Scan of communicated cases

Cases covered from 28 Oct until 8 Nov 2024

Kotherja v. Albania (51135/22)

Article 6.1, legal certainty in a property dispute

SUBJECT MATTER OF THE CASE

The application concerns the alleged violation of the principle of legal certainty because in a property dispute the Supreme Court by its decision of 23 June 2016 declared the applicant's appeal on points of law admissible, and then by its decision of 7 March 2022 declared the same appeal inadmissible.

QUESTION TO THE PARTIES

Was the decision of the Supreme Court of 7 March 2022 to declare the applicant's appeal inadmissible in breach of her right to a fair hearing guaranteed by Article 6 § 1 of the Convention having regard to that court's previous decision of 23 June 2016? In particular, was the principle of legal certainty breached by two contradictory decisions of the Supreme Court on the applicant's appeal (see *Beian v. Romania (no. 1)*, no. 30658/05, § 39, ECHR 2007-V (extracts); *Vusić v. Croatia*, no. 48101/07, §§ 40-46, 1 July 2010; and *Balažoski v. the former Yugoslav Republic of Macedonia*, no. 45117/08, §§ 29-34, 25 April 2013)?

Boetticher v. Austria (25374/24)

Article 8, Article 6, Article 14, surnames with prefixes, access to court, discrimination in right to bear a name

SUBJECT MATTER OF THE CASE

The application concerns a dispute surrounding the surname of the applicant, an Austrian national, following his request for the issuance of a new passport in the course of 2020.

The historical and legal background to the surname is as follows: the applicant's father, seemingly an Austrian national, was adopted in 1947 by a German national from whom he also received the surname ("von Boetticher"). In 1956, the applicant was born in Austria. His surname was registered as "von Boetticher".

Also in 1956, the Austrian Ministry of the Interior issued a decision concerning the applicant's (adoptive) grandmother, seemingly in the context of the grandmother acquiring Austrian citizenship. According to that decision, the grandmother, as a German national, had the right to bear the surname "von Boetticher" under German civil law. However, upon receiving Austrian citizenship, she would, as an Austrian national, only have the right to bear the surname "Boetticher", but not "von Boetticher". The decision explained this as an automatic consequence under the Abolition of Nobility Act of 1919 (*Adelshaufhebungsgesetz*), pursuant to which all former nobiliary particles had to be removed. On 11 February 1957 the Supreme Administrative Court (*Verwaltungsgerichtshof*) upheld the grandmother's appeal and held that former German nobiliary particles were now parts of a civil surname and did not fall under the provisions of the Abolition of Nobility Act if the person concerned acquired Austrian citizenship after the entry into force of the Weimar Constitution (see also *Künsberg Sarre v. Austria*, nos. 19475/20 and three others, § 31, 17 January 2023, where this decision of the Supreme Administrative Court is mentioned).

The applicant has borne the surname "von Boetticher" since his birth in 1956. However, on 6 August 2020 the Braunau District Administrative Authority (*Bezirkshauptmannschaft*) issued a decision refusing the issuance of a new passport to the applicant with the surname "von Boetticher", although the applicant had borne that surname already for 64 years and the Supreme Administrative Court had, in 1957, upheld his grandmother's appeal to retain the prefix "von" in the surname. On 18 May 2021 the Regional Administrative Court of Upper Austria (*Landesverwaltungsgericht Oberösterreich*) dismissed the applicant's

appeal, and on 22 September 2021 the Constitutional Court (*Verfassungsgerichtshof*) declined to deal with the applicant's complaint for lack of prospects of success.
Upon an extraordinary appeal (*ausserordentliche Revision*) lodged by the applicant, the Supreme Administrative Court, on 13 February 2024, asked the applicant to submit a statement (*Stellungnahme*) as to why there would still be a legal interest in a decision in this matter, given that the applicant had in the meantime already received a passport with the surname "von Boetticher". The applicant submitted that the issuing of the passport was a *de facto* official act without the character of a legal decision, and that the decision of the Braunau District Administrative Authority of 6 August 2020 would set a legal precedent which would legally bind the domestic authorities once the current passport would expire after ten years. Furthermore, the right to bear a name went beyond the issuance of a passport and concerned all of his private and public legal relationships, and these proceedings concerned not just the question of the passport but also his surname. He lastly referred again to the decision of the Supreme Administrative Court of 11 February 1957 which concerned his grandmother's surname and also had, indirectly, a legal effect for him. On 11 April 2024 the Supreme Administrative Court dismissed the appeal on the grounds that there was no longer any legal interest in a decision. Consequently, a decision would have no practical but only theoretical significance.
Under Article 8 of the Convention, the applicant complains of a disproportionate interference with his right to respect for his private and family life. Under Article 6 of the Convention, he further complains of a violation of his fair trial rights on account of the refusal to implement the 1957 decision by the Supreme Administrative Court, the legal effect of which also encompassed him. Under Article 14 of the Convention read in conjunction with Article 8, the applicant lastly complains of a discriminatory treatment in so far as other citizens were allowed to bear prefixes such as "von" or other similar prefixes like "van", "de" and "von der", without an objective justification and their names did not fall within the scope of the Abolition of Nobility Act.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his private and family life, within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see *Daróczy v. Hungary*, no. 44378/05, § 34, 1 July 2008, and *Künsberg Sarre v. Austria*, nos. 19475/20 and three others, §§ 65 and 67-73, 17 January 2023)? Was, in this context, the applicant's individual situation properly assessed?

2. 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? In particular, in the light of the decision of the Supreme Administrative Court of 11 February 1957, was the principle of execution of a final, binding judicial decision and/or the principle of *res judicata* respected (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 196, ECHR 2006-V, and *Sharxhi and Others v. Albania*, no. 10613/16, §§ 92-93, 11 January 2018)? Furthermore, did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, was the principle of legal certainty respected (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, §§ 237-38, 1 December 2020)?

3. Has the applicant suffered discrimination in the enjoyment of his Convention right to bear a name under Article 8 OF the Convention, contrary to Article 14 of the Convention? In particular, has the applicant been subjected to a difference in treatment in comparison to other Austrian citizens who bear other prefixes as a part of their surname? If so, was that difference in treatment objectively justified in the circumstances of the present case?

Salamov v. Azerbaijan (9914/18)

Article 3, Article 6.1, ill-treatment by police officers, lack of effective investigation

SUBJECT MATTER OF THE CASE

The application concerns alleged ill-treatment of the applicant by police officers during his arrest and detention, lack of effective investigation into his complaints of ill-treatment and unfairness of criminal proceedings against him. By a final decision of 25 July 2017 (served on the applicant on 21 August 2017), the Supreme Court upheld the lower courts' judgments convicting the applicant of theft. By a final decision of 8 December 2017, the appellate court upheld the prosecuting authority's decision to refuse to open criminal proceedings in connection with the alleged ill-treatment.

The applicant complains under Article 3 of the Convention that he was beaten and humiliated by the police in order to extract self-incriminating statements from him and that the domestic authorities failed to conduct an effective investigation in that regard. He also complains under Article 6 of the Convention that his conviction was based on unlawful evidence and that the criminal proceedings against him were in breach of his rights to a reasoned decision and to an effective opportunity to contest the evidence against him.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention?
2. Having regard to the procedural protection from inhuman or degrading treatment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?
3. Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the applicant's right to a reasoned decision respected? Was the applicant afforded an adequate opportunity to contest the evidence against him, to adduce evidence in support of his line of defence and to have such evidence assessed by the court?

The parties are requested to provide necessary documentary evidence in support of their replies and submissions, including copies of the transcripts of the court hearings and the applicant's appeals and requests.

De Halleux and Sa Sud Presse v. Belgium (48589/21)*

Article 10, criminal conviction of journalist for listening on telephone conversation between participants in a mediation process related to a media case, conviction of journalist and employer for publishing content.

SUBJECT MATTER OF THE CASE

The applicants are a journalist and the media outlet that employs her.

The application concerns the criminal conviction of the first applicant for listening in on a telephone conversation between participants in a mediation process related to a media case, as well as the conviction of both applicants for publishing the content of this conversation, which was illegally overheard and recorded by taking notes (under Article 314bis of the Belgian Penal Code). During the mediation session in question, a mediator dropped his mobile phone, which allegedly caused an accidental telephone

connection between the first applicant's landline and the mediator's mobile phone, allowing the first applicant to overhear and take notes on part of the conversation. The applicants were criminally sentenced to fines of €3,000 and €21,000, respectively.

They claim a violation of Article 10 of the Convention, arguing that the interference with their freedom of expression resulting from their criminal conviction was not "prescribed by law" due to the lack of intent required under Article 314bis of the Penal Code. They also argue that the content of the mediation concerned a matter of general public interest, that the national courts did not properly balance the competing interests at stake, and that they were subjected to disproportionate penalties.

QUESTIONS TO THE PARTIES

1. Was the alleged interference with the applicants' freedom of expression, particularly their right to receive or communicate information, "prescribed by law" and necessary to achieve one or more legitimate aims in accordance with Article 10 § 2 of the Convention? (See *Dammann v. Switzerland*, no. 77551/01, §§ 29-58, 25 April 2006, and *Stoll v. Switzerland* [GC], no. 69698/01, §§ 45-162, ECHR 2007-V; compare with *Société Éditrice de Mediapart and Others v. France*, nos. 281/15 and 34445/15, §§ 72-93, 14 January 2021).

2. In their response to the above question, the parties are invited to provide any necessary details regarding the legal framework and objective of the mediation, the extent of confidentiality attached to the mediation process, and the obligations journalists and media outlets would be bound by in this context.

3. The applicants are also invited to provide a copy of the contested press article.

Stoyanova and Others v. Bulgaria (2266/21)

Article 1 of Protocol No. 1, Article 6 § 1, Article 13, uncertainty in restitution process about the scope of applicants' restitution rights.

SUBJECT MATTER OF THE CASE

The application is of the type examined in *Sivova and Koleva v. Bulgaria* (no. 30383/03, 15 November 2011) and the follow-up cases, and concerns lengthy uncertainty in the restitution process about the scope of the applicants' restitution rights.

In 1995 the applicants obtained a decision of the relevant administrative body on the restitution of a plot of land in Karlovo. Since parts of the plot were taken by farm buildings, and the buildings were being held and used by a private farming cooperative, in 1996 the applicants brought *rei vindicatio* proceedings against it. In a final judgment of 8 August 2001, the Plovdiv Regional Court ruled in their favour, noting in particular that the restitution had been valid and that the applicants, as the owners of the land, had also become the owners of the buildings.

Despite the above developments, in 2009-10 the cooperative sold the buildings to private parties. After that, in 2010 the land adjoining the buildings was declared State property, on the basis of a legislative provision stipulating that land adjoining farm buildings owned by the previously existing State farming cooperatives, and not subject to restitution in kind, would pass to the State. In 2010-11 the State sold to the same third parties the adjoining land, separated into two plots measuring respectively 291 and 623 square metres.

In 2017 and 2019 those third parties brought against the applicants (in one of the cases also against a person having bought parts of their land) actions for judicial declarations that they were the rightful owners of the two plots. By that point, the applicants (respectively the person having bought from them) had apparently never possessed and used the land.
In two sets of civil proceedings ending with decisions of the Supreme Court of Cassation of 25 June 2020 and 4 November 2021 the domestic courts ruled against the applicants. They held in particular that the applicants had not been entitled to restitution, since the land had not been agricultural and had been constructed upon, and that they were competent to perform an indirect judicial review of the 1995 restitution decision, which had been invalid. The third parties had accordingly lawfully bought the land from the State.
The applicants do not explain whether after the above developments they have sought to receive compensation in lieu of restitution in kind, as entitled in principle under domestic law.
They complain, relying on Article 1 of Protocol No. 1 and Articles 6 § 1 and 13 of the Convention, of the lengthy uncertainty as to the scope of their restitution rights.

QUESTIONS TO THE PARTIES

Has there been a violation of Article 1 of Protocol No. 1, seeing the lengthy period of time it took in the domestic procedures to establish that the applicants were not entitled to restitution in kind? Do this lengthy period of uncertainty, and the applicants having to participate in several sets of proceedings to establish the scope of their restitution rights, mean that the applicants had to bear an excessive individual burden (see, among others, *Sivova and Koleva v. Bulgaria*, no. 30383/03, §§ 115-19, 15 November 2011, and *Karaivanova and Mileva v. Bulgaria*, no. 37857/05, §§ 79-82, 17 June 2014)?

A.A.N. and others v. Greece and 7 others (38203/20)*

Article 2, Article 3, Article 13, Article 5 §§ 1, 2, and 4, pushbacks without prior procedure, lack of individualized assessment

SUBJECT MATTER OF THE CASE

The applications concern the alleged pushback of the applicants from Greece to Turkey, without prior procedure. In particular, the applicants claim that they were detained in an unofficial detention center for two days and two nights before being sent back on March 23, 2020, by the Greek authorities from the island of Symi. The applicant designated as no. 1 in application no. 38203/20 claims to have been subject to a chain pushback from Turkey to Syria, his country of origin.
Invoking Article 2 in conjunction with Article 13 of the Convention, the applicants argue that the operations in question posed a danger to their life and physical integrity and that they did not have an effective remedy to complain about violations of Article 2.
Invoking Article 3 of the Convention, they claim to have been victims of ill-treatment by the Greek authorities.
The applicants also argue that their return to Turkey was not compatible with Article 3 of the Convention, taken alone and in combination with Article 13, in particular because they were unable to file asylum applications in Greece and because of the alleged risk of being pushed back from Turkey to their countries of origin.

Finally, the applicants complain of being deprived of their liberty in violation of Article 5 §§ 1, 2, and 4 of the Convention. They further argue that no individual assessment based on their age and health status was made by the Greek authorities.

QUESTIONS TO THE PARTIES

Have the applicants exhausted domestic remedies concerning their complaints under Articles 2 and 3 of the Convention?

Was the applicants' right to life, guaranteed by Article 2 of the Convention, violated in the present case? In particular, did the Greek authorities, through their acts or omissions, endanger the applicants' lives before and during their alleged return to Turkey? Reference is made in particular to the applicants' allegation that they were abandoned at sea on a raft without an engine, most of them without life jackets.

Were the applicants subjected, in violation of Article 3 of the Convention, to inhuman or degrading treatment before and during their alleged return to Turkey, through the acts or omissions of the Greek authorities? Reference is made in particular to the applicants' allegation that they were subjected to repeated and arbitrary violence by the Greek authorities during their detention and that they underwent treatment resembling a mock execution.

Did the applicants have available, as required by Article 13 of the Convention, an effective domestic remedy through which they could raise their complaints of violations of Articles 2 and 3 of the Convention?

Was the alleged return of the applicants to Turkey compatible with Article 3 of the Convention, taken alone and in combination with Article 13, in light of their allegations that they were unable to file an asylum application in Greece (Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, §§ 146-147 and 201-207, ECHR 2012)? Reference is made in particular to the applicants' allegation that their return to Turkey exposed them to treatment contrary to Article 3 of the Convention and to the claim that the applicant designated as no. 1 in application no. 38203/20 was subjected to a chain pushback from Turkey to Syria.

Were the applicants deprived of their liberty in violation of Article 5 § 1 of the Convention?

Were the applicants informed, as soon as possible and in a language they understood, of the reasons for their detention, as required by Article 5 § 2 of the Convention (J.R. and Others v. Greece, no. 22696/16, §§ 121-124, January 25, 2018)?

Did the applicants have available an effective remedy to challenge the legality of their alleged detention, in accordance with the requirements of Article 5 § 4 of the Convention (A.M. v. France, no. 56324/13, §§ 40-41, July 12, 2016)?

Were the applicants detained under conditions compatible with Article 3 of the Convention? Did the Greek authorities take into consideration the vulnerability (minority and health status) of some of the applicants (see mutatis mutandis, Moustahi v. France, no. 9347/14, §§ 54-56 and 65-67, June 25, 2020)? Reference is made in particular to the applicants' allegation that they had no access to water, food, shelter, medical care, and sanitary facilities.

Requests for Documents

In application no. 38203/20, the Court invites the applicant designated as no. 1 to produce a power of attorney bearing his original signature or to provide explanations as to why the production of this document is currently impossible.
In application no. 4207/22, given the different indications in the document issued by the Greek police authorities when the applicant filed an asylum claim and his Greek residence permit submitted, and in order for the applicant's personal data (name, surname) to be correctly entered by the Court, the applicant is invited to submit a copy of his identity card translated into one of the official languages of the Court or other official identification documents issued by the authorities of his country of origin, or to provide explanations as to why the production of such a document is currently impossible and why the data provided to the Court on this matter differ.
In applications nos. 42830/20 and 4208/22, given the different indications in the application forms and, on the one hand, the residence permit issued by the German authorities (application no. 42830/20) and, on the other hand, the asylum seeker card issued by the Dutch authorities (application no. 4208/22), and in order for the applicants' personal data (day, month, and year of birth) to be correctly entered by the Court, the applicants are invited to submit a copy of their identity cards translated into one of the official languages of the Court or other official identification documents issued by the authorities of their countries of origin, or to provide explanations as to why the production of such a document is currently impossible and why the data provided to the Court on this matter differ.

EZE NZE v. ITALY and 1 other application (7219/23 and 14143/23)

Article 6.3(a) and Article 6.3(b), (d) and (e), criminal proceedings, in absentia conviction, examination of witnesses, lack of interpreter

SUBJECT MATTER OF THE CASE

The applications concern criminal proceedings in which the applicants were convicted *in absentia* and the refusal of the Court of Cassation to reopen the proceedings. The final rejection in both cases was based on the presumption that the applicants deliberately decided to abscond since they were unwilling to attend trial and wanted to evade justice.
In application no. 14143/23, the Supreme Court based its reasoning on the fact that the applicant had moved to a different country and provided a different identity to the local authorities there. In application no. 7219/23, the presumption was based on excerpts of the applicant's wiretapped conversations in which he expressed his worry over a police intervention directly relating to him.
The applicants complain under Article 6 § 3 (a) and (c) of the Convention, claiming that they were never informed about the charges against them and that the failure to reopen the proceedings hindered their right to defend themselves in person.
In application no. 14143/23, the applicant also complains under Article 6 § 1 of the Convention, claiming that his conviction *in absentia* and the failure to reopen the proceedings deprived him of a fair hearing.
The applicant in application no. 7219/23 further complains under Article 6 § 3 (b), (d) and (e) of the Convention, stating that (i) he had no time to prepare his defence; (ii) he could not examine any witnesses; and (iii) he did not have free assistance of an interpreter.

QUESTIONS TO THE PARTIES

1. Were the applicants informed in sufficient detail of the nature and cause of the accusations against them, as required by Article 6 § 3 (a) of the Convention? In this regard, was the writ of summons served and notified to the applicants (see *Pereira Cruz and Others v. Portugal*, nos. 56396/12 and 3 others, § 196, 26 June 2018,)?

2. Did the applicants enjoy a practical and effective defence in accordance with Article 6 § 3 (c) of the Convention during the criminal proceedings brought against them? If not, were the relevant authorities obligated to take steps to ensure practical and effective respect for the applicants' right to due process (see *Sejdovic v. Italy* [GC], no. 56581/00, §§ 81, 84 and 94, ECHR 2006-II)?

Concerning application no. 14143/23

3. Did the applicant have a fair hearing in the determination of the criminal charge against him (see *Yeğer v. Turkey*, no. 4099/12, § 30, 7 June 2022, and compare *Sanader v. Croatia*, no. 66408/12, §§ 67-68, 12 February 2015)?

Concerning application no. 7219/23:

4. Was the applicant afforded adequate time to prepare his defence, as required by Article 6 § 3 (b) of the Convention, having regard to the fact that he did not participate in the trial (see *Pereira Cruz and Others v. Portugal*, nos. 56396/12 and 3 others, §§ 196-99, 26 June 2018, and *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 52-54, ECHR 1999-II)?

5. Was the applicant given an adequate and proper opportunity to challenge and question the witnesses against him as required by Article 6 § 3 (d) of the Convention? In this connection, did the domestic court take the necessary steps to enable him to cross-examine witnesses? (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, ECHR 2015)?

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

Talbi v. Italy and 1 other application (13997/20 and 19559/20)

Article 6.1, Article 6.3(a), (b), (c) and (d), criminal proceedings, in absentia conviction, refusal to reopen proceedings

SUBJECT MATTER OF THE CASE

The applications concern criminal proceedings in which the applicants were convicted *in absentia* and the refusal of the Court of Cassation to reopen the proceedings.

In application no. 13997/20, the final rejection of the Supreme Court was based on the presumed unwillingness of the applicant, who knew about the existence of a criminal investigation against him, to attend the trial. However, the applicant had appointed a lawyer and provided his personal residence address but never officially received the *vocatio in ius*.

In application no. 19559/20, the Court of Cassation's refusal to reopen the proceedings was based on the assumption that the applicant knew about the proceedings but that he had deliberately absconded, leading him to be considered a "fugitive" during the course of the proceedings. However, the applicant, following another Italian ruling for drug-related crimes, was expelled from Italy and repatriated to his home country, while the current proceedings were ongoing. In addition, a few days before the first instance judgment, the judicial authority had been informed by Interpol that the applicant was indeed residing in Albania. Despite the fact that the judicial authorities were aware of the whereabouts of the applicant, they proceeded to conduct also the second instance proceedings in his absence.

The applicants complain under Article 6 §§ 1 and 3 (c) of the Convention, claiming that their convictions *in absentia* and the refusals to reopen the proceedings against them deprived them of a fair hearing and of access to a tribunal, as well as hindered their right to defend themselves in person.
In application no. 19559/20, the applicant further complains under Article 6 § 3 (a), (b) and (d) of the Convention claiming that (i) he was never informed about the charges against him, and (ii) he had no time to prepare his defence and could not examine any witnesses.

QUESTIONS TO THE PARTIES

1. Did the applicants have a fair hearing in the determination of the criminal charges against them (see *Yeğer v. Turkey*, no. 4099/12, § 30, 7 June 2022, and compare *Sanader v. Croatia*, no. 66408/12, §§ 67-68, 12 February 2015)?

2. Having regard to the fact that the applicants were tried and convicted *in absentia*, did they have effective access to court as guaranteed by Article 6 § 1 of the Convention (see *Sejdovic v. Italy* [GC], no. 56581/00, §§ 81-95 and 99, ECHR 2006-II)? In particular:

(a) Did the judgments of the Court of Cassation (R.G. 25317/2019 of 26 November 2019 no. 48104/19, and R.G. 18365/2019 of 21 November 2019 no. 2949/2019) constitute an unjustified denial of the applicants' right of access to a new hearing on the merits (see *Topi v. Albania*, no. 14816/08, § 53, 22 May 2018)?

(b) Was it unequivocally established that the applicants had waived their right to participate in their trial (see *Lena Atanasova v. Bulgaria*, no. 52009/07, § 52, 26 January 2017)?

3. Did the applicants enjoy a practical and effective defence in accordance with Article 6 §§ 1 and 3 (c) of the Convention during the criminal proceedings brought against them? If not, were the relevant authorities obligated to take steps to ensure practical and effective respect for the applicants' right to due process (see *Sejdovic v. Italy* [GC], no. 56581/00, §§ 81, 84 and 94, ECHR 2006-II)?

Concerning application no. 19559/20:

4. Was the applicant informed in sufficient detail of the nature and cause of the accusations against him, as required by Article 6 § 3 (a) of the Convention? In this regard, was the writ of summons served and notified to the applicant (see *Pereira Cruz and Others v. Portugal*, nos. 56396/12 and 3 others, § 196, 26 June 2018)?

5. Was the applicant afforded adequate time to prepare his defence, as required by Article 6 § 3 (b) of the Convention, having regard to the fact that he did not attend the trial (see *Pereira Cruz and Others v. Portugal*, nos. 56396/12 and 3 others, §§ 196-99, 26 June 2018, and *Pélissier and Sassi v. France* [GC], no. 25444/94, §§ 52-54, ECHR 1999-II)?

6. Was the applicant given an adequate and proper opportunity to challenge and question the witnesses against him as required by Article 6 § 3 (d) of the Convention? In this connection, did the domestic court take the necessary steps to enable him to cross-examine witnesses? (see *Al-Khawaja and Tahery v. the United Kingdom* [GC], nos. 26766/05 and 22228/06, ECHR 2011, and *Schatschaschwili v. Germany* [GC], no. 9154/10, ECHR 2015)?

La Manna v. Italy (2700/24)

Article 6.3(b) and (c), choice of time and facilities for preparation of defense, choice to defend through legal assistance of his own choosing.

SUBJECT MATTER OF THE CASE

The application concerns the applicant's right to dispose of adequate time and facilities for the preparation of his defence and his right to defend himself through legal assistance of his own choosing.

The applicant was indicted for several charges for having received stolen goods. During the first instance hearing before the District Court of Foggia, the lawyer of his own choosing was registered absent and was therefore replaced by a court-appointed lawyer available on the spot. The prosecutor gave his closings statements, so did the newly appointed lawyer, who had only ten minutes to prepare the case file.

On the same day the applicant was convicted and sentenced to eight years and six months' imprisonment and to pay 7,000 euros as a fine. Immediately after, the lawyer chosen by the applicant appeared before the District Court, claiming that he was outside the courtroom at the time of his call and yet he did not hear it. He therefore asked to be allowed to give his final arguments, which the court declared to abstain. It would appear from the case file that no other decision followed its abstention.

Through the lawyer of his own choosing, the applicant appealed against the judgment requesting, among others, that the hearing be declared null and void since the court-appointed lawyer had not disposed of sufficient time to prepare the applicant's defence. The appeal was dismissed on the merits and, upon further appeal, by the Court of Cassation on points of law.

Under Article 6 §§ 1 and 3 (b) of the Convention the applicant complains of not having disposed of adequate time and facilities for the preparation of his defence, due to the very short time at his court-appointed lawyer's disposal during the first instance hearing to prepare the case file, which concerned several episodes of reception of stolen goods and a large number of documents.

Relying on Article 6 §§ 1 and 3 (c) of the Convention the applicant further complains that the District Court should have appointed his court-appointed lawyer under Article 97 § 1 of the Code of Criminal Procedure in order to allow him to request the adjournment of the case under domestic law and thus dispose of some extra time to prepare his defence.

QUESTIONS TO THE PARTIES

1. Was the applicant afforded adequate time and facilities to exercise his defence, as required by Article 6 § 3 (b) of the Convention (see *Sadak and Others v. Turkey (no. 1)*, nos. 29900/96 and 3 others, §§ 57-59, ECHR 2001-VIII; *Gregačević v. Croatia*, no. 58331/09, §§ 49-52, 10 July 2012; and *Nevzlin v. Russia*, no. 26679/08, § 152, 18 January 2022)?

2. Was the applicant able to defend himself through legal assistance of his own choosing, as required by Article 6 § 3 (c) of the Convention *(*see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 103 and 106, 2 November 2010; *Dvorski v. Croatia* [GC], no. 25703/11, §§ 76 and 101, ECHR 2015; and *Elif Nazan Şeker v. Turkey*, no. 41954/10, §§ 42-45, 8 March 2022)?

3. According to the domestic law and case-law applicable to this case, did the court-appointed lawyer have the possibility to ask for an adjournment of the first-instance hearing?

The Government are asked to submit a copy of all the documents related to applicant's criminal procedure, with regard in particular to the first-instance trial.

Barbieri and others v. Italy (37794/23)*

Article 2, Article 13, deaths due to alleged inadequacy of Covid-19 measures.

SUBJECT MATTER OF THE CASE

The application concerns measures taken by the Italian authorities to respond to the COVID-19 pandemic, as well as the information provided to the victims' families within the framework of the proceedings before the tribunale dei ministri (ministerial court).

The applicants are relatives of victims who died from COVID-19. Some of them filed complaints with the Public Prosecutor at the Bergamo court, alleging that the deaths of their loved ones were caused by the inadequate handling of the pandemic by national and regional authorities.

The Bergamo Public Prosecutor registered the names of several authorities and advisory body members as persons suspected of crimes. Most of the applicants designated lawyers to represent them in the investigation.

Under constitutional law No. 1 of January 16, 1989, jurisdiction over investigations into ministers' actions committed in the course of their official duties falls to specialized courts known as tribunali dei ministri (ministerial courts).

Consequently, the Bergamo Public Prosecutor transferred the case files to the competent territorial prosecutors, which led to three separate proceedings: one before the tribunale dei ministri in Brescia against the Minister of Health and the Prime Minister at the start of the pandemic; a second before the same court in Brescia against other individuals suspected of conduct closely linked to that of the ministers; and a third before the tribunale dei ministri in Rome against the three most recent Ministers of Health.

All three investigations were closed by orders issued by the Brescia ministerial court on June 7 and July 24, 2023, and by the Rome ministerial court on June 20, 2023. The applicants were not informed of these orders.

The applicants complain, under Article 2 of the Convention (substantive aspect), of the inadequate management of the COVID-19 pandemic, specifically the lack of a committee and plan for handling the pandemic and delays in the establishment of certain "red zones". They also complain, under Article 2 (procedural aspect) and Article 13 of the Convention, of the absence of an effective investigation, particularly due to a lack of information on the progress of the proceedings before the ministerial courts and the impossibility of participating in these proceedings or challenging their closure.

QUESTIONS TO THE PARTIES

1. Have the applicants exhausted domestic remedies, as required by Article 35 § 1 of the Convention? (See Nicolae Virgiliu Tănase v. Romania [GC], no. 41720/13, §§ 159-160 and 176-177, 25 June 2019, and Milić v. Serbia (dec.), no. 62876/15, §§ 54-59, 21 May 2019).

2. Did the national authorities take the necessary measures to protect the lives of the applicants' relatives, in accordance with the positive obligations under Article 2 of the Convention? (See Lopes de Sousa Fernandes v. Portugal [GC], no. 56080/13, §§ 164-167, 19 December 2017).

3. In light of the procedural protection of the right to life, did the procedures carried out by the national authorities meet the requirements of Article 2 of the Convention? In particular, were the victims' relatives involved in the proceedings to the extent necessary to protect their legitimate interests? (See Gray v. Germany, no. 49278/09, § 87, 22 May 2014 and, mutatis mutandis, Boychenko v. Russia, no. 8663/08, §§ 84 and 99, 12 October 2021).

4. Did the applicants have available to them, as required by Article 13 of the Convention, an effective domestic remedy through which they could raise their complaint regarding the alleged violation of Article 2 of the Convention?

The applicants are invited to provide detailed information on the steps each of them took within the framework of the criminal investigation.

Tazaghart v. France (37070/23)*

Article 10, dismissal of former editor-in-chief of Arabic-language editorial team at France 24

OBJECT OF THE CASE

The application concerns the dismissal of the applicant, a former editor-in-chief of the Arabic-language editorial team at France 24, a news television channel owned by a public broadcasting company, due to a divergence over the editorial line in the context of the channel's representation, following comments made during a live interview given by the applicant to a Lebanese television channel three years prior.

By a judgment of June 21, 2018, the labour tribunal declared the dismissal void and ordered the applicant's reinstatement. On May 20, 2021, the Court of Appeal overturned the judgment. By a decision of June 7, 2023, which was not specifically reasoned, the Court of Cassation rejected the applicant's appeal.

Invoking Article 10 of the Convention, the applicant argues that his dismissal constituted a disproportionate interference with his right to freedom of expression.

QUESTIONS TO THE PARTIES

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

2. If so, did this interference pursue a legitimate aim and was it necessary, within the meaning of Article 10 § 2, in a democratic society? (See Stoll v. Switzerland [GC], no. 69698/01, §§ 102-106, ECHR 2007-V, Fuentes Bobo v. Spain, no. 39293/98, §§ 43 and 46, February 29, 2000, or Nenkova-Lalova v. Bulgaria, no. 35745/05, §§ 50-62, December 11, 2012)

Kameneff v. France and 4 others (40592/23)*

Article 2 of Protocol no. 4 (freedom of movement), Article 14 combined with Article 8 and Article 2 of Protocol no 4, Covid-19 measures, health pass and vaccination pass requirements,

SUBJECT MATTER OF CASE

The applications concern the obligation to present proof of non-contamination by COVID-19 ("health pass" resulting from an RT-PCR test or an antigenic test) or proof of vaccination status ("vaccination pass"), which conditioned access to certain public places under the provisions of Decree No. 2021-699 of June 1, 2021, prescribing the general measures necessary for managing the exit from the health crisis in its various amended versions.

All applicants claim that they have not been vaccinated against COVID-19.

Applications Nos. 40592/23, 40593/23, 40596/23, and 41895/23

The applicants were, at the time of the events, working in the following professions: taxi driver (Ms. Kameneff), employee of a large company (Mr. Martineau), sports coach (Mr. Milhau), and CEO of the French Federation of Fitness (Mr. Guilbaud).

They brought multiple legal actions before the Conseil d'État (CE) for excess of power, challenging the legality of Articles 2-1 to 2-4, 8, 11, 15, 27, and 47-1 of the Decree of June 1, 2021, as amended by Articles 1 of Decrees Nos. 2021-955 and 2021-1059 of July 19 and August 7, 2021, by Article 1 of Decree No. 2022-51 of January 22, 2022, and by Decree No. 2022-176 of February 14, 2022, concerning the "health pass" and later the "vaccination pass." The applicants argued that these measures had a detrimental impact on their daily lives and professional activities.

By a judgment of August 4, 2023, consolidating the applications, the CE rejected them. It ruled that the implementation of the health pass and then the vaccination pass had allowed continued access to certain places, establishments, services, or events that presented a particularly high risk of spreading the virus. The CE further noted that, based on available scientific advice and prior experience, other measures, such as barrier gestures or wearing masks, would not have been sufficient to control the epidemic. Given the ongoing COVID-19 epidemic, aggravated by the spread of a new, highly contagious variant, the applicants were not entitled to claim that the contested provisions suffered from a manifest error of judgment, nor that the restrictions on their freedom of movement were unnecessary, unsuitable, or disproportionate to the public health goal. In particular, regarding COVID-19 vaccines and vaccination conditions, the CE found that the applicants did not demonstrate that the benefits of vaccination were not greater than its risks. The CE also rejected claims based on a breach of equality, non-discrimination, or violation of the right to respect for private life.

The contested measures ended on March 14, 2022, regarding the vaccination pass, and on August 1, 2022, regarding the health pass.

Invoking Article 8 of the Convention, alone and in combination with Article 14, and Article 2 of Protocol No. 4, the applicants complain of an unjustified and disproportionate interference with their privacy and freedom of movement, discriminatory in comparison to vaccinated individuals. They argue that the health pass system illegitimately hindered their daily and professional activities and their health, as it forced them to undergo invasive medical procedures (nasopharyngeal tests or vaccination) they did not wish to, and which violated medical confidentiality.

Application No. 42141/23

The applicants are a couple with two children. They filed an excess-of-power appeal before the CE, challenging the legality of Article 47-1 of the Decree of June 1, 2021, as amended by Article 1 of Decree No. 2022-51 of January 22, 2022, which implemented the "vaccination pass" and required all individuals over the age of sixteen to provide proof of vaccination against COVID-19 in order to access public places, services, and events (restaurants, theaters, public transport, etc.) between January 24 and March 13, 2022.

By a judgment of July 26, 2023, the CE rejected their application. It held that the challenged provisions were justified by the health situation and allowed continued access to certain locations despite the resurgence of the epidemic, while limiting the exposure of unvaccinated people to the risk of infection. The CE found that these measures did not violate the freedom of movement or the right to respect for private and family life. The CE also ruled that, considering the characteristics of the places, establishments, services, or events that required the vaccination pass, individuals wishing to access them were exposed to a higher risk of transmission of the COVID-19 virus, particularly because other barrier measures had been lifted. The CE concluded that unvaccinated persons were not in the same situation as vaccinated individuals concerning access to these places and therefore could not claim a violation of the principles of equality and non-discrimination.

Invoking Articles 8 of the Convention and Article 2 of Protocol No. 4, alone and in combination with Article 14 of the Convention, the applicants complain of interference with their private and family life and freedom of movement that is discriminatory compared to vaccinated individuals. They argue that they were deprived of access to many public places and interregional transport without a legitimate reason, given that other less restrictive measures, such as the presentation of a negative test, would have been sufficient to protect public health.

QUESTIONS TO THE PARTIES

1. Have the applicants (Applications Nos. 40592/23 and 40593/23) exhausted domestic remedies, as required by Article 35 § 1 of the Convention?

2. Specifically, did these applicants raise, at least substantively, before the national authorities, the right guaranteed by Article 2 of Protocol No. 4, which they now invoke before the Court?

3. Was there a violation of the applicants' right to freedom of movement, under Article 2 of Protocol No. 4?

4. In light of the introduction of the health pass and then the vaccination pass, to which the applicants were subject under the Decree of June 1, 2021, prescribing the general measures necessary for managing the exit from the health crisis, as amended by the decrees of July 19 and August 7, 2021, and January 22 and February 14, 2022, was there an interference with their right to respect for their private and family life, within the meaning of Article 8 of the Convention (all applications)?

5. Have the applicants (Applications Nos. 40592/23, 40593/23, 40596/23, and 41895/23) been victims, in the exercise of their rights guaranteed by the Convention, as unvaccinated individuals, in terms of their daily life, health, and professional activity, of discrimination compared to vaccinated persons, in violation of Article 14 of the Convention combined with Article 8 of the Convention?

6. Have the applicants (Application No. 42141/23) been victims, in the exercise of their rights guaranteed by the Convention, of discrimination compared to vaccinated persons due to their inability to access public

places and interregional public transport because of their vaccination status, in violation of Article 14 of the Convention combined with Articles 8 of the Convention and 2 of Protocol No. 4?

Satin v. France (4050/24)*

Article 8, consent for performance of surgery by unknown doctor, broadcasting of surgery

SUBJECT OF THE CASE

The application concerns the live broadcast, during an international urology conference held in Paris, of a surgical operation performed on the applicant in a public hospital. The surgery was not carried out by the doctor with whom the applicant had been in contact but by a physician from Italy who was participating in the conference. Afterward, the surgeon posted images of the operation on social media.

The applicant states that she was only informed during her preoperative hospitalization, the day before the surgery, that the procedure would be "videotaped" and that it would "be performed in collaboration with French and international experts, with [her] anonymity strictly respected," but without further details. The applicant filed a compensation claim against the hospital, alleging that her "free and informed consent" was not obtained regarding the conditions under which the surgery was performed and broadcast by a doctor unfamiliar to her, whose identity was not disclosed to her. The administrative courts, including the Conseil d'État (in a decision dated October 13, 2023), rejected her claims, particularly those regarding the alleged failure to obtain her informed consent for the performance and broadcast of the surgery by an external doctor. The applicant now complains before the Court of a violation of Article 8 of the Convention.

QUESTIONS TO THE PARTIES

1. Is Article 8 of the Convention applicable in this case?

2. Is it established that the applicant did not give her free and informed consent for the surgery to be performed by a doctor who was external to the service and unknown to her, and/or for the surgery to be broadcast live as part of an international urology conference held in Paris? If so, was there a violation of Article 8 as a result?

Granato v. France (28522/23)*

Article 2, refusal to extradite murderer to Italy.

SUBJECT MATTER OF THE CASE

The application concerns the refusal by French authorities to extradite the murderer of the applicant’s brother to Italy.

The applicant is the sister of a police officer who was killed in a terrorist attack carried out by the Red Brigades in Rome in 1979.

On October 12, 1988, the Court of Assizes in Rome sentenced Mrs. Cappelli to life imprisonment for the murders of three people, including the applicant's brother. This decision was confirmed on appeal by the Court of Assizes of Appeal in Rome on March 6, 1993. Mrs. Cappelli's appeal to the Court of Cassation against the ruling of the Court of Assizes of Appeal was dismissed on May 10, 1993.

That same year, Mrs. Cappelli fled Italy and sought refuge in France.

Following an extradition request from the Italian government to the French government, Mrs. Cappelli was placed under provisional arrest on August 25, 1994, but was released after the Court of Appeal of Paris ordered her release on October 26, 1994.

On January 25, 1995, the investigating chamber of the Court of Appeal of Paris issued a favorable opinion for Mrs. Cappelli's extradition. On November 6, 1995, the French Court of Cassation dismissed the appeal against this decision.

However, no extradition decree was issued, despite repeated requests from the Italian government transmitted via diplomatic notes on June 2, 1995, and January 9, 1996.

On January 28, 2020, Italian authorities sent a request for the provisional arrest of Mrs. Cappelli for extradition purposes in order to serve her sentence.

On April 28, 2021, Mrs. Cappelli was arrested by French police and later placed under conditional release.

On June 29, 2022, the investigating chamber of the Court of Appeal of Paris issued an opinion against extraditing Mrs. Cappelli, stating that given the age of the offenses, her current situation in France, and the social reintegration guarantees she now presented, extraditing her would constitute a disproportionate interference with her right to private and family life protected under Article 8 of the Convention.

On March 28, 2023, the French Court of Cassation rejected the public prosecutor's appeal against the decision of the Court of Appeal.

From the perspective of Article 2 of the Convention, the applicant argues that the French authorities failed to fulfill their duty of cooperation by refusing to grant the extradition request. She adds that this refusal was illegitimate and insufficiently reasoned.

From the perspective of Articles 8 and 3 of the Convention, combined and interpreted in light of Article 6, the applicant argues that the refusal of the French authorities to extradite the murderer of her brother led to an interference with her right to respect for her private and family life, causing suffering equivalent to inhuman or degrading treatment. She also complains about the lack of adequate reasoning in the French decisions.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted domestic remedies?

2. In light of the applicant's grievance and the documents submitted, and in light of the Court's case-law (see Güzelyurtlu and Others v. Turkey and Cyprus ([GC], no. 36925/07, 29 January 2019, and Romeo Castaño v. Belgium, no. 8351/17, 9 July 2019), should we consider that by refusing to extradite the

murderer of the applicant's brother to Italy, the French authorities failed in their duty of cooperation under the procedural aspect of Article 2 of the Convention? In particular, was the refusal of extradition justified by a legitimate reason?

Jurgo v. Lithuania (35950/23)

Article 8, prisoner rights, health, confiscation of supplements

SUBJECT MATTER OF THE CASE

The application concerns confiscation of nutritional supplements from a prisoner and an alleged breach of his privacy when taking a urine sample.

In 2012 the applicant was diagnosed as HIV-positive. On an unspecified date he was also diagnosed with hepatitis C.

The applicant lodged a civil claim against the State, claiming 10,000 euros in respect of non-pecuniary damage caused by the following actions of the prison authorities:
(1) While serving a prison sentence, the applicant, through a doctor's mediation and with the prison director's consent, had been allowed to purchase nutritional supplements necessary for his medical condition (protein). On 15 June 2021 the prison officers had carried out a search in his cell and confiscated the supplements. He had lodged eight requests with the prison authorities to have the supplements returned, but they had been returned to him only on 7 July 2021.
(2) On 26 May 2021 the applicant had been requested to give a urine sample for a drug test. He had undergone a body search beforehand, but the authorities had demanded that the door be left open and observed him while he was urinating for the sample.

On 30 November 2022 the Regional District Administrative Court dismissed the applicant's civil claim. The court found that the nutritional supplements had been confiscated in order to investigate the lawfulness of their acquisition. It acknowledged that the authorities had not returned them to the applicant with sufficient promptness but held that there were no grounds to find that he had experienced intensive suffering which would warrant monetary compensation. On 14 June 2023 the Supreme Administrative Court upheld that conclusion. It also found that the applicant's privacy while giving the urine sample for the drug test had not been ensured, since it was not clear why, despite a full body search performed beforehand, he had still been observed while urinating. However, the Supreme Administrative Court held that those violations could not be regarded as torture within the meaning of the Convention. It held that the finding of a violation constituted sufficient just satisfaction and made no monetary award.

The applicant complains about the absence of a monetary compensation. He submits that because of his illnesses and the restricted possibilities to purchase certain food products in prison, he needed protein supplements, therefore, they were of essential importance for his health. He also states that he was humiliated when his urine sample was taken and that he could not refuse to undergo that procedure because of fear of punishment. He relies on Article 3 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicant's rights under Article 8 of the Convention on account of the fact that from 15 June to 7 July 2021 nutritional supplements were taken away from him (see, *mutatis mutandis*, *Blokhin v. Russia* [GC], no. 47152/06, §§ 135-37, 23 March 2016, and the cases cited therein)?

2. Has there been a violation of the applicant's rights under Article 8 of the Convention on account of the fact that, when he was providing a urine sample for a drug test, the prison officials demanded that the door be left open and observed him (see, *mutatis mutandis*, *Wainwright v. the United Kingdom*, no. 12350/04, §§ 41-43, ECHR 2006-X, and the cases cited therein)?

Î.C.S. Moldova Zahăr S.R.L. v. The Republic of Moldova (77590/17)

Article 6.1, Article 1 of Protocol no. 1, damages and expenses for defamation, allegedly unreasoned judgments

SUBJECT MATTER OF THE CASE

The application concerns the applicant company's obligation to pay damages and expenses for defamation ordered as a result of allegedly unreasoned judgments.

In 2013, the applicant company along with two other companies (C. and L.) and the periodical publication „Official Journal" were sued by companies A. and B. ("the plaintiffs") for defamation, seeking pecuniary and non-pecuniary damage.

The plaintiffs claimed that the respondent companies had ordered the publication of an information notice in the Official Journal, stating that the plaintiffs had illegally harvested crops from a village's plots of land. They considered this information defamatory and denigrating, having negatively affected their image and business reputation.

The first instance court rejected the plaintiffs' claims noting *inter alia* that: the applicant company did not have any commercial relations with them, and that it neither ordered nor paid for the publication of the impugned information notice. The court further held that the impugned information could not be categorized as defamatory because it was of an informative nature and did not contain tendentious expressions, being based on an ordinance to initiate criminal prosecution even if it was later terminated.

The appellate court quashed the first instance court's decision and partially granted the plaintiffs' claims, ordering the respondent companies to pay them pecuniary and non-pecuniary damage plus tax. In doing so, the court noted that the information published had been untrue and seriously affected the honour, dignity and professional reputation of the plaintiffs, without examining who had been responsible for the publication of the notice.

On 17 May 2017 that decision was upheld by the Supreme Court of Justice and the applicant company's appeal on the points of law was declared inadmissible.

After the initiation of the enforcement procedure, the applicant company being the only solvent company out of the three respondents paid a total of 50,250 euros.

The applicant company claimed that it was well known to the plaintiffs that the applicant company was the only solvent company out of the three respondents and that the burden to pay the pecuniary, non-pecuniary damage and other expenses would be borne only by it.

The applicant company complains, under Article 6 § 1 and Article 1 of Protocol No. 1 of the Convention, that the domestic courts did not sufficiently reason their judgments which led to a violation of its right to a fair trial and ultimately of its property rights.

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 6 § 1 of the Convention? In particular, did the domestic courts adequately state the reasons on which their decisions were based, notably by giving a specific and express reply to the arguments of the applicant company's which were decisive for the outcome of the proceedings (see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, §§ 185-86, 6 November

2018; *Tarvydas v. Lithuania*, no. 36098/19, §§ 47-53, 23 November 2021; and *Covalenco v. the Republic of Moldova*, no. 72164/14, § 24, 16 June 2020)?

2. Has there been a violation of Article 1 of Protocol No. 1 to the Convention? In particular, as a result of the judgments adopted, did the applicant company have to bear "an individual and excessive burden" within the meaning of that provision (see *Vulakh and Others v. Russia*, no. 33468/03, §§ 42-45, 10 January 2012; *Zagrebačka banka d.d. v. Croatia*, no. 39544/05, §§ 250-252, 12 December 2013)?

Adnan v. the Netherlands (4643/24)

Article 5.3, pre-trial detention, manslaughter case, reasoning of domestic decisions

SUBJECT MATTER OF THE CASE

The applicant's pre-trial detention, which started on 24 February 2023, was based on the existence of a reasonable suspicion of attempted manslaughter (the applicant allegedly stabbed his brother during a family dispute) and on the grounds relating to a risk of reoffending and a risk of serious upset caused to the legal order.

On 21 June 2023 the North Holland Regional Court dismissed the applicant's request to lift or suspend his pre-trial detention. It held that because of the seriousness of the offence, the ground of upset to the legal order remained and that there was a risk of reoffending, because the report of the probation and social rehabilitation service (*reclasseringsadvies*) indicated that the applicant's inability to control himself in the situation of family disputes, remained a risk-increasing factor. It did not address, in its reasoning, the fact that in the final conclusions of the above-mentioned report the risk of recidivism was assessed as low, although the applicant had relied on these conclusions, as well as on a report from the Netherlands Institute for Forensic Psychiatry and Psychology (*NIFP*).

On 5 July 2023 the Amsterdam Court of Appeal upheld the decision and the reasoning.

The Regional Court dismissed the applicant's subsequent request to lift or suspend his pre-trial detention on the same grounds on 28 August 2023. It did not address, in its reasoning, the applicant's argument that the comments in the report of the probation and social rehabilitation service about his conduct and future family disputes were presented as a point of attention that could be overcome by a duty to report.

The applicant complains under Article 5 § 3 of the Convention that the refusals to lift or suspend his pre-trial detention were not based on relevant and sufficient reasons.

QUESTION TO THE PARTIES

Was the applicant's pre-trial detention justified under Article 5 § 3 of the Convention? In particular, were the decisions of the North Holland Regional Court of 21 June 2023 and 28 August 2023 and the decision of the Amsterdam Court of Appeal of 5 April 2023 sufficiently reasoned, in the light of the final conclusions of the advisory opinion of the Probation and Social Rehabilitation Service (see *Buzadji v. the Republic of Moldova* [GC] no. 23755/07, §§ 84-91, 5 July 2016; *Geisterfer v. the Netherlands*, no. 15911/08, §§ 38-39, 9 December 2014; and *Maassen v. the Netherlands*, no. 10982/15, §§ 54-59, 9 February 2021)?

Zieba v. Poland and 7 other applications (40317/19)

Article 10, criminal proceedings, criticism of public figures and entities

SUBJECT MATTER OF THE CASE

The applications concern criminal proceedings instituted against the applicants for expressing criticism of public figures or entities. The details of each application can be found in the appended table.
The applicants complain under Article 10 of the Convention that the domestic courts interfered with their right to freedom of expression.

QUESTION TO THE PARTIES

Was the interference with each applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention necessary and proportionate to the legitimate aim pursued in terms of Article 10 § 2 of the Convention (see, *Kurłowicz v. Poland* , no. 41029/06, 22 June 2010; *Zybertowicz v. Poland*, no. 59138/10, 17 January 2017; *Kącki v. Poland*, no. 10947/11, 4 July 2017; *Brzeziński v. Poland*, no. 47542/07, 25 July 2019; and *Banaszczyk v. Poland*, no. 66299/10, 21 December 2021)?

M.A.E. v. Poland (7463/23)

Article 3, Article 5.1(f), Article 5.4, detention pending examination of asylum application, conditions in detention

SUBJECT MATTER OF THE CASE

The application concerns the applicant's detention in a guarded centre for aliens pending the examination of his asylum application.
On 21 July 2022 the applicant, who is an Egyptian national, travelled to Poland without a visa.
On 21 July 2022 he was arrested by the Polish authorities. On 23 July 2022 he was placed in the Lesznowola Guarded Centre for Aliens.
On 22 July 2022 the Head of the Border Guard in Zgorzelec ordered the applicant to return and banned him from entering Poland for two years.
On 23 July 2023 the Zgorzelec District Court ordered the applicant's detention pending expulsion, on the grounds that the applicant was a flight risk as he had declared that his intention had been to claim asylum in France. The applicant did not appeal. The applicant's detention was then extended by the court decisions of 26 August and 27 October 2022 (until 23 February 2023). The applicant appealed against these decisions, to no avail.
The applicant's application to have his detention lifted, lodged on 11 January 2023, was pending examination on the date when the present application was introduced to the Court.
On an unspecified date the Polish authorities dismissed the applicant's asylum application (filed on 25 July 2022). These proceedings appear to be ongoing on appeal.
The applicant submitted that he was a victim of violence in his home country and that he suffered from a series of severe medical conditions, one of which required urgent surgery. The medical documents produced in detention contain a recommendation that the applicant should receive further diagnostic and medical care.
The applicant complains under Articles 3 of the Convention about poor material conditions in the detention centre, in particular, overcrowding and inadequate medical care, as well as limited contact with the outside world.
The applicant also complains under Article 5 § 1 (f) of the Convention that his detention is unlawful, arbitrary and disproportionate.
Lastly the applicant complains under Article 5 § 4 of the Convention that the decisions extending his detention were not communicated to him; that he could not participate in court hearings concerning his

detention; that he was not represented by a lawyer in these proceedings; and that the review of his detention was protracted.

QUESTIONS TO THE PARTIES

As to the facts:

1. Has the applicant's detention been further extended?
2. In the event, his detention has been lifted, is the applicant currently in Poland? Is the applicant's lawyer still in contact with the applicant?

As to the law:

3. Has the applicant been subjected to treatment contrary to Article 3 of the Convention owing to his medical condition, medical care provided to him, and the overall conditions of his detention in Lesznowola Guarded Centre for Aliens (see, *mutatis mutandis*, *Sławomir Musiał v. Poland*, no. 28300/06, 20 January 2009)?
4. Is the applicant's deprivation of liberty in compliance with Article 5 § 1 (f)?
5. Has the applicant had at his disposal an effective procedure by which he could challenge the lawfulness of his detention, as required by Article 5 § 4 of the Convention?

Czerski v. Poland (55654/21)

Article 9 (freedom of thought), Article 10, criminal conviction for insulting object of religious worship

SUBJECT MATTER OF THE CASE

The application concerns the criminal conviction of the applicant for insulting an object of religious worship.
In 2018 the applicant placed a plaque on a statue of Pope John Paul II in Starogard Gdański which read "Paedophilia is a crime". He also sprayed the statue, painting the eyes red. He published photographs of the statue and of the plaque on his Facebook profile. The statue was later washed clean, and the paint left no permanent damage.
On 10 December 2020 the Starogard Gdański District Court convicted the applicant on two counts (i) of "insulting a monument" ("*znieważenie pomnika*", Article 261 of the Criminal Code) and (ii) of offending religious feelings ("*obraza uczuć religijnych*") of three individuals, who as it appears had filed a crime notice with the police, by insulting the object of their religious worship (Article 196 of the Criminal Code). The applicant was sentenced to three months' community service for the offence of insulting the monument. The court refrained from imposing a penalty for the other offence.
In its judgment the court took into account the ongoing media discussion about the Pope's alleged awareness of paedophilia in the Catholic Church. It concluded that spraying the statue with paint was excessive, as there were other methods of exercising the right to freedom of expression, such as hanging plaques. On 7 May 2021 the Gdańsk Regional Court essentially upheld the first-instance judgment.
The applicant complains under Article 9 of the Convention of a violation of his freedom of thought, claiming that he was entitled to criticism of religious figures.
He also complains under Article 10 of the Convention of a violation of his right to freedom of expression. He argues that his actions, in the form of a performance, expressed his own opinion and had their origins in a vibrant social debate.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to freedom of thought within the meaning of Article 9 of the Convention? If so, was this interference necessary and proportionate to the legitimate aim pursued in terms of paragraph 2 of that provision (see, *mutatis mutandis*, *Taganrog LRO and Others v. Russia*, nos. 32401/10 and 19 others, § 154, 7 June 2022)?

2. Was the interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention, necessary and proportionate to the legitimate aim pursued in terms of Article 10 § 2 of the Convention (see *Rabczewska v. Poland*, no. 8257/13, §§ 51-53, 15 September 2022)?

Leocádio De Lemos v. Portugal (34122/23)

Article 5.3, length of appeal proceedings

SUBJECT MATTER OF THE CASE

The application concerns the alleged violation of the applicant's right to a speedy judicial review concerning the lawfulness of his pre-trial detention, ordered by the investigating judge at the North Lisbon Court on 10 November 2017.
On 25 June 2023 the Lisbon Administrative Court dismissed an action lodged by the applicant against the State in which he claimed 3,000 euros (EUR) for the alleged excessive length of the review proceedings regarding his pre-trial detention.
Relying on Article 5 § 3 of the Convention, the applicant complains of the excessive length of the Court of Appeal's review proceedings regarding the lawfulness of his pre-trial detention.

QUESTION TO THE PARTIES

Did the length of the appeal proceedings in the instant case that ended with a judgment of 28 February 2018, in which the applicant sought to challenge the lawfulness of his pre-trial detention, comply with the requirement of speediness under Article 5 § 4 of the Convention (instead of under Article 5 § 3, as submitted by the applicant) (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, §§ 251-256, 4 December 2018, and *Martins O'Neill Pedrosa v. Portugal*, no. 55214/15, §§ 39-41 and 46, 14 February 2017)?

Janockova and Kvocera v Slovakia (55206/22)

Article 8, length of proceedings, contact order

SUBJECT MATTER OF THE CASE

The present application concerns the length and effectiveness of proceedings for the enforcement of an assisted contact order (*rozhodnutie o asistovanom styku*) between the applicants (a mother and her son born in 2014), the authorities' alleged failure to take the necessary measures to ensure that assisted contact and the effectiveness of the domestic remedy provided by the Constitutional Court.
The applicants allege that the enforcement proceedings have been ongoing since 12 July 2021 and that they have had no contact during this period.

On 29 June 2022 the Constitutional Court found a violation of the applicants' rights to a hearing within a reasonable time and to respect for their private and family life (II. ÚS 167/2022). However, it did neither order the enforcement court to accelerate the proceedings nor award the applicants just satisfaction.

On 24 May 2023 the Constitutional Court dismissed another constitutional complaint lodged by the applicants. It found the complaints raised by the first applicant manifestly ill-founded and rejected the complaints raised on behalf of the second applicant for lack of standing on account of conflict of interest between him and the first applicant (II. ÚS 276/2023).

According to the applicants' submissions the enforcement proceedings are still ongoing and the Constitutional Court's involvement in this case has not had any effect.

The applicants complain under Articles 6, 8 and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicants' right to respect for their family life, contrary to Article 8 of the Convention?

In particular:
(i) given the length of the enforcement proceedings during which the applicants have had no contact, and the role inherently played by the passage of time, have the domestic authorities complied with their positive obligations with regard to respect for the applicants' family life under Article 8 of the Convention (see *Janočková and Kvocera v. Slovakia*, no. 39980/22, §§ 44-51, 8 February 2024)?

(ii) having regard to all the circumstances of the case, including the particularly strained relationship between the first applicant and the child's father, have the domestic authorities discharged their positive obligations to ensure the effective exercise of the first applicant's contact rights and to establish a meaningful relationship between the applicants (*Anagnostakis v. Greece*, no. 26504/20, §§ 55-58, 10 October 2023)?

2. In the light of the Court's case-law (see *Janočková and Kvocera,* cited above, § 63; *Bergmann v. the Czech Republic*, no. 8857/08, §§ 45-46, 27 October 2011; and *Kuppinger v. Germany*, no. 62198/11, § 137, 15 January 2015), did the applicants have at their disposal an effective domestic remedy for their complaints raised under Article 8 of the Convention, as required by Article 13 of the Convention?

Özoral v. Türkiye (42863/21)*

Article 1 no. Protocol 1, compensation for de facto expropriation

SUBJECT MATTER OF THE CASE

The application concerns the rejection of the applicant's request for compensation for de facto expropriation.

In 1992, the applicant's land was flooded due to the construction of the Sarımehmet Dam. Based on Law No. 5543 on the establishment (İskan Kanunu), as compensation, a plot of land was allocated to the applicant at a preferential rate in 2008, as it was for 77 other families in the same situation.

In 2017, the applicant initiated an action for de facto expropriation to seek compensation for the damage caused by the electricity pylons installed on the land by the national electricity distribution company (TEDAŞ).

This action was ultimately rejected on the grounds that Law No. 5543 prohibited the owner of the land from transferring it within 10 years of its allocation, and that the applicant could not initiate an action for de facto expropriation as the aforementioned 10-year period had not yet expired.

The applicant complains of a violation of his right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention.

Presenting several judicial decisions relating to actions for de facto expropriation concerning strictly similar situations, where the same Court of Appeal had taken a diametrically opposite approach, he also complains of a violation of his right to a fair trial under Article 6 of the Convention.

QUESTIONS TO THE PARTIES

1. Has the applicant's right to the peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention been violated? What was the aim pursued by the provision invoked by the Erzurum Court of Appeal to reject the applicant's claim? Was a fair balance maintained between this aim and the applicant's interests? In this regard, did the absence of compensation impose an excessive burden on the applicant?

2. Given the procedural requirements of Article 1 of Protocol No. 1, did the applicant have access to adequate remedies enabling him to assert his rights (see Société Anonyme Thaleia Karydi Axte v. Greece, no. 44769/07, §§ 36-37, November 5, 2009, and Blumberga v. Latvia, no. 70930/01, § 67, October 14, 2008)?

3. Did the applicant have a fair trial under Article 6 of the Convention? In this context, given what the applicant considered to be a well-established case-law, did the judgment of the Erzurum Court of Appeal provide sufficient reasoning (see Atanasovski v. the former Yugoslav Republic of Macedonia, no. 36815/03, § 38, January 14, 2010)?

Arat v. Türkiye (40265/23)

Article 10, rights of prisoners, refusal to hand over books sent to detained applicant by post

SUBJECT MATTER OF THE CASE

The application concerns the refusal of the prison administration to hand over to the applicant, who was detained at the time of the events, books entitled *'A Modern History of the Kurds'*, *'History and Geography of the Kurds – 1 Rojava'* and *'Handbook on the Kurds'*, which were sent to him by post.
The authorities dismissed the applicant's requests on the basis of section 62 § 3 of Law no. 5275 on the Enforcement of Sentences and Preventive Measures.
Relying on Article 10 of the Convention, the applicant complains of a violation of his right to freedom of expression on account of the refusal to hand over the books to him.

QUESTIONS TO THE PARTIEs

1. Has there been an interference with the applicant's freedom of expression, in particular his right to receive information and ideas, within the meaning of Article 10 § 1 of the Convention, on account of the prison authorities' refusal to hand over the books to him (see *Mehmet Çiftçi v. Turkey*, no. 53208/19, §§ 32-33, 16 November 2021, and *Osman and Altay v. Türkiye*, nos. 23782/20 and 40731/20, §§ 40-41, 18 July 2023)?

2. If so, was that interference prescribed by law and necessary in terms of Article 10 § 2? In particular, did the national authorities and courts adequately balance the applicant's right to freedom of expression against other interests at stake in accordance with the principles enshrined in Article 10 of the Convention (see *Mehmet Çiftçi*, cited above, §§ 34-45, and *Osman and Altay*, cited above, §§ 42-59)?

Dönmez v. Türkiye (17585/23)

Article 3 (procedural aspect), Article 3 (substantive aspect), police ill-treatment including sexual assault

SUBJECT MATTER OF THE CASE

The application concerns the alleged ill-treatment inflicted on the applicant during his police custody in December 2016 and the ineffectiveness of the investigation carried out into his allegations.

During the course of his police custody, the applicant complained of having been heavily beaten and subjected to sexual assault by certain police officers. He was referred to a hospital for an assessment of any risk of gastrointestinal bleeding. The medical report drawn up on 14 December 2016 following his examination at the Ankara Education and Research Hospital noted that he had a periorbital ecchymosis around the left eye, as well as various symptoms of haemorrhoids.

On 3 September 2018 the applicant filed a petition with the Ankara public prosecutor's office, claiming that he had been subjected to ill-treatment during his time in police custody. On 30 January 2019 the public prosecutor's office decided not to process his petition, pursuant to Law no. 4483 on the prosecution of civil servants, finding that there was nothing to support his claims.

The applicant lodged an individual application with the Constitutional Court on account of his alleged ill-treatment and unlawful detention. By a judgment of 15 June 2022, the Constitutional Court stated that the medical reports issued regarding the applicant had made certain findings and that it could not be said that his claims were not arguable. It concluded that there had been a violation of the procedural aspect of the prohibition of ill-treatment, as the application of Law no. 4483, which could not be applied to allegations of torture and passing the limits of the authority to use force, had prevented the authorities from carrying out an investigation. The Constitutional Court did not reach a finding regarding the substantive aspect of the applicant's complaint. As for his complaints regarding his detention, the court found that they were substantially the same as those examined in its decision of 24 December 2018. Lastly, it ordered that the applicant be paid 45,000 Turkish liras (2,500 euros at the material time) in non-pecuniary damages and that a copy of the decision be transmitted to the Ankara public prosecutor's office in order for the latter to initiate a fresh investigation.

The Constitutional Court's decision was served on the applicant on 28 November 2022.

The applicant complains of a violation of Article 3 of the Convention and argues that despite the Constitutional Court's finding, no fresh investigation has been initiated by the Ankara public prosecutor's office. He also relies on Articles 5, 6 and 7 of the Convention, maintaining that his detention was unlawful.

QUESTIONS TO THE PARTIES

1. Can the applicant still claim to be a victim of a violation of the procedural aspect of Article 3 of the Convention, within the meaning of Article 34?

Taking into account the requirement of an effective investigation capable of leading to the identification and punishment of those responsible with regard to alleged violations of Article 3, and in the absence of a fresh investigation initiated by the investigating authorities following the Constitutional Court's decision to that effect, can the finding of a violation and award of non-pecuniary damages by the Constitutional Court be considered to constitute sufficient redress for the applicant's grievances under Article 3 (see *Gäfgen v. Germany* [GC], no. 22978/05, § 116, ECHR 2010)?

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

In particular, was a new individual application before the Constitutional Court regarding the non-enforcement of that court's judgment of 15 June 2022, in so far as it pertained to the initiation of a new investigation, an effective remedy within the meaning of this provision, in respect of the applicant's complaint under Article 3 of the Convention (compare, *mutatis mutandis*, *Mehmet Hasan Altan v. Turkey*, no. 13237/17, §§ 132-39, 20 March 2018)?

3. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention (see *Bouyid v. Belgium* [GC], no. 23380/09, §§ 83-84, ECHR 2015)?

Having regard to the procedural protection from inhuman or degrading treatment, was the decision of the public prosecutor's office not to process the applicant's petition in breach of Article 3 of the Convention (ibid., § 116)?

Baltepe v. Türkiye and 3 Other Applications (8598/21)

Article 8, rights of detainees, confidentiality of correspondence.

SUBJECT MATTER OF THE CASE

The applications concern the right of the applicants, who were detained at the time of the events, to confidential communication with their family members.

Relying on Article 8 of the Convention, the applicants complain about the monitoring by an officer or the recording by means of technical devices of their meetings with their family members during their visits in prison.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicants' right to respect for their private and family life and/or correspondence, within the meaning of Article 8 § 1 of the Convention, on account of the presence of an officer during the applicants' meetings with their family members and/or the recording of their conversations?

If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see, for example, *Doerga v. the Netherlands*, no. 50210/99, §§ 43-53, 27 April 2004, and *Wisse v. France*, no. 71611/01, §§ 24-34, 20 December 2005)?

Cengiz v. Türkiye and 2 Other Applications (25406/22)

Article 8, rights of detainees, confidentiality communication with family.

SUBJECT MATTER OF THE CASE

The applications concern the right of the applicants, who were detained at the time of the events, to confidential communication with their family members.
Relying on Article 8 of the Convention, the applicants complain about the monitoring by an officer or the recording by means of technical devices of their meetings with their family members during their visits in prison.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicants' right to respect for their private and family life and/or correspondence, within the meaning of Article 8 § 1 of the Convention, on account of the presence of an officer during the applicants' meetings with their family members and/or the recording of their conversations?
If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (see, for example, *Doerga v. the Netherlands*, no. 50210/99, §§ 43-53, 27 April 2004, and *Wisse v. France*, no. 71611/01, §§ 24-34, 20 December 2005)?

Görmez v. Türkiye (37572/22)

Article 8, rights of detainees, monitoring of conversations with lawyers, electronic recording and storage of private correspondence.

SUBJECT MATTER OF THE CASE

The application concerns the following measures adopted by the authorities during the applicant's detention: monitoring/recording of the applicant's conversations with his lawyers pursuant to section 6 of Emergency Legislative Degree no. 667 and electronic recording and storage of the applicant's private correspondence in the National Judicial Network System (UYAP).
Relying on Article 8 of the Convention, the applicant complains about the above-mentioned measures.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his private life and correspondence, within the meaning of Article 8 § 1 of the Convention, on account of the presence of an officer during the applicant's consultations with his lawyers and the recording of their conversations?
If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 (compare *Campbell v. the United Kingdom*, 25 March 1992, §§ 33-53, Series A no. 233; *Altay v. Turkey (no. 2)*, no. 11236/09, §§ 49-52, 9 April 2019; and *Canavcı and Others v. Türkiye*, nos. 24074/19 and 2 others, §§ 91 and 93-96, 14 November 2023)?

2. Has there been an interference with the applicant's right to respect for his private life and correspondence, within the meaning of Article 8 § 1 of the Convention, on account of the recording and storage of his private correspondence in the National Judicial Network System (UYAP) (see *Nuh Uzun and Others v. Turkey*, no. 49341/18 and 13 others, § 82, 29 March 2022)?
If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention? In particular, did the impugned measure have an accessible and foreseeable legal basis

providing appropriate safeguards to prevent any arbitrary interferences by public authorities that might be inconsistent with the guarantees of Article 8 of the Convention (ibid., §§ 84-98)?

Keleş v. Türkiye (23636/23)

Article 10, rights of prisoners, refusal to handover newspapers.

SUBJECT MATTER OF THE CASE

The application concerns the prison administration's refusal to hand over to the applicant copies of several editions of the daily newspaper *'Yeni Yaşam'*.
The authorities dismissed the applicant's requests on the basis of Article 8 of the Regulation on Materials and Articles in Prison and Articles 11 and 12 of the Directive on Libraries and Bookshelves in Prison.
Relying on Article 10 of the Convention, the applicant complains of the prison administration's refusal to pass on the newspapers in question.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's freedom of expression, in particular his right to receive information and ideas, within the meaning of Article 10 § 1 of the Convention, on account of the prison authorities' refusal to hand over the newspapers to him (see *Mehmet Çiftçi v. Turkey*, no. 53208/19, §§ 32-33, 16 November 2021 and *Osman and Altay v. Türkiye*, nos. 23782/20 and 40731/20, §§ 40-41, 18 July 2023)?

2. If so, was that interference prescribed by law and necessary in terms of Article 10 § 2? In particular, and bearing in mind also the considerations outlined in the Constitutional Court's relevant case-law (see *Mustafa Koca*, no. 2021/38039, 26 July 2022), did the national authorities and courts adequately balance the applicant's right to freedom of expression against other interests at stake in accordance with the principles enshrined in Article 10 of the Convention (see *Mehmet Çiftçi*, cited above, §§ 34-45)?

Palyvoda v. Ukraine (20901/19)

Article 3, police ill-treatment, investigation

SUBJECT MATTER OF THE CASE

The application concerns the alleged police ill-treatment of the applicant and the ineffectiveness of the ensuing domestic investigation.
According to the applicant, on 20 March 2018 he went outside his apartment to inquire about the actions of the officers from the Kryvyi Rih Police Patrol, who were at that time arresting his neighbour. After the applicant attempted to engage in dialogue with the officers, one of them kicked the applicant in the leg and forcefully pushed him. As a result of these actions, the applicant sustained fractures to both of his legs and was subsequently admitted to hospital.
On 22 March 2018 the Kryvyi Rih Prosecutor's Office initiated a criminal investigation into the alleged abuse of power by a police officer. However, since the newly established State Bureau of Investigation (the "SBI"), which is authorised under Ukrainian law to investigate police misconduct, was not yet operational at the time, the applicant's case was transferred to the Kryvyi Rih Police Department.
The applicant submits that throughout the police investigation his lawyer's repeated motions to carry out specific investigative activities were either ignored or not adequately followed up, and that key evidence in

the case – footage from the police officers' bodycams – was not properly assessed. Furthermore, his requests to transfer the case to the SBI, which commenced operations on 27 November 2018, were denied. On 22 September 2019 the investigation was terminated due to the inability to identify the suspects and the expiration of procedural time limits. This decision was based on Article 219 of the Code of Criminal Procedure, which at the relevant time required investigations into serious crimes where no suspects had been identified to be concluded within 18 months.
In December 2019, following the applicant's complaint, a district court overturned the decision to terminate the investigation, stating that after the SBI became operational, the police were no longer authorised to handle the applicant's case. No reference was made to the statutory time limits.
The current status of the investigation is unknown.
The applicant complained under Article 3 of the Convention that he had been ill-treated by the police and that there had been no effective investigation into the incident, particularly because those responsible for and carrying out the investigation had not been independent and impartial.
The applicant died on 7 May 2023. By letter of 18 July 2024 his mother informed the Court of her wish to pursue his application.

QUESTIONS TO THE PARTIES

1. Was the applicant submitted to treatment in breach of Article 3 of the Convention on 20 March 2018?

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

3. In particular, did the respondent State ensure the independence of the investigation of the applicant's ill-treatment complaint (see *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, §§ 320, 333, ECHR 2014 (extracts); *Najafli v. Azerbaijan*, no. 2594/07, § 52, 2 October 2012; *Voykin and Others v. Ukraine*, no. 47889/08, §§ 100-19, 27 March 2018)?

Panasenko v. Ukraine (27445/22)

Article 3, detention, state of health, procedure for release of convicts

No section on subject matter available.

QUESTIONS TO THE PARTIES

1. Considering the applicants' state of health, was their continued detention compatible with the requirements of Article 3 of the Convention (see, for instance, *Contrada v. Italy (no. 2)*, no. 7509/08, §§ 79-85, 11 February 2014, *Farbtuhs v. Latvia*, no. 4672/02, §§ 58-61, 2 December 2004, and *Cosovan v. the Republic of Moldova*, no. 13472/18, §§ 73-90, 22 March 2022)?

2. Did the State perform an adequate and timely assessment of the compatibility of the applicants' state of health with their detention (see, for instance, *Dorneanu v. Romania*, no. 55089/13, §§ 95-100, 28 November 2017)?

In particular, did the procedure of release of convicts from further serving a sentence due to incompatibility of their state of health with detention envisaged in law meet the requirements of quality of the law? Was

this procedure sufficiently clear to ensure the practical possibility of release for such persons? Was the manner of interpretation of this procedure by domestic courts foreseeable?

Gazin v. Ukraine (43898/19)

Article 8, medical malpractice, criminal proceedings.

SUBJECT MATTER OF THE CASE

The application concerns an alleged act of medical malpractice, which took place during a bladder catheterisation procedure performed on the applicant on 4 August 2012 at a municipal clinic No. 4 in Dnipro. Owing to the ensuing complications, the applicant developed multiple bladder and urinary tract disorders.

Following the applicant's complaint, on 6 June 2013 the police launched a criminal investigation, during which Dr. P., who performed the bladder catheterisation on the applicant, was charged with a criminal offence under Section 140 § 1 of the Criminal Code of Ukraine (negligence by a healthcare professional). Within the framework of these criminal proceedings, in November 2016 the applicant brought a civil claim seeking compensation of pecuniary and non-pecuniary damage.

In December 2016 the case of P. went to trial. According to the available information, the proceedings are still ongoing.

The applicant complains under Articles 3 and 13 of the Convention that the criminal proceedings in respect of his allegations of medical malpractice have been lengthy and ineffective. This complaint falls to be examined under Article 8 of the Convention.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicant's right to respect for his private life, contrary to Article 8 of the Convention? In particular, having regard to the length of the domestic medical malpractice proceedings, did the applicant have access to a procedure capable of establishing the relevant facts, holding accountable those at fault and providing him with appropriate redress (see *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, §§ 137-39, 31 January 2019; *Eryiğit v. Turkey*, no. 18356/11, §§ 49-52, 10 April 2018; *Botoyan v. Armenia*, no. 5766/17, §§ 90-92, 106-09, 8 February 2022)?

Zhuchenko v. Ukraine and 6 Other Applications (30475/20)

Article 3 and Article 13, regimes of life prisoners, conditions in prison

SUBJECT MATTER OF THE CASES

The applications concern prison regimes of life prisoners, allegedly causing significant distress and denying them the possibility of rehabilitation.

The applicants, life prisoners detained in different facilities, complain under Articles 3 and 13 of the Convention of poor material conditions of their detention, severe social isolation, lack of access to any purposeful activities, such as work, education, sport, or recreation, and the absence of any effective domestic remedy in this respect. A short summary of each application is provided in the appendix.

QUESTIONS TO THE PARTIES

1. Did the conditions of the applicants' detention amount to inhuman or degrading treatment, in breach of Article 3 of the Convention? In particular:

(a) Have the applicants been held in inadequate material conditions of detention in breach of Article 3 of the Convention (see *Muršić v. Croatia* [GC], no. 7334/13, 20 October 2016; *Melnik v. Ukraine*, no. 72286/01, 28 March 2006; *Sukachov v. Ukraine*, no. 14057/17, 30 January 2020)?

(b) Do the applicants, except for applications nos. 31650/20 and 34048/23, have an adequate level of human and social interaction (see *Ivan Karpenko v. Ukraine*, no. 45397/13, §§ 58-65, 16 December 2021)?

(c) Do the applicants, as indicated in the appendix, have access to purposeful activities, such as work, education, sports, or recreation, particularly with a view to their rehabilitation (see *Murray v. the Netherlands* [GC], no. 10511/10, §§ 101-104, 26 April 2016, and *N.T. v. Russia*, no. 14727/11, §§ 44-52, 2 June 2020)? Your Government are requested to specify the nature and the scope of the activities, along with the relevant legal framework, as well as any recent developments in domestic legislation and practice.

2. Did the applicants have an effective domestic remedy in respect of the above complaints, as required by Article 13 of the Convention? If so, have the applicants exhausted domestic remedies within the meaning of Article 35 § 1 of the Convention?