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2023

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE
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Foreword

At a time when armed conflict and democratic and rule of law backsliding continue to afflict certain parts of Europe, 2023 was set to be a particularly complex and challenging year for the European Court of Human Rights and for the Convention system.

The Court has remained steadfast, however, in its understanding and exercise of the judicial mission accorded to it within the Convention system, registering a considerable increase in the number of applications giving rise to a judgment (6,931, compared to 4,168 in 2022) and engaging effectively with the forty-six Council of Europe member States in advance of and following the fourth summit of the Heads of State and Government (see further below).

With a very high number of inter-State applications pending at the beginning of 2023, particular attention has been paid to accelerating and rationalising case-processing in their regard, prioritising those relating to the ongoing conflict in Ukraine. The Court also rolled out procedures developed to deal with the considerable stock of individual applications which remained pending following the cessation of membership of the Russian Federation in 2022. Both the Grand Chamber and Chambers of seven Judges clarified some unprecedented procedural questions which arise in cases in relation to which the Court retains residual jurisdiction under Article 58 §§ 2 and 3 of the Convention, but which are pending against a respondent State which has nevertheless ceased to be a High Contracting Party.

The year just passed reminds us that the European Court of Human Rights is the judicial branch of what is, in essence, a peace project. The promise of "never again" has been fundamentally challenged by Russia's war of aggression against Ukraine, but also by cold and active conflicts in other regions within the Convention legal space. However, these conflicts also remind us that the project is and must remain a central part of our international rules-based order.

At Grand Chamber level, after a concerted effort, case-processing time has been reduced in both contentious and non-contentious proceedings.

SÍOFRA O'LEARY
President of the European Court of Human Rights

Given that the Grand Chamber focuses on cases which, although relatively few in number, raise serious questions affecting the interpretation and application of the Convention or serious issues of general importance, the need for sufficiently expeditious case processing by the Court's most solemn judicial composition is clear. Furthermore, all Grand Chamber judgments and decisions are now accompanied by tables of contents, to facilitate navigation of their content online, and preparatory work has been undertaken to ensure that in 2024 Grand Chamber judgments and decisions can be delivered in a more accessible and informative manner.

Consolidation in 2023 of the impact strategy, combined with greater use of Committees of three Judges in cases where well-established case-law can be applied, saw a quantitative and qualitative shift in judicial work at Chamber and Committee levels. This is with a view to allowing the former greater time and space to deal with the new and complex legal questions raised in many of the cases pending before them, while ensuring that the latter

can increase judicial output and expedition where the existing case-law and a given case so permit.

In this year's Annual Report, you will find a summary of the Court's judicial activity, including a statistical overview of caseload and productivity, reference to some of the human rights milestones which have marked 2023, an overview of completed and ongoing procedural reforms and an explanation of the Court's judicial outreach and Convention knowledge sharing. Combined with a pictorial guide to the year's events, I hope that you will find it both enlightening and engaging. For an outline of some of the landmark judgments and decisions handed down in 2023, I refer you to the body of the report and to my speech at the Solemn Hearing to mark the opening of the judicial year, held in the Human Rights Building in Strasbourg on 26th January 2024.

As regards statistics, I will limit myself to some salient points. By the end of 2023, the number of applications pending, although high (68,450), has significantly decreased, compared to the close of 2022 (74,650). Of the 38,260 applications dealt with in 2023, 6,931 gave rise to a judgment, of which 6,386 were decided by Committees. Single-judge formations dealt with 25,834 applications.

75% of pending applications concern the same five States as those listed in 2022, namely Türkiye (23,400 applications), the Russian Federation (12,450), Ukraine (8,750), Romania (4,150) and Italy (2,750).

The shift of caseload from Chambers to Committees is clearly reflected in this year's statistics. There has been a 48% decrease since 1st January 2023 in the number of pending applications assigned to a Chamber (18,150) and a corresponding increase of 33% in the number of applications pending before Committees (46,150). In the same period, the number of pending applications assigned to a single judge decreased by 13% to around 4,150.

Turning to milestones, in early 2023 the Council of Europe prepared for a fourth historic summit of the Heads of State and Government, seeking recommitment to the three fundamental, interdependent and inalienable principles of democracy, rule of law and human rights, enshrined in the Statute of the Council of Europe and in the Convention. These core values and principles, which the Convention system was designed to safeguard, are the bedrock of continued freedom, peace, prosperity and security for Europe.

In preparation for the summit, the Plenary Court set out in stark terms the challenges currently facing the Convention system and the Court itself and emphasised why, in the present context, legal, political and material support for both is more than ever essential.[1]

In the ensuing Reykjavík Declaration, the Heads of State and Government reaffirmed their

> "deep and abiding commitment to the European Convention on Human Rights and the European Court of Human Rights as the ultimate guarantors of human rights across our continent, alongside our domestic democratic and judicial systems.[2]

Responding, moreover, to the key points made by the Court in its memorandum, the Declaration also recommitted the States to resolving the systemic and structural human rights problems identified by the Court, ensuring the full, effective and prompt execution of final judgments, and providing sufficient and sustainable resources to enable the Court to exercise its judicial functions effectively and to deal with its workload expeditiously.

September marked the 70th anniversary of the entry into force of the Convention. During this period the Court has dealt with well over one million applications and handed down more than 26,000 judgments and many thousands of decisions. Through these judgments and decisions, the Court has sought consistently to defend "the common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law" (see, recently, *Ukraine and the Netherlands v. Russia*[3]).

In October the Court organised a seminar on "Judicial dialogue through the advisory opinion mechanism under Protocol No. 16 " to mark the fifth anniversary of the entry into force of the protocol. The seminar provided an opportunity to gather with superior court presidents, hailing from States which have ratified the protocol but also from others which have not, to take stock of how the mechanism is operating in practice and to reflect on how it might develop in the future.

Protocol No. 11, which established and shaped the permanent Court as we know it today, entered

1. Memorandum of the European Court of Human Rights, adopted by the Plenary Court on 20 March 2023.
2. United around our values – Reykjavík declaration (2023).
3. *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 385, 30 November 2022.

into force twenty-five years ago, in 1998, while the 75th anniversary of the Universal Declaration of Human Rights, the prelude to the Convention system, was celebrated in Paris in December, with the Court fully involved.

A landmark summit, combined with these different anniversaries, remind us of the centrality of the Convention system and of the Court in supporting how Contracting States have shaped the modern European societies in which we live and of the importance of the unique human rights protection mechanism from which those societies and their members benefit.

The Court continued to reflect in 2023 on whether and what procedural reforms might be necessary to enhance procedures and proceedings before it. When amending the Rules of Court, the Court engages with relevant stakeholders, including Member States and members of civil society, whenever necessary in this regard.

In March 2023, a new Practice Direction on third party interventions was published. It sought to clarify the manner in which third parties can intervene, in particular as concerns time-limits for making written submissions, the content and scope of such submissions, and the way in which the Court uses them when examining cases.[4] In October, with five years of experience of the new Protocol No. 16 procedure under its belt, the Court updated the guidelines for domestic courts. These guidelines seek to offer them practical assistance when making such requests.[5] Lastly, a revised version of the Rules of Court was published on the Court's website in October, incorporating a new Rule 44F on the treatment of highly sensitive documents.[6]

As regards Rule 28, which governs the withdrawal of a Judge from a judicial formation or their recusal at the request of one of the parties, consultation under Rule 116 § 2 on a revised text of the rule commenced in October. As explained in my intervention before the Committee of Ministers in October, the revised rule seeks to clarify and consolidate the existing grounds for recusal and the procedure followed in relation to the same. Following the consultation, the Plenary Court confirmed the revision of Rule 28 and a new practice direction was issued on 22 January 2024.[7]

Interim measures adopted under Rule 39 have continued to make headlines in 2023. It is important to recall that a failure by a respondent State to comply with interim measures undermines the effectiveness of the right of individual application guaranteed by Article 34 of the Convention and the State's formal undertaking in Article 1 to protect the rights and freedoms set forth in the Convention.

When issuing interim measures, which it does in exceptional cases where there is an imminent risk of irreparable harm, the Court exercises its jurisdiction to ensure observance of the engagements undertaken by the High Contracting Parties in the Convention and Protocols thereto, in accordance with Article 19 of the Convention, which jurisdiction extends to all matters concerning their interpretation and application, as provided in Article 32.

In 2023 certain States have continued to question, however, whether they are bound by interim measures and the Court has continued to find respondent States to have violated their Article 34 obligations when such measures were disregarded.[8] As emphasised in my speech at the opening of the 2023 judicial year, in view of the vital role played by interim measures in the Convention system, it should be a cause of grave concern that some Contracting States are prepared to flout international rule of law requirements in this manner.

The binding nature of interim measures does not mean that the Court does not listen to comments and criticisms in relation to its decision-making processes. As part of the series of procedural reforms outlined above, in June and November 2023 the Plenary Court adopted several decisions clarifying and codifying its existing practice relating to interim measures[9]. The proposed codification of the Court's well-established case-law on Rule 39 is presently the subject of an ongoing consultation procedure. An updated Practice Direction accompanying the amended Rule 39 will be prepared and published following the consultation process. Since 1st December the Court has, *inter alia*, disclosed the identity of the judges who render decisions on interim measure requests and maintained the established practice of adjourning the examination of requests for interim measures and requesting the parties to submit information in those circum-

4. See press release.
5. Guidelines on the implementation of the advisory-opinion procedure introduced by Protocol No. 16 to the Convention.
6. See press release.
7. See press release.
8. See *A.Y. and Others v. Russia*, nos. 29958/20 and 2 others, 17 January 2023.
9. See press release.

stances where the situation is not extremely urgent and where the information that the applicants could submit to the Court was insufficient to enable the Court to examine the request. In 2024, it plans to commence issuing formal judicial decisions for the parties.

Finally, as regards knowledge sharing and outreach, the now externalised Knowledge Sharing platform, which is accessible on the Court's website and curated by the Jurisconsult's Directorate, has gone from strength to strength, gaining visibility, enriching its content and enhancing access to materials on the Convention across the forty-six Member States and well beyond.

The Superior Courts Network (SCN) stands at 105 member courts, covering forty-five member States. These courts have now been joined by three international courts with observer status. The SCN, which continues to be the largest judicial network of its kind in the world, is the embodiment of the principles of subsidiarity and shared responsibility which lie at the heart of the Convention system. To strengthen its contribution in this regard, the new Visiting Professionals Scheme allows member and observer courts to benefit from workshops at the Court tailored to their specific needs in areas such as case-processing, document and knowledge management and related IT systems. Over eighty participants from ten courts coming from nine member States have thus far been able to benefit from this scheme during its first year of operation.

In 2023 we also invested heavily in judicial dialogue, free of the limitations which had understandably restricted the number and nature of such exchanges during the Covid pandemic. The Court has welcomed visits by judges and dignitaries from different member States, including the Presidents of the Constitutional Court and Court of Cassation of Armenia, the President of the Republic of Latvia, the President of the Republic of Slovenia, the Chief Justice of the Supreme Court of Azerbaijan, the President of the Supreme Administrative Court of Poland and the President of the Constitutional Court of Hungary. Larger judicial delegations from Azerbaijan, the Czech Republic, Poland, Norway, Spain, Hungary, Slovenia and Sweden have engaged in round table discussions and workshops with Judges and registry staff. Beyond Strasbourg, I have made official visits to Croatia, Spain, Italy, the German Federal Constitutional Court and the Constitutional Court of Austria, engaged in our annual bilateral, accompanied by other members of the Court, with the Court of Justice of the European Union (CJEU) and participated in crucial trilateral exchanges with EU national constitutional and supreme courts and the CJEU in The Hague and Vienna.

The Court's outreach does not stop at Europe's borders. It hosted a delegation of judges from the Court of Justice of the Economic Community of West African States (ECOWAS) in March and a delegation of the National High Court of Brazil in November. I also led a judicial delegation from the Court at the Third International Human Rights Forum organised by the Inter-American Court of Human Rights in May and had the pleasure of exchanging online with Justice Saburo Tokura, Chief Justice of the Supreme Court of Japan, earlier in the year.

In conclusion, the complex and challenging year which was 2023 has born much fruit and sewn the seeds for further case-law consolidation and procedural reforms going forward. Some of these seeds will germinate in 2024, which will undoubtedly be marked by intense judicial activity despite, and perhaps also as a result of, the increasingly tense and unstable international environment in which the European Court of Human Rights and the Convention system operate.

Solemn hearing

27 January 2023

Speech given by Síofra O'Leary, President of the European Court of Human Rights

Presidents of the Constitutional Courts and Supreme Courts, President of the Ministers' Deputies, Deputy Secretary General of the Council of Europe, Secretary General of the Parliamentary Assembly, Commissioner for Human Rights, Excellencies, Ladies and gentlemen,

I should like to thank you, personally and on behalf of all of my colleagues, for honouring us with your presence at this solemn hearing to mark the opening of the judicial year at the European Court of Human Rights.

By your presence, you demonstrate not only your commitment to our Court, but also, in this tragic period that Europe is living through, your commitment to the European mechanism for the protection of human rights. As we seek, together and collectively, to safeguard democracy and the rule of law and to protect human rights, your presence each year at this event goes well beyond the ceremonial.

Today I am speaking on this occasion for the first time. While I am very conscious of the honour that

has been bestowed upon me, I feel, above all, the heavy responsibility that is entailed by this office, namely that of bequeathing the Convention edifice intact to future generations.

Fortunately, it is a responsibility that I share with judges of high quality and great dedication, and I take this opportunity to thank both my colleagues and the members of the Registry who support us in carrying out our judicial work.

Historians looking back on 2022 will have available a wealth of terms to describe the times that we are living though. The concept of "*Zeitenwende*" used by the German Chancellor strikes me as very apt – a change of era; the end of an era.

In 2022 we experienced the aftershocks of the pandemic and witnessed disputed but perceptible environmental damage, an energy crisis and the return of inflation – not forgetting the fears always raised by migratory phenomena and the frequently anarchical development of social media.

However, the major and tragic event of 2022 was the return of what had seemed unthinkable: once again a war on the European continent between two member States of the Council of Europe, and the expulsion of the Russian Federation.

Given the origins of the Convention and the objectives it pursues, the European Court of Human Rights could not escape this cataclysm.

As you know, Russia was expelled from the Council of Europe on 16 March 2022.[1]

The Court, sitting in plenary session, immediately adopted a resolution whereby it remained competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred up to 16 September 2022.[2]

This so-called "residual" jurisdiction of the Court derives from Article 58 of the Convention. There are currently 16,800 cases against the Russian Federation pending before the Court.

Since Russia's expulsion, various judicial formations of the Court have continued to process Russian cases and several important judgments have been delivered. I am thinking, for example, of the Grand Chamber judgment in *Fedotova and Others*[3], delivered a week ago, finding a violation of Article 8 on account of the absence of any possibility under Russian law to obtain formal recognition of a same-sex relationship.

The Court will continue to deal with Russian applications over the coming months. In line with the impact strategy, the processing of these cases will be differentiated, taking into account the importance of the legal issues in issue and whether there exists a well-established case-law applicable in the given area.

I should like to stress that there are currently eight pending inter-State cases concerning Russia. Processing of these cases remains a top priority for the Court, as demonstrated by the admissibility decision delivered two days ago in the case of *Ukraine and the Netherlands v. Russia*[4]. Reiterating the essential character of the Convention as a constitutional instrument of European public order, the Grand Chamber emphasised that:

> "the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interests but to realise the aims and ideals of the Council of Europe, as expressed in its Statute, and "to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law".[5]

More than anything, the Court's exercise of its residual jurisdiction reflects the fact that a State cannot take advantage of its expulsion from the Council of Europe to avoid responsibility for violations of the Convention. This is all the more vital given that some of the cases in question are of great significance in terms of Russia's responsibility under international law.

Despite the challenges posed in 2022, the Court sought to fulfil its mission faithfully, and ruled on 39,570 applications, of which 4,168 gave rise to a judgment.

There are now 74,650 applications pending before the Court, compared to around 70,000 a year ago. Approximately 10,000 applications are

1. Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe (Adopted by the Committee of Ministers on 16 March 2022 at the 1428ter meeting of the Ministers' Deputies).
2. Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, adopted on 22 March 2022.
3. *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023.
4. *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, adopted on 30 November 2022 and delivered on 25 January 2023.
5. Ibid., § 385.

related to ongoing conflicts, a situation which is also reflected in the 19 inter-State applications now before the Court.

As in previous years, three-quarters of the pending cases concern five States. First, Türkiye, with 20,300 applications, followed by the Russian Federation, Ukraine (10,600), Romania (5,900) and Italy (3,700).

Several of my predecessors have emphasised the need for greater awareness by the authorities of the lack of resources available to the Court. In view of the role we are called upon to play and the situation I have just described, I have no choice but to do the same.

Throughout the Interlaken reform process and even beyond, the Court has worked relentlessly to improve its efficiency. It will continue to do so under my presidency.

In terms of organisation, however, there is no leeway for further improvement. We as a Court are currently dealing with multiple complex inter-State cases, while simultaneously processing tens of thousands of individual applications lodged in some forty languages. Case management depends not only on the judges, but on the availability of experienced lawyers capable of mastering these languages and who are familiar with the legal systems of forty-six member States.

Political support for the Council of Europe's values and for the Convention system itself will no doubt be at the heart of the fourth Summit in Reykjavík in May.

However, this support must imperatively be translated into the provision of appropriate material resources and more sustainable funding to further the implementation of a Convention which, for over 70 years, has contributed to stability, security and peace in Europe.

* * *

Ladies and Gentlemen,

Given the theme of this afternoon's judicial seminar, it is natural that questions relating to the consolidation of democracy and means to counter democratic backsliding feature in my intervention this evening.

Much ink has rightly been devoted in recent years to the European Convention's rule of law guarantees and to the frontal challenges to judicial independence which Europe has been witnessing. In contrast, a misplaced complacency may have installed itself in certain States over the last decades regarding the Convention's success in supporting and preserving democracy itself.

However, in recent years our Court has witnessed first-hand efforts to dismantle democracy, the only political model envisaged by the Convention. Democratic backsliding, aptly described as "death by a thousand cuts", takes many different forms, from the adoption of measures to undermine the judiciary, muzzle the press, stifle political pluralism, or dispense with institutional checks and balances, to the elimination of political competition or the turning of a blind eye to corruption.

Had it been forgotten that the maintenance and further realisation of human rights and fundamental freedoms are best ensured by an effective political democracy, underpinned by the rule of law, and by a common understanding and observance of human rights? If so, the tragic events unfolding in Ukraine since February last, and the forces which gave rise to those events, have surely reminded us of the importance of what our forebearers fought so hard for.

Democracy, just like human rights and the rule of law, is not acquired once and for all. It must be fought for every day.

Through its protection of key civil and political rights, the Convention plays a vital role in ensuring that the elements we need for a peaceful society – democracy, tolerance and pluralism – are in place. Constant vigilance is required to ensure that they are not dismantled. The European Convention is a product, in the words of one of my predecessors, Luzius Wildhaber, of "idealistic realism". It is anchored in the belief that democratic regimes, respectful of fundamental rights, do not go to war with one another, such that it is not an issue of purely domestic jurisdiction whether democracies relapse into dictatorships.[6] The purpose of the Convention, according to those who drafted it, was to ensure that Council of Europe States are democratic and that they remain so.

In its recent case-law on freedom of expression, long been regarded as the lifeblood of democracy, the Court has been sensitive to the form, nature and quality of information received by voters, present and future.

6. Luzius Wildhaber, 'Rethinking the European Court of Human Rights' in Jonas Christoffersen and Mikael Rask Madsen (eds), The European Court of Human Rights between Law and Politics (Oxford University Press 2011), pp. 204-30.

I am particularly struck by an extract from a recent German case on Article 10, in which the Court emphasised:

> "the enormous importance, from a public-policy perspective, of teaching and educating children, in a credible manner, about freedom, democracy, human rights and the rule of law.[7]

In dangerous times, when the values hitherto taken for granted in post-war Europe are increasingly challenged, it is on the young and their future that we must concentrate.

* * *

In keeping with tradition, I will mention some cases from the last year which are emblematic, at this turning point in history, of the essential role played by the Convention.

In the first case, *H.F. and Others v. France*[8], delivered by the Grand Chamber on 14 September 2022, the applicants applied unsuccessfully at national level for emergency repatriation of their daughters and grandchildren, held in camps in north-eastern Syria.

The Court emphasised that Article 3 § 2 of Protocol No. 4 does not give rise to a general right to repatriation.

However, the right to enter national territory may give rise to a positive obligation on the part of the State where the refusal to take any steps would lead to the national concerned being placed in a situation comparable, *de facto*, to that of an exile.

A refusal to repatriate must be accompanied by appropriate safeguards. This presupposes a review mechanism before an independent body – not necessarily of a judicial nature – which makes it possible to verify that the reasons for the contested decision are free of arbitrariness. Applicants must be able to acquaint themselves, albeit summarily, with the grounds relied upon and it must be possible to verify that the best interests of any children involved have been taken into account.

Given the absence of a formal decision and the refusal of the domestic courts to entertain jurisdiction, the Court found a violation of Article 3 § 2 of Protocol No. 4 to the Convention.

The second judgment I wish to mention is *NIT S.R.L. v. the Republic of Moldova*[9], delivered by the Grand Chamber in April 2022. The case concerned the freedom of expression of a television channel which, following elections, became a platform for criticism of the new government. It was sanctioned for serious and repeated breaches of the legal obligation to ensure political balance and pluralism. Its broadcasting licence was eventually revoked. Before the Court, the company relied on Article 10 and on Article 1 of Protocol No. 1 to the Convention. The Court found no violation of either provision in the particular circumstances of the case.

The case raised novel issues relating to the internal dimension of media pluralism, the openness of discourse in European democracies and the right balance to be struck between safeguarding political pluralism in the media and respecting editorial freedom.

When States, such as Moldova, opt for a regulatory model requiring internal pluralism, designed to guarantee balanced political coverage, this falls within their margin of appreciation and often reflects their political culture and the historical development of their broadcasting sector. Article 10 does not impose a particular model of internal pluralism as long as overall programme diversity in the sector as a whole is guaranteed at national level. The role of the Court is to ensure that the effects of the regulatory regime a State choses are compatible with the guarantees afforded by Article 10 and the scrutiny it exercises will be more or less strict scrutiny depending on the degree of restriction on editorial freedom which the model chosen entails.

The existence of procedural safeguards was considered of particular importance by the Court when it came to the revocation of a broadcasting licence as in this case. So too was the role of the regulatory authority, whose independence has to be verified given the delicate and complex nature of that role.

The *NIT* judgment reminds us that media freedom and pluralism are enablers of the rule of law and democratic accountability. It showcases the important role played by the Council of Europe, setting standards regarding responsible journalism, media pluralism and the essential independence of regulatory authorities in this field.

Altogether the Grand Chamber adopted nine judgments in 2022, including one within the context of infringement proceedings under Article 46 § 4

7. *Godenau v. Germany*, no. 80450/17, § 54, 29 November 2022.
8. *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, 14 September 2022.
9. *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, 5 April 2022.

of the Convention.[10] Moreover, three advisory opinions were handed down following requests made by the Lithuanian Supreme Administrative Court,[11] the Armenian Court of Cassation[12] and the French Council of State.[13] A seventh request for an advisory opinion, this time from the Finnish Supreme Court, is pending.[14]

While the judgments of the Grand Chamber may attract the greatest attention, the judgments delivered by Chambers of seven judges, in line with our "impact strategy", increasingly concern important and complex legal and societal questions. As you know the strategy seeks to ensure rapid identification and expeditious processing of such cases.

This is well-illustrated in a series of four judgments handed down in 2022 in relation to the rule of law crisis in Poland (*Grzęda v. Poland*, *Advance Pharma sp. z.o.o. v. Poland*, *Żurek v. Poland* and *Juszczyszyn v. Poland*[15]), only one of which hails from the Grand Chamber.

At issue in both *Grzęda* and *Żurek*, cited above, was the unjustifiable limitation of the applicants' access to court to challenge the premature termination of their terms of office as members of the National Council of the Judiciary (NCJ), while both were serving judges. Finding Article 6 § 1 both applicable and violated, the Court emphasised that where judicial councils are established, States must ensure their independence from the executive and legislative powers in order to safeguard the integrity of the judicial appointment process. The fundamental change in the manner of electing the NCJ's judicial members, considered jointly with the early termination of the mandate of previous judicial members like the applicant judges, meant that its independence was no longer guaranteed.

In *Żurek* the Chamber also found a violation of Article 10 of the Convention as a result of a series of measures applied to the applicant, who was a spokesperson of the NCJ and critic of the judicial reforms. According to the Court:

> the general right to freedom of expression of judges to address matters concerning the functioning of the justice system may be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental values come under threat.[16]

These cases are noteworthy for a number of reasons. Firstly, the Court stressed that in the light of the principles of subsidiarity and shared responsibility, the Contracting Parties' obligation to ensure judicial independence is crucially important for the Convention system itself. The latter cannot function properly without independent judges. Secondly, all Contracting Parties must abide by rule of law standards and respect their obligations under international law, including those voluntarily undertaken when they ratified the Convention. Domestic law, including national constitutions, cannot be invoked as justification for failure to respect those obligations. Finally, these judgments, in which the Court referred extensively to the parallel rule of law jurisprudence of the Court of Justice of the European Union reflect further the synergy between the two European courts in defence of judicial independence and the values which underpin the Convention. In *Ecodefence and Others v. Russia*[17], the final judgment I will reference, the applicants were non-governmental organisations involved in civil-society issues which were placed on a register of so-called "foreign agents" funded by "foreign sources". This resulted in the imposition of administrative fines, financial expenditure and severe restrictions on their activities. One organisation, Memorial, joint winner of the Nobel Peace Prize in 2022, was liquidated,

10. *Kavala v. Türkiye* (infringement proceedings) [GC], no. 28749/18, 11 July 2022.

11. *Advisory opinion on the assessment, under Article 3 of Protocol No. 1 to the Convention, of the proportionality of a general prohibition on standing for election after removal from office in impeachment proceedings* [GC], request no. P16-2020-002, Lithuanian Supreme Administrative Court, 8 April 2022.

12. *Advisory opinion on the applicability of statutes of limitation to prosecution, conviction and punishment in respect of an offence constituting, in substance, an act of torture* [GC], request no. P16-2021-001, Armenian Court of Cassation, 26 April 2022.

13. *Advisory opinion on the difference in treatment between landowners' associations "having a recognised existence on the date of the creation of an approved municipal hunters' association" and landowners' associations set up after that date* [GC], request no. P16-2021- 002, French *Conseil d'État*, 13 July 2022.

14. The European Court of Human Rights has accepted a request (no. P16-2022-001) for an advisory opinion under Protocol No. 16 to the Convention received from the Supreme Court of Finland on 10 October 2022. In its request, the Supreme Court of Finland has asked the ECHR to provide an advisory opinion on the procedural rights of a biological mother in proceedings concerning the adoption of her adult child.

15. *Grzęda v. Poland* [GC], no. 43572/18, 15 March 2022; *Advance Pharma sp. z o.o v. Poland*, no. 1469/20, 3 February 2022; *Żurek v. Poland*, no. 39650/18, 16 June 2022; *Juszczyszyn v. Poland*, no. 35599/20, 6 October 2022.

16. *Żurek*, cited above, § 222.

17. *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, 14 June 2022.

declared illegal and forcibly dissolved the same year.

In a judgment delivered in June 2022, the Court found a violation of Article 11, interpreted in the light of Article 10 of the Convention, due to key concepts in the Foreign Agents Act which fell short of the Convention's foreseeability requirement. In addition, judicial review had failed to provide adequate and effective safeguards against the arbitrary and discriminatory exercise of the wide discretion left to the executive by the law.

In *Ecodefence and Others*, cited above, the Court emphasised that:

> "The democratic process is an ongoing one which needs to be continuously supported by free and pluralistic public debate and carried forward by many actors of civil society.[18]

The impugned Russian regulation reflected the notion that external scrutiny of matters relating to human rights and the rule of law was suspect and a potential threat to national interests. The Court, in response, emphasised that the rights of all persons within the legal space of the Convention are a matter of concern to all member States of the Council of Europe.

Ladies and Gentlemen,

The *Ecodefence and Others* judgment, cited above, also reminds us that by virtue of Article 34 of the Convention, Contracting States undertake to refrain from hindering the effective exercise of the right of individual application. That right is the cornerstone of the Convention system. In *Ecodefence and Others* and in three other cases decided in 2022, the Court has found respondent States' disregard of interim measures to be in violation of their Article 34 obligations.

In view of the vital role played by interim measures in the Convention system, it should be a cause of grave concern that some Contracting States are prepared to flout international rule of law requirements in this manner.

Finally, as regards this case, like any court worth its salt, we too must be open and self-critical. This Court took too long to decide the *Ecodefence and Others* case; a fact which underlines the need to consolidate the impact strategy and the expeditious handling of key cases which I referred to previously, a fact which also underlines the need for us to have the resources to do so.

Before turning to our guest of honour, let me remind you that today is the international day of commemoration in the memory of victims of the Holocaust.

Let us not forget why the Convention was conceived.

Let us not forget what, through the work of this Court and your work as national judges, the Convention has achieved.

And let us not forget what remains to be done.

* * *

Ladies and gentlemen,

This is the first time that a leading Italian figure has honoured us by delivering the traditional speech at the start of our Solemn Hearing.

A leading figure indeed, as Silvana Sciarra has been a judge at the Italian Constitutional Court since 2014 – a court she has presided over since last September.

Ms Sciarra, President of the Constitutional Court,

Our professional paths, devoted to European law and the construction of a Europe of rights and freedoms, have crossed on several occasions.

You are an acknowledged specialist in labour law and have trained generations of students at the University Institute in Florence – students who enthusiastically welcomed your recent election as President.

While social rights are your preferred field, you have long been passionate about human rights, and have written extensively on the rule of law and pluralism. These subjects, which are at the heart of our mission, are more topical than ever.

We are therefore looking forward to hearing from you, and it is with great pleasure that I invite you to take the floor.

18. Ibid., § 139.

Speech given by Silvana Sciarra, President of the Constitutional Court of Italy

"Recourse" to and "discourse" on the European Convention: an asset for democracies

I am deeply honoured to be speaking on this ceremonial and formal occasion in front of a distinguished audience, following President O'Leary's most inspiring presentation. I am honoured for the Italian Constitutional Court, which I represent, and I hope the message that – through my voice – will be shared with judges acting in diverse capacities, will provide opportunities for enhanced mutual learning and for closer cooperation.

Cooperation is indeed a key word.

Cooperation leads to common interests.

The message I would anticipate in such a context of cooperation is that constitutional courts occupy a privileged position in supporting democracies and in promoting the integration of common standards, whenever human rights are at stake. They do so because they bear a distinctive responsibility, inherent in constitutional adjudication.

In particular, in recent times, issues of independence of the judiciary have been shaking the symmetry of the international legal order, taken in its entirety, namely in the combination of constitutional and Convention law, often intertwined with regional standards, above all those of the European Union.

Independence rests, among other criteria, on the coherence and transparency of legal argument, best exemplified through the choice of precedent.

Let me underline another key-word: "symmetry".

It is an utmost responsibility for constitutional courts to strike the right balance among all parameters to be taken into account and to construct an overall equilibrium within national legal systems.

At the end of the 1990s in the last century, innovative proposals to foster the integration of legal standards were aired in academic circles, triggered by Opinion 2/1994 on accession of the Communities to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Proposals circulating in those years were based on the analysis of existing competences in various fields; they aimed at empowering all European institutions in the enforcement of human rights policies.

An alleged lacuna in such policies made recourse to the European Convention a crucial instrument in a wider process of constitution-building. Hence, recourse to the European Convention should have implied an expansion of competences.

As we all know, no European constitution saw the light of day in the wake of all such efforts.

However, wider expectations had been created. One may argue that courts subsequently acquired an even stronger visibility in the transition towards a discourse on the European Convention.

Here comes the linguistic escamotage I propose to use.

"Discourse" on – as a follow up to "recourse" to – the European Convention, is used in my presentation as a way of exemplifying the steps forward that need to be taken, in order to magnify the democratisation of national legal systems and to proceed in the direction of closer cooperation among international institutions and consequently among courts.

For example – I hope you will appreciate what is meant to be a touch of pride rather than self-referentiality – the Italian Constitutional Court delivered in 2007 the so called "twin judgments" on the role of the European Convention as an "interposed parameter" in constitutional adjudication. The Court underlined the "special nature" of the Convention, unlike other international treaties, which gave rise to a "system for the uniform protection of fundamental rights".

Recourse to the European Convention, in this as in other national legal systems, sets in motion cooperation among courts, which then develops into a discourse on the European Convention, namely a less fragmented interpretation of international standards by domestic courts.

References to Protocol No. 16 and to advisory opinions on questions of principle confirm that discourse on the European Convention can be developed in different ways and in different fields. They all converge towards a unitary notion of democracy.

It has been maintained that, despite their non-binding character, such opinions substantially "irradiate" general effects.

The text of Protocol No. 16 clarifies that only courts designated as the highest by the Contracting Parties can request advisory opinions (Art. 1 (1)) and that the procedure can only originate in pending cases (Art. 1 (2)).

This is yet another confirmation of the responsibilities undertaken by courts, which are asked to show consistency in their own legal argument.

The novelty lies with an interpretation of subsidiarity ending up in complementarity and shared responsibilities, rather than in considering the European Court (ECHR) to be a court of last resort.

The first such opinion, delivered in response to a reference from the French Court of Cassation, gave rise to interesting responses, as regards its *erga omnes* effect, well beyond the State in which it originated.

The opinion concerned the recognition in domestic law of a legal parent-child relationship between a child, born through a gestational surrogacy arrangement abroad, and the intended mother.

The ECHR advised the national court to consider that

> "the child's right to respect for private life within the meaning of Article 8 of the Convention requires that domestic law provide a possibility of recognition of a legal parent-child relationship with the intended mother, designated in the birth certificate legally established abroad, as the 'legal mother" and that "the child's right to respect for private life within the meaning of Article 8 of the Convention does not require such recognition to take the form of entry in the register of births … another means, such as adoption of the child by the intended mother, may be used, in accordance with the child's best interests.

The Italian Constitutional Court has quoted the Opinion in a few judgments, albeit with different accents. It is worth recalling that Italy has not ratified the Protocol.

The Italian Court of Cassation made a reference to the same Opinion both in an order raising a question of constitutionality and in a recent landmark decision, which came as a response to a Constitutional Court ruling of inadmissibility in a case dealing with the child of a same-sex couple, born through surrogacy.

In the same ruling the Court of Cassation quoted, among others, the ECHR's judgment in *D.B. and Others v. Switzerland*[1], delivered on 22 November 2022 and not final as of today, to support the concept that, whatever the parents' behaviour, the best interests of the child should become a component of the notion of international public order. The latter, "traditionally conceived as merely preclusive and oppositional", should rather pursue a positive function: new relationships of parenthood should enter the international scene.

The consequence of this meaningful step forward is to acquire a "uniform value", to be applied for the recognition of the best interests of the child.

The example here quoted – in which both the Constitutional Court and the Court of Cassation have had recourse to the ECHR's advisory opinion – is nothing but confirmation that Protocol No. 16 is already interpreted as a living instrument in the context of international human rights law. And it is so in a most delicate field, with regard to the best interests of the child.

Opinions enter legal discourse as *res interpretata* and acquire a legal standing – not merely a factual, persuasive or moral one – within the broader spectrum of Convention case-law.

This original approach – I call it an example of law in action – deserves to be underlined when courts, such as the Italian courts I have mentioned, refer to advisory opinions, while operating in a country which has not ratified Protocol No. 16.

There is a profound reason for this: a discourse on the protection of human rights must imply a broad generalisation of all interests at stake and equal relevance for all States parties to the Convention. Article 43 § 2 of the Convention refers – this point must be recalled – to issues of general interest, to be decided by the Grand Chamber.

Let us take another example.

On issues related to assisted suicide, which carry very delicate ethical implications, convergence between the Italian and the Austrian constitutional courts, as regards references to the ECHR's rulings, display a coherence of legal argument which fortifies the authority of constitutional adjudication.

Let me now move to what I propose to call an interconnection between the Court of Justice of the European Union (CJEU) and the ECHR, on cases dealing with disciplinary measures against judges, potentially entailing serious consequences for those who are penalised.

The Polish cases – although not being the only ones – have proved to be crucial in the case-law of both courts.

In an action brought by the Commission against Poland for failure to fulfil obligations under Article 258 of the Treaty on the Functioning of the European Union, the Grand Chamber specifies that even the "mere prospect" for judges to be the addressees of disciplinary measures, issued by a body whose independence is not guaranteed, may affect their own independence. In support of its argument, the CJEU quotes the ECHR's case law (*Ramos Nunes de Carvalho e Sá v. Portugal*[2],

1. *D.B. and Others v. Switzerland*, nos. 58817/15 and 58252/15, 22 November 2022.
2. *Ramos Nunes de Carvalho e Sá v. Portugal*, nos. 55391/13 and 2 others, 6 November 2018.

6 November 2018, and *Eminağaoğlu v. Turkey*[3], 9 March 2021).

The CJEU refers to Article 19 of the Treaty on European Union (TEU), which, in the words of the Court itself, gives concrete expression to the rule of law, a value enshrined in Article 2 TEU and a condition for enjoying the rights connected to membership of the Union.

The CJEU goes as far as affirming that the combination of various reforms adopted by the Polish legislature brought about a "structural breakdown which no longer makes it possible to preserve the appearance of independence and impartiality of justice". This decision was delivered on 15 July 2021.

In May 2021 the ECHR held in *Xero Flor w Polsce sp. z.o.o. v. Poland*[4] that the presence of a judge elected by the new parliament in 2015 – one of the so-called "judge doublers" – was in violation of Article 6 of the Convention, specifically of the right to have one's case heard by a tribunal established by law.

The case was decided following a complaint to the Polish Constitutional Court, perceived by the complainant as a non-independent body. A press release issued by the Constitutional Court itself attacked the ECHR for not having competence in matters of organisation of justice and for becoming a threat to Poland's sovereignty.

The monumental rulings produced by both courts are enriched with references to objective criteria on how to measure the independence of the judiciary. These criteria are the outcome of reflections and investigation by national and international bodies, above all the Council of Europe and the European Commission, with their careful evaluations in country reports.

They take into consideration various standards, for example the functioning of independent self-governing bodies, and even communication with the media.

A solid contribution to building up the notion of independence is offered by the CJEU. The leading case is *Wilson*[5], which goes back as far as 2006. In this judgment the CJEU exemplified certain criteria. Objectivity within the proceedings has to do with the composition of the body, the appointment of judges, the length of service and the grounds provided for withdrawal. Any "reasonable doubt in the minds of individuals" should be dispelled. That was the aim of the CJEU in that judgment, which has been followed by a consistent stream of more recent decisions, further clarifying the concept of independence.

I will now move to some concluding remarks. I have suggested that domestic courts, including constitutional courts, offer an evolving interpretation of the European Convention, which has been accentuated by the operation of Protocol No. 16. This has happened even in most delicate fields of law, involving ethical issues. I have focussed on the best interests of the child as an example.

I have also submitted that in all such cases recourse to the European Convention develops into a discourse on the European Convention.

This linguistic escamotage is used to propose that domestic courts must be protagonists in consolidating a unitary vision of human rights law.

This is an asset for democracies. In the post-war period, the search for peace inspired those who took responsibility for paving with norms the ground left empty by the armies. The expression "constituent body" is used to describe the ritual accompanying the entering of law into the field previously dominated by conflict.

The metaphor of a "body" brings with it the notion of life: this happens when courts construct common standards, in a coherent reading of legal sources.

This interpretative process should constantly feed the culture created by constituent bodies and enlarge the space for constitutionalising fundamental rights and create a scenario of peace.

A discourse on the European Convention is strengthened – as I have indicated – by cross-fertilisation and mutual leaning among judiciaries.

Constitutional courts talk to each other adopting a common language: they come closer in sharing the language of human rights and in adopting objective criteria, as suggested by cross-border investigations.

When they defend the independence of the judiciary, they act as responsible guardians of the rule of law and adopt a semantic of power in preserving democracy.

3. *Eminağaoğlu v. Turkey*, no. 76521/12, 9 March 2021.
4. *Xero Flor w Polsce sp. z.o.o. v. Poland*, no. 4907/18, 7 May 2021.
5. Judgment of the Court of Justice of the European Union of 19 September 2006 in *Wilson*, C-506/04, ECLI:EU:2006:587.


COUR

Case-law overview

Jurisdiction and admissibility[1]

Jurisdiction of States (Article 1)

The decision in *Ukraine and the Netherlands v. Russia*[2] concerned the exclusion from jurisdiction of military operations carried out during an active phase of hostilities.

In its two inter-State applications, the Ukrainian Government alleged an administrative practice by Russia resulting in numerous Convention violations in the areas of eastern Ukraine under separatist control. The inter-State application lodged by the Netherlands Government concerned the downing of flight MH17. In its decision, the Grand Chamber held that Russia had had effective control over all areas in the hands of separatists from 11 May 2014 and that the impugned facts fell within the spatial jurisdiction (*ratione loci*) of Russia within the meaning of Article 1, with the exception of the Ukrainian Government's complaint about the bombing and shelling of areas outside separatist control. The question of whether the latter complaint came under Russia's personal jurisdiction (State agent authority and control) was joined to the merits. The Grand Chamber confirmed its *ratione materiae* jurisdiction to examine complaints concerning armed conflict. It dismissed the respondent Government's further preliminary objections (the alleged lack of the "requirements of a genuine application" (Article 33), non-exhaustion of domestic remedies and non-compliance with the six-month time-limit) and declared admissible: the Netherlands Government's complaints under the substantive and procedural aspects of Articles 2, 3 and 13 in respect of the downing of flight MH17, and the Ukrainian Government's complaints about an alleged administrative practice contrary to Articles 2 and 3, Article 4 § 2 and Articles 5, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4, and Article 14 of the Convention in conjunction with Articles 2 and 3, Article 4 § 2 and Articles 5, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1[3].

The Grand Chamber decision is noteworthy in that the Court shed some light on how to interpret the exclusion from jurisdiction of "military operations carried out during an active phase of hostilities", in accordance with the principle set out in *Georgia v. Russia (II)*[4].

The Grand Chamber referred to its judgment in the case of *Georgia v. Russia (II)* (cited above), according to which the first question to be addressed in cases concerning armed conflict was whether the complaints concerned "military operations carried out during an active phase of hostilities". In that case, the question had been answered in the affirmative and, as a result, the substantive complaints about events concerning the "active phase of hostilities" had fallen outside the "jurisdiction" of the respondent State for the purposes of Article 1, while the duty to investigate deaths which had occurred remained. At the same time, in that case, there had been a distinct, single, continuous five-day phase of intense fighting. The Court had therefore been able to separate out complaints which it had identified as concerning

1. This overview of selected cases from 2023 was drafted within the Directorate of the Jurisconsult and does not bind the Court.

2. *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, adopted on 30 November 2022 and delivered on 25 January 2023. See also under Article 35 § 1 (Exhaustion of domestic remedies), Article 35 § 1 (Four-month period) and Article 33 (Inter-State cases) below.

3. The Grand Chamber declared inadmissible the following complaints by the Ukrainian Government: the individual complaints concerning the alleged abduction of three groups of children and accompanying adults (failure to exhaust domestic remedies); and the complaints of administrative practices in breach of Article 11 (lack of sufficient prima facie evidence of the repetition of acts) and of Article 3 of Protocol No. 1 (presidential elections being outside the scope of this provision).

4. *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021.

"military operations carried out during the active phase of hostilities", in the sense of "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos". The alleged attacks falling under this exception covered "bombing, shelling and artillery fire". In the present decision, the Grand Chamber clarified that the *Georgia v. Russia (II)* judgment could not be seen as authority for excluding entirely from a State's Article 1 jurisdiction a specific temporal phase of an international armed conflict: indeed, in that case the Court had found jurisdiction to exist in respect of the detention and treatment of civilians and prisoners of war even during the "five-day war". A State could therefore have extraterritorial jurisdiction in respect of complaints concerning events which had occurred while active hostilities were taking place. Unlike the above case, the vast majority of the complaints advanced in the present case (except for those relating to the downing of flight MH17 and artillery attacks) concerned events unconnected with military operations occurring within the area under separatist control and therefore they could not be excluded from the spatial jurisdiction of Russia on the basis of this exception.

As regards the downing of flight MH17, which had taken place in the context of active fighting between the two opposing forces, the Court stated that it would be wholly inaccurate to invoke any "context of chaos" in this regard. It noted the exceptional and painstaking work of the international Joint Investigation Team (JIT), which had been able to pierce "the fog of war" and elucidate the specific circumstances of this incident. The Court further specified that the chaos that might exist on the ground as large numbers of advancing forces sought to take control of territory under cover of a barrage of artillery fire did not inevitably exist in the context of the use of surface-to-air missiles, which were used to attack specific targets in the air. There was moreover no evidence of fighting to establish control in the areas directly relevant to the missile launch site or the impact site, both being under separatist control and thus within the spatial jurisdiction of Russia. The jurisdiction of Russia in respect of this incident could not therefore be excluded on the basis of "the active phase of hostilities" exception.

As regards the Ukrainian Government's complaint about the bombing and shelling, the victims had been outside the areas controlled by separatists and those complaints were excluded from Russia's spatial jurisdiction. The Grand Chamber joined to the merits the question of whether that complaint was also excluded from Russia's personal jurisdiction (on account of State agent authority or control) by virtue of the above exception identified in *Georgia v. Russia (II)*.

Admissibility (Articles 34 and 35)

Petition (Article 34)

The judgment in *Grosam v. the Czech Republic*[5] concerned the distinction between complaints and secondary arguments and the consequent delimiting of the Court's ability to recharacterise a complaint.

The disciplinary chamber of the Supreme Administrative Court had found the applicant guilty of misconduct and fined him.

In his application to the Court, he complained under Article 6 § 1 of the lack of fairness of the disciplinary proceedings. He also complained, under Article 2 of Protocol No. 7, that domestic law excluded appeals against the disciplinary chamber of the Supreme Administrative Court. After notice of the case had been given to the respondent Government, a Chamber of the Court, of its own motion, invited the parties to submit further observations under Article 6 § 1 on whether, given its composition, the disciplinary chamber met the requirements of a "tribunal established by law" within the meaning of that provision. In his observations of 5 November 2015, the applicant contended that it did not. In its judgment, the Chamber recharacterised the complaint under Article 2 of Protocol No. 7 as one to be examined under Article 6 § 1 and found a violation of that provision: the disciplinary chamber did not meet the requirements of an independent and

5. *Grosam v. the Czech Republic* [GC], no. 19750/13, 1 June 2023. See also under Article 32 (Jurisdiction of the Court) below.

impartial tribunal and, furthermore, there was no need to examine the admissibility or merits of the remaining complaints under Article 6 § 1 (fairness of the disciplinary proceedings).

The Grand Chamber disagreed, finding that the applicant's arguments under Article 2 of Protocol No. 7 could not be interpreted as raising a complaint that the disciplinary chamber had not been an independent and impartial tribunal within the meaning of Article 6 § 1. The applicant had not raised such a complaint in his application form but only subsequently in his observations to the Chamber, after it had given notice of the application to the respondent Government. The Grand Chamber therefore found this new complaint to be inadmissible, given that it had been submitted more than six months after the disciplinary proceedings against the applicant had ended (in 2012). Going on to examine the remaining complaints within the scope of the referred case, the Grand Chamber dismissed the complaints under Article 6 § 1 (fairness of the disciplinary proceedings) as manifestly ill-founded and, having agreed with the Chamber that Article 6 § 1 was applicable under its civil but not its criminal head, the Grand Chamber rejected as incompatible *ratione materiae* with the provisions of the Convention the complaint under Article 2 of Protocol No. 7 (the concept of "criminal offence" used in that provision corresponding to that of "criminal charge" in Article 6 § 1).

The Grand Chamber judgment is noteworthy because the Court, being master of the characterisation to be given in law to the facts of a case, confirmed and clarified the limits of its power to recharacterise an applicant's complaints and, in so doing, it ensured that the scope of the case did not extend beyond the complaints contained in the application.

The Court reiterated that it could base its decision only on the facts "complained of", which ought to be seen in the light of the legal arguments underpinning them and vice versa, these two elements of a complaint being intertwined (*Radomilja and Others v. Croatia*[6]). Drawing upon its approach in the context of the exhaustion of domestic remedies, the Court emphasised that it was not sufficient that a violation of the Convention was "evident" from the facts of the case or the applicant's submissions. Instead, applicants had to complain that a certain act or omission had entailed a violation of the rights set forth in the Convention or the Protocols thereto, in a manner which should not leave the Court to second-guess whether a certain complaint had been raised or not (*Farzaliyev v. Azerbaijan*[7]). Referring to a similar position of the International Court of Justice (ICJ – compare the judgments in the cases of *Nuclear Tests (Australia v. France)*[8] and *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*[9]), the Court emphasised that it had no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced. Drawing inspiration again from the *Nuclear Tests* judgment of the ICJ, the Court clarified that it was necessary to distinguish between complaints (that is, the arguments pointing to the cause or the fact constitutive of the alleged violations of the Convention) and secondary arguments.

On that basis, the Court considered whether the applicant's complaint under Article 2 of Protocol No. 7, as formulated in his application, could be examined under Article 6 § 1 (as a complaint about an independent and impartial tribunal) as the Chamber had done after recharacterising it to fall within that provision. In his application, the applicant did not claim that the inclusion, in the composition of the disciplinary chamber, of members who were not professional judges entailed a violation of Article 2 of Protocol No. 7. Rather, he argued that that body could not be regarded as the "highest tribunal" within the meaning of paragraph 2 of that provision, as its lay members were not subject to the same requirements of expertise and independence as judges. That argument was therefore aimed only at excluding the application of the exception provided for in Article 2 § 2 of Protocol No. 7, according to which the right of appeal did not apply where an accused had been tried in the first instance by the highest tribunal. Moreover, the applicant emphasised that the composition of the disciplinary chamber was atypical among the higher judicial institutions in the Czech Republic, which normally did not involve lay assessors (their participation being common in some first-instance courts). In short, he did not argue that the disciplinary chamber was not a

6. *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, 20 March 2018.
7. *Farzaliyev v. Azerbaijan*, no. 29620/07, 28 May 2020.
8. *Nuclear Tests (Australia v. France)*, judgment of 20 December 1974, *ICJ Reports* 1974, p. 253.
9. *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, ICJ judgment of 1 December 2022.

"tribunal" but merely that it was not the "highest tribunal".

In the Court's view, that was a secondary argument which could not be equated with a complaint: indeed, the applicant had not claimed the composition of the disciplinary chamber to be the cause or fact constitutive of a violation of Article 2 of Protocol No. 7. His argument could not therefore be interpreted as raising a complaint that the disciplinary chamber was not an independent and impartial tribunal within the meaning of Article 6 § 1. If the applicant had wished, at that stage, to complain of a breach of those guarantees set forth in Article 6 § 1, he should have stated so in his application form in a clear manner, especially as the scope of Article 6 was very broad and the complaints under that provision had to contain all the parameters necessary for the Court to define the issue it would be called upon to examine (*Ramos Nunes de Carvalho e Sá v. Portugal*[10]). Although the applicant had formulated such a complaint in his observations to the Chamber, that was a new complaint: since it related to distinct requirements arising from Article 6 § 1, it could therefore not be viewed as concerning a particular aspect of his initial complaint under Article 2 of Protocol No. 7.

Accordingly, by raising a question concerning compliance with the requirement of a "tribunal established by law" under Article 6 § 1, the Chamber had extended, of its own motion, the scope of the case beyond the one initially referred to it by the applicant in his application. It had thereby exceeded the powers conferred on the Court by Articles 32 and 34 of the Convention.

Exhaustion of domestic remedies (Article 35 § 1)

The decision in *Ukraine and the Netherlands v. Russia*[11] concerned, *inter alia*, the effectiveness of domestic remedies in the context of the downing of flight MH17.

In its decision, the Grand Chamber, *inter alia*, dismissed the respondent Government's preliminary objection concerning non-exhaustion of domestic remedies and declared admissible the Netherlands Government's complaints under the substantive and procedural aspects of Articles 2, 3 and 13 in respect of the downing of flight MH17.

The Grand Chamber decision is noteworthy in that the Court examined the effectiveness of domestic remedies taking into account the important political dimension of the case.

The Court reiterated that the exhaustion requirement applied to inter-State applications denouncing violations allegedly suffered by individuals (*Ukraine v. Russia (re Crimea)*[12]). When assessing the effectiveness of domestic remedies in this context, the Court had regard to the existence of a dispute as to the underlying facts. For example, as regards the abduction and transfer to Russia of the three groups of children alleged by the Ukrainian Government, the Russian investigative authorities had not contested the underlying facts (namely, the border crossing) but only the forcible nature of the transfer. The Court therefore concluded that the Russian authorities ought to have been afforded the opportunity by the Ukrainian Government to investigate their allegations and the evidence collected by them, notably in the context of a judicial appeal. By contrast, as regards the downing of flight MH17, this complaint had been consistently met by the respondent Government with a blanket denial of any involvement whatsoever. In the latter context, the Court also emphasised the political dimension of the case, being unconvinced as to the effectiveness of domestic remedies in a case where State agents were implicated in the commission of a crime, especially one condemned by the United Nations Security Council. In this regard, the Court referred to its finding of a violation of the procedural aspect of Article 2 in *Carter v. Russia*[13], which concerned the high-profile poisoning of a Russian dissident abroad by State agents. In the instant case, the Court pinpointed the Russian authorities' formalistic failure to initiate an investigation into the allegation that Russian nationals had been involved in the downing of flight MH17. Indeed, the Russian authorities had been contacted on multiple occasions by victims' relatives and had had ample legal possibilities to launch such an investigation, even in the absence of a specific request.

10. *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 104, 6 November 2018.

11. *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, adopted on 30 November 2022 and delivered on 25 January 2023. See also under Article 1 (Jurisdiction of States) above, and Article 35 § 1 (Four-month period) and Article 33 (Inter-State cases) below.

12. *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.

13. *Carter v. Russia*, no. 20914/07, 21 September 2021.

The judgment in *FU QUAN, s.r.o. v. the Czech Republic*[14] concerned the domestic courts' failure to apply the principle of *jura novit curia*.

The applicant company's property (mostly merchandise) had been seized during criminal proceedings against the managing director and the other member of the company. Following their acquittal, the company brought a civil action for the damage caused by the State. The action was dismissed for lack of *locus standi*, the company not being a party to the criminal proceedings in issue. The company complained to the Court under Article 6 § 1 and Article 1 of Protocol No. 1. A Chamber considered that it had been up to the courts, applying the principle of *jura novit curia*, to subsume the facts of the case under the relevant domestic-law provisions in order to deal with the merits of the action: it was clear that the company had claimed compensation for the depreciation of its merchandise. The Chamber therefore dismissed the Government's preliminary objection (exhaustion of domestic remedies) and found a breach of Article 1 of Protocol No. 1 given the unjustified protracted retention of the property. The Chamber also decided that there was no need to rule separately on the complaint under Article 6 § 1 concerning the alleged denial of access to a court resulting from a formalistic and restrictive interpretation of national law by the domestic courts.

The Grand Chamber, however, considered that the complaint under Article 6 § 1 was the applicant company's main complaint and rejected it as manifestly ill-founded. Furthermore, having ascertained the scope of the complaints under Article 1 of Protocol No. 1, the Grand Chamber observed that the Chamber had examined only one of the complaints raised, even though there were three altogether. Given its findings concerning the complaint in respect of access to a court, the Grand Chamber rejected two of these complaints for non-exhaustion of domestic remedies: the applicant company had not properly availed itself of the possibility of obtaining compensation for undue delay in lifting the order for the seizure of its property and for the authorities' alleged failure to take care of it. As regards the third complaint (damage to the property following the unwarranted prosecution and detention of the company's managing director and other member), such a compensation claim did not have a sufficient basis in domestic law. The guarantees of Article 1 of Protocol No. 1 being therefore inapplicable, the Grand Chamber rejected this complaint as incompatible *ratione materiae* with the provisions of the Convention.

The Grand Chamber judgment is noteworthy in that the Court confirmed that the courts' ability to apply the principle of *jura novit curia* had no bearing on the obligation on the applicants to exhaust domestic remedies under Article 35 § 1.

As to the complaints under Article 1 of Protocol No. 1, the Grand Chamber reiterated the following principles established in its case-law in the context of exhaustion of domestic remedies. Even in those jurisdictions where the domestic courts in civil proceedings were able, or even obliged, to examine the case of their own motion (that is, to apply the principle of *jura novit curia*), applicants were not dispensed from raising before them a complaint which they might intend to subsequently make to the Court (*Kandarakis v. Greece*[15]), it being understood that for the purposes of exhaustion of domestic remedies the Court had to take into account not only the facts but also the legal arguments presented domestically (*Radomilja and Others v. Croatia*[16]). Likewise, it was not sufficient that a violation of the Convention was "evident" from the facts of the case or the applicant's submissions: rather, he or she must actually complain (expressly or in substance) of such a violation in a manner which left no doubt that the same complaint subsequently submitted to the Court had indeed been raised at domestic level (*Farzaliyev v. Azerbaijan*[17]). The Grand Chamber considered that this, clearly, could not be said to have been the situation in the instant case.

The judgment in the case of *Communauté genevoise d'action syndicale (CGAS) v. Switzerland*[18] concerned the unjustified abandon by the applicant association of an application for holding a public event in view of a COVID-19 related ban;

14. *FU QUAN, s.r.o. v. the Czech Republic* [GC], no. 24827/14, 1 June 2023. See also under Article 6 § 1 (Right to a fair hearing in civil proceedings – Access to a court) and under "Rules of Court" below.
15. *Kandarakis v. Greece*, nos. 48345/12 and 2 others, § 77, 11 June 2020.
16. *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 117, 20 March 2018.
17. *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020.
18. *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, 27 November 2023.

victim status and compliance with the exhaustion requirement.

The applicant is an association whose declared aim is to defend the interests of workers and of its member organisations. In May 2020, it refrained from organising a public event after a competent authority informed it, by telephone, that the requested authorisation would be refused given the enacted federal Ordinance COVID-19 no. 2 (COVID-19 pandemic).

Relying on Article 11 of the Convention, the applicant association alleged that that Ordinance had deprived it of the right to organise or to take part in any public gatherings in the period from March to May 2020.

In 2022 a Chamber of the Court declared the application admissible (the applicant association could claim to be a victim in so far as it had been obliged to refrain from organising public meetings to avoid the criminal penalties provided for in the Ordinance and there was no effective remedy available) and found a violation of Article 11 of the Convention. The Grand Chamber disagreed and declared the application inadmissible for having failed to exhaust domestic remedies: an application for a preliminary ruling on constitutionality, lodged in the context of an ordinary appeal against a decision implementing federal ordinances, was a remedy which was directly accessible to litigants and made it possible, where appropriate, to have the provision at issue declared unconstitutional.

While this was the first time the Grand Chamber had addressed the exceptional context of the COVID-19 pandemic, it did so from the standpoint of the requirement to exhaust domestic remedies under Article 35 § 1 of the Convention. In that connection, the Court clarified two issues related to the fact that the complaint had stemmed from the content of a domestic-law provision (rather than a specific measure restricting freedom of assembly): in the first place, the applicant association's unjustified decision not to continue with the authorisation procedure for the intended event had deprived it, not only of its status as a "direct" victim, but also of an opportunity to bring the matter before the domestic courts; and secondly, the requirement of judicial review in advance of the date of the planned event was not decisive for the determination of the effectiveness of a remedy allowing for review of a law's compatibility with the Convention.

(i) As to the applicant association's victim status, while the Court had previously held that applicants were permitted to complain about a law in the absence of any individual implementing measure (for example, *Marckx v. Belgium*[19]; *Burden v. the United Kingdom*[20]; *Sejdić and Finci v. Bosnia and Herzegovina*[21]; and *Tănase v. Moldova*[22]), those cases had concerned texts applicable to predefined situations regardless of the individual facts and, in consequence, had been likely to infringe the applicants' rights by their mere entry into force. However, the present case was different: the ban on public events at issue did not amount to a "general measure" since the Ordinance authorised exemptions. However, the applicant association had deliberately chosen not to continue with the authorisation procedure for the planned event, even before receiving a formal decision from the competent administrative authority that could have been challenged before the courts, and it had refrained from submitting any other authorisation requests. In the Court's view, such conduct, without adequate justification, had a bearing on the applicant association's victim status. Indeed, as a non-profit-making private association the applicant was not subject to criminal sanctions and could therefore not rely on any fear of same. In any event, there was nothing to suggest that the mere fact of taking administrative steps to organise public events would have amounted to conduct that was likely to be sanctioned. The applicant had therefore failed to show that it had been "directly affected" by the Ordinance in issue.

(ii) By abandoning the authorisation procedure, the applicant association had also renounced the opportunity to complain about the ban on public events before the domestic courts. While the applicant had argued, *inter alia*, that it was unlikely that the ordinary court would have complied with the requirement to rule in advance of the date of the intended public event (*Bączkowski and Others v. Poland*[23]), it was clarified that this criterion had been developed in the Court's case-law on judicial review of a specific measure restricting freedom of assembly whereas the present situation concerned

19. *Marckx v. Belgium*, 13 June 1979, Series A no. 31.
20. *Burden v. the United Kingdom* [GC], no. 13378/05, ECHR 2008.
21. *Sejdić and Finci v. Bosnia and Herzegovina* [GC], nos. 27996/06 and 34836/06, ECHR 2009.
22. *Tănase v. Moldova* [GC], no. 7/08, ECHR 2010.
23. *Bączkowski and Others v. Poland*, no. 1543/06, § 81, 3 May 2007.

the very content of the law (Ordinance) itself: accordingly, that criterion was not, of itself, decisive for determining the effectiveness of a remedy to review whether legislation was compatible with the Convention.

Finally, in the unprecedented and highly sensitive context of the COVID-19 pandemic, it was all the more important that the national authorities be first given the opportunity to strike a balance between the relevant competing private and public interests or between different rights protected by the Convention, taking into consideration local needs and conditions and the public-health situation as it stood at the relevant time (see the decision in *Zambrano v. France*[24]). Drawing attention to its fundamentally subsidiary role, the Court further reiterated that, in healthcare policy matters, the margin of appreciation afforded to States was a wide one. Accordingly, the Court concluded that the applicant association had failed to take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system, namely, to prevent or put right eventual Convention violations through their own legal system.

Four-month period (Article 35 § 1)

The decision in *Ukraine and the Netherlands v. Russia*[25] concerned, *inter alia*, the relevance of non-domestic remedies in an inter-State case for the purposes of the six-month rule.

The inter-State application lodged by the Netherlands Government concerns the downing of flight MH17. In its decision, the Grand Chamber, *inter alia*, dismissed the respondent Government's preliminary objection concerning non-compliance with the six-month time-limit and declared admissible the Dutch Government's complaints under the substantive and procedural aspects of Articles 2, 3 and 13 in respect of the downing of flight MH17.

The Grand Chamber decision is noteworthy in that the Court clarified, in the novel and exceptional context of this complaint, how the interplay between the six-month rule and the exhaustion of "domestic" remedies, enshrined in Article 35 § 1, is to be transposed to potential remedies outside the respondent State or to avenues which States themselves may wish to pursue at the international level prior to lodging an inter-State case with this Court, especially where there is no clarity from the outset as to the circumstances of the alleged violation of the Convention and the identity of the State allegedly responsible for it.

As there had been no effective remedy in Russia available to the relatives of the victims of flight MH17, the normal starting-point for the running of the six-month time-limit would be the date of the incident itself (17 July 2014). The Court, however, emphasised the novel factual nature of the present case: first, the identity of the State allegedly responsible for a violation of the Convention had not been apparent from the date of the act in issue itself (given the lack of clarity as to the identities of the perpetrators, the weapon used and the extent of any State's control over the area concerned, as well as Russia's denial of any involvement whatsoever); secondly, the criminal investigation carried out by the Netherlands authorities with the assistance of the JIT could not been seen as a "domestic" remedy in respect of complaints lodged against Russia. The Court therefore considered the relevance of the latter investigation, as well as the international-law remedies pursued, for the purposes of compliance with the six-month time-limit in the inter-State context and in the exceptional circumstances of the present case. The Court had particular regard to the interests of justice and the purposes of Article 35 § 1. On the one hand, this provision could not be interpreted in a manner which would require an applicant State to seise the Court of its complaint before having reasonably satisfied itself that there had been an alleged breach of the Convention by another State and before that State had been identified with sufficient certainty. On the other hand, it would indeed be unjust and contrary to the purpose of Article 35 § 1 if the effect of reasonably awaiting relevant findings of an independent, prompt and effective criminal investigation, in order to assist the Court in its own assessment of the complaints, were to render those complaints out of

24. *Zambrano v. France* (dec.), no. 41994/21, § 26, 21 September 2021.

25. *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, adopted on 30 November 2022 and delivered on 25 January 2023. See also under Article 1 (Jurisdiction of States) and Article 35 § 1 (Exhaustion of domestic remedies) above, and Article 33 (Inter-State cases) below.

time. With this in mind, the Court concluded that it would be artificial to ignore the investigative steps taken in the Netherlands and in the context of the JIT, which had precisely enabled the pertinent facts to be elucidated, all the more so as no investigation had been undertaken in the respondent State. Furthermore, as those steps had been carried out promptly, regularly and diligently, it could not be said that there had been a delay in the referral of the complaints to this Court such that it would be difficult to ascertain the pertinent facts, rendering a fair examination of the allegations almost impossible. In other words, the aim of the time-limit in Article 35 § 1 had not been undermined by the lodging of the application some six years after the aircraft had been downed.

The Court further acknowledged the relevance of remedies under international law in an inter-State dispute, particularly where the allegation is that the State itself, at the highest level of government, bears responsibility. While such remedies are not mentioned in Article 35 § 1 and, as a result, the running of the time-limit in that Article is not linked to their exercise, the Court had already accepted that, in some circumstances, it might be appropriate to have regard to such remedies when assessing whether the obligation of diligence incumbent on applicants had been met (*Varnava and Others v. Turkey*[26]). It was therefore legitimate for the Netherlands Government to have explored the opportunity of negotiations with Russia, which had ended in 2020. In sum, in the exceptional circumstances of the case, the complaints had been lodged in time.

The Court also confirmed that, unlike the exhaustion requirement, the six-month time-limit was applicable to allegations of administrative practices.

The decision in *Orhan v. Türkiye*[27] concerned the determination of the applicable time-limit (six or four months), in accordance with Article 8 § 3 of Protocol No. 15.

The time-limit for lodging applications provided for in Article 35 § 1 of the Convention, which used to be six months, was reduced to four months by Article 4 of Protocol No. 15. Under Article 8 § 3 of that Protocol, the new time-limit came into force on 1 February 2022[28]. According to that provision, the new time-limit does not apply to applications in respect of which the final decision within the meaning of Article 35 § 1 "was taken" prior to the date of its entry into force.

On 18 July 2022 the applicant, who had been sentenced to life imprisonment, lodged an application with the Court raising several complaints under Articles 5, 6, 13 and 14 of the Convention. The final domestic decision in the process of exhaustion of remedies was adopted by the Constitutional Court on 19 January 2022, that is, prior to the date on which the new time-limit established by Protocol No. 15 came into force. However, it was notified to the applicant after that date, on 25 February 2022.

The Court began by determining which time-limit for applying – the former six-month time-limit or the new four-month time-limit – was applicable in the present case. It considered that the six-month time-limit was applicable, since it had been in force on 19 January 2022, the date on which the final domestic decision had been given. The relevant period had started to run on the day after notification of the decision, that is, on 26 February 2022 (*dies a quo*) and had ended on 25 August 2022 (*dies ad quem*). As the application had been lodged on 18 July 2022, the Court concluded that the time-limit for applying under Article 35 § 1 had been complied with. The Court nevertheless declared the application inadmissible on other grounds.

The decision is noteworthy in that the Court addressed a situation in which the final domestic decision had been handed down before the date of entry into force of the new time-limit established by Protocol No. 15 (1 February 2022), but had been notified after that date. The Court clarified in that regard that the applicable time-limit for submitting an application – the former six-month time-limit or the new four-month time-limit – should be determined by reference to the date on which the final domestic decision was adopted, and not the date on which it was notified to the person concerned. In other words, the fact that the latter date was after the entry into force of the new time-limit did not affect the determination of the applicable time-limit.

The Court stated, as a general observation, that the six-month time-limit should apply to

26. *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 170, ECHR 2009.

27. *Orhan v. Türkiye* (dec.), no. 38358/22, adopted on 6 December 2022 and delivered on 19 January 2023.

28. Specifically, on expiry of a transitional period of six months after the date of entry into force of Protocol No. 15. Protocol No. 15 came into force on 1 August 2021.

applications in respect of which the final domestic decision within the meaning of Article 35 § 1 had been handed down prior to 1 February 2022, irrespective of when it had been notified to the person concerned, that is to say, even where the date of notification was after 31 January 2022. The new four-month time-limit should be applied to applications in respect of which the final domestic decision had been taken after 31 January 2022.

The issue regarding the determination of the applicable time-limit had arisen in the present case because, according to the Court's settled case-law, the period for submitting an application began running not on the date on which the decision exhausting domestic remedies was adopted, but on the date on which it was notified to the person concerned (where this was provided for in domestic law) or finalised (*Papachelas v. Greece*[29]). This was so even though the English version of Article 35 § 1 – like Article 8 § 3 of Protocol No. 15 – indicated the date on which the decision "was taken" as the starting-point of the relevant period. The Court explained in that regard that the practice followed with regard to the starting-point of the period for submitting an application was not relevant to the issue raised in the present case, and considered that the ordinary meaning of the words should take precedence in determining which time-limit was applicable, for the following reasons.

First, the identification of the applicable time-limit – four or six months – was clearly a separate issue from the determination of the date on which the relevant period started to run.

Secondly, Article 35 § 1 and Article 8 § 3 of Protocol No. 15 pursued different purposes: the former contained general procedural and jurisdictional rules, while the latter laid down a transitional period following the entry into force of Protocol No. 15.

Thirdly, in determining the starting-point of the period for submitting an application, the Court was guided by the need to preserve the effectiveness of the right of individual petition, in a manner compatible with the object and purpose of the Convention. The time-limit for submitting applications was designed not only to ensure legal certainty, but also to afford the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (*Worm v. Austria*[30]). Furthermore, a period for appealing could only start to run from the date on which the appellant was able to act effectively. Otherwise, the authorities could substantially reduce the time available for lodging an application or even deprive the applicant of the opportunity of lodging a valid application with the Court by delaying notification of their decisions. Those considerations weighed in favour of taking as the reference point the date of notification, or the date on which the applicant had had the opportunity to actually find out the content of the final decision (finalisation date). Moreover, this approach was consistent with the Court's case-law regarding access to a court for the purposes of Article 6 of the Convention (*Miragall Escolano and Others v. Spain*[31]). However, no considerations of this kind requiring the Court to depart from the ordinary meaning of the words arose when it came to determining the applicable time-limit under Article 8 § 3 of Protocol No. 15.

Fourthly, applying the time-limit in force at the time the final domestic decision was notified rather than that in force at the time the decision was taken would run counter to the very objectives referred to above and would have adverse consequences for the applicant in the present case, who had been entitled to expect, if need be after seeking appropriate advice, that he had six months from the date of notification of the Constitutional Court's decision in which to submit an application.

Fifthly, applying the time-limit in force on the date of adoption of the final domestic decision was consistent with the aim of Article 8 § 3 of Protocol No. 15, which was to prevent the new four-month time-limit from being applied retrospectively, that is, to applications in respect of which the final domestic decision had been adopted on a date when that time-limit was not yet in force.

Lastly, the Court made clear that there was no inconsistency between, on the one hand, taking into account the time-limit in force on the date of adoption of the final domestic decision, as expressly provided for by Protocol No. 15, and, on the other hand, setting as the start date of the applicable time-limit – whether the old or the new one – the date of notification or finalisation of the decision, having regard to the object and purpose of the Convention in accordance with the Court's well-established case-law.

29. *Papachelas v. Greece* [GC], no. 31423/96, ECHR 1999-II.

30. *Worm v. Austria*, 29 August 1997, *Reports of Judgments and Decisions* 1997-V.

31. *Miragall Escolano and Others v. Spain*, nos. 38366/97 and 9 others, ECHR 2000-I.

Competence *ratione temporis* (Article 35 § 3 (a))

The decision in *Pivkina and Others v. Russia*[32] concerned the Court's temporal jurisdiction mainly with respect to acts or omissions spanning the date on which a respondent State ceased to be a Party to the Convention.

On 16 March 2022 the Russian Federation ceased to be a member of the Council of Europe. Shortly thereafter, the Court, sitting in Plenary formation, adopted a Resolution stating that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022 ("the termination date"). The applications in this case concerned different factual scenarios, alleging violations of various Convention provisions. Some of the facts occurred up until, some occurred after, and some spanned across the termination date. The Court reconfirmed its jurisdiction to deal with cases where all acts and judicial decisions leading to the alleged Convention violations had occurred up until the termination date[33]. The Court further rejected complaints as incompatible *ratione personae* with the provisions of the Convention where both the triggering act and the applicant's judicial challenge to it had occurred after the termination date. As regards the case where the facts spanned across the termination date, the Court found that some of the complaints fell within its temporal jurisdiction and gave notice thereof to the respondent Government. It rejected the remaining complaints as incompatible *ratione temporis* with Article 35 § 3 of the Convention.

The decision is noteworthy in that the Court developed a test for determining its temporal jurisdiction with regard to alleged Convention violations spanning across the date on which a respondent State ceased to be a party to the Convention.

(i) While the situation where a respondent State ceased to be a party to the Convention was novel, the Court observed that it was similar to situations where the acts or omissions occurred or began before the ratification date (prior to the entry into force of the Convention for the respective State) but their effects or a chain of appeals extended beyond that date. The Court therefore developed a test for determining its temporal jurisdiction with regard to acts or omissions spanning across the termination date, drawing upon its case-law (*Blečić v. Croatia*[34]) and the approach followed by the Inter-American Court of Human Rights[35]. The Court's jurisdiction is determined in relation to the facts constitutive of the interference. In cases where the interference occurs before the termination date but the failure to remedy it occurs after the termination date, it is the date of the interference that must be retained. It is therefore essential to identify, in each specific case, the exact moment of the alleged interference, considering both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated. This approach ensures that complaints are not treated differently based solely on the length of the process of exhaustion of remedies, and it prevents the State from evading responsibility by protracting remedial proceedings.

(ii) The Court went on to apply this test to the alleged violations of different Convention provisions:

Article 3 (substantive aspect): An act of ill-treatment which occurred before the termination date falls within the Court's temporal jurisdiction.

Article 3 (procedural aspect): The Court applied the test developed for situations spanning the ratification date – what is important for determining the Court's temporal jurisdiction is that a significant proportion of the required procedural steps were or ought to have been carried out during the period when the Convention was in force in respect of the respondent State.

Article 3 and Article 5 § 3 (a "continuous situation"): Such a situation (for example, allegedly inhuman detention conditions) falls within the Court's jurisdiction only in respect of the part occurring before the termination date, following which the respondent State is no longer bound to ensure Convention-compliant conditions or to conduct judicial proceedings within a reasonable time. However, a period of detention approved before the termination date but extending beyond it will fall within the Court's jurisdiction in its entirety

32. *Pivkina and Others v. Russia* (dec.), no. 2134/23 and 6 others, 6 June 2023. See also under Article 35 § 3 (a) (Competence *ratione personae*) and Article 32 (Jurisdiction of the Court) below.

33. *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023.

34. *Blečić v. Croatia* [GC], no. 59532/00, ECHR 2006-III.

35. Judgment of the Inter-American Court of Human Rights in *Ivcher-Bronstein v. Peru* (competence), 24 September 1999, Series C No. 54; Advisory opinion OC-26/20 of the Inter-American Court of Human Rights of 9 November 2020 requested by the Republic of Colombia, Series A No. 26.

(up to the date until which the latest extension was approved) on account of the "overflowing" effect of the extension order.

Article 6 (fairness of a trial): Only complaints concerning proceedings where a judgment at last instance was given before the termination date, fall within the Court's jurisdiction. This also applies to complaints under Articles 7 or 18 which arise from the same proceedings.

Article 8: An instantaneous act (such as a search) which occurred before the termination date falls within the Court's temporal jurisdiction, even if the final appeal decision was issued after that date.

Article 10: Acts constitutive of an interference encompass any restrictive measures taken against an applicant in connection with his or her expressive conduct (such as an arrest and detention on remand, the institution of administrative-offence proceedings, the search and/or seizure of a journalist's electronic devices). The Court's jurisdiction is based on whether such acts occurred before or after the termination date.

Article 11: An interference can take various forms, such as measures taken by authorities before or during an assembly, as well as punitive measures thereafter. Any such measures which occurred before the termination date will fall within the Court's jurisdiction.

Article 5 and Article 2 of Protocol No. 7: The acts constitutive of an interference (such as excessively lengthy and unrecorded detention at a police station and immediate enforcement of a custodial sentence) which occurred before the termination date fall within the Court's jurisdiction. Any domestic court decisions in relation to an applicant's complaints in this respect, which were given after the termination date, should be regarded as the exercise of an available domestic remedy rather than a new or independent instance of interference.

Competence *ratione personae* (Article 35 § 3 (a))

The decision in *Pivkina and Others v. Russia*[36] concerned the Court's temporal jurisdiction mainly with respect to acts or omissions spanning the date on which a respondent State ceased to be a Party to the Convention.

On 16 March 2022 the Russian Federation ceased to be a member of the Council of Europe. Shortly thereafter the Court, sitting in Plenary formation, adopted a Resolution stating that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022 ("the termination date"). The applications in this case concerned different factual scenarios, alleging violations of various Convention provisions. Some of the facts occurred up until, some occurred after, and some spanned across the termination date. The Court reconfirmed its jurisdiction to deal with cases where all acts and judicial decisions leading to the alleged Convention violations had occurred up until the termination date[37]. The Court further rejected complaints as incompatible *ratione personae* with the provisions of the Convention where both the triggering act and the applicant's judicial challenge to it had occurred after the termination date. As regards the case where the facts spanned across the termination date, the Court found that some of the complaints fell within its temporal jurisdiction and gave notice thereof to the respondent Government. It rejected the remaining complaints as incompatible *ratione temporis* with Article 35 § 3 of the Convention.

36. *Pivkina and Others v. Russia* (dec.), no. 2134/23 and 6 others, 6 June 2023. See also under Article 35 § 3 (a) (Competence *ratione temporis*) above and Article 32 (Jurisdiction of the Court) below.

37. *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023.

"Core" rights

Prohibition of torture and inhuman or degrading treatment and punishment (Article 3)

Inhuman or degrading treatment

The judgment in *Schmidt and Šmigol v. Estonia*[38] concerned the consecutive enforcement of disciplinary punishments and imposition of security measures in prison, resulting in prolonged periods of solitary confinement.

The applicants were convicted prisoners, each of whom had received a series of disciplinary sanctions in the form of solitary confinement in a punishment cell. The consecutive enforcement of those measures resulted in particularly lengthy periods continuously spent by the applicants in solitary confinement. The first applicant spent, in a punishment cell, periods of 69 days, 30 days, 65 days, 60 days, and 747 days: he was also once held in a locked isolation cell for 33 consecutive days as an additional security measure (not considered a punishment), owing to his dangerous behaviour. The breaks between those periods, when he could return to the normal detention regime, lasted between 6 and 36 days. The second applicant was subjected to the punishment cell regime three times during a period of one year and four months, the respective periods lasting 392, 55 and 34 days with two two-day breaks in between.

The Court found a violation of Article 3 on account of the extended periods spent by the applicants in solitary confinement, considering that neither the breaks between those periods nor the various measures of social, psychological, and medical support offered by the prison authorities had been sufficient to alleviate the negative and damaging effects arising from such confinement.

The compatibility with Article 3 of the Convention of solitary confinement of detainees is not a novel issue in the Court's case-law, even if applied as a disciplinary punishment (for example, *Ramishvili and Kokhreidze v. Georgia*[39]; *Razvyazkin v. Russia*[40]; and *Khodorkovskiy and Lebedev v. Russia*[41]) or as a security/safety measure (for example, *Onoufriou v. Cyprus*[42]; *Borodin v. Russia*[43]; and *A.T. v. Estonia (no. 2)*[44]).

This judgment is the first to deal with consecutive disciplinary sanctions and security measures: while domestic law set an upper limit on the duration of each disciplinary sanction, the absence of such a limit on the overall duration of consecutive periods of uninterrupted sanctions had resulted, in the applicants' case, in their seclusion for excessive periods of time.

The judgment is therefore noteworthy in that the Court:

(a) acknowledged the difference between solitary confinement as a disciplinary punishment and as a security measure, and acknowledged that it might not be possible to suspend/postpone a security measure owing to a variety of security concerns that prison authorities had to tackle in the interests of their personnel or prisoners;

38. *Schmidt and Šmigol v. Estonia*, nos. 3501/20 and 2 others, 28 November 2023.
39. *Ramishvili and Kokhreidze v. Georgia*, no. 1704/06, §§ 79-88, 27 January 2009.
40. *Razvyazkin v. Russia*, 13579/09, §§ 102-08, 3 July 2012.
41. *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 468-74, 25 July 2013.
42. *Onoufriou v. Cyprus*, no. 24407/04, §§ 71-81, 7 January 2010.
43. *Borodin v. Russia*, no. 41867/04, §§ 129-35, 6 November 2012.
44. *A.T. v. Estonia (no. 2)*, no. 70465/14, §§ 74-86, 13 November 2018.

(b) referring to the United Nations Standard Minimum Rules for the Treatment of Prisoners ("the Nelson Mandela Rules"), the European Prison Rules and the conclusions of the CPT, emphasised that solitary confinement as a punishment should only be used exceptionally and as a measure of last resort;

(c) indicated that solitary confinement should be alternated with periods of return to the normal prison regime. The longer the solitary confinement, the longer those intervening periods should be; and

(d) declared that prolonged solitary confinement, in itself, entailed an inherent risk of harm to any person's mental health, irrespective of the material conditions surrounding it, and even in the absence of any noticeable deterioration of the applicants' physical health.

Positive obligations

The judgment in *S.P. and Others v. Russia*[45] concerned segregation, humiliation and abuse of prisoners by fellow inmates on account of their inferior status in an informal prisoner hierarchy tolerated by the authorities.

The applicants, serving prisoners, complained of being constantly subjected to humiliating treatment and physical abuse by fellow inmates on account of being assigned to the lowest "outcast" group in an informal prisoner hierarchy, enforced by threats or violence and tolerated by the prison authorities. The applicants described being constantly segregated, both socially and physically. They were allocated either separate or the least comfortable places in the dormitory and canteen, and were prohibited from using any other areas under threat of punishment. They were provided with separate cutlery (with holes) and lower quality or leftover food. Their access to prison resources, including showers and medical care, was limited or blocked. They were forbidden from coming into close proximity with, let alone from touching, other prisoners under threat that that person would become "contaminated". All the applicants were forced to perform what was considered "dirty work", such as cleaning latrines or shower cubicles. Their complaints were summarily rejected by the authorities. The Court found a violation of Article 3 of the Convention (substantive aspect). In its view, the applicants' stigmatisation and segregation, coupled with their assignment to menial labour and denial of basic needs, enforced by threats of violence as well as by occasional physical and sexual violence, meant that they had endured for a number of years mental anxiety and physical suffering amounting to inhuman and degrading treatment. Furthermore, while being aware of the applicants' vulnerable situation, the authorities had taken no individual or general measures to ensure their safety and well-being and to address this systemic and widespread problem. The Court also found a violation of Article 13 in conjunction with Article 3 of the Convention (in respect of the applicants who raised that complaint).

The judgment is noteworthy in that the Court considered, for the first time, as a specific phenomenon, the degrading effects of an informal prisoner hierarchy, a systemic and widespread problem in penal facilities in Russia[46]. The judgment is interesting in three respects: firstly, for the manner in which the Court proceeded to establish the facts; secondly, for the Court's analysis of the ritualistic and symbolic features of the treatment complained of; and, thirdly, for the application, in this particular novel context, of the established positive obligation to take necessary measures to protect the physical or psychological integrity and well-being of prisoners (*Premininy v. Russia*[47]).

(i) In view of the difficulties due to the unofficial, *de facto* nature of the hierarchy complained of, the Court proceeded to establish the facts in the following manner. In the first place, the Court analysed the quality and consistency of the applicants' submissions. The applicants – held in far-off and distant places at different times – had submitted similar accounts of the abuse they had faced, including detailed accounts of the events that had led to their classification as "outcast" prisoners. They had also provided evidence to support their claims. Secondly, the Court took

45. *S.P. and Others v. Russia*, nos. 36463/11 and 10 others, 2 May 2023.

46. See also the concluding observations of the United Nations Committee against Torture (CAT) on the fourth periodic report of Armenia (2017) (CAT/C/ARM/CO/4) and on the third periodic report of Kazakhstan (2014) (CAT/C/KAZ/CO/3); see also the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Armenia (CPT/Inf (2021) 10), to Georgia (CPT/Inf (2022) 11), to Lithuania (CPT/Inf (2023) 01) and to the Republic of Moldova (CPT/Inf (2020) 27).

47. *Premininy v. Russia*, no. 44973/04, § 83, 10 February 2011, and the cases cited therein..

account of all the information from different sources provided by the applicants, including official reports (by public monitoring entities and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment) and academic research. Those sources lent credence to the applicants' submissions. Thirdly, the Court took note of the Government's position: they had neither engaged with the applicants' detailed submissions nor provided an alternative account of events[48]. On this basis, the Court found it established that the informal prisoner hierarchy existed, that the applicants had been assigned to the lowest group in that hierarchy and had been subjected to the treatment of which they complained, and that the domestic authorities had been, or ought to have been, aware of both the hierarchy complained of and the applicants' inferior status within it and hence their particular vulnerability.

(ii) When examining the merits of the applicants' complaints under Article 3, the Court had particular regard to the following specific effects and features of the prisoner hierarchy. The applicants' separation from other inmates, through arbitrary restrictions and deprivations, had physical and symbolic dimensions: in the Court's view, the denial of human contact was a dehumanising practice that reinforced the idea that certain people were inferior and not worthy of equal treatment and respect, and the resulting social isolation and marginalisation of the "outcast" applicants must have had serious psychological consequences. In addition, the status-based allocation of menial types of work had further debased the applicants and perpetuated their separation and feelings of inferiority. The Court also noted the enduring nature of the stigma attached to their low status, which excluded any prospect of improvement, even after a lengthy period of detention or upon transfer to another institution.

(iii) The Court went on to examine whether the respondent State had complied with its positive obligation to protect individuals from inter-prisoner violence, as set out in *Premininy* (cited above, §§ 82-88). In the first place, the Court noted that the authorities had, or ought to have had, knowledge of the heightened risk of such violence faced by the applicants on account of belonging to a particularly vulnerable category of "outcast" prisoners (on the importance of vulnerability in the Court's assessment, see *Stasi v. France*[49]; *J.L. v. Latvia*[50]; *M.C. v. Poland*[51]; *Sizarev v. Ukraine*[52]; and *Totolici v. Romania*[53]). Secondly, the Court emphasised the structural nature of the problem, individual measures being incapable of changing the power structures underlying the informal prisoner hierarchy or the applicants' subordinate place in it. While a systemic and comprehensive response was therefore called for on the part of the authorities, the Court observed a lack of action at all levels. As regards policy-making, the informal prisoner hierarchy had not even been identified as a problem to be addressed in the relevant policy documents: no specific remedies had been set up to provide redress, while the existing general ones had proved to be ineffective. As regards the prison administration, the Court noted the following specific omissions: a lack of prompt security or surveillance measures and an absence of any standardised policy of punishments to prevent the informal code of conduct from being enforced; and the lack of a proper policy regarding classification, which would have included screening for any risk of victimisation or abuse. Concluding as to a breach of Article 3, the Court emphasised, in view of the extent of the problem, that the authorities' failure to take action could be seen as a form of complicity in the abuse inflicted upon the prisoners under their protection.

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48. The Government's observations were submitted before the Russian Federation ceased to be a party to the Convention.
49. *Stasi v. France*, no. 25001/07, § 91, 20 October 2011.
50. *J.L. v. Latvia*, no. 23893/06, § 68, 17 April 2012.
51. *M.C. v. Poland*, no. 23692/09, § 90, 3 March 2015.
52. *Sizarev v. Ukraine*, no. 17116/04, §§ 114-15, 17 January 2013.
53. *Totolici v. Romania*, no. 26576/10, §§ 48-49, 14 January 2014.

Prohibition of slavery and forced labour (Article 4)

Positive obligations

The judgment in the case of *Krachunova v. Bulgaria*[54] concerned the positive obligation to enable a victim of trafficking to claim compensation from her trafficker in respect of lost earnings from coerced prostitution.

During 2012 and 2013 the applicant had been a sex worker until she was intercepted by and spoke to police officers. Her pimp (X) was later convicted of human trafficking. While the domestic courts allowed the applicant's claim against X for compensation for non-pecuniary damage, her claim for compensation for pecuniary damage, based on the estimated earnings from prostitution that X had allegedly taken away from her, was dismissed essentially on the basis that it concerned money earned in an immoral manner. The applicant complained under Article 4 of the Convention. The Court held that this provision was applicable and found a violation thereof.

The judgment is noteworthy in that the Court dealt, for the first time, with the inability of a trafficking victim to seek compensation in respect of lost earnings from coerced prostitution. In the first place, and as to the applicability of Article 4, the Court confirmed that the presence of the "means" element of the international definition of trafficking in human beings could be established on the basis of subtler methods, in the absence of violence or threats thereof. Secondly, the Court laid down a novel positive obligation to enable victims of trafficking to claim compensation from their traffickers in respect of lost earnings. Thirdly, and as to earnings obtained through prostitution, the Court clarified that non-compliance with the above obligation could not be automatically justified on the grounds of morality and had to be assessed in the light of the compelling public policy against human trafficking and in favour of protecting its victims.

(i) The Court found Article 4 to be applicable, in that all three elements of the international definition of trafficking in human beings – "action", "means" and "purpose" – were present. The Court elaborated on the "means" element: there was no evidence that X had resorted to violence or threats of violence. Referring to the explanatory report to the Council of Europe Convention on Action against Trafficking in Human Beings[55], the Court noted that international law reflected clearly the understanding that modern-day trafficking was sometimes carried out by subtler means, such as deception, psychological pressure and the abuse of vulnerability, tactics which should not be seen in isolation. The applicant, a poor and emotionally unstable young woman hailing from a small village, had felt dependent on X who had had her living in his house, had retained her identity card and had taken away a substantial portion of her earnings. He had also threatened to disclose to her co-villagers the fact that she was engaged in sex work. In such circumstances, the Court clarified that the fact that the applicant might have, at least initially, consented to engage in sex work was not decisive. In any event, under the Convention on Action against Trafficking in Human Beings definitions, such consent was irrelevant if any of the "means" of trafficking had been used. Nor was it decisive that the applicant could have perhaps broken free earlier.

(ii) The Court analysed her complaint in the light of the object and purpose of Article 4 and in a way that rendered its safeguards practical and effective. It observed that its case-law to date relating to after-the-fact responses to trafficking had focused on investigation and punishment, rather than on redressing the material harm suffered by the victims. However, in some recent cases the Court had highlighted the need to protect trafficking victims after the fact from the perspective of their recovery and reintegration into society (*V.C.L. and A.N. v. the United Kingdom*[56], and *J. and Others v. Austria*[57]). From that very perspective, the possibility for victims to seek compensation from their traffickers in respect of lost earnings would constitute a means of ensuring *restitutio in integrum* and would also go a considerable way (by providing them with the financial means to rebuild their lives) towards upholding their dignity, assisting

54. *Krachunova v. Bulgaria,* no. 18269/18, 28 November 2023.
55. Council of Europe Convention on Action against Trafficking in Human Beings, CET No. 197.
56. *V.C.L. and A.N. v. the United Kingdom*, nos. 77587/12 and 74603/12, 16 February 2021.
57. *J. and Others v. Austria*, no. 58216/12, 17 January 2017.

their recovery, and reducing the risks of their falling victim to traffickers again. Moreover, such a possibility would help to ensure that traffickers were not able to enjoy the fruits of their offences, thus reducing the economic incentives to commit them. Moreover, it could give victims an additional incentive to expose trafficking, thereby increasing the odds of holding human traffickers accountable and of the prevention of future instances. The Court therefore considered that such a possibility had to be an essential part of the integrated State response to trafficking required under Article 4. It observed that that approach had found support in the available comparative-law material, in the relevant international instruments (the Palermo Protocol[58] and the Council of Europe Convention on Action against Trafficking in Human Beings), as well as in the recommendations and reports of UN bodies, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Parliamentary Assembly of the Council of Europe. On that basis, the Court read into Article 4 a novel positive obligation on Contracting States to enable victims of trafficking to claim compensation from their traffickers in respect of lost earnings.

(iii) As to the domestic authorities' compliance with that positive obligation, the Court had particular regard to the sensitive prostitution context of the case, a phenomenon which was approached differently in different legal systems. In the first place, the Court circumscribed the scope of its analysis: it did not concern whether contracts for sex work had to be recognised as legally valid in themselves or whether the Convention precluded prostitution or some of its aspects from being outlawed[59]. The Court's analysis was limited to whether the positive obligation could be avoided on public-policy grounds, notably on the basis that the earnings at issue had been obtained immorally. Secondly, while concerns based on moral considerations had to be taken into account in such a sensitive domain, the manner in which domestic law approached different aspects of the problem had to be coherent and permit the various legitimate interests at play to be adequately taken into account. Moreover, human rights should be the main criterion in designing and implementing policies on prostitution and trafficking. The Court did not exclude that there might exist sound public-policy reasons to dismiss a tort claim relating to earnings obtained through prostitution. Nevertheless, it attached considerable importance to the countervailing and compelling public policy against trafficking in human beings and in favour of protecting its victims. Indeed, the present applicant had been seeking the proceeds with which her trafficker had unjustly enriched himself and which had been derived from her unlawful exploitation for coerced prostitution. The Court further observed the consonant position of the Bulgarian authorities, and notably the Constitutional Court, which regarded prostitution not as reprehensible conduct on the part of those engaging in it, but as a form of exploitation by others and as a breach of their human rights. In the light of the above, and notwithstanding the respondent State's margin of appreciation, the Court concluded that reliance on the "immoral" character of the applicant's earnings was not a sufficient justification for the authorities' failure to comply with the above-noted positive obligation.

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58. Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000.

59. *M.A. and Others v. France* (dec.), nos. 63664/19 and 4 others, 27 June 2023, a case pending on the merits.

Procedural rights

Right to a fair hearing in civil proceedings (Article 6 § 1)

Access to a court

The judgment in *FU QUAN, s.r.o. v. the Czech Republic*[60] concerned the domestic courts' failure to apply the principle of *jura novit curia*.

The applicant company's property (mostly merchandise) had been seized during criminal proceedings against the managing director and the other member of the company. Following their acquittal, the company brought a civil action for the damage caused to its property by the State. The action was dismissed for lack of *locus standi*, the company not being a party to the criminal proceedings in issue. The company complained to the Court under Article 6 § 1 and Article 1 of Protocol No. 1. A Chamber considered that it had been up to the courts, applying the principle of *jura novit curia*, to subsume the facts of the case under the relevant domestic-law provisions in order to deal with the merits of the action: it was clear that the company had claimed compensation for the depreciation of its merchandise. The Chamber therefore dismissed the Government's preliminary objection (exhaustion of domestic remedies) and found a breach of Article 1 of Protocol No. 1, given the unjustified protracted retention of the property. The Chamber also decided that there was no need to rule separately on the complaint under Article 6 § 1 concerning the alleged denial of access to a court resulting from a formalistic and restrictive interpretation of national law by the domestic courts.

The Grand Chamber, however, considered that the complaint under Article 6 § 1 was the applicant company's main complaint and rejected it as manifestly ill-founded. Furthermore, having ascertained the scope of the complaints under Article 1 of Protocol No. 1, the Grand Chamber observed that the Chamber had examined only one of the complaints raised, even though there were three altogether. Given its findings concerning the complaint in respect of access to a court, the Grand Chamber rejected two of these complaints for non-exhaustion of domestic remedies: the applicant company had not properly availed itself of the possibility of obtaining compensation for the undue delay in lifting the order for the seizure of its property and for the authorities' alleged failure to take care of the property. As regards the third complaint (damage to the property following the unwarranted prosecution and detention of the company's managing director and other member), such a compensation claim did not have a sufficient basis in domestic law. The guarantees of Article 1 of Protocol No. 1 being therefore inapplicable, the Grand Chamber rejected this complaint as incompatible *ratione materiae* with the provisions of the Convention.

The Grand Chamber judgment is noteworthy in that the Court analysed whether the domestic courts' failure to apply the principle of *jura novit curia* amounted to excessive formalism, in breach of the right of access to a court guaranteed by Article 6 § 1.

Unlike the Chamber, the Grand Chamber focused on the manner in which the applicant company had presented the facts in its action. First, it had not expressly specified which of the two statutory causes of action – an unlawful decision or irregular official conduct – it had intended to pursue. Secondly, when the domestic courts had treated its action as one against an unlawful decision and had dismissed it for lack of *locus standi*, the applicant

60. *FU QUAN s.r.o. v. the Czech Republic* [GC], no. 24827/14, 1 June 2023. See also under Article 35 § 1 (Exhaustion of domestic remedies) above and under "Rules of Court" below.

company had not argued, in pursuing subsequent remedies, that the lower court(s) had misconstrued it and that they should have treated it as an action based on irregular official conduct. Its arguments rather suggested that the courts' refusal to grant *locus standi* in disregard of the applicable statutory provision had been excessively formalistic. By contrast, in its subsequent submissions before the Chamber of this Court, the applicant company had adopted a totally different attitude by arguing that the excessive formalism consisted of the domestic courts' failure to treat its civil action as one based on irregular official conduct, rather than an unlawful decision. The Grand Chamber emphasised that parties could not validly put forward before the Court arguments which they had never made before the domestic courts: the applicant company had neither based its action on irregular official conduct, nor argued before the domestic courts that they should have treated it as such. In those circumstances, the domestic courts could not be blamed for not treating the applicant company's action as one based on irregular official conduct. Lastly, it had been open to the applicant company, for a further four months after the dismissal of its action, to bring a new one specifying irregular official conduct as the cause of the damage. The Grand Chamber therefore dismissed the complaint in respect of access to court.

Fairness of the proceedings

The judgment in *Yüksel Yalçınkaya v. Türkiye*[61] concerned a conviction for membership of a terrorist organisation based on the use of an encrypted messaging application.

The applicant was convicted of membership of an armed terrorist organisation ("FETÖ/PDY")[62], considered by the domestic authorities to have been behind the attempted coup of 2016. The conviction was based decisively on his use of an encrypted messaging application, ByLock, which the domestic courts had found to have been designed for the exclusive use of the members of FETÖ/PDY.

The applicant complained mainly under Articles 6, 7 and 11. The Grand Chamber (relinquishment) found a violation of Article 7 on account of the domestic courts' unforeseeable interpretation of the domestic law, which attached objective liability to the mere use of ByLock. It also found a breach of Article 6 § 1 on account of the domestic courts' failure to put in place appropriate safeguards to enable the applicant to challenge effectively the key evidence (electronic data), to address the salient issues lying at the core of the case and to provide sufficient reasons. In the Grand Chamber's view, there had also been a breach of Article 11, as the domestic courts had deprived the applicant of the minimum protection against arbitrariness and had extended the scope of the relevant offence when relying, to corroborate his conviction, on his membership of a trade union and an association (purportedly affiliated with FETÖ/PDY) that had both been operating lawfully at the material time.

The Grand Chamber judgment is noteworthy in that the Court confirmed and clarified the application of the safeguards enshrined in Article 6 § 1 with regard to two specific features of the instant case: in the first place, the unique challenges faced by the domestic authorities in their fight against terrorism in its covert, atypical forms and in the aftermath of the attempted military coup; and, secondly, the use of a high volume of encrypted electronic data stored on the server of an internet-based communication application.

In addressing the specific nature and scope of the evidence from the standpoint of the relevant guarantees under Article 6 § 1, the Court noted that electronic evidence differed in many respects from traditional forms of evidence and raised distinct reliability issues. Furthermore, the handling of electronic evidence, particularly where it concerned data that were encrypted and/or vast in volume or scope, might present the law enforcement and judicial authorities with serious practical and procedural challenges. In this connection, the Court clarified that those factors did not call for the safeguards under Article 6 § 1 to be applied differently, be it more strictly or more leniently. The Court would therefore adhere to its usual approach and assess whether the overall fairness of the proceedings had been ensured through the lens of

61. *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023. See also under Article 7 (No punishment without law) and under Article 15 (Derogation in time of emergency) below.

62. "Fetullahist Terror Organisation/Parallel State Structure".

the procedural and institutional safeguards and the fundamental principles of a fair trial.

In the instant case, the Court did not have sufficient elements to impugn the accuracy of the ByLock data – at least to the extent that they established the applicant's use of that application. However, as the raw data obtained from the ByLock server had not been disclosed to the applicant, he had been unable to verify first-hand the integrity and reliability of that evidence and to challenge the relevance and significance attributed to it. In the Court's view, that situation placed a greater onus on the domestic courts to subject those issues to the most searching scrutiny. The Court concluded that the prejudice to the defence on that account had not been counterbalanced by adequate procedural safeguards, having examined this issue on the basis of its well-established case-law (*Rook v. Germany*[63], *Matanović v. Croatia*[64], *Mirilashvili v. Russia*[65]). In particular, the domestic courts had neither provided reasons for the impugned non-disclosure, nor responded to the applicant's request for an independent examination of the data or to his concerns as to their reliability; and the applicant had not been given the opportunity to acquaint himself with the decrypted ByLock material (including, in particular, the nature and content of his activity on that application), which would have constituted an important step in preserving his defence rights, especially given the preponderant weight of that evidence in securing his conviction. Importantly, the courts had not sufficiently explained how it was ascertained that ByLock was not, and could not have been, used by anyone who was not a "member" of FETÖ/PDY. While acknowledging that electronic evidence of such a kind might, in principle, be very important in the fight against terrorism or other organised crime, the Court emphasised that it could not be used by the domestic courts in a manner that undermined the basic tenets of a fair trial.

As to whether the impugned failure to observe the requirements of a fair trial could be justified by the Turkish derogation under Article 15 (in connection with the attempted coup), the Court emphasised that such a derogation, even if justified, neither had the effect of dispensing the States from the obligation to respect the rule of law (*Pişkin v. Turkey*[66]), nor did it give them *carte blanche* to engage in conduct that could lead to arbitrary consequences for individuals. Accordingly, when determining whether a derogating measure was strictly required by the exigencies of the situation, the Court would also examine whether adequate safeguards had been provided against abuse and whether the measure undermined the rule of law. In the present case, no sufficient connection had been established between the above fair trial issues and the special measures taken during the state of emergency. The Court therefore found a breach of Article 6 § 1 of the Convention.

Other rights in criminal proceedings

No punishment without law (Article 7)

The judgment in *Yüksel Yalçınkaya v. Türkiye*[67] concerned a conviction for membership of a terrorist organisation based on the use of an encrypted messaging application.

The applicant was convicted of membership of an armed terrorist organisation ("FETÖ/PDY")[68], considered by the domestic authorities to have been behind the attempted coup of 2016. The conviction was based decisively on his use of an encrypted messaging application, ByLock, which the domestic courts had found to have been designed for the exclusive use of the members of FETÖ/PDY.

Before the Court, the applicant complained mainly under Articles 6, 7 and 11. The Grand Chamber (relinquishment) found a violation

63. *Rook v. Germany*, no. 1586/15, 25 July 2019.
64. *Matanović v. Croatia*, no. 2742/12, 4 April 2017.
65. *Mirilashvili v. Russia*, no. 6293/04, 11 December 2008.
66. *Pişkin v. Turkey*, no. 33399/18, § 153, 15 December 2020.
67. *Yüksel Yalçınkaya v. Türkiye*[GC], no. 15669/20, 26 September 2023. See also under Article 6 § 1 (Fairness of the Proceedings) above and under Article 15 (Derogation in time of emergency) below.
68. "Fetullahist Terror Organisation/Parallel State Structure".

of Article 7 on account of the domestic courts' unforeseeable interpretation of domestic law, which attached objective liability to the mere use of ByLock. It also found a breach of Article 6 § 1 on account of the domestic courts' failure to put in place appropriate safeguards to enable the applicant to challenge effectively the key evidence (electronic data), to address the salient issues lying at the core of the case and to provide sufficient reasons. In the Grand Chamber's view, there had also been a breach of Article 11, as the domestic courts had deprived the applicant of the minimum protection against arbitrariness and had extended the scope of the relevant offence when relying, to corroborate his conviction, on his membership of a trade union and an association (purportedly affiliated with FETÖ/PDY) that had both been operating lawfully at the material time.

The Grand Chamber judgment is noteworthy in that the Court confirmed and clarified the application of the safeguards enshrined in Article 7 with regard to two specific features of the instant case: in the first place, the unique challenges faced by the domestic authorities in their fight against terrorism in its covert, atypical forms and in the aftermath of the attempted military coup; and, secondly, the use of a high volume of encrypted electronic data stored on the server of an internet-based communication application.

The Court reiterated that Article 7 enshrines a non-derogable right that is at the core of the rule of law principle. It emphasised that the fundamental safeguards guaranteed by that provision could not be applied less stringently when it came to the prosecution and punishment of terrorist offences, even when allegedly committed in circumstances threatening the life of the nation. The Convention required the observance of the Article 7 guarantees, including in the most difficult of circumstances. The Court clarified in the course of its judgment that it was not sufficient for national law to clearly set out an offence: courts had also to comply with the law and not circumvent it through its interpretation and application to the specific facts of a case.

In the instant case, while the use of ByLock was neither criminalised as such nor part of the *actus reus* of the relevant offence, the domestic courts' interpretation had had the effect of equating such use with knowingly and willingly being a member of an armed terrorist organisation. For the Court, the issue was not the assessment of the relevance/weight to be attached to a particular item of evidence, an issue not in principle within its remit under Article 7. Rather, the issue in the present case was that the applicant's conviction had been secured without duly establishing the presence of all the constituent elements of the offence (including its specific intent) in an individualised manner. It also confirmed the right of an individual, under Article 7, not to be punished without the existence of a mental link through which an element of personal liability could be established (*G.I.E.M. S.r.l. and Others v. Italy*[69]). While the Court acknowledged the significant challenges involved in accessing the content of secure communications used by organisations operating in secrecy, it was against the principles of legality and foreseeability, and thus in disregard of the guarantees laid down in Article 7, to attach criminal liability in a virtually automatic manner to all ByLock users.

69. *G.I.E.M. S.r.l. and Others v. Italy* [GC], nos. 1828/06 and 2 others, §§ 242 and 244, 28 June 2018.

Other rights and freedoms

Right to respect for one's private and family life, home and correspondence (Article 8)

Private life

The judgment in *L.B. v. Hungary*[70] concerned the statutory requirement to publish taxpayers' personal data, including their home address, in response to non-compliance with tax obligations.

As required by the legislation, the National Tax and Customs Authority published in the list of major tax debtors on its website the applicant's personal data, including his name and home address. Introduced as a tool to tackle non-compliance with tax regulations, the systematic and mandatory publication of such data applied to all taxpayers who, at the end of the quarter, owed a large amount in tax for a period longer than 180 consecutive days.

The applicant complained under Article 8. A Chamber of the Court found no violation of this provision: the impugned publication had not placed a substantially greater burden on the applicant's private life than had been necessary to further the State's legitimate interest. Upon referral, the Grand Chamber disagreed and found a breach of Article 8 of the Convention. The reasons relied upon by the Hungarian legislature in enacting the impugned mandatory publication scheme, although relevant, had not been sufficient and a fair balance had not been struck between the competing interests at stake: on the one hand, the public interest in ensuring tax discipline and the economic well-being of the country and the interest of potential business partners in obtaining access to certain State-held information concerning private individuals and, on the other, the interest of private individuals in protecting certain forms of data retained by the State for tax collection purposes.

The Grand Chamber judgment is noteworthy in that the Court examined, for the first time, whether, and to what extent, the imposition of a statutory obligation to publish taxpayers' personal data, including their home address, was compatible with Article 8 of the Convention. The Court defined the scope of the margin of appreciation available to the State when regulating questions of that nature and it specified the relevant criteria by which to carry out the balancing exercise between the competing interests at stake in this area.

(i) The Court had regard to the degree of consensus at national and European level. According to the comparative-law survey, in twenty-one of the thirty-four Contracting States surveyed the public authorities could, and in some cases had to, disclose publicly the personal data of taxpayers who failed to comply with their payment obligations, subject to certain conditions. While a majority of the States concerned provided unrestricted access to taxpayer information, only a few of those disclosed the home address of taxpayers.

The Court also drew on three sets of principles: general principles in its case-law on the disclosure of personal data (*inter alia*, *Z v. Finland*[71]; *S. and Marper v. the United Kingdom*[72]; and *Satakunnan*

70. *L.B. v. Hungary* [GC], no. 36345/16, 9 March 2023.

71. *Z v. Finland*, 25 February 1997, *Reports of Judgments and Decisions* 1997-I.

72. *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, ECHR 2008.

Markkinapörssi Oy and Satamedia Oy v. Finland[73]*;* specific principles concerning data protection (notably, the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data[74]) and applied by the Court; and, lastly, principles on the adoption and implementation of general measures (*Animal Defenders International v. the United Kingdom*[75]).

Taking all the above factors into account, the Court found that the Contracting States enjoyed a wide margin of appreciation when assessing the need to establish a scheme for the dissemination of personal data of taxpayers who failed to comply with their tax payment obligations, as a means, *inter alia*, of ensuring the proper functioning of tax collection as a whole.

In so far as the present impugned publication was part of the application of a general measure (and not a matter of an individual decision), the Court clarified that the choice of such a general scheme by the legislature was not in itself problematic; nor was the publication of taxpayer data as such. However, the discretion enjoyed by States in this area was not unlimited: the Court had repeatedly held that the choices made by the legislature were not beyond its scrutiny and had assessed the quality of the parliamentary and judicial review of the necessity of a particular measure (*M.A. v. Denmark*[76]).

In this particular context, the Court would therefore scrutinise whether the competent domestic authorities, be it at the legislative, executive or judicial level, had performed a proper balancing exercise between the competing interests and, in so doing, they had to have regard not only to (a) the public interest in the dissemination of the information in question, but also to (b) the nature of the disclosed information; (c) the repercussions on and risk of harm to the enjoyment of private life of the persons concerned; (d) the potential reach of the medium used for the dissemination of the information, in particular, that of the Internet; and (e) the basic data protection principles, including those on purpose limitation, storage limitation, data minimisation and data accuracy. The existence of procedural safeguards could also play an important role.

(ii) In assessing whether the Hungarian legislature had acted within the margin of appreciation afforded to it, the Court singled out two features of the impugned publication scheme: the inclusion of a home address among a taxpayer's personal data subject to the mandatory publication; and the lack of any discretion on the part of the Tax Authority to conduct an individualised proportionality assessment. With this in mind, the Court analysed the quality of the parliamentary review and identified the following shortcomings:

– no assessment had been made of the necessity and the complementary value of the impugned general measure (most notably in so far as it required the publication of the tax debtor's home address) against the background of the existing tools with the same deterrent purpose;

– no consideration had been given to the impact on the right to privacy and, in particular, the risk of misuse of the tax debtor's home address by other members of the public;

– no consideration had been given to the potential reach of the medium used for the dissemination of the information in question (the Internet), implying an unrestricted access to rather sensitive information (name and home address), with the risk of republication as a natural, probable and foreseeable consequence of the original publication; and

– no consideration had been given to data protection requirements in accordance with domestic and EU law and to the possibility of devising appropriately tailored responses in the light of the principle of data minimisation.

Accordingly, the Court concluded that, notwithstanding the respondent State's wide margin of appreciation, the interference complained of had not been "necessary in a democratic society".

In response to the request submitted by the Finnish Supreme Court, the Court delivered its advisory opinion[77] on 13 April 2023, which concerned the procedural status and rights of a biolog-

73. *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, 27 June 2017.

74. Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, CET 108.

75. *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, ECHR 2013 (extracts).

76. *M.A. v. Denmark* [GC], no. 6697/18, 9 July 2021.

77. *Advisory opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult* [GC], request no. P16-2022-001, Supreme Court of Finland, 13 April 2023. See also under Article 1 of Protocol No. 16 (Advisory opinions) below.

ical parent in proceedings for the adoption of an adult.

The request for an advisory opinion arose out of proceedings before the Finnish courts concerning the adoption of an adult, C, by his aunt, B, with whom he had lived from the age of three until adulthood. During that period, B had supplementary custody over C, granted at the request of his biological mother, A. His mother had, however, remained involved in his upbringing and they still had contact. She objected to the adoption and was heard as a witness by the District Court, on its own initiative. That court granted the adoption, finding that the statutory conditions had been met, namely that C had been brought up by B and that, while the adoptee had still been a minor, they had had a relationship comparable to that of a child and parent. A's appeal was dismissed by the Court of Appeal without consideration of the merits: under the Adoption Act, a parent of an adult was not a party to a matter concerning adoption and had no right of appeal. The biological mother applied to the Supreme Court, who in turn requested an advisory opinion based on the following questions:

> "(1) Should the Convention on Human Rights be interpreted in such a way that legal proceedings concerning the granting of an adoption of an adult child in general, and especially in the circumstances of the case at hand, are covered by the protection of a biological parent referred to in Article 8 of the Convention on Human Rights?
>
> (2) If the answer to the question asked above is affirmative, should Articles 6 and 8 of the Convention on Human Rights be interpreted in such a way that a biological parent of an adult child should in all cases, or especially in the circumstances of this case, be heard in legal proceedings concerning the granting of adoption?
>
> (3) If the answer to the questions asked above is affirmative, should Articles 6 and 8 of the Convention on Human Rights be interpreted in such a way that a biological parent should be given the status of a party in the matter, and that the biological parent should have the right to have the decision concerning the granting of adoption reviewed by a higher tribunal by means of appeal?

In this, its sixth advisory opinion under Protocol No. 16, the Court clarified whether Article 8 was applicable to legal proceedings concerning the grant of adoption of an adult child, under its family or private life aspects, and what procedural requirements were to be complied with in that context.

(i) As regards the "family life" aspect, the Court noted that the relationship between the biological mother (A) and the adopted adult (C) was not characterised by any factors of dependence (*Emonet and Others v. Switzerland*[78]; *Bierski v. Poland*[79]; and *Savran v. Denmark*[80]) or by a pecuniary or patrimonial aspect (*Marckx v. Belgium*[81]). It concluded that it was therefore inappropriate to analyse the case pending before the requesting court from the standpoint of "family life".

As regards the "private life" aspect of Article 8, the Court observed the importance of biological parentage as a component of identity (*Mennesson v. France*[82], and *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship*[83]), the right to self-determination (*Paradiso and Campanelli v. Italy*[84]) and the principle of personal autonomy (*Fedotova and Others v. Russia*[85]). In the light of the above principles, and in so far as the biological parent's identity was at stake given the effect of the discontinuation of the legal parental relationship with the adult child, the Court concluded that legal proceedings concerning the grant of adoption of an adult child could be regarded as affecting a biological parent's private life under Article 8 of the Convention.

(ii) The Court went on to clarify the procedural requirements under Article 8 applicable to the proceedings in question and, notably, whether the biological parent of the adult adoptee had to be afforded a right to be heard, a right to be granted the status of "a party" and a right to appeal against

78. *Emonet and Others v. Switzerland*, no. 39051/03, 13 December 2007.
79. *Bierski v. Poland*, no. 46342/19, 20 October 2022.
80. *Savran v. Denmark* [GC], no. 57467/15, § 174, 7 December 2021.
81. *Marckx v. Belgium*, 13 June 1979, § 52, Series A no. 31.
82. *Mennesson v. France*, no. 65192/11, ECHR 2014 (extracts).
83. *Advisory opinion concerning the recognition in domestic law of a legal parent-child relationship between a child born through a gestational surrogacy arrangement abroad and the intended mother* [GC], request no. P16-2018-001, French Court of Cassation, 10 April 2019.
84. *Paradiso and Campanelli v. Italy* [GC], no. 25358/12, 24 January 2017.
85. *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023.

the granting of adoption. The Court pointed out that, while the biological parent was entitled to due respect for his or her personal autonomy, that had to be understood as being delimited by the personal autonomy and private life of the adopter and adult adoptee which were also, and if anything to a greater degree, concerned by such proceedings. As the domestic proceedings concerned the sphere of relations of individuals between themselves, the choice of the means calculated to ensure compliance with Article 8 came within the State's margin of appreciation. This was, in particular, true of the Finnish-law approach to adult adoption, which, unlike the adoption of a minor, was essentially a personal matter, and the interests of other parties – notably those of the biological parents – were therefore not treated as relevant considerations, the requisite assessment being focused on an essentially factual issue (the character of the relationship between adopter and adoptee while the latter was a minor). Moreover, according to the comparative survey completed (thirty-eight Contracting States), there was no common practice among those States permitting adult adoption: it was only in very few legal systems that the interests of biological parents were expressly taken into account although it was more common than not for the biological parents to have some formal standing and/or procedural rights in such proceedings. While the Court noted that the right to be heard by the domestic court was not provided for in the relevant Finnish law, the Court reiterated that its task was not to assess, in a general way, the rationale and structure of the applicable domestic law but rather to give guidance to the requesting court, so that it could ensure that the proceedings before it were conducted in accordance with the Convention. The Court emphasised the importance of the notion of personal autonomy in this respect. At the same time, where an individual's interests protected by Article 8 were at stake, such as those of a biological parent of the adult adoptee, an elementary procedural safeguard was that he or she be given the opportunity to be heard and that the arguments made were taken into account by the decider to the extent relevant. In this connection, the Court observed that this was what appeared to have happened before the District Court: the latter had, on its own initiative, heard the biological mother in person, as well as several other witnesses proposed by her; she had been able to put into evidence the nature and quality of her relationship with her now adult child throughout his childhood; and the District Court had expressly referred to her evidence. Lastly, the Court did not consider that any additional specific safeguards were called for: having regard to the wide margin of appreciation to which the State was entitled in the regulation of the procedure for adult adoption, respect for Article 8 did not require that a biological parent be granted the status of a party or the right to appeal the granting of the adoption.

(iii) In so far as Article 6 was referred to, the Court emphasised that, in order to provide useful guidance, all of the elements raised by the requesting court might need to be addressed. Therefore, while the Court, in its own practice, had often chosen to focus on Article 8 only where the complaints concerned both Articles 6 and 8, such a practice might not be appropriate in the context of Protocol No. 16. The Court observed that the right claimed by the biological mother did not appear to exist, even on arguable grounds, in domestic law. If the requesting court were to so confirm, it would follow that, from her perspective, Article 6 was not applicable to the proceedings for the adoption of an adult.

Family life

The judgment in *B.F. and Others v. Switzerland*[86] concerned the requirement of financial independence for family reunification of certain 1951 Convention refugees.

The applicants, who resided in Switzerland, were all recognised as refugees within the meaning of the Convention relating to the Status of Refugees[87] ("the 1951 Convention"). In line with domestic law, they had been granted provisional admission rather than asylum, since the grounds for their refugee status had arisen following their departure from their countries of origin and as a result of their own actions (so-called "subjective post-flight grounds"), namely their illegal exit from those countries. This meant that they were not entitled to family reunification (in contrast to

86. *B.F. and Others v. Switzerland*, nos. 13258/18 and 3 others, 4 July 2023.

87. Convention relating to the Status of Refugees, adopted on 28 July 1951.

refugees who had been granted asylum) but it was discretionary and subject to certain cumulative conditions being met. Their applications for family reunification (with minor children and/or spouses) were rejected because one of those cumulative criteria, non-reliance on social assistance, had not been satisfied and because the refusals were deemed not to breach Article 8. The Court found a violation of Article 8 in three applications, and no violation of that provision in the fourth.

The judgment is interesting as the Court examined, for the first time, the requirement of financial independence for family reunification of (certain) 1951 Convention refugees.

(i) The Court observed that common ground could be discerned at international and European levels in favour of not distinguishing between different 1951 Convention refugees as regards requirements for family reunification. This reduced the margin of appreciation afforded to the respondent State, as did the consensus at international and European level that refugees needed to have the benefit of a more favourable family reunification procedure than other aliens. The Court was not convinced that there was a difference, in terms of nature and duration, between the stay of refugees granted asylum and those provisionally admitted. The Court's case-law did not require that the circumstances in which the departure from the country of origin and the separation from the family members had occurred be taken into account, but it was not *per se* manifestly unreasonable to do so. The Court thus concluded that member States enjoyed a certain margin of appreciation in relation to requiring non-reliance on social assistance before granting family reunification in the case of refugees who had left their countries of origin without being forced to flee persecution and whose grounds for refugee status had arisen following their departure and as a result of their own actions. However, that margin was considerably more narrow than the margin afforded to member States in relation to the introduction of waiting periods for family reunification when that reunification was requested by persons who had not been granted refugee status, but rather subsidiary or temporary protection status (compare *M.A. v. Denmark*[88]).

(ii) (a) The Court considered that the particularly vulnerable situation in which refugees *sur place* find themselves, needed to be adequately taken into account in the application of a condition (such as the requirement of non-reliance on social assistance) to their family reunification requests, with insurmountable obstacles to enjoying family life in the country of origin progressively assuming greater importance in the fair-balance assessment as time passed. The requirement of non-reliance on social assistance needed to be applied with sufficient flexibility, as one element of the comprehensive and individualised fair-balance assessment. Having regard to the waiting period applicable to the family reunification of provisionally admitted refugees under Swiss law, this consideration was applicable by the time provisionally admitted refugees became eligible for family reunification. More generally, the Court observed that refugees, including those whose fear of persecution in their country of origin had arisen only following their departure from the country of origin and as a result of their own actions (as in the present case), should not be required to "do the impossible" in order to be granted family reunification. In particular, where the refugee present in the territory of the host State was and remained unable to meet the income requirements, despite doing all that he or she reasonably could do to become financially independent, applying the requirement of non-reliance on social assistance without any flexibility as time passed could potentially lead to the permanent separation of families.

(b) The Court noted that it was not called upon to determine in the present case whether and/or to what extent those considerations applied in scenarios in which refugees had to fulfil such a requirement if they submitted their applications for family reunification outside of a certain time-limit, without particular circumstances rendering the late submission objectively excusable, it being noted that such a question might arise in cases where European Union member States made use of the possibility afforded to them under the third subparagraph of Article 12 § 1 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.

(c) The Court observed that Swiss law and practice provided for a certain flexibility in the application of the requirement at issue but that there were also conditions circumscribing that flexibility. Only a small number of family reunification requests by provisionally admitted persons had been granted (thirty to fifty persons thus admitted per year, while there were nearly

88. *M.A. v. Denmark* [GC], no. 6697/18, § 161, 9 July 2021.

40,000 provisionally admitted persons, of whom nearly 10,000 were provisionally admitted refugees).

(iii) In two of the applications, the Court found that the gainfully employed applicants had done all that could reasonably be expected of them to earn a living and to cover their and their family members' expenses. In the third application, the Court was not satisfied that the Federal Administrative Court had sufficiently examined whether the applicant's health would enable her to work, at least to a certain extent, and consequently whether the requirement at issue needed to be applied with flexibility in view of her health. By contrast, the Court found no violation as regards the fourth case, considering that the Federal Administrative Court had not overstepped its margin of appreciation when it had taken the applicant's lack of initiative in improving her financial situation into account when balancing the competing interests.

Positive obligations

The judgment in *Fedotova and Others v. Russia*[89] concerned the positive obligation to provide a legal framework allowing adequate recognition and protection for same-sex couples, as well as the scope of the margin of appreciation afforded to States in this respect.

The applicants – three same-sex couples – gave notice of marriage to their local departments of the Register Office. Their notices were rejected on the grounds that the relevant domestic legislation defined marriage as a "voluntary marital union between a man and a woman", thus excluding same-sex couples. The applicants challenged those decisions without success.

Before the Court, the applicants complained that it was impossible for them to have their respective relationships formally registered and that, because of the legal vacuum in which they found themselves as couples, they were deprived of any legal protection and faced substantial difficulties in their daily lives. A Chamber of the Court found a violation of Article 8 in this respect, and the Grand Chamber endorsed this finding.

The Grand Chamber judgment is noteworthy in that the Court confirmed that Article 8 gave rise to a positive obligation for States Parties to provide a legal framework allowing same-sex couples to enjoy adequate recognition and protection of their relationship. The Court also clarified the scope of the margin of appreciation afforded to States in this respect.

(i) Article 8 had already been interpreted as requiring a State Party to ensure legal recognition and protection for same-sex couples by putting in place a "specific legal framework" (*Oliari and Others v. Italy*[90] and *Orlandi and Others v. Italy*[91]). In the instant case, the Grand Chamber confirmed, in general terms and outside of a specific national context, the existence of such a positive obligation under Article 8. In doing so, the Court relied, in the first place, on the degree of consensus found at the national and international level. The Court observed that its own approach in the above-noted case-law was consolidated by a clear ongoing trend in the States Parties towards legal recognition of same-sex couples (through the institution of marriage or other forms of partnership), since a majority (thirty) State Parties had legislated to that effect. This trend was further consolidated by the converging positions of a number of international bodies, including several Council of Europe bodies. Secondly, the Court was guided by the ideals and values of a democratic society. In its view, allowing same-sex couples to be granted legal recognition and protection undeniably served pluralism, tolerance and broadmindedness. Indeed, recognition and protection of that kind conferred legitimacy on such couples and promoted their inclusion in society. Many authorities and bodies viewed this as a tool to combat stigmatisation, prejudice and discrimination against homosexual persons.

(ii) The Court went on to clarify the scope of the national authorities' margin of appreciation in this regard. In its view, the margin of appreciation of the States Parties was significantly reduced when it came to affording same-sex couples the possibility of legal recognition and protection. The Court relied in this respect on the fact that particularly important facets of the personal and social identity

89. *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023. See also under Article 58 (Cessation of membership of the Council of Europe) below.

90. *Oliari and Others v. Italy*, nos. 18766/11 and 36030/11, 21 July 2015.

91. *Orlandi and Others v. Italy*, nos. 26431/12 and 3 others, 14 December 2017.

of persons of the same sex were at stake, as well as the clear ongoing trend in the Council of Europe member States. At the same time, no similar consensus could be found as to the form of such recognition and the content of such protection. It followed that the States Parties had to be afforded a more extensive margin of appreciation in determining the exact nature of the legal regime to be made available to same-sex couples. Indeed, States had the "choice of the means" to be used in discharging their positive obligations inherent in Article 8. The discretion afforded to them in that respect related both to the form of recognition and to the content of the protection.

In particular, regarding the form of recognition, the Court underlined that it did not necessarily have to be that of marriage. The Court reiterated that Article 8 could not be understood as imposing a positive obligation on the States Parties to make marriage available to same-sex couples (*Hämäläinen v. Finland*[92]). This interpretation of Article 8 coincided with the Court's interpretation of Article 12, which could not be construed as imposing such an obligation either (*Schalk and Kopf v. Austria*[93]; *Hämäläinen*; *Oliari and Others*; and *Orlandi and Others*, all cited above). Furthermore, it is consonant with the Court's conclusion under Article 14, in conjunction with Article 8, that States remain free to restrict access to marriage to different-sex couples only (*Schalk and Kopf*, cited above; *Gas and Dubois v. France*[94]; and *Chapin and Charpentier v. France*[95]).

As regards the content of the protection to be afforded, the Court was guided by the concern to ensure effective protection of the private and family life of homosexual persons. It was therefore important that the protection afforded should be adequate. In that connection, the Court referred to various aspects, in particular material aspects (maintenance, taxation or inheritance) and moral aspects (rights and duties in terms of mutual assistance), that were integral to life as a couple and would benefit from being regulated within a legal framework available to same-sex couples (*Vallianatos and Others v. Greece*[96], and *Oliari and Others*, cited above, § 169).

On the facts, the Court found that the respondent State had overstepped its margin of appreciation and had failed to comply with its positive obligation to secure adequate recognition and protection for the applicants. None of the public-interest grounds put forward by the Government (protection of the traditional family, protection of minors from the promotion of homosexuality and disapproval of the latter by the majority of the Russian population) prevailed over the applicants' interests. Official recognition had an intrinsic value for them in so far as it conferred an existence and a legitimacy *vis-à-vis* the outside world. However, under the Russian legal framework, same-sex partners were unable to regulate fundamental aspects of life as a couple such as those concerning property, maintenance and inheritance except as private individuals entering into contracts under the ordinary law, rather than as a couple. Nor were they able to rely on the existence of their relationship in dealings with the judicial or administrative authorities. Indeed, the fact that same-sex partners were required to apply to the domestic courts for protection of their basic needs as a couple constituted, in itself, a hindrance to respect for their private and family life. The Court therefore found a breach of Article 8 of the Convention.

The judgments in *O.H. and G.H. v. Germany*[97] and *A.H. and Others v. Germany*[98] concerned the legal impossibility for a transgender parent's current gender, which did not reflect the biological reality, to be indicated on the birth certificate of a child conceived after gender reclassification.

The two cases concerned transgender parents who conceived their children after obtaining recognition of their gender change in the courts. In *O.H. and G.H. v. Germany*, a single transgender man, born female, gave birth to a child who had been conceived through sperm donation and was thus recorded as the mother on the birth certificate. In *A.H. and Others v. Germany*, a transgender woman who was born male could only be recorded in the birth register as the father, because the child

92. *Hämäläinen v. Finland* [GC], no. 37359/09, ECHR 2014.
93. *Schalk and Kopf v. Austria*, no. 30141/04, ECHR 2010.
94. *Gas and Dubois v. France*, no. 25951/07, ECHR 2012.
95. *Chapin and Charpentier v. France*, no. 40183/07, 9 June 2016.
96. *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 81, ECHR 2013 (extracts).
97. *O.H. and G.H. v. Germany*, nos. 53568/18 and 54741/18, 4 April 2023.
98. *A.H. and Others v. Germany*, no. 7246/20, 4 April 2023.

had been conceived with her sperm. Her female partner, who had given birth to the child, was recorded as the mother. Relying on Articles 8 and 14, the applicants complained about the legal impossibility for the transgender parent's current gender, which did not reflect the biological reality, to be indicated on the birth certificate of a child conceived after the parent's gender reclassification. Finding Article 8 to be applicable under its "private life" head, the Court found that there had been no violation: the German courts had struck a fair balance between the rights of transgender parents and any partner concerned, the interests of their children, considerations as to their children's welfare and public interests. The Court dismissed the complaints under Article 14, taken together with Article 8, as manifestly ill-founded.

The interest of the judgments lies in the fact that the Court addressed for the first time the question whether an entry recording a transgender parent under his or her former gender and former forename on a child's birth certificate was compatible with Article 8. Examining this issue from the perspective of the State's positive obligations and in the light of the principles summed up in *Hämäläinen v. Finland*[99], the Court defined the margin of appreciation and clarified the criteria to be considered in weighing up the private and public interests at stake.

(i) The Court explained that the authorities had a broad margin of appreciation based on the following considerations. At the outset it noted the lack of a consensus in Europe, reflecting the fact that gender change combined with parenthood raised sensitive ethical questions. It then looked at the complexity of the balancing exercise in the present case. First, as to the rights of the transgender parents, their complaints concerned an indication in the birth register in respect of another person (their respective children), and not their own official documents. Second, as far as the children were concerned, the issue was the possible disclosure of information relating to the transgender identity of their parents, and not their own gender identity. In addition, the right of children to be informed of the details of their biological descent was capable of limiting the rights relied upon by the transgender parents. The authorities had also taken account of the children's interest in having a stable legal connection with their parents. It followed that the margin of appreciation was not narrowed by the rights relied upon by the applicants, even though they did relate to a basic aspect of private life. Lastly, consideration had to be given to the public interest in the coherence of the legal system and in the accuracy and completeness of civil registration records, which were of particular evidential value. The Court had previously recognised a degree of importance of that general interest in the balancing exercise in such matters (*Christine Goodwin v. the United Kingdom*[100], and *A.P., Garçon and Nicot v. France*[101]).

(ii) Proceeding on the premise of a broad margin of appreciation, the Court clarified the criteria that it saw as relevant to its analysis, focusing on the divergence between the interests of the children and those of their transgender parents. First, based on the essential principle that the child's best interests must be paramount (*Mennesson v. France*[102]), the Court clarified that the child's interests had to be examined exhaustively, taking account of any conflicts of interest between the child and his or her parents. The Court emphasised that this examination should not be limited by the manner in which the child's interests were presented by his or her parents. In addition, it was necessary to take account of the child's possible future interests and the interests of children in a comparable situation to whom the legislative provisions in question also applied. The Court emphasised that the welfare of the children in the present case could not have been examined on an individualised basis, on account of their infancy at the time the issue arose, as to what information should be recorded in the birth register. In the view of the Federal Court of Justice, the children's interests coincided to some extent with the general interest in ensuring the reliability and consistency of the civil registration system, together with legal certainty. The Court endorsed the approach of that apex court in finding that the right to gender identity of the parents concerned could be limited by the child's right to know his or her origins, to be brought up by his or her two parents and to have a permanent legal relationship with them. The Federal Court pointed out in particular that the legal attachment of a child to his or her parents in accordance with their respective biological

99. *Hämäläinen v. Finland* [GC], no. 37359/09, ECHR 2014.

100. *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, §§ 86-88 and 91, ECHR 2002-VI.

101. *A.P., Garçon and Nicot v. France*, nos. 79885/12 and 2 others, § 132, 6 April 2017.

102. *Mennesson v. France*, no. 65192/11, § 81, ECHR 2014 (extracts).

roles allowed the child to maintain a stable and unchanging connection with a father and a mother, even in the not merely theoretical scenario where the transgender parent subsequently sought reversal of the gender reclassification.

Secondly, the Court noted that the number of situations that could lead, on presentation of the children's birth certificates, to the disclosure of the transgender identities of the parents concerned was limited. Certain precautions were in place to reduce any inconvenience that the parents might face. In particular it was possible to obtain a birth certificate without any indication of the parents. Only a limited number of individuals, who would generally be aware of the transgender identity, were authorised to request a full copy of the birth certificate; anyone else had to show a legitimate interest. Moreover, besides the full birth certificate there were other documents which could be used containing no indication of gender change, for example if required by an employer, without revealing such information. The Court incidentally noted that the solutions proposed by the applicants would not have given them any greater protection against such disclosure. For example, in the event of the replacement of "mother" and "father" by "parent 1" and "parent 2", the indication "parent 1" would remain associated with the parent who gave birth to the child. Furthermore, if a single transgender parent were to be indicated as the father, without any mother being mentioned on the birth certificate, that might also raise questions as to that parent's status.

Lastly, the Court had regard to the fact that the biological relationship between the transgender parents and their children had not been called into question.

In the light of the foregoing, the Court found that the courts had struck a fair balance between the competing interests, in accordance with the requirements of Article 8 of the Convention.

The judgment in the case of *G.T.B. v. Spain*[103] concerned the positive obligation to facilitate "birth registration" of, and the obtention of identity documents by, a vulnerable minor, in the case of parental negligence

The applicant, a Spanish national, was born to his Spanish mother in Mexico in 1985. His birth was not registered and shortly thereafter he and his mother were repatriated to Spain. When he was 12 years old, his mother applied to have his birth registered in Spain. Owing to her lack of diligence, but also to the onerous requests of the administration, the applicant's birth was not registered until 2006 when he was 21, allowing him to finally obtain identity documents.

Relying on Articles 3 and 8 of the Convention as well as on Article 2 of Protocol No. 1, the applicant complained about the suffering and difficulties, including in the educational and private sphere, of having been undocumented for many years in Spain. The Court considered the case from the standpoint of Article 8 and found a violation of that provision.

The judgment is noteworthy in a number of respects. In the first place, the Court stated that an individual's right to have his or her birth registered and to obtain, on that basis, access to identity documents was a protected interest under Article 8. Secondly, the Court specified the relevant considerations for striking a fair balance between public and private interests at stake in that connection. Thirdly, the Court established a positive obligation to facilitate the birth registration of, and the obtention of identity documents by, a vulnerable minor in the case of parental negligence. Finally, the Court developed a test for assessing whether the domestic authorities had complied with that positive obligation.

(i) The Court reiterated its case-law to the effect that obstacles in obtaining birth registration, and the resulting lack of access to identity documents, could have a serious impact on a person's sense of identity as an individual human being (*Mennesson v. France*[104]) and on personal autonomy (*Christine Goodwin v. the United Kingdom*[105]), which could cause significant problems in a person's daily life, in particular at the administrative (*M. v. Switzerland*[106]) and educational levels. The importance of obtaining a registration of birth and, consequently, other valid identity documents had been underlined by other international bodies, notably the UN Committee on the Rights of the Child[107]. On this basis, the Court concluded that the right to respect for private life

103. *G.T.B. v. Spain*, no. 3041/19, 16 November 2023.

104. *Mennesson v. France,* no. 65192/11, § 96, ECHR 2014 (extracts).

105. *Christine Goodwin v. the United Kingdom* [GC],no. 28957/95, § 91, ECHR 2002-VI.

106. *M. v. Switzerland*, no. 41199/06, § 57, 26 April 2011.

107. See General comment No. 13 (2011) on The right of the child to freedom from all forms of violence and General comment No. 7 (2005) on Implementing child rights in early childhood. See also, Thematic Report of the Office of the UN High Commissioner for Human

under Article 8 should be seen as including, in principle, an individual right to have one's birth registered and consequently, where relevant, to have access to other identity documents.

(ii) The Court went on to outline the important public interests at stake in the process of birth registration, such as safeguarding the consistency and reliability of civil registries and, more broadly, legal certainty, which interests justified strict procedures to register a birth, in particular when it had taken place outside the relevant State's territory, as in the instant case. States therefore enjoyed a wide margin of appreciation in that respect, which covered substantive and procedural requirements imposed on the individual seeking to obtain a birth certificate. At the same time, some adaptability of the standard procedures might be required when it was imperative in the circumstances to safeguard important interests protected under Article 8, such as the right to a recognised identity.

(iii) The Court underlined the following specific features of the instant case: in the first place, the applicant's only available parent had failed to act diligently and, secondly, the applicant was particularly vulnerable given various health and social factors (a minor with a record of psychological disorders and psychiatric conditions). The Court observed that the applicant's lack of identity documents had had, at least to some extent, an impact on his ability to pursue academic studies and training. It had also made it impossible for him to secure stable employment contracts, which had affected his ability to organise his private and family life and had contributed to increasing his anxiety and distress. Drawing on its constant case-law on the paramount importance to act in the best interests of the child, the Court concluded that the authorities had been under a positive obligation under Article 8 to act with due diligence to assist the applicant, a vulnerable minor, who had been unable to obtain his birth certificate and identity documents, resulting from his parent's negligence.

(iv) Finally, the Court responded to two questions to determine whether the domestic authorities had complied with that positive obligation.

In the first place, the point in time at which it could have been said that the authorities had been sufficiently aware of the particular situation and could have reasonably been expected to have taken active measures. In the instant case, the authorities had been apprised of the applicant's vulnerable situation for most of his life and had become aware of his difficulties in registering his birth in mid-1999, when the procedure had had to be suspended because of the impossibility of summoning his mother. The Court found, however, that the positive obligation to assist the applicant had arisen in 2002, when it had become clear that, despite the authorities' repeated requests, the applicant's mother would not be able to produce documents other than those she had already submitted.

Secondly, whether the public authorities had taken sufficiently adequate and timely action to discharge their positive obligation. Disregarding the particular vulnerability of the applicant, the authorities had merely insisted on his mother's responsibility to comply with all the legally established criteria, notwithstanding their awareness that she had not acted with full diligence in the past and that no further documents concerning the applicant´s birth in Mexico would be found. As a result, four years had elapsed between the moment when it became apparent that the applicant's mother could not provide any further documents to register her son's birth, and its actual registration. There was no justification for this delay. The Court concluded that the domestic authorities had failed to discharge their positive obligation to assist the applicant in having his birth registered and, as a consequence, to obtain identity documents.

Rights "Birth registration and the right of everyone to recognition everywhere as a person before the law"; and UNICEF's report "Every child's birth right".

Freedom of thought, conscience and religion (Article 9)

Manifest one's religion or belief

In response to a request submitted by the Belgian *Conseil d'État*, the Court delivered its advisory opinion[108] on 14 December 2023, which concerned the question whether an individual may be denied authorisation to work as a security guard or officer on account of being close to, or belonging to, a religious movement considered by the national authorities to be dangerous.

The request for an Advisory Opinion arose in the context of proceedings pending in the Belgian *Conseil d'État* concerning a decision of the Minister of the Interior to withdraw, from a Belgian national, S.B., an identification card entitling him to work as a security guard on the Belgian railway network and to refuse to issue him with a second card for a similar function. That decision was based on the fact that, according to the information held by the intelligence services, S.B. was a follower of the "scientific" Salafist movement, he frequented other followers thereof and he engaged in proselytising, by electronic means, among friends and family. Since scientific Salafism was, according to the authorities, incompatible with the Belgian model of society (community segregation, questioning the legitimacy of secular law, undermining the fundamental rights of fellow citizens and a backward view of women's role, and so on), was harmful to the basic democratic values of a State governed by the rule of law and represented a threat to the country in the medium to long term, S.B. did not fulfil the statutory conditions to work as a security guard, particularly in terms of respect for fundamental rights and democratic values, integrity, loyalty and ensuring there was no risk for the security of the State or public order. On an application by S.B., the *Conseil d'État* noted that the file was lacking in concrete and precise facts imputable to him, such as to show that he might put religious imperatives before strict respect for legality or that he might discriminate against certain categories of people for religious reasons. It was on that basis that the *Conseil d'État* put the following question to the Court for an advisory opinion:

> "Does the mere fact of being close to or belonging to a religious movement that, in view of its characteristics, is considered by the competent administrative authority to represent a threat to the country in the medium to long term, constitute a sufficient ground, in the light of Article 9 § 2 (right to freedom of thought, conscience and religion) of the Convention, for taking an unfavourable measure against an individual, such as a ban on employment as a security guard?

In this its seventh advisory opinion under Protocol No. 16, the Court responded to the question whether Article 9 of the Convention would allow the authorities to rely on the mere fact that an individual was close to or belonged to a religious movement, considered to be extremist and dangerous, even though he or she had not committed any offence or professional misconduct, in order to justify an unfavourable measure like the one at issue in the domestic proceedings.

(i) The Court reasserted the distinction between the two aspects of Article 9, one concerning the right to hold a belief (the *forum internum* of each person, an absolute and unqualified right) and the right to manifest one's belief (the *forum externum* with its potential restrictions under the second paragraph of Article 9 (see *Ivanova v. Bulgaria*[109], and *Mockutė v. Lithuania*[110]). As to the fact of "being close to" or "belonging to" a movement or an ideological orientation, the Court stressed the need to ensure, in the particular circumstances of each case, whether the accusation against the individual related to the *forum internum* or the *forum externum* and thus, in other words, whether it was mere adherence in thought or a more concrete manifestation of such adherence through acts. The Court found the notion of "being close" too uncertain and preferred to focus on "belonging", which related only to the *forum externum*.

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108. *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to, or belonging to, a religious movement* [GC], request no. P16-2023-001, Belgian *Conseil d'État*, 14 December 2023. See also under Article 1 of Protocol No. 16 (Advisory Opinions) below.

109. *Ivanova v. Bulgaria*, no. 52435/99, § 79, 12 April 2007.

110. *Mockutė v. Lithuania*, no. 66490/09, § 119, 27 February 2018.

(ii) The Court declared, for the first time, that activities on the internet and on social media might in principle constitute a "manifestation" of a religion or a belief – in the form of "worship", "teaching" (encompassing the right to try to convince one's neighbour), "practice" and "observance" – and were thus protected by Article 9 of the Convention.

(iii) The Court recognised that the established fact that an individual belonged to a religious movement that, in view of its characteristics, was considered by the competent administrative authority to represent a threat, in the medium to long-term, to a democratic society and its values, might in principle justify a preventive measure against that person. However, it lay down a series of conditions that such a measure had to satisfy in order to be compatible with Article 9, namely:

(a) The measure had to have an accessible and foreseeable legal basis.

(b) The measure had to be adopted in the light of the conduct or acts of the individual concerned.

(c) The measure had to have been taken for the purpose of averting a real and serious risk for democratic society, and had to pursue one or more of the legitimate aims under Article 9 § 2 of the Convention. The assessment as to whether the risk was real and likely to materialise, and also as to its scale, was a matter for the competent national authorities. It had to be carried out in the light of the nature of the person's duties on the one hand, and of the substance of the beliefs or ideology in question, on the other, also having regard to the character of the person concerned and his or her background, actions, role and degree of adherence to the relevant religious movement. The Court explained that although the absence of any professional misconduct on the part of the individual, or of any criminal complaints recorded against him or her, or of any measures taken against the movement (dissolution or ban), should be taken into account, those factors would not necessarily be decisive.

(d) The measure had to be proportionate to the risk that it sought to avert and to the legitimate aim or aims that it pursued, which meant ensuring that the aim could not be attained by means of less intrusive or radical measures.

(e) It had to be possible for the measure to be referred to a judicial authority for a review that was independent, effective and surrounded by appropriate procedural safeguards, such as to ensure compliance with the requirements listed above.

(iv) The Court emphasised that, in any event, the authorities had to avoid any form of discrimination prohibited under Article 14 of the Convention in access to employment, particularly that based on religion, under the guise of protecting the values of a democratic society.

Freedom of expression (Article 10)

Freedom of expression

The judgment in *Halet v. Luxembourg*[111] concerned the protection of whistle-blowers.

A former employee (A.D.) of Pricewaterhouse-Coopers (PwC), a private company, disclosed several hundred confidential tax documents to the media. They were published by various media outlets to draw attention to highly advantageous tax agreements concluded between PwC (acting on behalf of multinational companies) and the Luxembourg tax authorities (the so-called "*Luxleaks*" affair). Following those revelations, the applicant, who was also a PwC employee, handed over to a journalist several tax returns of multinational companies, which were used in a television programme. The applicant was dismissed by PwC. He was also sentenced to a criminal fine of 1,000 euros, the whistle-blower defence having been refused to him even though he had been acquitted on that basis.

A Chamber of the Court found no violation of Article 10: the applicant's disclosure had been of insufficient public interest to counterbalance the harm caused to the company, and the sanction was a proportionate one. The Grand Chamber disagreed and found a breach of this provision.

The Grand Chamber judgment is noteworthy in that the Court confirmed and consolidated the principles concerning the protection of

111. *Halet v. Luxembourg* [GC], no. 21884/18, 14 February 2023.

whistle-blowers. In doing so, it refined and clarified the criteria identified in *Guja v. Moldova*[112], having regard to the current European and international context as well as to the specific features of the instant case (a breach of the statutory obligation to observe professional secrecy, as well as prior revelations by a third party concerning the same activities of the same employer).

(i) In view of the lack of an unequivocal legal definition at international and European level, the Court refrained from providing an abstract and general definition of the concept of "whistle-blower". However, it confirmed the three pertinent elements for the application of the relevant regime of protection: first, whether the employee or civil servant concerned was the only person, or part of a small category of persons, aware of what was happening at work (*Guja*, cited above, § 72, and *Heinisch v. Germany*[113]); secondly, the duty of loyalty, reserve and discretion inherent in a work-based relationship and, where appropriate, the obligation to comply with a statutory duty of secrecy; and, thirdly, the position of economic vulnerability *vis-à-vis* the person, public institution or enterprise on which they depended for employment and the risk of suffering retaliation from them. Relying on the Recommendation of the Committee of Ministers of the Council of Europe on the protection of whistleblowers, the Court clarified that it was the *de facto* working relationship of the whistle-blower, rather than his or her specific legal status, which was decisive. Finally, the assessment of whether a person was to be protected as a whistle-blower would follow the usual case-by-case approach taking account of the circumstances and specific context of each case.

(ii) Turning to the *Guja* criteria, the Court reconfirmed its approach of verifying compliance with each criterion taken separately, without establishing a hierarchy between them or an order of examination, and it also refined certain of these criteria as follows:

(a) *Channels used to make the disclosure* – While priority should be given to the internal hierarchical channel, certain circumstances might justify the direct use of "external reporting", such as the media. This was particularly the case where the internal disclosure channel was unreliable or ineffective; where the whistle-blower was likely to be exposed to retaliation; or where the relevant information pertained to the very essence of the activity of the employer concerned (particularly where the activity in issue was not in itself illegal, as had been the case with the present tax-optimisation practices).

Neither (b) *the authenticity of the disclosed information* nor (c) *the applicant's good faith* were in issue in the present case, and the Court confirmed the established case-law principles in those respects (for example, *Gawlik v. Liechtenstein*[114]).

(d) *Public interest in the disclosed information* – This concept was to be assessed in the light of both the content of the disclosed information and the principle of its disclosure. The assessment of the public interest in disclosure necessarily had to have regard to the interests that the duty of secrecy was intended to protect (especially where the disclosure also concerned third parties). Having regard to the range of information of public interest that could fall within the scope of whistle-blowing, the Court indicated that the weight of the public interest in the disclosed information would decrease depending on whether the information related to unlawful acts or practices; to reprehensible acts, practices or conduct; or to a matter that sparked a debate giving rise to controversy as to whether or not there was harm to the public interest. Information capable of being considered of public interest might also, in certain cases, concern the conduct of private parties, such as companies. The public interest also had to be assessed at the supranational (European or international) level or with regard to other States and their citizens. In sum, the assessment of that criterion had to take account of the circumstances of each case and the context in which it had occurred.

In the specific context of the instant case involving prior revelations, the Court clarified that the sole fact that a public debate had already been under way when the disclosure had taken place could not, of itself, rule out the possibility that the disclosed information might also have been of public interest: the purpose of whistle-blowing was not only to uncover and draw attention to information of public interest, but also to bring about change, which sometimes required that the alarm be raised several times on the same subject. By helping the general public to form an informed opinion on a subject of great complexity, the tax returns disclosed by the applicant had contributed to the transparency of the tax practices

112. *Guja v. Moldova* [GC], no. 14277/04, ECHR 2008.

113. *Heinisch v. Germany*, no. 28274/08, § 63, ECHR 2011 (extracts).

114. *Gawlik v. Liechtenstein*, no. 23922/19, 16 February 2021.

of multinational companies seeking to shift profits to low-tax countries, as well as the political choices made in Luxembourg in this regard. The disclosure had therefore been in the public interest, not only in Luxembourg, but also in Europe and in the other States whose tax revenues could be affected by the said practices. As to the weight of that public interest, the Court noted the important economic and social issues involved in view of the place now occupied by global multinational companies.

(e) *Detriment caused* – The Court fine-tuned the terms of the balancing exercise to be conducted, clarifying that, over and above the sole detriment to the employer, account should be taken of the detrimental effects taken as a whole, in so far as these could affect private interests (including those of third parties) and public ones (for example, the wider economic good or citizens' confidence in the fairness and justice of the fiscal policies of States). The domestic court having focused solely on the harm sustained by PwC, the Court therefore had regard also to the harm caused to the private interests of PwC's customers and to the public interests involved (for example, the public interest in preventing/punishing the theft of data and in preserving professional secrecy).

Having conducted the balancing exercise, the Court concluded that the public interest in the disclosure in issue outweighed all of the detrimental effects taking into account, in particular, the above findings as to the importance (at national and European level) of the public debate on the tax practices of multinational companies to which the information disclosed had made an essential contribution.

(f) *Severity of the sanction* – While the use of criminal proceedings had been found to be incompatible with the exercise of the whistle-blower's freedom of expression, the Court observed, however, that in many instances, depending on the content of the disclosure and the nature of the duty of confidentiality or secrecy breached by it, the conduct of the person concerned could legitimately amount to a criminal offence. Moreover, neither the letter of Article 10 nor the Court's case-law ruled out the possibility that one and the same act could give rise to a combination of sanctions or lead to multiple repercussions, whether professional, disciplinary, civil or criminal. In the present case, having regard to the nature of the penalties imposed and the seriousness of their cumulative effect and, in particular, the chilling effect, the Court considered that the applicant's criminal conviction had been disproportionate.

As a result of a global analysis of all the *Guja* criteria, the Court found that the interference with the applicant's right to freedom of expression, in particular his freedom to impart information, had not been "necessary in a democratic society" and was in breach of Article 10 of the Convention.

The judgment in *Macatė v. Lithuania*[115] concerned the question of whether restrictions on a children's book presenting same-sex relationships as essentially equivalent to different-sex ones pursued a legitimate aim.

The applicant is a children's author and is homosexual. She wrote a book of fairy tales aimed at nine to ten-year-old children, seeking to encourage tolerance and acceptance of various marginalised social groups. Some associations and members of the *Seimas* expressed concerns about two of the fairy tales, which depicted marriage between persons of the same sex. The distribution of the book was suspended for a year. When it resumed, the book was marked with a warning label stating that its contents could be harmful to children under the age of 14: this was done pursuant to an indication by a public authority that the fairy tales in question encouraged a different concept of marriage and of the creation of a family from the one enshrined in the Lithuanian Constitution and law (namely, a union only between a man and a woman). The authority relied on section 4(2)(16) of the Law on the protection of minors from the negative effects of public information ("the Minors Protection Act"). The applicant unsuccessfully brought civil proceedings against the publisher.

Before the Court, the applicant complained under Article 10 of the Convention. The Grand Chamber (on relinquishment) was unable to subscribe to the Government's argument that the aim of the measures taken against the applicant's book had been to protect children from sexually explicit content or content which "promoted" same-sex relationships as superior to different-sex ones by "insulting", "degrading" or "belittling" the latter (there was no support in the text of the book for such a conclusion). In the Grand Chamber's view, the impugned measures had actually sought to limit children's access to information presenting same-sex relationships as essentially equivalent to different-sex ones. However, such an aim could

115. *Macatė v. Lithuania* [GC], no. 61435/19, 23 January 2023.

not be accepted as legitimate under Article 10 § 2, which led the Court to find a violation of this provision.

The Grand Chamber judgment is noteworthy in that the Court assessed, for the first time, restrictions imposed specifically on children's literature (that is, literature aimed directly at, and written in a style and language easily accessible to, children) depicting same-sex relationships. The judgment is interesting in two respects: first, for the manner in which the Court determined the aim pursued by the impugned measures, and, secondly, for the assessment of the legitimacy of that aim.

(i) Having ruled out the aims relied on by the Government, the Court turned to the legislative history of section 4(2)(16) of the Minors Protection Act. Indeed, the explicit reference to homosexual or bisexual relations had been removed from the final text of this provision only to avoid international criticism. Moreover, every single instance in which that provision had been applied or relied upon concerned information about LGBTI-related issues. The Court therefore had no doubt that its intended aim was to restrict children's access to content which presented same-sex relationships as being essentially equivalent to different-sex relationships. Having regard to the relevant domestic court decisions, the Court concluded that the aim of the impugned measures against the applicant's book had been the same, namely, to bar children from such information.

(ii) As to whether the above-mentioned aim could be considered legitimate, the Court's analysis was based on the following factors.

In the first place, the Court assessed the issue from the standpoint of the best interests of children, seen in the light of their impressionable and easily influenced nature. In this regard, the Court relied upon its own findings (*Alekseyev v. Russia*[116], and *Bayev and Others v. Russia*[117]) and those of various international bodies (including the European Parliament, the Parliamentary Assembly of the Council of Europe, the Venice Commission and the European Commission against Racism and Intolerance). On the one hand, there was no scientific evidence that information about different sexual orientations, when presented in an objective and age-appropriate way, could cause any harm to children. On the other hand, the lack of such information and the continuing stigmatisation of LGBTI persons in society was harmful to children, especially those who identified as LGBTI or came from same-sex families. Furthermore, the laws of a significant number of Council of Europe member States either explicitly included teaching about same-sex relationships in the school curriculum or contained provisions on ensuring respect for diversity and for the prohibition of discrimination on grounds of sexual orientation in teaching. The Court also took note of the infringement proceedings brought by the European Commission against Hungary given its recent legislation explicitly restricting minors' access to information about homosexuality or same-sex relationships (such a law being exceptional among the Council of Europe member States).

Secondly, and prompted by the Government's argument as to the need to avoid promoting same-sex families, the Court had regard to the manner in which the information in issue had been presented. The Court emphasised that equal and mutual respect for persons of different sexual orientations was inherent in the whole fabric of the Convention. It followed that insulting, degrading or belittling persons on account of their sexual orientation, or promoting one type of family at the expense of another, was never acceptable under the Convention. However, such an aim or effect could not be discerned in the facts of the present case. On the contrary, to depict, as the applicant had done in her writings, committed relationships between persons of the same sex as being essentially equivalent to those between persons of a different sex rather advocated respect for and acceptance of all members of a given society in this fundamental aspect of their lives.

Thirdly, the Court outlined another key element for its assessment of the restrictions on children's access to information about same-sex relationships. In particular, the Court would scrutinise whether any such measures were based solely on considerations of sexual orientation, or whether there was some other basis to consider the information in issue to be inappropriate or harmful to children's growth and development.

The Court underlined that any such measures taken solely on the basis of sexual orientation had wider social implications. Such measures, whether they were directly enshrined in the law or adopted in case-by-case decisions, demonstrated

116. *Alekseyev v. Russia*, nos. 4916/07 and 2 others, 21 October 2010.

117. *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, 20 June 2017.

that the authorities had a preference for some types of relationships and families over others and that they saw different-sex relationships as more socially acceptable and valuable than same-sex relationships, thereby contributing to the continuing stigmatisation of the latter. Therefore, such restrictions, however limited in their scope and effects, were incompatible with the notions of equality, pluralism and tolerance inherent in a democratic society. The Court thereby fully endorsed, and drew upon, its previous conclusions in the case of *Bayev and Others* concerning the Russian legislative ban on the "promotion of homosexuality or non-traditional sexual relations" among minors: it had held, in particular, that by adopting such laws the authorities reinforced stigma and prejudice and encouraged homophobia.

In sum, where there was no other basis in any other respect to consider information about same-sex relationships to be inappropriate or harmful to children's growth and development, restrictions on access to such information did not pursue any aims that could be accepted as legitimate, for the purposes of Article 10 § 2, and were therefore incompatible with Article 10 of the Convention.

The judgment in *Sanchez v. France*[118] concerned the liability of politicians who use social networks for political and electoral purposes in instances where hate speech is posted by other users on such politicians' accounts.

The applicant, who at the time was a locally elected councillor and a candidate in the legislative elections, was found guilty of inciting hatred and violence against Muslims. He was sentenced to a fine for not having deleted from his Facebook "wall" – which was accessible to the public and used during the election campaign – Islamophobic comments, the authors of which were also convicted (as accomplices). The conviction was the ultimate result of a complaint filed by the partner of one of the applicant's political opponents. Feeling personally targeted, she confronted one of the authors, who deleted his message immediately and told the applicant, who subsequently posted on his Facebook "wall" a message asking Internet users to be careful with the content of their comments, but without moderating those already posted. In 2021 a Chamber of the Court found no violation of Article 10, considering that the conviction was based on relevant and sufficient reasons and was "necessary in a democratic society". On referral, the Grand Chamber reached the same conclusion.

This Grand Chamber judgment is noteworthy in that the Court examined for the first time the question of the liability of users of social networks or other types of non-commercial internet fora in relation to comments posted by third parties on such users' accounts. The Court thus consolidated and supplemented its *Delfi AS v. Estonia*[119] case-law, which concerned the liability on a similar basis of a large internet news portal. In view of the specific features of the present case, the Court approached the question from the angle of the "duties and responsibilities", within the meaning of Article 10 § 2, which must be assumed by politicians when they decide to use social networks for political purposes, in particular for an election campaign, by opening fora that are accessible to the public on the internet in order to receive their reactions and comments.

(i) In the Court's view, there was no difficulty in principle for the liability of a social network account holder to be engaged on account of third-party comments, provided safeguards existed in the attribution of such liability and that there was a shared liability between all actors involved. If appropriate, the level of liability and the manner of its attribution could be graduated according to the objective situation of each actor, whether it was a host (a professional creating a social network and making it available to users) or an account holder who used the platform to publish his or her own content while allowing other users to post comments. The Court emphasised the fact that an account holder could not claim any right to impunity in his or her use of the digital tools made available on the internet. If the account holder were to be released from liability, that might facilitate or encourage abuse and misuse, not only hate speech and calls to violence, but also manipulations, lies or disinformation. For the Court there was no doubt that a minimum degree of moderation or prior filtering to identify any clearly unlawful posts as soon as possible and to ensure they were deleted within a reasonable time – even where no notice was given by an injured party – was desirable, whether by the host (in this case Facebook), or the account holder. The latter had to act within the limits that could be expected of him or her.

118. *Sanchez v. France* [GC], no. 45581/15, 15 May 2023.

119. *Delfi AS v. Estonia* [GC], no. 64569/09, ECHR 2015.

(ii) In order to determine which steps an account holder was required to take, or could reasonably be expected to take, in relation to unlawful comments by third parties, the Court set out the factors that were relevant to its analysis:

(a) the nature and context of the impugned comments (in the present case they amounted to hate speech, the impact of which became greater and more harmful in the run-up to an election);

(b) the introduction of automatic filtering of comments and the practical possibility of prior moderation (in the present case, those means were not available on Facebook);

(c) the traffic on an account: when this was excessive the resources or availability required to ensure effective monitoring would be significant, if not considerable (this issue did not arise in the present case because only about fifteen comments had been posted in response to the applicant's initial and lawful content);

(d) the deliberate choice to make access to the account forum (Facebook "wall") totally public: such a decision could not be criticised in the present case and any individual so choosing – and thus especially a politician experienced in public communication – had to be aware of the greater risk of excessive and immoderate remarks that might appear and necessarily become visible to a wider audience;

(e) knowledge of the unlawful comments of third parties (in the present case, in spite of being rapidly alerted by the authors, the applicant had not moderated the comments in question);

(f) the promptness of the reaction (in the present case, having noted that one of the authors had deleted his comment less than twenty-four hours after posting it, the Court found that to require an account holder to have acted even more promptly would be excessive and impracticable; however, the applicant had left all the other comments visible more than a month after they had been posted);

(g) the status of the account holder (in the present case not only did it concern a politician in an election campaign, but also a professional in the field of online communication strategy with some digital expertise), and in particular the person's notoriety and representativeness on which depended the level of responsibility. The Court found it relevant to apply a proportionality assessment based on that level:

> "... a private individual of limited notoriety and representativeness will have fewer duties than a local politician and a candidate standing for election to local office, who in turn will have a lesser burden than a national figure for whom the requirements will necessarily be even heavier, on account of the weight and scope accorded to his or her words and the resources to which he or she will enjoy greater access in order to intervene efficiently on social media platforms.

The Court emphasised, however, that while specific duties might be required of a politician, such requirement was indissociable from the principles relating to the rights which came with such status, and the domestic courts could usefully have referred to those principles in line with established case-law.

(iii) While the question of online anonymity was not in issue in this case (unlike in *Delfi AS*, cited above), the fact that the authors of the unlawful comments had been convicted did not rule out the possibility of separately establishing the liability of the account holder on other charges and under a different regime. In addition, in spite of the chilling effects for users of social networks or online fora, the Court confirmed that criminal-law measures were not to be ruled out in cases of hate speech or calls to violence. Moreover, the fine of EUR 3,000 had had no negative consequences for the applicant's political career or any chilling effect on the exercise of his freedom of expression.

The judgment in *Hurbain v. Belgium*[120] concerned measures taken with regard to lawful content in online press archives, on the grounds of the "right to be forgotten", and the criteria and principles for weighing up the rights at stake.

The applicant, the publisher of a daily newspaper, was ordered in a civil judgment to anonymise, on the grounds of the "right to be forgotten", the electronic archived version of an article originally published in 1994 in the newspaper's print edition and published online in 2008. The article mentioned the full name of G., a driver responsible for a fatal road-traffic accident.

In 2021 a Chamber of the Court held that there had been no violation of Article 10. The Grand Chamber agreed with that conclusion.

120. *Hurbain v. Belgium* [GC], no. 57292/16, 4 July 2023.

The Grand Chamber judgment is noteworthy in that the Court circumscribed the scope of claims arising out of the "right to be forgotten" and established the principles and criteria to be applied in order to resolve a conflict between rights under Articles 8 and 10 of the Convention, specifically in cases where the measures requested related to information that had been published in a lawful and non-defamatory manner and where the request did not concern the initial publication of the information but rather its continued dissemination online, in the press archives and for journalistic purposes.

(i) The Court acknowledged the adverse effects of the continued availability of certain information on the internet, and in particular the considerable impact on the way in which the person concerned was perceived by public opinion, as well as the risks linked to the creation of a profile of the person concerned and to a fragmented and distorted presentation of the reality. Nevertheless, the Court clarified that a claim of entitlement to be forgotten did not amount to a self-standing right protected by the Convention. In previous cases (*Węgrzynowski and Smolczewski v. Poland*[121], *Fuchsmann v. Germany*[122], *M.L. and W.W. v. Germany*[123], *Biancardi v. Italy*[124]), the "right to be forgotten online" had been linked to the right to respect for reputation, irrespective of what measures had been deployed to give effect to that right. To the extent that it was covered by Article 8, the right in question could concern only certain situations and items of information. Prior to this judgment, the Court had not upheld any measure removing or altering information that had been published lawfully for journalistic purposes and archived on the website of a news outlet.

(ii) The Court emphasised that in examining any interference with freedom of expression based on a claim of entitlement to be forgotten, it attached importance to the distinction between the activities and obligations of search engine operators and those of news publishers (*M.L. and W.W v. Germany*, cited above, § 97). Furthermore, the examination of an action against the publisher could not be made contingent on submission of a prior request for delisting to the search engine operators, and *vice versa*.

(iii) The Court noted the emergence of a consensus within Europe regarding the importance of archives, which should, as a general rule, remain authentic, reliable and complete so that the press could carry out its mission. Accordingly, the integrity of press archives should be the guiding principle in examining any request for the removal or alteration of all or part of an archived article, especially if its lawfulness had never been called into question. Such requests called for particular vigilance and thorough examination by the national authorities.

(iv) In the light of the specific context of the case (online press archives), the Court further developed and clarified the criteria for balancing the various rights at stake, drawing on the general principles and in particular the need to preserve the integrity of those archives, and also, to some extent, on the practice of the courts in the Council of Europe member States.

(a) The nature of the archived information – It had to be ascertained whether the information related to the private, professional or public life of the person concerned and whether it had a social impact, or whether, on the contrary, it fell within the intimate sphere of private life. With regard to data concerning criminal proceedings – characterised as sensitive data – the nature and seriousness of the offence were relevant. The inclusion of individualised information (full name) was an important aspect with regard to press reports and did not in itself raise an issue under the Convention, either at the time of the initial publication of reports on criminal proceedings or at the time of the entry in the online archives.

(b) The time elapsing since the events and since initial and online publication.

(c) The contemporary interest of the information – It was necessary to examine, from the perspective of the time when the request concerning the "right to be forgotten" had been made, whether the article continued to contribute to a debate of public interest (for instance, owing to the emergence of new information). In the absence of a contribution to such a debate, it had to be ascertained whether the information was of interest for any other purpose (historical, scientific or statistical) or for placing recent events in context.

(d) Whether the person claiming entitlement to be forgotten was well known, and his or her

121. *Węgrzynowski and Smolczewski v. Poland*, no. 33846/07, 16 July 2013.
122. *Fuchsmann v. Germany*, no. 71233/13, 19 October 2017.
123. *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, 28 June 2018.
124. *Biancardi v. Italy,* no. 77419/16, 25 November 2021.

conduct since the events – This criterion was to be examined from the perspective of the time when the request concerning the "right to be forgotten" was made. The fact of staying out of the media spotlight could weigh in favour of protecting a person's reputation.

(e) The negative repercussions of the continued availability of the information online – The person concerned had to be able to make a duly substantiated claim of serious harm to his or her private life. With regard to judicial information, the fact that the person's conviction had been removed from the criminal records and he or she had been rehabilitated were factors to be taken into consideration, although rehabilitation could not by itself justify recognising a "right to be forgotten".

(f) The degree of accessibility of the information in the digital archives – It was important to establish whether the information was available without restrictions and free of charge, or whether access was confined to subscribers or otherwise restricted.

(g) The impact of the measure on freedom of expression and more specifically on freedom of the press – When it came to deciding which of the different measures sought by the person making the request to apply, preference should be given to the measure that was both best suited to the aim pursued – assuming it to be justified – and least restrictive of the press freedom which could be relied on by the publisher concerned. Only measures which met this twofold objective could be ordered, even if that might involve dismissing the action invoking the "right to be forgotten". In the Court's view, the obligation to anonymise a lawful article might in principle fall within the "duties and responsibilities" of the press and the limits which might be imposed on it.

In the context of a balancing exercise between the various rights at stake, the criteria to be applied did not all carry the same weight. Particular attention was to be paid to properly balancing, on the one hand, the interests of the individuals requesting the measures and, on the other hand, the impact of such requests on the publishers. The principle of preservation of the integrity of press archives required the alteration and, *a fortiori*, the removal of content to be limited to what was strictly necessary, so as to prevent any chilling effect on the performance by the press of its task of imparting information and maintaining archives.

(v) In the present case the national courts had taken into account the fact that the article, which concerned a short news item, had no topical, historical or scientific interest, and the fact that G. was not well known and had suffered serious harm as a result of the continued online availability of the article with unrestricted access, which had been apt to create a "virtual criminal record" in view of the length of time that had elapsed since the original publication. After reviewing the measures that might be considered, the courts had held that anonymisation did not impose an excessive and impracticable burden on the applicant, while constituting the most effective means of protecting G.'s privacy. In the Court's view, that balancing exercise between the rights at stake had satisfied the requirements of the Convention.

Freedom of assembly and association (Article 11)

Freedom of association

The judgment in *Humpert and Others v. Germany*[125] concerned a complete prohibition on strikes by civil servants.

The applicants were State school teachers (with civil servant status, employed by different German *Länder*) and members of a trade union. They were reprimanded or fined in disciplinary proceedings for having breached their duties by participating in strikes organised by that union during their working hours. The Federal Constitutional Court dismissed their constitutional complaints, holding that the prohibition on strikes by all civil servants was a well-established traditional principle of career civil service within the German constitutional order, systemically connected with, and indissociable from, the civil servants' duty of loyalty and the "principle of alimentation", namely, their individual right to claim appropriate remuneration from the State. The Constitutional Court noted that the prohibition in question did not render the civil

125. *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, 14 December 2023.

servants' freedom of association entirely ineffective as the legislature had taken sufficient compensating measures, such as the participation of umbrella organisations of civil servants' trade unions in the drafting of respective statutory provisions, which enabled trade unions to make their voices heard, as well as the possibility for civil servants to have the constitutionality of their level of remuneration reviewed by the courts. The Grand Chamber (on relinquishment) found no violation of Article 11, considering that, in the specific circumstances of the case, the measure at issue did not render trade-union freedom of civil servants devoid of substance, and reflected a proper balancing and weighing-up of different, potentially competing, constitutional interests: the margin of appreciation afforded to the respondent State had therefore not been exceeded.

The Grand Chamber judgment is noteworthy because the Court adopted a more nuanced approach than in *Enerji Yapı-Yol Sen v. Turkey*[126], in which it had stated that a prohibition on strikes could not extend to civil servants in general but only to some clearly and narrowly defined categories of persons. The Court introduced a case-by-case approach, declaring that the question whether such a measure affected an essential element of trade-union freedom by rendering it devoid of substance was context-specific and could not be answered in the abstract. An assessment of all the circumstances of the case was required, considering, *inter alia*, the totality of the measures taken by the respondent State to secure trade-union freedom, to make their voice heard and to protect their members' occupational interests. The Court distinguished the present case from *Enerji Yapı-Yol Sen*, where no proper balancing exercise had been carried out at the domestic level.

(a) The Court reiterated that, while strike action was an important part of trade-union activity, it was not the only means for trade unions and their members to protect the relevant occupational interests. In principle, Contracting States remained free to decide what measures they wished to take to safeguard trade union freedom guaranteed by Article 11, so long as that freedom did not become devoid of substance. In the case of a general ban, as in the instant case, the Court needed to examine, taking into account all the relevant circumstances, whether other guarantees sufficiently compensated for that restriction, enabling the persons concerned to protect their occupational interests effectively. The Court specified that the structure of labour relations in the system concerned, such as whether the working conditions in that system were determined through collective bargaining (the latter being closely linked to the right to strike) and non-union-related representation, as well as the nature of the functions performed by the workers, were among other aspects to be taken into account in this assessment. In the present case, the Court had regard to the following aspects of the case: (i) the nature and extent of the restriction on the right to strike; (ii) the measures taken to enable civil servants' trade unions and civil servants themselves to protect occupational interests; (iii) the objectives pursued by the prohibition in question; (iv) further rights encompassed by civil servant status; (v) the possibility of working as a State school teacher as a contractual State employee with a right to strike; and (vi) the severity of the disciplinary measures applied to the applicants.

(b) The Court accepted the respondent Government's argument, based on a conclusion of the Federal Constitutional Court, that the prohibition generally pursued the overall aim of providing good administration and guaranteed the effective performance of functions delegated to the civil service, thereby ensuring the protection of the population, the provision of services of general interest and the protection of the rights enshrined in the Convention – in this case, the right of others to education protected both by the German Basic Law and by Article 2 of Protocol No. 1 to the Convention – through effective public administration in multiple situations.

(c) The Court restated and clarified the breadth of the margin of appreciation afforded to the State, specifying that it would be reduced if the restriction in question struck at the core of trade-union activity and if it affected an essential element of trade-union freedom. Thus, for example, in cases of severe restrictions on "primary" or direct industrial action by public-sector employees who were neither exercising public authority in the name of the State nor providing essential services to the population, the margin of appreciation would be narrow, and the assessment of the proportionality of the restriction should take into account all the circumstances of the case. Conversely, the margin of appreciation would be wide if a substantial restriction on the right to strike concerned civil servants exercising public authority in the name of the State or secondary action, as in that latter

126. *Enerji Yapı-Yol Sen v. Turkey,* no. 68959/01, § 32, 21 April 2009.

scenario it was not the core but a secondary or accessory aspect of trade-union activity which was affected (*National Union of Rail, Maritime and Transport Workers v. the United Kingdom*[127], and *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain*[128]).

(d) The Court further clarified the extent of the importance of external sources (such as, in this case, international labour law and the practice of the competent monitoring bodies set up under specialised international instruments), as well as of the consensus or the prevailing trends among the Contracting States, as auxiliary sources of law helping to determine the proportionality of the interference in issue. The Court noted that the approach taken by the respondent State, namely, to prohibit strikes by all civil servants, was clearly not in line with the trend emerging from specialised international instruments, as interpreted by the competent monitoring bodies, or from the practice of Contracting States. Moreover, those monitoring bodies had repeatedly criticised the status-based prohibition of strikes by civil servants in Germany, in particular with respect to teachers. The Court emphasised that its assessment had to be limited to compliance with the Convention and based on the specific facts of the case. Therefore, while all these elements were undoubtedly relevant, they were not in and of themselves decisive for the Court's conclusion as to whether the impugned prohibition on strikes, and the disciplinary measures imposed on the applicants, remained within the margin of appreciation afforded to the respondent State under the Convention.

Just satisfaction (Article 41)

Non-pecuniary damage

The judgment in *Georgia v. Russia (II)*[129] concerned just satisfaction in an inter-State case where the respondent State had ceased to be a member of the Council of Europe.

In its principal judgment[130] of 21 January 2021, the Court found that there had been a series of administrative practices on the part of the Russian Federation, in the context of the armed conflict between Georgia and Russia in August 2008, in violation of Articles 2, 3, 5 and 8 of the Convention, of Article 1 of Protocol No. 1 and of Article 2 of Protocol No. 4. The Court also held that Russia had failed to comply with its obligations under Article 38 of the Convention. The examination of Article 41 was reserved. The applicant Government then submitted their claims for just satisfaction, and the respondent Government did not react to the Court's invitation to submit their comments in reply. In the meantime, on 16 March 2022 the Russian Federation ceased to be a member of the Council of Europe and on 22 March 2022 the plenary Court adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights", stating that the Russian Federation would cease to be a Party to the Convention on 16 September 2022.

127. *National Union of Rail, Maritime and Transport Workers v. the United Kingdom*, no. 31045/10, §§ 87-88, ECHR 2014.

128. *Junta Rectora Del Ertzainen Nazional Elkartasuna (ER.N.E.) v. Spain*, no. 45892/09, §§ 37-41, 21 April 2015.

129. *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, 28 April 2023. See also under Article 46 (Binding force and execution of judgments – Execution of judgments) and Article 38 (Obligation to furnish all necessary facilities) below.

130. *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021.

The Court held that it had jurisdiction to deal with the applicant Government's just satisfaction claims notwithstanding the above-mentioned cessation of the Russian Federation's membership of the Council of Europe and that the respondent Government's failure to cooperate did not present an obstacle to its examination. It awarded the applicant Government lump sums in respect of non-pecuniary damage for every violation found in the principal judgment, except with respect to the 1,408 alleged victims of the administrative practice of torching and looting of houses in the "buffer zone".

The Grand Chamber judgment is noteworthy in that the Court, first, affirmed its jurisdiction to deal with non-substantive issues (such as just satisfaction, the binding force of a judgment and the Government's duty to cooperate) after the relevant State was no longer a High Contracting Party to the Convention and, secondly, it further clarified the application of Article 41 in inter-State cases (following *Cyprus v. Turkey*[131], and *Georgia v. Russia (I)*[132]).

(i) The Court made it clear that the cessation of a Contracting Party's membership of the Council of Europe did not release it from its duty to cooperate with the Convention bodies, and that this duty continued for as long as the Court remained competent to deal with applications against that State. Since the facts giving rise to the present inter-State application had occurred prior to 16 September 2022, the Court confirmed that it had jurisdiction to examine the just satisfaction claims in this case. It clarified that Article 38 (the respondent Government's duty to cooperate), Article 41 (just satisfaction) and Article 46 (binding force and execution of judgments) of the Convention, as well as the corresponding provisions of the Rules of Court, continued to be applicable after the respondent State had ceased to be a High Contracting Party to the Convention.

(ii) Likewise, the Russian Federation was required by Article 46 § 1 of the Convention to implement the Court's judgments despite the cessation of its membership of the Council of Europe. Article 46 § 2, requiring that the Committee of Ministers set forth an effective mechanism for the implementation of the Court's judgments, was also applicable in cases against a State which had ceased to be a High Contracting Party.

(iii) The Court restated the principles and methodology of counting and identifying alleged individual victims of a violation for the purposes of the application of Article 41 in an inter-State case, as defined in *Georgia v. Russia (I)* (just satisfaction) (§§ 68-71, cited above). In this connection, it specified that the duty of the High Contracting Parties to cooperate (Article 38 of the Convention and Rule 44A of the Rules of Court) applied to both parties to the proceedings: not only to the respondent Government, in respect of whom the existence of an administrative practice in breach of the Convention had been found in the principal judgment, but also to the applicant Government, who, in accordance with Rule 60 of the Rules of Court, had to substantiate their claims.

In particular, regarding just satisfaction for the administrative practice of plundering or destroying private property, the Court imposed on the applicant Government a strict requirement to produce additional evidence of the alleged direct victims' title to property or of residence. The applicant Government had submitted a list of 1,408 alleged victims of the administrative practice of torching and looting of houses in the "buffer zone". Referring to its case-law in individual applications, the Court pointed out that it had developed a flexible approach regarding the evidence to be provided by applicants who claimed to have lost their property and home in situations of international or internal armed conflict. However, if an applicant did not produce any evidence of title to property or of residence, his or her complaints were bound to fail. Likewise, in the present inter-State case, the evidence submitted by the applicant Government did not allow the Court to establish that the houses, allegedly torched or looted, had indeed belonged to the persons on the list or had constituted their home or dwelling within the meaning of Article 8. Accordingly, the Court held that it was not in a position to make an award under Article 41 in that respect.

131. *Cyprus v. Turkey* (just satisfaction) [GC], no. 25781/94, ECHR 2014.

132. *Georgia v. Russia (I)* (just satisfaction) [GC], no. 13255/07, 31 January 2019.

Pecuniary damage

The judgment in the case of *G.I.E.M. S.r.l. and Others v. Italy*[133] concerned the elements to be taken into account when assessing the extent of pecuniary damage caused by confiscation of property in violation of Article 1 of Protocol No. 1.

The applicants – four companies and one individual – had complained about the automatic and complete confiscation of unlawfully developed land. In 2018 the Grand Chamber found that the measure had breached Article 1 of Protocol No. 1 in respect of all the applicants; it also found a violation of Article 7 of the Convention in respect of the companies, but not the individual; and lastly a violation of Article 6 § 2 in respect of the individual. The property has been returned to all the applicants. In the present judgment, taking the violation of Article 1 of Protocol No. 1 as the sole basis for compensation, the Grand Chamber made awards in respect of pecuniary damage particularly on account of the applicants' inability to use their land. However, it refused compensation for the deterioration of the buildings, given that they had been erected in breach of administrative permits. It also refused to take account of the loss of value of the land resulting from circumstances which had no causal link with the confiscation, or the violations found. Lastly, the Grand Chamber awarded sums to the applicants for non-pecuniary damage and for costs and expenses.

This Grand Chamber judgment is noteworthy as the Court explained the relevant factors to be taken into consideration when establishing the extent of pecuniary damage resulting from the confiscation of property in violation of Article 1 of Protocol No. 1.

The Court began by confirming its well-established approach, whereby it was in principle for the applicant to adduce evidence of the existence and quantum of any pecuniary damage and to prove that there was a causal link between the claim being made and the violation(s) found.

As to the elements to be taken into account in order to assess pecuniary damage in that context, they included the value of the land and/or constructions prior to the confiscation, whether or not the land could be built upon at that time, the designated use of the property under the relevant legislation and land-use plans, the duration of the inability to use the land and the loss of value caused by the confiscation, while if necessary deducting the cost of demolishing illegal constructions.

The Court relied on its judgment in *Sud Fondi S.r.l. and Others v. Italy* (just satisfaction)[134], while emphasising that the present case had to be distinguished from it in a number of respects. In particular, the nature of the violations in question differed significantly: whereas in *Sud Fondi S.r.l. and Others v. Italy*[135], the violations of Article 7 of the Convention and Article 1 of Protocol No.1 had been found on account of the lack of legal basis of the confiscations in question, thus rendering them arbitrary, in the present case the violations had been mainly procedural, being caused solely by the fact that the applicant companies had not been parties to the proceedings in question.

In the case of *Sud Fondi S.r.l. and Others* (just satisfaction), cited above, the Court had decided that the compensation due for the inability to use the land should be based on the probable value of the land at the beginning of the situation complained of. The damage caused by that inability for the period in question could be compensated for by a sum corresponding to the statutory interest accruing throughout that period, as applied to the value of the land. The Court applied that approach in the present case.

In assessing the duration for which the property, since returned, had been unusable, the Court took as the starting point the actual confiscations and not any previous measures of seizure, given that only the confiscations had been found to constitute the violations in the judgment on the merits.

The Court thus ascertained, in each case, whether the land could be built on, noting that that status had a significant impact on the value of land. Where it was possible to build on the land to a very limited extent, it was necessary for the Court to consider, whether it could have been sold in spite of any construction thereon which did not comply with the specifications stipulated in the planning permission.

133. *G.I.E.M. S.r.l. and Others v. Italy* (just satisfaction) [GC], nos. 1828/06 and 2 others, 12 July 2023.
134. *Sud Fondi S.r.l. and Others v. Italy* (just satisfaction), no. 75909/01, 10 May 2012.
135. Sud Fondi S.r.l. and Others v. Italy, no. 75909/01, 20 January 2009.

Binding force and execution of judgments (Article 46)

Execution of judgments

The judgment in *Georgia v. Russia (II)*[136] concerned just satisfaction in an inter-State case where the respondent State had ceased to be a member of the Council of Europe.

In its principal judgment[137] of 21 January 2021, the Court found that there had been a series of administrative practices on the part of Russia, in the context of the armed conflict between Georgia and Russia in August 2008, in violation of Articles 2, 3, 5 and 8 of the Convention, of Article 1 of Protocol No. 1 and of Article 2 of Protocol No. 4. The Court also held that Russia had failed to comply with its obligations under Article 38 of the Convention. The examination of Article 41 was reserved. The applicant Government then submitted their claims for just satisfaction, and the respondent Government did not react to the Court's invitation to submit their comments in reply. In the meantime, on 16 March 2022 the Russian Federati ceased to be a member of the Council of Europe and on 22 March 2022 the plenary Court adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights", stating that the Russian Federation would cease to be a Party to the Convention on 16 September 2022.

The Court held that it had jurisdiction to deal with the applicant Government's just satisfaction claims notwithstanding the above-mentioned cessation of the Russian Federation's membership of the Council of Europe and that the respondent Government's failure to cooperate did not present an obstacle to its examination. It awarded the applicant Government lump sums in respect of non-pecuniary damage for every violation found in the principal judgment, except with respect to the 1,408 alleged victims of the administrative practice of torching and looting of houses in the "buffer zone".

The Grand Chamber judgment is noteworthy in that the Court affirmed its jurisdiction to deal with non-substantive issues (such as just satisfaction, the binding force of a judgment and the Government's duty to cooperate) after the relevant State was no longer a High Contracting Party to the Convention.

(i) The Court made it clear that the cessation of a Contracting Party's membership of the Council of Europe did not release it from its duty to cooperate with the Convention bodies, and that this duty continued for as long as the Court remained competent to deal with applications against that State. Since the facts giving rise to the present inter-State application had occurred prior to 16 September 2022, the Court confirmed that it had jurisdiction to examine the just satisfaction claims in this case. It clarified that Article 38 (the respondent Government's duty to cooperate), Article 41 (just satisfaction) and Article 46 (binding force and execution of judgments) of the Convention, as well as the corresponding provisions of the Rules of Court, continued to be applicable after the respondent State had ceased to be a High Contracting Party to the Convention.

(ii) Likewise, the Russian Federation was required by Article 46 § 1 of the Convention, to implement the Court's judgments despite the cessation of its membership of the Council of Europe. Article 46 § 2, which requires that the Committee of Ministers set forth an effective mechanism for the implementation of the Court's judgments, was also applicable in cases against a State which had ceased to be a High Contracting Party.

136. *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, 28 April 2023. See also under Article 41 (Just satisfaction – Non-pecuniary damage) above, and Article 38 (Obligation to furnish all necessary facilities) below.

137. *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021.

Other Convention provisions

Derogation in time of emergency (Article 15)

The judgment in *Yüksel Yalçınkaya v. Türkiye*[138] concerned a conviction for membership of a terrorist organisation based on the use of an encrypted messaging application.

The applicant was convicted of membership of an armed terrorist organisation ("FETÖ/PDY")[139], considered by the domestic authorities to have been behind the attempted coup of 2016. The conviction was based decisively on his use of an encrypted messaging application, ByLock, which the domestic courts had found to have been designed for the exclusive use of the members of FETÖ/PDY.

Before the Court, the applicant complained mainly under Articles 6, 7 and 11. The Grand Chamber (relinquishment) found a violation of Article 7 on account of the domestic courts' unforeseeable interpretation of domestic law, which attached objective liability to the mere use of ByLock. It also found a breach of Article 6 § 1 on account of the domestic courts' failure to put in place appropriate safeguards to enable the applicant to challenge effectively the key evidence (electronic data), to address the salient issues lying at the core of the case and to provide sufficient reasons. In the Grand Chamber's view, there had also been a breach of Article 11, as the domestic courts had deprived the applicant of the minimum protection against arbitrariness and had extended the scope of the relevant offence when relying, to corroborate his conviction, on his membership of a trade union and an association (purportedly affiliated with the FETÖ/PDY) that had both been operating lawfully at the material time.

The Grand Chamber judgment is noteworthy in that the Court confirmed and clarified the application of the safeguards enshrined in Article 7 and Article 6 § 1 with regard to two specific features of the instant case: in the first place, the unique challenges faced by the domestic authorities in their fight against terrorism in its covert, atypical forms and in the aftermath of the attempted military coup; and, secondly, the use of a high volume of encrypted electronic data stored on the server of an internet-based communication application.

The Court examined the question whether the impugned failure to observe the requirements of a fair trial could be justified by the Turkish derogation under Article 15 (in connection with the attempted coup). In this respect, the Court emphasised that such a derogation, even if justified, neither had the effect of dispensing the States from the obligation to respect the rule of law (*Pişkin v. Turkey*[140]), nor did it give them carte blanche to engage in conduct that could lead to arbitrary consequences for individuals. Accordingly, when determining whether a derogating measure was strictly required by the exigencies of the situation, the Court would also examine whether adequate safeguards had been provided against abuse and whether the measure undermined the rule of law. In the present case, no sufficient connection had been established between the above fair trial issues and the special measures taken during the state of emergency. The Court therefore found a breach of Article 6 § 1 of the Convention.

138. *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, 26 September 2023. See also under Article 7 (No punishment without law) and Article 6 § 1 (Fairness of the Proceedings) above.

139. "Fetullahist Terror Organisation/Parallel State Structure".

140. *Pişkin v. Turkey*, no. 33399/18, § 153, 15 December 2020.

Obligation to furnish all necessary facilities (Article 38)

The judgment in *Georgia v. Russia (II)*[141] concerned just satisfaction in an inter-State case where the respondent State had ceased to be a member of the Council of Europe.

In its principal judgment[142] of 21 January 2021, the Court found that there had been a series of administrative practices on the part of the Russian Federation, in the context of the armed conflict between Georgia and Russia in August 2008, in violation of Articles 2, 3, 5 and 8 of the Convention, of Article 1 of Protocol No. 1 and of Article 2 of Protocol No. 4. The Court also held that Russia had failed to comply with its obligations under Article 38 of the Convention. The examination of Article 41 was reserved. The applicant Government then submitted their claims for just satisfaction, and the respondent Government did not react to the Court's invitation to submit their comments in reply. In the meantime, on 16 March 2022 the Russian Federation had ceased to be a member of the Council of Europe and on 22 March 2022 the plenary Court adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights", stating that the Russian Federation would cease to be a Party to the Convention on 16 September 2022.

The Court held that it had jurisdiction to deal with the applicant Government's just satisfaction claims notwithstanding the above-mentioned cessation of the Russian Federation's membership of the Council of Europe and that the respondent Government's failure to cooperate did not present an obstacle to its examination. It awarded the applicant Government lump sums in respect of non-pecuniary damage for every violation found in the principal judgment, except with respect to the 1,408 alleged victims of the administrative practice of torching and looting of houses in the "buffer zone".

The Grand Chamber judgment is noteworthy in that the Court affirmed its jurisdiction to deal with non-substantive issues (such as just satisfaction, the binding force of a judgment and the Government's duty to cooperate) after the relevant State was no longer a High Contracting Party to the Convention.

The Court made it clear that the cessation of a Contracting Party's membership of the Council of Europe did not release it from its duty to cooperate with the Convention bodies, and that this duty continued for as long as the Court remained competent to deal with applications against that State. Since the facts giving rise to the present inter-State application had occurred prior to 16 September 2022, the Court confirmed that it had jurisdiction to examine the just satisfaction claims in this case. It clarified that Article 38 (the respondent Government's duty to cooperate), Article 41 (just satisfaction) and Article 46 (binding force and execution of judgments) of the Convention, as well as the corresponding provisions of the Rules of Court, continued to be applicable after the respondent State had ceased to be a High Contracting Party to the Convention.

Jurisdiction of the Court (Article 32)

The judgment in *Grosam v. the Czech Republic*[143] concerned the distinction between complaints and secondary arguments and the consequent delimiting of the Court's ability to recharacterise a complaint.

The disciplinary chamber of the Supreme Administrative Court had found the applicant guilty of misconduct and fined him.

In his application to the Court, he complained under Article 6 § 1 of the lack of fairness of the disciplinary proceedings. He also complained, under Article 2 of Protocol No. 7, that domestic law excluded appeals against the disciplinary chamber of the Supreme Administrative Court. After notice of the case had been given to the respondent Government, a Chamber of the Court, of its own motion, invited the parties to submit further observations under Article 6 § 1 on whether, given its composition, the disciplinary chamber met the requirements of a "tribunal established

141. *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, 28 April 2023. See also under Article 41 (Just satisfaction – Non-pecuniary damage) and Article 46 (Binding force and execution of judgments) above.

142. *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021.

143. *Grosam v. the Czech Republic* [GC], no. 19750/13, 1 June 2023. See also under Article 34 (Petition) above.

by law" within the meaning of that provision. In his observations of 5 November 2015, the applicant contended that it did not. In its judgment, the Chamber of the Court recharacterised the complaint under Article 2 of Protocol No. 7 as one to be examined under Article 6 § 1 and found a violation of that provision: the disciplinary chamber did not meet the requirements of an independent and impartial tribunal and, furthermore, there was no need to examine the admissibility/merits of the remaining complaints under Article 6 § 1 (fairness of the disciplinary proceedings).

The Grand Chamber disagreed, finding that the applicant's arguments under Article 2 of Protocol No. 7 could not be interpreted as raising a complaint that the disciplinary chamber had not been an independent and impartial tribunal within the meaning of Article 6 § 1. The applicant had not raised such a complaint in his application form but only subsequently in his observations to the Chamber, after it had given notice of the application to the respondent Government. The Grand Chamber therefore found this new complaint to be inadmissible, given that it had been submitted more than six months after the disciplinary proceedings against the applicant had ended (in 2012). Going on to examine the remaining complaints within the scope of the referred case, the Grand Chamber dismissed the complaints under Article 6 § 1 (fairness of the disciplinary proceedings) as manifestly ill-founded and, having agreed with the Chamber that Article 6 § 1 was applicable under its civil but not its criminal head, the Grand Chamber rejected as incompatible *ratione materiae* with the provisions of the Convention the complaint under Article 2 of Protocol No. 7 (the concept of "criminal offence" used in that provision corresponding to that of "criminal charge" in Article 6 § 1).

The Grand Chamber judgment is noteworthy because the Court, being master of the characterisation to be given in law to the facts of a case, confirmed and clarified the limits of its power to recharacterise an applicant's complaints and, in so doing, it ensured that the scope of the case did not extend beyond the complaints contained in the application.

The Court reiterated that it could base its decision only on the facts "complained of", which ought to be seen in the light of the legal arguments underpinning them and vice versa, these two elements of a complaint being intertwined (*Radomilja and Others v. Croatia*[144]). Drawing upon its approach in the context of exhaustion of domestic remedies, the Court emphasised that it was not sufficient that a violation of the Convention was "evident" from the facts of the case or the applicant's submissions. Instead, the applicants had to complain that a certain act or omission had entailed a violation of the rights set forth in the Convention or the Protocols thereto, in a manner which should not leave the Court to second-guess whether a certain complaint had been raised or not (*Farzaliyev v. Azerbaijan*[145]). Referring to a similar position of the International Court of Justice (ICJ – compare the judgments in the cases of *Nuclear Tests (Australia v. France)*[146] and *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*[147]), the Court emphasised that it had no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced. Drawing inspiration again from the *Nuclear Tests* judgment of the ICJ, the Court clarified that it was necessary to distinguish between complaints (that is, the arguments pointing to the cause or the fact constitutive of the alleged violations of the Convention) and secondary arguments.

On that basis, the Court considered whether the applicant's complaint under Article 2 of Protocol No. 7, as formulated in his application, could be examined under Article 6 § 1 (as a complaint about an independent and impartial tribunal) as the Chamber had done after recharacterising it to fall within that provision. In his application, the applicant did not claim that the inclusion, in the composition of the disciplinary chamber, of members who were not professional judges entailed a violation of Article 2 of Protocol No. 7. Rather, he argued that that body could not be regarded as the "highest tribunal" within the meaning of paragraph 2 of that provision, as its lay members were not subject to the same requirements of expertise and independence as judges. That argument was therefore aimed only at excluding the application of the exception provided for in Article 2 § 2 of Protocol No. 7, according to which the right of appeal did not apply where an accused had been tried in the first instance by the highest tribunal. Moreover,

144. *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, 20 March 2018.

145. *Farzaliyev v. Azerbaijan*, no. 29620/07, 28 May 2020.

146. *Nuclear Tests (Australia v. France)*, judgment of 20 December 1974, *ICJ Reports* 1974, p. 253.

147. *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, ICJ judgment of 1 December 2022.

the applicant emphasised that the composition of the disciplinary chamber was atypical among the higher judicial institutions in the Czech Republic, which normally did not involve lay assessors (their participation being common in some first-instance courts). In short, he did not argue that the disciplinary chamber was not a "tribunal" but merely that it was not the "highest tribunal".

In the Court's view, that was a secondary argument which could not be equated with a complaint: indeed, the applicant had not claimed the composition of the disciplinary chamber to be the cause or fact constitutive of a violation of Article 2 of Protocol No. 7. His argument could not therefore be interpreted as raising a complaint that the disciplinary chamber was not an independent and impartial tribunal within the meaning of Article 6 § 1. If the applicant had wished, at that stage, to complain of a breach of those guarantees set forth in Article 6 § 1, he should have so stated in his application form in a clear manner, especially as the scope of Article 6 was very broad and the complaints under that provision had to contain all the parameters necessary for the Court to define the issue it would be called upon to examine (*Ramos Nunes de Carvalho e Sá v. Portugal*[148]). Although the applicant had formulated such a complaint in his observations to the Chamber, that was a new complaint: since it related to distinct requirements arising from Article 6 § 1, it could therefore not be viewed as concerning a particular aspect of his initial complaint under Article 2 of Protocol No. 7.

Accordingly, by raising a question concerning compliance with the requirement of a "tribunal established by law" under Article 6 § 1, the Chamber had extended, of its own motion, the scope of the case beyond the one initially referred to it by the applicant in his application. It had thereby exceeded the powers conferred on the Court by Articles 32 and 34 of Convention.

The decision in *Pivkina and Others v. Russia*[149] concerned the Court's temporal jurisdiction mainly with respect to acts or omissions spanning the date on which a respondent State ceased to be a Party to the Convention.

On 16 March 2022 the Russian Federation ceased to be a member of the Council of Europe. Shortly thereafter the Court, sitting in Plenary formation, adopted a Resolution stating that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022 ("the termination date"). The applications concerned different factual scenarios, alleging violations of various Convention provisions. Some of the facts occurred up until, some occurred after and some spanned across the termination date. The Court reconfirmed its jurisdiction to deal with cases where all acts and judicial decisions leading to the alleged Convention violations had occurred up until the termination date[150]. The Court further rejected complaints as incompatible *ratione personae* with the provisions of the Convention where both the triggering act and the applicant's judicial challenge to it had occurred after the termination date. As regards the case where the facts spanned across the termination date, the Court found that some of the complaints fell within its temporal jurisdiction and gave notice thereof to the respondent Government. It rejected the remaining complaints as incompatible *ratione temporis* with Article 35 § 3 of the Convention.

Russia's Federal Law no. 43-FZ of 28 February 2023 provided that the Convention was to be considered as having ceased to be applicable to the Russian Federation as of 16 March 2022 (not the termination date). The Court, however, emphasised that its ability to determine its own jurisdiction was essential to the Convention's protection system. By acceding to the Convention, the High Contracting Parties had undertaken to comply not just with its substantive provisions but also with its procedural provisions, including Article 32, which gave the Court exclusive authority over disputes regarding its jurisdiction. The Court's jurisdiction could not therefore be contingent upon events extraneous to its own operation, such as domestic legislation that sought to affect or limit its jurisdiction in pending cases, such as the above-mentioned Russian law.

148. *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. 55391/13 and 2 others, § 104, 6 November 2018.

149. *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, 6 June 2023. See also under Article 35 § 3 (a) (Competence *ratione temporis*, and Competence *ratione personae*) above.

150. *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023.

Cessation of membership of the Council of Europe (Article 58)

The judgment in *Fedotova and Others v. Russia*[151] is noteworthy in that the Court ruled, for the first time, on its jurisdiction to examine a case against Russia after it had ceased to be a Party to the Convention.

Referring to the wording of Article 58 (§§ 2 and 3), the Court confirmed that a State which ceased to be a Party to the Convention, by virtue of the fact that it had ceased to be a member of the Council of Europe, was not released from its obligations under the Convention in respect of any act performed by that State before the date on which it ceased to be a Party to the Convention. The Court thus reiterated its reading of this provision set out in its Resolution concerning Russia[152] delivered after sitting in plenary session. In the present case, the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022, when Russia ceased to be a Party to the Convention. Since the applications had been lodged with it in 2010 and 2014, the Court had jurisdiction to deal with them. The Court eventually found a violation of Article 8 on the ground that the respondent State had failed to comply with its positive obligation to secure adequate recognition and protection for the applicants, who were same-sex couples.

Inter-State cases (Article 33)

The decision in *Ukraine and the Netherlands v. Russia*[153] concerned exclusion from jurisdiction in the context of the active phase of hostilities, as well as the relevance of non-domestic remedies in an inter-State case for the purposes of the six-month rule.

In its two inter-State applications, the Ukrainian Government alleged an administrative practice by Russia resulting in numerous Convention violations in the areas of eastern Ukraine under separatist control. The inter-State application lodged by the Netherlands Government concerned the downing of flight MH17. In its decision, the Grand Chamber held that Russia had had effective control over all areas in the hands of separatists from 11 May 2014 and that the impugned facts fell within the spatial jurisdiction (*ratione loci)* of Russia within the meaning of Article 1, with the exception of the Ukrainian Government's complaint about the bombing and shelling of areas outside separatist control. The question of whether the latter complaint came under Russia's personal jurisdiction (State agent authority and control) was joined to the merits. The Grand Chamber confirmed its *ratione materiae* jurisdiction to examine complaints concerning armed conflict. It dismissed the respondent Government's further preliminary objections (the alleged lack of the "requirements of a genuine application" (Article 33), non-exhaustion of domestic remedies and non-compliance with the six-month time-limit) and declared admissible: the Netherlands Government's complaints under the substantive and procedural aspects of Articles 2, 3 and 13 in respect of the downing of flight MH17; and the Ukrainian Government's complaints about an alleged administrative practice contrary

151. *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023. See also under Article 8 (Positive obligations) above.

152. Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, adopted on 22 March 2022.

153. *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, adopted on 30 November 2022 and delivered on 25 January 2023. See also under Article 1 (Jurisdiction of States), Article 35 § 1 (Exhaustion of domestic remedies) and Article 35 § 1 (Four-month period) above.

to Articles 2 and 3, Article 4 § 2, and Articles 5, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1, Article 2 of Protocol No. 4, and Article 14 of the Convention in conjunction with Articles 2 and 3, Article 4 § 2, and Articles 5, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1[154].

The Grand Chamber decision is noteworthy in several respects. In the first place, the Court shed some light on how to interpret the exclusion from jurisdiction of "military operations carried out during an active phase of hostilities", in accordance with the principle set out in *Georgia v. Russia (II)*[155]. Secondly, and with regard to the downing of flight MH17, the Court examined the effectiveness of domestic remedies, taking into account the important political dimension of the case. Thirdly, and in the novel and exceptional context of that same complaint, the Court clarified how the interplay between the six-month rule and the exhaustion of "domestic" remedies, enshrined in Article 35 § 1, was to be transposed to potential remedies outside the respondent State or to avenues which States themselves might wish to pursue at the international level prior to lodging an inter-State case with this Court, especially where there was no clarity from the outset as to the circumstances of the alleged violation of the Convention and the identity of the State allegedly responsible for it.

(i) The Grand Chamber referred to its judgment in the case of *Georgia v. Russia (II)* (cited above), according to which the first question to be addressed in cases concerning armed conflict was whether the complaints concerned "military operations carried out during an active phase of hostilities". In that case, the question had been answered in the affirmative and, as a result, the substantive complaints about events concerning the "active phase of hostilities" had fallen outside the "jurisdiction" of the respondent State for the purposes of Article 1, while the duty to investigate deaths which had occurred remained. At the same time, in that case, there had been a distinct, single, continuous five-day phase of intense fighting. The Court had therefore been able to separate out complaints which it had identified as concerning "military operations carried out during the active phase of hostilities", in the sense of "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos". The alleged attacks falling under this exception covered "bombing, shelling and artillery fire". In the present decision, the Grand Chamber clarified that the *Georgia v. Russia (II)* judgment could not be seen as authority for excluding entirely from a State's Article 1 jurisdiction a specific temporal phase of an international armed conflict: indeed, in that case, the Court had found in jurisdiction to exist in respect of the detention and treatment of civilians and prisoners of war even during the "five-day war". A State could therefore have extraterritorial jurisdiction in respect of complaints concerning events which had occurred while active hostilities were taking place. Unlike the above case, the vast majority of the complaints advanced in the present case (except for those relating to the downing of flight MH17 and artillery attacks) concerned events unconnected with military operations occurring within the area under separatist control and therefore they could not be excluded from the spatial jurisdiction of Russia on the basis of this exception.

As regards the downing of flight MH17, which had taken place in the context of active fighting between the two opposing forces, the Court stated that it would be wholly inaccurate to invoke any "context of chaos" in this regard. It noted the exceptional and painstaking work of the international Joint Investigation Team (JIT), which had been able to pierce "the fog of war" and elucidate the specific circumstances of this incident. The Court further specified that the chaos that might exist on the ground as large numbers of advancing forces sought to take control of territory under cover of a barrage of artillery fire did not inevitably exist in the context of the use of surface-to-air missiles, which were used to attack specific targets in the air. There was moreover no evidence of fighting to establish control in the areas directly relevant to the missile launch site or the impact site, both being under separatist control and thus within the spatial jurisdiction of Russia. The jurisdiction of Russia in respect of this incident could not therefore be excluded on the basis of "the active phase of hostilities" exception.

As regards the Ukrainian Government's complaint about the bombing and shelling, the victims

154. The Grand Chamber declared inadmissible the following complaints by the Ukrainian Government: the individual complaints concerning the alleged abduction of three groups of children and accompanying adults (failure to exhaust domestic remedies); the complaints of administrative practices in breach of Article 11 (lack of sufficient prima facie evidence of the repetition of acts) and of Article 3 of Protocol No. 1 (presidential elections being outside the scope of this provision).

155. *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021.

had been outside the areas controlled by separatists and those complaints were excluded from Russia's spatial jurisdiction. The Grand Chamber joined to the merits the question of whether that complaint was also excluded from Russia's personal jurisdiction (on account of State agent authority or control) by virtue of the above exception identified in *Georgia v. Russia (II)* (cited above).

(ii) The Court reiterated that the exhaustion requirement applied to inter-State applications denouncing violations allegedly suffered by individuals (*Ukraine v. Russia (*re *Crimea)*[156]). When assessing the effectiveness of domestic remedies in this context, the Court had regard to the existence of a dispute as to the underlying facts. For example, as regards the abduction and transfer to Russia of the three groups of children alleged by the Ukrainian Government, the Russian investigative authorities had not contested the underlying facts (namely, the border crossing) but only the forcible nature of the transfer. The Court therefore concluded that the Russian authorities ought to have been afforded the opportunity by the Ukrainian Government to investigate their allegations and the evidence collected by them, notably in the context of a judicial appeal. By contrast, as regards the downing of flight MH17, this complaint had been consistently met by the respondent Government with a blanket denial of any involvement whatsoever. In the latter context, the Court also emphasised the political dimension of the case, being unconvinced as to the effectiveness of domestic remedies in a case where State agents were implicated in the commission of a crime, especially one condemned by the United Nations Security Council. In this regard, the Court referred to its finding of a violation of the procedural aspect of Article 2 in *Carter v. Russia*[157], which concerned the high-profile poisoning of a Russian dissident abroad by State agents. In the instant case, the Court pinpointed the Russian authorities' formalistic failure to initiate an investigation into the allegation that Russian nationals had been involved in the downing of flight MH17. Indeed, the Russian authorities had been contacted on multiple occasions by victims' relatives and had had ample legal possibilities to launch such an investigation, even in the absence of a specific request.

(iii) As there had been no effective remedy in Russia available to the relatives of the victims of flight MH17, the normal starting-point for the running of the six-month time-limit would be the date of the incident itself (17 July 2014). The Court, however, underlined the novel factual nature of the present case: first, the identity of the State allegedly responsible for a violation of the Convention had not been apparent from the date of the act in issue itself (given the lack of clarity as to the identities of the perpetrators, the weapon used and the extent of any State's control over the area concerned, as well as Russia's denial of any involvement whatsoever); secondly, the criminal investigation carried out by the Netherlands authorities with the assistance of the JIT could not been seen as a "domestic" remedy in respect of complaints lodged against Russia. The Court therefore considered the relevance of the latter investigation, as well as the international-law remedies pursued, for the purposes of compliance with the six-month time-limit in the inter-State context and in the exceptional circumstances of the present case. The Court had particular regard to the interests of justice and the purposes of Article 35 § 1. On the one hand, this provision could not be interpreted in a manner which would require an applicant State to seise the Court of its complaint before having reasonably satisfied itself that there had been an alleged breach of the Convention by another State and before that State had been identified with sufficient certainty. On the other hand, it would indeed be unjust and contrary to the purpose of Article 35 § 1 if the effect of reasonably awaiting relevant findings of an independent, prompt and effective criminal investigation, in order to assist the Court in its own assessment of the complaints, were to render those complaints out of time. With this in mind, the Court concluded that it would be artificial to ignore the investigative steps taken in the Netherlands and in the context of the JIT, which had precisely enabled the pertinent facts to be elucidated, all the more so as no investigation had been undertaken in the respondent State. Furthermore, as those steps had been carried out promptly, regularly and diligently, it could not be said that there had been a delay in the referral of the complaints to this Court such that it would be difficult to ascertain the pertinent facts, rendering a fair examination of the allegations almost impossible. In other words, the aim of the time-limit in Article 35 § 1 had not been undermined by the lodging of the application some six years after the aircraft had been downed.

The Court further acknowledged the relevance of remedies under international law in an inter-

156. *Ukraine v. Russia (*re *Crimea)* (dec.) [GC], nos. 20958/14 and 38334/18, 16 December 2020.

157. *Carter v. Russia*, no. 20914/07, 21 September 2021.

State dispute, particularly where the allegation is that the State itself, at the highest level of government, bears responsibility. While such remedies are not mentioned in Article 35 § 1 and, as a result, the running of the time-limit in that Article is not linked to their exercise, the Court had already accepted that, in some circumstances, it might be appropriate to have regard to such remedies when assessing whether the obligation of diligence incumbent on applicants had been met (*Varnava and Others v. Turkey*[158]). It was therefore legitimate for the Netherlands Government to have explored the opportunity of negotiations with Russia, which had ended in 2020. In sum, in the exceptional circumstances of the case, the complaints had been lodged in time.

The Court confirmed that, unlike the exhaustion requirement, the six-month time-limit was applicable to allegations of administrative practices.

Advisory opinions (Article 1 of Protocol No. 16)

In response to a request submitted by the Finnish Supreme Court, the Court delivered its advisory opinion[159] on 13 April 2023. It concerned the procedural status and rights of a biological parent in proceedings for the adoption of an adult.

See also under Article 8 (Private life) above.

In response to a request submitted by the Belgian *Conseil d'État*, the Court delivered its advisory opinion[160] on 14 December 2023, which concerned the question whether an individual could be denied authorisation to work as a security guard or officer on account of being close to, or belonging to, a religious movement considered by the authorities to be dangerous. See also under Article 9 (Manifest one's religion or belief) above.

158. *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 170, ECHR 2009.

159. *Advisory opinion on the procedural status and rights of a biological parent in proceedings for the adoption of an adult* [GC], request no. P16-2022-001, Supreme Court of Finland, 13 April 2023.

160. *Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to, or belonging to, a religious movement* [GC], request no. P16-2023-001, Belgian *Conseil d'État*, 14 December 2023.

Rules of Court

The judgment in *Svetova and Others v. Russia*[161] dealt with the consequences of a State's failure to participate in the proceedings after it ceased to be a Party to the Convention.

The applicant journalists complained about an unjustified search of their home and the indiscriminate seizure of personal belongings including electronic data storage devices. In 2021 the Court notified the respondent Government of the applicants' complaints under Articles 8, 10 and 13.

In the context of a procedure launched under Article 8 of the Statute of the Council of Europe (COE), the Committee of Ministers of the COE adopted a Resolution[162], in accordance with which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022. Shortly thereafter the Court, sitting in plenary formation, adopted a Resolution[163] stating that the Russian Federation would cease to be a High Contracting Party to the Convention on 16 September 2022.

Referring to the wording of Article 58 (§§ 2 and 3) of the Convention and the above-cited Resolution of 22 March 2022, the Court established its jurisdiction to deal with the present case[164] since the facts giving rise to the alleged violations of the Convention had taken place before 16 September 2022. The Court further noted that, by failing to submit their written observations when requested to do so, the respondent Government had manifested their intention to abstain from further participating in the examination of the present case. Nevertheless, and relying on Rules 44A and 44C of the Rules of Court, the Court considered it could examine the case on the merits and found violations of Articles 8 and 10 of the Convention and of Article 13 in conjunction with Article 8.

The judgment is noteworthy in that a Chamber formation of the Court dealt with procedural matters arising from the cessation of membership of the Russian Federation to the Council of Europe.

(i) In the first place, the Court addressed the appointment of an *ad hoc* judge in Russian cases after 16 September 2022. On 5 September 2022 the Court, sitting in plenary formation, took formal notice of the fact that the office of the judge with respect to the Russian Federation would cease to exist after 16 September 2022. This consequently entailed that there was no longer a valid list of *ad hoc* judges who would be eligible to take part in the consideration of the cases against Russia. Having informed the parties, the President of the Chamber decided to appoint an *ad hoc* judge from among the members of the composition, applying by analogy Rule 29 § 2 (b) of the Rules of Court.

(ii) Secondly, the Court addressed the consequences of the Government's failure to participate in the proceedings, finding that this omission could not be an obstacle for its examination.

The Court drew on case-law principles developed in the context of Articles 34 and 38 of the Convention as to the obligations on States to furnish all necessary facilities to make possible a proper and effective examination of applications (*Georgia v. Russia (I)*[165], and *Carter v. Russia*[166]). The Court also relied on Rule 44A of the Rules of Court on the parties' duty to cooperate with the Court, emphasising that the cessation of a Contracting Party's membership of the Council of Europe did not release it from this duty. It was a duty which continued for as long as the Court remained competent to deal with applications arising out of acts or omissions capable of constituting a

161. *Svetova and Others v. Russia*, no. 54714/17, 24 January 2023.

162. Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, adopted on 16 March 2022.

163. Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, adopted on 22 March 2022.

164. The Court ruled, for the first time, on this matter in *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, 17 January 2023. See also *Kutayev v. Russia*, no. 17912/15, 24 January 2023.

165. *Georgia v. Russia (I)* [GC], no. 13255/07, § 99, ECHR 2014 (extracts).

166. *Carter v. Russia*, no. 20914/07, §§ 92-94, 21 September 2021.

violation of the Convention, provided that the said act/omission had taken place prior to the date on which the respondent State had ceased to be a Contracting Party to the Convention.

The Court also referred to Rule 44C § 2 which stipulated that "a respondent Contracting Party's failure or refusal to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of an application". In the Court's view, this provision acted as an enabling clause for the Court, making it impossible for a party unilaterally to delay or obstruct the conduct of proceedings. The Court had already dealt with a situation where a State had not participated in at least some stages of the proceedings (for example, the respondent Government had failed to submit their memorials or participate in a hearing in the absence of sufficient cause, see *Cyprus v. Turkey*[167], and *Denmark, Norway and Sweden v. Greece*[168]): the Court considered that failure to be a waiver of the right to participate, which could not prevent the Court from conducting its examination of the case. Such a course of action by the Court was consistent with the proper administration of justice.

While the Court was not therefore prevented from examining the present case, it had to assess the consequences of such a waiver for the distribution of the burden of proof. In accordance with its usual standard of proof "beyond reasonable doubt", based on a free evaluation of all the evidence, the distribution of the burden of proof remained intrinsically linked to the specificity of the facts, the nature of the allegations made and the Convention right at stake, as well as the conduct of the parties (*Georgia v. Russia (I)*, cited above, §§ 93-95 and 138, and *Abu Zubaydah v. Lithuania*[169]). As regards the latter aspect, the Court referred to Rule 44C (§ 1 *in fine*) which empowered it to draw such inferences as it deemed appropriate from a party's failure or refusal to participate effectively in the proceedings. At the same time, such a failure by the respondent State should not automatically lead to the acceptance of the applicants' claims, and the Court had to be satisfied by the available evidence that the claim was well founded in fact and law (compare the approach taken in *Cyprus v. Turkey*, cited above, § 58, and *Mangîr and Others v. the Republic of Moldova and Russia*[170], where only one of the respondent Governments had submitted observations on the issue of jurisdiction).

In the instant case, faced with the respondent State's choice not to participate in the proceedings or to submit any documents or arguments in its defence, the Court examined the application on the basis of the applicants' submissions which were presumed to be accurate where supported by evidence and in so far as other evidence available in the case file did not lead to a different conclusion.

The judgment in *FU QUAN, s.r.o. v. the Czech Republic*[171] concerned the domestic courts' failure to apply the principle of *jura novit curia*.

The applicant company's property (mostly merchandise) had been seized during criminal proceedings against the managing director and the other member of the company. Following their acquittal, the company brought a civil action for the damage caused to its property by the State. The action was dismissed for lack of *locus standi*, the company not being a party to the criminal proceedings in issue. It complained to the Court under Article 6 § 1 and Article 1 of Protocol No. 1. A Chamber considered that it had been up to the courts, applying the principle of *jura novit curia*, to subsume the facts of the case under the relevant domestic-law provisions in order to deal with the merits of the action: it was clear that the company had claimed compensation for the depreciation of its merchandise. The Chamber therefore dismissed the Government's preliminary objection (exhaustion of domestic remedies) and found a breach of Article 1 of Protocol No. 1 given the unjustified protracted retention of the property. The Chamber also decided that there was no need to rule separately on the complaint under Article 6 § 1 concerning the alleged denial of access to a court resulting from a formalistic and restrictive interpretation of national law by the domestic courts.

The Grand Chamber, however, considered that the complaint under Article 6 § 1 was the applicant company's main complaint and rejected it as manifestly ill-founded. Furthermore, having

167. *Cyprus v. Turkey* [GC], no. 25781/94, §§ 10-12, ECHR 2001-IV.

168. *Denmark, Norway and Sweden v. Greece*, no. 4448/70, Commission decision of 16 July 1970, unreported.

169. *Abu Zubaydah v. Lithuania*, no. 46454/11, §§ 480-83, 31 May 2018.

170. *Mangîr and Others v. the Republic of Moldova and Russia*, no. 50157/06, §§ 47-60, 17 July 2018.

171. *FU QUAN, s.r.o. v. the Czech Republic* [GC], no. 24827/14, 1 June 2023. See also under Article 35 § 1 (Exhaustion of domestic remedies) and Article 6 § 1 (Right to a fair hearing in civil proceedings – Access to a court) above.

ascertained the scope of the complaints under Article 1 of Protocol No. 1, the Grand Chamber observed that the Chamber had examined only one of the complaints raised, even though there were three altogether. Given its findings concerning the complaint in respect of access to a court, the Grand Chamber rejected two of these complaints for non-exhaustion of domestic remedies: the applicant company had not properly availed itself of the possibility of obtaining compensation for undue delay in lifting the order for the seizure of its property and for the authorities' alleged failure to take care of the property. As regards the third complaint (damage to the property following the unwarranted prosecution and detention of the company's managing director and other member), such a compensation claim did not have a sufficient basis in domestic law. The guarantees of Article 1 of Protocol No. 1 being therefore inapplicable, the Grand Chamber rejected this complaint as incompatible *ratione materiae* with the provisions of the Convention.

The Grand Chamber judgment is noteworthy in that the Court emphasised the importance of submitting complaints to it in its application form in a clear manner.

The Court reiterated that the applicant had to complain that a certain act or omission had entailed a violation of the rights set forth in the Convention or the Protocols thereto, in a manner which should not leave the Court to second-guess whether a certain complaint had been raised or not (*Farzaliyev v. Azerbaijan*[172]). Ambiguous phrases or isolated words did not suffice for it to accept that a particular complaint had been raised (*Ilias and Ahmed v. Hungary*[173]), as also followed from Rule 47 § 1 (e) and (f) and Rule 47 § 2 (a) of the Rules of Court concerning the content of an individual application.

While the applicant company had mentioned in the application form that the property had been seized for five years, it had done so only to highlight the extent to which the functioning of the company had been paralysed by the allegedly unlawful decision remanding both of its members in custody. In the Grand Chamber's view, this reference to the storage of the property for five years was too ambiguous to be interpreted as raising a complaint about its prolonged seizure. Had it been the wish of the applicant company at that stage to complain of the prolonged seizure of its property, it should have stated so in its application form in a clear manner, as it had subsequently done in its observations before the Chamber. Therefore, this complaint had been submitted more than six months after the compensation proceedings had ended (and, in any event, was inadmissible for non-exhaustion of domestic remedies).

172. *Farzaliyev v. Azerbaijan*, no. 29620/07, § 55, 28 May 2020.

173. *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 85, 21 November 2019.

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Key cases

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Belgium

Advisory opinion as to whether an individual may be denied authorisation to work as a security guard or officer on account of being close to, or belonging to, a religious movement [GC], request no. P16-2023-001, Belgian *Conseil d'État*, 14 December 2023

Hurbain v. Belgium [GC], no. 57292/16, 4 July 2023

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S.P. and Others v. Russia, nos. 36463/11 and 10 others, 2 May 2023

Svetova and Others v. Russia, no. 54714/17, 24 January 2023

Ukraine and the Netherlands v. Russia (dec.) [GC], nos. 8019/16 and 2 others, adopted on 30 November 2022 and delivered on 25 January 2023

Spain

G.T.B. v. Spain, no. 3041/19, 16 November 2023

Switzerland

B.F. and Others v. Switzerland, nos. 13258/18 and 3 others, 4 July 2023

Communauté genevoise d'action syndicale (CGAS) v. Switzerland [GC], no. 21881/20, 27 November 2023

Türkiye

Orhan v. Türkiye (dec.), no. 38358/22, adopted on 6 December 2022 and delivered on 19 January 2023

Yüksel Yalçınkaya v. Türkiye [GC], no. 15669/20, 26 September 2023

Milestones

Major events

1948 Adoption of the Universal Declaration of Human Rights

Charter of hope

The Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, was the result of the experience of the Second World War.

1953 Entry into force of the European Convention on Human Rights

Pioneering instrument

The Convention for the Protection of Human Rights and Fundamental Freedoms came into force on 3 September 1953. It was the first instrument to give effect to certain of the rights stated in the Universal Declaration of Human Rights and to make them binding.

1998 Entry into force of Protocol No. 11 to the Convention, instituting "the new Court"

First major reform

In 1998 Protocol No. 11 replaced the original two-tier structure comprising the Court and the Commission on Human Rights, which sat a few days per month, by a single full-time Court. This change put an end to the Commission's filtering function, enabling applicants to bring their cases directly before the Court.

2018 Entry into force of Protocol No. 16 to the Convention allowing the Court to deliver advisory opinions

The "dialogue Protocol"

Protocol No. 16 enables the highest national courts and tribunals of the member States to request the Court to give advisory opinions on questions of principle relating to the interpretation or application of the rights and freedoms defined in the Convention or the Protocols thereto. The advisory opinions, delivered by the Grand Chamber, are reasoned and are not binding.

2023 The fourth Summit of Heads of State and Government of the Council of Europe in Reykjavík

United around our values

The fourth Summit of Heads of State and Government of the Council of Europe took place in Reykjavík between 16-17 May 2023. Gathering together heads of State and Government from the Council of Europe's member States, it aimed to refocus the Council of Europe's mission in the light of new threats to democracy.

75 years since the Universal Declaration of Human Rights was adopted on 10 December 1948

10 December 2023 marked the 75th anniversary of the adoption of the Universal Declaration of Human Rights. The 1948 Declaration was adopted by the UN General Assembly in response to the tragedy of the Second World War.

The Universal Declaration promotes the universal recognition of the rights enshrined therein and sets out an ambitious common standard which all peoples and nations shall strive for.

Its preamble begins by affirming that

> "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

At the heart of the Declaration lies a catalogue of inalienable rights which apply to everyone without distinction of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time, the Declaration unequivocally prohibits any distinction made on the basis of political, jurisdictional or international status of the country or territory to which a person belongs.

The Universal Declaration of Human Rights furthermore inspired and paved the way for dozens of other Treaties, international and regional, in the area of human rights and beyond. The European Convention on Human Rights is a prime example: its preamble explicitly references the Declaration and emphasises the resolve of the High Contracting Parties to

> "take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration.

The European Convention on Human Rights moreover mirrors the Declaration's universalist language and to a certain extent its content. Like the Universal Declaration, the Convention places the right to life, the prohibition of torture and inhuman or degrading treatment or punishment, and the prohibition of slavery at its core. The Convention system however goes further than the Universal Declaration in the sense that it also provides for a judicial enforcement mechanism.

The anniversary of the Universal Declaration of Human Rights comes at a tragic time for Europe, with war returning to the continent. It is a solemn reminder that the advances in society should not be considered acquired once and for all, but must be the subject of ongoing efforts.

To celebrate this anniversary, the President of the Court attended a conference entitled "Defending the rights of everyone, everywhere" in Paris in the presence of Emmanuel Macron, President of the French Republic. President Siofra O'Leary also delivered an address during an official event hosted by Anne Hidalgo, Mayor of Paris.

70 years since the European Convention on Human Rights entered into force on 3 September 1953

Statement of the President of the Court, Síofra O'Leary. Strasbourg, 02.09.2023

For seventy years, the European Convention on Human Rights has played a crucial role in preserving and protecting the common European values of pluralist parliamentary democracy, the rule of law and the indivisibility and universality of human rights across a legal space now serving 700 million persons.

When ratifying the Convention, the member States of the Council of Europe committed to a unique international system for the protection of human rights with the external supervision of the European Court of Human Rights in response to individual and inter-State complaints at its core. They reaffirmed this commitment at the fourth Summit of the Heads of State and Government in Reykjavík last May.

Since the entry into force of the Convention the Court has dealt with well over 1 million applications and handed down more than 26,000 judgments and many thousands of decisions. Through these judgments and decisions, the Court has sought to defend

> "the common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law.

The judgments of the Court have saved many lives, transformed thousands of others, and contributed to the bettering of our societies.

By holding States to account the Court seeks to maintain and foster democratic stability and the effective functioning of the rule of law across the Council of Europe legal space. Through the exercise of its residual jurisdiction in relation to complaints lodged against the Russian Federation, the Court seeks to ensure that a former Contracting Party cannot evade, retroactively, its international legal obligations. As evidenced by the invasion of Ukraine, instances of democratic erosion in transitional and previously stable democracies, rule of law backsliding, or signs of regression when it comes to issues such as equality or societal responses to gender violence, some of the fundamental values enshrined in the Convention are under threat in different parts of Europe and beyond. However, this 70th anniversary reminds us of what the Convention and the Court, as the ultimate guarantors of human rights across our continent, alongside domestic democratic and judicial systems, continue to achieve.

At this critical point in Europe's history, we should treasure the Convention's special character as a treaty for the collective enforcement of human rights and fundamental freedoms and remember our collective responsibility to pass on this unique international protection mechanism to future generations.

700

million persons

are served now by the European Convention.

1

million applications

have been dealt with by the Court since the entry into force of the Convention.

26,000

judgments

have been handed down by the Court in 70 years.

25 years since Protocol No. 11 to the Convention entered into force on 1 November 1998

The new Court

Structure

The two-tier structure comprising the Court and the Commission on Human Rights was replaced with the single permanent Court.

Direct access to the Court

Protocol No. 11 enabled applicants to bring individual applications directly before the Court.

Filter mechanism

The cases are considered by a single-judge for admissibility, then progressing through a three-judge committee, seven-judge Chamber and/or the Grand Chamber to decide the merits.

Enhanced efficiency

Those changes made the Court more efficient by streamlining procedures and expediting the handling of cases.

2023 also sees the 25th anniversary of Protocol No. 11 to the Convention. In light of the urgent need to improve efficiency following an increase in applications and the growing membership of the Council of Europe, Protocol No. 11 established "the new Court". It replaced the original two-tier structure comprising the Court and the Commission on Human Rights, which sat only a few days per month.

This new structure saw major changes to the way the Court functioned. It put an end to the Commission's filtering function, enabling applicants to bring individual applications directly before the Court. This was a departure from the previously convoluted and sometimes bureaucratic system for cases to come to the Court's attention.

The reforms introduced by Protocol No. 11 also saw the advent of the Court's current working methodology with cases initially considered by a single-judge for admissibility and then progressing systematically as necessary through a three-judge committee, seven-judge Chamber and/or the Grand Chamber, to decide the merits, with the possibility of the Chamber relinquishing jurisdiction in favour of the Grand Chamber in complex cases. The Committee of Ministers no longer decides the merits of cases but retains a role of monitoring the enforcement of judgments.

Whilst it remains true that the Court's case-load today remains excessively high and cases are not processed as rapidly as we would wish, the Court has made a great deal of progress in the 25 years since Protocol No. 11 entered into force. It serves as an example of the Court recognising its deficiencies and seeking to make wholesale changes to ensure that human rights protections are not stifled by administrative blockages. The Court will continue to review its working practices and, more recently, it reformed its Rules of Court to improve transparency and efficiency.

Reykjavík: the Convention on Human Rights, a "bulwark in times of conflict"

Representing the European Court of Human Rights, the President, Síofra O'Leary, attended the fourth Summit of the Council of Europe in Reykjavík. She was accompanied by the Registrar of the Court, Marialena Tsirli. The President underlined the importance of States reaffirming their commitment to the Convention system and to the binding nature of the Court's judgments and decisions, including interim measures. The President emphasised the importance of the Convention in terms of accountability in times of conflict but also in terms of its equal application to all States at all times, in defence of effective political democracies underpinned by the rule of law. During the Summit, the President held bilateral meetings with a number of heads of State and Government.

List of bilateral meetings:

- France, President of the Republic, Emmanuel Macron
- Republic of Moldova, President of the Republic, Maia Sandu
- Belgium, Prime Minister, Alexander de Croo
- Croatia, Prime Minister, Andrej Plenković
- Iceland, Prime Minister, Katrín Jakobsdóttir
- Ireland, Taoiseach, Leo Varadkar
- Luxembourg, Prime Minister, Xavier Bettel
- United Kingdom, Prime Minister, Rishi Sunak
- The European Commission, President, Ursula von der Leyen

The fourth Summit of Heads of State and Government of the Council of Europe took place in Reykjavík between 16-17 May 2023. Gathering heads of State and Government from the Council of Europe's member States, it aimed to refocus the Council of Europe's mission in the light of new threats to democracy and human rights, and to support Ukraine.

Making a statement during the general debate, President O'Leary referred to the role played by the European Convention on Human Rights as a bulwark in times of conflict.

> "Through the exercise of its residual jurisdiction in relation to the Russian Federation, the Court was ensuring that a former High Contracting Party was not evading retroactively its obligations under the Convention, stated President O'Leary.

She underlined that the Convention's value lay in its equal application at all times to all Council of Europe Member States, both old and new democracies.

The President welcomed the States' reaffirmation of their commitment to the Convention system and to the binding nature of the Court's judgments and decisions, including interim measures.

Regarding interim measures, the President clarified in bilateral meetings (listed above) that the Court regularly reviews its working methods, whether as regards, for example, the mass influx of cases which are the consequence of specific regional, State or societal events, the intervention of third parties or the treatment of repetitive cases. Since last November, reflections have been ongoing within the Court in relation to the procedures for dealing with interim measures (Rule 39).

The latter are urgent measures which are applied exceptionally where there is an imminent risk of irreparable harm. She stressed that such an internal review is unrelated to any individual case or the position on interim measures of any one of the 46 member States.

Judicial activities

The Court

11 December 2023, from left to right

Front row
Mārtiņš Mits
Carlo Ranzoni
Egidijus Kūris
Arnfinn Bårdsen
Gabriele Kucsko-Stadlmayer
Georges Ravarani (Vice-President)
Síofra O'Leary (President)
Marko Bošnjak (Vice-President)
Pere Pastor Vilanova
Krzysztof Wojtyczek
Branko Lubarda
Armen Harutyunyan
Stéphanie Mourou-Vikström

Middle row
Marialena Tsirli (Registrar)
Oddný Mjöll Arnardóttir
Saadet Yüksel
Lorraine Schembri Orland
Kateřina Šimáčková
Anja Seibert-Fohr
Raffaele Sabato
Alena Poláčková
Jolien Schukking
Tim Eicke
Gilberto Felici
Pauliine Koskelo
Faris Vehabović
Diana Sârcu
Andreas Zünd
Ana Maria Guerra Martins
Darian Pavli
Abel Campos (Deputy Registrar)

Back row
Lətif Hüseynov
Péter Paczolay
Yonko Grozev
Mykola Gnatovskyy
Ioannis Ktistakis
Erik Wennerström
Lado Chanturia
Ivana Jelić
Peeter Roosma
Davor Derenčinović
Sebastian Răduleţu
Anne Louise Bormann
Jovan Ilievski
Georgios Serghides
Mattias Guyomar

Judicial metrics: a year in review

68,450
pending applications
decrease of 8%

319
judgments
delivered by Chambers

682
judgments
delivered by Committees of three judges

25,834
applications
declared inadmissible or struck out by single judges

5,344
applications
declared inadmissible or struck out by Committees

151
applications
declared inadmissible or struck out by Chambers

Grand Chamber activities

13
judgments
and 1 admissibility decision delivered by the Grand Chamber

8
oral hearings
held by the Grand Chamber

9
meetings
held by the Panel of the Grand Chamber

3
cases
relinquished to the Grand Chamber

6
cases
referred to the Grand Chamber

15
cases
pending at the end of the year

2
advisory opinions
under Protocol No. 16 delivered by the Grand Chamber

1
advisory-opinion request
under Protocol No. 16 accepted and pending before the Grand Chamber

Composition of the Sections

As of 31 December 2023, in order of precedence

1

Marko BOŠNJAK President
Alena POLÁČKOVÁ Vice-President
Krzysztof WOJTYCZEK
Lətif HÜSEYNOV
Péter PACZOLAY
Ivana JELIĆ
Gilberto FELICI
Erik WENNERSTRÖM
Raffaele SABATO
Ilse FREIWIRTH Registrar
Liv TIGERSTEDT Deputy Registrar

2

Arnfinn BÅRDSEN President
Jovan ILIEVSKI Vice-President
Egidius KŪRIS
Pauliine KOSKELO
Saadet YÜKSEL
Lorraine SCHEMBRI ORLAND
Frédéric KRENC
Diana SÂRCU
Davor DERENČINOVIĆ
Hasan BAKIRCI Registrar
Dorothee von ARNIM Deputy Registrar

3

Pere PASTOR VILANOVA President
Jolien SCHUKKING Vice-President
Yonko GROZEV
Georgios SERGHIDES
Darian PAVLI
Peeter ROOSMA
Ioannis KTISTAKIS
Andreas ZÜND
Oddný Mjöll ARNARDÓTTIR
Milan BLASKO Registrar
Olga CHERNISHOVA Deputy Registrar

4

Gabriele KUCSKO-STADLMAYER President
Tim EICKE Vice-President
Faris VEHABOVIĆ
Branko LUBARDA
Armen HARUTYUNYAN
Anja SEIBERT-FOHR
Ana Maria GUERRA MARTINS
Anne Louise BORMANN
Sebastian RĂDULEȚU
Andrea TAMIETTI Registrar
Deputy Registrar

5

Georges RAVARANI President
Lado CHANTURIA Vice-President
Síofra O'LEARY
Carlo RANZONI
Mārtiņš MITS
Stéphanie MOUROU-VIKSTRÖM
María ELÓSEGUI
Mattias GUYOMAR
Kateřina ŠIMÁČKOVÁ
Mykola GNATOVSKYY
Victor SOLOVEYTCHIK Registrar
Martina KELLER Deputy Registrar

Composition of the Court

As of 31 December 2023, in order of precedence, from left to right

Síofra O'Leary President **Irlande**	**Georges Ravarani** Vice-President **Luxembourg**	**Marko Bošnjak** Vice-President **Slovenia**	**Gabriele Kucsko-Stadlmayer** Section President **Austria**	**Pere Pastor Vilanova** Section President **Andorra**	**Arnfinn Bårdsen** Section President **Norway**
Krzysztof Wojtyczek **Poland**	**Faris Vehabović** **Bosnia and Herzegovina**	**Egidijus Kūris** **Lithuania**	**Branko Lubarda** **Serbia**	**Yonko Grozev** **Bulgaria**	**Carlo Ranzoni** **Liechtenstein**
Mārtiņš Mits **Latvia**	**Armen Harutyunyan** **Armenia**	**Stéphanie Mourou-Vikström** **Monaco**	**Alena Poláčková** **Slovak Republic**	**Pauliine Koskelo** **Finland**	**Georgios Serghides** **Cyprus**
Tim Eicke **United Kingdom**	**Lətif Hüseynov** **Azerbaijan**	**Jovan Ilievski** **North Macedonia**	**Jolien Schukking** **Netherlands**	**Péter Paczolay** **Hungary**	**Lado Chanturia** **Georgia**
María Elósegui **Spain**	**Ivana Jelić** **Montenegro**	**Gilberto Felici** **San Marino**	**Darian Pavli** **Albania**	**Erik Wennerström** **Sweden**	**Raffaele Sabato** **Italy**
Saadet Yüksel **Türkiye**	**Lorraine Schembri Orland** **Malta**	**Anja Seibert-Fohr** **Germany**	**Peeter Roosma** **Estonia**	**Ana Maria Guerra Martins** **Portugal**	**Mattias Guyomar** **France**
Ioannis Ktistakis **Greece**	**Andreas Zünd** **Switzerland**	**Frédéric Krenc** **Belgium**	**Diana Sârcu** **Rep. of Moldova**	**Kateřina Šimáčková** **Czech Republic**	**Davor Derenčinović** **Croatia**
Mykola Gnatovskyy **Ukraine**	**Oddný Mjöll Arnardóttir** **Iceland**	**Anne Louise Bormann** **Denmark**	**Sebastian Răduleţu** **Romania**	**Marialena Tsirli** Registrar **Greece**	**Abel Campos** Deputy Registrar **Portugal**

Meet our new judges

Who are you?

I've been a judge for the past seventeen years and, for the past seven years, I've been a judge of the Supreme Court in Copenhagen.

What does the ECHR represent for you?

The Court represents a safeguard for individual rights in the Europe that is changing, sometimes too fast, and sometimes not fast enough.

What do you consider to be the most important ECHR case?

It's impossible to pick just one, so I have picked two different cases. One is *Marckx v. Belgium* from 1979, guaranteeing equal rights [with other children] for children born out of wedlock. The other is *Al-Khawaja and Tahery v. the United Kingdom* from 2011, which shows how case-law can be refined through dialogue with a member State.

Anne Louise Bormann (Denmark)
judge of the Court since 13 April 2023

Who are you?

I am, among other things, a former professor of human rights law, and a judge at the Icelandic Court of Appeals.

What does the ECHR represent for you?

The Court's jurisprudence has had a profound effect on the development of European societies and, to me, it represents an extraordinary achievement in bringing effective human rights protection to the people of Europe.

What do you consider to be the most important ECHR case?

The Court has delivered many important cases on a wide range of issues, so I think it is very difficult to identify a single most important case. If I had to choose, I would say the early judgments where the Court elaborated its approach to interpretation of the Convention are the most important, as they still resonate throughout the Court's case-law.

Oddný Mjöll Arnardóttir (Iceland)
judge of the Court since 15 March 2023

Who are you?

I am a university lecturer and teach human rights and criminal law. I have also been a lawyer for almost 25 years, and, in that capacity, I have acted for applicants before the Court.

What does the ECHR represent for you?

The Court has played a very important role in the emergence and development of human rights everywhere in Europe. I believe that the Court's role has been particularly important in central and eastern Europe. After the fall of the totalitarian regimes, in that region from 1989 onwards, the Convention stimulated, not only the recognition and promotion of human rights, but also the development of States governed by the rule of law.

What do you consider to be the most important ECHR case?

Although it is primarily for the national courts to apply the European Convention on Human Rights and to defend individual rights, it is the Court which has the last word, especially with regard to the interpretation of the Convention. In this context, I think that the judgments in which the Court has defined the key concepts of the Convention are very important. One example of this is the 1976 judgment in the case of *Engel and Others v. the Netherlands*, in which the Court defined the notion of a "criminal charge", a key concept for the application of Article 6 of the Convention.

Sebastian Răduleţu (Romania)
judge of the Court since 3 July 2023

In this section the new judges of the European Court of Human Rights give their views on the institution and its case-law.

How we work: the Registry

THE REGISTRAR

The Registrar is the head of the Registry and holds overall responsibility for its judicial and administrative activities. Elected by the Plenary Court, the Registrar works under the authority of the President of the Court. A Deputy Registrar, also elected by the Plenary Court, assists the Registrar.

JURISCONSULT DIRECTORATE

This directorate ensures the consistency of case-law and provides opinions and information, in particular to the judicial formations and the members of the Court (Rule 18B).

DIRECTORATE OF FILTERING AND SUPPORT SERVICES

This directorate ensures the consistency of procedures and working methods, the linguistic quality of the Court's documents and a streamlined, efficient and secure IT system.

THE FILTERING SECTION

Under the supervision of the Filtering Section Registrar, assisted by his or her deputies, the filtering section sorts applications in order to direct them to the appropriate judicial formation, and deals with interim measure requests.

5 JUDICIAL SECTIONS

These sections, each of which is assisted by a Section Registrar and a Deputy Section Registrar, decide cases.

51 CASE-PROCESSING LEGAL UNITS assisted by
8 ADMINISTRATIVE SUPPORT TEAMS

These divisions process the applications lodged by individuals with the Court. The lawyers prepare the files and analytical notes for the Judges, and correspond with the parties on procedural matters.

SUPPORT SECTORS OF ACTIVITY

Case-law analysis, research and knowledge management • case management and working methods • press and public relations • language • information technology • human resources and logistics • finances • internal control • mail office and logistical support • archives • the library

640

staff members of the Registry

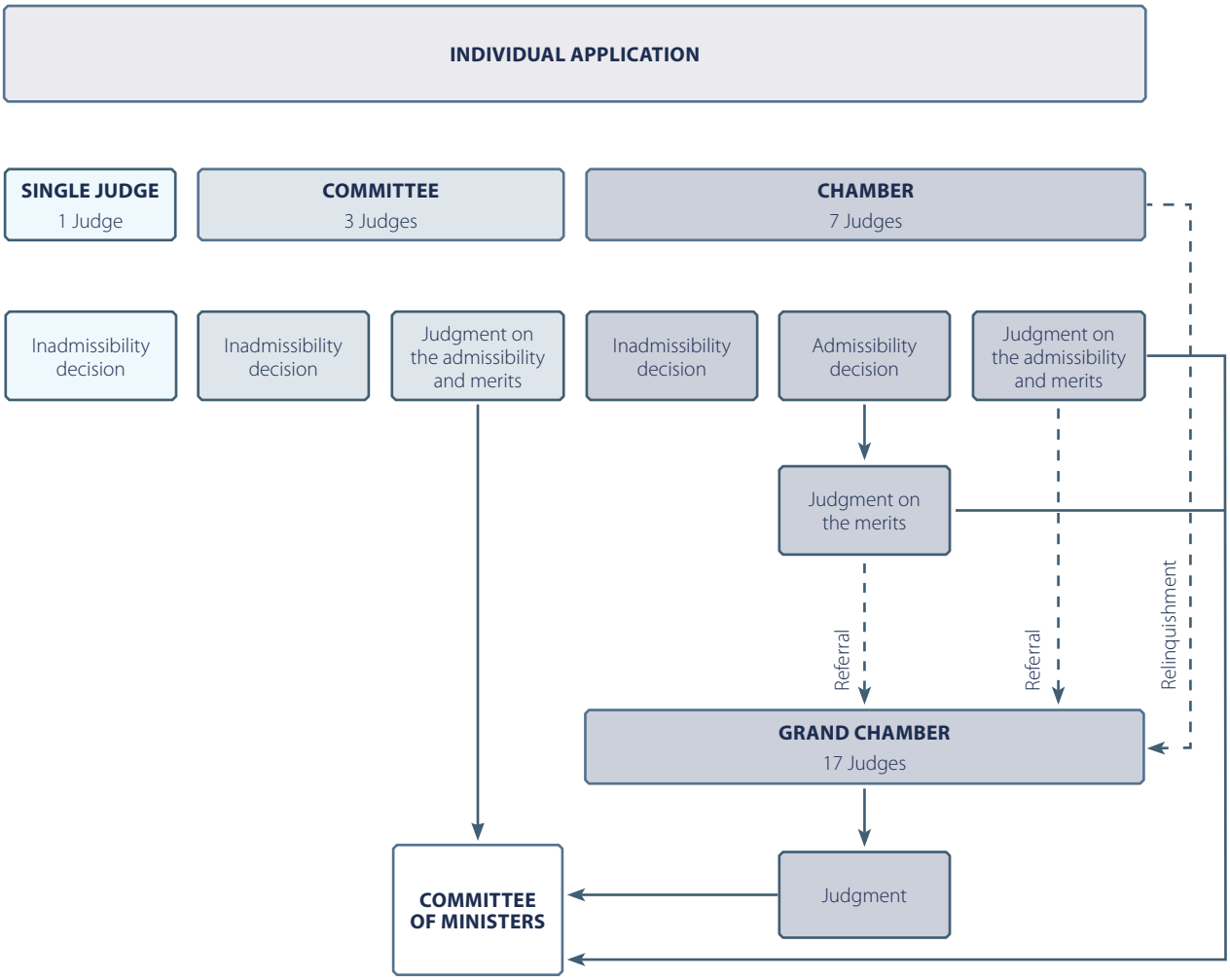
lawyers, translators, administrative and technical staff, who are staff members of the Council of Europe, the Court's parent organisation. All members of the Registry are recruited on the basis of open competitions, and are required to adhere to strict conditions as to their independence and impartiality.

77 M€

budget 2023

covers Judges' remuneration, staff salaries and operational expenditure (IT, official journeys, translation, interpretation, publications, representational expenditure, legal aid, fact-finding missions, etc.). It does not include expenditure on the building and infrastructure (telephone, cabling, etc.).

How we work: case-processing



36

phone calls per day

are handled by the Registry's phone reception in 11 languages in addition to English and French.

The information about the Court is provided in Bosnian, Croatian, German, Italian, Polish, Romanian, Russian, Serbian, Spanish, Turkish and Ukrainian.

519

mails, faxes and emails per day

are handled by the Mail office.

8,921

emails

arrived in 2023 on the ECHRMail shared mailbox.

Case-processing strategies

Impact strategy

The strategy for more targeted and effective case-processing is in full implementation. The new approach to prioritisation in case-processing to make the Court's work more immediately relevant for applicants and in Member States has been put in place and wielded results. In particular, it has ensured that both priority and impact cases are processed and adjudicated by the Court more expeditiously. It has enabled the Court to produce more relevant judgments and decisions and to reduce the length of case-processing for all cases. The Court can finally measure its impact not only in numerical terms but also with reference to its adjudication of priority and "impact" cases which address core issues of relevance for the State in question and/or for the Convention system generally.

Targeted approach to processing certain category of cases

The Court has explored the possibility of a more targeted approach towards examination of certain categories of legal issues and cases, by setting up a specialised Committee, focusing on dealing with applications related to immigration. While underscoring the complexity and evolving nature of the legal landscape, this more targeted case-processing strategy allows the Court to concentrate the specific expertise in the area of concern within the dedicated Committee formation, ensuring a nuanced and comprehensive approach to addressing legal complexities of immigration cases. This proactive approach is essential to maintaining the Court's efficacy and relevance in a dynamic legal environment.

Enhanced strategy for processing cases in committee formation

Giving a timely response to applicants whose cases are considered meritorious, but less significant from a jurisprudential point of view, has remained one of the Court's main priorities this year. The Court has continued to strike a careful balance when apportioning resources between the "impact" cases and other meritorious cases, to avoid delay in processing either category of case. The strategy of the Court in this respect includes a shift towards an even broader recourse to the examination of "well-established case-law" (WECL) applications in Committee formations. Summary-formula judgments and decisions have become the main procedural tool and method of drafting judgments and decisions in respect of cases which fall to be examined under the Broader WECL procedure by Committee formations, complementing the new case processing policy and leading to the more expeditious processing of WECL cases, allowing the Court to move more of its limited resources to important impact cases.

Processing of Russian cases

Following the cessation of the membership of the Russian Federation, the Court continued processing applications lodged against Russia. A large number of cases have been dealt with via the Chamber and Committee formations, including by using the simplified methods of processing (via "well-established case-law fast-track" (WECL FT) procedure) combined with the communication of applications to the parties and notification of the Court's judgments and decisions through their publication on the Court's HUDOC platform.

Procedural reforms

Third-party interventions

In March 2023, a new Practice Direction on third-party interventions was published. It aims to clarify the procedure, particularly with regard to the deadlines for submitting written observations, the content and scope of those observations, and the way in which the Court uses them when examining cases.

Advisory opinions

In October 2023, capitalising on its first five years of experience since Protocol No. 16 to the Convention entered into force, the Court updated the advisory opinion guidelines for national courts.

Highly sensitive documents

Also in October 2023, the Court published a revised version of Rule 44F on the treatment of highly sensitive documents. The purpose of this new provision is to establish a specific regime for the treatment of highly sensitive documents which, in the opinion of a State Party, require special treatment for reasons of national security or which, in the opinion of an applicant, require special treatment for other equally compelling reasons.

Interim measures

In June and November 2023, the Court adopted several decisions clarifying and codifying its existing practice relating to interim measures . The proposed codification of the Court's well-established case-law on Rule 39 is presently the subject of an ongoing consultation procedure. An updated Practice Direction accompanying the amended Rule 39 will be prepared and published following the consultation process. Since 1st December the Court has, *inter alia*, disclosed the identity of the judges who render decisions on interim measure requests.

Recusal of judges

Rule 28 ensures the rigorous implementation of the principle of judicial impartiality, which is crucial for upholding the rule of law, protecting human rights, and ensuring the good administration of justice.

After extensive consultation with the relevant stakeholders, in particular with the Contracting Parties, organisations with experience in representing applicants, and several bar associations, who submitted their written comments, the Court published a revised version of the Rules of Court on 22 January 2024, accompanied by Practice Directions issued by the President.

The updated Rule reiterates the reasons for which a judge cannot sit in a particular case and strengthens the core procedural framework for the recusal of judges by expressly codifying the existing practice according to which the parties to the proceedings may request the recusal of a judge.

Sharing Convention knowledge

Following the launch of a new public platform (ECHR-KS) in 2022, the Court has continued to scale up its knowledge-sharing activities by expanding the KS collection and by deepening the analysis of existing themes. More generally, the Court continues to seek to provide national courts with privileged access to a variety of tools to adjudicate Convention issues at home, thereby reinforcing the subsidiary nature of the Convention system, as recalled in the Reykjavík Declaration.

The Court's knowledge-sharing and other outreach activities are aimed at improving the accessibility and understanding of key Convention principles and standards at national level, in order to give full expression to the principle of subsidiarity as laid down in the Preamble to the Convention. Indeed, one of the overarching themes of the Interlaken reform process (2010-2020) was defining and optimising subsidiarity, it being agreed that responsibility for ensuring human rights protection is one shared between national authorities and the Strasbourg Court. This overarching principle was again underlined in the Reykjavík Declaration adopted at the Council of Europe Summit in May 2023, recalling further that executive, national and local authorities, national courts and national parliaments bear responsibility for implementing the Convention and complying with the judgments of the Court.[1]

The Convention is embedded in the domestic legal order of all Council of Europe member States. Moreover, Protocol No. 16 allows the highest national courts and tribunals to request advisory opinions from the European Court. As well as the key Convention requirements to exhaust domestic remedies and to have access to such remedies (Articles 35 and 13 of the Convention), the Strasbourg Court itself also articulates subsidiarity through concepts developed in its substantive case-law, including by tailoring the margin of appreciation according to context; by conducting a process-based review, placing the national court's analysis at the centre of its own assessment; and by interpreting substantive rights as requiring an adequate domestic process and assessment.

1. See Appendix IV of the Reykjavík Declaration (p. 17).

Judicial dialogue

Bilateral exchanges with the Superior Courts of member States

A crucial part of the Court's multi-faceted role is to conduct outreach through bilateral exchanges with superior courts. 2023 has been a particularly productive year in this regard.

The Court welcomed a number of national judicial delegations to Strasbourg, including judges from the Special Appeals Chamber of Albania, the Presidents of the Constitutional Court and Court of Cassation of Armenia, the Chief Justice of the Supreme Court of Azerbaijan, the President of the Constitutional Court of Hungary, a delegation from the Supreme Court of Norway, the President of the Supreme Administrative Court of Poland, a delegation from the Constitutional Court of Slovenia, delegations from the Constitutional and Supreme Courts of Spain, delegations from the Supreme Court of Sweden and the President of the Council of the State of Türkiye.

Aside from hosting judicial delegations, President O'Leary also led several official visits to Council of Europe member States, on each occasion accompanied by the Judge elected in respect of those States. In February, she paid an official visit to Croatia during which she met Prime Minister Andrej Plenković as well as Ivan Malenica, Minister of Justice and Public Administration, Radovan Dobronić, President of the Supreme Court, Miroslav Šeparović, President of the Constitutional Court, and Zlata Hrvoj Šipek, State Attorney General.

In June, the President led a Court delegation to Karlsruhe for a meeting with the Federal Constitutional Court of Germany. The delegation was received by Stephan Harbarth, President of the Constitutional Court, and took part in roundtable discussions with judges of the Constitutional Court.

In October, President O'Leary paid an official visit to Spain, during which, together with Cándido Conde-Pumpido Tourón, President of the Constitutional Court of Spain, she was received in Audience by His Majesty King Felipe VI of Spain. On the same occasion, she delivered a speech at the Constitutional Court of Spain and at a multilateral conference involving the Spanish and South American superior courts at the Complutense University of Madrid.

Later in October, the President paid an official visit to Italy, where she was received by Sergio Mattarella, President of the Republic and Silvana

Sciarra, President of the Constitutional Court. On the same occasion, she delivered a speech at a conference organised by the Italian Scuola Superiore della Magistratura and the *Accademia dei Lincei*.

President O'Leary also led the Court's delegations which participated in crucial trilateral exchanges with EU national constitutional and supreme courts and the CJEU in The Hague and Vienna.

Superior Courts Network

The SCN is an operational-level structure for sharing Convention case-law knowledge and know-how, in a privileged space and through mutually beneficial activities, with the superior national courts. By the end of 2023, the SCN had grown to 105 member courts in 45 of the 46 Council of Europe member States, this year's newcomers being the Supreme Court of Denmark and the Court of Auditors of Portugal.

The African Court of Human and Peoples' Rights joined the Network as the third observer court, following the Court of Justice of the European Union in 2021 and the Inter-American Court of Human Rights in 2022.

The core objective in creating the SCN was to provide concrete operational support to the judges of the superior national courts, whom may be considered to act as "Strasbourg judges" when faced with litigation concerning Convention rights. If the Interlaken reform process and, most recently, the Reykjavík Declaration underlined the clear vision of shared responsibility for the implementation of the Convention, the Court's purpose in creating the SCN was to provide the national courts with the practical tool-box to facilitate their work in this regard.

Following the launch of the new public knowledge-sharing platform (ECHR-KS) in late 2022, member courts continue to benefit from a more complete, restricted version of that platform. In addition, the SCN continues to provide targeted knowledge and know-how to its member courts by hosting case-law webinars and providing case-law materials typically focussed on issues pending before national jurisdictions, thereby ensuring that the relevant Convention case-law is provided at the crucial stage to the primary Convention actors. The SCN platform hosts a collection of several hundred legal databases from all States represented – a resource of considerable value to member courts. The network has also become a place of informal and *ad hoc* exchanges between national courts, who seek more and more opportunities for informal exchanges on their own judicial experiences and problem-solving.

Knowledge-sharing within SCN is a two-way street as member courts provide valued assistance to the Strasbourg Court's comparative work. National practices or trends, and any growing consensus in the member States, can be key reference points in certain Convention cases. Once the relevant ECHR judgment has been delivered, the national contributions obtained for that case are compiled and made available to SCN member courts. Over the years the Strasbourg Court has received over 1,500 such contributions (including over 170 in 2023 alone).

Attended by representatives from 76 member courts, the annual Focal Points Forum included a case-law sessions on the independence of the judiciary as well as a know-how session on the topic of knowledge management, legal research and the role of the Jurisconsult.

This year's webinar focused on "The Present and Future of the Artificial Intelligence Systems in the Judiciary". It was attended by around 200 participants, representing 47 member courts in 33 States. The Registry further organised regular web-based training sessions on how to research the Court's case-law, with over 100 participants from 33 member courts in 28 States and one observer court benefitting from these.

Transmission of know-how is being scaled up further through informal exchanges under a new Visiting Professionals Scheme ("VPS"), whereby member and observer courts may benefit from a visit to the Court in Strasbourg on subjects tailored to their specific needs in areas such as case-processing, document and knowledge management as well as related IT systems and development. Launched in April, the VPS has been an immediate success. In these early months of operation, over 80 participants from ten courts in nine member States have already visited the Court and benefited from detailed tailor-made presentations and exchanges on know-how related to judicial processes and needs. The VPS is being financed in part by the Council of Europe's Directorate-General of Human Rights and Rule of Law.

The Registry continued to assist member courts by responding to formal requests for case-law information. Such assistance is limited to providing a non-analytical list of case-law references, which ensures that the requesting domestic court has the full picture of potentially relevant case-law when deciding on any case before it. Over 50 such requests have been processed over the years, including six in 2023.

In addition to the Focal Points network encompassing member and observer courts, the SCN is currently setting up similar points of contact within the monitoring and standard setting bodies of the Council of Europe. Their input will directly enrich the knowledge-sharing platforms and the SCN webinars, and member courts will gain access to those specialised bodies' expertise. The overall aim is to ensure that the SCN provides a curated gateway for member courts to other bodies of knowledge and to other specialised fora of discussion and development.

Annual bilateral meeting with the Court of Justice of the European Union

On 16 October 2023 President O'Leary led a Court delegation of 20 Judges to the Court of Justice of the European Union in Luxembourg for the two Courts' annual meeting. The delegation was received by Koen Lenaerts, President of the Court of Justice of the European Union and took part in roundtable discussions with members of the Court of Justice organised around different case-law themes.

Aside from this annual meeting, the President also participated in trilateral exchanges with the Court of Justice and EU national superior courts in The Hague and Vienna. Given the complexity and importance of Europe's multi-level system for human rights protection and the European Court of Human Rights' role as the court of last resort in this field, participation in these exchanges is of fundamental importance.

Cooperation between regional human rights courts

In 2018 the Court, together with the African Court of Human and Peoples' Rights and the Inter-American Court of Human Rights, adopted the San José Declaration and established a Permanent Forum of Institutional Dialogue which is to meet every two years. The sister courts also publish a Joint Law Report, covering their leading case-law of the preceding year.[1]

In May 2023 President Síofra O'Leary and Judges Arnfinn Bårdsen, Elósegui, Pavli and Seibert-Fohr attended the third International Human Rights Forum, this time held at the Inter-American Court of Human Rights, in San José, Costa Rica, and resulting in the adoption of the San José Declaration II. Judges from the three courts exchanged views on judicial independence and rule of law as well as on environment and climate change. The delegation of the Court also attended a seminar on the topic "Regional systems of human rights protection and their challenges".

In November 2023 the Director of Filtering and Support Services took part in the Sixth African Union Judicial Dialogue in Algiers, organised by the African Court of Human and Peoples' Rights. Representatives of constitutional and supreme courts on the continent discussed the implementation of regional court decisions by national courts.

Exchanges with other non-European Courts

Beyond the official visits and meetings with judicial authorities from the Council of Europe member States, President O'Leary also participated in judicial dialogues with several non-European Courts. As such, she exchanged online with Judge Saburo Tokura, Chief Justice of the Supreme Court of Japan, and hosted a delegation of judges from the Court of Justice of the Economic Community of West African States (ECOWAS). Moreover, in May the Court hosted a visit by a delegation of the National High Court of Brazil, headed by Justice Antonio Herman Benjamin, and organised roundtable discussions with judges of the Court and members of the Registry.

1. Available at Regional Human Rights Courts.

Sharing the knowledge

The external knowledge-sharing platform

The Court's external knowledge-sharing platform (ECHR-KS)[1] provides detailed contextualised case-law analysis on all of the key Convention subjects, Article by Article as well as through the optic of transversal themes such as the environment, terrorism, data protection, immigration and prisoners' rights. It also filters into the platform key commentaries, doctrine and other publications and offers links to key texts and standards from other relevant international bodies. Crucially, it is not a static system: the case-law analytical content is updated every week and, importantly, it is managed so as to expand to provide analysis on new case-law issues as they emerge.

The ECHR-KS launch in late 2022 was a milestone in the project "Enhancing Subsidiarity: Support to the ECHR Knowledge-sharing and Superior Courts Dialogue", jointly implemented by the Registry and the Council of Europe Directorate-General of Human Rights and Rule of Law. Partly funded by voluntary contributions from France, Ireland and Human Rights Trust Fund, the Court is working actively with colleagues in DG1 to make ECHR-KS available in select non-official languages.[2]

In 2023 ECHR-KS content continued to expand, with a new page on Article 2 of Protocol no. 7 (Right of appeal in criminal matters) and with further transversal-theme pages being developed for publication in 2024, such as on the rights of the child. Legal summaries that would have appeared in the now discontinued Case-law Information Note can now be accessed either on ECHR-KS or HUDOC-ECHR, in principle on the day of delivery of the relevant judgment, decision or advisory opinion.

Overview of the case-law and key cases

The Jurisconsult's *Overview of the case-law* provides valuable insight into the most important judgments and decisions delivered by the Court each year, setting out the salient aspects of the Court's findings and their relevance to the evolution of its case-law. The annual version of the *Overview* can be consulted in this Annual Report and both the annual and mid-year versions can be downloaded from the Court's website.

In making its selection of "key cases", the Bureau of the Court identifies those judgments and decisions it considers to be of particular importance for each quarter, for example because they make a significant contribution to the development of the Court's case-law, deal with a new problem of general interest or entail a new interpretation or clarification of principles. Cases in this category will always be made available in both official languages. The selected cases are listed at the end of the chapter "Case-law Overview" and may also be found by referring to the quarterly and annual lists available on the Court's website[3] or by selecting "Key cases" in the "Importance" filter in HUDOC.

Case-law translations programme

The Registry maintains a standing invitation to courts, ministries, judicial training centres, associations of legal professionals, non-governmental organisations and other partners to share any translations to which they have the intellectual rights. A significant number of partners continue to support the Court's work and the implementation of the Convention at national level by offering to translate select judgments, decisions and advisory opinions as well as case-law guides, key themes,

1. Available at ECHR Knowledge Sharing (coe.int).
2. For more information visit: Subsidiarity Project.
3. Under Case-Law Updating – ECHR-KS – Knowledge Sharing (coe.int).

legal summaries, factsheets and the like. These are then shared with the Court so as to be made available online to an even wider audience. The Registry also references, on the Court's website, third-party websites or databases hosting translations of the Court's case-law, and welcomes suggestions for the inclusion of further sites of this kind.[1]

Handbooks on European law

The Court continues to cooperate with the EU Fundamental Rights Agency and relevant Council of Europe entities to produce European law handbooks on selected topics (so far, on access to justice; asylum, borders and immigration; child rights; data protection; and non-discrimination).[2] Published in nearly all EU languages, the handbooks are intended to be practical and instructive, covering ECHR and CJEU case-law; EU law and CoE soft law; relevant UN and other international or regional standards; as well as any pertinent national case-law.

In 2023 preparations began for a 2024 update of the handbook relating to access to justice, whereas a new handbook relating to cybercrime and fundamental rights is planned for 2025.

The HUDOC-ECHR case-law database

With the launch of the Armenian user interface in 2023, HUDOC-ECHR (hudoc.echr.coe.int) now exists in a total of nine languages (English, French, Armenian, Bulgarian, Georgian, Russian, Spanish, Turkish and Ukrainian), to be followed by a Romanian version in 2024.

The largest of the ten HUDOC sites, HUDOC--ECHR now contains over 194,000 documents. The number of visits increased by 12% in 2023 (6,679,867 compared with 5,962,612 visits in 2022).

Nearly 36,000 translations in 34 languages (other than English and French) have now been made available in HUDOC-ECHR (over 18% of its total content), making it the first port of call for legal professionals across Europe and beyond. The language-specific filter allows for rapid searching of these translations, including in free text.

In its Recommendation CM/Rec(2021)4 the Committee of Ministers of the Council of Europe acknowledged

> "the central contribution of the HUDOC databases in ensuring the continued effectiveness of the Convention system.

Library

During 2023 nearly 2,700 bibliographic references were added to the Library online catalogue bringing the number of records held in this database to more than 65,000.

The catalogue, which is accessible from the Library webpages on the Court's website, is an important resource for references to secondary literature on the Convention, case-law, and Articles, and it was consulted around 293,000 times during 2023.

A selection of references drawn from the catalogue are provided to the ECHR-KS platform twice a year.

A new interface for the catalogue delivers a more contemporary user experience and incorporates essential Court tools (ECHR-KS and HUDOC) to provide the researcher with broader information capture.

1. For more details see Case-law translations (coe.int).
2. Available at Other publications – Council of Europe publications, joint publications – ECHR – ECHR / CEDH (coe.int)

Training of legal professionals

Judges and Registry staff continued to share their expertise through case-law training sessions, both at the Court and in the member States. In organising the training sessions, the Court maintained its long-standing collaboration with France's Court of Cassation and *École nationale de la magistrature* (National School for the Judiciary), Latvia's Supreme Court, the *Oberlandesgericht Wien* (Vienna Higher Regional Court), the Swedish National Courts Administration and the Dutch Training and Study Centre for the Judiciary.

The Court hosted a delegation from the ECOWAS Community Court of Justice (Abuja, Nigeria) for a training session.

It also held training sessions for EU judges and prosecutors in partnership with the European Judicial Training Network.

In 2023 the Visitors' Unit ran 28 training sessions, of one to three days each, for legal professionals from 13 of the 46 member States.

General outreach

Press

Throughout the year, the Court's Press Unit – comprising five press officers and three assistants – acted as the interface between the Court and journalists, providing answers to their questions, accompanying them during the Court's public hearings, dealing with interview requests and drafting press releases, which provide information about the Court's activities and especially its judgments and decisions.

In 2023, 362 press releases were published (each of which is available in both French and English), with a further five or so in other languages (Albanian, Bosnian, Russian and Ukrainian).

Ten public hearings were held, with the attendance of 60-70 journalists at two of the climate-case hearings.

In addition, during the course of the year, the Press Unit compiled and/or updated:

- country files which contain key information for each of the 46 member States: the name of the national judge, statistics, budget contribution, landmark judgments, pending cases, etc.;
- factsheets, which are compiled by theme and are regularly updated to reflect the development of the Court's case-law, provide the reader with a rapid overview of the most relevant cases concerning a particular topic. More than 70 factsheets are currently available in English and French, with some being translated into other languages with the support of the States concerned and national human-rights institutions;
- questions and answers (Q&As) which are useful for helping the press quickly understand and explain concepts linked to related cases.

These documents – downloadable from the Court's website under Press/Press Service and published alongside press releases and on X (formerly Twitter) – provided journalists and the general public with as much relevant information as possible in connection with particular cases.

Lastly, the Press Unit contributed to the smooth running of the President's press conference which was held on 26 January 2023 in the Court building, with it also being streamed live on the internet. On that occasion, the President gave an overview of the Court's activities in 2022, presented the statistics for that year and took questions from journalists.

Public relations

The focal point of the Court's communication policy is its internet site (www.echr.coe.int), which registered a total of 2,900,000 visits in 2023 (a 4% reduction compared to 2022). In 2023 the internet site was upgraded through the launch of a new platform, enabling a wide range of information about all aspects of the Court's work to be consulted on different devices.

In 2023 the Court continued to expand its multimedia activity, and published new videos on its internet site and on social media:

- the "One judge, three questions" series includes: Oddný Mjöll Arnardóttir (judge elected in respect of Iceland); Anne Louise Bormann (judge elected in respect of Denmark), and Sebastian Răduleţu (judge elected in respect of Romania);
- the "Official visits" series includes: the Minister for Foreign Affairs of Germany, the President of Latvia and the President of the Republic of Slovenia;
- following the entry into force of Protocol No. 15, a new video on admissibility conditions (in English and French) was issued;
- the Film on the Court was updated in 39 languages.

With regard to social media: the twitter.com/ECHR_CEDH and YouTube accounts were added to regularly in the light of current events. The number of subscribers to the Twitter account increased by 26% in 2023, while the YouTube account saw an increase of 10%.

Visits

In 2023 the Visitors' Unit organised 327 information visits for 9,166 visitors from the legal community and welcomed about 12,864 visitors in total.

1,500
national contributions
compiled and made available to SCN member courts (including 170 in 2023)

36,000
translations
other than English and French have now been made available in HUDOC-ECHR

105
SCN member courts
in 45 of the 46 Council of Europe member States

12,864
visitors
in total were welcomed by the Visitors' Unit


Chief Justice of the Supreme Court of Azerbaijan

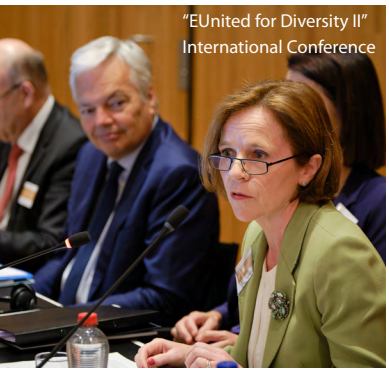
Judges from the Special Appeals Chamber of Albania

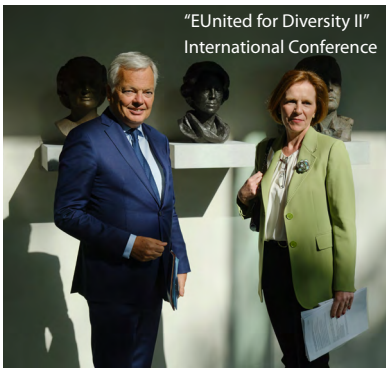

Presidents of the Constitutional Court and Court of Cassation of Armenia


Delegation from the Supreme Court of Norway


President of the Constitutional Court of Hungary


President of the Council of the State of Türkiye


"EUnited for Diversity II" International Conference


"EUnited for Diversity II" International Conference

Celebration of the 103rd anniversary of the Austrian Constitution and Constitutional Court


© CJUE, photo par G. Talavera


Delegation from the Constitutional Court of Slovenia


Delegations from the Constitutional and Supreme Courts of Spain


Delegation from the Supreme Court of Sweden


Trilateral exchanges with EU national constitutional and supreme courts and the CJEU


© Federal Constitutional Court of Germany

Statistics

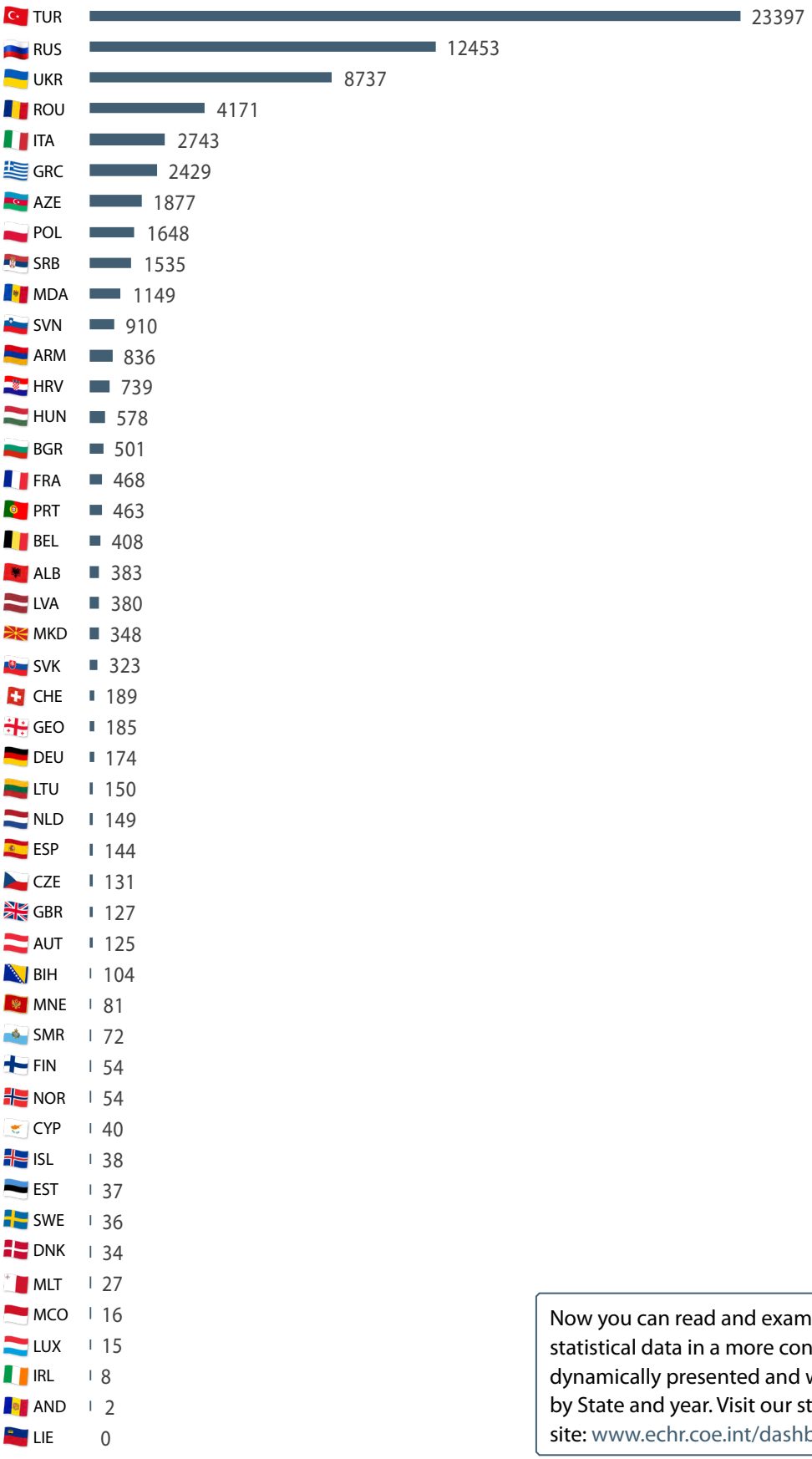
General information

A glossary of statistical terms (Understanding the Court's statistics) and further statistics are available on www.echr.coe.int under Statistics.

	2022	2023	
Allocated applications*	45,500	**34,650**	24% ↘
Communicated applications	6,822	**16,623**	**144%** ↗
Decided applications	39,570	**38,260**	3% ↘
by judgment delivered	4,168	**6,931**	**66%** ↗
by struck out or inadmissibility decision	35,402	**31,329**	12% ↘
Pending applications*	74,650	**68,450**	8% ↘
Chamber and Grand Chamber	35,100	**18,150**	48% ↘
Committee	34,800	**46,150**	**33%** ↗
Single-judge	4,750	**4,150**	13% ↘

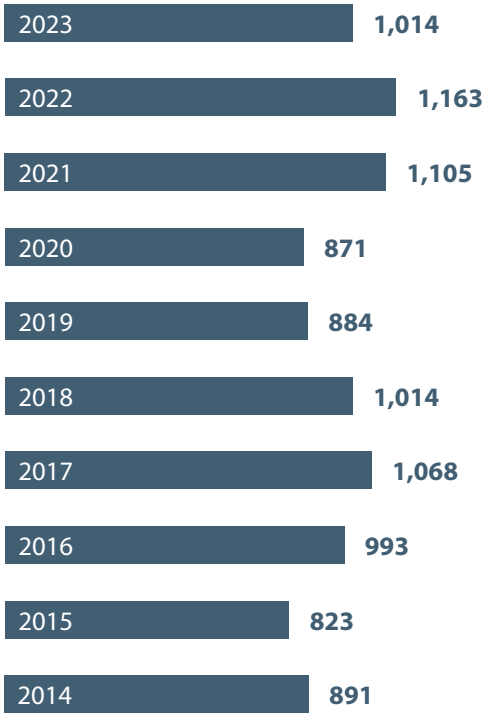
* Round figures [50] as of 31 December of the reference year.

Pending cases (by State)



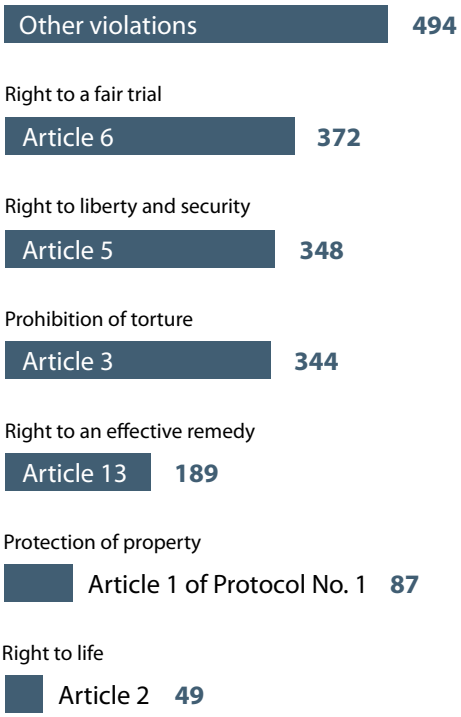
Now you can read and examine the Court's statistical data in a more convenient way, dynamically presented and with information by State and year. Visit our statistical web site: www.echr.coe.int/dashboards.

Delivered judgments

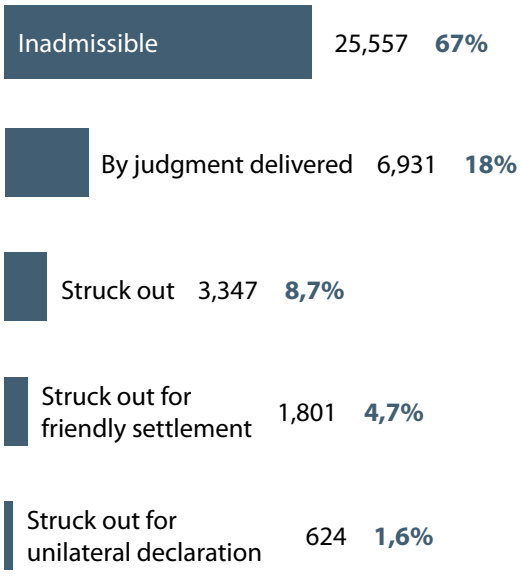


One judgment may concern more than one application.

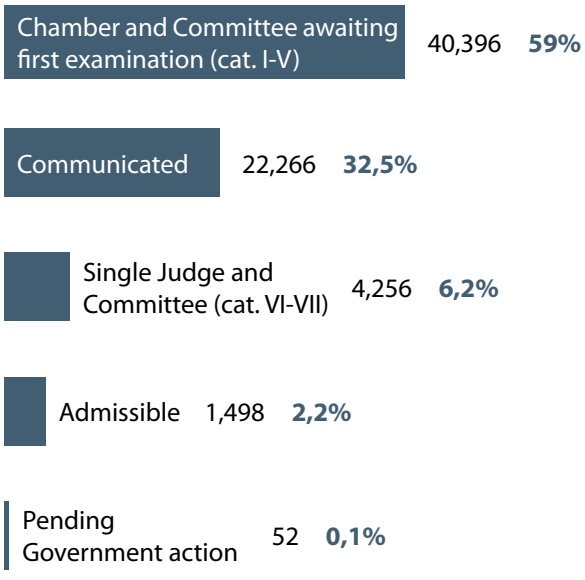
Violations by subject matter



Decided applications



Court's workload



Allocated applications by State and by population (2021-23)

	Allocated applications			Population (1,000)			Allocated/population (10,000)		
	2021	2022	2023	1.1.2021	1.1.2022	1.1.2023	2021	2022	2023
Albania	75	85	133	2.830	2.794	2.762	0,27	0,30	0,48
Andorra	11	10	6	77	80	82	1,43	1,25	0,73
Armenia	134	111	147	2.963	2.963	2.977	0,45	0,37	0,49
Austria	222	254	200	8.933	8.979	9.105	0,25	0,28	0,22
Azerbaijan	425	389	438	10.119	10.156	10.127	0,42	0,38	0,43
Belgium	155	1.169	1.328	11.555	11.618	11.754	0,13	1,01	1,13
Bosnia and Herzegovina	784	407	248	3.287	3.234	3.211	2,39	1,26	0,77
Bulgaria	623	597	486	6.917	6.839	6.448	0,90	0,87	0,75
Croatia	698	886	1.012	4.036	3.862	3.851	1,73	2,29	2,63
Cyprus	52	43	29	896	905	921	0,58	0,48	0,31
Czech Republic	331	309	343	10.495	10.517	10.828	0,32	0,29	0,32
Denmark	67	97	87	5.840	5.873	5.933	0,11	0,17	0,15
Estonia	113	141	103	1.330	1.332	1.366	0,85	1,06	0,75
Finland	91	170	91	5.534	5.548	5.564	0,16	0,31	0,16
France	764	831	729	67.657	67.872	68.071	0,11	0,12	0,11
Georgia	120	150	156	3.728	3.689	3.736	0,32	0,41	0,42
Germany	574	535	450	83.155	83.237	84.359	0,07	0,06	0,05
Greece	912	1.947	541	10.679	10.460	10.394	0,85	1,86	0,52
Hungary	1.086	1.267	2.469	9.731	9.689	9.597	1,12	1,31	2,57
Iceland	21	30	19	369	376	388	0,57	0,80	0,49
Ireland	35	28	21	5.006	5.060	5.194	0,07	0,06	0,04
Italy	1.610	1.931	1.957	59.236	59.030	58.851	0,27	0,33	0,33
Latvia	268	272	166	1.893	1.876	1.883	1,42	1,45	0,88
Liechtenstein	8	1	6	39	39	40	2,05	0,26	1,50
Lithuania	429	360	351	2.796	2.806	2.857	1,53	1,28	1,23
Luxembourg	30	35	28	635	645	661	0,47	0,54	0,42
Malta	62	19	22	516	521	542	1,20	0,36	0,41
Republic of Moldova	630	642	653	2.597	2.604	2.513	2,40	2,47	2,60
Monaco	8	8	9	39	36	36	2,05	2,22	2,50
Montenegro	381	295	173	621	618	617	6,14	4,77	2,80
Netherlands	248	198	231	17.475	17.591	17.811	0,14	0,11	0,13
North Macedonia	394	367	335	2.069	1.837	1.830	1,90	2,00	1,83
Norway	116	131	87	5.391	5.425	5.489	0,22	0,24	0,16
Poland	2.889	2.146	1.843	37.840	37.654	36.754	0,76	0,57	0,50
Portugal	260	335	371	10.298	10.352	10.467	0,25	0,32	0,35
Romania	2.971	3.302	2.821	19.202	19.042	19.052	1,55	1,73	1,48
Russia	9.432	6.077	1.695	143.667	143.667	143.667	0,66	0,42	0,12
San Marino	18	56	16	35	34	34	5,14	16,47	4,71
Serbia	1.993	3.289	1.522	6.872	6.797	6.664	2,90	4,84	2,28
Slovak Republic	460	479	457	5.460	5.435	5.429	0,84	0,88	0,84
Slovenia	234	287	978	2.109	2.107	2.117	1,11	1,36	4,62
Spain	614	718	421	47.399	47.433	48.060	0,13	0,15	0,09
Sweden	157	162	143	10.379	10.452	10.522	0,15	0,15	0,14
Switzerland	273	257	280	8.670	8.739	8.813	0,31	0,29	0,32
Türkiye	9.548	12.551	8.341	83.614	84.680	85.280	1,14	1,48	0,98
Ukraine	3.721	1.914	2.531	45.246	45.246	45.246	0,82	0,42	0,56
United Kingdom	210	240	201	68.134	67.509	67.737	0,03	0,04	0,03
TOTAL	**44.257**	**45.528**	**34.674**	**837.369**	**837.258**	**839.640**	**0,53**	**0,54**	**0,41**

46 Council of Europe member States had a combined population of approximately 696 million inhabitants on 1 January 2023. The average number of applications allocated per 10,000 inhabitants (without taking into account the Russian population) was 0,47 in 2023. Sources on 01.01.2023: Internet sites of Eurostat (General and regional statistics: "Population on 1 January" database) and of the Population Division of the United Nations Department of Economic and Social Affairs.

Violations by Article and by State

	Total of judgments	At least one violation	No violation	Friendly settlements / striking-out	Other judgments [1]	Right to life	Lack of effective investigation	Prohibition of torture [2]	Inhuman / degrading treatment	Lack of effective investigation	Conditional violations [3]	Prohibition of slavery / forced labour	Right to liberty and security	Right to a fair trial [2]
						Art. 2	Art. 2	Art. 3	Art. 3	Art. 3	Art. 2/3	Art. 4	Art. 5	Art. 6
Albania	21	2	1			1	2						2	10
Andorra														
Armenia	25	23	1		1	5	6		1	2			7	2
Austria	6	5	1											2
Azerbaijan	4	38	1		1	1	2		2	2			8	10
Belgium	1	4	6						1					1
Bosnia and Herzegovina	2	2												
Bulgaria	3	25	2	1	2		1		1	1		1	3	2
Croatia	27	24	3			1	1		8	1				8
Cyprus	5	4	1										2	
Czech Republic	9	2	5		2	1	1							1
Denmark	5	3	2						1	1				
Estonia	4	4							2				1	
Finland	2		2											
France	26	12	13		1				3		1		4	3
Georgia	17	12	5				2	1	1	2			4	1
Germany	9	3	6											
Greece	18	16	2						7	1			3	4
Hungary	37	36	1			1	1		9	3			14	1
Iceland														
Ireland	2		2											
Italy	52	48	3	1		1			9	1			14	8
Latvia	3	1	2											
Liechtenstein														
Lithuania	13	5	8										1	
Luxembourg	2	1	1											
Malta	14	14							1				2	
Republic of Moldova	24	24							2	2			5	9
Monaco	1		1											
Montenegro														
Netherlands	9	5	4						1					2
North Macedonia	11	1		1					1				4	2
Norway	3	3												
Poland	33	31		1	1		1						6	7
Portugal	6	6							4					1
Romania	74	58	7	8	1		3		32	3			4	7
Russian Federation	217	216			1	3	6	16	140	22	1		168	138
San Marino	1		1											
Serbia	9	9											2	2
Slovak Republic	18	17		1					1	1				1
Slovenia	2	2												2
Spain	7	6	1											1
Sweden	2		2											
Switzerland	9	7	1		1								1	2
Türkiye	78	72	3	3			2		3	4			16	17
Ukraine	13	123	2	1	4	1	6		40	10			77	12
United Kingdom	3	1	2											
Sub-total		892	92	17	15	15	34	17	270	56	2	1	348	256
TOTAL [4]			1,014											

This table has been generated automatically, using the conclusions recorded in the metadata for each judgment contained in HUDOC, the Court's case-law database.

1. Other judgments: just satisfaction, revision, preliminary objections and lack of jurisdiction.
2. Figures in this column may include conditional violations.
3. Cases in which the Court held there would be a violation of Article 2 and/or 3 if the applicant was removed to a State where he/she was at risk.
4. Two judgments are against more than 1 State: Georgia and Russian Federation.

	Length of proceedings	Non-enforcement	No punishment without law	Respect for private and family life[2]	Freedom of thought, conscience, religion	Freedom of expression	Freedom of assembly and association	Right to marry	Right to an effective remedy	Prohibition of discrimination	Protection of property	Right to education	Right to free elections	Right not to be tried / punished twice	Other Articles of the Convention	
	Art. 6	Art. 6	Art. 7	Art. 8	Art. 9	Art. 10	Art. 11	Art. 12	Art. 13	Art. 14	P. 1-1	P. 1-2	P. 1-3	P. 7-4		
Albania	3	2		1							1					
Andorra																
Armenia	3			1		3			3		2					
Austria	1			2												
Azerbaijan				8		3	6		1		5				7	
Belgium	1	1														
Bosnia and Herzegovina		1									1				2	
Bulgaria				6		1				1	11		1			
Croatia	6	1	1	1					3	1	1				1	
Cyprus	2								2							
Czech Republic																
Denmark				2												
Estonia				2												
Finland																
France		3							1		2				1	
Georgia							1			4	2					
Germany				1		2										
Greece	2			2					4		1					
Hungary	8			6		2			6	1	1				2	
Iceland																
Ireland																
Italy	8	5		10					3		16				1	
Latvia				1												
Liechtenstein																
Lithuania				3		4					1					
Luxembourg						1										
Malta	1								7		12					
Republic of Moldova		5		6		1			2	1	6				1	
Monaco																
Montenegro																
Netherlands				1			1									
North Macedonia				1						1	3				2	
Norway				3												
Poland	9			8		3			9	1	1				1	
Portugal				1					3							
Romania	2	1		7		1					3		1	1		
Russian Federation				49	3	37	105		85	9			3	21	50	
San Marino																
Serbia		3		1		1			1		3				2	
Slovak Republic	10			4					2	1	1					
Slovenia																
Spain				1		1					3					
Sweden																
Switzerland				3					1	1						
Türkiye			1	15		10	16			1	4	1				
Ukraine	38			13		5	1		56	1	7				2	
United Kingdom				1												
Sub-total	94	22	2	160	3	75	130	0	189	23	87	1	5	22	72	


ENTRANCE
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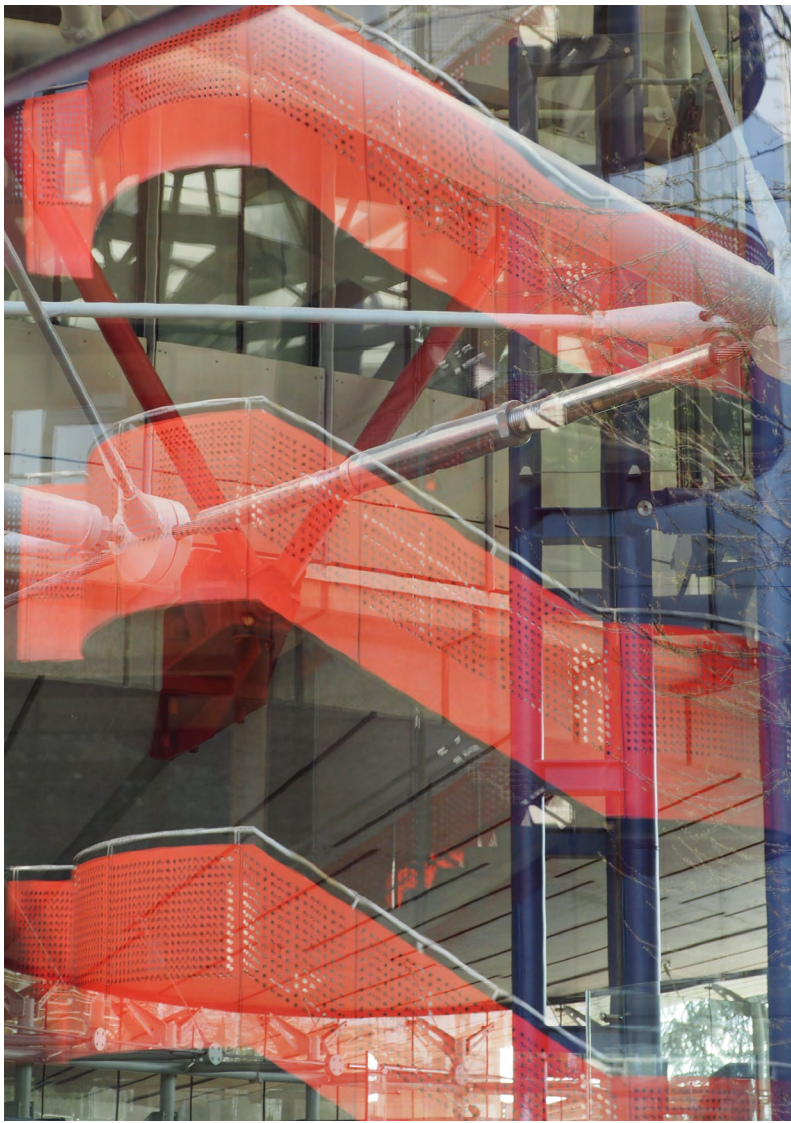
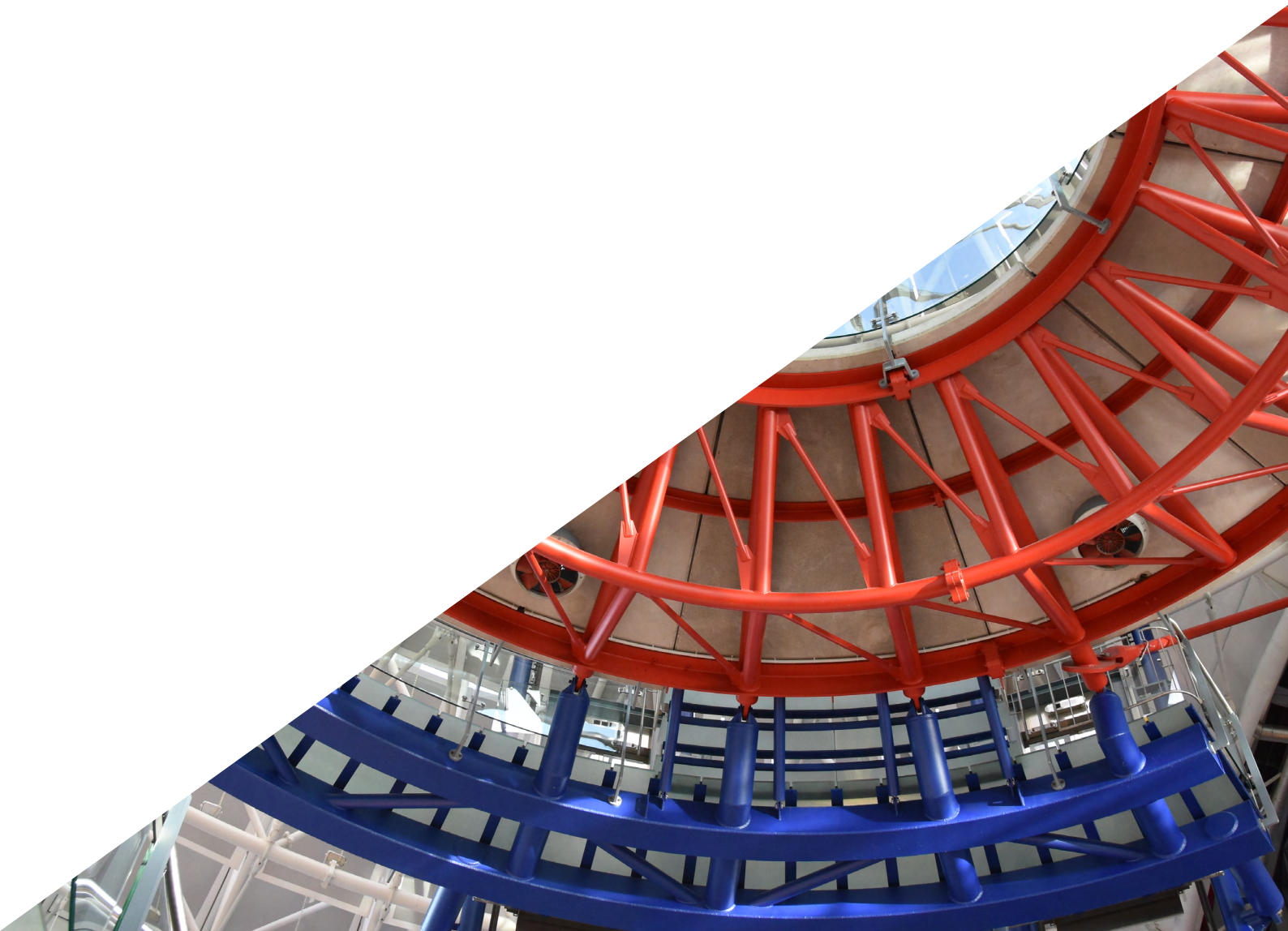


The year in pictures



24.01 | Visit by the Minister for Foreign Affairs of Germany

On 24 January 2023 Annalena Baerbock, Minister for Foreign Affairs of Germany, visited the Court and was received by President Síofra O'Leary. Anja Seibert-Fohr, judge elected in respect of Germany, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

26.01 | Visit by the Presidents of the Constitutional Court and the Court of Cassation of Armenia

On 26 January 2023 Arman Dilanyan, President of the Constitutional Court of Armenia, and Lilit Tadevosyan, President of the Court of Cassation of Armenia, visited the Court and were received by President Síofra O'Leary. Armen Harutyunyan, judge elected in respect of Armenia, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

26.01 | Visit by the President of the Council of State of Türkiye

On 26 January 2023 Zeki Yiğit, President of the Council of State of Türkiye, visited the Court and was received by President Síofra O'Leary. Saadet Yüksel, judge elected in respect of Türkiye, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

27.01 | Opening of the Judicial Year

A solemn hearing took place at the Court on 27 January 2023. It was preceded by a judicial seminar on *Judges preserving democracy through the protection of human rights*, which was attended by important figures from the European judicial world, the Council of Europe and from local, national and international authorities.

13.02 | Visit by the President of Latvia

On 13 February 2023 Egils Levits, President of the Republic of Latvia, paid an official visit to the Court and was received by President Síofra O'Leary. Mārtiņš Mits, Judge elected in respect of Latvia, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

15.02 | Visit by the Attorney General of the United Kingdom

On 15 February 2023 Victoria Prentis, Attorney General of the United Kingdom, visited the Court and was received by President Síofra O'Leary. Tim Eicke, judge elected in respect of the United Kingdom, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

16-17.02 | Official visit to Croatia

On 16 and 17 February 2023 President Síofra O'Leary paid an official visit to Croatia. During this visit, she met Andrej Plenković, Prime Ministrer, Ivan Malenica, Minister of Justice and Public Administration, Radovan Dobronić, President of the Supreme Court, Miroslav Šeparović, President of the Constitutional Court, and Zlata Hrvoj Šipek, State Attorney General. She was accompanied by Davor Derenčinović, judge elected in respect of Croatia, and Marialena Tsirli, Registrar of the Court.

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23.03 | Binding Force: Institutional dialogue between the ECHR and the Committee of Ministers under Article 46 of the European Convention

A seminar organised in the framework of the Icelandic Presidency of the Council of Europe's Committee of Ministers by the Court and the Department for the Execution of the Judgments of the Court, on the theme Binding force: Institutional dialogue between the European Court of Human Rights and the Committee of Ministers under Article 46 of the European Convention on Human Rights, took place in the Human Rights Building in Strasbourg on 23 March 2023.

24.03 | René Cassin competition

Students from the University of Strasbourg were declared the winners of the 2023 René Cassin advocacy competition for law students after beating a rival team from the University of Paris-Saclay.

The final round of the 38th René Cassin competition in French took place at the Court on 24 March 2023 before the jury made up of judges of the ECHR, lawyers, academics and representatives of the competition's partner institutions. It was chaired by Mr Christophe Soulard, First President of the French Court of Cassation.

04.04 | Visit by the Minister of Justice of Azerbaijan

On 4 April 2023 Fikrat Mammadov, Minister of Justice of Azerbaijan, visited the Court and was received by President Síofra O'Leary. Lətif Hüüseynov, judge elected in respect of Azerbaijan, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

09.05 | Visit by the Minister of Justice of Hungary

On 9 May 2023, Judit Varga, Minister of Justice of Hungary, visited the Court and was received by President Síofra O'Leary. Péter Paczolay, judge elected in respect of Hungary, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

16-17.05 | Fourth Summit of the Heads of State and Government of the Council of Europe

On 16 and 17 May 2023 President Síofra O'Leary represented the Court at the fourth Council of Europe Summit in Reykjavík (Iceland). She delivered a statement on that occasion and held bilateral meetings with: Emmanuel Macron, President of the French Republic; Maia Sandu, President of the Republic of Moldova; Alexander de Croo, Prime Minister of Belgium; Andrej Plenković, Prime Minister of Croatia; Katrín Jakobsdóttir, Prime Minister of Iceland; Leo Varadkar, Taoiseach of Ireland; Xavier Bettel, Prime Minister of Luxembourg; Rishi Sunak, Prime Minister of the United Kingdom; and Ursula von der Leyen, President of the European Commission.

22.05 | Visit by a delegation of the Supreme Court of Norway

On 22 May 2023 a delegation from the Supreme Court of Norway, headed by Chief Justice Toril Marie Øie, paid a working visit to the Court and was received by President Síofra O'Leary. During the visit the delegation took part in roundtable discussions with judges of the Court and members of the Registry.

22-26.05 | ELSA Moot Court

A team from the University of Maastricht was declared the winner of the 11th edition of the European Moot Court Competition in English on the European Convention of Human Rights. Eighteen university teams from ten countries were competing to win a fictitious case related to gestational surrogacy from 22 to 26 May 2023.

This competition is organised jointly by the Council of Europe and the European Law Students Association (ELSA).

12.06 | Visit by the Minister of Justice of Armenia

On 12 June 2023 Grigor Minasyan, Minister of Justice of Armenia, visited the Court and was received by President Síofra O'Leary. Armen Harutyunyan, judge elected in respect of Armenia, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

14.06 | Visit by delegations from the Constitutional and Supreme Courts of Spain

On 14 June 2023 a delegation from the Constitutional Court of Spain, headed by its Vice-President Inmaculada Montalbán Huertas, and a delegation of the Supreme Court of Spain, headed by Judge Celsa Picó Lorenzo, paid a working visit to the Court and were received by President Síofra O'Leary. During the visit, the delegations took part in roundtable discussions with judges of the Court and members of the Registry.

19.06 | Visit to the German Federal Constitutional Court

On 19 June 2023 President Síofra O'Leary led a Court delegation to Karlsruhe for a meeting with the Federal Constitutional Court of Germany. The delegation was received by Stephan Harbarth, President of the Constitutional Court, and took part in roundtable discussions with judges of the Constitutional Court.

21.06 | Visit by the President of the Republic of Slovenia

On 21 June 2023 Nataša Pirc Musar, President of the Republic of Slovenia, visited the Court and was received by President Síofra O'Leary. Marko Bošnjak, Vice-President of the Court, judge elected in respect of Slovenia, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

22.06 | Visit by the President of the Constitutional Court of Hungary

On 22 June 2023 Tamás Sulyok, President of the Constitutional Court of Hungary, visited the Court and was received by President Síofra O'Leary. Péter Paczolay, judge elected in respect of Hungary, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.

08.09 | Visit by France's Minister of Justice

On 8 September 2023 Éric Dupond-Moretti, France's Minister of Justice, visited the Court and was received by President Síofra O'Leary. Mattias Guyomar, judge elected in respect of France, and Marialena Tsirli, Registrar of the Court, also attended the meeting.

11.09 | Visit by a delegation of the Constitutional Court of Slovenia

On 11 September 2023 a delegation from the Constitutional Court of Slovenia, headed by its President, Matej Accetto, paid a working visit to the Court and was received by President Síofra O'Leary. During the visit the delegation took part in roundtable discussions with judges of the Court and members of the Registry.

05-07.10 | Official visit to Spain

On 5-7 October, President Síofra O'Leary paid an official visit to Spain, accompanied by María Elósegui, Judge elected in respect of Spain, and Abel Campos, Deputy Registrar of the Court.

On 5 October, together with Cándido Conde-Pumpido Tourón, President of the Constitutional Court of Spain, President O'Leary was received in Audience by His Majesty King Felipe VI of Spain. On the same day, she delivered a speech at the Constitutional Court of Spain.

On 6 October, the President participated in a conference held at the Complutense University of Madrid as part of the 5th International Congress of the Iberoamerican Union of Universities and Supreme Courts, where she delivered a keynote speech.

13.10 | Seminar to mark the fifth anniversary of the coming into force of Protocol No. 16

On 13 October the ECHR organised a half-day Seminar, *Judicial dialogue through the advisory opinion mechanism under Protocol No. 16*, to mark the fifth anniversary of the coming into force of Protocol No. 16 and the advisory opinion mechanism. The Seminar gathered together superior court presidents from many Council of Europe member States (including from those States which have not ratified the Protocol) to take stock of how the mechanism is operating in practice and reflect on how it could develop in the future.

16.10 | Visit to the Court of Justice of the European Union

On 16 October 2023 President Síofra O'Leary led a Court delegation to the Court of Justice of the European Union in Luxembourg for the two Courts' annual meeting. The delegation was received by Koen Lenaerts, President of the Court of Justice of the European Union, and took part in roundtable discussions with members of the Court of Justice.


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19-20.10 | Official visit to Italy

On 19-20 October 2023, President Síofra O'Leary paid an official visit to Italy. On 19 October she was received by Sergio Mattarella, President of the Republic. On the same day, President O'Leary also met Silvana Sciarra, President of the Constitutional Court. On 20 October, she participated in a conference at the *Accademia dei Lincei* on *The Judge and the Rule of Law*. Other keynote speakers included President Sciarra and Koen Lenaerts, President of the Court of Justice of the European Union. President O'Leary was accompanied by Raffaele Sabato, judge elected in respect of Italy, and Stefano Piedimonte Bodini, Head of the Private Office of the President.

31.10 | Official visit by the Lord Chancellor, Secretary of State for Justice of the United Kingdom

On 31 October 2023 Alex Chalk, Lord Chancellor, Secretary of State for Justice of the United Kingdom, visited the Court and was received by President Síofra O'Leary. Marialena Tsirli, Registrar of the Court, also attended the meeting.

16.11 | Official visit by the State Secretary at the Federal Ministry of Justice of Germany

On 16 November 2023, Angelika Schlunck, State Secretary at the Federal Ministry of Justice of Germany, visited the Court and was received by President Síofra O'Leary. Anja Seibert-Fohr, Judge elected in respect of Germany, and Abel Campos, Deputy Registrar of the Court, also attended the meeting.


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01.12 | Conference "Human Rights in Practice"

On 1 December 2023 President Síofra O'Leary took part in the Conference *Human Rights in Practice: the Role of Human Rights* on the 20th anniversary of the ECHR Act 2003 organised by the Irish Centre for European Law (ICEL) in Dublin (Ireland). She delivered a speech on that occasion.

04.12 | Awards ceremony at the University of Strasbourg

On 4 December 2023 President Síofra O'Leary attended an awards ceremony at the Faculty of Law, Political Science and Management of the University of Strasbourg, where she was accompanied by Judge Mattias Guyomar, elected in respect of France. She delivered an address on that occasion.


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English edition

This Report is available to download at www.echr.coe.int (The Court/Annual Reports)

Layout and cover design: ECHR

Cover: the Human Rights Building (Architects: Richard Rogers Partnership and Atelier Claude Bucher)

The Annual Report of the European Court of Human Rights provides information on the organisation, activities and case-law of the Court.

This Report contains a foreword by the President, an outline of the events that marked the year, the speeches delivered at the opening of the judicial year, an overview of the case-law, the year's judicial activities and the statistical data and tables of violations of Articles of the European Convention on Human Rights by member State.

The Report presents the Court's recent procedural reforms and provides an update on its knowledge-sharing and outreach programmes, notably the Superior Courts Network.

The Court's Annual Reports and other materials about the work of the Court and its case-law are available to download from the Court's website (www.echr.coe.int).

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The European Court of Human Rights is an international court set up in 1959 by the member States of the Council of Europe. It rules on individual or State applications alleging violations of the rights set out in the European Convention on Human Rights of 1950.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE