Scan of communicated cases

Cases covered from 25 November – 6 December 2024

MANJANI v. ALBANIA (no. 32283/23)

Article 8 – life-long ban on the applicant's access to certain civil service positions (refusal admission to School of Magistrates as prosecutor); activities of a professional nature

Article 8 § 1 – accordance with the law; necessity; permanent ban on access to a magistrate career on the grounds of his prior criminal conviction as a minor, after rehabilitated, compatible with the needs of rehabilitation of minors or generally

Lodged on 21 August 2023

Communicated on 8 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

The application concerns a decision not to admit the applicant to the School of Magistrates as prosecutor on the grounds of his conviction for theft which he had committed as a minor and for which he had been rehabilitated. A final decision was taken by the Constitutional Court on 23 March 2023.

QUESTIONS TO THE PARTIES

1. Is Article 8 applicable in the present case, given that it concerns a life-long ban on the applicant's access to certain civil service positions (see *Naidin v. Romania*, no. 38162/07, §§ 30-35, 21 October 2014), and in view of the criteria established in the Court's case-law in relation to the activities of a professional nature (see *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 115-117, 25 September 2018)?

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

3. If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2? In particular, was the permanent ban on the applicant's access to a magistrate career on the grounds of his prior criminal conviction as a minor, for which he had been rehabilitated, compatible with the needs of rehabilitation of minors or generally (see *mutatis mutandis Minicozzi v. Italy*, no. 7774/02, § 19, 24 May 2006; and *N.F. and Others v. Russia*, nos. 3537/15 and 8 others, §§ 47 and 54, 12 September 2023)?

BERISHA v. ALBANIA (no. 7731/24)

Article 5 § 4 – exhaustion of effective remedies; speediness of dealing with complaints; lawfulness examined adequately; impartial tribunal; justifying ongoing house arrest; effective legal assistance; length of preceedings

Article 3 of Protocol No. 1 – Restrictions on his parliamentary activities resulting from his house arrest

Lodged on 18 March 2024

Communicated on 7 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

The case concerns the applicant's request for judicial review of his house arrest on suspicion of having committed a criminal offence and the resulting interference with the work of a member of the Parliament.

The applicant is a prominent politician in the country, former President and Prime Minister, actual member of Parliament and leader of the main opposition party.

On 20 October 2023, the Special Court of First Instance against Corruption and Organised Crime ("the first-instance court"), following a request by the Special Prosecutor's Office ("the prosecutor"), imposed on the applicant as security measure the requirement to regularly report to the police and prohibited him to leave the country. The security measures were imposed in connection with suspicion of committing the offence of accepting bribes. On 12 December 2023, since the applicant had not presented himself before the police, the prosecutor requested Parliament's authorisation for a more severe security measure.

On 21 December 2023 Parliament granted the authorisation. On 30 December 2023 the first-instance court ordered the applicant's house arrest, on the grounds that the applicant had not complied with the previous security measure imposed on him, along with the existence of a reasonable suspicion, the risks of absconding and of tampering with evidence.

That decision was upheld by the Special Court of Appeal for Corruption and Organised Crime ("the Court of Appeal") and the Supreme Court. On 9 April 2024 the Supreme Court dismissed the applicant's appeal on points of law. The applicant appealed further, and these proceedings are pending before the Constitutional Court.

The applicant submitted several requests for revision or revocation of his house arrest, which were all dismissed. On 11 September 2024 the applicant was charged with passive corruption (accepting bribes) committed by a high-ranking state official in collusion with others. On 13 September 2024 the Court of Appeal dismissed the latest of the applicant's request for revision of the security measures.

Since 30 December 2023 the applicant has been under house arrest.

Relying on Article 5 § 4 of the Convention, the applicant raises the following issues concerning the procedure of revision of his house arrest:

- The courts did not provide sufficient grounds to justify his continuing deprivation of liberty;

- The first-instance court was not impartial because in 1996 the (only) judge of that court had been dismissed by the High Judicial Council which the applicant as the President of the country had chaired at the time;

- He did not have effective legal assistance, as not enough time and facilities were allowed to the lawyers, and the applicant was not able to meet with them;

- The decisions were not taken within a reasonable time.

Under Article 3 of Protocol No. 1 to the Convention he also complains that his house arrest has been arbitrary and adopted with the purpose of impeding him to exercise his duties as a lawfully elected member of Parliament.

QUESTIONS TO THE PARTIES

1. Did the applicant exhaust the remedies available in domestic law in relation to his complaints under Article 5 § 4 of the Convention (see *G.B. and Others v. Turkey*, no. 4633/15, §§ 163-69, 17 October

2019)? In particular, is an individual complaint to the Constitutional Court an effective remedy to be exhausted in this respect (see *Žúbor v. Slovakia*, no. 7711/06, §§ 71-86, 6 December 2011, and, *mutatis mutandis*, *Hysa v. Albania*, no. 52048/16, § 54, 21 February 2023)? Are such complaints dealt with the required speediness as a matter of law and/or practice? The parties are requested to submit copies of relevant domestic decisions issued by the Constitutional Court, if any, with an indication of the length of such proceedings.

2. Without prejudice to question 1, was the procedure by which the lawfulness of the applicant's house arrest has been examined in conformity with Article 5 § 4 of the Convention (see *Idalov v. Russia* [GC], no. 5826/03, § 161, 22 May 2012; *Cernák v. Slovakia*, no. 36997/08, § 78, 17 December 2013; *G.B. and Others v. Turkey*, no. 4633/15, §§ 174-76, 17 October 2019; and *Venet v. Belgium*, no. 27703/16, §§ 31-35, 22 October 2019)? In particular:

(a) Was the first instance court which dealt with the applicant's case an impartial tribunal?

(b) Did the domestic courts provide adequate reasons to justify his initial and ongoing house arrest?

(c) Did the applicant enjoy effective legal assistance?

(d) Did the length of the proceedings by which the applicant sought to challenge the lawfulness of his house arrest comply with the "speediness" requirement of Article 5 § 4 of the Convention (see *Mooren v. Germany* [GC], no. 11364/03, §§ 106-07, 9 July 2009)?

3. there been a violation of the applicant's rights under Article 3 of Protocol No. 1 to the Convention on account of the restrictions on his parliamentary activities resulting from his house arrest (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 388-89, 22 December 2020)?

DIMITROV v. BULGARIA (no. 44635/21)

Inability to oppose to the operation of a car repair shop (excessive noise and pollution)

Article 6 § 1 – applicable under its civil head; access to court

Article 8 § 1 – interference right to respect for his private life and his home

Article 13 – effective domestic remedy under Article 8 and Article 13; actio negatoria

Lodged on 23 August 2021

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's inability to oppose to the operation of a car repair shop, allegedly the source of excessive noise and pollution, situated across the street from his house. The applicant submitted numerous complaints to the local authorities, who at one point ordered the closure of the shop on the ground that it did not have the necessary permissions, but did not enforce the order. Eventually, in 2020 the shop's owner obtained an amendment of the detailed urban development plan, permitting the shop's work. The applicant applied for that amendment's judicial review, but his application was found to be inadmissible in a final decision of the Supreme Administrative Court of 23 February 2021, on the ground that domestic law allowed only immediate neighbours, but not across-the-street neighbours, to challenge such administrative decisions.

The applicant complains under Article 6 § 1 of the Convention that his application for judicial review was not examined on the merits. He argues that the restriction of his right to access to a court did not pursue any legitimate aim in the public interest and was unjustified. He further complains under Article 8 and Article 13 of the Convention of the national authorities' failure to put an end to the nuisances from the car repair shop, which interfered with his quality of life and his enjoyment of his home, and of the lack of effective domestic remedies in that regard.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention under its civil head applicable to the judicial proceedings in the present case? If so, was the restriction of the applicant's right to access to a court, as guaranteed under Article 6 § 1 of the Convention, justified?

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

If so, has there been a violation of this right? Did the national authorities take adequate measures to put an end to the nuisance allegedly inflicted on the applicant?

3. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 8, as required by Article 13 of the Convention?

In particular, could an *actio negatoria* under section 109 of the Property Act represent such a remedy?

GEORGIEV v. BULGARIA (no. 31792/22)*

Article 3 – inhuman or degrading treatment at the hands of the police during his detention; investigation by domestic authorities

Lodged on 20 June 2022

Communicated on 8 November 2024

Published on 25 November 2024

SUBJECT-MATTER OF THE CASE

The application concerns the applicant's allegation that he was beaten by a police officer while he was detained at the police station on 24 July 2021, and the alleged lack of an effective investigation into this. The medical certificate issued to the applicant after his release attests to some bruising on his back and head, as well as an injury to his chin. The applicant's complaint against the police officer was definitively dismissed on 15 March 2022 by the public prosecutor's office at the Supreme Court of Cassation. He relies on Article 3 of the Convention under its substantive and procedural limbs.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected, in violation of Article 3 of the Convention, to inhuman or degrading treatment at the hands of the police during his detention on 24 July 2021 (see Bouyid v. Belgium [GC], no. 23380/09, §§ 81-90, ECHR 2015)?

2. Having regard to the procedural protection against inhuman or degrading treatment (see paragraph 131 of Labita v. Italy [GC], no. 26772/95, ECHR 2000-IV), did the investigation conducted in the present case by the domestic authorities satisfy the requirements of Article 3 of the Convention? The

Government is requested to provide the full file of the preliminary investigation into the applicant's complaint against police officer I.D.

KOSTADINOVA v. BULGARIA (no. 38615/21)

Article 6 § 1 – Conviction was based on the appellate court's reconsideration of the facts established by the first-instance court without a direct examination of the witnesses (domestic violence case; minor bodily injury to husband)

Lodged on 26 July 2021

Communicated on 8 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

The applicant was criminally prosecuted for inflicting a minor bodily injury to her husband. The first-instance court heard several witnesses and, in a judgment of 12 November 2020, acquitted the applicant. Upon appeal, and without hearing anew the witnesses, in a final judgment of 3 February 2021, the Stara Zagora Regional Court reversed the lower court's judgment, found the applicant guilty as charged, waived her criminal liability, imposed on her an administrative fine amounting to 1,000 Bulgarian levs (BGN), equivalent of 511 euros (EUR), and ordered her to pay a compensation for non-pecuniary damages to her husband as well as to reimburse his legal and court fees.

Relying on Article 6 § 1 and Article 13 of the Convention, the applicant complains that the criminal proceedings against her were not fair since the Regional Court reversed the lower court's judgment without hearing anew the witnesses.

QUESTION TO THE PARTIES

Was the applicant's conviction by the Regional Court, after acquittal by the lower court, compatible with the requirements of Article 6 § 1 of the Convention, considering that her conviction was based on the appellate court's reconsideration of the facts established by the first-instance court without a direct examination of the witnesses (see *Manolachi v. Romania*, no. 36605/04, §§ 39-50, 5 March 2013, *Júlíus Þór Sigurþórsson v. Iceland*, no. 38797/17, §§ 30-44, 16 July 2019, and *Dan v. the Republic of Moldova (no. 2)*, no. 57575/14, §§ 47-68, 10 November 2020)?

VĚTROVEC v. THE CZECH REPUBLIC (no. 20342/23)

Article 6 § 1 – fair hearing; non-communication to the applicant of observations submitted by the parties intervening in the proceedings; lack of opportunity for him to comment on them

Lodged on 16 May 2023

Communicated on 6 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

In the criminal proceedings against him the applicant was found guilty of mismanagement of another's property and ordered by the appellate court to pay damages to a civil party. His application concerns in particular the failure of the Constitutional Court to communicate to him written observations submitted in reaction to his constitutional appeal against the appellate court's decision by the regional prosecutor and the civil party, as a result of which he was unable to comment on them. On 18 January 2023 his constitutional appeal was dismissed by the Constitutional Court (no. I. ÚS 3416/22), whose reasoning appears to be partly based on the arguments submitted in particular by the prosecutor in his observations.

The applicant also complains about a breach of the principle of immediacy by the appellate court and about the unforeseeability and insufficient reasoning of the latter's decision (Article 6 § 1 of the Convention).

QUESTION TO THE PARTIES

Did the applicant have a fair hearing before the Constitutional Court, in accordance with Article 6 § 1 of the Convention? In particular, was the fairness of those proceedings undermined by the non-communication to the applicant of observations submitted by the parties intervening in the proceedings and the consequent lack of opportunity for him to comment on them (see *Janáček v. the Czech Republic*, § 53, no. 9634/17, 2 February 2023)?

TARMELIT v. FRANCE and 16 other applications (no. 37144/23)*

(see attached list)

Accommodation that meet the needs and abilities application

Article 6 § 1 – the failure to enforce the judgments of the administrative courts in favour of the applicants

Communicated 8 November 2024

Published on 25 November 2024

SUBJECT OF THE CASE

On various dates, the Mediation Commission recognised the claimants as having priority and requiring urgent accommodation that met their needs and abilities. Having not received an offer of rehousing within six months of the decisions concerning them, the applicants appealed to the administrative courts, on the basis of article L. 441-2-3-1 of the French Construction and Housing Code. The courts ordered the prefects to provide rehousing for the applicants, subject to a fine to be paid into the 'national fund for support towards and within housing'. Some of the claimants sued for compensation for 'disturbances in living conditions' caused by the failure to rehouse them. Others benefited from judgments ordering the liquidation of the outstanding penalty payment and the increase of the future penalty payment

The details are set out in the attached table.

The applicants stated that, at the time their applications were lodged, they had not received any offer of suitable alternative accommodation.

Invoking Article 6 § 1 of the Convention, they criticised the State for failing to enforce the judgments ordering their rehousing. Invoking Article 8 of the Convention, some of the applicants (applications nos.

9830/24, 9838/24, 9840/24, 9842/24, 9847/24, 9851/24, 9853/24, 9858/24, 9868/24, 9872/24, 9876/24, 9883/24 and 9890/24) maintained that, by failing to rehouse them, the State had violated their right to respect for their physical and moral integrity and, for some of them, the best interests of their child or children.

QUESTIONS TO THE PARTIES

1. Does the failure to enforce the judgments of the administrative courts in favour of the applicants constitute a violation of Article 6 § 1 of the Convention?

2. The applicants are asked to provide substantiated and up-to-date information about their (re)accommodation and about any claims for compensation and the amounts awarded.

In particular, the applicant in application no. 9883/24 is asked to provide information on the amount awarded by the judgment of 30 October 2020, together with a copy of that judgment.

3. In applications Nos 9830/24, 9838/24, 9840/24, 9842/24, 9847/24, 9851/24, 9853/24, 9858/24, 9868/24, 9872/24, 9876/24, 9883/24 and 9890/24, the applicants are asked to provide documents relating to the composition of their family households.

APPENDIX

List of applications

List of applications and case details

Z.Z. v. GREECE (no. 39501/19)

Involuntary hospitalisation

Article 5 § 1 – Mental health disorder; detention; necessary procedural safeguards in the proceedings pertaining to her involuntary hospitalisation

Lodged on 23 July 2019

Communicated on 8 November 2024

Published on 25 November

SUBJECT MATTER OF THE CASE

The application concerns the applicant's involuntary hospitalisation.

The applicant was diagnosed with a mental health disorder in 2007. She lives with her son, who in 2009 was appointed as her guardian (*δικαστικός συμπαραστάτης*).

On 11 January 2019 the applicant was transferred under police custody to the Alexandroupoli University Hospital for examination at the psychiatric clinic as per a prosecutorial order. On 4 March 2019 the Rhodopi prosecutor lodged an involuntary hospitalisation request under Law no. 2071/92, which was rejected on 12 March 2019 by judgment no. 37/2019 of the Rhodopi Court of First Instance. The court held that the prosecutor lacked standing: as the applicant had close relatives who had not demonstrated inaction (her son and legal guardian), only the latter could request the applicant's involuntary hospitalisation. On 25 May 2019 the applicant was discharged. In subsequent guardianship proceedings,

the Thrace Court of Appeal by judgment no. 319/2022 found that the applicant's hospitalisation had not been voluntary.

The applicant complains under Article 5 § 1 of the Convention on account of her hospitalisation: (a) neither she nor her legal guardian consented to the hospitalisation of 11 January 2019, which had been involuntary, nor received summons in person to the relevant hearing before the Rhodopi Court of First Instance; and (b) the applicant's discharge occurred more than two months after that court had dismissed the prosecutor's hospitalisation request.

QUESTION TO THE PARTIES

Was the applicant deprived of her liberty in breach of Article 5 § 1 (e) of the Convention (see, for instance, *Karamanof v. Greece*, no. 46372/09, §§ 43-47, 26 July 2011, and *Venios v. Greece,* no. 33055/08, §§ 49-53, 5 July 2011)? In particular,

(a) Was her detention in respect of each of the periods complained of ordered and maintained "in accordance with a procedure prescribed by law"?

(b) Was the applicant afforded the necessary procedural safeguards in the proceedings pertaining to her involuntary hospitalisation (see, for instance, *M.S. v. Croatia (No. 2)*, no. 75450/12, §§ 114-115 and 147, 19 February 2015, and *Venios,* cited above, § 52)?

TEACHERS' TRADE UNION AND OTHERS v. HUNGARY (no. 33159/23)

Trade Union (Teachers)

Article 6 § 1 – restriction of access to court

Article 11 and Article 11 § 2 – restriction of right to strike; necessity

Lodged on 30 August 2023

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The applicants are two trade unions (the Teachers' Trade Union (*Pedagógusok Szakszervezete*), the first applicant, and the Teachers' Democratic Trade Union (*Pedagógusok Demokratikus Szakszervezete*), the second applicant), representing the interests of teachers and other employees in the education sector, and a teacher (Ms B. Kiss-Berta, the third applicant).

The first and second applicants planned to organise a strike seeking a number of measures to improve the renumeration and working conditions of employees in the public education sector. They envisaged a warning, and in case it was unsuccessful, an indefinite strike for early 2022. They started negotiations with the Government on the scope of essential services in late December 2021.

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

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

On 6 May 2022 Parliament adopted Act no. V of 2022 on regulatory issues related to the termination of the state of danger. Sections 14 and 15 of the Act defined the scope of minimum services in public education in accordance with Government Decree no. 36/2022 (II.11).

The applicants filed a constitutional complaint on 7 November 2022, arguing that Act no. V of 2022 constituted a violation of their right to strike. The complaint was dismissed by the Constitutional Court on 3 May 2023, which decision was served on the applicants on 2 September 2023.

The applicants complain that they have been deprived of their right of access to a court as guaranteed in Article 6 § 1 of the Convention. They maintain that by defining the content of essential services, Act no. V of 2022 effectively frustrated their right to have a court ruling on the matter.

In addition, the applicants complain that Act no. V of 2022, by defining the content of minimum services in a disproportionally broad manner, deprives the substance of their right to strike, as protected under Article 11 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been a breach of the applicants' right of access to a court as guaranteed by Article 6 § 1 of the Convention? In particular, did Act no. V of 2022 constitute a restriction on the applicants' right of access to a court (see *Organisation nationale des syndicats d'infirmiers libéraux (ONSIL) v. France* (dec.), no. 39971/98, ECHR 2000-IX?)

2. If so, was that restriction of access to court justified and proportionate to any legitimate aim pursued?

3. Has there been a violation of the applicants' right to strike as protected by Article 11 of the Convention (see *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, 8 April 2014)? In particular, did Act no. V of 2022 constitute an interference with the applicants' freedom of association, within the meaning of Article 11 § 1 of the Convention?

4. If so, was that interference necessary in terms of Article 11 § 2?

APPENDIX

No.	Applicant's Name	Year of birth/registration	Place of residence
1.	TEACHERS' TRADE UNION (PEDAGÓGUSOK SZAKSZERVEZETE)	1989	Budapest
2.	TEACHERS' DEMOCRATIC TRADE UNION (PEDAGÓGUSOK DEMOKRATIKUS SZAKSZERVEZETE)	1989	Budapest
3.	Beáta KISS-BERTA	1977	Budapest

DI GIROLAMO v. ITALY and 6 other applications (no. 35016/20)*

(see attached list)

Article 6 § 1 – the refusal to make a reference to the CJEU for a preliminary ruling

Communicated on 7 November 2024

Published on 25 November 2024

SUBJECT OF THE CASE

The applications concern the Conseil d'Etat's refusal to refer a question to the Court of Justice of the European Union ('CJEU') for a preliminary ruling.

The applicants, honorary justices of the peace, applied to the administrative courts for recognition of the existence of a civil service employment relationship within the judiciary. They asked the Conseil d'Etat to refer questions to the CJEU for a preliminary ruling on the interpretation of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and Council Directive 97/81/EC of 15 December 1997 concerning the framework agreement on part-time work concluded by UNICE, CEEP and the ETUC, Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and on their possible application to honorary judges.

In Judgment No. 1326 of 21 February 2020, and subsequently Judgments Nos. 7762, 7763, 7764, 7765, 7766 and 7771 of 9 December 2020, which were motivated by reference to the first judgment, the Conseil d'État rejected the applicants' requests for preliminary questions to be referred to the CJEU, holding that European Union labour law could not apply to the persons concerned because of their "status as honorary civil servants".

Citing Article 6(1) of the Convention, the claimants allege that the Conseil d'État failed to give proper reasons for its refusal to refer the case for a preliminary ruling.

QUESTION TO THE PARTIES

Having regard to the reasons given by the Conseil d'État in judgment no. 1326 of 21 February 2020 and those expressed by reference to that judgment in judgments nos. 7762, 7763, 7764, 7765, 7766 and 7771 of 9 December 2020, the refusal to make a reference to the CJEU for a preliminary ruling in the present case satisfied the obligation to state reasons under Article 6 § 1 of the Convention (see Sanofi Pasteur v. France, no. 25137/16, §§ 68-71, 13 February 2020, and Ullens de Schooten and Rezabek v. Belgium, nos. 3989/07 and 38353/07, §§ 56-62, 20 September 2011)?

In particular, the refusal decisions criticised, having regard also to the context in which they were made, and in particular to

- Case C-658/18, which was pending before the CJEU at the time when the Council of State was called upon to rule in application No 35016/20, and which had been defined, when the Council of State ruled on the other applications, by a judgment delivered on 16 July 2020 (Governo della Repubblica italiana (Statute of Italian Justices of the Peace), C-658/18, EU:C:2020:572) ;

- Case C-236/20, which was pending before the CJEU at the time when the Council of State was called upon to rule on applications Nos 30141/21, 30146/21, 30148/21, 30151/21, 30152/21 and 30154/21;

were they accompanied by an examination of the Cilfit criteria (see Sanofi Pasteur, cited above, §§ 68 and 80, and Ullens de Schooten and Rezabek, cited above, § 62)?

APPENDIX

List of applications :

No.	Requête No	Nom de l'affaire	Introduite le	Requérant Année de naissance Lieu de résidence Nationalité	Représenté par
1.	35016/20	Di Girolamo c. Italie	30/07/2020	**Gabriele DI GIROLAMO** 1956 Sulmona italienne	Giovanni ROMANO
2.	30141/21	Gonan c. Italie	08/06/2021	**Giancarlo GONAN** 1954 Pontedasio italienne	Giovanni ROMANO
3.	30146/21	Grammatico c. Italie	08/06/2021	**Andrea GRAMMATICO** 1948 Vezzi Portio italienne	Giovanni ROMANO
4.	30148/21	Campi c. Italie	08/06/2021	**Laura CAMPI** 1954 La Spezia italienne	Giovanni ROMANO
5.	30151/21	Cervasio c. Italie	08/06/2021	**Teresa CERVASIO** 1951 Ceriale italienne	Giovanni ROMANO
6.	30152/21	Boero c. Italie	08/06/2021	**Stefano BOERO** 1966 Genes italienne	Giovanni ROMANO
7.	30154/21	Cappelli c. Italie	08/06/2021	**Anna Vera CAPPELLI** 1950 VEZZI PORTIO italienne	Giovanni ROMANO

AVENIA v. ITALY (no. 32116/21)

Article 6 § 1 – the statute of limitation decisive for the outcome of the criminal proceedings; failure of the domestic court to reply; criminal charge examined fairly

Lodged on 15 June 2021

Communicated on 7 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The applicant, a police officer (*carabiniere*), was convicted at three instances of aggravated breach of his duties under Article 120 of the Military Criminal Code (*violata consegna da parte di militare di guardia o di servizio*). Pending proceedings before the Court of Cassation, he filed observations submitting, *inter alia*, that the case against him should have been dismissed as the offence of which he was accused had become time-barred. The Court of Cassation declared his appeal on points of law inadmissible as manifestly ill-founded, without making any reference to the issue concerning the statute of limitation.

The applicant complains, under Article 6 §1 of the Convention, that the Court of Cassation did not provide any reply to an argument that was decisive for the outcome of his case.

QUESTIONS TO THE PARTIES

1. Did the applicant have at his disposal an effective remedy for his complaint under Article 6 § 1 of the Convention?

2. Was the applicant's argument concerning the statute of limitation decisive for the outcome of the criminal proceedings against him? If so, having regard to the relevant domestic case-law and in view of the Court of Cassation's failure to provide a reply to it, was the merit of the criminal charge against the applicant examined fairly, as required by Article 6 § 1 of the Convention (see *Moreira Ferreira v. Portugal (no.2)* [GC], no. 19867/12, § 84, 11 July 2017, and *Felloni v. Italy*, no. 44221/14, §§ 24-31, 6 February 2020)?

F.B. v. THE NETHERLANDS (no. 28157/18)

Article 3 – ex officio pardon decision; legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention; Murray-assessment

Lodged on 12 June 2020

Communicated on 17 March 2022 and 7 November 2024

Published 25 November 2024

The Subject matter of the case and Questions to the parties is available in HUDOC.

QUESTIONS TO THE PARTIES

1. At the time of the final judgments in the applicant's case and the submission of the parties' observations, section 4 of the Advisory Board (Life Sentence Prisoners) Decree (*Besluit Adviescollege*

levenslanggestraften) provided that the responsible Minister was to take an *ex officio* pardon decision based on section 19 of the Pardons Act (*Gratiewet*) no later than twenty-seven years counted from the start of detention on remand. On 1 July 2023 a legislative amendment increased this period to twenty-eight years.

Does this legislative change have any impact, in the applicant's *individual* case, on the State's compliance with Article 3 of the Convention?

Please note that further observations in respect of this question must focus exclusively on the legislative change introduced on 1 July 2023.

2. In how many cases has the Advisory Board on Life Imprisonment (*Adviescollege levenslanggestraften*) advised the Minister regarding integration?

3. How many prisoners have been admitted to the reintegration phases on the basis of an advice by the Advisory Board?

4. In how many cases has the Advisory Board advised the Minister regarding pardon?

5. How many life sentence prisoners have been pardoned since 1970?

6. How many life sentence prisoners have been pardoned under the system of the Advisory Board (Life Sentence Prisoners) Decree?

7. Has the applicant undergone a so-called *Murray*-assessment (named after *Murray v. the Netherlands* [GC], no. 10511/10, 26 April 2016) and, if not, why not?

SOEREL v. THE NETHERLANDS (no. 55021/19)

Article 3 – ex officio pardon decision; legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention; Murray-assessment

Lodged on 16 October 2020

Communicated on 17 March 2022 and 7 November 2024

Published 25 November 2024

The Subject matter of the case and Questions to the parties is available in HUDOC.

QUESTIONS TO THE PARTIES

1. At the time of the final judgments in the applicant's case and the submission of the parties' observations, section 4 of the Advisory Board (Life Sentence Prisoners) Decree (*Besluit Adviescollege levenslanggestraften*) provided that the responsible Minister was to take an *ex officio* pardon decision based on section 19 of the Pardons Act (*Gratiewet*) no later than twenty-seven years counted from the start of detention on remand. On 1 July 2023 a legislative amendment increased this period to twenty-eight years.

Does this legislative change have any impact, in the applicant's *individual* case, on the State's compliance with Article 3 of the Convention?

Please note that further observations in respect of this question must focus exclusively on the legislative change introduced on 1 July 2023.

2. In how many cases has the Advisory Board on Life Imprisonment (*Adviescollege levenslanggestraften*) advised the Minister regarding integration?

3. How many prisoners have been admitted to the reintegration phases on the basis of an advice by the Advisory Board

4. In how many cases has the Advisory Board advised the Minister regarding pardon?

5. How many life sentence prisoners have been pardoned since 1970?

6. How many life sentence prisoners have been pardoned under the system of the Advisory Board (Life Sentence Prisoners) Decree?

7. Has the applicant undergone a so-called Murray-assessment (named after *Murray v. the Netherlands* [GC], no. 10511/10, 26 April 2016) and, if not, why not?

REMMERS v. THE NETHERLANDS (no. 55483/19)

Article 3 – ex officio pardon decision; legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention; Murray-assessment

Lodged on 23 October 2020

Communicated on 17 March 2022 and 7 November 2024

Published 25 November 2024

The Subject matter of the case and Questions to the parties is available in HUDOC.

QUESTIONS TO THE PARTIES

1. At the time of the final judgments in the applicant's case and the submission of the parties' observations, section 4 of the Advisory Board (Life Sentence Prisoners) Decree (*Besluit Adviescollege levenslanggestraften*) provided that the responsible Minister was to take an *ex officio* pardon decision based on section 19 of the Pardons Act (*Gratiewet*) no later than twenty-seven years counted from the start of detention on remand. On 1 July 2023 a legislative amendment increased this period to twenty-eight years.

Does this legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention?

Please note that further observations in respect of this question must focus exclusively on the legislative change introduced on 1 July 2023.

2. In how many cases has the Advisory Board on Life Imprisonment (Adviescollege levenslanggestraften) advised the Minister regarding integration?

3. How many prisoners have been admitted to the reintegration phases on the basis of an advice by the Advisory Board?

4. In how many cases has the Advisory Board advised the Minister regarding pardon?

5. How many life sentence prisoners have been pardoned since 1970?

6. How many life sentence prisoners have been pardoned under the system of the Advisory Board (Life Sentence Prisoners) Decree?

7 Has the applicant undergone a so-called *Murray*-assessment (named after *Murray v. the Netherlands* [GC], no. 10511/10, 26 April 2016) and, if not, why not?

RASNABE v. THE NETHERLANDS (no. 56209/19)

Article 3 – ex officio pardon decision; legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention

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QUESTIONS TO THE PARTIES

1. At the time of the final judgments in the applicant's case and the submission of the parties' observations, section 4 of the Advisory Board (Life Sentence Prisoners) Decree (*Besluit Adviescollege levenslanggestraften*) provided that the responsible Minister was to take an *ex officio* pardon decision based on section 19 of the Pardons Act (*Gratiewet*) no later than twenty-seven years counted from the start of detention on remand. On 1 July 2023 a legislative amendment increased this period to twenty-eight years.

Does this legislative change have any impact, in the applicant's *individual* case, on the State's compliance with Article 3 of the Convention?

Please note that further observations in respect of this question must focus exclusively on the legislative change introduced on 1 July 2023.

2. In how many cases has the Advisory Board on Life Imprisonment (*Adviescollege levenslanggestraften*) advised the Minister regarding integration?

3. How many prisoners have been admitted to the reintegration phases on the basis of an advice by the Advisory Board?

4. In how many cases has the Advisory Board advised the Minister regarding pardon?

5. How many life sentence prisoners have been pardoned since 1970?

6. How many life sentence prisoners have been pardoned under the system of the Advisory Board (Life Sentence Prisoners) Decree?

ADMILSON RICHTER v. THE NETHERLANDS (no. 59806/19)

Article 3 – ex officio pardon decision; legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention

Lodged on 13 November 2020

Communicated on 17 March 2022 and 7 November 2024

Published 25 November 2024

The Subject matter of the case and Questions to the parties is available in HUDOC.

QUESTIONS TO THE PARTIES

1. At the time of the final judgments in the applicant's case and the submission of the parties' observations, section 4 of the Advisory Board (Life Sentence Prisoners) Decree (*Besluit Adviescollege levenslanggestraften*) provided that the responsible Minister was to take an *ex officio* pardon decision based on section 19 of the Pardons Act (*Gratiewet*) no later than twenty-seven years counted from the start of detention on remand. On 1 July 2023 a legislative amendment increased this period to twenty-eight years.

Does this legislative change have any impact, in the applicant's *individual* case, on the State's compliance with Article 3 of the Convention?

Please note that further observations in respect of this question must focus exclusively on the legislative change introduced on 1 July 2023.

2. In how many cases has the Advisory Board on Life Imprisonment (*Adviescollege levenslanggestraften*) advised the Minister regarding integration?

3. How many prisoners have been admitted to the reintegration phases on the basis of an advice by the Advisory Board?

4. In how many cases has the Advisory Board advised the Minister regarding pardon?

5. How many life sentence prisoners have been pardoned since 1970?

6. How many life sentence prisoners have been pardoned under the system of the Advisory Board (Life Sentence Prisoners) Decree?

MARCOS RICHTER v. THE NETHERLANDS (no. 59814/19)

Article 3 – ex officio pardon decision; legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention

Lodged on 13 November 2020

Communicated on 17 March 2022 and 7 November 2024

Published 25 November 2024

The Subject matter of the case and Questions to the parties is available in HUDOC.

QUESTIONS TO THE PARTIES

1. At the time of the final judgment in the applicant's case and the submission of the parties' observations, section 4 of the Advisory Board (Life Sentence Prisoners) Decree (*Besluit Adviescollege levenslanggestraften*) provided that the responsible Minister was to take an *ex officio* pardon decision based on section 19 of the Pardons Act (*Gratiewet*) no later than twenty-seven years counted from the start of detention on remand. On 1 July 2023 a legislative amendment increased this period to twenty-eight years.

Does this legislative change have any impact, in the applicant's *individual* case, on the State's compliance with Article 3 of the Convention?

Please note that further observations in respect of this question must focus exclusively on the legislative change introduced on 1 July 2023.

2. In how many cases has the Advisory Board on Life Imprisonment (*Adviescollege levenslanggestraften*) advised the Minister regarding integration?

3. How many prisoners have been admitted to the reintegration phases on the basis of an advice by the Advisory Board?

4. In how many cases has the Advisory Board advised the Minister regarding pardon?

5. How many life sentence prisoners have been pardoned since 1970?

6. How many life sentence prisoners have been pardoned under the system of the Advisory Board (Life Sentence Prisoners) Decree?

HENRIQUEZ v. THE NETHERLANDS (no. 15199/20)

Article 3 – ex officio pardon decision; legislative change have any impact, in the applicant's individual case, on the State's compliance with Article 3 of the Convention

Lodged on 12 March 2020

Communicated on 17 March 2022 and 7 November 2024

Published 25 November 2024

The Subject matter of the case and Questions to the parties is available in HUDOC.

QUESTIONS TO THE PARTIES

1. At the time of the final judgments in the applicant's case and the submission of the parties' observations, section 4 of the Advisory Board (Life Sentence Prisoners) Decree (*Besluit Adviescollege levenslanggestraften*) provided that the responsible Minister was to take an *ex officio* pardon decision based on section 19 of the Pardons Act (*Gratiewet*) no later than twenty-seven years counted from the start of detention on remand. On 1 July 2023 a legislative amendment increased this period to twenty-eight years.

Does this legislative change have any impact, in the applicant's *individual* case, on the State's compliance with Article 3 of the Convention?

Please note that further observations in respect of this question must focus exclusively on the legislative change introduced on 1 July 2023.

2. In how many cases has the Advisory Board on Life Imprisonment (*Adviescollege levenslanggestraften*) advised the Minister regarding integration?

3. How many prisoners have been admitted to the reintegration phases on the basis of an advice by the Advisory Board?

4. In how many cases has the Advisory Board advised the Minister regarding pardon?

5. How many life sentence prisoners have been pardoned since 1970?

6. How many life sentence prisoners have been pardoned under the system of the Advisory Board (Life Sentence Prisoners) Decree?

A.B.A. AND OTHERS v. THE NETHERLANDS and 1 other application (nos. 27637/23 and 19542/24)

Article 3 – children; duration of the detention and the conditions of detention

Article 3 and Article 13 – effective remedy

Article 5 § 1(f) – no other measure involving a lesser restriction

Article 5 § 4 – effective procedure; speedily

Lodged on 17 July 2023 and 5 July 2024 respectively

Communicated on 7 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

The applications concern the immigration detention of a family with three children aged 2, 4, and 5 in a section of a detention centre which was specifically adapted to families with minor children and unaccompanied minors (*GGV Zeist*). They were expecting a fourth child.

The applicants' requests for asylum had been rejected and the authorities had planned a flight to remove them to Nigeria, their country of origin. During an interview on 16 June 2023, prior to issuing an order to detain them with a view to their removal, the applicants lodged subsequent asylum requests. On that same day a detention order was issued – and they were placed in immigration detention – with a view to obtaining information for the assessment of these requests and because it was considered that there was a risk that they would abscond or frustrate the proceedings. The applicants lodged an appeal against this detention order with the Regional Court, that was dismissed by a judgment of 6 July 2023.

On 5 July 2023 their subsequent asylum requests were rejected and, consequently, on 6 July 2023 the detention order of 16 June 2023 was lifted and a detention order with a view to their removal was issued. The applicants lodged an appeal with the Regional Court against this new detention order, that was dismissed by a judgment of 18 July 2023. On the same day, an interim measure requested under Article 39 of the Rules of Court based on Article 3 of the Convention, was applied, ordering the authorities of the respondent State to lift the applicants' detention. The applicants were released on 19 July 2023.

By a judgment of 26 March 2023, the Administrative Jurisdiction Division of the Council of State upheld the judgments of the Regional Court of 6 and 18 July 2023. The applicants were detained for a total of 33 days in GGV Zeist, first pending the examination of their asylum requests for 20 days and, subsequently, with a view to their removal for 13 days.

QUESTIONS TO THE PARTIES

1. Given their age, the duration of the detention and the conditions of detention, has there been a violation of Article 3 of the Convention in respect of the applicant children (see amongst others, *A.M. and Others v. France*, no. 24587/12, §§ 44-46, 12 July 2016, and *R.R. and Others v. Hungary*, no. 36037/17, §§ 48-49, 2 March 2021)?

2. Did the applicant children have at their disposal an effective remedy for their complaint under Article 3 of the Convention, as required by Article 13 of the Convention?

3. Was the applicants' detention in compliance with Article 5 § 1(f) of the Convention (see *Saadi v. the United Kingdom* [GC], no. 13229/03, §§ 67-74, ECHR 2008)? In respect to the applicant children, have the national authorities verified that no other measure involving a lesser restriction of freedom could be implemented (*M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, §§ 237, 18 November 2021)?

4. Did the applicants have at their disposal an effective procedure by which the lawfulness of the detention orders, issued against them on 16 June 2023 and 6 July 2023, was decided "speedily" by a court, as required by Article 5 § 4 of the Convention (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, §§ 128-131, ECHR 2016 (extracts))?

ANASTASOVSKI v. NORTH MACEDONIA and 1 other application (nos. 29573/21 and 29592/21)

Objections to payment orders issued by a notary public for not having been submitted by a lawyer

Article 6 § 1 – the statutory requirement compelling litigants to engage a lawyer; access to a court

Lodged on 3 June 2021 and 2 June 2021 respectively

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The applications concern the rejection of the applicants' objections to payment orders issued by a notary public for not having been submitted by a lawyer, as required by section 68 of the Notary Act, but by the applicants themselves.

The applicants complain under Article 6 § 1 of the Convention and Article 13 read in conjunction with Article 1 of Protocol No. 1 to the Convention about a lack of access to a court.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicants' right of access to court within the meaning of Article 6 § 1 of the Convention? In particular, can the statutory requirement compelling litigants to engage a lawyer in the proceedings pertaining to their objections against the payment orders in question be regarded as

a proportionate limitation on the applicant's right of access to a court within the meaning of Article 6 § 1 of the Convention (see *Kitanovska and Barbulovski v. North Macedonia*, no. 53030/19, §§ 46-61, 9 May 2023)?

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1.	29573/21	Anastasovski v. North Macedonia	03/06/2021	**Igor ANASTASOVSKI** 1967 Skopje Macedonian/citizen of the Republic of North Macedonia	Danche CHAKAROVSKA-GROZDANOVSKA
2.	29592/21	Stojanovski v. North Macedonia	02/06/2021	**Gencho STOJANOVSKI** 1951 Skopje Macedonian/citizen of the Republic of North Macedonia	Danche CHAKAROVSKA-GROZDANOVSKA

FUNDACJA INSTYTUT REPORTAŻU v. POLAND (no. 459/20)

Applicant foundation calling consumer boycott by beer brand

Article 10 § 1 interference prescribed by law, necessary and proportionate to the legitimate aim pursued

Lodged on 13 December 2019

Communicated on 14 November 2024

Published on 2 December

SUBJECT MATTER OF THE CASE

The case concerns the legal consequences faced by the applicant foundation for calling for a consumer boycott of a beer brand.

The applicant foundation, *Fundacja Instytut Reportażu*, is a non-governmental organisation which launched the "Journalists Without Discrimination" initiative, with the statutory aim of, *inter alia*, reacting to discrimination against people from minority groups.

The applicant foundation operates a bookstore in Warsaw, which also sells beer, including beer C., at the relevant time produced by the brewing company B.R.J. and distributed by its sister company, P.R.

The Chief Executive Officer (CEO) and the sole shareholder of B.R.J., who was also the main shareholder of P.R., was M.J.

On 17 September 2014 M.J. published a news item on his Facebook profile, in which he condemned a famous boxer supporting adoption of children by same-sex couples. M.J. wrote:

"Boxing is supposedly harmful and this is irrefutable proof of that! I know that it is no longer possible, but I wish you, D., a Mommy with a pecker (*mamusi z fujarką*) instead of breasts, you will have something to suck!"

On 21 September 2014 the applicant foundation reacted by publishing a news item on its Facebook profile. In the text it made, *inter alia*, the following statements:

"The great trashing, Mr C.! (*wielkie lanie, panie C.*) We're pouring out beer C.! (...) We don't want to drink it anymore. (...) Because we don't like what the owner of this brewery says publicly about people. But we have a large supply of C. and (...) we'll ceremoniously pour it out. (...) anyone who thinks this is wasteful will be able to drink beer from a homophobe for a very symbolic fee. (...) Someone wants to copy our idea? No problem"

On 22 September 2014 the beer produced by B.R.J. was publicly spilled out in front of the applicant foundation's bookstore. Subsequently, other establishments declared support for the boycott of the beer.

On 28 November 2014 B.R.J. and its sister company, P.R., filed a lawsuit against the applicant foundation, relying on Section 15 of the Unfair Competition Act (*Ustawa o zwalczaniu nieuczciwej konkurencji*), demanding payment of 100,000 Polish zlotys ((PLN) – approximately 25,000 euros (EUR)) to a cultural institution and publication of an apology. The plaintiff companies identified the applicant foundation's actions as hindering access to the market and argued that the applicant foundation had successfully called for a consumer boycott.

In response to the lawsuit, the applicant foundation relied on, *inter alia*, freedom of expression in connection to the right to defend important social values.

On 21 March 2016 the Warsaw Regional Court granted the claim, ordered the applicant foundation to pay PLN 5,000 (approximately EUR 1,200) to a cultural institution and to publish an apology.

The court stressed that the private opinions of M.J., a natural person, should not be perceived as a reason to buy, or not, the products of the plaintiff companies. The court assessed that calling for a boycott of a beer brand could not be justified by a necessity of bringing social attention to the statements of M.J. The court reasoned that criticizing socially harmful behaviour, including opposing hate speech and criticizing homophobic statements deserved approval. However, it was irrelevant to the outcome of the proceedings as the purpose of the boycott was economic, and aimed at limiting or eliminating the plaintiff companies' capability to operate on the market.

The applicant foundation appealed, relying on, *inter alia*, Article 54 of the Polish Constitution which protects the freedom of expression. It stressed that the boycott had an economic effect, not purpose.

On 21 March 2018 the Warsaw Court of Appeal altered the judgment in that it ordered the applicant foundation to publish an apology and dismissed the remainder of the claim. The court stressed that the applicant foundation could have used other, lawful measures to manifest its disapproval with M.J.'s statements.

The judgment was served on the applicant foundation's representative on 14 June 2019.

The applicant foundation complains under Article 10 of the Convention that its right to freedom of expression was violated. It further claims that the impugned decisions were not prescribed by law or necessary in a democratic society in terms of Article 10 § 2 of the Convention.

QUESTION TO THE PARTIES

Was the interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention, prescribed by law, necessary and proportionate to the legitimate aim pursued in terms of Article 10 § 2 of the Convention (see, among others, *Perinçek v. Switzerland* [GC], no. 27510/08, §§ 196 and 231, ECHR 2015 (extracts); *Baldassi and Others v. France*, nos. 15271/16 and 6 others, §§ 63-64, 11 June 2020; and, *mutatis mutandis*, *Baka v. Hungary* [GC], no. 20261/12, § 159, ECHR 2016)?

PAIVA DE ANDRADA REIS v. PORTUGAL (no. 863/22)

Article 6 § 2 – right to be presumed innocent in tax enforcement proceedings; link between tax proceedings and criminal proceedings

Lodged on 28 December 2021

Communicated on 13 November 2024

Published 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the alleged breach of the applicant's right to be presumed innocent in tax enforcement proceedings initiated against him.

In a judgement dated 23 October 2012, the Lisbon Tax Court considered the applicant, in his capacity as manager, to be liable for the debt of company M. and ordered him to pay the tax authorities the sum of 451,664.61 euros (EUR) in withheld personal income tax with respect to the period 2001-2004.

The applicant appealed against the judgment. He relied on a judgment of the Lisbon Criminal Court of 16 July 2012, which had acquitted him of the offence of embezzlement (*abuso de confiança*) of social security contributions on the grounds that he had not exercised *de facto* management of company M. during the period in question.

In a judgment dated 9 June 2021, the Central Administrative Court of the South (hereinafter the "TCAS") upheld the judgment of the Lisbon Tax Court, ruling that the acquittal judgment of the Lisbon Criminal Court could not be taken into account. The TCAS held, on the one hand, that as the applicant had not contested his status as manager in his initial defence pleadings (*petição inicial*), he was estopped from invoking this supervening legal argument. On the other hand, the TCAS considered that the tax courts were not bound by the outcome of criminal proceedings given that the authority of *res judicata* of criminal judgments only extended to civil proceedings under domestic law.

The applicant alleges that by refusing to take into consideration the Lisbon Criminal Court's judgment of 16 July 2012, the TCAS has infringed his right to the presumption of innocence guaranteed by Article 6 § 2 of the Convention.

QUESTIONS TO THE PARTIES

1. Is Article 6 § 2 applicable to the impugned proceedings? In particular, is there a link between the tax proceedings in question and the criminal proceedings in the context of which the applicant was acquitted (see *Nealon and Hallam v. the United Kingdom* [GC], nos. 32483/19 and 35049/19, § 122, 11 June 2024; *Allen v. the United Kingdom* [GC], no. 25424/09, § 104, ECHR 2013; and *Melo Tadeu v. Portugal*, no. 27785/10, §§ 50-51, 23 October 2014)?

2. If so, having regard to the fact that the applicant had been acquitted of the offence of embezzlement on the grounds that he had not exercised de facto management of company M. during the period in question, have the reasonings employed by the Lisbon Tax Court and the TCAS, when considered as a

whole, and in the context of the exercise they were required to undertake under domestic law, violated Article 6 § 2 of the Convention in its second aspect, to the extent that it amounted to the imputation of criminal liability to the applicant (see *Nealon and Hallam*, cited above, §§ 168-169)?

CORREIOS DE PORTUGAL S.A. v. PORTUGAL (no. 23911/23)

Article 4 of Protocol No. 7 and Article 4 § 1 of Protocol No. 7– concession contract of a criminal nature; punished twice for same offence

Lodged on 7 June 2023

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The Portuguese State concluded a concession contract with the applicant company for providing the national postal service. The application concerns two sets of proceedings instituted against the applicant company by the National Authority for Communications ("ANACOM") for breach of the concession contract and for administrative offences.

Relying on Article 4 of Protocol No. 7 to the Convention, the applicant company complains of having been punished twice for the same facts.

QUESTIONS TO THE PARTIES

1. Were the proceedings instituted against the applicant company by the ANACOM for breach of the concession contract of a criminal nature, within the meaning of Article 4 of Protocol No. 7 to the Convention (see, *Sergey Zolotukhin v. Russia* [GC], no. 14939/03, §§ 52-53, 10 February 2009; *Grande Stevens and Others v. Italy,* nos. 18640/10 and 4 others, § 94, 4 March 2014; and *A and B v. Norway* [GC], nos. 24130/11 and 29758/11, §§ 105-107, 15 November 2016)?

2. If so, has the applicant company been punished twice for the same offences, as prohibited by Article 4 § 1 of Protocol No. 7 to the Convention? In particular:

(a) Did the two sets of proceedings instituted by the ANACOM originate from identical facts or facts which were substantially the same (see *Sergey Zolotukhin*, cited above, §§ 82-84; *A and B v. Norway*, cited above, §§ 108 and 117-134; *Grande Stevens and Others*, cited above, §§ 219-20; and *Ramda v. France*, no. 78477/11, § 87, 19 December 2017)?

(b) In the affirmative, were the proceedings sufficiently closely connected in substance and time (see *A and B v. Norway*, cited above, §§ 130-34, and *Goulandris and Vardinogianni v. Greece*, no. 1735/13, §§ 54-55, 16 June 22)?

BALTAZAR VILAS BOAS AND PINHEIRO BALTAZAR VILAS BOAS v. PORTUGAL (no. 45657/22)

Article 2 – authorities fail to take adequate and appropriate steps to protect the applicants' son's life ; procedural aspect of positive obligations; length proceedings

Lodged on 16 September 2022

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the circumstances and the subsequent proceedings regarding the drowning of the applicants' son, which occurred on 7 June 2005, when he was thirteen years old, after he had jumped over the fence of his school and left unattended with three classmates to play by the river Cávado.

In 2006 the investigation proceedings were discontinued on the grounds that there was no evidence of any criminal offence being committed. In 2009 the applicants lodged an action with the Braga Administrative Court for the alleged failure of the school State officials to ensure their son's supervision and to provide them information about his absence from school. The administrative proceedings ended in 2022 by a decision of the Central Administrative Court of the North ruling against the applicants.

Relying on Articles 2 and 5 of the Convention, the applicants complain that the authorities had failed to protect the life of their son. They also complain about the excessive length of the administrative proceedings, under Article 6 § 1 of the Convention.

QUESTIONS TO THE PARTIES

1. In view of States' positive obligations under Article 2 of the Convention, did the domestic authorities fail to take adequate and appropriate steps to protect the applicants' son's life (see, *Bône v. France* (dec.), no. 69869/01, 1 March 2005; *Molie v. Romania* (dec.), no. 13754/02, §§ 39-41, 1 September 2009; *Fedina v. Ukraine*, no. 17185/02, §§ 50-53, 2 September 2010; and *Ercankan v. Turkey* (dec.), no. 44312/12, §§ 47-48, 15 May 2018)?

2. Having regard to the procedural aspect of the positive obligation to protect the right to life, did the proceedings carried out in this case by the domestic authorities meet the requirements of Article 2 of the Convention? In particular, given the length of the administrative proceedings, was their positive obligation to set up an effective judicial system respected (see, *mutatis mutandis*, *Fernandes de Oliveira v. Portugal* [GC], no. 78103/14, § 137, 31 January 2019)?

MONDA v. ROMANIA (no. 53076/22)*

Article 35 § 1 – time-limit; final domestic decision; extraordinary remedy as effective remedy

Article 7 – offence of abuse of office under national law; foreseeability of the material element of the offence

Lodged on 4 November 2022

Notified on 14 November 2024

Published on 2 December 2024

PURPOSE OF THE CASE

The application concerns, from the point of view of Article 7 of the Convention, the applicant's allegations that the legal basis for her conviction for abuse of functions was not foreseeable and that the criminal law was applied extensively.

In a final judgment of 15 April 2021, the Bacău Court of Appeal sentenced the applicant, a former deputy mayor of the town of Piatra-Neamţ, to a suspended sentence of three years' imprisonment for abuse of office.

Relying on Article 438 § 1 point 7 of the Code of Criminal Procedure, the applicant lodged an appeal in cassation, an extraordinary remedy, against the above-mentioned final judgment of 15 April 2021. She alleged that the acts complained of as established by the final judgment of conviction were not provided for by criminal law. More specifically, she argued that some of the acts of which she was accused did not fall within the scope of her functions and that the remainder of the acts of which she was accused were not provided for by so-called 'primary' legislation within the meaning of Constitutional Court decision no. 405 of 15 June 2016 to constitute the offence of abuse of functions.

In a final judgment of 8 February 2022, handed down by a majority and communicated to the applicant on 5 July 2022, the High Court of Cassation and Justice dismissed the appeal on the ground that it was unfounded, on the grounds that the facts constituted the offence of abuse of office.

QUESTIONS TO THE PARTIES

1. Did the applicant lodge her application within the time-limit laid down in Article 35 § 1 of the Convention?

More specifically

(a) does the judgment of 8 February 2022 of the High Court of Cassation and Justice represent a 'final domestic decision' within the meaning of Article 35 § 1 of the Convention (Lekić v. Slovenia [GC], no. 36480/07, § 65, 11 December 2018)?

(b) does the remedy of cassation, an extraordinary remedy, constitute an effective remedy capable of remedying the complaint raised by the applicant before the Court (Lopes de Sousa Fernandes v. Portugal [GC], no. 56080/13, § 134, 19 December 2017, and Communauté genevoise d'action syndicale (CGAS) v. Switzerland [GC], no. 21881/20, § 139, 27 November 2023, with the references cited therein)?

The Government are invited to provide examples of relevant domestic case-law relating to the application of Article 438 § 1, point 7, of the Code of Criminal Procedure ('the CPP').

Similarly, the Government is invited to indicate, for each year since the entry into force of the CPC (1 February 2014), the number of appeals in cassation declared inadmissible, those dismissed for lack of merit and those allowed.

2. Did the acts for which the applicant was convicted constitute the offence of abuse of office under national law, at the time when they were committed, within the meaning of Article 7 of the Convention (Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, § 238, 26 September 2023, Achour v. France [GC], no. 67335/01, § 41, ECHR 2006-IV, and Dragotoniu and Militaru-Pidhorni v. Romania, nos. 77193/01 and 77196/01, § 33, 24 May 2007)?

3. If so, was the applicant's conviction for abuse of office provided for by a law which satisfied the requirements of foreseeability within the meaning of Article 7 of the Convention (see Del Río Prada v. Spain [GC], no. 42750/09, §§ 91-93, ECHR 2013)? More specifically, did the applicable legal provisions define with sufficient foreseeability the material element of the offence of abuse of position at the time when the acts were committed?

The parties are invited to specify all the legal provisions (administrative and criminal) that governed the applicant's duties and that formed the basis for her criminal conviction. With regard to the criminal

provisions governing the applicant's duties, the parties are asked to specify whether they fell under the so-called 'primary' legislation or the so-called 'secondary' legislation, within the meaning of Constitutional Court decision no. 405 of 15 June 2016.

The parties are invited to submit a full copy of the case file compiled during the criminal proceedings and the various levels of jurisdiction.

MARIAN v. ROMANIA (no. 38715/22)

Refusal to allow the applicant to continue to work after she attained the retirement age set for women, until she reached the higher retirement age set for men

Article 14, Article 8, Article 1 of Protocol No. 1 – discrimination on grounds of sex and age; retirement

Article 6 § 1 – fair hearing; examination under different provision that indicated by application; refusal to examine complaint on discrimination

Lodged on 2 August 2022

Communicated on 13 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the refusal to allow the applicant to continue to work after she attained the retirement age set for women, until she reached the higher retirement age set for men.

The applicant, whose work contract had been terminated on 25 February 2020 by her employer, the National Museum George Enescu, despite her request to continue to work, lodged a complaint before the National Council for Combatting Discrimination ("the NCCD") and a civil action before the Bacău County Court, arguing, among others, that she had been discriminated against because she was a woman.

On 20 January 2021 the NCCD found that the situation in which the applicant had been placed amounted to discrimination based on age and sex, and fined her employer on that account.

Her civil action, initially allowed by the Bacău County Court on 14 April 2021, was ultimately dismissed by the Bacău Court of Appeal in a final decision of 12 April 2022. The Court of Appeal interpreted the applicant's request to continue to work as one covered by Article 56 § 4 of the Labour Code (which allowed continuation of a work contract for a maximum of three years beyond the standard retirement age with the employer's approval) and not as one covered by Article 56 § 1 (c) of the Labour Code (which allowed a female employee, if she so whished, to continue to work beyond the retirement age set for women). The court found that, in the absence of the employer's approval for continued employment, the applicant's work contract had been rightfully terminated. The NCCD decision was not mentioned in the reasoning of the Court of Appeal.

Relying on Article 1 of Protocol No. 12 and on Article 14 of the Convention, taken together with Article 8 of the Convention and 1 of Protocol No. 1, the applicant alleged that women were discriminated in terms of conditions of retirement. She also complained, under Article 6 of the Convention, about the manner in which the Court of Appeal examined her case.

QUESTIONS TO THE PARTIES

1. Has the applicant suffered discrimination on account of her sex and age, contrary to Article 14 of the Convention read in conjunction with Article 8 of the Convention and/or Article 1 of Protocol No. 1, or contrary to Article 1 of Protocol No. 12, given that she was forced to retire at an age different from that set for men (see, notably, *Moraru and Marin v. Romania,* nos. 53282/18 and 31428/20, §§ 123-24, 20 December 2022, *Carvalho Pinto de Sousa Morais v. Portugal*, no. 17484/15, § 46, 25 July 2017, and *Napotnik v. Romania*, no. 33139/13, §§ 69-75, 20 October 2020)?

2. Did the applicant have a fair hearing in the determination of her civil rights and obligations before the Court of Appeal, in accordance with Article 6 § 1 of the Convention (see, notably, *Gillissen v. the Netherlands*, no. 39966/09, § 50, 15 March 2016, *Vanjak v. Croatia*, no. 29889/04, §§ 45-47, 14 January 2010, and *Wierzbicki v. Poland*, no. 24541/94, § 39, 18 June 2002), given that:

(a) on its own initiative, the Court of Appeal examined the case under a different provision than that which had been indicated by the applicant in her action; and

(b) the Court of Appeal failed to examine her complaint based on discrimination despite her explicit request to that end and despite the conclusions of the NCCD's decision of 20 January 2021?

MARINESCU v. ROMANIA (no. 49283/22)

Allegations of discrimination regarding allocation of pregnancy benefits (maternity risk allowance) between women employed with labour contracts ("salariate") and women in liberal professions

Article 14, Article 1 of Protocol No. 1, Article 1 of Protocol No. 12 – discrimination on account of sex and/or type of employment; denial of benefit in social allowance for maternity risk on equal terms with other pregnant woman

Article 6 § 1 – fair hearing; examination of arguments

Article 8 – order to return money in respect of social allowances for maternity risk

Article 1 of Protocol No. 1 – interference with peaceful enjoyment of possessions; necessary to control use of property in accordance with general interest; excessive individual burden

Lodged on 11 October 2022

Communicated on 13 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns allegations of discrimination regarding allocation of pregnancy benefits (maternity risk allowance) between women employed with labour contracts ("*salariate*") and women in liberal professions.

On 1 May 2020 the applicant signed a contract with the Dolj Agency for Social Insurance ("CAS") allowing her to benefit from social insurance under Emergency Government Ordinance no. 158/2005 ("OUG 158/2005").

She became pregnant and as her pregnancy did not allow her to continue to work, she benefited from a social allowance for maternity risk (*risc maternal*) from 15 May 2020 to 31 July 2020 (Emergency Government Ordinance no. 96/2003 on the protection at work of pregnant women, "OUG 96/2003").

On 15 September 2021 the CAS sought restitution of the allowances paid to the applicant, on the ground that, as she was not an employee, she did not qualify for those payments. On 14 January 2022 the Dolj

County Court dismissed the action, on the grounds that the content of the substantive right to protection during pregnancy was the same for all pregnant women. In a final decision of 6 June 2022 the Craiova Court of Appeal allowed the appeal and the action on the ground that only women employed via a labour contract could benefit from the protection of OUG 96/2003. The applicant was ordered to pay back 85,883 Romanian Lei (approximately 17,500 euros at that time).

The applicant argues that she was discriminated against because of the arbitrary exclusion of pregnant women in a liberal profession from the benefit of the allowance for maternity risk (she invokes, in this respect, Article 14 of the Convention, taken together with Article 1 of Protocol No. 1, or Article 1 of Protocol No. 12). She also complains about the manner in which the Cour of Appeal examined her case (Article 6 of the Convention), and about an alleged infringement of her right to respect for her private life (Article 8 of the Convention) and of her right to respect for the peaceful enjoyment of her possessions (Article 1 of Protocol No. 1), as she was ordered to return the money received, although she had used that money to pay for her expenses during the pregnancy.

QUESTIONS TO THE PARTIES

1. Has the applicant suffered discrimination on account of her sex and/or type of employment, contrary to Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 or to Article 1 of Protocol No. 12 to the Convention, insofar as she was denied the benefit of a social allowance for maternity risk on equal terms with other pregnant women (see, notably, *Jurčić v. Croatia*, no. 54711/15, §§ 69-70 and 84-85, 4 February 2021)?

2. Did the applicant have a fair hearing in the determination of her civil rights and obligations before the Court of Appeal, in accordance with Article 6 § 1 of the Convention? In particular, did the Court of Appeal examine the arguments raised by the applicant and correctly engage with the applicable law (see *Napotnik v. Romania*, no. 33139/13, §§ 40-42, 20 October 2020)?

3. Has there been a violation of the applicant's right to respect for her private life, contrary to Article 8 of the Convention, given that she was ordered to return the money received in respect of social allowance for maternity risk?

4. Has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1, given that she was ordered to return the money received in respect of social allowance for maternity risk?

If so, was that interference necessary to control the use of property in accordance with the general interest?

In particular, did that interference impose an excessive individual burden on the applicant (see *Immobiliare Saffi v. Italy*, [GC], no. 22774/93, § 59, ECHR 1999-V and *Čakarević v. Croatia*, no. 48921/13, §§ 50-53 and 72, 26 April 2018)?

DRĂGUŞIN v. ROMANIA (no. 5894/20)

Article 1 of Protocol No. 1 – the public authority's refusal to grant consent for the works necessary to maintain the building; court overriding lack of consent; failure to act by domestic authorities; fair balance between demands of general interest of community and fundamental rights applicant

Article 6 § 1 – fair hearing; principle of adversarial proceedings

Lodged on 20 December 2019

Communicated on 13 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's claims that the failure of the domestic authorities to take the lawful measures aimed at the protection of his property, i.e. providing approval and pro quota contribution for the works necessary to upkeep that property, have breached his rights under Article 1 of Protocol No. 1 to the Convention. He also complains about the proceedings before the appellate court, where his claims were denied allegedly in breach of the adversarial principle laid out by Article 6 of the Convention.

The applicant owns an apartment in a building where the Bucharest Municipality, in its private capacity, owns two other apartments.

Relying on the conclusions of expert reports carried out at his own expense, which proved that the building, dating from the 1920s and subjected to several serious earthquakes, needed significant consolidation interventions, the applicant initiated a written dialogue with the relevant local authorities, including the Municipality, seeking to obtain authorisation for the maintenance works as well as appropriate financing, in line with the property quota of each owner. Such dialogue, extended over two years, remained unsuccessful. The reasons laid out by the administration mainly referred to the fact that the building was not on the list of the most endangered buildings in Bucharest (category I as concerns the seismic risks), but was a "category II" building, for which no funding had yet been provided or indeed been envisaged; and also that the two apartments owned by the Municipality were in the process of being returned to their former owners, hence, no public funding could be allocated; lastly, that in any event, all steps to be taken and works to be carried out had to be made in compliance with the public procurement procedure.

In 2016 the applicant lodged a civil action against the Bucharest Municipality; relying on the provisions of the Civil Code relevant for common forced ownership, the applicant petitioned the court to replace the consent of the refusing party (the Municipality) to initiate the administrative proceedings necessary for the consolidation of the building (for instance to obtain the urban planning certificate and the building permit, to obtain the corresponding expert report and all other technical documents required by the law for such works) and to carry out the respective works.

By a decision of the Bucharest Second District Court of 21 June 2018 the applicant's action was allowed. The first instance court found, on the basis of an expert report, that the property was in an advanced state of degradation and revealed a serious risk of collapse, therefore being in real and urgent need of consolidation; it further considered that in its capacity as authority in charge of reducing seismic risks, but also as co-owner of the endangered building, the Municipality should have given its consent and should have initiated, along with the other co-owners, all necessary works for the upkeep of the building. The court considered that the prolonged refusal to do so was abusive; also, the fact that the two apartments belonging to the Municipality continued to be the object of restitution proceedings was by the latter's own fault, as it was bound, as per the law, to decide on such restitution claims within sixty days as of the day of notice; nevertheless, the restitution proceedings had been pending since 2001 (respectively 2015). In any event, the obligation to maintain the property belonged to the one who was in possession, namely, until further decision on the ownership, to the Municipality. The court also held that the applicant was entitled to carry out, at his own expense as well as at the expense of the co-owner, all the necessary works of consolidation and major repairs as outlined in the expert report.

By a final decision of the Bucharest County Court of 17 December 2018 (notified to the applicant on 24 June 2019), the appeal lodged by the Municipality was allowed and the applicant's action was rejected, on the grounds that the refusal of the Municipality did not amount to an abuse of right. The court found that the necessary consent could not be given until several preliminary steps had been taken. Those steps were enumerated in Government Decision no. 1364/2001 approving the methodology of

application of the Government Ordinance no. 20/1994 setting out certain measures to reduce the seismic risk of existing buildings, and they included: the carrying out of an expert report; the approval by the owners to initiate the works; the carrying out of the project for such works and their execution. For each step, the approval by the public procurement authority was needed; the applicant could not circumvent the public procurement procedure by having recourse to the general law (Civil Code).

QUESTIONS TO THE PARTIES

1. Has there been a violation of Article 1 of Protocol No. 1 to the Convention? In that connection, was there an interference with the applicant's right to the peaceful enjoyment of his possession in the circumstances of the present case? If so, does such interference consist of the public authority's refusal to grant consent for the works necessary to maintain the building? Does it consist of the domestic court's denial to override such lack of consent? Does it consist of any other action or failure to act of the domestic authorities involved in dealing with the applicant's claims (see, *mutatis mutandis*, *Plechanow v. Poland*, no. 22279/04, §§ 99-100, 7 July 2009, and *Kurşun v. Turkey*, no. 22677/10, § 114, 30 October 2018)?

Was the interference in question in accordance with the conditions provided for by law, within the meaning of Article 1 of Protocol No. 1, and did it strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the applicant's fundamental rights?

2. Did the applicant have a fair hearing in the determination of his civil rights and obligations, in accordance with Article 6 § 1 of the Convention? In particular, was the principle of adversarial proceedings respected as regards the dismissal of the applicant's appeal on account of legal arguments relied on by the appellate court in its reasoning (in particular Government Decision no. 1364/2001) which had not been discussed in adversarial proceedings (see *Vegotex International S.A. v. Belgium* [GC], no. 49812/09, §§ 135-36, 3 November 2022)?

GRIGORESCU v. ROMANIA no. 14142/23

Article 2 – effective investigation into death after being hit by a car; promptness

Lodged on 21 March 2023

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns alleged ineffective investigation into the death on 6 July 2015 of the applicant's twelve years old son, who was hit by a car on a street near his home.

Soon after, an investigation against the driver was opened by the police and discontinued by the prosecutor's office at two levels of jurisdiction in January and February 2019. After the Bălcești District Court annulled that decision in May 2019, the investigation was again discontinued by the prosecutor on 31 May 2022, confirmed by the Bălcești District Court on 28 December 2022 (decision served on the applicant on 2 February 2023). On the basis of admitted evidence (three expert reports and several witnesses' statements) it was established that notwithstanding the fact that the driver was driving, at the time of accident, at excessive speed (around 65 km/h, exceeding the legal speed limit of 50 km/h), the speed at which the impact could have been avoided was around 38 km/h. The domestic authorities therefore found that notwithstanding the driver's conduct, he had not caused the accident which would have occurred even if the speed had been below 50 km/h. Accordingly, it held that the victim, who had

ran while crossing the street at a place that had not been marked as a crosswalk, bore the entire responsibility for the accident.

The applicant complains under Article 6 of the Convention about the outcome, as well as the length and alleged shortcomings in the investigation, which gave no consideration to a question that she had raised, namely whether the victim would have died had the speed of the car been 50 km/h or less.

QUESTIONS TO THE PARTIES

1. Having regard to the fact that the Court is the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018) and having regard to the State's duty to safeguard the right to life (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §§ 157-171, 25 June 2019), was the investigation in the present case by the domestic authorities in breach of Article 2 of the Convention? In particular, did the investigation address the issue whether the death would have been avoided if the driver had driven at a speed of 50 km/h or less?

2. Did the investigation by the domestic authorities satisfy the requirement of promptness under Article 2 of the Convention? In particular, was the lapse of three and a half years between the accident, in July 2015, and the first prosecutorial decision, in January 2019, excessive? Were there any reasons for the long periods in which no investigation measures seem to have been undertaken, such as the period between May 2019, when the first prosecutor decision to discontinue the case was quashed in court, and November 2021 when an additional expert report was produced?

TROFIM v. ROMANIA (no. 15979/22)

Article 3 – Inhuman or degrading treatment by police; excessive force; effective investigation

Lodged on 14 March 2022

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the alleged use of excessive force against the applicant by the police and the failure of the domestic authorities to carry out an effective investigation into his allegation of ill-treatment.

Relying on Article 3 of the Convention under its both heads, substantive and procedural, the applicant complains that he was unlawfully assaulted by a police officer and subjected to inhuman and degrading treatment at the police station where he was taken on 28 July 2019. He also claims that the ensuing criminal investigation conducted by the authorities was superficial and ignored relevant evidence. He alleges in particular that the prosecutor's decision to terminate the investigation, upheld by a final decision rendered on 10 November 2021 by the Tulcea District Court, was based solely on the police officers' statements, who were present at the incident and at the police station, which were not corroborated by other evidence proposed by him, such as other eyewitnesses to the incident, a medical certificate and a video-recording of the incident.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment by police, in breach of Article 3 of the Convention on 28 July 2019? In particular, was excessive force used against the applicant?

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?

NICOLAE v. ROMANIA (no. 16040/20)

Article 6 § 1 – appellate court's interpretation of the domestic procedural rules; practical and effective right of access to a court

Lodged on 16 March 2020

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's lack of access to a court, in so far as her arguments on the merits of the case have not been examined by the appellate court.

On 5 March 2005 the applicant concluded a credit contract with a lending company for an amount of 3,675.90 Romanian lei (RON, approximately 1,025 euros (EUR)) and she was granted a credit card; the reimbursement period was agreed to five years, the payment being made in sixty monthly instalments. The applicant claims to have reimbursed the whole amount, the last payment being made on an unspecified date in 2010.

In 2017 forced execution proceedings were initiated against her based on the 2005 credit contract. The amount allegedly due by the applicant was of 5,115.62 RON (approximately EUR 1,140), of which 2,664.44 RON was the main debt, the remainder of the amount including interest, execution costs and other bank fees.

The applicant challenged these proceedings. As a preliminary objection, she argued that the right to initiate forced execution proceedings was time-barred, because the term of three years of the statute of limitations had started to run in 2010, when she had made the final payment, and had thus ended in 2013; on the merits, she alleged that she had paid all due amounts by 2010.

On 29 November 2018 the Pitești District Court allowed the preliminary objection, as raised by the applicant.

The defendant appealed, arguing against the admissibility of the preliminary objection allowed by the first instance court. It submitted that the term for the statute of limitations started to run in 2015, in so far as the credit contract was renewable for the same period as the one initially agreed, unless the debtor expressly denounced such automatic renewal.

In reply, the applicant reiterated her defence that she had already paid the due amounts.

On 16 September 2019 the Argeș County Court allowed the appeal and found that the right to claim forced enforcement had not been time barred, as the credit contract had been automatically and successively renewed, twice, each time for sixty instalments, considering that the applicant had not duly notified that she opposed such renewal. It also held that it was not bound to examine the case any further, in view of the fact that the appeal had only challenged the decision to allow the preliminary objection. No reply was given to the applicant's arguments that she had fully paid the debt in 2010. The challenge to the execution proceedings was dismissed as ill-founded.

QUESTIONS TO THE PARTIES

Has the applicant's right of access to a court provided for in Article 6 § 1 of the Convention been disproportionately restricted by the judgment of 16 September 2019? In particular, has the appellate court's interpretation of the domestic procedural rules, which prevented the applicant's action being examined on the merits, secured her a practical and effective right of access to a court (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 76-78 and 97, 5 April 2018)?

The parties are invited to submit copies of all documents related to the enforcement proceedings.

VLAD v. ROMANIA (no. 21693/20)

Article 35 § 3 – Sanction imposed on the applicant on account of her participation in the protest

Article 6 § 1 and Article 6 § 2 – Fair hearing; taking into account evidence; right to be presumed innocent

Article 10 § 1 and/or Article 11 § 1 – Interference

Lodged on 15 April 2020

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The applicant describes herself as an active participant in demonstrations against actions taken by the Government or other public institutions, and as a supporter of a non-governmental organisation promoting transparency and accountability in the manner public institutions work. Her application concerns administrative offence proceedings related to her participation in a public gathering in front of the Ministry of Internal Affairs on 31 July 2018. The gathering was called to protest against the alleged unlawful manner in which the Romanian Gendarmerie had fined peaceful protesters for their participation in various public protests against the Government held in 2017 and 2018. On 1 August 2018 the Gendarmerie produced a report and fined the applicant on the grounds that she had participated in a gathering undeclared to the authorities, refused to comply with gendarmes' instructions to leave and shouted slogans against the ruling party. By a final judgment of 15 October 2018 the Bucharest County Court found the applicant liable for participating in an undeclared gathering and for refusing to comply with the gendarmes' instructions to leave, replaced the fine by a warning, and dismissed her arguments that any sanction imposed on her violated her rights to freedom of expression and peaceful assembly. The court held that the applicant had not rebutted the facts noted in the above-mentioned Gendarmerie report, which were confirmed with evidence adduced by the authorities, which served as the basis for the courts' findings and the sanction imposed. Moreover, the sanction was lawful because the applicant had participated in an undeclared gathering. Furthermore, without referring to any evidentiary material, the court held that it could be presumed that by imposing it the authorities sought to organise the traffic in the area and to protect the protesters and the bystanders. Lastly, the court held that the warning was a proportionate sanction in the circumstances.

Relying on Article 6 of the Convention, the applicant complained that the impugned proceedings were unfair and violated her right to be presumed innocent. She alleged that the County Court, acting with bias and ignoring the evidence adduced by her, had reversed the burden of proof requiring her to prove her innocence. Relying on Articles 10 and 11 of the Convention, the applicant complained that the County Court's judgment of 15 October 2018 had violated her rights to freedom of expression and peaceful assembly and that the reasons given had not been relevant and sufficient.

QUESTIONS TO THE PARTIES

1. In view of the sanction imposed on the applicant on account of her participation in the protest of 31 July 2018, can the applicant be said to have suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention (compare *Sylka v. Poland* (dec.), no. 19219/07, §§ 28-38, 3 June 2014, and *Obote v. Russia*, no. 58954/09, § 31, 19 November 2019)?

2. If so, did the applicant have a fair hearing in the determination of the "criminal" charge against her, in accordance with Article 6 § 1 of the Convention? In particular, was the applicant's case dealt with by an impartial tribunal which took into account the evidence adduced by her and respected her right to be presumed innocent guaranteed by Article 6 § 2 of the Convention (see *Telfner v. Austria*, no. 33501/96, §§ 15-19, 20 March 2001)?

3. Has there been an interference with the applicant's right to freedom of expression and/or peaceful assembly within the meaning of Article 10 § 1 and/or Article 11 § 1 of the Convention?

If so, was that interference justified under Article 10 § 2 and/or Article 11 § 2 of the Convention?

GAVRILĂ v. ROMANIA (no. 2424/22)*

Article 3 – Inhumane and degrading treatment; prison; effective investigation

Lodged on 2 February 2022

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT-MATTER OF THE CASE

The application concerns, from the point of view of Article 3 of the Convention, the ill-treatment to which the applicant, detained in Tulcea prison, was allegedly subjected on 12 December 2017 by the guards at that prison, and the failure to carry out an effective investigation into that ill-treatment.

On 5 January 2018 the applicant lodged a complaint against the guards, whom he accused of the ill-treatment. He argued that, according to the conclusions of the forensic examination that had taken place on 15 December 2017, he had been the victim of blows and injuries requiring six to seven days of medical treatment. The investigation is still pending before the domestic judicial authorities.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected, in breach of Article 3 of the Convention, to inhuman or degrading treatment on 12 December 2017 in Tulcea prison?

2. Having regard to the procedural protection against inhuman or degrading treatment (see paragraph 131 of the Labita v. Italy [GC] judgment, no. 26772/95, ECHR 2000-IV), did the investigation carried out in the present case by the domestic authorities satisfy the requirements of Article 3 of the Convention?

GOIA v. ROMANIA (no. 27673/19)

Failure of the domestic courts to render a decision in respect of civil claims lodged within a set of criminal proceedings

Article 35 § 1 – exhaustion of effective domestic remedies

Article 6 § 1 – access to court; fair hearing; proper examination of submissions; decision properly reasoned

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The case concerns the alleged failure of the domestic courts to render a decision in respect of civil claims lodged within a set of criminal proceedings initiated against the applicant.

At the first-instance level, the applicant was convicted for accessory to attempted murder and to bodily injury and sentenced to 5 years and 2 months' imprisonment. He was ordered to pay damages to the hospital, jointly with other co-defendants in relation to the attempted murder offence, and solely, in relation to the bodily injury offence.

At the appeal stage, the victim of the bodily injury offence withdrew his prior complaint against the applicant. The latter argued that the criminal proceedings should be discontinued, and he should not be ordered to pay any damages to the hospital, because the prior complaint had been withdrawn.

By a final decision of 21 February 2019 the Cluj Court of Appeal acknowledged the discontinuance of the charges of bodily injury since the prior complaint of the victim was a prerequisite for the pursuing of criminal proceedings for this offence, and upheld the conviction for accessory to attempted murder. No consideration was made in the Court of Appeal's reasoning in so far as the civil claims were concerned with the exception of the operative part of the judgment, which stated that the remaining provisions of the decision adopted by the first-instance court were upheld.

Relying on Article 6 § 1 of the Convention, the applicant complained that the Cluj Court of Appeal had failed to render a decision in respect of his civil obligations on account of the bodily injury offence, remaining under the obligation to pay damages to the hospital, as per the first-instance court's decision. He claimed that, following the withdrawal of the prior complaint, the domestic court should have either dismissed the civil claims in this respect or, according to the domestic law, leave them open for decision by a civil court. Lastly, he asserted that he had not had any available remedy in this respect.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies, as required by Article 35 § 1 of the Convention? In particular, in so far as he complained about the Cluj Court of Appeal's omission to examine the civil claims he had made in the criminal proceedings, were there any effective remedy available to the applicant? Was a request for review under Article 453 (2) of the Criminal Procedure Code and/or Article 509 (1) of the Civil Procedure Code an effective remedy?

2. Did the applicant have access to a court for the determination of his civil rights and obligations, and if so, did he have a fair hearing, in accordance with Article 6 § 1 of the Convention? In particular, having regard to the domestic courts' duty to conduct a proper examination of the parties' submissions (see, for example, *Hiro Balani v. Spain*, no. 18064/91, 9 December 1994, §§ 27-28, Series A no. 303-B, *Perez*

v. France [GC], no. 47287/99, §§ 80-82, ECHR 2004 I, and *Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine*, no. 11161/08, § 84, 14 January 2021), did the Cluj Court of Appeal render a decision in respect of the applicant's civil obligations related to the bodily injury offence? In the affirmative, was the decision properly reasoned?

CUCU v. ROMANIA and 3 other applications (no. 28140/20)

(see list appended)

Article 2 – positive obligations; state-owned mining company; real and immediate risk to lives of applicants (employees; work accident); legislation and administrative regulation concerning safety and health at work; adequacy and promptness of investigation by domestic authorities; legal remedies to secure legal means capable of establishing facts, holding accountable and provide appropriate redress

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The applications concern the death of the applicants' husbands, employees of a State-owned coal mining company, in a collective work accident which occurred on 5 February 2011.

Criminal proceedings were instituted against four employees of the mining company for non-compliance with the safety and health regulations at work and negligent killing.

The applicants joined civil proceedings to the criminal proceedings seeking compensation for their pecuniary and non-pecuniary damage.

By a final decision of 20 December 2019 (communicated to the applicants one year and two months after its delivery – on 14 January 2021), the Alba Iulia Court of Appeal acquitted the employees of the mining company holding that due to the complexity of the investigation it was impossible to identify those responsible for the accident. It also dismissed the applicants' civil claims.

The applicants complain, under both, the substantive and procedural limbs of Article 2 of the Convention, about the authorities' failure to protect their husbands' lives and their failure to conduct a proper and effective investigation into the cause of the collective work accident.

QUESTIONS TO THE PARTIES

1. Was the applicants' right to life guaranteed by Article 2 of the Convention breached in the present case?

In particular, having regard to the positive obligations imposed on the State by this provision (*Öneryıldız v. Turkey* [GC], no. 48939/99, §§ 89-90, ECHR 2004-XII; and *Binişan v. Romania*, no. 39438/05, §§ 71-75, 20 May 2014), did the State-owned mining company know or ought to have known of the existence of a real and immediate risk and, if so, did it do all that could have been required of it to prevent the lives of the applicants from being avoidably put at risk? Were the existent legislative and administrative regulations concerning safety and health at work implemented effectively?

2. Did the investigation conducted by the domestic authorities satisfy the conditions of adequacy and promptness as required under the procedural head of Article 2 (*Nicolae Virgiliu Tănase v. Romania* [GC],

no. 41720/13, §§ 164-171, 25 June 2019)? Did the available legal remedies, taken together, and as provided for in law and applied in practice, secure legal means capable of establishing the facts, holding accountable those at fault and providing appropriate redress to the victim?

Appendix
List of cases

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
1.	28140/20	Cucu v. Romania	12/06/2020	Marinela CUCU 1972 Lupeni Romanian
2.	28494/20	Borc-Hici v. Romania	15/06/2020	Lucreţia BORC-HICI 1973 Uricani Romanian
3.	29039/20	Stoi v. Romania	15/06/2020	Mihaela STOI 1975 Uricani Romanian
4.	30091/20	Nădrag v. Romania	12/06/2020	Alina-Claudia NĂDRAG 1987 Uricani Romanian

TANC v. ROMANIA (no. 33249/20)

Article 1 of Protocol No. 1 – interferences based on order to pay damages to the Environment Fund Office on the basis of legal provisions which were no longer in force

Lodged on 24 July 2020

Communicated on 12 November 2024

Published 2 December

SUBJECT MATTER OF THE CASE

The application concerns criminal proceedings instituted against the applicant for fraud, forgery and use of forged documents. Between 2009 and 2010, he assisted and represented before the tax authorities

natural and legal persons intending to register imported motor vehicles in Romania. In this context, he prepared the documents for the payment of the pollution taxes based on Emergency Ordinance no. 50/2008, which established the obligation to pay a pollution tax on motor vehicles imported into Romania from other Member States. The sums paid as pollution taxes went into the account of the Environment Fund Office, which joined the criminal proceedings as a civil party.

By a final decision of 31 May 2018, the Oradea Court of Appeal found the applicant guilty and ordered him to pay damages to the Environment Fund Office amounting to 325,451 Romanian lei (the equivalent of approximately 70,000 euros), which represented the damages allegedly caused to the tax authorities by forging and using forged documents in order to decrease the amounts paid as pollution taxes by 49 taxpayers.

The applicant complains under Article 1 of Protocol No. 1 that the damages he was ordered to pay were unlawful, as Emergency Ordinance no. 50/2008 had been found to be incompatible with the EU law by the Court of Justice of the European Union and subsequently repealed by Emergency Ordinance no. 52/2017, which provides for the full reimbursement of the sums paid by way of the pollution tax on motor vehicles.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1 on account of him being ordered to pay damages to the Environment Fund Office on the basis of legal provisions which were no longer in force?

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

RUSU v. ROMANIA (no. 38382/19)

Article 1 of Protocol 1 – re-assessment of pension rights and the demand for the retrospective repayment of an important sum of money

Lodged on 4 July 2019

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the review of the applicant's old-age pension rights five years after they have been assessed and a demand for retrospective repayment of money mistakenly paid to him.

In 2012 the applicant attained the retirement age and started receiving a monthly pension of 1,150 Romanian Lei (RON) (the equivalent of some 260 Euro (EUR)). In 2017 the applicant was informed by the local pension authority that there had been a mistake at the time of assessment of his pension rights due to the wrong application of the pension legislation by the authority. In particular, a period during which he had worked in a collective farm ("*CAP*"), had to be excluded from the assessment because he had not been an ordinary member of the farm but an accountant. As a result, his monthly pension was to be reduced by approximately thirty percent, and he had to repay the State the money mistakenly paid to him over the last three years in an amount of RON 12,749 (the equivalent of some EUR 3,000).

The applicant challenged the above decision and was successful at first instance. However, the Court of Appeal reversed the judgment of the first instance court and ruled in favour of the pension authority. In

so doing, the court did not find any fault on the part of the applicant in relation to the mistake produced at the time of assessment of his pension rights by the pension authority.

The applicant complains that the re-assessment of his pension rights five years later, as well as the demand for the retrospective repayment of an important sum of money received breached his rights under Article 1 of Protocol No. 1 to the Convention.

QUESTION TO THE PARTIES

Did the re-assessment of the applicant's pension rights and the demand for the retrospective repayment of an important sum of money amount to a deprivation of his possessions within the meaning of Article 1 of Protocol No. 1? If so, was the interference justified under this provision (*Béláné Nagy v. Hungary* [GC], no. 53080/13, 13 December 2016; and *Čakarević v. Croatia*, no. 48921/13, 26 April 2018)?

A.M.P. v. ROMANIA (no. 50787/22)*

Article 8 – Refusal to give legal recognition to the applicant's claimed gender identity; legal framework for legal recognition of gender clear and predictable

Article 6 § 1 – fair hearing; adversarial principle; opportunity to comment effectively on evidence (forensic report)

Lodged on 20 October 2022

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT OF THE CASE

The application concerns the Romanian courts' refusal to legally recognise the gender identity of the applicant, who was assigned female sex at birth, from the point of view of Articles 6, 8 and 14 of the Convention.

As his female birth identity did not correspond to his male psychological and social identity, after being diagnosed in 2017 with a gender identity disorder (transsexualism syndrome), the applicant began medical procedures (psychological and psychiatric counselling as well as hormone treatment) with a view to gender conversion. In 2018, he underwent a double mastectomy.

In 2020, on the basis of documents attesting to his diagnosis and the medical treatments he had undergone, the claimant brought an action before the Romanian courts requesting that his gender be changed from female to male in his identity documents and that his first name be changed.

In a judgment of 18 November 2020, the Timişoara Court of First Instance dismissed the claim on the grounds that, although the claimant had sought to bring his real life into line with his civil status documents, the granting of his claim would in reality have led to a discrepancy between the 'biological reality' and the new civil status that would be attested by the new official documents.

In a final judgment of 13 April 2022 (finalised on 21 June 2022), the County Court of Timiş dismissed the applicant's appeal on the following grounds. The court noted that, according to the forensic psychiatric report requested in order to verify the diagnosis relied on by the applicant, he did indeed suffer from a gender identity disorder, but also from a borderline personality disorder. He noted that the doctors recommended that the claimant undergo individual psychotherapy over the long term, to enable him to gain a better understanding of his claimed gender and to achieve a level of stability,

acceptance and satisfaction with his gender, whether or not it was in accordance with his biological sex, and even beyond any binary framework. On the basis of these findings and the definition of borderline personality disorder, the court held that it had not been established that the male gender was the one to which the claimant felt he comfortably and naturally belonged. The court dismissed the claim without hearing the applicant or the doctors who had drawn up the expert report referred to above.

Invoking Articles 3 and 8 of the Convention, taken alone and in conjunction with Article 14 of the Convention, the applicant criticised the Romanian State for failing to establish a clear and predictable legal framework for the legal recognition of gender identity. Moreover, in his view, the judicial nature of the procedure that had to be followed with a view to such recognition constituted in itself a violation of his right to self-determination. He emphasised that, in the present case, his own definition of gender had been replaced by the judges' expression of will, without the applicant or the experts being heard by the appeal court. In his view, the main reason for rejecting his application was the lack of correspondence between the gender he claimed and his biological sex.

On the basis of the same articles, the applicant complained that he had been exposed to secondary victimisation, on the grounds that he had been subjected to a humiliating psychiatric forensic examination that was not governed by standards and a clear and transparent procedure, even though the diagnosis of gender identity disorder had been removed from the International Catalogue of Psychiatric Diseases by the World Health Organisation in May 2019.

In addition, he denounced as discriminatory the statements, based on prejudice against transgender people, made during the legal proceedings before the Court of First Instance by the defendant, namely the mayor of the town in which he lives, and by the Court of First Instance.

Lastly, he relied on Article 6 of the Convention and complained that he had not had a fair trial, since his claim had been rejected on the basis of a diagnosis of borderline personality disorder, which had not been discussed during the proceedings. In these circumstances, he was unable to make any submissions in this regard.

QUESTIONS TO THE PARTIES

1. Did the national courts' refusal to give legal recognition to the applicant's claimed gender identity constitute a violation of his right to respect for his private life guaranteed by Article 8 of the Convention (X and Y v. Romania, nos. 2145/16 and 20607/16, 19 January 2021) and discriminatory treatment contrary to Article 14 of the Convention?

2. In particular, is the Romanian legal framework for the legal recognition of gender clear and predictable for persons wishing to change their gender/sex and first names on their official documents (X and Y v. Romania, nos. 2145/16 and 20607/16, 19 January 2021)?

3. Was the applicant's challenge to his civil rights heard fairly and in accordance with the adversarial principle, as required by Article 6 § 1 of the Convention? In particular, was the applicant given the opportunity to comment effectively on the key piece of evidence in the present case, namely the forensic report in the file?

ANTONESCU v. ROMANIA (no. 5183/24)

Criminal investigation in respect of bodily injuries inflicted on the applicant by a private individual.-

Article 3 – investigation by domestic authorities; promptness; compliance of prosecutorial authorities with court order

Lodged on 9 February 2024

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns a criminal investigation in respect of bodily injuries inflicted on the applicant by a private individual.

The applicant was assaulted on 17 January 2016 by an unknown man, as a result of which he sustained a fracture on his leg and multiple bruises. A forensic expert examination determined that his recovery would require around 80 days of medical care. Soon after the incident, the police informed him verbally that they had identified the assailant, but then the investigation stalled. The applicant contacted the police and prosecutor repeatedly, to no avail. On 13 February 2019 the Bucharest District Court concluded that the investigation was lengthy and ordered, also on 15 November 2019, that the prosecutor conclude the investigation within a time-limit set. On 23 July 2020 the prosecutor lodged an indictment, which a pre-trial judge returned with an order that certain irregularities in the investigation be corrected. After the prosecutor had re-submitted the case to the court, the trial was discontinued on 4 April 2023 because the statute of limitations had expired. On 17 October 2023 the Bucharest Court of Appeal confirmed the discontinuation of the criminal trial. In the same decision, the court ordered the alleged perpetrator to pay monetary compensation to the applicant for the injuries sustained.

The applicant alleges a breach of Article 6 of the Convention complaining that the authorities did not effectively and promptly investigate the assault.

QUESTIONS TO THE PARTIES

1. Since the Court is the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), and having regard to the procedural protection from inhuman or degrading treatment (see *Isayeva v. Ukraine*, no. 35523/06, §§ 46-47, 4 December 2018, and *Beganović v. Croatia*, no. 46423/06, §§ 64-87, 25 June 2009), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention? In particular,

(a) Did the investigation by the domestic authorities satisfy the requirement of promptness under Article 3 of the Convention? In particular, was the lapse of more than four years between the assault against the applicant on 17 January 2016 and the indictment of 23 July 2020, excessive?

(b) Have the prosecutorial authorities complied with the orders of 13 February and 15 November 2019 of the Bucharest District Court?

2. The parties are invited to comment on the impact of the civil compensation awarded by the domestic court on the applicant's victim status, as regards the complaint of ineffective investigation.

SANDU v. ROMANIA (no. 64703/19)

Withdrawal certificate of security agent of a forest ranger

Article 6 § 1 and 2 – rights to be presumed innocent; fair hearing

Lodged on 4 December 2019

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The applicant was a forest ranger and was required to possess a certificate of security agent ("security certificate") to be able to work. The application concerns the decision of the national authorities to withdraw the applicant's security certificate because a criminal investigation had been opened against him by the public prosecutor's office on charges of work-related offences committed by him, namely accessory to unlawful tree cutting and steeling trees cut. By a final judgment of 4 June 2019 the Iași Court of Appeal dismissed the applicant's challenge against the withdrawal of his security certificate holding that, *inter alia*, the results of the investigation conducted by the prosecutor's office until then entailed that the applicant had committed the work-related offences. On 13 December 2023 the prosecutor's office closed the investigation against the applicant because of lack of evidence that he committed the offences.

Relying on Article 6 §§ 1 and 2 of the Convention the applicant alleged that the administrative proceedings were unfair because the Court of Appeal had violated his right to be presumed innocent. In particular, the court in question found the applicant guilty of the offences of which he was charged even though the criminal proceedings against him were still pending before the relevant authorities at the time.

QUESTION TO THE PARTIES

Was the applicant's rights to be presumed innocent and to a fair hearing protected by Article 6 §§ 1 and 2 of the Convention respected in the present case given that the Iași Court of Appeal found in its final judgment of 4 June 2019 that the applicant committed the offences of which he was charged?

SHALINA v. RUSSIA (no. 17908/20)

(see table appended)

Article 5 § 1 – unlawful detention which are the subject of well-established case law of the Court

Published 2 December 2024

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the application on 7 November 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the application should be given to the Government of Russia.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The application concern complaints raised under Article 5 § 1 of the Convention relating to unlawful detention (deprivation of liberty) which are the subject of well-established case law of the Court (see *Fortalnov and Others v. Russia,* nos. 7077/06 and 12 others, 26 June 2018, *Rozhkov v. Russia (no. 2),* no. 38898/04, §§ 91-96, 31 January 2017, *Butkevich v. Russia,* no. 5865/07, § 67, 13 February 2018, *Kuptsov and Kuptsova v. Russia,* no. 6110/03, § 81, 3 March 2011 and *Tsvetkova and Others v. Russia,* nos. 54381/08 and 5 others, §§ 121-22, 10 April 2018).

APPENDIX – STATEMENT OF FACTS

Application raising complaints under Article 5 § 1 of the Convention

(unlawful detention (deprivation of liberty)) – see communications through link

ZAKHAROV v. RUSSIA and 32 other applications (no. 3292/24)

(see table appended)

Article 10 §1 – various restrictions on the right to freedom of expression which are the subject of well-established case law

Published 2 December 2024

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the applications on 7 November 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the applications should be given to the Government of Russia.

In the applications marked by an asterisk, other complaints were raised. This part of the applications has been struck out of the Court's list of cases or declared inadmissible by the Court, sitting in a single-judge formation, assisted by a rapporteur as provided for in Article 24 § 2 of the Convention.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The applications concern complaints raised under Article 10 of the Convention relating to various restrictions on the right to freedom of expression which are the subject of well-established case law of the Court (see the appendix for relevant case-law authorities).

APPENDIX – STATEMENT OF FACTS

List of applications raising complaints under Article 10 § 1 of the Convention and associated complaints – see communications through link

SOKOLOV AND OTHERS v. RUSSIA and 7 other applications (no. 1488/16)

(see table appended)

Article 10 §1 – various restrictions on the right to freedom of expression which are the subject of well-established case law

Published 2 December 2024

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the applications on 7 November 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the applications should be given to the Government of Russia.

In the applications marked by an asterisk, other complaints were raised. This part of the applications has been struck out of the Court's list of cases or declared inadmissible by the Court, sitting in a single-judge formation, assisted by a rapporteur as provided for in Article 24 § 2 of the Convention.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The applications concern complaints raised under Article 10 §1 of the Convention relating to various restrictions on the right to freedom of expression which are the subject of well-established case law of the Court (see *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, 11 May 2021; *Taganrog LRO and Others v. Russia*, nos. 32401/10 and 19 others, 7 June 2022; *Dmitriyevskiy v. Russia*, no. 42168/06, § 113, 3 October 2017; *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, 23 June 2020; and *Savva Terentyev v. Russia*, no. 10692/09, 28 August 2018)

APPENDIX – STATEMENT OF FACTS

List of applications raising complaints under Article 10 §1 of the Convention

(various restrictions on the right to freedom of expression) – see communications through link

KREPKIN v. RUSSIA and 5 other applications - no. 26009/18

(see table appended)

Article 11 – disproportionate measures against organisers and participants of public assemblies which are the subject of well-established case law

Published 2 December 2024

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the applications on 7 November 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the applications should be given to the Government of Russia.

In the applications marked by an asterisk, other complaints were raised. This part of the applications has been struck out of the Court's list of cases or declared inadmissible by the Court, sitting in a single-judge formation, assisted by a rapporteur as provided for in Article 24 § 2 of the Convention.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The applications concern complaints raised under Article 11 of the Convention relating to disproportionate measures against organisers and participants of public assemblies which are the subject of well-established case law of the Court (see *Frumkin v. Russia,* no. 74568/12, ECHR 2016 (extracts), *Navalnyy and Yashin v. Russia,* no. 76204/11, 4 December 2014 and *Kasparov and Others v. Russia,* no. 21613/07, 3 October 2013).

APPENDIX – STATEMENT OF FACTS

List of applications raising complaints under Article 11 of the Convention

(disproportionate measures against organisers and participants of public assemblies) – see communications through link

SOKOLOV AND OTHERS v. RUSSIA and 7 other applications (no. 1488/16)

(see table appended)

Article 10 § 1 – various restrictions on the right to freedom of expression

PROCEDURAL INFORMATION

Following a preliminary examination of the admissibility of the applications on 7 November 2024, the Court decided, under Rule 54 § 2 (b) of the Rules of Court, that notice of the applications should be given to the Government of Russia.

In the applications marked by an asterisk, other complaints were raised. This part of the applications has been struck out of the Court's list of cases or declared inadmissible by the Court, sitting in a single-judge formation, assisted by a rapporteur as provided for in Article 24 § 2 of the Convention.

In the enclosed table, whenever an applicant is referred to using initials, this indicates that the Court has authorised anonymity for that person, whose identity will not be disclosed to the public (Rule 47 § 4).

For further information on the procedure following communication of an application brought against Russia, subject of well-established case law of the Court, please refer to the Court's website.

SUBJECT MATTER

The applications concern complaints raised under Article 10 §1 of the Convention relating to various restrictions on the right to freedom of expression which are the subject of well-established case law of the Court (see *RID Novaya Gazeta and ZAO Novaya Gazeta v. Russia*, no. 44561/11, 11 May 2021; *Taganrog LRO and Others v. Russia*, nos. 32401/10 and 19 others, 7 June 2022; *Dmitriyevskiy v. Russia*, no. 42168/06, § 113, 3 October 2017; *OOO Flavus and Others v. Russia*, nos. 12468/15 and 2 others, 23 June 2020; and *Savva Terentyev v. Russia*, no. 10692/09, 28 August 2018).

APPENDIX – STATEMENT OF FACTS

List of applications raising complaints under Article 10 §1 of the Convention

(various restrictions on the right to freedom of expression) – see communication through link

SAMKO AND TAMÁŠ v. SLOVAKIA (no. 5887/23)

Article 6 § 1 and Article 14 – statements about the applicants' ethnic origin made by the appellate; discrimination on account of their ethnic origin; reasonable and objective justification

Article 6 § 1 – impartiality

Lodged on 25 January 2023

Communicated on 6 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

The applicants are of Roma origin. The first-instance court sentenced them to five years' imprisonment for causing serious bodily harm, vandalism, and property damage. The appellate court overturned the judgment and sentenced the applicants to seven years' imprisonment on account of the balance between the extenuating and the aggravating circumstances and due to the requirements of general deterrence. In this regard the appellate court stated:

"... it is known for this ethnic group that in road accidents caused by anybody, in particular when in their community, where the neighbours or kin of the injured party are present, a driver of a vehicle cannot stop to provide first aid to those injured without risking danger to his life and health, as it was in this case, because the neighbours or kin of the injured party react aggressively and attack all passing vehicles regardless of who caused the accident or who is actually injured... Every sentence imposed for such and similar conduct, as committed by the applicants, must serve as a warning, although when sober the applicants allegedly behave decently and there are no reprimands as to their behaviour by their neighbours, the municipality, at their domicile or workplace etc."

The Supreme Court upheld the appellate court's decision. While it considered the impugned statement "unlucky" it found that it had been meant to underline the need for general deterrence in relation to the specific conduct. The Constitutional Court dismissed the applicants' complaint about the unfair and discriminatory sentence as manifestly ill-founded (I. ÚS 628/2022). It stated that the applicants had failed to prove the difference in treatment compared to perpetrators of the same crimes who were not of Roma origin and the impugned remarks should be understood within the notion of general deterrence. Moreover, the applicants' sentence was lower than mid-range for the crimes concerned and the courts duly considered all extenuating factors.

The applicants complain that they were given a more severe sentence on account of their ethnic origin and that the appellate court lacked impartiality. They complain under Article 14 of the Convention read together with Article 6 § 1 of the Convention.

QUESTIONS TO THE PARTIES

1. Given the statements about the applicants' ethnic origin made by the appellate court in support of the imposition of a higher sentence, have the applicants suffered discrimination on account of their ethnic origin contrary to Article 14 of the Convention read together with Article 6 § 1 of the Convention? In particular, have the domestic authorities given reasonable and objective justification for the alleged difference in treatment (see *Paraskeva Todorova v. Bulgaria*, no. 37193/07, § 36, 25 March 2010, and *mutatis mutandis Aleksandr Aleksandrov v. Russia*, no. 14431/06, §§ 21-30, 27 March 2018)?

2. Can the appellate court which heard the applicants' case be considered impartial, as required by Article 6 § 1 of the Convention (see *Ilnseher v. Germany* [GC], nos. 10211/12 and 27505/14, §§ 288-89, 4 December 2018)?

MAKRO 5 GRADNJE D.O.O. v. SLOVENIA (no. 27043/24)

Article 6 § 1 – access to court for applicant company

Article 1 of Protocol No. 1 – interference with applicant company's property rights

Lodged on 16 September 2024

Communicated on 15 November 2024

Published 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the Municipal Spatial Plan adopted by the Ankaran Municipality which was challenged by the applicant company before the administrative court in accordance with sections 58(1) and 58(2)(1) of the Spatial Management Act (SPA).

The applicant company claimed that the adopted spatial plan was unlawful in the part that concerned the change in the permitted use of the applicant company's land. While the proceedings before the administrative court were pending, the Constitutional Court adopted decision no. U-I-327/20-16 of 18 February 2022 in which it concluded that section 58 of the SPA was unconstitutional and that it had exclusive jurisdiction to rule on the constitutionality and legality of local government regulations. Accordingly, since it no longer had jurisdiction to adjudicate the dispute (the Municipal Spatial Plan

being a type of local government regulation), the administrative court dismissed the applicant company's action. Pursuant to paragraph 31 of the Constitutional Court's decision the applicant company had three months from the service of the decision of the administrative court to lodge a request for the review of constitutionality and legality of the Municipal Spatial Plan. In its timely request, the applicant company submitted that the contested Municipal Spatial Plan was unjustified, contrary to domestic law and resulted in significant financial loss. It argued that it had had legitimate expectations to build on the concerned piece of land and that the impugned measure had not pursued any public interest and had disproportionately interfered with its property rights. The Constitutional Court did not consider the merits of the applicant company's request, but, on 30 April 2024, dismissed it, finding that it did not raise an important legal question.

The applicant company complains that by adopting the Municipal Spatial Plan the Ankaran Municipality violated its rights under Article 1 of Protocol No. 1 to the Convention by changing the permitted use of its property from "building land" to "agricultural or forest land". The applicant company submits that, as a result, the value of its property has decreased by at least 1,240,250.00 euros.

The applicant company further complains that its right to a fair trial enshrined in Article 6 § 1 of the Convention was breached because it could only challenge the disputed Municipal Spatial Plan before the Constitutional Court which dismissed its claim without examining its merits.

QUESTIONS TO THE PARTIES

1. Did the applicant company have access to court for the determination of its civil rights and obligations, in accordance with Article 6 § 1 of the Convention?

2. Was the alleged interference with the applicant company's property rights on account of the contested Municipal Spatial Plan justified within the meaning of Article 1 of Protocol No. 1 to the Convention?

In particular, was the interference lawful and proportionate, regard being had to the circumstances in which it took place and the requirement that measures interfering with rights enshrined in Article 1 of Protocol No. 1 to the Convention must be accompanied by sufficient procedural guarantees against arbitrariness (see *Pintar and Others v. Slovenia*, nos. 49969/14 and 4 others, § 97, 14 September 2021)?

OVEN AND RDEČE NEBO D.O.O. v. SLOVENIA (no. 30528/24)

Article 6 § 1 – access to court

Article 1 of Protocol No. 1 – interference with property rights

Lodged on 14 October 2024

Communicated on 15 November 2024

Published 2 December 2024

SUBJECT MATTER OF THE CASE

The applicant is the sole owner of the applicant company. The application concerns the Municipal Spatial Plan adopted by the Ankaran Municipality which was challenged by the applicants before the administrative court in accordance with sections 58(1) and 58(2)(1) of the Spatial Management Act (SPA).

The applicants argued that the adopted spatial plan was unlawful in the part that changed the permitted use of their land, of which they each owned 50%. While the proceedings before the administrative court were pending, the Constitutional Court adopted decision no. U-I-327/20-16 of 18 February 2022 in which it concluded that section 58 of the SPA was unconstitutional and that it had exclusive jurisdiction to rule on the constitutionality and legality of local government regulations. Accordingly, since it no longer had jurisdiction to adjudicate the dispute (the Municipal Spatial Plan being a type of local government regulation), the administrative court dismissed the applicants' action. Pursuant to paragraph 31 of the Constitutional Court's decision the applicants had three months from the service of the decision of the administrative court to lodge a request for the review of constitutionality and legality of the Municipal Spatial Plan. In their timely request, the applicants submitted that the contested Municipal Spatial Plan was unjustified, contrary to domestic law and resulted in significant financial loss for them. They argued that they had had legitimate expectations to build on the concerned piece of land or sell it and that the impugned measure had not pursued any public interest and had disproportionately interfered with their property rights. The applicants further claimed that because their property had been *de facto* expropriated, they should have, at the very least, received compensation The Constitutional Court did not consider the merits of the applicants' request, but, on 5 June 2024, dismissed it, finding that it did not raise an important legal question.

The applicants complain that by adopting the Municipal Spatial Plan the Ankaran Municipality violated their rights under Article 1 of Protocol No. 1 to the Convention by changing the permitted use of their property from "building land" to "agricultural or forest land". They submit that, as a result, the value of their property has decreased by at least 829,593.28 euros, and that they should have therefore been compensated for their financial loss.

The applicants further complain that their right to a fair trial enshrined in Article 6 § 1 of the Convention was breached because they could only challenge the disputed Municipal Spatial Plan before the Constitutional Court which dismissed their claim without examining its merits. They also raise Article 13 in this connection.

QUESTIONS TO THE PARTIES

1. Did the applicants have access to court for the determination of their civil rights and obligations, in accordance with Article 6 § 1 of the Convention?

2. Was the alleged interference with the applicants' property rights on account of the contested Municipal Spatial Plan justified within the meaning of Article 1 of Protocol No. 1 to the Convention?

In particular, was the interference lawful and proportionate, regard being had to the circumstances in which it took place and the requirement that measures interfering with rights enshrined in Article 1 of Protocol No. 1 to the Convention must be accompanied by sufficient procedural guarantees against arbitrariness (see *Pintar and Others v. Slovenia*, nos. 49969/14 and 4 others, § 97, 14 September 2021)?

KOELLA v. SLOVENIA (no. 12482/24)

Article 6 § 1 – reasonable time; length of enforcement proceedings; effective domestic remedy as required by Article 13

Lodged on 24 April 2024

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the length of enforcement proceedings initiated by the applicant. On 4 May 2004 the first-instance court issued an order allowing enforcement of a compensation award amounting to 59,417 euros (EUR). The enforcement proceedings were subsequently discontinued as the debtor objected to the enforcement and, therefore, it was referred to litigation. On 2 June 2010 the debtor brought an action against the enforcement of his real estate which, on 26 April 2017, the first-instance court upheld. On 7 December 2017, the Celje Higher Court in part upheld the applicant's appeal and allowed enforcement against half of the real estate in question based on the court's order of 4 May 2004.

During the course of these enforcement proceedings, which are still pending, the applicant filed several acceleratory remedies under the Act on the Protection of the Right to a Trial Without Undue Delay ("the Act"), but they were rejected.

The applicant complains under Article 6 § 1 of the Convention that her right to a trial within a reasonable time has been violated. She also complains under Article 13 of the Convention that the preventive remedies available to her failed to expedite the proceedings and that she could not avail herself of the compensatory remedy since, according to the Act, such remedy can be used only after the termination of the proceedings.

QUESTIONS TO THE PARTIES

1. Was the length of the enforcement proceedings in the present case in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention (see *Jama v. Slovenia*, no. 48163/08, §§ 35-36, 19 July 2012)?

2. Did the applicant have at her disposal an effective domestic remedy for her complaint under Article 6 § 1 as required by Article 13 of the Convention (see *Jama*, cited above, §§ 45-47)?

DOĞAN v. TÜRKİYE (no. 11258/24)

Article 3 – obligation of the authorities to protect from domestic violence

Article 6 – fair hearing; criminal charge; rejection of police officers as witnesses; sufficient reasoning by the court based on main arguments of the applicant and context of cycle of domestic violence; refusal of considering self-defence plea

Article 14 – gender-based discrimination in respect to Article 3 and Article 6

Lodged on 5 April 2024

Communicated on 14 November 2024

Published 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's conviction for killing her husband, who subjected her to physical and psychological violence for a prolonged period, and against whom the applicant had secured restraining orders, some of which she later asked to be lifted.

During her criminal trial the applicant pleaded self-defence, submitting that on the night of the event her husband had forced her to go to another city and had threatened to prostitute her, and had dragged

her by the hair when she had resisted. She explained that she had picked up her husband's gun and had fired at him multiple times, in a moment of desperation and out of fear for her life. The applicant also submitted that the police had failed to protect her; they had in fact advised her to return to her husband and had used her as an informant to collect information on his illegal activities. During the course of the criminal proceedings, and in a written response to a question by the trial court in this respect, the relevant police authority disputed the allegation that they had used the applicant as an informant.

The trial court rejected the applicant's plea of self-defence, noting, *inter alia*, the absence of an imminent threat to her life and the fact that she had suffered no injuries on the night of the incident. The court, however, considered that she had been provoked by her husband, and therefore sentenced her to fifteen years of imprisonment for voluntary manslaughter.

The applicant complains under Articles 3, 6 and 13 of the Convention that the authorities failed to effectively protect her from domestic violence; that the chain of events in the broader context of the domestic violence she had suffered at the hands of her husband was insufficiently taken into account when her plea of self-defence was assessed; that her requests for the police officers who asked her to be an informant to be heard as witnesses were refused without any reason being given and that the courts gave insufficient reasons for their decision by not properly assessing the facts within the framework of Article 27 § 2 of the Criminal Code, which provides for criminal liability to be waived in certain cases of excessive self-defence.

The applicant furthermore complains under Article 14 of the Convention, in connection with the above provisions and complaints, that she was discriminated against in the treatment of her case on the basis of her gender.

QUESTIONS TO THE PARTIES

1. Having regard to the State's positive obligations under Article 3 of the Convention, did the authorities discharge their obligation to protect the applicant from domestic violence (see, *mutatis mutandis*, *Kurt v. Austria* [GC], no. 62903/15, §§ 157-160 and §§ 177-189, 15 June 2021 and *A.E. v. Bulgaria*, no. 53891/20, §§ 84-89, 23 May 2023)?

2. Did the applicant have a fair hearing in the determination of the criminal charge against her, in accordance with Article 6 of the Convention? In particular;

(a) Was the rejection by the trial court of the applicant's request to call the police officers as witnesses compatible with Articles 6 §§ 1 and 3 (d) of the Convention (see, *mutatis mutandis*, *Murtazaliyeva v. Russia* [GC], no. 36658/05, §§ 139-168, 18 December 2018)?

(b) Did the domestic courts provide sufficient reasoning for their decision to convict the applicant for voluntary manslaughter, having regard to the main arguments of the applicant and the specific context of the cycle of domestic violence suffered by the applicant? Was the refusal of those courts to consider the applicant's self-defence plea under Article 27 § 2 of the Criminal Code manifestly unreasonable for the purposes of Article 6 § 1 (see, generally, *Moreira Ferreira v. Portugal (no. 2)* [GC], no. 19867/12, §§ 83-84, 11 July 2017)?

3. Has the applicant suffered gender-based discrimination contrary to Article 14 of the Convention, read in conjunction with Articles 3 and 6 of the Convention, in respect of the authorities' acts or omissions she complains of under Articles 3 and 6 (see, among others, *A. E. v. Bulgaria*, cited above, § 119 with further references)?

EROL v. TÜRKİYE (no. 11980/23)

Article 8 and Article 8 § 2 – Interference with right to respect for his private and family life and his home; unlawful search of the applicant's house while he was detained; accordance with the law and necessity; presence of public prosecutor or two attesting witnesses during search ensured by police officers

Lodged on 15 February 2023

Communicated on 14 November 2024

Published on 6 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the allegedly unlawful search of the applicant's house while he was detained in prison in Tavşanlı. At the material time, the applicant was convicted of membership of a terrorist organisation by a final court judgment. On 2 March 2021 a search of his house, in which his wife resided, was carried out for another investigation into the same offence. According to the search report, two police officers conducted the search in the absence of a public prosecutor and without ensuring the presence of two attesting witnesses, as was required by Article 119 § 4 of the Code of Criminal Procedure.

Invoking Article 8 of the Convention, the applicant complains that the search conducted at his home was in breach of his right to respect for his private and family life.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicant's right to respect for his private and family life and his home, contrary to Article 8 of the Convention?

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

In particular, did the police officers ensure the presence of the public prosecutor or of two attesting witnesses during the search, as was required by Article 119 § 4 of the Code of Criminal Procedure (see *Budak v. Turkey*, no. 69762/12, §§ 53-59, 16 February 2021)?

ŞENGÜL v. TÜRKİYE (no. 13426/23)

Pre-trial detention in the context of a criminal investigation opened against him for membership of a terrorist organisation, namely the PKK

Article 35 § 1 – exhaustion of all effective domestic remedies in respect to Article 5

Article 5 § 1 – detention based 'reasonable suspicion'; evidence sufficient

Article 5 § 2 – informed promptly of reasons arrest and charges

Article 5 § 3 – initial and continued pre-trial detention; relevant and sufficient grounds for deprivation of liberty; length of pre-trail detention of reasonable time

Article 5 § 4 – effective remedy to speedily determine lawfulness of detention

Lodged on 24 March 2023

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

At the material time, the applicant was a member of the Executive Committee of the Peoples' Democratic Party (HDP), a left-wing pro-Kurdish political party, and an adviser to an elected member of the National Assembly for the HDP. The application concerns the applicant's pre-trial detention in the context of a criminal investigation opened against him for membership of a terrorist organisation, namely the PKK (Kurdistan Workers' Party, an illegal armed organisation).

The applicant alleges that his pre-trial detention violated Article 5 §§ 1, 2, 3 and 4 of the Convention.

QUESTIONS TO THE PARTIES

1. Did the applicant exhaust all effective domestic remedies, as required by Article 35 § 1 of the Convention, in respect of his complaints under Article 5 of the Convention?

2. Was the applicant's pre-trial detention compatible with the requirements of Article 5 § 1 of the Convention? In particular, can the applicant be considered to have been detained on the basis of a "reasonable suspicion" that he had committed an offence, within the meaning of Article 5 § 1 (c) of the Convention (see, in particular, *Fox, Campbell and Hartley v. the United Kingdom*, 30 August 1990, § 32, Series A no. 182)? Was the evidence that was available in the file at the time of the applicant's pre-trial detention sufficient to satisfy an objective observer that he may have committed the offence attributed to him (see, *mutatis mutandis*, *Mergen and Others v. Turkey*, nos. 44062/09 and 4 others, §§ 46-55, 31 May 2016, and *Yüksel and Others v. Turkey*, nos. 55835/09 and 2 others, §§ 51-60, 31 May 2016)?

3. Was the applicant informed promptly of the reasons for his arrest and of any charge against him, as required by Article 5 § 2 of the Convention (see *Döner and Others v. Turkey*, no. 29994/02, §§ 46-49, 7 March 2017)?

4. Did the magistrates who ordered the applicant's initial and continued pre-trial detention fulfil their obligation under Article 5 § 3 of the Convention to provide relevant and sufficient grounds in support of the deprivation of liberty in question? In addition, was the length of the applicant's pre-trial detention in breach of the "reasonable time" requirement under Article 5 § 3 of the Convention (see, in particular, *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, §§ 84-102, 5 July 2016)?

5. Did the applicant have at his disposal an effective remedy by which the lawfulness of his detention could be determined speedily, and his release ordered if necessary, as required by Article 5 § 4 of the Convention (compare *Khokhlov v. Cyprus*, no. 53114/20, §§ 72-83, 13 June 2023)? In this context, the Government are in particular invited to respond to the complaint made by the applicant that the time taken by the Constitutional Court to examine his individual application had been unreasonably long.

YILDIRIM v. TÜRKIYE (no. 29952/20)

Article 3 – inhuman or degrading treatment; detention in individual unit; solitary confinement in the form of total or relative social isolation; substantive reasons for detention regime; discretion of prison administration following letter of Directorate General; prolongation of measure; informing application of decision; procedural safeguards; monitoring physical and mental condition; total duration; physical conditions; communication with others and access to outdoor exercise or social activities; regular visits family/lawyer; restriction on all social and education activities due to detention regime

Lodged on 22 June 2020

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's alleged isolation during his detention. The applicant had been a judge and a former member of the High Council of Judges and Prosecutors who was subsequently dismissed from his post. On 17 July 2016 he was detained following the coup attempt of 2016 on account of charges of membership of an organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "FETÖ/PDY"). On 8 December 2016, as he was being held in Sincan T-Type Prison, he was placed in an individual unit. On 18 August 2017 he was transferred to Kocaeli F-Type Prison where he was once again detained in an individual unit.

According to the applicant, he did not receive any information regarding the reasons for the specific detention regime imposed on him until he objected to the enforcement judge. In rejecting his objection, the enforcement judge dealing with the applicant's detention in Sincan T-Type Prison noted that the measure was taken for security reasons. The enforcement judge dealing with the applicant's detention in Kocaeli F-Type Prison additionally noted that the applicant's name had been listed in the letter sent by the Ministry of Justice's Directorate General of Prisons ("Directorate General") regarding the inmates to be placed in individual units, which noted that the applicant was to be kept alone during the course of his detention. The Constitutional Court rejected his application, in which he had complained of his alleged solitary confinement, stressing its length and the physical conditions of detention in his cell, as being manifestly ill-founded.

At the time of lodging of the application, the applicant was still being held in the same cell.

The applicant complains under Article 3 of the Convention of his alleged solitary confinement, stressing its length and the physical conditions of detention in his cell. He claims that he is allowed to leave his cell only for one hour per day without the company of any other inmate and that he was not allowed to interact with anyone during the three years of his detention. He also states that his cell does not receive sufficient natural light and the prison guards check on him at frequent intervals during nighttime by turning the lights on.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, due to his detention in an individual unit? In that connection, did the applicant's detention in that unit constitute solitary confinement in the form of total or relative social isolation (see *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 119-24 and 135, ECHR 2006-IX, and *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, § 104, 18 March 2014)?

2. Did the authorities give substantive reasons for the imposition of the impugned detention regime, in particular, in view of the prison administrations' decisions relying on security grounds as well as the decision of the Ministry of Justice's Directorate General of Prisons? Did the prison administration have any discretion regarding the implementation of the measure following the letter of the Directorate General?

Have there been subsequent decisions for the prolongation of this measure, and if so, was the applicant informed of those decisions (see *Ramirez Sanchez*, cited above, §§ 139 and 145, and *Öcalan*, cited above, § 105)?

Was the imposition of this measure accompanied by procedural safeguards guaranteeing its proportionality and the applicant's welfare? In particular, was the applicant's physical and mental condition monitored and his physical or psychological capacity to deal with long-term detention in an individual unit assessed when the decisions to impose and prolong such a detention regime upon him were taken (see *Ramirez Sanchez*, cited above, § 139, and *Schmidt and Šmigol v. Estonia*, nos. 3501/20 and 2 others, §§ 126 and 147, 28 November 2023)?

3. What was the total duration of the applicant's detention in an individual unit (see *Öcalan*, cited above, §§ 137-45, and *Bora v. Turkey* (dec.), no. 30647/17, §§ 24-6, 28 November 2017)?

4. What were the physical conditions of detention in the individual units the applicant was held in in both the Sincan T-Type and Kocaeli F-Type prisons (see *Ramirez Sanchez*, cited above, §§ 126-130, and *Öcalan*, cited above, §§ 110-15)?

5. Was the applicant allowed ample opportunity to communicate with other persons and to have access to outdoor exercise or social activities (see *Öcalan*, cited above, §116-26)?

In particular, was he allowed regular visits from his family and lawyer (see *Ramirez Sanchez*, cited above, §§ 131-35, and *Öcalan*, cited above, §§ 127-35)?

In view of the Kocaeli Execution Judge's decision of 24 November 2017 (E: 2017/5230, K: 2017/6071), did the detention regime imposed on the applicant entail a restriction on all social and educational activities?

KÖSE v. TÜRKİYE (no. 34526/20)

Article 3 – inhuman or degrading treatment; detention in individual unit; solitary confinement in the form of total or relative social isolation; substantive reasons for detention regime; discretion of prison administration following letter of Directorate General; prolongation of measure; informing application of decision; procedural safeguards; monitoring physical and mental condition; total duration; physical conditions; communication with others and access to outdoor exercise or social activities; regular visits family/lawyer

Lodged on 14 July 2020

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's alleged isolation during his detention. The applicant, who used to be a prosecutor, was detained on 21 July 2016 on account of charges of membership of an organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "FETÖ/PDY"). On 19 September 2016, as he was in Samsun E-Type prison, he was placed in an individual unit upon a decision of the prison administration which stated that his name had been listed in the letter sent by the Ministry of Justice's Directorate General of Prisons ("Directorate General") regarding the inmates to be placed in individual units. The said letter noted that certain measures should be taken for the security of the listed inmates who were detained on account of charges related to FETÖ/PDY. They should be placed in individual units and should not be brought together with other detainees. Moreover, the prison administration should assign special personnel to keep them under control 24 hours a day and their correspondence and meeting logs should be specifically monitored.

The applicant's objection to the decision of the prison administration was rejected by the enforcement judge who found that it was in accordance with law.

In November 2016 the applicant was transferred to Bolu F-Type Prison where he was first placed in a three-person cell and later transferred to an individual unit, upon a decision of the prison administration, once again on the basis of a letter from the Directorate General to that effect and by virtue of Articles 111 (2), 113 (1), 115 (e) and 116 of Law no. 5275. The enforcement judge rejected the

applicant's objection, finding the measure lawful with reference to the relevant case-law of the Constitutional Court, as well as the Court's decision in the case of *Bora v. Turkey* ((dec.), no. 30647/17, 28 November 2017). The enforcement judge considered that the situation did not constitute solitary confinement and that the applicant was not subject to the restrictions imposed on those placed in a cell on account of a disciplinary measure. He received visits and benefited from means of communication. Moreover, the measure was necessary and proportionate in view of the offence that he was charged with.

In the meantime, the applicant's requests to benefit from social and educational activities were rejected on account of the Directorate General's letters stating that those charged with membership of FETÖ/PDY would not benefit from any social activities except for visits to psychologists.

On 2 March 2020 the Constitutional Court rejected the applicant's individual application, in which he had complained of his alleged isolation which had begun in Samsun Prison and had continued in Bolu Prison, stressing its length and the physical conditions of detention in his cell, as being manifestly ill-founded without differentiating between the applicant's time in Samsun and Bolu Prisons.

At the time of lodging of the application, the applicant was still being held in the same cell.

The applicant complains under Article 3 of the Convention of his alleged solitary confinement, stressing its length and the physical conditions of detention in his cell. He claims that during his detention in Samsun prison between 19 September 2016 and 15 November 2016, he was allowed to leave his cell only for one hour per day without the company of any other inmate. He claims that his cell in Samsun prison did not have a light switch or a closed toilet and that he had to hit the iron bars to inform the guards of his need to go to the toilet. He further states that the prison guards were checking on him at frequent intervals during nighttime by turning the lights on.

As for his detention in Bolu prison, he argues that he was not allowed to participate in sportive or cultural activities except for brief non-specified periods when he was allowed to exercise in isolation.

He maintains that due to his alleged solitary confinement, his psychological condition started to deteriorate and that he receives medical treatment.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, due to his detention in an individual unit? In that connection, did the applicant's detention in that unit constitute solitary confinement in the form of total or relative social isolation (see *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 119-24 and 135, ECHR 2006-IX, and *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, § 104, 18 March 2014)?

2. Did the authorities give substantive reasons for the imposition of the impugned detention regime, in particular, in view of the prison administrations' decision relying on the decision of the Ministry of Justice's Directorate General of Prisons? Did the prison administration have any discretion regarding the implementation of the measure following the letter of the Directorate General?

Have there been subsequent decisions for the prolongation of this measure, and if so, was the applicant informed of those decisions (see *Ramirez Sanchez*, cited above, §§ 139 and 145, and *Öcalan*, cited above, § 105)?

Was the imposition of this measure accompanied by procedural safeguards guaranteeing its proportionality and the applicant's welfare? In particular, was the applicant's physical and mental condition monitored and his physical or psychological capacity to deal with long-term detention in an individual unit assessed when the decisions to impose and prolong such a detention regime upon him were taken (see *Ramirez Sanchez*, cited above, § 139, and *Schmidt and Šmigol v. Estonia*, nos. 3501/20 and 2 others, §§ 126 and 147, 28 November 2023)?

3. What was the total duration of the applicant's detention in an individual unit (see *Öcalan*, cited above, §§ 137-45, and *Bora v. Turkey* (dec.), no. 30647/17, §§ 24-6, 28 November 2017)?

4. What were the physical conditions of detention in the individual units the applicant was held in in both the Samsun E-Type and Bolu F-Type prisons (see *Ramirez Sanchez*, cited above, §§ 126-130, and *Öcalan*, cited above, §§ 110-15)?

5. Was the applicant allowed ample opportunity to communicate with other persons and to have access to outdoor exercise or social activities (see *Öcalan*, cited above, §§ 116-26)?

In particular, was he allowed regular visits from his family and lawyer (see *Ramirez Sanchez*, cited above, §§ 131-35, and *Öcalan*, cited above, §§ 127-35)?

ÖZEN v. TÜRKİYE (no. 34529/20)

Article 8 § 1 and Article 8 § 2 – right to respect for his correspondence by the prison administration's refusal to send his letters; accordance with the law and necessity; appropriate safeguards

Lodged on 14 July 2020

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the refusal of the prison administration to send four of the applicant's letters.

The first letter, dated 1 February 2017, was addressed to a friend of the applicant and described certain prison practices that he claimed were objectionable. The second letter, dated 27 February 2017, was addressed to a journalist, and contained similar complaints about the prison's allegedly objectionable practices. The third and fourth letters, both dated 27 March 2017, were addressed to two different lawyers, one of whom the applicant claimed to be his own. These letters also outlined allegedly objectionable prison practices. One of these letters further requested the lawyer to take the necessary actions with the relevant authorities regarding these practices, while the other letter also mentioned an ongoing hunger strike in prison.

The matters were brought before four different enforcement judges and assize courts through separate domestic proceedings. As to the first and second letters, the domestic courts rejected the applicant's claims, holding that the letters in question contained incorrect information and aimed to damage the reputation of the institution. As to the third and fourth letters, the domestic courts held that these letters were not related to the applicant's defence, intended to facilitate communication of a terrorist organisation, and posed a security risk to the institution.

The Constitutional Court examined all four individual applications in a single judgment and found no violation of the applicant's rights.

Relying on Article 8 of the Convention, the applicant complained of a violation of his right to respect for correspondence by the prison administration's refusal to send his letters.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicant's right to respect for his correspondence by the prison administration's refusal to send his letters, contrary to Article 8 § 1 of the Convention? If so,

(a) Was the interference in accordance with the law and necessary in terms of Article 8 § 2?

(b) Were appropriate safeguards in place to mitigate the effect of the interference with the applicant's right to respect for his correspondence (see, for instance, *Halit Kara v. Türkiye*, no. 60846/19, §§ 43-59, 12 December 2023; *Eylem Kaya v. Turkey*, no. 26623/07, §§ 26-48, 13 December 2016; and *Ekinci and Akalın v. Turkey*, no. 77097/01, §§ 37-47, 30 January 2007)?

KUL v. TÜRKİYE (no. 48100/20)

Article 3 – inhuman or degrading treatment; detention in individual unit; solitary confinement in the form of total or relative social isolation; substantive reasons for detention regime; prolongation of measure; informing application of decision; procedural safeguards; monitoring physical and mental condition; total duration; physical conditions; communication with others and access to outdoor exercise or social activities; regular visits family/lawyer

Lodged on 28 July 2020

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's isolation during his detention. The applicant was a judge serving at the Court of Cassation. On 21 July 2016 he was arrested and detained in Sincan Prison following the attempted coup d'état of 2016 on account of charges of membership of an organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "FETÖ/PDY"). On 8 October 2016 he was transferred to Silivri L-Type Prison and was placed in an individual unit upon a decision of the prison's administration and observation board, in accordance with Articles 9/2 (d-e), 24/1-d, 113 and 116/1 of Law no. 5275. The decision stated that his placement in an individual unit aimed at ensuring safety and order within the prison facilities and the safety of the detainee himself due to his former profession, as well as following the domestic legislation given the charges against the applicant.

The enforcement judge and the Assize Court rejected the applicant's objections, finding the impugned treatment in accordance with the law and the procedure. On 6 April 2020 the Constitutional Court rejected his application, in which he had complained of his alleged isolation stressing its length and the physical conditions of detention in his cell, as being manifestly ill-founded.

The applicant claims to be held under the same conditions at the time of lodging of his application.

He complains, in particular, under Article 3 of the Convention that his detention in an individual unit constitutes solitary confinement in view of its length and the physical conditions of detention in his cell. He argues that he is allowed to leave his cell for less than one hour per day and is isolated during that time as well. He also states that his cell of 7 square metres was dirty at the time of his transfer, and that he had to stay in dire conditions for a week. Lastly, he maintains that he is constantly being checked on by prison guards in his cell at nighttime.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, due to his detention in an individual unit? In that connection, did the applicant's detention in that unit constitute solitary confinement in the form of total or relative social isolation (see *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 119-24 and 135, ECHR 2006-IX, and *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, § 104, 18 March 2014)?

2. Did the authorities give substantive reasons for the applicant's placement in an individual unit? Have there been subsequent decisions for the prolongation of his detention regime, and if so, was the applicant informed of those decisions (see *Ramirez Sanchez*, cited above, §§ 139 and 145, and *Öcalan*, cited above, § 105)?

Was the imposition of this measure accompanied by procedural safeguards guaranteeing its proportionality and the applicant's welfare? In particular, was the applicant's physical and mental condition monitored and his physical or psychological capacity to deal with long-term detention in an individual unit assessed when the decisions to impose and prolong such a detention regime upon him were taken (see *Ramirez Sanchez*, cited above, § 139, and *Schmidt and Šmigol v. Estonia*, nos. 3501/20 and 2 others, §§ 126 and 147, 28 November 2023)?

3. What was the total duration of the applicant's detention in an individual unit (see *Öcalan*, cited above, §§ 137-45, and *Bora v. Turkey* (dec.), no. 30647/17, §§ 24-6, 28 November 2017)?

4. What were the physical conditions of detention in the individual unit the applicant was detained in? Were these conditions compatible with the Court's case-law to alleviate the effects of his alleged isolation (see *Ramirez Sanchez*, cited above, §§ 126-30, and *Öcalan*, cited above, §§ 110-15)?

5. Was the applicant allowed ample opportunity to communicate with other persons and to have access to outdoor exercise or social activities (see *Öcalan*, cited above, §§ 116-26)?

In particular, was the applicant allowed regular visits from his family and lawyer (see *Ramirez Sanchez*, cited above, §§ 131-35, and *Öcalan*, cited above, §§ 127-35)?

GÖKÇE v. TÜRKİYE (no. 51110/19)

Article 3 – inhuman or degrading treatment; detention in individual unit; solitary confinement in the form of total or relative social isolation; substantive reasons for detention regime; prolongation of measure; informing application of decision; procedural safeguards; monitoring physical and mental condition; total duration; physical conditions; communication with others and access to outdoor exercise or social activities; regular visits family/lawyer

Lodged on 10 September 2019

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's alleged isolation during his detention. The applicant was a public servant serving at the Banking Regulation and Supervision Agency. On 30 September 2016 he was arrested and placed in Silivri L-Type Prison on account of charges of membership of an organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "FETÖ/PDY"). On 17 April 2018 he was placed in an individual unit upon a decision of the prison's management and supervisory board, in accordance with sections 9/2 (d-e), 24/1-d, 113 and 116/1 of Law no. 5275. The decision stated that his placement in an individual unit aimed at ensuring safety and order within the prison facilities and the safety of the detainee himself due to his former profession, as well as following the domestic legislation given the charges against the applicant. The applicant maintains that he was not informed of the reasons for his placement in an individual unit at the time.

The enforcement judge and the Assize Court rejected the applicant's objections to that placement on the grounds that the prison administration had discretion regarding the placement of detainees and that the impugned measure was in accordance with law. The Constitutional Court rejected his application, in which he had complained of alleged isolation in detention stressing its length, the restrictions imposed and the physical conditions of detention in his cell, as being manifestly ill-founded.

The applicant claims to be held under the same conditions at the time of lodging of his application.

He complains, in particular, under Article 3 of the Convention that his detention in an individual unit constitutes solitary confinement in view of its length and the restrictions imposed. He argues that he is only allowed to leave his cell for a one-and-a-half-hour period twice per day, is being extensively searched each time he leaves and enters his cell, and only permitted to communicate with three to four persons during that time. He also states that he is being checked on by prison staff at hourly intervals, including nighttime.

The applicant also complains of the physical conditions of detention in his cell, pointing to the allegedly poor sanitary conditions of the bathroom, the existence of mould, the lack of a kitchen sink, and the lack of a ventilation system.

He argues that he was not examined by a psychologist prior to his placement in an individual unit and could see one only after his request to that effect.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, due to his detention in an individual unit? In that connection, did the applicant's detention in that unit constitute solitary confinement in the form of total or relative social isolation (see *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 119-24 and 135, ECHR 2006-IX, and *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, § 104, 18 March 2014)?

2. Did the authorities give substantive reasons for the imposition of the impugned detention regime? Have there been subsequent decisions for the prolongation of that regime, and if so, was the applicant informed of those decisions (see *Ramirez Sanchez*, cited above, §§ 139 and 145, and *Öcalan*, cited above, § 105)?

Was the imposition of this measure accompanied by procedural safeguards guaranteeing its proportionality and the applicant's welfare? In particular, was the applicant's physical and mental condition monitored and his physical or psychological capacity to deal with long-term placement in an individual unit assessed when the decisions to impose and prolong such an detention regime upon him were taken (see *Ramirez Sanchez*, cited above, § 139, and *Schmidt and Šmigol v. Estonia*, nos. 3501/20 and 2 others, §§ 126 and 147, 28 November 2023)?

3. What was the total duration of the applicant's detention in an individual unit (see *Öcalan*, cited above, §§ 137-45, and *Bora v. Turkey* (dec.), no. 30647/17, §§ 24-6, 28 November 2017)?

4. What were the specific physical conditions of detention in the applicant's individual unit? Were these conditions compatible with the Court's case-law to alleviate the effects of his isolation (see *Ramirez Sanchez*, cited above, §§ 126-30, and *Öcalan*, cited above, §§ 110-15)?

5. Was the applicant allowed ample opportunity to communicate with other persons and to have access to outdoor exercise or social activities? (see *Öcalan*, cited above, §§ 116-126)?

In particular, was he allowed regular visits from his family and his lawyer (see *Ramirez Sanchez*, cited above, §§ 131-135, and *Öcalan*, cited above, §§ 127-135)?

KAYA v. TÜRKİYE (no. 54624/20)

Article 3 – inhuman or degrading treatment; detention in individual unit; solitary confinement in the form of total or relative social isolation; substantive reasons for detention regime; discretion of prison administration following letter of Directorate General; prolongation of measure; informing application of decision; procedural safeguards; monitoring physical and mental condition; total duration; physical conditions; communication with others and access to outdoor exercise or social activities; regular visits family/lawyer

Lodged on 3 November 2020

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the applicant's alleged isolation during his detention. The applicant had been a prosecutor who was subsequently dismissed from his post. On 21 July 2016 he was detained on account of charges of membership of an organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "FETÖ/PDY"). On 20 September 2016 he was transferred to Manisa
T-Type Prison and was placed in an individual unit upon a decision of the prison administration which stated that his name had been listed in the letter sent by the Ministry of Justice's Directorate General of Prisons ("Directorate General") regarding the inmates to be placed in individual units.

The applicant's objection to the decision of the prison administration was rejected by the enforcement judge who found the treatment lawful given that it had been implemented following the decision of the Directorate General. The Assize Court rejected his further objections. On 5 May 2020 the Constitutional Court found his application, in which he had complained of his alleged isolation in prison stressing its length and the physical conditions of detention in his cell, inadmissible.

At the time of lodging of the application, the applicant was still held in the same cell.

The applicant complains under Article 3 of the Convention of his alleged solitary confinement, stressing its length and the physical conditions of detention in his cell. He claims that he is allowed to leave his cell only for one hour and a half per day with two other inmates, that he is being searched by prison guards every time he leaves his cell, and that his visits, specifically during holidays, participation in social and sportive activities, and access to means of communication are restricted. He also argues that his cell measures approximately 9 square metres and does not receive sufficient natural light. Lastly, he states that his psychological condition deteriorated due to his isolation and that he started to receive psychiatric treatment as a result.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, due to his detention in an individual unit? In that connection, did the applicant's detention in that unit constitute solitary confinement in the form of total or relative social isolation (see *Ramirez Sanchez v. France* [GC], no. 59450/00, §§ 119-24 and 135, ECHR 2006-IX, and *Öcalan v. Turkey (no. 2)*, nos. 24069/03 and 3 others, § 104, 18 March 2014)?

2. Did the authorities give substantive reasons for the imposition of the impugned detention regime, in particular, in view of the prison administrations' decision relying on the decision of the Ministry of Justice's Directorate General of Prisons? Did the prison administration have any discretion regarding the implementation of the measure following the letter of the Directorate General?

Have there been subsequent decisions for the prolongation of this measure, and if so, was the applicant informed of those decisions (see *Ramirez Sanchez*, cited above, §§ 139 and 145, and *Öcalan*, cited above, § 105)?

Was the imposition of this measure accompanied by procedural safeguards guaranteeing its proportionality and the applicant's welfare? In particular, was the applicant's physical and mental condition monitored and his physical or psychological capacity to deal with long-term detention in an individual unit assessed when the decisions to impose and prolong such a detention regime upon him were taken (see *Ramirez Sanchez*, cited above, § 139, and *Schmidt and Šmigol v. Estonia*, nos. 3501/20 and 2 others, §§ 126 and 147, 28 November 2023)?

3. What was the total duration of the applicant's detention in an individual unit (see *Öcalan*, cited above, §§ 137-45, and *Bora v. Turkey* (dec.), no. 30647/17, §§ 24-6, 28 November 2017)?

4. What were the physical conditions of detention in the individual units the applicant was held in in Manisa T-Type Prison (see *Ramirez Sanchez*, cited above, §§ 126-130, and *Öcalan*, cited above, §§ 110-15)?

5. Was the applicant allowed ample opportunity to communicate with other persons and to have access to outdoor exercise or social activities (see *Öcalan*, cited above, §§ 116-26)?

In particular, was he allowed regular visits from his family and lawyer (see *Ramirez Sanchez*, cited above, §§ 131-35, and *Öcalan*, cited above, §§ 127-35)?

KILINÇ v. TÜRKİYE (no. 5963/22)

Article 10 § 1 and Article 10 § 2 – refusal to hand over to the applicant certain documents brought to him by his attorney; prescribed by law and necessity; balancing test

Lodged on 13 December 2021

Communicated on 14 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the refusal of the prison authorities to hand over to the applicant certain documents brought to him by his attorney. These documents included photocopies and printouts of the Rules of Court, the UN Human Rights Commission's Turkey Reports from 2017 and 2018, the European Commission's Turkey Progression Report of 2019, the ECHR's Hate Speech Information Note, the ECHR's Evaluation Report of 2018, and the Constitutional Court's *Selçuk Özdemir* judgment. The authorities dismissed his requests on the grounds that the documents were not textbooks and their originality and relevance to his ongoing trials could not be determined, as doing so would impose significant burdens on them.

The applicant complains under Article 10 of the Convention about the prison authorities' refusal to hand over the documents sent to him.

QUESTION TO THE PARTIES

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 to the applicant certain documents brought to him by his

attorney (see, *mutatis mutandis*, *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)?

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, §§ 40 and 41, and *Osman and Altay*, cited above, §§ 56-58)?

POYRAZ v. TÜRKİYE (no. 35128/22)

Article 6 § 1 – the principle of immediacy; changes in the composition of the trial court

Lodged on 3 June 2022

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns, under Article 6 § 1 of the Convention, the alleged unfairness of criminal proceedings against the applicant due to a breach of the principle of immediacy, stemming from the change of a member of the trial court's bench who had only sat at the last four hearings and had thus not examined any witnesses.

The applicant stood trial before the Istanbul 7th Assize Court ("the trial court") for two counts of incitement to murder, unlawful possession of firearms, and inflicting bodily injury. In its judgment dated 19 April 2017, the trial court convicted the applicant, by two votes to one, of, *inter alia*, incitement to murder caused by unjust provocation and sentenced him to eighteen years' imprisonment. On 12 October 2017 the 1st Division of the Istanbul Regional Court of Appeal ("the Regional Court") quashed the conviction for incitement to murder and remitted the case to the trial court for re-examination.

On 13 July 2018 the trial court, composed of Judges Z.Ö., A.D. and M.D., gave its judgment and found, *inter alia*, the applicant guilty of incitement to murder and sentenced him to life imprisonment. The judgment was adopted by two votes to one.

Throughout the trial, M.D. had been the only judge who sat on the trial court's bench from the beginning until the end (save for the eighth and ninth hearings which were held after the reversal of the first judgment) and who had examined virtually all witnesses. He dissented in both the first and second judgments of the trial court, taking the view that there was no evidence, be it documents, testimony, information or any other material, which could show, to the criminal standard of proof (beyond reasonable doubt) that the applicant had incited H.Y. and A.A. to kill A.E.

Judge Z.Ö. sat as a member of the three-judge panel of the trial court for the first time at the seventh hearing before the delivery of the first judgment and continued to do so in all of the subsequent hearings held until the end of the trial. He formed part of the majority in the first and second judgment of the trial court which resulted in the applicant's conviction.

Judge A.D. sat as a member of the trial court's panel for the first time at the seventh hearing on 9 July 2018, that was after the reversal of the first judgment, and remained on the panel until the end of the trial.

On 26 February 2019 the 1st Division of the Istanbul Regional Court of Appeal unanimously upheld the trial court's judgment.

On 26 June 2020 the 1st Division of the Court of Cassation dismissed, by three votes to two, the appeals lodged by the defendants, including the applicant. The president of the Division and a member dissented, arguing that the applicant's conviction had been based on a hypothesis, because while it may certainly be thought that he had held a grudge against the personnel of the bar including A.E. after an altercation a few days before, he had carried out no acts that could be regarded as incitement, such as providing H.Y. and A.A. with weapons, making a promise to them, or giving them orders or directions.

On 18 June 2020 the Chief Public Prosecutor's Office at the Court of Cassation had used its right to lodge an extraordinary appeal, pursuant to Article 308 of the Code of Criminal Procedure, asking the 1st Division of the Court of Cassation to annul its decision in so far as it concerned the applicant. The Office took the view that the applicant should have been acquitted in the absence of absolute and credible evidence showing, beyond any reasonable doubt, that he had committed the offence of which he had been convicted.

On 24 November 2020 the same panel of the 1st Division of the Court of Cassation dismissed, by three votes to two, the extraordinary appeal in question, resulting in the case being brought before the plenary criminal divisions of the Court of Cassation ("the plenary").

On 18 March 2021 the plenary dismissed, by thirteen votes to six, the extraordinary appeal, holding that the applicant and the deceased had a feud as a result of the altercation in the bar.

On 15 April 2022 the Constitutional Court dismissed, in a summary fashion, an individual application lodged by the applicant.

The applicant complains of a breach of "the natural judge principle", arguing that despite the changes in the composition of the trial court's panel, witnesses had not been re-examined before the judges who had ultimately convicted him of incitement to murder and sentenced him to life imprisonment.

QUESTIONS TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? Has there been a breach of the principle of immediacy on account of the changes in the composition of the trial court in the course of the proceedings (see, for the general principles, *Orhan Şahin v. Türkiye*, no. 48309/17, §§ 48-49, 12 March 2024)? Did the higher instance courts remedy the alleged procedural shortcoming?

ÇETIN v. TÜRKİYE (no. 47472/22)

Article 6 § 1 – fair hearing; statements witness accompanied by appropriate safeguards; assessing quality of evidence; searching scrutiny with a view to enabling the applicant to effectively challenge it

Lodged on 28 September 2022

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The application concerns the alleged unfairness of criminal proceedings in which the applicant was convicted of undermining the unity of the State and its territorial integrity (Article 302 of the Criminal Code), and sentenced to life imprisonment. His conviction was based, to a decisive extent, if not solely, on statements made by a witness, M.H., a former member of the PKK (Worker's Party of Kurdistan) who had surrendered to the Erciş Gendarmerie Command and cooperated with the prosecuting authorities in exchange for a reduction of his sentence. In that context, M.H. made incriminating statements in

respect of many individuals, including the applicant, which led to the discovery of weapons, as well as the identification and conviction of certain persons as PKK members. The trial court also found that the statements of Ö.S. (who was mentioned in M.H.'s statements as being one of the persons involved in the act attributed to the applicant) in which the latter had not mentioned the applicant, had corroborated M.H's statement in which the applicant's name was mentioned.

The applicant complains that his conviction entailed a breach of Article 6 § 1 of the Convention, as it had been based solely on the testimony of a witness, M.H., who had cooperated with the prosecution. The domestic courts neither shed light on the circumstances surrounding the statements that M.H. had allegedly made after his surrender nor scrutinised those statements. The applicant further pointed out that when giving evidence at the trial, M.H. denied having made any statements to the gendarmerie forces about or identifying him, arguing that he had not seen the applicant before. This showed that the law enforcement officers had manipulated M.H's testimony as they pleased and had included the applicant's name there without M.H.'s consent. Yet, the domestic courts had neither assessed these points nor resolved the inconsistency between M.H.'s statements given at different times.

Moreover, Ö.S., who was identified by M.H. as one of the persons involved in the incident of which the applicant was accused, gave evidence as a witness at the trial, and while he confessed that he had acted as a lookout in that incident, he stated that he had not seen the applicant at the incident scene. Yet, even though the fact that Ö.S.'s statements had not indicated the applicant's name was crucial for the case, the domestic courts failed to explain why they had not based their decision on Ö.S.'s statements.

In the applicant's view, the foregoing considerations were such that the proceedings against him fell short of the requirements of a fair trial, entailing a breach of Article 6 § 1 of the Convention.

QUESTION TO THE PARTIES

Did the applicant have a fair hearing in the determination of the criminal charges against him, in accordance with Article 6 § 1 of the Convention? In particular, was the use of the statements made by M.H. accompanied by appropriate safeguards so as to ensure the overall fairness of the proceedings against the applicant? In that connection, did the domestic courts properly assess the quality of the evidence given by M.H. and subject it to a searching scrutiny with a view to enabling the applicant to effectively challenge it (see for the relevant principles *Habran and Dalem v. Belgium*, nos. 43000/11 and 49380/11, §§ 94-96, 17 January 2017)?

The parties are invited to submit copies of all the relevant documents concerning the applicant's case, including but not limited to the minutes of all the hearings, the reasoned judgment of the trial court, documentary evidence against the applicant, and the written submissions of the applicant and his lawyer(s) throughout the proceedings.

The parties are further requested to submit all the relevant documents concerning the criminal proceedings against M.H. and Ö.S., including the statements that they had made on different dates.

ERDEM v. TÜRKIYE and 2 other applications (no. 8978/19)

(see list appended)

Electronic recording and storage of the applicants' private correspondence in the National Judicial Network System (UYAP) by the authorities during their detentions

Article 8 § 1 and § 2 – right to respect for their private life and correspondence; accordance with the law; necessity; accessibility of litigious measure; appropriate safeguards to prevent disclosure of personal information

Communicated on 12 November 2024

Published on 2 December 2024

SUBJECT MATTER OF THE CASE

The applications concern electronic recording and storage of the applicants' private correspondence in the National Judicial Network System (UYAP) by the authorities during their detentions.

Relying on Article 8 of the Convention, the applicants complain about the recording and storage of their private correspondence on UYAP.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicants' right to respect for their private life and correspondence, within the meaning of Article 8 § 1 of the Convention (*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?

Was the litigious measure prescribed by a legislative and administrative provision accessible to the applicants and providing appropriate safeguards to prevent any such disclosure of personal information that might be inconsistent with the guarantees of Article 8 (*Nuh Uzun and Others*, cited above, §§ 84-98, see also the Turkish Constitutional Court's judgment in the application of *Ümit Karaduman*, no. 2020/20874, §§ 64-71, 2 February 2022)?

APPENDIX

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality
1.	8978/19	Erdem v. Türkiye	01/02/2019	**Murat ERDEM** 1973 Adana Turkish
2.	31746/20	Tekin v. Türkiye	09/06/2020	**Adem TEKİN** 1972 Kırıkkale Turkish
3.	50337/20	Gök v. Türkiye	27/10/2020	**Veysal GÖK** 1966 Osmaniye Turkish

KILIÇARSLAN v. TÜRKİYE and 199 other applications (no. 16234/18)

(see list of applications through link)

Article 6 § 1 and Article 7 – trial and conviction for membership of the FETÖ/PDY; fair trial; the principle of no punishment

Communicated on 12 November 2024

Published on 25 November 2024

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The applications mainly concern the applicants' conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "the FETÖ/PDY"), considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016.

3. According to the information submitted by the applicants, the convictions were based, *inter alia*, on their alleged use of the encrypted messaging application "ByLock", which the domestic courts held was used exclusively by FETÖ/PDY members and which therefore constituted sufficient evidence to prove on its own that a person had been part of the FETÖ/PDY's hierarchical structure.

4. The broader domestic background and context to the present applications was set out by the Grand Chamber in the case of *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023).

B. Relevant domestic law and practice

5. A description of the relevant domestic law and practice can be found in *Yüksel Yalçınkaya* (cited above, §§ 141-93).

COMPLAINTS

6. The applicants mainly complained that their trial and conviction for membership of the FETÖ/PDY had violated the principle of no punishment without law under Article 7 of the Convention and/or the right to a fair trial under Article 6 § 1.

QUESTIONS TO THE PARTIES

Since the issues raised by the present applications are already the subject of well-established case-law of the Court (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, §§ 237-356, 26 September 2023), the Court does not put any questions to the parties or require any observations on these applications. However, if they so wish, the Government may submit observations on the complaints set out in the appended table, to the extent that they refer essentially to the factual aspects of the applications and not to preliminary objections or legal issues already decided by the Court in *Yüksel Yalçınkaya* (cited above) or other similar cases against Türkiye.

APPENDIX

List of applications raising complaints under Article 7 (no punishment without law) and/or Article 6 § 1 of the Convention (right to a fair trial) – (conviction for membership of the FETÖ/PDY based, *inter alia*,

on the applicants' alleged use of the encrypted messaging application "ByLock") - see communications through link.

ÇELEBI v. TÜRKİYE and 199 other applications (no. 45584/21)

(see list of applications through link)

Article 6 § 1 and Article 7 – trial and conviction for membership of the FETÖ/PDY; fair trial; the principle of no punishment

Communicated on 12 November 2024

Published on 25 November 2024

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The applications mainly concern the applicants' conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "the FETÖ/PDY"), considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016.

3. According to the information submitted by the applicants, the convictions were based, *inter alia*, on their alleged use of the encrypted messaging application "ByLock", which the domestic courts held was used exclusively by FETÖ/PDY members and which therefore constituted sufficient evidence to prove on its own that a person had been part of the FETÖ/PDY's hierarchical structure.

4. The broader domestic background and context to the present applications was set out by the Grand Chamber in the case of *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023).

B. Relevant domestic law and practice

5. A description of the relevant domestic law and practice can be found in *Yüksel Yalçınkaya* (cited above, §§ 141-93).

COMPLAINTS

6. The applicants mainly complained that their trial and conviction for membership of the FETÖ/PDY had violated the principle of no punishment without law under Article 7 of the Convention and/or the right to a fair trial under Article 6 § 1.

QUESTIONS TO THE PARTIES

Since the issues raised by the present applications are already the subject of well-established case-law of the Court (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, §§ 237-356, 26 September 2023), the Court does not put any questions to the parties or require any observations on these applications. However, if they so wish, the Government may submit observations on the complaints set out in the appended table, to the extent that they refer essentially to the factual aspects of the applications and not to preliminary objections or legal issues already decided by the Court in *Yüksel Yalçınkaya* (cited above) or other similar cases against Türkiye.

APPENDIX

List of applications raising complaints under Article 7 (no punishment without law) and/or Article 6 § 1 of the Convention (right to a fair trial)

(conviction for membership of the FETÖ/PDY based, *inter alia*, on the applicants' alleged use of the encrypted messaging application "ByLock") - see communications through link.

TÜRKYILMAZ v. TÜRKİYE and 199 other applications (no. 9439/22)

(see list of applications through link)

Article 6 § 1 and Article 7 – trial and conviction for membership of the FETÖ/PDY; fair trial; the principle of no punishment

Communicated on 12 November 2024

Published on 25 November 2024

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The applications mainly concern the applicants' conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "the FETÖ/PDY"), considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016.

3. According to the information submitted by the applicants, the convictions were based, *inter alia*, on their alleged use of the encrypted messaging application "ByLock", which the domestic courts held was used exclusively by FETÖ/PDY members and which therefore constituted sufficient evidence to prove on its own that a person had been part of the FETÖ/PDY's hierarchical structure.

4. The broader domestic background and context to the present applications was set out by the Grand Chamber in the case of *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023).

B. Relevant domestic law and practice

5. A description of the relevant domestic law and practice can be found in *Yüksel Yalçınkaya* (cited above, §§ 141-93).

COMPLAINTS

6. The applicants mainly complained that their trial and conviction for membership of the FETÖ/PDY had violated the principle of no punishment without law under Article 7 of the Convention and/or the right to a fair trial under Article 6 § 1.

QUESTIONS TO THE PARTIES

Since the issues raised by the present applications are already the subject of well-established case-law of the Court (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, §§ 237-356, 26 September 2023), the Court does not put any questions to the parties or require any observations on these applications. However, if they so wish, the Government may submit observations on the complaints set out in the

appended table, to the extent that they refer essentially to the factual aspects of the applications and not to preliminary objections or legal issues already decided by the Court in *Yüksel Yalçınkaya* (cited above) or other similar cases against Türkiye.

APPENDIX

List of applications raising complaints under Article 7 (no punishment without law) and/or Article 6 § 1 of the Convention (right to a fair trial)

(conviction for membership of the FETÖ/PDY based, *inter alia*, on the applicants' alleged use of the encrypted messaging application "ByLock") - see communications through link.

KUZUCU v. TÜRKİYE and 199 other applications (no. 45140/22)

(see list of applications through link)

Article 6 § 1 and Article 7 – trial and conviction for membership of the FETÖ/PDY; fair trial; the principle of no punishment

Communicated on 12 November 2024

Published on 25 November 2024

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The applications mainly concern the applicants' conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "the FETÖ/PDY"), considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016.

3. According to the information submitted by the applicants, the convictions were based, *inter alia*, on their alleged use of the encrypted messaging application "ByLock", which the domestic courts held was used exclusively by FETÖ/PDY members and which therefore constituted sufficient evidence to prove on its own that a person had been part of the FETÖ/PDY's hierarchical structure.

4. The broader domestic background and context to the present applications was set out by the Grand Chamber in the case of *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023).

B. Relevant domestic law and practice

5. A description of the relevant domestic law and practice can be found in *Yüksel Yalçınkaya* (cited above, §§ 141-93).

COMPLAINTS

6. The applicants mainly complained that their trial and conviction for membership of the FETÖ/PDY had violated the principle of no punishment without law under Article 7 of the Convention and/or the right to a fair trial under Article 6 § 1.

QUESTIONS TO THE PARTIES

Since the issues raised by the present applications are already the subject of well-established case-law of the Court (see *Yüksel Yalçınkaya v.Türkiye* [GC], no. 15669/20, §§ 237-356, 26 September 2023), the Court does not put any questions to the parties or require any observations on these applications. However, if they so wish, the Government may submit observations on the complaints set out in the appended table, to the extent that they refer essentially to the factual aspects of the applications and not to preliminary objections or legal issues already decided by the Court in *Yüksel Yalçınkaya* (cited above) or other similar cases against Türkiye.

APPENDIX

List of applications raising complaints under Article 7 (no punishment without law) and/or Article 6 § 1 of the Convention (right to a fair trial)

(conviction for membership of the FETÖ/PDY based, *inter alia*, on the applicants' alleged use of the encrypted messaging application "ByLock") - see communications through link.

BAŞOĞUL v. TÜRKİYE and 199 other applications (no. 52109/22)

(see list of applications through link)

Article 6 § 1 and Article 7 – trial and conviction for membership of the FETÖ/PDY; fair trial; the principle of no punishment

Communicated on 12 November 2024

Published on 25 November 2024

STATEMENT OF FACTS

1. A list of the applicants is set out in the appendix.

A. The circumstances of the case

2. The applications mainly concern the applicants' conviction for membership of an armed terrorist organisation described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure" (*Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması*, hereinafter referred to as "the FETÖ/PDY"), considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016.

3. According to the information submitted by the applicants, the convictions were based, *inter alia*, on their alleged use of the encrypted messaging application "ByLock", which the domestic courts held was used exclusively by FETÖ/PDY members and which therefore constituted sufficient evidence to prove on its own that a person had been part of the FETÖ/PDY's hierarchical structure.

4. The broader domestic background and context to the present applications was set out by the Grand Chamber in the case of *Yüksel Yalçınkaya v. Türkiye* ([GC], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023).

B. Relevant domestic law and practice

5. A description of the relevant domestic law and practice can be found in *Yüksel Yalçınkaya* (cited above, §§ 141-93).

COMPLAINTS

6. The applicants mainly complained that their trial and conviction for membership of the FETÖ/PDY had violated the principle of no punishment without law under Article 7 of the Convention and/or the right to a fair trial under Article 6 § 1.

QUESTIONS TO THE PARTIES

Since the issues raised by the present applications are already the subject of well-established case-law of the Court (see *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, §§ 237-356, 26 September 2023), the Court does not put any questions to the parties or require any observations on these applications. However, if they so wish, the Government may submit observations on the complaints set out in the appended table, to the extent that they refer essentially to the factual aspects of the applications and not to preliminary objections or legal issues already decided by the Court in *Yüksel Yalçınkaya* (cited above) or other similar cases against Türkiye.

APPENDIX

List of applications raising complaints under Article 7 (no punishment without law) and/or Article 6 § 1 of the Convention (right to a fair trial)

(conviction for membership of the FETÖ/PDY based, *inter alia*, on the applicants' alleged use of the encrypted messaging application "ByLock") - see communications through link.

SAYIN AND BODURLU v. TÜRKİYE (no. 14883/20)*

Article 1 of Protocol No. 1 – destruction of the applicants' property; compensation which is reasonably commensurate with the damage suffered; the consequences of an amendment to the urban planning scheme taken into account when determining the amount of compensation

Lodged on 6 March 2020

Communicated on 8 November 2024

Published on 25 November 2024

SUBJECT-MATTER OF THE CASE

The application concerns the amount of compensation paid to the applicants to repair the damage caused to their apartment.

During the construction of a tunnel by the General Directorate of Roads, several buildings, including the one where the applicants' apartment was located, suffered significant damage, rendering the property unusable and dangerous. As the damage to the structure of the buildings was irreparable, the buildings were evacuated and then demolished by the administration.

The courts awarded the applicants compensation corresponding to the cost of construction, although they considered that they had been victims of a de facto expropriation and claimed payment of compensation corresponding to the market value of their apartment.

The applicants consider that the amount of compensation awarded to them is not sufficient to compensate for the damage they have suffered, in particular because it does not take into account the fact that an amendment to the urban planning scheme is in progress and that they will not be able to rebuild a building with the same characteristics and surface area as the one that was destroyed.

They rely on Article 1 of Protocol No. 1 to the Convention in support of their complaint.

QUESTIONS TO THE PARTIES

Did the destruction of the applicants' property violate their right to respect for their possessions within the meaning of Article 1 of Protocol No. 1 to the Convention? In particular, did they obtain compensation that was reasonably commensurate with the damage suffered? In this context, were the consequences of an amendment to the urban planning scheme taken into account when determining the amount of compensation?

YILDIRIM v. TÜRKİYE (no. 22802/20)*

Article 1 of Protocol no. 1 – compensation reasonably commensurate with the value of his property

Article 6 § 1 – failure to respond to some of his requests and the argument concerning a contradiction between the operative part of the judgment and the reasoning set out

Article 1 of Protocol no. 1 and Article 6 § 1 costs of legal representation that the applicant was ordered to pay

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SUBJECT-MATTER OF THE CASE

The claim concerns proceedings for compensation for the loss suffered by the claimant as a result of the cancellation in 2005 of his title deed entered in the land register.

The claimant complains that the courts awarded compensation corresponding to the value of the property on the date the title was cancelled, but did not start charging interest until the date the matter was referred to the court, i.e. 2014. He further argues that this solution, which appears in the operative part of the judgment, contradicts the reasoning set out by the court. Relying on the Bistrović v. Croatia judgment (no. 25774/05, May 31, 2007), he criticizes the Court of Cassation for failing to rule on this ground.

The claimant also alleges that the courts have failed to respond, favorably or unfavorably, to all of his claims, including in particular those relating to compensation for the loss of trees on the land and reimbursement of costs incurred during the proceedings to cancel the title.

Lastly, the applicant complains of the excessive amount of the costs of representation by counsel for the opposing party that he was ordered to pay and relies on the Musa Tarhan v. Turkey judgment (no. 12055/17, October 23, 2018).

He invokes Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention.

QUESTIONS TO THE PARTIES

1. Has the applicant's right to respect for his property within the meaning of Article 1 of Protocol no. 1 to the Convention been infringed? Has the person concerned obtained compensation reasonably commensurate with the value of his property? In this context, did the compensation take into account all the factors, such as the presence of trees, that would make it possible to determine the applicant's loss (Preite v. Italy, no. 28976/05, §§ 49-50, 17 November 2015) as well as those likely to reduce its value

(see Demiray v. Türkiye, no. 61380/15, § 60, 18 April 2023)? In addition, did the applicant benefit from legal proceedings with the requisite procedural guarantees so as to enable him to assert his right to respect for his property (see Blumberga v. Latvia, no. 70930/01, § 67, 14 October 2008)?

2. In view of the applicant's allegations concerning the failure to respond to some of his requests and the argument concerning a contradiction between the operative part of the judgment and the reasoning set out, has the applicant's right to a fair trial been infringed (Zayidov v. Azerbaijan (no. 2), no. 5386/10, § 91, 24 March 2022)?

3. Did the amount of the costs of legal representation that the applicant was ordered to pay to the opposing party amount to a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention (see Perdigão v. Portugal [GC], no. 24768/06, §§ 67-79, 16 November 2010, Klauz v. Croatia, no. 28963/10, §§ 78-97 and 108-110, 18 July 2013, Cindrić and Bešlić v. Croatia, no. 72152/13, §§ 91-111 and 116-123, 6 September 2016, and Musa Tarhan v. Turkey, no. 12055/17, §§ 71-89, 23 October 2018)?

KAYA v. TÜRKİYE (no. 42049/19)*

Inability to make normal use of their land due to classification as a 'school' zone on the town planning scheme for more than 37 years and the resulting uncertainties as to the fate of their property

Article 1 of Protocol No. 1 – restrictions affecting the applicants' property

Lodged on 25 July 2019

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SUBJECT-MATTER OF THE CASE

The application concerns the inability of the applicants to make normal use of their land due to its classification as a 'school' zone on the town planning scheme for more than 37 years and the resulting uncertainties as to the fate of their property.

The interested parties argue that the total surface area of the 'educational establishment' zone encompassing their land is less than the legal minimum set for the creation of an educational establishment. In support of their claim, they submitted a letter from the Ministry to the Istanbul Prefecture, which stated that, according to the Ministry's geographic information system, the applicants' plot of land was not located in an area intended for an educational establishment.

Relying on the judgment in Hakan Arı v. Turkey (no. 13331/07, 11 January 2011), they alleged a breach of their right to respect for their property.

QUESTIONS TO THE PARTIES

Did the restrictions affecting the applicants' property violate their right to respect for their property within the meaning of Article 1 of Protocol No. 1 to the Convention? In this context, taking into account the applicants' arguments concerning the surface area and the position of the Ministry of National Education, did the restrictions comply with domestic law (see Yel and Others v. Turkey, no. 28241/18, §§ 88-90, 13 July 2021)? If so, did they place an excessive burden on the applicants (see, among other authorities, Hakan Arı v. Turkey, cited above, §§ 38 and 46)?

İPEK v. TÜRKİYE (no. 30001/21)*

Article 6 and Article 1 of Protocol No. 1 – amount of the costs of legal representation which the applicant was ordered to pay

lodged on 24 May 2021

Communicated on 8 November 2024

Published on 25 November 2024

SUBJECT OF THE CASE

The application concerns the amount of legal representation costs which the applicant was ordered to pay to the opposing party, which represents more than 88% of the compensation awarded to him.

The applicant regards this as a violation of his right to a fair trial within the meaning of Article 6 of the Convention and of his right to respect for his property within the meaning of Article 1 of Protocol No. 1 to the Convention.

QUESTION TO THE PARTIES

Did the amount of the costs of legal representation which the applicant was ordered to pay to the opposing party constitute a violation of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention (see Perdigão v. Portugal [GC], no. 24768/06, §§ 67-79, 16 November 2010, Klauz v. Croatia, no. 28963/10, §§ 78-97 and 108-110, 18 July 2013, Cindrić and Bešlić v. Croatia, no. 72152/13, §§ 91-111 and 116-123, 6 September 2016, and Musa Tarhan v. Turkey, no. 12055/17, §§ 71-89, 23 October 2018)?

KAYA v. TÜRKİYE (no. 17010/21)*

Article 5 § 1 – Continued detention

Article 5 § 3 – relevant and sufficient reasons

Article 5 § 4 – Effective procedure available; pre-trial detention in her absence and in the presence of the prosecutor; sufficiently and properly reasoned

Lodged on 16 March 2021

Communicated on 4 November 2024

Published on 2 December 2024

PURPOSE OF THE CASE

The application concerns the detention and continued detention on remand of the applicant who, at the material time, was president of Rosa, a women's protection association.

On 22 May 2020 the applicant was arrested and remanded in custody on the ground that she was a member of an illegal organisation, namely the PKK (Kurdistan Workers' Party, an illegal armed organisation). On 23 May 2020 the Diyarbakır Justice of the Peace ordered that the applicant be remanded in custody. The judge based his decision on the testimony of an anonymous witness, telephone taps and evidence obtained during searches of the applicant's home. The applicant lodged an unsuccessful appeal against the decision to remand her in custody.

On 11 June 2020 the 4th Diyarbakır Assize Court accepted the indictment filed by the public prosecutor's office and, by the same decision, ordered that the applicant be remanded in custody. On 3 July 2020 the 4th Diyarbakır Assize Court held its first hearing in the absence of the applicant. At the hearing the prosecutor requested that the applicant be remanded in custody. This request was accepted by the Assize Court.

On 16 July 2020 the applicant lodged an individual appeal with the Constitutional Court, relying in particular on Article 5 §§ 1, 3 and 4 of the Convention. In a decision of 19 November 2020, the Constitutional Court declared the application inadmissible.

Before the Court, the applicant complained of a violation of Article 5 §§ 1 (c), 3 and 4 of the Convention. From the standpoint of Article 5 § 1 (c) of the Convention, she alleged that she had been placed and kept in pre-trial detention without there being any reasonable suspicion that she had committed an offence. Invoking Article 5 § 3 of the Convention, she then submitted that the judicial decisions ordering her placement and maintenance in pre-trial detention had not been adequately reasoned. In addition, under Article 5 § 4 of the Convention, she complained of a breach of the principle of equality of arms on the ground that the 4th Assize Court of Diyarbakır had extended her pre-trial detention in her absence but in the presence of the public prosecutor. Lastly, she alleged that the Constitutional Court had failed to give adequate reasons for its decision, given that her complaints under Article 5 §§ 3 and 4 (lack of sufficient and relevant reasons in the orders for placing and maintaining her in pre-trial detention and extension of her pre-trial detention by the Diyarbakır Assize Court in her absence at the hearing) had not been examined by it.

QUESTIONS TO THE PARTIES

1. Was the applicant remanded in custody contrary to Article 5 § 1 of the Convention? More specifically, was the evidence in the file at the time of the applicant's detention and continued detention sufficient to persuade an objective observer that she might have committed the offences with which she was charged (see Mergen and Others v. Turkey, nos. 44062/09 and 4 others, §§ 46-55, 31 May 2016, and Yüksel and Others v. Turkey, nos. 55835/09 and 2 others, §§ 51-60, 31 May 2016)?

2. Did the domestic courts give relevant and sufficient reasons to justify the applicant's detention on remand, in accordance with Article 5 § 3 of the Convention (see Buzadji v. the Republic of Moldova [GC], no. 23755/07, §§ 84-102, 5 July 2016)?

3. Did the applicant have at her disposal, in accordance with Article 5 § 4 of the Convention, an effective procedure through which she could challenge the lawfulness of her detention? In particular

- did the Diyarbakır Assize Court's decision of 3 July 2020, by which it was decided to keep the applicant in pre-trial detention in her absence and in the presence of the prosecutor, comply with the requirements of Article 5 § 4 of the Convention (compare Altınok v. Turkey, no. 31610/08, §§ 45-49, 29 November 2011)?

- was the Constitutional Court's decision sufficiently and properly reasoned within the meaning of Article 5 § 4 of the Convention (compare Dimo Dimov and Others v. Bulgaria, no. 30044/10, § 69, 7 July 2020)?

PYATAK v. UKRAINE (no. 27388/24)*

Article 6 § 1 – applicability (civil head); length of administrative proceedings

Article 6 § 1 and Article 13 – Effective domestic remedy

Lodged on 19 August 2024

Communicated on 8 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

The application concerns the allegedly excessive length of the ongoing administrative proceedings. The applicant, who has served in the Armed Forces since 3 April 2022, challenged, in October 2023, his military unit command's failure to consider his request for discharge from military service. He sought discharge in order to take care of his 88-year-old grandmother who, according to her medical file, requires constant care. The applicant claims that he is her sole carer and, therefore, is entitled by law to be discharged from military service. In December 2023 the Kyiv Circuit Administrative Court initiated the proceedings and decided to hear the case in abridged procedure. The case is still pending before that court. Following the applicant's requests to expedite the proceedings, in April 2024, the court informed him that it was facing a heavy workload.

Relying on Article 6 § 1 of the Convention, the applicant complains of the length of the proceedings. He also complains, mainly under Article 13 of the Convention, that no effective domestic remedy is available in that regard.

QUESTIONS TO THE PARTIES

1. Is Article 6 § 1 of the Convention under its civil head applicable to the proceedings in the present case?

2. If so, is the length of the proceedings in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention (compare, for instance, *Q and R v. Slovenia*, no. 19938/20, §§ 75-83, 8 February 2022)?

3. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 6 § 1 of the Convention, as required by Article 13 of the Convention (see, *Karnaushenko v. Ukraine*, no. 23853/02, §§ 65-66, 30 November 2006)?

KAGANOVSKYY v. UKRAINE – (no. 5694/19)

Legal standing

Article 5 § 1 – deprivation of liberty

Article 5 § 4 – effective procedure to challenge lawfulness of detention

Article 5 § 5 - effective and enforceable right to compensation

Lodged on 26 December 2018

Communicated on 7 November 2024

Published on 25 November 2024

SUBJECT MATTER OF THE CASE

By judgment in the case of *Kaganovskyy v. Ukraine* (no. 2809/18, 15 September 2022) the Court found *inter alia* that the applicant's confinement in the enhanced supervision unit of the Kyiv Psychoneurological Residential Institution, a State-run social care institution ("the KPRI") between 27

June and 6 July 2017 had been in breach of Article 5 § 1 (ibid., §§ 98-104). The present application concerns the applicant's stay at the KPRI immediately before and after his confinement in the enhanced supervision unit.

From 2014 the applicant, who had been declared legally incapable due to schizophrenia, voluntarily resided at the KPRI.

After unsuccessful attempts to persuade his brother, who had been appointed as his guardian, to take steps to restore his legal capacity, in February 2017 the applicant, assisted by the lawyers from the Ukrainian Helsinki Human Rights Union ("the UHHRU"), initiated the relevant legal proceedings himself. The applicant claimed that his guardian had opposed these proceedings. It is alleged that from around 1 April 2017 the KPRI staff, acting under the instructions of the applicant's guardian, prohibited the applicant from leaving the institution's territory in order to obstruct the applicant's attendance at relevant court hearings. Further directives from the applicant's brother in his capacity as a guardian in October 2017 resulted in the applicant being forbidden from meeting with other people, including his lawyers, unless in the guardian's presence. The applicant asserted that he had not been able to attend court hearings, socialise with friends or go to church.

On approximately 27 June 2018 the KPRI's staff informed the applicant that he would be permitted to leave the institution periodically.

Relying on Article 5 §§ 1, 4 and 5 of the Convention and Article 2 of Protocol No. 4, the applicant complained about being prohibited from leaving the KPRI territory between 1 April 2017 and 27 June 2018, as well as the inability under domestic law to challenge the lawfulness of his confinement in court and to receive compensation for it. These complaints fall to be examined under Article 5 §§ 1, 4 and 5 of the Convention.

On 25 December 2019 the applicant died. Referring to the reluctance of the applicant's guardian to continue the case and the absence of other relatives willing to take it up, the UHHRU expressed the wish to pursue the case on the applicant's behalf. It claimed *inter alia* that its long-term legal representation of the applicant had established a strong link with him.

QUESTIONS TO THE PARTIES

1. Does the Ukrainian Helsinki Human Rights Union have legal standing to pursue the application on the applicant's behalf?

2. Did the applicant's stay in the KPRI between 1 April and 26 June 2017 and between 7 July 2017 and 27 June 2018, constitute a deprivation of liberty (see *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 115-20, ECHR 2012; *Mihailovs v. Latvia*, no. 35939/10, §§ 128-40, 22 January 2013)? If yes, was it compatible with Article 5 § 1 of the Convention?

3. Did the applicant have at his disposal an effective procedure by which he could challenge the lawfulness of his detention, as required by Article 5 § 4 of the Convention? Did the applicant have an effective and enforceable right to compensation for the deprivation of liberty in alleged breach of Article 5 §§ 1 and 4, as required by Article 5 § 5 of the Convention?