Scan of communicated cases

Cases covered between 14 October 2024 – 26 October 2024

Gagik KHACHATRYAN v. Armenia (application no. 16028/24)

Article 2 – Article 3 – refusal to allow prosecuted applicant to travel abroad for medical treatment

SUBJECT MATTER OF THE CASE

The applicant is a well-known public figure in Armenia and a former high-ranking Government official. Since February 2019 he has been under prosecution for several offences allegedly committed while he was still in office, including embezzlement and abuse of authority. The applicant has serious health issues, including spinal stenosis, myelopathy, radiculopathy, gallstone disease, chronic cholecystitis and chronic pancreatitis.

In April 2018, that is prior to the investigation against the applicant, he had been operated in Germany (spinal surgery with decompression of the spinal canal and disc replacement) and underwent several sessions of mandatory post-surgical rehabilitation. His treatment was apparently interrupted due to the investigation and his subsequent detention in August 2019. Following his release on bail in October 2020 the applicant was allowed by the trial court to travel to Hamburg, Moscow and Paris for medical treatment on a number of occasions.

On 8 May 2023, further to the applicant having filed another request for permission to travel abroad for a medical treatment, the prosecution requested the trial court to impose on him a written undertaking not to leave the place of residence arguing that the applicant was using his health condition to delay the proceedings. The trial court granted the prosecution's request on the grounds that, despite multiple permissions to undergo medical treatments abroad, the applicant was still failing to attend the court hearings referring to his poor health.

On 29 September 2023 the applicant requested authorisation to travel to Germany from 8 October until 10 November 2023. The trial court ordered a forensic examination of the applicant's medical condition. On 11 December 2023 Doctor V.A., the adviser to the Minister of Health in the field of neurosurgery, issued an opinion confirming that there had been a negative dynamics in the applicant's health requiring an urgent surgery which could not be performed in Armenia due to the lack of appropriate equipment. He also stated in this opinion that postponing the secondary surgery could cause irreversible consequences and lead to the emergence of other health issues or the aggravation of the existing ones.

In the meantime, in early December 2023 Doctor N.H., the applicant's German doctor who had performed his spinal surgery in Hamburg, visited him in Armenia. On 9 December 2023 Doctor N.H. and two Armenian doctors issued a joint medical opinion noting the deterioration of the applicant's general condition and the deepening of the neurological deficit. Surgical treatment was prescribed to avoid further irreversible damage which could "worsen the applicant's life and quality of life". In his written statement submitted to the applicant's lawyers on the same day, Doctor N.H. stated that he could not perform the prescribed surgery in Armenia due to the lack of the relevant equipment and the impossibility to bring the implants necessary for the surgery (which were not available in Armenia and which he was not allowed to carry with him).

According to the applicant, he orally requested the trial court to examine his several requests to be allowed to travel abroad for medical treatment in his absence due to his poor health condition. It appears that the trial court rejected the applicant's above request.

On 23 February 2024 the trial court rejected the applicant's requests to travel to Germany for medical treatment on the grounds that his treatment was possible in Armenia, including with the participation of his foreign doctors, and that he had been granted leave from trial on a number of occasions before. At the same hearing the trial court ordered to secure the applicant's presence before it.

According to the applicant, despite his poor state of health, he had been obliged to attend six court hearings between March and May 2024. He had to be put on a stretcher with the help of an ambulance crew and suffered from severe pain. Some of those hearings were adjourned since the applicant had felt unwell and needed medical assistance.

Further to the applicant's appeal, the Anti-Corruption Court of Appeal decided on 22 March 2024 that the trial court's decision of 23 February 2024 was not amenable to appeal. The Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit by its decision of 10 May 2024.

On 17 May 2024 Doctor N.H. and the applicant's two Armenian doctors issued a joint medical opinion according to which the applicant's health had deteriorated as compared to his previous examination in December 2023. In addition to the previously recommended cervical surgery, a shoulder surgery had also become necessary. That opinion further stated that, even in the most positive case scenario, the applicant would still be left with "irreversible damage and reduced mobility" after those surgeries.

On 16 June 2024 the applicant qualified for permanent disability benefit due to severe loss of functionality (66%).

The applicant complains under Article 2 of the Convention about the authorities' refusal to allow his medical treatment in Germany at his own expense despite his life-threatening medical condition and the unavailability of the necessary medical treatment in Armenia. He also complains of degrading treatment on account of the trial court requiring him to attend court hearings despite the fact that he had to do so while being on a stretcher, suffering from severe pain and unable to use the toilet facilities that were not adapted to his special needs.

QUESTIONS TO THE PARTIES

1. Having regard to the fact that since May 2023 the applicant has not been allowed to travel to Germany for allegedly life-saving medical treatment, can it be said that the authorities have complied with their positive obligation to protect his right to life arising from Article 2 of the Convention?

2. Having regard to the applicant's medical condition and the alleged unavailability of adapted sanitary facilities at the courthouse, has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, on account of his participation in court hearings between 7 March 2024 and 17 May 2024?

The parties are requested to clarify whether there is a realistic possibility for the applicant's German doctor having the necessary expertise to perform the recommended surgery in Armenia. In that connection, the parties are requested to explain, if possible with reference to the applicable national and international regulations, whether it is legally and practically possible to import the implants and equipment required for the given surgery to Armenia.

The parties are further requested to clarify whether there is a legal and practical possibility for the accused person's remote participation in court hearings.

Sevda SULEYMANOVA v. Azerbaijan (application no. 57774/17)

Article 3 – ill-treatment by police – lack of investigation

SUBJECT MATTER OF THE CASE

The application concerns the alleged ill-treatment of the applicant by police officers on several occasions and the lack of an effective investigation into those allegations.

According to the applicant, she had been unlawfully detained, harassed and ill-treated by police officers, following which she had lodged a complaint before the prosecuting authorities.

After questioning the applicant and the police officers, by a decision dated 25 December 2015, the prosecuting authorities refused to open a criminal investigation. The applicant's complaints against that decision lodged before the domestic courts were unsuccessful.

The applicant complains under Article 3 of the Convention that she was subjected to ill-treatment by the police during her unlawful detention and that the domestic authorities failed to conduct an effective investigation in that regard.

QUESTIONS TO THE PARTIES

3. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention?

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

5. The Government are requested to submit copies of all documents concerning the investigation into the alleged ill-treatment (complaints, decisions and other relevant documents).

Giyas IBRAHIMOV v. Azerbaijan and Giyas IBRAHIMOV and Hasan IBRAHIMOV v. Azerbaijan (applications nos. 34247/18 and 27312/19)

Article 10 – Article 18 in conjunction with Article 6 – allegations of fabricated charges following applicant's spraying graffiti on statue of former president

SUBJECT MATTER OF THE CASE

Application no. 34247/18 concerns the criminal proceedings against the applicant, a member of the NIDA civic movement. On the night of 9 to 10 May 2016 he and B.M., sprayed graffiti on a statue of the former president of Azerbaijan in order to express their opposition against the government and disseminated photographs thereof on social networks, which were also reproduced by some online media. Several hours later, the applicant was arrested allegedly on the basis of operational information received by the police about his involvement in drug trafficking. Domestic proceedings concerning the applicant's arrest and pre-trial detention have been subject of the Court's judgment in *Ibrahimov and Mammadov v. Azerbaijan* (nos. 63571/16 and 5 others, 13 February 2020).

By a judgment of 25 October 2016 the Baku Court of Serious Crimes convicted the applicant under Article 234.4 (illicit acquisition, possession, and transportation of narcotic substances in large quantities by a group of persons in prior agreement) of the Criminal Code and sentenced him to ten years' imprisonment. The applicant complained, among other things, that the criminal case against him had been fabricated in order to punish him for painting graffiti on a statue of the former president. By a final judgment of 30 November 2017 (served on the applicant on 17 January 2018) the Supreme Court upheld the lower court's judgment.

Application no. 27312/19 concerns the criminal proceedings against the applicants under Article 289.2 (contempt of court) of the Criminal Code. The domestic courts held that the applicants had insulted the judges of the appellate court at the hearing concerning the first applicant's trial. They sentenced the first applicant to six months' imprisonment (resulting in a cumulative sentence of ten years and three months' imprisonment) and the second applicant, his father, to one year and six months of correctional work. By a final judgment of 10 October 2018 (served on the applicants on 12 November 2018) the Supreme Court upheld the lower court's judgment.

In March 2019 the first applicant was released and exonerated from serving the remainder of his sentence after being pardoned by a presidential decree.

Relying on Article 6 of the Convention, the first applicant complains that the domestic courts' judgments concerning his trial were not duly reasoned and that his conviction was based on flawed evidence. Relying on Article 10 of the Convention and Article 18 taken in conjunction with Article 6 of the Convention, he also complains that his criminal conviction was aimed at punishing him for spraying graffiti with political slogans on a statue of the former president.

Both applicants complain under Article 10 of the Convention that their right to freedom of expression was breached as a result of their conviction for contempt of court.

QUESTIONS TO THE PARTIES

Application no. 34247/18

1. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the applicant's right to a reasoned judgment based on a proper examination of the submissions and evidence respected in the present case (see *Ilgar Mammadov v. Azerbaijan (no. 2)*, no. 919/15, §§ 205-10, 16 November 2017)?

2. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention? In particular, did his criminal conviction for illicit acquisition, possession, and transportation of narcotic substances amount to an interference with the exercise of his freedom of expression? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

3. Did the conviction of the applicant in the present case, purportedly pursuant to Article 6 of the Convention, pursue a purpose other than those envisaged by that provision, contrary to Article 18 of the Convention?

Application no. 27312/19

Has there been an interference with the applicants' freedom of expression within the meaning of Article 10 § 1 of the Convention as a result of their criminal conviction for contempt of court? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2 (see, for example, *Skałka v. Poland*, no. 43425/98, §§ 30-43, 27 May 2003; *Saday v. Turkey*, no. 32458/96, §§ 30-37, 30 March 2006; and *Žugić v. Croatia*, no. 3699/08, §§ 24-49, 31 May 2011)?

Dragana STANKOVIĆ v. Bosnia and Herzegovina (application no. 11103/23)

Article 14 in conjunction with Article 8 – Article 1 of Protocol No. 12 – entitlement to maternity leave – difference in treatment on the basis of profession

SUBJECT MATTER OF THE CASE

The applicant is a self-employed practising lawyer. She participated in the compulsory health insurance scheme with the Republika Srpska Health Insurance Fund. Until 2001 self-employed insured persons were entitled to a paid maternity and paternity leave. Following 2001 amendments to the 1996 Child Care Act only insured employees were entitled to this benefit.

Consequently, in 2019 the domestic authorities refused the applicant's request for paid maternity leave. On 18 October 2022 (served on the applicant on 31 October 2022), the Constitutional Court examined her discrimination complaint only under Article 1 of Protocol No. 12 and found no violation of that provision.

The new Child Care Act which entered into force in 2020 envisages paid maternity and paternity leave for all categories of insured persons.

Relying on Article 14 in conjunction with Article 8 of the Convention, and on Article 1 of Protocol No. 12 to the Convention, the applicant complains that she was treated differently on the basis of her professional status.

QUESTIONS TO THE PARTIES

Was the refusal by the administrative authorities of the applicant's request for a paid maternity leave contrary to Article 14 of the Convention read in conjunction with Article 8, and/or Article 1 of Protocol No. 12 to the Convention (see *Pinkas and Others v. Bosnia and Herzegovina*, no. 8701/21, 4 October 2022, and, *mutatis mutandis, Jurčić v. Croatia*, no. 54711/15, 4 February 2021)?

The Government are requested to submit the draft 2001 amendments to the 1996 Child Care Act containing the reasons for their adoption (*travaux préparatoires)*.

Ivan Stoimenov GESHEV v. Bulgaria (application no. 37441/23)*

Article 6 – Article 8 – Article 10 – removal from office of Prosecutor General – lack of access to a court to challenge decision – independence and impartiality of Supreme Judicial Council

SUBJECT MATTER OF THE CASE

The application concerns the premature termination of the mandate of the Prosecutor General of Bulgaria on June 15, 2023.

The applicant had been appointed Prosecutor General by a presidential decree of 26 November 2019 for a seven-year term. In May 2023, the Supreme Judicial Council ("SJC") received two proposals from several of its members for the dismissal of the applicant on the grounds that he had committed actions detrimental to the prestige of the judiciary, within the meaning of Article 129(3) of the Constitution and the Judiciary Act. The second proposal referred in particular to remarks made by the interested party at a press conference during which he had called deputies "political trash" ("политически боклук").

The plenary panel of the SJC considered these proposals at four meetings held on May 25, June 5, June 8 and June 12, 2023, at which the petitioner was largely able to take part. On June 12, 2023, following a show of hands, the SJC considered, by 16 votes to 4, that the applicant's actions had damaged the prestige of the judiciary, within the meaning of article 129, paragraph 3, of the Constitution, and issued a proposal to the President of the Republic to remove the applicant from office. The applicant was removed from office by presidential decree on June 15, 2023.

Invoking Article 6 of the Convention, the applicant complained that he had not had access to a court to challenge the decision of the SJC and the presidential decree ordering his dismissal. He maintains that the CSM does not constitute an "independent and impartial tribunal established by law" within the meaning of Article 6, and that the proceedings before this body do not satisfy the requirements of a fair trial.

From the standpoint of Article 8, he maintains that his dismissal, together with the smear campaign waged against him on that occasion, has infringed his right to respect for his private life, in particular his reputation and his ability to exercise his profession and develop relations with his colleagues. He claims that he has also been deprived of the possibility of receiving his salary.

Invoking Article 10 of the Convention, the applicant contends that his dismissal was motivated by his utterances and therefore constitutes interference with the exercise of his freedom of expression which was

not “provided for by law”, given that domestic law contains no definition of the concept of “actions detrimental to the prestige of the judiciary”.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention, in its civil branch, applicable to the proceedings in the present case (see Ramos Nunes de Carvalho e Sá v. Portugal [GC], nos. 55391/13 and 2 others, § 120, 6 November 2018, and Denisov v. Ukraine [GC], no. 76639/11, §§ 51-55, 25 September 2018)? If so, did the applicant have access to a court in order to obtain a decision on “disputes concerning his civil rights and obligations” within the meaning of that provision? In particular, did the Conseil supérieur de la magistrature which ruled on the applicant's dismissal constitute “an independent and impartial tribunal established by law” within the meaning of Article 6 § 1 of the Convention? If so, were the proceedings before this body fair, as required by this provision?
2. Has the applicant's right to respect for his private life within the meaning of Article 8 § 1 of the Convention been infringed (Denisov, cited above, §§ 100-117)? If so, was the interference with the exercise of this right prescribed by law and necessary within the meaning of Article 8 § 2?
3. Was the applicant's freedom of expression infringed within the meaning of Article 10 § 1 of the Convention? If so, was this interference prescribed by law and necessary within the meaning of Article 10 § 2?

Dražen RADELIĆ v. Croatia (application no. 12432/22)

Article 7 – legality of confiscation measures

SUBJECT MATTER OF THE CASE

The application concerns criminal proceedings against the applicant on charges of commercial fraud with the intent of acquiring illegal property gain for the benefit of a company of which he was the sole shareholder and the director. Having found him guilty as charged, the domestic courts imposed a prison sentence on him. In addition, they ordered that the proceeds of the crime be confiscated from him personally, since the company had in the meantime ceased to exist.

The applicant complains about the arbitrariness of the domestic courts’ decision to confiscate the proceeds of the crime from him personally.

QUESTIONS TO THE PARTIES

4. Does the confiscation measure imposed on the applicant in the present case constitute a “penalty” within the meaning of Article 7 of the Convention (see *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 210-233, 28 June 2018; *Del Río Prada v. Spain* [GC], no. 42750/09,

§§ 81-90, ECHR 2013; and *Welch v. the United Kingdom*, 9 February 1995, §§ 27-35, Series A no. 307-A)?

5. Does Croatian criminal law have a specific provision allowing the proceeds of crime to be confiscated from the perpetrator if they were acquired for the benefit of another individual or legal entity?

6. If there is no such provision, was the application of section 252(5) of the Commercial Companies Act by the domestic courts in the present case, and the resultant confiscation of the proceeds of crime from the applicant himself, foreseeable and thus in compliance with Article 7 of the Convention (see, for example, *Del Río Prada*, cited above, §§ 91-93)? More specifically, was it in line with the requirement that the provisions of the criminal law must not be extensively construed to an accused's detriment, for instance by analogy (see, for example, *Del Río Prada*, cited above, § 78, and *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, §§ 42-43, ECHR 1999-IV)?

Dominique SOUBDÉ v. France (application no. 30980/23)*

Article 6 – rejection of application for legal aid

SUBJECT MATTER OF THE CASE

The application concerned the rejection of the legal aid (AJ) application made by the claimant to present a motion for failure to adjudicate subject to compulsory representation.

In a ruling dated January 30, 2018, the Aix-en-Provence Court of Appeal upheld certain claims for compensation for the damage suffered by the claimant as a result of the fault of the lawyer who represented her in a dispute with her ex-husband, but failed to rule on one head of damage. The appeal lodged by the claimant, represented by an *avocat au Conseil d'État et à la Cour de cassation* ("*avocat aux conseils*"), was dismissed by the *Cour de cassation* on July 4, 2019. Subsequently, the claimant filed a claim for compensation for the faults committed this time by her *avocat aux conseils* in the presentation of her appeal, and was successful on one head of loss before the *Cour de cassation* on July 6, 2022. However, the latter rejected the lawyer's fault for not having raised a plea relating to the omission to adjudicate affecting the above-mentioned Court of Appeal ruling, given that the applicable procedure for remedying this was the filing of a motion for omission to adjudicate presented to the Court of Appeal pursuant to Article 463 of the Code of Civil Procedure.

Representation before the latter court was compulsory, and the claimant, declaring herself indigent, applied for legal aid. On December 2, 2022, the legal aid office (*Bureau d'Aide Juridique*- BAJ) noted the omission to adjudicate, but rejected the application, a decision that was upheld on appeal on June 7, 2023 by the adviser delegated by the First President of the Court of Appeal, on the grounds that "the law does not provide for the benefit of [AJ] to be granted for an action for compensation for an omission to adjudicate".

Invoking Article 6 § 1 of the Convention, the applicant complained that her right of effective access to a court had been violated, since she had been denied the right to legal aid in order to be represented by a lawyer, despite her indigence and the alleged absence of a legal basis for this refusal in the law of July 10,

1991 governing legal aid, and had therefore been deprived of the remedy enabling her to make good an omission to adjudicate, which she claimed had been recognised by the Cour de cassation and the BAJ.

QUESTIONS TO THE PARTIES

1. Was the right of access to a court guaranteed by Article 6 § 1 of the Convention respected with regard to the applicant in view of the rejection on June 7, 2023 of her application for legal aid (AJ) on the grounds that "the law does not provide for granting the benefit of [AJ] for an action for reparation for a failure to adjudicate" affecting the judgment of January 30, 2018 of the Aix-en-Provence Court of Appeal before which representation was compulsory?

2. In this context, what was the starting point of the one-year period available to the claimant to submit her motion for failure to adjudicate in accordance with the provisions of article 463 of the Code of Civil Procedure, and did she have any other means of redress that might enable her to obtain reparation for the failure to adjudicate affecting the above-mentioned judgment of the Court of Appeal, while benefiting, where appropriate, from the AJ?

The applicant is invited to produce copies of the following documents:

- the judgment of the Cour de cassation of July 4, 2019 ruling on the appeal lodged against the judgment of the court of appeal of January 30, 2018, as well as the brief filed in support of this appeal on November 19, 2018,

- the decision of the legal aid office of December 2, 2022 rejecting the request for legal aid.

Y. v. Georgia (application no. 11032/22)

Article 6 – independence of Supreme Court of Georgia

SUBJECT MATTER OF THE CASE

The application concerns the applicant's complaint that the Criminal Chamber of the Supreme Court which examined his case in domestic proceedings was not an "independent and impartial tribunal established by law". In particular, he claimed that one of the judges – a former Prosecutor General of Georgia – had been appointed to the Supreme Court in violation of a statutory eligibility criterion. Additionally, the applicant complained that the judge in question and another judge (former Deputy Prosecutor General) had not been impartial on account of their prior roles in the prosecution service.

The criminal proceedings against the applicant ended with the Supreme Court's inadmissibility decision dated 9 November 2021 (served on 22 November 2021). According to the applicant, he became aware of the composition of the Criminal Chamber of the Supreme Court when he got acquainted with the final decision in his case.

The applicant relied on Article 6 § 1 of the Convention.

QUESTIONS TO THE PARTIES

3. Did the applicant have at his disposal an effective domestic remedy with respect to the complaints concerning the impartiality and lawfulness of the composition of the Supreme Court of Georgia, within the meaning of Article 35 § 1 of the Convention, and has he exhausted it (see *Ugulava v. Georgia (no. 2)*, no. 22431/20, §§36-43, 1 February 2024)?
4. Was the composition of the Supreme Court of Georgia which dealt with the applicant's case a "tribunal established by law" as required by Article 6 § 1 of the Convention?
5. Was the composition of the Supreme Court in the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

Irakli PIRTSKHALAVA v. Georgia (application no. 11025/22)

Article 6 – impartiality of composition of Supreme Court of Georgia

SUBJECT MATTER OF THE CASE

The application concerns the lawfulness and impartiality of the composition of the Supreme Court of Georgia which dealt with the applicant's case, and the procedural fairness of the proceedings against him.

In particular, the applicant claimed that one of the judges – Sh.T., the former Prosecutor General of Georgia – had not been impartial on account of his prior role in the prosecution service. In this respect, the applicant stated that his case had attracted heightened public interest and had been commented on by the former Prosecutor General (Sh.T.'s predecessor). Accordingly, Sh.T. must have been privy, at the time when he served as the Prosecutor General, to internal information about the prosecution service's strategy in handling the criminal proceedings conducted against the applicant and this reality must have been obvious to an external objective observer. The applicant also claimed that Sh.T. had been appointed to the Supreme Court in violation of a statutory eligibility criterion.

The applicant additionally claimed that (a) he had been unable to examine as witnesses in the criminal case against him two of his former co-accused individuals whose cases had been separated from the main proceedings as a result of their plea-bargain agreements with the prosecution service; (b) he had not been given an adequate opportunity to challenge the evidence against him because he had been unable to demonstrate evidentiary items from the case-file material to several witnesses when questioning them, despite having a procedural right to do so; and part of the evidence against him had been examined without his personal participation despite his having submitted medical evidence certifying inability to attend and requesting the postponement of the trial.

The criminal proceedings against the applicant ended with the Supreme Court's inadmissibility decision dated 23 September 2021 (served on 12 October 2021). According to the applicant, he became aware of

the fact that Judge Sh.T. had been in the composition of the Criminal Chamber of the Supreme Court when he got acquainted with the final decision in his case.

The applicant relied on Article 6 §§ 1 and 3 (d) of the Convention.

QUESTIONS TO THE PARTIES

1. Did the applicant have at his disposal an effective domestic remedy with respect to the complaints concerning the impartiality and lawfulness of the composition of the Supreme Court of Georgia, within the meaning of Article 35 § 1 of the Convention, and has he exhausted it (see *Ugulava v. Georgia (no. 2)*, no. 22431/20, §§36-43, 1 February 2024)?
2. Did the applicant have a fair hearing in the determination of the criminal charges against them, in accordance with Article 6 §§ 1 and 3 (d) of the Convention? In particular,

   (a) Was he able to obtain the attendance of witnesses on their behalf under the same conditions as witnesses against them, as required by Article 6 § 3 (d) of the Convention (see, for instance, *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 139-168, 18 December 2018)?

   (b) Was the applicant given an adequate and proper opportunity to challenge the evidence against him?
3. Was the composition of the Supreme Court of Georgia which dealt with the applicant's case a "tribunal established by law" as required by Article 6 § 1 of the Convention?
4. Was the composition of the Supreme Court in the applicant's case independent and impartial, as required by Article 6 § 1 of the Convention?

Lado ULUMBERASHVILI v. Georgia (application no. 54853/22)

Article 6 – length of proceedings

SUBJECT MATTER OF THE CASE

The application concerns the length of a labour dispute which the applicant initiated on 6 March 2019. At the time of the submission of the application, the proceedings were still pending before the first instance court.

Relying on Articles 6 § 1 of the Convention the applicant complains about the length of the relevant proceedings.

QUESTIONS TO THE PARTIES

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

D.G. v. Georgia (application no. 17193/24)

Article 3 – Article 8 – abuse in boarding school run by Georgian Orthodox Church – ineffective investigation

SUBJECT MATTER OF THE CASE

The application concerns various complaints raised under Articles 3 and 8 of the Convention relating to the applicant's allegations of ill-treatment and abuse in a closed-type boarding school run by the Georgian Orthodox Church in Ninotsminda ("Ninotsminda Boarding School") in the period between 2011 and 2019. On various dates between 2016 and 2021 four separate sets of criminal proceedings were initiated into the allegations of child abuse including sexual violence in the Ninotsminda Boarding School. The applicant's various complaints have been investigated as a part of a criminal case opened on 15 November 2019 under Article 137 of the Criminal Code (the criminal offence of rape) and another criminal case opened on 3 June 2021 under Article 263 (the criminal offence of violence). According to the case file, the applicant was refused victim status in the above proceedings and her various procedural requests concerning, among others, the requalification of the alleged criminal offence from Article 126 (violence) to 1443 (inhuman or degrading treatment) was also dismissed.

The applicant, who was minor at the material time, alleges under Article 3 of the Convention, that she was systematically subjected to various forms of inhuman and degrading treatment and punishment, including corporal punishment, sleep and food deprivation, and verbal and psychological abuse, in the Ninotsminda Boarding School; that the State failed to put in place and apply an effective and adequate legal framework to protect her rights; and that the relevant authorities have failed to conduct an effective investigation into her allegations. She also alleges a violation of Article 8 of the Convention on account of the conditions in which she was living and studying in the school.

QUESTIONS TO THE PARTIES

1. Has there been a breach of Article 3 and/or Article 8 of the Convention in the present case? In particular:
    a. Was the applicant subjected to treatment in violation of Article 3 and/or Article 8 of the Convention?
    b. Was there a violation of the applicant's right to respect for her private life within the meaning of Article 8 of the Convention on account of her living and learning conditions in the Ninotsminda Boarding School?
    c. (c) Can the respondent State be held responsible under Article 3 and/or Article 8 of the Convention for the applicant's treatment and living and learning conditions in the

Ninotsminda Boarding School (*Costello-Roberts v. the United Kingdom,* 25 March 1993, Series A no. 247-C)?

d. Did the respondent State in the present case comply with its positive obligations under Article 3 and/or Article 8 of the Convention? In particular, did it put in place and apply an adequate legal framework to ensure the applicant's effective protection in compliance with its obligations under Articles 3 and 8 of the Convention?

e. In the latter respect, did the applicant have at her disposal an effective domestic mechanism for establishing any liability of the State as well as for obtaining compensation in that respect (see *O'Keeffe v. Ireland* [GC], no. 35810/09, § 177, ECHR 2014 (extracts))?

f. Has there been a violation of Article 3 and/or Article 8 on account of the alleged ineffective investigation into the applicant's complaints?

Altin MIRAKA v. Greece (application no. 34575/19)

Article 6 – conviction following undercover police operations

SUBJECT MATTER OF THE CASE

By judgment no. 107/10.07.2012 of the Ioannina Criminal Court of Appeal (three-member formation), the applicant was convicted and sentenced to a six-year prison term and a 10,000 euros (EUR) fine, for having been an accessory in transporting drugs. The court found that, after having been contacted by undercover officer A.G. *via* a police informant's phone, the applicant transported his associate by car to receive drugs from A.G.

By judgment no. 81/2017, the Ioannina Criminal Court of Appeal (five-member formation) upheld the above conviction and sentence. The applicant pleaded that A.G. had incited him to commit the offence and alleged that the undercover operation had not been formally authorised by A.G.'s supervisor, requesting that the latter be examined as witness. The court held that A.G.'s supervisor had authorised the operation and dismissed the request to examine him as witness, as the existing evidence was sufficient. Relying primarily on A.G.'s witness testimony, it dismissed the *agent provocateur* defence and held that the applicant was not incited: the applicant recognised the informant's phone number and replied to A.G.'s calls even late at night, he knew about the drugs in question before being contacted by A.G. and expressed interest in their delivery while arranging the relevant details.

The Court of Cassation, by judgment no. 1354/2018, dismissed the applicant's cassation appeal and confirmed the appellate court's findings. It notably held that there was no procedural nullity due to the lack of judicial or prosecutorial supervision of the undercover operation, as such supervision was not provided for under the applicable at the time Law no. 3459/2006.

Under Article 6 § 1 of the Convention, the applicant complains that his conviction was the result of police entrapment and that his allegations were not sufficiently addressed by the domestic courts, notably due to

the inadequate supervision of the entrapment operation and to his inability to examine A.G.'s supervisor at the trial, as witness. He also complains of the non-attendance of this witness, under Article 6 § 3 (d) of the Convention.

QUESTIONS TO THE PARTIES

Did the applicant have a fair trial satisfying the combined requirements of Article 6 §§ 1 and § 3 (d) of the Convention? In particular, was the applicant's entrapment allegation sufficiently addressed by the domestic courts (see *Ramanauskas v. Lithuania* [GC], no. 74420/01, §§ 49-61, ECHR 2008, and *Pătraşcu v. Romania*, no. 7600/09, §§ 44-47 and 52, 14 February 2017), notably considering the supervision of the undercover operation (see *Tchokhonelidze v. Georgia*, no. 31536/07, § 51, 28 June 2018) and the applicant's inability to examine A.G.'s supervisor as a witness (see, *Bannikova v. Russia*, no. 18757/06, § 65, 4 October 2010, and *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, §§ 118-47, 15 December 2011, as refined in *Schatschaschwili v. Germany* [GC], no. 9154/10, §§ 110-31, ECHR 2015).

Ilias KANELLIS v. Greece (application no. 29163/19)

Article 6 – refusal of Parliament to lift the immunity of an MP

SUBJECT MATTER OF THE CASE

The application concerns the refusal of the Hellenic Parliament to lift the immunity of P.K., Member of Parliament. P.K. had lodged a criminal complaint against the applicant for, *inter alia*, lying under oath, insult and slanderous defamation, after the applicant had testified as a witness in a civil trial against P.K. In October 2013, the applicant in turn lodged a criminal complaint for false accusation and slanderous defamation against P.K., Member of Parliament at the time, also applying for civil-party status claiming the sum of forty-four euros. After P.K.'s criminal complaint against the applicant was rejected by decision no. 4870/20.11.2017 of the Athens Council of Misdemeanour Judges, the Public Prosecutor forwarded the applicant's criminal complaint to the Hellenic Parliament in order for the latter to decide whether P.K.'s immunity should be lifted pursuant to Article 62 of the Constitution and Articles 43A and 83 of the Parliamentary Regulation. Following a vote on 21 November 2018 the Hellenic Parliament refused to lift P.K.'s parliamentary immunity and the applicant's criminal complaint was archived.

The applicant complains under Article 6 § 1 of the Convention as regards his right of access to a court.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicant's right of access to a court under Article 6 § 1 of the Convention on account of the Hellenic Parliament's refusal to lift P.K.'s immunity following the applicant's criminal complaint against him (see *mutatis mutandis Bakoyanni v. Greece,* no. 31012/19, 20 December 2022; *Tsalkitzis v. Greece*, no. 11801/04, 16 November 2006 and *Syngelidis v. Greece*, no. 24895/07, 11 February 2010)?

Enrico GUIDA v. Italy (application no. 37668/23)

Article 3 – conditions of detention for disabled detainee

SUBJECT MATTER OF THE CASE

The application concerns the alleged inadequate conditions of detention and the medical treatment provided to the applicant.

The applicant has limited mobility in his lower limbs due to the consequences of a prior poliomyelitis, and is recognised as 100 % invalid.

Previously detained in Naples since 2010, he was transferred to the Piacenza Prison in July 2016. Subsequently, in April 2021, he was transferred to the Pavia Prison, where he is currently detained.

Invoking Article 3 of the Convention, the applicant complains that, since 2016, he has been subject to inadequate conditions of detention for a disabled detainee, particularly due to the facilities' architectural barriers and to the difficulties in accessing showers and outdoor spaces. He further complains that he has been deprived of the required medical treatment.

QUESTIONS TO THE PARTIES

1. With regard to the period of detention spent in the Piacenza Prison, has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?
2. Has there been a breach of the applicant's rights under Article 3 of the Convention (see *Rooman v. Belgium* [GC], no. 18052/11, §§ 141-48, 31 January 2019, and *Blokhin v. Russia* [GC], no. 47152/06, §§ 136-37, 23 March 2016)? In particular:

   (a) did the applicant receive adequate medical treatment while in prison, such as physiotherapy (see, for example, *Helhal v. France*, no. 10401/12, §§ 57, 58 and 63, 19 February 2015)?

   (b) did the applicant's conditions of detention correspond to the special needs resulting from his disability (see *Shirkhanyan v. Armenia*, no. 54547/16, § 151, 22 February 2022)?

Tomas VALENTA v. Lithuania (application no. 38781/23)

Article 1 of Protocol No. 1 – expropriation

SUBJECT MATTER OF THE CASE

The application concerns expropriation of property.

The applicant is a farmer, he raises and breeds sheep (165 sheep), bees, and as of 2007 has been engaged in ecological farming.

In 2013 the *Seimas* passed a resolution whereby constructing a Via Baltica transport corridor was given State importance status. In 2019 the Government approved the plan for laying down the Via Baltica highway, and, on the basis of the Law on Expropriation of the Land, started expropriating land for its construction. As a result, several plots of land belonging to the applicant and his wife, where the applicant pursued sheep raising activity, were expropriated; the applicant was paid pecuniary compensation for the expropriated land.

The applicant initiated administrative proceedings, arguing that his remaining plots of land had become separated by a highway, rendering it impossible for the sheep to move from one plot to another without crossing the highway, which was fenced out. He also maintained that no animals could be herded over the highway. The applicant thus sought pecuniary compensation of EUR 17,787 for a livestock transport vehicle, and EUR 14,794 for costs of operating that vehicle for the next 29 years, when he would reach retirement age.

On 25 November 2021 the regional administrative court dismissed the applicant's claim having held, among other, that the applicant should have adapted to the changed conditions and, as a farmer, chosen another activity. It was also uncertain whether the applicant would have been able to pursue his farming activity until his retirement age.

By a final ruling of 21 June 2023, the Supreme Administrative Court upheld the lower court's decision.

Under Article 1 of Protocol No. 1 to the Convention the applicant complains about the authorities' decision not to compensate him for the loss he experienced as a farmer, and in particular to award him compensation for sheep transportation expenses.

QUESTIONS TO THE PARTIES

3. Has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1?

4. Has the applicant been deprived of his possessions in the public interest (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII), and in accordance with the conditions provided for by law (see *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, §§ 95-98, 25 October 2012, with further references), within the meaning of Article 1 of Protocol No. 1?

5. In particular, did that deprivation impose an excessive individual burden on the applicant on account of the authorities' decision not to compensate the applicant for the loss he experienced as a farmer (see *Ouzounoglou v. Greece*, no. 32730/03, § 30, 24 November 2005, *Bistrović v. Croatia*, no. 25774/05, § 42, 31 May 2007, and *Vistiņš and Perepjolkins*, cited above, § 108)?

Edmundas BŪBELIS v. Lithuania (application no. 48537/22)

Article 1 of Protocol No. 1 – restitution of nationalised land under Soviet rule

SUBJECT MATTER OF THE CASE

The application concerns restitution of property.

In 1991 the applicant asked the authorities to restore his property rights to the land that his grandfather owned in the resort town of Palanga; that land was nationalised by the soviets in the 1940s.

On 18 June 1992 the municipal authorities in Palanga restored the applicant's right to land *in natura*, and on 20 July 1992 they ordered that the applicant be given a plot of land at the address A. Mickevičius 4a, Palanga.

Afterwards, the implementation of the two decisions was suspended until 26 July 2007, although they were not annulled. In the meantime, on 11 January 1998 the authorities wrote to the applicant that the Palanga municipality decided to restore to the applicant a plot of land of up to the size that the initial owner (the applicant's grandfather) had owned, yet the restoration of property could take place only after the detailed plan of Palanga city was approved.

On 25 October 2007 the authorities informed the applicant that the plot of land could not be returned *in natura*, on the grounds that, among others, it fell within the territory of another plot of land, which in 2004 was rented out, for a duration of 58 years, to a trade union, which operated a sanatorium on that land. The applicant also specifies that another part of the plot of land that he sought to have restored was transferred to third persons by the authorities between 1996 and 2007.

In 2020 the National Land Service informed the applicant that instead of restoring his property rights *in natura*, he would be given a pecuniary compensation, 997 euros, for a 0,20 hectares' plot of land in Palanga town. The applicant started administrative court proceedings, arguing that his right to property was breached because of the authorities' mistakes and delay to act, which led to a situation where restitution *in natura* became impossible. He also argued that the proposed compensation was entirely incommensurate with the actual value of the plot of land in the centre of Palanga.

By a final ruling of 15 June 2022 the Supreme Administrative Court dismissed the applicant's complaint. It held that the land which the applicant sought to have restored, was rented out and also transferred into private ownership; those plots also fell within the territory of Palanga town's historic centre, and thus could not be restored *in natura*. There was no basis to quash the National Land Service's decision that the applicant be paid a pecuniary compensation. The fact that the Palanga authorities' decisions of 18 June 1992 and 20 July 1992 were not implemented was irrelevant, because to implement them would mean disregarding the protected status of Palanga town's historic part.

Relying, in particular, on Article 1 of Protocol No. 1 to the Convention, and also on Articles 6 and 13 of the Convention, the applicant states that his right to restitution of property was acknowledged as early as in 1992. Yet, as the authorities acted in breach of the principle of good administration and delayed implementing the relevant decisions, restitution of property *in natura* became impossible, he was deprived

of property, and left with an incommensurate compensation, making him bear the burden of the authorities' mistakes.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis*, *Paukštis v. Lithuania*, no. 17467/07, §§ 67-69, 24 November 2015; and also *Gėglis v. Lithuania* [Committee], no. 52815/15, § 47, 18 December 2018)?

2. Has the applicant been deprived of his possessions in the public interest, and in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1?

3. If so, did that interference satisfy the requirement of proportionality? In particular, did that deprivation impose an excessive individual burden on the applicant (see, *mutatis mutandis*, *Nekvedavičius v. Lithuania*, no. 1471/05, §§ 86 and 87, 10 December 2013, and *Beinarovič and Others v. Lithuania*, nos. 70520/10 and 2 others, §§ 138-139, 12 June 2018)?

Alfonsas DARAŠKA v. Lithuania (application no. 25875/23)

Article 6 – inadequate judicial reasoning – inability to meet density requirements for forestation

SUBJECT MATTER OF THE CASE

The application concerns allegedly inadequate reasoning of the domestic courts in proceedings concerning an obligation for the applicant to return previously received financial aid.

In 2018 the applicant took over a grant of financial aid which had been previously awarded to other persons in order to plant a forest on a certain plot of land.

In 2021 the National Paying Agency under the Ministry of Agriculture ordered him to return approximately 41,395 euros of the previously received financial aid. The Agency stated that he had not met the goal for which the aid had been granted, since the density of the trees had not complied with the requirements established under domestic law.

The applicant challenged the above-mentioned decision before the administrative courts. In particular, he argued that the trees had been planted in 2013 as required and some had later been replanted. However, in 2017 and 2018 floods and droughts had affected the condition of the trees, and therefore, the required density of the forest could not have been reached regardless of his efforts. He submitted that, at the relevant time, the authorities had acknowledged that the weather conditions had been extreme and had announced that beneficiaries of financial aid had not been required to take any additional action, but that relevant specialists would record the condition of the land.

On 6 January 2022 the Vilnius Regional Administrative Court dismissed the applicant's complaint. By a final ruling of 8 March 2023, the Supreme Administrative Court upheld that decision. The courts held that the

forest at issue had not met the density requirements and there was no evidence that, as required by the domestic law, the applicant had contacted the relevant authorities and informed them that he would be unable to meet his obligations because of the meteorological conditions. As submitted by the applicant, the courts did not address his arguments that the situation had been caused by meteorological conditions and that, taking into consideration the publicly announced information, he had not been required to inform the authorities about those conditions.

The applicant complains that the domestic courts failed to properly address his arguments regarding the cause of the death of the trees and the absence of an obligation for him to notify the authorities, and that their decisions were based on general and abstract reasoning. He relies on Article 6 § 1 of the Convention and Article 13 of the Convention.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, did the administrative courts provide specific and explicit replies to the applicant's arguments which were decisive for the outcome of those proceedings (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 185-86, 6 November 2018, and *Tarvydas v. Lithuania*, no. 36098/19, §§ 47-53, 23 November 2021)? In this connection, the Court refers, in particular, to the following arguments raised by the applicant in the domestic proceedings:

(a) that the required density of the forest was not achieved because of meteorological conditions;

(b) that, according to the information which was publicly announced by the authorities and the instructions issued by those authorities, he was not required to inform them about his inability to comply with his obligations as a result of meteorological conditions.

Svetlana AKSAN v. the Republic of Moldova (application no. 45571/17)*

Article 8 – Article 1 of Protocol No. 1 – seizure of possessions in connection with criminal proceedings against a relative

SUBJECT MATTER OF THE CASE

The application concerned the seizure of the applicant's apartment, the search of her safety deposit box rented from a bank, and the seizure of the contents of this box (approximately 35,000 euros) with a view to possible confiscation in connection with criminal proceedings brought against a close member of her family. These measures were taken in the absence of the applicant and her lawyer, and without her consent.

Having lived abroad for several years, the applicant appointed her sister and brother-in-law to manage her property, in particular her apartment and the safe. On December 21, 2016, the applicant's brother-in-law, a senior police officer, was indicted for passive corruption and illicit enrichment. As part of these proceedings, the examining magistrate authorised a search of the safe belonging to the applicant and the seizure of the apartment. Neither the applicant nor her lawyer attended the search. By final decisions of

the Chișinău Court of Appeal dated March 21, 2017, the applicant's appeals challenging the authorisations for the search of the safe and the seizure of the apartment were dismissed as unfounded.

An examining magistrate subsequently authorised the seizure of the sum found in the safe. According to the claimant, this sum belonged to herself and her uncle. By a final decision of the Chișinău Court of Appeal of July 13, 2017, the applicant's brother-in-law's appeal challenging this seizure was dismissed on the grounds that the sum actually belonged to him, the applicant having the capacity of mere intermediary.

Invoking Article 8 of the Convention, the applicant alleged that the search of the safe in the context of criminal proceedings that did not directly concern her constituted an unjustified interference with respect for her private life.

Under Article 1 of Protocol No. 1 to the Convention, the applicant also complains that the seizure of her apartment and the contents of the safe were unlawful and disproportionate.

QUESTIONS TO THE PARTIES

1. Was there interference with the applicant's right to respect for her private life in relation to the search of her safe, within the meaning of Article 8 of the Convention (see, inter alia, Yunusova and Yunusov v. Azerbaijan, no. 68817/14, § 148, 16 July 2020; Tortladze v. Georgia, no. 42371/08, § 59, March 18, 2021)?
   If so, was the interference with the exercise of this right prescribed by law and necessary within the meaning of Article 8 § 2 (see, among others, Buck v. Germany, no. 41604/98, §§ 34-53, ECHR 2005-IV; Ivashchenko v. Russia, no. 61064/10, §§ 71-76, 13 February 2018)?
2. Was there an interference with the applicant's right to respect for her property, within the meaning of Article 1 of Protocol No. 1, resulting from the seizure of her property ordered in the criminal proceedings against a member of her family?
   If so, did this interference arise from the application of a law deemed necessary to regulate the use of property in accordance with the public interest and did it impose an excessive burden on the applicant (Broniowski v. Poland [GC], no. 31443/96, §§ 147-48 and 150-51, ECHR 2004-V, and Pendov v. Bulgaria, no. 44229/11, §§ 42 and 44, 26 March 2020)?

Ludmila Catruc v. the Republic of Moldova (application no. 56320/17)

Article 2 – Article 13 – no effective investigation into applicant’s son’s death – lack of diligence of investigative authorities

SUBJECT MATTER OF THE CASE

The application concerns the alleged failure of the Moldovan authorities to conduct an effective investigation into the circumstances surrounding the accidental death of the applicant’s son.

On 26 July 2014 the applicant’s son, then aged nine, went to a sports field accompanied by his brother and was playing football with other boys when the football gate goal frame, which was not fixed to the ground,

fell on him and crushed his head. He was taken to hospital the same day, but died of his injuries twelve days later, on 7 August 2014.

The applicant lodged a criminal complaint with the prosecutor and on 11 August 2014 a criminal case was opened against local officials on account of negligent performance of their duties (Article 329 of the Criminal Code).

On 15 March 2015 the Criuleni Prosecutor's Office discontinued the criminal case on the grounds that no one was criminally liable for the death of the applicant's son. The prosecutor found that the applicant's son had been seen swinging on the football gate goal frame that ultimately fell onto him, causing a serious head injury that led to his death. The prosecutor explained that, according to a Moldovan Federation of Football note, football gate goal frames were movable to allow multipurpose use of the sports field. The prosecutor also mentioned that there were no standards for the frame to be fixed to the ground and no obligation for the public authority to secure the frame, as it was movable. The prosecutor concluded that the applicant's son's death had occurred because of his improper way of playing.

The applicant appealed against that decision and, on 22 May 2015, the Criuleni District Court ordered the reopening of the investigation, considering that not all the factual and legal aspects of the case had been clarified. On 9 March 2016 the Criuleni Prosecutions Office again discontinued the case as no elements of a criminal offence had been established. The applicant appealed against the decision, arguing that it was not substantially different from the first one, as no further investigative measures had been taken. She also mentioned the public administration's responsibility to publish the general safety rules on the sports field. On 12 July 2016 the hierarchically higher prosecutor reopened the case and referred it for further investigation.

In the absence of any replies to her numerous requests regarding the progress of the investigation, the applicant sought to have the criminal investigation expedited. Her request was rejected by the investigating judge on 3 April 2017. At the time when the application was lodged, the criminal investigation was still pending.

The applicant complains under Article 2 of the Convention about the lack of diligence of the investigative authorities, highlighting that the investigation was pending for more than three years without any results. In particular, the applicant points out multiple periods when no measures were taken in relation to the case, conduct which was assessed as improper by the investigating judge and the hierarchically higher prosecutor on two occasions. She also alleges a violation of Article 13 in conjunction with Article 2 of the Convention, due to the lack of an effective remedy capable of protecting her from the State's failure to conduct an effective investigation into the circumstances of her son's death.

QUESTIONS TO THE PARTIES

1. Having regard to the State's positive obligations arising in respect of the protection of the right to life (see *Railean v. Moldova*, no. 23401/04, §§ 28-29, 5 January 2010 and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 157-71, 25 June 2019), was the criminal investigation conducted by the domestic authorities in the present case in compliance with the procedural obligations provided for by Article 2 of the Convention? In particular, did the available legal remedies taken

together, and as provided for in law and applied in practice, secure the legal means capable of establishing the facts, holding accountable those at fault?

2. Did the applicant have at her disposal an effective domestic remedy for her complaints under Article 2, as required by Article 13 of the Convention (see *Scripnic v. the Republic of Moldova*, no. 63789/13, §§ 31 and 37, 13 April 2021)?

Etienne Avinash RAMSOENDER v. the Netherlands (application no. 6628/24)

Article 5 § 3 – extension of pre-trial detention

SUBJECT MATTER OF THE CASE

The applicant's pre-trial detention, which started on 13 October 2023, was based on the existence of a reasonable suspicion of habitual money laundering (*gewoontewitwassen*) and on the ground of a risk of reoffending.

On 23 October 2023 the probation and social rehabilitation service (*reclassering*) issued a report concluding that the risk of recidivism was assessed as low, partly on the basis of the defendant's clean criminal record. During the hearing before the Rotterdam Regional Court the applicant argued, relying on this report, that his detention could no longer be justified on the ground of a risk of reoffending.

On 24 October 2023 the Rotterdam Regional Court extended the applicant's detention on remand for 60 days. It held that the ground for pre-trial detention followed from "the nature and total extent of the facts, assessed in combination with the further content of the suspect's communications and other conduct". It did not address, in its reasoning, the fact that in the above-mentioned report the risk of recidivism was assessed as low. The Regional Court also dismissed the alternative request to suspend the applicant's pre-trial detention.

On 23 November 2023 the Court of Appeal of The Hague upheld the decision and the reasoning.

The applicant complains under Article 5 § 3 of the Convention that his pre-trial detention from 13 October 2023 onwards had been without adequate justification, or in the alternative, that the decisions taken by the Regional Court and the Court of Appeal had lacked sufficient reasons.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 5 § 3 of the Convention?

2. In particular, were the Rotterdam Regional Court's decision of 24 October 2023 and the Court of Appeal of The Hague's decision of 28 November 2023 sufficiently reasoned (see *Idalov v. Russia* [GC], no. 5826/03, §§ 139-41, 22 May 2012; *Zohlandt v. the Netherlands*, no. 69491/16,

§§ 48-54, 9 February 2021; and *Hasselbaink v. the Netherlands*, no. 73329/16, §§ 67-73, 9 February 2021)?

Andrzej ŚLEDŹ v. Poland (application no. 20262/20)

Article 6 – Article 8 – inability to establish contact with sister under conservatorship

SUBJECT MATTER OF THE CASE

The application concerns the applicant's inability to obtain a ruling by the domestic court concerning contact with his adult disabled sister, A.O., who had sustained serious injuries in a car accident and who, even though is not incapacitated, is unable to express her will. Proceedings to declare A.O. incapacitated have been pending since 2015 and for the duration of the proceedings, A.O.'s husband has been appointed as her guardian. He opposes any contact between the applicant and A.O. The applicant complains under Article 6 § 1 of the Convention that he has no access to court for the determination of his civil rights and under Article 8 of the Convention that the inability to obtain contact arrangement with his sister amounts to violation of his family rights.

QUESTIONS TO THE PARTIES

1. 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?
2. Is Article 8 of the Convention applicable to the circumstances of the present case?
3. Has there been an interference with the applicant's right to respect for his family life, within the meaning of Article 8 § 1 of the Convention (see, *mutatis mutandis*, *Bierski v. Poland*, no. 46342/19, 20 October 2022)? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention? Reference is made to the national courts' findings that the applicant had no legitimate right to claim before the court a determination of contact with his adult sister.

Marcin WINKEL v. Poland (application no. 9397/23)

Article 3 – prison conditions – 'dangerous detainee' regime

SUBJECT MATTER OF THE CASE

The application concerns the imposition of the "dangerous detainee" regime with regard to the applicant from 13 September 2022 until 7 June 2023. The applicant complains under Article 3 of the Convention that this period of nine months amounted to inhuman and degrading treatment.

QUESTIONS TO THE PARTIES

Having regard to the cumulative effect of the "dangerous detainee" regime, imposed on the applicant from 13 September 2022 until 7 June 2023, has he been subjected to treatment contrary to Article 3 of the Convention (see, *Piechowicz v. Poland*, no. 20071/07, 17 April 2012)?

Andrzej Mirosław MILNER v. Poland (application no. 45466/21)

Article 3 – prison conditions – 'dangerous detainee' regime

SUBJECT MATTER OF THE CASE

The application concerns the imposition since 28 March 2017 and ongoing of the "dangerous detainee" regime with regard to the applicant in various detention centres and prisons in Poland. The applicant complains under Article 3 of the Convention that this regime, which he endures for more than seven years and six months already, amounts to inhuman and degrading treatment.

QUESTIONS TO THE PARTIES

Having regard to the cumulative effect of the "dangerous detainee" regime, imposed on the applicant since 28 March 2017 and ongoing, has he been subjected to treatment contrary to Article 3 of the Convention (see, *Piechowicz v. Poland*, no. 20071/07, 17 April 2012)?

G.V. v. Romania (application no. 31927/23)

Article 2 – ineffective investigation into death of applicant's daughter

SUBJECT MATTER OF THE CASE

The application concerns the alleged ineffective investigation into the death of the applicant's daughter, A., who was 34 years old when, in the early hours of 25 July 2016, was found by her husband (X.) hanging from a tree inside their garden. On the same day *in rem* investigation for manslaughter started. In October 2016 the applicant lodged a criminal complaint for murder against X. In the absence of any investigative measure, despite a court's order of February 2018 that the prosecutor complete the investigation within twelve months, in October 2018 the case was reassigned to another prosecutor's office. At the end of 2019 the prosecutor requalified the charges and dismissed the applicant's request that certain investigative measure be taken. In January 2020 the prosecutor discontinued the investigation holding that A. had committed suicide. In August 2020 the competent court quashed that decision and ordered that the prosecutor commission a fresh *postmortem* report and organise crime scene reconstruction, as previously requested by the applicant. The prosecutor ordered that a fresh expert report be drawn up by December

2020, which the forensic experts did in November 2021. In February 2022 the prosecutor discontinued the criminal investigation, which the competent court confirmed in April 2023, on account that there was no evidence that A.'s death was suspicious or in any way attributable to X. This decision was served on the applicant on 12 April 2023.

The applicant complains under Articles 2 and 6 of the Convention that the criminal investigation into the death of his daughter was ineffective for the following main reasons: (a) the excessive length of the investigation; (b) that the initial investigation was for manslaughter, which, in the circumstances, was illogical; (c) the prosecutor's failure to adduce evidence ordered by the courts (hear witnesses, crime scene reconstruction, etc). Under Articles 3 and 8, the applicant further complains that despite available evidence the domestic authorities failed to consider whether A. had been a victim of domestic abuse.

QUESTIONS TO THE PARTIES

Since the Court is the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention (see *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], no. 24014/05, §§ 171-81, 14 April 2015; *Nicolau. v. Cyprus*, no. 29068/10, §§ 132-53, 28 January 2020; and *Danciu and Others v. Romania*, no. 48395/16, §§ 76-97, 12 May 2020)? In particular,

a) Did the investigation by the domestic authorities satisfy the requirement of promptness under Article 2 of the Convention? In particular, was the lapse of more than three years between A.'s death and the first prosecutorial decision excessive?
b) Has the competent prosecutor complied with the courts' orders of February 2018 and August 2020?

Cabinet Medical Medicină Generală dr. Mărgineanu Alexandru-Valentin v. Romania (application no. 18211/22)

Article 14 – Article 1 of Protocol No. 1 – difference in treatment between medical practices in possibility to employ physicians past the age of retirement

SUBJECT MATTER OF THE CASE

The application was lodged by a physician on behalf of his private individual medical practice (the applicant association). It concerns a difference in treatment among individual private medical practices concerning the possibility to continue working via contracts that they sign with the Health Insurance Fund (which allows their patients to benefit from third-party payment of medical costs) after physicians that own and run the practice, reach the statutory retirement age. Such an option was open only to private medical practices established in rural areas (Article 391 of Law no. 95/2006 on the reform of the public health sector) unlike those, such as the applicant association, operating in an urban area.

The discrimination action lodged by the applicant association was dismissed by a final decision of 7 December 2021 of the Timişoara Court of Appeal, which reiterated that, in the light of the Romanian Constitutional Court ("the CCR") decisions of principle nos. 818, 819, 820 of 3 July 2008 (see *Ádám and Others v. Romania*, nos. 81114/17 and 5 others, § 14, 13 October 2020), the power to set aside a law deemed discriminatory or contrary to the Convention was exclusively reserved to the CCR.

The applicant association complains of discrimination, relying on Article 1 of Protocol No. 12 to the Convention, as well as on Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (raised in substance).

QUESTIONS TO THE PARTIES

1. Has the applicant association exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, and having regard to the above-mentioned decisions of the Constitutional Court of 3 July 2008, was the applicant association required to challenge before the Constitutional Court the constitutionality of Article 391 of Law no. 95/2006 on the reform of the public health sector in the specific circumstances of the case, bearing in mind the findings of the Timişoara Court of Appeal in its final decision of 7 December 2021 concerning the scope of the power to set aside discriminatory laws (see *Ēcis v. Latvia*, no. 12879/09, § 49, 10 January 2019)?

2. Has the applicant association suffered discrimination on account of its registered seat (urban area), contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 or to Article 1 of Protocol No. 12 to the Convention, given the impossibility, unlike medical practices situated in rural areas, to conclude a contract with the Health Insurance Fund and continue operating after the physician, who owned and ran it, reached the statutory retirement age (see, *mutatis mutandis*, *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 70, ECHR 2010, *Aleksandr Aleksandrov v. Russia*, no. 14431/06, § 22, 27 March 2018, or *Baralija v. Bosnia and Herzegovina*, no. 30100/18, § 47, 29 October 2019)?

Massimiliano SIMONCINI v. San Marino (application no. 14396/24)

Article 6 – Article 8 – annulment of appointment to judicial organ – retrospective legislative intervention – access to independent and impartial tribunal

SUBJECT MATTER OF THE CASE

The application concerns proceedings related to the applicant's appointment to *Commissario della Legge* (CoL – a judicial organ in the ordinary courts with competence in civil or criminal cases) and its consequent withdrawal.

The applicant's appointment to CoL was confirmed by the Judicial Council (*Consiglio Giudiziario Plenario*, "CGP") on 12 February 2019 (composed of, *inter alia*, Judge C.). On 11 April 2019 X and Y felt aggrieved by the applicant's appointment and instituted administrative proceedings (no. 13/2019) challenging the

relevant procedure and the composition of the CGP in so far as it included Judge C. The applicant was notified of these proceedings but, at that stage, he chose not to participate.

Pending the latter proceedings, on 28 September 2020, following a change of government and a legislative intervention (Law no. 1/2020 of 20 February 2020) with retroactive effect, the decision of the CGP appointing the applicant was annulled by the same CGP. It considered that there had been a problem in the composition of the CGP taking the decision of 12 February 2019 in so far as it had included Judge C., who, at the time, had not been under an indefinite mandate, contrary to that established by the new Article 3 of Law no. 1/2020, which had been considered as an interpretative law.

At that point, the applicant unsuccessfully tried to intervene in proceedings no. 13/2019, which were eventually discontinued (*archiviazione*) as the actors had lost interest in the case following their appointment to the post.

The applicant challenged the decision to discontinue the case and what had gone on in those administrative proceedings by means of an appeal under Article 19 and 20 of Law no. 68/2021 which gave rise to proceedings no. 7/2021, but his application was deemed inadmissible by Judge S. The latter was a judge for the civil responsibility of magistrates who had been appointed to hear these proceedings as an administrative judge (*Giudice per la responsabilità civile dei magistrati in veste di Giudice amministrativo*) following the withdrawal of the competent judge.

At the same time, the applicant instituted separate proceedings (no. 37/2020) challenging the CGP decision of 28 September 2020. The merits of the case were dismissed by a judgment of 25 January 2023. It was confirmed on appeal by a judgment of 9 January 2024 notified on 10 January 2024, delivered by Judge S. The applicant's requests for Judge S. to abstain or withdraw, on the basis that he had already decided proceedings no. 7/2021 (as well as other related proceedings), were rejected by the relevant bodies.

Relying on Articles 6 and 8 of the Convention the applicant complains of a legislative intervention of the State with the judiciary, contrary to the rule of law, which had not been cured by means of proceedings no. 37/2020, to the detriment of his civil rights and right to private life given the consequences on his career. He also complained of the impartiality of Judge S. who 1) had dealt with a case concerning the same matters 2) exercised different judicial functions in the same proceedings and 3) decided the case which was challenging his own decisions.

QUESTIONS TO THE PARTIES

1. Was Article 6 of the Convention applicable to proceedings no. 37/2020? In particular did the applicant have a civil right recognised by domestic law (see, *inter alia*, *Baka v. Hungary* [GC], no. 20261/12, §§ 107-11, 23 June 2016, and *Grzęda v. Poland* [GC], no. 43572/18, §§ 265-85, 15 March 2022)?

2. If so, in order to comply with the rule of law, has the applicant had access to an impartial and independent tribunal, as provided by Article 6 § 1 of the Convention (see *Grzęda*, cited above), particularly bearing in mind that the appeal in proceedings no. 37/2020 had been decided by Judge S. whose impartiality had been challenged? Was the latter impartial in the present case (see, for

general principles and their application, inter alia, *Pasquini v. San Marino*, no. 50956/16, §§ 139-53, 2 May 2019, and *San Leonard Band Club v. Malta*, no. 77562/01, §§ 58-66, ECHR 2004-IX)?

3. Bearing in mind the findings in proceedings no. 37/2020 that the impugned law, leading to the annulment of the applicant's appointment as CoL, targeted other pending judicial proceedings (lodged by X and S) can it be said that the legislative interference which occurred prior to the proceedings brought by the applicant (no. 37/2020), was aimed at circumventing the principle of the rule of law (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 72, ECHR 2004-III, and *Azzopardi and Others v. Malta* (dec.), nos. 16467/17 and 24115/17)?

4. Have proceedings no. 37/2020 respected the reasonable time requirement as required by Article 6 § 1 of the Convention?

5. Is Article 8 of the Convention applicable in the present case (see *Denisov v. Ukraine* [GC], no. 76639/11, §§ 115-34, 25 September 2018, and *Gumenyuk and Others v. Ukraine*, no. 11423/19, §§ 86-89, 22 July 2021)?

6. If so, was the interference with the applicant's private life, namely, the annulment of the applicant's appointment as CoL, in accordance with a law of sufficient quality and respectful of the rule of law (see *Gumenyuk and Others*, cited above, §§ 95-97)? Did it pursue a legitimate aim and was it proportionate to the aim pursued?

7. In particular, the Government should indicate:

    a. How many persons have been affected by the retroactive application of Law no. 1/2021?

    b. Whether there has been any attempt to re-appoint the applicant to CoL by a decision of the Judicial Council composed in conformity with the requirements of Law no. 1/2021?

    c. Whether any challenges have been lodged at the domestic level by litigants whose civil rights or criminal charges had been adjudicated by the applicant while he held his function as CoL? If so, what where the conclusions of the domestic courts in view of the principles set out in *Guðmundur Andri Ástráðsson v. Iceland* ([GC], no. 26374/18, 1 December 2020)?

P.D. v. Serbia (application no. 42112/21)

Article 5 – Article 2 of Protocol No. 4 – COVID-19 – derogation of rights – restrictions on freedom of movement of asylum seekers

SUBJECT MATTER OF THE CASE

The applicant is a national of Burundi who applied for asylum in Serbia and was accommodated in the Banja Koviljača Asylum Centre.

In the wake of the COVID-19 pandemic, the Serbian authorities declared a state of emergency, between 15 March and 6 May 2020, and introduced a set of extraordinary measures in order to prevent the spreading of the SARS-CoV-2 coronavirus. Between 16 March and 14 May 2020, the Serbian authorities imposed a temporary restriction on freedom of movement of refugees, asylum seekers and migrants accommodated in asylum and reception centres, save with the authorisation from the Commissioner for Refugees and Migrations for specific period of time and in exceptional circumstances.

On 17 September and 30 December 2020, the Constitutional Court refused the initiatives of several NGOs to open the proceedings for a review of constitutionality of, *inter alia*, the aforementioned measure.

Relying on Articles 5 and 14 of the Convention, and Article 2 of Protocol No. 4 the applicant complains that the measures in question, with which she was required to comply, amounted to a deprivation of liberty and/or restriction of her liberty of movement. She further complains that these restrictions were unlawful, arbitrary, and disproportionate and were discriminatory. Finally, she complains that the procedures for permission to seek leave were too vague and that she did not have sufficient information on the reasons for her confinement and access to judicial protection in any form, including the right to compensation.

QUESTIONS TO THE PARTIES

1. Did the Government's derogation from the rights and freedoms enshrined in the Convention comply with the requirements of Article 15 §§ 1 and 3 of the Convention? In particular, was there a public emergency threatening the life of the nation and were the measures taken strictly required by the exigencies of the situation?

2. In view of all the circumstances, including – but not limited to – the nature of the contested measures and the Constitutional Court's jurisprudence on the measures introduced in the context of prevention of the spreading of the SARS-CoV-2 virus (see the Constitutional Court's decisions IUo – 45/2020 and IUo – 62/2020) has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention?

3. Has there been a violation of the applicant's right to liberty of movement, contrary to Article 2 of Protocol No. 4? In particular, was the restriction in accordance with the law and necessary, within the meaning of Article 2 §§ 3 and 4 of Protocol No. 4?

4. Alternatively, is Article 5 of the Convention applicable in the present case? In particular, was the applicant's confinement in the asylum centre serious enough, in terms of its context, form, duration, level of intensity, manner of implementation and/or effect, to fall within the ambit of a deprivation of liberty within the meaning of Article 5 § 1 of the Convention (see, in the context of the general lockdown introduced to tackle the COVID-19 pandemic, *Terheş v. Romania* (dec.), no. 49933/20, §§ 39-47, 13 April 2021; see, *mutatis mutandis*, in the context of the confinement in transit zones and reception centres, *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, §§ 211-251, 21 November 2019; see, also, for the general standards *De Tommaso v. Italy* [GC], no. 43395/09, §§ 80-89, 23 February 2017)? If so, what was the particular ground for the applicant's deprivation of liberty and did it the fall within the paragraph 1 (e) of this provision?

5. Was the applicant's confinement in breach of Article 5 § 1 of the Convention (see, *mutatis mutandis*, *Enhorn v. Sweden*, no. 56529/00, §§ 43-44, ECHR 2005-I, and *Plesó v. Hungary*, no. 41242/08, §§ 54-69, 2 October 2012)? If the confinement was imposed "for the prevention of the spreading of infectious diseases", have the authorities envisaged or considered any less severe measures in the present case?

6. Was the applicant's confinement "in accordance with a procedure prescribed by law", in particular concerning the requirement of "quality of law" and lack of "arbitrariness" (see, *mutatis mutandis*, *Suso Musa v. Malta*, no. 42337/12, §§ 94-107, 23 July 2013)?

7. Was the applicant informed promptly, in a language which she understood, of the reasons for her deprivation of liberty, as required by Article 5 § 2 of the Convention (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 115, ECHR 2016 (extracts), and *J.R. and Others v. Greece*, no. 22696/16, §§ 121-124, 25 January 2018)?

8. Did the applicant have at her disposal an effective and accessible procedure by which she could challenge the lawfulness of her confinement, as required by Article 5 § 4 of the Convention (see, for example, *Khlaifia and Others*, cited above, §§ 128 and 130-131)?

9. Did the applicant have an effective and enforceable right to compensation for her detention, as required by Article 5 § 5 of the Convention (see, for example, *Nolan and K. v. Russia*, no. 2512/04, §§ 102 105, 12 February 2009)?

10. Has the applicant suffered discrimination in the enjoyment of her right to liberty and/or of her right of freedom of movement, contrary to Article 14 of the Convention, read in conjunction with Article 5 of the Convention and/or Article 2 of Protocol No. 4 to the Convention?

11. Lastly, the Government are invited to clarify and submit copies of the relevant legislation and practice concerning (a) the imposed measures, (b) the procedure for seeking permission to leave the reception and asylum centres at the relevant time, (c) how the exceptional and justifiable reasons for which such permission could be granted have been interpreted in practice by the competent authorities, and (d) on the right to appeal against negative decisions.

Vilko ĐAKOVIĆ v. Serbia (application no. 30749/22)

Article 2 – ineffective investigation into death

SUBJECT MATTER OF THE CASE

The application concerns the death of the applicant's father in Croatia in 1991. The applicant complains under Articles 2, 3 and 6 of the Convention about a lack of effective investigation into the event in question.

QUESTIONS TO THE PARTIES

1. Having regard to the procedural protection of the right to life (see paragraph 104 of *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII), was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention?

2. The Government are invited to submit a copy of the entire case file concerning the applicant's criminal complaint lodged with the Office of the War Crimes Prosecutor of Serbia.

Muhamed AVDIĆ and Abdurahman MALKIĆ v. Serbia (application no. 14725/22)

Article 2 – Article 3 – war crimes in the Yugoslav Wars – deportation to Bosnia & Herzegovina

SUBJECT MATTER OF THE CASE

The application concerns the arrest of the father of the first applicant (Mr Avdić) and the arrest and alleged torture, inhuman or degrading treatment or punishment of the second applicant (Mr Malkić) personally, by the Serbian authorities and their deportation to the Republika Srpska in Bosnia and Herzegovina in July of 1995, where the father of the first applicant disappeared and the second applicant was detained as a prisoner in a war camp.

The applicants' criminal complaint regarding the above was dismissed in 2018 by the Serbian Office of the War Crimes Prosecutor, and the Constitutional Court rejected their constitutional appeal in a decision dated 27 January 2022.

The applicants complain, respectively, under Articles 2 and 3 of the Convention of the lack of an effective investigation into the events in question.

QUESTIONS TO THE PARTIES

1. With respect to the first applicant and having regard to the procedural protection of the right to life (see, *mutatis* mutandis, *Salman v. Turkey* [GC], no. 21986/93, § 104, ECHR 2000-VII, and *Krdžalija and Others v. Montenegro* (dec.) no. 79065/13, §§ 119-122, 13 March 2023), was the investigation in the present case, as carried out by the Serbian authorities, in breach of Article 2 of the Convention?

2. With respect to the second applicant and having regard to the procedural protection from torture, inhuman or degrading treatment or punishment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), specifically his alleged torture, inhuman or degrading treatment or punishment in Serbia and his subsequent deportation to Bosnia and Herzegovina, was the investigation in the present case, as carried out by the Serbian authorities, in breach of Article 3 of the Convention?

3. The Government are invited to submit a copy of the entire case file concerning the applicants' criminal complaint lodged with the Office of the War Crimes Prosecutor of Serbia.

H.M. v. Sweden (application no. 10859/24)

Article 3 – deportation of Syrian asylum-seeker

SUBJECT MATTER OF THE CASE

The applicant, a Syrian national, requested asylum in Sweden. He submitted, among other things, that he had previously been imprisoned in Syria because of his oppositional activities; that he was still of interest to the Syrian authorities; and that he had been called up for reserve military service in Syria but had not complied with this summons. The Swedish authorities refused his request for asylum and ordered his deportation.

The applicant complains that if he were to be deported to Syria he would be exposed to treatment contrary to Article 3 of the Convention, *inter alia*, because he is wanted by the Syrian authorities.

QUESTIONS TO THE PARTIES

In the light of the applicant's claims, the documents which have been submitted and relevant country information, would he face a risk of being subjected to treatment in breach of Article 3 of the Convention if he were deported to Syria?

In particular, would he face such a risk on account of his previous oppositional activities, evasion of reserve military service, potential interest from the Syrian authorities and/or the situation for individuals returning to Syria?

Sümeyra GÜLEN and Others v. Türkiye (application no. 34796/22)*

Article 2 – Article 3 – Article 5 – prison conditions – detention on account of alleged membership of terrorist organisation

SUBJECT MATTER OF THE CASE

The petition concerns the detention of the applicants' relative in prison despite his fragile state of health and his death following complications from his illness.

Yusuf Bekmezci was the applicants' husband and father.

On January 19, 2020, Yusuf Bekmezci was arrested and taken into custody on suspicion of belonging to an armed terrorist organisation, namely the group that the Turkish authorities refer to as the "Fetullahist terrorist organisation/parallel state structure" (Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması, hereinafter "the FETÖ/PDY") and to which they attribute responsibility for the coup attempt that took place in Türkiye on July 15, 2016.

On January 23, 2020, the Izmir Justice of the Peace ordered that Yusuf Bekmezci be remanded in custody on the grounds, inter alia, that there was concrete evidence leading to a strong suspicion that he had committed the offence of belonging to an armed terrorist organization.

According to the applicants, Yusuf Bekmezci suffered from various health problems such as dementia, hearing loss, sleep apnoea and prostate disease.

At the time of his detention, he was 81 years old and had difficulty supporting himself. His fellow inmates helped him to feed, dress and wash himself.

Yusuf Bekmezci repeatedly requested suspension of his sentence on the basis of article 16 of law no. 5275, which stipulates that when detention poses a definite vital risk, execution of the sentence is suspended until the "convict" has recovered. His requests were rejected by the authorities on the grounds that his sentence could be served in a prison environment, provided that medical follow-up was guaranteed.

He also lodged an individual appeal with the Constitutional Court.

On February 11, 2022, the Constitutional Court rejected his allegations as manifestly unfounded.

Yusuf Bekmezci died on February 20, 2022 following complications in his state of health.

The applicants considered that the circumstances of the case had led to a violation of Articles 2, 3 and 5 of the Convention. In this respect, they contend principally that the State failed to fulfil its positive obligations to protect the life of their loved one.

QUESTIONS TO THE PARTIES

1. In view of Yusuf Bekmezci's advanced age and various health problems, did his continued detention for some fifteen months, and his death at the end of that period, entail a violation of Articles 2 and 3 of the Convention (Legal Resource Centre on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, § 131, ECHR 2014, Mouisel v. France, no. 67263/01, §§ 38-40, ECHR 2002-IX, Farbtuhs v. Latvia, no. 4672/02, §§ 53 and 56, 2 December 2004, Tekin Yıldız v. Turkey, no. 22913/04, §§ 70-73, 10 November 2005, and Erdem Onur Yıldız v. Turkey, no. 49655/07, §§ 30-31, 27 October 2009)?
2. Can the applicants be considered to have locus standi before the Court to complain of a violation of Articles 5 § 3 and 5 § 4 of the Convention?
3. If so, was the length of Yusuf Bekmezci's pre-trial detention compatible with the requirement of trial within a "reasonable time", within the meaning of Article 5 § 3 of the Convention (Buzadji v. Republic of Moldova [GC], no. 23755/07, §§ 84-102, 5 July 2016)?
4. Did Yusuf Bekmezci have at his disposal, in accordance with Article 5 § 4 of the Convention, an effective procedure through which he could challenge the lawfulness of his detention (Şık v. Turkey, no. 53413/11, § 71, 8 July 2014)?

Ekrem ZIL v. Türkiye and 3 other applications (application nos. 27913/21 and 3 others)

Article 2 – death of relative during police operation – procedural and substantive violations

SUBJECT MATTER OF THE CASE

The applications concern the death of the applicants' relative, Erdem Zil, during a police operation in Istanbul. The applicants are the mother, father and two siblings of the deceased.

The applicants allege that the substantive and procedural limbs of the right to life of their relative have been violated as the domestic authorities failed to protect the life of their relative and to carry out an effective investigation into his death. In particular, they argue that:

- their relative was shot and died because of a police officer's use of him as a human shield, and
- in the decision of non-prosecution issued following the investigation against the police officers, the testimonies of eyewitnesses were disregarded and the public prosecutor relied solely on the statements of the police officers.

In this connection, they allege a violation of both the substantive and procedural limbs of Article 2 of the Convention. They complain about the ineffectiveness of the criminal investigation also under Article 6 of the Convention.

QUESTIONS TO THE PARTIES

1. Has the applicants' relative's right to life, ensured by Article 2 of the Convention, been violated in the present case?

   In particular, were all necessary steps taken by the domestic authorities in organising and regulating the operation with a view to minimising to the greatest extent possible any risk to the right to life (see *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 194, Series A no. 324; *Makaratzis v. Greece* [GC], no. 50385/99, § 60, ECHR 2004-XI; *Andronicou and Constantinou v. Cyprus*, 9 October 1997, § 181, *Reports of Judgments and Decisions* 1997-VI; and *Elvan v. Türkiye*, no. 64937/19, §§ 93-94, 7 February 2023)?

2. Having regard to the procedural protection of the right to life (see *Salman v. Turkey* [GC], no. 21986/93, § 104, ECHR 2000-VII; *Avşar v. Turkey*, no. 25657/94, §§ 393-395, ECHR 2001-VII (extracts); and *Tkhelidze v. Georgia*, no. 33056/17, §§ 58-59, 8 July 2021), was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention? In particular:

- Did the domestic judicial authorities carry out an effective investigation to establish whether the police officers who conducted the police operation in question had had a responsibility in the incident?
- Did the public prosecutor from the office for investigating offences allegedly committed by civil servants *(Memur Suçları Soruşturma Bürosu)*, attached to the Istanbul public prosecutor's office,

duly collect and assess all the relevant evidence, including the testimonies of eyewitnesses, within the scope of the criminal investigation (see *Özalp and Others v. Turkey*, no. 32457/96, §§ 42-47, 8 April 2004; and *İkincisoy v. Turkey*, no. 26144/95, §§ 76-78, 27 July 2004)?

The Government are requested to submit a copy of all documents concerning the criminal investigation carried out against all persons involved in the incident.

Muhammet Can SOLMAZ and Others v. Türkiye (application no. 18314/20)

Article 1 of Protocol No. 1 – Article 6 – classification of land as forest

SUBJECT MATTER OF THE CASE

The application concerns the classification following a cadastral survey of the land that the applicants claimed to be in their possession as forest belonging to the State and the alleged lack of a reasonable opportunity for the applicants to challenge that measure.

Following the completion of the cadastral survey, which took place between 2007 and 2008, the land, which the applicants claim to be in their possession since 1937, was classified as a forest. In 2012, the applicants brought a civil action and requested the quashing of the outcome of the cadastral survey. The first instance court dismissed the case on the ground that the applicants failed to object to the outcome of the cadastral survey within the negative prescription time-limit, although it accepted that the land met the requirements to be classified as 2B land, which could have enabled the applicants to acquire it on favourable terms because of the possession they claimed to exercise over it. The Court of Cassation rejected the applicants' appeal.

Relying on Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the applicants complain that the cadastral survey was not carried out properly as the land was not classified as 2B land and their possession was not mentioned. They further complain that they had been denied the opportunity to file an objection in due time as the outcome of the cadastral survey had not been published.

QUESTIONS TO THE PARTIES

1. Taking into account that the applicants claim to have used the land since 1937, did the applicants have a "legitimate expectation" with regard to the right to acquire the land under favourable tariff conditions and thus a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention (see, *mutatis mutandis, Ipseftel v. Turkey*, no. 18638/05, §§ 48-59, 26 May 2015)? If so, has there been a violation of the applicants' right to peaceful enjoyment of their possessions?

2. In particular, have the applicants been afforded a reasonable opportunity to challenge effectively the measures depriving them of their possessions and to obtain an adequate redress (see *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008, and *Elif Kızıl v. Turkey*, no. 4601/06, §§ 89 et 98-102, 24 March 2020)? Was the application of the time-limit foreseeable? Was the outcome of the cadastral survey notified or published?

3. Has there been a violation of the applicants' right of access to a court, guaranteed by Article 6 § 1 of the Convention? Was the outcome of the cadastral survey duly published or notified? Was the domestic courts' approach to the procedural rules for the prescription time-limit foreseeable (see, *mutatis mutandis*, *Kurşun v. Turkey*, no. 22677/10, §§ 103-104, 30 October 2018)?

Sergiy Mykolayovych KULISH v. Ukraine and 6 other applications (application no. 38243/15)

Article 2 – Article 3 – substantive and procedural violations – allegations of medical malpractice

SUBJECT MATTER OF THE CASE

The present applications concern the complaints under the procedural limb of Article 2 of the Convention about ineffective investigations into the deaths of the applicants' next-of-kin as a result of alleged medical malpractice. In application no. 38243/15, the applicant also complains in this respect of the alleged lack of independence of forensic expert establishments which carried out forensic medical examinations in that case, as both those establishments and public hospitals implicated in the events were subordinated to the Ministry of Health.

In applications nos. 32156/20, 1516/21 and 44287/21, the applicants also invoke the substantive aspect of Article 2 of the Convention complaining that the deaths of their next-of-kin were caused by serious omissions of health-care professionals.

In addition, in application no. 32156/20, the applicants complain under Article 3 of the Convention that the alleged medical malpractice caused suffering to their two-year-old daughter, and that there has been no investigation into those events.

The summary of the facts for each application, as submitted by the applicants, is provided in the attached table.

QUESTIONS TO THE PARTIES

Regarding all applications

Having regard to the procedural protection of the right to life (see paragraph 104 of *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII), was the investigation in the present cases by the domestic authorities in breach of Article 2 of the Convention?

Additional question to the parties in application no. 38243/15

Were the forensic expert establishments which carried out forensic medical examinations in the present case independent in the view of the procedural guarantees enjoyed by Article 2 of the Convention (see, *mutatis mutandis, Bajić v. Croatia*, no. 41108/10, §§ 95-102, 13 November 2012), considering that both those establishments and public hospitals implicated in the events were subordinated to the Ministry of Health?

Additional question to the parties in applications nos. 32156/20, 1516/21 and 44287/21

Has the State complied with its positive obligation under Article 2 to put in place an effective regulatory framework in the field of health care that would ensure proper protection of the lives of the applicants' next-of-kin (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 186-189, 19 December 2017)?

Additional questions to the parties in application no. 32156/20

1. Was the applicants' daughter subjected to inhuman or degrading treatment in view of the alleged inadequate medical care provided to her in the public hospital? If so, did the State comply with its positive obligation under Article 3 of the Convention to protect the applicants' daughter from ill-treatment?
2. Having regard to the State's procedural obligation envisaged in Article 3 of the Convention, has the investigation into the above allegations of medical malpractice been effective?