

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

Guide on Article 6 of the European Convention on Human Rights

Right to a fair trial

(civil limb)

Updated to 31 August 2020



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This Guide was originally drafted in English. It is updated regularly and, most recently, on 31 August 2020.

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Note to readers

This Guide is part of the series of Guides on the Convention published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 6 (civil limb) of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Article 6 § 1 of the Convention – Right to a fair trial

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ..."

HUDOC keywords

Civil rights and obligations (6-1) – Determination (6-1) – Dispute (6-1) – Criminal charge (6-1) – Determination (6-1) – Access to court (6-1) – Fair hearing (6-1) – Adversarial trial (6-1) – Equality of arms (6-1) – Legal aid (6-1) – Public hearing (6-1) – Oral hearing (6-1) – Exclusion of press (6-1) – Exclusion of public (6-1) – Necessary in a democratic society (6-1) – Protection of morals (6-1) – Protection of public order (6-1) – National security (6-1) – Protection of juveniles (6-1) – Protection of private life of the parties (6-1) – Extent strictly necessary (6-1) – Prejudice interests of justice (6-1) – Reasonable time (6-1) – Independent tribunal (6-1) – Impartial tribunal (6-1) – Tribunal established by law (6-1) – Public judgment (6-1)

I. Scope: the concept of "civil rights and obligations"

Article 6 § 1 of the Convention

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] tribunal ..."

A. General requirements for applicability of Article 6 § 1

1. The concept of "civil rights and obligations" cannot be interpreted solely by reference to the respondent State's domestic law; it is an "autonomous" concept deriving from the Convention. Article 6 § 1 applies irrespective of the parties' status, the nature of the legislation governing the "dispute" (civil, commercial, administrative law etc.), and the nature of the authority with jurisdiction in the matter (ordinary court, administrative authority etc.) (*Georgiadis v. Greece*, § 34; *Bochan v. Ukraine (no. 2)* [GC], § 43; *Naït-Liman v. Switzerland* [GC], § 106).

2. However, the principle that the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions does not give the Court power to interpret Article 6 § 1 as though the adjective "civil" (with the restrictions which the adjective necessarily places on the category of "rights and obligations" to which that Article applies) were not present in the text (*Ferrazzini v. Italy* [GC], § 30).

3. The applicability of Article 6 § 1 in civil matters firstly depends on the existence of a "dispute" (in French, "*contestation*"). Secondly, the dispute must relate to a "right" which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether it is protected under the Convention. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise. Lastly, the result of the proceedings must be directly decisive for the "civil" right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play (*Denisov v. Ukraine* [GC],

§ 44; *Regner v. the Czech Republic* [GC], § 99; *Károly Nagy v. Hungary* [GC], § 60; *Naït-Liman v. Switzerland* [GC], § 106).

4. The two aspects, civil and criminal, of Article 6 of the Convention are not necessarily mutually exclusive, so if Article 6 § 1 is applicable under its civil head, the Court may assess whether the same Article is also applicable under its criminal head (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 121). The Court considers that it has jurisdiction to examine of its own motion the question of the applicability of Article 6 even if the respondent Government have not raised this issue before it (*Selmani and Others v. the former Yugoslav Republic of Macedonia*, § 27).

1. "Genuine and serious" "dispute" with a decisive outcome

5. The word "dispute" must be given a substantive meaning rather than a formal one (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 45; *Moreira de Azevedo v. Portugal*, § 66; *Miessen v. Belgium*, § 43). It is necessary to look beyond the appearances and the language used and concentrate on the realities of the situation according to the circumstances of each case (*Gorou v. Greece (no. 2)* [GC], § 29; *Boulois v. Luxembourg* [GC], § 92). However, Article 6 does not apply to a non-contentious and unilateral procedure which does not involve opposing parties and which is available only where there is no dispute over rights (*Alaverdyan v. Armenia* (dec.), § 35). Article 6 likewise does not apply to reports on an investigation aimed at ascertaining and recording facts which might subsequently be used as a basis for action by other competent authorities – prosecuting, regulatory, disciplinary or even legislative (even if the reports may have damaged the reputation of the persons concerned) (*Fayed v. the United Kingdom*, § 61).

6. The "dispute" must be genuine and of a serious nature (*Sporrong and Lönnroth v. Sweden*, § 81; *Cipolletta v. Italy*, § 31; *Yankov v. Bulgaria* (dec.), §§ 26-27). This condition has, for example, ruled out civil proceedings taken against prison authorities on account of the mere presence in the prison of HIV-infected prisoners (*Skorobogatykh v. Russia* (dec.)). The Court has also held a "dispute" to be real in a case concerning a request to the public prosecutor to lodge an appeal on points of law, as it formed an integral part of the whole of the proceedings that the applicant had joined as a civil party with a view to obtaining compensation (*Gorou v. Greece (no. 2)* [GC], § 35).

7. Where proceedings relate solely to issues of observance of admissibility criteria, there is no "dispute" over "civil" rights and obligations (*Neshev v. Bulgaria* (dec.); *Nicholas v. Cyprus* (dec.), with further case-law references). In a number of cases where actions in the domestic courts had been dismissed on procedural grounds (because a prior remedy had not been used or proceedings had been brought before a court lacking jurisdiction), the Court has held that the "dispute" raised by the applicants in the domestic courts was neither "genuine" nor "serious", meaning that Article 6 § 1 was not applicable. In reaching that finding, it noted that the dismissal of the action had been foreseeable and that the applicants had had no prospect of reversing the situation of which they complained (*Astikos Oikodomikos Synetairismos Nea Konstantinoupolis v. Greece* (dec.); *Arvanitakis and Others v. Greece* (dec.); *Stavroulakis v. Greece* (dec.)). The situation is different where the domestic courts (which declined jurisdiction) were called upon for the first time to determine the legal issue raised (*Markovic and Others v. Italy* [GC], §§ 100-01). A finding that the domestic court to which an application was made lacked jurisdiction may also result from a detailed examination of the applicable law (*Károly Nagy v. Hungary* [GC], §§ 60, 72 and 75).

8. The dispute may relate not only to the actual existence of a right but also to its scope or the manner in which it is to be exercised (*Benthem v. the Netherlands*, § 32; *Cipolletta v. Italy*, § 31). For example, the fact that the respondent State does not actually contest the existence of a right for torture victims to obtain compensation, but rather its extraterritorial application, does not mean that there cannot be a "dispute" over that right for the purposes of the Convention (*Naït-Liman v. Switzerland* [GC], § 107). The dispute may also concern matters of fact.

8. In *Cipolletta v. Italy* the Court developed its case-law concerning the existence of a genuine and serious "dispute" in proceedings for a company's administrative liquidation. It found it appropriate to adopt a new approach harmonising its case-law concerning the guarantees secured to creditors, whether in the context of an insolvency procedure or in the special administrative liquidation procedure (§§ 33-37).

9. The result of the proceedings must be directly decisive for the right in question (see, for example, *Ulyanov v. Ukraine* (dec.) and *Alminovich v. Russia* (dec.), §§ 31-32). Consequently, a tenuous connection or remote consequences are not enough to bring Article 6 § 1 into play (*Boulois v. Luxembourg* [GC], § 90). For example, the Court found that proceedings challenging the legality of extending a nuclear power station's operating licence did not fall within the scope of Article 6 § 1 because the connection between the extension decision and the right to protection of life, physical integrity and property was "too tenuous and remote", the applicants having failed to show that they personally were exposed to a danger that was not only specific but above all imminent (*Balmer-Schafroth and Others v. Switzerland*, § 40; *Athanassoglou and Others v. Switzerland* [GC], §§ 46-55; see, more recently, *Sdružení Jihočeské Matky v. the Czech Republic* (dec.); for a case concerning limited noise pollution at a factory (*Zapletal v. the Czech Republic* (dec.)), or the hypothetical environmental impact of a plant for treatment of mining waste (*Ivan Atanasov v. Bulgaria*, §§ 90-95; compare with *Bursa Barosu Başkanlığı and Others v. Turkey*, §§ 127-128).

10. Disciplinary proceedings that do not directly interfere with the right to continue to practise a profession, since such an outcome requires the institution of separate proceedings, are likewise not "decisive" for the purposes of Article 6 (*Marušić v. Croatia* (dec.), §§ 74-75; see, in a different context, *Morawska v. Poland* (dec.), § 72). Moreover, proceedings instituted against the author of a book for alleged plagiarism are not directly decisive, from an Article 6 standpoint, for the author's civil right to enjoy a good reputation (§§ 72 and 73).

11. In contrast, the Court found Article 6 § 1 to be applicable to a case concerning the building of a dam which would have flooded the applicants' village (*Gorraiz Lizarraga and Others v. Spain*, § 46) and to a case about the operating permit for a gold mine using cyanidation leaching near the applicants' villages (*Taşkın and Others v. Turkey*, § 133; *Zander v. Sweden*, §§ 24-25).

12. In a case regarding the appeal submitted by a local environmental-protection association for judicial review of a planning permission, the Court found that there was a sufficient link between the dispute and the right claimed by the legal entity, in particular in view of the status of the association and its founders, and the fact that the aim it pursued was limited in space and in substance (*L'Érablière A.S.B.L. v. Belgium*, §§ 28-30). Furthermore, proceedings for the restoration of a person's legal capacity are directly decisive for his or her civil rights and obligations (*Stanev v. Bulgaria* [GC], § 233).

13. In *Denisov v. Ukraine* [GC] the applicant had been dismissed as president of an administrative court of appeal for failure to perform his administrative duties properly. He had remained in office as a judge of the same court. The Court held that the dispute concerning the applicant's exercise of his right to hold this administrative position, to which he had been appointed for a five-year term, was a serious one, in view of the role assigned to the president of a court under domestic law and the potential direct pecuniary consequences (§§ 47-49).

2. Existence of an arguable right or obligation in domestic law

14. The substantive right relied on by the applicant in the national courts, or the "obligation" (*Evers v. Germany*, §§ 67-68), must have a legal basis in the State concerned (*Károly Nagy v. Hungary* [GC], §§ 60-61; *Roche v. the United Kingdom* [GC], § 119; *Boulois v. Luxembourg* [GC], § 91). In order to decide whether the "right" or "obligation" in question really has a basis in domestic law, the starting-point must be the provisions of the relevant domestic law and their interpretation by the domestic courts (*Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], § 97; *Regner v. the Czech Republic* [GC], § 100; *Evers v. Germany*, § 66). It is primarily for the national authorities, in particular

the courts, to resolve problems of interpretation of domestic legislation. The Court's role is limited to verifying whether the effects of such interpretation are compatible with the Convention. That being so, save in the event of evident arbitrariness, it is not for the Court to question the interpretation of the domestic law by the national courts (*Naït-Liman v. Switzerland* [GC], § 116). Thus, where the superior national courts have analysed the precise nature of the impugned restriction in a comprehensive and convincing manner, on the basis of the relevant Convention case-law and principles drawn therefrom, the Court would need strong reasons to depart from the conclusion reached by those courts by substituting its own views for theirs on a question of interpretation of domestic law and by finding, contrary to their view, that there was arguably a right recognised by domestic law (*Károly Nagy v. Hungary* [GC], §§ 60 and 62; *X and Others v. Russia*, § 48).

15. In *Naït-Liman v. Switzerland* [GC], certain aspects of international law were also taken into account by the Court in concluding that the applicant could lay claim to a right recognised under Swiss law. In particular, the Court referred to the United Nations Convention against Torture, which had become an integral part of the domestic legal system after being ratified by Switzerland, thus obliging the national authorities to comply with it (§ 108).

16. It should be noted that it is the right as asserted by the claimant in the domestic proceedings that must be taken into account in order to assess whether Article 6 § 1 is applicable (*Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), § 120). Where, at the outset of the proceedings, there was a genuine and serious dispute about the existence of such a right, the fact that the domestic courts concluded that the right did not exist does not retrospectively deprive the applicant's complaint of its arguability (*Z and Others v. the United Kingdom* [GC], §§ 88- 89; see also, where the domestic courts were called upon to decide for the first time on the issue in question, *Markovic and Others v. Italy* [GC], §§ 100-02; compare and contrast with *X and Others v. Russia*, § 47, and *Károly Nagy v. Hungary* [GC], §§ 75-77). As to the point in time to which the assessment of whether or not there was an "arguable" right in domestic law should relate in the event of a change in the law, see *Baka v. Hungary* [GC], § 110.

17. There is a "right" within the meaning of Article 6 § 1 where a substantive right recognised in domestic law is accompanied by a procedural right to have it enforced through the courts (*Regner v. the Czech Republic* [GC], § 99). Whether or not the authorities enjoyed discretion in deciding whether to grant the measure requested by an applicant may be taken into consideration and may even be decisive (*Boulois v. Luxembourg* [GC], § 93; *Fodor v. Germany* (dec.)). Nevertheless, the mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a "right" *Pudas v. Sweden*, § 34; *Miessen v. Belgium*, § 48). Indeed, Article 6 applies where the judicial proceedings concern a discretionary decision resulting in interference in an applicant's rights (*Obermeier v. Austria*, § 69; *Mats Jacobsson v. Sweden*, § 32).

18. In some cases, national law, while not recognising that an individual has a subjective right, does confer the right to a procedure for examination of his or her claim, involving matters such as ruling whether a decision was arbitrary or ultra vires or whether there were procedural irregularities (*Van Marle and Others v. the Netherlands*, § 35). This is the case regarding certain decisions where the authorities have a purely discretionary power to grant or refuse an advantage or privilege, with the law conferring on the person concerned the right to apply to the courts, which may set the decision aside if they find that it was unlawful. In such a case Article 6 § 1 is applicable, on condition that the advantage or privilege, once granted, gives rise to a civil right (*Regner v. the Czech Republic* [GC], § 105). In the case cited, the applicant did not have a right to be issued with security clearance, which was a matter left to the authorities' discretion, but once such clearance had been issued in order to enable him to carry out his duties at the Ministry of Defence, he had a right to challenge its revocation.

19. In the case of *Mirovni Inštitut v. Slovenia* the Court applied these principles in connection with a call for tenders issued by the authorities for the award of a research grant (§ 29). Although the applicant institute had had no right to an award of funding and the examination of the merits of the

different tender bids fell within the authorities' discretion, the Court pointed out that the applicant institute had clearly enjoyed a procedural right to the lawful and proper adjudication of the bids. Had its bid been accepted, it would have had a civil right conferred on it. Article 6 was therefore applicable (§§ 28-30). In more general terms, the Court revisited its line of case-law concerning the applicability of Article 6 to tendering procedures.

20. However, Article 6 is not applicable where the domestic legislation, without conferring a right, grants a certain advantage which it is not possible to have recognised in the courts (*Boulois v. Luxembourg* [GC], §§ 96 and 101). The same situation arises where a person's rights under domestic legislation are limited to a mere hope of being granted a right, with the actual grant of that right depending on an entirely discretionary and unreasoned decision by the authorities (*Masson and Van Zon v. the Netherlands*, §§ 49-51; *Roche v. the United Kingdom* [GC], §§ 122-125; *Ankarcrona v. Sweden* (dec.)). It should be noted that even if there is a certain degree of tolerance on the national authorities' part, the law cannot recognise a "right" to commit acts prohibited by law (*De Bruin v. the Netherlands* (dec.), § 58).

21. The Court has pointed out that whether a person has an actionable domestic claim may depend not only on the content, properly speaking, of the relevant civil right as defined in national law but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court (*Fayed v. the United Kingdom*, § 65). In that event, the domestic legislation recognises that a person has a substantive right even though, for whatever reason, there is no legal means of asserting or enforcing the right through the courts. In cases of this kind, Article 6 § 1 may apply (*Al-Adsani v. the United Kingdom* [GC], § 47; *McElhinney v. Ireland* [GC], § 25). However, the Convention institutions may not create through the interpretation of Article 6 § 1 a substantive civil right which has no legal basis in the State concerned (*Roche v. the United Kingdom*, § 117; *Károly Nagy v. Hungary* [GC], §§ 60-61). In *Károly Nagy v. Hungary* [GC], §§ 60-61, the Court emphasised the importance of maintaining a distinction between procedural and substantive elements: fine though that distinction may be in a particular set of national legal provisions, it remains determinative of the applicability and, as appropriate, the scope of the guarantees of Article 6. The Court confirmed its case-law to the effect that Article 6 could not apply to substantive limitations on a right existing under domestic law (*Roche v. the United Kingdom*; *Boulois v. Luxembourg*; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 100).

22. Applying the distinction between substantive limitations and procedural bars in the light of these criteria, the Court has, for example, recognised as falling under Article 6 § 1 civil actions for negligence against the police (*Osman v. the United Kingdom*) or against local authorities (*Z and Others v. the United Kingdom* [GC]) and has considered whether a particular limitation (exemption from prosecution or non-liability) was proportionate from the standpoint of Article 6 § 1. Immunity is to be seen here not as qualifying a substantive right but as a procedural bar to the national courts' power to determine that right (*Al-Adsani v. the United Kingdom* [GC], § 48; *Cudak v. Lithuania* [GC], § 57). On the other hand, the Court has held that the Crown's exemption from civil liability *vis-à-vis* members of the armed forces derived from a substantive restriction and that domestic law consequently did not recognise a "right" within the meaning of Article 6 § 1 (*Roche v. the United Kingdom* [GC], § 124; *Hotter v. Austria* (dec.); *Andronikashvili v. Georgia* (dec.)) A declaration by which one branch of the judicial system declined jurisdiction to determine an applicant's compensation claim was examined in the case of *Károly Nagy v. Hungary* [GC], § 60. Referring to the domestic law applicable when the applicant had brought his claim before the courts, the Court found that the national courts' declaration that they lacked jurisdiction had been neither arbitrary nor manifestly unreasonable. That being so, the applicant had not at any time had a "right" which could be said, at least on arguable grounds, to be recognised under domestic law (§§ 75-77). In *Vilho Eskelinen and Others v. Finland* [GC], § 41, the Court acknowledged the existence of an "arguable" right to compensation.

23. The Court has accepted that associations also qualify for protection under Article 6 § 1 if they seek recognition of specific rights and interests of their members (*Gorraiz Lizarraga and Others v. Spain*,

§ 45) or even of particular rights to which they have a claim as legal persons (such as the right of the "public" to information and to take part in decisions regarding the environment (*Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox and Mox v. France* (dec.)), or when the association's action cannot be regarded as an *actio popularis* (*L'Érablière A.S.B.L. v. Belgium*).

24. Although there is in principle no right under the Convention to hold a public post entailing the administration of justice, such a right may exist at domestic level. In *Regner v. the Czech Republic* [GC] the Court reiterated that there could be no doubt that there was a right within the meaning of Article 6 § 1 where a substantive right recognised in domestic law was accompanied by a procedural right to have that right enforced through the courts. The mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right. Indeed, Article 6 applies where the judicial proceedings concern a discretionary decision resulting in interference in an applicant's rights (§ 102). The Court has held that the right to participate in a lawful and fair recruitment procedure in public service constitutes a "right" within the meaning of Article 6 § 1 (*Frezadou v. Greece*, § 30).

25. Where legislation lays down conditions for admission to an occupation or profession, a candidate who satisfies them has a right to be admitted to the occupation or profession (*De Moor v. Belgium*, § 43). For example, if the applicant has an arguable case that he or she meets the legal requirements for registration as a doctor, Article 6 applies (*Chevrol v. France*, § 55; see, conversely, *Bouilloc v. France* (dec.)). At all events, when the legality of proceedings concerning a civil right is challengeable by a judicial remedy of which the applicant has made use, it has to be concluded that there was a "dispute" concerning a "civil right" even if the eventual finding was that the applicant did not meet the legal requirements (right to continue practising the medical specialisation which the applicant had taken up abroad: *Kök v. Turkey*, § 37, or an application for the title of court expert, *Cimperšek v. Slovenia*, §§ 35-36).

26. Recruitment, in the context of access to employment, constitutes in principle a privilege that can be granted at the relevant authority's discretion and cannot be legally enforced. For the purposes of Article 6, this question should be distinguished from the continuation of an employment relationship or the conditions in which it is exercised. While access to employment and to the functions performed may constitute in principle a privilege that cannot be legally enforced, this is not the case regarding the continuation of an employment relationship or the conditions for its enjoyment (*Regner v. the Czech Republic* [GC], § 117). In *Baka v. Hungary* [GC], for instance, the Court recognised the right of the President of the Hungarian Supreme Court to serve his full term of six years under Hungarian law (§§ 107-111). Furthermore, in the private sector, labour law generally confers on employees the right to bring legal proceedings challenging their dismissal where they consider that they have been unlawfully dismissed, or unilateral substantial changes have been made to their employment contract. The same applies to public-sector employees, save in cases where the exception provided for in *Vilho Eskelinen and Others v. Finland* applies (*Regner v. the Czech Republic* [GC], § 117; *Kövesi v. Romania*, § 115).

27. In *Regner v. the Czech Republic* [GC] a Ministry of Defence official challenged the revocation of his security clearance, which had prevented him from continuing to perform his duties as deputy to the first Vice-Minister. Admittedly, security clearance did not constitute an autonomous right. However, it was a fundamental condition for the performance of the applicant's duties. Its revocation had had a decisive effect on his personal and professional situation, preventing him from carrying out certain duties at the Ministry and harming his prospects of obtaining a new post within the State authorities. Those factors were found to be sufficient for the applicant to be able to claim a "right" for the purposes of Article 6 when challenging the revocation of his security clearance (§ 119; see also the case-law references in § 109 to *Ternovskis v. Latvia*, §§ 9-10, and in § 112 to *Miryana Petrova v. Bulgaria*, §§ 30-35).

3. "Civil" nature of the right or obligation

28. Whether or not a right, or an obligation (*Evers v. Germany*, § 65), is to be regarded as civil in the light of the Convention must be determined by reference to its substantive content and effects – and not its legal classification – under the domestic law of the State concerned. In the exercise of its supervisory functions, the Court must also take into account the Convention's object and purpose and the national legal systems of the other Contracting States (*König v. Germany*, § 89).

29. In principle the applicability of Article 6 § 1 to disputes between private individuals which are classified as civil in domestic law is uncontested before the Court (for a judicial separation case, see *Airey v. Ireland*, § 21).

30. The Court also regards as falling within the scope of Article 6 § 1 proceedings which, in domestic law, come under "public law" and whose result is decisive for private rights and obligations or the protection of "pecuniary rights". Such proceedings may, *inter alia*, have to do with permission to sell land (*Ringeisen v. Austria*, § 94), running a private clinic (*König v. Germany*, §§ 94-95), building permission (see, *inter alia*, *Sporrong and Lönnroth v. Sweden*, § 79), the establishment of a right of ownership, including in relation to a place of worship (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], §§ 71-73), administrative permission in connection with requirements for carrying on an occupation (*Benthem v. the Netherlands*, § 36), a licence for serving alcoholic beverages (*Tre Traktörer Aktiebolag v. Sweden*, § 43), or a dispute concerning the payment of compensation for a work-related illness or accident (*Chaudet v. France*, § 30). An application to review the lawfulness of licences issued to a rival company for the construction and operation of a similar business in a neighbouring district, since it relates to the loss of clientele caused by the competitor, concerns a "pecuniary interest" falling within the scope of Article 6 § 1 (*Sine Tsaggarakis A.E.E. v. Greece*, §§ 38-43).

31. In a case concerning the administrative authorities' refusal to comply with final decisions revoking a building permit for a factory on environmental grounds in particular, the Court held that despite the general nature of the interest defended by the applicants, Article 6 was applicable. As nearby residents, they had complained to the national courts that the factory's operations had harmful effects on the environment, and the courts had concluded that they could claim to have a civil right. The Court had regard to what was at stake in the proceedings, the nature of the measures complained of and the applicants' standing under domestic law (*Bursa Barosu Başkanlığı and Others v. Turkey*, §§ 127-128).

32. Article 6 is applicable to a negligence claim against the State (*X v. France*), an action for cancellation of an administrative decision harming the applicant's rights (*De Geouffre de la Pradelle v. France*), administrative proceedings concerning a ban on fishing in the applicants' waters (*Alatulkkila and Others v. Finland*, § 49) and proceedings for awarding a tender in which a civil right - such as the right not to be discriminated against on grounds of religious belief or political opinion when bidding for public-works contracts – is at stake (*Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, § 61; contrast *I.T.C. Ltd v. Malta* (dec.)). Article 6 has also been held to be applicable to administrative procedures concerning revocation of a firearms licence, where the applicants had been listed in a database containing information on individuals deemed to represent a potential danger to society (*Pocius v. Lithuania*, §§ 38-46; *Užukauskas v. Lithuania*, §§ 34-39). The applicants had brought legal proceedings challenging their inclusion in police files and had sought to have their names removed from the database. The Court concluded that Article 6 was applicable, on the grounds that the inclusion of the applicants' names in the database had affected their reputation, private life and job prospects.

33. Article 6 § 1 is also applicable to a civil action seeking compensation for ill-treatment allegedly committed by agents of the State (*Aksoy v. Turkey*, § 92).

B. Extension to other types of dispute

34. Article 6 is applicable to disciplinary proceedings before professional bodies where the right to practise a profession is directly at stake (*Le Compte, Van Leuven and De Meyere v. Belgium*; *Philis v. Greece (no. 2)*, § 45, and the case-law references cited in *Peleki v. Greece**, § 39; compare and contrast with *Ali Rıza and Others v. Turkey*, § 155 and §§ 159-160). The applicability of Article 6 to disciplinary proceedings is determined on the basis of the sanctions which the individual risked incurring as a result of the alleged offence (*Marušić v. Croatia* (dec.), §§ 72-73). The case-law concerning the applicability of Article 6 to disciplinary proceedings against civil servants refers to the *Vilho Eskelinen* test (*Kamenos v. Cyprus*, § 73, concerning disciplinary proceedings against a judge, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 120 and case-law references cited; *Grace Gatt v. Malta*, §§ 60-63, concerning disciplinary proceedings against a police officer).

35. The Court has held that Article 6 § 1 is applicable to disputes concerning *social matters*, including proceedings relating to an employee's dismissal by a private firm (*Buchholz v. Germany*), proceedings concerning social-security benefits (*Feldbrugge v. the Netherlands*), even on a non-contributory basis (*Salesi v. Italy*), welfare assistance and accommodation (*Fazia Ali v. the United Kingdom,* §§ 58-59), and also proceedings concerning compulsory social-security contributions (*Schouten and Meldrum v. the Netherlands*). (For the challenging by an employer of the finding that an employee's illness was occupation-related, see *Eternit v. France* (dec.), § 32). In these cases the Court took the view that the private-law aspects predominated over the public-law ones. In addition, it has held that there were similarities between entitlement to a welfare allowance and entitlement to receive compensation for Nazi persecution from a private-law foundation (*Woś v. Poland*, § 76).

36. Disputes concerning *public servants* fall in principle within the scope of Article 6 § 1. In its judgment in *Vilho Eskelinen and Others v. Finland* [GC] (§§ 50-62) the Court clarified the scope of the "civil" concept and developed new criteria for the applicability of Article 6 § 1 to employment disputes concerning civil servants (see also *Baka v. Hungary* [GC], § 103; *Regner v. the Czech Republic* [GC], § 107). Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question (see, for instance, a dispute regarding police personnel's entitlement to a special allowance in *Vilho Eskelinen and Others v. Finland* [GC]). The principle is now that there will be a presumption that Article 6 applies, and it will be for the respondent Government to demonstrate, firstly, that a civil-servant applicant does not have a right of access to a court under national law and, secondly, that the exclusion of the rights under Article 6 for the civil servant is justified (*Vilho Eskelinen and Others v. Finland* [GC], § 62).

37. Accordingly, the State cannot rely on an applicant's status as a civil servant to exclude him or her from the protection afforded by Article 6 unless two conditions are fulfilled. Firstly, domestic law must have expressly excluded access to a court for the post or category of staff in question. Secondly, the exclusion must be justified on "objective grounds in the State's interest" (*Vilho Eskelinen and Others v. Finland* [GC], § 62). The two conditions of the *Vilho Eskelinen* test must be fulfilled in order for the protection of Article 6 § 1 to be legitimately excluded (*Baka v. Hungary* [GC], § 118 – see also *Kövesi v. Romania*, § 124).

38. If the applicant had access to a court under national law, Article 6 applies (even to active army officers and their claims before the military courts: *Pridatchenko and Others v. Russia*, § 47). For the purpose of applying the *Vilho Eskelinen* test, there is nothing to prevent the Court from characterising a particular domestic body outside the judiciary as a "tribunal". In that context, therefore, an administrative or parliamentary body may be viewed as a "tribunal", thereby rendering Article 6 applicable to civil servants' disputes determined by that body (*Oleksandr Volkov v. Ukraine*, § 88; *Grace Gatt v. Malta*, §§ 61-62, and case-law references cited).

39. The Court has emphasised that any exclusion of the application of Article 6 has to be compatible with the rule of law. For this to be the case, it must be based on an instrument of general application and not a provision directed at a specific individual (*Baka v. Hungary* [GC], § 117).

40. With regard to the second criterion, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists a special bond of trust and loyalty between the civil servant and the State, as employer. The State must also show that the subject matter of the dispute is linked to the exercise of State power or that it has called into question the special bond of trust and loyalty between the civil servant and the State (*Vilho Eskelinen and Others v. Finland* [GC], § 62). Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question (see, for instance, the dispute regarding police personnel's entitlement to a special allowance in *Vilho Eskelinen and Others v. Finland* [GC] – see also *Zalli v. Albania* (dec.); *Ohneberg v. Austria*). Where the removal from office of a chief prosecutor was decided on by the President following a proposal by the Ministry of Justice, the absence of any judicial supervision of the legality of the decision could not be "in the interests of the State" for the purposes of the second *Eskelinen* criterion referred to above. Senior members of the judiciary should – like other citizens – enjoy protection from arbitrariness on the part of the executive, and only oversight by an independent judicial body of the legality of the decision on removal can guarantee the effectiveness of such a right (*Kövesi v. Romania*, § 124).

41. The Court has declared Article 6 § 1 to be applicable to proceedings for unfair dismissal instituted by embassy employees (a secretary and switchboard operator: *Cudak v. Lithuania* [GC], §§ 44-47; a head accountant: *Sabeh El Leil v. France* [GC], § 39; a cultural and information officer: *Naku v. Lithuania and Sweden*, § 95), an official of the Ministry of Internal Affairs (*Fazliyski v. Bulgaria*, § 55), a senior police officer (*Šikić v. Croatia*, §§ 18-20) or an army officer in the military courts (*Vasilchenko v. Russia*, §§ 34-36), to proceedings regarding the right to obtain the post of parliamentary assistant (*Savino and Others v. Italy*), to disciplinary proceedings against a judge (*Olujić v. Croatia; Harabin v. Slovakia*) and a regular soldier (*R.S. v. Germany* (dec.), § 34), to an appeal by a prosecutor against a presidential decree ordering his transfer (*Zalli v. Albania* (dec.) and the other references cited therein), to the premature removal of a prosecutor (*Kövesi v. Romania*, §§ 115 and 121), to proceedings concerning the professional career of a customs officer (right to apply for an internal promotion: *Fiume v. Italy*, §§ 33-36) and a judge wishing to challenge the premature termination of his mandate as President of the Supreme Court (*Baka v. Hungary* [GC], § 118 – see also *Denisov v. Ukraine* [GC] for a judge who was dismissed as president of a court but remained in office as a judge), and to other disputes concerning civil servants and judges (see the references cited in *Baka v. Hungary* [GC], §§ 104-105; *Kamenos v. Cyprus*, §§ 75 et seq.; and the references cited in paragraph 52 of *Denisov v. Ukraine* [GC] and, regarding disciplinary sanctions against a judge, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 120).

42. Although the Court stated in its judgment in *Vilho Eskelinen and Others v. Finland* [GC] that its reasoning was limited to the situation of civil servants, it has held that the judiciary forms part of typical public service even if it is not part of the ordinary civil service (*Baka v. Hungary* [GC], § 104). The *Denisov v. Ukraine* [GC] judgment gave a detailed summary of the case-law and relevant principles concerning the application of Article 6 to ordinary labour disputes involving judges (see §§ 46-49 and the relevant precedents, §§ 52-55 – see also *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 120).

43. The *Vilho Eskelinen* test has been applied to many types of dispute concerning civil servants, including those relating to recruitment or appointment (*Juričić v. Croatia*, §§ 54-58), career or promotion (*Dzhidzheva-Trendafilova v. Bulgaria* (dec.), § 50), transfers (*Ohneberg v. Austria*, § 24), termination of service (*Olujić v. Croatia*; *Nazsız v. Turkey* (dec.)) and disciplinary proceedings (*Kamenos v. Cyprus*, §§ 73-81). More explicitly, the Court held in *Bayer v. Germany* (§ 38), which concerned the removal from office of a State-employed bailiff following disciplinary proceedings, that

disputes about "salaries, allowances or similar entitlements" were only non-exhaustive examples of "ordinary labour disputes" to which Article 6 should in principle apply under the *Vilho Eskelinen* test. In *Olujić v. Croatia* (§ 34) it held that the presumption of applicability of Article 6 in the *Vilho Eskelinen* judgment also applied to cases of dismissal (*Baka v. Hungary* [GC], § 105).

44. The Court also concluded that Article 6 was applicable in a case concerning judicial review of the appointment of a court president (*Tsanova-Gecheva v. Bulgaria*, §§ 84-85). While recognising that Article 6 did not guarantee the right to be promoted or to occupy a post in the civil service, the Court nevertheless observed that the right to a legal and fair recruitment or promotion procedure or to equal access to employment and to the civil service could arguably be regarded as rights recognised under domestic law, in so far as the domestic courts had recognised their existence and had examined the grounds submitted by the persons concerned in this regard (see also *Majski v. Croatia (no. 2)*, § 50; *Fiume v. Italy, § 35*).

45. Lastly, the *Vilho Eskelinen* test for the applicability of Article 6 § 1 is equally relevant to cases concerning the right of access to a court (see, for instance, *Nedelcho Popov v. Bulgaria*; *Suküt v. Turkey* (dec.)) and to cases concerning the other guarantees enshrined in Article 6 (*Vilho Eskelinen and Others v. Finland* [GC], which concerned the right to a hearing and the right to a judicial decision within a reasonable time).

46. Article 6 § 1 is also applicable to a civil-party complaint in criminal proceedings (*Perez v. France* [GC], §§ 70-71), except in the case of a civil action brought purely to obtain private vengeance or for punitive purposes (*Sigalas v. Greece*, § 29; *Mihova v. Italy* (dec.)). Indeed, the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence (see also *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], § 218). To fall within the scope of the Convention, such a right must be indissociable from the victim's exercise of a right to bring civil proceedings in domestic law (*Nicolae Virgiliu Tănase v. Romania* [GC], §§ 188 and 194), even if only to secure symbolic reparation or to protect a civil right such as the right to a "good reputation" (*Perez v. France* [GC], § 70; see also, regarding a symbolic award, *Gorou v. Greece (no. 2)* [GC], § 24). Therefore, Article 6 applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, including during the preliminary investigation stage taken on its own (*Nicolae Virgiliu Tănase v. Romania* [GC], § 207), unless he or she has unequivocally waived the right to reparation, and as long as the criminal proceedings are decisive for the civil right to compensation that is being asserted (*Alexandrescu and Others v. Romania*, § 22). Accordingly, a case-by-case examination is necessary to determine whether the domestic legal system recognises the complainant as having an interest of a civil nature to be asserted in the criminal proceedings. It must be established that the complainant is seeking to secure the protection of a civil right and has an interest in claiming compensation, even at a later stage, for the violation of that right. Next, the outcome of the proceedings in question must be decisive for obtaining redress for the damage (*Arnoldi v. Italy*, §§ 31-36). The Court has specified that the question of the applicability of Article 6 § 1 cannot depend on the recognition of the formal status of a "party" in domestic law. Lastly, for Article 6 to be applicable, the date of submission of the compensation claim is not decisive, as the Court has found Article 6 to be applicable in cases where the claim had yet to be submitted or had not been submitted at all even though this possibility existed under domestic law (§ 29).

47. The Court has held – *in the context of imprisonment* – that some restrictions on detainees' rights, and the possible repercussions of such restrictions, fall within the sphere of "civil rights" (see the summary of the case-law on this point in *De Tommaso v. Italy* [GC], §§ 147-50). Thus, Article 6 applies to prisoners' detention arrangements (for instance, disputes concerning the restrictions to which prisoners are subjected as a result of being placed in a high-security unit (*Enea v. Italy* [GC], §§ 97-107) or in a high-security cell (*Stegarescu and Bahrin v. Portugal*)), or disciplinary proceedings resulting in restrictions on family visits to prison (*Gülmez v. Turkey*, § 30); or other types of restrictions on prisoners' rights (*Ganci v. Italy*, § 25). Article 6 § 1 has also been applied to proceedings instituted by the prison authorities with a view to requiring the presence of a prison officer at meetings between a

prisoner and his lawyer, even though that measure had above all been aimed at preserving order and security in the prison. Finding that face-to-face lawyer-client conversations fell within the notion of "private life" within the meaning of Article 8 of the Convention, the Court concluded that the dispute was of a predominantly personal and individual nature (*Altay v. Turkey (no. 2)*, §§ 61, 67-69).

48. Article 6 also applies to *special supervision measures* in the context of a *compulsory residence order* entailing restrictions on freedom of movement in particular (*De Tommaso v. Italy* [GC], §§ 151-55). In the case cited, the Court found that some restrictions – such as the prohibition on going out at night, leaving the district of residence, attending public meetings or using mobile phones or radio communication devices – fell within the sphere of personal rights and were therefore "civil" in nature.

49. Article 6 also covers the right to a good reputation (*Helmers v. Sweden*); the right of access to administrative documents (*Loiseau v. France* (dec.)) or to evidence in the file on an investigation (*Savitskyy v. Ukraine*, §§ 143-145); disputes regarding the non-inclusion of a conviction in a criminal record (*Alexandre v. Portugal*, §§ 54-55); an appeal against an entry in a police file affecting the right to a reputation, the right to protection of property and the possibility of finding employment and hence earning a living (*Pocius v. Lithuania*, §§ 38-46; *Užukauskas v. Lithuania*, §§ 32-40); proceedings concerning the application of non-custodial preventive measures (*De Tommaso v. Italy* [GC], § 151), the right to be a member of an association (*Sakellaropoulos v. Greece* (dec.); *Lovrić v. Croatia*, §§ 55-56) – similarly, legal proceedings concerning the lawful existence of an association concern the association's civil rights, even if under domestic legislation the question of freedom of association belongs to the field of public law (*APEH Üldözötteinek Szövetsége and Others v. Hungary*, §§ 34-35) – and, lastly, the right to continue higher education studies (*Emine Araç v. Turkey*, §§ 18-25), a position which likewise applies to primary education (*Oršuš and Others v. Croatia* [GC], § 104).

50. Article 6 is also applicable to *other matters* such as environmental issues, where disputes may arise involving the right to life, to health or to a healthy environment (*Taşkın and Others v. Turkey*); the fostering of children (*McMichael v. the United Kingdom*); children's schooling arrangements (*Ellès and Others v. Switzerland*, §§ 21-23); the right to have paternity established (*Alaverdyan v. Armenia* (dec.), § 33); the right to liberty (*Aerts v. Belgium*, § 59; *Laidin v. France (no. 2)*); and lustration proceedings (see, for example, *Polyakh and Others v. Ukraine*, § 153 and the case-law references cited).

51. The right to freedom of expression (*Kenedi v. Hungary*, § 33) and the right of journalists to receive and impart information through the press in order to carry on their profession (*Selmani and Others v. the former Yugoslav Republic of Macedonia,* § 47; *Shapovalov v. Ukraine*, § 49) have also been treated as "civil" in nature.

52. There has therefore been a noticeable shift in the case-law towards applying the civil limb of Article 6 to cases which might not initially appear to concern a civil right but may have "direct and significant repercussions on a private right belonging to an individual" (*De Tommaso v. Italy* [GC], § 151; *Alexandre v. Portugal*, §§ 51 and 54), even in a professional context (*Pocius v. Lithuania*, § 43; *Selmani and Others v. the former Yugoslav Republic of Macedonia,* § 47; *Mirovni Inštitut v. Slovenia*, § 29), including the civil service (for example, *Denisov v. Ukraine* [GC] §§ 52-53 and the case-law references cited; *Ramos Nunes de Carvalho e Sá v. Portugal* [GC]).

C. Applicability of Article 6 to proceedings other than main proceedings

53. *Preliminary proceedings*, like those concerned with the grant of an interim measure such as an injunction, were not normally considered to "determine" civil rights and obligations. However, in 2009, the Court departed from its previous case-law and took a new approach. In *Micallef v. Malta* ([GC], §§ 80-86), the Court established that the applicability of Article 6 to interim measures will depend on whether certain conditions are fulfilled. Firstly, the right at stake in both the main and the

injunction proceedings should be "civil" within the meaning of the Convention. Secondly, the nature of the interim measure, its object and purpose as well as its effects on the right in question should be scrutinised. Whenever an interim measure can be considered effectively to determine the civil right or obligation at stake, notwithstanding the length of time it is in force, Article 6 will be applicable.

54. An interlocutory judgment can be equated to interim or provisional measures and proceedings, and the same criteria are thus relevant to determine whether Article 6 is applicable under its civil head (*Mercieca and Others v. Malta*, § 35).

55. Again with reference to the principles established in *Micallef v. Malta* [GC], Article 6 may apply to the stay of execution proceedings in accordance with the above-mentioned criteria (*Central Mediterranean Development Corporation Limited v. Malta (no. 2)*, §§ 21-23).

56. Article 6 is applicable to *interim proceedings* which pursue the same purpose as the pending main proceedings, where the interim injunction is immediately enforceable and entails a ruling on the same right (*RTBF v. Belgium*, §§ 64-65).

57. *Leave-to-appeal proceedings*: according to *Hansen v. Norway*, § 55, the prevailing approach seems to be that Article 6 § 1 is applicable to such proceedings (citing *Monnell and Morris v. the United Kingdom*, § 54; *Martinie v. France* [GC], §§ 11 and 53-55; see also *Pasquini v. San Marino*, § 89). The manner in which Article 6 is to be applied depends upon the special features of the proceedings involved, regard being had to the entirety of the proceedings conducted in the domestic legal order and of the role of the appellate or cassation court in those proceedings (*ibid.*; see also *Monnell and Morris v. the United Kingdom*, § 56).

58. *Consecutive criminal and civil proceedings*: if a State's domestic law provides for proceedings consisting of two stages – the first where the court rules on whether there is entitlement to damages and the second where it fixes the amount – it is reasonable, for the purposes of Article 6 § 1, to regard the civil right as not having been "determined" until the precise amount has been decided: determining a right entails ruling not only on the right's existence, but also on its scope or the manner in which it may be exercised, which of course includes assessing the damages (*Torri v. Italy*, § 19).

59. *Constitutional disputes* may also come within the ambit of Article 6 if their outcome is decisive for civil rights or obligations (*Süßmann v. Germany*, § 41; *Ruiz-Mateos v. Spain*). This does not apply in the case of disputes relating to a presidential decree granting citizenship to an individual as an exceptional measure, or to the determination of whether the President has breached his constitutional oath (*Paksas v. Lithuania* [GC], §§ 65-66). It is of little consequence whether the proceedings before the constitutional court concern the referral of a question for a preliminary ruling or a constitutional appeal against judicial decisions. Article 6 is also applicable, in principle, where the constitutional court examines an appeal directly challenging a law if the domestic legislation provides for such a remedy (*Voggenreiter v. Germany*, §§ 31-33 and 36 and case-law references cited). Furthermore, the criteria governing the application of Article 6 § 1 to an interim measure extend to the Constitutional Court (*Kübler v. Germany*, §§ 47-48).

60. *Execution of court decisions*: Article 6 § 1 applies to all stages of legal proceedings for the "determination of ... civil rights and obligations", not excluding stages subsequent to judgment on the merits. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (*Hornsby v. Greece*, § 40; *Romańczyk v. France*, § 53, concerning the execution of a judgment authorising the recovery of maintenance debts). Regardless of whether Article 6 is applicable to the initial proceedings, an enforcement title determining civil rights does not necessarily have to result from proceedings to which Article 6 is applicable (*Buj v. Croatia*, § 19).

61. Article 6 § 1 is also applicable to the execution of foreign judgments that are final (*exequatur* - see *Avotiņš v. Latvia* [GC], § 96 and case-law references cited). The *exequatur* of a foreign court's forfeiture order falls within the ambit of Article 6, under its civil head only (*Saccoccia v. Austria* (dec.)).

62. *Applications to have proceedings reopened/extraordinary appeal proceedings*: The case of *Bochan v. Ukraine (no. 2)* [GC] clarified the Court's case-law concerning the applicability of Article 6 to extraordinary appeals in civil judicial proceedings. The Convention does not in principle guarantee a right to have a terminated case reopened and Article 6 is not applicable to proceedings concerning an application for the reopening of civil proceedings which have been terminated by a final decision (*Sablon v. Belgium*, § 86). This reasoning also applies to an application to reopen proceedings after the Court has found a violation of the Convention (*Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)*, § 24). Article 6 is therefore deemed inapplicable to them. This is because, in so far as the matter is covered by the principle of *res judicata* of a final judgment in national proceedings, it cannot in principle be maintained that a subsequent extraordinary application or appeal seeking revision of that judgment gives rise to an arguable claim as to the existence of a right recognised under national law or that the outcome of the proceedings involving a decision on whether or not to reconsider the same case is decisive for the "determination of ... civil rights and obligations" (*Bochan v. Ukraine (no. 2)* [GC], §§ 44-45).

63. However, should an extraordinary appeal automatically entail, or result in practice in, reconsidering the case afresh, Article 6 applies to the "reconsideration" proceedings in the ordinary way (*ibid.*, § 46). Article 6 has also been found to be applicable in certain instances where the proceedings, although characterised as "extraordinary" or "exceptional" in domestic law, were deemed to be similar in nature and scope to ordinary appeal proceedings, the national characterisation of the proceedings not being regarded as decisive for the issue of applicability (*San Leonard Band Club v. Malta*, §§ 41-48). In conclusion, the Court has found that while Article 6 § 1 is not normally applicable to extraordinary appeals seeking the reopening of terminated judicial proceedings, the nature, scope and specific features of such proceedings in the legal system concerned may be such as to bring them within the ambit of Article 6 § 1 and of the safeguards of a fair trial that it affords to litigants. The Court must accordingly examine the nature, scope and specific features of the extraordinary appeal at issue (*Bochan v. Ukraine (no. 2)* [GC], § 50). In the case cited, those criteria were applied to an "exceptional appeal" in which the applicant, relying on a judgment in which the European Court of Human Rights had found a violation of Article 6, had asked her country's Supreme Court to quash the national courts' decisions. While the Court found in that case that Article 6 § 1 was applicable to the type of proceedings in issue (§§ 51-58), that was not the case in *Munteanu v. Romania* (dec.), §§ 38-44.

64. Article 6 has also been declared applicable to a *third-party appeal* which had a direct impact on the applicants' civil rights and obligations (*Kakamoukas and Others v. Greece* [GC], § 32), and to *costs proceedings* conducted separately from the substantive "civil" proceedings (*Robins v. the United Kingdom*, § 29).

D. Excluded matters

65. Merely showing that a dispute is "pecuniary" in nature is not in itself sufficient to attract the applicability of Article 6 § 1 under its civil head (*Ferrazzini v. Italy* [GC], § 25).

66. Matters outside the scope of Article 6 include *tax proceedings*: tax matters still form part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant (*ibid.*, § 29). Similarly excluded are summary injunction proceedings concerning customs duties or charges (*Emesa Sugar N.V. v. the Netherlands* (dec.)).

67. The same applies, in the *immigration* field, to the entry, residence and removal of aliens, in relation to proceedings concerning the granting of political asylum or deportation (application for an order quashing a deportation order: see *Maaouia v. France* [GC], § 38; extradition: see *Peñafiel Salgado v. Spain* (dec.); *Mamatkulov and Askarov v. Turkey* [GC], §§ 81-83; and an action in damages by an asylum-seeker on account of the refusal to grant asylum: see *Panjeheighalehei v. Denmark*

(dec.)), despite the possibly serious implications for private or family life or employment prospects. This inapplicability extends to the inclusion of an alien in the Schengen Information System (*Dalea v. France* (dec.)). The right to hold a passport and the right to nationality are not civil rights for the purposes of Article 6 (*Smirnov v. Russia* (dec.)). However, a foreigner's right to apply for a work permit may come under Article 6, both for the employer and the employee, even if, under domestic law, the employee has no *locus standi* to apply for it, provided that what is involved is simply a procedural bar that does not affect the substance of the right (*Jurisic and Collegium Mehrerau v. Austria*, §§ 54-62).

68. According to *Vilho Eskelinen and Others v. Finland* [GC], *disputes relating to public servants* do not fall within the scope of Article 6 when the following two criteria are met: the State in its national law must have expressly excluded access to a "tribunal" for the post or category of staff in question, and the exclusion must be justified on objective grounds in the State's interest (§ 62; see also *Baka v. Hungary* [GC], § 103; *Regner v. the Czech Republic* [GC], § 107). Moreover, any exclusion of the application of Article 6 has to be compatible with the rule of law. For this to be the case, it must be based on an instrument of general application and not a provision directed at a specific individual (*Baka v. Hungary* [GC], § 117). Very few cases have given rise to a finding that both conditions of the *Vilho Eskelinen* test were satisfied.

69. In the few cases in which the Court has found that the first condition of the *Vilho Eskelinen* test was fulfilled, the exclusion from access to a court for the post in question was clear and "express" (see, for example, *Suküt v. Turkey* (dec.); *Apay v. Turkey* (dec.); *Nazsız v. Turkey* (dec.); and *Nedelcho Popov v. Bulgaria*, § 38; and compare *Kövesi v. Romania*, §§ 119-121). It should be noted that the fact that there is no possibility of reviewing the decision complained of does not in itself mean that access to a court is excluded for the purposes of the first condition (*Kamenos v. Cyprus*, §§ 75 and 84; see also *Kövesi v. Romania*, §§ 122-123). In *Kamenos v. Cyprus*, the applicant had received a disciplinary punishment from a single body, the Supreme Council of Judicature, whose decision was final (§ 84). The Council had nevertheless constituted a "tribunal" within the meaning of Article 6, and the dismissed civil servant had therefore had access to a court for the purposes of the first condition of the *Vilho Eskelinen* test.

70. The Court has stated that there is nothing to prevent it from characterising a particular domestic body outside the domestic judiciary as a "tribunal" for the purpose of the *Vilho Eskelinen* test. An administrative or parliamentary body may thus be viewed as a "tribunal", thereby rendering Article 6 applicable to civil servants' disputes determined by it (*Oleksandr Volkov v. Ukraine*, § 88). There may also be particular circumstances where the Court must determine whether access to a court had been excluded under domestic law before, rather than at the time when, the impugned measure concerning the applicant was adopted (*Baka v. Hungary* [GC], §§ 115-16).

71. As regards the second condition, in order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in question participates in the exercise of public power or that there exists, to use the words of the Court in *Pellegrin v. France* [GC], a "special bond of trust and loyalty" between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. There can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question (*Vilho Eskelinen and Others v. Finland* [GC], § 62). The Court found that Article 6 was not applicable in the case of a soldier discharged from the army for breaches of discipline who was unable to challenge his discharge before the courts and whose "special bond of trust and loyalty" with the State had been called into question (*Suküt v. Turkey* (dec.)).[1]

[1] See section on "Extension to other types of dispute".

72. *Political rights* such as the right to stand for election and retain one's seat (electoral dispute: see *Pierre-Bloch v. France*, § 50), the right to a pension as a former member of Parliament (*Papon v. France* (dec.)), or a political party's right to carry on its political activities (for a case concerning the dissolution of a party, see *Refah Partisi (The Welfare Party) and Others v. Turkey* (dec.)), cannot be regarded as civil rights within the meaning of Article 6 § 1. Membership of and exclusion from a political party or association are not covered by Article 6 either (*Lovrić v. Croatia*, § 55). Similarly, proceedings in which a non-governmental organisation conducting parliamentary-election observations was refused access to documents not containing information relating to the organisation itself fall outside the scope of Article 6 § 1 (*Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia* (dec.)). The Court has confirmed that matters relating to conduct in political office, in particular the duty not to place oneself in a conflict of interests, are political rather than civil (*Cătăniciu v. Romania* (dec.), § 35).

73. In addition, the Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence (*Perez v. France* [GC], § 70; *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], § 218, concerning an appeal against a decision not to prosecute another person). Article 6 § 1 does not require that there be a national court with competence to invalidate or override the law in force (*James and Others v. the United Kingdom*, § 81).

74. The right to report matters stated in open court is not a "civil" right within the meaning of the Convention either (*Mackay and BBC Scotland v. the United Kingdom*, §§ 20-22).

75. Conclusion: Where there exists a "dispute" concerning "civil rights and obligations", as defined according to the above-mentioned criteria, Article 6 § 1 secures to the person concerned the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. To this are added the guarantees laid down by Article 6 § 1 as regards both the organisation and composition of the court and the conduct of the proceedings. In sum, the whole makes up the right to a "fair hearing" (*Golder v. the United Kingdom*, § 36).

E. Links with other provisions of the Convention[2]

1. Article 2 (right to life)

76. In *Fernandes de Oliveira v. Portugal* [GC] the applicant's son, who had been admitted to a psychiatric hospital, escaped and committed suicide. Relying on Article 2, the applicant complained that the authorities had failed to protect her son's right to life. She also complained, under Article 6 § 1, about the length of the compensation proceedings she had brought against the hospital. The Grand Chamber decided to examine all the complaints under Article 2 of the Convention alone (§§ 80-81).

77. Article 6 lays down a requirement of independence, and the procedural protection of the right to life inherent in Article 2 of the Convention implies that the investigation must be sufficiently independent. In *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], the Grand Chamber provided some clarification as to whether, in particular, the investigative authorities must meet similar criteria of independence under Article 2 as those prevailing under Article 6 (§§ 217 et seq.).

78. In *Nicolae Virgiliu Tănase v. Romania* [GC] the Grand Chamber highlighted the difference between the right to an effective investigation under Article 2 of the Convention and the right of access to a court under Article 6 § 1, which concerns the right of the victim to seek redress for damage sustained (§ 193).

2. See also the Case Law Guides on the following articles: *Article 2* (right to life), *Article 6 criminal limb* (right to a fair trial), *Article 8* (right to respect for private and family life), *Article 13* (right to an effective remedy) and *Article 1 of Protocol No. 1* (protection of property).

2. Article 6 § 1 (fair criminal trial)

79. The Court considers that the rights of persons accused of or charged with a criminal offence require greater protection than the rights of parties to civil proceedings. The principles and standards applicable to criminal proceedings must therefore be laid down with particular clarity and precision (*Moreira Ferreira v. Portugal (no. 2)* [GC], § 67.) The requirements inherent in the concept of "fair hearing" are not necessarily the same in cases concerning the determination of civil rights and obligations: "the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases" (*Dombo Beheer B.V. v. the Netherlands*, § 32; *Levages Prestations Services v. France*, § 46; and see also section IV.A.1. below). Nevertheless, when it examines proceedings falling under the civil head of Article 6, the Court may find it necessary to draw inspiration from its approach to criminal-law matters (see section IV.A.1. below).

80. The applicability of Article 6 § 1 under its civil head does not prevent the Court from examining whether this Article is also applicable under its criminal head (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 121).

3. Article 6 § 2 (presumption of innocence)

81. Cases concerning civil proceedings for compensation following either an acquittal or the discontinuation of criminal proceedings are normally examined under Article 6 § 2 of the Convention. The Court has dealt with a case in which the applicant complained that her civil liability for the acts of her minor son had been established on the basis of criminal proceedings in which her son had only been a witness and she herself had not had any procedural status. It was not alleged, either in the criminal or in the civil proceedings, that the applicant herself had committed any unlawful acts. The case therefore did not concern her right to the presumption of innocence guaranteed by Article 6 § 2. Nonetheless, the Court found that the principles developed in its case-law under that provision were of relevance to the situation examined under Article 6 § 1 in the case before it (*Kožemiakina v. Lithuania*, § 51).

4. Article 8 (private life)

82. If the pecuniary element of a dispute is considered significant for the applicability of Article 6 § 1 under its civil head, Article 8 does not automatically become applicable from the standpoint of the right to respect for "private life" (*Denisov v. Ukraine* [GC], §§ 54 and 122). In *López Ribalda and Others v. Spain* [GC], the Court examined whether the use of images obtained by means of covert video-surveillance as evidence in civil proceedings (Article 8) had undermined the fairness of the proceedings as a whole (§§ 154-158). In *Evers v. Germany*, the Court examined whether the right of vulnerable individuals with mental disorders to self-determination and dignity, for the purposes of Article 8, had been respected during the proceedings (§§ 82-84).

5. Article 10 (freedom of expression)

83. The Court has dealt with cases in which the applicants had been convicted of contempt of court on account of comments made in a courtroom or directed at judges. Initially, the Court carried out a separate examination of the complaints brought before it under Articles 6 and 10 of the Convention, while observing that its finding of procedural unfairness in the summary proceedings for contempt only served to compound the lack of proportionality (*Kyprianou v. Cyprus* [GC], § 181). More recently, it held that in the light of the shortcomings in the proceedings in question (resulting in a finding of a violation of Article 6 § 1), the restriction of the applicant's right to freedom of expression had not been accompanied by effective and "adequate safeguards" against abuse and had therefore not been necessary in a democratic society, thus breaching Article 10 (*Słomka v. Poland*, §§ 69-70).

II. Right to a court

Article 6 § 1 of the Convention

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ..."

A. Right and access to a court

84. The right of access to a court for the purposes of Article 6 was defined in *Golder v. the United Kingdom* (§§ 28-36). Referring to the principles of the rule of law and the avoidance of arbitrary power which underlie the Convention, the Court held that the right of access to a court was an inherent aspect of the safeguards enshrined in Article 6 (*Zubac v. Croatia* [GC], §§ 76 et seq.).

85. The right to a fair trial, as guaranteed by Article 6 § 1, requires that litigants should have an effective judicial remedy enabling them to assert their civil rights (*Běleš and Others v. the Czech Republic*, § 49; *Naït-Liman v. Switzerland* [GC], § 112).

86. Everyone has the right to have any claim relating to his "civil rights and obligations" brought before a court or tribunal. In this way Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect (*Golder v. the United Kingdom*, § 36; *Naït-Liman v. Switzerland* [GC], § 113). Article 6 § 1 may therefore be relied on by anyone who considers that an interference with the exercise of one of his or her civil rights is unlawful and complains that he or she has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1. Where there is a serious and genuine dispute as to the lawfulness of such an interference, going either to the very existence or to the scope of the asserted civil right, Article 6 § 1 entitles the individual concerned "to have this question of domestic law determined by a tribunal" (*Z and Others v. the United Kingdom* [GC], § 92; *Markovic and Others v. Italy* [GC], § 98). The refusal of a court to examine allegations by individuals concerning the compatibility of a particular procedure with the fundamental procedural safeguards of a fair trial restricts their access to a court (*Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], § 131).

87. The "right to a court" and the right of access are not absolute. They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (*Philis v. Greece (no. 1)*, § 59; *De Geouffre de la Pradelle v. France*, § 28; *Stanev v. Bulgaria* [GC], § 229; *Baka v. Hungary* [GC], § 120; *Naït-Liman v. Switzerland* [GC], § 113).[3] Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 89; *Naït-Liman v. Switzerland* [GC], § 115).

88. Although the right to bring a civil claim before a court ranks as one of the "universally recognised fundamental principles of law", the Court does not consider these guarantees to be among the norms of *jus cogens* in the current state of international law (*Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], § 136).

89. In *Baka v. Hungary* [GC] the Court noted the growing importance which international and Council of Europe instruments, the case-law of international courts and the practice of other international bodies were attaching to procedural fairness in cases involving the removal or dismissal of judges, including the intervention of an authority independent of the executive and legislative powers in

3. See also the section on "Fairness".

respect of every decision affecting the termination of office of a judge (§ 121). In *Kövesi v. Romania* the same considerations were applied to prosecutors (§ 156).

90. In its decision in *Lovrić v. Croatia* concerning the expulsion of a member of an association, the Court noted that a restriction on the right of access to a court to challenge such a measure pursued the "legitimate aim" of maintaining the organisational autonomy of associations (referring to Article 11 of the Convention). The scope of judicial review of such a measure may be restricted, even to a significant extent, but the person concerned must nevertheless not be deprived of the right of access to a court (§§ 71-73).

1. A right that is practical and effective

91. The right of access to a court must be "practical and effective" (*Bellet v. France*, § 38; *Zubac v. Croatia* [GC], §§ 76-79). For the right of access to be effective, an individual must "have a clear, practical opportunity to challenge an act that is an interference with his rights" (*Bellet v. France*, § 36; *Nunes Dias v. Portugal* (dec.) regarding the rules governing notice to appear; *Fazliyski v. Bulgaria*, concerning the lack of judicial review of an expert assessment that was decisive for settling an employment dispute touching on national security). This right is to be distinguished from the right guaranteed by Article 13 of the Convention[4] (*X and Others v. Russia*, § 50).

92. The rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring the proper administration of justice and compliance, in particular, with the principle of legal certainty (*Cañete de Goñi v. Spain*, § 36). That being so, the rules in question, or their application, should not prevent litigants from using an available remedy (*Miragall Escolano and Others v. Spain*, § 36; *Zvolský and Zvolská v. the Czech Republic*, § 51). In particular, each case should be assessed in the light of the special features of the proceedings in question (*Kurşun v. Turkey*, §§ 103-104). In applying procedural rules, the courts must avoid both excessive formalism that would impair the fairness of the proceedings and excessive flexibility such as would render nugatory the procedural requirements laid down in statutes (*Hasan Tunç and Others v. Turkey*, §§ 32-33).

93. The essence of the right of access to a court is impaired when the rules cease to serve the aims of "legal certainty" and the "proper administration of justice" and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (*Zubac v. Croatia* [GC], § 98). Where inaccurate or incomplete information about time-limits has been supplied by the authorities, the domestic courts should take sufficient account of the particular circumstances of the case and not apply the relevant rules and case-law too rigidly (compare *Clavien v. Switzerland* (dec.) and *Gajtani v. Switzerland*).

94. The right to bring an action or to lodge an appeal must arise from the moment the parties may effectively become aware of a legal decision imposing an obligation on them or potentially harming their legitimate rights or interests. Otherwise, the courts could substantially reduce the time for lodging an appeal or even render any appeal impossible by delaying service of their decisions. As a means of communication between the judicial body and the parties, service makes the court's decision and the grounds for it known to the parties, thus enabling them to appeal if they see fit (*Miragall Escolano and Others v. Spain*, § 37) or enabling an interested third party to intervene (*Cañete de Goñi v. Spain*, § 40, concerning an applicant who had not been summoned to give evidence as an interested party in proceedings whose outcome had caused her damage).

95. More broadly, it is the domestic authorities' responsibility to act with the requisite diligence in ensuring that litigants are apprised of proceedings concerning them so that they can appear and defend themselves; notification of proceedings cannot be left entirely at the discretion of the opposing party (for a summary of the case-law, see *Schmidt v Latvia*, §§ 86-90, 92 and 94-95, where

[4] See *Guide to Article 13 of the Convention – Right to an effective remedy*.

the applicant had not been informed of divorce proceedings and the Court emphasised that given what was at stake in the proceedings, special diligence had been required on the authorities' part to ensure that the right of access to a court was respected).

96. A system of general publication of administrative decisions that strikes a fair balance between the interests of the authorities and of the persons concerned, in particular by affording the latter a clear, practical and effective opportunity to challenge the decisions, does not constitute a disproportionate interference with the right of access to a court (*Geffre v. France* (dec.)).

The case of *Zavodnik v. Slovenia* concerned notification in the course of bankruptcy proceedings. The Court held that the manner in which notice of the hearing had been given (it had been announced on the court's notice board and in the Official Gazette) was inappropriate and had prevented the applicant from challenging the distribution of the estate (*Zavodnik v. Slovenia*, §§ 78-81).

97. In the specific circumstances of a case, the practical and effective nature of the right of access to a court may be impaired, for instance:

- by the prohibitive cost of the proceedings in view of the individual's financial capacity:
  - the excessive amount of security for costs in the context of an application to join criminal proceedings as a civil party (*Aït-Mouhoub v. France*, §§ 57-58; *García Manibardo v. Spain*, §§ 38-45);
  - excessive court fees (*Kreuz v. Poland*, §§ 60-67; *Podbielski and PPU Polpure v. Poland*, §§ 65-66; *Weissman and Others v. Romania*, § 42; *Georgel and Georgeta Stoicescu v. Romania*, §§ 69-70, and conversely, *Reuther v. Germany* (dec.)). In these cases the Court considered the question of court fees that had been imposed prior to the institution of civil proceedings and had had the effect of hindering access to a court at first instance or at a subsequent stage of the proceedings for applicants who were unable to pay. In *Stankov v. Bulgaria*, § 59, the Court held that substantial court fees imposed at the end of proceedings could also amount to a restriction on the right to a court; see also, regarding the refusal to reimburse legal costs, *Černius and Rinkevičius v. Lithuania*, §§ 68-69 and § 74. In cases concerning court fees, the litigant's conduct should also be taken into account (*Zubac v. Croatia* [GC], § 120);
- by issues relating to time-limits:
  - the time taken to hear an appeal leading to its being declared inadmissible (*Melnyk v. Ukraine*, § 26; *Miragall Escolano and Others v. Spain*, § 38). Litigants are nevertheless required to act with the requisite diligence (*Kamenova v. Bulgaria*, §§ 52-55).
  - The Court held in *Ivanova and Ivashova v. Russia* that the national courts should not interpret domestic law in an inflexible manner with the effect of imposing an obligation with which litigants could not possibly comply. Requiring an appeal to be lodged within one month of the date on which the registry drew up a full copy of the court's decision - rather than the point at which the appellant actually had knowledge of the decision - amounted to making the expiry of the relevant deadline dependent on a factor entirely outside the appellant's control. The Court found that the right of appeal should have become effective from the point at which the applicant could effectively apprise herself of the full text of the decision.
  - limitation periods for bringing a claim (see, regarding harm to physical integrity, the case-law references cited in paragraphs 53-55 of *Sanofi Pasteur v. France*, including *Howald Moor and Others v. Switzerland*, §§ 79-80; *Yagtzilar and Others v. Greece*, § 27). For example, the Court has found a violation of the right of access to a court in a number of cases in which the discontinuation of criminal proceedings and the resulting failure to examine a civil claim were due to a lack of diligence on the national authorities' part (*Atanasova v. Bulgaria*, §§ 35-47). Excessive delays in the examination of a claim may

also render the right of access to a court meaningless (*Kristiansen and Tyvik AS v. Norway*).

- the granting of leave to appeal out of time and the resulting acceptance of an ordinary appeal lodged after a significant period of time, for reasons that do not appear especially convincing, may entail a breach of the principle of legal certainty and the right to a court (*Magomedov and Others v. Russia*, §§ 87-89, where late appeals benefiting the competent authorities were accepted following the extension without any valid reason of the time-limit for appealing).
- delay by the national authorities in examining an application by the applicant (challenging the selection procedure for a post for which she had applied), with the result that the proceedings were terminated on the grounds that there was no legal interest in pursuing the application as the administrative decision at issue had expired (*Frezadou v. Greece*, § 47 – compare and contrast with *Sailing Club of Chalkidiki "I Kelyfos" v. Greece*, § 72). More generally, in exceptional cases where proceedings are kept pending for an excessive period, this may impair the right of access to a court (*Kristiansen and Tyvik AS v. Norway*, § 57). The unjustified lack of a decision for a particularly lengthy period by the court dealing with the case may be regarded as a denial of justice; the remedy used by the applicant may thus become deprived of all effectiveness where the court concerned does not manage to settle the dispute in good time, as required by the circumstances of the case and what is at stake (*Sailing Club of Chalkidiki "I Kelyfos" v. Greece*, § 60).

- by issues relating to jurisdiction (see, for example, *Arlewin v. Sweden*, concerning a television programme broadcast from another European Union country). Furthermore, where an action for damages is brought against it, the State has a positive obligation to facilitate the identification of the respondent authority (*Georgel and Georgeta Stoicescu v. Romania*, §§ 69-71).
- by issues of evidence, where the requirements for the burden of proof are overly rigid (*Tence v. Slovenia*, §§ 35-38);
- by the existence of procedural bars preventing or limiting the possibilities of applying to a court:
  - a particularly strict interpretation by the domestic courts of a procedural rule (excessive formalism) may deprive applicants of their right of access to a court (*Pérez de Rada Cavanilles v. Spain*, § 49; *Miragall Escolano and Others v. Spain*, § 38; *Sotiris and Nikos Koutras ATTEE v. Greece*, § 20; *Běleš and Others v. the Czech Republic*, § 50; *RTBF v. Belgium*, §§ 71-72 and 74; *Miessen v. Belgium*, §§ 72-74; *Zubac v. Croatia* [GC], § 97; *Gil Sanjuan v. Spain*, § 34; and for a constitutional court, *Dos Santos Calado and Others v. Portugal*, §§ 118-130), bearing in mind that an unreasonable construction of a procedural requirement impairs the right to effective judicial protection (*Miragall Escolano and Others v. Spain*, § 37). As regards the retroactive application of a new admissibility criterion after an appeal has been lodged, this raises an issue concerning the principle of legal certainty (*Gil Sanjuan v. Spain*, §§ 35-45);
  - consideration of the value of the subject matter of the dispute (ratione valoris admissibility threshold) in order to determine the jurisdiction of a higher court (*Zubac v. Croatia* [GC], § 73, §§ 85-86);
  - the requirements linked to execution of an earlier ruling may impair the right of access to a court, for instance where the applicant's lack of funds makes it impossible for him even to begin to comply with the earlier judgment (*Annoni di Gussola and Others v. France*, § 56; compare with *Arvanitakis v. France* (dec.));

- procedural rules barring certain subjects of law from taking court proceedings (*The Holy Monasteries v. Greece*, § 83; *Philis v. Greece (no. 1)*, § 65; *Lupaş and Others v. Romania*, §§ 64-67; and, regarding adults lacking capacity, *Stanev v. Bulgaria* [GC], §§ 241-45; *Nataliya Mikhaylenko v. Ukraine*, § 40; *Nikolyan v. Armenia*; and compare with *R.P. and Others v. the United Kingdom*);

- by the limits of the judicial review available, for example where a complaint to the administrative courts against a presidential decree could only give rise to a review of compliance with external formalities in the adoption of the decree, whereas the applicant's complaint called for an examination of the merits and of the internal legality of the decree (*Kövesi v. Romania*, §§ 153-154, concerning the premature removal of a prosecutor).

98. However, again on the subject of formalism, the conditions of admissibility of an appeal on points of law may quite legitimately be stricter than for an ordinary appeal. Given the special nature of the Court of Cassation's role, the procedure followed in the Court of Cassation may be more formal, especially where the proceedings before it follow the hearing of the case by a first-instance court and then a court of appeal, each with full jurisdiction (*Levages Prestations Services v. France*, §§ 44-48; *Brualla Gómez de la Torre v. Spain*, §§ 34-39), but the domestic authorities do not enjoy unfettered discretion in this respect (*Zubac v. Croatia* [GC], §§ 108-109). More generally, the *Zubac v. Croatia* [GC] judgment reiterated the general principles on access to a higher court (§§ 80-82 and § 84) and the case-law on formalism (§§ 96-99). In particular, the issues of "legal certainty" and "proper administration of justice" are two central elements for drawing a distinction between excessive formalism and acceptable application of procedural formalities (§ 98). These principles also apply to proceedings before a constitutional court (*Dos Santos Calado and Others v. Portugal,* §§ 111-112; *Fraile Iturralde v. Spain* (dec.), §§ 36-37).

99. According to *Zubac v. Croatia*, in determining the proportionality of legal restrictions on access to the superior courts, three factors should be taken into account: (i) the procedure to be followed for an appeal must be foreseeable from the point of view of the litigant; (ii) after identifying the procedural errors committed during the proceedings which eventually prevented the applicant from enjoying access to a court, it must be determined whether the applicant had to bear an excessive burden as a result of such errors. Where the procedural error in question occurred only on one side, that of the applicant or the relevant authorities, notably the court(s), as the case may be, the Court would normally be inclined to place the burden on the side that produced the error (§ 90 and the examples cited); and (iii) whether the restrictions in question could be said to involve "excessive formalism" (§ 97; see also, concerning a constitutional court, *Dos Santos Calado and Others v. Portugal*, §§ 116-117, and the examples cited).

100. In *Gil Sanjuan v. Spain* the Court found a violation of Article 6 § 1 on account of the retroactive application of a new admissibility criterion for an appeal to the Supreme Court after the appeal had been lodged (§ 45). Referring to the principle of legal certainty, the Court found that the emergence of the new criterion had not been foreseeable for the applicant (§§ 38-39) and that she had therefore been unable to remedy any potential effects of the application of the new criterion (§§ 40-43).

101. In *Trevisanato v. Italy* the Court did not find fault with the requirement for specialist lawyers to conclude each ground of appeal to the Court of Cassation with a paragraph summing up the reasoning and explicitly identifying the legal principle alleged to have been breached (§§ 42-45). The Court has also found that considerations linked to expediting and simplifying the Court of Cassation's examination of cases were legitimate (*Miessen v. Belgium*, § 71).

102. In principle, the imposition of a specified threshold (*ratione valoris* admissibility criterion) for access to a supreme court pursues the legitimate aim of ensuring that that court is only required to deal with matters of such importance as befits its role (*Zubac v. Croatia* [GC], § 73, § 83 and § 105). However, the proportionality of such a restriction must be assessed on a case-by-case basis (§§ 106-

107) and the Court has laid down precise criteria for assessing whether the national authorities exceeded their margin of appreciation in the case in question (§§ 108-109).

103. Furthermore, Article 6 § 1 guarantees not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 86; *Kutić v. Croatia*, §§ 25 and 32, regarding the staying of proceedings; *Ećimović v. Croatia*, § 41; *Beneficio Cappella Paolini v. San Marino*, § 29 concerning a denial of justice; *Marini v. Albania*, §§ 118-123, concerning a refusal to take a final decision on the applicant's constitutional appeal as a result of a tied vote).

104. In cases where the termination of criminal proceedings prevents the examination of civil-party claims made by applicants in the context of those proceedings, the Court examines whether the applicants could make use of other channels for asserting their civil rights. In cases where it has held that other accessible and effective remedies were available, it has found no infringement of the right of access to a court (*Nicolae Virgiliu Tănase v. Romania* [GC], § 198).

105. The right to a court may also be infringed where a court fails to comply with the statutory time-limit in ruling on appeals against a series of decisions of limited duration (*Musumeci v. Italy*, §§ 41-43) or in the absence of a decision (*Ganci v. Italy*, § 31). The "right to a court" also encompasses the execution of judgments.[5]

106. In examining the proportionality of a restriction of access to a civil court, the Court takes into account the procedural errors committed during the proceedings which prevented the applicant from enjoying such access, and determines whether the applicant was made to bear an excessive burden on account of such errors. Reference criteria have been laid down for assessing whether it is the applicant or the competent authorities who should bear the consequences of any errors (*Zubac v. Croatia* [GC], §§ 90-95, § 119). Where errors were made before the lower courts, the Court has assessed the subsequent role of the Supreme Court (§§ 122-124).

107. Furthermore, where a person claims the right of access to a court, that Convention right may be in conflict with the other party's right to legal certainty, likewise secured under the Convention. Such a situation requires a balancing exercise between conflicting interests, and the Court accords the State a wide margin of appreciation (*Sanofi Pasteur v. France*, §§ 56-58).

2. Limitations

108. The right of access to the courts is not absolute but may be subject to limitations permitted by implication (*Golder v. the United Kingdom*, § 38; *Stanev v. Bulgaria* [GC], § 230; *Zubac v. Croatia* [GC], § 78). This applies in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (*Luordo v. Italy*, § 85; *Zubac v. Croatia* [GC], §§ 107-109).

109. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a "legitimate aim" and if there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be achieved" (*Ashingdane v. the United Kingdom*, § 57; *Fayed v. the United Kingdom*, § 65; *Markovic and Others v. Italy* [GC], § 99; *Naït-Liman v. Switzerland* [GC], §§ 114-115).

110. The right of access to a court may also be subject, in certain circumstances, to legitimate restrictions, such as statutory limitation periods (*Sanofi Pasteur v. France*, §§ 50-55, concerning the defendant and the victim claiming damages; *Stubbings and Others v. the United Kingdom*, §§ 51-52), security for costs orders (*Tolstoy Miloslavsky v. the United Kingdom*, §§ 62-67), a legal representation requirement (*R.P. and Others v. the United Kingdom*, §§ 63-67), or a requirement to attempt a

5. See the section on "Execution of judgments".

friendly-settlement procedure before bringing a claim for damages against the State (*Momčilović v. Croatia*, §§ 55-57).

111. A restriction of access to a court may result from a decision by a supreme court to limit in time the effects of a declaration that a law is unconstitutional. This does not breach Article 6 § 1 in exceptional circumstances where it is justified by public-interest considerations. Indeed, it may be necessary to avoid any manifestly excessive consequences of such a declaration of unconstitutionality in a sensitive area such as, for example, a country's economic policy in times of serious economic crisis (*Frantzeskaki v. Greece* (dec.), §§ 38-40 and references cited).

112. Where access to a court is restricted by law or in practice, the Court examines whether the restriction affects the substance of the right and, in particular, whether it pursues a legitimate aim and whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved: *Ashingdane v. the United Kingdom*, § 57. With regard to the proportionality of the restriction, the scope of the State's margin of appreciation may depend, *inter alia*, on the relevant international law in this area (*Naït-Liman v. Switzerland* [GC], §§ 173-174). In cases involving issues that are subject to constant developments in the member States, the scope of the margin of appreciation may also depend on whether there is a "European consensus" or at least a certain trend among the member States (*ibid*., § 175). No violation of Article 6 § 1 can be found if the restriction is compatible with the principles established by the Court.

113. Whether a person has an actionable domestic claim may depend not only on the substantive content, properly speaking, of the relevant civil right as defined under national law but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court (*McElhinney v. Ireland* [GC], § 24). Article 6 § 1 does not guarantee any particular content for civil "rights" in the substantive law of the Contracting States: the Court may not create through the interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned (*Z and Others v. the United Kingdom* [GC], §§ 87 and 98). In *Lupeni Greek Catholic Parish and Others v. Romania* [GC], the Court held that the difficulties encountered by the applicants in their attempts to secure the return of a church building had resulted from the applicable substantive law and were unrelated to any limitation on the right of access to a court. It therefore held that there had been no violation of Article 6 § 1 (§§ 99 and 106).

114. In addition, the mere fact that a claim is held to be inadmissible for lack of a legitimate interest does not amount to a denial of access to a court as long as the claimant's submissions have been properly examined (*Obermeier v. Austria*, § 68, and for an international court, *Konkurrenten.no AS v. Norway* (dec.), §§ 46-48).

115. *Restrictions on the national courts' jurisdiction to deal with acts carried out abroad*: such restrictions may pursue legitimate aims linked to the principles of the proper administration of justice and maintaining the effectiveness of domestic judicial decisions (*Naït-Liman v. Switzerland* [GC], § 122).

116. International organisations' *immunity* from national jurisdiction (see in particular *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), § 139): this treaty-based rule – which pursues a legitimate aim (*Waite and Kennedy v. Germany* [GC], § 63) – is permissible from the standpoint of Article 6 § 1 only if the restriction stemming from it is not disproportionate. Hence, it will be compatible with Article 6 § 1 if the persons concerned have available to them reasonable alternative means to protect effectively their rights under the Convention (*ibid.*, §§ 68-74; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], § 48; *Chapman v. Belgium* (dec.), §§ 51-56; and *Klausecker v. Germany* (dec.), §§ 69-77, concerning the alternative to an arbitration procedure). It does not follow, however, that in the absence of an alternative remedy the recognition of immunity of an international organisation is *ipso facto* constitutive of a violation of the right of access to a court (*Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), § 164).

117. The decision in *Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.) concerned the granting of immunity to the United Nations (UN) in the national courts. The Court held that operations established by UN Security Council resolutions under Chapter VII of the UN Charter were fundamental to the UN's mission to secure international peace and security. Accordingly, the Convention could not be interpreted in a manner which would subject the acts and omissions of the Security Council to domestic jurisdiction in the absence of a UN decision to that effect. To bring such operations within the scope of domestic jurisdiction would amount to allowing any individual State, through its courts, to interfere with the fulfilment of a key mission of the UN in this field, including with the effective conduct of its operations (§ 154). The Court added that international law did not support the position that a civil claim should cause the domestic courts to lift the United Nations' immunity from suit for the sole reason that the claim was based on an allegation of a particularly grave violation of a norm of international law, even a norm of *jus cogens* (§ 158).

118. State immunity: the doctrine of foreign State immunity is generally accepted by the community of nations (*Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.), § 158). Measures taken by a member State which reflect generally recognised rules of public international law on State immunity do not automatically constitute a disproportionate restriction on the right of access to court (*Fogarty v. the United Kingdom* [GC], § 36; *McElhinney v. Ireland* [GC], § 37; *Sabeh El Leil v. France* [GC], § 49).

119. State immunity from jurisdiction: A foreign State may waive its right to immunity before the courts of another State by giving clear and unequivocal consent (*Ndayegamiye-Mporamazina v. Switzerland*, §§ 57 and 59). In cases where the application of the principle of State immunity from jurisdiction restricts the exercise of the right of access to a court, it must be ascertained whether the circumstances of the case justify such restriction. The restriction must pursue a legitimate aim and be proportionate to that aim (*Sabeh El Leil v. France* [GC], §§ 51-54; *Cudak v. Lithuania* [GC], § 59). The grant of sovereign immunity to a State in civil proceedings pursues the "legitimate aim" of complying with international law to promote comity and good relations between States (*Fogarty v. the United Kingdom* [GC], § 34; *Al-Adsani v. the United Kingdom* [GC], § 54; *Treska v. Albania and Italy* (dec.)). As to whether the measure taken is proportionate, it may in some cases impair the very essence of the individual's right of access to a court (*Cudak v. Lithuania* [GC], § 74; *Sabeh El Leil v. France* [GC], § 49; *Naku v. Lithuania and Sweden*, § 95), while in other cases it may not (*Al-Adsani v. the United Kingdom* [GC], § 67; *Fogarty v. the United Kingdom* [GC], § 39; *McElhinney v. Ireland* [GC], § 38). In the absence of an alternative remedy, there is not *ipso facto* a violation of the right of access to a court (*Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.)).

- State immunity from jurisdiction has been circumscribed by developments in customary international law.
  - Thus, the Court has noted a trend in international and comparative law towards limiting State immunity in respect of employment-related disputes, with the exception, however, of those concerning the recruitment of embassy staff (*Cudak v. Lithuania* [GC], §§ 63 et seq.; *Sabeh El Leil v. France* [GC], §§ 53-54 and 57-58; *Naku v. Lithuania and Sweden*, § 89, concerning the dismissal of embassy staff members; see also *Wallishauser v. Austria*, concerning the service of a summons in proceedings against a foreign State relating to salary arrears). As regards disputes concerning a contract of employment concluded between embassies or permanent missions and their support staff, the Court has always protected both nationals of the forum State (the State where the work is performed) and non-nationals living there (*Ndayegamiye-Mporamazina v. Switzerland*, §§ 49 and 61 and references cited). This consistent approach is in line with codified international custom: in principle, a foreign State cannot rely on immunity from jurisdiction in the context of a dispute concerning a contract of employment executed in the territory of the forum State. However, there are exceptions to that principle, in particular where "the employee is a national of the employer State at the time when the proceeding is instituted, unless

this person has his or her permanent residence in the State of the forum" (*ibid.*, §§ 61-63). In the case cited, unlike the previous cases, the applicant was a national of the employer State (Burundi) when she brought her case before the Swiss courts, and was not permanently resident in the forum State (Switzerland), where she worked at the Permanent Mission of the Republic of Burundi to the United Nations. The observance by Switzerland of the Republic of Burundi's immunity from jurisdiction in respect of the applicant's claim of unfair dismissal was compatible with the generally recognised rules of international law on State immunity (§ 66).

- A restrictive approach to immunity may also be taken in relation to commercial transactions between the State and foreign private individuals (*Oleynikov v. Russia*, §§ 61 and 66).

- On the other hand, the Court noted in 2001 that, while there appeared to be a trend in international and comparative law towards limiting State immunity in respect of personal injury caused by an act or omission within the forum State, that practice was by no means universal (*McElhinney v. Ireland* [GC], § 38).
- In addition, the Court held in 2014 that while there was some emerging support in favour of a special rule or exception in public international law in cases concerning civil claims for torture lodged against foreign State officials, the bulk of the authority was to the effect that the State's right to immunity could not be circumvented by suing its servants or agents instead (*Jones and Others v. the United Kingdom*, §§ 213-15, concerning the refusal to consider the applicants' civil claim in respect of torture allegations on account of the immunity invoked by the State in question and its officials).
- State immunity from execution is not in itself contrary to Article 6 § 1. The Court noted in 2005 that all the international legal instruments governing State immunity set forth the general principle that, subject to certain strictly delimited exceptions, foreign States enjoyed immunity from execution in the territory of the forum State (*Manoilescu and Dobrescu v. Romania and Russia* (dec.), § 73). By way of illustration, the Court held in 2002 that "although the Greek courts ordered the German State to pay damages to the applicants, this did not necessarily oblige the Greek State to ensure that the applicants could recover their debt through enforcement proceedings in Greece" (*Kalogeropoulou and Others v. Greece and Germany* (dec.)). These decisions are valid in relation to the state of international law at the relevant time and do not preclude future developments in that law.

120. Parliamentary immunity: it is a long-standing practice for States generally to confer varying degrees of immunity on parliamentarians, with the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with parliamentary functions (*C.G.I.L. and Cofferati v. Italy (no. 2)*, § 44). Hence, parliamentary immunity may be compatible with Article 6, provided that it:

- pursues legitimate aims: protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary (*A. v. the United Kingdom*, §§ 75-77 and 79);
- is not disproportionate to the aims sought to be achieved (if the person concerned has reasonable alternative means to protect effectively his or her rights (*ibid.*, § 86) and immunity attaches only to the exercise of parliamentary functions (*ibid.*, § 84; *Zollmann v. the United Kingdom* (dec.)). A lack of any clear connection with parliamentary activity calls for a narrow interpretation of the concept of proportionality between the aim sought to be achieved and the means employed (*Cordova v. Italy (no. 2)*, § 64; *Syngelidis v. Greece*, § 44). Individuals' right of access to a court cannot be restricted in a manner incompatible with Article 6 § 1 whenever the impugned remarks were made by a member of Parliament

(*Cordova v. Italy (no. 1)*, § 63; *C.G.I.L. and Cofferati v. Italy (no. 2)*, §§ 46-50, where, in addition, the victims did not have any reasonable alternative means to protect their rights).

121. Judges' exemption from jurisdiction is likewise not incompatible with Article 6 § 1 if it pursues a legitimate aim, namely the proper administration of justice (*Ernst and Others v. Belgium*, § 50), and observes the principle of proportionality in the sense that the applicants have reasonable alternative means to protect effectively their rights under the Convention (*Ernst and Others v. Belgium*, § 53-55).

122. Immunities enjoyed by civil servants: limitations on the ability of individuals to take legal proceedings to challenge statements and findings made by civil servants which damage their reputation may pursue a legitimate aim in the public interest (*Fayed v. the United Kingdom*, § 70); however, there must be a relationship of proportionality between the means employed and that legitimate aim (*ibid.*, §§ 75-82). The case of *Jones and Others v. the United Kingdom* (§§ 213-15) concerned the refusal to consider the applicants' civil claim in respect of torture allegations on account of the immunity invoked by the State in question and its officials. The Court was satisfied that the grant of immunity to the State officials in this particular case reflected generally recognised rules of public international law, while indicating that developments in this area needed to be kept under review.

123. Immunity of a head of State: in view of the functions performed by heads of State, the Court has considered it acceptable to afford them functional immunity in order to protect their freedom of expression and to maintain the separation of powers within the State. The parameters of such immunity must be regulated. Perpetual and absolute immunity that can never be lifted would constitute a disproportionate restriction on the right of access to a court (*Urechean and Pavlicenco v. Republic of Moldova*, §§ 47-55).

124. Limits to immunity: it would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons (*McElhinney v. Ireland* [GC], §§ 23-26; *Sabeh El Leil v. France* [GC], § 50).

125. The judgment in *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC] concerned the confiscation of assets pursuant to Resolution 1483 (2003) of the United Nations Security Council. The judgment lays down principles regarding the availability of appropriate judicial supervision by the domestic courts of measures adopted at national level pursuant to decisions taken within the UN sanctions system. The Court held in this particular case that there was nothing in Resolution 1483 (2003) that explicitly prevented the domestic courts from reviewing, in terms of human rights protection, the measures taken at national level pursuant to that Resolution. Where a resolution does not contain explicitly exclude the possibility of judicial supervision, it must always be understood as authorising States to exercise sufficient scrutiny to avoid any arbitrariness in its implementation, so that a fair balance can be struck between the competing interests at stake. Any implementation of the Security Council resolution without the possibility of judicial supervision to ensure the absence of arbitrariness would engage the State's responsibility under Article 6 of the Convention.

B. Waiver

1. Principle

126. An individual cannot be deemed to have waived a right if he or she had no knowledge of the existence of the right or of the related proceedings (*Schmidt v. Latvia*, § 96 and case-law references cited).

127. In the Contracting States' domestic legal systems a waiver of a person's right to have his or case heard by a court or tribunal is frequently encountered in civil matters, notably in the shape of arbitration clauses in contracts. The waiver, which has undeniable advantages for the individual concerned as well as for the administration of justice, does not in principle offend against the Convention (*Deweer v. Belgium*, § 49; *Pastore v. Italy* (dec.)). Article 6 does not therefore preclude the setting up of arbitration tribunals in order to settle certain disputes (*Transado - Transportes Fluviais Do Sado, S.A. v. Portugal* (dec.)). The parties to a case are free to decide that the ordinary courts are not required to deal with certain disputes potentially arising from the performance of a contract. In accepting an arbitration clause, the parties voluntarily waive certain rights enshrined in the Convention (*Eiffage S.A. and Others v. Switzerland* (dec.); *Tabbane v. Switzerland* (dec.), § 27). There may be a legitimate reason for limiting the right to direct individual access to an arbitration tribunal (*Lithgow and Others v. the United Kingdom*, § 197).

2. Conditions

128. Persons may waive their right to a court in favour of arbitration, provided that such waiver is permissible and is established freely and unequivocally (*Suda v. the Czech Republic*, §§ 48-49 and case-law references cited; *Tabbane v. Switzerland* (dec.), §§ 26-27 and 30). In a democratic society too great an importance attaches to the right to a court for its benefit to be forfeited solely by reason of the fact that an individual is a party to a settlement reached in the course of a procedure ancillary to court proceedings (*Suda v. the Czech Republic*, § 48). The waiver must be attended by minimum safeguards commensurate to its importance (*Eiffage S.A. and Others v. Switzerland* (dec.); *Tabbane v. Switzerland* (dec.), § 31).

129. A distinction is made in the case-law between voluntary and compulsory arbitration. In principle, no issue is raised under Article 6 in the case of voluntary arbitration since it is entered into freely. However, in the case of compulsory arbitration – that is, where arbitration is required by law – the parties have no opportunity to remove their dispute from the jurisdiction of an arbitration tribunal, which consequently must afford the guarantees set forth in Article 6 § 1 of the Convention (*Tabbane v. Switzerland* (dec.), §§ 26-27 and case-law references cited). In the decision cited, the Court held that the waiver clause and the relevant statutory provision had pursued a legitimate aim, namely promoting Switzerland's position as a venue for arbitration through flexible and rapid procedures, while respecting the applicant's contractual freedom (§ 36).

130. The Court has emphasised the advantages of arbitration over judicial proceedings in settling commercial disputes. In a case brought by a professional footballer and a speed skater, it reiterated the applicable principles in this area (*Mutu and Pechstein v. Switzerland*, §§ 94-96) and confirmed that this finding was equally relevant in the sphere of professional sport. In determining whether the applicants had waived all or part of the safeguards provided for in Article 6 § 1, the fundamental question was whether the arbitration procedure had been compulsory for them (§ 103). The Court observed that the second applicant had had no other choice than to apply to the Court of Arbitration for Sport (CAS), since the rules of the International Skating Union clearly stated that all disputes were to be brought before the CAS, failure to do so entailing a risk of exclusion from international competition (§§ 113-115). Conversely, the Court found that the first applicant had not been required to accept the compulsory jurisdiction of the CAS, since the relevant international rules gave footballers the choice in such matters. Nevertheless, the Court went on to observe that the first applicant could not be regarded as having unequivocally agreed to apply to a panel of the CAS lacking independence and impartiality. One of the important aspects in the Court's view was that, in making use of the rules governing procedure before the CAS, the first applicant had in fact sought to have one of the arbitrators on the panel stood down. Accordingly, in the cases of both the first and the second applicants, the arbitration procedure should have afforded the safeguards provided for in Article 6 § 1 (§§ 121-123). See also, regarding an arbitration committee with exclusive and compulsory jurisdiction to hear football disputes, *Ali Rıza and Others v. Turkey*, §§ 175-181.

C. Legal aid

1. Granting of legal aid

131. Article 6 § 1 does not imply that the State must provide free legal aid for every dispute relating to a "civil right" (*Airey v. Ireland*, § 26). There is a clear distinction between Article 6 § 3 (c) – which guarantees the right to free legal aid in criminal proceedings subject to certain conditions – and Article 6 § 1, which makes no reference to legal aid (*Essaadi v. France*, § 30).

132. However, the Convention is intended to safeguard rights which are practical and effective, in particular the right of access to a court. Hence, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court (*Airey v. Ireland*, § 26).

133. The question whether or not Article 6 requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case (*ibid.*; *Steel and Morris v. the United Kingdom*, § 61; *McVicar v. the United Kingdom*, § 48). What has to be ascertained is whether, in the light of all the circumstances, the lack of legal aid would deprive the applicant of a fair hearing (*ibid.*, § 51).

134. The question whether Article 6 implies a requirement to provide legal aid will depend, among other factors, on:

- the importance of what is at stake for the applicant (*Steel and Morris v. the United Kingdom*, § 61; *P., C. and S. v. the United Kingdom*, § 100);
- the complexity of the relevant law or procedure (*Airey v. Ireland*, § 24);
- the applicant's capacity to represent him or herself effectively (*McVicar v. the United Kingdom*, §§ 48-62; *Steel and Morris v. the United Kingdom*, § 61);
- the existence of a statutory requirement to have legal representation (*Airey v. Ireland*, § 26; *Gnahoré v. France*, § 41 *in fine*).

135. However, the right in question is not absolute and it may therefore be permissible to impose conditions on the grant of legal aid based in particular on the following considerations, in addition to those cited in the preceding paragraph:

- the financial situation of the litigant (*Steel and Morris v. the United Kingdom*, § 62);
- his or her prospects of success in the proceedings (*ibid*).

Hence, a legal aid system may exist which selects the cases which qualify for it. However, the system established by the legislature must offer individuals substantial guarantees to protect them from arbitrariness (*Gnahoré v. France*, § 41; *Essaadi v. France*, § 36; *Del Sol v. France*, § 26; *Bakan v. Turkey*, §§ 75-76 with a reference to the judgment in *Aerts v. Belgium* concerning an impairment of the very essence of the right to a court). It is therefore important to have due regard to the quality of a legal aid scheme within a State (*Essaadi v. France*, § 35) and to verify whether the method chosen by the authorities is compatible with the Convention (*Santambrogio v. Italy*, § 52; *Bakan v. Turkey*, §§ 74-78; *Pedro Ramos v. Switzerland*, §§ 41-45).

136. It is essential for the court to give reasons for refusing legal aid and to handle requests for legal aid with diligence (*Tabor v. Poland*, §§ 45-46; *Saoud v. France*, §§ 133-36).

137. Furthermore, the refusal of legal aid to foreign legal persons is not contrary to Article 6 (*Granos Organicos Nacionales S.A. v. Germany*, §§ 48-53).

2. Effectiveness of the legal aid granted

138. The State is not accountable for the actions of an officially appointed lawyer. It follows from the independence of the legal profession from the State (*Staroszczyk v. Poland*, § 133), that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel is appointed under a legal aid scheme or is privately financed. The conduct of the defence as such cannot, other than in special circumstances, incur the State's liability under the Convention (*Tuziński v. Poland* (dec.)).

139. However, assigning a lawyer to represent a party does not in itself guarantee effective assistance (*Siałkowska v. Poland*, §§ 110 and 116). The lawyer appointed for legal aid purposes may be prevented for a protracted period from acting or may shirk his duties. If they are notified of the situation, the competent national authorities must replace him; should they fail to do so, the litigant would be deprived of effective assistance in practice despite the provision of free legal aid (*Bertuzzi v. France*, § 30).

140. It is above all the responsibility of the State to ensure the requisite balance between the effective enjoyment of access to justice on the one hand and the independence of the legal profession on the other. The Court has clearly stressed that any refusal by a legal aid lawyer to act must meet certain quality requirements. Those requirements will not be met where the shortcomings in the legal aid system deprive individuals of the "practical and effective" access to a court to which they are entitled (*Staroszczyk v. Poland*, § 135; *Siałkowska v. Poland*, § 114 - violation).

III. Institutional requirements

Article 6 § 1 of the Convention

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal established by law. ..."

A. Concept of a "tribunal"

1. Autonomous concept

141. An authority not classified as one of the courts of a State may nonetheless, for the purposes of Article 6 § 1, come within the concept of a "tribunal" in the substantive sense of the term (*Sramek v. Austria*, § 36).

142. A court or tribunal is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (*ibid.*, § 36; *Cyprus v. Turkey* [GC], § 233).

143. A power of decision is inherent in the very notion of "tribunal". The proceedings must provide the "determination by a tribunal of the matters in dispute" which is required by Article 6 § 1 (*Benthem v. the Netherlands*, § 40).

144. The power simply to issue advisory opinions without binding force is therefore not sufficient, even if those opinions are followed in the great majority of cases (*ibid.*).

145. For the purposes of Article 6 § 1 a "tribunal" need not be a court of law integrated within the standard judicial machinery of the country concerned (*Ali Rıza and Others v. Turkey*, §§ 194-195 and §§ 202-204; *Mutu and Pechstein v. Switzerland*, § 139, concerning arbitration). It may be set up to deal

with a specific subject matter which can be appropriately administered outside the ordinary court system. What is important to ensure compliance with Article 6 § 1 are the guarantees, both substantive and procedural, which are in place (*Rolf Gustafson v. Sweden*, § 45).

146. Hence, a "tribunal" may comprise a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (*Lithgow and Others v. the United Kingdom*, § 201, in the context of an arbitration tribunal).

147. The fact that it performs many functions (administrative, regulatory, adjudicative, advisory and disciplinary) cannot *in itself* preclude an institution from being a "tribunal" (*H. v. Belgium*, § 50).

148. The power to give a binding decision which may not be altered by a non-judicial authority to the detriment of an individual party is inherent in the very notion of a "tribunal" (*Van de Hurk v. the Netherlands*, § 45). One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue their ruling should not be called into question (similarly, in the case of applications for leave to appeal: *Brumărescu v. Romania* [GC], § 61).[6] In addition, only an institution that has full jurisdiction merits the designation "tribunal" for the purposes of Article 6 § 1 (*Mutu and Pechstein v. Switzerland*, § 139).

149. A "tribunal" must also satisfy a series of further requirements – independence, in particular of the executive; impartiality; duration of its members' terms of office; guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 55; *Cyprus v. Turkey* [GC], § 233). Indeed, both independence and impartiality are key components of the concept of a "tribunal".[7]

150. Examples of bodies recognised as having the status of a "tribunal" within the meaning of Article 6 § 1 of the Convention include:

- a regional real-property transactions authority (*Sramek v. Austria*, § 36);
- a criminal damage compensation board (*Rolf Gustafson v. Sweden*, § 48);
- a forestry disputes resolution committee (*Argyrou and Others v. Greece*, § 27).
- the Court of Arbitration for Sport (*Mutu and Pechstein v. Switzerland*, § 149), and a football arbitration committee (*Ali Rıza and Others v. Turkey*, §§ 202-204).

2. Level of jurisdiction

151. While Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation, a State which does institute such courts is required to ensure that persons amenable to the law enjoy before these courts the fundamental guarantees contained in Article 6 § 1 (*Platakou v. Greece*, § 38; *Zubac v. Croatia* [GC], § 80):

- Assessment *in concreto*: The manner in which Article 6 § 1 applies to courts of appeal or of cassation will, however, depend on the special features of the proceedings concerned. The conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (*Levages Prestations Services v. France*, § 45; *Zubac v. Croatia* [GC], § 82).
- Assessment *in globo*: Account must be taken of the entirety of the proceedings conducted in the domestic legal order (*Levages Prestations Services v. France*, § 45; *Zubac v. Croatia* [GC], § 82). Consequently, a higher or the highest court may, in some circumstances, make reparation for an initial violation of one of the Convention's provisions (*De Haan v. the Netherlands*, § 54; *mutatis mutandis, Zubac v. Croatia* [GC], § 123).

152. Demands of flexibility and efficiency, which are fully compatible with the protection of human rights, may justify the prior intervention of administrative or professional bodies and, *a fortiori*, of

6. See also the section on "Execution of judgments".
7. See the section on "Independence and impartiality".

judicial bodies which do not satisfy the requirements of Article 6 in every respect (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 51). No violation of the Convention can be found if the proceedings before those bodies are "subject to subsequent control by a judicial body that has full jurisdiction" and does provide the guarantees of Article 6 (*Zumtobel v. Austria*, §§ 29-32; *Bryan v. the United Kingdom*, § 40; *Denisov v. Ukraine* [GC], § 65).

153. Likewise, the fact that the duty of adjudicating is conferred on professional disciplinary bodies does not in itself infringe the Convention. Nonetheless, in such circumstances the Convention calls for at least one of the following two systems: either the professional disciplinary bodies themselves comply with the requirements of that Article, or they do not so comply but are subject to subsequent review by "a judicial body that has full jurisdiction" and does provide the guarantees of Article 6 § 1 (*Albert and Le Compte v. Belgium*, § 29; *Gautrin and Others v. France*, § 57; *Fazia Ali v. the United Kingdom*, § 75).

154. Accordingly, the Court has consistently reiterated that under Article 6 § 1 it is necessary that the decisions of administrative authorities which do not themselves satisfy the requirements of that Article should be subject to subsequent control by "a judicial body that has full jurisdiction" (*Ortenberg v. Austria*, § 31).[8]

3. Review by a court having full jurisdiction

155. Only an institution that has full jurisdiction merits the designation "tribunal" within the meaning of Article 6 § 1 (*Beaumartin v. France*, § 38). Article 6 § 1 requires the courts to carry out an effective judicial review (*Obermeier v. Austria*, § 70). The concept of "full jurisdiction" does not necessarily depend on the legal characterisation in domestic law. For the purposes of Article 6 § 1 of the Convention, the "tribunal" must have "jurisdiction to examine all questions of fact and law relevant to the dispute before it" (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 176-177). The body in question must exercise "sufficient jurisdiction" or provide "sufficient review" in the proceedings before it (*Sigma Radio Television Ltd v. Cyprus*, § 152, and case-law references cited). The principle that a court should exercise full jurisdiction requires it not to abandon any of the elements of its judicial function (*Chevrol v. France*, § 63).

156. Where an administrative body determining disputes over "civil rights and obligations" does not satisfy all the requirements of Article 6 § 1, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 § 1", that is, if any structural or procedural shortcomings identified in the proceedings before the administrative authority are remedied in the course of the subsequent review by a judicial body with full jurisdiction (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 132).

157. Article 6 § 1 in principle requires that a court or tribunal should have jurisdiction to examine all questions of fact and law that are relevant to the dispute before it (*Terra Woningen B.V. v. the Netherlands*, § 52; *Sigma Radio Television Ltd v. Cyprus*, §§ 151-57). This means, in particular, that the court must have the power to examine point by point each of the litigant's grounds on the merits, without refusing to examine any of them, and must give clear reasons for their rejection. As to the facts, the court must be able to re-examine those that are central to the litigant's case (*Bryan v. the United Kingdom*, § 44-45). In some cases, the court in question does not have full jurisdiction within the meaning of the domestic law as such but examines point by point the applicants' grounds of appeal, without having to decline jurisdiction in replying to them or in scrutinising findings of fact or law made by the administrative authorities. In such cases, the assessment should concern the intensity of the court's review of the discretion exercised by the administrative authorities (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 183 and case-law references cited).

8. See also the section on "Fairness".

158. Furthermore, a judicial body cannot be said to have full jurisdiction unless it has the power to assess whether a penalty was proportionate to the corresponding misconduct (*Diennet v. France,* § 34, *Mérigaud v. France*, § 69).

159. The principle of full jurisdiction has been qualified in a number of cases by the Court's case-law, which has often interpreted it in a flexible manner, particularly in administrative-law cases where the jurisdiction of the appellate court had been restricted on account of the technical nature of the dispute's subject matter (*Chaudet v. France*, § 37; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], § 130).

160. Indeed, in the legal systems of the various member States, there are some specialised areas of the law (for instance, in the sphere of town and country planning) where the courts have limited jurisdiction as to the facts, but may overturn the administrative authorities' decision if it was based on an inference from facts which was perverse or irrational. Article 6 of the Convention does not require access to a level of jurisdiction that can substitute its own opinion for that of the administrative authority (see, for example, in relation to countryside planning, *Zumtobel v. Austria,* §§ 31-32, and town planning, *Bryan v. the United Kingdom*, §§ 44-47; environmental protection, *Alatulkkila and Others v. Finland*, § 52; regulation of gaming, *Kingsley v. the United Kingdom* [GC], § 32; and for a summary of the case-law, *Fazia Ali v. the United Kingdom*, §§ 75-78, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 178).

161. The above-mentioned situations concern judicial review of a decision taken in the ordinary exercise of administrative discretion in a *specialised area of law* (planning, social security, etc.), which the Court distinguished from *disciplinary disputes* in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 196 and 203. In that judgment it held that judicial review of an administrative decision had to be appropriate to the subject-matter of the dispute (§ 196).

162. In the context of the ordinary exercise by the administrative authorities of their discretion in *specialised areas of law requiring particular professional experience or specialist knowledge* (contrast *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 195), the case-law has established certain criteria for assessing whether the review was conducted by a body with "full jurisdiction" for the purposes of the Convention (*Sigma Radio Television Ltd v. Cyprus*, §§ 151-57). Thus, in order to determine whether the judicial body in question provided a sufficient review, the following three criteria must be considered in combination (see also *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 179-181):

- The subject matter of the decision appealed against:
  - if the administrative decision concerned a simple question of fact the court's scrutiny will need to be more intense than if it concerned a specialised field requiring specific technical knowledge;
  - the systems existing in Europe usually limit the courts' power to review factual issues, while not preventing them from overturning the decision on various grounds. This is not called into question by the case-law.
- The manner in which that decision was arrived at: what procedural safeguards were in place before the administrative authority concerned?
  - If the complainant enjoyed procedural safeguards satisfying many of the requirements of Article 6 during the prior administrative procedure, this may justify a lighter form of subsequent judicial control (*Bryan v. the United Kingdom*, §§ 46-47; *Holding and Barnes PLC v. the United Kingdom* (dec.)).
- The content of the dispute, including the desired and actual grounds of appeal (*Bryan v. the United Kingdom*, § 45):
  - the judgment must be able to examine all the complainant's submissions on their merits, point by point, without declining to examine any of them, and to give clear reasons for rejecting them. As to the facts, the court must be empowered to re-examine those which

are central to the complainant's case. Hence, if the complainant makes only procedural submissions, he or she cannot subsequently criticise the court for not having ruled on the facts (*Potocka and Others v. Poland*, § 57).

163. For example, the refusal of a court to rule independently on certain issues of fact which are crucial to the settlement of the dispute before it may amount to a violation of Article 6 § 1 (*Terra Woningen B.V. v. the Netherlands*, §§ 53-55). The same applies if the court does not have jurisdiction to determine the central issue in the dispute (*Tsfayo v. the United Kingdom*, § 48). In such cases the matter which is decisive for the outcome of the case is not subjected to independent judicial scrutiny (for a summary of the relevant precedents, see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 181-183).

164. To sum up, in a dispute involving the administrative authorities, where the courts refuse to consider questions that are essential for the outcome of the dispute on the grounds that they have already been settled by the authorities with binding effect on the courts, there is a violation of Article 6 § 1 (*Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, §§ 76-79, regarding access to employment; *Aleksandar Sabev v. Bulgaria*, §§ 55-58, regarding dismissals).

165. If a ground of appeal is upheld, the reviewing court must have the power to quash the impugned decision and to either take a fresh decision itself or remit the case for decision by the same or a different body (*Kingsley v. the United Kingdom* [GC], §§ 32 and 34, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 184).

166. Where the facts have already been established by the administrative authority in the course of a quasi-judicial procedure satisfying many of the requirements laid down by Article 6 § 1, where there is no dispute as to the facts thus established or the inferences drawn from them by the administrative authority, and where the court has dealt point by point with the litigant's other grounds of appeal, the scope of the review conducted by the appellate court will be held to be sufficient to comply with Article 6 § 1 (*Bryan v. the United Kingdom*, §§ 44-47).

167. Again with reference to the extent of the judicial review, the Court has added that the domestic courts must "adequately state the reasons on which their decisions are based" (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 185). Without requiring a detailed answer to every argument put forward by a complainant, this obligation nevertheless presupposes that a party to judicial proceedings can expect a specific and express reply to those submissions which are decisive for the outcome of the proceedings in question (*ibid.*).

168. The above criteria and principles as reiterated in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 173-186) were adapted by the Grand Chamber to what it deemed to be the specific context of disciplinary sanctions against judges. It emphasised the importance of the role played by such sanctions and by the judiciary in a democratic State and took into account the punitive aspect in this regard (§ 196). The relevant criteria for satisfying the requirements of Article 6 § 1 concern both the disciplinary proceedings at first instance and the judicial proceedings on appeal. First of all, this implies that the proceedings before the disciplinary body should not only entail procedural safeguards (§ 197) but also, when the applicant was liable to incur very severe penalties, measures to establish the facts adequately (for further details, see paragraph 198 of the judgment). Next, as regards the appeal proceedings before the judicial body, the Grand Chamber examined the following points (§§ 199 et seq. of the judgment):

- the issues submitted for judicial review (in this particular case, a finding of a breach of professional duties, which the applicant was challenging as regards both the facts and the penalties: see §§ 201-03). It should be noted that in the specific context of disciplinary proceedings, issues of fact are just as crucial as the legal issues for the outcome of the dispute. The establishment of the facts is especially important in the case of proceedings that entail the imposition of penalties, in particular disciplinary penalties against judges, as

the latter must enjoy the respect that is necessary for the performance of their duties, so as to ensure public confidence in the functioning and independence of the judiciary (§ 203).

- the method of judicial review, the decision-making powers of the body conducting the review and the reasoning of the decisions adopted by that body (§§ 204-213). It should be noted that in the context of disciplinary proceedings, dispensing with a public hearing should be an exceptional measure and should be duly justified in the light of the Convention institutions' case-law (§ 210).

169. Examples of judicial bodies that have not been considered to have "full jurisdiction":

- an administrative court which was empowered only to determine whether the discretion enjoyed by the administrative authorities was used in a manner compatible with the object and purpose of the law (*Obermeier v. Austria*, § 70);
- a court which heard appeals on points of law from decisions of the disciplinary sections of professional associations, without having the power to assess whether the penalty was proportionate to the misconduct (*Diennet v. France*, § 34, in the context of a medical association; *Mérigaud v. France*, § 69, in the context of an association of surveyors);
- a Constitutional Court which could inquire into the contested proceedings solely from the point of view of their conformity with the Constitution, thus preventing it from examining all the relevant facts (*Zumtobel v. Austria*, §§ 29-30);
- the *Conseil d'État* which, in accordance with its own case-law, was obliged, in resolving the issue before it concerning the applicability of treaties, to abide by the opinion of the minister – an external authority who was also a representative of the executive – without subjecting that opinion to any criticism or discussion by the parties. The minister's involvement, which was decisive for the outcome of the legal proceedings, was not open to challenge by the applicant, who was, moreover, not afforded any opportunity to have the basis of her own reply to the minister examined (*Chevrol v. France*, §§ 81-82).
- a supreme court in the specific context of disciplinary proceedings against a judge (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 214).

170. By contrast, the requirements of Article 6 § 1 were satisfied in the following cases:

- The case of *Fazia Ali v. the United Kingdom* concerned the limited judicial review of an administrative decision in the social welfare sphere, relating to the housing of homeless families. The scheme at issue in the case was designed to provide housing to homeless people; it covered a multitude of small cases and was intended to bring as great a benefit as possible to needy persons in an economical and fair manner. In the Court's view, when a thorough inquiry into the facts had already been conducted at administrative level, Article 6 § 1 could not be read as requiring that the review by the domestic courts should necessarily encompass a full reopening of the case with the rehearing of witnesses.
- *Chaudet v. France*: the *Conseil d'État* determined an application for judicial review as the court of first and last instance. In this case the *Conseil d'État* did not have "full jurisdiction", which would have had the effect of substituting its decision for that of the civil aviation medical board. However, it was clear from the case file that it had nonetheless addressed all of the submissions made by the applicant, on factual and legal grounds, and assessed all of the evidence in the medical file, having regard to the conclusions of all the medical reports discussed before it by the parties. The Court therefore held that the applicant's case had been examined in compliance with the requirements of Article 6 § 1 (§§ 37-38).
- *Zumtobel v. Austria*: the Court held that the Austrian Administrative Court had met the requirements of Article 6 § 1 in relation to matters not exclusively within the discretion of the administrative authorities, and that it had considered the submissions on their merits, point by point, without ever having to decline jurisdiction in replying to them or in

ascertaining various facts (§§ 31-32 – see also *Ortenberg v. Austria*, §§ 33-34; *Fischer v. Austria*, § 34).

- *McMichael v. the United Kingdom*: in this case, an order of the Sheriff Court freeing a child for adoption was subject to appeal to the Court of Session. The latter had full jurisdiction in that regard; it normally proceeded on the basis of the Sheriff's findings of fact but was not obliged to do so. It could, where appropriate, take evidence itself or remit the case to the Sheriff with instructions as to how he should proceed (§ 66). Furthermore, the Sheriff Court, in determining appeals against the decisions of children's hearings, also had full jurisdiction, being empowered to examine both the merits and alleged procedural irregularities (§ 82).
- *Potocka and Others v. Poland*: the scope of the Supreme Administrative Court's jurisdiction as determined by the Code of Administrative Procedure was limited to the assessment of the lawfulness of contested administrative decisions. However, the court was also empowered to set aside a decision wholly or in part if it was established that procedural requirements of fairness had not been met in the proceedings which had led to its adoption. The reasoning of the Supreme Administrative Court showed that in fact it had examined the expediency aspect of the case. Even though the court could have limited its analysis to finding that the contested decisions had to be upheld in the light of the procedural and substantive flaws in the applicants' application, it had considered all their submissions on their merits, point by point, without ever having to decline jurisdiction in replying to them or in ascertaining the relevant facts. It had delivered a judgment which was carefully reasoned, and the applicants' arguments relevant to the outcome of the case had been dealt with thoroughly. Accordingly, the scope of review of the Supreme Administrative Court had been sufficient to comply with Article 6 § 1 (§§ 56-59).

4. Execution of judgments

a. Right to prompt implementation of a final and binding judicial decision

171. Article 6 § 1 protects the implementation of final, binding judicial decisions (as distinct from the implementation of decisions which may be subject to review by a higher court) (*Ouzounis and Others v. Greece*, § 21).

172. The right to execution of such decisions, given by any court, is an integral part of the "right to a court" (*Hornsby v. Greece*, § 40; *Scordino v. Italy (no. 1)* [GC], § 196). Otherwise, the provisions of Article 6 § 1 would be deprived of all useful effect (*Burdov v. Russia*, §§ 34 and 37). An unreasonably long delay in enforcement of a binding judgment may therefore breach the Convention (*Burdov v. Russia (no. 2)*, § 66).

173. The "right to a court" also protects the implementation of interim measures taken pending the adoption of a final decision (*Sharxhi and Others v. Albania*, § 92). Thus, the demolition of a residential building despite interim orders issued by the national courts constitutes a violation of Article 6 § 1 (§§ 94-97).

174. The right to the execution of judicial decisions is of even greater importance in the context of administrative proceedings (*Sharxhi and Others v. Albania*, § 92). By lodging an application for judicial review with the State's highest administrative court, the litigant seeks not only annulment of the impugned decision but also and above all the removal of its effects (see, in relation to environmental issues, *Bursa Barosu Başkanlığı and Others v. Turkey*, § 144).

175. The effective protection of the litigant and the restoration of legality therefore presuppose an obligation on the administrative authorities' part to comply with the judgment (*Hornsby v. Greece*, § 41; *Kyrtatos v. Greece*, §§ 31-32).

176. Thus, while some delay in the execution of a judgment may be justified in particular circumstances, the delay may not be such as to impair the litigant's right to enforcement of the judgment (*Burdov v. Russia*, §§ 35-37).

177. Understood in this way, execution must be full and exhaustive and not just partial (*Matheus v. France*, § 58; *Sabin Popescu v. Romania*, §§ 68-76), and may not be prevented, invalidated or unduly delayed (*Immobiliare Saffi v. Italy* [GC], § 74).

178. The refusal of an authority to take account of a ruling given by a higher court – leading potentially to a series of judgments in the context of the same set of proceedings, repeatedly setting aside the decisions given – is also contrary to Article 6 § 1 (*Turczanik v. Poland*, §§ 49-51).

179. An unreasonably long delay in enforcement of a binding judgment may breach the Convention. The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own behaviour and that of the competent authorities, and the amount and nature of the court award (*Raylyan v. Russia*, § 31).

180. For example, the Court held that by refraining for more than five years from taking the necessary measures to comply with a final, enforceable judicial decision the national authorities had deprived the provisions of Article 6 § 1 of all useful effect (*Hornsby v. Greece*, § 45).

181. In another case, the overall period of nine months taken by the authorities to enforce a judgment was found not to be unreasonable in view of the circumstances (*Moroko v. Russia*, §§ 43-45).

182. The Court has found the right to a court under Article 6 § 1 to have been breached on account of the authorities' refusal, over a period of approximately four years, to use police assistance to enforce an order for possession against a tenant (*Lunari v. Italy*, §§ 38-42), and on account of a stay of execution – for over six years – resulting from the intervention of the legislature calling into question a court order for a tenant's eviction, which was accordingly deprived of all useful effect by the impugned legislative provisions (*Immobiliare Saffi v. Italy* [GC], §§ 70 and 74).

183. With regard to the payment of a monetary judicial award by a public authority, a delay of less than one year is in principle compatible with the Convention, while any longer delay is prima facie unreasonable. However, this presumption may be rebutted, depending on the circumstances, on the basis of precise criteria (*Gerasimov and Others v. Russia*, §§ 167-174, and for a complex liquidation procedure lasting one year and ten months concerning salary arrears, *Kuzhelev and Others v. Russia*, §§ 110 and 137; see also *Cocchiarella v. Italy* [GC], § 89: in respect of a compensatory remedy established under domestic law to redress the consequences of excessively lengthy proceedings, the time taken to make payment should not generally exceed six months from the date on which the decision awarding compensation becomes enforceable).

184. While the Court has due regard to the domestic statutory time-limits set for enforcement proceedings, their non-observance does not automatically amount to a breach of the Convention. Some delay may be justified in particular circumstances but it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1. The Court held in *Burdov v. Russia (no. 2)* that the failure to enforce a judgment for a period of six months was not in itself unreasonable (§ 85), and in *Moroko v. Russia* that an overall delay of nine months by the authorities in enforcing a judgment was not *prima facie* unreasonable under the Convention (§ 43). It should be noted, however, that these considerations do not obviate the need for an assessment of the proceedings as a whole in the light of the above-mentioned criteria and any other relevant circumstances (*Burdov v. Russia (no. 2)*, § 67).

185. In particular, in *Gerasimov and Others v. Russia* (§§ 168-74) the Court stated that if the judgment to be enforced required the public authorities to take specific action of significant importance for the applicant (for example, because the applicant's daily living conditions would be affected), a delay in enforcement of more than six months would run counter to the Convention requirement of special

diligence (§ 170). With regard to the allocation of housing, the Court has required a delay of less than two years, unless there is a need for special diligence (§ 171).

186. A person who has obtained judgment against the State at the end of legal proceedings may not be expected to bring separate enforcement proceedings (*Burdov v. Russia (no. 2)*, § 68; *Sharxhi and Others v. Albania*, § 93). The burden to ensure compliance with a judgment against the State lies with the State authorities (*Yavorivskaya v. Russia*, § 25), starting from the date on which the judgment becomes binding and enforceable (*Burdov v. Russia (no. 2)*, § 69). It follows that the late payment, following enforcement proceedings, of amounts owing to the applicant cannot cure the national authorities' long-standing failure to comply with a judgment and does not afford adequate redress (*Scordino v. Italy (no. 1)* [GC], § 198).

187. A successful litigant may be required to undertake certain procedural steps in order to allow or speed up the execution of a judgment. The requirement of the creditor's cooperation must not, however, go beyond what is strictly necessary and does not relieve the authorities of their obligations (*Burdov v. Russia (no. 2)*, § 69).

188. The Court has also held that the authorities' stance of holding the applicant responsible for the initiation of execution proceedings in respect of an enforceable decision in his favour, coupled with the disregard for his financial situation, constituted an excessive burden and restricted his right of access to a court to the extent of impairing the very essence of that right (*Apostol v. Georgia*, § 65).

189. A litigant may not be deprived of the benefit, within a reasonable time, of a final decision awarding him compensation for damage (*Burdov v. Russia*, § 35), or housing (*Teteriny v. Russia*, §§ 41-42), regardless of the complexity of the domestic enforcement procedure or of the State budgetary system. It is not open to a State authority to cite lack of funds or other resources as an excuse for not honouring a judgment debt (*Burdov v. Russia*, § 35; *Amat-G Ltd and Mebaghishvili v. Georgia*, § 47; *Scordino v. Italy (no. 1)* [GC], § 199). Nor may it cite a lack of alternative accommodation as an excuse for not honouring a judgment (*Prodan v. Moldova*, § 53; *Tchokontio Happi v. France*, § 50; *Burdov v. Russia (no. 2),* § 70)).

190. The time taken by the authorities to comply with a judgment ordering payment of a monetary award should be calculated from the date on which the judgment became final and enforceable until the date of payment of the amounted awarded. A delay of two years and one month in the payment of a judicial award is on its face incompatible with the Convention requirements, unless there are any circumstances to justify it (*Burdov v. Russia (no. 2)*, §§ 73-76 and 83).

191. Furthermore, the argument that local authorities enjoy autonomy under domestic law is inoperative in view of the principle of the State's international responsibility under the Convention (*Société de gestion du port de Campoloro and Société fermière de Campoloro v. France*, § 62).

192. Admittedly, in exceptional situations the *restitutio in integrum* enforcement of a court judgment declaring administrative acts unlawful and void may, as such, prove objectively impossible because of insurmountable factual or legal obstacles. However, in such situations, in accordance with the requirements of the right of access to court, a member State must, in good faith and of its own motion, examine other solutions that could remedy the detrimental effects of its unlawful acts, such as an award of compensation (*Cıngıllı Holding A.Ş. and Cıngıllıoğlu v. Turkey*, § 41, and for an application in the context of a dispute between individuals, *Nikoloudakis v. Greece*, § 50).

193. A distinction has to be made between debts *owed by the State authorities* (*Burdov v. Russia (no. 2)*, §§ 68-69, 72 et seq.) and those *owed by an individual*, since the extent of the State's obligation under the Convention varies according to the status of the debtor.

194. An individual who has obtained a judgment against a *public authority* is not normally required to bring separate enforcement proceedings. The Court has held that it is inappropriate to require an individual who has obtained a judgment against the State in legal proceedings to then bring

enforcement proceedings to obtain satisfaction (*Metaxas v. Greece*, § 19; *Kukalo v. Russia*, § 49). It is sufficient for the individual to notify the State authority concerned in the appropriate manner (*Akashev v. Russia*, § 21) or to perform certain procedural steps of a formal nature (*Kosmidis and Kosmidou v. Greece*, § 24).

195. Where the debtor is a *private individual*, the responsibility of the State cannot be engaged on account of non-payment of an enforceable debt as a result of the insolvency of a "private" debtor (*Sanglier v. France*, § 39; *Ciprová v. the Czech Republic* (dec.); *Cubanit v. Romania* (dec.)). Nevertheless, the State has a positive obligation to organise a system for enforcement of final decisions in disputes between private persons that is effective both in law and in practice (*Fuklev v. Ukraine*, § 84; *Fomenko and Others v. Russia* (dec.), §§ 171-181). The State's responsibility may therefore be engaged if the public authorities involved in enforcement proceedings fail to display the necessary diligence, or even prevent enforcement (*Fuklev v. Ukraine*, § 67). The measures taken by the national authorities to secure enforcement must be adequate and sufficient for that purpose (*Ruianu v. Romania*, § 66), in view of their obligations in the matter of execution, since it is they who exercise public authority (*ibid.*, §§ 72-73; *Sekul v. Croatia* (dec.), §§ 54-55).

196. Thus, for example, the Court held that, by refraining from taking sanctions in respect of the failure of a (private) third party to cooperate with the authorities empowered to enforce final enforceable decisions, the national authorities deprived the provisions of Article 6 § 1 of all useful effect (*Pini and Others v. Romania*, §§ 186-88, where the private institution where two children were living had prevented the execution for over three years of the orders for the children's adoption).

197. Nevertheless, where the State has taken all the steps envisaged by the law to ensure that a private individual complies with a decision, the State cannot be held responsible for the debtor's refusal to comply with his obligations (*Fociac v. Romania*, §§ 74 and 78) and the State's obligations under the Convention have been satisfied (*Fomenko and Others v. Russia* (dec.), § 195).

198. Lastly, the right to a court likewise protects the right of access to enforcement proceedings, that is, the right to have enforcement proceedings initiated (*Apostol v. Georgia*, § 56).

b. Right not to have a final judicial decision called into question

199. Furthermore, the right to a fair hearing must be interpreted in the light of the rule of law. One of the fundamental aspects of the rule of law is the principle of legal certainty (*Okyay and Others v. Turkey*, § 73), which requires, *inter alia*, that where the courts have finally determined an issue their ruling should not be called into question (*Brumărescu v. Romania* [GC], § 61; *Agrokompleks v. Ukraine*, § 148).

200. Judicial systems characterised by final judgments that are liable to review indefinitely and at risk of being set aside repeatedly are in breach of Article 6 § 1 (*Sovtransavto Holding v. Ukraine*, §§ 74, 77 and 82, concerning the *protest* procedure whereby the President of the Supreme Arbitration Tribunal, the Attorney-General and their deputies had discretionary power to challenge final judgments under the supervisory review procedure by lodging an objection).

201. The calling into question of decisions in this manner is not acceptable, whether it be by judges and members of the executive (*Tregubenko v. Ukraine*, § 36) or by non-judicial authorities (*Agrokompleks v. Ukraine*, §§ 150-51).

202. A final decision may be called into question only when this is made necessary by circumstances of a substantial and compelling character such as a judicial error (*Ryabykh v. Russia*, § 52; see also *Vardanyan and Nanushyan v. Armenia*, § 70, and compare with *Trapeznikov and Others v. Russia*, in which the supervisory review procedure, implemented at the parties' request, did not breach the principle of legal certainty, §§ 39-40).

203. In summary, legal certainty presupposes respect for the principle of *res judicata*, that is, the principle of the finality of judgments. By virtue of this principle, no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. The higher courts should not use their power of review to carry out a fresh examination. The review should not become an appeal in disguise, and the mere possibility of there being two views on the subject is not a sufficient ground for re-examining a case. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (*Ryabykh v. Russia*, § 52).

204. The Court's case-law concerning the *res judicata* principle covers two situations that are similar but not identical: the review of a final and binding judgment by means of an extraordinary remedy or in the light of newly discovered facts (see, for example, *Pravednaya v. Russia*, §§ 30-33, *Tregubenko v. Ukraine*, §§ 34-38) and the extension of the time-limit for using an ordinary remedy (*Magomedov and Others v. Russia*, §§ 87-89). The first situation concerns the quashing by the supervisory authority of a final and binding judgment by means of a procedure applicable in the event of new or newly discovered circumstances, amounting in reality to an appeal in disguise – that is, an opportunity for a public authority to secure a review of its case by relying on an existing and known fact that it had omitted to raise previously. In the second situation, the court allows a request by the losing party to appeal out of time. In this way, a judgment constituting *res judicata* is not immediately quashed but nevertheless ceases to be final and binding. Both of these situations can thus be regarded as breaching the principle of the finality of judgments.

205. In that context, the Court has emphasised that the risk of a mistake by a public authority in judicial or other proceedings must be borne by the State, especially where no other private interest is at stake, and that any errors must not be remedied at the expense of the individual concerned. Although the need to correct judicial mistakes might in principle constitute a legitimate consideration, it should not be satisfied in an arbitrary manner, and in any event, the authorities must, as far as possible, strike a fair balance between the interests of the individual and the need to ensure the proper administration of justice (*Magomedov and Others v. Russia*, §§ 94-95, concerning the admission of appeals out of time in the authorities' favour following the extension, without any valid grounds, of the time-limit for appealing).

c. Mutual recognition and execution of judgments delivered by foreign courts or elsewhere in the European Union

206. The Court has observed that the recognition and execution by a State of a judgment delivered by another State is a means of ensuring legal certainty in international relations between private parties (*Ateş Mimarlik Mühendislik A.Ş. v. Turkey*, § 46). Anyone with a legal interest in the recognition of a foreign judgment must be able to make an application to that end (*Selin Aslı Öztürk v. Turkey*, §§ 39-41, concerning the recognition of a divorce decree issued abroad).

207. A decision to enforce a foreign judgment (*exequatur*) is not compatible with the requirements of Article 6 § 1 if it was taken without any opportunity being afforded of effectively asserting a complaint as to the unfairness of the proceedings leading to that judgment, either in the State of origin or in the State addressed. The Court has always applied the general principle that a court examining a request for recognition and enforcement of a foreign judgment cannot grant the request without first conducting some measure of review of that judgment in the light of the guarantees of a fair hearing; the intensity of that review may vary depending on the nature of the case (*Pellegrini v. Italy*, § 40).

208. The case of *Avotiņš v. Latvia* [GC] concerned the execution of a decision delivered in another European Union member State. The Court's case-law concerning the presumption of equivalent protection of fundamental rights within the European Union (known as the "*Bosphorus* presumption") was applied for the first time to the mutual recognition mechanisms founded on the principle of mutual trust between the EU member States. The case related to the execution in Latvia of a judgment

delivered in a different country (Cyprus) in the debtor's absence. The Court laid down general principles on this matter and indicated the circumstances in which the presumption could be rebutted (see in particular §§ 115-17). Applying those principles, the Court did not find that the protection of fundamental rights was so manifestly deficient as to rebut the presumption of equivalent protection.

B. Establishment by law

209. In the light of the principle of the rule of law, inherent in the Convention system, the Court considers that a "tribunal" must always be "established by law", as it would otherwise lack the legitimacy required in a democratic society to hear individual cases (*Lavents v. Latvia*, § 81; *Biagioli v. San Marino* (dec.), § 71).

210. The phrase "established by law" covers not only the legal basis for the very existence of a "tribunal", but also compliance by the tribunal with the particular rules that govern it (*Sokurenko and Strygun v. Ukraine*, § 24). The lawfulness of a court or tribunal must by definition also encompass its composition (*Buscarini v. San Marino* (dec.)). It is the role of the courts to manage their proceedings with a view to ensuring the proper administration of justice. The assignment of a case to a particular judge or court falls within their margin of appreciation in such matters. However, to be compatible with Article 6 § 1, it must comply with the requirements of independence and impartiality (*Pasquini v. San Marino*, §§ 103 and 107). The judge assigned to a case must be independent of the executive, and the assignment cannot be solely dependent on the discretion of the judicial authorities (*ibid.*, § 110). The case-law has made a distinction between assignment and reassignment of a case (*ibid.*, § 107).

211. The practice of tacitly renewing judges' terms of office for an indefinite period after their statutory term of office had expired and pending their reappointment has been held to be contrary to the principle of a "tribunal established by law" (*Oleksandr Volkov v. Ukraine*, § 151). The procedures governing the appointment of judges cannot be relegated to the status of internal practice (*ibid.*, §§ 154-56). The replacement of a judge must also be devoid of arbitrariness (*Pasquini v. San Marino*, § 112; *Biagioli v. San Marino* (dec.), §§ 77-78 and 80, for the specific case of a small jurisdiction and a court with a limited number of judges).

212. "Law", within the meaning of Article 6 § 1, thus comprises not only legislation providing for the establishment and competence of judicial organs, but also any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular (*DMD Group, A.S., v. Slovakia*, § 59). This includes, in particular, provisions concerning the independence of the members of a "tribunal", the length of their term of office, impartiality and the existence of procedural safeguards (*Gurov v. Moldova*, § 36).

213. In principle, a breach by a court of these domestic legal provisions gives rise to a violation of Article 6 § 1 (*DMD Group, A.S., v. Slovakia*, § 61). The Court may therefore examine whether the domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court finds that it may not question their interpretation unless there has been a flagrant violation of the legislation (*ibid.*; *Biagioli v. San Marino* (dec.), § 75; *Pasquini v. San Marino*, §§ 104 and 109). A court which, without any explanation, oversteps the usual limits of its jurisdiction in deliberate breach of the law is not a "tribunal established by law" in the proceedings in question (*Sokurenko and Strygun v. Ukraine*, §§ 27-28). Thus, a supreme court which, instead of acting within its jurisdiction as provided for by domestic law in quashing a decision and remitting the case for further consideration or declaring the proceedings void, determines the case on the merits in place of the competent body is not a "tribunal established by law" (*Aviakompaniya A.T.I., ZAT v. Ukraine*, § 44).

214. The object of the term "established by law" in Article 6 § 1 is to ensure that the organisation of the judicial system does not depend on the discretion of the executive but is regulated by law emanating from Parliament (*Biagioli v. San Marino* (dec.), § 74; *Savino and Others v. Italy*, § 94).

215. Nor, in countries where the law is codified, can organisation of the judicial system be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret the relevant national legislation (*ibid.*, and case-law references cited).

216. Furthermore, delegating powers in matters concerning the organisation of the judicial system is permissible provided that this possibility is enshrined in the domestic law of the State, including the relevant provisions of the Constitution (*ibid.*).

C. Independence and impartiality

1. General considerations

217. The right to a fair hearing under Article 6 § 1 requires that a case be heard by an "independent and impartial tribunal". The concepts of "independence" and "impartiality" are closely linked and, depending on the circumstances, may require joint examination (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 150 and 152 – see also, as regards their close interrelationship, §§ 153-156; *Denisov v. Ukraine* [GC], §§ 61-64).

218. The participation of lay judges in a case is not, as such, contrary to Article 6 § 1. The existence of a panel with mixed membership comprising, under the presidency of a judge, civil servants and representatives of interested bodies does not in itself constitute evidence of bias (*Le Compte, Van Leuven and De Meyere v. Belgium*, §§ 57-58), nor is there any objection *per se* to expert lay members participating in the decision-making in a court (*Pabla Ky v. Finland*, § 32).

219. The principles established in the case-law concerning impartiality apply to lay judges as to professional judges (*Langborger v. Sweden*, §§ 34-35; *Cooper v. the United Kingdom* [GC], § 123). The Court has acknowledged that where commercial or sports arbitration has been accepted freely, lawfully and unequivocally, the concepts of independence and impartiality may be interpreted flexibly, seeing that the very essence of the arbitration system lies in the appointment of the decision-making bodies, or at least part of them, by the parties to the dispute (*Mutu and Pechstein v. Switzerland*, § 146; compare with an arbitration committee enjoying exclusive and compulsory jurisdiction, *Ali Rıza and Others v. Turkey*, §§ 207-222).

220. As a matter of principle, a violation of Article 6 § 1 cannot be grounded on the lack of independence or impartiality of a decision-making tribunal or the breach of an essential procedural guarantee by that tribunal, if the decision taken was subject to subsequent control by a judicial body that had "full jurisdiction" and ensured respect for the relevant guarantees by curing the failing in question (*De Haan v. the Netherlands*, §§ 52-55; *Helle v. Finland*, § 46; *Crompton v. the United Kingdom*, § 79; and *Denisov v. Ukraine* [GC], §§ 65, 67 and 72 in a disciplinary context).[9]

221. The Court has consistently stressed that the scope of the State's obligation to ensure a trial by an "independent and impartial tribunal" under Article 6 § 1 of the Convention is not limited to the judiciary. It also implies obligations on the executive, the legislature and any other State authority, regardless of its level, to respect and abide by the judgments and decisions of the courts, even when they do not agree with them. Thus, the State's respecting the authority of the courts is an indispensable precondition for public confidence in the courts and, more broadly, for the rule of law. For this to be the case, the constitutional safeguards of the independence and impartiality of the

9. See also the sections on "Review by a court having full jurisdiction" and "Fairness".

judiciary do not suffice. They must be effectively incorporated into everyday administrative attitudes and practices (*Agrokompleks v. Ukraine*, § 136).

2. An independent tribunal

222. The term "independent" refers to independence *vis-à-vis the other powers* (the executive and the Parliament) (*Beaumartin v. France*, § 38) and also *vis-à-vis the parties* (*Sramek v. Austria*, § 42). Compliance with this requirement is assessed, in particular, on the basis of statutory criteria, such as the manner of appointment of the members of the tribunal and the duration of their term of office, or the existence of sufficient safeguards against the risk of outside pressures (see, for example, *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 153-156). The question whether the body presents an appearance of independence is also of relevance (*ibid.*, § 144; *Oleksandr Volkov v. Ukraine*, § 103; *Grace Gatt v. Malta*, § 85). The defects observed may or may not have been remedied during the subsequent stages of the proceedings (*Denisov v. Ukraine* [GC], §§ 65, 67 and 72).

223. Although the notion of the separation of powers between the political organs of government and the judiciary has assumed growing importance in the Court's case-law, neither Article 6 nor any other provision of the Convention requires States to comply with any theoretical constitutional concepts regarding the permissible limits of the powers' interaction. The question is always whether, in a given case, the requirements of the Convention are met (*Kleyn and Others v. the Netherlands* [GC], § 193). Indeed, the notion of independence of a tribunal entails the existence of procedural safeguards to separate the judiciary from other powers.

224. The judgment in *Mustafa Tunç and Fecire Tunç v. Turkey* [GC] defined the distinctions and nuances in the assessment of the criteria of independence, depending on whether they concern Article 6 or Articles 2 and/or 3 of the Convention (§§ 217-21). The statutory criteria for verification of the requirement of independence within the meaning of Article 6 are not necessarily to be assessed in the same manner when examining the question of an investigation's independence from the perspective of the procedural obligations under Article 2 (§§ 219-25).

225. *Military courts* (see, for example, *Mikhno v. Ukraine,* §§ 162-64 and 166-70). In the case cited, the Court noted a tendency in international human rights law to urge States to act with caution in using military courts and, in particular, to exclude from their jurisdiction the determination of charges concerning serious human rights violations, such as extrajudicial executions, enforced disappearances and torture. Such an approach, which relates to serious and intentional human rights violations, is not automatically applicable in the Court's view to an accident causing very serious but unintentional damage as a result of negligence on the part of the military officers involved (*ibid.*, § 165).

a. Independence *vis-à-vis* the executive

226. The independence of judges will be undermined where the executive intervenes in a case pending before the courts with a view to influencing the outcome (*Sovtransavto Holding v. Ukraine*, § 80; *Mosteanu and Others v. Romania*, § 42).

227. The fact that judges are appointed by the executive and are removable does not *per se* amount to a violation of Article 6 § 1 (*Clarke v. the United Kingdom* (dec.)). The appointment of judges by the executive is permissible provided that the appointees are free from influence or pressure when carrying out their adjudicatory role (*Flux v. Moldova (no. 2)*, § 27).

228. The fact that the President of the Court of Cassation is appointed by the executive does not in itself undermine his independence provided that, once appointed, he is not subject to any pressure, does not receive any instructions and performs his duties with complete independence (*Zolotas v. Greece*, § 24).

229. Likewise, the mere fact that judges of the Council of Administrative Law are appointed by the regional administrative authority is not capable of casting doubt on their independence or impartiality

provided that, once appointed, they are not subject to any pressure, do not receive any instructions and exercise their judicial activity with complete independence (*Majorana v. Italy* (dec.)).

230. A situation where a public figure (the country's president) playing an institutional role in the career development of judges is a claimant in proceedings is capable of casting a legitimate doubt on the independence and impartiality of the judges hearing the case (*mutatis mutandis*, *Thiam v. France*, § 85, no violation).

b. Independence *vis-à-vis* Parliament

231. The fact that judges are appointed by Parliament does not by itself render them subordinate to the authorities if, once appointed, they receive no pressure or instructions in the performance of their judicial duties (*Sacilor Lormines v. France*, § 67). Furthermore, the fact that one of the expert members of the Court of Appeal, comprising mainly professional judges, was also a member of Parliament did not *per se* breach the right to an independent and impartial tribunal (*Pabla Ky v. Finland*, §§ 31-35).

c. Independence *vis-à-vis* the parties

232. Where a tribunal's members include a person who is in a subordinate position, in terms of his duties and the organisation of his service, *vis-à-vis* one of the parties, litigants may entertain a legitimate doubt about that person's independence. Such a situation seriously affects the confidence which the courts must inspire in a democratic society (*Sramek v. Austria*, § 42).

d. Specific case of judges' independence *vis-à-vis* the High Council of the Judiciary[10]

233. The fact that judges appealing against decisions of the High Council of the Judiciary (or equivalent body) come under the authority of the same body as regards their careers and disciplinary proceedings against them has been examined in the cases of *Oleksandr Volkov v. Ukraine,* § 130, and *Denisov v. Ukraine* [GC], § 79 (violations), and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 157-165 (no violation). The Court assessed and compared the disciplinary systems for the judiciary in the States concerned in order to determine whether there were any "serious structural deficiencies" or "an appearance of bias within the disciplinary body for the judiciary" (*Ramos Nunes de Carvalho e Sá v. Portugal*, §§ 157-160) and whether the requirement of independence was complied with (*ibid.*, §§ 161-163).

e. Criteria for assessing independence

234. In determining whether a body can be considered to be "independent", the Court has had regard, *inter alia*, to the following criteria (*Langborger v. Sweden*, § 32; *Kleyn and Others v. the Netherlands* [GC], § 190):

i. the manner of appointment of its members and
ii. the duration of their term of office;
iii. the existence of guarantees against outside pressures; and
iv. whether the body presents an appearance of independence.

i. Manner of appointment of a body's members

235. Questions have been raised as to the intervention of the Minister of Justice in the appointment and/or removal from office of members of a decision-making body (*Sramek v. Austria*, § 38; *Brudnicka and Others v. Poland*, § 41; *Clarke v. the United Kingdom* (dec.)).

10. See section on "An impartial tribunal".

236. Although the assignment of a case to a particular judge or court falls within the margin of appreciation enjoyed by the domestic authorities in such matters, the Court must be satisfied that it was compatible with Article 6 § 1, and, in particular, with the requirements of independence and impartiality (*Bochan v. Ukraine*, § 71).

ii. Duration of appointment of a body's members

237. The Court has not specified any particular term of office for the members of a decision-making body, although their irremovability during their term of office must in general be considered as a corollary of their independence. However, the absence of a formal recognition of this irremovability in the law does not in itself imply lack of independence provided that it is recognised in fact and that other necessary guarantees are present (*Sacilor Lormines v. France*, § 67; *Luka v. Romania*, § 44).

iii. Guarantees against outside pressure

238. Judicial independence demands that individual judges be free from undue influence outside the judiciary, and from within. Internal judicial independence requires that they be free from directives or pressures from fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court. The absence of sufficient safeguards securing the independence of judges within the judiciary and, in particular, *vis-à-vis* their judicial superiors, may lead the Court to conclude that an applicant's doubts as to the independence and impartiality of a court can be said to have been objectively justified (*Agrokompleks v. Ukraine*, § 137; *Parlov-Tkalčić v. Croatia*, § 86).

239. The judges of a County Court were found to be sufficiently independent of that court's president since court presidents performed only administrative (managerial and organisational) functions, which were strictly separated from the judicial function. The legal system provided for adequate safeguards against the arbitrary exercise of court presidents' duty to (re)assign cases to judges (*ibid.*, §§ 88-95).

iv. Appearance of independence

240. In order to determine whether a tribunal can be considered to be independent as required by Article 6 § 1, appearances may also be of importance (*Sramek v. Austria*, § 42). As to the appearance of independence, the standpoint of a party is important but not decisive; what is decisive is whether the fear of the party concerned can be held to be "objectively justified" (*Sacilor Lormines v. France*, § 63; *Grace Gatt v. Malta*, § 85). Therefore, no problem arises as regards independence when the Court is of the view that an "objective observer" would see no cause for concern about it in the circumstances of the case at hand (*Clarke v. the United Kingdom* (dec.)).

3. An impartial tribunal[11]

241. Article 6 § 1 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways (*Wettstein v. Switzerland*, § 43; *Micallef v. Malta* [GC], § 93; *Nicholas v. Cyprus*, § 49). The concepts of independence and impartiality are closely linked and, depending on the circumstances, may require joint examination (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 150 and 152 – see also, as regards their close interrelationship, §§ 153-156; *Sacilor Lormines v. France*, § 62). The defects observed may or may not have been remedied during the subsequent stages of the proceedings (*Helle v. Finland*, § 46; *Denisov v. Ukraine* [GC], §§ 65, 67 and 72).

242. Where impartiality is disputed during the domestic proceedings on a ground that does not immediately appear to be manifestly devoid of merit, the national court must itself check whether

11. See section on "Specific case of judges' independence *vis-à-vis* the High Council of the Judiciary".

such concerns are justified so that it can remedy any situation that would breach Article 6 § 1 (*Cosmos Maritime Trading and Shipping Agency v. Ukraine*, §§ 78-82).

a. Criteria for assessing impartiality

243. The existence of impartiality must be determined on the basis of the following (*Micallef v. Malta* [GC], § 93; *Nicholas v. Cyprus*, § 49):

i. a *subjective test*, where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case; and also

ii. an *objective test*, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality.

244. However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test) (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 145).

245. Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (*Micallef v. Malta* [GC], §§ 95 and 101). It should be noted that in the vast majority of cases raising impartiality issues the Court has focused on the objective test (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 146).

246. The Court has emphasised that appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (*Micallef v. Malta* [GC], § 98). A court dealing with a request for a judge to withdraw must address the arguments submitted in support of the request (*Harabin v. Slovakia*, § 136).

247. The principles established in the Court's case-law concerning the impartiality of a court apply to jurors just as they do to professional and lay judges, as well as other officials performing judicial functions, such as lay assessors and registrars or legal secretaries (*Bellizzi v. Malta*, § 51). The Court has emphasised that observance of the guarantees under Article 6 is particularly important in disciplinary proceedings against a judge in his capacity as president of the Supreme Court, given that the confidence of the public in the functioning of the judiciary at the highest national level is at stake (*Harabin v. Slovakia*, § 133).

i. Subjective approach

248. In applying the subjective test, the Court has consistently held that "the personal impartiality of a judge must be presumed until there is proof to the contrary" (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 58 *in fine*; *Micallef v. Malta* [GC], § 94). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility (*Buscemi v. Italy*, §§ 67-68). The fact that a judge did not withdraw from dealing with a civil action on appeal following his earlier participation in another related set of civil proceedings did not constitute the required proof to rebut the presumption (*Golubović v. Croatia*, § 52).

249. The principle that a tribunal must be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 58; *Driza v. Albania*, § 75).

250. In principle, a judge's personal animosity against a party is a compelling reason for disqualification. In practice, the Court often assesses this question by means of the objective approach (*Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, § 359 and case-law references cited).

ii. Objective approach

251. It must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. When applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to the impartiality of the body itself. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge (*Morel v. France*, §§ 45-50; *Pescador Valero v. Spain*, § 23) or a body sitting as a bench (*Luka v. Romania*, § 40) lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (*Wettstein v. Switzerland*, § 44; *Pabla Ky v. Finland*, § 30; *Micallef v. Malta* [GC], § 96).

252. In this respect even appearances may be of a certain importance or, in other words, "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (*Micallef v. Malta* [GC], § 98; for example, where the judge has made public statements relating to the outcome of the case: *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, §§ 341-342).

253. In order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor (see the specific provisions regarding the challenging of judges, *Micallef v. Malta* [GC], §§ 99-100). Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public (*Mežnarić v. Croatia*, § 27 and *A.K. v. Liechtenstein*, §§ 82-83, concerning the withdrawal of judges of a supreme court in a small jurisdiction). The hierarchical structure of the competent administrative bodies may also raise an issue in terms of appearances (*Grace Gatt v. Malta*, §§ 85-86).

254. It should be noted that the national system governing judges' careers and disciplinary proceedings against them has itself been the subject of applications to the Court from the standpoint of judges' independence and objective impartiality (compare *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 151-65 and in particular § 163, with *Denisov v. Ukraine* [GC], §§ 68-80, and *Oleksandr Volkov v. Ukraine*, §§ 109-117 and 124-29).

255. The Court has also examined the specific case of judges' independence in relation to a decision by the High Council of the Judiciary (their disciplinary body) where judges appealing against a decision by that body come under the authority of the same body as regards their careers and disciplinary proceedings against them (compare *Oleksandr Volkov v. Ukraine*, § 130, and *Denisov v. Ukraine* [GC] (violations) with *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 157-165 (no violation)). The Court drew a distinction between the two national systems concerned (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 158-160, and *Denisov v. Ukraine* [GC], § 79).

256. In the performance of their judicial duties, judges may themselves, at some point in their careers, be in a similar position to one of the parties, including the defendant. However, the Court does not consider that a risk of this kind is capable of casting doubt on the impartiality of a judge in the absence of specific circumstances pertaining to his or her individual situation. In disciplinary proceedings against members of the judiciary, the fact that the judges hearing the case are themselves still subject

to a set of disciplinary rules is not in itself a sufficient basis for finding a breach of the requirements of impartiality (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 163)[12]. The question of compliance with the fundamental guarantees of independence and impartiality may arise, however, if the structure and functioning of the disciplinary body itself raises serious issues in this regard (*Denisov v. Ukraine* [GC], § 79 (violation)).

b. Situations in which the question of a lack of judicial impartiality may arise

257. There are two possible situations in which the question of a lack of judicial impartiality may arise:

i. The first is *functional in nature* and concerns, for instance, the exercise of different functions within the judicial process by the same person, or hierarchical or other links between the judge and other actors in the proceedings (*Micallef v. Malta* [GC], §§ 97-98). In the latter case, the nature and degree of the relationship in question must be examined.

ii. The second is *of a personal character* and derives from the conduct of the judges in a given case or the existence of links to a party to the case or a party's representative.

i. Situations of a functional nature

α. The exercise of both advisory and judicial functions in the same case

258. The consecutive exercise of advisory and judicial functions within one body may, in certain circumstances, raise an issue under Article 6 § 1 as regards the impartiality of the body seen from the objective viewpoint (*Procola v. Luxembourg*, § 45 – violation).

259. The issue is whether there has been an exercise of judicial and advisory functions concerning "the same case", "the same decision" or "analogous issues" (*Kleyn and Others v. the Netherlands* [GC], § 200; *Sacilor Lormines v. France*, § 74 – no violation).

β. The exercise of both judicial and extra-judicial functions in the same case

260. When determining the objective justification for the applicant's fear, such factors as the judge's dual role in the proceedings, the time which elapsed between the two occasions on which he participated and the extent to which he was involved in the proceedings may be taken into consideration (*McGonnell v. the United Kingdom*, §§ 52-57).

261. Any direct involvement in the passage of legislation, or of executive rules, is likely to be sufficient to cast doubt on the judicial impartiality of a person subsequently called on to determine a dispute over whether reasons exist to permit a variation from the wording of the legislation or rules at issue (*ibid.*, §§ 55-58, where the Court found a violation of Article 6 § 1 on account of the direct involvement of a judge in the adoption of the development plan at issue in the proceedings; compare with *Pabla Ky v. Finland*, § 34 – no violation).

262. When there are two parallel sets of proceedings with the same person in the dual role of judge on the one hand and legal representative of the opposing party on the other, an applicant could have reason for concern that the judge would continue to regard him as the opposing party (*Wettstein v. Switzerland*, §§ 44-47).

263. The hearing of a constitutional complaint by a judge who had acted as counsel for the applicant's opponent at the start of the proceedings led to a finding of a violation of Article 6 § 1 (*Mežnarić v. Croatia*, § 36). As to the impartiality of a Constitutional Court judge who had acted as legal expert

12. See section on "An independent tribunal".

for the applicant's opponent in the civil proceedings at first instance, see *Švarc and Kavnik v. Slovenia*, § 44.

χ. The exercise of different judicial functions

264. The assessment of whether the participation of the same judge in different stages of a civil case complies with the requirement of impartiality laid down by Article 6 § 1 is to be made on a case-by-case basis, regard being had to the circumstances of the individual case (*Pasquini v. San Marino*, § 148). This also applies where the same judge participated in factually connected criminal and civil proceedings (§ 149).

265. The mere fact that a judge has already taken pre-trial decisions cannot by itself be regarded as justifying concerns about his impartiality. What matters is the scope and nature of the measures taken by the judge before the trial. Likewise, the fact that the judge has detailed knowledge of the case file does not entail any prejudice on his part that would prevent his being regarded as impartial when the decision on the merits is taken. Nor does a preliminary analysis of the available information mean that the final analysis has been prejudged. What is important is for that analysis to be carried out when judgment is delivered and to be based on the evidence produced and argument heard at the hearing (*Morel v. France*, § 45).

266. It is necessary to consider whether the link between substantive issues determined at various stages of the proceedings is so close as to cast doubt on the impartiality of the judge participating in the decision-making at these stages (*Toziczka v. Poland*, § 36).

267. In the case of judges sitting as a bench, the Court has found that the fact that some of the judges had previously adopted a particular position is not sufficient in itself to conclude that the bench as a whole was not impartial. In situations of this kind, it is necessary to take other factors into account, such as the number of judges involved in adopting the relevant position and their role on the bench in question (*Fazlı Aslaner v. Turkey*, §§ 36-43; *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, § 363 and case-law references cited, and see below). The situation is different where the two bodies conducting the proceedings against the applicant were composed of all the same judges and there was some confusion between the functions of bringing charges and determining the issues (*Kamenos v. Cyprus*, §§ 105-09). The confusion between the functions of prosecutor and judge may prompt objectively justified doubts as to the impartiality of the persons concerned (§ 104).

268. Other cases are to be noted:

- It cannot be stated as a general rule resulting from the obligation to be impartial, that a superior court which sets aside an administrative or judicial decision is bound to send the case back to a different jurisdictional authority or to a differently composed branch of that authority (*Ringeisen v. Austria*, § 97 *in fine*).
- An issue may arise if a judge takes part in two sets of proceedings relating to the same sets of facts (*Indra v. Slovakia*, §§ 51-53).
- A judge who is the presiding judge of an appeals tribunal assisted by two lay judges should not hear an appeal from his own decision (*De Haan v. the Netherlands*, § 51).
- A Court of Appeal in which the trial judges are called upon to ascertain whether or not they themselves committed an error of legal interpretation or application in their previous decision can raise doubts as to impartiality (*San Leonard Band Club v. Malta*, § 64). For similar reasoning concerning a constitutional court, see *Scerri v. Malta*, § 78).
- It is not prima facie incompatible with the requirements of impartiality if the same judge is involved, first, in a decision on the merits of a case and, subsequently, in proceedings in which the admissibility of an appeal against that decision is examined (*Warsicka v. Poland*, §§ 38-47).

- A judge having a dual role, as counsel representing the party opposing the applicants' company in the first set of proceedings and as a Court of Appeal judge in the second set of proceedings: having regard in particular to the remoteness in time and the different subject matter of the first set of proceedings in relation to the second set and to the fact that the functions as counsel and judge did not overlap in time, the Court found that the applicants could not have entertained any objectively justified doubts as to the judge's impartiality (*Puolitaival and Pirttiaho v. Finland*, §§ 46-54).
- The Court found a violation of the principle of impartiality in a case where some judges who had already ruled on the case were required to decide whether or not they had erred in their earlier decision and where another three judges had already expressed their opinions on the matter (*Driza v. Albania*, §§ 78-83).
- One of the judges involved in the proceedings concerning an appeal on points of law had prior involvement in the case as a judge of the Higher Court (*Peruš v. Slovenia*, §§ 38-39).
- In *Ramos Nunes de Carvalho e Sá v. Portugal* [GC] the President of the Supreme Court was also the president of the administrative body whose decision was being examined on appeal (§§ 153-156).
- A situation where the judicial assistant to the President of the Constitutional Court had been part of a team of lawyers who had represented the applicant's opponent in previous civil proceedings was examined in the case of *Bellizzi v. Malta* (§§ 60-61).
- The Court has found a violation of the right to an impartial tribunal in considering both the large proportion of judges who had already taken part in a case and their duties as president or rapporteur on the bench (*Fazli Aslaner v. Turkey*, § 39). In addition, the objective impartiality of a court was found to be open to doubt where four of the seven judges had already dealt with the case, in view of the nature and extent of the functions performed by the four judges (*Pereira da Silva v. Portugal*, §§ 59-60).
- The case of *Fazlı Aslaner v. Turkey* involved a bench of thirty-one judges, three of whom had already taken part in the proceedings at an earlier stage. Although the number or judges whose impartiality had been challenged was low in proportion to the total number on the bench, the Court found a violation because, firstly, no justification had been given for the need to include the three judges in question on the bench, and secondly, one of those three judges had presided over the bench of thirty-one judges and led its deliberations in the case. The Court therefore found that the applicant's doubts as to the impartiality of the bench were objectively justified (§§ 40-43; compare with the other cases cited in § 38 of the judgment).
- In *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia* there was a dispute as to the impartiality of the president of a bench of nine judges that had reached a unanimous decision; the Court found no violation (§ 363 and case-law references cited).

ii. Situations of a personal nature

269. The principle of impartiality will also be infringed where the judge has a personal interest in the case (*Langborger v. Sweden*, § 35; *Gautrin and Others v. France*, § 59). As to whether statements made on social media by the wife of a judge cast doubt on her husband's impartiality, see *Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, §§ 342 et seq., and, more generally, for the public expression of opinions by a judge's family members, § 344).

270. Professional, financial or personal links between a judge and a party to a case, or the party's advocate, may also raise questions of impartiality (*Pescador Valero v. Spain*, § 27; *Tocono and Profesorii Prometeişti v. Moldova*, § 31; *Micallef v. Malta* [GC], § 102; *Wettstein v. Switzerland*, § 47). Even indirect factors may be taken into account (*Pétur Thór Sigurðsson v. Iceland*, § 45).

271. The fact that a judge has blood ties with a member of a law firm representing a party to a case does not automatically mean that there has been a violation (*Ramljak v. Croatia*, §§ 29, and in relation to a small country, *Koulias v. Cyprus*, §§ 62-64). A number of factors should be taken into account, including: whether the judge's relative has been involved in the case concerned, the relative's position in the law firm in question, the size of the firm, its internal organisational structure, the financial significance of the case for the firm, and any potential financial interest or benefit (and the extent thereof) for the relative (*Nicholas v. Cyprus*, § 62; see also *Ramljak v. Croatia*, §§ 38-39).

272. The fact that judges know each other as colleagues or even share the same offices is not in itself sufficient to conclude that any concerns as to their impartiality are objectively justified (*Steck-Risch and Others v. Liechtenstein*, § 48). In a very small country, the fact that a legal professional may perform two functions on a part-time basis, for example as a judge and a practising lawyer, is not *per se* problematic either (*ibid.*, § 39; *Bellizzi v. Malta*, § 57; and compare *Micallef v. Malta* [GC], § 102, concerning family ties between a judge and a lawyer).

273. In this regard, the Court has found that complaints alleging bias on the part of courts should not lead to paralysis of the State's legal system. In small jurisdictions, such as Cyprus or Liechtenstein, the administration of justice could be unduly hampered by the application of excessively strict standards (*A.K. v. Liechtenstein*, § 82, *Nicholas v. Cyprus*, § 63). Given the importance of appearances, the existence of a situation that may give rise to doubts as to impartiality should be disclosed at the outset of the proceedings. In that way, the situation in question can be assessed in the light of the various factors involved in order to determine whether disqualification is actually necessitated (*Nicholas v. Cyprus*, §§ 64-66).

274. Furthermore, the language used by a judge may be important and demonstrate that the judge lacks the detachment required by his or her function (*Vardanyan and Nanushyan v. Armenia*, § 82). However, where a judge had made an inappropriate remark about the dangerousness of an applicant who had already been convicted of murder for sexual gratification, the Court found that although this might indicate unprofessional behaviour, it did not show that the judge was personally biased against the applicant or that there were objectively justified doubts as to his impartiality in the proceedings at issue (*Ilnseher v. Germany* [GC], § 289).

IV. Procedural requirements

A. Fairness

Article 6 § 1 of the Convention

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing by [a] tribunal ..."

1. General principles

275. A prominent place: the Court has always emphasised the prominent place held in a democratic society by the right to a fair trial (*Airey v. Ireland*, § 24; *Stanev v. Bulgaria* [GC], § 231). This guarantee "is one of the fundamental principles of any democratic society, within the meaning of the Convention" (*Pretto and Others v. Italy*, § 21). There can therefore be no justification for interpreting Article 6 § 1 restrictively (*Moreira de Azevedo v. Portugal*, § 66). The requirement of fairness applies to proceedings in their entirety; it is not confined to hearings *inter partes* (*Stran Greek Refineries and Stratis Andreadis v. Greece*, § 49). Thus, the proceedings are examined as a whole in order to

determine whether they were conducted in accordance with the requirements of a fair hearing (*De Tommaso v. Italy* [GC], § 172; *Regner v. the Czech Republic* [GC], § 161).

276. The Court has nevertheless specified that restrictions on an individual's procedural rights (including access to certain information) may be justified in very exceptional circumstances (*Adorisio and Others v. the Netherlands* (dec.)).

277. Content: civil claims must be capable of being submitted to a judge (*Fayed v. the United Kingdom*, § 65; *Sabeh El Leil v. France* [GC], § 46). Article 6 § 1 describes in detail the procedural guarantees afforded to parties in civil proceedings. It is intended above all to secure the interests of the parties and those of the proper administration of justice (*Nideröst-Huber v. Switzerland*, § 30). Litigants must therefore be able to argue their case with the requisite effectiveness (*H. v. Belgium*, § 53).

278. Role of the national authorities: the Court has always said that the national authorities must ensure in each individual case that the requirements of a "fair hearing" within the meaning of the Convention are met (*Dombo Beheer B.V. v. the Netherlands*, § 33 *in fine*).

279. The litigant's claims: it is a matter of principle that in the determination of his "civil rights and obligations" – as defined in the case-law of the Strasbourg Court[13] – everyone is entitled to a fair hearing by a tribunal. To this are added the guarantees laid down by Article 6 § 1 as regards both the organisation and the composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing (*Golder v. the United Kingdom*, § 36). However, neither the letter nor the spirit of Article 6 prevent a person from voluntarily waiving the guarantees of a fair hearing, either expressly or tacitly, subject to certain conditions (*Dilipak and Karakaya v. Turkey*, § 79; *Schmidt v Latvia*, § 96).

280. Principles of interpretation:

- The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally recognised fundamental principles of law; the same is true of the principle of international law which forbids the denial of justice. Article 6 § 1 must be read in the light of these principles (*ibid.*, § 35).
- The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States (*Brumărescu v. Romania*, § 61; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 57).
- The principle of legal certainty constitutes one of the basic elements of the rule of law (*Beian v. Romania (no. 1)*, § 39; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 116; see also, as regards the absence of a limitation period, *Oleksandr Volkov v. Ukraine*, §§ 137-139, or, for the starting-point of such a period, *Sanofi Pasteur v. France*, § 52). Arbitrariness amounts to the negation of the principle of the rule of law (*Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], § 145).
- In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 § 1 would not correspond to the aim and the purpose of that provision (*Ryakib Biryukov v. Russia*, § 37).
- The *Zubac v. Croatia* [GC] case emphasised the importance of these principles.
- In addition, the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (*Airey v. Ireland*, § 24; *Perez v. France* [GC], § 80).

281. States have greater latitude in civil matters: the Court has acknowledged that the requirements inherent in the concept of a "fair hearing" are not necessarily the same in cases concerning the

13. See section "Scope".

determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge: "the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases" (*Dombo Beheer B.V. v. the Netherlands*, § 32; *Levages Prestations Services v. France*, § 46). The requirements of Article 6 § 1 as regards cases concerning civil rights are less onerous than they are for criminal charges (*König v. Germany*, § 96). The judgment in *Moreira Ferreira v. Portugal (no. 2)* [GC], §§ 66-67, confirmed that the rights of persons accused of or charged with a criminal offence required greater protection than the rights of parties to civil proceedings.

282. However, when it examines proceedings falling under the civil head of Article 6, the Court may find it necessary to draw inspiration from its approach to criminal-law matters (see, as regards the principle, *López Ribalda and Others v. Spain* [GC], § 152, and, for example, *Dilipak and Karakaya v. Turkey*, § 80, concerning a payment order imposed *in absentia* on a person who had not been served with a writ of summons; *Carmel Saliba v. Malta*, §§ 67 and 70-71, concerning civil liability for damage resulting from a criminal offence; *R.S. v. Germany* (dec.), §§ 35 and 43, concerning disciplinary proceedings in the armed forces). In cases where civil liability is incurred for damage arising out of a criminal offence, it is imperative that the domestic decisions are based on a thorough assessment of the evidence produced and that they contain adequate reasons, on account of the serious consequences which may ensue from such decisions (*Carmel Saliba v. Malta*, § 73).

283. Lastly, in very exceptional circumstances relating to a particular case, the Court has been able to take into account "the need for a very speedy decision" by the domestic court (*Adorisio and Others v. the Netherlands* (dec.)).

2. Scope

a. Principles

284. An effective right: the parties to the proceedings have the right to present the observations which they regard as relevant to their case. This right can only be seen to be effective if the observations are actually "heard", that is to say duly considered by the trial court (*Donadze v. Georgia*, § 35). In other words, the "tribunal" has a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (*Kraska v. Switzerland*, § 30; *Van de Hurk v. the Netherlands*, § 59; *Perez v. France* [GC], § 80). In order for the right guaranteed by this Article to be effective, the authorities must exercise "diligence": for an appellant not represented by a lawyer, see *Kerojärvi v. Finland*, § 42; *Fretté v. France*, § 49; for an appellant represented by a lawyer, see *Göç v. Turkey* [GC], § 57.

285. Proper participation of the appellant party in the proceedings requires the court, of its own motion, to communicate the documents at its disposal. It is not material, therefore, that the applicant did not complain about the non-communication of the relevant documents or took the initiative to access the case file (*Kerojärvi v. Finland*, § 42). The mere possibility for the appellant to consult the case file and obtain a copy of it is not, of itself, a sufficient safeguard (*Göç v. Turkey* [GC], § 57). Furthermore, the appellant must be allowed the necessary time to submit further arguments and evidence to the domestic court (see, for example, *Adorisio and Others v. the Netherlands* (dec.), concerning a short time-limit for appealing).

286. Obligation incumbent on the administrative authorities: the appellant must have access to the relevant documents in the possession of the administrative authorities, if necessary via a procedure for the disclosure of documents (*McGinley and Egan v. the United Kingdom*, §§ 86 and 90). Were the respondent State, without good cause, to prevent appellants from gaining access to documents in its possession which would have assisted them in defending their case, or to falsely deny their existence, this would have the effect of denying them a fair hearing, in violation of Article 6 § 1 (*ibid.*).

287. Assessment of the proceedings as a whole: whether or not proceedings are fair is determined by examining them in their entirety (*Ankerl v. Switzerland*, § 38; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 197; *Regner v. the Czech Republic* [GC], § 161).

288. That being so, any shortcoming in the fairness of the proceedings may, under certain conditions, be remedied at a later stage, either at the same level (*Helle v. Finland*, §§ 46 and 54) or by a higher court (*Schuler-Zgraggen v. Switzerland*, § 52; contrast *Albert and Le Compte v. Belgium*, § 36; *Feldbrugge v. the Netherlands*, §§ 45-46).

289. In any event, if the defect lies at the level of the highest judicial body – for example because there is no possibility of replying to conclusions submitted to that body – there is an infringement of the right to a fair hearing (*Ruiz-Mateos v. Spain*, §§ 65-67).

290. A procedural flaw can be remedied only if the decision in issue is subject to review by an independent judicial body that has full jurisdiction and itself offers the guarantees required by Article 6 § 1. It is the scope of the appeal court's power of review that matters, and this is examined in the light of the circumstances of the case (*Obermeier v. Austria*, § 70).[14]

291. Previous decisions which do not offer the guarantees of a fair hearing: in such cases no question arises if a remedy was available to the appellant before an independent judicial body which had full jurisdiction and itself provided the safeguards required by Article 6 § 1 (*Oerlemans v. the Netherlands*, §§ 53-58; *British-American Tobacco Company Ltd v. the Netherlands*, § 78). What counts is that such a remedy offering sufficient guarantees exists (*Air Canada v. the United Kingdom*, § 62).

292. Before the appellate courts: Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation, but where such courts do exist the State is required to ensure that litigants before these courts enjoy the fundamental guarantees contained in Article 6 § 1 (*Andrejeva v. Latvia* [GC], § 97). However, the manner of application of Article 6 § 1 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role played therein by the appellate court (*Helmers v. Sweden*, § 31) or the court of cassation (*K.D.B. v. the Netherlands*, § 41; *Levages Prestations Services v. France*, §§ 44-45).

293. Given the special nature of the Court of Cassation's role, which is limited to reviewing whether the law has been correctly applied, the procedure followed may be more formal (*ibid.*, § 48). The requirement to be represented by a specialist lawyer before the Court of Cassation is not in itself contrary to Article 6 (*G.L. and S.L. v. France* (dec.); *Tabor v. Poland*, § 42).

294. Limits: as a general rule it is for the national courts to assess the facts: is not the Court's role to substitute its own assessment of the facts for that of the national courts (*Dombo Beheer B.V. v. the Netherlands*, § 31).[15] Furthermore, while appellants have the right to present the observations which they regard as relevant to their case, Article 6 § 1 does not guarantee a litigant a favourable outcome (*Andronicou and Constantinou v. Cyprus*, § 201). In addition, Article 6 § 1 does not go so far as to require the courts to indicate in the text of their decisions the detailed arrangements and time-limits for appealing against them (*Avotiņš v. Latvia* [GC], § 123).

295. The Court may find that an applicant contributed to a large extent, as a result of his or her inaction and lack of diligence, to bringing about the situation complained of before it, which he or she could have prevented (*Avotiņš v. Latvia* [GC], §§ 123-24; *Barik Edidi v. Spain* (dec.), § 45; and contrast *Zavodnik v. Slovenia*, §§ 79-80). Errors committed during the proceedings may be mainly and objectively attributable to the individual (*Zubac v. Croatia* [GC], §§ 90 and 121). More problematic, however, are situations where procedural errors have occurred on the part of both the individual and the relevant authorities, in particular the court(s) (§§ 91-95 and §§ 114-121).

14. See also the section on "Review by a court having full jurisdiction".
15. See the section on "Fourth instance".

296. The parties to civil proceedings are required to show diligence in complying with the procedural steps relating to their case. In assessing whether the "requisite diligence" was displayed in pursuing the relevant procedural actions, it should be established whether or not the applicant was represented during the proceedings. Indeed, "procedural rights will usually go hand in hand with procedural obligations" (*Zubac v. Croatia* [GC], §§ 89 and 93). This also applies to prisoners, seeing that the concept of "diligence normally required from a party to civil proceedings" is a matter to be assessed in the context of imprisonment (compare *Parol v. Poland*, §§ 42-48, in particular § 47, and *Kunert v. Poland*, §§ 34-37, concerning prisoners who were not assisted by a lawyer).

297. The theory of appearances: the Court has stressed the importance of appearances in the administration of justice; it is important to make sure the fairness of the proceedings is apparent. The Court has also made it clear, however, that the standpoint of the persons concerned is not in itself decisive; the misgivings of the individuals before the courts with regard to the fairness of the proceedings must in addition be capable of being held to be objectively justified (*Kraska v. Switzerland*, § 32). It is therefore necessary to examine how the courts handled the case.

298. In other cases, before Supreme Courts, the Court has pointed out that the public's increased sensitivity to the fair administration of justice justified the growing importance attached to appearances (*Kress v. France* [GC], § 82; *Martinie v. France* [GC], § 53; *Menchinskaya v. Russia*, § 32). The Court attached importance to appearances in these cases (see also *Vermeulen v. Belgium*, § 34; *Lobo Machado v. Portugal*, § 32).

299. Judicial practice: in order to take the reality of the domestic legal order into account, the Court has always attached a certain importance to judicial practice in examining the compatibility of domestic law with Article 6 § 1 (*Kerojärvi v. Finland*, § 42; *Gorou v. Greece (no. 2)* [GC], § 32). Indeed, the general factual and legal background to the case should not be overlooked in the assessment of whether the litigants had a fair hearing (*Stankiewicz v. Poland*, § 70).

300. The State authorities cannot dispense with effective control by the courts on grounds of national security or terrorism: there are techniques that can be employed which accommodate both legitimate security concerns and the individual's procedural rights (*Dağtekin and Others v. Turkey*, § 34).

301. A principle independent of the outcome of the proceedings: the procedural guarantees of Article 6 § 1 apply to all litigants, not just those who have not won their cases in the national courts (*Philis v. Greece (no. 2)*, § 45).

b. Examples

302. The case-law has covered numerous situations, including:

303. *Notification at the correct address of the existence of proceedings*: applicants must be given the opportunity to participate in the proceedings against them and to defend their interests. The competent authorities must therefore take the necessary steps to inform them of the proceedings concerning them (*Dilipak and Karakaya v. Turkey*, §§ 85-88, where insufficient efforts were made to identify the applicants' correct address and it was subsequently impossible for them to appear at a new hearing, even though they had not waived that right; *Bacaksız v. Turkey*, § 53, and case-law references cited).

304. *Civil proceedings conducted* in absentia */ civil judgment delivered in default*: drawing inspiration from its case-law concerning criminal proceedings, the Court summarised the conditions in which such a situation would comply with Article 6 § 1 in *Bacaksız v. Turkey*, §§ 56-57 and 60, with reference in particular to *Dilipak and Karakaya v. Turkey*, §§ 78-80 (in *Bacaksız*, unlike in the previous cases, the applicant had subsequently been able to appear at a fresh hearing, §§ 62-65).

305. *Observations submitted by the court to the appellate court manifestly aimed at influencing its decision*: the parties must be able to comment on the observations, irrespective of their actual effect

on the court, and even if the observations do not present any fact or argument which has not already appeared in the impugned decision in the opinion of the appellate court (*Nideröst-Huber v. Switzerland*, §§ 26-32) or of the respondent Government before the Strasbourg Court (*APEH Üldözötteinek Szövetsége and Others v. Hungary*, § 42).

306. *Preliminary questions*: the Convention does not guarantee, as such, any right to have a case referred by a domestic court to another national or international authority for a preliminary ruling (*Coëme and Others v. Belgium*, § 114; *Acar and Others v. Turkey* (dec.), § 43).

307. Article 6 § 1 does not, therefore, guarantee an absolute right to have a case referred by a domestic court to the Court of Justice of the European Union (CJEU) (*Dotta v. Italy* (dec.); *Herma v. Germany* (dec.)). It is for the applicant to provide explicit reasons for such a request (*John v. Germany* (dec.); *Somorjai v. Hungary*, § 60). The review of the soundness of the interpretation of European Union (EU) law by the national courts is a matter falling outside the Strasbourg Court's jurisdiction (§ 54).

308. Where a preliminary reference mechanism exists, refusal by a domestic court to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings (*Ullens de Schooten and Rezabek v. Belgium*, §§ 57-67, with further references; *Canela Santiago v. Spain* (dec.)). This is so where the refusal is found to be arbitrary, that is to say, where there has been a refusal even though the applicable rules allow no exception or alternative to the principle of preliminary reference, where the refusal was based on reasons other than those provided for by such rules, or where the refusal was not duly reasoned in accordance with those rules (*Ullens de Schooten and Rezabek v. Belgium*, § 59).

309. The Court examines whether the refusal appears to be arbitrary, applying the above-mentioned case-law (*Canela Santiago v. Spain* (déc.)). As regards the provision of reasons for a refusal by a national court to refer a question to the CJEU for a preliminary ruling in a decision not subject to appeal, the *Ullens de Schooten and Rezabek v. Belgium* judgment, referred to, *inter alia*, in *Somorjai v. Hungary*, §§ 57 and 62 (and the references cited), noted the following:

- Article 6 § 1 requires the domestic courts to give reasons, in the light of the applicable law, for any decision refusing to refer a question for a preliminary ruling;
- when the Strasbourg Court hears a complaint alleging a violation of Article 6 § 1 on this basis, its task consists in ensuring that the impugned refusal has been duly accompanied by such reasoning;
- while this verification has to be made thoroughly, it is not for the Court to examine any errors that might have been committed by the domestic courts in interpreting or applying the relevant law (*Repcevirág Szövetkezet v. Hungary*, § 59) ;
- in the specific context of the third paragraph of Article 234 of the Treaty establishing the European Community (now Article 267 of the TFEU), national courts within the European Union against whose decisions there is no judicial remedy under national law, and which refuse to request a preliminary ruling from the CJEU on a question raised before them concerning the interpretation of European Union law, are required to give reasons for such refusal in the light of the exceptions provided for by the case-law of the CJEU in accordance with the *Cilfit* criteria (*Somorjai v. Hungary*, §§ 39-41). They must therefore indicate the reasons why they have found that the question is irrelevant, that the European Union law provision in question has already been interpreted by the CJEU, or that the correct application of EU law is so obvious as to leave no scope for any reasonable doubt.

310. The reasons given in the decision by the court of final instance refusing to refer a case to the CJEU for a preliminary ruling are to be assessed in the light of the circumstances of the case and the domestic proceedings as a whole (*Harisch v. Germany*, § 42; *Repcevirág Szövetkezet v. Hungary*, § 59; *Krikorian v. France* (dec.), § 99).

311. The Court has accepted summary reasoning where the appeal on the merits itself had no prospect of success, such that a reference for a preliminary ruling would have had no impact on the outcome of the case (*Stichting Mothers of Srebrenica and Others v. the Netherlands* (dec.) §§ 173-174, and, *mutatis mutandis,* in criminal matters, *Baydar v. the Netherlands*, §§ 48-49), for example where the appeal did not satisfy the domestic admissibility criteria (*Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece* (dec.), §§ 46-47). The Court also accepts that, *in concreto*, the reasons for refusing a request for a preliminary ruling in the light of the *Cilfit* criteria may be inferred from the reasoning of the rest of the judgment of the court concerned (*Krikorian v. France* (dec.), §§ 97-99; *Harisch v. Germany*, §§ 37-42; and *Ogieriakhi v. Ireland* (dec.), § 62), or from somewhat implicit reasoning in the decision refusing the request (*Repcevirág Szövetkezet v. Hungary*, §§ 57-58).

312. In the case of *Dhahbi v. Italy*, §§ 32-34, the Court for the first time found a violation of Article 6 on account of the lack of reasons given by a domestic court for refusing to refer a question to the CJEU for a preliminary ruling. The Court of Cassation had made no reference to the applicant's request for a preliminary ruling or to the reasons why it had considered that the question raised did not warrant referral to the CJEU, or reference to the CJEU's case-law. It was therefore unclear from the reasoning of the impugned judgment whether that question had been considered not to be relevant or to relate to a provision which was clear or had already been interpreted by the CJEU, or whether it had simply been ignored (see also *Schipani and Others v. Italy*, §§ 71-72). In *Sanofi Pasteur v. France*, §§ 74-79, the Court also found a violation on account of the lack of sufficient reasoning where the Court of Cassation's judgment had contained a reference to the applicant company's requests for a preliminary ruling through the phrase "without it being necessary to refer a question to the Court of Justice of the European Union for a preliminary ruling".

313. *Changes in domestic case-law*: the requirement of legal certainty and the protection of legitimate expectations do not involve the right to an established jurisprudence (*Unédic v. France*, § 74). Case-law development is not, in itself, contrary to the proper administration of justice (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 116), since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 58; *Albu and Others v. Romania*, § 34). In *Atanasovski v. the former Yugoslav Republic of Macedonia* (§ 38) the Court held that the existence of well-established jurisprudence imposed a duty on the Supreme Court to make a more substantial statement of reasons justifying its departure from the case-law, failing which the individual's right to a duly reasoned decision would be violated. In some cases changes in domestic jurisprudence which affect pending civil proceedings may violate the Convention (*Petko Petkov v. Bulgaria*, §§ 32-34).

314. *Divergences in case-law* between domestic courts or within the same court cannot, in themselves, be considered contrary to the Convention (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 51, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 116). However, the Court has emphasised the importance of putting mechanisms in place to ensure consistency in court practice and uniformity of the courts' case-law. It is the Contracting States' responsibility to organise their legal systems in such a way as to avoid the adoption of discordant judgments (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 55).

It is not in principle the Court's function to compare different decisions of national courts, even if given in apparently similar or connected proceedings; it must respect the independence of those courts. It has pointed out that giving two disputes different treatment cannot be considered to give rise to conflicting case-law when this is justified by a difference in the factual situations at issue (*Hayati Çelebi and Others v. Turkey*, § 52, and *Ferreira Santos Pardal v. Portugal,* § 42).

- The case of *Nejdet Şahin and Perihan Şahin v. Turkey* [GC] concerned judgments of two separate, independent and hierarchically unrelated supreme courts. The Court held in particular that an individual petition to it could not be used as a means of dealing with or eliminating conflicts of case-

law that could arise in domestic law, or as a review mechanism for rectifying inconsistencies in the decisions of the different domestic courts (§ 95).

- The case of *Lupeni Greek Catholic Parish and Others v. Romania* [GC] concerned profound and long-standing differences in the case-law of a single court – the Supreme Court – and the failure to use a mechanism for ensuring harmonisation of the case-law. The Court stressed the importance of ensuring consistent practice within the highest court in the country, to avoid the risk of undermining the principle of legal certainty. That principle, which is implicit in all the Articles of the Convention, constitutes one of the fundamental aspects of the rule of law. The persistence of conflicting court decisions can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law (§ 116) (see also *Sine Tsaggarakis A.E.E. v. Greece*, §§ 51-59, concerning the persistently divergent positions taken by two different sections of the Supreme Administrative Court despite the institution of a mechanism for harmonising the case-law).

315. *Interpretation of a judgment of the Strasbourg Court by a national court*: in *Bochan v. Ukraine (no. 2)* [GC], the applicable legal framework provided the applicant with a remedy enabling a judicial review of her civil case by the Supreme Court in the light of a finding of a violation by the Strasbourg Court. The Court nevertheless found that the Supreme Court had "grossly misrepresented" the findings reached in its judgment. This did not amount merely to a different reading of a legal text but to an incorrect interpretation. The domestic court's reasoning could therefore only be regarded as being "grossly arbitrary" or as entailing a "denial of justice" in breach of Article 6 (*ibid.* [GC], §§ 63-65).

316. *Entry into force of a law when a case to which the State is a party is still pending*: the Court is especially mindful of the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinnable. Any reasons adduced to justify such measures must be closely examined (*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, § 112). In principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws. Article 6 does, however preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute – except on "compelling grounds of the general interest" (*Zielinski, Pradal, Gonzalez and Others v. France* [GC], § 57; *Scordino v. Italy (no. 1)* [GC], § 126).

The Court found violations, for example, in respect of:

- intervention by the legislature – at a time when proceedings to which the State was party had been pending for nine years and the applicants had a final, enforceable judgment against the State – to influence the imminent outcome of the case in the State's favour (*Stran Greek Refineries and Stratis Andreadis v. Greece*, §§ 49-50);
- a law which decisively influenced the imminent outcome of a case favour of the State (*Zielinski, Pradal, Gonzalez and Others v. France* [GC], § 59);
- the enactment, at a crucial point in proceedings before the Court of Cassation, of a law which for practical purposes resolved substantive issues and made carrying on with the litigation pointless (*Papageorgiou v. Greece*);
- a decision of an appellate court based, even subsidiarily, on a law enacted in the course of proceedings and which affected the outcome of the proceedings (*Anagnostopoulos and Others v. Greece*, §§ 20-21);
- recourse by the State to retrospective legislation influencing the judicial determination of a pending dispute to which the State was a party, without demonstrating that there were "compelling general-interest reasons" for such action. The Court pointed out, in particular, that financial considerations could not by themselves warrant the legislature taking the place

of the courts in order to settle disputes (*Azienda Agricola Silverfunghi S.a.s. and Others v. Italy*, §§ 76 and 88-89).

However, Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are party. In other cases the Court has held that the considerations relied on by the respondent State were based on the compelling public-interest motives required to justify the retroactive effect of the law (*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, § 112; *Forrer-Niedenthal v. Germany*, § 64; *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, §§ 71-72; *EEG-Slachthuis Verbist Izegem v. Belgium* (dec.); *Hôpital local Saint-Pierre d'Oléron and Others v. France*, §§ 72-73).

317. This case-law also applies to cases where the State, although not a party, vitiates the proceedings through its legislative powers (*Ducret v. France*, §§ 33-42).

318. Other types of legislative intervention:

- Laws may be enacted before the start of proceedings (*Organisation nationale des syndicats d'infirmiers libéraux (ONSIL) v. France* (dec.)) – compare with *Azzopardi and Others v. Malta* (dec.), § 44) – or once they have ended (*Preda and Dardari v. Italy* (dec.)), without raising an issue under Article 6.
- The enactment of general legislation may prove unfavourable to litigants without actually targeting pending judicial proceedings and thereby circumventing the principle of the rule of law (*Gorraiz Lizarraga and Others v. Spain*, § 72).
- A law with retrospective effect may be passed following a pilot judgment of the Court in order to remedy a systemic problem and thus respond to an obvious and compelling public-interest justification (*Beshiri and Others v. Albania* (dec.), concerning the prolonged non-enforcement of numerous final administrative decisions).
- A law may be declared unconstitutional while proceedings are pending without there being any intention of influencing those proceedings (*Dolca and Others v. Romania* (dec.)).

319. It should be noted that as regards the above-mentioned public-interest considerations to be taken into account in examining the justification of legislative intervention, the Court has specified that environmental protection is a matter of general interest (*Dimopulos v. Turkey*, §§ 39-40).

320. *Failure to communicate the observations of an "independent member of the national legal service" to litigants before a Supreme Court* (members of the public prosecutor's department: *Vermeulen v. Belgium*, *Van Orshoven v. Belgium*, *K.D.B. v. the Netherlands*; Principal Public Prosecutor/Attorney General: *Göç v. Turkey* [GC], *Lobo Machado v. Portugal*; Government Commissioner: *Kress v. France* [GC], *Martinie v. France* [GC]) and *no opportunity to reply to such observations*: many respondent States have argued that this category of members of the national legal service was neither party to the proceedings nor the ally or adversary of any party, but the Court has found that regard must be had to the part actually played in the proceedings by the official concerned, and more particularly to the content and effects of his submissions (*Vermeulen v. Belgium*, § 31; *Kress v. France* [GC], § 71 *in fine*).

321. The Court has stressed the importance of adversarial proceedings in cases where the submissions of an independent member of the national legal service in a civil case were not communicated in advance to the parties, depriving them of an opportunity to reply to them (*ibid.*, § 76; *Lobo Machado v. Portugal*, § 31; *Van Orshoven v. Belgium*, § 41; *Göç v. Turkey* [GC], §§ 55-56; *Immeubles Groupe Kosser v. France*, § 26; *Vermeulen v. Belgium*, § 33).

322. Participation by and even the mere presence of these members of the national legal service in the deliberations, be it "active" or "passive", after they have publicly expressed their views on the case

has been condemned (*ibid.*, § 34; *Lobo Machado v. Portugal*, § 32; *Kress v. France* [GC], § 87). This case-law is largely based on the theory of appearances (*Martinie v. France* [GC], § 53).

323. The conditions in which the proceedings took place must therefore be examined, and in particular whether the proceedings were adversarial and complied with the equality of arms principle (compare *Kress v. France* [GC], § 76, and *Göç v. Turkey* [GC], §§ 55-57; see also *Marc-Antoine v. France* (dec.)), in order to determine whether the problem was attributable to the litigant's conduct, or to the attitude of the authorities or the applicable legislation (*Fretté v. France*, §§ 49-51). For the procedure before the Court of Justice of the European Communities/of the European Union: *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. Netherlands* (dec.).

324. Limits:

- Equality of arms does not entail a party's right to have disclosed to him or her, before the hearing, submissions which have not been disclosed to the other party to the proceedings or to the reporting judge or the judges of the trial bench (*Kress v. France* [GC], § 73).
- There is no point in recognising a right that has no real reach or substance: that would be the case if the right relied on under the Convention would have had no incidence on the outcome of the case because the legal solution adopted was legally unobjectionable (*Stepinska v. France*, § 18).
- With reference again to situations where the applicant – who was party to the domestic proceedings – has complained that he or she did not receive a copy of evidence or observations sent to the judge, the Court has in some cases applied the new "significant disadvantage" admissibility criterion (Article 35 § 3 (b) of the Convention), which was introduced in 2010. According to this criterion, a violation of a right, however real from a purely legal point of view, must attain a minimum level of severity to warrant consideration by the Court, in accordance with the principle *de minimis non curat praetor*. In that context, complaints concerning the failure to provide applicants with a copy of evidence adduced or observations filed have been declared inadmissible by the Court for lack of a significant disadvantage (*Liga Portuguesa de Futebol Profissional v. Portugal* (déc.), §§ 36-40; *Kılıç and Others v. Turkey* (dec.); *Holub v. the Czech Republic* (dec); and contrast *Colloredo Mannsfeld v. the Czech Republic*, §§ 33-34). This approach has been applied, for example, where the document in question contained nothing new for the applicant and clearly had no influence, through its nature or content, on the court's decision; this is even more evident where the national court has itself stated that it did not take into account the document which was not communicated to the applicant (*Cavajda v. the Czech Republic* (dec.).

3. Fourth instance

a. General principles

325. One particular category of complaints submitted to the Court comprises what are commonly referred to as "fourth-instance" complaints. This term – which does not feature in the text of the Convention and has become established through the case-law of the Convention institutions (*Kemmache v. France (no. 3)*, § 44; *De Tommaso v. Italy* [GC], § 170) – is somewhat paradoxical, as it places the emphasis on what the Court is not: it is not a court of appeal or a court which can quash rulings given by the courts in the States Parties to the Convention or retry cases heard by them, nor can it re-examine cases in the same way as a Supreme Court. Fourth-instance applications therefore stem from a frequent misapprehension on two levels.

326. Firstly, there is often a widespread misconception on the part of the applicants as to the Court's role and the nature of the judicial machinery established by the Convention. It is not the Court's role to substitute itself for the domestic courts; its powers are limited to verifying the Contracting States' compliance with the human rights engagements they undertook in acceding to the Convention.

Furthermore, in the absence of powers to intervene directly in the legal systems of the Contracting States, the Court must respect the autonomy of those legal systems. That means that it is not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors may have infringed rights and freedoms protected by the Convention. It may not itself assess the facts which have led a national court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action (*García Ruiz v. Spain* [GC], § 28; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 197; *Avotiņš v. Latvia* [GC], § 99; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 90; *De Tommaso v. Italy* [GC], §§ 170-72).

327. Secondly, there is often misunderstanding as to the exact meaning of the term "fair" in Article 6 § 1 of the Convention. The "fairness" required by Article 6 § 1 is not "substantive" fairness (a concept which is part-legal, part-ethical and can only be applied by the trial court), but "procedural" fairness. Article 6 § 1 only guarantees "procedural" fairness, which translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (*Star Cate Epilekta Gevmata and Others v. Greece* (dec.)). The fairness of proceedings is always assessed by examining them in their entirety, so that an isolated irregularity may not be sufficient to render the proceedings as a whole unfair (*Miroļubovs and Others v. Latvia*, § 103).

328. Furthermore, the Court respects the diversity of Europe's legal and judicial systems, and it is not the Court's task to standardise them. Just as it is not its task to examine the wisdom of the domestic courts' decisions where there is no evidence of arbitrariness (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], §§ 68, 89 and 94).

b. Scope and limits of the Court's supervision

329. The Court has always said that it is generally not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors are manifest and infringed rights and freedoms protected by the Convention (*García Ruiz v. Spain* [GC], § 28; *Perez v. France* [GC], § 82). It is extremely rare for the Court to question under Article 6 § 1 the national courts' assessment on the grounds that their findings might be regarded as arbitrary or manifestly unreasonable (see, for example, *Dulaurans v. France*, `§ 38, where the Court found a violation of Article 6 § 1 because of a "manifest error of judgment"; *Khamidov v. Russia*, § 170, where the proceedings complained of had been "grossly arbitrary"; *Anđelković v. Serbia*, § 24, and *Lazarević v. Bosnia and Herzegovina*, § 32, where there had been a "denial of justice"; *Bochan v. Ukraine (no. 2)* [GC], §§ 63-65, where the domestic court's reasoning was regarded as being "grossly arbitrary" or as entailing a "denial of justice"; and contrast, for example, *Société anonyme d'habitations à loyers modérés Terre et Famille v. France* (dec.)).

330. This means that the Court may not, as a general rule, question the findings and conclusions of the domestic courts as regards:

- The establishment of the facts of the case: the Court cannot challenge the findings of the domestic courts, save where they are flagrantly and manifestly arbitrary (*García Ruiz v. Spain* [GC], §§ 28-29).
- The interpretation and application of domestic law: it is primarily for the domestic courts to resolve problems of interpretation of national legislation (*Perez v. France* [GC], § 82), not for the Strasbourg Court, whose role is to verify whether the effects of such interpretation are compatible with the Convention (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 49). In exceptional cases the Court may draw the appropriate conclusions where a Contracting State's domestic courts have interpreted a domestic law in a manifestly arbitrary or erroneous manner (*Barać and Others v. Montenegro*, §§ 32-34, with further references; *Anđelković v. Serbia*, §§ 24-27 (denial of justice); *Laskowska v. Poland*, § 61), but it generally

does so under other provisions of the Convention rather than under Article 6 § 1 (*Kushoglu v. Bulgaria*, § 50; *Işyar v. Bulgaria*, § 48; *Fabris v. France* [GC], § 60).

- Nor is the Court competent to rule formally on compliance with other international treaties or European Union law. The task of interpreting and applying the provisions of the European Union law falls firstly to the CJEU. The jurisdiction of the European Court of Human Rights is limited to reviewing compliance with the requirements of the Convention, for example with Article 6 § 1. Consequently, in the absence of any arbitrariness which would in itself raise an issue under Article 6 § 1, it is not for the Court to make a judgment as to whether the domestic court correctly applied a provision of European Union law (*Avotiņš v. Latvia* [GC], § 100), general international law or international agreements (*Waite and Kennedy v. Germany* [GC], § 54; *Markovic and Others v. Italy* [GC], §§ 107-108). However, divergences in the case-law of the national courts create legal uncertainty, which is incompatible with the requirements of the rule of law (*mutatis mutandis*, *Molla Sali v. Greece* [GC], § 153).
- The admissibility and assessment of evidence:[16] the guarantees under Article 6 § 1 only cover the administration of evidence at the procedural level. The admissibility of evidence or the way it should be assessed on the merits are primarily matters for the national courts, whose task it is to weigh the evidence before them (*García Ruiz v. Spain* [GC], § 28; *Farange S.A. v. France* (dec.)).

331. In *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC] the Court reiterated that, the Convention being a constitutional instrument of European public order, the States Parties were required, in that context, to ensure a level of scrutiny of Convention compliance which, at the very least, preserved the foundations of that public order. One of the fundamental components of European public order is the principle of the rule of law, and arbitrariness constitutes the negation of that principle. Even in the context of interpreting and applying domestic law, where the Court leaves the national authorities very wide discretion, it always does so, expressly or implicitly, subject to a prohibition of arbitrariness (§ 145).

332. So Article 6 § 1 does not allow the Court to question the substantive fairness of the outcome of a civil dispute, where more often than not one of the parties wins and the other loses.

333. A fourth-instance complaint under Article 6 § 1 of the Convention will be rejected by the Court on the grounds that the applicant had the benefit of adversarial proceedings; that he was able, at the various stages of those proceedings, to adduce the arguments and evidence he considered relevant to his case; that he had the opportunity of challenging effectively the arguments and evidence adduced by the opposing party; that all his arguments which, viewed objectively, were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decision were set out at length; and that, accordingly, the proceedings taken as a whole were fair (*García Ruiz v. Spain* [GC], § 29). The majority of fourth-instance applications are declared inadmissible *de plano* by a single judge or a three-judge Committee (Articles 27 and 28 of the Convention).

c. Consistency of domestic case-law

334. Article 6 § 1 does not confer an acquired right to consistency of case-law. Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 58; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 116). Divergences in case-law are, by nature, an inherent consequence of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. The role of a supreme court is precisely to resolve such conflicts (*Beian v. Romania (no. 1)*, § 37).

16. See also the section on "Administration of evidence".

335. In principle it is not the Court's role, even in cases which at first sight appear comparable or connected, to compare the various decisions pronounced by the domestic courts, whose independence it must respect. The possibility of divergences in case-law is an inherent consequence of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may even arise within the same court. That in itself cannot be considered contrary to the Convention (*Santos Pinto v. Portugal*, § 41). Furthermore, there can be no "divergence" where the factual situations in issue are objectively different (*Uçar v. Turkey* (dec.)).

336. There may, however, be cases where divergences in case-law lead to a finding of a violation of Article 6 § 1. Here the Court's approach differs depending on whether the divergences exist within the same branch of courts or between two different branches of court which are completely independent from one another.

337. In the first case (divergences in the case-law of the highest national court), the Court uses three criteria in determining:

- whether the divergences in the case-law are "profound and long-standing";
- whether the domestic law provides for mechanisms capable of resolving such inconsistencies; and
- whether those mechanisms were applied and to what effect (*Beian v. Romania (no. 1)*, §§ 37 and 39; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], §§ 116-35).

In the last-mentioned case, the highest national court had adopted judgments that were "diametrically opposed" and the mechanism provided for in domestic law for ensuring consistent practice had not been used promptly, thus undermining the principle of legal certainty.

338. A practice of profound and long-standing differences which has developed within the country's highest judicial authority is in itself contrary to the principle of legal certainty, a principle which is implicit in all the Articles of the Convention and constitutes one of the basic elements of the rule of law (*Beian v. Romania (no. 1)*, § 39).

- In the case cited, the Court noted that instead of fulfilling its task of establishing the interpretation to be pursued, the Supreme Court had itself become a source of legal uncertainty, thereby undermining public confidence in the judicial system. The Court found that this lack of certainty with regard to the case-law had had the effect of depriving the applicant of any possibility of securing the benefits provided for by law, whereas other persons in a similar situation had been granted those benefits (§§ 39-40).
- In *Hayati Çelebi and Others v. Turkey*, manifest contradictions in the case-law of the Court of Cassation, together with the failure of the mechanism designed to ensure harmonisation of practice within that court, led to the applicants' claim for damages being declared inadmissible, whereas other people in a similar situation had secured a review of the merits of their claims (§ 66).

339. However, where the system established in domestic law to settle case-law conflicts has proved effective, since it was introduced fairly quickly and put an end to such conflicts within a short space of time, the Court has not found a violation (*Albu and Others v. Romania*, § 42; compare *Lupeni Greek Catholic Parish and Others v. Romania* [GC], §§ 130-132).

340. In the second situation, the conflicting decisions are pronounced at last instance by courts in two different branches of the legal system, each with its own independent Supreme Court not subject to any common judicial hierarchy. Here Article 6 § 1 does not go as far as to demand the implementation of a vertical review mechanism or a common regulatory authority (such as a jurisdiction disputes court). In a judicial system with several different branches of courts, and where several Supreme Courts exist side by side and are required to give interpretations of the law at the same time and in

parallel, achieving consistency of case-law may take time, and periods of conflicting case-law may therefore be tolerated without undermining legal certainty. So two courts, each with its own area of jurisdiction, examining different cases may very well arrive at divergent but nevertheless rational and reasoned conclusions regarding the same legal issue raised by similar factual circumstances without violating Article 6 § 1 (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], §§ 81-83 and 86).

4. Adversarial proceedings

341. The adversarial principle: the concept of a fair trial comprises the fundamental right to adversarial proceedings. This is closely linked to the principle of equality of arms (*Regner v. the Czech Republic* [GC], § 146).

342. The requirements resulting from the right to adversarial proceedings are in principle the same in both civil and criminal cases (*Werner v. Austria*, § 66).

343. The desire to save time and expedite the proceedings does not justify disregarding such a fundamental principle as the right to adversarial proceedings (*Nideröst-Huber v. Switzerland*, § 30).

344. Content: the right to adversarial proceedings means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision (*Ruiz-Mateos v. Spain*, § 63; *McMichael v. the United Kingdom*, § 80; *Vermeulen v. Belgium*, § 33; *Lobo Machado v. Portugal*, § 31; *Kress v. France* [GC], § 74). This requirement may also apply before a Constitutional Court (*Milatová and Others v. the Czech Republic*, §§ 63-66; *Gaspari v. Slovenia*, § 53).

- The actual effect on the court's decision is of little consequence (*Nideröst-Huber v. Switzerland*, § 27; *Ziegler v. Switzerland*, § 38).
- The right to adversarial proceedings must be capable of being exercised in satisfactory conditions: a party to the proceedings must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time (*Krčmář and Others v. the Czech Republic*, § 42; *Immeubles Groupe Kosser v. France*, § 26), if necessary by obtaining an adjournment (*Yvon v. France*, § 39).
- The parties should have the opportunity to make known any evidence needed for their claims to succeed (*Clinique des Acacias and Others v. France*, § 37).
- The court itself must respect the adversarial principle, for example if it decides a case on the basis of a ground or objection which it has raised of its own motion (*Čepek v. the Czech Republic*, § 45, and compare *Clinique des Acacias and Others v. France*, § 38, with *Andret and Others v. France* (dec.), inadmissible: in the last-mentioned case the Court of Cassation informed the parties that new grounds were envisaged and the applicants had an opportunity to reply before the Court of Cassation gave judgment).
- It is for the parties to a dispute alone to decide whether a document produced by the other party or evidence given by witnesses calls for their comments. Litigants' confidence in the workings of justice is based on the knowledge that they have had the opportunity to express their views on every document in the file (including documents obtained by the court of its own motion: *K.S. v. Finland*, § 22) (*Nideröst-Huber v. Switzerland*, § 29; *Pellegrini v. Italy*, § 45).

345. Examples of infringement of the right to adversarial proceedings as a result of non-disclosure of the following documents or evidence:

- in proceedings concerning the placement of a child, of reports by the social services containing information about the child and details of the background to the case and making

recommendations, even though the parents were informed of their content at the hearing (*McMichael v. the United Kingdom*, § 80);

- evidence adduced by the public prosecutor, irrespective of whether he was or was not regarded as a "party", since he was in a position, above all by virtue of the authority conferred on him by his functions, to influence the court's decision in a manner that might be unfavourable to the person concerned (*Ferreira Alves v. Portugal (no. 3)*, §§ 36-39);
- a note from the lower court to the appellate court aimed at influencing the latter court's decision, even though the note did not set out any new facts or arguments (*ibid.*, § 41);
- documents obtained directly by the judges, containing reasoned opinions on the merits of the case (*K.S. v. Finland*, §§ 23-24).

346. Limit: the right to adversarial proceedings is not absolute and its scope may vary depending on the specific features of the case in question (*Hudáková and Others v. Slovakia*, §§ 26-27).

- The adversarial principle does not require that each party must transmit to its opponent documents which have not been presented to the court either (*Yvon v. France*, § 38).

- In several cases with very particular circumstances, the Court found that the non-disclosure of an item of evidence and the applicant's inability to comment on it had not undermined the fairness of the proceedings, in that having that opportunity would have had no impact on the outcome of the case and the legal solution reached was not open to discussion (*Stepinska v. France*, § 18; *Salé v. France*, § 19; *Asnar v. France (no. 2)*, § 26).

5. Equality of arms

347. The principle of "equality of arms" is inherent in the broader concept of a fair trial and is closely linked to the adversarial principle (*Regner v. the Czech Republic* [GC], § 146). The requirement of "equality of arms", in the sense of a "fair balance" between the parties, applies in principle to civil as well as to criminal cases (*Feldbrugge v. the Netherlands*, § 44).

348. Content: maintaining a "fair balance" between the parties. Equality of arms implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* the other party (*Regner v. the Czech Republic* [GC], § 146; *Dombo Beheer B.V. v. the Netherlands*, § 33).

- This principle, which covers all aspects of procedural law in the Contracting States, is also applicable in the specific sphere of service of judicial documents on the parties, although Article 6 § 1 cannot be interpreted as prescribing a specific form of service of documents (*Avotiņš v. Latvia* [GC], § 119).
- It is inadmissible for one party to make submissions to a court without the knowledge of the other and on which the latter has no opportunity to comment. It is a matter for the parties alone to assess whether a submission deserves a reaction (*APEH Üldözötteinek Szövetsége and Others v. Hungary*, § 42).
- However, if observations submitted to the court are not communicated to either of the parties there will be no infringement of equality of arms as such, but rather of the broader fairness of the proceedings (*Nideröst-Huber v. Switzerland*, §§ 23-24; *Clinique des Acacias and Others v. France*, §§ 36-37).

349. Examples of failure to observe the equality of arms principle: this principle was found to have been breached in the following cases because one of the parties had been placed at a clear disadvantage:

- A party's appeal was not served on the other party, who therefore had no possibility to respond (*Beer v. Austria*, § 19).

- Time had ceased to run against one of the parties only, placing the other at a substantial disadvantage (*Platakou v. Greece*, § 48; *Wynen and Centre hospitalier interrégional Edith-Cavell v. Belgium*, § 32).
- Only one of the two key witnesses was permitted to be heard (*Dombo Beheer B.V. v. the Netherlands*, §§ 34-35).
- The opposing party enjoyed significant advantages as regards access to relevant information, occupied a dominant position in the proceedings and wielded considerable influence with regard to the court's assessment (*Yvon v. France*, § 37).
- The opposing party held positions or functions which put them at an advantage and the court made it difficult for the other party to challenge them seriously by not allowing it to adduce relevant documentary or witness evidence (*De Haes and Gijsels v. Belgium*, §§ 54 and 58).
- In administrative proceedings the reasons given by the administrative authority were too summary and general to enable the appellant to mount a reasoned challenge to their assessment; and the tribunals of fact declined to allow the applicant to submit arguments in support of his case (*Hentrich v. France*, § 56).
- The denial of legal aid to one of the parties deprived them of the opportunity to present their case effectively before the court in the face of a far wealthier opponent (*Steel and Morris v. the United Kingdom*, § 72).
- In its *Martinie v. France* judgment ([GC], § 50) the Court considered that there was an imbalance detrimental to litigants on account of State Counsel's position in the proceedings before the Court of Audit: unlike the other party, he was present at the hearing, was informed beforehand of the reporting judge's point of view, heard the latter's submissions at the hearing, fully participated in the proceedings and could express his own point of view orally without being contradicted by the other party, and that imbalance was accentuated by the fact that the hearing was not public.
- The prosecutor intervened in support of the arguments of the applicant's opponent (*Menchinskaya v. Russia*, §§ 35-39).
- The judge refused to adjourn a hearing even though the applicant had been taken to hospital in an emergency and his lawyer had been unable to represent him at the hearing, thus irretrievably depriving him of the right to respond adequately to his opponent's submissions (*Vardanyan and Nanushyan v. Armenia*, §§ 88-90).

350. However, the Court found compatible with Article 6 § 1 a difference of treatment in respect of the hearing of the parties' witnesses (evidence given under oath for one party and not for the other), as it had not, in practice, influenced the outcome of the proceedings (*Ankerl v. Switzerland*, § 38).

351. Specific case of a civil-party action: the Court has distinguished between the system of a complaint accompanied by a civil-party action and an action brought by the public prosecutor, who is vested with public authority and responsible for defending the general interest (*Guigue and SGEN-CFDT v. France* (dec.)). As a result, different formal conditions and time-limits for lodging an appeal (a shorter time-limit for the private party) did not breach the "equality of arms" principle, provided that meaningful use could be made of that remedy (cf. the special nature of the system concerned).

352. The Court has also found it compatible with the principle of equality of arms for a provision to limit the civil party's possibilities of appeal without limiting those of the public prosecutor – as their roles and objectives are clearly different (*Berger v. France*, § 38).

353. As regards cases opposing the prosecuting authorities and a private individual, the prosecuting authorities may enjoy a privileged position justified for the protection of the legal order. However, this should not result in a party to civil proceedings being put at an undue disadvantage *vis-à-vis* the prosecuting authorities (*Stankiewicz v. Poland*, § 68).

6. Administration of evidence

354. General principles:[17] the Convention does not lay down rules on evidence as such (*Mantovanelli v. France*, § 34). The admissibility of evidence and the way it should be assessed are primarily matters for regulation by national law and the national courts (*Moreira de Azevedo v. Portugal*, §§ 83-84; *García Ruiz v. Spain* [GC], § 28). The same applies to the probative value of evidence and the burden of proof (*Tiemann v. France and Germany* (dec.)). It is also for the national courts to assess the relevance of proposed evidence (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 198). Presumptions of fact or of law operate in every legal system, and the Convention does not prohibit such presumptions in principle; however, individuals must be afforded effective judicial safeguards (*Lady S.R.L. v. Republic of Moldova*, § 27). The Court has also accepted that the principle of legal certainty implies that a party relying on the assessment made by a court in a previous case on an issue also arising in the case at hand may legitimately expect the court to follow its previous ruling, unless there is a valid reason for departing from it (*Siegle v. Romania*, §§ 38-39, and *Rozalia Avram v. Romania*, §§ 42-43).

355. However, the Court's task under the Convention is to ascertain whether the proceedings as a whole were fair, including the way in which evidence was taken (*Elsholz v. Germany* [GC], § 66; *Devinar v. Slovenia*, § 45). It must therefore establish whether the evidence was presented in such a way as to guarantee a fair trial (*Blücher v. the Czech Republic*, § 65). The Court should not act as a fourth-instance body and will therefore not question under Article 6 § 1 the national courts' assessment, unless their findings can be regarded as arbitrary or manifestly unreasonable (*Bochan v. Ukraine (no. 2)* [GC], § 61, and *López Ribalda and Others v. Spain* [GC], §§ 149, 159-161).

356. It is therefore not the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. It must examine whether the proceedings as a whole, including the way in which the evidence was obtained, were fair; this involves an examination of the unlawfulness in question and, where the violation of another Convention right is concerned, the nature of the violation found (see *López Ribalda and Others v. Spain* [GC], § 150, in which these principles, developed in a criminal context, were applied to a civil case, §§ 150-152). In the judgment cited, the Court laid down criteria for determining whether the use of information obtained in violation of Article 8 or of domestic law as evidence rendered civil proceedings unfair (§§ 151-152). In that case, the Court did not find a violation of Article 8 on account of the secret video-surveillance of employees. However, the employees argued that the video-surveillance had been installed in breach of domestic law and that the national courts had not addressed that question, having deemed it irrelevant. The Court examined whether the use of images obtained by means of covert video-surveillance as evidence in civil proceedings had undermined the fairness of the proceedings as a whole. It found no violation of Article 6 in this particular case (§§ 154-158).

357. In the course of the proceedings, care must be taken to protect vulnerable individuals, for example those with a mental disability, and their dignity and interests in relation to Article 8 (*Evers v. Germany*, §§ 82-84).

358. It is the duty of the national courts to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (*Van de Hurk v. the Netherlands*, § 59). Accordingly, it is for litigants to adduce relevant and sufficient evidence in support of their case (*Fleischner v. Germany*, §§ 40-41).

a. Witness evidence

359. Article 6 § 1 does not explicitly guarantee the right to have witnesses called, and the admissibility of witness evidence is in principle a matter of domestic law. However, the proceedings in their

17. See also the section on "Fourth instance".

entirety, including the way in which evidence was permitted, must be "fair" within the meaning of Article 6 § 1 (*Dombo Beheer B.V. v. the Netherlands*, § 31).

- Where courts refuse requests to have witnesses called, they must give sufficient reasons and the refusal must not be tainted by arbitrariness: it must not amount to a disproportionate restriction of the litigant's ability to present arguments in support of his case (*Wierzbicki v. Poland*, § 45).
- A difference of treatment in respect of the hearing of the parties' witnesses may be such as to infringe the "equality of arms" principle (*Ankerl v. Switzerland*, § 38, where the Court found that the difference of treatment had not placed the applicant at a substantial disadvantage *vis-à-vis* his opponent; contrast *Dombo Beheer B.V. v. the Netherlands*, § 35, where only one of the two participants in the events in issue was allowed to give evidence (violation)).

b. Expert opinions

360. Domestic rules on the admissibility of expert evidence must afford litigants the possibility of challenging it effectively (*Letinčić v. Croatia*, § 50).

361. Refusal to order an expert opinion:

- Refusal to order an expert opinion is not, in itself, unfair; the Court must ascertain whether the proceedings as a whole were fair (*H. v. France*, § 61 and 70). The reasons given for the refusal must be reasonable.
- Refusal to order a psychological report in a case concerning child custody and access must also be examined in the light of the particular circumstances of the case (*Elsholz v. Germany* [GC], § 66, and *mutatis mutandis* *Sommerfeld v. Germany* [GC], § 71).
- In a child abduction case (*Tiemann v. France and Germany* (dec.)) the Court examined whether a Court of Appeal had given sufficient grounds for its refusal to allow the applicant's request for a second expert opinion, in order to ascertain whether the refusal had been reasonable.

362. Appointment of an expert: where an expert has been appointed by a court, the parties must be able to attend the interviews held by him or her or to be shown the documents he or she has taken into account; what is essential is that the parties should be able to participate properly in the proceedings (*Letinčić v. Croatia*, § 50; *Devinar v. Slovenia*, § 46).

363. Article 6 § 1 of the Convention does not expressly require an expert heard by a "tribunal" to fulfil the same independence and impartiality requirements as the tribunal itself (*Sara Lind Eggertsdóttir v. Iceland*, § 47; *Letinčić v. Croatia*, § 51). However, a lack of neutrality on the part of an expert, together with his or her position and role in the proceedings, can tip the balance of the proceedings in favour of one party to the detriment of the other, in violation of the equality of arms principle (*Sara Lind Eggertsdóttir v. Iceland*, § 53; *Letinčić v. Croatia*, § 51); likewise, the expert may occupy a preponderant position in the proceedings and exert considerable influence on the court's assessment (*Yvon v. France*, § 37; *Letinčić v. Croatia*, § 51). To sum up, the position occupied by the expert throughout the proceedings, the manner in which his or her duties are performed and the way the judges assess his or her opinion are relevant factors to be taken into account in assessing whether the principle of equality of arms has been complied with (*Devinar v. Slovenia*, § 47).

364. A medical expert report pertaining to a technical field that is not within the judges' knowledge is likely to have a preponderant influence on their assessment of the facts; it is an essential piece of evidence and the parties must be able to comment effectively on it (*Mantovanelli v. France*, § 36; *Storck v. Germany*, § 135).

365. Where the only expert opinion produced before a court was issued by a specialist body, for example in relation to disability benefits, it will have a decisive influence on the court in the absence of a second opinion by an independent expert (*Devinar v. Slovenia*, §§ 49-50). However, the following should be noted.

The Convention does not bar the national courts from relying on expert opinions drawn up by specialist bodies that are themselves parties to the case where this is required by the nature of the issues in dispute (*Letinčić v. Croatia*, § 61; *Devinar v. Slovenia*, § 47). The fact that an expert is employed by the same administrative authority that is a party to the case might give rise to doubts on the part of the applicant as the opposing party, but what is decisive is whether such doubts can be held to be objectively justified (*Devinar v. Slovenia*, §§ 48 and 51). When requesting a second opinion by an independent expert, the applicant is thus required to produce sufficient material to substantiate the request (*ibid.*, §§ 56-58). Should the applicant fail to do so, despite having had the right to comment on the expert opinion and challenge it in writing and orally or to submit an opposing opinion by a specialist of his or her choice, the Court will find no violation of Article 6 (§ 56).

366. Concerning the parties' rights *vis-à-vis* the expert: compare *Feldbrugge v. the Netherlands*, § 44 (violation), with *Olsson v. Sweden (no. 1)*, §§ 89-91 (no violation). As regards the requirement to disclose an adverse report, see *L. v. the United Kingdom* (dec.), and as regards access to material in a guardianship case file, see *Evers v. Germany*, §§ 86-93).

c. Non-disclosure of evidence

367. In certain cases, overriding national interests have been put forward to deny a party fully adversarial proceedings (*Miryana Petrova v. Bulgaria*, §§ 39-40; *Regner v. the Czech Republic* [GC]).

368. In the Court's view, the right to disclosure of relevant evidence is not absolute. However, only measures restricting the rights of a party to the proceedings which do not affect the very essence of those rights are permissible under Article 6 § 1.

369. For that to be the case, any difficulties caused to the applicant by a limitation of his or her rights must be sufficiently counterbalanced by the procedure followed by the judicial authorities. Where evidence has been withheld from the applicant on public-interest grounds, the Court must scrutinise the decision-making procedure to ensure that, as far as possible, it complied with the requirements to provide adversarial proceedings and equality of arms and incorporated adequate safeguards to protect the applicant's interests (*Regner v. the Czech Republic* [GC], §§ 147-49).

370. The case cited raised the issue of the need to preserve the confidentiality of classified documents. The Court had regard to the proceedings as a whole, examining whether the restrictions on the adversarial and equality-of-arms principles had been sufficiently counterbalanced by other procedural safeguards (§ 151).

7. Reasoning of judicial decisions

371. The guarantees enshrined in Article 6 § 1 include the obligation for courts to give sufficient reasons for their decisions (*H. v. Belgium*, § 53). A reasoned decision shows the parties that their case has truly been heard, and thus contributes to a greater acceptance of the decision (*Magnin v. France* (dec.), § 29).

372. Although a domestic court has a certain margin of appreciation when choosing arguments and admitting evidence, it is obliged to justify its activities by giving reasons for its decisions (*Suominen v. Finland*, § 36; *Carmel Saliba v. Malta*, § 73).

373. The reasons given must be such as to enable the parties to make effective use of any existing right of appeal (*Hirvisaari v. Finland*, § 30 *in fine*).

374. Article 6 § 1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument (*Van de Hurk v. the Netherlands*, § 61; *García Ruiz v. Spain* [GC], § 26; *Jahnke and Lenoble v. France* (déc.); *Perez v. France* [GC], § 81).

375. The extent to which this duty to give reasons applies may vary according to the nature of the decision (*Ruiz Torija v. Spain*, § 29; *Hiro Balani v. Spain*, § 27) and can only be determined in the light of the circumstances of the case: it is necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments (*Ruiz Torija v. Spain*, § 29; *Hiro Balani v. Spain*, § 27).

376. However, where a party's submission is decisive for the outcome of the proceedings, it requires a specific and express reply (*Ruiz Torija v. Spain*, § 30; *Hiro Balani v. Spain*, § 28).

377. The courts are therefore required to examine:

- the litigants' main arguments (*Buzescu v. Romania*, § 67; *Donadze v. Georgia* §35);
- pleas concerning the rights and freedoms guaranteed by the Convention and its Protocols: the national courts are required to examine these with particular rigour and care (*Fabris v. France* [GC], § 72 *in fine*; *Wagner and J.M.W.L. v. Luxembourg*, § 96).

378. Article 6 § 1 does not require a supreme court to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal on points of law as having no prospects of success, without further explanation (*Burg and Others v. France* (dec.); *Gorou v. Greece (no. 2)* [GC], § 41).

379. Similarly, in the case of an application for leave to appeal, which is the precondition for a hearing of the claims by the superior court and the eventual issuing of a judgment, Article 6 § 1 cannot be interpreted as requiring that the rejection of leave be itself subject to a requirement to give detailed reasons (*Kukkonen v. Finland (no. 2)*, § 24; *Bufferne v. France* (dec.))

380. Furthermore, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (*García Ruiz v. Spain* [GC], § 26; contrast *Tatishvili v. Russia*, § 62). However, the notion of a fair procedure requires that a national court which has given sparse reasons for its decisions, whether by incorporating the reasons of a lower court or otherwise, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court (*Helle v. Finland*, § 60). This requirement is all the more important where a litigant has not been able to present his case orally in the domestic proceedings (*ibid.*).

381. However, appellate courts (at second instance) with responsibility for filtering out unfounded appeals and with jurisdiction to deal with questions of fact and law in civil proceedings are required to give reasons for their refusal to accept an appeal for adjudication (*Hansen v. Norway,* §§ 77-83). In the case cited, the Court of Appeal had refused to consider an appeal by the applicant against a decision by the first-instance court in civil proceedings, holding that it was "clear that the appeal will not succeed" and in doing so simply reproducing the wording of the Code of Civil Procedure.

382. Furthermore, the Court found no violation in a case where no specific response had been given to an argument relating to an inconsequential aspect of the case – namely the absence of a signature and a stamp, which was a flaw of a formal rather than substantive nature and had been promptly rectified (*Mugoša v. Montenegro,* § 63).

B. Public hearing

Article 6 § 1 of the Convention

> "1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing by [a] tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

1. Hearing

383. *General principles*: in principle, litigants have a right to a public hearing because this protects them against the administration of justice in secret with no public scrutiny. By rendering the administration of justice visible, a public hearing contributes to the achievement of the aim of Article 6 § 1, namely a fair trial (*Malhous v. the Czech Republic* [GC], §§ 55-56). While a public hearing constitutes a fundamental principle enshrined in Article 6 § 1, the obligation to hold such a hearing is not absolute (*De Tommaso v. Italy* [GC], § 163). The right to an oral hearing is not only linked to the question whether the proceedings involve the examination of witnesses who will give their evidence orally (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 187). To establish whether a trial complies with the requirement of publicity, it is necessary to consider the proceedings as a whole (*Axen v. Germany*, § 28).

384. In proceedings before a court of first and only instance the right to a "public hearing" under Article 6 § 1 entails an entitlement to an "oral hearing" (*Fredin v. Sweden (no. 2)*, §§ 21-22; *Allan Jacobsson v. Sweden (no. 2)*, § 46; *Göç v. Turkey* [GC], § 47; *Selmani and Others v. the former Yugoslav Republic of Macedonia*, §§ 37-39) unless there are exceptional circumstances that justify dispensing with such a hearing (*Hesse-Anger and Anger v. Germany* (dec.); *Mirovni Inštitut v. Slovenia*, § 36). The exceptional character of such circumstances stems essentially from the nature of the questions at issue, for example in cases where the proceedings concern exclusively legal or highly technical questions (*Koottummel v. Austria*, § 19), and not from the frequency of such questions (*Miller v. Sweden*, § 29; *Mirovni Inštitut v. Slovenia*, § 37). For a recapitulation of the case-law, see *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 188-190.

385. The absence of a hearing at second or third instance may be justified by the special features of the proceedings concerned, provided a hearing has been held at first instance (*Helmers v. Sweden*, § 36, but contrast §§ 38-39; *Salomonsson v. Sweden*, § 36). Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even though the appellant was not given an opportunity of being heard in person by the appeal or cassation court (*Miller v. Sweden*, § 30). Regard therefore needs to be had to the particularities of proceedings in the highest courts.

386. The Court has examined whether the lack of a public hearing at the level below may be remedied by holding a public hearing at the appeal stage. In a number of cases, it has found that the fact that proceedings before the appellate court are held in public cannot remedy the lack of a public hearing at the lower levels of jurisdiction where the scope of the appeal proceedings is limited, in particular where the appellate court cannot review the merits of the case, including a review of the facts and an assessment as to whether the penalty was proportionate to the misconduct. If, however, the appellate court has full jurisdiction, the lack of a hearing before a lower level of jurisdiction may be remedied before that court (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 192 and case-law references therein). As a result, a complaint concerning the lack of a public hearing may be closely linked to a

complaint concerning the allegedly insufficient extent of the review performed by the appellate body (*ibid.*, § 193). The lack of a hearing in the trial court can only be remedied by a full public rehearing before the appellate court (*Khrabrova v. Russia*, § 52).

387. The Court has emphasised the importance of an adversarial hearing before the body performing the judicial review of a decision not complying with the guarantees of Article 6, where that body has a duty to ascertain whether the factual basis for the decision was sufficient to justify it (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 211). In this particular case, the lack of a hearing either at the stage of the disciplinary decision or at the judicial review stage, combined with the insufficiency of the judicial review, gave rise to a violation of Article 6 § 1 (§ 214).

388. Accordingly, unless there are exceptional circumstances that justify dispensing with a hearing (see the summary of the case-law in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 190), the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least at one level of jurisdiction (*Fischer v. Austria*, § 44; *Salomonsson v. Sweden*, § 36).

389. In *Vilho Eskelinen and Others v. Finland* [GC], § 74, the Court found no violation of Article 6 § 1 on account of the lack of a hearing. It attached weight to the fact that the applicants had been able to request a hearing, although it had been for the courts to decide whether a hearing was necessary; that the courts had given reasons for refusing to hold a hearing; and that the applicants had been given ample opportunity to put forward their case in writing and to comment on the submissions of the other party (*ibid.*). For a case where interim measures were taken without a hearing being held, see *Helmut Blum v. Austria*, §§ 70-74.

390. It may also be legitimate in certain cases for the national authorities to have regard to the demands of efficiency and economy (*Eker v. Turkey*, § 29). In the case cited, the Court did not deny that the proceedings at two levels of jurisdiction had taken place without a hearing. It pointed out that the legal issues had not been especially complex and that it had been necessary to conduct the proceedings promptly (§ 31). The dispute had concerned textual and technical matters that could be adequately determined on the strength of the case file. Moreover, the proceedings had involved an exceptional emergency procedure (an application for an order for publication of a reply in a newspaper), which the Court found to be necessary and justifiable in the interests of the proper functioning of the press.

391. It should be noted that in the context of disciplinary proceedings, in view of what is at stake – namely the impact of the possible penalties on the lives and careers of the persons concerned and their financial implications – the Court has held that dispensing with an oral hearing should be an exceptional measure and should be duly justified in the light of its case-law (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], §§ 208-211). The case cited is also important in relation to disciplinary sanctions against a judge. The Court emphasised the specific context of disciplinary proceedings conducted against judges (§§ 196, 211 and 214).

392. As regards proceedings concerning prisoners, incarceration cannot in itself justify not giving them a hearing before a civil court *(Igranov and Others v. Russia*, §§ 34-35). Practical reasons may be taken into consideration but the principles of the right to a fair hearing must be observed and the prisoner must have the opportunity to ask to be present at the hearing (*Altay v. Turkey (no. 2)*, § 77). If the prisoner has not made such a request when this possibility was not provided for in domestic law, that does not mean that the prisoner has waived his or her right to appear in court (§ 78).

In this context, the first question to be determined is whether the nature of the dispute dictates that the prisoner should appear in person. If so, the domestic authorities are required to take practical measures of a procedural nature to ensure the prisoner's effective participation in the hearing in his or her civil case (*Yevdokimov and Others v. Russia*, §§ 33-47). In the case cited, the domestic courts had refused to allow prisoners to attend hearings in civil proceedings to which they were parties, on the grounds that no provision was made in domestic law for transferring the prisoners to the court.

Finding that the applicants had been deprived of the opportunity to present their cases effectively, the Court held that the domestic authorities had failed to meet their obligation to ensure respect for the principle of a fair trial (§ 52 – see also *Altay v. Turkey (no. 2)*, §§ 78-81).

Furthermore, a practical problem arising because the applicant is serving a prison sentence in a different country does not preclude consideration of alternative procedural options, such as the use of modern communication technologies, so that the applicant's right to be heard can be respected (*Pönkä v. Estonia*, § 39).

393. In *Ramos Nunes de Carvalho e Sá v. Portugal* [GC] the Grand Chamber summarised some examples of situations where a hearing was, or was not, necessary (§§ 190-191).

394. *Specific applications*:

- A hearing may not be required where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties' submissions and other written materials (*Döry v. Sweden*, § 37; *Saccoccia v. Austria*, § 73; *Mirovni Inštitut v. Slovenia*, § 37).
- The Court has also accepted that forgoing a hearing may be justified in cases raising merely legal issues of a limited nature (*Allan Jacobsson v. Sweden (no. 2)*, § 49; *Valová, Slezák and Slezák v. Slovakia*, §§ 65-68) or which present no particular complexity (*Varela Assalino v. Portugal* (dec.); *Speil v. Austria* (dec.)). The same also applies to highly technical questions. The Court has had regard to the technical nature of disputes over social-security benefits, which are better dealt with in writing than by means of oral argument. It has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing since systematically holding hearings could be an obstacle to the particular diligence required in social-security proceedings (*Schuler-Zgraggen v. Switzerland*, § 58; *Döry v. Sweden*, § 41; and contrast *Salomonsson v. Sweden*, §§ 39-40). The judgment in *Ramos Nunes de Carvalho e Sá v. Portugal* [GC] specified that notwithstanding the technical nature of some discussions and depending on what was at stake in the proceedings, public scrutiny could be viewed as a necessary condition both for transparency and for the protection of litigants' rights (§§ 208 and 210).
- By contrast, holding an oral hearing will be deemed necessary, for example, when it comes to examining issues of law and important factual questions (*Fischer v. Austria*, § 44), or assessing whether the facts were correctly established by the authorities (*Malhous v. the Czech Republic* [GC], § 60) and ensuring a more thorough review of facts in dispute (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], § 211), and where the circumstances require the courts to gain a personal impression of the applicant, to allow the applicant to explain his personal situation, in person or through his representative (*Miller v. Sweden*, § 34 *in fine*; *Andersson v. Sweden*, § 57) – for example when the court needs to hear evidence from the applicant about his personal suffering in order to determine the level of compensation to award him (*Göç v. Turkey* [GC], § 51; *Lorenzetti v. Italy*, § 33) or to obtain information about the applicant's character, behaviour and dangerousness (*De Tommaso v. Italy* [GC], § 167; *Evers v. Germany*, § 98) – or where the court requires clarifications on certain points, *inter alia* by this means (*Fredin v. Sweden (no. 2)*, § 22; *Lundevall v. Sweden*, § 39).

395. The case of *Pönkä v. Estonia* concerned the use of a simplified procedure (reserved for small claims) and the court's refusal to hold a hearing, without providing reasons for its application of the written procedure (§§ 37-40). The case of *Mirovni Inštitut v. Slovenia* concerned a challenge against a decision to reject a bid in a tendering procedure. The domestic court had given no explanation for refusing to hold a hearing, thus preventing the Court from determining whether the domestic court had simply neglected to deal with the applicant institute's request for a hearing or whether it had decided to dismiss it and, if so, for what reasons (§ 44). In both cases the Court found that the refusal to hold a hearing had breached Article 6 § 1 (*Pönkä v. Estonia*, § 40; *Mirovni Inštitut v. Slovenia*, § 45).

As to the extent of the reasons to be provided, in *Cimperšek v. Slovenia* the Court emphasised the importance of justifying the refusal to hold a hearing on the basis of the factual circumstances of the case (§ 45).

396. In a case concerning hearings before the Court of Arbitration for Sport (CAS), the Court found that the matters relating to the question whether the sanction imposed on the applicant for doping had been justified, had required a hearing open to public scrutiny. It observed that the facts had been contested and that the penalties which the applicant had been liable to incur carried a significant degree of stigma and were likely to adversely affect her professional honour. It therefore concluded that there had been a violation of Article 6 § 1 on account of the lack of a public hearing before the CAS (*Mutu and Pechstein v. Switzerland*, §§ 182-183).

397. Whenever an oral hearing is to be held, the parties have the right to attend and make oral submissions, to choose another way of participating in the proceedings (for example by appointing a representative) or to ask for an adjournment. For the effective exercise of those rights, the parties must be informed of the date and place of the hearing sufficiently in advance to be able to make arrangements. The Court has stated that the national courts are required to check the validity of the notification prior to embarking on the merits of the case. The analysis set out in the domestic decisions must go beyond a mere reference to the dispatch of a judicial summons and must make the most of the available evidence in order to ascertain whether an absent party was in fact informed of the hearing sufficiently in advance. A domestic court's failure to ascertain whether an absent party received the summons in due time and, if not, whether the hearing should be adjourned, is in itself incompatible with genuine respect for the principle of a fair hearing and may lead the Court to find a violation of Article 6 § 1 (see *Gankin and Others v. Russia*, §§ 39 and 42, and the summary of the principles established in the case-law concerning notification of hearings, the provision of information to the parties and the question of waiving the right to a hearing, §§ 34-38).

398. *Presence of press and public*: The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret with no public scrutiny and thus constitutes one of the means whereby confidence in the courts can be maintained, contributing to the achievement of the aim of a fair trial (*Diennet v. France*, § 33; *Martinie v. France* [GC], § 39; *Gautrin and Others v. France*, § 42; *Hurter v. Switzerland*, § 26; *Lorenzetti v. Italy*, § 30). Article 6 § 1 does not, however, prohibit courts from deciding, in the light of the special features of the case, to derogate from this principle (*Martinie v. France* [GC], §§ 40-44). Holding proceedings, whether wholly or partly, *in camera* must be strictly required by the circumstances of the case (*Lorenzetti v. Italy*, § 30). The wording of Article 6 § 1 provides for several exceptions.

399. According to the wording of Article 6 § 1, "[t]he press and public may be excluded from all or part of the trial":

- "in the interests of morals, public order or national security in a democratic society" (*Zagorodnikov v. Russia*, § 26; *B. and P. v. the United Kingdom*, § 39);
- "where the interests of juveniles or the protection of the private life of the parties so require": the interests of juveniles or the protection of the private life of the parties are in issue, for example, in proceedings concerning the residence of minors following their parents' separation, or disputes between members of the same family (*ibid.*, § 38); however, in cases involving the transfer of a child to a public institution the reasons for excluding a case from public scrutiny must be subject to careful examination (*Moser v. Austria*, § 97). As for disciplinary proceedings against a doctor, while the need to protect professional confidentiality and the private lives of patients may justify holding proceedings in private, such an occurrence must be strictly required by the circumstances (*Diennet v. France*, § 34; and for an example of proceedings against a lawyer: *Hurter v. Switzerland*, §§ 30-32);
- "or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice": it is possible to limit the open and public

nature of proceedings in order to protect the safety and privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice (*B. and P. v. the United Kingdom*, § 38; *Osinger v. Austria*, § 45).

400. The Court has added that the case-law concerning the holding of a hearing as such, relating mainly to the right to address the court as enshrined in Article 6 § 1 (see above) is applicable by analogy to hearings that are open to the public. Thus, where a hearing takes place in accordance with domestic law, it must in principle be public. The obligation to hold a public hearing is not absolute since the circumstances that may justify dispensing with one will essentially depend on the nature of the issues to be determined by the domestic courts (*De Tommaso v. Italy* [GC], §§ 163-67). "Exceptional circumstances – including the highly technical nature of the matters to be determined - may justify the lack of a public hearing, provided that the specific subject matter does not require public scrutiny" (*Lorenzetti v. Italy*, § 32).

401. The mere presence of classified information in the case file does not automatically imply a need to close a trial to the public. Accordingly, before excluding the public from a particular set of proceedings, the courts must consider specifically whether such exclusion is necessary for the protection of a public interest, and must confine the measure to what is strictly necessary in order to attain the aim pursued (*Nikolova and Vandova v. Bulgaria*, §§ 74-77, concerning a hearing held *in camera* because of documents classified as State secrets).

402. Lastly, the lack of a hearing may or may not be sufficiently remedied at a later stage in the proceedings (*Le Compte, Van Leuven and De Meyere v. Belgium*, §§ 60-61; *Diennet v. France*, § 34; *Malhous v. the Czech Republic* [GC], § 62).

403. *Waiver of the right to a public hearing*/to appear at the hearing: neither the letter nor the spirit of Article 6 § 1 prevents an individual from waiving his right to a public hearing of his own free will, whether expressly or tacitly, but such a waiver must be made in an unequivocal manner and must not run counter to any important public interest (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 59; *Håkansson and Sturesson v. Sweden*, § 66; *Exel v. the Czech Republic*, § 46). The summons to appear must also have been received in good time (*Yakovlev v. Russia*, §§ 20-22; *Dilipak and Karakaya v. Turkey*, §§ 79-87).

404. Conditions governing a waiver of these rights: the person concerned must consent (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 59), of his own free will (*Albert and Le Compte v. Belgium*, § 35). The right may be waived expressly or tacitly (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 59). But it must be done in an unequivocal manner (*Albert and Le Compte v. Belgium*, § 35; *Håkansson and Sturesson v. Sweden*, § 67) and it must not run counter to any important public interest (*ibid.*, § 66).

405. Failure to request a public hearing does not necessarily mean the person concerned has waived the right to have one held; regard must be had to the relevant domestic law (*Exel v. the Czech Republic*, § 47; *Göç v. Turkey* [GC], § 48 *in fine*). Whether or not the applicant requested a public hearing is irrelevant if the applicable domestic law expressly excludes that possibility (*Eisenstecken v. Austria*, § 33).

406. Examples: waiver of the right to a public hearing in disciplinary proceedings: *Le Compte, Van Leuven and De Meyere v. Belgium*, § 59; *H. v. Belgium*, § 54. Unequivocal waiver of the right to a public hearing: *Schuler-Zgraggen v. Switzerland*, § 58; and contrast *Exel v. the Czech Republic*, §§ 48-53.

2. Delivery

407. The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret with no public scrutiny and constitutes a basic safeguard against arbitrariness (*Fazliyski v. Bulgaria*, § 69, concerning a case classified secret – violation). It is also a means of maintaining confidence in the courts (*Pretto and Others v. Italy*, § 21). Even in indisputable

national-security cases, such as those relating to terrorist activities, some States have opted to classify only those parts of the judicial decisions whose disclosure would compromise national security or the safety of others, thus illustrating that there exist techniques which could accommodate legitimate security concerns without fully negating fundamental procedural guarantees such as the publicity of judicial decisions (*Fazliyski v. Bulgaria*, § 69).

408. Article 6 § 1 states "Judgment shall be pronounced publicly", which would seem to suggest that reading out in open court is required. The Court has found, however, that "other means of rendering a judgment public" may also be compatible with Article 6 § 1 (*Moser v. Austria*, § 101).

409. In order to determine whether the forms of publicity provided for under domestic law are compatible with the requirement for judgments to be pronounced publicly within the meaning of Article 6 § 1, "in each case the form of publicity to be given to the judgment under the domestic law ... must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1" (*Pretto and Others v. Italy*, § 26; *Axen v. Germany*, § 31). The object pursued by Article 6 § 1 in this context – namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial – must have been achieved during the course of the proceedings, which must be taken as a whole (*ibid.*, § 32).

410. Where judgment is not pronounced publicly it must be ascertained whether sufficient publicity was achieved by other means.

411. In the following examples sufficient publicity was achieved by means other than public pronouncement:

- Higher courts which did not publicly pronounce decisions rejecting appeals on points of law: in order to determine whether the manner in which a Court of Cassation delivered its judgment met the requirements of Article 6 § 1, account must be taken of the entirety of the proceedings conducted in the domestic legal order and of the role of that court therein (*Pretto and Others v. Italy* § 27).

  In finding no violation of Article 6 § 1 the Court paid particular attention to the stage of the procedure and to the scrutiny effected by these courts – which was limited to points of law – and to the judgments they delivered, upholding the decisions of the lower courts without any change to the consequences for the applicants. In the light of these considerations it found that the requirement for public pronouncement had been complied with where, by being deposited in the court registry, the full text of the judgment had been made available to everyone (*ibid.*, §§ 27-28), or where a judgment upholding that of a lower court which itself had been pronounced publicly had been given without a hearing (*Axen v. Germany*, § 32).
- Trial court: the Court found no violation in a case where an appellate court publicly delivered a judgment summarising and upholding the decision of a first-instance court which had held a hearing but had not delivered its judgment in public (*Lamanna v. Austria*, §§ 33-34).
- Cases concerning the residence of children: while the domestic authorities are justified in conducting these proceedings in chambers in order to protect the privacy of the children and the parties and to avoid prejudicing the interests of justice, and to pronounce the judgment in public would, to a large extent, frustrate these aims, the requirement under Article 6 § 1 concerning the public pronouncement of judgments is satisfied where anyone who can establish an interest may consult or obtain a copy of the full text of the decisions, those of special interest being routinely published, thereby enabling the public to study the manner in which the courts generally approach such cases and the principles applied in deciding them (*B. and P. v. the United Kingdom*, § 47).

412. In the following cases, failure to pronounce the judgment publicly led to the finding of a violation:

- In a child residence case between a parent and a public institution: giving persons who established a legal interest in the case access to the file and publishing decisions of special interest (mostly of the appellate courts or the Supreme Court) did not suffice to comply with the requirements of Article 6 § 1 concerning publicity (*Moser v. Austria*, §§ 102-03).
- When courts of first and second instance examined in chambers a request for compensation for detention without their decisions being pronounced publicly or publicity being sufficiently ensured by other means (*Werner v. Austria*, §§ 56-60).

413. Where only the operative part of the judgment is read out in public: it must be ascertained whether the public had access by other means to the reasoned judgment which was not read out and, if so, the forms of publicity used must be examined in order to subject the judgment to public scrutiny (*Ryakib Biryukov v. Russia*, §§ 38-46 and case-law references cited in §§ 33-36). As the reasons which would have made it possible to understand why the applicant's claims had been rejected were inaccessible to the public, the object pursued by Article 6 § 1 was not achieved (*ibid.*, § 45).

C. Length of proceedings

Article 6 § 1 of the Convention

"1. In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] tribunal ..."

414. In requiring cases to be heard within a "reasonable time", the Convention underlines the importance of administering justice without delays which might jeopardise its effectiveness and credibility (*H. v. France*, § 58; *Katte Klitsche de la Grange v. Italy*, § 61). Article 6 § 1 obliges the Contracting States to organise their legal systems so as to enable the courts to comply with its various requirements.

415. The Court has repeatedly stressed the importance of administering justice without delays which might jeopardise its effectiveness and credibility (*Scordino v. Italy (no. 1)* [GC], § 224). Where the Court finds that in a particular State there is a practice incompatible with the Convention resulting from an accumulation of breaches of the "reasonable time" requirement, this constitutes an "aggravating circumstance of the violation of Article 6 § 1" (*Bottazzi v. Italy* [GC], § 22; *Scordino v. Italy (no. 1)* [GC], § 225).

1. Determination of the length of the proceedings

416. As regards the starting-point of the relevant period, time normally begins to run from the moment the action was instituted before the competent court (*Poiss v. Austria*, § 50; *Bock v. Germany*, § 35), unless an application to an administrative authority is a prerequisite for bringing court proceedings, in which case the period may include the mandatory preliminary administrative procedure (*König v. Germany*, § 98; *X v. France*, § 31; *Schouten and Meldrum v. the Netherlands*, § 62; *Kress v. France* [GC], § 90).

417. Thus, in some circumstances, the reasonable time may begin to run even before the issue of the writ commencing proceedings before the court to which the claimant submits the dispute (*Golder v. the United Kingdom*, § 32 *in fine*; *Erkner and Hofauer v. Austria*, § 64; *Vilho Eskelinen and Others v. Finland* [GC], § 65). However, this is exceptional and has been accepted where, for example, certain preliminary steps were a necessary preamble to the proceedings (*Blake v. the United Kingdom*, § 40). For the case of a civil-party claim, see *Nicolae Virgiliu Tănase v. Romania* [GC], §§ 207-208, and *Koziy v. Ukraine*, § 25).

418. Article 6 § 1 may also apply to proceedings which, although not wholly judicial in nature, are nonetheless closely linked to supervision by a judicial body. This was the case, for example, with a procedure for the partition of an estate which was conducted on a non-contentious basis before two notaries, but was ordered and approved by a court (*Siegel v. France*, §§ 33-38). The duration of the procedure before the notaries was therefore taken into account in calculating the reasonable time.

419. As to when the period ends, it normally covers the whole of the proceedings in question, including appeal proceedings (*König v. Germany*, § 98 in fine) and extends right up to the decision which disposes of the dispute (*Poiss v. Austria*, § 50). Hence, the reasonable-time requirement applies to all stages of the legal proceedings aimed at settling the dispute, not excluding stages subsequent to judgment on the merits (*Robins v. the United Kingdom*, §§ 28-29).

420. The execution of a judgment, given by any court, is therefore to be considered as an integral part of the proceedings for the purposes of calculating the relevant period (*Martins Moreira v. Portugal*, § 44; *Silva Pontes v. Portugal*, § 33; *Di Pede v. Italy*, § 24). Time does not stop running until the right asserted in the proceedings actually becomes effective (*Estima Jorge v. Portugal*, §§ 36-38).

421. Proceedings before a Constitutional Court are taken into consideration where, although the court has no jurisdiction to rule on the merits, its decision is capable of affecting the outcome of the dispute before the ordinary courts (*Deumeland v. Germany*, § 77; *Pammel v. Germany*, §§ 51-57; *Süßmann v. Germany*, § 39). Nevertheless, the obligation to hear cases within a reasonable time cannot be construed in the same way as for an ordinary court (*ibid.*, § 56; *Oršuš and Others v. Croatia* [GC], § 109).

422. Lastly, as regards the intervention of third parties in civil proceedings, the following distinction should be made: where the applicant has intervened in domestic proceedings only on his or her own behalf the period to be taken into consideration begins to run from that date, whereas if the applicant has declared his or her intention to continue the proceedings as heir he or she can complain of the entire length of the proceedings (*Scordino v. Italy (no. 1)* [GC], § 220).

2. Assessment of the reasonable-time requirement

a. Principles

423. Obligation on member States: they are required to organise their judicial systems in such a way that their courts are able to guarantee everyone's right to a final decision on disputes concerning civil rights and obligations within a reasonable time (*Comingersoll S.A. v. Portugal* [GC], § 24; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 142).

424. Assessment in the specific case: The reasonableness of the length of proceedings coming within the scope of Article 6 § 1 must be assessed in each case according to the particular circumstances (*Frydlender v. France* [GC], § 43), which may call for a global assessment (*Obermeier v. Austria*, § 72; *Comingersoll S.A. v. Portugal* [GC], § 23; *Nicolae Virgiliu Tănase v. Romania* [GC], § 214).

425. The whole of the proceedings must be taken into account (*König v. Germany*, § 98 *in fine*).

- While different delays may not in themselves give rise to any issue, they may, when viewed together and cumulatively, result in a reasonable time being exceeded (*Deumeland v. Germany*, § 90). Thus, although the length of each stage of the proceedings (approximately one and a half years) might not be considered unreasonable as such, the overall duration may nonetheless be excessive (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], §§ 210-11).
- A delay during a particular phase of the proceedings may be permissible provided that the total duration of the proceedings is not excessive (*Pretto and Others v. Italy*, § 37).

- The national authorities may have remained active throughout the proceedings, with delays being caused by procedural defects (*Nicolae Virgiliu Tănase v. Romania* [GC], § 213).
- "Long periods during which the proceedings ... stagnate" without any explanations being forthcoming are not acceptable (*Beaumartin v. France*, § 33).

426. The applicability of Article 6 § 1 to preliminary proceedings or interim measures, including injunctions, will depend on whether certain conditions are fulfilled (*Micallef v. Malta* [GC], §§ 83-86).[18]

427. Proceedings for a preliminary ruling from the Court of Justice of the European Union (CJEU) are not taken into consideration in the assessment of the length of time attributable to the domestic authorities (*Pafitis and Others v. Greece*, § 95; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 208).

428. If the State has introduced a compensatory remedy for breaches of the reasonable-time principle and the remedy, examined as a whole, has not caused the applicant to lose "victim" status for the purposes of Article 34 of the Convention, this constitutes an "aggravating circumstance" in the context of a violation of Article 6 § 1 for exceeding a reasonable time (*Scordino v. Italy (no. 1)* [GC], § 225).

b. Criteria

429. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and in accordance with the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (*Comingersoll S.A. v. Portugal* [GC]; *Frydlender v. France* [GC], § 43; *Sürmeli v. Germany* [GC], § 128; *Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 143; *Nicolae Virgiliu Tănase v. Romania* [GC], § 209).

i. Complexity of the case

430. The complexity of a case may relate both to the facts and to the law (*Katte Klitsche de la Grange v. Italy*, § 55; *Papachelas v. Greece* [GC], § 39). It may relate, for instance, to the involvement of several parties in the case (*H. v. the United Kingdom*, § 72) or to the various items of evidence that have to be obtained (*Humen v. Poland* [GC], § 63). A case may be legally complex because of the scarcity of precedents at national level, or the need to seek a ruling from the CJEU on questions relating to the interpretation of European law (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], § 212). In *Nicolae Virgiliu Tănase v. Romania* [GC], proceedings involving a civil-party claim were of "considerable factual complexity", which had increased because of the many expert reports required (§ 210).

431. The complexity of the domestic proceedings may explain their length (*Tierce v. San Marino*, § 31). However, while acknowledging the complexity of insolvency proceedings, the Court has found that a duration of approximately twenty-five years and six months did not satisfy the "reasonable time" requirement (*Cipolletta v. Italy*, § 44).

432. Even if the case in itself is not a particularly complex one, the lack of clarity and foreseeability in the domestic law may also render its examination difficult and contribute decisively to extending the length of the proceedings (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 150).

ii. The applicant's conduct

433. Article 6 § 1 does not require applicants actively to cooperate with the judicial authorities, nor can they be blamed for making full use of the remedies available to them under domestic law (*Erkner and Hofauer v. Austria*, § 68) or for consequences linked to their medical condition (*Nicolae Virgiliu*

18. See section "Scope".

Tănase v. Romania [GC], § 211). Nevertheless, the national authorities cannot be held accountable for any resulting increase in the length of the proceedings (*ibid.*).

434. The person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings (*Unión Alimentaria Sanders S.A. v. Spain*, § 35).

435. Applicants' behaviour constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account for the purpose of determining whether or not the reasonable time referred to in Article 6 § 1 has been exceeded (*Poiss v. Austria*, § 57; *Wiesinger v. Austria*, § 57; *Humen v. Poland* [GC], § 66). An applicant's conduct cannot by itself be used to justify periods of inactivity.

436. Some examples concerning the applicant's conduct:

- a lack of alacrity by the parties in filing their submissions may contribute decisively to the slowing-down of the proceedings (*Vernillo v. France*, § 34);
- frequent/repeated changes of counsel (*König v. Germany*, § 103);
- requests or omissions which have an impact on the conduct of the proceedings (*Acquaviva v. France*, § 61), or lack of diligence in carrying out procedural steps (*Keaney v. Ireland*, § 95);
- an attempt to secure a friendly settlement (*Pizzetti v. Italy*, § 18; *Laino v. Italy* [GC], § 22);
- proceedings brought erroneously before a court lacking jurisdiction (*Beaumartin v. France*, § 33);
- litigious behaviour as evidenced by numerous applications and other claims (*Pereira da Silva v. Portugal*, §§ 76-79).

437. Although the domestic authorities cannot be held responsible for the conduct of a defendant, the delaying tactics used by one of the parties do not absolve the authorities from their duty to ensure that the proceedings are conducted within a reasonable time (*Mincheva v. Bulgaria*, § 68).

iii. Conduct of the competent authorities

438. The State is responsible for all its authorities: not just the judicial organs, but all public institutions (*Martins Moreira v. Portugal*, § 60). Only delays attributable to the State may justify a finding of failure to comply with the "reasonable time" requirement (*Buchholz v. Germany*, § 49; *Papageorgiou v. Greece*, § 40; *Humen v. Poland* [GC], § 66). The Court examines the proceedings as a whole, meaning that although the national authorities may be deemed responsible for certain procedural defects which caused delays in the proceedings, they may still have complied with their duty to examine the case expeditiously under Article 6 (*Nicolae Virgiliu Tănase v. Romania* [GC], § 211).

439. Even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial required by Article 6 § 1 (*Pafitis and Others v. Greece*, § 93; *Tierce v. San Marino*, § 31; *Sürmeli v. Germany* [GC], § 129).

440. The same applies where the cooperation of an expert is necessary during the proceedings: responsibility for the preparation of the case and the speedy conduct of the trial lies with the judge (*Capuano v. Italy*, §§ 30-31; *Versini v. France*, § 29; *Sürmeli v. Germany* [GC], § 129).

441. Although the obligation to give a decision within a "reasonable time" also applies to a Constitutional Court, it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms (compare

Süßmann v. Germany, §§ 56-58; *Voggenreiter v. Germany*, §§ 51-52; *Oršuš and Others v. Croatia* [GC], § 109). Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice (*Von Maltzan and Others v. Germany* (dec.) [GC], § 132). Nevertheless, a chronic overload cannot justify excessive length of proceedings (*Probstmeier v. Germany*, § 64).

442. Since it is for the member States to organise their legal systems in such a way as to guarantee the right to obtain a judicial decision within a reasonable time, an excessive workload cannot be taken into consideration (*Vocaturo v. Italy*, § 17; *Cappello v. Italy*, § 17). Nonetheless, a temporary backlog of business does not involve liability on the part of the State provided the latter has taken reasonably prompt remedial action to deal with an exceptional situation of this kind (*Buchholz v. Germany*, § 51). Methods which may be considered, as a provisional expedient, include choosing to deal with cases in a particular order, based not just on the date when they were brought but on their degree of urgency and importance and, in particular, on what is at stake for the persons concerned. However, if a state of affairs of this kind is prolonged and becomes a matter of structural organisation, such methods are no longer sufficient and the State must ensure the adoption of effective measures (*Zimmermann and Steiner v. Switzerland*, § 29; *Guincho v. Portugal*, § 40). The fact that such backlog situations have become commonplace does not justify the excessive length of proceedings (*Unión Alimentaria Sanders S.A. v. Spain*, § 40).

443. Furthermore, the introduction of a reform designed to speed up the examination of cases cannot justify delays since States are under a duty to organise the entry into force and implementation of such measures in a way that avoids prolonging the examination of pending cases (*Fisanotti v. Italy*, § 22). In that connection, the adequacy or otherwise of the domestic remedies introduced by a member State in order to prevent or provide redress for the problem of excessively long proceedings must be assessed in the light of the principles established by the Court (*Scordino v. Italy (no. 1)* [GC], §§ 178 et seq. and 223).

444. The State was also held to be responsible for the failure to comply with the reasonable-time requirement in a case where there was an excessive amount of judicial activity focusing on the applicant's mental state. The domestic courts continued to have doubts in that regard despite the existence of five reports attesting the applicant's soundness of mind and the dismissal of two guardianship applications; moreover, the litigation lasted for over nine years (*Bock v. Germany*, § 47).

445. A strike by members of the Bar cannot by itself render a Contracting State liable with respect to the "reasonable time" requirement; however, the efforts made by the State to reduce any resultant delay are to be taken into account for the purposes of determining whether the requirement has been complied with (*Papageorgiou v. Greece*, § 47).

446. Where repeated changes of judge slow down the proceedings because each of the judges has to begin by acquainting himself with the case, this cannot absolve the State from its obligations regarding the reasonable-time requirement, since it is the State's task to ensure that the administration of justice is properly organised (*Lechner and Hess v. Austria*, § 58).

447. While it is not the Court's function to analyse the manner in which the national courts interpreted and applied the domestic law, it nonetheless considers that judgments quashing previous findings and remitting the case are usually due to errors committed by the lower courts and that the repetition of such judgments may point to a shortcoming in the justice system (*Lupeni Greek Catholic Parish and Others v. Romania* [GC], § 147).

iv. What is at stake in the dispute

448. Examples of categories of cases which by their nature call for particular expedition:

- Particular diligence is required in cases concerning civil status and capacity (*Bock v. Germany*, § 49; *Laino v. Italy* [GC], § 18; *Mikulić v. Croatia*, § 44).

- Child custody cases must be dealt with speedily (*Hokkanen v. Finland*, § 72; *Niederböster v. Germany*, § 39), all the more so where the passage of time may have irreversible consequences for the parent-child relationship (*Tsikakis v. Germany*, §§ 64 and 68) – likewise, cases concerning parental responsibility and contact rights call for particular expedition (*Paulsen-Medalen and Svensson v. Sweden*, § 39; *Laino v. Italy* [GC], § 22).

  Employment disputes by their nature call for expeditious decision (*Vocaturo v. Italy*, § 17; *Ruotolo v. Italy*, § 17; and *Frydlender v. France* [GC], § 45) – whether the issue at stake is access to a liberal profession (*Thlimmenos v. Greece* [GC], §§ 60 and 62), the applicant's whole professional livelihood (*König v. Germany*, § 111), the continuation of the applicant's occupation (*Garcia v. France*, § 14), an appeal against dismissal (*Buchholz v. Germany*, § 52; *Frydlender v. France* [GC], § 45), the applicant's suspension (*Obermeier v. Austria*, § 72), transfer (*Sartory v. France*, § 34) or reinstatement (*Ruotolo v. Italy*, § 117), or where an amount claimed is of vital significance to the applicant (*Doustaly v. France*, § 48). This category includes pensions disputes (*Borgese v. Italy*, § 18).
- Exceptional diligence is required from the authorities in the case of an applicant who suffers from an "incurable disease" and has "reduced life expectancy" (*X v. France*, § 47; *Pailot v. France*, § 68; *A. and Others v. Denmark*, §§ 78-81).

449. Other precedents:

- Special diligence was required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he had been subjected to violence by police officers (*Caloc v. France*, § 120).
- In a case where the applicant's disability pension made up the bulk of his resources, the proceedings by which he sought to have that pension increased in view of the deterioration of his health were of particular significance for him, justifying special diligence on the part of the domestic authorities (*Mocié v. France*, § 22).
- In a case concerning an action for damages brought by an applicant who had suffered physical harm and was aged 65 when she applied to join the proceedings as a civil party, the issue at stake called for particular diligence from the domestic authorities (*Codarcea v. Romania*, § 89).
- The issue at stake for the applicant may also be the right to education (*Oršuš and Others v. Croatia* [GC], § 109).

450. On the contrary, special diligence is not required, for example, for a claim for compensation relating to damage sustained in a road accident (*Nicolae Virgiliu Tănase v. Romania* [GC], § 213).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (*http://hudoc.echr.coe.int*) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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A. v. the United Kingdom, no. 35373/97, ECHR 2002-X
A.K. v. Liechtenstein, no. 38191/12, 9 July 2015
A. and Others v. Denmark, 8 February 1996, Reports of Judgments and Decisions 1996-I
Aćimović v. Croatia, no. 61237/00, ECHR 2003-XI
Acquaviva v. France, 21 November 1995, Series A no. 333-A
Adorisio and others v. the Netherlands (dec.), no. 47315/13 and 2 others, 17 march 2015
Aerts v. Belgium, 30 July 1998, Reports of Judgments and Decisions 1998-V
Agrokompleks v. Ukraine, no. 23465/03, 6 October 2011
Air Canada v. the United Kingdom, 5 May 1995, Series A no. 316-A
Airey v. Ireland, 9 October 1979, Series A no. 32
Aït-Mouhoub v. France, 28 October 1998, Reports of Judgments and Decisions 1998-VIII
Akashev v. Russia, no. 30616/05, 12 June 2008
Aksoy v. Turkey, 18 December 1996, Reports of Judgments and Decisions 1996-VI
Alaverdyan v. Armenia (dec.), no. 4523/04, 24 August 2010
Al-Adsani v. the United Kingdom [GC], no. 35763/97, ECHR 2001-XI
Al-Dulimi and Montana Management Inc. v. Switzerland [GC], no. 5809/08, ECHR 2016
Alatulkkila and Others v. Finland, no. 33538/96, 28 July 2005
Albert and Le Compte v. Belgium, 10 February 1983, Series A no. 58
Albu and Others v. Romania, nos. 34796/09 and 63 others, 10 May 2012
Aleksandar Sabev v. Bulgaria, no. 43503/08, 19 July 2018

Alexandre v. Portugal, no. 33197/09, 20 November 2012
Ali Rıza and Others v. Turkey, nos. 30226/10 and 4 others, 28 January 2020
Allan Jacobsson v. Sweden (no. 2), 19 February 1998, Reports of Judgments and Decisions 1998-I
Alminovich v. Russia (dec.), no. 24192/05, 20 October 2019
Altay v. Turkey (no. 2), no. 11236/09, 9 April 2019
Amat-G Ltd and Mebaghishvili v. Georgia, no. 2507/03, ECHR 2005-VIII
Anagnostopoulos and Others v. Greece, no. 39374/98, ECHR 2000-XI
Anđelković v. Serbia, no. 1401/08, 9 April 2013
Andersson v. Sweden, no. 17202/04, 7 December 2010
Andrejeva v. Latvia [GC], no. 55707/00, ECHR 2009
Andret and Others v. France (dec.), no. 1956/02, 25 May 2004
Andronicou and Constantinou v. Cyprus, 9 October 1997, Reports of Judgments and Decisions 1997-VI
Andronikashvili v. Georgia (dec.), no. 9297/08, 22 June 2010
Ankarcrona v. Sweden (dec.), no. 35178/97, ECHR 2000-VI
Ankerl v. Switzerland, 23 October 1996, Reports of Judgments and Decisions 1996-V
Annoni di Gussola and Others v. France, nos. 31819/96 and 33293/96, ECHR 2000-XI
Apay v. Turkey, no. 3964/05, 11 December 2007
APEH Üldözötteinek Szövetsége and Others v. Hungary, no. 32367/96, ECHR 2000-X
Apostol v. Georgia, no. 40765/02, ECHR 2006-XIV
Argyrou and Others v. Greece, no. 10468/04, 15 January 2009
Arlewin v. Sweden, no. 22302/10, 1 March 2016
Arnoldi v. Italy, no. 35637/04, 7 December 2017
Arvanitakis v. France (dec.), no. 46275/99, ECHR 2000-XII
Arvanitakis and Others v. Greece (dec.), no. 21898/10, 26 August 2014
Ashingdane v. the United Kingdom, 28 May 1985, Series A no. 93
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Astikos Kai Paratheristikos Oikodomikos Synetairismos Axiomatikon and Karagiorgos v. Greece (dec.), nos. 29382/16 and 489/17, 9 May 2017
Astikos Oikodomikos Synetairismos Nea Konstantinoupolis v. Greece (dec.), no. 37806/02, 20 January 2005
Atanasova v. Bulgaria, no. 72001/01, 2 October 2008
Atanasovski v. the former Yugoslav Republic of Macedonia, no. 36815/03, 14 January 2010
Ateş Mimarlik Mühendislik A.Ş. v. Turkey, no. 33275/05, 25 September 2012
Athanassoglou and Others v. Switzerland [GC], no. 27644/95, ECHR 2000-IV
Augusto v. France, no. 71665/01, 11 January 2007
Aviakompaniya A.T.I., ZAT v. Ukraine, no. 1006/07, 5 October 2017
Avotiņš v. Latvia [GC], no. 17502/07, 23 May 2016
Axen v. Germany, 8 December 1983, Series A no. 72
Azienda Agricola Silverfunghi S.a.s. and others v. Italy, nos. 48357/07 and 3 others, 24 June 2014
Azzopardi and Others v. Malta (dec.), nos. 16467/17 and 24115/17, 12 March 2019

—B—

B. and P. v. the United Kingdom, nos. 36337/97 and 35974/97, ECHR 2001-III
Baka v. Hungary [GC], no. 20261/12, ECHR 2016
Bakan v. Turkey, no. 50939/99, 12 June 2007
Balmer-Schafroth and Others v. Switzerland, 26 August 1997, Reports of Judgments and Decisions 1997-IV
Barać and Others v. Montenegro, no. 47974/06, 13 December 2011
Barik Edidi v. Spain (dec.), no. 21780/13, 26 April 2016

Baydar v. the Netherlands, no. 55385/14, 24 April 2018
Bayer v. Germany, no. 8453/04, 16 July 2009
Beaumartin v. France, 24 November 1994, Series A no. 296-B
Beer v. Austria, no. 30428/96, 6 February 2001
Beian v. Romania (no. 1), no. 30658/05, ECHR 2007-V (extracts)
Běleš and Others v. the Czech Republic, no. 47273/99, ECHR 2002-IX
Bellet v. France, 4 December 1995, Series A no. 333-B
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Beneficio Cappella Paolini v. San Marino, no. 40786/98, ECHR 2004-VIII (extracts)
Benthem v. the Netherlands, 23 October 1985, Series A no. 97
Berger v. France, no. 48221/99, ECHR 2002-X (extracts)
Bertuzzi v. France, no. 36378/97, ECHR 2003-III
Biagioli v. San Marino (dec.), no. 8162/13, 8 july 2014
Blake v. the United Kingdom, no. 68890/01, 26 September 2006
Blücher v. the Czech Republic, no. 58580/00, 11 January 2005
Bochan v. Ukraine, no. 7577/02, 3 May 2007
Bochan v. Ukraine (no. 2) [GC], no. 22251/08, ECHR 2015
Bock v. Germany, 29 March 1989, Series A no. 150
Borgese v. Italy, 26 February 1992, Series A no. 228-B
Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland [GC], no. 45036/98, CEDH 2005-VI
Bottazzi v. Italy [GC], no. 34884/97, ECHR 1999-V
Bouilloc v. France (dec.), no. 34489/03, 28 November 2006
Boulois v. Luxembourg [GC], no. 37575/04, ECHR 2012
British-American Tobacco Company Ltd v. the Netherlands, 20 November 1995, Series A no. 331
Brualla Gómez de la Torre v. Spain, 19 December 1997, Reports of Judgments and Decisions 1997-VIII
Brudnicka and Others v. Poland, no. 54723/00, ECHR 2005-II
Brumărescu v. Romania [GC], no. 28342/95, ECHR 1999-VII
Bryan v. the United Kingdom, 22 November 1995, Series A no. 335-A
Buchholz v. Germany, 6 May 1981, Series A no. 42
Bufferne v. France (dec.), no. 54367/00, ECHR 2002-III (extracts)
Buj v. Croatia, no. 24661/02, 1 June 2006
Burdov v. Russia, no. 59498/00, ECHR 2002-III
Burdov v. Russia (no. 2), no. 33509/04, ECHR 2009
Burg and Others v. France (dec.), no. 34763/02, ECHR 2003-II
Bursa Barosu Başkanlığı and Others v. Turkey, no. 25680/05, 19 June 2018
Buscarini v. San Marino (dec.), no. 31657/96, 4 May 2000
Buscemi v. Italy, no. 29569/95, ECHR 1999-VI
Buzescu v. Romania, no. 61302/00, 24 May 2005

—C—

C.G.I.L. and Cofferati v. Italy (no. 2), no. 2/08, 6 April 2010
Caloc v. France, no. 33951/96, ECHR 2000-IX
Canela Santiago v. Spain (dec.), no. 60350/00, 4 October 2001
Cañete de Goñi v. Spain, no. 55782/00, ECHR 2002-VIII
Cappello v. Italy, 27 February 1992, Series A no. 230-F
Capuano v. Italy, 25 June 1987, Series A no. 119
Carmel Saliba v. Malta, no. 24221/13, 29 november 2016
Cătăniciu v. Romania (dec.), no. 22717/17, 6 December 2018
Cavajda v. the Czech Republic (dec.), no. 17696/07, 29 March 2011

Central Mediterranean Development Corporation Limited v. Malta (no. 2), no. 18544/08, 22 November 2011
Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC], no. 38433/09, ECHR 2012
Černius and Rinkevičius v. Lithuania, nos. 73579/17 and 14620/18, 18 February 2020
Chapman v. Belgium (dec.), no. 39619/06, 5 March 2013
Chaudet v. France, no. 49037/06, 29 October 2009
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Ciprová v. the Czech Republic (dec.), no. 33273/03, 22 March 2005
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Clarke v. the United Kingdom (dec.), no. 23695/02, ECHR 2005-X (extracts)
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Clinique des Acacias and Others v. France, nos. 65399/01 and 3 others, 13 October 2005
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Codarcea v. Romania, no. 31675/04, 2 June 2009
Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox and Mox v. France (dec.), no. 75218/01, 28 March 2006
Colloredo Mannsfeld v. the Czech Republic, nos. 15275/11 and 76058/12, 15 December 2016
Comingersoll S.A. v. Portugal [GC], no. 35382/97, ECHR 2000-IV
Cooper v. the United Kingdom [GC], no. 48843/99, ECHR 2003-XII
Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. Netherlands (dec.), no. 13645/05, ECHR 2009
Cordova v. Italy (no. 1), no. 40877/98, ECHR 2003-I
Cordova v. Italy (no. 2), no. 45649/99, ECHR 2003-I (extracts)
Cosmos Maritime Trading and Shipping Agency v. Ukraine, no. 53427/09, 27 June 2019
Crompton v. the United Kingdom, no. 42509/05, 27 October 2009
Cubanit v. Romania (dec.), no. 31510/02, 4 January 2007
Cudak v. Lithuania [GC], no. 15869/02, ECHR 2010
Cyprus v. Turkey [GC], no. 25781/94, ECHR 2001-IV

—D—

Dağtekin and Others v. Turkey, no. 70516/01, 13 December 2007
Dalea v. France (dec.), no. 964/07, 2 February 2010
De Bruin v. the Netherlands (dec.), no. 9765/09, 17 September 2013
De Geouffre de la Pradelle v. France, 16 December 1992, Series A no. 253-B
De Haan v. the Netherlands, 26 August 1997, Reports of Judgments and Decisions 1997-IV
De Haes and Gijsels v. Belgium, 24 February 1997, Reports of Judgments and Decisions 1997-I
De Moor v. Belgium, 23 June 1994, Series A no. 292-A
De Tommaso v. Italy, no. 43395/09, ECHR 2017 (extracts)
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Deweer v. Belgium, 27 February 1980, Series A no. 35
Dhahbi v. Italy, no. 17120/09, 8 April 2014
Di Pede v. Italy, 26 September 1996, Reports of Judgments and Decisions 1996-IV
Diennet v. France, 26 September 1995, Series A no. 325-A
Dilipak and Karakaya v. Turkey, nos. 7942/05 and 24838/05, 4 March 2014
Dimopulos v. Turkey, no. 37766/05, 2 April 2019
DMD Group, A.S., v. Slovakia, no. 19334/03, 5 October 2010
Dolca and Others v. Romania (dec.), nos. 59282/11 and 2 others, 4 September 2012

Dombo Beheer B.V. v. the Netherlands, 27 October 1993, Series A no. 274
Donadze v. Georgia, no. 74644/01, 7 March 2006
Döry v. Sweden, no. 28394/95, 12 November 2002
Dos Santos Calado and Others v. Portugal, nos. 55997/14 and 3 others, 31 March 2020
Dotta v. Italy (dec.), no. 38399/97, 7 September 1999
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Ducret v. France, no. 40191/02, 12 June 2007
Dulaurans v. France, no. 34553/97, 21 March 2000
Dzhidzheva-Trendafilova v. Bulgaria (dec.), no. 12628/09, 9 October 2012

—E—

EEG-Slachthuis Verbist Izegem v. Belgium (dec.), no. 60559/00, ECHR 2005-XII
Eiffage S.A. and Others v. Switzerland (dec.), no. 1742/05, 15 September 2009
Eisenstecken v. Austria, no. 29477/95, ECHR 2000-X
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Elsholz v. Germany [GC], no. 25735/94, ECHR 2000-VIII
Ellès and Others v. Switzerland, no. 12573/06, 16 December 2010
Emesa Sugar N.V. v. the Netherlands (dec.), no. 62023/00, 13 January 2005
Emine Araç v. Turkey, no. 9907/02, ECHR 2008
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Erkner and Hofauer v. Austria, 23 April 1987, Series A no. 117
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Essaadi v. France, no. 49384/99, 26 February 2002
Estima Jorge v. Portugal, 21 April 1998, Reports of Judgments and Decisions 1998-II
Eternit v. France (dec.), no. 20041/10, 27 March 2012
Exel v. the Czech Republic, no. 48962/99, 5 July 2005

—F—

Fabris v. France [GC], no. 16574/08, ECHR 2013 (extracts)
Farange S.A. v. France (dec.), no. 77575/01, 14 September 2004
Fayed v. the United Kingdom, 21 September 1994, Series A no. 294-B
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Fredin v. Sweden (no. 2), 23 February 1994, Series A no. 283-A
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Frezadou v. Greece,no. 2683/12, 8 November 2018
Frydlender v. France [GC], no. 30979/96, ECHR 2000-VII
Fuklev v. Ukraine, no. 71186/01, 7 June 2005

—G—

G.L. and S.L. v. France (dec.), no. 58811/00, ECHR 2003-III (extracts)
Gajtani v. Switzerland, no. 43730/07, 9 September 2014
Ganci v. Italy, no. 41576/98, ECHR 2003-XI
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García Manibardo v. Spain, no. 38695/97, ECHR 2000-II
García Ruiz v. Spain [GC], no. 30544/96, ECHR 1999-I
Gaspari v. Slovenia, no. 21055/03, 21 July 2009
Gautrin and Others v. France, 20 May 1998, Reports of Judgments and Decisions 1998-III
Georgel and Georgeta Stoicescu v. Romania, no. 9718/03, 26 July 2011
Georgiadis v. Greece, 29 May 1997, Reports of Judgments and Decisions 1997-III
Geraguyn Khorhurd Patgamavorakan Akumb v. Armenia (dec.), no. 11721/04, 14 April 2009
Gerasimov and Others v. Russia, nos. 29920/05 and 10 others, 1 July 2014
Gnahoré v. France, no. 40031/98, ECHR 2000-IX
Göç v. Turkey [GC], no. 36590/97, ECHR-2002-V
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Gorou v. Greece (no. 2) [GC], no. 12686/03, 20 March 2009
Gorraiz Lizarraga and Others v. Spain, no. 62543/00, ECHR 2004-III
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Gülmez v. Turkey, no. 16330/02, 20 May 2008
Guigue and SGEN-CFDT v. France (dec.), no. 59821/00, ECHR 2004-I
Guincho v. Portugal, 10 July 1984, Series A no. 81
Gurov v. Moldova, no. 36455/02, 11 July 2006
Gutfreund v. France, no. 45681/99, ECHR 2003-VII

—H—

H. v. Belgium, 30 November 1987, Series A no. 127-B
H. v. France, 24 October 1989, Series A no. 162-A
H. v. the United Kingdom, 8 July 1987, Series A no. 120
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Harisch v. Germany, no. 50053/16, 11 April 2019
Hasan Tunç and Others v. Turkey, no. 19074/05, 31 January 2017
Hayati Çelebi and Others v. Turkey, no. 582/05, 9 February 2016
Helle v. Finland, 19 December 1997, Reports of Judgments and Decisions 1997-VIII
Helmers v. Sweden, 29 October 1991, Series A no 212-A
Hentrich v. France, 22 September 1994, Series A no. 296-A
Herma v. Germany (dec.), no. 54193/07, 8 December 2009
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Hiro Balani v. Spain, 9 December 1994, Series A no. 303-B
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Hokkanen v. Finland, 23 September 1994, Series A no. 299-A

Holding and Barnes PLC v. the United Kingdom (dec.), no. 2352/02, ECHR 2002-IV
Holub v. the Czech Republic, no. 24880/05, 14 December 2010
Hôpital local Saint-Pierre d'Oléron and Others v. France, nos. 18096/12 and 20 others, 8 November 2018
Hornsby v. Greece, 19 March 1997, Reports of Judgments and Decisions 1997-II
Hotter v. Austria (dec.), no. 18206/06, 7 October 2010
Hudáková and Others v. Slovakia, no. 23083/05, 27 April 2010
Humen v. Poland [GC], no. 26614/95, 15 October 1999
Hurter v. Switzerland, no. 53146/99, 15 December 2005

—I—

I.T.C. Ltd v. Malta (dec.), no. 2629/06, 11 December 2007
Igranov and Others v. Russia, no. 63246/10, 9 January 2018
Ilnseher v. Germany [GC], nos. 10211/12 and 27505/14, 4 December 2018
Immeubles Groupe Kosser v. France, no. 38748/97, 21 March 2002
Immobiliare Saffi v. Italy [GC], no. 22774/93, ECHR 1999-V
Indra v. Slovakia, no. 46845/99, 1 February 2005
Işyar v. Bulgaria, no. 391/03, 20 November 2008
Ivan Atanasov v. Bulgaria, no. 12853/03, 2 December 2010

—J—

Jahnke and Lenoble v. France (dec.), no. 40490/98, ECHR 2000-IX
James and Others v. the United Kingdom, 21 February 1986, Series A no. 98
John v. Germany (dec.), no. 15073/03, 13 February 2007
Jurisic and Collegium Mehrerau v. Austria, no. 62539/00, 27 July 2006

—K—

K.D.B. v. the Netherlands, 27 March 1998, Reports of Judgments and Decisions 1998-II
K.S. v. Finland, no. 29346/95, 31 May 2001
Kakamoukas and Others v. Greece [GC], no. 38311/02, 15 February 2008
Kalogeropoulou and Others v. Greece and Germany (dec.), no. 59021/00, ECHR 2002-X
Kamenos v. Cyprus, no. 147/07, 31 October 2017
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Károly Nagy v. Hungary [GC], no. 56665/09, ECHR 2017
Katte Klitsche de la Grange v. Italy, 27 October 1994, Series A no. 293-B
Kemmache v. France (no. 3), 24 November 1994, Series A no. 296-C
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Kingsley v. the United Kingdom [GC], no. 35605/97, ECHR 2002-IV
Kleyn and Others v. the Netherlands [GC], nos. 39343/98 and 3 others, ECHR 2003-VI
Kök v. Turkey, no. 1855/02, 19 October 2006
König v. Germany, 28 June 1978, Series A no. 27
Konkurrenten.no AS v. Norway (dec.), no. 47341/15, 5 November 2019
Koottummel v. Austria, no. 49616/06, 10 December 2009
Kožemiakina v. Lithuania, no. 231/15, 2 October 2018
Kraska v. Switzerland, 19 April 1993, Series A no. 254-B
Krčmář and Others v. the Czech Republic, no. 35376/97, 3 March 2000

Kress v. France [GC], no. 39594/98, ECHR 2001-VI
Kreuz v. Poland, no. 28249/95, ECHR 2001-VI
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Kukkonen v. Finland (no. 2), no. 47628/06, 13 January 2009
Kunert v. Poland, no. 8981/14, 4 April 2019
Kurşun v. Turkey, no. 22677/10, 30 October 2018
Kushoglu v. Bulgaria, no. 48191/99, 10 May 2007
Kuzhelev and Others v. Russia, nos. 64098/09 and 6 others, 15 October 2019
Kutić v. Croatia, no. 48778/99, ECHR 2002-II
Kyprianou v. Cyprus [GC], no. 73797/01, ECHR 2005-XIII
Kyrtatos v. Greece, no. 41666/98, ECHR 2003-VI (extracts)

—L—

L. v. the United Kingdom (dec.), no. 34222/96, ECHR 1999-VI
L'Érablière A.S.B.L. v. Belgium, no. 49230/07, ECHR 2009
Lady S.R.L. v. Republic of Moldova, no. 39804/06, 23 October 2018
Laidin v. France (no. 2), no. 39282/98, 7 January 2003
Laino v. Italy [GC], no. 33158/96, ECHR 1999-I
Lamanna v. Austria, no. 28923/95, 10 July 2001
Langborger v. Sweden, 22 June 1989, Series A no. 155
Laskowska v. Poland, no. 77765/01, 13 March 2007
Lavents v. Latvia, no. 58442/00, 28 November 2002
Le Calvez v. France, 29 July 1998, Reports of Judgments and Decisions 1998-V
Le Compte, Van Leuven and De Meyere v. Belgium, 23 June 1981, Series A no. 43
Lechner and Hess v. Austria, 23 April 1987, Series A no. 118
Letinčić v. Croatia, no. 7183/11, 3 May 2016
Levages Prestations Services v. France, 23 October 1996, Reports of Judgments and Decisions 1996-V
Libert v. Belgium (dec.), no. 44734/98, 8 July 2004
Liga Portuguesa de Futebol Profissional v. Portugal (déc.), no. 49639/09, 3 April 2012
Lithgow and Others v. the United Kingdom, 8 July 1986, Series A no. 102
Lobo Machado v. Portugal, 20 February 1996, Reports of Judgments and Decisions 1996-I
Loiseau v. France (dec.), no. 46809/99, ECHR 2003-XII
López Ribalda and Others v. Spain, [GC], nos. 1874/13 and 8567/13, 17 October 2019
Lorenzetti v. Italy, no. 32075/09, 10 April 2012
Luka v. Romania, no. 34197/02, 21 July 2009
Lunari v. Italy, no. 21463/93, 11 January 2001
Lundevall v. Sweden, no. 38629/97, 12 November 2002
Luordo v. Italy, no. 32190/96, ECHR 2003-IX
Lupaş and Others v. Romania, nos. 1434/02 and 2 others, ECHR 2006-XV (extracts)
Lupeni Greek Catholic Parish and Others v. Romania [GC], no. 76943/11, ECHR 2016 (extracts)

—M—

Maaouia v. France [GC], no. 39652/98, ECHR 2000-X
Mackay and BBC Scotland v. the United Kingdom, no. 10734/05, 7 December 2010
Magomedov and Others v. Russia, nos. 33636/09 and 9 others, 28 March 2017
Majorana v. Italy (dec.), no. 75117/01, 26 May 2005
Malhous v. the Czech Republic [GC], no. 33071/96, 12 July 2001
Mamatkulov and Askarov v. Turkey [GC], nos. 46827/99 and 46951/99, ECHR 2005-I

Manoilescu and Dobrescu v. Romania and Russia (dec.), no. 60861/00, ECHR 2005 VI
Mantovanelli v. France, 18 mars 1997, Reports of Judgments and Decisions 1997-II
Markovic and Others v. Italy [GC], no. 1398/03, ECHR 2006-XIV
Martinie v. France [GC], no. 58675/00, ECHR 2006-VI
Martins Moreira v. Portugal, 26 October 1988, Series A no. 143,
Marušić v. Croatia (dec.), *no.* 79821/12, 23 May 2017
Masson and Van Zon v. the Netherlands, 28 September 1995, Series A no. 327-A
Matheus v. France, no. 62740/00, 31 March 2005
Mats Jacobsson v. Sweden, 28 June 1990, Series A no. 180-A
McElhinney v. Ireland [GC], no. 31253/96, ECHR 2001-XI (extracts)
McGinley and Egan v. the United Kingdom, 9 June 1998, Reports of Judgments and Decisions 1998-III
McGonnell v. the United Kingdom, no. 28488/95, ECHR 2000-II
McMichael v. the United Kingdom, 24 February 1995, Series A no. 307-B
McVicar v. the United Kingdom, no. 46311/99, ECHR 2002-III
Melnyk v. Ukraine, no. 23436/03, 28 March 2006
Menchinskaya v. Russia, no. 42454/02, 15 January 2009
Mercieca and Others v. Malta, no. 21974/07, 14 June 2011
Mérigaud v. France, no. 32976/04, 24 September 2009
Mežnarić v. Croatia, no. 71615/01, 15 July 2005
Micallef v. Malta [GC], no. 17056/06, ECHR 2009
Miessen v. Belgium, no. 31517/12, 18 October 2016
Mihova v. Italy (dec.), no. 25000/07, 30 March 2010
Mikhno v. Ukraine, no. 32514/12, 1 September 2016
Mikulić v. Croatia, no. 53176/99, ECHR 2002-I
Milatová and Others v. the Czech Republic, no. 61811/00, ECHR 2005-V
Miller v. Sweden, no. 55853/00, 8 February 2005
Mincheva v. Bulgaria, no. 21558/03, 2 September 2010
Miragall Escolano and Others v. Spain, nos. 38366/97 and 9 others, ECHR 2000-I
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Mirovni Inštitut v. Slovenia, no. 32303/13, 13 March 2018
Miryana Petrova v. Bulgaria, no. 57148/08, 21 July 2016
Mocié v. France, no. 46096/99, 8 April 2003
Molla Sali v. Greece [GC], no. 20452/14, 19 December 2018
Morawska v. Poland (dec.), no. 3508/12, 7 January 2020
Moreira de Azevedo v. Portugal, 23 October 1990, Series A no. 189
Moreira Ferreira v. Portugal (no. 2) [GC], no. 19867/12, ECHR 2017 (extracts)
Morel v. France, no. 34130/96, ECHR 2000-VI
Moroko v. Russia, no. 20937/07, 12 June 2008
Moser v. Austria, no. 12643/02, 21 September 2006
Mosteanu and Others v. Romania, no. 33176/96, 26 November 2002
Munteanu v. Romania (dec.), no. 54640/13, 11 February 2020
Mustafa Tunç and Fecire Tunç v. Turkey [GC], no. 24014/05, 14 April 2015
Musumeci v. Italy, no. 33695/96, 11 January 2005
Mutu and Pechstein v. Switzerland, nos. 40575/10 and 67474/10, 2 October 2018

—N—

Naït-Liman v. Switzerland [GC], no. 51357/07, 15 March 2018
National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom, 23 October 1997, Reports of Judgments and Decisions 1997-VII
Nazsız v. Turkey (dec.), no. 22412/05, 26 May 2009

Ndayegamiye-Mporamazina v. Switzerland, no. 16874/12, 5 February 2019
Nedelcho Popov v. Bulgaria, no. 61360/00, 22 November 2007
Nejdet Şahin and Perihan Şahin v. Turkey [GC], no. 13279/05, 20 October 2011
Nicholas v. Cyprus, no. 63246/10, 9 January 2018
Nicholas v. Cyprus (dec.), no. 37371/97, 14 March 2000
Nicolae Virgiliu Tănase v. Romania [GC], no. 41720/13, 25 June 2019
Nideröst-Huber v. Switzerland, 18 February 1997, Reports of Judgments and Decisions 1997-I
Niederböster v. Germany, no. 39547/98, ECHR 2003-IV (extracts)
Nikolyan v. Armenia, no. 74438/14, 3 October 2019
Nunes Dias v. Portugal (dec.), nos. 2672/03 and 69829/01, ECHR 2003-IV

—O—

Obermeier v. Austria, 28 June 1990, Series A no. 179
Oerlemans v. the Netherlands, 27 November 1991, Series A no. 219
OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France, nos. 42219/98 and 54563/00, 27 May 2004
Ohneberg v. Austria, no. 10781/08, 18 September 2012
Okyay and Others v. Turkey, no. 36220/97, ECHR 2005-VII
Oleksandr Volkov v. Ukraine, no. 21722/11, ECHR 2013
Oleynikov v. Russia, no. 36703/04, 14 March 2013
Olsson v. Sweden (no. 1), 24 March 1988, Series A no. 130
Olujić v. Croatia, no. 22330/05, 5 February 2009
Organisation nationale des syndicats d'infirmiers libéraux (ONSIL) v. France (dec.), no. 39971/98, ECHR 2000-IX
Oršuš and Others v. Croatia [GC], no. 15766/03, ECHR 2010
Ortenberg v. Austria, 25 November 1994, Series A no. 295-B
Osinger v. Austria, no. 54645/00, 24 March 2005
Osman v. the United Kingdom 28 October 1998, Reports of Judgments and Decisions 1998-VIII
Ouzounis and Others v. Greece, no. 49144/99, 18 April 2002

—P—

P., C. and S. v. the United Kingdom, no. 56547/00, ECHR 2002-VI
Pabla Ky v. Finland, no. 47221/99, ECHR 2004-V
Pafitis and Others v. Greece, 26 February 1998, Reports of Judgments and Decisions 1998-I
Paksas v. Lithuania [GC], no. 34932/04, ECHR 2011
Pammel v. Germany, 1 July 1997, Reports of Judgments and Decisions 1997-IV
Panjeheighalehei v. Denmark (dec.), no. 11230/07, 13 October 2009
Papachelas v. Greece [GC], no. 31423/96, ECHR 1999-II
Papageorgiou v. Greece, 22 October 1997, Reports of Judgments and Decisions 1997-VI
Papon v. France (dec.), no. 344/04, ECHR 2005-XI
Parlov-Tkalčić v. Croatia, no. 24810/06, 22 December 2009
Parol v. Poland, no. 65379/13, 11 October 2018
Pasquini v. San Marino, no. 50956/16, 2 May 2019
Paulsen-Medalen and Svensson v. Sweden, 19 February 1998, Reports of Judgments and Decisions 1998-I
Pedro Ramos v. Switzerland, no. 10111/06, 14 October 2010
*Peleki v. Greece**, no. 69291/12, 5 March 2020
Pellegrin v. France [GC], no. 28541/95, ECHR 1999-VIII

Pellegrini v. Italy, no. 30882/96, ECHR 2001-VIII
Peñafiel Salgado v. Spain (dec.), no. 65964/01, 16 April 2002
Pereira da Silva v. Portugal, no. 77050/11, 22 March 2016
Perez v. France [GC], no. 47287/99, ECHR 2004-I
Pérez de Rada Cavanilles v. Spain, 28 October 1998, Reports of Judgments and Decisions 1998-VIII
Peruš v. Slovenia, no. 35016/05, 27 September 2012
Pescador Valero v. Spain, no. 62435/00, ECHR 2003-VII
Petko Petkov v. Bulgaria, no. 2834/06, 19 February 2013
Pétur Thór Sigurðsson v. Iceland, no. 39731/98, ECHR 2003-IV
Philis v. Greece (no. 1), 27 August 1991, Series A no. 209
Philis v. Greece (no. 2), 27 June 1997, Reports of Judgments and Decisions 1997-IV
Pierre-Bloch v. France, 21 October 1997, Reports of Judgments and Decisions 1997-VI
Pini and Others v. Romania, nos. 78028/01 and 78030/01, ECHR 2004-V (extracts)
Pizzetti v. Italy, 26 February 1993, Series A no. 257-C
Platakou v. Greece, no. 38460/97, ECHR 2001-I
Pocius v. Lithuania, no. 35601/04, 6 July 2010
Podbielski and PPU Polpure v. Poland, no. 39199/98, 26 July 2005
Poiss v. Austria, 23 April 1987, Series A no. 117
Polyakh and Others v. Ukraine, nos. 58812/15 and 4 others, 17 October 2019
Pönkä v. Estonia, no. 64160/11, 8 November 2016
Potocka and Others v. Poland, no. 33776/96, ECHR 2001-X
Pravednaya v. Russia, no. 69529/01, 18 November 2004
Preda and Dardari v. Italy (dec.), nos. 28160/95 and 28382/95, ECHR 1999-III
Pretto and Others v. Italy, 8 December 1983, Series A no. 71
Pridatchenko and Others v. Russia, nos. 2191/03 and 3 others, 21 June 2007
Prince Hans-Adam II of Liechtenstein v. Germany [GC], no. 42527/98, ECHR 2001-VIII
Probstmeier v. Germany, 1 July 1997, Reports of Judgments and Decisions 1997-IV
Procola v. Luxembourg, 28 September 1995, Series A no. 326
Prodan v. Moldova, no. 49806/99, ECHR 2004-III (extracts)
Pudas v. Sweden, 27 October 1987, Series A no. 125-A
Puolitaival and Pirttiaho v. Finland, no. 54857/00, 23 November 2004

—R—

R.P. and Others v. the United Kingdom, no. 38245/08, 9 October 2012
Ramljak v. Croatia, no. 5856/13, 27 June 2017
Ramos Nunes de Carvalho e Sá v. Portugal [GC], nos. 55391/13 and 2 others, 6 November 2018
Raylyan v. Russia, no. 22000/03, 15 February 2007
Regner v. the Czech Republic [GC], no. 35289/11, 19 September 2017
Refah Partisi (The Welfare Party) and Others v. Turkey (dec.), nos. 41340/98 and 3 others, 3 October 2000
Repcevirág Szövetkezet v. Hungary, no. 70750/14, 30 April 2019
Reuther v. Germany (dec.), no. 74789/01, ECHR 2003-IX
Ringeisen v. Austria, 16 July 1971, Series A no. 13
Robins v. the United Kingdom, 23 September 1997, Reports of Judgments and Decisions 1997-V
Roche v. the United Kingdom [GC], 32555/96, ECHR 2005-X
Rolf Gustafson v. Sweden, 1 July 1997, Reports of Judgments and Decisions 1997-IV
Romańczyk v. France, no. 7618/05, 18 November 2010
Rozalia Avram v. Romania, no. 19037/07, 16 September 2014
RTBF v. Belgium, no. 50084/06, ECHR 2011
Ruianu v. Romania, no. 34647/97, 17 June 2003

Ruiz-Mateos v. Spain, 23 June 1993, Series A no. 262
Ruiz Torija v. Spain, 9 December 1994, Series A no. 303-A
Ruotolo v. Italy, 27 February 1992, Series A no. 230-D
Rustavi 2 Broadcasting Company Ltd and Others v. Georgia, no. 16812/17, 18 July 2019
Ryabykh v. Russia, no. 52854/99, ECHR 2003-IX
Ryakib Biryukov v. Russia, no. 14810/02, ECHR 2008

—S—

Sabeh El Leil v. France [GC], no. 34869/05, 29 June 2011
Sabin Popescu v. Romania, no. 48102/99, 2 March 2004
Sablon v. Belgium, no. 36445/97, 10 April 2001
Saccoccia v. Austria (dec.), no. 69917/01, 5 July 2007
Saccoccia v. Austria, no. 69917/01, 18 December 2008
Sacilor Lormines v. France, no. 65411/01, ECHR 2006-XIII
Sailing Club of Chalkidiki "I Kelyfos" v. Greece, nos. 6978/18 and 8547/18, 21 November 2019
Sakellaropoulos v. Greece (dec.), no. 38110/08, 6 January 2011
Salesi v. Italy, no. 26 February 1993, Series A no. 257-E
Salomonsson v. Sweden, no. 38978/97, 12 November 2002
San Leonard Band Club v. Malta, no. 77562/01, ECHR 2004-IX
Sanglier v. France, no. 50342/99, 27 May 2003
Sanofi Pasteur v. France, no. 25137/16, 13 February 2020
Santambrogio v. Italy, no. 61945/00, 21 September 2004
Santos Pinto v. Portugal, no. 39005/04, 20 May 2008
Saoud v. France, no. 9375/02, 9 October 2007
Sara Lind Eggertsdóttir v. Iceland, no. 31930/04, 5 July 2007
Sartory v. France, no. 40589/07, 24 September 2009
Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC], no. 931/13, ECHR 2017 (extracts)
Savino and Others v. Italy, nos. 17214/05 and 2 others, 28 April 2009
Savitskyy v. Ukraine, no. 38773/05, 26 July 2012
Schipani and Others v. Italy, no. 38369/09, 21 July 2015
Schouten and Meldrum v. the Netherlands, 9 December 1994, Series A no. 304
Schuler-Zgraggen v. Switzerland, 24 June 1993, Series A no. 263
Scordino v. Italy (no. 1) [GC], no. 36813/97, ECHR 2006-V
Sdružení Jihočeské Matky v. the Czech Republic (dec.), no. 19101/03, 10 July 2006
Selin Aslı Öztürk v. Turkey, no. 39523/03, 13 October 2009
Selmani and Others v. the former Yugoslav Republic of Macedonia, no. 67259/14, 9 February 2017
Sharxhi and Others v. Albania, no. 10613/16, 11 January 2018
Siałkowska v. Poland, no. 8932/05, 22 March 2007
Siegel v. France, no. 36350/97, ECHR 2000-XII
Siegle v. Romania, no. 23456/04, 16 April 2013
Sigalas v. Greece, no. 19754/02, 22 September 2005
Sigma Radio Television Ltd v. Cyprus, nos. 32181/04 and 35122/05, 21 July 2011
Šikić v. Croatia, no. 9143/08, 15 July 2010
Silva Pontes v. Portugal, 23 March 1994, series A n° 286-A
Sine Tsaggarakis A.E.E. v. Greece, no. 17257/13, 23 May 2019
Skorobogatykh v. Russia (dec.), no. 37966/02, 8 June 2006
Słomka v. Poland, no. 68924/12, 6 December 2018
Smirnov v. Russia (dec.), no. 14085/04, 6 July 2006
Société anonyme d'habitations à loyers modérés Terre et Famille v. France (dec.), no. 62033/00, 17 February 2004

Sokurenko and Strygun v. Ukraine, nos. 29458/04 and 29465/04, 20 July 2006
Sommerfeld v. Germany [GC], no. 31871/96, ECHR 2003-VIII (extracts)
Somorjai v. Hungary, no. 60934/13, 28 August 2018
Sotiris and Nikos Koutras ATTEE v. Greece, no. 39442/98, ECHR 2000-XII
Sovtransavto Holding v. Ukraine, no. 48553/99, ECHR 2002-VII
Speil v. Austria (dec.), no. 42057/98, 5 September 2002
Sporrong and Lönnroth v. Sweden, 23 September 1982, Series A no. 52
Sramek v. Austria, 22 October 1984, Series A no. 84
Stanev v. Bulgaria [GC], no. 36760/06, ECHR 2012
Stankiewicz v. Poland, no. 46917/99, ECHR 2006-VI
Stankov v. Bulgaria, no. 68490/01, 12 July 2007
Star Cate Epilekta Gevmata and Others v. Greece (dec.), no. 54111/07, 6 July 2010
Staroszczyk v. Poland, no. 59519/00, 22 March 2007
Stavroulakis v. Greece (dec.), no. 22326/10, 28 January 2014
Steck-Risch and Others v. Liechtenstein, no. 63151/00, 19 May 2005
Steel and Morris v. the United Kingdom, no. 68416/01, ECHR 2005-II
Stegarescu and Bahrin v. Portugal, no. 46194/06, 6 April 2010
Stepinska v. France, no. 1814/02, 15 June 2004
Stichting Mothers of Srebrenica and Others v. the Netherlands (dec.), no. 65542/12, ECHR 2013 (extracts)
Storck v. Germany, no. 61603/00, ECHR 2005-V
Stran Greek Refineries and Stratis Andreadis v. Greece, 9 December 1994, Series A no. 301-B
Stubbings and Others v. the United Kingdom, 22 October 1996, Reports of Judgments and Decisions 1996-IV
Suda v. the Czech Republic, no. 1643/06, 28 October 2010
Suküt v. Turkey (dec.), no. 59773/00, 11 September 2007
Suominen v. Finland, no. 37801/97, 1 July 2003
Sürmeli v. Germany [GC], no. 75529/01, ECHR 2006-VII
Süßmann v. Germany, 16 September 1996, Reports of Judgments and Decisions 1996-IV
Švarc and Kavnik v. Slovenia, no. 75617/01, 8 February 2007
Syngelidis v. Greece, no. 24895/07, 11 February 2010
Szücs v. Austria, 24 November 1997, Reports of Judgments and Decisions 1997-VII

—T—

Tabor v. Poland, no. 12825/02, 27 June 2006
Taşkın and Others v. Turkey, no. 46117/99, ECHR 2004-X
Tatishvili v. Russia, no. 1509/02, ECHR 2007-I
Ternovskis v. Latvia, no. 33637/02, 29 April 2014
Terra Woningen B.V. v. the Netherlands, 17 December 1996, Reports of Judgments and Decisions 1996-VI
Teteriny v. Russia, no. 11931/03, 30 June 2005
The Holy Monasteries v. Greece, 9 December 1994, Series A no. 301-A
Thiam v. France, no. 80018/12, 18 October 2018
Thlimmenos v. Greece [GC], no. 34369/97, ECHR 2000-IV
Tiemann v. France and Germany (dec.), nos. 47457/99 and 47458/99, ECHR 2000-IV
Tierce v. San Marino, no. 69700/01, ECHR 2003-VII
Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom, 10 July 1998, Reports of Judgments and Decisions 1998-IV
Tocono and Profesorii Prometeişti v. Moldova, no. 32263/03, 26 June 2007
Tolstoy Miloslavsky v. the United Kingdom, 13 July 1995, Series A no. 316-B

Torri v. Italy, 1 July 1997, Reports of Judgments and Decisions 1997-IV
Toziczka v. Poland, no. 29995/08, 24 July 2012
Trapeznikov and Others v. Russia, nos. 5623/09 and 3 others, 5 April 2016
Tre Traktörer Aktiebolag v. Sweden, 7 July 1989, Series A no. 159
Tregubenko v. Ukraine, no. 61333/00, 2 November 2004
Treska v. Albania and Italy (dec.), no. 26937/04, ECHR 2006-XI (extracts)
Tsfayo v. the United Kingdom, no. 60860/00, 14 November 2006
Tsikakis v. Germany, no. 1521/06, 10 February 2011
Turczanik v. Poland, no. 38064/97, ECHR 2005-VI
Tuziński v. Poland (dec), no. 40140/98, 30 March 1999

—U—

Uçar v. Turkey (dec.), no. 12960/05, 29 September 2009
Ullens de Schooten and Rezabek v. Belgium, nos. 3989/07 and 38353/07, 20 September 2011
Ulyanov v. Ukraine (dec.), no. 16472/04, 5 October 2010
Unédic v. France, no. 20153/04, 18 December 2008
Unión Alimentaria Sanders S.A. v. Spain, 7 July 1989, Series A no. 157
Urechean and Pavlicenco v. the Republic of Moldova, nos. 27756/05 and 41219/07, 2 December 2014
Užukauskas v. Lithuania, no. 16965/04, 6 July 2010

—V—

Valová, Slezák and Slezák v. Slovakia, no. 44925/98, 1 June 2004
Van de Hurk v. the Netherlands, 19 April 1994, Series A no. 288
Van Marle and Others v. the Netherlands, 26 June 1986, Series A no. 101
Van Orshoven v. Belgium, 25 June 1997, Reports of Judgments and Decisions 1997-III
Vardanyan and Nanushyan v. Armenia, no. 8001/07, 27 October 2016
Varela Assalino v. Portugal (dec.), no. 64336/01, 25 April 2002
Vasilchenko v. Russia, no. 34784/02, 23 September 2010
Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2), no. 32772/02, 4 October 2007
Verlagsgruppe News GmbH v. Austria (dec.), no. 62763/00, 16 January 2003
Vermeulen v. Belgium, 20 February 1996, Reports of Judgments and Decisions 1996-I
Vernillo v. France, 20 February 1991, Series A no. 198
Versini v. France, no. 40096/98, 10 July 2001
Vilho Eskelinen and Others v. Finland [GC], no. 63235/00, ECHR 2007-II
Vocaturo v. Italy, 24 May 1991, Series A no. 206-C
Voggenreiter v. Germany, no. 47169/99, ECHR 2004-I (extracts)
Von Maltzan and Others v. Germany (dec.) [GC], nos. 71916/01 and 2 others, ECHR 2005-V

—W—

Wagner and J.M.W.L. v. Luxembourg, no. 76240/01, 28 June 2007
Waite and Kennedy v. Germany [GC], no. 26083/94, ECHR 1999-I
Wallishauser v. Austria, no. 156/04, 17 July 2012
Warsicka v. Poland, no. 2065/03, 16 January 2007
Weissman and Others v. Romania, no. 63945/00, ECHR 2006-VII (extracts)
Werner v. Austria, 24 November 1997, Reports of Judgments and Decisions 1997-VII

Wettstein v. Switzerland, no. 33958/96, ECHR 2000-XII
Wierzbicki v. Poland, no. 24541/94, 18 June 2002
Wiesinger v. Austria, 30 October 1991, Series A no. 213
Woś v. Poland, no. 22860/02, ECHR 2006-VII
Wynen and Centre hospitalier interrégional Edith-Cavell v. Belgium, no. 32576/96, ECHR 2002-VIII

—X—

X v. France, 31 March 1992, Series A no. 234-C
X and Others v. Russia, nos. 78042/16 and 66158/14, 14 January 2020

—Y—

Yagtzilar and Others v. Greece, no. 41727/98, ECHR 2001-XII
Yakovlev v. Russia, no. 72701/01, 15 March 2005
Yankov v. Bulgaria (dec.), no. 44768/10, 18 June 2019
Yavorivskaya v. Russia, no. 34687/02, 21 July 2005
Yevdokimov and Others v. Russia, nos. 27236/05 and 10 others, 16 February 2016
Yvon v. France, no. 44962/98, ECHR 2003-V

—Z—

Z and Others v. the United Kingdom [GC], no. 29392/95, ECHR 2001-V
Zagorodnikov v. Russia, no. 66941/01, 7 June 2007
Zalli v. Albania (dec.), no. 52531/07, 8 February 2011
Zander v. Sweden, 25 November 1993, Series A no. 279-B
Zapletal v. the Czech Republic (dec.), no. 12720/06, 30 November 2010
Zappia v. Italy, 26 September 1996, *Reports of Judgments and Decisions* 1996-IV
Zavodnik v. Slovenia, no. 53723/13, 21 May 2015
Ziegler v. Switzerland, no. 33499/96, 21 February 2002
Zielinski, Pradal, Gonzalez and Others v. France [GC], nos. 24846/94 and 9 others, ECHR 1999-VII
Zimmermann and Steiner v. Switzerland, 13 July 1983, Series A no. 66
Zollmann v. the United Kingdom (dec.), no. 62902/00, ECHR 2003-XII
Zolotas v. Greece, no. 38240/02, 2 June 2005
Zubac v. Croatia [GC], no. 40160/12, 5 April 2018
Zumtobel v. Austria, 21 September 1993, Series A no. 268-A
Zvolský and Zvolská v. the Czech Republic, no. 46129/99, ECHR 2002-IX