Scan of communicated cases

Cases covered from 9 December 2024 until 4 January 2025

Onik MANUCHARYAN v. Armenia (no. 9970/19)

Article 2 – death during compulsory military service – effectiveness of investigation

SUBJECT MATTER OF THE CASE

The case concerns the death of the applicant's brother, M. Manucharyan, during compulsory military service and the subsequent investigation.

On 27 June 2012 M. Manucharyan was drafted into the Armenian army and assigned to military unit no. 24923 ("the military unit").

On 31 July 2013 at around 1.40 p.m. M. Manucharyan was found dead with a gunshot injury to his head in the observation tower near the car park of the military unit, where he had been performing watch duty.

On 1 August 2013 the Investigative Service of the Ministry of Defence instituted criminal proceedings on account of incitement to suicide (Article 110 of the former Criminal Code in force until 1 July 2022), ordered an autopsy and a combined ballistic, trace and fingertip forensic examination. On the same day took place an examination of the scene of the incident, during which, among other things, a burnt piece of paper, one unfired bullet and three fired cartridge cases were found on the floor of the observation tower and three bullet exits were found on the ceiling. Additionally, two thirty-round magazines were found one of which contained twenty-six bullets.

On 17 September 2013 the autopsy was completed. The ensuing report concluded that M. Manucharyan's death had resulted from a ballistic injury with the bullet entry having been in the chin and bullet exit being in the top of the head. The autopsy revealed another gunshot injury in the lower half of the right ear which was said not to be linked to M. Manucharyan's death. The following bodily injuries were also discovered: an ecchymosis in the right side of the chest, which had been inflicted by a blunt and hard object before the death and sections of missing skin on the waist inflicted by blunt and hard objects after the death.

On 16 October 2013 the expert report following the combined ballistic, trace and fingertip forensic examination was delivered. It established that the three cartridge cases found at the scene had been fired from the assault rifle assigned to M. Manucharyan, which had been in "fire line" mode at the time of the shooting. There were fragments of sweat and grease on M. Manucharyan's assault rifle but there were no identifiable fingerprints on it. According to the same report, the rifle could not have fired without pulling the trigger. The examination of M. Manucharyan's uniform had revealed that his military underwear lacked two buttons one of which had apparently been ripped off.

On 17 February 2014 the investigating authority ordered a posthumous combined psychiatric and psychological forensic examination. According to the ensuing report delivered on 1 July 2014, M. Manucharyan had not suffered from any mental illness. Instead, as a consequence of continual violence and humiliation by his fellow servicemen, Sergeant A.S. and Junior Sergeant B.G., he had developed acute depressive reaction in the form of hopelessness and desperation, which could prompt him to commit suicide.

The investigation eventually concluded that M. Manucharyan had committed suicide as a consequence of the violence and humiliation to which he had been subjected during military service. In that connection, charges were brought against Sergeant A.S. and Junior Sergeant B.G. under Article 358.1 § 4 of the former

Criminal Code (beating or carrying out other acts of violence in respect of a subordinate or threatening to do so, which resulted in grave consequences).

During the trial the applicant requested the court to order an additional forensic examination of M. Manucharyan's trousers in order to find out whether the burn mark surrounded by blood on their back that had been recorded by the investigator upon the examination of his brother's uniform on 1 August 2013 had resulted from gunshot. He stated that that mark had not been mentioned in the subsequent expert reports. The court rejected that request.

In the course of the trial the trial court, having considered that the expert report issued on the basis of the posthumous combined psychiatric and psychological forensic examination was not sufficiently clear and substantiated, ordered a secondary examination of the kind. The ensuing expert report delivered on 23 June 2014 concluded that there had been a causal link between the actions of Junior Sergeant B.G. and M. Manucharyan's psychological state before his suicide while the causal link between the latter's psychological condition preceding his suicide and Sergeant A.S.'s actions was indirect.

On 30 August 2017 the trial court mitigated the charges against Sergeant A.S. and sentenced him to three years of imprisonment which he was exempted from serving because he had been under detention for the duration of the imposed sentence. It found Junior Sergeant B.G. guilty as charged and sentenced him to seven years of imprisonment.

The applicant appealed arguing that the investigation had failed to explore the hypothesis of murder and to clarify, inter alia, the circumstances surrounding the burn mark on his brother's trousers, the injuries on his body, and the absence of fingertips on the assault rifle. The applicant also claimed that his brother's case was one of those cases where a murder in the army was being covered up as suicide.

By a decision of 21 February 2018 the Criminal Court of Appeal rejected the applicant's appeal. At the same time, it reduced Junior Sergeant B.G.'s sentence to six years of imprisonment.

On 7 August 2018 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit. That decision was served on the applicant on 14 August 2018.

The applicant complains under Article 2 of the Convention about his brother's death (he alleges that in reality his brother was murdered) and the ineffectiveness of the investigation into the matter carried out by the domestic authorities.

QUESTIONS TO THE PARTIES

1. Was M. Manucharyan's right to life, ensured by Article 2 of the Convention, violated in the present case?

2. Having regard to the procedural protection of the right to life, was the investigation by the domestic authorities in the present case in breach of the guarantees of Article 2 of the Convention (see Muradyan v. Armenia, no. 11275/07, §§ 133-36, 24 November 2016; Ohanjanyan v. Armenia, no.70665/11, §§ 133-38, 25 April 2023; and Hovhannisyan and Karapetyan v. Armenia, no. 67351/13, §§ 90-95, 17 October 2023)?

Armine AVETISYAN v. Armenia (no. 19153/20)

Article 2 – death during compulsory military service – effectiveness of investigation

SUBJECT MATTER OF THE CASE

The case concerns the death of the applicant's son, H. Grigoryan, during compulsory military service and the subsequent investigation.

On 26 July 2017 H. Grigoryan was drafted into the Armenian army and assigned to military unit no. 38862 of the Nagorno-Karabakh armed forces ("the military unit", situated in the "Republic of Nagorno-Karabakh" (the "NKR")).

Between 4.25 and 4.45 p.m. on 27 January 2018 H. Grigoryan died from a gunshot injury to his forehead while performing watch duty at a military base guarded by the military unit.

On the same date the Investigative Committee of Armenia instituted criminal proceedings under Article 373 § 3 (a breach of the rules for handling weapons that had led to the death of a person caused by negligence) of the former Criminal Code (in force until 1 July 2022).

On 31 January 2018 A.C., a conscript on duty with H. Grigoryan on the day of the incident, was charged with breaching the rules on handling assault rifles which unintentionally caused H. Grigoryan's death.

According to the findings of the criminal investigation, on the day of the incident H. Grigoryan went to the neighbouring observation point where private A.C. was assigned for duty to ask him some questions since he could not read the instructions in Armenian and it was his first time on watch duty. During their conversation they had an argument concerning faith: H. Grigoryan mentioned that he was not afraid of anything, including God. In order to scare him, A.C. grabbed the assault rifle assigned to H. Grigoryan, loaded it while the magazine was attached to the rifle, then detached the magazine and pressed the trigger causing his death.

According to A.C.'s statements, he did not remember at that moment that despite the magazine having been detached from the rifle, there could still be a bullet inside from the previous load.

According to the statements of six fellow servicemen who had been present at the military base on the day of the incident they had not witnessed the incident directly but had heard A.C. expressing remorse immediately after shooting H. Grigoryan which he had insisted to have happened by accident. H. Grigoryan and A.C. had never had any personal issues before. At the same time, several days before the incident the two of them had had another argument in relation to faith. One of the questioned servicemen stated that he had reported about that argument to the platoon commander Senior Lieutenant N.V.

An internal investigation into H. Grigoryan's death ordered by the Commander of the Nagorno-Karabakh Defence Army ("the Commander") found a number of shortcomings and violations of the internal rules concerning organisation of military service on the part of the commanding officers of the military unit at different levels, including poor supervision by N.V. and Junior Sergeant A.M. who was in charge of the base. The internal investigation also found that the requirements of the Commander's order no. 832 of 12 December 2017 concerning an earlier incident which had taken place in the military unit on 11 December

2017 had not been fully implemented. Based on the results of the internal investigation the responsible officers were subjected to disciplinary penalties.

A.C.'s request to conduct an expedited trial was granted despite the applicant's objection.

On 25 December 2018 the trial court (First Instance Court of General Jurisdiction of Syunik Region) found A.C. guilty as charged and sentenced him to six years of imprisonment. He was absolved from serving his punishment by application of an act of amnesty. The applicant disputed the judgment objecting against the classification of the crime (causing death by negligence as opposed to murder) as well as the application of an act of amnesty. She also claimed that the investigation had not been thorough as it had failed to elucidate several important circumstances surrounding her son's death, including the extent to which poor supervision and discipline in the military unit had contributed to the fatal incident, whether the conscripts had been properly trained to handle assault rifles and so on. On 10 June 2019 the Criminal Court of Appeal dismissed the applicant's appeal. On 1 October 2019 the Court of Cassation declared the applicant's appeal on points of law inadmissible for lack of merit.

The applicant complains under Article 2 of the Convention that the State failed to protect her son's life during compulsory military service, that the investigation carried out by the domestic authorities into the matter was ineffective and that the punishment imposed on private A.C. was inadequate.

QUESTIONS TO THE PARTIES

1. Do the matters complained of fall within the jurisdiction of Armenia within the meaning of Article 1 of the Convention?

2. Was H. Grigoryan's right to life, ensured by Article 2 of the Convention, violated in the present case?

3. Having regard to the procedural protection of the right to life, was the investigation by the domestic authorities in the present case in breach of the guarantees of Article 2 of the Convention?

The Government are invited to submit the copy of Nagorno-Karabakh Defence Army Commander's order no. 832 of 12 December 2017 concerning an incident which had taken place in the military unit on 11 December 2017.

Emil SAFARYAN v. Armenia (no. 48207/19)

Article 2 – Article 13 – death during compulsory military service – effectiveness of investigation

SUBJECT MATTER OF THE CASE

The case concerns the death of the applicant's son, A. Safaryan, during compulsory military service and the ensuing investigation.

A. Safaryan was performing his compulsory military service in military unit no. 49971 of the Nagorno-Karabakh armed forces ("the military unit", situated in the "Republic of Nagorno-Karabakh").

At around 8.40 p.m. on 27 February 2015, when A. Safaryan was on watch duty in a military base guarded by the military unit, he died from a gunshot injury to his chin.

On 28 February 2015 the Investigative Committee of Armenia instituted criminal proceedings under Article 110 of the former Criminal Code (incitement to suicide) and ordered an autopsy.

The investigation eventually concluded that A. Safaryan had committed suicide as a consequence of the violence and humiliation to which he had been subjected before his death. In that connection, charges were brought against Private G.G. and Junior Sergeant M.H. under Article 359 § 3 of the former Criminal Code (breach of the rules of military conduct by servicemen in the absence of a subordinate relationship between them, in the form of humiliation, bullying, beating or other acts of violence, which resulted in grave consequences). Also, Warrant officer A.S., who had beaten and insulted A. Safaryan in front of the entire personnel of the base when in charge of the given military base on 24 February 2015, was charged under Article 358.1 § 2 of the former Criminal Code (beating a subordinate or carrying out other acts of violence in respect of a subordinate, or threatening to do so, in relation to the performance of duties linked to military service).

On 5 March 2015 the report based on the results of the internal investigation into A. Safaryan's death (ordered by the Chief of the General Staff of the armed forces of Armenia) was delivered. It established, in particular, that one of the reasons for A. Safaryan's harassment by other servicemen was the fact that he had slept on watch duty several times. That problem had not been reported to the superiors and had not been dealt with properly. The internal investigation concluded that A. Safaryan's death could have been prevented had there been proper supervision of the military base, psychological and pedagogical work had been carried out with the personnel and had the atmosphere of intolerance and humiliation among servicemen been eliminated.

On 8 May 2015 the autopsy report (no. 252/12) was delivered which, apart from the gunshot injury that had caused A. Safaryan's death, revealed numerous scratches and ecchymoses on different parts of his body some of them caused immediately before his death and others 2-3 days prior to it. A fracture discovered on the right side of the lower jaw was found to have been caused around 2 hours before the death and was considered to qualify as medium gravity harm to health while A. Safaryan had still been alive. An additional autopsy was ordered to find out, among other things, whether that injury could have resulted from the same gunshot that had caused A. Safaryan's death. According to the ensuing expert report (no. 179/L) delivered on 22 October 2015, the given injury could not have been caused by gunfire whereas a strong punch was a possibility.

On 15 July 2015 a posthumous forensic psychiatric and psychological examination was ordered. According to the ensuing report (no. 79/15) received on 6 August 2015, A. Safaryan had not suffered from any mental illness. Rather, as a result of regular insults and humiliation by his fellow servicemen he had developed frustration and neurotic depression due to psychological trauma which could have prompted him to commit suicide. The experts considered that there had been a direct causal link between the actions of Private G.G. and Junior Sergeant M.H. and A. Safaryan's psychological state before his suicide. They found no direct causal link between A. Safaryan's suicide and the actions of Warrant officer A.S.

Two cartridge cases were found at the scene of the incident both of which had been shot from the rifle assigned to A. Safaryan. During the investigation witnesses and the defendants stated that they had heard two gunshots at the time of the incident.

By a judgment of 19 May 2017 the trial court (First Instance Court of General Jurisdiction of Syunik Region) sentenced Private G.G. and Junior Sergeant M.H. to five years' imprisonment. Warrant officer A.S. was

sentenced to one year and three months' imprisonment (including for the same crime committed in respect of another conscript), which was suspended upon probation. The applicant's claim for non-pecuniary damage was left without examination for absence of relevant legal regulations in the former Code of Criminal Procedure.

The applicant appealed arguing against the leniency of the imposed sentences and the inadequate legal classification of Warrant officer A.S.'s actions. He also claimed that the investigation had failed to explore the hypothesis of murder and to clarify the circumstances surrounding the infliction of the fracture of the lower jaw two hours before his son's death, as well as, inter alia, the reasons for him having frequently fallen asleep when on duty.

On 14 December 2017 the Criminal Court of Appeal partially granted the applicant's appeal and sentenced Private G.G. and Junior Sergeant M.H. to six years' imprisonment. The applicant lodged an appeal on points of law against that decision.

On 24 December 2018 the Court of Cassation partly granted the applicant's appeal and quashed the appellate court's decision as far as Warrant officer A.S.'s sentence was concerned.

On 28 March 2019 Criminal Court of Appeal set the case down for examination. The outcome of those proceedings is unknown.

The applicant complains under Articles 2 and 13 of the Convention about his son's death (he alleges that his son was murdered) and the ineffectiveness of the investigation carried out by the domestic authorities. He also complains about the absence of an effective legal mechanism to raise those complaints and to claim compensation for his son's death, which occurred under the exclusive control of the authorities.

QUESTIONS TO THE PARTIES

1. Do the matters complained of fall within the jurisdiction of Armenia within the meaning of Article 1 of the Convention (see Nana Muradyan v. Armenia, no. 69517/11, §§ 88-92, 5 April 2022; Hovhannisyan and Karapetyan v. Armenia, no. 67351/13, §§ 59-63, 17 October 2023; Varyan v. Armenia, no. 48998/14, §§ 69-70, 6 June 2024)?

2. Was A. Safaryan's right to life, ensured by Article 2 of the Convention, violated in the present case (see Nana Muradyan, cited above, §§ 118-23; Hovhannisyan and Nazaryan v. Armenia, nos. 2169/12 and 29887/14, §§ 116-23, 8 November 2022; Varyan, cited above, §§ 87-95)?

3. Having regard to the procedural protection of the right to life, was the investigation by the domestic authorities in the present case in breach of the guarantees of Articles 2 and/or 13 of the Convention (see Muradyan v. Armenia, no. 11275/07, §§ 134-36, 24 November 2016; Ohanjanyan v. Armenia, no. 70665/11, §§ 135-38, 25 April 2023; Hovhannisyan and Karapetyan v. Armenia, no. 67351/13, §§ 90-95, 17 October 2023)?

4. Did the applicant have at his disposal an effective domestic remedy for his complaint under Article 2 of the Convention, as required by Article 13 of the Convention? In particular, was there available to him a legal mechanism for establishing any potential liability of State officials or bodies for acts or omissions involving the breach of his son's rights under Article 2 of the Convention and to claim compensation for

non-pecuniary damage flowing from any such breach (see Paul and Audrey Edwards v. the United Kingdom, no. 46477/99, §§ 96 and 97, ECHR 2002-II)?

The parties are invited to inform the Court about the developments with regard to the criminal case concerning A. Safaryan's death since 28 March 2019 and submit the copies of relevant documents.

The Government are invited to submit the copy of the record of the examination of the scene of the incident and the copies of the following forensic expert reports: combined ballistic and trace examination (report no. 10451503), ballistic examination (report no. 12481503) and combined autopsy and trace examination (report no. 28121503).

Aydin JANIYEV v. Azerbaijan (no. 25138/23)

Article 6 – Article 10 – conviction for sharing insulting and defamatory statements on social media

SUBJECT MATTER OF THE CASE

The application concerns administrative proceedings against the applicant, a journalist, instituted after a complaint by E.F., a journalist, resulting in the applicant's administrative conviction for disseminating "restricted information" on Facebook.

By a judgment of 26 January 2013, the Yasamal District Court convicted the applicant under Article 388-1.1.1 (dissemination on the internet of information restricted by law) of the Code of Administrative Offences (CAO) and sentenced him to thirty days' administrative detention. The court held, and the applicant admitted, that he had shared insulting and defamatory statements about E.F. on Facebook. The Baku Court of Appeal, essentially reiterating the lower court's reasoning, upheld the conviction and the sentence in a final decision of 8 February 2023.

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

QUESTIONS TO THE PARTIES

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

2. Was the applicant able to defend himself through legal assistance of his own choosing, as required by Article 6 § 3 (c) of the Convention?

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

The parties are requested to submit the original text and a translation into English or French of the impugned restricted information disseminated by the applicant which led to his conviction.

Ibrahim SALAMOV v. Azerbaijan and Elchin HASANZADE v. Azerbaijan (nos. 8188/22 and 9539/22)

Article 10 – defamatory posts on social media

SUBJECT MATTER OF THE CASE

The applicants were co-defendants in the same set of criminal proceedings instituted under the procedure of private prosecution by S.M, the director of the Housing Maintenance and Utilities Union in Mingachevir, resulting in their criminal conviction for making allegedly defamatory posts about S.M. on Facebook.

The first applicant had shared a photo depicting S.M. and two other men in front of a monument to which a photo of a historical figure (M. A. Rasulzade) had been affixed by someone. The first applicant, accusing S.M. of "treason", had noted that S.M. disrespected M. A. Rasulzade by tearing his photo off the monument. He had also made some other statements in the post about S.M. The second applicant, a journalist, had written about the mentioned incident on Facebook. He had also accused S.M. of corruption, embezzlement, and some other criminal acts in subsequent posts and in an article published on a local news portal.

By a judgment of 16 November 2020, the Mingachevir City Court convicted both applicants of the criminal offences under Articles 147 (libel) and 148 (insult) of the Criminal Code and sentenced them to one year of corrective work with a deduction of 10% of their monthly income in favour of the State. The applicants and S.M. appealed against the judgment. By a decision of 2 March 2021, the Shaki Court of Appeal upheld the conviction but changed the applicants' sentence to eight months' imprisonment instead of corrective work and deduction of salary. The Supreme Court upheld the appellate court's judgment by a final decision of 13 July 2021 (served on the applicants on 12 August 2021). The domestic courts, referring to the linguistic expert report and other adduced evidence, held that the applicants had publicly disseminated defamatory information damaging S.M.'s reputation.

Relying on Article 10 of the Convention, the applicants complain that the domestic courts' decisions amounted to a violation of their right to freedom of expression.

QUESTIONS TO THE PARTIES

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

The parties are requested to submit translations into English or French of the applicants' allegedly defamatory posts and articles which led to their criminal conviction.

Ali ALIYEV v. Azerbaijan (no. 25610/23)

Article 6 – Article 10 – criminal proceedings for defamation

SUBJECT MATTER OF THE CASE

The present application concerns criminal proceedings instituted against the applicant, an opposition party leader, as private prosecution by R.G., a former head of a district branch of the ruling party. In September 2021, an intimate video of R.G. was published on social network platforms. Following the incident, R.G.'s party membership was cancelled. A few days later, the applicant referring to the impugned video, made some allegedly defamatory statements about R.G. in an interview on a YouTube channel.

By a judgment of 23 June 2022, the Yasamal District Court convicted the applicant under Article 148 (insult) of the Criminal Code and sentenced him to six months' imprisonment. This sentence was merged fully with a previous prison sentence imposed on him in a different set of defamation proceedings, resulting in one year's imprisonment. After a series of appeals, by a final decision of 1 March 2023, the Supreme Court upheld the judgments of the lower courts.

Relying on Articles 6 and 10 of the Convention, the applicant complains about the alleged unfairness of the proceedings and argues that his conviction amounted to a violation of his freedom of expression.

QUESTIONS TO THE PARTIES

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

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

The parties are requested to submit translations into English or French of the applicant's allegedly defamatory statements which led to his criminal conviction.

Vugar ABILLI v. Azerbaijan (no. 12506/21)

Article 5 – Article 6 – Article 10 – dissemination of restricted information on the internet

SUBJECT MATTER OF THE CASE

The application concerns the administrative proceedings brought against the applicant for "failure to comply with a lawful order of a police officer" and for "dissemination on the internet of information restricted by law" under Articles 535.1 and 388-1.1 of the Code on Administrative Offences.

By a judgment of 17 April 2020, the Absheron District Court convicted the applicant of the above-mentioned offences and sentenced him to twenty days' administrative detention. Referring to the relevant

police report, the court found that the applicant had imparted restricted information on a social network and that he had disobeyed a lawful order of a police officer. In his appeal submissions, the applicant argued that he had not disseminated any restricted information, but that he had only shared interviews and speeches of an opposition leader on Facebook. By a final decision of 4 May 2020, the Sumgayit Court of Appeal upheld the judgment of the first-instance court. The decision was served on the applicant on 23 November 2020.

Relying on Articles 5, 6 and 10 of the Convention, the applicant complains of the alleged unfairness of the domestic proceedings and of a violation of his right to freedom of expression.

QUESTIONS TO THE PARTIES

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

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

Aydin JANIYEV v. Azerbaijan (no. 25138/23)

Article 6 – Article 10 – defamation on social media

SUBJECT MATTER OF THE CASE

The application concerns administrative proceedings against the applicant, a journalist, instituted after a complaint by E.F., a journalist, resulting in the applicant's administrative conviction for disseminating "restricted information" on Facebook.

By a judgment of 26 January 2013, the Yasamal District Court convicted the applicant under Article 388-1.1.1 (dissemination on the internet of information restricted by law) of the Code of Administrative Offences (CAO) and sentenced him to thirty days' administrative detention. The court held, and the applicant admitted, that he had shared insulting and defamatory statements about E.F. on Facebook. The Baku Court of Appeal, essentially reiterating the lower court's reasoning, upheld the conviction and the sentence in a final decision of 8 February 2023.

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

QUESTIONS TO THE PARTIES

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

2. Was the applicant able to defend himself through legal assistance of his own choosing, as required by Article 6 § 3 (c) of the Convention?

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

The parties are requested to submit the original text and a translation into English or French of the impugned restricted information disseminated by the applicant which led to his conviction.

Muzaffar BAKHISHOV v. Azerbaijan (no. 33302/21)

Article 10 – disbarment of lawyer due to statements at court hearings and to the press

SUBJECT MATTER OF THE CASE

The application concerns the disbarment of the applicant, who was a lawyer, on account of the statements that he made at the court hearings before the Supreme Court and to the press on the President of the Supreme Court.

At the request of the Presidium of the Azerbaijani Bar Association, the domestic courts, by a final decision of the Supreme Court dated 18 November 2020 and served on the applicant on 25 December 2020, ordered the applicant's disbarment.

Relying on Article 10 of the Convention, the applicant argues that his disbarment on account of those statements amounted to a breach of his right to freedom of expression.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicant's freedom of expression, in particular his right to impart information and ideas, within the meaning of Article 10 § 1 of the Convention? In particular, was the applicant's disbarment on account of the statements that he had made at the court hearings before the Supreme Court and to the press on the President of the Supreme Court justified under Article 10 § 2 of the Convention?

Faig AMIROV v. Azerbaijan (no. 34282/18)

Article 6 – fairness of proceedings

SUBJECT MATTER OF THE CASE

The present application concerns the criminal proceedings against the applicant who was an active member of the Popular Front Party and worked as the financial director of the Azadlig newspaper.

By a judgment of 24 July 2017, the Sabail District Court sentenced the applicant to three years and three months' imprisonment for tax evasion and incitement to ethnic, racial, social or religious hatred and hostility under Articles 213.1 and 283.2.2 of the Criminal Code. On 15 September 2017 the Baku Court of Appeal confirmed the conviction but changed the sentence and decided to conditionally suspend it for three years. The applicant was released from the courtroom. By a judgment of 27 February 2018, the Supreme Court upheld the judgment of the Baku Court of Appeal.

Relying on Article 6 of the Convention, the applicant complains of unfairness of the proceedings since his conviction was based on fabricated and unlawfully obtained evidence and that the domestic courts' decisions were not reasoned.

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 (see Fatullayev v. Azerbaijan (no. 2), no. 32734/11, §§ 76-83, 7 April 2022, and Rustamzade v. Azerbaijan (no. 2), no. 22323/16, §§ 35-44, 23 February 2023)? In particular:

(a) Did the domestic courts establish the existence of all the elements of the criminal offences of which the applicant was convicted and provide reasons for their decisions?

(b) Was the applicant's conviction based on unlawfully obtained evidence?

(c) Was the applicant afforded an adequate opportunity to contest the evidence against him, and to adduce evidence in support of his line of defence and to have such evidence assessed by the court?

The Government are requested to submit copies of all the documents in the case file relating to the domestic proceedings.

Afgan SADIGOV v. Azerbaijan and Babak HASANOV v. Azerbaijan (nos. 58553/18 and 27303/19)

Article 3 – alleged ill-treatment by police – effective investigation

SUBJECT MATTER OF THE CASE

The applications concern the applicants' alleged ill-treatment by police officers and ineffective investigations into those allegations.

According to the applicants, they were ill-treated by the police officers during their arrest and/or in police custody, following which they lodged criminal complaints with the prosecuting authorities.

While in application no. 58553/18 the applicant has not received any reply to his criminal complaint, in application no. 27303/19 the prosecuting authorities rejected the applicant's complaints of ill-treatment as unsubstantiated. The applicants' complaints against the prosecuting authorities lodged before the domestic courts were unsuccessful.

The applicants complain under Article 3 of the Convention that they were subjected to ill-treatment by the police and that the domestic authorities failed to conduct an effective investigation in that regard.

QUESTIONS TO THE PARTIES

1. Have the applicants been subjected to torture or inhuman or degrading treatment, in breach of Article 3 of the Convention (see Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV, and Mustafa Hajili v. Azerbaijan, no. 42119/12, §§ 34-37, 24 November 2016)?

2. Having regard to the procedural protection from torture or inhuman or degrading treatment (see Labita, cited above, § 131, and Mustafa Hajili, cited above, §§ 47-48), were the investigations in the present cases by the domestic authorities in breach of Article 3 of the Convention?

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

Araz YUSIFOV v. Azerbaijan (no. 27669/19)

Article 3 – Article 13 – alleged ill-treatment by police – effective investigation

SUBJECT MATTER OF THE CASE

The application concerns the applicant's alleged ill-treatment by police officers and ineffective investigation into those allegations.

According to the applicant, he was ill-treated by the police officers in police custody, following which he lodged a criminal complaint with the prosecuting authorities.

The prosecuting authorities rejected the applicant's complaints of ill-treatment as unsubstantiated. The applicant's complaints against the prosecuting authorities lodged before the domestic courts were unsuccessful.

The applicant complains under Article 3 of the Convention that he was subjected to ill-treatment by the police and that the domestic authorities failed to conduct an effective investigation in that regard. He also complains under Article 13 of the Convention that he did not have an effective remedy in respect of his complaint concerning his ill-treatment in police custody.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to torture or inhuman or degrading treatment, in breach of Article 3 of the Convention (see Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV, and Mustafa Hajili v. Azerbaijan, no. 42119/12, §§ 34-37, 24 November 2016)?

2. Having regard to the procedural protection from torture or inhuman or degrading treatment (see Labita, cited above, § 131, and Mustafa Hajili, cited above, §§ 47-48), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

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

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

Arzu HAJIYEVA v. Azerbaijan (no. 23311/18)

Article 3 – Article 13 – Article 10 – alleged ill-treatment by police – effective investigation

SUBJECT MATTER OF THE CASE

The applications concern the applicants' alleged ill-treatment by police/prison officers and ineffective investigations into those allegations.

According to the applicants, they were ill-treated by the officers, following which they lodged criminal complaints with the prosecuting authorities.

The prosecuting authorities rejected the applicants' complaints of ill-treatment as unsubstantiated. The applicants' complaints against the prosecuting authorities lodged before the domestic courts were unsuccessful.

The applicants complain under Article 3 of the Convention that they were subjected to ill-treatment by the police/prison officers and that the domestic authorities failed to conduct an effective investigation in that regard. Relying on Article 13 of the Convention, the applicant in application no. 30480/18 also complains that there was no effective remedy in respect of his alleged ill-treatment.

The applicant in application no. 23311/18 also complains under Article 10 of the Convention that the police officers interfered with her journalistic activity and ill-treated her while she was reporting.

QUESTIONS TO THE PARTIES

1. Have the applicants been subjected to torture or inhuman or degrading treatment, in breach of Article 3 of the Convention (see Labita v. Italy [GC], no. 26772/95, § 119, ECHR 2000-IV, and Mustafa Hajili v. Azerbaijan, no. 42119/12, §§ 34-37, 24 November 2016)?

2. Having regard to the procedural protection from torture or inhuman or degrading treatment (see Labita, cited above, § 131, and Mustafa Hajili, cited above, §§ 47-48), were the investigations in the present cases by the domestic authorities in breach of Article 3 of the Convention?

3. Did the applicant in application no. 30480/18 have at his disposal an effective domestic remedy for his complaints under Article 3 of the Convention, as required by Article 13 of the Convention?

4. In application no. 23311/18, has there been an interference with the applicant's freedom of expression, in particular her right to receive and impart information, within the meaning of Article 10 § 1 of the Convention (see Najafli v. Azerbaijan, no. 2594/07, § 66, 2 October 2012)? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

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

Atanas Ivanov KUZMANOV v. Bulgaria (no. 22895/23)

Article 14 – Article 8 – Article 1 P1 – Father requesting benefit paid to mothers who had given birth – sex discrimination

SUBJECT MATTER OF THE CASE

The application concerns a complaint that the applicant was a victim of discrimination on the ground of his sex. In particular, he claims that this was the result of both the relevant legal provision, namely section 6(1) of the Family Allowances for Children Act 2002 (the FACA), and of the authorities refusal in practice – in application of that provision – to grant the applicant a one-off benefit paid to mothers who had given birth to children who were alive at birth. He relies on Article 14 in conjunction with Article 8 of the Convention.

The applicant is the father of twins born in September 2022. The Pazardzhik District Court awarded him sole custody of the children in a final decision of 14 November 2022 at the end of the divorce proceedings between him and the children's mother who was given contact rights with the children comprising an overnight visit twice a month plus 20 days in the summer.

On 12 December 2022 the applicant requested from the Regional Social Assistance Agency (the Agency) to pay him a benefit provided under section 6(1) of the FACA. The provision entitles mothers to receive a one-off financial assistance for the birth of a child born alive, the amount being determined on the basis of the number of children born alive by the same woman. On 20 December 2022 the Agency refused the applicant's claim on the ground that only the mother was eligible for that benefit. It was in addition impossible to determine its amount without knowing how many children were born by the same mother.

The applicant brought judicial review proceedings, relying on section 6(5) of the FACA. According to that provision, if the mother could not collect the benefit in question, it was paid to another legal representative of the child. The applicant specified that the mother was a foreigner and he had custody of the children. With a final decision of 1 March 2023 the Pazardzhik Administrative Court rejected the applicant's challenge. The court found that the benefit in question was not a family benefit for supporting the children, but an assistance specifically introduced to stimulate women to give birth. Accordingly, the father was not entitled to it.

QUESTIONS TO THE PARTIES

1. Was the applicant, in the exercise of his right to private and family life as protected under the Convention, a victim of discrimination, in violation of Article 14 of the Convention in conjunction with Article 8, as well as with Article 1 of Protocol No. 1 to the Convention?

2. In particular, was he subjected to a difference in treatment (less favourable) as compared to women who had given birth, as a result of the authorities' refusal, on the basis of the law, to grant him a benefit because he was the father and not the mother? In the affirmative, did this difference in treatment pursue a legitimate aim and was it necessary in a democratic society (compare, mutatis mutandis, Weller v. Hungary, no. 44399/05, §§ 34-35, 31 March 2009)?

Remzi GÜNANA v. Bulgaria (no 54549/22)*

Article 3 – Article 13 – alleged ill-treatment by police – effectiveness of investigation

SUBJECT MATTER OF THE CASE

On 24 August 2019 the applicant was arrested by the Haskovo police on suspicion of drug trafficking. He alleged that he had been beaten by some police officers on the premises of the Haskovo police station. A document drawn up on 25 August 2019 by the officers responsible for guarding the pre-trial detention premises in Haskovo attests to several haematomas on the applicant's torso, back, arms, legs and neck. By a final order of 19 July 2022, the public prosecutor's office attached to the Plovdiv Court of Appeal dismissed the applicant's complaint and refused to bring criminal proceedings against the police officers. The applicant relied on Articles 3 and 13 of the Convention to denounce the ill-treatment he had suffered at the hands of the police and the absence of an effective investigation into the matter.

QUESTIONS TO THE PARTIES

1. Was the applicant subjected, in breach of Article 3 of the Convention, to inhuman or degrading treatment at the hands of the police during his detention at Haskovo police station on 24 August 2019 (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 Labita v. Italy [GC], no. 26772/95, § 131, ECHR 2000-IV), did the investigation carried out in this case by the domestic authorities satisfy the requirements of Article 3 of the Convention? The Government are requested to provide the full file on the preliminary investigation into the applicant's complaint.

David BEVAN v. Czech Republic (no 27137/23)*

Article 8 – Article 14 – adoption – recognition abroad – same-sex parents

SUBJECT MATTER OF THE CASE

The application concerns the refusal of the Czech courts to recognise a British decision by which, on 17 July 2019, the full adoption of the third applicant, born in 2018, was granted to the first and second applicants, who are Czech and British nationals respectively. The application for exequatur was rejected on the grounds that Czech law did not permit the adoption of a child by two persons of the same sex. On 28 February 2023, the Constitutional Court declared the applicants' constitutional appeal inadmissible (no. IV. ÚS 2210/22).

Relying on Articles 8 and 14 of the Convention, the applicants maintained that the Czech courts' refusal to grant exequatur to the British court's decision granting the third applicant's adoption infringed their right to respect for private and family life and constituted discrimination on grounds of the sexual orientation of the first and second applicants.

QUESTIONS TO THE PARTIES

1. Was there a breach of the applicants' right to respect for their private and family life, within the meaning of Article 8 of the Convention, by reason of the Czech courts' refusal to grant enforceability of the United Kingdom decision granting adoption of the third applicant by the first two (see, mutatis mutandis, Wagner and J.M.W.L. v. Luxembourg, no. 76240/01, 28 June 2007)?

2. Having had their application for exequatur refused, were the applicants discriminated against, within the meaning of Article 14 of the Convention in conjunction with Article 8, on account of the sexual orientation of the first and second applicants (see, mutatis mutandis, D.B. and Others v. Switzerland, nos. 58817/15 and 58252/15, 22 November 2022)?

Natia KAPANADZE v. Georgia (no. 12433/24)

Article 10 – dismissal of managing director of public broadcaster

SUBJECT MATTER OF THE CASE

The application concerns, under Article 10 of the Convention, the applicant's dismissal, on 19 April 2019, from her position as managing director of the Ajara TV, a public broadcaster in the Autonomous Republic of Ajara, Georgia ("the ARA"), after four out of five members of the channel's Advisory Board ("the Advisory Board") passed a motion of no confidence against her.

Members of the Advisory Board were, at that time, selected by the ARA's legislative body, the Supreme Council, with the ruling and opposition parties each nominating potential members. The proceedings to impeach the applicant from her post started on 10 April 2019, when two members of the Board, one who had been endorsed by the ruling Georgian Dream party and another by the opposition United National Movement, addressed the body with a fifteen-pages document explaining why the applicant should step down. Amongst the reasons stated, there was reference to the TV channel's ratings that had halved since 2016, the Board's difficulty in communicating with the director, misuse of expenditures and repeated violations of the internal rules on procurement, various instances conflict of interests, and so on.

The applicant sued the Advisory Board for her dismissal, claiming that there had been no sufficient evidentiary basis for imputing the multiple breaches of the managerial duties to her. She did not voice at that time any complaints relating to the Advisory Board's purported attempt to censure the editorial freedom of the TV channel.

On 6 May 2022 the Tbilisi City Court rejected the applicant's employment action as ill-founded. The court confirmed that the Advisory Board had dismissed the applicant in full compliance with the applicable legislation and that there had been sufficient evidence confirming the multiple episodes of mismanagement.

The applicant appealed against the judgment of 6 May 2022, reiterating her complaints about the insufficiency of the evidence necessary for reaching conclusions about the mismanagement. Her appeals were rejected by the Kutaisi Court of Appeals and the Supreme Court of Georgia on 2 November 2022 and 11 October 2023 respectively. It does not appear from the available case materials that the applicant raised any fears about her dismissal being linked to censorship of the editorial independence of the Ajara TV in the appellate proceedings either. The final domestic decision of 11 October 2023 was served on the applicant on 21 December 2023.

QUESTIONS TO THE PARTIES

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

In particular, did the applicant invoke before the national authorities, at least in substance, the rights under Article 10 on which she now wishes to rely before the Court?

2. Has there been an interference with the applicant's freedom of expression, within the meaning of Article 10 § 1 of the Convention, on account of her dismissal from the position of managing director of the Ajara television channel? If so, was that interference prescribed by law and necessary in terms of Article 10 § 2?

I.K. and T.K. v. Georgia (no. 6400/24)

Article 3 – Article 8 – Article 13 – Article 14 – procedural obligations – domestic abuse – sexual abuse of daughter

SUBJECT MATTER OF THE CASE

The application concerns the respondent State's procedural obligations under Articles 3 and 8 of the Convention, taken alone and in conjunction with Articles 13 and 14, on account of the alleged inadequacy of the criminal response to domestic abuses committed against the applicants, who are siblings, by their stepfather. The first applicant accused her stepfather of sexual abuses continuously perpetrated against her in the period between 2005 and March 2021, including those committed while she had still been a minor (she was born in 1991), whilst the second applicant, her brother (born in 1981), who is a person with physical impairment (deaf), accused the stepfather of psychological and harassment committed in the period between 2005 and October 2020.

By a final judgment of 25 October 2023, the Supreme Court of Georgia, amending a lower court's judgment, found the applicants' stepfather guilty of having committed abuses against the second applicant only. Endorsing almost all of the facts imputed to the perpetrator by the public prosecutor's office on behalf of the victims, the court decided to give those facts a legal qualification different from that initially proposed by the prosecution authority. Notably, whilst the prosecution office had requested that more than fifteen years of the first applicant's sexual harassment be prosecuted as a criminal offence under Article 144(3) § 2 of the Criminal Code ("the CC") – inhuman and degrading treatment –, the Supreme Court ruled that the perpetrator's conduct rather fell to be prosecuted under Article 138 of the CC (sexual abuse), which was a lex specialis in the circumstances. However, since the prosecution authority had not brought charges against the perpetrator under the latter criminal provision (apparently because the authority considered that prosecution for sexual abuse would be time-barred), the Supreme Court stated that it lacked jurisdiction to convict the applicants' stepfather in relation to the sexual abuses committed against the first applicant.

As regards the years of harassment committed against the second applicant (described as daily insults using violent expressions, episodes of deprivation of food and social contacts, limitation of physical liberty, and so on), whilst the Supreme Court acknowledged that a hate crime motivated, amongst others, by the perpetrator's intolerance of the second applicant's physical impairment had indeed been committed, it refused, similarly to the lower court, to classify it, contrary to the prosecution authority's request, as inhuman and degrading treatment (Article 144(3) of the CC), stating that the necessary threshold had not

been reached. Instead, the court decided to give those facts a legal classification under Article 126(1) of the CC (domestic violence). Domestic violence was considered to be a less serious criminal offence in comparison to inhuman and degrading treatment according to the scale of the crime gravity provided for by the CC. Having thus found the perpetrator guilty of domestic violence committed against the second applicant, the Supreme Court sentenced him to two years in prison for that particular episode.

The Supreme Court also found the applicants' stepfather guilty of domestic violence (Article 126(1) of the CC) committed against his wife, the applicants' mother (who is not an applicant in the present case), in the period between 2012 and April 2021. He was sentenced to one year in prison for that particular episode.

Finally, the Supreme Court found the applicants' stepfather guilty of a separate offence under Article 157(1) of the Criminal Code (taking, making or sharing of intimate information) on account of having secretly installed, in March 2021, a video equipment in the bathroom of the first applicant's apartment and having thus recorded her intimate images, sentencing him to five years' imprisonment in relation to that particular episode.

All in all, applying the principle of total absorption of the imposed custodial sentences, the Supreme Court sentenced the applicants' stepfather to five years in prison in relation to (i) the domestic violence committed against the applicants' mother and the second applicant and (ii) the recording of the first applicant's intimate videos. The sexual abuses committed against the first applicant were left unpunished.

QUESTIONS TO THE PARTIES

1. Having regard to the positive obligations of the respondent State inherent in Articles 3 and 8 of the Convention, taken alone and in conjunction with Article 13, to carry out a thorough and effective investigation and prosecution of acts of sexual abuse and other attacks on physical and mental integrity, has the domestic criminal investigation into the allegations of sexual abuse and other forms of harassment of, respectively, the first and second applicants by their stepfather been in breach of either of the above-mentioned Articles (compare, for example, Vučković v. Croatia, no. 15798/20, §§ 49-50, 12 December 2023, with further references therein, and Y. v. Slovenia, no. 41107/10, §§ 95-100, ECHR 2015 (extracts))?

1.1. In particular, can the sentence that the perpetrator received be considered to be manifestly disproportionate given the gravity of the committed acts (compare Smiljanić v. Croatia, no. 35983/14, § 99, 25 March 2021)?

1.2. What were the reasons for which the public prosecution service decided to abstain from bringing sexual abuse charges against the perpetrator of the relevant acts against the first applicant? If those reasons lay in the relevant statute of limitations and the associated concerns linked to the principle of non-retroactivity, was any consideration given to the question of whether or not the sexual abuses committed against the first applicant constituted "a continuous offence" (compare, mutatis mutandis, Rohlena v. the Czech Republic [GC], no. 59552/08, §§ 54-73, ECHR 2015)?

1.3. Do the domestic courts' findings – confirmed by the Supreme Court in the final instance – that the first applicant's sexual abuses and the ill-treatment of the second applicant, who was moreover a physically impaired person and thus belonged to a vulnerable category, did not reach the threshold of "inhuman and degrading treatment" sit well with [weird formulation?] the Court's relevant case-law under Article 3

(compare, mutatis mutandis, Nicolae Virgiliu Tănase v. Romania [GC], no. 41720/13, §§ 121 and 123, 25 June 2019, and M.C. v. Bulgaria, no. 39272/98, §§ 169-187, ECHR 2003-XII).

2. Can the first applicant be said to have suffered gender-based discrimination contrary to Article 14 of the Convention, read in conjunction with either Article 3 or Article 8 of the Convention, on account of the allegedly inadequate criminal response by the State to her sexual abuses?

T.K. and M.N. v. Georgia (no. 31207/24)

Article 6 – Article 8 – Article 14 – best interests of the child – travel abroad with parent living there – risk of abduction

SUBJECT MATTER OF THE CASE

The applicants are T.K. (the first applicant) and her underage son, M.N. (the second applicant, born in 2012). The first applicant is a Georgian national, while her son, the second applicant, is a citizen of Canada.

On 21 April 2015 the first applicant initiated divorce and custody proceedings seeking from the court, among other things, to have her address in Georgia designated as her son's permanent place of residence and to restrict the father's parental rights, particularly with respect to his taking the second applicant to his permanent place of residence in Canada. The first applicant argued that there was a real risk that the father might abduct their son and fail to return him to Georgia. She also alleged that the father had psychologically and physically abused her. In his counterclaim, the father asked the court, among other things, to establish a contact schedule with his son and to allow him to take his son to Canada regularly. The paternal grandfather filed a separate claim requesting the court to establish a separate contact schedule between him and his grandchild. On 23 March 2018 the Tbilisi City Court partially granted the first applicant's application, ruling that the second applicant's place of residence would be with her, and that the father would be permitted to travel abroad, in particular to Canada, with their son only from 2023 onwards, with an obligation to return. The court also established separate contact schedules for the father and the grandfather while in Georgia.

The first applicant appealed. In addition to her allegations of physical and psychological abuse, she maintained her fears that the father might abduct their son if permitted to travel to Canada. She also contested the separate contact schedule between the grandfather and the second applicant, clarifying that she was not opposed to the grandfather having a relationship with her son and that, in any case, the grandfather could see her son when he was with his father.

On 3 July 2019 the Tbilisi Court of Appeal, while upholding the decision of the court of first instance, slightly amended it with regard to the contact schedules for the father and grandfather, as well as the second applicant's travel to Canada. As for the first applicant's allegations of violence and the risk of abduction, the appellate court found them to be unsubstantiated.

On 31 May 2024 the Supreme Court of Georgia upheld the above decision, slightly modifying again the arrangements for the second applicant's travel to Canada together with his father.

The applicants complain under Articles 6, 8, and 14 of the Convention about the outcome and length of the relevant proceedings. They allege that the domestic courts failed to property assess the second applicant's

best interests when permitting the father to take him to Canada. The first applicant also complains about the establishment of a separate contact schedule for the grandfather.

QUESTIONS TO THE PARTIES

1. Having regard to the State's positive and procedural obligations under Article 8 of the Convention, was the manner in which the relevant proceedings were conducted and the decision subsequently adopted in breach of that Article? Reference is made, in particular, to the following elements:

(i) the content of the domestic court's final ruling regarding the grandfather's contact rights with the second applicant;

(ii) the content of the domestic court's final ruling regarding the father's right to take his son to Canada;

(iii) the length of the proceedings.

2. What measures have been taken with a view to assessing the second applicant's wishes and his best interests as regards the travel and contact arrangements? Was he given an opportunity to express his own views (see N.Ts. and Others v. Georgia, no. 71776/12, §§ 72 and 74-80, 2 February 2016)?

3. Did the applicants have a fair hearing in the determination of their civil rights and obligations, in accordance with Article 6 § 1 of the Convention?

Eleni SKARLATOU and Others v. Greece (no. 23121/21)

Article 6 – Article 13 – Article 1 P1 – property green-zoned – no compensation – non-enforcement of judgment

SUBJECT MATTER OF THE CASE

The applicants are owners and co-owners of plots of land situated in the Municipality of Rafina. By the Presidential Decree of 20 February 2003, the properties were included in green zones entailing restrictions to the applicants' properties.

Relying inter alia on the provisions of Article 22 § 1 of Law no. 1650/1986, which provides that owners affected by the restrictions in question could benefit from compensatory measures, applicants nos. 2, 3, 4, 5 and the predecessor of applicants nos. 1 and 6 applied on 26 December 2012 to the competent authorities for compensation. Their application was implicitly dismissed.

On 10 April 2013 the applicants lodged an application for annulment with the Council of State against the administration's implicit refusal. By judgment no. 1833/10.07.2017 the Council of State (5th Section) upheld the applicants' demand and held that in view of the administrative procedure provided by Article 22 § 1 of Law no. 1650/1986, the applicants could not bring an action for compensation directly before the administrative courts relying on the provisions in question. The Council of State annulled the implicit refusal, notably the administration's omission to address the applicants' request and remitted the case to the administration. In particular, the Council of State held that the administration had an obligation to examine the applicants' request and to compensate them pursuant to Article 22 § 1 of Law no. 1650/1986 or examine an adequate alternative. It also found that the compensation was not dependent on the adoption of the

Presidential Decree provided for in Article 22 § 4 of the same law, which should set out the requirements and procedure for those compensatory measures.

In the meantime, on 27 December 2012 applicants nos. 2, 3, 4, 5, and the predecessor of applicants nos. 1 and 6 also filed an action for damages pursuant to Article 105 of the Introductory Law of the Civil Code before the Administrative Court of First Instance of Athens, but withdrew it after judgment no. 1833/10.07.2017 was issued by the Council of State.

It appears that the applicants' application of 26 December 2012 was re-considered by the administration following the remittal of the case after judgment no. 1833/10.07.2017 of the Council of State was issued. On 12 May 2020 the applicants addressed the Council of Compliance of the Council of State ("the committee of three judges") in charge of monitoring the proper execution by the administration of the judgments of administrative courts, requesting that judgment no. 1833/10.07.2017 of the Council of State be complied with. By decision no. 3/26.01.2021 the committee of three judges rejected the application.

In particular, the committee expressly referred to judgment no. 689/2019 of the Plenary of the Council of State, which interpreted the provisions of Article 22 of Law no. 1650/1986 in order to address conflicting case-law of different Sections (1st and 5th Section) of the Council of State on the matter. In the above-mentioned judgment, the Plenary held, in another case, that insofar as the Presidential Decree regulating the requirements and procedure for the compensatory measures had not been issued, the procedure for the recognition of the right to compensation could not be implemented. Therefore, it should be possible for the affected parties to introduce a compensatory action directly before the administrative courts.

Furthermore, the committee of three judges held that the administration had considered the applicants' request of 26 December 2012 and in the latest round has taken account of the Plenary's judgment no. 689/2019 and thus there was no margin for further compliance.

Relying on Article 6 § 1 of the Convention, the applicants complain of the non-enforcement of judgment no. 1833/10.07.2017 of the Council of State, lack of access to court and absence of legal certainty. They further allege a violation of Article 13 of the Convention, on account of absence of an effective remedy in relation to their complaint under Article 6 § 1 regarding the non-enforcement of the domestic judgment and the restitution of the damage suffered as a result of the imposed restrictions. Lastly, they complain under Article 1 of Protocol No.1 to the Convention about the non-enforcement of the domestic judgment and the reversal of jurisprudence, resulting in a substantial restriction of their property rights and the deprivation of their right to receive any compensation.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicants' right to effective judicial protection, as required by Article 6 § 1 of the Convention, due to the alleged impossibility, following decision no. 3/26.01.2021 of the committee of three judges of the Council of State to enforce judgment no.1833/10.07.2017 of the Council of State (see Kanellopoulos v. Greece, no. 11325/06, § 26, 21 February 2008)?

2. Does judgment no. 689/2019 of the Plenary of the Council of State constitute a reversal of jurisprudence in relation to the previous case-law pertaining to the interpretation of Article 22 of Law no. 1650/1986? In the affirmative, has the case-law reversal been duly reasoned, as required by Article 6 § 1 of the Convention

(see Atanasovski v. the former Yugoslav Republic of Macedonia, no. 36815/03, §§ 36-38, 14 January 2010, and Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, § 116, 29 November 2016)?

3. Did the applicants have an effective remedy within the meaning of Article 13 of the Convention, taken in conjunction with Article 6, to challenge the alleged refusal of the administration to comply with judgment no. 1833/10.07.2017 of the Council of State (see Kanellopoulos, cited above, § 33)?

4. Have the applicants exhausted domestic remedies with respect to their complaint under Article 1 of Protocol No. 1? In the affirmative, has there been an interference with the applicants' peaceful enjoyment of possessions, within the meaning of Article 1 of Protocol No. 1? If so, has that interference been in compliance with the requirements of Article 1 of Protocol No. 1 (see Z.A.N.T.E. – Marathonisi A.E. v. Greece, no. 14216/03, 6 December 2007, and Theodoraki and Others v. Greece, no. 9368/06, § 66, 11 December 2008)?

Salvatore SANTORO and Sarah PAPALE v. Italy (no 25533/24)*

Article 6 – Article 8 – Article 13 – Article 14 –legal proceedings for adoption – impossibility of foster parents to take part

SUBJECT MATTER OF THE CASE

The application concerned the impossibility for the applicants, as foster parents with a view to adoption (affidamento preadottivo), to take part in the proceedings before the Court of Appeal concerning the adoptability of the child who had been placed with them for four years.

The minor was placed with the applicants 16 days after his birth.

In 2020, the court confirmed that the minor was adoptable. In 2021, the biological mother recognised the child and appealed against the adoptability decision. In 2021, the Court of Appeal revoked the declaration of adoptability, finding procedural errors on the part of the juvenile court.

Following the Court of Appeal's decision, the applicants lodged an appeal (ricorso in opposizione di terzo), claiming that they had not been heard or involved in the procedure, which had resulted in discrimination against temporary foster parents.

In 2024, the Court of Appeal dismissed their appeal, ruling that they did not have legal standing.

At issue are Articles 6, 8, 13 and 14 of the Convention.

QUESTIONS TO THE PARTIES

1. Having regard to the relationship between the applicants and the child, can there be said to be a 'private and/or family life' within the meaning of Article 8 of the Convention in the present case (Moretti and Benedetti v. Italy no. 16318/07 §§ 49-52, 2 April 2010; Kopf and Liberda v. Austria no. 1598/06 § 37, 17 January 2012; Nazarenko v. Russia no. 39438/13 § 58, 16 July 2015 and Jessica Marchi v. Italy, no. 54978/17, §§ 54-58, 27 May 2021)?

2. Was the decision-making process leading to the decisions of the domestic courts fair and did it respect, as it should have, the interests protected by Articles 6 and 8 of the Convention having regard, in particular, to the fact that the applicants were not given the opportunity to participate in the proceedings before the Court of Appeal concerning the adoption of the minor; that their appeal against the decision to revoke (ricorso in opposizione di terzo) the adoption was dismissed on the ground that, under domestic law, the parents receiving the child with a view to adoption are not regarded as parties to the adoption proceedings (see, among other judgments, Cour de cassation no. 35537 of 2023 and no. 9456 of 2021)?

3. Did the applicants, as foster parents with whom the child had been placed with a view to adoption, suffer discrimination in the exercise of their right to respect for their private and family life, within the meaning of Articles 8 and 14 combined, as a result of not being heard in the proceedings before the Court of Appeal concerning the child's adoptability?

In this connection, the Government is asked to specify why the case-law (Court of Cassation judgments no. 36092 of 2022, no. 14077 of 2022, no. 23803 of 2021, no. 23795 of 2021 and no. 9456 of 2021) allows temporary foster parents to be heard but not foster parents with a view to adoption.

4. Was there a breach of the right to an effective remedy before a national authority, within the meaning of Article 13 of the Convention, by reason of the fact that the applicants were unable to participate in the proceedings concerning the adoptability of the child?

L.Z. and D.Z. v. Italy (no. 27379/24)

Article 8 – Article 13 – foster care – adoption – return of child to biological mother

SUBJECT MATTER OF THE CASE

The application concerns the interruption of relations between the mother (the first applicant) and her child (the second applicant), who had been placed in pre-adoption foster care following his abandonment.

The Juvenile Court initiated proceedings for the adoption of the second applicant in November 2020 (sixteen days after his birth), appointed a guardian for the second applicant and placed him in pre-adoption foster care. Such proceedings were annulled by the Court of Appeal, in July 2021, at the request of the first applicant. In August 2021, the Juvenile Court initiated new proceedings for the adoption of the second applicant, maintaining his pre-adoptive placement with the couple already identified and the guardian. Following an expert assessment to determine the mother's parental capabilities, in December 2022 the Juvenile Court ordered the return of the second applicant to the first applicant within four months, with the assistance of social services, the family counselling centre, and the child neuropsychiatry service. The latter were entrusted with the task of facilitating the reunification process between the first and second applicants, which included holding contact visits. In November 2023, the Juvenile Court, following several requests from the first applicant, took note of the fact that the December 2022 measure had not been enforced. The Juvenile Court also criticised the conduct of the foster family, the guardian of the child, and the experts it had appointed to assist with facilitating the reunification process. It therefore appointed three new experts to identify strategies and solutions with a view to the reunification. Following a first assessment by the three experts, the Juvenile Court requested that they perform a fresh assessment of the first applicant's parental capabilities.

The applicants allege that contact visits had not been held, the measure providing for their reunification had not been carried out, and the adoption proceedings were still pending. They also allege the lack of effective remedies for the restoration of family ties in a reasonable time to avoid a de facto determination of the matter. The applicants raise complaints under Articles 8 and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been a violation of the applicants' right to respect for their family life within the meaning of Article 8 of the Convention on account of the alleged failure by the competent authorities, from December 2022, to reunite the applicants in a timely manner, including by determining contact rights between them, as established by the Juvenile Court?

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

2. Were the measures taken by the Italian authorities consistent with the ultimate aim of reuniting the natural parent and the child? Were adequate steps taken to facilitate family reunification as soon as reasonably feasible (see Strand Lobben and Others v. Norway [GC], no. 37283/13, §§ 206-08 and 220, 10 September 2019, D.M. and N. v. Italy, no. 60083/19, 20 January 2022, §§73 and 76, A.I. v. Italy, no. 70896/17, §§ 86-89, 92 and 94, 1 April 2021)? Did the domestic authorities perform a genuine balancing exercise between the interests at stake, taking into account, in particular, the following elements:

(a) In 2022 the Juvenile Court had found, on the basis of the experts' conclusions, that the first applicant had adequate parental capabilities;
(b) Despite the Juvenile Court's order of December 2022, social services, the family counselling centre, and the child neuropsychiatry service did not hold any contact meetings between December 2022 and November 2023 (A and Others v. Italy, no. 17791/22, § 103, 7 September 2023, Terna v. Italy, no 21052/18, §§ 67 and72, 14 January 2021);
(c) In November 2023 the three experts appointed by the Juvenile Court decided not to allow any contact meeting between the two applicants (Terna, cited above, §§ 67 and 72).

3. Was the decision-making process leading to the decision of the Juvenile Court fair and did it respect the interests protected by Article 8 of the Convention, taking into account that there is a risk that the passage of time may result in a de facto determination of the matter (see, among others, A and Others v. Italy, cited above, § 95, T.C. v. Italy, no. 54032/18, § 58, 19 May 2022, Endrizzi v. Italy, no 71660/14, § 48, 23 March 2017, et Improta v. Italy, no 66396/14, § 45, 4 May 2017), having regard, in particular, to the fact that:

(a) The adoption proceedings concerning the second applicant are still ongoing after four years;
(b) Although the first applicant stated that the three experts appointed in November 2023 displayed prejudice against her, the same experts are still tasked with the assessment of the first applicant's parental capabilities;
(c) Although the Juvenile Court held that the foster family and the guardian had been uncooperative, the second applicant is still placed with his foster family.

4. Did the applicants have at their disposal an effective remedy, as required by Article 13 of the Convention, considering that the Juvenile Court has not issued a final decision since 2021?

5. The parties are invited to clarify the link in Italian law between temporary (or urgent) measures and final measures in the context of proceedings relating to family relations and children's rights. In particular:

- are there provisions that prevent family matters from being settled by the Courts on a temporary basis?
- is there a remedy against an interim measure?
- are there provisions to request the adoption of final measures?
- are there provisions aimed at ensuring the binding force of judicial decisions in so far as social services, family counselling centre and court-appointed experts are concerned? Do the latter have the possibility of not enforcing these decisions?
- are there provisions allowing for the enforcement of measures and decisions that have not been enforced?
- how have recent legislative reforms addressed these issues?

The parties are invited to provide, if applicable, examples of relevant case-law.

Giancarla DE ANGELIS v. Italy (no. 53205/20)

Article 9 – house arrest – attendance of mass for deceased daughter

SUBJECT MATTER OF THE CASE

The applicant was placed under house arrest on 24 August 2020. On 7 September 2020 she lodged a request with the Rome court responsible for the execution of sentences (tribunale di sorveglianza – "the Rome Court") seeking leave from house arrest in order to attend a mass commemorating the death of her daughter thirty days after her passing (messa di trigesimo), which was to take place on 18 September 2020. The applicant alleges that the Rome Court never replied to her request. She complains that such a failure to reply, which made it impossible for her to attend the mass, entailed a breach of her rights under Article 9 of the Convention.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicant's freedom of religion set forth in Article 9 of the Convention on account of the Rome Court's failure to reply to her request to attend the mass commemorating the death of her daughter?

INDUSTRIALI COSTRUZIONI MECCANICHE TOR CERVARA S.R.L. v. Italy (no 24104/20)*

Article 6 §1 – Article 1 P1 – wrongful occupation of hotel – inability to recover property

SUBJECT MATTER OF THE CASE

The claim concerned the inability of the claimant, the owner of a hotel, to recover her property, which had been wrongfully occupied by approximately two hundred people since 6 April 2013, despite a court decision ordering the seizure of the building requested by the claimant.

On 18 March 2014, the claimant brought a possessory action, which was dismissed. On 9 July 2015 she brought an action for compensation against the public authorities, which was dismissed by a judgment of the Court of Rome dated 25 January 2019. The case file shows that these proceedings are pending before the Court of Appeal in Rome.

On 15 May 2013, the applicant lodged a complaint and joined as a civil party in criminal proceedings which led to the conviction of some of those responsible for the abusive occupation and, in the course of which, on 5 May 2017, the Rome Preliminary Investigation Judge ordered the seizure of the building.

On 18 July 2019, the Prefect of Rome set a timetable for the staggered eviction of the abusive occupants of a number of buildings, including the applicant's building. According to the applicant, the eviction proceedings in respect of her property were scheduled for June 2024, but have not yet taken place.

In the meantime, despite attempts to stop the supply of electricity, the applicant had continued to receive bills for this and had been ordered to pay approximately EUR 350,000, relating to the years 2013 to 2017.

On 29 October 2018, the applicant applied to the Court of Rome to have the electricity cut off in the occupied building. On 14 March 2019, she applied for an interim measure to that end, which was granted by an order of the Court of Rome of 15 March 2019, which set a time-limit for execution of 30 days. As the order had not been complied with, on 24 April 2019 the applicant brought proceedings within the meaning of Article 669 duodecies of the Code of Civil Procedure in order to obtain enforcement. The measure has not yet been enforced.

Complaining under Article 6 § 1 of the Convention, the applicant company complained that the seizure order issued by the preliminary investigation judge on 5 May 2017 and the order of the Court of Rome of 15 March 2019 had not been complied with.

Invoking Article 1 of Protocol No. 1 to the Convention, it also complained of the failure of the State to take measures to put an end to the abusive occupation of its property.

QUESTIONS TO THE PARTIES

1. Does the refusal of the national authorities to comply with the judicial decision ordering the seizure of the applicant's property, occupied without title by third parties, infringe her right to effective judicial protection of her civil rights within the meaning of Article 6 § 1 of the Convention (Casa di Cura Valle Fiorita s.r.l. v. Italy, no. 67944/13, §§ 46-54, 13 December 2018)?

2. In view of the failure to comply with the Rome Court's order of 15 March 2019, did the authorities do everything within their power or that could reasonably be expected of them to ensure respect for the applicant's right under Article 6 § 1 of the Convention (mutatis mutandis Fuklev v. Ucraine, no. 71186/01, §§ 67 and 84, 7 June 2005 and Işgın v. Türkiye, no. 41747/10, §§ 31-32, 4 October 2022)?

3. Did the applicant's inability to recover the building infringe her right to respect for her property within the meaning of Article 1 of Protocol No. 1, particularly in view of the alleged failure of the State to take steps to put an end to the abusive occupation (see Casa di Cura Valle Fiorita s.r.l. v. Italy, cited above, and Papachela and Amazon v. Greece, no. 12929/18, 2 September 2019)?

Nazzareno ROMANI and Stefano ROMANI v. Italy and Giovanni CANCELLI v. Italy (nos. 54213/19 and 61041/19)*

Article 2 – medical liability – effectiveness of proceedings – length of proceedings

SUBJECT MATTER OF THE CASE

The applications concerned the effectiveness of the civil proceedings brought by the applicants after the deaths of their relatives- the mother of the former and the daughter of the latter- in order to establish the possible liability of the doctors who had treated them.

The applicants invoked Article 2 (procedural aspect) of the Convention, complaining that the proceedings were excessively lengthy.

QUESTIONS TO THE PARTIES

Did the civil proceedings brought by the applicants satisfy the procedural obligation under Article 2 of the Convention, particularly in view of their duration (see Šilih v. Slovenia [GC], no. 71463/01, § 196, 9 April 2009, G.N. and Others v. Italy, no. 43134/05, §§ 96-102, 1 December 2009, and Fergec v. Croatia, no. 68516/14, § 38, 9 May 2017)?

Guido MAZZARELLA v. Italy (no. 6424/24)

Article 10 – conviction for defamation – criticism on social media of military regulations

SUBJECT MATTER OF THE CASE

The application concerned the conviction of the applicant, a marshal in the Military Aeronautics Corps, for aggravated defamation following the publication on his Facebook account of comments criticising the adoption, by the relevant military department, of a circular relating to the rules governing the employment of military personnel. The claimant questioned the competence of two senior officers quoted in the articles, suggesting that they be replaced by more competent colleagues. He also raised the possibility of a link between the adoption of the directive and several cases of military suicides.

On 28 April 2022, the Naples Military Court acquitted the claimant on the basis that the ‘right to criticise’ was justified. In particular, it emphasised that the applicant was involved in trade union and journalistic activities, that the statements made were opinions and concerned the conditions of service of military personnel and that they were limited to envisaging the administrative and political responsibility of the two commanders in question. However, on 15 December 2022, the Naples Court of Appeal found that the statements were very serious and overturned the judgment, sentencing the applicant to a one-month suspended prison sentence. On 15 December 2023, the Court of Cassation upheld the Court of Appeal's judgment, which it deemed to be duly reasoned. Invoking Article 10 of the Convention, the applicant complained of a violation of his freedom of expression.

QUESTIONS TO THE PARTIES

1. Did the applicant's criminal conviction constitute a 'necessary interference in a democratic society' within the meaning of Article 10 § 2 of the Convention (see Axel Springer AG v. Germany [GC], no. 39954/08, §§ 78-95, 7 February 2012)?

2. In particular, did the domestic courts take proper account of the nature of the impugned remarks, the consequences for their addressees and the context in which they were published (mutatis mutandis Ayuso Torres v. Spain, no. 74729/17, §§ 48-59, 8 December 2022, and mutatis mutandis Magosso and Brindani v. Italy, no. 59347/11, §§ 48-49, 16 January 2020)? Were there alternative means of punishing the applicant (Belpietro v. Italy, no. 43612/10, §§ 53 and 61, 24 September 2013)?

A.B.F. v. Italy (no. 3132/24)

Article 3 – Article 5 §1 – stay at repatriation centre not meeting basic needs

SUBJECT MATTER OF THE CASE

The applicant is a Tunisian asylum seeker who was hosted at the Centre of Repatriation of Trapani (CPR-Centro di Permanenza per i Rimpatri) since 16 November 2023.

On 7 February 2024, the Court applied an interim measure under Rule 39 of the Rules of Court, indicating to the respondent Government "to immediately transfer the applicant to a hosting facility adequate to his needs and to adopt any other measure aimed at guaranteeing adequate hosting and living conditions in the Trapani's CPR". The measure was granted since the Government were not able to provide specific information concerning the applicant's situation nor did they submit any information on the concrete operational measures taken in order to guarantee that the living conditions within the CPR were adequate to the needs of the people hosted therein. The Court further granted the application priority under Rule 41 of the Rules of Court. On the same day, the applicant was transferred to the CPR of Caltanissetta and, after the issuing of the provisional measure by the Court, the Trapani CPR has been temporarily closed for renovations.

According to the applicant, the CPR of Caltanissetta was also not adequate to his basic needs. The applicant remained in this Centre until 12 April 2024, when he was repatriated to Tunisia.

The applicant claims that both his stays at the Trapani's and Caltanissetta's CPRs were in breach of Article 3 of the Convention due to the inhuman and degrading conditions of the said Centres. He further alleges he has been detained at the Centres in violation of Article 5 § 1 of the Convention since November 2023.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment, in breach of Article 3 of the Convention, during his retention at the Centre of Repatriation of Trapani and at the Centre of Repatriation of Caltanissetta, taking into account also his vulnerable situation of asylum seeker, having regard in particular to the material conditions of his detention (see M.S.S. v. Belgium and Greece [GC], no. 30696/09, ECHR 2011; Tarakhel v. Switzerland [GC], no. 29217/12, ECHR 2014 (extracts) and N.H. and Others v. France, nos. 28820/13 and 2 others, § 162, 2 July 2020)?

2. Was the applicant deprived of his liberty in breach of Article 5 § 1 of the Convention (see Khlaifia and Others v. Italy [GC], no. 16483/12, §§ 117 and 132-134, 15 December 2016 and J.A. and Others v. Italy, no. 21329/18, §§ 79-84, 30 March 2023)?

Francesco PELLE v. Italy (no. 23710/24)

Article 3 – detention – adequate medical care

SUBJECT MATTER OF THE CASE

The application concerns the alleged incompatibility of the applicant's state of health with his continued detention. On 11 May 2022, the Cagliari Supervisory Judge granted the applicant's request to be provided with necessary medical care (physiotherapy). In February 2023, the applicant filed a request for postponement of the execution of his sentence or replacement with house arrest, claiming that he was not receiving the necessary medical care. His request was rejected by the Bologna Supervisory Tribunal on 31 July 2023 and confirmed by the Court of Cassation on 8 April 2024.

The applicant, relying on Article 3 of the Convention, complains of insufficient access to adequate medical treatment (specifically, physiotherapy) for his diseases, which include paraplegia.

QUESTIONS TO THE PARTIES

Has there been a breach of the applicant' s rights under Article 3 of the Convention? In particular, did the applicant receive adequate medical treatment during his detention in prison, specifically with regard to physiotherapy (see the principles set out by the Court in Blokhin v. Russia [GC], no. 47152/06, §§ 136-37, 23 March 2016; Rooman v. Belgium [GC], no. 18052/11, §§ 145-48, 31 January 2019; and mutatis mutandis, Helhal v. France, no. 10401/12, § 57, 19 February 2015)?

Bruno PIAZZERA v. Italy (no. 39002/22)

Article 6 §1 – compensation for building restraints on plot of land

SUBJECT MATTER OF THE CASE

The applications concern the alleged unfairness of civil proceedings relating to compensation for building restraints ("vincoli conformativi") imposed on a plot of land.

In 2010 the applicants requested to the Municipality of Altopiano della Vigolana (Trento) to pay them compensation as the 1999 urban plan, in classifying their plot of land as area for public facilities, substantially reiterated building restraints already imposed in previous urban plans of 1973, 1985 and 1991.

In 2011 a new urban plan designated 91% of the plot of land as an area "for public and school facilities" and the remaining part as agricultural zone and area for roads project.

In 2016, following the Municipality's refusal to pay compensation, the applicants brought a claim before the Court of Appeal of Trento, which rejected it by a judgment of 17 January 2017. The applicants submitted an appeal on points of law with the Court of Cassation, based on three grounds: i) the statute of limitations

could not start to run in 1999 as at that time the relevant legislative framework did not allow the applicants to request compensation for the contested building restraints; ii) in any case, the classification set out in the 2011 urban plan constituted a reiteration of the same restraints and therefore the statute of limitations should have started to run at that time; iii) the contested restraints had expropriative nature and had thus to be compensated. By an order of 28 April 2022, the Court of Cassation rejected the first ground of appeal by confirming the starting of the statute of limitations in 1999 and considered absorbed the remaining two.

The applicants complain under Article 6 § 1 of the Convention that the Court of Cassation failed to provide adequate reasons to reject their second and third grounds of appeal.

QUESTIONS TO THE PARTIES

Having regard to:

- the applicants' claim that their second ground of appeal was decisive for the outcome of the case as, if allowed, the dies a quo of the statute of limitations for their compensation claim would have started to run in 2011, and not in 1999 as stated in the decisions of domestic courts,

- the reasoning by the order of the Court of Cassation no. 13390/2022, according to which the second and third grounds of appeal had to be regarded as absorbed by the first,

- did the applicants have a fair hearing in determination of their civil rights and obligations, in accordance with Article 6 § 1 of the Convention (see Mont Blanc Trading Ltd and Antares Titanium Trading Ltd v. Ukraine, no. 11161/08, § 82, 14 January 2021, and Petrović and Others v. Montenegro, no. 18116/15, § 41, 17 July 2018)?

Dušan KNEŽEVIĆ v. Montenegro (no. 34442/23)

Article 3 – ill-treatment by police – effective investigation

SUBJECT MATTER OF THE CASE

The application concerns the applicant's ill-treatment by unidentified members of the Special Police Unit on 17 October 2015 and the lack of an effective investigation in that regard.

In 2018 and 2021 the civil courts found a violation of the substantive and procedural limb of Article 3 of the Convention, respectively, and awarded the applicant 7,058.33 euros (EUR) and EUR 3,000, respectively. On 21 March 2023 the Constitutional Court, following the applicant's constitutional appeal, found a violation of both the substantive and procedural limb of Article 3. This decision was served on the applicant on 24 May 2023 (the editorial correction of the decision was served on 13 June 2023).

The applicant complains under procedural limb of Article 3 of the Convention that there still has been no effective investigation into his ill-treatment.

QUESTIONS TO THE PARTIES

Having regard to the procedural protection from inhuman or degrading treatment (see Labita v. Italy [GC], no. 26772/95, § 131, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention (see Baranin and Vukčević v. Montenegro, nos. 24655/18 and 24656/18, §§ 141-49, 11 March 2021; see also El-Masri v. the former Yugoslav Republic of Macedonia [GC], no. 39630/09, §§ 182-85, ECHR 2012; Mocanu and Others v. Romania [GC], nos. 10865/09 and 2 others, §§ 316-25, ECHR 2014 (extracts)); and Cestaro v. Italy, no. 6884/11, §§ 216-17, 7 April 2015)?

S.M.A. v. the Netherlands (no. 32184/23)

Article 8 – family reunification – domestic violence – childcare supervision order

SUBJECT MATTER OF THE CASE

The application concerns family reunification between a mother with legal residency in the Netherlands and her son, both Surinamese citizens.

The application was lodged to the competent authorities while the son (the applicant) was still a minor, whereas he became an adult pending the domestic proceedings. The applicant's mother moved to the Netherlands in 2017 to reunite with her Dutch husband and their child, who is a Dutch citizen. Shortly thereafter she became the victim of severe domestic violence. She and her Dutch child moved to a shelter for victims of domestic violence, and her Dutch child was placed under a childcare supervision order. The applicant's request for family reunification was rejected because, having weighed the facts and circumstances of the case in the light of Article 8 of the Convention, the authorities had concluded that there was no reason to exempt the mother from fulfilling the income requirement.

The applicant complained under Article 8 of the Convention that the respondent State failed to strike a fair balance between the right to respect for his family life and the other interests at stake. Among other things he argued that the supervision order imposed on his mother's youngest child posed an insurmountable obstacle to exercising her family life with the applicant in Suriname, and moreover that it was not in the best interests of her youngest child to move to Suriname.

QUESTIONS TO THE PARTIES

Did the competent authorities comply with their positive obligations under Article 8 of the Convention?

In particular, when striking a balance between the interests involved, did those authorities and the domestic courts take sufficiently into account all relevant elements (see, M.A. v. Denmark [GC], no. 6697/18, §§ 131-135, 9 July 2021; Jeunesse v. the Netherlands [GC], no. 12738/10, §107-109, 3 October 2014)?

Zhaklina DIMOVSKA v. North Macedonia (no. 6375/23)

Article 2 – Article 13 – criminal investigation into death

SUBJECT MATTER OF THE CASE

The application concerns the criminal proceedings initiated by the applicant following the death of her nine-year old daughter T.D., whose requests to have a medical operation abroad were dismissed and/or, despite the indications of urgency, allegedly belatedly decided by the relevant authorities.

In February 2015 the applicant initiated criminal proceedings against several persons, including the members of medical commissions at two instances, who had initially provided opinions that T.D.'s condition was treatable in the respondent State, as well as against two directors of the Health Insurance Fund ("the Fund") and the president of the Fund's executive board, who had at two instances dismissed T.D.'s initial request to be operated abroad. Having lodged an indictment in April 2018, in April 2022 the public prosecutor changed the legal classification of the charges against the members of the medical commissions to less serious charges (which ultimately resulted in their prosecution becoming time-barred) and decided not to prosecute the Fund's directors or the president of the executive board. The trial court dismissed the indictment.

The applicant complains, under Articles 2 and 13 of the Convention, that the criminal investigation into her daughter's death was unreasonably long and ineffective resulting in prosecution becoming time-barred. She also complains that she did not have an effective remedy against the protracted conduct of the proceedings.

QUESTIONS TO THE PARTIES

1. Did the State comply with its procedural obligation under Article 2 of the Convention? In particular,

(a) did the circumstances of the case require a criminal-law response (see, for example, Nicolae Virgiliu Tănase v. Romania [GC], no. 41720/13, §§ 157-161, 25 June 2019; Lopes de Sousa Fernandes v. Portugal [GC], no. 56080/13, §§ 214-221 and 232, 19 December 2017; Asiye Genç v. Turkey, no. 24109/07, §§ 73 and 83, 27 January 2015; and Koceski v. the former Yugoslav Republic of Macedonia (dec.), no. 41107/07, §§ 20-25, 22 October 2013)?

(b) If so, did the criminal investigation into the applicant's daughter's death satisfy the conditions of promptness and adequacy as required under the procedural head of Article 2 (see Nicolae Virgiliu Tănase, cited above, §§ 164-67; Lopes de Sousa Fernandes, cited above, §§ 218 and 233; and Mustafa Tunç and Fecire Tunç v. Turkey [GC], no. 24014/05, § 175, 14 April 2015)? Did the ensuing criminal proceedings comply with the requirements of Article 2 of the Convention (see, mutatis mutandis, Mocanu and Others v. Romania [GC], nos. 10865/09 and 2 others, §§ 314-326 and 346, ECHR 2014 (extracts); Ali and Ayşe Duran v. Turkey, no. 42942/02, §§ 61-63, 8 April 2008; Angelova and Iliev v. Bulgaria, no. 55523/00, §§ 91-96 and 101-103, 26 July 2007; and P.M. v. Bulgaria, no. 49669/07, §§ 63-66, 24 January 2012)?

2. Did the applicant have at her disposal an effective domestic remedy for the purposes of her complaint under Article 2, as required by Article 13 of the Convention (see, for example, Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC], no. 47848/08, §§ 148-53, ECHR 2014; Giuliani and Gaggio v. Italy [GC], no. 23458/02, § 336, ECHR 2011 (extracts); and Zavoloka v. Latvia, no. 58447/00, §§ 40-41, 7 July 2009)?

Doan MEMISHOSKI v. North Macedonia (no. 24570/22)

Article 3 – police violence – Roma origin – effective investigation

SUBJECT MATTER OF THE CASE

The application concerns allegations of physical abuse of the applicant, who is of Roma origin, by police officers. During his arrest, he was allegedly beaten and dragged by the police, even though his trousers had fallen off. Two levels of prosecution dismissed the applicant's complaint regarding inhuman and degrading treatment, concluding that there was insufficient evidence that any crime had been committed by the police officers. No oral evidence was ever taken from the eyewitnesses proposed by the applicant.

The applicant complains, under Article 3 of the Convention, that the police had ill-treated him during his arrest and that the domestic authorities had failed to carry out an effective investigation into those allegations.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to inhuman or degrading treatment during his arrest, in breach of Article 3 of the Convention (see Bouyid v. Belgium [GC], no. 23380/09, §§ 81-90, ECHR 2015)?

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

Łukasz KOLADA v. Poland (no. 14971/19)

Article 11 – dissolution of march for reasons of security

SUBJECT MATTER OF THE CASE

The application concerns the organisation of an assembly "March and Picnic of Silesian Uprisers" (Marsz i Piknik Powstańców Śląskich) in Katowice on 6 August 2018. The applicant was one of the organisers of the march which had been planned for approximately 80 persons and which finally gathered about 200 participants. It started at 3 p.m. and counter-demonstrators tried to block it. The police officers who were responsible for securing safety removed three blockages. After some 45 minutes, as the march was approaching narrow streets and police was afraid for security of participants, bystanders and property, the authorities of the city proposed the organisers to stop the march and continue the assembly in a square. When they refused, the Katowice Mayor decided to dissolve the assembly and ordered its participants to disperse. Upon the applicant's appeal, the decision to dissolve the assembly was quashed by the Katowice Regional Court and then, upon further appeal by the Mayor of Katowice, the applicant's original appeal was dismissed by the Katowice Court of Appeal.

The applicant complains that the dissolution of the march amounted to an interference with his right to freedom of assembly, in breach of Article 11 of the Convention.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's freedom of peaceful assembly within the meaning of Article 11 § 1 of the Convention?

2. If so, was that interference prescribed by law and necessary in terms of Article 11 § 2 (see The United Macedonian Organisation Ilinden and Ivanov v. Bulgaria, no. 44079/98, 20 October 2005, and Bączkowski and Others v. Poland, no. 1543/06, 3 May 2007)?

Piotr RACZKOWSKI v. Poland (no. 33082/22)

Article 6 – Article 8 – Article 34 – lifting of judicial immunity – independent and impartial tribunal established by law – reputation – interim measure

SUBJECT MATTER OF THE CASE

The application concerns the applicant's right of access to a tribunal established by law in a case concerning the lifting of his judicial immunity.

A. Applicant's background

The applicant is an experienced military judge. He was elected to the National Council of the Judiciary ("NCJ") for two terms, in 2010 and 2014 (that is the term ex lege terminated in 2017, for details see Grzęda v. Poland [GC], no. 43572/18, 15 March 2022). He was also elected the Vice-President of the NCJ in 2014.

B. Proceedings before the Disciplinary Chamber of the Supreme Court

The applicant submits that in 2019 criminal proceedings have been launched into various aspects of his professional activity. In so far as relevant, one of the allegations was the abuse of powers by allegedly unlawful declassification of the case file of one set of criminal proceedings in 2016.

On 17 March 2021 the State Prosecution Service requested the Disciplinary Chamber of the Supreme Court (DCSC) to lift the applicant's judicial immunity in order to allow for his criminal prosecution for abuse of powers.

An in camera session was scheduled in the case by the DCSC for 11 July 2022.

C. Interim measure indicated by the Court

On 7 July 2022 the applicant lodged a request under Rule 39 of the Rules of Court in connection with the proceedings before the DCSC.

On 8 July 2022 the Court (the President of the Chamber to which the case has been allocated) decided to indicate to the Government, under Rule 39, that, in the interests of the parties and the proper conduct of the proceedings before the Court, the Respondent State ensure that the proceedings concerning the lifting of the applicant's judicial immunity, which were then pending before the DCSC, comply with the requirements of "fair trial" as guaranteed by Article 6 § 1 of the Convention, in particular the requirements of an "independent and impartial tribunal established by law" (see Reczkowicz v. Poland, no. 43447/19, 22

July 2021, §§ 225-284) and that no decision in respect of the applicant's immunity is taken by the DCSC until the final determination of the applicant's complaints by the Court.

The session scheduled by the DCSC for 11 July 2022 was cancelled on that day.

D. Abolition of the DCSC and the transfer of the applicant's case

Following the abolition of the DCSC in 2022 the applicant's case was transmitted to the newly created Chamber of Professional Liability ("the CPL"). The CPL was composed of judges appointed to the Supreme Court both before 6 March 2018 and after that date on the recommendation of the NCJ as established under the Amending Act on the NCJ and certain other statutes of 8 December 2017 ("the recomposed NCJ", see Tuleya v. Poland, nos. 21181/19 and 51751/20, §§ 181-185, 6 July 2023).

On 13 September 2022, the single judge W. Kozielewicz (appointed to the Supreme Court in 1999) of the CPL issued a 1st instance resolution refusing to lift the applicant's immunity.

The prosecutor appealed but the CPL, sitting in a three-judge panel at 2nd instance, on 6 December 2022 gave a final and binding ruling in which it upheld the impugned resolution. The panel was composed of judges M. Motuk, M. Dobrowolski and M. Siwek (all appointed after 6 March 2018, on the recommendation of the recomposed NCJ).

The applicant's request to exclude the three members of the 2nd instance panel from hearing the case, lodged on 29 November 2022, was dismissed on 14 March 2023.

The interim measure, previously indicated on 8 July 2022, was later lifted by the Court (the President of the Section) on 7 October 2024.

E. Complaints

The applicant complains, under Article 6 § 1 of the Convention, that the request for lifting his immunity was submitted to be examined by bodies that did not satisfy the requirements of an "independent and impartial tribunal established by law", first the DCSC and later the CPL of the Supreme Court. In particular, as regards the CPL, the applicant submits that:

(1) it includes judges appointed to the Supreme Court in manifest breach of the law as established in the Court's judgments in Reczkowicz, Dolińska-Ficek and Ozimek and Advance Pharma sp. z o.o.;

(2) its composition was determined in a discretionary manner by the executive (the President of the Republic with the countersignature of the Prime Minister, see Tuleya, cited above, § 185), which lacked competence to appoint judges to hear a specific category of cases.

The applicant also complains, under Article 8 of the Convention, that the impugned proceedings adversely affected his professional reputation and, in consequence, amounted to a breach of the right to respect for his private life. He submits that the mere initiation of proceedings for lifting his judicial immunity negatively impacted his reputation and that the ensuing necessity to prove his innocence before bodies not constituting an "independent and impartial tribunal established by law" further exacerbated this effect.

Finally, the applicant alleges that the CPL of the Supreme Court ruled on the merits of his case despite the binding interim measure indicated by the Court.

QUESTIONS TO THE PARTIES

1. Victim status:

Can the applicant claim to currently be a victim of a violation of his Convention rights in view of the fact that the request to lift his immunity was ultimately refused?

2. Article 6 § 1

(a) Was Article 6 § 1 of the Convention under its criminal head applicable to the proceedings for lifting of the applicant's immunity?

(b) Can the applicant's case be considered to have been "heard" by the Disciplinary Chamber of the Supreme Court? If so, have the proceedings before that body violated the applicant's right to be heard by an independent and tribunal established by law as guaranteed by Article 6 § 1 of the Convention (see Reczkowicz v. Poland, no. 43447/19, §§ 225-282, 22 July 2021)?

(c) Have the proceedings before the Chamber of Professional Liability of the Supreme Court violated the applicant's right to be heard by an independent and tribunal established by law as guaranteed by Article 6 § 1 of the Convention? Reference is made to:

(i) the composition of the Chamber of Professional Liability of the Supreme Court in general, and its composition in the applicant's case;

(ii) the method of appointment of judges to that Chamber and the President's involvement in that process.

3. Article 8

(a) Has there been an interference with the applicant's right to respect for his private life, within the meaning of Article 8 § 1 of the Convention on account of the prosecutor's request for the lifting of the applicant's immunity and the ensuing proceedings before the Disciplinary Chamber and the Chamber of Professional Liability of the Supreme Court?

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

4. Article 34

Has there been any hindrance by the respondent State in the present case with the effective exercise of the applicant's right of application, ensured by Article 34 of the Convention? Reference is made to the examination of the applicant's case on the merits by the Chamber of Professional Liability of the Supreme Court after the Court's decision on interim measures of 8 July 2022.

Rauşan AHMETŞIN v. Republic of Moldova and Russia (no. 862/16)

Multiple human rights violations – Transnistria – Article 3 – Article 5 §1 – Article 10 – Article 11 – Article 2 P4 – Article 13

SUBJECT MATTER OF THE CASE

The cases concern allegations of human rights violations at the hands of the authorities of the self-proclaimed "Moldovan Republic of Transnistria" (the "MRT"), as described in the table below [not added]. In particular, they refer to alleged unlawful deprivation of liberty and inadequate conditions of detention (case no. 862/16), alleged violation of the applicant's right to freedom of expression (case no. 35739/17), alleged restriction of the right to freedom of movement after the applicant was not allowed to enter the "MRT", alleged restriction of the freedom to access information and to impart information about the elections for the "MRT President" and of the freedom of assembly (case no. 79438/17).

The applicants complain of a violation of their rights under Articles 3 and 5 § 1 of the Convention (in case no. 862/16), under Article 10 of the Convention (in cases nos. 79438/17 and 35739/17), under Article 11 and Article 2 of Protocol No. 4 to the Convention (in case no. 79438/17) and under Article 13 of the Convention (in all cases). A short summary of each application is provided in the appendix.

QUESTIONS TO THE PARTIES

1. Do the applicants come within the jurisdiction of the Republic of Moldova and/or Russia within the meaning of Article 1 of the Convention as interpreted by the Court in the cases of Lypovchenko and Halabudenco v. the Republic of Moldova and Russia (nos. 40926/16 and 73942/17, §§ 85-87, 20 February 2024) and Mozer v. the Republic of Moldova and Russia ([GC], no. 11138/10, §§ 99-111, 23 February 2016), on account of the circumstances of the present cases?

2. In case no. 862/16, has there been a breach of Article 3 of the Convention? In particular, was the applicant detained in adequate conditions and was he provided with required medical treatment (see Lypovchenko and Halabudenco, cited above, §§ 105-114)?

3. In case no. 862/16, has there been a breach of Article 5 § 1 of the Convention? In particular, was the applicant lawfully deprived of liberty (see Lypovchenko and Halabudenco, cited above, §§ 119-129)?

4. In cases nos. 35739/17 and 79438/17 (as regards the first applicant), has there been a breach of Article 10 of the Convention (see Selmani and Others v. the former Yugoslav Republic of Macedonia, no. 67259/14, §§ 71-72, 9 February 2017; Mătăsaru v. the Republic of Moldova, nos. 69714/16 and 71685/16, §§ 28-35, 15 January 2019; Pryanishnikov v. Russia, no. 25047/05, §§ 49-53, 10 September 2019; Vereinigung Bildender Künstler v. Austria, no. 68354/01, §§ 26-38, 25 January 2007)?

5. In case no. 79438/17, has there been a breach of Article 11 of the Convention (see Navalnyy v. Russia [GC], nos. 29580/12 and 4 others, §§ 98-103, 15 November 2018; Promo Lex and Others v. the Republic of Moldova, no. 42757/09, §§ 21-26, 24 February 2015; Hyde Park and Others v. Moldova (no. 4), no. 18491/07, §§ 47-52, 7 April 2009)?

6. In case no. 79438/17, has there been a breach of the first applicant's right to freedom of movement, contrary to Article 2 of Protocol No. 4 to the Convention (see Lypovchenko and Halabudenco, cited above, §§ 143-149; Denizci and Others v. Cyprus, nos. 25316/94 and 6 others, §§ 400-406, ECHR 2001-V; and, for factual similarities, Dobrovitskaya and Others v. The Republic of Moldova and Russia [Committee] nos. 41660/10 and 5 others, §§ 92-97, 3 September 2019)?

7. In all cases, did the applicants have at their disposal an effective domestic remedy for their complaints under Articles 3, 5 § 1, 10 and 11 of the Convention and Article 2 of Protocol No. 4 to the Convention, as required by Article 13 of the Convention (see Lypovchenko and Halabudenco, cited above, §§ 152-157)?

SIMSEK S.R.L. v. Republic of Moldova (no. 72202/17)*

Article 1 P1 – Article 13 – challenge to decision concerning tax

SUBJECT MATTER OF THE CASE

The application concerns a limitation on the right to challenge in court the amount of tax payable by the applicant company.

In this case, the applicant company challenged before the courts the decision of the competent customs authority concerning the valuation of the goods imported by the applicant company. Applying a general rule, the court of first instance held that the action was inadmissible for failure to comply with the prior procedure of first referring the matter to the customs authority in question. The claimant company appealed, arguing that, pursuant to an exception provided for in Article 7 § 4 of the Customs Tariff Act and in accordance with the guidelines drawn up by the Supreme Court of Justice on the subject, the prior procedure was not mandatory for disputes relating to customs tariffs and that it could therefore bring the matter directly before the courts. In a final decision of 4 July 2017, the Chișinău Court of Appeal dismissed the appeal as ill-founded, without responding to the applicant company's aforementioned plea. According to the applicant company, when the Court of Appeal handed down its decision, the time limit for initiating the preliminary procedure had already expired.

Invoking Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1, the applicant company complained of an unlawful and unjustified restriction of its right to an effective remedy enabling it to defend its right to the peaceful enjoyment of its possessions.

QUESTIONS TO THE PARTIES

1. Did the applicant company raise an arguable complaint within the meaning of Article 13 of the Convention, based on Article 1 of Protocol No. 1 (see Boyle and Rice v. the United Kingdom, 27 April 1988, §§ 52 and 55, Series A no. 131, and Mugemangango v. Belgium [GC], no. 310/15, § 130, 10 July 2020)?

2. If so, was the requirement of Article 13 of the Convention concerning the availability of an effective remedy enabling the applicant company to complain about an infringement of its right guaranteed by Article 1 of Protocol No. 1 complied with, having regard to the applicant company's allegation that its application had been rejected arbitrarily since the preliminary procedure was not compulsory in the instant case (Iatridis v. Greece [GC], no. 31107/96, § 65, ECHR 1999-II, and De Tommaso v. Italy [GC], no. 43395/09, §§ 179-80 and 183, 23 February 2017)?

Sanda ŞLEPAC v. Republic of Moldova (no. 27144/17)

Article 14 – Article 8 – Article 13 – hate-motivated violence – transgender person

SUBJECT MATTER OF THE CASE

The application concerns the alleged failure of the Moldovan authorities to provide effective protection to the applicant from hate-motivated violence.

The applicant is a male to female transgender person. On 27 July 2015 she reported to the police a physical and verbal assault by a certain V.E. on that day. On 31 July 2015 the police found V.E. responsible for minor acts of violence under Article 78 of the Code of Administrative Offences and ordered him to pay a fine of 500 Moldovan Lei (MDL) (equivalent at the time to 24 euros (EUR)), which was the minimum amount under that provision.

On 11 November 2015 the applicant initiated civil proceedings against V.E. claiming non-pecuniary damage, arguing that she had been assaulted because of her gender identity. On 10 March 2016 the Anenii Noi District Court awarded the applicant EUR 100 for non-pecuniary damage and EUR 225 for costs and expenses. The applicant appealed against the judgment and argued that the amount of the award for non-pecuniary damage was too low, emphasising the absence of a legal framework punishing hate-motivated violence and the ensuing lack of an investigation into the hate motive behind the attack in her respect. The applicant also complained that, despite the hate element being overt in the administrative offence proceedings –V.E. had admitted attacking the applicant because she was transgender – the court had failed to properly address it. Instead, the first-instance court had concluded that it was the applicant's behaviour – she had splashed V.E. with wine – that prompted V.E. to attack her, and not her gender identity. Finally, the applicant pointed to the lack of a legal framework that would effectively protect her against hate-motivated offences. On 6 September 2016 the Chișinău Court of Appeal upheld the first-instance judgment but increased the award for non-pecuniary damage to EUR 250 without acknowledging the existence of a hate element. The decision was later upheld by the Supreme Court of Justice on 1 February 2017.

The applicant complains, under Article 14 read in conjunction with Article 8 of the Convention, that the State's failure to secure a legal framework providing protection against transphobic hate-motivated attacks and abuse perpetrated by private individuals was in breach of the State's positive obligations under these provisions.

The applicant further complains, under Article 13 of the Convention, that there had been no effective domestic remedies available to her to seek redress for the violations of which she complained. She maintained, in particular, that in the absence of the legal framework against hate-offences, the civil action was an illusory remedy.

QUESTIONS TO THE PARTIES

1. Has the applicant exhausted all effective domestic remedies as required by Article 35 § 1 of the Convention given the fact that she did not appeal against the decision of 31 July 2015?

2. Have the State authorities complied with their positive obligations under Article 8 of the Convention, taken alone and/or in conjunction with Articles 13 and 14 of the Convention, concerning the discriminatory (transphobic) attack against the applicant (see Beizaras and Levickas, no. 41288/15, §§ 106-30, 149-56, 14 January 2020; Association ACCEPT and Others v. Romania, no. 19237/16, §§ 96-103 and 114-26, 1 June 2021; Sabalić v. Croatia, no. 50231/13, §§ 90-101, 14 January 2021; and Nepomnyashchiy and Others v. Russia, nos. 39954/09 and 3465/17, §§ 76-79 and 84-85, 30 May 2023)?

3. Was it possible for the applicant, at the time of the events, in the absence of a specific legal provision against hate-motivated offences, to obtain, through seeking the pursuit of administrative or criminal proceedings, the recognition of the existence of a discriminatory (transphobic) motive and an adequate punishment for the offender?

Eduard POPA v. Republic of Moldova (no. 580/21)

Article 2 – Article 3 – allegations of ill-treatment by the police – effective investigation – case pending execution – jurisdiction – new issue

SUBJECT MATTER OF THE CASE

The application concerns the alleged ongoing failure of Moldovan authorities to carry out an effective investigation into the applicant's allegations of ill-treatment by the police on 19 November 2005 and resulting in the impunity of the perpetrators, after the adoption of the Court's judgment in Eduard Popa v. the Republic of Moldova (no. 17008/07, 12 February 2013).

A. Background to the case

The factual background of this case was described in Eduard Popa v. the Republic of Moldova (cited above, §§ 5-31). The applicant, aged twenty-four at the time, complained that he had been beaten up by police officers and left lying on the bank of a lake; owing to the low temperatures he had suffered severe frostbite to his limbs, and later, on 8 December 2005, both his feet and eight of his fingers were amputated. In that judgment the Court found a procedural violation of Articles 2 and 3 of the Convention on account of the Moldovan authorities' failure to conduct an effective investigation into the applicant's allegations of ill-treatment by the police on 19 November 2005. However, due to the deficiencies of the investigation, the Court found it impossible to establish beyond reasonable doubt whether or not the applicant had been in police custody on the morning of 19 November 2015 and whether he had been ill-treated by police officers (ibid., § 50).

On 24 February 2014, in the context of the procedure for the execution of the Court's judgment, the Government submitted an action plan indicating that the criminal investigation was pending at domestic level. To date, the Committee of Ministers has not yet concluded the supervision of the execution of the judgment under Article 46 § 2 of the Convention.

B. Criminal investigation of the case after the delivery Court's judgment on 12 February 2013

On 1 April 2014 the Ialoveni prosecutor's office suspended the criminal investigation, finding that all investigative measures had been undertaken and no suspect had been identified. The applicant challenged

that decision. On 15 May 2014 the Prosecutor General's Office found deficiencies in the investigation, annulled the above-mentioned decision and ordered a fresh re-examination of the case by the Chișinău prosecutor's office.

In 2015 the applicant and his parents were interviewed by the prosecutor. The applicant insisted that he could identify two police officers concerned.

On 22 September 2016 the applicant was informed that a new forensic medical examination was requested. When invited to be examined by the experts, the applicant was unable to attend on the proposed date and requested another appointment. However, the prosecutor never informed the applicant about a new date for the examination. The medical examination was never carried out because the forensic experts had refused to conduct it based exclusively on the case medical file. The applicant was informed about their refusal on 17 November 2017.

On 5 and 7 June 2017 the two police officers who had searched the applicant's house on 19 November 2005 were charged with torture and ill-treatment (Article 3091 of the Criminal Code). The charges were however dropped in 2020, since the applicant did not identify them as his aggressors.

At the applicant's request a new forensic medical examination was initiated and on 19 September 2018 the applicant was interviewed. The forensic experts could not conclude that the applicant had suffered a head injury during the alleged attack of 19 November 2005. They explained that the findings of the applicant's independent medical examination of 2016, which found that he had suffered approximately twenty head injuries, could be attributed to a multitude of potential causes.

On 21 May 2019 the applicant asked the prosecutor to identify those involved in the search on 19 November 2005, to order a re-hearing of the two police officers who had searched his house and lastly to interview the police officer who had been in charge of and had coordinated the search.

On 8 June 2020 the prosecutor identified police officer D.S. as the one who had coordinated the search and interviewed him as a witness.

On 18 June 2020 the prosecutor presented the applicant with photos of police officers involved in the search. The applicant identified S.M. as one of the police officers who had caught him. On 19 June 2020 S.M. was charged under Article 3091 of the Criminal Code (torture and ill-treatment).

On 30 June 2020 the prosecutor suspended the criminal investigation in respect of S.M. because he had absconded. The proceedings are still pending.

The applicant complains under the substantive and procedural limbs of Articles 2 and 3 of the Convention. In particular, he argues that the recently obtained evidence corroborated his allegation that he had been in the custody of the police and had been ill-treated by them putting his life at risk. The applicant complains that the national authorities failed anew to conduct an adequate and effective investigation into his allegations of ill-treatment by the police on 19 November 2005 and of being left unconscious at the edge of a pond at below-zero temperatures putting his life at risk. The applicant also argues that the expiry of the statute of limitation may preclude the prosecution of the perpetrators.

QUESTIONS TO THE PARTIES

1. Having regard to the fact that the execution of Eduard Popa v. the Republic of Moldova (no. 17008/07, 12 February 2013) is currently pending before the Committee of Ministers, and taking into account the measures taken so far by the respondent Government to abide by the Court's judgment, are the complaints related to the execution of the judgment within the jurisdiction of the Court (see Moreira Ferreira v. Portugal (no. 2) [GC], no. 19867/12, §§ 47-48, 11 July 2017; V.D. v. Croatia (no. 2), no. 19421/15, § 46, 15 November 2018)? In particular, were there any factual developments and any new events or circumstances not determined by the above Eduard Popa judgment which could be said to raise a "new issue" capable of triggering a fresh investigative obligation under Articles 2 and 3 of the Convention and thus a possible breach of those provisions (see Egmez v. Cyprus, no.12214/07, § 62, 18 September 2012)?

2. If so, in the light of the new circumstances of the case:

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

(b) Was the applicant subjected to ill-treatment in breach of Article 3 of the Convention?

3. Having regard to the procedural protection of the right to life and procedural protection from inhuman or degrading treatment was the investigation in the present case done by the domestic authorities in compliance with Articles 2 and 3 of the Convention with respect to the period after the Court's judgment in the case of Eduard Popa v. the Republic of Moldova on 12 February 2013 (see S.M. v. Croatia [GC], no. 60561/14, §§ 312-319, 25 June 2020; Ciorcan and Others v. Romania, nos. 29414/09 and 44841/09, §§ 118-27, 27 January 2015)?

R.P.A. v. Romania (no. 38044/23)

Article 8 – positive obligations – sexual assault

SUBJECT MATTER OF THE CASE

The application concerns allegations of the authorities' failure to satisfy their positive obligations under Article 8 of the Convention, in the light of the acquittal of the perpetrator of non-consensual groping.

On 15 September 2022, the applicant pressed charges for sexual assault (agresiune sexuală) against an unidentified male perpetrator, who had followed her that evening from the public bus up into the lobby of her block of flats. She complained that, after being warned by the applicant not to follow her, the man suddenly lifted her skirt and grabbed her bottom taking advantage of her turning her back to him when calling the lift. The man ran away when the applicant cried in shock.

On the basis of the forensic and documentary evidence collected during the investigation stage and during the trial, including statements by the applicant, her husband (who pursued and confronted the perpetrator immediately after the incident) and the perpetrator who had eventually been identified, on 17 January 2023 the Bucharest District Court sentenced the latter to 4 year and 9 months in prison for sexual assault (Article 219 § 1 of the Criminal Code). The District Court ruled that the case at hand concerned an act of sexual nature (concerning sexual organs, in order to obtain sexual satisfaction) against the applicant who, in the circumstances, felt coerced and vulnerable. The District Court noted that the act was perpetrated in an isolated space, at a late hour, in the absence of any other person, by an individual whom the applicant –

feeling under threat by a stranger and without alternative options – had warned not to follow her into the lift. When establishing the penalty, the District Court also took into account that the perpetrator was a post-execution reoffender of sexual assault (five past such acts, one of which a tentative, committed in a similar manner). It noted that the applicant didn't wish to lodge a claim for damages within the criminal proceedings.

By a final decision rendered on 16 June 2023, the Bucharest Court of Appeal ("Court of Appeal") quashed the District Court judgment and acquitted the accused. While confirming the certainty that the impugned facts have been committed as described by the applicant, the Court of Appeal considered that the material element of the offence of sexual assault was missing. Referring to the relevant provision, the Court of Appeal held that the material element of this offence consists in an act, other than rape, that is accomplished in order to satisfy the sexual instinct, and noted that it was irrelevant whether such acts were normal or abnormal manifestations of the latter. For the Court of Appeal, the perpetrator's behaviour, although reprehensible, did not have a criminal connotation, as the mere gesture of grabbing of the applicant's bottom without the victim's consent, by surprise, could not be qualified as the offence of sexual assault. Nor could it be accepted, in the opinion of the Court of Appeal, that in circumstances such as in this case which involved the victim's surprise, the applicant – an adult who managed to pursue the perpetrator – had been vulnerable or under physical or moral coercion.

The applicant complains under Article 8 of the Convention about the failure of the relevant domestic criminal law and practice to effectively punish the non-consensual act of sexual nature and about the fact that, in her case, the domestic courts did not place those acts in their context and did not take into account the perpetrator's previous record. She also complains about the absence of programmes for sexual offenders and the lack of an obligation for the domestic authorities to assess and impose such programmes, where appropriate.

QUESTIONS TO THE PARTIES

1. Did the competent authorities discharge their obligation under Article 8 of the Convention to provide the applicant with effective protection against the type of act of sexual nature to which she fell victim? In particular, is the domestic law and practice in Romania sufficiently clear in order to offer effective protection against non-consensual acts of sexual nature?

2. Having regard to the international standards that are guiding the Court, in particular the definition of "sexual violence" by the Council of Europe Convention on preventing and combating violence against women and domestic violence ("the Istanbul Convention", Article 36), and the Bucharest Court of Appeal's assessment that appears to rely on the absence of coercion without denying the lack of consent in the present case, did the Romanian legal system, in the circumstances of this case, effectively "prevent, prosecute and eliminate" violence against women, notably non-consensual acts of sexual nature (compare with, mutatis mutandis, X v. Greece, no. 38588/21, §§ 72 and 85, 13 February 2024, and Vučković v. Croatia, no. 15798/20, § 57, 12 December 2023)?

The parties are invited to provide the Court with the relevant legal provisions and examples of relevant domestic case-law.

3. Having regard to the positive obligations of States inherent in Article 8 of the Convention to carry out an effective investigation of acts of sexual nature, were the judicial proceedings in the present case in breach of the above-mentioned Article (see, for example, A, B and C v. Latvia, no. 30808/11, 31 March 2016; C. v.

Romania, no. 47358/20, 30 August 2022; and, mutatis mutandis, Sandra Janković v. Croatia, no. 38478/05, 5 March 2009)?

Aladin PAUČINAC v. Serbia (no. 13536/24)

Article 6 – Article 10 – conviction for insult

SUBJECT MATTER OF THE CASE

The case concerns the applicant's conviction for insult in respect of statements made at an informal civic protest during the Covid-19 pandemic which were later published on his Facebook page.

The applicant is a founder of "Free Citizens' Initiative", a civic union based in Novi Pazar.

He participated in several civic protests prompted by allegations of disproportionately high death rate in Novi Pazar during the Covid-19 pandemic and mismanagement of the City Hospital in that context.

At one of them, in September 2020, he filmed himself saying that M. M., the director of the hospital, was a thief (lopov) and a carcass (ljipsa). The video was streamed live and later published on the applicant's Facebook page. Following M. M.'s private criminal action, the applicant was found guilty of insult and fined with approximately 1,280 euros. The appellate court upheld the conviction, finding, as did the trial court, that the applicant's comments had been excessive and had been made with the intention of denigrating and insulting M. M.

On 19 September 2023, the Constitutional Court dismissed the applicant's constitutional appeal and upheld the reasoning of the lower courts. This decision was served on the applicant on 28 November 2023.

It would appear that several similar proceedings, both criminal and civil, all instituted by M. M., are pending against the applicant.

While invoking Articles 6 and 10 of the Convention, the applicant essentially complains that the criminal conviction violated his right to freedom of expression.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicant's right to freedom of expression contrary to Article 10 of the Convention? In particular, was the interference with the applicant's right to freedom of expression "necessary in a democratic society" in terms of Article 10 § 2 of the Convention? More specifically:

(a) Were the applicant's comments a gratuitous personal attack on, or insult to M. (see Mamère v. France, no. 12697/03, § 25, ECHR 2006-XIII; Lopes Gomes da Silva v. Portugal, no. 37698/97, § 34, ECHR 2000-X; and, mutatis mutandis, Janowski v. Poland [GC], no. 25716/94, §§ 32-34, ECHR 1999-I)?

(b) Did the national authorities strike a fair balance between, on the one hand, the applicant's right to freedom of expression, and the protection of M. M.'s right to respect for his private life, on the other hand (see, mutatis mutandis, Milisavljević v. Serbia, no. 50123/06, § 38, 4 April 2017; Radio Broadcasting

Company B92 AD v. Serbia, no. 67369/16, § 77, 5 September 2023; see also Sanchez v. France [GC], no. 45581/15, §§ 158-62, 15 May 2023; Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary, no. 22947/13, § 77, 2 February 2016; Milosavljević v. Serbia, no. 57574/14, § 61, 25 May 2021; and Busuioc v. Moldova, no. 61513/00, § 64, 21 December 2004)?

(c) Was the nature and the severity of the penalty imposed on the applicant a proportionate interference with his freedom of expression (see Cumpănă and Mazăre v. Romania [GC], no. 33348/96, § 111, ECHR 2004-XI; Sanchez, cited above, §§ 205-08)? The applicant is invited to provide the Court with the information about his income.

The parties are requested to provide copies of all the documents produced in the course of all criminal and civil proceedings instituted by M. M. against the applicant which concern the applicant's statements made in the context of the COVID-19 pandemic and the functioning of the healthcare system in Novi Pazar.

M.S. v. Sweden (no. 22720/24)

Article 2 – Article 3 – Article 14 – deportation – non-refoulement – interim measure in place

SUBJECT MATTER OF THE CASE

The applicant, an Afghan national, requested asylum in Sweden. In several sets of proceedings, during the years from 2015 to 2024, the Swedish authorities refused his requests and ordered his deportation.

The applicant complains that, if he were to be deported, he would face a risk of being subjected to treatment in breach of Articles 2 and 3 of the Convention mainly owing to his Hazara ethnicity, his intellectual disability and mental health problems, his conversion to Christianity and his "westernisation". He, furthermore, complains that the Swedish authorities failed to adequately assess the risks he would face in Afghanistan and that there were deficiencies in the domestic proceedings. In particular, he argues that his intellectual disability was not properly accommodated during the domestic proceedings nor properly considered in the domestic authorities' decisions and that the authorities did not perform a comprehensive assessment of the cumulative risks he faced. Moreover, invoking Article 14 of the Convention he complains that the failure to properly accommodate his intellectual disability in the proceedings led to unequal treatment in comparison to asylum seekers without disabilities.

The applicant's request for an interim measure under Rule 39 of the Rules of Court was granted by the Court on 22 August 2024.

QUESTIONS TO THE PARTIES

1. In the light of the applicant's claims, the documents which have been submitted and relevant country information, would he face a risk of being subjected to treatment in breach of Articles 2 and 3 of the Convention if he were deported to Afghanistan?

In particular, would he face such a risk on account of his Hazara origin, alone or in combination with any further individual circumstances, taking into consideration, inter alia, country information regarding the

situation in Afghanistan for individuals of Hazara ethnicity and individuals perceived as influenced by foreign values (see, for example, UN High Commissioner for Refugees (UNHCR), Guidance Note on the International Protection Needs of People Fleeing Afghanistan (Update I), February 2023, § 16 (iv), and European Union Agency for Asylum (EUAA), Country Guidance: Afghanistan 2024, 17 May 2024, Common analysis, sections 3.13 and 3.14.2)?

2. Did the domestic authorities fulfil their procedural obligation to conduct an adequate examination of whether the applicant would face a real risk of death or ill-treatment if he were deported to Afghanistan, as required by Articles 2 and 3 of the Convention?

In particular, was the applicant's alleged disability and/or cognitive difficulties adequately taken into account during the domestic proceedings and in the domestic authorities' decisions?

3. Has the applicant suffered discrimination in the enjoyment of his Convention rights, contrary to Article 14 of the Convention read in conjunction with Articles 2 and 3 of the Convention, in particular in view of his claim that his disability and/or cognitive difficulties were not adequately taken into account during the domestic proceedings and in the domestic authorities' decisions?

Aymael ROUX v. Switzerland (no. 45008/22)

Article 3 – ill-treatment by police – person with schizophrenia – thorough investigation

SUBJECT MATTER OF THE CASE

The applicant, who has French and Swiss nationalities, was born in 1988 and suffers from schizophrenia.

On 9 April 2018, during a random identity check in a park in Geneva, he was stopped by three plainclothes police officers from the drug squad. Although he presented his identity card, the applicant, due to his mental state and past assaults, questioned the officers' authenticity. Becoming agitated, he called his mother. Noticing his distress, the officers decided to handcuff him.

Still suspicious, the applicant attempted to flee, kneeing one of the officers, Mr L., in the groin before running off. He got into a passing car driven by his mother's neighbour, Ms. B., who mistakenly believed he was being pursued by attackers. The police caught up with the vehicle and tried to pull the applicant out, shouting to the driver that they were law enforcement. Ms. B. then stopped and exited the car.

According to the applicant, when he refused to leave the car and resisted by pushing and kicking, Officer S. punched him multiple times in the face, resulting in injuries and blood splatter on the rear window. The officer then pulled the applicant from the car, restrained him by the neck with the assistance of Officer L., and continued to punch him, even after the applicant had been handcuffed and was lying face down on the ground. Then the applicant was taken to the police station. The applicant alleged that the officers insulted him throughout the ordeal. According to medical records, he sustained a broken nose, head injuries, and a hematoma around his left eye.

Later that day, Officers S. and L. filed a complaint against the applicant for violence against public servants. The applicant was found guilty of the charge and was fined, a decision upheld by the Geneva Court in July 2021.

On 9 July 2018, the applicant filed a complaint against Officer S. for abuse of authority and assault. In May 2020, a criminal case was opened against the officer for abuse of authority and bodily harm. The investigation gathered statements from the applicant, his mother, Ms. B., and the police officers involved. On 30 June 2021, the prosecutor's office closed the case, determining that the use of force was justified.

The applicant appealed against this decision. In November 2021, the Geneva Court of Justice, and later on 17 May 2022, the Swiss Federal Supreme Court, upheld the dismissal of the criminal case against Officer S. The courts concluded that the force used was justified and necessary to restrain the applicant and prevent potential harm to others. They found that alternative methods, such as pepper spray, were not feasible due to the risk of affecting the vehicle's driver Ms B. However, the applicant's claims that he was punched while handcuffed and lying on the ground were not thoroughly examined.

The applicant complains under Article 3 of the Convention that he was subjected to ill-treatment by the police, who used unnecessary and disproportionate force, and that the domestic authorities failed to adequately investigate his allegations.

QUESTIONS TO THE PARTIES

1. Has the applicant been subjected to ill-treatment, in breach of Article 3 of the Convention (see Dembele v. Switzerland, no. 74010/11, 24 September 2013 and Kuchta and Mętel v. Poland, no. 76813/16, 2 September 2021) ?

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?

Y.T. v. Switzerland (no. 26572/23)*

Article 6 §1 – Eritrean national unlawfully residing in Switzerland – right not to contribute to one's own incrimination

SUBJECT MATTER OF THE CASE

The application concerns the right not to contribute to one's own incrimination, guaranteed by Article 6 § 1 of the Convention.

The applicant is an Eritrean citizen who left Eritrea in 2014 and entered Switzerland in 2015. Her application for asylum was rejected in 2018. Although legally obliged to leave the country (Wegweisung), she has since been living in Switzerland. Forced deportation of the applicant was (and still is) not possible, as the Eritrean authorities do not accept deportations from Switzerland to Eritrea. Eritrean nationals residing in Switzerland can therefore only return 'voluntarily' to Eritrea. To do so, they must go to the Eritrean consulate in Geneva, pay 2% of their income abroad since leaving the country (salary or social benefits) to the Eritrean state- this payment is commonly known as the 'diaspora tax' (Diasporasteuer)- and sign a form ('letter of regret'; Reueformular), in which they acknowledge, among other things, that they have committed a criminal offence by leaving the country illegally and accept the resulting penalty (unspecified). The applicant categorically refused to sign the 'letter of regret'. She also states that she is neither willing nor able to pay the 'diaspora tax' on all her income, including social benefits, received since 2014.

Several criminal orders for illegal residence and breach of the order not to leave the district of Uster (canton of Zurich) were issued against the applicant. She was also arrested and detained on several occasions.

Ruling on an appeal on 15 March 2021, the Uster District Court found the applicant guilty of unlawful residence and sentenced her to 60 days' imprisonment. The court considered that it was objectively possible for the applicant to leave the country despite the fact that the Eritrean authorities had asked her to sign a 'letter of regret' and pay a 'diaspora tax'. Consequently, there had been no violation of the right not to contribute to one's own incrimination (nemo tenetur).

The Court of Appeal of the Canton of Zurich upheld this ruling on 19 October 2021. It argued that the nemo tenetur principle was procedural in nature and applied only in Swiss criminal proceedings. It held that the applicant was not, however, obliged to participate actively in those proceedings. On 3 September 2023 (judgment 6B_1471/2021), the Federal Court dismissed the applicant's criminal appeal, relying essentially on the same arguments as the lower court.

Before the Court, the applicant claimed that her criminal conviction for unlawful residence in Switzerland amounted to a breach of the nemo tenetur principle. In essence, she claims that she was convicted by the Swiss authorities for not having signed the 'letter of regret' and for not having paid the 'diaspora tax' to the Eritrean consulate.

QUESTIONS TO THE PARTIES

Does the applicant's criminal conviction for unlawful residence in Switzerland, for failing to sign the 'letter of regret' and for failing to pay the 'diaspora tax' to the Eritrean consulate, amount to a violation of the right not to contribute to one's own incrimination (nemo tenetur), guaranteed by Article 6 § 1 of the Convention?

Rojda BARIŞ KARABULUT v. Türkiye (no. 49012/21)

Article 5 – detention – human rights activist – membership of illegal organisation

SUBJECT MATTER OF THE CASE

The applicant describes herself as a human rights activist focusing on violence against women, discrimination against women and children's rights. The application concerns the applicant's pre-trial detention in the context of a criminal investigation opened against her for membership of an illegal organisation, namely the Democratic Society Congress (Demokratik Toplum Kongresi, "DTK").

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

QUESTIONS TO THE PARTIES

1. 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 she 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 she may have committed the offences attributed to her (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)?

2. 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 (see, in particular, Buzadji v. the Republic of Moldova [GC], no. 23755/07, §§ 84-102, 5 July 2016)?

3. Did the applicant have at her disposal a remedy by which she could challenge the lawfulness of her deprivation of liberty, as required by Article 5 § 4 of the Convention? In particular, was Article 5 § 4 of the Convention violated by reason of the fact that the decisions to extend her detention and her objections to those decisions had been examined without a hearing (see, mutatis mutandis, Baş v. Turkey, no. 66448/17, § 216, 3 March 2020)?

Veysi AKTAŞ v. Türkiye (no. 38334/20)

Article 8 – Article 10 – correspondence with lawyer in prison

SUBJECT MATTER OF THE CASE

The application concerns the refusal of the prison administration to hand over certain web page printouts sent to the applicant by his lawyer via post. The Bursa Assize Court held that the documents in question did not meet the criteria outlined in section 87 § 2 of the Regulations on the Administration of Penitentiary Institutions. This section allows newspapers, books and other publications from official institutions, universities, organisations with public institution status, foundations which have been granted tax exemption or associations working for the public benefit to be distributed in prisons free of charge. The Assize Court also cited section 87 § 3 of the same Regulations, which permits prison authorities to withhold documents if they are deemed a threat to prison security or are obscene.

Relying on Articles 8 and 10 of the Convention, the applicant complains of a violation of his right to receive information and ideas as well as his right to respect for his correspondence with his lawyer.

QUESTIONS TO THE PARTIES

1. Has there been an interference with the applicant's right to respect for his correspondence with his lawyer by the refusal of the prison administration to hand over certain web page printouts sent to the applicant by that lawyer, contrary to Article 8 § 1 of the Convention (see, for instance, Campbell v. the United Kingdom, 25 March 1992, §§ 32-54, Series A no. 233; Ekinci and Akalın v. Turkey, no. 77097/01, §§ 37-47, 30 January 2007 and Eylem Kaya v. Turkey, no. 26623/07, §§ 24-48, 13 December 2016)? If so,

(a) Was the interference in accordance with the law and necessary in terms of Article 8 § 2 (Halit Kara v. Türkiye, no. 60846/19, §§ 51-58, 12 December 2023)?

(b) Were appropriate safeguards in place to mitigate the effect of the interference with the applicant's right to respect for his correspondence (see Eylem Kaya v. Turkey, no. 26623/07, §§ 41-48, 13 December 2016)?

2. 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, by the refusal of the prison administration to hand over certain web page printouts sent to the applicant by his lawyer? If so,

(a) Was that interference prescribed by law and necessary in terms of Article 10 § 2?

(b) In particular, did the national courts, in their decisions in the present case, 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 Çiftci v. Turkey, no. 53208/19, §§ 32-45, 16 November 2021; and Osman and Altay v. Türkiye, nos. 23782/20 and 40731/20, §§ 40-59, 18 July 2023)?

İsa KARTAL v. Türkiye and Ersan TAŞ v. Türkiye (nos. 35983/23 and 40838/23)

Article 10 – conviction for insulting the President – sustpension of pronouncement of judgment – victim status

SUBJECT MATTER OF THE CASE

The applications concern the criminal conviction of the applicants to prison sentences combined with a measure of suspension of the pronouncement of the judgment on charges of insulting the President of the Republic (application nos. 35983/23 and 40838/23) and insulting a public official (application no. 40838/23) for their acts and statements allegedly relating to the use by them of their freedom of expression.

Following the rejection of their appeal by the appeal court, the applicants lodged an individual application before the Turkish Constitutional Court, alleging that their right to freedom of expression had been violated.

The Constitutional Court, in its judgment of Abbas Yalçın and others (no. 2014/8146, 29 March 2023), relying on the principles set out in its previous judgment of Atilla Yazar and Others (no. 2016/1635, 5 July 2022), concluded that the applicants' right to freedom of expression had been violated. It found that the legislation providing for the suspension of the pronouncement of the judgment did not satisfy the requirement of legality due to the infringements of fair trial guarantees in its application, and that the legal provisions in question posed structural problems which were likely to lead to recurrent violations of freedom of expression. However, the Constitutional Court refused to award any compensation on the grounds that the acknowledgement of a violation and a retrial would provide adequate redress taking into account the fact that the applicants had not been subjected to any obligation during their five-year supervision period and that they had a right to appeal in the event that the judgments were pronounced.

Relying on Article 10 of the Convention, the applicants claim that their convictions and the subsequent application of a measure of suspension of the pronouncement of the judgment infringed their freedom of expression. They argue that, in the absence of any compensation award, the Constitutional Court's

judgment finding a violation cannot be considered to have effectively redressed the violation of their right to freedom of expression. The applicant in application no. 40838/23 argued in addition that the measure of reopening of proceedings indicated in the Constitutional Court's judgment was ineffective, reiterating in this respect his arguments as to his continued victim status. The applicant in application no. 35983/23 alleged that there was also a breach of Article 13 of the Convention due to the failure of the Constitutional Court to award compensation.

QUESTIONS TO THE PARTIES

1. Can the applicants be considered to have lost their victim status in respect of their complaint under Article 10 of the Convention as a result of the decision of the Turkish Constitutional Court? In particular, did the Constitutional Court's acknowledgement of a violation of the right to freedom of expression, ordering reopening of proceedings, without awarding any compensation deprive them of their victim status (see for the general principles Selahattin Demirtaş v. Turkey (no. 2) [GC], no. 14305/17, §§ 217- 18, 22 December 2020)?

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

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

In particular, was the measure of the suspension of the pronouncement of the judgment imposed on the applicants prescribed by a legal basis defining the scope and modalities of this measure with sufficient clarity to enable the applicants to enjoy the degree of protection required by the rule of law in a democratic society (Durukan and Birol v. Türkiye, nos. 14879/20 and 13440/21, §§ 59-68, 3 October 2023)?

Kadriye AKINCI v. Türkiye (no. 22179/19)

Article 8 – searches of house, office, vehicle, person

SUBJECT MATTER OF THE CASE

All the applications listed below (see appendix [not added]) concern the searches conducted in the applicants' houses, offices, vehicles or on their person in the aftermath of the attempted coup of 15 July 2016. The applicants were judges and prosecutors in different jurisdictions at the relevant time. Acting on the instructions of the Ankara public prosecutor's office, regional and provincial prosecutors' offices initiated criminal investigations in respect of individuals suspected of being involved in the coup attempt and other individuals, such as the applicants in the present cases, who were not directly involved in the coup attempt but were alleged to have links to the organisation described by the Turkish authorities as the "Fetullahist Terror Organisation / Parallel State Structure" (Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması), which was considered by the authorities to be behind the coup attempt.

Relying, in particular, on Article 8 of the Convention, the applicants complained about the searches conducted in their houses, offices, vehicles or on their person. They alleged in particular that these searches were not in compliance with section 88 of Law no. 2802, which prohibited the conduct of searches in the

houses of judges and prosecutors or on their persons, except for cases of discovery of commission of an offense in flagrante delicto falling within the jurisdiction of the assize courts.

QUESTIONS TO THE PARTIES

Has there been an interference with the applicants' rights under Article 8 of the Convention on account of the searches conducted in their houses, offices, vehicles or on their person?

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

In particular, were the searches carried out in accordance with the relevant legislation (see, mutatis mutandis, Baş v. Turkey, no. 66448/17, §§ 145-158, 3 March 2020, and Tercan v. Turkey, no. 6158/18, §§ 199-201, 29 June 2021)?

Ahmet KURTGÖZ v. Türkiye (no. 17962/20)

Article 3 – Article 8 – Article 10 – detention – conditions of detention – recording and storage of correspondence – regime of visits – access to newspaper and books

SUBJECT MATTER OF THE CASE

The application concerns the allegedly inadequate conditions of the applicant's detention due to insufficient space in his prison cell. It also concerns electronic recording and storage of the applicant's private correspondence in the National Judicial Network System (UYAP) by the authorities during his detention; and the decision of the prison authorities to prohibit visits during weekends. It concerns moreover the prison administration's refusal to hand over to the applicant the Yeni Asya newspaper and books published by the Yeni Asya publishing house.

Relying on Article 3 of the Convention the applicant complains of allegedly inadequate conditions of his detention due to insufficient space in his prison cell.

Under Article 8 of the Convention, he complains about the recording and storage of his private correspondence in the UYAP and of the decision of the prison authorities to prohibit visits during weekends.

Moreover, invoking Article 10 of the Convention, he complains about the prison administration's refusal to hand over to him the Yeni Asya newspaper and books published by the Yeni Asya publishing house.

QUESTIONS TO THE PARTIES

1. Have the conditions of the applicant's detention, having regard, in particular, to the personal space available in view of the number of prisoners placed in the same multi-occupancy units, amounted to inhuman or degrading treatment in breach of Article 3 of the Convention (see Muršić v. Croatia [GC], no. 7334/13, §§ 136-140, 20 October 2016; and İlerde and Others v. Türkiye, nos. 35614/19 and 10 others, §§ 169-199, 5 December 2023)?

The Government is requested to provide the Court information with respect to the floor space that was available to the applicant in the prison cell he stayed in by specifying the period of his detention in accordance with the methodology applied in the Court's İlerde and Others judgment (ibid, §§ 173-176).

2. Has there been an interference with the applicant's right to respect for his private life and correspondence, within the meaning of Article 8 § 1 of the Convention on account of the recording and storage of his private correspondence in the National Judicial Network System (UYAP) (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 applicant and providing appropriate safeguards to prevent any such disclosure of personal information that might be inconsistent with the guarantees of Article 8 (Nuh Uzun, cited above, §§ 84-98, see also the Turkish Constitutional Court's judgment in the case of Ümit Karaduman, no. 2020/20874, §§ 64-71, 2 February 2022)?

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

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

4. 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 him Yeni Asya newspapers and publications (see Mehmet Çiftçi v. Turkey, no. 53208/19, §§ 32-33, 16 November 2021 and Osman and Altay v. Türkiye, nos. 23782/20 and 40731/20, §§ 40-41, 18 July 2023)?

If so, was that interference prescribed by law and necessary in terms of Article 10 § 2? 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, §§ 35-45)?

Erol KÖKÇÜ v. Türkiye and 29 other applications (no. 25347/18)

Article 5 – arrest and pre-trial detention – attempted coup d'état

SUBJECT MATTER OF THE CASE

The applications mainly concern the arrest and pre-trial detention of the applicants, on suspicion of being involved in the attempted coup d'état that took place on 15 July 2016 and membership of an organisation described by the Turkish authorities as FETÖ/PDY ("Fetullahist Terror Organisation/Parallel State Structure").

At the material time, most of the applicants were serving in the army as senior army officers, field officers or private soldiers. Some of the applicants were serving or former police officers.

Relying on Article 5 of the Convention, the applicants raise the following complaints (see the appended table [not added] for detailed information as to the specific complaints raised by each applicant):

- There were no relevant and sufficient reasons to justify their initial and/or continued pre-trial detention;
- The length of their pre-trial detention was excessive;
- The reviews of detention took place without a hearing and they were not notified of the opinion of the public prosecutor on those reviews;
- Their access to the investigation files was restricted;
- The decisions extending their pre-trial detention were not notified to them, or were notified with a delay, which prevented them from appealing against those decisions;
- They did not benefit from effective legal assistance and facilities to challenge their detention, having particular regard to the fact that their communication with their lawyers was restricted and monitored by the prison authorities.

QUESTIONS TO THE PARTIES

On the basis of the complaints communicated in accordance with the list in the Appendix

Complaints under Article 5 of the Convention

1. (a) Did the applicants exhaust the remedies available in domestic law in relation to their complaints under Article 5 § 3 of the Convention? To the extent that the applicants' complaints did not relate solely to the length of their pre-trial detention but also concerned the alleged failure of the domestic courts to provide relevant and sufficient reasons to justify their initial and continued pre-trial detention, can a compensation claim under Article 141 § 1 (d) of the Code of Criminal Procedure be regarded as an effective remedy in respect of those complaints (see Selahattin Demirtaş v. Turkey (no. 2) [GC], no. 14305/17, § 213, 22 December 2020)?

(b) Was the applicants' pre-trial detention compatible with the requirements of Article 5 § 3 of the Convention? In particular:

(i) Did the judges, who ordered the applicants' initial pre-trial detention and the prolongation of their detention, and who examined the objections lodged against those decisions, fulfil their obligation to provide relevant and sufficient grounds for the deprivation of liberty in question (see, in particular, Buzadji v. the Republic of Moldova [GC], no. 23755/07, § 102, 5 July 2016)?

(i) (ii). Was the length of the applicants' pre-trial detention in breach of the "reasonable time" requirement under Article 5 § 3 of the Convention?

2. (a) Did the compensation remedy provided under Article 141 of the Code of Criminal Procedure constitute an effective remedy, within the meaning of Article 5 § 4 of the Convention, in respect of the complaints concerning (i) the lack of an oral hearing during the review of detention; (ii) the non-notification or belated notification of the detention decision (compare, for example, Hebat Aslan and Firas Aslan v. Turkey, no. 15048/09, §§ 92-93, 28 October 2014)?

(b) Did the applicants have at their disposal a remedy by which they could challenge the lawfulness of their deprivation of liberty, as required by Article 5 § 4 of the Convention? In particular, the Government are invited to respond to the following complaints made by the applicants:

(i) the principle of equality of arms had not been respected, as the decisions to extend their detention and their objections to those decisions had been examined without a hearing and the prosecutors' opinions had not been communicated to them (see, in particular, Baş v. Turkey, no. 66448/17, §§ 212-214, 3 March 2020, and Kocamış and Kurt v. Turkey, no. 227/13, §§ 34-35, 25 January 2022);

(ii) they had been unable to challenge their detention in an effective manner because of the restriction imposed on their access to the investigation file (see, inter alia, Ceviz v. Turkey, no. 8140/08, § 41, 17 July 2012);

(iii) the decisions to extend their detention had not been notified to them or had been notified with a delay, which had prevented them from lodging objections against those decisions (compare, for example, Voskuil v. the Netherlands, no. 64752/01, § 83, 22 November 2007);

(iv) they had had no effective legal assistance or facilities to challenge their detention, having particular regard to the fact that their communication with their lawyers had been restricted and monitored (see, mutatis mutandis, Černák v. Slovakia, no. 36997/08, § 78, 17 December 2013).

Enver EVREN v. Türkiye (no. 6597/20)

Article 8 – prison transer

SUBJECT MATTER OF THE CASE

The applications concern the rejection of the applicants' requests for their transfer to a prison located closer to the place of residence of their families. The applicants were serving a prison sentence at the relevant time. The Ministry of Justice refused the applicants' requests stating that the prisons to which they wished to be transferred were full.

Relying on Article 8 of the Convention, the applicants allege that their repeated requests to be transferred to a prison located closer to their families' place of residence were rejected without sufficient justification.

QUESTIONS TO THE PARTIES

Has there been a violation of the applicants' right to respect for their family life contrary to Article 8 of the Convention on account of the refusal of the domestic authorities to authorise the transfer of the applicants to a prison located closer to their families' place of residence (see Avşar and Tekin v. Turkey, nos. 19302/09 and 49089/12, §§ 60-74, 17 September 2019)?

Olga Selin HÜNLER ÇİDAM v. Türkiye (no. 20289/19)

Article 6 – Article 13 – suspension of jury hearing in process of application for post of associate professor

SUBJECT MATTER OF THE CASE

The application concerns the indefinite suspension of the applicant's jury hearing in the process of her application for the post of associate professor and the subsequent refusal of the administrative courts to examine her complaint with respect to the allegedly unlawful nature of the suspension on grounds of lack of jurisdiction. The administrative courts held that solely the State of Emergency Commission ("Commission") could examine her action owing to section (1) of the Legislative Decree no. 685. However, the applicant was unable to lodge an application with the Commission because she was not listed among the category of persons that could lodge a complaint.

On 26 September 2018 the Constitutional Court rejected her application in which she had complained, among others, of a breach of her right of access to a court as inadmissible on grounds of non-exhaustion of domestic remedies.

On 2 July 2021 the applicant informed the Court that she had been confirmed in the post of associate professor on 22 July 2020 but added that she had lost three years of her career on account of the suspension in question.

The applicant complains under Articles 6 § 1 and 13 of the Convention that she was denied access to a court on account of the administrative courts' manifestly erroneous interpretation of the law with respect to their jurisdiction as well as the Constitutional Court's rejection of her application.

QUESTIONS TO THE PARTIES

Is Article 6 § 1 of the Convention under its civil head applicable in the present case (see, for example, Oktay Alkan v. Türkiye, no. 24492/21, §§ 39- 42, 20 June 2023)? If so, has there been a violation of the applicant's right of access to a court within the meaning of Article 6 § 1 of the Convention on account of the refusal of the courts to examine her complaint with respect to the suspension in question (see generally Zubac v. Croatia [GC], no. 40160/12, §§ 76-79, 5 April 2018)?

Viktor Ivanovych TATKOV v. Ukraine (no. 46521/18)

Article 6 §1 – Article 8 – independent and impartial tribunal – dismissal of judge

SUBJECT MATTER OF THE CASES

The application concerns the dismissal of a judge of the High Commercial Court for a "violation of incompatibility requirements".

In September 2016, following a proposal of the High Council of Justice ("the old HCJ" – Вища рада юстиції), the applicant was dismissed by Parliament under the 2014 Government Cleansing Act ("the Lustration Act") based on his membership in the old HCJ in the period between 25 February 2010 and 22 February 2014 (see Polyakh and Others v. Ukraine, nos. 58812/15 and 4 others, § 73, 17 October 2019). This also banned

him from employment in the civil service until the end of 2024 and put his name in a publicly accessible Lustration Register (ibid., §§ 74 and 78). That dismissal decision was later set aside by the courts due to the breach of a procedure for its adoption.

After the 2016 major judicial reform conducted in Ukraine, the old HCJ was replaced by a newly established HCJ ("the new HCJ" – Вища рада правосуддя), which, having new competence to take a final decision on the dismissal of judges, dismissed the applicant again in September 2019 based on the same proposal of the old HCJ. The applicant then challenged this dismissal before the Supreme Court ("the SC"), which was also reorganised as a result of the aforementioned judicial reform, but eventually on 21 January 2021 it ruled against him.

The applicant complains that the proceedings regarding his dismissal were not compatible with Article 6 § 1 of the Convention. In particular, he alleges that his dismissal case was not considered by an independent and impartial tribunal since one of the new HCJ's members had already expressed his position while proposing to dismiss the applicant for the first time. The applicant also complains that the review of his case by the SC was insufficient to remedy deficiencies on the part of the new HCJ, such as the alleged lack of reasoning in its decision and breach of a procedure by the latter.

Relying on Article 8 of the Convention, the applicant complains that his dismissal and the measures applied to him under the Lustration Act breached his right to respect for his private life.

QUESTIONS TO THE PARTIES

1. Do the applicant's complaints disclose a violation of Article 6 § 1 of the Convention? In particular:

(a) Was the High Council of Justice (Вища рада правосуддя) dealing with the applicant's case independent and impartial?

(b) Was the scope of the review of the applicant's case by the Supreme Court sufficient to address his complaints?

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? If so, did that interference comply with Article 8 § 2 of the Convention (see Samsin v. Ukraine, no. 38977/19, §§ 50-59, 14 October 2021)?

Elli Anatoliyivna RADCHENKO v. Ukraine and Denys Oleksandrovych VLASENKO v. Ukraine (nos. 38599/18 and 52154/21)

Article 6 §1 – Article 8 – independent and impartial tribunal – dismissal of judge

SUBJECT MATTER OF THE CASE

The applications concern the dismissal of judges of local courts in 2018 for a "significant disciplinary misdemeanour, gross or systematic disregard of duties, which is incompatible with the status of a judge or

has shown incompatibility with the position held", which consisted of alleged grave breaches of procedural rules while delivering court decisions in property-related disputes (the latter decisions being subsequently set aside on appeal).

The above disciplinary sanction was imposed by the High Council of Justice ("the HCJ" – Вища рада правосуддя) which was set up by virtue of the 2016 major judicial reform instead of the old HCJ (Вища рада юстиції). The applicants further unsuccessfully challenged their dismissal before the Supreme Court ("the SC") which was also reorganised as a result of the aforementioned reform. Some of the SC's judges attached their dissenting opinions to the final court decisions, where they stated, inter alia, about the disproportionality of such a severe disciplinary measure.

The applicants complain that the proceedings regarding their dismissal were incompatible with Article 6 § 1 of the Convention. In particular, they allege that their dismissal cases were not considered by an independent and impartial tribunal given that one of the HCJ's members had already expressed his position on the applicant's dismissal being involved twice on various stages of the dismissal procedure (application no. 52154/21), and the fact that the SC's judges were under the jurisdiction of the HCJ, so they could be subject to disciplinary proceedings by the latter (both applications). The applicants also complain that the court decisions in their cases were not properly reasoned and substantiated.

Relying on Article 8 of the Convention, the applicants complain that their private lives were substantially affected by their dismissal which they consider disproportional.

QUESTIONS TO THE PARTIES

1. Do the applicants' complaints disclose a violation of Article 6 § 1 of the Convention? In particular:

(a) Were the High Council of Justice (Вища рада правосуддя) and the Supreme Court dealing with the applicants' cases independent and impartial?

(b) Was the scope of the review of the applicants' cases by the Supreme Court sufficient to address their complaints?

2. Has there been an interference with the applicants' right to respect for their private lives, within the meaning of Article 8 § 1 of the Convention, on account of their dismissal for a "significant disciplinary misdemeanour, gross or systematic disregard of duties, which is incompatible with the status of a judge or has shown incompatibility with the position held"? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention? In particular, was it proportional to a legitimate aim sought to be achieved?

Alla Petrivna CHALA v. Ukraine (no. 19981/17)

Article 6 § 1 – Article 8 – dismissal of judges – independent and impartial tribunal

SUBJECT MATTER OF THE CASE

The applications concern the dismissal of judges of local and appellate courts in 2019-2022 for a "significant disciplinary misdemeanour, gross or systematic disregard of duties, which is incompatible with the status of a judge or has shown incompatibility with the position held", allegedly committed between December 2001 and February 2014.

Between June 2010 and September 2016, following proposals of the High Council of Justice ("the old HCJ" – Вища рада юстиції), all of the applicants, except for the applicant in application no. 38743/21, were dismissed by Parliament for a "breach of oath"[1]. Those dismissal decisions were subsequently quashed by the courts due to the breach of a procedure for their adoption by Parliament (applications nos. 19981/17, 8816/21, 46296/21, 25838/23 and 42750/23) or because of the review of the applicants' cases after the delivery of the Court's judgment in the case of Kulykov and Others v. Ukraine (nos. 5114/09 and 17 others, 19 January 2017), where they were applicants (applications nos. 38810/21 and 50426/21).

Following the 2016 major judicial reform conducted in Ukraine, the old HCJ was replaced by a newly established HCJ ("the new HCJ" – Вища рада правосуддя), which, having new competence to take a final decision on the dismissal of judges, dismissed the applicants again based on the same proposals of the old HCJ. In application no. 38743/21, the applicant was dismissed by the new HCJ twice with reference to the materials of the old HCJ (the first such decision of 31 October 2017 was set aside by the courts due to the breach of a procedure for its delivery).

The applicants further challenged their dismissal before the Supreme Court ("the SC"), which was also reorganised as a result of the aforementioned judicial reform, but to no avail. The SC rejected their claims noting, inter alia, that the applicable three-year limitation period for imposing disciplinary sanctions on them stopped running when the relevant dismissal proposals were lodged. Several judges of the SC disagreed with that reasoning and the overall outcome in the applicants' cases attaching their dissenting opinions to the final court decisions.

The applicants complain that the proceedings regarding their dismissal were not compatible with Article 6 § 1 of the Convention. In particular, they allege that their dismissal cases were not considered by an independent and impartial tribunal given that some of the new HCJ's members had already expressed their position while proposing to dismiss/dismissing the applicants for the first time (applications nos. 19981/17 and 38743/21), and the fact that the SC's judges were under the jurisdiction of the new HCJ, so they could be subject to disciplinary proceedings by the latter (applications nos. 8816/21, 38743/21, 38810/21, 50426/21, 25838/23 and 42750/23). The applicants also complain that the principle of legal certainty was not observed in their cases since the existing limitation period for their dismissal was not respected.

Relying expressly or in substance on Article 8 of the Convention, the applicants complain that their private lives were substantially affected by their dismissals which they consider unlawful.

QUESTIONS TO THE PARTIES

1. Do the applicants' complaints disclose a violation of Article 6 § 1 of the Convention? In particular:

(a) Were the High Council of Justice (Вища рада правосуддя) and the Supreme Court dealing with the applicants' cases independent and impartial?

(b) Was the scope of the review of the applicants' cases by the Supreme Court sufficient to address their complaints?

(c) Was the principle of legal certainty respected in view of the domestic authorities' interpretation of application of the limitation period for imposing disciplinary sanctions in the applicants' cases?

2. Has there been an interference with the applicants' right to respect for their private lives, within the meaning of Article 8 § 1 of the Convention, on account of their dismissal for a "significant disciplinary misdemeanour, gross or systematic disregard of duties, which is incompatible with the status of a judge or has shown incompatibility with the position held"? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2 of the Convention?

Valeriya Valeriyivna ANANKO v. Ukraine (no. 51769/20)

Article 6 §1 – non-appointment of judge

SUBJECT MATTER OF THE CASE

The applicant complains under Article 6 § 1 of the Convention of unfair hearing of her case concerning her non-appointment to a post of a judge.

In 2012 the applicant applied for a position of a judge. She passed all necessary procedures and was put into a roster of successful candidates. On 26 May 2016 the High Council of Justice ("the HCJ" – Вища рада юстиції) lodged a submission with the President for the appointment of the applicant, as well as other candidates, as a local court judge for an initial period of five years (that submission was received by the President on 4 August 2016). In August-September 2016 the President appointed most of the persons listed in the HCJ's submission of 26 May 2016, with some exceptions including the applicant.

On 30 September 2016 a new legislation entered into force pursuant to which the President lost its power to appoint judges for an initial five-year term. In accordance with the legislative amendments, case files submitted by the HCJ before 30 September 2016 but not examined by the President were to be remitted to a newly established HCJ (Вища рада правосуддя); new principles and mechanisms were introduced in the procedure of selection of judges who were to be appointed by the President upon a submission of the new HCJ for an indefinite term. As it appears from the available documents, the applicant was then required to undergo a new competition for a position of a judge in compliance with the new procedure.

On 25 July 2017 the applicant challenged the selective appointments by the President in the courts. By a judgment of 10 June 2019, upheld on appeal on 27 February 2020, the Supreme Court ("the SC") dismissed the applicant's claim in full. It held that the President had not complied with a thirty-day time-limit for the applicant's appointment as a judge as provided for by domestic law in force at that time, but found no appearance of unlawfulness in his inactivity because of the ongoing full-scale judicial reform and the fact that the President had received submissions from the HCJ in respect of more than 300 persons and its administration had not managed to proceed with all the case files until 30 September 2016. Some of the SC's judges attached their dissenting opinion to the final court decision, where they stated that the President had unlawfully restricted the applicant's right to access to judicial profession.

The applicant alleges that the SC failed to provide adequate reasoning while finding against her, in breach of Article 6 § 1 of the Convention.

QUESTIONS TO THE PARTIES

Was the applicant's right to fair trial under Article 6 § 1 of the Convention infringed? In particular, has there been a violation of the applicant's right to a reasoned court decision (see Pronina v. Ukraine, no. 63566/00, § 25, 18 July 2006; Benderskiy v. Ukraine, no. 22750/02, §§ 42-47, 15 November 2007; and Bogatova v. Ukraine, no. 5231/04, §§ 18 and 19, 7 October 2010)?

Spartak KHACHANOV v. Ukraine (no. 56605/21)

Article 3 – Article 8 – Article 10 – artistic expression – death threats – effectiveness of investigation

SUBJECT MATTER OF THE CASE

The application was lodged by a visual artist who used to be a student at the National Academy of Fine Arts and Architecture ("the Academy").

In December 2018 the applicant set up an anti-war exhibition called "Parade of penises" as his end-of-semester work (a 100 meters long line of sculptures of soldiers and weaponry visualised as penises). According to the applicant, one of the professors of the Academy then called his friends from the army and they all together destroyed the exhibition. The applicant alleges that he further started receiving death threats, both online and in person (in the premises of the Academy as well as in its dormitory), from members of a far-right activist group purportedly having links to law-enforcement authorities.

In January 2019 the applicant applied to the police on account of the threats. In November 2019 the relevant criminal investigation was launched. In December 2019 the criminal proceedings were terminated owing to the lack of evidence of crime. In October 2020 that decision was set aside by the investigating judge due to the failure to carry out any measures. According to the applicant, the police only took explanations from him and his witnesses. As of May 2021, the investigation was ongoing.

Being afraid for his life or limb because of the threats and the police inactivity in this connection, the applicant fled Ukraine.

The applicant complains under Articles 3, 8 and 10 of the Convention that the domestic authorities failed to conduct an effective investigation into threats to his life or limb, which allegedly had a chilling effect on his artistic expression and forced him to leave the country.

QUESTIONS TO THE PARTIES

1. Did the applicant make prima facie credible claims triggering the State's procedural obligation to investigate, in the sense of Article 3 of the Convention?

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

2. Having regard to the procedural protection from acts of violence (see K.U. v. Finland, no. 2872/02, § 46, ECHR 2008), was the investigation in the present case by the domestic authorities in breach of Article 8 of the Convention?

3. In so far as the investigation into the threats received by the applicant is concerned, did the State discharge its positive obligation under Article 10 of the Convention to take all necessary measures to investigate a conduct allegedly having a chilling effect on his artistic expression (see, among other authorities, Khadija Ismayilova v. Azerbaijan, nos. 65286/13 and 57270/14, §§ 158-66, 10 January 2019)?

Volodymyr Oleksandrovych KUZNETSOV v. Ukraine (no. 38146/21)

Article 10 – destruction of artwork – censorship

SUBJECT MATTER OF THE CASE

The application was lodged by a well-known Ukrainian painter whose works were mostly linked to Ukrainian history and culture often disclosing sharp social problems of present times.

In 2013 the applicant was invited by the State-owned gallery "Mystetskyi Arsenal" to paint a mural "Doomsday" on one of the walls for a future exhibition. A day before the opening of the exhibition, the mural was painted over in black, and the applicant was not admitted to the building. The administration of the gallery explained that he failed to finish his work on time. A few years later, the ex-director of the gallery wrote an article confessing therein that she had decided to destroy the mural since the exhibition had been supported by Orthodox Church while the mural had depicted priests in a hell pot.

In March 2015 the applicant instituted proceedings against the gallery seeking compensation for the violation of his copyright. By a judgment of 9 September 2015, upheld on appeal and in cassation, the applicant was awarded 1,000 Ukrainian hryvnias (UAH; about 38 euros (EUR)) in respect of non-pecuniary damage; the remainder of his claim was rejected. The final court decision in these proceedings was delivered on 6 July 2016.

In May 2017 the applicant instituted proceedings against the gallery seeking compensation for the act of censorship. The first-instance court found for the applicant, but the appellate court overruled holding that his arguments were of "subjective nature" and did not indicate the existence of any censorship. The latter decision was upheld by the Supreme Court in its final decision of 24 February 2021.

In June 2018 the applicant instituted defamation proceedings against the ex-director of the gallery seeking to refute the allegedly untrue information having been disseminated about him. By a final decision dated 6 December 2021 the Supreme Court upheld the decisions of the lower courts granting the applicant's claim in part of some of the contested statements which were unrelated to the purported motives for the destruction of his work.

The applicant complains under Article 10 of the Convention that his freedom of expression was infringed due to the destruction of his work by the administration of the gallery. According to the applicant, such measure amounted to a kind of censorship prohibited by law, it did not pursue any legitimate aim and was not necessary in a democratic society.

QUESTIONS TO THE PARTIES

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

2. If so, was that interference prescribed by law and necessary in terms of Article 10 § 2 of the Convention?