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Robert KOCHARYAN v. ARMENIA (no. 52996/18)

Article 5 – unlawful detention – Article 6 – presumption of innocence

SUBJECT MATTER OF THE CASE

The applicant is an Armenian national. He is represented before the Court by Mr H. Alumyan and Mr A. Orbelyan, lawyers practising in Yerevan. The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant's pre-trial detention

The first detention order and related developments: The applicant was the President of Armenia from 9 April 1998 until 8 April 2008. On 26 July 2018 the applicant appeared for an interview as a witness within the framework of the criminal case instituted in connection with the events that occurred in Yerevan on 1 and 2 March 2008 (for details see Advisory opinion concerning the use of the "blanket reference" or "legislation by reference" technique in the definition of an offence and the standards of comparison between the criminal law in force at the time of the commission of the offence and the amended criminal law [GC], request no. P16-2019-001, Armenian Constitutional Court, §§ 13-15, 29 May 2020 - hereafter, "the Advisory opinion"). On the same date, an investigator at the Special Investigative Committee charged the applicant under Article 300.1 § 1 of the Criminal Code ("the CC") with overthrowing the constitutional order (for further details regarding the charges against the applicant, see the Advisory Opinion, cited above, § 16) and applied to the Court of General Jurisdiction of Yerevan ("the Yerevan Court") requesting that the applicant be detained for two months. The applicant objected against the investigator's application. He disputed the existence of a reasonable suspicion that he had committed the alleged offence and argued that there were no grounds for detention. He further argued that he enjoyed presidential immunity.

On 27 July 2018 the Yerevan Court granted the investigator's application and ordered the applicant's detention. It found that there was a reasonable suspicion that the applicant had committed the alleged offence. In doing so, the court relied on the following evidence: "The top secret order no. 0032 of 23 February 2008 of the Minister of Defence of Armenia which was titled 'On the execution of the tasks given by the Commander-in-Chief of Armenia'. The record of the examination of a laser disk containing a video of a televised speech of 29 February 2008, according to which [the applicant] said in his speech that the authorities have two options: first, to wait patiently until the theatrical performance [at Freedom Square] fades away by itself; second option, to clean [Freedom Square] with the use of police forces. The record of examination of a laser disk containing a video recorded on 1 March 2008, according to which at around 3 p.m. on 1 March 2008 personnel of the units of the armed forces of the Ministry of Defence of Armenia, vehicles and armoured vehicles were brought to the city of Yerevan and its vicinities. The record of examination of a laser disk containing a video of a statement given by [M.H., the Minister of Defence at the time of the events,] to the members of the fact-finding group investigating the events of 1 and 2 March 2008, according to which [M.H.] did not deny the circumstances of establishing a de facto state of emergency and deploying the units of the armed forces in the city of Yerevan. The record of the examination of a laser disk containing the press conference of 1 March 2008 of the Minister of Foreign Affairs of Armenia, [V.O.], according to which, the latter, at around 7 p.m. on the same day, made an announcement about the decree of the President of Armenia declaring a state of emergency and about the supporting documents being ready. The record of the examination of the video containing the speech of 1 March 2008 of the President of Armenia Robert Kocharyan, according to which at around 10 p.m. on the same day he published the decree declaring a state of emergency in Yerevan.

The decree of 1 March 2008 of the President of Armenia Robert Kocharyan 'On the declaration of the state of emergency' by which the implementation of the state of emergency was entrusted also to the Ministry of Defence of Armenia. The record of the examination of the video containing the live address of the Chief of the General Staff of the Ministry of Defence of Armenia, [S.O.], according to which [S.O.] addressed the public and warned that any attempt to organise or participate in events banned during the state of emergency will receive an adequate and a strong response, in case of slightest doubts, the armed forces of Armenia will take measures, prescribed by the Constitution and the laws, against the offenders. he witness statements of [G.K., A.M., A.A., M.S., V.H., A.K., Va.P. and Vi.P.]"

The court further found that, if at large, the applicant might abscond and obstruct the investigation by exerting unlawful influence on persons involved in the proceedings, including on the former Minister of Defence, as well as by hiding or falsifying the materials that were of significance for the case. According to the decision, the court took into account the nature and dangerousness of the offence, the severity of the possible punishment, the applicant's personality, his former position, his connections, the stage of the investigation and the need to take further investigative measures. Bail was considered ineffective for neutralising the above-mentioned risks. The court also stated that, in view of the charges under Article 300.1 of the CC, given that the offence imputed to the applicant included actions that had not derived from his status, the constitutional guarantee of immunity was not applicable.

The applicant lodged appeals against the decision. On 13 August 2018 the Criminal Court of Appeal granted the applicant's appeals on the grounds that the alleged offence had derived from the applicant's status as president and that he had, therefore, enjoyed immunity. The same day the applicant was released. The Prosecutor General lodged an appeal on points of law with the Court of Cassation requesting that the decision of the Criminal Court of Appeal be quashed and the decision of the Yerevan Court be upheld. Meanwhile, it appears that following his release, the applicant applied to the investigator requesting permission to travel abroad for medical treatment but his request was refused. On 4 September 2018 the investigator decided to apply a written undertaking not to leave the place of residence as a preventive measure in respect of the applicant.

On 15 November 2018 the Court of Cassation, upon the Prosecutor General's appeal, quashed the decision of the Criminal Court of Appeal and remitted the case for fresh examination. It reasoned that a former president could enjoy immunity if he had acted within his constitutional powers, was guided by public interest and his actions were necessary for the performance of his functions. If, however, a president, while performing his duties, was guided by his private, personal interest or did not have the authority to perform the relevant action or exceeded his constitutional powers when performing it, then such actions had to be deemed unrelated to his status. It therefore found that the conclusion of the Criminal Court of Appeal as regards the applicant's immunity had not been well-founded.

On 7 December 2018, following a fresh examination, the Criminal Court of Appeal dismissed the applicant's appeals and upheld the decision of the Yerevan Court of 27 July 2018. On the same day the applicant was detained again. In its reasoning, the Criminal Court of Appeal, in substance, endorsed the Yerevan Court's conclusions regarding the existence of a "reasonable suspicion" and the lack of immunity. As regards the grounds for detention, it reiterated the nature of the alleged offence and the severity of the punishment prescribed for it. It further noted that the applicant had previously held high-ranking positions which gave reasons to believe that he had connections, influence and reputation, including among the persons implicated in the case, which increased the probability that, if he stayed at large during the active phase of evidence gathering, he would obstruct the investigation by exerting unlawful influence on persons involved in the criminal proceedings. The Court of Appeal also agreed with the Yerevan Court's conclusions regarding

the risk of the applicant's absconding. In that connection, it essentially relied on the information submitted by the investigative authorities, according to which the applicant's main place of work was in Russia, and that there had been 150 recorded instances of him traveling outside Armenia between 2008 and 2018. Bail was considered ineffective for neutralising the risk of the applicant's obstructing the proceedings. At the same time, reference was made to the grounds for detention as a reason for not allowing bail.

The first extension of the applicant's detention

On 18 January 2019, the Yerevan Court, at the investigator's request decided to extend the period of the applicant's detention by two months. It considered that the "reasonable suspicion" and the grounds for the applicant's detention persisted. On 29 January 2019 the applicant appealed against the Yerevan Court's decision. On 7 February 2019 the Criminal Court of Appeal refused the appeal. The second extension of the applicant's detention and related developments. On 12 February 2019 a new charge was brought against the applicant under Article 311 § 4 (2) of the CC (receiving a bribe in a particularly large amount).

On 15 March 2019 the Yerevan Court, at the investigator's request, decided to extend the period of the applicant's detention by two more months. It found that there was a reasonable suspicion that the applicant committed the offence proscribed by Article 300.1 § 1 of the CC but that there was no reasonable suspicion as regards the new charge under Article 311 § 4 (2) of the CC. As grounds for detention, the Yerevan Court mentioned the need to prevent the commission of a new offence and an unlawful influence on persons involved in the proceedings. The court did not see a risk that the applicant might abscond. Bail was not allowed and as justification reference was made to the grounds of detention.

The applicant and the prosecutor appealed against the decision. On 11 April 2019 the Criminal Court of Appeal refused the appeals. It agreed with the Yerevan Court's conclusions regarding the "reasonable suspicion" and the risk of the applicant's obstructing the investigation, as well as the absence of a risk that he might abscond. The Criminal Court of Appeal found, however, that the Yerevan Court's conclusions about the risk of the applicant's re-offending had not been based on the submitted materials. It lastly noted that bail could not neutralise the risk of obstructing the investigation.

Detention during trial

The applicant's release and subsequent developments: On 29 April 2019 the criminal case was referred to the Yerevan Court for trial. On 18 May 2019 the Yerevan Court decided to replace the applicant's detention with an alternative preventive measure in the form of a personal guarantee provided by two public figures that the applicant would display proper behaviour, appear before the court and perform his other procedural obligations. On the same day the applicant was released. On 20 May 2019 the Yerevan Court, without entering into the judicial examination stage, decided to suspend the criminal proceedings and apply to the Constitutional Court with a request to determine, inter alia, the compatibility of Article 300.1 of the CC with the Constitution. The court expressed doubts, inter alia, as to whether Article 300.1 met the requirement of legal certainty. Noting that the provision contained references to several Articles of the Constitution, to the court stated that it was uncertain whether it referred to Articles of the Constitution that had been in force in 2008 or to the 2015 version of the Constitution. The meaning of the term 'de facto elimination of the norm' used in that Article, which should be manifested 'by terminating the validity of that norm in the legal system', was also unclear. Furthermore, it was unclear for the court whether the term 'legal system' was used in that Article in a broad or narrow sense, and whether the termination of the legal norm should be episodic or systemic, final or temporary.

On 29 May and 4 June 2019, the applicant submitted applications to the Constitutional Court, requesting to determine the compatibility of the same provision with the Constitution. Appeals against the applicant's release and the hearing of 20 June 2019. The prosecutor and one of the victims in the criminal case appealed against the Yerevan Court's decision of 18 May 2019 to the Criminal Court of Appeal. While the appeals were pending before the Criminal Court of Appeal, the applicant's counsel submitted an application to the court requesting that the latter apply to the Constitutional Court for the determination of the constitutionality of certain procedural rules and stay the criminal proceedings.

At a hearing held on 20 June 2019, the applicant's counsel were invited to present their oral pleadings in reply to the appeals. Before presenting their pleadings, the applicant's counsel asked that the court first examine and take a decision on their above-mentioned application. The presiding judge had several exchanges with the applicant's counsel in order to clarify whether the latter wanted to proceed with their oral pleadings or considered that the court first had to examine the application. Following repeated requests by the applicant's counsel to examine and decide on the application, the presiding judge concluded that, by insisting on the examination of the application, the defence counsel tried to disrupt the normal course of the proceedings and unnecessarily delay the hearing, which, in substance, amounted to a waiver of their rights. Consequently, the presiding judge decided that the review proceedings were completed.

On 25 June 2019 the Criminal Court of Appeal issued its decision, quashing the decision of the Yerevan Court and ordering the applicant's detention, without setting any time-limit. It found that there was a reasonable suspicion that the applicant had committed the offences proscribed by Articles 300.1 § 1 and 311 § 4 (2) of the CC and that, if at large, the applicant might abscond and obstruct the proceedings. As reasons for its conclusions, the Criminal Court of Appeal mentioned the dangerousness of the offences imputed to the applicant, the severity of the "anticipated" punishment, the applicant's employment in Russia, multiple instances of his travel outside Armenia, the fact that the applicant had expressed a desire to go abroad for medical treatment, his substantial financial means, the fact of having held high ranking posts in the past and, by implication, his influence and connections. It further stated that at that stage of the investigation, when the applicant was already familiar with the materials of the case and the persons involved in it, the risk of obstruction of the proceedings by exerting unlawful influence on those persons was higher. The court lastly added that, when deciding on a preventive measure, it had to be guided by the presumption that the grounds for detention were sufficient. On the same day the applicant was detained again. Applications for release and the decision of 2 September 2019

(a) Applications for release lodged on 26 and 27 June and 14 August 2019

On 26 June 2019 the applicant submitted an application to the Yerevan Court asking that his detention be replaced with a preventive measure that did not entail a deprivation of liberty. He alleged that the deprivation of his liberty was unlawful. On 27 June 2019 the applicant submitted an application to the Yerevan Court asking for release on bail. He alleged that there were no grounds for his detention. On 2 July 2019 the applicant sent a letter to the Yerevan Court asking it to examine his application for release on bail. According to the applicant, he was orally informed that his request for release on bail was not being examined because the Criminal Court of Appeal had not returned the materials of the case to the Yerevan Court. On 4 July 2019 the applicant submitted copies of the materials of the criminal case to the Yerevan Court and requested that his applications of 26 and 27 June 2019 be examined. On 10 July 2019 the applicant applied to the Criminal Court of Appeal requesting that the materials of the criminal case be returned to the Yerevan Court so that the examination of the case could continue. By a letter of 11 July 2019, the Criminal Court of Appeal replied that the materials of the criminal case would be returned to the

relevant court only after the expiry of the time-limit for appeal. It also stated that in case an appeal on points of law was lodged, the case file would be sent to the Court of Cassation. On 27 July 2019 the Supreme Judicial Council suspended the powers of the judge at the Yerevan Court who presided over the applicant's case, in connection with criminal proceedings instituted against that judge. On 14 August 2019 the applicant submitted another application to the Yerevan Court asking for release on bail. He again alleged that there were no grounds for his detention. On 19 August 2019 the applicant's case was reassigned to a different judge of the Yerevan Court who admitted the case for examination the following day.

(b) The decision of 2 September 2019 leaving the applicant's detention unchanged.

Following the assignment of the case to a new judge, the Yerevan Court, on 2 September 2019, without holding a hearing, decided to set the case for trial and held that the applicant's detention ordered by the decision of the Criminal Court of Appeal of 25 June 2019 was to remain unchanged. The court considered that in the preparatory stage of the trial the applicant had already exercised his constitutional right to be heard by a court and that the change of the court's composition did not call for a new examination of the preventive measure in a court hearing. No time-limit was set for the applicant's detention. The court noted, however, that the applicant's applications for release of 26 and 27 June and 14 August 2019 were scheduled to be examined in the upcoming court hearing on 12 September 2019.

On 6 September 2019 the applicant appealed against the Yerevan Court's decision in its part concerning his detention. On 16 September 2019 the Criminal Court of Appeal declared the appeal inadmissible. It considered that the Yerevan Court's decision was not subject to appeal. It further stated that the reassignment of the case to a new judge did not automatically set aside the decisions taken on preventive measures and, therefore, the new judge to whom the case was assigned did not have to re-examine whether the detention had been justified. On 24 September 2019 the applicant lodged an appeal on points of law against the decision. On 25 February 2021 the Court of Cassation quashed the decision of the Criminal Court of Appeal and remitted the case to the same court. It noted that the Yerevan Court's decision was subject to appeal and the Criminal Court of Appeal was obliged to examine the appeal.

On 15 March 2021 the Criminal Court of Appeal, having examined the appeal, refused it on the merits. It essentially reasoned that the applicant had already been brought before the court and had exercised his right to be heard, before his detention was ordered on 25 June 2019. It therefore found that the Yerevan Court had not been obliged to re-examine the applicant's detention. Moreover, the question of the applicant's detention had been scheduled to be examined on 12 September 2019. On 30 April 2021 the applicant lodged an appeal on points of law against this decision. It appears that his appeal was admitted for examination by the Court of Cassation but no information is available on further developments.

(c) Examination of the applicant's applications for release

On 12 September 2019 the Yerevan Court examined the applicant's applications for release of 26 and 27 June and 14 August 2019 and decided to refuse them by its decision of 20 September 2019. The court stated that the reasonable suspicion that the applicant had committed the offences with which he had been charged persisted. As for the grounds for detention, it saw no risk of the applicant's absconding but considered that there was a risk that he might obstruct the proceedings by exerting influence on persons involved in them. The court stated that the latter risk had subsided at that stage of the proceedings but had not disappeared completely and, therefore, could not be ruled out. It lastly noted that alternative preventive measures were incapable of preventing such a risk.

(d) Applications for release of 16 and 24 March 2020

On 16 March 2020 the applicant submitted an application to the Yerevan Court requesting that his detention be replaced with the personal guarantee of four persons as a preventive measure. On 24 March 2020 the applicant submitted another application to the Yerevan Court requesting that he be released from detention or his detention be replaced with any other alternative preventive measure which did not entail a deprivation of liberty. By a letter dated 30 March 2020 the registry of the Yerevan Court replied that the presiding judge was on sick leave. On 13 May 2020 the Yerevan Court refused the applicant's applications. The applicant appealed to the Criminal Court of Appeal.

On 18 June 2020 the Criminal Court of Appeal decided to release the applicant on bail. The next day the applicant was released. The Constitutional Court's decision of 26 March 2021 and the termination of the prosecution under Article 300.1 of the CC. On 26 March 2021 the Constitutional Court, following an examination conducted on the basis of the Yerevan Court's request of 20 May 2019 and the applicant's applications of 29 May and 4 June 2019, decided that Article 300.1 of the CC was not in line with Articles 78 (principle of proportionality) and 79 (principle of certainty) of the 2015 Constitution and declared it unconstitutional. In its reasoning, the Constitutional Court stated, inter alia, the following: "... Article 300.1 of the CC is problematic from the point of view of the principle of legal certainty prescribed by Article 79 of the Constitution in so far as it makes a 'blanket reference' to the norms of the Constitution that were in force at the time of its enactment but had been amended at the time of its application because it does not allow a person to have a clear idea of the constituent elements of the relevant criminal offence proscribed by the [CC] and to clearly foresee which of his actions (omission) will entail criminal liability. The Constitutional Court attaches particular importance to the fact that the question of uncertainty of concepts used in the disputed Article has been also raised by the court examining the case on the merits. In particular, the term 'de facto elimination of the norm' used in the disputed Article, which should be manifested 'by terminating the validity of that norm in the legal system', is not clear to the court. It is not clear to the court whether the term 'legal system' is used in a broad or narrow sense, whether the termination of the legal norm should be episodic or systemic, final or temporary. … Thus, the disputed provision, which prescribes the most intensive interference with the basic right to liberty of person, is formulated so vaguely that it does not allow to understand its meaning, may lead to unforeseeable and therefore also arbitrary application, and allows expansion of the boundaries of the crime due to the fact of referring to constitutional norms with an extremely high degree of abstraction."

Consequently, on 6 April 2021, the Yerevan Court decided to terminate the criminal prosecution against the applicant and other co-accused under Article 300.1 of the CC on the grounds that the criminal offence was absent. Facts relating to the alleged breach of the presumption of innocence. On 26 July 2018 A.D., an advisor to the Prime Minister of Armenia, shared a media Article titled "Robert Kocharyan has been charged, a motion was submitted to detain him" on her Facebook page and commented: "Nothing is forgotten, no one is forgotten. 1 March. The spring stolen by Kocharyan".

On 27 July 2018 S.G., another advisor to the Prime Minister, posted the following text on Facebook with the applicant's picture: "... you have to rot in prison and your family's lavish life full of pleasures has to end!!!!!" On 28 July 2018 N.B., another advisor to the Prime Minister, posted the applicant's picture with the following comment: "What was the real reason for the events of 1 March: greed as a motivation to keep what had been illegally looted [from the State] at all costs ..., which led to 10 deaths."

In a media interview that was published on 3 August 2018, the Head of the Special Investigative Committee, S.K., speaking about the charges brought against the applicant, said, inter alia, the following: "...What has

been committed? An overthrow of the Constitution and of the constitutional order. How has the overthrow of the constitutional order been committed? By using the army and the armed forces for solving problems in domestic political matters...” On 11 September 2018 the Prime Minister made the following statement during a public rally: “... Robert Kocharyan withdrew the troops from the Armenia-Azerbaijan border in order to bring them and occupy his own people and that has been proven ... maybe he had made an agreement with [the president of Azerbaijan] such as ‘let me massacre our people, and you do not attack us’. Otherwise, who in his right mind would withdraw the troops from the border and bring them to the centre of the capital? Who is he, if not a criminal? Who is he, if not a traitor? ... Our operational information suggests that on the morning of 1 March the instruction was precisely to smash the people... Robert Kocharyan and [his successor S.S.] are responsible for usurping power in Armenia and they have to stand before the court. Robert Kocharyan, [S.S.] are responsible for looting Armenia and they have to stand before the court...” At a public event, allegedly held on 15 September 2018, the Prime Minister, in the presence of media representatives, made, inter alia, the following statement: “...the explanation for releasing Robert Kocharyan. It says ‘he has immunity’. What does it mean ‘he has immunity’? Does it mean it is possible to organise the murder of people and say ‘I have immunity’? Where is such a thing written?...”

On 17 September 2018 the applicant lodged a civil defamation claim under Article 1087.1 of the Civil Code with the Yerevan Court against the Prime Minister requesting that the latter be obliged to publicly apologise for his statement made on 15 September 2018. The Prime Minister submitted a reply in which he essentially stated that his statement concerned the interpretation of the constitutional doctrine of immunity given in the decision to release the applicant and that it had been formulated as a general, rhetorical question. He denied that his statement attributed murder to the applicant. In a court hearing held on 12 June 2019 the Prime Minister’s representative stated that the statement concerned the interpretation of a constitutional norm and assured that it had not concerned the applicant. On 13 June 2019 the applicant withdrew his civil claim following which the civil proceedings were terminated.

RELEVANT LEGAL FRAMEWORK

Criminal Code and Constitution: The relevant provisions of the Criminal Code and the Constitution have been set out in the Advisory opinion, cited above (§§ 25-28).

Code of Criminal Procedure (1999 – “the CCP”): Article 138 § 6 provides that there are no limits on the duration of the accused’s detention period during the court proceedings of a criminal case. Article 300 provides that, when adopting decisions, the court is obliged to decide whether to apply a preventive measure in respect of the accused and, in case a preventive measure has been applied, whether the type of the preventive measure is justified.

Case-law of the Constitutional Court: In a decision taken on 26 June 2018 the Constitutional Court declared Article 300 of the CCP unconstitutional in so far as it did not envisage a possibility for the accused and/or his defence counsel, during the preparation of the case for trial, to participate in the examination by a court of the issue of whether or not to choose detention as a preventive measure in respect of the accused and, in case detention had been chosen as a preventive measure, whether or not it was justified. In the same decision, the Constitutional Court considered that the examination by a court, during the preparation of the case for trial, of the issue of whether to choose detention as a preventive measure in respect of an accused and whether the detention that had been imposed was justified, in the absence of the accused and/or his defence counsel, did not restrict the right of a person to challenge the lawfulness of the deprivation of his liberty with a judicial appeal (review). The Constitutional Court went on to conclude that

the decision taken, during the preparation of the case for trial, on the preventive measure depriving a person from liberty could be contested by the accused or his defence counsel.

The Civil Code (1999) (as in force at the material time): Article 1087.1 § 1 provides that a person whose honour, dignity or business reputation has been tarnished through insult or defamation can institute court proceedings against the person who made the insulting or defamatory statement. Article 1087.1 § 2 provides that, within the meaning of the Code, an insult is a public statement made through words, images, sounds, signs or other means with the aim of tarnishing someone's honour, dignity or business reputation. A public statement may be considered not to be an insult if it is based on true facts (except congenital defects) or pursues a paramount public interest. Article 1087.1 § 3 provides that, within the meaning of the Code, defamation is a public statement of a false fact about a person that tarnishes his or her honour, dignity or business reputation. In defamation cases, the burden of proof as to the existence or absence of the relevant facts rests on the defendant. This burden shifts to the plaintiff if presenting such proof requires unreasonable actions or efforts on the part of the defendant, whereas the plaintiff possesses the necessary evidence. Article 1087.1 § 7 provides that, in the case of insult, a person may request the court to order one or more of the following measures: (i) a public apology, with the form of apology to be determined by the court; (ii) if the insult appears in information disseminated by a media outlet, publication of all or part of the court's judgment through that media outlet, with the manner and volume of the publication to be determined by the court; and/or (iii) payment of compensation of up to 1,000 times the fixed minimum wage. Article 1087.1 § 8 provides that, in case of defamation, a person may claim through court proceedings one or more of the following measures: (i) if the defamatory statements of fact are contained in information disseminated by a media outlet, the person may demand a public retraction of such statements and/or a publication of his reply regarding such statements through the same media outlet, with the text of the retraction and the reply to be confirmed by the court on the basis of the law of the Republic of Armenia "On mass media"; and/or (ii) payment of compensation of up to 2,000 times the fixed minimum wage.

COMPLAINTS

1. The applicant complains under Article 5 § 1 of the Convention that his detention was unlawful and that it was not based on a reasonable suspicion of his having committed an offence. In particular, he argues that Article 300.1 of the CC did not have sufficient clarity as to what constituted an overthrow of the constitutional order. It thus lacked sufficient precision and foreseeability in order to avoid the risk of arbitrariness. Moreover, it was applied retroactively. Furthermore, the facts and information on which the domestic courts relied did not meet the threshold of a reasonable suspicion that he had committed that offence.

2. The applicant complains under Article 5 § 1 of the Convention that he was kept in detention during trial without a fixed time-limit.

3. The applicant complains under Article 5 § 3 of the Convention that the courts did not provide relevant and sufficient reasons for his detention.

4. The applicant complains under Article 5 § 4 of the Convention that the principle of adversarial proceedings was breached because the Criminal Court of Appeal deprived him of the opportunity to present his oral pleadings during the hearing of 20 June 2019.

5. The applicant complains under Article 5 § 4 of the Convention that his applications for release of 26 and 27 June and 14 August 2019, as well as those of 16 and 24 March 2020 were not examined speedily by the courts.

6. The applicant complains under Article 5 § 4 of the Convention that on 2 September 2019 the Yerevan Court decided to leave his detention unchanged without hearing him and that the Criminal Court of Appeal, contrary to domestic case-law, refused to examine his appeal against that decision.

7. The applicant complains under Article 6 § 2 of the Convention that public officials made statements that breached his presumption of innocence.

QUESTIONS TO THE PARTIES

1. Was the applicant's detention between 27 July to 13 August 2018, and between 7 December 2018 to 18 May 2019 on the basis of Article 300.1 of the Criminal Code in compliance with Article 5 § 1 of the Convention? In particular, was his detention on the basis of that criminal provision lawful and based on a reasonable suspicion of having committed an offence (see Merabishvili v. Georgia [GC], no. 72508/13, § 186, 28 November 2017, and Selahattin Demirtaş v. Turkey (no. 2) [GC], no. 14305/17, §§ 314-21 and 337, 22 December 2020)?

2. Was the applicant's detention between 25 June 2019 and 19 June 2020 compatible with the requirements of Article 5 § 1 of the Convention, having regard, in particular, to the fact that no time-limits were fixed to its duration (see Merabishvili, cited above, § 199; and Vardan Martirosyan v. Armenia, no. 13610/12, § 49, 15 June 2021)?

3. Did the applicant's detention comply with the requirements of Article 5 § 3 of the Convention? In particular, did the courts provide relevant and sufficient reasons for the applicant's continued detention (see Buzadji v. the Republic of Moldova [GC], no. 23755/07, §§ 87-91, 5 July 2016; Merabishvili, cited above, §§ 222-25; and Ara Harutyunyan v. Armenia, no. 629/11, §§ 48-53, 20 October 2016)?

4. Was the principle of adversarial proceedings and equality of arms guaranteed by Article 5 § 4 of the Convention respected at the hearing of 20 June 2019 before the Criminal Court of Appeal (see A. and Others v. the United Kingdom [GC], no. 3455/05, § 204, ECHR 2009; and Piruzyan v. Armenia, no. 33376/07, § 116, 26 June 2012)?

5. Having regard to the period it took to decide on the applicant's applications for release, can it be said that the speediness requirement of Article 5 § 4 of the Convention was respected (see Ilnseher v. Germany [GC], nos. 10211/12 and 27505/14, §§ 254-56, 4 December 2018)?

6. Was the decision of the Yerevan Court of 2 September 2019 taken in compliance with the guarantees of Article 5 § 4 of the Convention, taking into account that it was taken without holding a hearing (see Khodorkovskiy v. Russia, no. 5829/04, § 235, 31 May 2011)?

7. Did the refusal by the Criminal Court of Appeal to examine the applicant's appeal of 6 September 2019 against the Yerevan Court's decision of 2 September 2019 breach his rights guaranteed by Article 5 § 4 of the Convention?

8. Did the applicant have at his disposal any effective remedies for the protection of his right to be presumed innocent? If so, has the applicant exhausted those remedies as required by Article 35 § 1 of the Convention? The Government are requested to support their arguments with examples of domestic case-law.

9. Was the applicant's right to be presumed innocent, guaranteed by Article 6 § 2 of the Convention, respected in the present case? In particular, did the statements of public officials amount to an infringement of the applicant's right to the presumption of innocence?.

Maximilian MOLITOR-MÜHLFELD v. AUSTRIA (no. 19139/24)

Article 8 – Article 14 – change of surname

SUBJECT MATTER OF THE CASE

The application concerns a dispute surrounding the surname of the applicant, a dual Austrian and German national, following his request for the issuance of a new passport in the course of 2021. On 5 January 2022 the Vienna municipality issued a formal decision changing the applicant's surname from "Molitor von Mühlfeld" to "Molitor-Mühlfeld", thereby removing the prefix "von" and replacing it with a hyphen, after almost 27 years of previously accepted use (from his birth in 1994 until 2021), on the grounds that the original surname was in breach of the Abolition of Nobility Act of 1919 (Adelsaufhebungsgesetz) and its implementing provisions (Vollzugsanweisung) as interpreted by the Constitutional Court in its new case-law starting from 2014 onwards (see Künsberg Sarre v. Austria, nos. 19475/20 and three others, §§ 20-33 and 58-74, 17 January 2023).

On 5 June 2022 the Vienna Administrative Court (Verwaltungsgericht Wien) upheld the applicant's appeal on the grounds that the decision had not been issued by the competent authority. On 4 November 2022 the Vienna municipality issued a new decision, identical with the previous one but this time issued and signed correctly. On 2 December 2022 the Vienna Administrative Court dismissed the applicant's appeal against the second decision. On 5 March 2024 the Constitutional Court (Verfassungsgerichtshof) dismissed the applicant's complaint, including with reference to the Court's judgment in Künsberg Sarre (cited above) delivered in the meantime. It reiterated its previous case-law on the Abolition of Nobility Act and the corresponding adjustment of the case-law of the Supreme Administrative Court (Verwaltungsgerichtshof). It held that Künsberg Sarre (cited above) concerned different circumstances than the present case, and that it was therefore not relevant. In particular, that case related to a self-chosen fantasy name and not to the title of nobility "von". This also corresponded to the Court's case-law according to which the scope of protection under Article 8 of the Convention on the right to bear a name did not extend to titles of nobility.

The applicant did not bring any proceedings before the Supreme Administrative Court, claiming that the latter was not an effective domestic remedy, as it could not decide on violations of constitutionally guaranteed rights. He also submitted a decision by the Vienna Administrative Court of 13 June 2023 (not yet final) concerning his sister. Referring to Künsberg Sarre (cited above), the Vienna Administrative Court upheld her appeal against the decision of the Vienna municipality of 22 November 2022 changing her surname in the same manner as his, after previously accepted use since her birth in 1996. It held that in the light of Künsberg Sarre (cited above), the change of her surname was not necessary within the meaning of Article 8 of the Convention, nor had the municipality conducted a balancing of interests. Lastly, the

applicant submitted a circular note issued by the Ministry of the Interior of 19 September 2023 concerning the Court's case-law on the name component "von". Referring to Künsberg Sarre (cited above), the note states, inter alia, that an overriding individual interest (unlawful interference) can be assumed if the person concerned has been using the surname, which was established according to a law other than Austrian law, (i) at the time of the decision already for at least 15 years, (ii) as an Austrian citizen, and (iii) unchallenged by the Austrian civil status authorities.

Under Article 8 of the Convention, the applicant complains of a disproportionate interference with his right to respect for his private and family life. Under Article 14 read in conjunction with Article 8, he complains that he was subjected to a different treatment because the circular note of the Ministry of the Interior explicitly orders an administrative practice which was not applied to him although he fulfilled all the requirements.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, was the revision (ausserordentliche Revision) to the Supreme Administrative Court (Verwaltungsgerichtshof) an effective remedy within the meaning of this provision in respect of the applicant's complaints under Article 8 and under Article 14 of the Convention, read in conjunction with Article 8? Furthermore, did the applicant invoke before the national authorities, at least in substance, the rights under these provisions on which he now wishes to rely before the Court?

2. Assuming domestic remedies to have been exhausted, has there been an interference with the applicant's right to respect for his private and family life, 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 Daróczy v. Hungary, no. 44378/05, § 34, 1 July 2008, and Künsberg Sarre v. Austria, nos. 19475/20 and three others, §§ 65 and 67-73, 17 January 2023)? Was, in this context, the applicant's individual situation properly assessed?

3. Has the applicant suffered discrimination in the enjoyment of his Convention right to bear a name under Article 8 of the Convention, contrary to Article 14 of the Convention? In particular, has the applicant been subjected to a difference in treatment in comparison to other persons fulfilling the requirements mentioned in the circular note of the Ministry of the Interior of 19 September 2023? If so, was that difference in treatment objectively justified in the circumstances of the present case?

Ramil BAKIROVI v. AZERBAIJAN and GEORGIA (no. 13390/24)

Articles 2, 5 and 13 – ineffective criminal investigation

SUBJECT MATTER OF THE CASE

The application concerns an incident in which the applicant received a gunshot injury to his head. According to the applicant, on 6 December 2019 he was shot by the Azerbaijani border officers located on the Azerbaijani territory while he was herding sheep on the Georgian territory. He alleges that the said officers then crossed into Georgian territory, took him to a hospital in Azerbaijan, and eventually handed him over to the Georgian authorities on 3 February 2020.

A criminal investigation was opened by the Georgian authorities in respect of attempted murder and unlawful deprivation of liberty. According to the applicant, the investigating authorities addressed their Azerbaijani counterparts with a request for cooperation. It is unclear whether the request was answered. On 16 November 2022 the applicant was granted the procedural status of a victim by the Georgian authorities. In the applicant's submission, he was not permitted to make a copy of the criminal case file. The investigation is ongoing.

The applicant relies on Articles 2, 5 and 13 of the Convention. In so far as Azerbaijan is concerned, the applicant alleges that the Azerbaijani border officials shot him, transferred him to a hospital in Azerbaijan and deprived him of his liberty for almost two months. As far as Georgia is concerned, the applicant complains that the criminal investigation opened by the relevant authorities has been ineffective. He also claims that Azerbaijan failed to respond to the cooperation request within the context of the criminal investigation opened by Georgia.

QUESTIONS TO THE PARTIES

Questions to the Azerbaijani Government and the applicant

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

2. Has there been a violation of the substantive and procedural aspects of Article 2 of the Convention? In particular,

(a) was the applicant shot in the circumstances described by him?

(b) did the authorities carry out an effective criminal investigation into the matter?

(c) did the relevant authorities cooperate with their Georgian counterparts within the context of the criminal investigation ongoing in Georgia?

3. Is Article 5 of the Convention applicable in the present case? Namely, was the applicant "deprived of his liberty" within the meaning of the provision in question (see, for instance, Aftanache v. Romania, no. 999/19, §§ 81-82, 26 May 2020)? If so, was his deprivation of liberty compatible with the guarantees of Article 5 § 1 of the Convention?

Question to the Georgian Government and the applicant:

Has the criminal investigation opened by the Georgian authorities been effective, within the meaning of the procedural aspect of Articles 2 and 5 of the Convention?

Question to both respondent Governments and the applicant:

Has the applicant had at his disposal effective domestic remedies in relation to the alleged violations of his Convention rights, as required by Article 13 of the Convention?

Tamilla MAMMADOVA and Others v. AZERBAIJAN (no. 52066/13)

Article 34 – expropriation and demolition of applicants' properties

SUBJECT MATTER OF THE CASE

The facts and complaints in this application have been summarised in the Court's Statement of facts and Questions to the parties, which is available in HUDOC under application no. 77919/11 Bagvanov v. Azerbaijan and 31 other applications.

QUESTION TO THE PARTIES

In view of the seizure of the applicants' case file from Mr I. Aliyev's office on 8 and 9 August 2014, has the State in the present case hindered the effective exercise of the applicants' right of application under Article 34 of the Convention?

A.M. v. BULGARIA (no. 27677/21)

Article 8 – Article 9 – prevention of non-EU students from finishing their higher education – national security concerns

SUBJECT MATTER OF THE CASE

The applications concern decisions of the Bulgarian national security services prohibiting the three applicants – British nationals of Pakistani origin – from entering and residing in Bulgaria, where they were pursuing their higher education in medicine. The decisions, taken at the end of 2019 and upheld in final judgments of the Supreme Administrative Court between October 2020 and February 2021, relied on national security grounds.

In particular, the applicants and other Muslim students had set up an association, which according to the services had represented an Islamist organisation with "military structures". As far as can be understood from the case files (some of the documents have been classified and are not available), such a conclusion was based on the fact that during a public lecture in front of Muslim students in April 2018 another British citizen had spoken about "800 warriors"; according to the applicants the expression had been taken out of context and interpreted in an Islamophobic manner. It was also noted by the domestic authorities that after 2015 the number of students in the Plovdiv Medical University from "high-risk countries" such as Pakistan, Iraq and Palestine had increased, that the applicants' association had been seeking to impose "non-traditional forms of Islam" among local Muslims, that it had been looking for its own premises for daily prayers, and that it had financed the construction of a mosque in a poor Muslim-populated neighbourhood. A Bulgarian mufti testified before the courts that the practices followed by the applicants and their association had been "normal", while the applicants stated that all of the association's activities had been known and approved by the Plovdiv mufti's office.

The applicants complain under Article 8 of the Convention that they were unable to finish their studies in Bulgaria and obtain diplomas, and point out that they had otherwise been sufficiently settled in that country so as to have "private life" there. They also complain under Article 9 of the Convention of an interference with their right to practice their religion. They dispute the Bulgarian authorities' claims that

they had represented a threat to national security and that they had been members of an Islamist organisation. Lastly, the applicants complain under Article 13 and Article 14 of the Convention in conjunction with Articles 8 and 9 that they did not have at their disposal an effective domestic remedy, and that the measures against them were discriminatory based on their religion and ethnic origin.

QUESTIONS TO THE PARTIES

1. 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? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2? In particular, has it been sufficiently established that the applicants posed a threat to national security?

2. Has there been an interference with the applicants' freedom of religion, within the meaning of Article 9 § 1 of the Convention? If so, was that interference prescribed by law and necessary in terms of Article 9 § 2? In particular, were the measures against the applicants related to the exercise of their right to freedom of religion, and were they designed to repress that right (see, mutatis mutandis, Nolan and K. v. Russia, no. 2512/04, 12 February 2009)?

3. Did the applicants have at their disposal an effective domestic remedy for their complaints under Articles 8 and 9, as required by Article 13 of the Convention?

4. Have the applicants suffered discrimination on the ground of their religion and ethnic origin, contrary to Article 14 of the Convention?

Vasil Krumov BOZHKOV and others v. BULGARIA (no. 29126/20)*

Articles 8, 6, 2, 13 – Article 1 of Protocol No. 1

SUBJECT MATTER OF THE CASE

The three applications were lodged on different dates by two Bulgarian nationals - Mr Vasil Bozhkov and Ms Elena Dineva, and by a legal entity under Bulgarian law - the Thrace Foundation. They concern the searches carried out in the homes and offices of the three applicants, the seizure and detention of several items following those searches, the disclosure of four private conversations of Mr Bozhkov by the public prosecutor's office and the statement made by the public prosecutor's spokeswoman to Mr Bozhkov at a press conference held on 14 July 2020. The applicants alleged that these facts constituted several violations of Article 8, Article 6 §§ 1 and 2 and Article 13 of the Convention, as well as of Article 1 of Protocol No. 1.

QUESTIONS TO THE PARTIES

1. Did the searches and seizures carried out at the premises at 79 Vasil Levski Boulevard and 43 Moskovska Street in Sofia constitute a breach of the three applicants' right to respect for their private life, home and correspondence within the meaning of Article 8 § 1 of the Convention? If so, was the interference with the exercise of that right prescribed by law and necessary within the meaning of Article 8 § 2?

2. Did the applicants have access to a court in order to obtain a decision on 'disputes concerning their rights and obligations in a suit at law', in accordance with Article 6 § 1 of the Convention? In particular, were they given the opportunity to challenge the lawfulness and necessity of the searches and seizures carried out at the above-mentioned premises?

3. Did the seizure and prolonged detention of numerous items belonging to the three applicants constitute an interference with their right to respect for their property? If so, did that interference arise from the application of a law considered necessary to regulate the use of property in accordance with the public interest? In particular, did the interference impose an excessive burden on the applicants (see Immobiliare Saffi v. Italy [GC], no. 22774/93, § 59, ECHR 1999-V)?

4. 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 complaints of breach of Article 8 of the Convention and Article 1 of Protocol No. 1 in relation to the searches and seizures carried out?

5. Was the presumption of innocence guaranteed by Article 6 § 2 of the Convention respected in the present case? In particular, did the remarks made by the spokesperson for the public prosecutor's office - S.M., during the press conference of 14 July 2020, addressed to Mr Bozhkov, infringe the applicant's presumption of innocence?

6. Did Mr Bozhkov have at his disposal an effective domestic remedy, as required by Article 13 of the Convention, by means of which he could have complained of a breach of Article 6 § 2 of the Convention?

7. Did the disclosure by the public prosecutor's office of Mr Bozhkov's intercepted telephone conversations constitute an interference with his right to respect for his private life and correspondence within the meaning of Article 8 § 1 of the Convention? If so, was the interference with the exercise of that right prescribed by law and necessary within the meaning of Article 8 § 2?

8. Did Mr Bozhkov have at his disposal an effective domestic remedy, as required by Article 13 of the Convention, through which he could have raised his complaint of breach of Article 8 of the Convention concerning the disclosure of his telephone conversations by the public prosecutor's office?

Ivan ŠOJAT v. CROATIA (no. 31882/23)

Article 1 of Protocol No. 1 – recording ownership in land register

SUBJECT MATTER OF THE CASE

The application concerns the annulment of a property title on grounds not imputable to the applicant. In particular, in 1998 the applicant bought a plot of land from a person who was recorded as its owner in the land register. The legal system of the former Socialist Federal Republic of Yugoslavia distinguished between two types of ownership: private ownership and social ownership (društveno vlasništvo). The owner of property in social ownership was not defined but individuals and legal entities had certain quasi-ownership rights over such property, such as the right to use it (pravo korištenja). By the entry into force of the 1996 Property Act on 1 January 1997 the rights to use socially owned immovable property were ex lege

converted into private ownership, former holders of such rights thus becoming the owners of such property.

As regards the land bought by the applicant, in 1988 two holders of the right to use over that land transferred that right to the local authorities in exchange for a compensation. In 1996 the local authorities attempted to record their right to use in the land register, but their application was misplaced by the relevant land registry court.

The right to use over the land at issue thus remained recorded in the land register in the name of its former holders which used that situation to convert that right into the right of ownership when the 1996 Property Act entered into force on 1 January 1997, and to record themselves as the owners of the land.

In 1997 these two individuals sold the land in question to the person from whom the applicant bought it in 1998. These transfers of ownership were duly recorded in the land register.

In 2012 the local authorities brought a civil action against the applicant seeking to be declared the owners of the land in question. They argued that, when the 1996 Property Act had entered into force on 1 January 1997, they had been the holders of the right to use over that land and had thus become its owners by the operation of law. Even though the person from whom the applicant had bought the land had been recorded in the land register as its owner, the applicant could not rely on that information when buying the land. That was so because at the time the principle of trust to the information in the land register had not applied to immovable property which had been in social ownership on 1 January 1997.

The applicant argued that the local authorities had had enough time to record their rights in the land register but had not been sufficiently diligent. Even though the domestic courts held that the sale-purchase agreement whereby the applicant bought the land from the registered owner was valid, they nevertheless eventually ruled in favour of the local authorities finding that he could not have relied on the principle of trust regarding the information in the land register.

Before the Court the applicant complains under Article 1 of Protocol No. 1 to the Convention that he was deprived of his property fourteen years after he had bought it just because the local authorities had not been sufficiently diligent in recording their ownership in the land register.

QUESTIONS TO THE PARTIES

Has the applicant been deprived of his possessions in accordance with the requirements of Article 1 of Protocol No. 1 to the Convention? More specifically, did the domestic courts in the particular circumstances of the applicant's case strike the requisite fair balance between the general interests of the community and the protection of his property rights (see Gashi v. Croatia, no. 32457/05, §§ 27-43, 13 December 2007; Gladysheva v. Russia, no. 7097/10, §§ 64-83, 6 December 2011; Seregin and Others v. Russia, nos. 31686/16 and 4 others, §§ 89-111, 16 March 2021; Gavrilova and Others v. Russia, no. 2625/17, §§ 69-87, 16 March 2021; and Semenov v. Russia, no. 17254/15, §§ 53-72, 16 March 2021)?

Ivanka BOSOTINA v. CROATIA (no. 30720/23)

Article 6 – lack of impartiality of a judge

SUBJECT MATTER OF THE CASE

The application concerns the alleged lack of impartiality of a judge of the second-instance court who had decided on the seemingly same legal issue in the consecutive enforcement and civil proceedings between the same parties which concerned the same facts. In particular, the applicant instituted civil proceedings against her former employer seeking payment of her gross salary arrears for the period between 1 January 2009 and 23 May 2011. The courts awarded her the arrears sought but at the same time allowed the employer's counterclaim seeking that she pays back a part of the statutory default interest paid to her in the earlier enforcement proceedings instituted on the basis of a judgment adopted in previous civil proceedings between the same parties.

Before the Court the applicant complains under Article 6 § 1 of the Convention that Judge I.D. who sat in the panel of the second-instance court in the civil proceedings complained of could not be considered impartial. That judge had ruled in the previous enforcement proceedings that she was not entitled to receive a part of the statutory default interest paid to her on the basis of an earlier judgment between the same parties. The applicant argues that, by deciding on the defendant's counterclaim to pay back that sum in the subsequent civil proceedings, he was deciding on the same issue.

QUESTION TO THE PARTIES

Was the Zadar County Court, which decided on the applicant's appeal, impartial, as required by Article 6 § 1 of the Convention, given that Judge I.D., who sat in the panel of that court, had previously sat as a second-instance judge and delivered a decision against the applicant in the earlier enforcement proceedings between the same parties (see Stoimenovikj and Miloshevikj v. North Macedonia, no. 59842/14, §§ 34-43, 25 March 2021; Golubović v. Croatia, no. 43947/10, §§ 47-60, 27 November 2012; and Indra v. Slovakia, no. 46845/99, §§ 43-55, 1 February 2005)?

Ahmed Kvadrani ABUKAR v. DENMARK (no. 24837/24)

Article 8 – expulsion of foreign national with 12-year re-entry ban following criminal conviction

SUBJECT MATTER OF THE CASE

The applicant is a Somali national. He entered Denmark when he was 8 years old. He has a criminal past and has been warned several times that he may risk expulsion. By a High Court judgment which became final on 1 May 2024, the applicant was convicted of, inter alia, violence under aggravating circumstances and attempted robbery. He was sentenced to 2 years and 6 months' imprisonment and his expulsion from Denmark was ordered, with a 12-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 2 years and 6 months' imprisonment, would the order to expel him from the country with a 12-year re-entry ban be in breach of Article 8 of the Convention (see, for example, Abdi v. Denmark, no. 41643/19, 14 September 2021)?

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 twelve-year re-entry ban "purely theoretical" (see, among others, Savran v. Denmark [GC], no. 57467/15, § 200, 7 December 2021)?

GROUPE ANTIFASCISTE LYON ET ENVIRON (LA GALE) v. FRANCE (no. 5607/24)*

Article 10 – Article 11 – dissolution of group for violent actions and incitement to hatred

SUBJECT MATTER OF THE CASE

The applications concerned the dissolution of the first applicant, the de facto grouping 'Groupe antifasciste Lyon et Environs' known as 'GALE', whose purpose was to combat the establishment and development of the extreme right in Lyon. The second applicant was a member of the group and identified as one of its leaders. The third and fourth applicants were the sister and wife of the second applicant (see Appendix).

In a letter dated 15 March 2022, served on 17 March 2022, the Ministry of the Interior informed the second applicant of the Government's intention to initiate the dissolution of the 'la GALE' group on the basis of paragraph 1 of Article L. 212-1 of the Internal Security Code, as amended by Article 16 of the Act of 24 August 2021 reinforcing respect for the principles of the Republic. This provision states that groups that incite violence against people or property may be dissolved. It invited the Minister to submit his written observations and, where appropriate, oral observations, at his request, within a period of ten days.

By decree dated 30 March 2022, the President of the French Republic ordered the dissolution of the group. The decree was based on three grounds, the first being that the group carried out violent actions, the second that it called for hatred and violence against the forces of law and order, and the third that it was very active on social networks, legitimising violence against its opponents and allowing similarly violent comments to appear under its publications.

The first two applicants applied to the interim relief judge for a stay of execution of the decree on the basis of article L. 521-2 of the Code of Administrative Justice. In an order dated 16 May 2022, the interim relief judge of the Conseil d'État granted this request, ruling that the facts of which the group was accused did not justify its dissolution, which would have seriously and manifestly unlawfully infringed the fundamental freedoms of assembly and association.

On 9 November 2023, the Conseil d'État dismissed the four applicants' application to have the decree annulled on the grounds of breach of Articles 10 and 11 of the Convention: ‘ (...) 7. Thirdly, it follows from Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms that the exercise of freedom of expression and freedom of assembly and association, which they guarantee, may be subject to restrictions prescribed by law and constituting measures necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime. Having regard, on the one hand, to the scope of the provisions of 1o of Article L. 212-1 of the Code de la sécurité intérieure as recalled in paragraph 2 and given that, as stated in paragraph 4, the legality of the dissolution measure is subject to its being appropriate, necessary and proportionate to the seriousness of the disturbances likely to be caused to public order, the applicants have no grounds for claiming that those provisions authorise, as a matter of principle, unjustified interference with the freedoms guaranteed by those provisions. Moreover, the fact that the provisions introduced in Article L. 212-1(1) by the Law of 24 August 2021 may lawfully provide a basis for the dissolution of an association or grouping by reason of acts prior to the entry into force of that Law does not constitute a breach of the provisions relied on, since those provisions were in force on the date of the contested decree and the restrictions placed on the freedoms referred to above were thus, on that date, provided for by law within the meaning of those provisions.

8. Fourthly, it is clear from the documents in the file that several messages posted by the dissolved group and Mr D... on social networks, which cannot be seriously disputed as being attributable to them, explicitly called for violent acts against property or persons, constituting serious disturbances of public order, in particular during demonstrations, whether declared or not, on the public highway.

9. Secondly, the group repeatedly published messages on social networks over several years, inserting photographs or drawings showing police officers or police vehicles being set on fire, pelted with projectiles or subjected to other attacks or damage, particularly during demonstrations, together with hateful and insulting texts about the national police force, justifying the use of violence against law enforcement officers, their premises and vehicles, rejoicing in such acts of violence and even congratulating the perpetrators. It also distributed messages approving and justifying, in the name of ‘anti-fascism’, serious violence committed against extreme right-wing activists and their property. Other publications by the group on social networks had also led to calls by third parties for violence, or even murder, directed against internet users claiming to be ultra-right-wing, without any moderation on the part of the organisation, which did not lack the means to do so.

10. It follows from the foregoing that the grouping ‘Groupe Antifasciste Lyon et Environs’ provoked violent acts against people and property falling within the scope of 1o of Article L. 212-1 of the Internal Security Code.

Fifthly, having regard to the content, seriousness and recurrence, over several years, of the acts of explicit and implicit incitement to commit violent acts attributable to the group at issue, and to the seriousness of the harm thus caused to public order, the contested measure of dissolution cannot be regarded, in the present case, as either unnecessary or disproportionate (...)’.

Invoking Articles 10 and 11 of the Convention, the applicants submitted that the dissolution at issue constituted an unjustified and disproportionate interference with the exercise of their right to freedom of association and freedom of expression.

QUESTION TO THE PARTIES

Did the dissolution of the group known as 'LA GALE' constitute an interference with the exercise of the applicants' right to freedom of association and/or right to freedom of expression (Ayoub and Others v. France, nos. 77400/14 and 2 others, 8 October 2020, Vona v. Hungary, no. 35943/10, ECHR 2013). If so, was that interference prescribed by law and necessary within the meaning of Article 11 § 2 and/or Article 10 § 2?

Jean-Eudes GANNAT v. FRANCE (no. 7475/24)*

Article 10 – Article 11 – dissolution of a group due for provoking or contributing through their actions to discrimination, hatred or violence

SUBJECT MATTER OF THE CASE

The application concerns the dissolution of the de facto grouping 'Alvarium' created on 17 January 2018 on Facebook, which presented itself as a 'community centre for social and cultural action in Anjou' and of which the applicant was the leader. In a letter dated 27 October 2021, the Ministry of the Interior informed the applicant of the Government's intention to dissolve the 'Alvarium' group. It invited him to submit his written observations and, where appropriate, oral observations, at his request, within a period of ten days. By decree dated 17 November 2021, the President of the Republic ordered the dissolution of the group on the basis of paragraphs 1 and 6 of article L. 212-1 of the French Internal Security Code, which state that: 'All de facto associations or groupings shall be dissolved by decree in the Council of Ministers: 1o which provoke armed demonstrations or violent acts against persons or property ; 6o Or which either provoke or contribute through their actions to discrimination, hatred or violence against a person or group of persons on the grounds of their origin, sex, sexual orientation, gender identity or actual or supposed membership or non-membership of a particular ethnic group, nation, alleged race or religion, or propagate ideas or theories tending to justify or encourage such discrimination, hatred or violence;'.

The group, which describes itself on its website as 'resolutely identitarian', was found to have been involved in acts of violence, to have supported the violent actions of its members and to have used its publications to encourage violent acts. Also included were publications that propagated a discourse and ideas equating immigration and Islam with threats that the French must fight, and confusing immigration, Muslims and terrorism.

On 9 November 2023, the Conseil d'État rejected the applicant's request for the decree to be annulled, based in particular on a breach of Articles 10 and 11 of the Convention: '(...) 3. Having regard to the seriousness of the infringement of freedom of association, a fundamental principle recognised by the laws of the Republic, by a measure of dissolution, the provisions of Article L. 212-1 of the Internal Security Code are to be interpreted strictly and may be implemented only to prevent serious disturbances of public order. 4. The decision to dissolve an association or a de facto grouping taken on the basis of article L. 212-1 of the Internal Security Code may only be pronounced, subject to the control of the juge de l'excès de pouvoir, if it is appropriate, necessary and proportionate to the seriousness of the disturbances likely to be caused to public order by the actions of the association or grouping. 6. Firstly, it is common ground that 'Alvarium' has accounts on several social networks, a website, premises where its members meet and pay an annual subscription, an emblem and communication media in the form of posters, stickers and clothing. These elements are sufficient to characterise the existence of a group of persons organised with a view to their collective expression, and therefore a de facto grouping within the meaning of the aforementioned

provisions of Article L. 212-1 of the Code de la sécurité intérieure, without the fact that the decree wrongly refers to the existence of a 'hierarchical structure' and that Mr A. is its 'leader' having any bearing in this respect, even though he is merely its spokesperson. 7. Secondly, it is clear from the documents in the case file that, among the messages disseminated on social networks by 'Alvarium' in 2020 and 2021 cited by the Minister for the Interior, some exceed the limits of freedom of political expression by propagating ideas justifying discrimination and hatred against foreigners or French nationals of immigrant origin by equating them with delinquents or criminals, Islamists or terrorists. The 'Alvarium' group also maintains links, through several of its leading members, with groups calling for discrimination, violence or hatred against foreigners. These actions, which tend to justify or encourage discrimination, hatred or violence against people of non-European origin, in particular those of the Muslim faith, fall within the scope of Article L. 212-1, 6th paragraph of the Internal Security Code. 8. In view of the nature, seriousness and recurrence of the actions mentioned in the previous point, aimed at stigmatising people of immigrant origin and, in particular, those of the Muslim faith, and blaming them for acts of crime and delinquency committed on national territory, the dissolution measure criticised is not disproportionate in view of the resulting risk of disturbance of public order. 9. It follows from the foregoing that the author of the contested decree did not misapply the provisions of Article L. 212-1(6) of the Internal Security Code. It is also clear from the investigation that he would have taken the same decision if he had based himself solely on these provisions. 10. Thirdly and lastly, for the reasons given in point 8, the interference with freedom of association resulting from the contested Decree does not infringe the provisions of Article 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Invoking Articles 10 and 11 of the Convention, the applicant maintained that the dissolution at issue constituted an unjustified and disproportionate interference with the exercise of his right to freedom of association.

QUESTION TO THE PARTIES

Did the dissolution of the 'Alvarium' group constitute interference with the exercise of the applicant's right to freedom of association and/or freedom of expression (Ayoub and Others v. France, nos. 77400/14 and 2 others, 8 October 2020, Vona v. Hungary, no. 35943/10, ECHR 2013)? If so, was this interference prescribed by law and necessary within the meaning of Article 11 § 2 and/or Article 10 § 2?

CODEPINK : WOMEN FOR PEACE et EGYPTIANS ABROAD FOR DEMOCRACY (DEMOCRACY V AUTOCRACY, INC) v. FRANCE (no. 4125/24)*

Articles 2, 6 and 13 – dismissal of complaint on charges of crimes against humanity and complicity as part of security and intelligence operation

SUBJECT MATTER OF THE CASE

The application concerns the dismissal of the applicants' complaint on charges of crimes against humanity, complicity in crimes against humanity and torture, for acts committed on Egyptian territory between July 2015 and January 2019 as part of a security and intelligence operation between Egypt and France known as Operation Sirli.

The applicants are two non-profit non-governmental organisations (NGOs) registered in the United States. Egyptian Abroad for Democracy's mission is to address issues of human rights abuses and anti-democratic actions in Egypt. Codepink is a women-led organisation that supports peace and human rights initiatives, including human rights and justice issues in the Middle East.

On 21 November 2021, the NGO Disclose published an investigation into Operation Sirli. It argued that this French military operation, aimed at combating terrorism in the border area between Libya and Egypt, had allowed the Egyptian army to carry out bombardments that caused the deaths of several hundred civilians. In the days following this publication, French officials and politicians, including the French Minister of the Armed Forces, expressed the need for an enquiry into France's responsibility. On 16 February 2022, in response to a question from a senator (no. 2147S) on the outcome of the enquiry, the Minister Delegate to the Minister for the Armed Forces replied as follows: 'The mission you are talking about was undertaken as part of the strategic partnership established with Egypt, one of the major objectives of which, I would like to point out, is the fight against terrorism. It is designed to meet our partner's intelligence needs as a matter of priority. The conclusions of the internal investigation requested by the Minister (...) show that the mission was clearly framed and that strict preventive measures were put in place: a compartmentalised organisation and limited capabilities. The prevention of any risk of drift was monitored over time, as evidenced both by the reports from the various successive detachments and the directives from command. The measures adopted and the technical limitations imposed were constantly applied and reminded to the partner. In view of the matter in question, Mr Senator, the results of this investigation have also been placed under the protection of national defence confidentiality, without prejudice, however, to the full cooperation of the Ministry of the Armed Forces with the justice system'.

On 12 September 2022, the applicants lodged a complaint against X with the anti-terrorist public prosecutor at the Paris judicial court on charges of crimes against humanity, complicity in crimes against humanity and torture, for acts committed on Egyptian territory between July 2015 and January 2019 as part of Operation Sirli. In their complaints, they argued that French officials involved in the operation could be prosecuted and tried in France under active personal jurisdiction (article 113-6 of the Criminal Code) for complicity in crimes against humanity (articles 127-1 and 212-1 of the Criminal Code) and that Egyptian officials present on French territory could be prosecuted under universal jurisdiction for torture (article 113-12 of the Criminal Code, articles 689-1 and 689-2 of the Code of Criminal Procedure).

As regards the offence of crimes against humanity, the applicants argued that there had been a concerted plan to target Egyptian civilians suspected of smuggling, not terrorism, and that the Egyptian authorities had carried out a widespread or systematic attack against them with the help of French intelligence and equipment. They claimed that the Egyptian army had deliberately targeted and killed passengers in suspect vehicles at the Egyptian-Libyan border for several years. They also alleged the underlying crimes of wilful bodily harm and torture.

They concluded as follows: 'The following offences have been established:

- Crimes against humanity, committed by Egyptian officials whose identities will have to be determined;

- crimes of torture, committed by Egyptian officials whose identities will have to be determined

- complicity in crimes against humanity, committed by French officials whose identities will need to be determined.

On 19 December 2022, the public prosecutor informed their lawyer that the complaint had been dismissed on the grounds that the facts complained of did not justify criminal prosecution as the offence was not sufficiently serious. On 17 April 2023, the applicants submitted two new witness statements to the public prosecutor. On 19 May 2023, the prosecutor confirmed his decision to close the case. On 30 May 2023, the applicants appealed the decision to close the case on 19 December 2022, on the basis of Article 40-3 of the Code of Criminal Procedure, to the Public Prosecutor at the Paris Court of Appeal (Article 689-11 of the Code of Criminal Procedure). They asked the latter to enjoin the public prosecutor to continue the investigation and to carry out the investigative steps necessary to preserve the evidence needed to identify the offences in question.

On 9 October 2023, the public prosecutor replied as follows: '(...) In light of the information provided to me, I would like to inform you that I do not intend to challenge this decision. Indeed, after studying the file, I can only confirm that the constituent elements of the offences complained of are not sufficiently well-founded, including in the light of the new evidence provided. It is up to you, if you so wish and subject to the rules of criminal procedure, to initiate public proceedings yourself.

Invoking Article 2 of the Convention, the applicants submitted that the French authorities had failed in their positive obligation to protect the right to life of civilians in Egypt by continuing to cooperate with the Egyptian authorities despite their knowledge of the violations of that right committed by the latter. As regards the procedural aspect of Article 2, the applicants complained of the decisions of the National Anti-Terrorism Prosecutor's Office not to conduct an effective investigation into those violations. Relying on Articles 2, 6 and 13 of the Convention, the applicants maintained that they had not had an effective remedy since the prosecution of crimes against humanity could be brought only at the request of the public prosecutor, an authority which, moreover, lacked independence and whose decisions could not be challenged before the domestic courts.

QUESTION TO THE PARTIES

Do the facts of which the applicants complain fall within the 'jurisdiction' of France within the meaning of Article 1 of the Convention?

Did the applicants have at their disposal effective domestic remedies, as required by Article 13 of the Convention, through which they could have pursued their complaint of breach of Article 2 of the Convention in respect of the alleged deaths of Egyptian civilians during Operation Sirli? Had they exhausted domestic remedies, as required by Article 35 § 1 of the Convention?

The Government are asked to distinguish between the situation of the French and Egyptian officials involved in the operation and to clarify, in particular, whether :

- the applicants were entitled to bring a civil action before the criminal court, pursuant to Article 2-4 of the Code of Criminal Procedure and the case-law of the judicial courts;

- military cooperation actions are subject to judicial review.

If the answer to the first two questions is in the affirmative, is the French State to be held liable for the alleged deaths of the Egyptian civilians, and was it obliged, under Article 2 of the Convention in its procedural aspect, to investigate these civilian losses?

Abdelaziz CHAAMBI and ASSOCIATION COORDINATION CONTRE LE RACISME ET L'ISLAMOPHOBIE (CRI) v. FRANCE (nos. 7464/24 and 7481/24)*

Article 10 – Article 11 – dissolution of anti-racism association

SUBJECT MATTER OF THE CASE

The applications concerned the dissolution of the applicant association 'Coordination contre le racisme et l'islamophobie' (Coordination against Racism and Islamophobia), whose purpose was to combat all forms of racism: anti-Semitism, negrophobia, romophobia and, in particular, Islamophobia. The second applicant was president of this association.

In a letter dated 4 October 2021, the Ministry of the Interior informed the second applicant of the Government's intention to dissolve the applicant association. It invited him to submit his written observations and, where appropriate, oral observations, at his request, within a period of eight days. By decree dated 21 October 2021, the President of the French Republic ordered the dissolution of the applicant association on the basis of paragraphs 1 and 6 of Article L. 212-1 of the Internal Security Code, which state that: 'All de facto associations or groupings shall be dissolved by decree of the Council of Ministers: 1o Who provoke armed demonstrations or violent acts against persons or property; 6o Or which either provoke or contribute by their actions to discrimination, hatred or violence against a person or group of persons on the grounds of their origin, sex, sexual orientation, gender identity or their actual or supposed membership or non-membership of a particular ethnic group, nation, alleged race or religion, or propagate ideas or theories tending to justify or encourage such discrimination, hatred or violence;'.

The applicant was found to have made statements, through her leaders and publications, calling for violence against the police or reprisals against the perpetrators of what she considered to be Islamophobic acts. Also included were online publications which, under the guise of denouncing acts of Islamophobia, distilled a message inviting people to perceive French institutions as Islamophobic by exploiting any event involving people of the Muslim faith or the image of Islam in order to fuel a permanent suspicion of religious persecution likely to stir up hatred, violence or discrimination against non-Muslims, thereby creating a breeding ground for terrorist action.

On 9 November 2023, the Conseil d'État rejected the two applicants' application to have the decree annulled, based in particular on a breach of Articles 10 and 11 of the Convention: 8. Firstly, by vehemently criticising in public, in 2016, the action of the police, the administrative authorities and the courts following clashes between a Muslim family and other inhabitants of a village, the association's representative in Perpignan cannot be regarded as having, within the meaning of Article L. 212-1(1) of the Internal Security Code, provoked violent acts. On the other hand, although the messages that the association had published via its account on a social network had provoked reactions from third parties on the same account, these reactions, although insulting or threatening towards the President of the Republic, the police or a journalist,

did not call for violence. It follows that the applicants are entitled to argue that the contested decree misapplied the provisions of Article L. 212-1, paragraph 1, of the Internal Security Code in holding that these various comments and messages fell within the scope of those provisions. 9. On the other hand, it is clear from the documents in the file that, via its social network accounts, the association published a large number of comments, some of them outrageous, on national and international news, particularly in the period between 2019 and its dissolution in 2021, tending, including explicitly, to impose the idea that the public authorities, legislation, the various national institutions and authorities and many political parties and media were systematically hostile to Muslim believers and used anti-Semitism to harm Muslims. These publications have given rise, on these same accounts, to numerous hateful, anti-Semitic and insulting comments calling for public vindictiveness, without the association attempting to contradict or delete them. 10. These actions are likely to provoke discrimination, hatred or violence against a person or group of persons on the grounds of their origin or their membership or non-membership of a nation, a so-called race or a particular religion, or to propagate ideas or theories tending to justify or encourage them, without the fact that the object of the association, as defined by its articles of association, was not unlawful having any bearing in this respect. They therefore fall within the scope of Article L. 212-1, 6th paragraph of the Internal Security Code. 11. In view of the serious and recurrent nature of the conduct referred to in point 9 and the fact that the association was seeking to propagate its ideas to the widest possible audience, and even though it claims that it intended to combat discrimination, the contested dissolution measure cannot be considered, in the present case, to be disproportionate in view of the risk of disturbance of public order resulting from this conduct. 12. It follows from the foregoing that the author of the decree did not misapply the provisions of Article L. 212-1(6) of the Internal Security Code. It also follows from the investigation that he would have taken the same decision if he had based himself solely on these provisions. 13. It follows from the foregoing that the applications by the association 'Coordination contre le racisme et l'islamophobie' and by Mr C... must be dismissed (...)'.

Invoking Articles 10 and 11 of the Convention, the applicants submitted that the dissolution at issue constituted an unjustified and disproportionate interference with the exercise of their right to freedom of association and freedom of expression.

QUESTION TO THE PARTIES

Did the dissolution of the association 'Coordination contre l'islamophobie en France' constitute interference with the exercise of the applicants' right to freedom of association and/or right to freedom of expression (Ayoub and Others v. France, nos. 77400/14 and 2 others, 8 October 2020, Vona v. Hungary, no. 35943/10, ECHR 2013). If so, was that interference prescribed by law and necessary within the meaning of Article 11 § 2 and/or Article 10 § 2?

Tombe CAMARA v. FRANCE (no. 19021/22)*

Article 5 – Article 6 – dismissal of appeal during administrative detention

SUBJECT MATTER OF THE CASE

The application concerned the impossibility for the applicant, a Mauritanian national, whose administrative detention had been extended by the Préfecture de Police in execution of a deportation order, to make oral submissions to the domestic courts himself and through his lawyer present at the hearings.

At first instance, the applicant alleged that the liberty and custody judge failed to hear him before handing down his decision. His court-appointed lawyer filed submissions requesting that he be given notice of the failure to hear his oral submissions. On appeal, although the appellant was given the floor, his lawyer filed the same submissions, this time because the judge appointed by the First President of the Paris Court of Appeal refused to hear him in the context of a lawyers' strike, even though he was intervening pro bono.

In a judgment of 13 October 2021, the Court of Cassation dismissed the appellant's appeal, holding in particular that the arguments relating to the failure to hear the lawyer's oral submissions were, on the one hand, manifestly not such as to result in the quashing of the decision of the Court of Appeal, which had, on the other hand, been able to validly consider that there were 'insurmountable circumstances leading to this situation [in] proceedings responding to [a] short deadline'.

Relying on Articles 5 § 4 and 6 § 1 of the Convention, the applicant complained that his right of access to a court and his rights of defence had been infringed as a result of the alleged impossibility for him to be heard at first instance and for his lawyer to make oral submissions at the first instance and appeal hearings, despite the fact that the proceedings concerned his deprivation of liberty.

QUESTIONS TO THE PARTIES

Did the proceedings in which the applicant challenged the lawfulness of the extension of his administrative detention comply with the requirements of Article 5 § 4 of the Convention?

In particular, had the applicant's right of access to a court and his rights of defence been respected before the competent domestic courts (the liberty and custody judge and then the judge delegated by the First President of the Court of Appeal), given that it was allegedly impossible for him to be heard in person and for his lawyer to make oral submissions (see, in particular, Lutsenko v. Ukraine, no. 6492/11, § 96, 3 July 2012, Černák v. Slovakia, no. 36997/08, § 78, 17 December 2013, and Bah v. the Netherlands (dec.), no. 35751/20, §§ 37-39, 22 June 2021, and the references cited)?

Laurent BARILLIOT and others v. FRANCE (no. 9748/24)*

Articles 2, 8 and 14 – rights of future generations – radioactive waste management – Article 6 – refusal to refer case to the CJEU for a preliminary ruling

SUBJECT MATTER OF THE CASE

The application was lodged by twenty-six local residents of a proposed deep geological repository for high-level and long-lived intermediate-level radioactive waste, known as the 'Cigéo' project. The facility is to be built on the borders of the Meuse, Haute-Marne and Vosges departments, in the municipalities of Bure, Ribeaucourt, Mandres-en Barrois and Bonnet.

The applicants, together with a number of non-governmental organisations, applied to the Conseil d'État for the annulment of decree no. 2022-993 of 7 July 2022 declaring the Cigéo project to be in the public interest and for the territorial coherence plan for the Pays Barrois and the local town planning schemes for Haute Saulx and Gondrecourt-le-Château to be made compatible with the decree. The applicants argued that the public interest application file did not provide answers to the difficulties and questions raised by both experts and opponents of the project. They complained that the public's right to be informed and participate had been undermined by irregularities in the organisation of the public enquiry, arguing that the number of enquiry locations was too small in relation to the number of municipalities affected by the project, that the public enquiry was fragmented and that the information provided was not easy to understand. Citing in this regard Article 6 of Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment and Article 6 of the Aarhus Convention of 25 June 1998 on access to information, public participation in decision-making and access to justice in environmental matters, They argued that, although a comprehensive public enquiry and a readable file covering the entire project were necessary, the public enquiry had only concerned the construction work on the storage centre, under the contracting authority of the national agency for radioactive waste management (‘ANDRA’), and not all the work relating to the project, which was the responsibility of other contracting authorities. In this context, they asked the Conseil d'État to refer the following question to the Court of Justice of the European Union (‘CJEU’) for a preliminary ruling on the interpretation of Article 6 of the Directive: ‘Where a project such as Cigéo is carried out in several stages, all of which remain dependent on one another, can information and participation be split up, at the risk of providing fragmented information and leading to fragmented participation? Or, on the contrary, do the requirements arising from Article 6 make it necessary to provide for an overall public information and participation procedure, in addition to the partial information and participation procedures?

The applicants also complained of shortcomings in the public enquiry file, relating to the impact study, the summary assessment of expenditure and the control of risks, safety and security. On this last point, the applicants asked the Conseil d'État to refer to the CJEU for a preliminary ruling questions on whether a declaration of public interest, insofar as it allows a spent fuel or radioactive waste management activity to be undertaken, constitutes an authorisation within the meaning of Directive 211/170/Euratom establishing a Community framework for the safe and responsible management of spent fuel and radioactive waste, whether the declaration of public interest should already contain all the information relating to the safety of the chosen location, the operating arrangements for the facility, the risk of accidents and of accidental interaction with other dangerous facilities located nearby, and whether the information relating to safety should be communicated to the public pursuant to Article 10 of the Directive prior to the public enquiry relating to the declaration of public interest or prior to future authorisations allowing the waste storage centre to be operated.

Criticising the arrangements for informing EU Member States whose environment was likely to be affected by Cigéo, the applicants also asked the Conseil d'État to refer the following question to the CJEU for a preliminary ruling on the interpretation of Article 7 of Directive 2011/92/EU cited above: ‘Where the implementation of a project such as Cigéo requires several acts or authorisations, must the obligations contained in Article 7 of Directive 2011/92/EU be performed prior to the first of those acts making it possible to identify and assess all the effects that the project is likely to have on the environment, namely the declaration of public interest in the present case, or may those obligations be performed subsequently when other acts are issued or other authorisations are granted? ‘.

They also criticised the inadequacy of the case file with regard to damage to biodiversity, and put forward questions for a preliminary ruling relating to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds.

The applicants also challenged the public utility of the project. In particular, they argued that the rights of future generations had been disregarded, claiming that the administrative authority had committed a manifest error of assessment by declaring the Cigéo project to be in the public interest, for the benefit of current generations, even though the reversibility of deep geological disposal of radioactive waste and the ability of future generations to retrieve it were not guaranteed.

The Conseil d'État dismissed the application (along with another seeking the annulment of Decree no. 2022-992 classifying the Cigéo project as an operation of national interest[1]) in a decision dated 1 December 2023, stating that there was no need to refer the preliminary questions put by the applicants to the CJEU.

Before the Court, relying on Article 10 and, in particular, the judgments in Magyar Helsinki Bizottság v. Hungary [GC] (no. 18030/11, 8 November 2016), Cangı v. Turkey (no. 24973/15, 29 January 2019), and Association Burestop 55 and Others v. France (nos 56176/18 and 5 others, 1 July 2021), the applicants complained of a breach of their right to receive information which was clear, legible, not fragmented, sincere, accurate and sufficient, as a result of: 1o the irregularities in the way the public enquiry was organised, given the inadequate territorial coverage of the enquiry locations, and the fragmentation and lack of legibility of the public enquiry file; 2o the inadequacy of the impact study in terms of the need to assess the impact of the project when the first authorisation was granted; (3) the insincerity, inaccuracy and inadequacy of the summary assessment of the expenditure relating to the project; (4) the inadequacies of the public enquiry file relating to risk management, safety and security.

Invoking Articles 2, 8 and 14 of the Convention, the applicants argue that the Cigéo project presents an unavoidable risk in the very long term: that of the migration of radioactive elements through the geological layer, which will eventually reach the surface and are likely to affect water resources. In their view, these circumstances infringe their right to life and to respect for their private and family life, as well as that of their descendants, whether born or unborn, in a way that would be neither necessary nor proportionate in a democratic society. On the latter point, they considered that there was nothing to prevent the Court, in interpreting the Convention, from enshrining a principle of protection for future generations.

Relying on Article 6 § 1 of the Convention and referring in particular to the judgment in Ullens de Schooten and Rezabek v. Belgium (nos. 3989/07 and 38353/07, 20 September 2011), the applicants complained that the Conseil d'État had failed to give reasons for its refusal to refer to the CJEU the questions they had submitted in their appeal for a preliminary ruling.

QUESTIONS TO THE PARTIES

The parties are asked to specify the main stages of the Cigéo project, those that have already been completed and those that remain to be completed in order to start operating the industrial geological disposal centre.

1. Have the applicants exhausted domestic remedies in respect of their complaints under Articles 8 and 10 of the Convention?

2. Can the applicants claim to be victims of a violation of Article 8 of the Convention, and is that provision applicable in the present case?

3. Do the decision-making procedures relating to the Cigéo project, in particular their fragmentation, reveal a failure to respect the applicants' right to information, constituting a breach of Article 8 or Article 10 of the Convention?

4. At the current stage of the Cigéo project, is there interference with the applicants' right to respect for their private and family life within the meaning of Article 8 of the Convention? If so, does the interference meet the requirements of the second paragraph of that provision? In particular, does the deep geological burial of high-level and long-lived intermediate-level radioactive waste meet at least one of the legitimate aims listed therein, and does it, in the light of that aim or those aims, impose a disproportionate burden on persons who, like the applicants, live in the vicinity of the burial site? What consideration have the domestic authorities and court given to the interests of future generations?

5. Was there a breach of Article 6 § 1 of the Convention by reason of the refusal of the Conseil d'État to refer to the CJEU the questions referred to it by the applicants for a preliminary ruling?

Mathilde PANOT v. FRANCE (no. 19883/24)*

Article 10 – Article 13 – disciplinary penalty imposed on member of parliament for tweeting about work of parliamentary committee – procedural safeguards

SUBJECT MATTER OF THE CASE

The application concerns a disciplinary penalty imposed on a Member of Parliament. On 5 April 2023, the applicant, the MNA for the 10th constituency of Val-de-Marne, reported on the progress of the work of a joint committee on the social network Twitter during the meeting. At its meeting on 5 April 2023, the Bureau of the National Assembly issued her with a disciplinary warning, taking the view that the applicant had breached the rules on publicising the work of a joint committee.

On 25 April 2023, she applied to have the penalty imposed on her annulled on the grounds that it was ultra vires. On 24 July 2023, the Conseil d'État dismissed her application against this measure as having been brought before a court that did not have jurisdiction to hear it. It held that, in accordance with the French constitutional tradition of the separation of powers, it was not for the administrative courts to hear cases concerning sanctions imposed by the Assembly's organs on its members, and held that the provisions of the Convention, as interpreted by the Court, did not require that a member of parliament who had been subject to a disciplinary sanction should enjoy the right to a judicial remedy.

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

QUESTIONS TO THE PARTIES

1. Did the applicant lodge her application within the time-limit laid down in Article 35 § 1 of the Convention? In particular, when did that time-limit start to run in the present case (see 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 of her right to impart information or ideas, within the meaning of Article 10 of the Convention? In particular, was the disciplinary measure taken against her lawful and necessary within the meaning of Article 10 § 2? Did the applicant enjoy sufficient procedural safeguards (see 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 pursued her complaint of breach of Article 10?

Sébastien DELOGU v. FRANCE (no. 16026/24)*

Article 10 – Article 13 – disciplinary penalty imposed on member of parliament – procedural safeguards

SUBJECT MATTER OF THE CASE

The application concerned a disciplinary penalty imposed on a Member of Parliament. On 9 June 2024, during a sitting of the National Assembly devoted to questions to the government, the applicant, the MP for the 7th constituency of Bouches-du-Rhône, stood up and brandished a Palestinian flag in the Chamber. The President of the National Assembly first called him to order and entered the matter in the minutes, indicating that the matter would be referred to the Bureau of the National Assembly following the incident. Then, in view of the reactions in the Chamber, the President suspended the sitting to confer with the chairmen of the parliamentary groups. When the sitting resumed, she announced that the Bureau of the National Assembly would be convened as a matter of urgency to decide on the follow-up to this incident. The sitting was suspended again at 3:36pm for this purpose. The Bureau of the National Assembly met immediately and proposed that the applicant's behaviour be punished by a disciplinary penalty of censure with temporary exclusion.

The sitting resumed at 4:30 p.m. and the penalty proposed by the Bureau was put to a vote without debate, by sitting and standing. The National Assembly pronounced censure with temporary exclusion of the applicant and consequently forbade him to take part in its proceedings and to reappear in its precincts for a fortnight. The sanction also had the effect of depriving him of half his parliamentary allowance for two months.

Invoking Article 10 of the Convention, alone and in conjunction with Article 13, the applicant complained of a disproportionate interference with his freedom of expression and the absence of an effective remedy. He argued that his disciplinary conviction had been unforeseeable, that it had not been 'necessary in a democratic society' and that it had not been accompanied by adequate procedural safeguards. In this respect, he deplored the fact that the Rules of Procedure of the National Assembly made no provision for the Member facing disciplinary proceedings to be heard by the parliamentary bodies responsible for proposing and imposing a penalty on him, nor for reasons to be given for the decision to impose a penalty. He also criticised the speed with which he was disciplined and considered that the disciplinary procedure

had not been implemented impartially. Finally, he maintained that no effective remedy was available to him.

QUESTIONS TO THE PARTIES

1. Did the applicant exhaust domestic remedies, as required by Article 35 § 1 of the Convention? In particular, did the applicant have a domestic remedy that could be regarded as effective?

2. Was there a violation of the applicant's right to freedom of expression, and in particular his right to impart information or ideas, within the meaning of Article 10 of the Convention? In particular, was the disciplinary measure taken against him prescribed by law and necessary within the meaning of Article 10 § 2? Was the applicant afforded sufficient procedural safeguards (see 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 pursued his complaint of breach of Article 10?

Maria VLACHOPOULOU and Others v. GREECE (no. 43983/19)

Article 6 – refusal of applicants' request to seek a preliminary ruling with the CJEU

SUBJECT MATTER OF THE CASE

The application concerns the tacit refusal of the Court of Cassation to seek a preliminary ruling from the Court of Justice of the European Union (CJEU). The applicants, defendants in an appeal on points of law lodged by the Greek State and having lodged an appeal on points of law themselves against decision no. 4659/2015 of the Athens Court of Appeal, invited the Court of Cassation by their written submissions to seek a preliminary ruling from the CJEU on the correct interpretation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP and its application on their case. The domestic court granted the Greek State's appeal on points of law by decision 1670/2018, which was finalised on 19 February 2019, without mentioning the applicants' referral request and without giving reasons for its refusal to seek a preliminary ruling.

QUESTION TO THE PARTIES

Did the fact that the Court of Cassation gave no reasons for its refusal of the applicants' request to seek a preliminary ruling with the CJEU render the proceedings unfair, in violation of Art 6 § 1 of the Convention (see Sanofi Pasteur v. France, no. 25137/16, §§ 68-69, 13 February 2020, Ullens de Schooten and Rezabek v. Belgium, nos. 3989/07 et 38353/07, §§ 56-62, 20 September 2011 and Georgiou v. Greece, no. 57378/18, § 22-23, 14 March 2023)?

Kyriakos MARKOPOULOS v. GREECE (no. 42237/22)

Article 3 – Article 13 – conditions of detention and access to medical treatment

SUBJECT MATTER OF THE CASE

The application concerns the applicant's conditions of detention and access to medical treatment, as well as the effectiveness of the domestic legal remedy provided by article 6A of Law no. 2776/1999 (Penitentiary Code). The applicant is currently detained in Chalkida Prison. He complains under Article 3 of the Convention of the conditions of his detention, in particular regarding:

- overcrowding;

- filthy wards infested with bedbugs;

- lack of physical exercise in fresh air;

- lack of leisure or educational activities;

- unpartitioned toilet inside the cell;

- insufficient heating and ventilation;

- lack of bedding, bed linen and toiletries;

- meals of poor quality, quantity and nutritional value.

The applicant also complains under Article 3 of the Convention of the lack of appropriate medical care in prison. He suffers from viral hepatitis C and complains that, despite having notified the prison authorities accordingly, he has not seen a doctor, he has not had a medical check-up or received medication. He alleges that his state of health is deteriorating.

Under Article 13 of the Convention, the applicant complains of the lack of an effective domestic remedy in respect of his complaints regarding the conditions of his detention and the lack of adequate medical care in detention.

QUESTIONS TO THE PARTIES

1. Do the conditions of the applicant's detention amount to inhuman or degrading treatment in breach of Article 3 of the Convention (see Muršić v. Croatia [GC], no. 7334/13, §§ 96-101, 20 October 2016)?

2. Does the applicant have at his disposal an effective domestic remedy in respect of his complaint under Article 3 regarding his conditions of detention, as required by Article 13 of the Convention? In particular, can the remedy provided by virtue of Law no. 4985/2022, as added to article 6A of Law no. 2776/1999, be considered as an effective preventive and/or compensatory remedy for the purpose of Article 13 of the Convention (see Ananyev and Others v. Russia, nos. 42525/07 and 60800/08, §§ 93-99, 210-231, 10 January 2012; Ulemek v. Croatia, no. 21613/16, §§ 71-74, 31 October 2019; and J.M.B. and Others v. France, nos. 9671/15 and 31 others, § 208, 30 January 2020)?

The Government are requested to provide examples of the relevant domestic case-law in application of the remedy provided by virtue of Law no. 4985/2022, as added to article 6A of Law no. 2776/1999.

3. Has there been a breach of Article 3 of the Convention on account of the alleged lack of adequate medical treatment of the applicant? In particular, does the applicant have access to regular medical monitoring and medicine?

The parties are requested to provide further evidence related to the applicant's medical treatment, such as copies of his complaints to the domestic authorities, responses to such complaints and a copy of his medical file maintained at Chalkida Prison.

4. Does the applicant have at his disposal an effective domestic remedy regarding his complaint about the lack of adequate medical treatment, as required by Article 13 of the Convention?

Latef AREF v. GREECE (no. 55713/19)

Article 6 – court reliance on contradictory pre-trial written witness statements

SUBJECT MATTER OF THE CASE

The applicant is an Afghan national detained in Corfu Prison. In 2013, the Athens Assize Court convicted the applicant for murder by decision no. 838, 851, 852, 896, 897/2013, and sentenced him to fifteen years' imprisonment. At the hearing, two out of ten prosecution witnesses were present: one stated that it was not the applicant who stabbed the victim with a knife, while the other did not provide any relevant information. As regards the eight absent witnesses, the court considered their pre-trial written statements, dismissing the respective applicant's objection. Relying on four of these statements, which identified the applicant as the murderer, the court held that the applicant had stabbed the victim.

In 2018, following appeals by the prosecutor and the applicant, the Athens Appeals Assize Court, upheld the conviction and sentenced him to life imprisonment, by judgment no. 44/2018. The court relied on the evidence considered at first instance and a DNA expertise which found that the applicant's DNA did not match that found on the murder weapon. The court maintained the first-instance reasoning and held that the expertise was not decisive, as the applicant must have covered the weapon with a rug to avoid leaving DNA on it.

The applicant lodged an appeal on points of law. Relying on Article 510 § 1 (H) of the Code of Criminal Procedure, he complained that the appeal court adopted a deficient reasoning and erroneously upheld the prosecutor's appeal. He argued that the appeal court arbitrarily overlooked the DNA expertise by considering that the murder weapon was used while covered in a rug, although the relevant witness statements merely mentioned that it was brought to the murderer in a rug. The Court of Cassation, by judgment no. 775/2019, rejected the cassation appeal as unfounded and held that the appeal court did not err in declaring the prosecutor's appeal admissible.

Under Article 6 § 1, the applicant complains that the criminal proceedings were unfair, notably because the domestic courts adopted deficient reasonings and erred in the establishment of the facts by relying on contradictory pre-trial written witness statements and overlooking decisive DNA evidence.

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 the Court of Cassation, at least in substance, the rights under Article 6 § 1 on which he now wishes to rely before the Court?

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 (see, for instance, Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, §§ 302-5, 26 September 2023)?

TEACHERS' TRADE UNION and TEACHERS' DEMOCRATIC TRADE UNION v. HUNGARY (no. 45299/22)

Article 6 – right to strike – definition of essential services and of minimum services

SUBJECT MATTER OF THE CASE

The applicants are trade unions (Teachers' Trade Union (Pedagógusok Szakszervezete), the first applicant, and the Teachers' Democratic Trade Union (Pedagógusok Demokratikus Szakszervezete), the second applicant), representing the interests of teachers and other employees in the education sector. The applicants decided to organise a strike seeking a number of measures to improve the working conditions of employees in the education sector and to increase salaries in the sector.

Under the terms of section 4 (2) of Act no. VII of 1989 on the right to strike, in case of employers engaged in essential services to the population, a strike may only be held once the parties have reached an agreement on the nature and scope of essential services to be maintained during the strike, or in the absence of an agreement, once a final judicial decision has defined the scope and nature of minimum services.

The applicants submitted their offer of minimum services to the Hungarian Government representative on 5 October 2021. The parties' negotiations in this respect produced no results and consequently the trade unions announced a two-hours warning strike for 31 January 2022. They also lodged a request with the Budapest Administrative and Labour Court to define the nature and scope of minimum services. On 28 January 2022 the first-instance court upheld the plaintiffs' request as regards holding a strike and defined the minimum services to be maintained during the strike days and the applicants held the warning strike on 31 January 2022. On 10 February 2022 the Budapest Court of Appeal overturned the first-instance decision and held that the warning strike had been unlawful since it took place before the first-instance decision had become final. This decision was overturned by the Kúria on 15 June 2022.

The applicants initiated the continuation of the negotiations to define the scope of essential services for the indefinite strike announced for 16 March 2022. The negotiations scheduled for 10 February 2022 were delayed to 16 February 2022 upon the Government representative's request.

On 10 February 2022 Government adopted Government Decree no. 36/2022 (II.11) defining the scope of essential services in public education institutions during the "state of danger".

The applicants lodged a new request with the Budapest Administrative and Labour Court to define the nature and scope of minimum services in line with their offer addressed to the Government. Their request was dismissed on 24 February 2022 on the grounds that the issue had been regulated by the Government Decree. The applicants' appeal was dismissed by the Budapest Court of Appeal and their constitutional complaint was declared inadmissible on 24 May 2022.

The applicants complain that they have been deprived of their right of access to a court as guaranteed in Article 6 § 1 of the Convention. They maintain that by defining the content of essential services, the Government, through their Decree no. 36/2022 (II.11), effectively frustrated their right to have a court ruling on the matter. The second applicant further complains, under Article 11 of the Convention, that the Government Decree was not sufficiently foreseeable, did not serve a legitimate aim and infringed the very essence of its right to strike.

QUESTIONS TO THE PARTIES

1. Has there been a breach of the applicants' right to access to a court as guaranteed by Article 6 § 1 of the Convention?

In particular, did Government Decree no. 36/2022 (II.11) constitute a restriction on the applicants' right to access to a court? If so, was that restriction of access to court justified and proportionate to any legitimate aim pursued?

2. Has there been a violation of the second applicant's right to strike as protected by Article 11 of the Convention (see National Union of Rail, Maritime and Transport Workers v. the United Kingdom, no. 31045/10, 8 April 2014)?

In particular, did Government Decree no. 36/2022 (II.11) constitute an interference with the second 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?

Bernadett SZÉL and Ákos HADHÁZY v. HUNGARY (nos. 28707/22 and 28709/22)

Articles 10 and 11 – right to demonstrate – freedom of expression – Covid-19 pandemic

SUBJECT MATTER OF THE CASE

The applications concern the right to demonstrate and to freedom of expression during the Covid-19 pandemic. On 11 March 2020 the Hungarian Government adopted Governmental Decree no. 40/2020 (III. 10.) introducing a special legal order and declaring a state of danger. On 16 March 2020 Governmental Decree no. 46/2020 was adopted (entering into force on 17 March 2020), setting out the specific measures to be put in place to prevent and fight the spread of the corona virus. Section 4 of the Decree introduced a ban to participate in assemblies. The ban, due to its numerous prolongations, was in effect until 14 June 2021.

The applicants, two opposition politicians, Ms Szél and Mr Hadházy, and an opposition political party, Momentum Mozgalom, announced on Facebook a series of public gatherings to be held at the roundabout in central Budapest on a weekly basis between 20 April and 18 May 2020. The organisers announced that the assemblies would be contact-free in that the participants would pass through the roundabout in their cars using their car honks to demonstrate solidarity with the healthcare workers, demand widespread testing for the corona virus and support for small enterprises and transparent information. The organisers did not announce the event to the police, as required under Act no. LV of 2018 on the Right to Assembly. On 11 August 2020 Mr Hadházy was fined 80,000 Hungarian forints (HUF, approximately 205 euros (EUR)) by the Budapest I District Police Department for abuse of the right to assembly. The Police Department considered that by sharing the event of 20 April 2020 on his Facebook page and by calling on people to participate, Mr Hadházy had been the organiser of the event. He was fined another HUF 100,000 (approximately EUR 260) for the abuse of the right to assembly in connection with the event of 25 April 2020. The administrative decisions were upheld by Pest Central District Court, reducing the fines to HUF 40,000 (approximately EUR 100) and HUF 50,000 (EUR 130). Ms Szél participated at the gathering on 27 April 2020, driving her car and honking. The Budapest I District Police Department established Ms Szél's liability for minor violation of traffic rules, for infringement of Government Decree no. 46/2020, and for the minor offence of the abuse of the right to assembly. Following a hearing requested by the applicant, the Police Department issued a new decision on 9 October 2020, finding the applicant liable for the same offences and fining her HUF 250,000 (approximately EUR 640).

On 3 March 2021 the Pest Central District Court overturned the administrative decision in respect of the infringement of Government Decree no. 46/2020 but found Ms Szél liable of violation of traffic rules and the minor offence of abuse of the right to assembly and reduced the fine to HUF 100,000 (approximately EUR 260). Both applicants lodged a constitutional complaint against the decisions of the Pest Central District Court. The complaints were dismissed on 25 January 2022 and the decisions served on the applicants on 1 February 2022. The Constitutional Court held that Ms Szél's conduct had not constituted an exercise of her right to freedom of expression, given that she had participated in an unannounced gathering, abusing the right to assembly.

Mr Hadházy complains under Articles 10 and 11 of the Convention that he has been found liable for the minor offence of abuse of the right to assembly. Ms Szél complains under Articles 10 and 11 of the Convention that she has been found liable for the minor offence of abuse of the right to assembly and for the violation of traffic rules because of having used her car honk at a public assembly.

QUESTIONS TO THE PARTIES

1. Has there been an "interference" with the applicants' right to freedom of expression under Article 10 of the Convention or a "restriction" of their right to freedom of assembly under Article 11 of the Convention?

2. If so, was that "interference", respectively "restriction", "prescribed by law" and "necessary in a democratic society" to attain a legitimate aim, as required by Article 10 § 2 and Article 11 § 2 of the Convention?

Gergely István GAZDA v. HUNGARY (no. 30238/22)

Article 10 – right to demonstrate – Covid-19 pandemic

SUBJECT MATTER OF THE CASE

The application concerns the right to demonstrate and to freedom of expression during the Covid-19 pandemic. On 11 March 2020 the Hungarian Government adopted Decree no. 40/2020 (III. 10.) introducing a special legal order and declaring a state of danger. On 16 March 2020 Governmental Decree no. 46/2020 was adopted (entering into force on 17 March 2020), setting out the specific measures to be put in place to prevent and fight the spread of the corona virus. Section 4 of the Decree introduced a ban to participate in assemblies. The ban, due to its numerous prolongations, was in effect until 14 June 2021.

Two opposition politicians, Ms Szél and Mr Hadházy, and an opposition political party, Momentum Mozgalom, announced on Facebook a series of public gatherings to be held at the roundabout in central Budapest on a weekly basis between 20 April and 18 May 2020. The organisers announced that the assemblies would be contact-free in that the participants would pass through the roundabout in their cars using their car honks to demonstrate solidarity with the healthcare workers, demand widespread testing for the corona virus, support for small enterprises and transparent information.

The applicant participated in the gathering on 11 May 2020, taking few rounds with his car at the roundabout and displaying a banner with the message: "Solidarity, humane crisis management". On 4 June 2020 the Budapest I District Police Department established the applicant's liability for minor violation of traffic rules and for infringement of Government Decree no. 46/2020 and fined him to 150,000 Hungarian forints (HUF, approximately 380 euros (EUR)). Following a hearing requested by the applicant, the Police Department issued a new decision on 19 August 2020, finding the applicant liable for the same offences and fining him the same amount.

On 29 January 2021 the Pest Central District Court upheld the administrative decision. The applicant's constitutional complaint was dismissed on 25 January 2022. The Constitutional Court held that the applicant's conduct had not constituted the exercise of his right to freedom of expression and that at the material time there had been a general ban on public assemblies.

The applicant complains under Articles 10 and 11 of the Convention that he has been found liable for breaching the general ban on participating in public assemblies and violating traffic rules by using his car honk at a public assembly.

QUESTIONS TO THE PARTIES

1. Has there been an "interference" with the applicant's right to freedom of expression under Article 10 of the Convention or a "restriction" of his right to freedom of assembly under Article 11 of the Convention?

2. If so, was that “interference”, respectively “restriction”, “prescribed by law” and “necessary in a democratic society” to attain a legitimate aim, as required by Article 10 § 2 and Article 11 § 2 of the Convention?

József ÉBERLING v. HUNGARY (no. 19002/20)

Article 3 – life imprisonment without possibility of release on parole

SUBJECT MATTER OF THE CASE

The applications concern the applicants’ conviction to life imprisonment without the possibility of release on parole and the fact that their mandatory pardon proceedings can take place only after having served forty years. The lists of applicants and the final domestic decisions are set out in the appended table. The applicants complain under Article 3 of the Convention.

QUESTION TO THE PARTIES

Have the applicants been deprived of any real prospect of release and thus potentially subjected to inhuman punishment, in breach of Article 3 of the Convention, in view of the fact that they will not be eligible for the mandatory pardon proceedings before having served forty years of imprisonment (see T.P. and A.T. v. Hungary, nos. 37871/14 and 73986/14, 4 October 2016)?

Maria Carla MACOLA v. ITALY (no. 38732/22)

Article 7 – Article 6(2) – administrative sanction

SUBJECT MATTER OF THE CASE

The application concerns the administrative sanction of 163,000 euros imposed by the Bank of Italy on the applicant for corporate governance failures attributable to her as member of the board of directors of the Banca Popolare di Vicenza. The sanction was upheld by the Rome Court of Appeal and, in last instance, by the Court of Cassation with decision no. 12436/22 issued on 18 January 2022 and filed with the court’s registry on 19 April 2022.

The applicant complains under Articles 7 of the Convention of the failure by the domestic courts to duly assess and establish a mental link between the conduct and the offence committed. Furthermore, she complains that her right to be presumed innocent, guaranteed by Article 6 § 2 of the Convention, has been violated since, in applying the presumption set by Article 3 of Law no. 689/1981 on administrative sanctions, the domestic courts shifted the burden of proof on the defence.

QUESTIONS TO THE PARTIES

1. Does the sanction imposed by domestic authorities fall within the concept of "penalty" under Article 7 of the Convention (G.I.E.M. S.r.l. and Others v. Italy [GC], nos. 1828/06 and 2 others, §§ 210-1, 28 June 2018 and Grande Stevens and Others v. Italy, nos. 18640/10 and 4 others, §§ 94-101, 4 March 2014)?

2. If so, did the domestic courts duly establish, for the purposes of the adoption of the sanction, whether a mental link disclosing an element of liability in the conduct of the applicant materialised in the present case, as required under Article 7 of the Convention (see G.I.E.M S.R.L. and Others v. Italy [GC], nos. 1828/06 and 2 Others, §§ 241-246, 28 June 2018 and Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, § 242, 26 September 2023)?

3. Did Article 3 of Law no. 689/1981 as interpreted by the domestic courts comply with the presumption of innocence guaranteed by Article 6 § 2 of the Convention? Did the domestic courts analyse the intentional element with sufficient care, specifically the question of whether there were objective elements of which the applicant should have been aware which would have led to believe that the internal procedures and controls applied were not adequate in relation to the risks at the material time (Barberà, Messegué and Jabardo v. Spain, 6 December 1988, § 77, Series A no. 146; Telfner v. Austria, no. 33501/96, § 15, 20 March 2001; and Klouvi v. France, no. 30754/03, § 41, 30 June 2011)?

Torquato ALESSI v. ITALY (no. 3060/21)

Article 6 – Article 7 – conviction lacking a sufficient legal basis

SUBJECT MATTER OF THE CASES

The application concerns the alleged lack of legal basis and retrospective application of the penalty imposed on the applicant. Pursuant to section 656 § 5 of the Code of Criminal Procedure ("the CCP"), the execution of a prison sentence up to three years of imprisonment can be suspended at certain conditions. In that case, the sentence can be served with measures alternative to full-time detention. According to section 656 § 9 of the CCP, as amended by Law-Decree no. 78/2013, converted into Law no. 94/2013, a sentence cannot be suspended and access to alternative measures cannot be granted if a person has been convicted of aggravated stalking committed with a weapon, under section 612 bis § 3 of the Criminal Code ("the CC").

The applicant was convicted to two years and one month of imprisonment for several offences committed in 2012, among which stalking under section 612 bis of the CC. Following the conviction, the domestic courts ordered the execution of the applicant's prison sentence without possibility of suspension nor access to alternative measures, in application of section 656 § 9 of the CCP (see Court of Cassation's judgment no. 6828 of 23 February 2021).

The applicant complains under Article 6 § 3 a) of the Convention that the penalty concretely applied to him lacked a sufficient legal basis as the domestic courts considered section 656 § 9 of the CCP applicable to his case, while he had not been convicted of aggravated stalking committed with a weapon. Under Article 7 of the Convention, he complains that section 656 § 9 of the CCP, as amended in 2013, was applied retrospectively to offences committed in 2012. He also complains under Article 6 § 1 of the Convention that the Court of Cassation failed to address his complaint concerning the retrospective application of section 656 § 9 of the CCP.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 7 of the Convention? In particular, in light of the wording of section 656 § 9 of the Code of Criminal Procedure and of the applicant's conviction under section 612 bis of the Criminal Code, did the domestic courts' decision not to suspend the execution of his prison sentence have a sufficient legal basis?

2. Did the application of section 656 § 9 of the Code of Criminal Procedure breach the applicant's rights under Article 7 of the Convention (see Del Río Prada v. Spain [GC], no. 42750/09, § 116, ECHR 2013, and Kupinskyy v. Ukraine, no. 5084/18, §§ 62-64, 10 November 2022)?

3. 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, did the Court of Cassation evaluate and address in its judgment the argument raised by the applicant concerning the question of the retrospective application of section 656 § 9 of the Code of Criminal Procedure to his detriment (see Felloni v. Italy, no. 44221/14, §§ 27-31, 6 February 2020, and Boldea v. Romania, no. 19997/02, § 30, 15 February 2007)?

COOP LOMBARDIA S.C. and IMMOBILIARE FUTURA S.R.L. v. ITALY (no. 7987/20)

Article 1 of Protocol No. 1 – expropriation proceedings – owners' legitimate expectation to exploit the land by constructing a sales area

SUBJECT MATTER OF THE CASE

The application concerns the progressive restrictions on the possibilities to exploit the applicants' land, imposed by a series of amendments to the local land-planning instruments. Between 1991 and 1993, Coop Lombardia s.c. ("the first applicant") acquired plots of land in the municipality of Gallarate, totalling about 163,900 square metres. In 1994, the land was transferred to Immobiliare Futura s.r.l. ("the second applicant"), entirely owned by the first applicant. The land had been purchased for the purpose of opening a sales area, a use which was in conformity with the land-use plan in force at the time. Already in 1989, the applicants had submitted a first request to open a sales area which was allegedly never examined by the competent authorities. On 10 April 1999, the Lombardia Region approved the "Malpensa Area Plan", which included the applicants' land in a business park dedicated to tertiary, directional and tourist facilities. On 20 April 1999, the second applicant again applied for an authorisation to open a sales area. By decision of 12 August 1999, the municipality suspended the examination of the request indefinitely, pending the amendment of the land-use plan. In 2003, the municipality amended the land-use plan, excluding the possibility to open supermarkets on the applicants' land and designating half of it for environmental renovation interventions.

The applicants appealed against both the suspension of their request and the amendment of the land-use plan, but they were ultimately rejected by the Council of State on 29 August 2019. In 2008, the municipality further amended the land-use plan, designating the applicants' land for environmental renovation interventions; the designation was subsequently confirmed in 2011. Another amendment adopted in 2015

designated the land for agricultural purposes. The applicants challenged these amendments before administrative tribunals, without success.

In the meantime, the applicants had submitted additional requests to the administration, proposing to use the land for alternative purposes, such as the construction of outlets or a stadium. They state that such requests were either rejected or ignored by the administration. On 6 March 2019, expropriation proceedings were initiated in respect of part of the applicants' land.

The applicants complain that the progressive restrictions on the use of their land have entailed a disproportionate interference with their property rights, in breach of Article 1 of Protocol No. 1 to the Convention. They submit that they had a legitimate expectation to exploit the land by constructing a sales area; that the land has virtually no residual use, since it is inadequate for agriculture; that the interference has resulted in a de facto expropriation of the land, in the absence of any compensation; and that in the meantime they have had to bear considerable costs both for the maintenance of the land and for the payment of taxes on it.

QUESTIONS TO THE PARTIES

1. Have the applicants exhausted all effective domestic remedies, particularly with regard to the latest amendment to the land-use plan, as required by Article 35 § 1 of the Convention?

2. Has there been an interference with the applicants' peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? If so, was the interference necessary and proportionate to the aim pursued, as required by Article 1 of Protocol No. 1?

In particular, taking into account the progressive restrictions on the possibilities to use the land, the alleged lack of any residual use, as well as the authorities' delays in replying to the applicants' various requests for authorisation, did the interference impose an excessive burden on the applicants (see Bērziņš and Others v. Latvia, no. 73105/12, § 91, 21 September 2021; Matczyński v. Poland, no. 32794/07, § 106, 15 December 2015; and Potomska and Potomski v. Poland, no. 33949/05, § 67, 29 March 2011; compare and contrast with Scagliarini and Others v. Italy (dec.), no. 56449/07, §§ 16-21, 3 March 2015)?

The parties are invited to provide updated information on the outcome of the domestic proceedings regarding the latest amendments to the land-use plan, as well as on the expropriation proceedings.

Rosalia FEDERICO and Mario RADDI v. ITALY (no. 5053/24)

Article 2 (substantive limb) – Article 3 – adequate medical care in prison

SUBJECT MATTER OF THE CASE

The application concerns the alleged lack of medical care provided in prison to the applicants' son, A.R. A.R., who suffered from drug addiction, anxiety, and depression, was arrested on 28 April 2019. During his imprisonment, he experienced a significant weight loss, which became apparent as from July/August 2019, but which did not lead to him being diagnosed or given any particular treatment.

On 10 December 2019, following several episodes of loss of consciousness, he was taken to the hospital but refused to be hospitalised against the doctor's advice. On 13 December 2019, he was urgently hospitalised and the following day he went into a coma. On 30 December 2019, he died in hospital from a septic shock.

On 7 January 2020, the National Guarantor of the rights of people detained or deprived of their liberty (Garante nazionale dei detenuti e delle persone private della liberta personale) lodged a criminal complaint, asking for an investigation into the circumstances of A.R.' s death. The public prosecutor appointed three different medical experts in order to clarify both the cause of death and the appropriateness of the medical care received in prison. While the first expert' s report excluded any responsibility of the prison authorities and health professionals, the second and the third reports concluded that A.R.' s weight loss had played a causal role in his death and that there had been undue delays in the establishment of a diagnosis and in the provision of medical treatment regarding his weight loss. At the same time, both reports attributed relevance to A.R.' s refusal to be hospitalised on 10 December 2019, which could probably have prevented his death. Based on the latter considerations, the public prosecutor asked for the discontinuance of the proceedings, which the applicants objected to under Article 410 of the Code of Criminal Procedure. On 9 October 2023, the preliminary investigation judge ordered the discontinuation of the proceedings.

The applicants complain, under Article 2 (substantive limb) and Article 3 of the Convention, that their son did not receive adequate medical care while in prison, which contributed to his death.

QUESTIONS TO THE PARTIES

1. Did the respondent State comply with its obligation to protect the applicants' son' s right to life under Article 2 of the Convention? In particular, was his health and physical well-being duly protected during his imprisonment, by providing him with prompt and adequate medical care, in particular with regard to his significant weight loss (see Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, §§ 130-31, ECHR 2014, and Karpylenko v. Ukraine, no. 15509/12, § 81, 11 February 2016)?

2. Has there been a breach of the applicants' son' s rights under Article 3 of the Convention? In particular, did he receive adequate medical treatment while in prison (see Rooman v. Belgium [GC], no. 18052/11, §§ 141-48, 31 January 2019; Blokhin v. Russia [GC], no. 47152/06, §§ 136-37, 23 March 2016; and Amirov v. Russia, no. 51857/13, § 93, 27 November 2014)?

Salvatore SCADUTO and Pietro SCADUTO v. ITALY (no. 50055/21)

Article 6 – Article 8 – access to traffic and location data and use in proceedings

SUBJECT MATTER OF THE CASE

During criminal proceedings against the applicants the public prosecutor obtained traffic and location data relating to them from certain communications service providers. In the judgments convicting the applicants, domestic courts relied on some of that data.

Invoking Articles 6 and 8 of the Convention, the applicants complain about the public prosecutor's access to their data and its use in the proceedings against them. They claim in particular that the relevant legal provisions in force at the time did not ensure sufficient protection against arbitrary and indiscriminate access to data, insofar as they allowed the public prosecutor to authorise that access without prior judicial review.

QUESTIONS TO THE PARTIES

1. Given that the applicants argue that they did not complain before the criminal courts about the lack of prior judicial review relating to access to their telecommunication data since the power of the public prosecutor to authorise that access emanated directly from legislation, as interpreted by the consolidated case-law of domestic courts (they rely in particular on the judgment of the Constitutional Court no. 281 of 1998 and on the judgment of the Plenary Court of Cassation of 23 February 2000), did they have at their disposal an effective remedy by which compliance of the alleged interference with Article 8 could be determined (see Parrillo v. Italy [GC], no. 46470/11, § 87, ECHR 2015)?

In this context, the parties are invited to:

- comment on the particular features of indirect application by individuals to the Constitutional Court to seek constitutional review of legislation (see Parrillo, cited above, §§ 101 and 104; compare and contrast Communauté genevoise d'action syndicale (CGAS) v. Switzerland [GC], no. 21881/20, §§ 145, 151 and 152, 27 November 2023; Tănase v. Moldova [GC], no. 7/08, § 122, ECHR 2010; Fizgejer v. Estonia [dec.], 43480/17, §§ 68-77, 2 June 2020; and Larionovs and Tess v. Latvia [dec.], nos. 45520/04 and 19363/05, §§ 161 and 162, 25 November 2014);

- specify whether the requirements set out in the case-law of the Constitutional Court under which only the ordinary courts would be bound to comply with the Court's case-law were fulfilled in the present case (Parrillo, cited above, §§ 97 and 100);

- justify their answer with reference to the domestic courts' case-law (Parrillo, cited above, §§ 90 and 104).

2. Having regard to the fact that access to the applicants' traffic and location data was authorised by decree of the public prosecutor, was the aforementioned access in compliance with the requirements of Article 8 of the Convention, including the requirement of lawfulness (see Ben Faiza v. France, no. 31446/12, § 73, 8 February 2018; Ekimdzhiev and Others v. Bulgaria, no. 70078/12, §§ 400-06, 11 January 2022; and Škoberne v. Slovenia, no. 19920/20, § 143, 15 February 2024; compare also with Big Brother Watch and Others v. the United Kingdom [GC], nos. 58170/13 and 2 others, §§ 519, 521 and 522, 25 May 2021)? Furthermore, did the use of such data in the proceedings against the applicants respect their right to private life and correspondence under Article 8 of the Convention?

In answering to the questions under 2), the parties are invited to comment on relevant case-law of the Court of Justice of the European Union, including judgments of 2 March 2021, Prokuratuur (Conditions of access to data relating to electronic communications), C-746/18, EU:C:2021:152; 16 December 2021, Spetsializirana prokuratura (Traffic and location data), C-724/19, EU:C:2021:1020; 17 November 2022, Spetsializirana prokuratura (Retention of traffic and location data), C-350/21, EU:C:2022:896; and 30 April 2024, Procura della Repubblica presso il Tribunale di Bolzano,

C-178/22, EU:C:2024:371; and on legislative developments following the facts of the case, in particular section 1 of the Law Decree No. 132 of 30 September 2021, converted with amendments into Law No. 178 of 23 November 2021.

Lauryna SKREBYTĖ v. LITHUANIA (no. 35631/23)

Article 1 of Protocol No. 1 – restrictions on use of property

SUBJECT MATTER OF THE CASE

The application concerns property rights. In 2004 the authorities approved the limits of a plot of 0.2317 hectares in Palanga, a resort by the Baltic Sea, and registered it in the Real Estate Register. In 2006 the authorities restored the property rights of several individuals by giving them that plot jointly. The applicant submits that at that time the Real Estate Register did not contain information that the plot at issue included a forest and that the authorities which adopted those decisions did not have such information at their disposal.

In 2011 the heirs of the above-mentioned individuals sold the plot to the applicant's father for 250,000 Lithuanian litai (approximately 72,400 euros). The sales and purchase agreement, which was certified by a notary, did not indicate that the land was subject to any restrictions linked to the presence of a forest on it. In 2012 the applicants' parents gifted the plot to her.

In 2015 the prosecutor instituted court proceedings seeking the annulment of the administrative decisions by which the plot at issue had been given to the above-mentioned individuals, as well as the agreements by which it had been sold to the applicant's father and gifted to the applicant. The prosecutor submitted that the plot included 0.1946 hectares of a forest of national importance (valstybinės reikšmės miškas) which, according to the law, could only be owned by the State. However, in 2016 the administrative courts rejected the prosecutor's claim as time-barred.

The presence of a forest on the applicant's plot was registered in the Real Estate Register in December 2020. In November 2020 she lodged a request with the municipal authorities of Palanga to amend the relevant territorial planning documents in order to allow construction on her plot. The authorities rejected her request, on the grounds that the plot included a forest of national importance, and that decision was upheld by the administrative courts; the final decision was taken by the Supreme Administrative Court on 1 February 2023.

In April 2021 the applicant lodged a request with the National Forests Service, asking it to correct a mistake made in the plan of forests of national importance and to exclude her plot from that plan. She pointed out that a forest of national importance could not be owned by an individual. Her request was rejected, on the grounds that the forest on her plot met the criteria of a forest of national importance and thus there was no mistake to be corrected. That decision was upheld by the administrative courts; the final decision was taken by the Supreme Administrative Court on 17 May 2023.

The applicant complains under Article 1 of Protocol No. 1 to the Convention that her property rights are severely restricted, as she is unable to use the plot or sell it for a price comparable to the one for which it was bought. She submits that she acquired the plot in good faith, relying on the data of the Real Estate

Register, which did not indicate the presence of a forest on the plot. However, she has had to bear an excessive burden of the authorities' failure to act diligently because she has not been given any compensation for the restrictions on her property rights.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted the effective domestic remedies, as required under Article 35 § 1 of the Convention? In particular, does the domestic law provide for a remedy which may be considered "effective" for the purposes of Article 35 § 1, allowing the applicant to claim compensation for damage allegedly sustained as a result of actions or omissions of the public authorities relating to restrictions on her property rights (see, mutatis mutandis, Mozeris and "Eugenijos ir Leonido Pimonovų Alzheimerio ligos paramos fondas" v. Lithuania (dec.), no. 66803/17, §§ 55-61, 2 April 2019, and the cases cited therein)? The parties are asked to provide examples of relevant case-law of the domestic courts.

2. Has there been a violation of the applicant's right to the peaceful enjoyment of her possessions under Article 1 of Protocol No. 1 to the Convention (see Köktepe v. Turkey, no. 35785/03, §§ 81-92, 22 July 2008, and Beinarovič and Others v. Lithuania, nos. 70520/10 and 2 others, §§ 136-42, 12 June 2018, and the cases cited therein)? The parties are asked to indicate the date on which the presence of a forest of national importance on the plot at issue was registered in a relevant public register or otherwise made known to the public.

Vladislovas JUOZAPAVIČIUS v. LITHUANIA (no. 16030/23)

Article 6 – Article 1 of Protocol No. 1 – right to grandparents' land not restored

SUBJECT MATTER OF THE CASE

The application concerns restitution of property. The applicant's grandfather owned 2.38 hectares of land near Kaunas. His grandmother owned 0.225 hectares of land in Kaunas. Those plots were nationalised by the Soviet regime in 1940. In 1992 the applicant applied for restoration of his property rights to the two plots which had belonged to his grandparents. In 1997 the authorities restored his property rights to his grandfather's land in part, by giving him 0.20 hectares of land in Kaunas. In 2015 the authorities informed the applicant that the available documents were insufficient to establish who had owned his grandfather's land after the latter's death in 1938 until the nationalisation in 1940.

At the applicant's request, in 2016 the courts established a fact of legal significance that, after his grandfather's death and until the nationalisation, the land had been owned in equal parts (that is, 0.7933 hectares each) by his three sons, including the applicant's father. In 2017 the applicant complained to the National Land Service (hereinafter "the NLS") that his property rights had still not been restored.

On 11 June 2017 the NLS informed the applicant that the property rights to his grandparents' land had been restored to their other heirs. The remaining land to which property rights had not yet been restored amounted to 0.1967 hectares but no vacant land was currently available. The NLS acknowledged that some of the heirs had been given more land than they had had the right to receive. However, the NLS did not have the authority to institute court proceedings seeking the annulment of administrative decisions. It had asked the prosecutor to institute such proceedings, but the prosecutor had refused on the grounds that

the ten-year statute of limitations for seeking the annulment of those decisions had expired. The NLS informed the applicant that he could defend his property rights by lodging a civil claim against the State and claiming damages for the mistakes made by the authorities in the restitution process.

The applicant lodged an appeal against the above-mentioned decision, asking the courts to order the NLS to examine the question of the restoration of his property rights anew. On 11 June 2019 the Regional Administrative Court dismissed his appeal, finding that the decision of the NLS had complied with the law and had been duly reasoned. On 10 February 2021 the Supreme Administrative Court endorsed that conclusion. It also noted that in the document at issue the NLS had not taken any decisions affecting the applicant's rights but had merely informed him about the situation regarding the restitution of his property rights.

In January 2021 the applicant lodged a civil claim against the State, requesting monetary compensation for the mistakes made by the public authorities in the restitution process. He claimed 261,800 euros (EUR) in respect of pecuniary damage and EUR 200,000 in respect of non-pecuniary damage. However, on 20 October 2021 the Regional Administrative Court and on 7 December 2022 the Supreme Administrative Court dismissed his claim. They held that the applicant ought to have understood that his rights had been violated on 11 June 2017 at the latest, when he had received the relevant information from the NLS, and that he had missed the three-year statutory limitation period for lodging a claim for damages.

The applicant complains under Article 6 § 1 of the Convention that the finding of the domestic courts that he ought to have understood already on 11 June 2017 that his rights had been violated was unfair and put him in an unequal position vis-à-vis the public authorities who had failed to act lawfully and to promptly correct their own mistakes but had not had to bear any of the consequences thereof. He also submits that, in the two sets of proceedings, the Supreme Administrative Court adopted contradictory conclusions regarding his right to claim damages from the State. Lastly, he complains under Article 1 of Protocol No. 1 to the Convention that his rights to his grandparents' land were not restored and that he had to bear the consequences of the mistakes made by the authorities.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicant's right of access to a court, guaranteed under Article 6 § 1 of the Convention, in view of the fact that his civil claim against the State was dismissed as time-barred (see Sanofi Pasteur v. France, no. 25137/16, § 50, 13 February 2020, and Stagno v. Belgium, no. 1062/07, §§ 26-28, 7 July 2009)? The Court refers, in particular, to the conclusion reached by the administrative courts that the statutory limitation period for the applicant to lodge such a claim started running on 11 June 2017, at the latest.

2. Has there been a violation of the applicant's right to the peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention, on account of the fact that his rights to his grandparents' land were not restored and he was not awarded any compensation? In particular, did the applicant have to bear an individual and excessive burden of the mistakes made by the public authorities in the restitution process (see Beinarovič and Others v. Lithuania, nos. 70520/10 and 2 others, §§ 138-42, 12 June 2018, and the cases cited therein)?

ANCIENT BALTIC RELIGIOUS ASSOCIATION ROMUVA v. LITHUANIA (no. 1747/24)

Article 14 in conjunction with Article 9 – state recognition of religious association

SUBJECT MATTER OF THE CASE

The application concerns the refusal by the Seimas (the Lithuanian Parliament) to grant to the applicant association the status of a State-recognised religious association. On 27 June 2019 the Seimas denied State recognition to the applicant association. The relevant factual and legal background was presented in detail in the Court's judgment in Ancient Baltic religious association "Romuva" v. Lithuania (no. 48329/19, 8 June 2021). In the latter judgment, the Court found that there had been a violation of Article 14 of the Convention read in conjunction with Article 9, on account of the fact that when refusing to grant State recognition to the applicant association, the State authorities had not provided a reasonable and objective justification for treating the applicant association differently from other religious associations that had been in a relevantly similar situation, and the members of the Seimas who had voted against the granting of State recognition had not remained neutral and impartial in exercising their regulatory powers (ibid., § 147). The Court also found that there had been a violation of Article 13 of the Convention, on account of the fact that the applicant association had not had an effective domestic remedy with respect to the impugned decision of the Seimas (ibid., § 153). At the time of the lodging of the present application (on 4 January 2024), the supervision of the execution of the Court's judgment of 8 June 2021 was still pending before the Committee of Ministers.

As submitted by the applicant association, after the adoption of the Court's judgment, the following relevant developments have taken place: In a ruling of 7 September 2021, the Constitutional Court held that Article 6 § 2 of the Law on Religious Communities and Associations was in line with the Constitution in so far as it provided that a religious association could seek State recognition twenty-five years after its initial registration in Lithuania. However, that provision was not in line with the Constitution in so far as it provided that, if a request for State recognition was denied, the religious association could lodge a new request after ten years.

On 29 September 2022 the Seimas held a debate and a vote on a new draft resolution proposing that the applicant association be granted the status of a State-recognised religious association. After a brief debate, it voted to return the draft resolution to the Seimas Committee for Human Rights for redrafting.

On 23 March 2023 the Seimas enacted an amendment to Article 6 of the Law on Religious Communities and Associations (ibid., §§ 59-60). The amendment entered into force on 1 May 2023. Following the amendment, Article 6 § 4 provides that the Seimas must decide on granting State recognition to a religious association within three months after receiving a conclusion of the Ministry of Justice on whether the religious association meets the criteria provided by law, excluding the periods between the sessions of the Seimas. If the Seimas does not adopt the draft resolution on State recognition, it has to consider the issue again until a decision is adopted. Article 6 § 5 provides that if the Seimas decides not to grant State recognition to a religious association, its resolution must provide reasons showing that the religious association does not have support in society and/or its teaching and practices contravene the law or public morals. If the request is denied, a new request may be lodged after two years.

On 19 September 2023 the Seimas held a debate and a vote on the draft resolution proposing to grant State recognition to the applicant association. After a brief debate, the Seimas voted to reject it.

On the same day the Seimas held a debate and a vote on a new draft resolution which proposed not to grant State recognition to the applicant association, on the grounds that its teaching and practices contravene public morals. After a brief debate, the Seimas voted not to adopt the draft resolution and to return it to the Seimas Committee for Human Rights for redrafting.

The applicant association complains under Article 14 of the Convention read in conjunction with Article 9 that it was treated differently from other religious associations which had been granted State recognition and that the members of the Seimas who voted against the granting of State recognition did not remain neutral and impartial in exercising their regulatory powers – in particular, some of the members of the Seimas based their decision on arguments relating to the Catholic religion. It further complains under Article 13 of the Convention that the domestic law does not provide it with any possibility to appeal against the impugned decisions of the Seimas.

QUESTIONS TO THE PARTIES

1. Does Article 46 of the Convention preclude the Court's examination of the applicant association's complaints under Article 14 of the Convention read in conjunction with Article 9 and under Article 13 of the Convention (see Moreira Ferreira v. Portugal (no. 2) [GC], no. 19867/12, § 47, 11 July 2017, and the cases cited therein)? In particular, does the present application concern the execution of the Court's judgment rendered in the applicant association's initial case of Ancient Baltic religious association "Romuva" v. Lithuania (no. 48329/19, 8 June 2021) or does it contain relevant new information capable of giving rise to a fresh violation of the Convention?

2. Has the applicant association suffered discrimination in the enjoyment of its Convention rights, contrary to Article 14 of the Convention, taken in conjunction with Article 9? In particular, when deciding not to grant State recognition to the applicant association, did the authorities remain neutral and impartial in exercising their regulatory powers (see Ancient Baltic religious association "Romuva", cited above, § 147)?

3. Did the applicant association have at its disposal an effective domestic remedy for its complaints under Article 9 of the Convention, taken alone and in conjunction with Article 14, as required by Article 13 of the Convention (ibid., § 153)?

Maria Concetta Sive Connie DEGUARA CARUANA GATTO v. MALTA (no. 47417/21)

Article 1 of Protocol No. 1

SUBJECT MATTER OF THE CASE

The application concerns a unilaterally imposed lease under Chapter 69 of the Laws of Malta. The applicant became the sole owner of a property in Kalkara in 2016 (following a contract of division dividing the inheritance left by her mother in May 2014 to her three children as universal heirs). The property had been leased out for 100 euros (EUR) (sic) annually, in 1989. In 2009 the rent payable was EUR 185 and in 2021 it was EUR 210. According to the court-appointed expert the rental value in 1987 was EUR 1,048, in 1993 EUR 1,747, in 1999 EUR 2,795, in 2005 EUR 5,939, in 2011 EUR 10,500 and in 2017 EUR 12,000.

The applicant instituted constitutional redress proceedings complaining about a violation of Article 1 of Protocol No. 1 to the Convention in her respect and claiming damage in her respect ("fil konfront tar-rikorrenti"). Her affidavit to the court was also filed in the same terms.

By a judgment of 29 April 2021, the Civil Court (first hall) found a violation of Article 1 of Protocol No. 1 and awarded the applicant EUR 12,500 in pecuniary damage and EUR 1,500 in non-pecuniary damage. In calculating compensation, the Civil Court considered that it could only make an award for the period following which the applicant became an owner. No costs were to be paid by the applicant. By a judgment of 27 March 2023 the Rent Regulation Board (RRB) ordered that the tenant be evicted within a period of three months. The judgment was confirmed on appeal on 3 April 2024.

Relying on Article 1 of Protocol No. 1 to the Convention the applicant complains that the domestic court had not remedied the violation of that provision due to the lack of appropriate compensation, the lack of an eviction order or any other order capable of bringing the violation to an end.

QUESTION TO THE PARTIES

Has there been a violation of Article 1 of Protocol No. 1 to the Convention in the present case (see, inter alia, Amato Gauci v. Malta, no. 47045/06, 15 September 2009)?

Vladislav TODOSIICIUC v. MOLDOVA (no. 17443/17)

Article 14 together with Article 8 – change of surname following conclusion of same-sex civil partnership

SUBJECT MATTER OF THE CASE

The application concerns the refusal of the Moldovan authorities to change the applicant's surname, on the basis of his change of name following his same-sex civil partnership concluded abroad. On 29 August 2014 the applicant entered into a registered civil partnership with his same-sex partner in Switzerland. The applicant chose his partner's surname, under which he holds his residence permit, health insurance and bank account in Switzerland.

The applicant submitted a formal request to the Embassy of the Republic of Moldova in Switzerland to change his surname to that of his partner. As the Embassy did not process his request, on 25 February 2015 the applicant filed another request with the Civil Registry Office (CRO). The CRO replied by a letter relying on the public order of the Republic of Moldova under which same-sex partnerships were not recognised and explaining that accordingly the documents confirming the applicant's civil partnership had no legal consequences and could not serve as grounds for any change of name.

The applicant challenged the refusal before the domestic courts. He noted that after having adopted his partner's surname, he had two different identities and that, in accordance with Article 13 of the Law No. 100/2001 on civil status acts, he had notified the authorities of the changes in his civil status requesting his surname to be changed. At the preliminary stage of the proceedings, the CRO submitted that the applicant had failed to comply with the pre-trial procedure because its above reply could not be regarded as a proper

refusal to grant his request, but as general information about non recognition of same-sex marriages. The first instance court agreed with the CRO and struck his case out for failure to comply with the pre-trial procedure. However, on 20 October 2015 the Chișinău Court of Appeal quashed that decision and ordered a hearing on the merits, finding that the applicant had complied with the procedural rules and that the CRO's preliminary objection had been ill-founded.

On 7 December 2015, having heard the case on the merits, the Buiucani District Court instructed the CRO to issue a document confirming the change of the applicant's surname. On appeal, on 11 May 2016 the Chișinău Court of Appeal overturned the first instance judgment, finding, inter alia, that the applicant had not followed the correct procedure in that he had not submitted a formal request with the local CRO service in the area of his registered residence. The applicant appealed, arguing that he had followed the legal procedure provided for citizens living abroad by submitting his request to the Embassy of the Republic of Moldova in Switzerland, where he lived, and that his only request was to change his surname and not to recognise his relationship. On 28 September 2016 the Supreme Court of Justice rejected the applicant's appeal on points of law and upheld the appellate court's judgment in full.

The applicant complains that he was discriminated against in the enjoyment of his right to respect for private life on the basis of his sexual orientation. He complains specifically under Article 14 in conjunction with Article 8 of the Convention about the authorities' refusal to change his surname based on his civil partnership registered abroad. He also complains under Article 6 of the Convention about the lack of a fair trial and limited access to the domestic courts.

QUESTIONS TO THE PARTIES

1. Did the applicant have access to court for the determination of his appeal against the authorities' refusal to grant his change of surname in Moldovan civil records, in accordance with Article 6 § 1 of the Convention (see Zubac v. Croatia [GC], no. 40160/12, §§ 76-79 and 96-99, 5 April 2018)?

2. Has the applicant suffered discrimination in the enjoyment of his right to respect for his private life on the ground of his sexual orientation, contrary to Article 14 of the Convention read in conjunction with Article 8 of the Convention, due to his inability to change his surname in Moldovan civil records based on his same-sex civil partnership concluded in Switzerland (see, mutatis mutandis, Pajić v. Croatia, no. 68453/13, §§ 53-60, 23 February 2016; Ünal Tekeli v. Turkey, no. 29865/96, §§ 42 and 49-52, ECHR 2004-X (extracts))?

Victor CREȚU v. MOLDOVA (no. 11887/24)

Article 3 (procedural and substantive limb) – Article 14 together with Article 3 (on the ground of disability) – ill-treatment because of the conditions of his placement and of the prescribed treatment

SUBJECT MATTER OF THE CASE

The application mainly concerns the alleged lack of protection and assistance provided by the authorities to the applicant, a minor born in August 2006 described at some point as suffering from a psychosocial disability, and his internment in a psychiatric hospital where he was allegedly subjected to ill-treatment. It

further concerns the alleged failure to carry out an effective investigation into the ill-treatment and the alleged breach of his right to education.

In particular, between 2018 and 2019, during the summer holidays and at the initiative of the local authorities, the applicant was placed in rehabilitation and social integration centres for young children. Representatives of the Children's Ombudsperson had visited the applicant's place of residence on several occasions (in February 2019 – in an abandoned nursery school building and in July 2019 – on a cow farm), finding him in extremely poor living conditions (starving and suffering of severe cold; absence of heating, the wood being too cold to light the fire; poor state of the premises in question with water leaking from the roof; sleeping with animals) and being in the absence of his mother for extended periods.

Due to inappropriate and aggressive violent behaviour and following medical advice, with his mother's authorisation, from 27 November 2018, the applicant, then aged twelve, was placed in a psychiatric hospital, on three occasions, for short periods. In the psychiatric ward, the applicant was allegedly held against his will, in inadequate material conditions, for some time in the unit under strict supervision where patients diagnosed with severe mental illness were kept, and was subject to medical restraint, despite the absence of psychiatric disorders or pathologies according to a psychological assessment carried out on 3 May 2019.

In February 2019 the applicant's representative lodged a criminal complaint against the psychiatric hospital, claiming that the applicant had been submitted to ill-treatment because of the conditions of his placement and of the prescribed treatment. These proceedings have been pending since then, without any significant progress, despite repeated requests from the applicant.

Following another set of proceedings introduced by the applicant's representative, the Anenii Noi District Court, by a judgment of 22 June 2022, ordered the municipality to assemble a multidisciplinary team within the local public administration, to draw up an individual assistance plan in the field of health, social assistance and education for the applicant, to guarantee the applicant access to psycho-educational assistance services, to find a place for the applicant's family guaranteeing his right to a residence complying with hygiene standards and, finally, to guarantee his right to education.

Under Article 3 of the Convention, the applicant alleges a violation of both the substantive and the procedural limbs of this provision due to the non-respect by the State of its positive obligations to provide him with proper housing and to protect him from inhuman and degrading living conditions. He further complains of the ill-treatment in the psychiatric hospital and the failure to conduct an effective investigation into his internment. Under Article 14 taken in conjunction with Article 3 of the Convention, the applicant alleges that the authorities' failure to offer him reasonable accommodation in accordance with the judgment of 22 June 2022 was due to discrimination on grounds of disability. The applicant also alleges a violation of Article 13 taken in conjunction with Article 3 of the Convention due to the lack of an effective remedy capable of protecting him from the State's failures. Finally, the applicant alleges a violation of his right to education under Article 2 of the Protocol No. 1 to the Convention.

QUESTIONS TO THE PARTIES

1. Did the national authorities comply with their positive obligations under Article 3 of the Convention to offer the applicant protection and assistance on account of his personal situation? Was the decision-making

process with respect to the applicant's psychiatric internment and to the medical treatment received there in compliance with Article 3 of the Convention?

2. Were the failure to provide the applicant, together with his family, with proper housing and his placement in insalubrious conditions in a unit under strict supervision, where he was allegedly subjected to various forms of coercion, in breach of Article 3 of the Convention (see, mutatis mutandis, X and Others v. Bulgaria [GC], no. 22457/16, § 177, 2 February 2021; Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, §§ 130 ss., ECHR 2014; and B. v. Romania (no. 2), no. 1285/03, §§ 85-92, 19 February 2013)?

3. Having regard to the procedural protection under Article 3 of the Convention, did the authorities carry out an effective investigation into the applicant's allegations of ill-treatment and other forms of coercion and neglect during his internment (see, mutatis mutandis, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, §§ 145 ss., ECHR 2014, and X and Others v. Bulgaria [GC], no. 22457/16, §§ 184 ss., 2 February 2021?

4. Has there been a discriminatory difference in treatment on the ground of the applicant's medical condition and social status as regards the authorities' failure to offer him reasonable accommodation in accordance with the judgment of 22 June 2022, in violation of Article 14 read in conjunction with Article 3 of the Convention?

5. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3, as required by Article 13 of the Convention?

6. Did the authorities guarantee the applicant's right to education protected under Article 2 of Protocol No. 1 to the Convention, in accordance with the judgment of 22 June 2022 imposing an obligation on the Government to provide the applicant with schooling?

In particular, what measures have been taken to provide the applicant with integrated education for children from different social backgrounds (see Çam v. Turkey, no. 51500/08, §§ 52-54 and 64-67, 23 February 2016; Sanlisoy v. Turkey (dec.), no. 77023/12, §§ 58-61, 8 November 2016; Enver Şahin v. Turkey, no. 23065/12, §§ 52-55 and 60-61, 30 January 2018; and G.L. v. Italy, no. 59751/15, §§ 49-54, 57 and 62-63, 10 September 2020)?

George Ranjit Mohamed JAMALOODIN v. the NETHERLANDS (no. 41708/22)

Article 6 – presumption of innocence

SUBJECT MATTER OF THE CASES

The application concerns allegedly incriminating statements made about the applicant in criminal proceedings conducted against a third party. On 5 May 2013 H.M. Wiels, a politician on the island of Curaçao, was shot and killed. The applicant was prosecuted and convicted of solicitation of (uitlokking van) murder of Mr Wiels and sentenced to thirty years' imprisonment by judgment on appeal of the Joint Court

of Justice of Aruba, Curaçao, Sint Maarten and Bonaire, Saint Eustatius and Saba ("the Joint Court of Justice"). His appeal on points of law was dismissed by the Supreme Court on 7 June 2022.

Prior to the applicant's trial, F. had been convicted of complicity (medeplegen) of murder of Mr Wiels by judgment of 13 July 2018 of (another three-member bench of) the Joint Court of Justice. In that judgment, the court, in assessing the evidence against F., considered, inter alia, that: "[..] The items of evidence used by the court demonstrate that the defendant [F.] accepted the order for Wiels' murder from Jamaloodin, that he then negotiated with Jamaloodin and P. about the further execution of the murder and the amount to be paid for it, that he then sought a gunman and a driver through P., and that he passed on the money intended for them through P [..].". The press-release issued by the court the same day as the judgment, contained the following statement: "[..] The court concludes that the defendant [F.] accepted the murder order from Jamaloodin, that he went to negotiate the amount to be paid for it with Jamaloodin, that he hired a gunman and driver through P., and that he passed on the money intended for them through P. [..]"

Relying on Article 6 § 2 of the Convention, the applicant complains that these statements, in both the judgment and the press release, with respect to his alleged involvement in the murder of Mr Wiels disregarded the principle of the presumption of innocence and that insufficient safeguards were in place ensuring that procedural steps taken in the proceedings against F. would not undermine the fairness of the hearing in the subsequent proceedings against the applicant.

QUESTIONS TO THE PARTIES

Was the presumption of innocence, guaranteed by Article 6 § 2 of the Convention, respected in the present case?

In particular, did the statements contained in the judgment of 13 July 2018 and the press-release of the Joint Court of Justice as regards the applicant's alleged acts and intention go beyond an establishment of the facts of the case necessary for the assessment of the guilt of a third person (see Karaman v. Germany, no. 17103/10, §§ 63-64, 27 February 2014, Bauras v. Lithuania, no. 56795/13, §§ 52-55, 31 October 2017, Mucha v. Slovakia, no. 63703/19, §§ 57-62, 25 November 2021)?

B.N. v. POLAND (no. 23032/22)

Article 6 – Article 8 – Article 14 taken together with Article 8 – child custody and discrimination against one parent based on sexual orientation

SUBJECT MATTER OF THE CASES

In June 2018 the applicant's then-husband, X., filed for divorce requesting that their daughter (born in 2013) live with her mother (the applicant) and that both parents retain parental rights. The applicant agreed to the divorce. In October 2018 during the first hearing before the Gdańsk Regional Court, composed of judge D.C. and two lay judges, the applicant was repeatedly questioned about her sexual orientation. Judge D.C. suggested to X. that he should request custody of the child and that the daughter should not live with the applicant because of her sexual orientation. Judge D.C. ordered an expert opinion from the Family Consultation Centre ("RODK") and asked the experts whether the mother's sexual orientation could put the child's wellbeing at risk. The opinion of Gdańsk RODK of 18 March 2019 stated that both parents had

good parenting skills and ended with the statement: “we believe that the mother’s sexual preference does not jeopardise the wellbeing of the child.” In the course of the subsequent hearings, the applicant’s sexual orientation was constantly at the centre of judge D.C.’s interest.

In January 2019 X. changed his claim and requested that their daughter live with him. He submitted that the applicant lived with a woman by which she “had shown to the child that a relationship between two women was something natural and not wrong”. On 8 November 2019 the Gdańsk Regional Court, sitting in a single-judge formation, judge D.C., gave an interim order granting the custody of the child to the father. The applicant’s appeal against the ruling was dismissed. The applicant was granted visiting rights, which were not respected over time as X. refused to hand over the child to the applicant. On 18 November 2019 the applicant challenged the impartiality of judge D.C. She claimed that the judge had been biased against her because of her sexual orientation. In December 2019 the Gdańsk Regional Court dismissed her application on the grounds that there was no objective reason to doubt the impartiality of judge D.C. On 7 July 2020 the same court dismissed the applicant’s appeal. On 31 July 2020 the Gdańsk Regional Court granted the divorce. It decided that the daughter should live with her father, granted the applicant visiting rights and limited her parental rights. In the written reasoning, the court referred to the applicant’s relations with other women. On 5 November 2021 the Gdańsk Court of Appeal dismissed the applicant’s appeal. This judgment was notified to the applicant’s lawyer on 4 January 2022.

The applicant complains under Articles 6 and 8 of the Convention, and Article 14 taken together with Article 8, that she lost custody and full parental rights over her child because judge D.C. was biased against her due to her sexual orientation. She also complains that X. has not respected contact rights and that the courts have not attempted to enforce them effectively.

QUESTIONS TO THE PARTIES

1. Regard being had to the applicant’s allegation that the courts decided on the custody of her child and limited her parental rights on the basis of her sexual orientation, has the applicant suffered discrimination in the enjoyment of her Convention rights, contrary to Article 14 of the Convention read in conjunction with Article 8 (see X v. Poland, no. 20741/10, 16 September 2021)?

2. Regard being had to the applicant’s second allegation that judge D.C. was biased against her and the fact that the domestic courts dismissed her challenge against the judge, did the applicant have a fair hearing in the divorce proceedings, in accordance with Article 6 § 1 of the Convention?

3. Regard being had to all the allegations indicated in questions 1 and 2 above, and that the applicant’s contact rights had not been respected, has there been a violation of the applicant’s right to respect for her private and family life, contrary to Article 8 of the Convention?

4. As concerns the enforcement of the applicant’s contact rights, did she exhaust available domestic remedies in this respect?

João Júlio CERQUEIRA v. PORTUGAL (no. 9601/23)

Article 10 – criminal conviction for defamatory statements

SUBJECT MATTER OF THE CASE

The applicant is a medical practitioner. The application concerns the applicant's criminal conviction for having written, on his website, blog and Facebook profile, defamatory statements about P.C., a Chinese medical practitioner and acupuncture physician, namely that he was a "charlatan", "snake fat salesman", "skin seamstress", "dishonest", "ignorant", "basic", "liar", "stupid", and also referring to him as "chop choy" (after the Chinese dish).

On 14 January 2021 the Lisbon District Court fined the applicant 3,000 euros (EUR) and ordered him to pay EUR 15,000 to P.C. for non-pecuniary damage. On 25 October 2022 the Appeal Court of Lisbon upheld the judgment. The domestic courts found that the applicant had overstepped the limits of permissible criticism because the impugned statements about P.C. had been personal, offensive, humiliating and xenophobic.

The applicant relies on Article 10 of the Convention, complaining that his conviction and the award of damages on account of his criticism of P.C. were in breach of his right to freedom of expression.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to freedom of expression, within the meaning of Article 10 § 1 of the Convention? If so:

2. Was that interference prescribed by law and necessary in terms of Article 10 § 2? In particular, were the reasons adduced by the domestic courts "relevant and sufficient" to justify the alleged interference? (see Perinçek v. Switzerland [GC], no. 27510/08, §§ 204-08, ECHR 2015; Sanchez v. France [GC], no. 45581/15, §§ 158-62, 15 May 2023; Féret v. Belgium, no. 15615/07, §§ 64 and 78, 16 July 2009; Savva Terentyev v. Russia, no. 10692/09, §§ 66 and 68, 28 August 2018; and Almeida Arroja v. Portugal, no. 47238/19, §§ 87-90, 19 March 2024)?

Jozsef-Beniamin PUSKÁS and Others v. ROMANIA (no. 38194/22)

Article 6 – Article 1 of Protocol No. 1 – arbitrary interpretation of evidence and legislation

SUBJECT MATTER OF THE CASE

The applicants' father was recognised by administrative decisions issued in 1991 and 1994, respectively, by the national competent authority as a "political detainee" with respect to two imprisonment periods running: a) from 21 May 1949 to 29 April 1954, and b) from 27 February 1971 to 6 July 1976. Based on these recognitions, he was awarded the benefits provided by the Legislative Decree no. 118/1990 which granted certain rights to those who had been persecuted by the dictatorial regime established starting with 6 March 1945.

After the entry into force of Law no. 232/2020, which extended the benefits provided by the Legislative Decree no. 118/1990 also to the children of the political detainees, the applicants, who are siblings, lodged with the competent local authorities separate claims – since they are residing in different counties – in order to receive these benefits. Two of the applicants (Mr. Jozsef-Beniamin Puskás and Mrs. Maria-Magdalena Puskas) initially received favourable administrative decisions granting them these benefits, but these administrative decisions were later modified on 28 May 2021 and the two applicants' claims in respect of the first detention period were dismissed on ground that that detention following a conviction for disobedience was not "political". The applicants' judicial challenges against this administrative decision were dismissed by a decision of 21 October 2021 of the Mureș County Court. The applicants' appeal on points of law was dismissed as ill founded by the Târgu-Mureș Court of Appeal on 31 January 2022 (served on 23 February 2022).

The third applicant, Puskas Ionadab-Francisc, received an administrative decision from the local competent authority recognising his rights only for the second period, between 27 February 1971 to 6 July 1976, and dismissing his claim for the first detention period, on ground that this detention following a conviction for disobedience was not "political". His challenge against this administrative decision was dismissed by a decision of 22 July 2021 of the Teleorman County Court. His appeal on points of law was dismissed as inadmissible by the Bucharest Court of Appeal on 13 January 2022 (served on 18 February 2022).

The applicants complain under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention of the arbitrary interpretation of evidence and legislation by the domestic courts, in breach of the Constitutional Court and High Court of Cassation and Justice decisions on this matter and of the principle of legal certainty by infringing the final administrative decisions issued in favour of their father and their respective "possessions" in the sense of Article 1 of Protocol. No. 1.

QUESTIONS TO THE PARTIES

1. Has the third applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention?

2. Was the dismissal of the applicants' claim by decisions of 31 January 2022, issued by Târgu-Mureș Court of Appeal, and of 22 July 2021, issued by the Teleorman County Court, despite a final administrative decision to the effect that the applicant's father was a political detainee, in breach of the principle of legal certainty and thus of the applicants' rights under Article 6 § 1 of the Convention?

3. Having regard to the applicants' claims that they were entitled to the benefits provided by the Legislative Decree no. 118/1990, can the applicants be considered have a possession within the meaning of Article 1 of Protocol No. 1 to the Convention?

4. If so, have the applicants been deprived of their possessions within the meaning of Article 1 of Protocol No. 1? Did that deprivation impose an excessive individual burden on the applicant (see, mutatis mutandis, Bélané Nagy v. Hungary [GC], no. 53080/13, §§ 72-127, 13 December 2016, and Beeler v. Switzerland [GC], no. 78630/12, § 57, 11 October 2022)

Daniel PETCU v. ROMANIA (no. 38191/22)

Article 6 – Article 14 – arbitrary interpretation of evidence and legislation

SUBJECT MATTER OF THE CASE

The applicant's father was recognised by administrative decision issued in 1990 by the national competent authority as a "political detainee" with respect to an imprisonment period running from 29 July 1975 to 9 May 1977. Based on this recognition, he was awarded by administrative decision the benefits provided by the Legislative Decree no. 118/1990 which granted certain rights to those who had been persecuted by the dictatorial regime established starting with 6 March 1945.

After the entry into force of Law no. 232/2020, which extended the benefits provided by the Legislative Decree no. 118/1990 also to the children of the political detainees, the applicant and his two other siblings each lodged a claim with the competent local authorities in order to receive these benefits. While the applicant's siblings both received favourable administrative decisions granting them these benefits, the applicant's claim was dismissed by administrative decision on ground that his father's detention following a conviction for disobedience was not political. The applicant's judicial challenge against this administrative decision was dismissed by a decision of 25 May 2021 of the Teleorman County Court. The decision of the County Court mentioned that it could be appealed. However, the applicant's appeal on points of law was dismissed as inadmissible by the Bucharest Court of Appeal on 9 December 2021 (delivered on 28 April 2022).

The applicant complains under Article 6 § 1 and Article 14 of the Convention of arbitrary interpretation of evidence and legislation by the domestic courts, in breach of the Constitutional Court and High Court of Cassation and Justice decisions on this matter and of the principle of legal certainty by infringing the final decision issued in favour of his father.

QUESTIONS TO THE PARTIES

1. Has the applicant complied with the six-month time-limit laid down in Article 35 § 1 of the Convention?

2. Was the dismissal of the applicant's claim by decisions of 9 December 2021 issued by Bucharest Court of Appeal and of 25 May 2021, issued by the Teleorman County Court despite a final administrative decision to the effect that the applicant's father was a political detainee in breach of the principle of legal certainty and thus of the applicant's rights under Article 6 § 1 of the Convention?

3. Having regard to the reasons and the outcome of the decision of 25 May 2021 of the Teleorman County Court, has the applicant suffered discrimination contrary to Article 14 of the Convention read in conjunction with Articles 8 and 6 of the Convention and/or to Article 1 of Protocol no. 12 to the Convention (see Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, 29 November 2016; Albu and Others v. Romania, nos. 34796/09 and 63 others, 10 May 2012, and Beeler v. Switzerland [GC], no. 78630/12, §§ 93-94, 11 October 2022)?

M.C. v. ROMANIA (no. 19536/22)*

Article 8 – inclusion in the automated national register of perpetrators of sexual offences and exploitation of persons and minors

SUBJECT MATTER OF THE CASE

The application concerned, from the point of view of Article 8 of the Convention, the applicant's inclusion in the automated national register of perpetrators of sexual offences and exploitation of persons and minors ('the register').

By a final judgment of 16 April 1991, the Bucharest Court of First Instance ('the Court of First Instance') sentenced the applicant to seven years' imprisonment for aggravated rape of a minor. The applicant served his sentence until June 1997. In a final judgment of 7 September 2006, the Court of First Instance declared that the applicant had been rehabilitated. Since that date, the applicant's name no longer appears in the criminal record.

On 29 June 2019, Law no. 118/2019 on the register ('Law no. 118/2019') came into force. On an unspecified date in 2019, the applicant, who was a secondary school teacher, was entered on the register. Having requested the Neamţ County Police Inspectorate to delete his data from the register, the applicant was refused on the ground that, under Article 10 §§ 1 and 5 of Law no. 118/2019, the deletion of criminal record data had no effect on the data entered in the register and that, under Article 10(2)(e) of Law no. 118/2019, where the sentence imposed exceeded five years' imprisonment, the data were not deleted from the register until the person concerned reached the age of 85.

On 13 February 2020, the claimant appealed to the Court of First Instance against the deletion of his data from the register, citing his judicial rehabilitation. He also raised before the Court of First Instance a plea of unconstitutionality of Article 10 §§ 1 and 5 and Articles 17 and 18 § 1 of Law no. 118/2019. In the applicant's view, the inclusion of his data in the register and the access to the register permitted by law to various persons constituted interference with his right to privacy. He argued that that interference was not provided for by a clear law, given, on the one hand, the contradiction which, in his view, existed between Law no 118/2019 and Article 169 of the Criminal Code governing the effects of judicial rehabilitation and, on the other hand, the general nature of the legal provision governing third-party access to the register. He also argued that his inclusion in the register was unnecessary in a democratic society, given the length of time that had elapsed since the commission of the offence, the absence of any repeat offences and his judicial rehabilitation. Lastly, he complained that it was impossible for him to challenge the retention of his data after his rehabilitation and its disclosure to third parties.

In a judgment of 27 November 2020, the Court of First Instance referred the plea of unconstitutionality to the Constitutional Court and, on the merits, dismissed the applicant's action. It noted that, according to Articles 10 §§ 1 and 5 of Law no. 118/2019, the register constituted a database separate from that of the criminal record and that only certain offences were recorded in the register in order to protect vulnerable persons. It then found that the claimant was not in any of the situations provided for by Article 10 of Law no. 118/2019 for his data to be deleted from the register. The Court of First Instance also held that the interference complained of was provided for by law, pursued a legitimate aim and was proportionate to the aim pursued. It noted that Articles 17 and 18 of Law no. 118/2019 expressly provided for a list of entities that could obtain an extract from the register.

On appeal by the applicant, by a final judgment of 15 October 2021 (drawn up on 12 November 2021), the Bucharest County Court upheld the judgment of the court of first instance. The objection of unconstitutionality raised by the applicant was still pending before the Constitutional Court at the date of the latest information available to the Court (1 February 2024).

Invoking Article 8 of the Convention, the applicant complained that his right to respect for his private life had been infringed by the inclusion of his data in the register and its possible consequences for his professional activity. In particular, he considered that the legal basis for the entry was unclear, in that it contradicted Article 169 of the Criminal Code and allowed personal data to be recorded decades after the offence had been committed. He also considered that the applicable law did not offer sufficient safeguards against arbitrariness, since it did not adequately regulate either the access of the various authorities and other entities to the register or their use of the data thus collected, and that it did not provide him with any effective means of challenging the inclusion of his data in the register.

QUESTIONS TO THE PARTIES

1. Was there an 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 inclusion of his personal data relating to his criminal conviction for rape in the automated national register of perpetrators of sexual offences and exploitation of persons and minors ('the register') (Rotaru v. Romania [GC], no. 28341/95, § 46, ECHR 2000-V, Gardel v. France, no. 16428/05, § 58, ECHR 2009, and Adamson v. the United Kingdom (dec.), no. 42293/98, 26 January 1999)?

2. If so, was the interference provided for by a clear and foreseeable law which afforded adequate and sufficient safeguards against arbitrary interference by the authorities with the right to respect for private life (M.M. v. the United Kingdom, no. 24029/0722)?

Alin-Mihăiță GOGA v. ROMANIA (no. 52722/20)*

Article 10 – protection as whistleblower

SUBJECT MATTER OF THE CASE

The application concerned the alleged interference with the right to freedom of expression of the applicant, an employee of the National Company for the Administration of Road Infrastructure ('the Company'), as a result of his being ordered by a final judgment of 1 July 2020 of the Craiova Court of Appeal to pay compensation to A.C., the Company's deputy general manager, following the publication on Facebook of comments found to be defamatory against him.

Invoking Article 10 of the Convention, the applicant complained that the national courts had failed to balance the interests at stake and had not taken account of the fact that he had acted as a whistleblower.

QUESTIONS TO THE PARTIES

Was there a violation of the applicant's right to freedom of expression, and in particular his right to impart information or ideas, within the meaning of Article 10 § 1 of the Convention?

In particular, did the statements published by the applicant on Facebook, which had led to his being ordered to pay compensation to A.C., fall within the scope of the whistleblower principle (Halet v. Luxembourg [GC], no. 21884/18, §§ 111-154, 14 February 2023; compare also Wojczuk v. Poland, no. 52969/13, §§ 85-88, 9 December 2021)? Did the national courts balance the competing interests involved (see, for example, Couderc and Hachette Filipacchi Associés v. France [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts), and Axel Springer AG v. Germany [GC], no. 39954/08, §§ 87-88, 7 February 2012)?

Alexandru-Manuel CARPIUC-MIRON v. ROMANIA (no. 36807/23)*

Articles 6 and 9 – Article 2 of Protocol No. 1 – positive obligations arising from right to education

SUBJECT MATTER OF THE CASE

The application concerned the State's positive obligations in relation to the education of children where there was a lack of cooperation between the parents and disagreement as to which school to attend. The claimant and his wife are currently in divorce proceedings. In June 2023 they each applied to the national courts for interim relief (ordonanţă preşedenţială). The applicant brought the action in his own name. The actions were similar and were considered together. The actions sought judicial authorisation to enrol S., their minor son aged 13, in the public school that each parent had chosen for the 2023-2024 school year. In his action, the applicant also stated that he was opposed to his wife's choice because he believed that the school, which S. was already attending, practised religious indoctrination. He had submitted evidence to show that, in his opinion, even though the school was secular, it operated under the patronage of the Metropolitan Church (Mitropolia Moldovei şi Bucovinei) and required pupils to engage in extensive religious practices, such as fasting in the morning in order to go to confession and Holy Communion or attending Mass in the school building.

In a judgment of 29 June 2023, the Court of First Instance in Iaşi ('the Court') dismissed the claimant's action and upheld that of his wife. The court held that it was in the child's best interests to continue his education at the school chosen by his mother. The court had heard S., who had stated that he wished to remain in that school, that he ate in the mornings and that he did not take communion.

The applicant appealed, arguing in particular that the court had not examined his allegations regarding the religious indoctrination practised by his son's school. By a decision of 12 July 2023, the Tribunal départemental de Iaşi ('the Tribunal départemental') dismissed his appeal as unfounded. The County Court held, inter alia, that the applicant had failed to adduce adequate evidence of the allegedly excessive religious character (presupusa religiozitate excesivă) of the school attended by S.

Before the Court, the applicant relied on Articles 6 and 9 of the Convention and Article 2 of Protocol No. 1 to the Convention.

QUESTIONS TO THE PARTIES

1. Was there disregard of the applicant's right to ensure the education of his child in accordance with his religious convictions, within the meaning of Article 2 of Protocol No. 1 to the Convention? Did the national authorities duly examine the applicant's allegations that the public school attended by his minor son had religious practices of which he did not approve (see, mutatis mutandis, Kjeldsen, Busk Madsen and

Pedersen v. Denmark, 7 December 1976, § 50 et seq., Series A no. 23, and Perovy v. Russia, no. 47429/09, §§ 62 et seq., 20 October 2020)?

2. Does the applicant have standing to act on behalf of S., his child (see, mutatis mutandis, Strand Lobben and Others v. Norway [GC], no. 37283/13, §§ 156-158, 10 September 2019, and A and Others v. Iceland, nos. 25133/20 and 31856/20, § 58, 15 November 2022)? Or is there a conflict of interests between the applicant's rights and those of S., his child (see Strand Lobben, cited above, § 158; see also, mutatis mutandis, Scozzari and Giunta v. Italy [GC], nos. 39221/98 and 41963/98, § 138, ECHR 2000-VIII)?

Assuming that the applicant could act on behalf of S., was there interference with S.'s right under Article 9 of the Convention? Was that interference prescribed by law, did it pursue a legitimate aim and was it necessary in a democratic society? In particular, had the national courts duly examined the applicant's arguments based on the alleged religious indoctrination practised by the school attended by S. (see, mutatis mutandis as regards positive procedural obligations relating to the examination of conscientious objections¸ Papavasilakis v. Greece, no. 66899/14, §§ 60 et seq., 15 September 2016, and Dyagilev v. Russia, no. 49972/16, §§ 82-84, 10 March 2020)?

Massimiliano SIMONCINI v. SAN MARINO (no. 3106/24)

Article 6 – Tribunal established by law

SUBJECT MATTER OF THE CASE

The application concerns disciplinary proceedings against the applicant, who is a member of the San Marino judiciary. The proceedings were conducted, pursuant to Constitutional Law no. 1/2021, before the Judicial Council (Consiglio Giudiziario) which, by decision of 13 July 2023, established the applicant's disciplinary liability and issued a warning.

The applicant appealed to the Constitutional Court (Collegio garante della costituzionalità delle norme), as provided by Section 16 § 10 of Constitutional Law no. 1/2021. By a decree of 12 September 2023, the President of the Constitutional Court declared the appeal inadmissible because the applicant was not represented by a lawyer as required by Section 9 § 1 of Qualified Law no. 55/2003. On 15 September, a lawyer appointed by the applicant filed a brief, with the declared purpose of formally confirming the applicant's appeal and curing its initial lack of representation. By a decree of 22 September 2023, the President of the Constitutional Court confirmed the inadmissibility of the appeal, stating that the lawyer's brief had been filed after the expiry of the thirty days' time-limit for appeal.

The applicant, relying on Article 6 § 1 of the Convention, complains that the issuance of the decision by the President of the Constitutional Court in a single-judge formation, rather than by the panel, breached the requirement that his claims should be determined by a "tribunal established by law". He further complained of an insufficient reasoning of the decree of 22 September 2023, insofar as it did not address the possibility of curing the initial lack of representation by the subsequent appointment of a lawyer.

QUESTIONS TO THE PARTIES

1. Was the composition of the Constitutional Court deciding on the applicant's case established by the law, as required by Article 6 § 1 of the Convention (see Pasquini v. San Marino, no. 50956/16, §§ 101 and 107, 2 May 2019; Momčilović v. Serbia, no. 23103/07, §§ 30-33, 2 April 2013; and Jenița Mocanu v. Romania, no. 11770/08, §§ 38 and 41, 17 December 2013)?

2. 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, was the decree of 22 September 2023 sufficiently reasoned in respect of the arguments which were decisive for the outcome of the appeal (Moreira Ferreira v. Portugal (no. 2) [GC], no. 19867/12, § 84, 11 July 2017)?

Manuela NOGALES DE LA MORENA v. SPAIN (no. 1508/24)

Article 1 of Protocol 1 – right to obtain reversion of expropriated land

SUBJECT MATTER OF THE CASE

On 16 May 2018 the applicant, acting on behalf of an inheritance community (comunidad hereditaria) composed of her two siblings and her, requested the reversion of her late parent's expropriated land. The applicant alleged that the expropriation had been undertaken as part of a project for the construction of a new town to cover the need of housing in Madrid, consisting of two zones - at the east and west parts of a main road. Her parents' expropriated land had been in a sector in the west zone where 11.210 residences were to be constructed. However, dwellings had been constructed only in the east zone and, for the past 50 years, there had not been any relevant construction activity in the west zone, which remained a rough landscape.

The applicant's reversion action was based on section 54.1 of the Expropriation Act of 1954 (artículo 54.1 de la Ley de Expropiación Forzosa de 16 de diciembre de 1954), which attributes both to the original owners of an expropriated land and to their heirs the right, under certain conditions, to claim its reversion. The applicant brought administrative proceedings against the absence of a reply on the part of the city council. The Court of First Instance rejected the applicant's action without ruling on the merits.

The Court of Appeal quashed the Court of First Instance's judgment and ruled on the merits. It rejected the claim for reversion because the projected new town had indeed been created during the eighties and the nineties. The initial project had been divided into two clear zones (east and west of the road). Regarding the west zone (in which no dwelling had been constructed) the Court of Appeal found that the conditioning of natural paths in the landscape, the demolition of illegal farms, the works to allow passing over a water stream, as well as the public parking and bike lane, could be considered as sufficient fulfilment of the cause of the expropriation, based on the reports of the council engineers.

The applicant's appeal on points of law and further action for annulment were declared inadmissible. The Constitutional Court declared the applicant's amparo appeal inadmissible on 5 September 2023. The applicant complains under Article 1 of Protocol 1 that her right to obtain the reversion was refused unlawfully and without justification. The applicant argues that the public authorities have not developed any construction in the west zone or integrated this zone into the new town in the east and therefore the intended purpose of the expropriation of her parents' land has not been fulfilled.

QUESTIONS TO THE PARTIES

1. Does the claim raised by the applicant concerning the right of reversion constitute a "possession" within the meaning of Article 1 of Protocol 1 to the Convention (see The Pine Valley Developments Ltd. and Others v. Ireland judgment of 29 November 1991, Series A no. 222, p. 23, § 51)?

2. If so, did the refusal to grant the claim by the national courts amount to an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1?

3. If so, was that interference in accordance with the conditions provided for by law and proportionate to the legitimate aim pursued, within the meaning of Article 1 of Protocol No. 1? In particular, did that interference impose an excessive individual burden on the applicant within the meaning of Article 1 of Protocol No. 1 having regard to the applicant's allegation that the intended purpose of the expropriation has not been realised (see, mutatis mutandis, Motais de Narbonne v. France, no. 48161/99, §§ 21-23, 2 July 2002)?

4. The applicant is requested to submit the inheritance documents that were submitted with the claims at the domestic level.

S.K. and others v. SWITZERLAND (no. 5590/23)

Article 8 – right to respect for private ad family life – ban on entering Switzerland on national security grounds

SUBJECT MATTER OF THE CASE

The application concerns the ban on entering Switzerland of a Turkish national (the first applicant). He is married to a Swiss national (the second applicant) and they have a child (the third applicant, born in October 2021). The second and third applicants live in Switzerland, while the first applicant lives in Iraqi Kurdistan.

The first applicant claims that he was a member of the Workers' Party of Kurdistan (PKK), which he left after many years. He was subsequently arrested by the PKK and managed to escape. He surrendered to the Kurdistan Democratic Party (KDP). He was granted a one-year residence permit for the Kurdistan Region. He claims that his residence permit has not been renewed and he fears that the KDP may expel him to Türkiye, where he risks arrest and conviction as a former member of the PKK.

In 2020 the first and second applicants married in Iraq. Subsequently, they submitted a request for family reunification in Switzerland to the Cantonal Office for Migration to obtain a residence permit for the first applicant. In a report dated 26 November 2020, on the basis of the documents submitted by the applicants in connection with the request for family reunification, the Swiss Federal Intelligence Service (FSI) reiterated that the first applicant was a member holding a leadership position in the PKK. It concluded that an entry ban should be issued against the first applicant due to fears that the PKK could put pressure on him to carry out activities on its behalf in Switzerland. Based on this report, the Federal Office of Police (fedpol), by decision of 6 January 2021, issued an entry ban of 10 years against the first applicant on the grounds that he was a potential threat to Switzerland's internal or external security. As a result of this entry ban, the Cantonal Office for Migration discontinued the request for family reunification. The applicants did not have a possibility to appeal against the decision to discontinue the family reunification proceedings.

They did, however, appeal against the entry ban. The Federal Department of Justice and Police (FDJP) rejected the appeal by decision of 14 October 2021. The Federal Council confirmed the entry ban by decision of 23 September 2022. The domestic authorities considered that the public interests (risk to national security and to Swiss international relations) outweighed the applicants' individual rights under Article 8 of the Convention.

The applicants argue that the entry ban of ten years is based on an incomplete assessment of the interests at stake, and complaint that the ban is disproportionate, violating their right to respect for family life under Article 8 of the Convention and is contrary to the best interests of the child.

QUESTIONS TO THE PARTIES

1. Did the entry ban imposed on the first applicant constitute a breach of the applicants' right to respect for their family life within the meaning of Article 8? Do the authorities have a positive obligation under Article 8 to allow the first applicant entering Switzerland (see, mutatis mutandis, Nada v. Switzerland [GC] no. 10593/08, §§ 164-99, 12 September 2012; M.A. v. Denmark [GC], no. 6697/18, § 130-94, 9 July 2021; Jeunesse v. the Netherlands [GC], no. 12738/10, §§ 106-122, 3 October 2014; and El Ghatet v. Switzerland, no. 56971/10, §§ 46-53, 8 November 2016)? If yes, did they comply with this positive obligation?

2. Was the entry ban in respect of the first applicant subject to a meaningful scrutiny by a court competent to review all the relevant questions of fact and law and in line with the requirements under Article 8 (see Al-Nashif v. Bulgaria, no 50963/99, § 123, 20 June 2002; C.G. and others v. Bulgaria, no 1365/07, §§ 43-49, 24 April 2008; and Slivenko v. Latvia [GC], no. 48321/99, §§ 93-129, 9 October 2003)?

Emre YAVAŞ v. TÜRKİYE (no. 15499/20)

Article 8 – right to respect for private ad family life – two-month visiting ban of spouse in prison

SUBJECT MATTER OF THE CASE

The application concerns the two-month visiting ban imposed by the prison administration on the applicant's wife who was seven months pregnant. The prison authorities found that the applicant's wife had breached the prison rules by taking notes on her wrist, which might have contained a cipher message.

According to the official report, the written notes were: 'birthday, clothes, money, telephone, Denizli photography, workplace, workplace petition, when, implicit rejection, 60 days pregnancy, petition for the TCC application'.

Relying on Article 8 of the Convention, the applicant complains that his right to respect for private and family life with his wife had been infringed, particularly considering the fragility of the course of her pregnancy.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicant's right to respect for his private and family life within the meaning of Article 8 § 1 of the Convention, on account of the impugned visiting ban?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2? In particular, did the domestic authorities make a concrete assessment of the applicant's needs and engage with his complaints in accordance with the guarantees inherent in Article 8 of the Convention (see Khoroshenko v. Russia [GC], no. 41418/04, §§ 116-126, ECHR 2015; Subaşı and Others v. Türkiye, nos. 3468/20 and 18 others, §§ 80-93, 6 December 2022, and Deltuva v. Lithuania, no. 38144/20, §§ 46-49, 21 March 2023)?

Fehim İŞBİLİR v. TÜRKİYE (no. 9850/22)

Article 10 – insulting a public official

SUBJECT MATTER OF THE CASE

All the applications listed below (appendix) concern the criminal conviction of the applicants to prison sentences or a judicial fine combined with a measure of suspension of the pronouncement of the judgment on charges of insulting a public official or insulting the President of the Republic for their acts and statements allegedly relating to the use by them of their freedom of expression.

Relying on Article 10 of the Convention, all the applicants complained that their convictions and the subsequent application of a measure of suspension of the pronouncement of the judgment violated their freedom of expression.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicants' right to freedom of expression, within the meaning of Article 10 § 1 of the Convention, due to their conviction to prison sentences or a judicial fine combined with a measure of suspension of the pronouncement of the judgment?

If so, was that interference in accordance with the law and necessary in terms of Article 10 § 2?

Was the measure of the suspension of the pronouncement of the judgment imposed on the applicants prescribed by a legal basis defining the scope and modalities of this measure with sufficient clarity to enable the applicants to enjoy the degree of protection required by the rule of law in a democratic society (Durukan and Birol v. Türkiye, nos. 14879/20 and 13440/21, §§ 58-68, 3 October 2023).

Mustafa İÇTİN v. TÜRKİYE (no. 19683/19)

Article 8 – monitoring and recording during detention

SUBJECT MATTER OF THE CASE

The application concerns the following measures adopted by the authorities during the applicant's detention: monitoring/recording of the applicant's conversations with his lawyers pursuant to section 6 of Emergency Legislative Degree no. 667, electronic recording and storage of the applicant's private correspondence with his family in the National Judicial Network System (UYAP) and restrictions imposed on the applicant for monthly contact visits, weekend visits from his school-age children, and for weekly telephone calls.

Relying on Article 8 of the Convention, the applicant complains about the above-mentioned measures.

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, on account of the presence of an officer during the applicant's consultations with his lawyers and/or the recording of their conversations?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (compare Campbell v. the United Kingdom, 25 March 1992, §§ 33-53, Series A no. 233; Altay v. Turkey (no. 2), no. 11236/09, §§ 49-52, 9 April 2019; and Canavcı and Others v. Türkiye, nos. 24074/19 and 2 others, §§ 91 and 93-96, 14 November 2023)?

2. 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 recording and storage of his private correspondence in the National Judicial Network System (UYAP) (see Nuh Uzun and Others v. Turkey, no. 49341/18 and 13 others, § 82, 29 March 2022)?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention? In particular, did the impugned measure have an accessible and foreseeable legal basis providing appropriate safeguards to prevent any arbitrary interferences by public authorities that might be inconsistent with the guarantees of Article 8 of the Convention (ibid., §§ 84-98)?

3. Has there been an interference with the applicant's right to respect for his private and family life, within the meaning of Article 8 § 1 of the Convention, on account of the impugned restrictions on the contact and weekend visits and the weekly telephone calls (see Subaşı and Others v. Türkiye, nos. 3468/20 and 18 others, §§ 77-79 and 100-102, 6 December 2022)?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention? In particular, did the domestic authorities make a concrete assessment of the applicant's needs and engage with his complaints in accordance with the guarantees inherent in Article 8 of the Convention (ibid., §§ 80-93 and 105-1

Yüksel SAMAST v. TÜRKİYE (no. 16536/20)

Article 1 of Protocol No. 1 – Article 6 – loss of the privileges attached to the shares in a joint stock company

SUBJECT MATTER OF THE CASE

The application concerns the loss, by virtue of a new law, of the privileges attached to the shares held by the applicant in a joint stock company. The applicant was a B-grade privileged shareholder in a joint stock company. The other shares (A-grade) belong to a foundation connected to the Turkish Military Forces.

Under the company's articles of association, additional shares could be created at the end of a certain period and the applicant was entitled to acquire them on a priority basis at a preferential rate in exchange for the profits made by the company over that period and thus increase his stake in the company.

On 12 April 2011 Law No. 6215 entered into force and amended Article 401 of the Turkish Commercial Code. According to the amendment, no privileges could be established in joint stock companies in favour of shareholders who are not among the public benefit foundations. Additionally, the law provided that the articles of association had to be brought in line with this amendment. On 16 December 2011 the company in question called a general assembly meeting, at the end of which it was decided to amend the articles of association and cancel the privileges attached to the applicant's shares.

The applicant brought an action before the Commercial Court and requested the annulment of the decision taken during this general assembly meeting. He further requested that the Commercial Court apply to the Constitutional Court in order to have the constitutionality of the newly enacted law reviewed in the framework of a preliminary ruling. The applicant's requests were rejected. The judgment in question was upheld by the Court of Cassation. Subsequently, the applicant's individual application to the Constitutional Court was declared inadmissible. The applicant complains under Article 1 of Protocol No. 1 to the Convention that, as a result of the above-mentioned legal amendment, he lost the privilege of acquiring additional shares at favourable conditions with the profits of the company as foreseen in the company's articles of association.

The applicant further complains under Article 6 of the Convention that the right to a reasoned judgment and the right of access to a court had been infringed because the trial court had not given any details as to why it had dismissed his requests, especially the one related to the referral to the Constitutional Court.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention, as the applicant's share privileges were cancelled by virtue of the new law? In this context, to what extent did this interference affect the applicant's pecuniary rights?

2. Was the interference with the applicant's property rights in conformity with the requirements of Article 1 of Protocol No. 1?

(a) Did the interference serve a public interest? Is there any provision in the new Commercial Code similar to the one the applicant is complaining of?

(b) Did the interference strike a fair balance between the demands of the general interest and the interest of the applicant within the meaning of Article 1 of Protocol No. 1? In this framework, to what extent is the quality of the parliamentary and judicial review of the necessity of the measure material to its proportionality in the circumstances of the present case (see James and Others v. the United Kingdom, 21 February 1986, § 36, Series A no. 98, and, mutatis mutandis, Animal Defenders International v. the United Kingdom [GC], no. 48876/08, § 108, ECHR 2013 (extracts))?

(c) Has the applicant been afforded a reasonable opportunity to challenge effectively the measures affecting his possessions and to obtain adequate redress (compare Blumberga v. Latvia, no. 70930/01, § 67, 14 October 2008)?

3. Did the applicant have a fair trial in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, did the Commercial Court's rejection of the applicant's request for a preliminary ruling violate the applicant's rights to a reasoned judgment and of access to a court guaranteed by Article 6 § 1 of the Convention (see, mutatis mutandis, Dhahbi v. Italy, no. 17120/09, §§ 31 to 34, 8 April 2014)?

Mehmet Emin NAKÇİ v. TÜRKİYE (no. 47318/20)

Article 6 – statutory thirty-day time-limit for lodging an application

SUBJECT MATTER OF THE CASE

The application concerns an alleged breach of the applicant's right of access to a court stemming from the Constitutional Court's interpretation of the statutory thirty-day time-limit in declaring his application inadmissible.

On 3 October 2019 the Court of Cassation upheld the applicant's conviction for being a member of an armed terrorist organisation, namely the YPG (People's Protection Units, founded in Syria and regarded as a terrorist organisation by Türkiye on account of its links with the PKK (Workers' Party of Kurdistan, an armed terrorist organisation)). On 19 October 2019 Law no. 7188 on Amendments to the Code of Criminal Procedure and certain other laws entered into force, providing for, inter alia, a possibility to lodge appeals in cassation against final judgments of regional courts of appeal pertaining to a certain limited number of offences. On 28 October 2019 the applicant sent a letter to the trial court, asking the latter to apply the provisions of the "first judicial reform package" and to apply the provisions favourable to him. On 20 January 2020 the applicant was notified of the committal order (müddetname) issued by the competent public prosecutor's office concerning the execution of his sentence.

By a letter dated 7 February 2020 the applicant lodged an individual application with the Constitutional Court. On 27 April 2020 the Constitutional Court declared the application inadmissible for failure to comply with the statutory thirty-day time-limit. In dismissing the applicant's objection to its decision, the Constitutional Court held, on 1 June 2020, that he must be taken to have been apprised of the Court of Cassation's final judgment on 28 October 2019 at the latest, on which date he had asked for the application of provisions favourable to him and a reduction of his sentence (uyarlama yargılaması) if that was rendered possible by the legislative changes. Accordingly, the Constitutional Court found that the thirty-day time-limit started to run on 28 October 2019, whereas the application had been lodged on 7 February 2020, that was after the expiry of the above-mentioned time-limit.

The applicant complains, under Article 1 of the Convention, that his right to respect for human rights was breached due to the fact that his letter dated 28 October 2019 on which the Constitutional Court based itself to declare his application inadmissible as being lodged out of time, did not contain any element that could have enabled the latter to assume that he had become aware of the final judgment.

QUESTION TO THE PARTIES

Has there been a breach of the applicant's right of access to a court within the meaning of Article 6 § 1 of the Convention on account of the Constitutional Court's decision to declare his individual application inadmissible for failure to comply with the statutory thirty-day time-limit (see, for general principles, Üçdağ v. Turkey, no. 23314/19, §§ 37-40, 31 August 2021)?

Yaşar MESCİGİL v. TÜRKİYE (no. 19766/22)

Article 1 of Protocol No. 1 – Article 6 – trial in absentia – injunction imposed on assets

SUBJECT MATTER OF THE CASE

The application concerns the duration during which the injunction imposed on the applicant's assets due to his responsibility as a manager of bankrupt Yurtbank remained in place, as well as the lack of any remedy against the continued validity of the injunction.

The applicant had been a branch manager of Yurtbank whose management and control were transferred to the Savings Deposits Insurance Fund ("the Fund"). The Fund lodged personal bankruptcy proceedings against managers of Yurtbank including the applicant with the Commercial Court for the damages caused to the bank which resulted in the transfer of the bank to the Fund. The Commercial Court imposed an interim injunction on the applicant's personal assets on the Fund's request.

While these proceedings against the applicant were still pending, on 23 March 2010 the Fund signed a Protocol with the Balkaner Group, the majority shareholder of Yurtbank at the time the bank was transferred to the Fund. This protocol was aimed at restructuring the debt that the Balkaner Group owed to the Fund by reason of fraudulent loans and other transactions that had allegedly caused losses to Yurtbank and to set out the terms of the repayment of the debt. It also contained a special provision concerning the lawsuits filed by the Fund to recover the losses of Yurtbank. According to that provision, the proceedings against the defendants were to be suspended as long as the parties complied with the terms of the Protocol.

The Commercial Court decided to suspend the proceedings against the applicant following the signature of the Protocol between the Fund and the Balkaner Group, without lifting the interim injunction.

The applicant complains under Article 1 of Protocol No. 1 to the Convention that the continuation of the measures regarding his assets affects the very essence of his right to property. He further complains under Article 6 § 1 of the Convention that he did not have access to a court to challenge the continued validity of the interim injunction regarding his assets. He further complains under Article 6 § 1 of the Convention of the length of the proceedings before the Commercial Court.

QUESTIONS TO THE PARTIES

1. Having regard to the Court's case-law (see Karahasanoğlu v. Turkey, nos. 21392/08 and 2 others, §§ 142-154, 16 March 2021) and the duration during which the injunction remained in place, has there been an

interference with the applicant's right to peaceful enjoyment of his possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention? If so, was that interference necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties? In particular, did that interference impose an excessive individual burden on him?

2. Did the applicant benefit from sufficient procedural safeguards to effectively challenge the implemented measures as required by Article 1 of Protocol No. 1 to the Convention (Karahasanoğlu, cited above, §§ 149-154)? In particular, did the Turkish Constitutional Court's failure to address the applicant's complaints under Article 1 of Protocol No. 1 to the Convention violate the procedural safeguards envisaged therein?

3. 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, to challenge the continued validity of the interim injunction regarding his assets?

4. Was the length of the proceedings before the Commercial Court in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?

The parties are invited to submit a copy of the Protocol signed between the Balkaner Group and the Fund on 23 March 2010.

Oktay KAYA and Mehmet AVCI v. TÜRKİYE (nos. 27526/22 and 29593/22)

Article 6 – Alleged unfairness of criminal proceedings on account of anonymity of witnesses

SUBJECT MATTER OF THE CASE

The applications concern the alleged unfairness of criminal proceedings against the applicants on account of their alleged inability to examine three witnesses, whose identities were protected (anonymous witnesses), in person before the trial court.

On 13 July 2016 the Bingöl Public Prosecutor's Office, charging the applicants with the offence of membership of an armed terrorist organisation, filed a bill of indictment with the Bingöl 2nd Assize Court. On 8 November 2017 the Bingöl 2nd Assize Court convicted the applicants of membership of an armed terrorist organisation (the PKK (Workers' Party of Kurdistan) / KCK (Kurdistan Communities Union)). In its judgment the Bingöl 2nd Assize Court relied on statements of anonymous witnesses who had been heard by the court in a private hearing in the absence of the defendants and their lawyers.

The applicants complain that their rights under Article 6 § 3 (d) of the Convention have been violated as they were convicted based on statements of anonymous witnesses whom they had not been able to examine in person.

QUESTIONS TO THE PARTIES

1. 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 (see Al-Khawaja and Tahery v. the United Kingdom [GC],

nos. 26766/05 and 22228/06, §§ 118-151, ECHR 2011, and Schatschaschwili v. Germany [GC], no. 9154/10, §§ 100-131, ECHR 2015). In particular:

(a) Were the applicants able to examine all witnesses against them, as required by Article 6 § 3 (d) of the Convention?

(b) Was there a good reason for (i) keeping the identities of the witnesses concerned confidential, (ii) the non-attendance of the applicants or their lawyers at the session held by the trial court, during which it examined the anonymous witnesses? Were the factual or legal grounds of such a reason reflected in the domestic courts' judgments?

(c) Did the statements of those witnesses serve as the sole or decisive evidence or carry significant weight for the applicants' conviction?

(d)(Did the domestic courts' judgments indicate that they had approached the statements given by the anonymous witnesses with any specific caution?

e) Did the domestic courts provide the applicants with procedural safeguards aimed at compensating for the alleged lack of opportunity to directly examine the witnesses before the trial court?

The Government are invited to submit all relevant documents concerning the applicants' cases.

Artur Sarkisovych ANTONYAN v. UKRAINE (no. 6855/15)

Article 1 of Protocol No. 1 – annulment of the registration of applicant's car – Article 6

SUBJECT MATTER OF THE CASE

The application concerns the police's decision to annul the applicant's car registration. In 2009 the applicant bought a car, already registered in Ukraine, on a commodity exchange and became the sixth owner of that car. He re-registered the car in his name with the police in accordance with the relevant procedure and used the car, including for his travels abroad, until 2012, when the registration of the car was cancelled by the police on the grounds that the initial registration had been carried out in breach of domestic law, as there was no information in the customs database that the car had undergone customs clearance when it had been imported into Ukraine in 2003. The criminal case against the police officers accused of unlawfully registering vehicles, including that of the applicant, was discontinued as time-barred in 2012.

The applicant challenged the annulment before the administrative courts, arguing, inter alia, that such a decision violated his property rights. The first and second instance courts held that the cancellation was unlawful and ordered the police to renew the registration of the applicant's car. By a final decision of 22 October 2014, the Higher Administrative Court of Ukraine (the HACU) overturned the decisions of the lower courts and dismissed the applicant's claim.

The applicant complains that the annulment of the registration of his car was unlawful and disproportionate, in breach of Article 1 of Protocol No. 1. He additionally complains, under Article 6 § 1 of the Convention, that the HACU misinterpreted domestic law and made an unfounded decision

QUESTIONS TO THE PARTIES

Was there an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? If so:

Was the annulment of the registration of the car, of which the applicant had been a bona fide acquirer and which had already been registered for years in Ukraine, lawful? Notably, were the relevant provisions of domestic law complied with (see East West Alliance Limited v. Ukraine, no. 19336/04, § 167, 23 January 2014, with further references)?

Was the requisite fair balance between the demands of the general interest and the requirements of the protection of the applicant's right of property respected (see, for example, Akshin Garayev v. Azerbaijan, no. 30352/11, § 56, 2 February 2023, and the case-law references therein)?

Valentyna Zakhariyivna SERGIYENKO and Nina Andriyivna NYSHCHA v. UKRAINE (no. 5784/20)

Article 2 – Article 3 – ineffective investigation – torture and murder because of journalist activity

SUBJECT MATTER OF THE CASE

The application concerns alleged ill-treatment resulting in the death of Mr Sergiyenko (the first applicant's husband and the second applicant's son) at hands of non-State agents allegedly hired by a Member of Parliament (further – "MP"). On 4 April 2014 Mr Sergiyenko, who was a journalist and a public activist, was kidnapped from his home by a group of men and later ill-treated and murdered. A forensic medical examination confirmed the infliction of numerous heavy bodily injuries and established that the death had been caused by craniocerebral injuries. Before those events, Mr Sergiyenko had been investigating the alleged corruption of officials of the Cherkasy Region and of N., an MP at that time, and, according to the applicants, Mr Sergiyenko had been receiving threats from persons connected with those officials. A criminal investigation was launched and, after 10 years, is still pending. Several perpetrators were officially charged, inter alia, with kidnapping and murder, and the criminal cases against them are currently ongoing before trial courts. The investigation established that some of those perpetrators had been in close contact with N. No one has been informed that they were suspected of having contracted the murder.

The applicants complain under Articles 2 and 3 of the Convention that Mr Sergiyenko had been tortured and killed because of his journalist activity, and that the investigation into those events has been ineffective. They also complain under Article 6 of the Convention of the excessive length of the consideration of their civil claim lodged within the criminal proceedings, and of the absence of an effective domestic remedy in that regard invoking Article 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Since the person who allegedly contracted the murder of Mr Sergiyenko was a State official, can the respondent State be held responsible for the alleged substantive violations of Articles 2 and 3 of the Convention?

2. If so:

(a) Has Mr Sergiyenko's right to life, ensured by Article 2 of the Convention, been violated in the present case?

(b) Has Mr Sergiyenko been subjected to torture or inhuman or degrading treatment in breach of Article 3 of the Convention?

3. Have the domestic authorities conducted an effective investigation into the above complaints, as required by Articles 2 and 3 of the Convention?

4. Was the length of the consideration of the applicants' civil claim, lodged within the criminal proceedings, in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention?

5. Has there been an effective domestic remedy available for the above complaint under Article 6 § 1, as required by Article 13 of the Convention?