal.
The applicant lodged an appeal on points of law with the Supreme Court. He argued that there had been a breach of procedural and substantive criminal law. Among others, he stated that the police officers had delayed taking him to a medical facility. As a result, although at the medical facility the alcohol level in his blood was lower, which would have led to administrative rather than criminal liability, the results of that test had not been taken into account. He also argued that the confiscation of his car had been disproportionate.

On 2 May 2023 the Supreme Court informed the applicant, in writing, that his appeal on points of law would be examined at an oral hearing on 6 June 2023, at 9.00 a.m.

The applicant arrived in Vilnius from Klaipėda on 5 June 2023, that night he stayed at a hotel. In the morning of 6 June 2023, at 8.11 a.m. the applicant sent an email to the Supreme Court, wherein he wrote having arrived in Vilnius last night, that during the night his blood pressure had significantly risen, and that therefore he would be unable to take part in the Supreme Court's hearing and to defend himself. The applicant asked the Supreme Court to postpone the hearing to the following day; the applicant expected to stay at the hotel and to search for possibilities to get his health situation in order.

The Supreme Court nevertheless held the oral hearing on 6 June 2023, in which the prosecutor took part.

On 6 June 2023, at 10.42 a.m. news portal lrt.lt published an article to the effect that the Supreme Court's chamber had observed that the applicant had not provided any medical documents as to his state of health and had decided the case in the applicant's absence. The article also noted that the prosecutor had pleaded, during the Supreme Court's hearing, that substantive and procedural criminal law had been correctly applied in the applicant's case. The prosecutor pleaded that the evidence against the applicant had been gathered lawfully and that the rules for testing the alcohol level in the blood had been properly followed.

The Supreme Court's ruling, dismissing the applicant's appeal on points of law, was pronounced on 4 July 2023.

Under Article 6 § 1 of the Convention the applicant complains that he did not have a fair trial on account of the fact that the Supreme Court, knowing that he had not had a lawyer to represent him at the Supreme Court's hearing, decided his appeal on points of law in his absence. The applicant points out that the Supreme Court had been informed about the sudden deterioration of the applicant's medical condition, as well as about the applicant's wish to take part in person in the oral hearing, wherein the prosecutor took part and made arguments on the applicant's appeal on points of law. That notwithstanding, the Supreme Court refused to postpone the hearing, thus denying the applicant a right to be heard.

QUESTIONS TO THE PARTIES AND REQUEST FOR INFORMATION

Did the applicant have a fair hearing in the determination of the criminal charge(s) against him, in accordance with Article 6 § 1 of the Convention (see Sejdovic v. Italy [GC], no. 56581/00, § 81 in limine, ECHR 2006-II)?

In particular, was the principle of equality of arms respected (see Steel and Morris v. the United Kingdom, no. 68416/01, § 59, ECHR 2005-II, and Batsanina v. Russia, no. 3932/02, § 22, 26 May 2009, with further references)?

The parties are requested to provide the Court with a copy of the transcript of the Supreme Court's hearing of 6 June 2023 in the applicant's case.

CAMILLERI v. Malta and 1 other application (nos. 35797/23 and 35803/23)

Art. 1 Prot 1 – precautionary warrant forbidding sale of property in which applicants were co-owners to guarantee damage payments valued at a lower amount than applicant's share in the property

SUBJECT MATTER OF THE CASE

The applications concern an injunction on the applicants' property which they co-owned with others.
In September 2015 X lodged eviction proceedings against the applicants.
On X's request, in April 2018, the Court of Magistrates (COM) issued a precautionary warrant to the effect that the applicants could not sell, transfer or dispose of two named properties (the only assets of the applicants) which they owned in conjunction with others (their share in that property being valued at around EUR 180,000) so as to safeguard the payment of the alleged damage suffered by X (EUR 60,000) without prejudice to further damage that may be claimed.

In December 2019, a promise of sale having been entered into by the joint owners, the applicants asked the COM to allow them to sell the property, in exchange for EUR 60,000 which they would deposit in court. On 22 January 2020 the COM rejected their request noting that the warrant had been issued not only considering the EUR 60,000 in alleged damage suffered but also any further damage.

In February 2020 the applicants instituted constitutional redress proceedings complaining of an interference with their property rights, since the value of their share of the property subject to the injunction was three times that invoked in damage by X.

By a judgment of 18 July 2022, the court refused to take cognisance of the case considering that the applicants had failed to exhaust ordinary remedies, namely proceedings against X for damages resulting from his request for a precautionary warrant under the Civil Code or via proceedings under Article 836 (9) of the Code of Organisation and Civil Procedure (COCP).

The applicants appealed noting that to obtain damages against X his request would have had to be frivolous and vexations and questioning the use of lodging a civil action to request the revocation of the mandate.
By a judgment of 31 May 2023, the Constitutional Court confirmed that the complaint was premature varying the reasoning, in so far as it considered that an effective remedy would be one capable of annulling the warrant and not one for damage. Indeed, in the view of the State defendant, according to domestic case-law the warrant of injunction could have been challenged by an application on oath, apart from the damage the applicants could have claimed against X. According to X, the applicants could have lodged an appeal under Article 836 (5) (sic.) of the COCP. The Constitutional Court considered that it was not for it to determine whether the warrant had to be challenged by an application or an appeal, it sufficed that a remedy existed.

Pending these proceedings, the eviction proceedings came to an end on 27 April 2021 and the applicants were ordered to evict the property.

The applicants complain under Article 1 of Protocol No. 1 to the Convention about an interference with their property rights in so far as the warrant in place covered a substantial amount of money, in excess of the damages alleged.

QUESTIONS TO THE PARTIES

1. Bearing in mind the applicants' request of 17 December 2019 to vary the warrant and the Court of Magistrates' assessment of that request, have the applicants exhausted domestic remedies (see, mutatis mutandis, Micallef v. Malta [GC], no. 17056/06, § 58, ECHR 2009)? In their replies, the parties are invited to be specific about the provisions of law which are the basis of any remedies relied on, and to substantiate their replies by case-law examples.

2. Did the interference in the present case, namely the injunction issued by the Court of Magistrates, which remained unchanged, impose an excessive individual burden on the applicants (see for the applicable general principles Karahasanoğlu v. Turkey, nos. 21392/08 and 2 others, §§ 142-52, 16 March 2021, and, mutatis mutandis, Džinić v. Croatia, no. 38359/13, §§ 67-80, 17 May 2016)?

STRATULAT V. Republic of Moldova (no. 11903/24)

Article 3 – article 8 – mother separated from children who stay with father/ex-husband – alleged failure to take sufficient measures to avert violence by ex-husband and reunite mother and children

SUBJECT MATTER OF THE CASE

The application concerns, on the one hand, the alleged ineffectiveness of the authorities, who allegedly failed to make the necessary efforts promptly to reunite the applicant with her children, and, on the other hand, the failings of those authorities, who allegedly failed to take measures to avert the real and immediate risks of psychological, economic and emotional violence against the applicant by her ex-husband.

In September 2011, the applicant married the future father of her children. The couple divorced in January 2014. However, the former spouses lived together until November 2023. Three children, born in April 2016 and September 2018, were born of this union.

The applicant alleges that she was subjected to physical and psychological violence throughout this period, which is why she allegedly tried on several occasions to separate from her ex-husband.

The applicant refers in particular to an incident that occurred on 22 November 2023, during which an argument between her and her ex-husband allegedly took place over one of her sons. At that time, her ex-husband allegedly made threats and insults, which the applicant recorded on her phone. Following this incident, she left the home permanently with two of her children, the third having remained with the father.

On 24 November 2023, the applicant filed an application with the courts to determine the residence of the minors, which is still pending.

On the same day, she applied on her own behalf and on behalf of her children for a “protection order” against her ex-husband. On the same day, the court of first instance found that the ex-husband had made threats and insults against the applicant representing a real and immediate risk and issued the required order, accompanied by electronic monitoring, prohibiting the ex-husband from having contact with the applicant and their children. This was based on the victim’s statements as well as on a psychological assessment report of the minors (dated 6 April 2022) noting that the latter showed signs of anxiety and parental alienation due to the father’s psychological manipulation. The court also relied on a certificate from a psychologist according to which the applicant had received psychological counselling and finally on the victim’s audio recordings.

Upon appeal by the ex-husband, the court of appeal, by a final judgment of 14 December 2023, annulled the contested decision, considering that the applicant had not provided proof of having been subjected to acts of violence. The Court of Appeal observed in this regard that not every act expressed verbally, insult or abuse, constitutes an act of psychological violence on the part of the perpetrator, such acts must be of such a nature and intensity that they seriously and effectively affect the psychological state of the victim.

Since then, the two children born in 2016 have remained with their father. The applicant claims to be prevented from having contact with them. According to her, the children are under the influence of their father and express hostility towards her.

A contravention procedure was also brought against the ex-husband for domestic violence but dismissed on 1 December 2023 on the grounds that there was little risk of abuse. The applicant challenged this decision, the procedure being, according to her, still pending.

The applicant also brought two criminal proceedings against her former husband for failure to comply with the restrictions imposed by the protection order and for the unlawful interception of a telephone conversation between her and her sister. Both sets of proceedings are still pending.

Relying on Article 3 of the Convention, the applicant complains of the psychological violence suffered by her and her children at the hands of her former husband, violence which, in her view, reaches the threshold of severity required by that Article and which continues after the annulment of the protection order. She also complains of the inactivity of the national authorities in this regard and in particular of the annulment of the said order.

Relying on Article 8 of the Convention, the applicant alleges that the annulment of the protection order has serious repercussions on the present and future ties between her and her minor children, and that this interferes with her private and family life.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 3 of the Convention? In particular, did the national authorities fulfil their positive obligations to protect the applicant from psychological and emotional violence allegedly perpetrated by her former husband (see, mutatis mutandis, Opuz v. Turkey, no. 33401/02, §§ 158-176, ECHR 2009, and Tunikova and Others v. Russia, nos. 55974/16 and 3 others, §§ 75 and 78, 14 December 2021)?

2. Have the Moldovan authorities complied with their positive obligations under Article 8 of the Convention (Strumia v. Italy, no. 53377/13, §§ 110-111 and 113, 23 June 2016, and Giorgioni v. Italy, no. 43299/12, §§ 62-64 and 74-75, 15 September 2016; and see also Jansen v. Norway, no. 2822/16, §§ 91-93, 6 September 2018)? In particular, was there a breach of the applicant's right to respect for her private and family life, within the meaning of Article 8 § 1 of the Convention, on account of the alleged failure of the Moldovan authorities to make prompt efforts to maintain the ties between the applicant and her children (see, among other authorities, Bordeianu v. Moldova, no. 49868/08, §§ 90-92, 11 January 2011; Tocarenco v. the Republic of Moldova, no. 769/13, §§ 51-57 and 62-67, 4 November 2014; and Ignaccolo-Zenide v. Romania, no. 31679/96, § 94, 25 January 2000)?

LORINELA GRUP SRL v. Republic of Moldova (no. 52407/17)

Article 6 § 1 - Article 1 of Protocol No. 1 – excessive length of proceedings – failure to exhaust friendly settlement procedure before initiating court proceedings

SUBJECT MATTER OF THE CASE

The application concerns an alleged restriction of the applicant company's access to court, in breach of Article 6 of the Convention.

The applicant is a private company which in 2012 was contracted by another private company, C., to build a new kindergarten. According to the contract, in the event of any disputes the parties were first to exhaust a friendly-settlement procedure before initiating court proceedings. The construction works were completed in 2012 but payment was incomplete. On 8 June 2015 the applicant company sent company C. via registered mail a formal notice requesting payment of the outstanding debt. In the absence of any action, on 20 July 2015 the applicant company instituted civil proceedings against company C. claiming the amount of 40,834 euros (EUR), comprising the debt and interest. The applicant company submitted to the domestic court the formal notice and acknowledgement of its receipt. On 21 July 2015 the Criuleni District Court registered the applicant company's case for examination, considering that it met the admissibility criteria. On the following day, at the applicant company's request, the judge ordered interim measures authorising the freezing of company C.'s assets. On 27 June 2016, at company C.'s request, the Criuleni District Court struck out the case on the grounds that the applicant company had failed to exhaust the friendly-settlement pre-court proceedings. The decision was finally upheld by the Chișinău Court of Appeal on 19 December 2016. The applicant company's repeated attempt to institute civil proceedings in 2017 failed as its claims were rejected as time-barred.

Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicant company complains, in essence, of having been deprived of access to a court on account of

the domestic courts' decisions which, on the one hand, disregarded the formal notice as evidence of pre-court proceedings and, on the other hand, took an excessive amount of time to rule on such preliminary issues, thus precluding any subsequent proceedings due to the expiry of the statutes of limitation, which also breached its property rights.

QUESTIONS TO THE PARTIES

1. Did the applicant company have access to a court for the determination of its civil rights and obligations, in accordance with Article 6 § 1 of the Convention (see Zubac v. Croatia [GC], no. 40160/12, §§ 76-79, 5 April 2018)? In particular, were the decisions of the domestic courts, by which it was decided not to adjudicate on the case, in breach of the applicant company's right of access to a court guaranteed under Article 6 § 1 of the Convention (see Nesterenko and Gaydukov v. Russia, nos. 20199/14 and 20655/14, §§ 29-35, 24 October 2017; Negura and Others v. the Republic of Moldova [Committee], no. 16602/06, §§ 27-33, 5 March 2019)?

2. Has there been a breach of the applicant company's right to property, within the meaning of Article 1 of Protocol No. 1 to the Convention (see Project-Trade D.O.O. v. Croatia, no. 1920/14, §§ 85-86, 19 November 2020)?

KOWALSKI v. Poland (no. 40076/22)

Article 8 – article 14 – Legal recognition of same-sex couples in taxation

SUBJECT MATTER OF THE CASE

The case concerns the lack of legal recognition of same-sex couples.

The applicant has been in a same-sex relationship for over twenty-five years. In 2020 he received a loan from his partner, of which he informed the Tax Office. He indicated that the loan had been received from his "spouse" (being the first and closest group of affiliation, allowed to receive tax-free loans). The Warsaw Tax Office calculated the amount of the tax due by the applicant; a decision upheld by the Tax Office Director. The authorities established that the loan had been received from a person falling within the third group – no affiliation. The applicant's further appeals were dismissed by the Warsaw Regional Administrative Court and, on 2 March 2022, by the Supreme Administrative Court.

The applicant complains under Article 8 taken alone and in conjunction with Article 14 of the Convention about absence of any form of legal recognition and protection of same-sex couples.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicant's right to respect for his private and family life, contrary to Article 8 of the Convention? Reference is made to the allegation that the State failed in their positive obligation to ensure that the applicant had a specific legal framework providing for the recognition and protection of his same-sex union (see Przybyszewska and Others v. Poland, nos. 11454/17 and 9 others, 12 December 2023).

2. Has the applicant suffered discrimination in the enjoyment of his Convention rights on the ground of his sexual orientation, contrary to Article 14 of the Convention in conjunction with Article 8 of the Convention in respect of his inability to enter into any type of civil union providing for the recognition and protection of his same-sex union?

KURIANSKI v. Poland (no. 31761/18)

Article 8 – Revocation of adoption on request of adoptive parents

SUBJECT MATTER OF THE CASE

The application concerns revocation of the applicant's adoption on the request of her adoptive parents, forty years after the adoption.

The applicant was adopted in 1978 as a four-year-old child. She does not know her biological parents and lived with her adoptive parents until majority. In 2003 the applicant returned to live with her parents after the birth of her daughter and remained with them for ten years. The parents subsequently became dissatisfied with the applicant's life choices and applied to revoke the adoption.

In December 2015 the Gliwice District Court dismissed the request. The court considered that such interference in the applicant's family life was not justified by the facts of the case. It noted that the adoptive parents had been partly responsible for the disagreements with the applicant and, moreover, there had been allegations of sexual abuse by her adoptive father.

The parents appealed. The public prosecutor sought to uphold the judgment pointing to the consequences of severing the family ties between the applicant and her adoptive parents; especially since the applicant had a child of her own.

In February 2017 the Gliwice Regional Court overturned the impugned judgment and revoked the applicant's adoption. The court held that the sexual abuse allegations had not been proven and that the irretrievable breakdown of the family relationship had been established since the applicant had remarried and had an adult daughter. The court noted that the interests of the granddaughter should also be considered. However, after she had moved out of the applicant's parents' household, she had not maintained contact with them.

The applicant lodged a cassation appeal pointing out that throughout the entire proceedings she had expressed her wish to maintain family ties with her parents and had confirmed her emotional attachment to them.

On 21 February 2018 the Supreme Court refused to entertain the cassation appeal.

The applicant complains under Article 8 of the Convention that the revocation of her adoption amounted to an interference with her private and family life. She claims that the interference was not justified and necessary for any reasons and that the Regional Court's assessment had failed to take note of the domestic case-law of the Supreme Court.

QUESTION TO THE PARTIES

Has there been an interference with the applicant's right to respect for her private and family life through the decision to revoke the adoption, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see Zaieţ v. Romania, no. 44958/05, 24 March 2015)?

BREJZA and 8 others v. Poland (no. 27830/23)

Article 8 – Article 13 – Article 35 – Article 3 protocol no. 1 – use of surveillance software Pegasus and hacking against opposition party candidates

SUBJECT MATTER OF THE CASE

The applications concern the alleged secret surveillance of the applicants using the Pegasus spyware by the intelligence services of the government in power between 2015 and 2023.

All the applicants except for Dorota Brejza are public figures, members or supporters of the Civic Platform, the main opposition party to the then government. They were involved in the election campaign for the European and national elections of 2019 and had worked closely together for this purpose. Opposition senator Krzysztof Brejza was the head of the Civic Platform's election campaigns. Applicants Jacek Karnowski, Ryszard Brejza (father of Krzysztof Brejza), Hanna Zdanowska, Zygmunt Frankiewicz, and Rafał Trzaskowski were mayors of Sopot, Inowrocław, Łódź, Gliwice, and Warsaw, respectively, at the time of the events. Dorota Brejza, the partner of Krzysztof Brejza and a lawyer, represented her husband in disputes with members or supporters of the main governing party at the time.

In 2019, there were reports of surveillance activities in Poland using the Pegasus program, which allegedly intensified until 2021.

The ruling party won the 2019 parliamentary elections. The following year, Andrzej Duda, a supporter of the ruling party, was re-elected as President of the Republic, narrowly defeating opposition candidate Rafał Trzaskowski.

In the meantime, in July 2021, reports began to emerge revealing that Pegasus had potentially been used by governments worldwide to target journalists, lawyers, judges, activists, politicians, and officials.

In December 2021, the Citizen Lab at the University of Toronto announced that Pegasus had been used in Poland against public figures critical of the government, including Krzysztof Brejza. It reported that Brejza's phone was hacked multiple times between April and October 2019 when he was leading the Civic Platform's election campaign. Following these attacks, the correspondence from Brejza's phone was allegedly stolen and disseminated on a state-controlled television network as part of a defamation campaign orchestrated against him. In September 2021, Brejza filed a complaint with the prosecutor's office for abusive secret surveillance, which is still under investigation. In January 2022, Security Lab, affiliated with Amnesty International, confirmed the findings of its Canadian counterpart.

According to revelations from an investigation conducted in March 2023 by journalists from the Polish newspaper Gazeta Wyborcza, Jacek Karnowski was also subjected to surveillance using Pegasus during the election campaign in question. Following these revelations, Karnowski filed a complaint for abusive surveillance, which is under investigation. He also requested information from the relevant state services about his alleged surveillance but to no avail.

Subsequent investigative reports and other sources demonstrated that Pegasus and other similar spyware were used by Council of Europe member states against their own citizens. Thus, a European Parliament committee established to investigate allegations of breaches or mismanagement in EU law regarding the use of Pegasus and equivalent surveillance spyware ("PEGA Committee") identified abuses in five European countries, including Poland, in a report dated 8 May 2023. It particularly noted that the use of Pegasus contributed to a surveillance system targeting the opposition and critics of the government to maintain the ruling majority in power.

Additionally, an extraordinary Senate investigation commission in Poland concluded in a report issued in June 2023 that the government had acquired and used the Pegasus software illegally for retaliation against opposition figures, stating that these surveillance operations negatively impacted the 2019 national elections. Furthermore, the Parliamentary Assembly of the Council of Europe declared in its

resolution of 11 October 2023 (Resolution 2513 (2023)) that "the 2019 Polish parliamentary elections were not fair as Pegasus was used against political opponents during the election campaign."

In January 2024, the Polish Parliament approved the creation of a commission of inquiry into the use of Pegasus by the previous government. The work of this commission is ongoing.

Invoking Article 6 of the Convention, applicants Krzysztof Brejza and Dorota Brejza complain about the interception of their communications covered by attorney-client privilege. Citing Article 8 of the Convention alone and in conjunction with Article 13, all applicants complain about being subjected to irregular and abusive surveillance using Pegasus and not having an effective remedy to complain about this surveillance. Moreover, under Article 18 of the Convention in conjunction with Article 8, they complain that the alleged secret surveillance was not motivated by a legitimate interest but aimed at influencing the election results to the disadvantage of the opposition to the then-in-power government. The applicants further complain that, as a result of the use of Pegasus during the election campaign against political opponents, the 2019 parliamentary elections were conducted in conditions contrary to Article 3 of Protocol No. 1 to the Convention.

QUESTIONS TO THE PARTIES

1. Have the applicants exhausted domestic remedies, as required by Article 35 § 1 of the Convention?
2. Have the applications been lodged within four months, as required by Article 35 § 1 of the Convention?
3. Can the applicants claim to be victims of a violation of their right to respect for their private and family life and correspondence, under Article 8 of the Convention?
4. If so, was the alleged interference with the applicants' right to respect for private and family life and correspondence "in accordance with the law," as required by Article 8 § 2 of the Convention? If so, was this interference "necessary in a democratic society" and "proportionate," as required by Article 8 § 2 of the Convention?
5. Was there an infringement of the rights of applicants Krzysztof Brejza and Dorota Brejza to respect for their private life and correspondence due to the alleged surveillance of their communications covered by attorney-client privilege, under Article 8 § 1 of the Convention? If so, was this interference "in accordance with the law," "necessary in a democratic society," and "proportionate," under Article 8 § 2 of the Convention?
6. Did the applicants have an effective remedy, as required by Article 13 of the Convention, through which they could raise their grievances regarding the breach of Article 8 of the Convention?
7. Was the alleged interference with the applicants' rights protected by Article 8 of the Convention motivated by a purpose other than that envisaged by this provision, in violation of Article 18 of the Convention?
8. Given the alleged use of Pegasus against political opponents, including the applicants, during the 2019 electoral campaign in Poland, was there an infringement of the free expression of the people's opinion on the choice of the legislature, under Article 3 of Protocol No. 1 to the Convention?

BANDURSKI v. Poland and 25 other applications (no. 56930/21)

Article 6 §1 – judicial proceedings by judges appointed by the President of Poland – independent and impartial tribunal

SUBJECT MATTER OF THE CASE

The applicants were parties to various proceedings (civil, criminal, administrative and concerning pre-trial detention[1]). All except for 2 applicants[2] had their cases examined by courts of first or second instance in a formation including judges seconded to those courts in accordance with a decision of the Minister for Justice pursuant to Article 77 of the Law on the organisation of the ordinary courts (ustawa o z dnia 27 lipca 2001- Prawo o ustroju sadów powszechnych).
In addition, four applicants had their cases examined by courts of first instance sitting either in a single-judge formation composed of a court assessor [3] (i.e. a trainee judge) or in a panel of three judges including a court assessor[4]. According to the relevant regulations, the court assessors are appointed judges by the President of the Republic of Poland upon recommendation of the National Council of the Judiciary (Krajowa Rada Sądownictwa, "the NCJ") as established under the Amending Act on the NCJ and certain other statutes of 8 December 2017 (ustawa o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw; "the 2017 Act").

The applicants complain that their cases were examined by judicial formations of the ordinary courts and of the Warsaw Regional Administrative Court including 1) judges seconded to those courts by decision of the Minister for Justice 2) and/or court assessors whose upcoming appointments as judges were dependant on the recommendation of the NCJ which gave rise to a violation of their right to an "independent and impartial tribunal", in breach of Article 6 § 1 of the Convention.

QUESTIONS TO THE PARTIES

1. Was the court which dealt with the applicants' cases (with the exception of the case of the applicant Nieckarz (see question 2 below)) an "independent and impartial tribunal established by law" as required by Article 6 § 1 of the Convention? Reference is made to the fact that the applicants' cases were examined by courts in formations including 1) judges who were seconded to those courts in accordance with a decision of the Minister for Justice 2) and/or court assessors whose upcoming appointments as judges were dependent on the recommendation of the NCJ.

2. Was the procedure in which the Warsaw Regional Court, on 14 March 2022, extended the applicant's (Nieckarz, no. 47791/22) pre-trial detention (case no. VIII Kp 278/22) in conformity with Article 5 § 4 of the Convention? In particular, was the body which examined the case at first instance a "court" within the meaning of this provision? Reference is made to the fact that the applicant's case was examined by the Warsaw Regional Court sitting in a single judge formation composed of a judge who was seconded to this court in accordance with a decision of the Minister for Justice.

ADDITIONAL QUESTION IN
Gęsiak v. Poland (no. 38324/22)

3. Was the length of the civil proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention (see Rutkowski and Others v. Poland, nos. 72287/10 and 2 others, 7 July 2015)?

ADDITIONAL QUESTIONS IN
Nieckarz v. Poland (no. 47791/22)

4. Was the procedure in which the Warsaw Regional Court, on 14 March 2022, extended the applicant's pre-trial detention (case no. VIII Kp 278/22) in conformity with Article 5 § 4 of the Convention? In particular, was the principle of equality of arms between the applicant and the prosecution respected in the present case notably in terms of access to the case file?

5. Did the length of the proceedings initiated by the applicant's appeal against the extension order of 14 March 2022 and concluded by decision of the Warsaw Court of Appeal of 13 May 2022 (case no. II AKz 433/22), comply with the "speed" requirement of Article 5 § 4 of the Convention (see Frasik v. Poland, no. 22933/02, §§ 64-66, ECHR 2010 (extracts))?

ADDITIONAL QUESTION IN

G.T. v. Poland (no. 16585/23)

6. Was the formation of the Criminal Chamber of the Supreme Court which dealt with the applicant's case an "independent and impartial tribunal established by law" as required by Article 6 § 1 of the Convention? Reference is made to the Court's judgments in Advance Pharma sp. z o.o v. Poland, no. 1469/20, §§ 294-351, 3 February 2022; Dolińska-Ficek and Ozimek v. Poland, nos. 49868/19 and 57511/19, §§ 283-359, 8 November 2021, and Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, §§ 205-290, 1 December 2020.

ADDITIONAL QUESTIONS IN

Nawrot v. Poland (no. 36567/23)

7. Was Article 6 § 1 of the Convention under its civil head applicable to the proceedings instituted by the applicant under the 2004 Act?

8. If so, was the court which dealt with the applicant's complaint under the Act of 17 June 2004 about a breach of the right to have a case examined in an investigation conducted or supervised by a prosecutor and in judicial proceedings without undue delay (ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki – "the 2004 Act") and the judicial panel of the Szczecin Court of Appeal which examined the applicant's appeal against the decision of the same court of 31 May 2023, an "independent and impartial tribunal established by law" as required by Article 6 § 1 of the Convention?

Reference is made to the fact that the applicant's case was examined by a formation of ordinary courts composed of judges appointed in the procedure established by the Law of 8 December 2017 Amending the Act on the National Council of the Judiciary. In their replies, the parties are asked to refer to the Court's judgments in Advance Pharma sp. z o.o v. Poland, no. 1469/20, 3 February 2022 and Guðmundur Andri Ástráðsson v. Iceland [GC], no. 26374/18, §§ 205-290, 1 December 2020.

9. Did the applicant have access to a court for the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? Reference is made to the fact that his appeal against the judgment of 10 February 2023 was left unexamined on the ground that it had allegedly not been prepared by a lawyer.

SOKÓŁ v. Poland (no. 29826/20)

Article 2 – article 8 – article 6§1 – swimming accident in public pool leading to disability - alleged failure to carry out effective, diligent and prompt criminal proceedings

SUBJECT MATTER OF THE CASE

The application concerns the length and the alleged ineffectiveness of the criminal proceedings following a swimming accident which left the applicant severely disabled.

As a result of the accident, which took place at a municipal swimming pool on 9 April 2010, the applicant suffered cerebral hypoxia leading to spastic quadriplegia and muscle atrophy. She is severely disabled and incapable of independent living.

On 15 April 2010 the prosecution service opened an investigation into the accident. In June 2012 the prosecutor lodged a bill of indictment against two lifeguards, the manager of the pool and the doctor who had taken over the resuscitation of the applicant at the pool. The applicant joined the proceedings as the auxiliary prosecutor (oskarżyciel posiłkowy). The proceedings ended on 12 April 2022 with all defendants being acquitted.

On 21 September 2018 the Łomża Regional Court (Sąd Okręgowy) partly allowed the applicant's length of proceedings complaint and awarded her 4,000 Polish złotys (PLN) (approximately 930 euros (EUR)).

Separately, in 2013 the applicant lodged a civil action against the municipal entity managing the pool and the regional ambulance service. On 28 May 2013 the Łomża Regional Court granted an interim injunction ordering each of the defendants to pay the applicant monthly maintenance of PLN 1,450 (approximately EUR 340) and stayed the proceedings pending the outcome of the criminal case. These proceedings were resumed on 17 December 2020. It appears that they are still pending at first instance.

Invoking Articles 2, 8 and 6 § 1 of the Convention, the applicant complains that the authorities failed to carry out effective, diligent and prompt criminal proceedings regarding her accident, which had a negative impact both on the civil proceedings and on her private and family life.

QUESTIONS TO THE PARTIES

Having regard to the procedural protection of the right to life (see Nicolae Virgiliu Tanase v. Romania [GC], no. 41720/13, §§ 137-45 and 157-71, 25 June 2019), were the criminal proceedings conducted by the domestic authorities in respect of the applicant's accident in breach of Article 2 of the Convention? In particular:

(a) did the domestic authorities exercise requisite diligence in the process of gathering evidence (see Kornicka-Ziobro v. Poland, no. 23037/16, § 69, 20 October 2022)? Reference is made, in particular, to the reservations in this regard expressed by the domestic courts (see e.g.: judgment of 30 November 2018, case no. II K 319/17, page 13).

(b) does the length of the criminal proceedings, in and of itself, and as impacting the civil proceedings, raise an issue under the procedural limb of Article 2 of the Convention?

GASPAR GUIMARÃES v. Portugal (no. 28183/22)

Article 10 – damages for slandering honor and reputation of judge by lawyer who initiated unsuccessful criminal and disciplinary actions against them

SUBJECT MATTER OF THE CASE

The application concerns liability proceedings brought by R., a judge, against the applicant, a lawyer. They followed criminal and disciplinary complaints that the applicant unsuccessfully submitted against R. on account of the latter's refusal to exempt him from the obligation to pay costs in enforcement proceedings in which he had been acting as a lawyer intervening in person (advogado em causa própria).

On 11 October 2016 R. filed a non-contractual civil liability action against the applicant with the Lisbon Civil Court claiming 40,000 euros (EUR) in damages for the alleged harm to his honour and reputation caused by the above-mentioned criminal and disciplinary complaints.

On 5 April 2020 the Lisbon Civil Court ordered the applicant to pay EUR 5,000 to R. in damages, together with statutory interests calculated from the date of delivery of the judgment, holding that the accusations in question had gone beyond the limits of acceptable criticism and had constituted a serious attack on the honour and reputation of the judge. On 11 March 2022 the Lisbon Court of Appeal upheld the decision.

The applicant complains under Article 10 of the Convention that the courts' decisions breached his right to freedom of expression.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicant's right to freedom of expression contrary to Article 10 of the Convention? In particular, was the interference with the applicant's right to freedom of expression "necessary in a democratic society"? More specifically:

(a) Did the national authorities strike a fair balance between, on the one hand, the applicant's right to freedom of expression as a lawyer, and the protection of R's reputation as a judge, on the other hand (see, mutatis mutandis, Lešník v. Slovakia, no. 35640/97, §§ 53-56, ECHR 2003-IV; Łopuch v. Poland, no. 43587/09, §§ 59 and 61, 24 July 2012; and Zdravko Stanev v. Bulgaria (no. 2), no. 18312/08, §§ 38 and 39, 12 July 2016)?

(b) Was the amount of damages ordered against the applicant proportionate to the aims pursued (see, mutatis mutandis, Morice v. France [GC], no. 29369/10, §§ 175-76, 23 April 2015; Bezymyannyy v. Russia, no. 10941/03, § 43, 8 April 2010; and Zdravko Stanev (no. 2), cited above, § 44)?

FERREIRA LEAL CORREIA v. Portugal (no. 16110/23)

Article 2 – article 3 – inadequate conditions in criminal psychiatric institution

SUBJECT MATTER OF THE CASE

The application concerns the applicant's detention at the Caxias Prison Hospital following an order of 12 November 2022 issued by the Investigating Judge of the Cascais Investigation Court, for his placement, as a preventive security measure (internamento preventivo), in a psychiatric establishment in the context of a criminal investigation instituted against him.

Relying on Article 2 of the Convention, the applicant complains that he did not receive adequate medical care in Caxias Prison Hospital, as there were only four doctors for eighty inmates notwithstanding that the maximum capacity of that hospital was fifty inmates. Under Article 3 of the Convention, he also complains about the material conditions of his detention there (overcrowding, dampness, mould, poor quality of food).

QUESTIONS TO THE PARTIES

Has the applicant been subject to inhuman and degrading treatment, in breach of Article 3 of the Convention?

In particular:

1. Was he held in inhuman and degrading conditions of detention in the Caxias Prison Hospital in view of his state of health (Rooman v. Belgium [GC], no. 18052/11, §§ 144 and 145, 31 January 2019; Petrescu v. Portugal, no. 23190/17, §§ 97-101, 3 December 2019; and Miranda Magro v. Portugal, no. 30138/21, § 74, 9 January 2024)?

2. Did the applicant receive in the Caxias Prison Hospital adequate medical care in view of his medical condition (Rooman, cited above, §§ 146-48; Strazimiri v. Albania, no. 3462/16, § 103, 21 January 2020; and Miranda Magro, cited above, § 73)?

MOREIRA TEIXEIRA v. Portugal (no. 25491/23)

Article 6 §1 – article 8 – article 13 – placement of children applicant in public care and later with maternal grandmother

SUBJECT MATTER OF THE CASE

The applicant is the father of two children (J. and F.) born in 2012 and 2016 respectively. The application concerns F's emergency placement in public care.

By two decisions of 11 November 2022, the Fafe Family Court ordered the children's urgent and provisional placement in public care. On the same day they were placed in an institution. Pending the appeal proceedings against those orders, on 21 December 2022 the Fafe Family Court approved an agreement (acordo de promoção e proteção) concluded between the applicant and the children's mother, according to which they were to be placed in care by their maternal grandmother for six months. The agreement indicated that the applicant had no intention to withdraw the appeal filed against the decisions of 11 November 2022.

With a judgment of 23 March 2023, the Guimarães Court of Appeal held that it was no longer necessary to decide (inutilidade superveniente da lide) the applicant's appeal against the order placing F. in public care because she had already left the institution.

Relying on Article 6 § 1 of the Convention the applicant alleges unfairness of the proceedings in that he was separated from his daughter without any evidence and in the absence of a hearing. Relying on Article 8 of the Convention, he alleges a breach of his right to respect for his family life arguing that the decisions regarding his daughter were disproportionate, arbitrary and did not respect F's best interests. Lastly, invoking Article 13 of the Convention, the applicant claims that the judgment of the Guimarães Court of Appeal rejecting his appeal against the decision of the Fafe Family Court regarding his daughter F. breached his right of access to a court

QUESTIONS TO THE PARTIES

1. In so far as the proceedings regarding the applicant's daughter F. are concerned, did the applicant have a fair hearing in the determination of his civil rights, in accordance with Article 6 § 1 of the Convention? In particular, were sufficient reasons given for placing the applicant's daughter in public care in proceedings which did not provide for an oral hearing in the presence of the applicant (see, mutatis mutandis, Jussila v. Finland [GC], no. 73053/01, §§ 40-44, ECHR 2006-XIV, Ullens de Schooten and Rezabek v. Belgium, nos. 3989/07 and 38353/07, §§ 60-61, 20 September 2011, Harisch v. Germany, no. 50053/16, §§ 33-34, 11 April 2019, and Adžić v. Croatia (no. 2), no. 19601/16, §§ 55-56, 2 May 2019)?

2. Has there been a violation of the applicant's right of access to a court enshrined in Article 6 § 1 of the Convention (not under Article 13 as alleged by the applicant) in the proceedings concerning F. (see Zubac v. Croatia [GC], no. 40160/12, §§ 76-81, 5 April 2018)?

3. Has there been a violation of the applicant' s right to respect for his family life, contrary to Article 8 of the Convention? In particular:

Was the decision-making process conducted in a manner ensuring due respect for the various interests safeguarded by Article 8, notably the best interests of the child (see Soares de Melo v. Portugal, no. 72850/14, §§ 93 and 108, 16 February 2016; and Neves Caratão Pinto v. Portugal, no. 28443/19, § 109, 13 July 2021)? Were the reasons adduced by the domestic courts to place F. into emergency public care relevant and sufficient in the circumstances?

The parties are requested to provide information on the children's current situation.

MENÉNDEZ RAMIRÉZ v. Portugal (no. 10462/23)

Article 6§1 – Olympic athlete institutes action against Portuguese Olympic Committee – is refused exemption from paying legal costs – alleged hindrance of access to court

SUBJECT MATTER OF THE CASE

The application concerns the rejection of the applicant's request to be exempted from paying costs and expenses before the Court of Arbitration for Sport in Lisbon (CAS), according to Law no. 34/2004.

The applicant, an Olympic athlete, signed a contract with the Portuguese Olympic Committee and the Portuguese Judo Federation under which they were required to provide financial assistance to the applicant for the Tokyo Olympic Games. Given the alleged non-compliance with the agreement, the applicant wished to file a compensation action against the Portuguese Olympic Committee and the Portuguese Judo Federation before the CAS. Her request to be exempted from paying costs and expenses before the CAS was dismissed by both the Social Security services and the Santarém Judicial Court (decision dated 28 October 2022) on the grounds that her financial situation did not warrant granting such request.

The applicant complains that the refusal to grant her request for exemption from costs and expenses breached her right of access to the CAS under Article 6 § 1 of the Convention. She alleges that the legal aid scheme in Portugal fails to take into account the expensive nature of the proceedings before the CAS.

QUESTIONS TO THE PARTIES

1. Was Article 6 applicable to the proceedings before the Court of Arbitration for Sport concerning the applicant's dispute with the Portuguese Olympic Committee and the Portuguese Judo Federation (see, mutatis mutandis, Mutu and Pechstein v. Switzerland, nos. 40575/10 and 67474/10, § 56, 2 October 2018, and Ali Riza v. Switzerland, no. 74989/11, §§ 63-65, 13 July 2021)? In particular:

(a) Was the dispute subject to voluntary arbitration or compulsory arbitration (see Mutu and Pechstein, cited above, §§ 95-96, and Beg S.p.a. v. Italy, no. 5312/11, §§ 125-27, 20 May 2021)?

(b) If it was subject to voluntary arbitration, was the applicant's consent for it given freely? Did the applicant waive her rights under Article 6 § 1 of the Convention and was waiver surrounded by a

minimum of guarantees (see, Mutu and Pechstein, cited above, §§ 96, 103 and 113, and Beg S.p.a. v. Italy, cited above, §§ 125-27)?

2. If so, considering the amount of court fees which the applicant was required to pay in order to lodge her case before the Court of Arbitration for Sport, was her right to "access to a court" as secured by Article 6 § 1, respected (see Laçi v. Albania, no. 28142/17, §§ 50-52, 19 October 2021, and Nalbant and Others v. Turkey, no. 59914/16, §§ 32-40, 3 May 2022)?

VIERIU v. Romania (no. [4893/20])

Article 8 – Data storage, processing and retention

SUBJECT OF THE CASE

The application concerns the processing of the applicant's personal data by the County Police Inspectorate of Iaşi (Inspectoratul Județean de Poliție Iaşi or 'the I.J.P. of Iaşi') and by the General Inspectorate of the Romanian Police (Inspectoratul General al Poliției Române or 'the I.G.P.R.').

In July 2011, the I.G.P.R. refused to grant the applicant a favourable opinion in order to obtain an operating licence to set up a security and guarding company, on the grounds that he had been convicted of offences committed with intent. It was noted on that occasion that, although the applicant's personal data relating to his criminal record (namely an educational detention order made against him when he was a minor in 1991, a pre-trial detention order and a criminal conviction handed down at first instance by a judgment of 12 October 2010) had been removed from his criminal record, those data had been transferred to the operational register (evidența operativă) of the criminal record ('the operational register') where they could be consulted.

The applicant challenged before the National Data Processing Supervisory Authority ('the authority') the lawfulness of the processing of his personal data and the accuracy of the data held in the operational register. On 3 March 2016 the authority imposed a penalty on the I.J.P. of Iași for having processed the applicant's data in breach of Articles 14 §§ 1 and 3 and 32 of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ('Law no. 677/2001'). On a challenge by the I.J.P. of Iaşi, by a majority final judgment of 1 October 2019, the Court of Appeal of Iași quashed the above-mentioned penalty on the ground that it had not been established in compliance with the legal provisions.

In the meantime, the applicant brought an action in tort before the national courts against the I.J.P. de Iași and the I.G.P.R., claiming that his right to respect for his private life had been infringed. He claimed that his personal data had been stored in the operational register unlawfully and inaccurately, that incorrect data had been transmitted to third parties and that the defendants had failed to notify the said third parties that the data transmitted was incorrect.

In a judgment of 12 March 2021, the County Court of Iași ('the County Court') dismissed the claimant's action on the ground that his personal data had been processed on the basis of Article 5 § 2 (c) and (d) of Law no. 677/2001. He explained that the deletion from the criminal record of the applicant's personal data relating to the educational detention measure did not imply their destruction, as the data had been kept in the operational register. He added that, prior to 5 May 2011, the time-limit for the storage and use of the data entered in the operational register had not been laid down in legislative acts. It observed that on 5 May 2011 Order (dispoziția) no. 18 had been adopted and that Article 18 § 3 (a) and (d) of that Order provided that the data entered in the operational register were to be removed for

archiving purposes fifteen years after the date of the judicial decision imposing the sanction on the minor.

The tribunal départemental held that, after Order no. 18 came into force, the I.G.P.R. was obliged to delete from the operational register the data relating to the educational confinement measure imposed on the applicant in 1991. However, in his view, that obligation did not imply the immediate and automatic deletion of that data, given the large volume of changes and deletions to be made in the operational register after the Order came into force. Moreover, Article 18 of Order No. 18 provided that personal data was to be checked either each time new data was processed, or by means of a random annual check.

Lastly, the County Court added that deleting the data from the operational register did not imply destroying it, since under Article 3(a) of Order No. 18, the data had to be archived. However, in accordance with the archiving nomenclatures, the data remained in the archives for five years and only after this period had elapsed were they to be destroyed. He noted that as long as the data remained archived, it could be consulted.

On appeal by the applicant, the High Court of Cassation and Justice upheld the first instance judgment in a final ruling dated 18 October 2022.

Invoking Article 8 of the Convention, the applicant complained that his right to respect for his private life had been infringed by the excessive processing of his personal data by the police authorities and the transmission of allegedly inaccurate data to third parties.

In particular, he considered that the legal basis for the retention of data in the operational register had not been foreseeable and did not offer sufficient guarantees against arbitrariness.

QUESTIONS TO THE PARTIES

1. Was there any interference with the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention as a result of the processing of his personal data relating to his criminal convictions (educational detention order, pre-trial detention and criminal conviction) after those data had been deleted from his criminal record (see Rotaru v. Romania [GC], no. 28341/95, § 46, ECHR 2000-V, and S. and Marper v. the United Kingdom [GC], nos. 30562/04 and 30566/04, § 67, ECHR 2008)?

The parties are invited to provide copies of the criminal convictions handed down against the applicant, which had been entered in his criminal record and in the operational register of criminal records.

2.If so, was this interference prescribed by law (see Rotaru, cited above, § 52, M.M. v. the United Kingdom, no. 24029/07, § 195, 13 November 2012, and Borislav Tonchev v. Bulgaria, no. 40519/15, § 124, 16 April 2024)?

In particular:

(a) What provisions of domestic law governed the processing (collection, storage, use, disclosure, destruction) of personal data relating to criminal convictions, in particular, after they had been erased from the criminal record?

(b) Was the domestic legislation applicable in the instant case accessible and foreseeable, and did it provide adequate and sufficient safeguards against arbitrary interference by the authorities with the right to respect for private life, as required by Article 8 of the Convention (see M.M. v. the United Kingdom, cited above, §§ 191-207, and Borislav Tonchev, cited above, § 129)?In particular, were Order

no. 18 and I.G.P.R. provision no. S/2803 of 15 December 1993 on the archives of police units public documents to which the applicant could have had access?

3. What was the aim of the interference (see, for example, Leander v. Sweden, 26 March 1987, § 49, Series A no. 116)?

4. Was the interference complained of by the applicant necessary in a democratic society within the meaning of Article 8 § 2 of the Convention (see Gaughran v. the United Kingdom, no. 45245/15, § 76, 13 February 2020, and N.F. and Others v. Russia, nos. 3537/15 and 8 Others, § 45, 12 September 2023)? In particular:

- did the applicable legal provisions provide for automatic processing of data by entering all criminal convictions and measures in the operational register of criminal records, or was there a distinction in the processing of data according to the nature of the measures taken and the criminal offences committed (see M.M. v. the United Kingdom, cited above, §§ 187-207, and N.F. and Others v. Russia, cited above, §§ 49-55)?

- in the present case, what were the time limits for each of the stages in the processing of data relating to criminal convictions and measures, from their entry in the criminal record to their destruction (S. and Marper, cited above, § 103)?

- had the applicant been informed that his data had been entered in the operational register of the criminal record (Gardel v. France, no. 16428/05, § 65, ECHR 2009)?

- who has access to the data stored in the operational register of criminal records (Gardel, § 70)?

- what was the volume of data to be processed in the present case which justified the failure to apply Order No. 18 immediately (Catt v. the United Kingdom, no. 43514/15, § 127, 24 January 2019)?

- Is there a procedure enabling the applicant to request a check on the accuracy of the data and, where appropriate, their correction and destruction (see Rotaru, cited above, § 36)?

PĂTRU v. Romania (no. [14158/19](14158/19))

Article 6 §1 – access to court – request for legal aid to help cover security deposit to avoid seizure of assets by bank denied

SUBJECT MATTER OF THE CASE

The application concerns an alleged breach of the applicant's right of access to court under Article 6 § 1 of the Convention on account of his inability to pay the security deposit established by the domestic court which examined his request for the suspension of enforcement proceedings against him and his wife.
The applicant and his wife were the guarantors of a bank loan taken out by a company. As the company failed to fully pay its debt, the bank initiated enforcement proceedings in respect of some of their assets. When the applicant sought the suspension of the enforcement proceedings, he was requested to pay 10,674 Romanian lei (RON - approximately 2,300 euros (EUR)) as a security deposit for the creditor (cauțiune).
The applicant lodged a request for legal aid asking to be exempted from the payment of the security, or to have it reduced and paid in instalments, claiming that he and his wife had no income other than his wife's monthly salary, which amounted to RON 600 (approximately EUR 150), and was in any event not sufficient to cover the security deposit.

By a final interlocutory judgment of 13 December 2018, the Pitești District Court dismissed the applicant's request for legal aid. Despite being in possession of supporting documents from the applicant about his family's financial situation, the court held that the security deposit, which represented 10% of the debt, did not represent an excessive burden for the applicant and his wife if compared to the amount of the debt. In addition, it held that the legal basis relied on by the applicant in his request for legal aid, namely Government Emergency Ordinance no. 51/2008, was not applicable to his situation.
On 17 December 2018 the Pitești District Court rejected the applicant's request for suspension of enforcement proceedings as inadmissible for non-payment of the security deposit.

QUESTION TO THE PARTIES

Has there been a breach of the applicant's right of access to court as guaranteed by Article 6 § 1 of the Convention (see for example Laçi v. Albania, no. 28142/17, §§ 50-52, 19 October 2021; Weissman and Others v. Romania, no. 63945/00, §§ 39-42, ECHR 2006-VII (extracts), and Kreuz v. Poland, no. 28249/95, §§ 60-67, ECHR 2001-VI)?

GUŞĂ v. Romania (no. 22357/20)

Article 3 procedural and substantive – article 5 §1 – unlawful assault and detention by police officers – ineffective investigation

SUBJECT MATTER OF THE CASE

The application concerns allegations of unlawful detention of the applicant and of police brutality against him while in police custody, as well as the alleged ineffectiveness of the ensuing investigation.
The applicant complains under Article 3 of the Convention under both its limbs, substantive and procedural, that in the night of 2 to 3 May 2018 he was unlawfully assaulted by several police officers and subjected to inhuman and degrading treatment at the police station where he was taken, and that the ensuing criminal investigation into his allegations of abusive behaviour and unlawful detention was superficial and ignored relevant evidence. He alleges in particular that the prosecutor's decision to terminate the investigation, upheld by a final decision of the pre-trial judge of the Bucharest County Court of 21 November 2019, ignored a forensic medical certificate indicating multiple bruises, abrasions on different areas of his body and requiring 3-4 days of medical care and video recordings from the camera installed in the room where he was questioned at the police headquarters. Moreover, a series of photographs in the case file showed numerous rubber stick marks on his back.
Relying on Article 5 § 1 of the Convention the applicant complains that he was unlawfully deprived of his liberty for about two and a half hours (between midnight and around 2:30 a.m. in the night of 2 to 3 May 2018) at the police station before being accompanied by police officers to the Obreja Psychiatric Hospital where he was involuntarily hospitalised for a week. The applicant alleges that he was kept handcuffed at all times, being uncuffed only at the hospital in the presence of the doctor.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment by police, in breach of Article 3 of the Convention in the night of 2 to 3 May 2018 (see Bouyid v. Belgium [GC], no. 23380/09, §§ 81-90, 100-01, ECHR 2015, and Vasile Victor Stanciu v. Romania, no. 70040/13, § 35, 9 January 2018)?

2. Having regard to the procedural protection from inhuman or degrading treatment (see paragraph 131 of Labita v. Italy [GC], no. 26772/95, ECHR 2000-IV; and Bouyid, cited above, §§ 114-23), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

3. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention, insofar as he was taken against his will to the police station and then to a psychiatric hospital on the night between 2 and 3 May 2018 (see Creangă v. Romania [GC], no. 29226/03, §§ 84 and 101, 23 February 2012; Hoalgă and Others v. Romania, no. 76672/12, §§ 107-08, 15 March 2016; Aftanache v. Romania, no. 999/19, §§ 81-83 and 89-91, 26 May 2020, and M.A. v. Cyprus, no. 41872/10, § 190, ECHR 2013 (extracts))?

GRECU v. Romania and 41 other applications (no. 51390/22)

Article 6 §1 –gunshot victims of the repression of demonstrations against the communist regime in 1989 - statute of limitations used to declare civil suits for damages against the state inadmissible after prolonged criminal investigation – inconsistent decisions of the High Court of Cassation and Justice

SUBJECT MATTER OF THE CASES

The applications concern in the main the alleged violation of the right of access to a court and the divergences in case-law within the High Court of Cassation and Justice.

Some of the applicants are persons injured by gunshots during the violent repression of the demonstrations against the communist regime that took place in Timişoara from 16 to 22 December 1989. Others are relatives of persons killed or injured by gunshots during these demonstrations (for details, see the attached table).

A criminal investigation into the 1989 anti-communist revolt in Romania, including in Timişoara, was opened in 1990. The applicants participated in it as victims or civil parties.

In an indictment dated 5 April 2019, the Military Prosecutor’s Office at the High Court of Cassation and Justice considered that the repression of the anti-communist demonstrations was carried out by the army and the security forces of the time and that it was coordinated by former President Nicolae Ceauşescu with the help of senior commanders from the Ministry of the Interior and the Ministry of Defence. According to the Prosecutor’s Office, this repression could be qualified as a crime against humanity.

The Prosecutor’s Office closed the investigation for the acts committed before 22 December 1989, on the grounds that some of those responsible had died and that, for the other part, the authority of res judicata had intervened, as the persons responsible had been previously convicted following other trials (see, for example, the criminal proceedings described in the judgment Şandru and Others v. Romania, no. 22465/03, 8 December 2009). With regard to the victims who had joined as civil parties, including the applicants, the prosecution considered that these persons had the possibility of bringing proceedings before the competent civil courts to obtain compensation for the damages suffered. The prosecution specified that the criminal complaints filed and/or the joining of civil parties during the investigation had interrupted the limitation period concerning the right to claim moral and/or material damages for these damages. The prosecution added that crimes against humanity were imprescriptible and that, consequently, the action in tort for compensation for the damage was also imprescriptible.

In 2020 and 2021, the applicants separately brought actions in tort against the State, which were dismissed without examination on the merits due to either the limitation period or the absence of State liability. On appeal by the applicants, the High Court upheld these decisions (for details relating to each application, see the attached table).

The applicants complain expressly or in substance of a violation of their right of access to a court to obtain compensation for the damage suffered in 1989.

They also complain of a violation of the principle of legal certainty, arising from the divergent case-law of the High Court. They consider that by dismissing their similar actions on different grounds, the High Court created legal uncertainty on the issue of access to a court and on the applicable law.

QUESTIONS TO THE PARTIES

1. Did the applicants have access to a court for the determination of their civil rights and obligations, in accordance with Article 6 § 1 of the Convention (Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, §§ 84-90, 29 November 2016)? More specifically, did the domestic courts' dismissal of the tort claims without examining the merits infringe the very essence of the "right to a court"?

2. Did the divergence of case-law within the High Court, alleged by the applicants, regarding the criteria for admissibility of their similar claims infringe the principle of legal certainty and, as such, have the effect of depriving the applicants of a fair trial (Nejdet Şahin and Perihan Şahin v. Turkey [GC], no. 13279/05, §§ 49-58 and 61, 20 October 2011; Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 116, 29 November 2016)? Did domestic legislation provide mechanisms to remove such inconsistencies and, if so, were these mechanisms applied in this case?

CARAGEA v. Romania (no. 14157/20)

Article 6 – fairness of police surveillance used to convict applicant for drug crimes.

SUBJECT MATTER OF THE CASE

The application concerns the fairness of the criminal proceedings against the applicant for acts contrary to the narcotics legislation.

The applicant, together with a third party, was subjected to police surveillance on suspicion of selling drugs in a shop they managed. Undercover agents and collaborators of the investigating authorities were allowed to obtain drugs. The applicant was subsequently committed for trial on charges of drug trafficking and illegally carrying out operations with products likely to have psychoactive effects.

By a judgment of 8 November 2016, the Timiş County Court sentenced the applicant to five years and four months in prison. The conviction was based, for the most part, on evidence obtained as a result of police surveillance.

The applicant appealed and challenged the use as evidence of the statements of the participants in the surveillance and the results of the laboratory evidence carried out on the drug samples obtained following the surveillance.

By a decision of 9 October 2019 (notified on 6 January 2020), the Timişoara Court of Appeal dismissed his appeal, on the grounds that his arguments had already been examined during the Pre-Trial Chamber proceedings. One of the judges of the Court of Appeal presented a separate opinion in favour of acquittal and held that there was no evidence justifying the surveillance and that the applicant's conviction was based exclusively on the statements of the participants in the operation.

Relying on Article 6 §§ 1 and 3 (d) of the Convention, the applicant complains that he was convicted on the basis of the statements of the police collaborators and undercover officers and that the domestic courts failed to provide reasons for their decisions in this regard. He alleges that he was unable to challenge the manner in which the drug samples were taken, processed and tested.

QUESTIONS TO THE PARTIES

Were the criminal proceedings against the applicant fair within the meaning of Article 6 of the Convention? Did the use of evidence obtained as a result of a police surveillance operation undermine the fairness of the proceedings (Akbay and Others v. Germany, nos. 40495/15 and 2 others, §§ 121-123, 15 October 2020)?

In particular, when the surveillance operation was launched, did the authorities already have any evidence of ongoing criminal activity (Matanović v. Croatia, no. 2742/12, § 127 with reference therein, 4 April 2017)?

Did the domestic courts hear the witnesses who participated in the police surveillance operation (undercover officers and/or collaborators) in the presence of the applicant? If so, was the manner in which the applicant participated in those hearings compatible with the requirements arising from the relevant case-law of the Court (Pătraşcu v. Romania, no. 7600/09, § 50, 14 February 2017; and, mutatis mutandis, Schatschaschwili v. Germany [GC], no. 9154/10, § 103, ECHR 2015)?

Did the national courts adequately examine the applicant's arguments based on the manner in which the laboratory tests on the drug samples had been carried out (see, mutatis mutandis, Boldea v. Romania, no. 19997/02, §§ 28-30, 15 February 2007)?

Was the applicant's conviction based entirely on the evidence obtained by the authorities following the police surveillance operation (Pătraşcu, cited above, § 52)?

The parties are invited to provide full copies of the criminal file before the prosecution and of the file before the domestic courts.

MITITELU and PREOTEASA v. Romania (no. 24344/21)

Article 6 – article 7 – Criminal sentence for administrators of football club selling the federative rights of one of the club's players without permission of tax authorities after these had been seized as an asset by them

SUBJECT MATTER OF THE CASE

The application originated in criminal proceedings for tax evasion opened by the authorities against the applicants. The latter were administrators of the U.C. football club, who in March 2011 without the permission of the tax authorities, sold the federative playing rights of one of the club's players. These rights were treated by the tax authorities as an "asset" and seized by them on 31 January 2011 in the context of ongoing insolvency and bankruptcy proceedings opened against the club. By a final judgment of 5 November 2020 (made available to the applicants on 16 November 2020) the Craiova Court of Appeal ("the Court of Appeal") convicted the applicants of tax evasion and sentenced Mr Mititelu and Mr Preoteasa, respectively, to 3 years and 2 years and 6 months imprisonment.

The applicants alleged that the criminal proceedings against them were unfair and breached their rights guaranteed by Article 6 of the Convention. In particular, the Court of Appeal's judgment had breached the principle of legal certainty because it had ignored or contradicted the findings of other final judgments delivered by other courts – in particular those of the Bucharest Court of Appeal of 15 June

2017 and 1 February 2021, of the Brașov Court of Appeal of 18 April 2017 and of the Bucharest County Court of 25 November 2019 – to the effect that the tax authorities' seizure of 31 January 2011 had been unlawful and that the premise for the existence of the offence the applicants were convicted of, namely the presence of an asset (bun) which was or could be seized lawfully, was missing.

The applicants alleged further that by convicting them of the offence of tax evasion the Court of Appeal breached Article 7 of the Convention. In particular, the acts for which the applicants were convicted did not constitute a criminal offence at the time when they were committed because they did not meet the required elements of the offence of tax evasion given that (i) the federative playing rights of the club's players was not an asset with pecuniary or non-pecuniary value, (ii) the seizure imposed by the tax authorities was unlawful as the playing rights could not be seized and any form of enforcement (executare silită) against the club was stayed by default pending the outcome of the insolvency and bankruptcy proceedings, (iii) selling the playing rights could not be stopped by an unlawful seizure and (iv) the applicants' action did not result in damage or dangerous consequences or a failure to honour financial obligations.

Moreover, the Court of Appeal interpreted and applied the law arbitrarily and unreasonably making it impossible for the applicants to foresee at the time when they committed the alleged offence that they risked a criminal conviction. Furthermore, the penalties imposed on the applicants by the Court of Appeal exceeded the statutory limits for the sentence that could be imposed on them in the event that the damage resulting from the offence was compensated by the defendant, as laid out in Article 10 § 1 of Law no. 241/2005 on preventing and combating tax evasion and in Article 101 of the Criminal Code in force in March 2011, namely a fine or an administrative penalty. Lastly, relying in substance on Article 14 of the Convention taken in conjunction with Article 7, the applicants alleged that the Court of Appeal had treated them differently without an objective justification in comparison with other defendants who had compensated the damage caused by their actions because it had failed to give effect to the relevant provisions of Article 10 § 1 of Law no. 241/2005 and of Article 101 of the Criminal Code in force in March 2011 concerning sentencing.

QUESTIONS TO THE PARTIES

1. Did the applicants have a fair hearing in accordance with Article 6 of the Convention with regard to the determination of the criminal charge against them? In particular, did the Court of Appeal's judgment of 5 November 2020 breach the principle of legal certainty because it allegedly ignored or contradicted the findings of other final judgments delivered by the national courts to the effect that the tax authorities' seizure of 31 January 2011 was unlawful and that the premise for the existence of the offence the applicants were convicted of, namely the presence of an asset which was or could be seized lawfully, was missing?

2. Was the applicants' conviction for the offence of tax evasion compatible with the requirements of Article 7 of the Convention? In particular, were the applicants convicted for acts which did not constitute a criminal offence because their acts did not allegedly meet the required elements for the offences of which they were convicted? With regard to the interpretation and application of the national law by the Court of Appeal, was it possible for the applicants to foresee at the time when they committed the offence that they risked a criminal conviction? Furthermore, were the sentences imposed on the applicants by the Court of Appeal imposed in violation of the statutory limits required by Article 10 § 1 of Law no. 241/2005 on preventing and combating tax evasion and Article 101 of the Criminal Code in force in March 2011 (see Del Río Prada v. Spain [GC], no. 42750/09, §§ 77-80, ECHR 2013)?

3. Have the applicants suffered discrimination in the enjoyment of their Convention rights in comparison with other defendants who had compensated the damage caused by their actions because

of the Court of Appeal's alleged failure to give effect to the provisions of Article 10 § 1 of Law no. 241/2005 and of Article 101 of the Criminal Cod in force in March 2011 in their case? If so, was the discrimination contrary to Article 14 of the Convention, read in conjunction with Article 7?

FLORIAN v. Romania (no. 13816/22)

Article 1 Protocol No. 1 – prison guard does not get salary increment following promotion

SUBJECT MATTER OF THE CASE

The application concerns the applicant's (a prison guard) complaints under Article 1 of Protocol No. 1 to the Convention concerning the dismissal of his claim for salary increments related to his assignment to managerial posts in prison G. ("the prison"). The prison Director assigned the applicant, initially as Head of the Intervention Unit (between 8 May and 31 October 2017) and subsequently, as Head of the Security Office (between 31 April 2018 and 7 September 2020). The assignment was made by means of so-called "daily decisions" by the Director ("decizie zilnică pe unitate").

After Cluj County Court had granted the applicant's claim, with a judgment of 27 September 2021 Cluj Court of Appeal allowed appeals by the prison and the National Prison Administration ("the NPA") and dismissed the applicant's claim finding that the assignment orders had not complied with section 55 of Law no. 293/2004 and that the applicant was not therefore entitled to receive the increments claimed. The court relied on an earlier judgment of the High Court of Cassation and Justice ("the HCCJ") dated 12 April 2021 given in an appeal in the interests of law concerning the correct and uniform application of section 55 of Law no. 293/2004. That court found that the said provision made a distinction between delegation of duties ("împuternicire") and daily decisions delegating tasks in an unit ("decizii zilnice pe unitate"). While the former were in the exclusive competence of the General Director of the NPA, the entity entitled to assign people to certain managerial posts that conferred specific salary rights on the incumbents, the latter were within the province of prison directors, they concerned short transfers and did not confer any financial entitlements. According to the court, while the delegation was intuitu personae, daily decisions were taken irrespective of the incumbent person and aimed to ensure smooth functioning of the unit for a certain period when such functioning was impeded by objective factors (holidays, for instance). The HCCJ also found that those assigned on the basis of daily decisions were entitled to receive 50% increase of their salary, but only for exceptional tasks or special missions, if so found by the prison Director. This judgment followed after various courts in the country gave divergent interpretations of the said provision, some considering that the daily decisions delegating tasks in the unit had to be interpreted as "de facto" delegations if prolonged for a significant period of time, while others considering that no analogy between the two types of delegations could be allowed, the appointment on a managerial function being lawful only if done according to the law.

The High Court of Cassation and Justice (the HCCJ) embraced the second approach. It held that in the field of public functions, all salary rights had to be awarded based on the law (principle of legality). Such principle excluded the possibility of applying analogy to potentially similar situations.

The applicant complained under Article 1 of Protocol No. 1 to the Convention that the HCCJ's judgment should not have been applied to him retrospectively and that he should not suffer due to the fault of his employer which had failed to comply with law when assigning him to managerial posts.

QUESTIONS TO THE PARTIES

Did the applicant have a legitimate expectation to obtain salary increments for working approximately three years on the basis of the daily decisions (see, mutatis mutandis, Béláné Nagy v. Hungary [GC], no. 53080/13, §§ 74-79, 13 December 2016)?

In the affirmative, has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1 on account of the Cluj Court of Appeal's decision based on the HCCJ's judgment of 12 April 2021? If so, was that interference proportionate? In particular, did it impose an excessive individual burden on the applicant (see Moskal v. Poland, no. 10373/05, §§ 51 and 72, 15 September 2009; Lelas v. Croatia, no. 55555/08, § 74, 20 May 2010)?

KOZHUKHAR v. Russia (60844/15)

Article 2 of Protocol No. 1 – student at Crimean University obtains Russian Bachelor's degree upon graduation – degree not recognised in Ukraine where she wanted to pursue further education and start professional life

SUBJECT MATTER OF THE CASE

The application emanates from Russia establishing effective control over Crimea in 2014 and its integration into Russia, inter alia, in the sphere of education. The applicant complains that by issuing her a Russian state bachelor's diploma in 2015, Russia violated her right to education.

Between June 2011 and June 2015, the applicant pursued a bachelor's degree in Pedagogy at the Crimean Humanitarian University in the city of Armyansk. On 31 October 2014 the "Council of Ministers of the Republic of Crimea" issued a decree transferring the property of a number of Crimean universities, including the Crimean Humanitarian University, for "permanent unpaid usage" to the newly created "Crimean Federal University named after V.I. Vernadskiy". On 26 June 2015, upon completing her studies, the applicant received a Russian state bachelor's diploma issued by the latter institution. According to the applicant, this diploma is only recognised in Russia and cannot confirm her credentials in Ukraine or in any other country. Upon relocating to mainland Ukraine, the applicant has been unable to work in her field of specialization or to pursue a higher educational degree based on the diploma she had obtained in Crimea.

The applicant did have a possibility to transfer to a different university in mainland Ukraine to continue her studies. However, that would have inevitably required her to relocate to a different region of Ukraine and thus severe the ties with her family residing in the village of Dolynske in Kherson region close to Armyansk. Moreover, the Crimean Humanitarian University was a top institution with excellent faculty and program. The applicant tried to transfer to a different institution in Kherson but had to return to Armyansk because of the gap in curriculum and teaching methods.

The applicant believed that it was not necessary to transfer to a different university because the administration of the Crimean Humanitarian University had promised to issue a Ukrainian state diploma even in the circumstances of Crimea being controlled by Russia. The applicant had also hoped that the pressure of the international community would force Russia to continue issuing Ukrainian state diplomas.

The applicant complains that by issuing her a Russian state diploma, the respondent State deprived her of the right to education within the meaning of Article 2 of Protocol No. 1 to the Convention.

QUESTION TO THE PARTIES

Has the applicant been denied the right to education, guaranteed by Article 2 of Protocol No. 1? In particular, is her Russian state diploma recognised in any country except the Russian Federation?

YEGOROV v. Russia and 11 other applications (no. 22584/19)

Article 10 §1 - applications relating to various restrictions on the right to freedom of expression which are the subject of well-established case law of the Court

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the applications on 11 July 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the applications should be given to the Government of Russia.

In the applications marked by an asterisk, other complaints were raised. This part of the applications has been struck out of the Court's list of cases or declared inadmissible by the Court, sitting in a single-judge formation, assisted by a rapporteur as provided for in Article 24 § 2 of the Convention.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The applications concern complaints raised under Article 10 §1 of the Convention relating to various restrictions on the right to freedom of expression which are the subject of well-established case law of the Court (see Elvira Dmitriyeva v. Russia, nos. 60921/17 and 7202/18, §§ 77-90, 30 April 2019).

SANNIKOV v. Russia (no. 176/22)

Article 3 - complaints raised under Article 3 of the Convention relating to inadequate conditions of detention during transport which are the subject of well-established case law of the Court

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the application on 11 July 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Russia.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The application concern complaints raised under Article 3 of the Convention relating to inadequate conditions of detention during transport which are the subject of well-established case law of the Court (see Idalov v. Russia [GC], no. 5826/03, §§ 103-08, 22 May 2012).

F.A.D. v. Russia and 7 other applications (no. 47254/21)

Article 3 §2 - applications concern complaints raised under Article 3 § 2 of the Convention relating to ineffective investigation into allegations of ill-treatment committed by private individuals which are the subject of well-established case law of the Court

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the applications on 11 July 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the applications should be given to the Government of Russia.

In the applications marked by an asterisk, other complaints were raised. This part of the applications has been struck out of the Court's list of cases or declared inadmissible by the Court, sitting in a single-judge formation, assisted by a rapporteur as provided for in Article 24 § 2 of the Convention.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The applications concern complaints raised under Article 3 § 2 of the Convention relating to ineffective investigation into allegations of ill-treatment committed by private individuals which are the subject of well-established case law of the Court (see Denis Vasilyev v. Russia, no. 32704/04, 17 December 2009, Tyagunova v. Russia, no. 19433/07, 31 July 2012 and Volodina v. Russia, no. 41261/17, 9 July 2019).

DUBININ v. Russia (no. 16334/20)

Article 3 - complaints raised under Article 3 of the Convention relating to torture or inhuman or degrading treatment which are the subject of well-established case law of the Court

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the application on 11 July 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Russia.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The application concern complaints raised under Article 3 of the Convention relating to torture or inhuman or degrading treatment which are the subject of well-established case law of the Court (see Lyapin v. Russia, no. 46956/09, §§ 128-40, 24 July 2014 and Samesov v. Russia, no. 57269/14, §§ 54-63, 20 November 2018).

GRBIĆ and 6 others v. Serbia (no. 23420/22)

Article 6 – Inconsistent case law on costs and expenses claims

SUBJECT MATTER OF THE CASE

The applications concern the allegedly divergent case-law of various Serbian courts regarding the award of costs and expenses in proceedings under the Protection of the Right to a Trial Within a Reasonable Time Act (Zakon o zaštiti prava na suđenje u razumnom roku). In particular, the applicants allege that various courts in Serbia have ruled inconsistently by simultaneously rejecting their own claims and accepting other plaintiffs' claims for costs and expenses in situations where they were all successful on the merits.

The applicants' further constitutional appeals were also dismissed by the Constitutional Court.

Referring to Article 6 of the Convention, the applicants essentially complain that the rejection of their claims for costs and expenses, as well as the "flagrantly divergent case-law of the domestic courts" on this issue, created legal uncertainty and amounted to a denial of justice.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention under its civil head applicable to the length-related proceedings in the present case (i.e. the proceedings under the Protection of the Right to a Trial Within a Reasonable Time Act)? In particular, did the proceedings in question concern the "determination of civil rights and obligations" within the meaning of that provision (see Omdahl v. Norway, no. 46371/18, § 47, 22 April 2021; Alaverdyan v. Armenia (dec.), no. 45523/04, § 35, 24 August 2010; and, mutatis mutandis, Pelli v. Italy (dec.), no. 19537/02, 13 November 2003)?

2. If so, did the applicants have a fair hearing in the determination of their civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, in the light of the applicants' allegation that the Serbian courts have applied flagrantly different case-law to identical situations, has the principle of legal certainty contained in this provision been complied with by the domestic judiciary (see, mutatis mutandis, Živić v. Serbia, no. 37204/08, § 47, 13 September 2011; Stoilkovska v. the former Yugoslav Republic of Macedonia, no. 29784/07, § 47, 18 July 2013; and Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 116, 29 November 2016, with further references)?

NIKOLIĆ v. Serbia (no. 21155/22)

Article 3 procedural and substantive – police ill-treatment and ineffective investigation upon arrest for questioning related to theft – applicant was a minor

SUBJECT MATTER OF THE CASE

The application concerns, under Article 3 of the Convention, the alleged police ill-treatment of the applicant, who was taken to the police station on 16 November 2012 for questioning about alleged thefts, and the effectiveness of the investigation in response to his complaints about ill-treatment.

The applicant, minor at the relevant time, claims that he was beaten in order to confess to the thefts and that, as a result of a kick in the stomach, he had to be taken from the police station to the children's hospital where he was operated for incarcerated hernia.

The applicant's criminal complaint filed against several police officers on 7 February 2013 was rejected two and a half years later by the Novi Sad Basic Public Prosecutor's Office for lack of corpus delicti. Following the applicant's appeal, on 1 December 2015 the Novi Sad High Public Prosecutor's Office ordered further investigation noting several deficiencies in the investigation. On 19 June 2019 the Novi Sad Basic Public Prosecutor's Office once again rejected the applicant's complaint, and this decision was upheld by the High Public Prosecutor's Office in Novi Sad on 24 October 2019. The final domestic decision was rendered by the Constitutional Court on 17 June 2021 and served on the applicant on 4 October 2021.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to torture and/or inhuman or degrading treatment, in breach of Article 3 of the Convention?

2. Having regard to the procedural protection from torture and/or inhuman or degrading treatment (see paragraph 131 of Labita v. Italy [GC], no. 26772/95, ECHR 2000-IV), was the investigation by the domestic authorities into the applicant's allegations of ill-treatment in the police station in breach of Article 3 of the Convention? In particular, did the investigation satisfy the criteria of promptness and effective access to the investigatory proceedings (see Bouyid v. Belgium [GC], no. 23380/09, §§ 114-123, ECHR 2015; M.B. and Others v. Slovakia, no. 45322/17, §§ 78-79, 82, 1 April 2021; and X and Others v. Bulgaria [GC], no. 22457/16, § 189, 2 February 2021)?

BLAŽOVÁ v. Slovakia (no. 7747/21)

Article 8 – article 13 – necessity of surveillance measures on car of partner of person under investigation

SUBJECT MATTER OF THE CASE

The case concerns surveillance measures authorised and implemented by Slovakian authorities in the context of criminal proceedings brought against the applicant's partner and his relative upon suspicion of transborder criminal activities between Slovakia and the Czech Republic. In particular, in January 2017, the Specialised Criminal Court authorised undercover measures to be applied on cars operated by the applicant's partner and his relative consisting, in particular, of the use of listening and recording devices inside the cars, to be carried out over several months in 2017. In parallel, similar undercover measures were authorised by Czech authorities on the territory of the Czech Republic on the basis of requests for mutual assistance issued by the Slovakian authorities.

According to the applicant, who had also been driving these cars in the relevant time, the undercover measures were not brought to her attention until 22 January 2020. In March 2020 she challenged the measures before the Slovakian Constitutional Court which, however, considered itself not to have jurisdiction to examine the applicant's complaints as they were premature (decision no. II. ÚS 326/2020 of 7 July 2020).

The applicant complains that the undercover measures unlawfully and arbitrarily interfered with her right to respect for private life and that she did not have any effective remedy under Slovakian law to challenge these measures.
The complaints fall to be examined under Articles 8 and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Was there an interference with the applicant's right to respect for her private life, under paragraph 1 of Article 8 of the Convention, on account of the use of listening and recording devices in the cars (VIN: WAUZZZ4F27N120439 and VIN: WBAFV71010C774403) authorised by the orders of the Specialised Criminal Court of 18 January 2017?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention?

2. Did the applicant have at her disposal an effective domestic remedy for her complaints under Article 8, as required by Article 13 of the Convention?

RODRÍGUEZ QUINTERO and MARTINEZ MARTIN v. Spain (nos. 473/24 and 485/24)

Article 6 – article 8 – article 10 – dismissal because of breach of confidentiality agreement through Whatsapp Messages

SUBJECT MATTER OF THE CASES

The applications concern the applicants' dismissals on disciplinary grounds based on social media exchanges used as evidence in other proceedings brought by a third employee against their company.

The applicants used to work as explosives transport security guards. Due to the sensitive nature of the activity performed, the applicants signed a confidentiality agreement with the company, under which they undertook not to disclose any non-public information they were aware of during their duties, including issues regarding transport schedules, locations, security codes and other details.

On 28 December 2020 the company sent the applicants letters informing them of their disciplinary dismissal as of the day after reception of the letter. An identical letter was sent to another employee. The dismissal was based on different electronic communications that had taken place between the applicants and the other employee from March until September 2020. These communications, some of which were about working hours, periods of rest and inactivity of the company, or blasting sites, were deemed to be in violation of their confidentiality agreement. The company became aware of these exchanges because their content was incorporated into other legal proceedings brought against the company by the other employee.

After their dismissals, each of the applicants lodged a claim against the company seeking the nullity of the dismissals (arguing that the measure had infringed their rights to freedom of expression, to private life, and to join trade unions) or, subsidiarily, that it should be declared unlawful. Although the competent first instance courts partially upheld their claims, the Andalusia High Court of Justice dismissed them, upholding the company's appeals, stating that the company's conduct did not infringe any fundamental right of the applicants, and declaring that the dismissals were lawful. The applicants appealed on cassation for unification of doctrine to the Supreme Court, which declared the appeals inadmissible. The applicants lodged an amparo appeal, which the Constitutional Court declared inadmissible due to its lack of constitutional relevance.

The applicants complain mainly under Articles 6, 8 and 10 of the Convention that the national courts' judgments upholding the company's decision to use those social media exchanges from other judicial proceedings as the basis for their dismissals amounted to violations of their rights to a fair trial, to respect for private life and freedom of expression.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicants' right to a fair trial in view of the use against them of evidence obtained from other labour proceedings (see López Ribalda and Others, cited above, §§ 149-152 with further references)?

2. Did the applicants' dismissal and/or the use of private electronic communication as its basis amount to a violation of the applicants' right to respect for their private life, contrary to Article 8 of the Convention?

3. Have the authorities fulfilled their positive obligations under Article 8 in order to ensure the protection of the applicants' right to private life and correspondence (see Bărbulescu v. Romania [GC], no. 61496/08, §§ 109-121, 5 September 2017)?

4. Has there been an interference with the applicants' freedom to express themselves in private correspondence through WhatsApp? If so, has there been a violation of the applicants' right to freedom of expression, contrary to Article 10 of the Convention?

M.M. and A.M. v. Sweden (no. 31218/23)

Article 3 – Article 8 – Deportation to Afghanistan in breach of human rights

SUBJECT MATTER OF THE CASE

The case concerns the deportation of the applicants to Afghanistan following their unsuccessful requests for asylum in Sweden.

The applicants are brothers, born in 2000 and 2003 respectively, both Afghan nationals of Hazara origin. In 2015 they arrived in Sweden, together with their parents and sisters, and the whole family requested asylum. The Swedish authorities refused their request and ordered their deportation in a decision which became final on 22 October 2020.

In December 2021 the applicants were granted new examinations, due to changed circumstances following the Taliban takeover in Afghanistan. In these new proceedings the applicants' requests for asylum were refused and the previous deportation order thus remained in force. In separate proceedings the applicants' mother and sisters were granted refugee status and residence permits in Sweden. Their father's case is pending.

In July 2023 the applicants applied to the Swedish authorities, claiming that there were impediments to the enforcement of the deportation order, relying on alleged risks they faced upon return and their ties to Sweden and their family. The authorities found that there were no new circumstances which amounted to impediments to enforcement and thus decided not to grant the applicants residence permits.

The applicants complain that, if they were to be deported, they would face a risk of being subjected to treatment in breach of Article 3 of the Convention due to, among other things, being Shia Muslims of Hazara ethnicity, their lack of knowledge of Afghan society and language and the fact that they had

adapted to a “Westernised way of life”. Furthermore, they complain that their deportation would be in breach of their right to respect for private and family life under Article 8 of the Convention.

The applicants’ request for an interim measure under Rule 39 of the Rules of Court was granted by the Court on 16 November 2023.

QUESTIONS TO THE PARTIES

1. In the light of the applicants’ claims, the documents which have been submitted and relevant country information on Afghanistan, would they face a risk of being subjected to treatment in breach of Article 3 of the Convention if the deportation order were to be enforced?

In particular, would they face such a risk on account of their Hazara origin, alone or in combination with any further individual circumstances, taking into consideration recent country information regarding the situation in Afghanistan for individuals of Hazara ethnicity and individuals perceived as influenced by foreign values (see, for example, UN High Commissioner for Refugees (UNHCR), Guidance Note on the International Protection Needs of People Fleeing Afghanistan (Update I), February 2023, § 16 (iv), and European Union Agency for Asylum (EUAA), Country Guidance: Afghanistan 2024, 17 May 2024, Common analysis, sections 3.13 and 3.14.2)?

2. Given the specific circumstances of the case, is there “family life” within the meaning of Article 8 of the Convention between the applicants and their parents and sisters (see, for example, see Slivenko v. Latvia [GC], no. 48321/99, § 97, ECHR 2003-X; Osman v. Denmark, no. 38058/09, § 55, 14 June 2011; and Pormes v. the Netherlands, no. 25402/14, § 47, 28 July 2020)?

Did the refusal to grant the applicants residence permits entail a violation of the applicants’ rights to respect for their family life and/or private life contrary to Article 8 of the Convention?

Did the competent domestic authorities and courts sufficiently examine that question, taking into account all relevant elements?

N.A. v. Sweden (no. 36702/23)

Article 2 – Article 3 – Deportation of Palestinian with Stateless nationality status to Syria or Iraq

SUBJECT MATTER OF THE CASE

In 2012 the applicant, a stateless person of Palestinian origin, born in Iraq in 1984 and having lived with his family in Syria from 2006 to 2011, requested asylum in Sweden. The Swedish authorities refused his request and ordered his deportation to Iraq. The deportation order became statute-barred in 2019, whereupon the applicant requested asylum again. In these new proceedings the authorities found that the applicant’s need for protection should be assessed in the light of the situation in Syria, not Iraq. The applicant relied on, inter alia, the war and the situation in Syria for stateless persons of Palestinian origin. The authorities refused the request and ordered the applicant’s deportation to Syria. The decision became final on 17 August 2021.

The applicant complains that if he were to be deported, he would face a real risk of being killed.

QUESTIONS TO THE PARTIES

1. Will the applicant be deported to Syria or Iraq?

2. In the light of the applicant's claims, the documents which have been submitted and relevant country information, would he face a risk of being subjected to treatment in breach of Article 2 and/or Article 3 of the Convention if he were deported to Syria or Iraq?

3. In particular, if the applicant were deported to Syria, would he face such a risk on account of being a stateless person of Palestinian origin having lived in the Yarmouk refugee camp, taking into consideration recent country information on the situation in the area and that of returnees to Syria (see, inter alia, European Union Agency for Asylum (EUAA), Syria: Targeting of Individuals, September 2022, section 12, and EUAA, Country Guidance: Syria, February 2023, sections 2, 4.1.4 and 5.3.4)?

Z. S. v. Switzerland (no. 20272/23)

Article 2 – article 3 – article 8 – expulsion of Burkinabe national with four children present in Switserland following his conviction for rape of his daughter

SUBJECT MATTER OF THE CASE

The application concerns the expulsion of a Burkinabe national born in 1970, who entered Switzerland in 2006. He has two daughters from a previous relationship in Burkina Faso (born in 2000 and 2004), who joined him in Switzerland in 2010. Later, he had two children (born in 2016 and 2020) with two different Swiss nationals and is currently in a relationship with the mother of his son born in 2020.

In May 2019 his eldest daughter (born in 2000) filed a criminal complaint against the applicant, accusing him of committing sexual acts against her over a period of several months. By judgment of 29 June 2021 the Court of First Instance of the Canton of Jura sentenced him to six years' imprisonment, inter alia, for multiple indecent assault, incest and rape and ordered his expulsion for ten years by virtue of Article 66a of the Criminal Code. The applicant appealed to the Cantonal Supreme Court of Jura, claiming, inter alia, that he would be in danger if he were to return to Burkina Faso because of the unstable and violent situation and his political activities in Burkina Faso. In its decision of 10 February 2022, the Cantonal Supreme Court of Jura essentially confirmed the verdict of the Court of First Instance but reduced the sentence to five years' imprisonment. It upheld the expulsion order without assessing the situation in Burkina Faso. In his appeal to the Federal Supreme Court, the applicant again referred to the violent situation following the military coups of January and September 2022. He also claimed that he was politically exposed in Burkina Faso as a relative of a former president. To substantiate his claims, he relied on information provided by the Swiss Federal Department of Foreign Affairs. The Federal Supreme Court rejected the applicant's appeal on 20 December 2022 (6B_396/2022), without separately addressing these claims. With regard to the partner and the youngest child, it stated that they could easily settle in Burkina Faso.

The applicant complains that if he were returned to Burkina Faso he would be exposed to a real risk of being subjected to treatment contrary to Articles 2 and 3 of the Convention due to the unstable security situation in that country. He also complains that his expulsion would violate Article 8 of the Convention because of his family life in Switzerland.

QUESTIONS TO THE PARTIES

1. Before deciding on the applicant's expulsion, did the authorities consider the applicant's claim that he would be exposed to a risk of being subjected to inhuman treatment contrary to Articles 2 and 3 of the Convention if returned to Burkina Faso?

2. Before executing the expulsion order, will the competent authorities make such an assessment? If so, does the assessment constitute an appealable decision?

3. In the light of the applicant's claims, the documents which have been submitted and the relevant country information, would he face a risk of being subjected to treatment in breach of Articles 2 and 3 of the Convention if the expulsion order were enforced?

4. Would there be a violation of the applicant's right to respect for his private and/or family life contrary to Article 8 of the Convention if the expulsion order were enforced? In this context, did the authorities sufficiently consider the applicant's family situation when ordering his expulsion?

YURT and 199 others v. Türkiye (no. 35216/21) ; TOPRAK and 199 others v. Türkiye (no. 16148/21) ; KAYA and 199 others v. Türkiye (no. 41926/21) ; KALELİ and 199 others v. Türkiye (no. 17400/22) ; ATEŞ and 199 others v. Türkiye (no. 27776/19)

Article 6 - Article 7 – Conviction of membership of "terrorist" organisation FETÖ/PDY because of use of encrypted messaging app Bylock

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The applications mainly concern the applicants' conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması, hereinafter referred to as "the FETÖ/PDY"), considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016.

3. According to the information submitted by the applicants, the convictions were based, inter alia, on their alleged use of the encrypted messaging application "ByLock", which the domestic courts held was used exclusively by FETÖ/PDY members and which therefore constituted sufficient evidence to prove on its own that a person had been part of the FETÖ/PDY's hierarchical structure.

4. The broader domestic background and context to the present applications was set out by the Grand Chamber in the case of Yüksel Yalçınkaya v. Türkiye ([GC], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023).

B. Relevant domestic law and practice

5. A description of the relevant domestic law and practice can be found in Yüksel Yalçınkaya (cited above, §§ 141-93).

COMPLAINTS

6. The applicants mainly complained that their trial and conviction for membership of the FETÖ/PDY had violated the principle of no punishment without law under Article 7 of the Convention and/or the right to a fair trial under Article 6 § 1.

QUESTIONS TO THE PARTIES

Since the issues raised by the present applications are already the subject of well-established case-law of the Court (see Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, §§ 237-356, 26 September 2023), the Court does not put any questions to the parties or require any observations on these applications. However, if they so wish, the Government may submit observations on the complaints set out in the appended table, to the extent that they refer essentially to the factual aspects of the applications and not to preliminary objections or legal issues already decided by the Court in Yüksel Yalçınkaya (cited above) or other similar cases against Türkiye.

UYĞUR v. Türkiye (no. 11219/23)

Article 6 – Access to court not granted due to interpretation of time limit

SUBJECT MATTER OF THE CASE

The application mainly concerns, under Article 6 § 1 of the Convention, an alleged breach of the applicant's right of access to a court due to the Constitutional Court's interpretation of the statutory thirty-day time-limit for lodging applications when declaring his individual application inadmissible as being lodged out of time.

Under the same provision, the application further pertains to an alleged breach of the applicant's right to be tried within a reasonable time, given that the proceedings before the domestic courts lasted approximately seven years and seven months before three levels of jurisdiction.

The applicant was indicted with (i) disrupting education and training (Article 112 of the Turkish Criminal Code) and (ii) resisting an order by the security forces for the dispersal of an unlawful demonstration (section 32 of Law no. 2911 on Marches and Demonstrations), but was subsequently acquitted by a first-instance court on 18 September 2020. Upon the public prosecutor's appeal, the Istanbul Regional Court of Appeal examined the case and upheld his acquittal by a decision dated 16 December 2021. This judgment became final on 7 January 2022, no appeal having been lodged against it.

On 25 January 2022 the applicant lodged an application with the Constitutional Court whereby he complained of a breach of his right to a trial within a reasonable time. On 20 October 2022 the Constitutional Court found the application inadmissible on account of the applicant's failure to comply with the thirty-day time-limit, holding that he should be taken to have been apprised of the Istanbul Regional Court of Appeal's decision (dated 16 December 2021) on 20 December 2021, on which date his lawyer had read the appeal court's judgment on the National Judiciary Informatics System ("UYAP"). According to the applicant's submissions, he was notified of the Constitutional Court's decision on 29 October 2022.

The applicant complains, under Article 6 § 1 of the Convention, that the Constitutional Court's interpretation of the time-limit for lodging applications entailed a violation of his right of access to a court, because it had been calculated from the date (20 December 2021) he had learnt of the Istanbul Regional Court of Appeal's decision, rather than the date it had become final (7 January 2022). In any event, on 20 December 2021 the impugned decision had not been final, because the public prosecutor's statutory right to lodge an appeal in cassation within fifteen days from the announcement of the decision had not expired on that date. Accordingly, the Constitutional Court's decision to dismiss the application he had lodged on 25 January 2022 as being lodged out of time had been erroneous, thereby impinging on his right of access to a court.

The applicant further complains of a breach of Article 6 § 1 of the Convention owing to the excessive duration of the proceedings before the domestic courts.

QUESTIONS TO THE PARTIES

1. Has there been a breach of the applicant's right of access to a court on account of the Constitutional Court's decision dated 20 October 2022 whereby his individual application was found inadmissible owing to his alleged non-compliance with the thirty-day time-limit for lodging applications (see, mutatis mutandis, Üçdağ v. Turkey, no. 23314/19, §§ 37-40, 31 August 2021)?

2. Was the length of the proceedings in the present case in breach of the "reasonable time" requirement laid down in Article 6 § 1 of the Convention (see, among other authorities, Pélissier and Sassi v. France [GC], no. 25444/94, § 67, ECHR 1999-II)?

ŞILA v. Türkiye (no. 21529/19)

Article 8 – article 6 – Confiscation in prison of "books that might have negative consequences"

SUBJECT MATTER OF THE CASE

The application concerns the prison administration's confiscation of two books, The Art of War (Sun Zi) and The Honourable Departure from the Ideological Neighbourhood to Türkiye, which the applicant wanted to give to his wife during her visit. The prison authorities based their decisions on the fact that these books contained notes that might have negative consequences.

Relying on Article 8 of the Convention, the applicant complains that his right to respect for his private life and correspondence with his wife had been infringed.

He further complains under Article 6 of the Convention about the lack of reasoning in the domestic courts' decisions.

Relying on Article 1 of Protocol No. 1 to the Convention, the applicant also complains that the confiscation order constituted an unjustified interference with his right to protection of his possessions.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicant's right to respect for his private life and correspondence, within the meaning of Article 8 § 1 of the Convention, on account of the confiscation of the books the applicant wished to give to his wife?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (compare Halit Kara v. Türkiye, no. 60846/19, §§ 43-47, 12 December 2023; see also Vlasov v. Russia, no. 78146/01, §§ 135-139, 12 June 2008)?

ÇAĞATAY GÖKÇE v. Türkiye and 1 other application (nos. 12804/23 and 14667/23)

Article 6 - Article 10 – article 11 – conviction of lawyer for rendering services to illegal armed terrorist organization

SUBJECT MATTER OF THE CASE

The applications concern the applicants' conviction to three years and nine months' imprisonment for membership of an illegal organisation, pursuant to Articles 220 § 7 and 314 § 2 of the Turkish Criminal Code. They were convicted of: having worked as lawyers at the law firm Halkın Hukuk Bürosu ("the Firm"), which was allegedly linked to the DHKP-C (Devrimci Halk Kurtuluş Partisi-Cephesi – Revolutionary People's Liberation Party-Front), an illegal armed terrorist organisation that provided communication between the DHKP-C and its members in prison; having participated in a number of demonstrations, press statements and activities allegedly organised by the DHKP-C; and having possession of organisational documents that were among the digital documents found during the police search.

In their convictions, the domestic courts relied on the following evidence: statements by a protected witness who claimed that the applicants had been active as lawyers for an illegal terrorist organisation; the fact that they had participated in the "Justice for Berkin" demonstration[1] and other activities organised by Halk Cephesi, allegedly a branch of that terrorist organisation; and the digital material found during the police search, which included organisational documents. The domestic courts noted that the applicant Çağatay Gökçe had also participated in a demonstration organised by Halk Cephesi in Diyarbakır province to protest against the curfews.

Relying on Article 6 of the Convention, the applicants complained that the criminal proceedings had been unfair in terms of the establishment of the facts and respect for their rights of defence. They further alleged, under the same head, that the domestic courts had convicted them for acts that fell within the scope of their professional practice as lawyers. The applicants also complained that the domestic courts had not given sufficient reasons for their judgments.

Relying on Articles 10 and 11 of the Convention, the applicants complained that their conviction constituted a violation of their right to freedom of expression and/or freedom of assembly. They argued that the fact that they had been convicted on account of their professional activities as lawyers and their participation in demonstrations did not comply with the foreseeability and legality requirements of Articles 10 and/or 11 and had a chilling effect on their right to freedom of expression and freedom of assembly.

QUESTIONS TO THE PARTIES

1. In the light of the principles emerging from the Court's case-law (see, for example, Gülcü v. Turkey, no. 17526/10, §§ 91-117, 19 January 2016; Işıkırık v. Turkey, no. 41226/09, §§ 53-70, 14 November 2017; Bakır and Others v. Turkey, no. 46713/10, §§ 50-69, 10 July 2018; Daş v. Turkey [Committee], no. 36909/07, §§ 22-26, 2 July 2019; Çiçek and Others v. Türkiye, nos. 48694/10 and 4 others, §§ 155-163, 22 November 2022), does the applicants' conviction to three years and nine months' imprisonment for membership of an illegal organisation under Article 220 § 7 and Article 314 § 2 of the Criminal Code on account of their professional activities as lawyers and for their participation in certain meetings constitute an interference with their right to freedom of expression and freedom of assembly within the meaning of Articles 10 and/or 11 of the Convention?

2. Was the interference prescribed by law within the meaning of Article 10 § 2 and Article 11 § 2 of the Convention? Did the acts of which the applicants were convicted constitute a criminal offence under domestic law at the time they were committed? In particular, was the judicial interpretation leading to the conviction for membership of a terrorist organisation, as regards the facts with which the applicants were charged, appropriate to the nature of the offence in question and foreseeable within the meaning

of Article 314 § 2 of the Criminal Code (Daş, cited above, §§ 22-26, Bakır and Others v. Turkey, no. 46713/10, §§ 56-69, 10 July 2018)?

3. Did the interference pursue a legitimate aim?

4. Was the interference necessary and did it enable a fair balance to be struck between the requirements of the general interest of the community and the imperatives of protecting the applicants' fundamental rights?

Furthermore, were the fairness of the proceedings and the procedural guarantees afforded to the applicants, which are elements to be taken into account in assessing the proportionality of the interference, respected in the present case (Baka v. Hungary [GC], no. 20261/12, § 161, 23 June 2016, and the references cited therein)? 2. Were the criminal proceedings against the applicants fair overall, as required by Article 6 § 1 and/or the procedural safeguards provided for in Articles 10 and/or 11 of the Convention, as regards the principle of equality of arms as regards the admission and assessment of evidence by the courts and respect for the applicants' rights of defence (see, mutatis mutandis, Hatice Çoban v. Turkey, no. 36226/11, §§ 40 and 43-47, 29 October 2019 and Imrek v. Turkey, no. 45975/12, §§ 21-23 and 40-47, 10 November 2020)? In particular, did the national courts provide sufficient grounds for a conviction for membership of an armed terrorist organisation under Article 314 § 2 of the Criminal Code (Vetrenko v. Moldova, no. 36552/02, § 55, 18 May 2010 and Ajdarić v. Croatia, no. 20883/09, § 51, 13 December 2011)?

KAHRAMAN v. Türkiye (no. 34184/20)

Article 8 – article 10 – article 1 Protocol No. 1 – confiscation of personal diary in prison cell

SUBJECT MATTER OF THE CASE

The application concerns the confiscation of the applicant's personal diary that he kept in his prison cell. The prison authorities found the content of the diary inappropriate, considering that it was denigrating the State, compromising prison security, and threatening public order, and sent it to the public prosecutor for further examination.

Relying on Articles 8 and 10 of the Convention, the applicant complains that his right to respect for his private life and his freedom of expression had been infringed due to the confiscation of his diary.

Relying on Article 1 of Protocol No. 1 to the Convention, the applicant also complains that the confiscation of his personal diary constituted an unjustified interference with his right to protection of his possessions.

QUESTION TO THE PARTIES

Has there been an interference with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention, by the confiscation of his personal diary in prison?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see, mutatis mutandis, Chocholáč v. Slovakia, no. 81292/17, §§ 52-78, 7 July 2022 and Soini and Others v. Finland, no. 36404/97, §§ 44-46, 17 January 2006)?

ATALAY v. Türkiye (no. 11503/24)

Article 5 - Article 6 - Article 7 - Article 10 - Article 11 - Article 18 - Article 3 Protocol No. 1 – applicant elected to parliament after criminal conviction for insurectionist activity resulting in jail sentence – conflicting decisions between Court of Cassation and Constitutional Court – Cassation upholds prison sentence and invalidates election to parliament – Constitutional Court upholds parliamentary immunity and insists on capacity to sit in parliament and need to have criminal proceedings reopened and suspended

STATEMENT OF FACTS

1. The applicant, Mr Şerafettin Can Atalay, is a Turkish national, who was born in 1976 and lives in Istanbul. He is represented before the Court by Mr F. İlkiz and Mr E. İşler, lawyers practising in Istanbul.

2. The application concerns the applicant's continued detention following his election as an MP in the general elections of 14 May 2023 and the Court of Cassation's refusal to release him despite the Constitutional Court's judgments in his favour, wherein that court found a violation of the applicant's right to liberty and security, as well as of his right to be elected and engaged in political activity under the Constitution.

3. The applicant complains of a violation of Articles 5, 6, 7, 10, 11 and 18 of the Convention, as well as Article 3 of Protocol No. 1 to the Convention.

THE CIRCUMSTANCES OF THE CASE

4. The facts of the case, as submitted by the applicant, may be summarised as follows.

5. The applicant is a lawyer. On 25 April 2022 the Istanbul Assize Court convicted him of attempting to overthrow the Government through force and violence and sentenced him to eighteen years' imprisonment, pursuant to Article 312 § 1 of the Criminal Code, for his acts in the context of the Gezi Park events which had taken place in 2013. The Assize Court stated that, with his acts before and during the course of the Gezi Park events, the applicant had aided Mr Kavala, the main perpetrator, and was one of the important members of the Taksim Solidarity, a collective which the court considered to have provided for the acceleration of violence during the events (for more information on the Gezi Park events, see Kavala v. Turkey, no. 28749/18, §§ 15-22, 10 December 2019). Taking account of the nature of his conviction and holding that there was a risk of his absconding, the Assize Court ordered the applicant's detention.

6. The applicant was placed in detention following the ruling.

7. On 28 December 2022 the Istanbul Regional Court of Appeal upheld the judgment. The applicant appealed against that decision before the Court of Cassation.

8. While his appeal was still pending, the applicant was elected as an MP from Hatay from the Workers Party of Türkiye in the parliamentary elections of 14 May 2023.

9. Subsequently, the applicant filed a petition with the Court of Cassation, requesting his release and the suspension of the criminal proceedings against him, in line with Article 83 of the Constitution regulating parliamentary immunity. Referring to previous judgments of the Constitutional Court and a decision of the Joint Criminal Chambers of the Court of Cassation, he argued that while Article 83 mentioned the situations listed in Article 14 of the Constitution (see paragraph 24 below) as exceptions to parliamentary immunity, those exceptions could not be clearly and foreseeably established.

10. By decisions of 13 and 17 July 2023, respectively, the Court of Cassation rejected the applicant's request for release and his objection to that rejection. It stated that although the Constitutional Court had found in previous cases that Article 14 of the Constitution did not establish the exceptions to parliamentary immunity in a clear and foreseeable manner, that court could not render a Constitutional provision unenforceable through its decisions within the scope of the individual application mechanism. Considering that legal certainty could also be provided by judicial decisions, the Court of Cassation concluded that the offence the applicant was convicted of, namely, attempting to overthrow the Government through force and violence, fell within the scope of Article 14 of the Constitution. Accordingly, he could not benefit from parliamentary immunity.

11. On 20 July 2023 the applicant filed an individual application with the Constitutional Court, complaining of violations of his right to liberty and security, right to a fair trial and right to be elected and to engage in political activity.

12. While his individual application was pending before the Constitutional Court, on 28 September 2023 the Court of Cassation upheld the applicant's conviction and forwarded a copy of its decision to the Turkish Grand National Assembly ("the National Assembly"), pursuant to Article 84 § 2 of the Constitution, which provides that loss of MP status would occur when the final conviction decision was notified to the National Assembly.

13. On 25 October 2023 the Constitutional Court found a violation of the applicant's right to liberty and security and his right to be elected and to engage in political activity under Articles 19 and 67 of the Constitution, respectively. Reiterating its findings in a previous case, the Constitutional Court stated that there were no clear and foreseeable constitutional or legal provisions that allowed to establish the content of the situations listed in Article 14 of the Constitution. According to it, Articles 83 and 14 of the Constitution should be interpreted by a rights-based approach. However, not only had the domestic courts failed to adopt such an approach, but there existed also no clear and foreseeable provisions to guide them to do so. It concluded accordingly that neither the interference with the applicant's right to be elected nor his continued detention were prescribed by law.

14. The Constitutional Court forwarded its judgment to the Istanbul Assize Court, ordering the latter to suspend the execution of the applicant's sentence, to ensure his release from prison, to reopen the criminal proceedings against him and to suspend the criminal proceedings following the reopening.

15. By a decision of 1 November 2023, the Assize Court forwarded the file to the Court of Cassation, stating that the violations found by the Constitutional Court's judgment actually stemmed from the decision of the Court of Cassation. It also noted that the Court of Cassation had upheld the applicant's conviction in the meantime, and that that court must make a fresh assessment in view of the new legal situation.

16. On 8 November 2023 the Court of Cassation reiterated the findings in its decision of 13 July 2023 and stated that the legislator had intentionally omitted to list specific offences in Article 14 of the Constitution which allowed for the interpretation of each offence attributed to MPs in its specific circumstances by the first instance and appeal courts. In that respect, it concluded once again that the offence of which the applicant had been convicted fell within the scope of Article 14 of the Constitution. It also noted that the Constitutional Court had disregarded its decision upholding the applicant's conviction, which had been delivered before its finding of a violation. Considering that the Constitutional Court acted like a fourth instance court over the other supreme courts and went so far as to threaten the members of the Court of Cassation, it stated that the former had exceeded the limits of its jurisdiction and abused its authority.

17. The Court of Cassation therefore decided, unanimously, not to comply with the decision of the Constitutional Court, which, according to it, did not have any legal value, and to forward the decision to the National Assembly for the latter to remove the applicant's MP status. It also decided to file a criminal complaint against the members of the Constitutional Court, who had voted for a violation of the applicant's rights, for unlawfully exceeding the limits of their authority.

18. On 24 November 2023 the applicant filed a fresh individual application with the Constitutional Court, this time additionally complaining of the non-execution of the Constitutional Court's judgment in his favour and the decisions of the Assize Court and Court of Cassation to that effect.

19. On 21 December 2023 the Constitutional Court once again found a violation of the applicant's right to liberty and security and his right to be elected and to engage in political activity. It also found a violation of the applicant's right to individual application under Article 148 § 3 of the Constitution. The Constitutional Court stated that the binding nature of its judgments was regulated by the Constitution and that the decisions of the Assize Court and Court of Cassation lacked any legal grounds. In that respect, it referred to previous decisions of the Court of Cassation wherein the latter had underlined that point, as well as a decision of the Joint Criminal Chambers of the Court of Cassation which concluded that the scope of Article 14 of the Constitution needed to be interpreted and determined by

the Constitutional Court. Reiterating its orders as to the redress, it decided to forward the decision to the Istanbul Assize Court.

20. On 27 December 2023 the Assize Court decided to forward the case to the Court of Cassation on the same grounds it had relied on in its previous decision dated 1 November 2023.

21. On 3 January 2024 the Court of Cassation decided not to comply with the Constitutional Court's judgment, mainly on the basis of the reasoning in its previous decision. It noted that the present case was not the first time it refused to comply with the Constitutional Court's judgments regarding individual applications and that the latter could not interpret Constitutional provisions in a manner that would deprive them of all meaning. It once again submitted the decision to the National Assembly.

22. On 12 January 2024 the applicant filed another application with the Constitutional Court, reiterating the complaints in its previous application. This time, he also complained of a violation of Article 18 of the Convention.

23. On 30 January 2024 Court of Cassation's decision of 3 January 2024 was read in the Plenary of the National Assembly and it was announced that the applicant lost his status as an MP pursuant to Article 84 § 2 of the Constitution.

RELEVANT LEGAL FRAMEWORK

24. Articles 14 and 83 of the Constitution were set out in Selahattin Demirtaş v. Turkey (no. 2) ([GC], no. 14305/17, §§ 129 and 134, 22 December 2020).

COMPLAINTS

25. The applicant complains under Article 5 of the Convention that his continued detention was not lawful and amounted to an arbitrary deprivation of liberty as he acquired parliamentary immunity with his election as an MP on 14 May 2023. In that connection, relying also on Article 7, he argues that the Court of Cassation unlawfully interpreted Articles 14 and 83 of the Constitution while that interpretation could only be made by the Constitutional Court, and rejected his requests for release, disregarding his parliamentary immunity.

26. He maintains under Article 3 of Protocol No. 1 to the Convention that he was prevented from sitting as an MP and performing his parliamentary duties as a result of the Court of Cassation's unlawful and restrictive interpretation of Article 14 of the Constitution, which, as also concluded by the Constitutional Court, did not clearly and foreseeably establish the exceptions to parliamentary immunity. In that respect, he also relies on Articles 10 and 11 of the Convention.

27. Relying on Articles 5 and 6 of the Convention, the applicant states that despite the Constitutional Court's repeated findings of violations of his right to liberty and security and his right to be elected, which required his release and the reopening and suspension of the criminal proceedings against him, the Istanbul Assize Court and the Court of Cassation failed to comply with those decisions. He argues that the non-execution of the Constitutional Court's judgments led to a judicial crisis.

28. He complains under Article 18, in conjunction with Articles 5, 6, 10 and 11 of the Convention and Article 3 of Protocol No. 1 to the Convention, that his rights were restricted for purposes other than those prescribed by the Convention, which, according to him, have been demonstrated by certain statements of the President of the Republic and other State officials;

QUESTIONS TO THE PARTIES

1. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention, taking into account the Constitutional Court's finding of a violation on account of his continued detention following his election as an MP? In particular, in view of the Constitutional Court's judgments of 25 October and 21 December 2023 ordering the applicant's release from prison, as well as the reopening and suspension of the criminal proceedings against him, was his continued deprivation of liberty "lawful"

and "in accordance with a procedure prescribed by law" for the purposes of Article 5 § 1 (see, mutatis mutandis, Mehmet Hasan Altan v. Turkey, no. 13237/17, § 139, 20 March 2018)?

2. Did the applicant have at his disposal an effective procedure by which he could challenge the lawfulness of his detention, as required by Article 5 § 4 of the Convention? In particular, has there been a violation of that provision due to the Court of Cassation's refusal to release the applicant despite the Constitutional Court's finding that the applicant's continued detention was not lawful (see Khlaifia and Others v. Italy [GC], no. 16483/12, §§ 128-31, 15 December 2016, and Yılmaz Aydemir v. Türkiye, no. 61808/19, §§ 36-38, 23 May 2023)?

3. Is Article 6 of the Convention applicable to the proceedings concerning the non-execution of the Constitutional Court's judgments finding a violation of the applicant's rights corresponding to Article 5 of the Convention and Article 3 of Protocol No. 1 to the Convention? Has there been a violation of the applicant's right of access to a court under Article 6 § 1 of the Convention on account of the non-execution of the Constitutional Court's judgments at issue (see for the relevant principles Bursa Barosu Başkanlığı and Others v. Turkey, no. 25680/05, §§ 133-35, 19 June 2018, with further references)?

4. Has there been a breach of the applicant's right under Article 3 of Protocol No. 1 to the Convention to sit as a member of parliament once elected in free elections (see Selahattin Demirtaş v. Turkey (no. 2) [GC], no. 14305/17, § 386, 22 December 2020), in view of his continued detention following his election and the eventual loss of his MP status?

5. Has the applicant exhausted the domestic remedies with regard to his complaint under Article 18 of the Convention? If so, were the restrictions imposed by the State in the present case applied for a purpose other than those envisaged by Articles 5 and 6 and Article 3 of Protocol No. 1, contrary to Article 18 (see Selahattin Demirtaş, cited above, §§ 421-22, with further references)?

ZAKUTNIY v. Ukraine and 7 other applications (no. 52652/20)

Article 3 – article 13 – inadequate conditions of detention and lack of effective domestic remedy

SUBJECT MATTER OF THE CASES

The applications concern effectiveness of the domestic compensatory remedy with regard to inadequate conditions of detention.

The applicants, who had been detained for various periods in allegedly inhuman and degrading conditions, lodged civil claims before national courts and, except for application no. 29177/21, were awarded compensation in respect of non-pecuniary damage, which they find insufficient. A short summary of each application is provided in the appendix.

Relying, explicitly or implicitly, on Articles 3 and 13 of the Convention, the applicants complain of the inadequate conditions of their detention and the lack of any effective domestic remedy in this respect.

QUESTIONS TO THE PARTIES

1. Did the material conditions of the applicants' detention amount to inhuman or degrading treatment, in breach of Article 3 of the Convention (see Muršić v. Croatia [GC], no. 7334/13, 20 October 2016; Melnik v. Ukraine, no. 72286/01, 28 March 2006; Sukachov v. Ukraine, no. 14057/17, 30 January 2020)?

2. Was the remedy used by the applicants effective, in particular in the light of the Court's case-law establishing the criteria for an adequate compensatory remedy, as required by Article 13 of the Convention (see Sukachov v. Ukraine, no. 14057/17, § 159, 30 January 2020)?

The Government are requested to provide relevant examples of domestic case-law and statistics as regards the use of this compensatory civil remedy, which could allow the Court to evaluate its availability and effectiveness in relation to the complaints about poor conditions of detention.

3. Did the applicants have at their disposal other effective domestic remedies for their complaints under Articles 3, as required by Article 13 of the Convention?

KOBYLYANSKYY v. Ukraine (no. 64361/17)

Article 6 §1 – article 2 Protocol No. 4 – article 13 – unreasonable length of criminal proceedings and undertaking not to abscont

SUBJECT MATTER OF THE CASE

The application concerns the applicant's complaints about the unreasonable length of the criminal investigation against him, in breach of Article 6 § 1 of the Convention, the lengthy restriction on his freedom of movement following application of the undertaking not to abscond, in breach of Article 2 of Protocol No. 4, and the lack of an effective domestic remedy for the above complaints, as required by Article 13 of the Convention.

On 25 June 2012 a notification of suspicion in the framework of the criminal investigation into an abuse of power by a group of police officers (unlawful use of force and detention of an individual) was served on the applicant. On the same day an undertaking not to abscond was imposed on him. On 9 May 2023 the Malynovskyi District Court of Odesa terminated the criminal investigation against the applicant as time barred. The court also lifted an undertaking not to abscond that was imposed on the applicant.

QUESTIONS TO THE PARTIES

1. Was the length of the criminal proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?

2. Has there been a restriction on the applicant's right to liberty of movement, guaranteed by Article 2 § 1 of Protocol No. 4, by virtue of the undertaking, which he was obliged to give, not to abscond? If so, was that restriction in accordance with the law and necessary in terms of Article 2 § 3 of Protocol No. 4?

3. Did the applicant have at his disposal an effective domestic remedy for his Convention complaints, as required by Article 13 of the Convention?

KIRYEYEV v. Ukraine (no. 56234/16)

Article 6 §1 – lack of access to court – applicant was dismissed from post of a judge by a Presidential Decree for having authorised the arrest of a former Prime Minister – alleged political motives

SUBJECT MATTER OF THE CASE

The application mainly concerns the applicant's lack of access to court regarding his action of 17 February 2016 challenging his dismissal from the post of a judge pursuant to the President's Decree of 18 January 2016. The decree was issued on the basis of the High Council of Justice's ("the HCJ") decision of 5 November 2015 finding that the applicant had committed a "breach of oath" when authorising the arrest of a former Prime-Minister in 2011 and proposing to dismiss him from the judicial position.

In so far as the applicant's action concerned the HCJ's decision of 5 November 2015, it was rejected as lodged after the expiry of the statutory one-month time-limit initially by the Higher Administrative Court's ("the HAC") ruling of 22 February 2016 and eventually, in a separate set of the proceedings instituted by the applicant in March 2016, by the final decision of the Supreme Court ("the SC") of 11 October 2016. The courts dismissed the applicant's argument that he had been informed of the HCJ's decision of 5 November 2015 only on 8 February 2016 because he had been away from his residence "trying to avoid political persecution" since late February 2014. The courts found that the applicant must have become aware of the HCJ's decision when it had been published on the HCJ's official Internet site on 1 December 2015. The courts also found no evidence of the alleged "political persecution".

In so far as the applicant's action concerned the President's Decree of 18 January 2016, the HAC rejected it as unsubstantiated on 2 March 2016 finding that the President had lawfully exercised his relevant powers. On 4 April 2016 the SC rejected the applicant's appeal against the HAC's judgment of 2 March 2016 as lodged out of time and refused his request for an extension of the statutory ten-day time-limit, in which he claimed that he had received the full text of the contested judgment on 12 March 2016. The SC noted that the applicant's lawyer had been present at the hearing of 2 March 2016 during which the introductory and operative parts of the contested judgment had been pronounced and that the time-limit in question had started to run on that date.

The applicant complains of a violation of Article 6 § 1 of the Convention regarding the courts' refusal to examine his claims and appeals on the merits.

QUESTION TO THE PARTIES

Did the applicant have access to a court for the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention, regard being had to the fact that his action against the decision of the High Council of Justice of 5 November 2015 and his appeal against the judgment of the Higher Administrative Court of 2 March 2016 were not examined on the merits for having been lodged out of time (see Melnyk v. Ukraine, no. 23436/03, §§ 22-31, 28 March 2006; Mushta v. Ukraine, no. 8863/06, §§ 37-47, 18 November 2010; and Kravchenko v. Ukraine, no. 46673/06, §§ 39-50, 30 June 2016)?

KOLESNYK v. Ukraine and 3 other applications (no. 24465/23)

Article 5 – article 6 §1 – pre-trial detention of persons accused of national security related offences – failure of relevant and sufficient reasons of domestic courts

SUBJECT MATTER OF THE CASES

The applicants are accused of certain national security-related offences. The domestic courts, in placing them in pre-trial detention or in extending their detention, relied in part on Article 176 § 6 of the Code of Criminal Procedure (introduced on 14 April 2022) which provides that pre-trial detention is the only preventive measure to be applied to defendants suspected of such offences (see, mutatis mutandis, Grubnyk v. Ukraine, no. 58444/15, §§ 110-30, 17 September 2020, and compare, for example, Avraimov v. Ukraine, no. 71818/17, §§ 57-72, 25 March 2021 [Committee], Aleksandrovskaya v. Ukraine, no. 38718/16, §§ 105-13, 25 March 2021 [Committee]; Kraynyak v. Ukraine, 68353/17, §§ 16-25, 16 February 2023 [Committee]).

The applicants mainly complain, invoking Articles 5 §§ 1, 3, 4 and 6 § 1 of the Convention, that, in part because of the reliance on the above-mentioned domestic law provision, the domestic courts failed to give relevant and sufficient reasons for their detention.

Additional facts related to particular applications are as follows.
Applications nos. 24465/23 Kolesnyk and 25217/23 Smelnytskyy
The applicants are accused, in the same proceedings, with dissemination, on a Telegram channel, of a video depicting Ukrainian military forces and military installations in Kharkiv.

Initially those acts were classified as the offence of "unauthorised dissemination of information about the location of the Armed Forces of Ukraine" under Article 114-2 of the Criminal Code. On 1 August 2022 a domestic court ordered the applicants' detention and, in the alternative, set bail. The acts were then reclassified as the offence of "treason", an offence under Article 111 of the Criminal Code, and on 3 August 2022 detention was ordered without bail alternative.

At the relevant time, the former offence was not listed in Article 176 § 6 of the Code of Criminal Procedure as excluding the use of bail but the latter offence was.

Application no. 39465/23 Derevyanko

The applicant is accused of the offence of "collaborationist activities" (Article 111-1 § 4 of the Criminal Code) which is defined as "transmission of material resources to the illegal armed formations created in the occupied territory, to the armed formations of the aggressor State or conducting business activities in coordination with the aggressor State or in coordination with illegal authorities created in the occupied territory."

The alleged offence consisted in the applicant occupying the position of an acting director of a local bread factory and, as such, running its day-to-day operations during the period of occupation by Russian forces in 2022.

Application no. 43066/23 Tarasova

The applicant is accused of the offence of "assisting the aggressor State" (Article 111-2 of the Criminal Code) which is defined as "an intentional act aimed at assisting the aggressor State, its military formations or occupation administration ... with the aim of harming the interests of Ukraine."

According to the charges, the applicant worked as a sales representative of a Ukrainian medicines manufacturer and it is suspected that she had a role in having drugs exported, through Latvia and Estonia, to Belarus, from where they were exported to Russia.

QUESTIONS TO THE PARTIES

1. Has there been a breach of Article 5 § 3 of the Convention in the applicants' cases? In particular:

(i) did the courts provide relevant and sufficient reasons for the applicants' detention and do the national authorities display "special diligence" in the conduct of the proceedings (see Kharchenko v. Ukraine, no. 40107/02, §§ 79-81 and 99, 10 February 2011, and Buzadji v. the Republic of Moldova [GC], no. 23755/07, § 87, 5 July 2016)?

(ii) is the domestic courts' reliance on Article 176 § 6 of the Code of Criminal Procedure in the applicants' cases compatible with the requirements of Article 5 § 3 of the Convention (see, mutatis mutandis, Grubnyk v. Ukraine, no. 58444/15, §§ 110-30, 17 September 2020, and compare, for example, Avraimov v. Ukraine, no. 71818/17, §§ 57-72, 25 March 2021 [Committee], Aleksandrovskaya

v. Ukraine, no. 38718/16, §§ 105-13, 25 March 2021 [Committee]; Kraynyak v. Ukraine, no. 68353/17, §§ 16-25, 16 February 2023 [Committee])?

2. In application no. 43066/23, can the applicant be considered to have been detained on the basis of "a reasonable suspicion" that she had committed an offence, within the meaning of Article 5 § 1 of the Convention and has her detention been in compliance with the requirements of that provision of the Convention?

3. Does Ukraine's derogation under Article 15 of the Convention (initially made on 28 February 2022 and subsequently extended and modified) apply in respect of the Article 5 rights at issue? If so, are the decisions which are the subject of the applicants' complaints justified and limited to what is strictly required by the exigencies of the current situation?

BOYAROV v. Ukraine and 3 other applications (no. 79083/17)

Article 10 – article 8 – article 6 – article 13 – Presidential Decree imposing sanction on Russian internet and media services – results in lack of access of number of nationals to email services and social media – ability to communicate with friends and family – access to news – sharing and receiving information

SUBJECT MATTER OF THE CASES

The applications concern the alleged impossibility for the applicants to access certain Russian websites following the respective decision of the Ukrainian authorities.

On 15 May 2017 the President of Ukraine signed a Decree implementing a decision of the National Defence Council on imposition of personal sanctions in respect, in particular, of a number of Russian internet services, including news portals, mailing services and social media. Those sanctions, apart from economic measures, also included the termination of provision of telecommunication services to the entities concerned. In practice, this supposed that the Ukrainian Internet services providers had to take measures to limit access to the respective Russian Internet services from Ukraine.

Three applicants challenged the presidential Decree before the Higher Administrative Court ("the HACU") as a court of first instance. They argued that they were active users of various Russian websites, for example, the mailing service mail.ru and the social medias VKontakte and Odnoklassniki, where they communicated with friends and relatives, read news, shared and received information. Because of the abovementioned sanctions against those services the applicants were allegedly no longer able to continue accessing the Russian websites in question.

The applicants' complaints were rejected by the courts essentially as the Decree was directed at specific legal entities and entailed legal consequences only for those entities; it had not created any rights or obligations for the applicants; therefore, they could not challenge it.

In applications nos. 52246/18 and 19640/19 the final judgments were adopted by the Supreme Court of Ukraine on 7 May 2018 and 20 December 2018 respectively. The applicant in the application no. 79083/17 did not submit an appeal to the Supreme Court.

The applicant in the application no. 80554/17 did not apply to the courts to challenge the Decree considering that the existing domestic practice evidenced that such an appeal was ineffective. In particular, he relied on an unfavourable HACU judgment of 14 June 2017 in an analogous case.

The applicants complained that the impossibility for them to access Russian websites, allegedly resulting from the sanctions imposed on the Russian entities, violated Article 10 of the Convention. The applicants in applications nos. 80554/17 and 19640/19 also invoked their right to respect for their private life under Article 8 of the Convention. The applicants in applications nos. 80554/17 and 52246/18 further raised complaints under Article 6 and/or 13 concerning alleged lack of access to court or effective remedy on account of the domestic courts not having examined their complaints on the merits.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicants' freedom of expression, in particular their right to receive and impart information and ideas, within the meaning of Article 10 § 1 of the Convention, on account of the alleged impossibility to access Russian websites resulting from the sanctions imposed on the respective Russian Internet services? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

The Government is invited to provide detailed information on the legal procedure used and concrete actions undertaken in implementation of the sanctions at issue, as well as the reasons for the need to implement such sanctions.

2. Assuming the applicability of Article 13 of the Convention, did the applicants have at their disposal an effective domestic remedy for their Convention complaints, in particular in view of the domestic courts' reasoning advanced to reject their claims?

3. Did the proceedings that some of the applicants tried to initiate concern their civil "rights" within the meaning of Article 6 of the Convention?

If so, did the applicants have access to a court for the determination of their civil rights, in accordance with Article 6 § 1 of the Convention, in particular in view of the domestic courts' reasoning advanced to reject their claims?

QUESTION TO THE PARTIES
AS TO APPLICATIONS NOS. 80554/17 AND 19640/19

Has there been an interference with the applicants' right to respect for their private life, within the meaning of Article 8 § 1 of the Convention, on account of the alleged impossibility to access the sanctioned Russian websites? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2?

QUESTION TO THE PARTIES
AS TO APPLICATIONS NOS. 79083/17 AND 80554/17

Have the applicants exhausted domestic remedies, as required by Article 35 § 1 of the Convention, in respect of their complaints concerning the impossibility to access Russian websites?