



The AIRE Centre
Advice on Individual Rights in Europe

**RECENT CASE LAW FROM
THE EUROPEAN COURT OF
HUMAN RIGHTS WITH
RESPECT TO ALBANIA,
CROATIA, BOSNIA AND
HERZEGOVINA, MACEDONIA,
MONTENEGRO AND SERBIA**

Recent case law from the European Court of Human Rights with respect to Albania, Croatia, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia

Prepared by the AIRE Centre

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2017 at the European Court of Human Rights – the Year in Review

An examination of the European Court of Human Rights (the Court or ECtHR's) jurisprudence throughout 2017 demonstrates a number of trends and specific challenges. Key trends and challenges will be presented in the first part of this publication. This publication will also address six cases of particular significance, decided by or brought before the Court last year. This review will be followed by an examination of cases against countries in the region handed down during 2017.

Trends in judgments rendered

At the start of 2017, 79,750 cases were pending before the Court; this rose to 93,200 in June 2017. This is in part explained by a significant increase in cases emanating from Turkey, following political unrest and a failed coup attempt in the State towards the end of 2016.

The issue of the Court being inundated with applications and the need for reform – to cater for the volume of cases – is not new. A second major reform process to address the considerable increase in the number of applications and the Court's backlog was brought about by the entry into force of Protocol No. 14 in 2010. This Protocol introduced new judicial formations for the simplest cases and established a new admissibility criterion (existence of a "significant disadvantage" for the applicant); it also extended the judges' term of office to 9 years (not renewable).

Over the years, a number of declarations following meetings between the Member States have been made, urging reform e.g. Brighton (2012) and Brussels (2015). The declarations continued to try to find new ways to expedite cases. Additionally, two other Protocols have been drafted, and presented to Member States; however they are yet to be ratified by all Member States and hence enter into force. Protocol 15 sets out a reduction of the time within which an application must be lodged from six to four months after a final national decision is delivered. Moreover, the principle of subsidiarity will form part of the Convention preamble once Protocol 15 enters into force, whereby the Contracting State bears the primary responsibility of protecting Convention rights. Additionally, Protocol 16 would permit the highest national courts to request the Court for an advisory opinion on questions of principle relating to the interpretation or application of the Convention.

Most recently, in early 2018, the draft Copenhagen Declaration was produced – following meetings with Member States. Therefore, Member States and indeed the Court, through response opinions, have been open to some of the reform steps set out over the years. Thus far, the reform measures have been successful in reducing the Court's caseload. However, both Member States and the Court recognise further steps are necessary.

The statistics evidence sharp increases in the volume of judgments the Court has delivered. In 2017, 1,068 judgments were delivered, an 8% increase from 2016. The single-judge formation decided 66,156 applications in 2017 (an increase of 113% from 2016), 523 judgments were adopted by a three-judge committee formation (a 69% increase from 2016), and 17% of the judgments accounted for were Committee judgments. The Grand Chamber held 13 oral hearings and delivered 19 judgments, representing 12,167 applications.

In terms of cases pending: there were 24 pending at Grand Chamber level, representing 39 applica-

tions. At the Chamber, there were 56,250 cases pending at the end of 2017, compared to 79,750 at the start of 2017. The decrease in pending applications is particularly remarkable given the increased pressure on the Court stemming from a large increase in cases from Turkey. However, it should be noted that approximately 12,000 applications were struck out through the *Burmych judgment*, see further below.

So the Court has been successful in its efforts to reduce the number of cases, over the course of 2017. There was a 29% reduction in cases pending, as a result of the increase in judgments delivered.

Procedure

Despite the general decrease, the challenge of reducing the backlog of non-repetitive cases before the Chambers remains. New procedures have been introduced intended to streamline processing and adjudication. A priority policy has been implemented that enables resources to be concentrated on the most pressing cases.

For example, 6000 Hungarian cases concerning detention applications, were originally marked to the priority category. They were subsequently sent to a Single Judge after the Chamber held that Hungary had established a national remedy. Secondly, applications concerning conditions of detention in Romania are subject to a pilot procedure.

The priority policy has contributed to the reduction of applications, in total, by 23% in 2017 compared to 2016. The number of priority applications leading to a judgment increased by 26% between 2016 and 2017.

The Committee of Ministers supervises the execution of judgments and ensures the State discharges its legal obligation under Article 46 (binding force and execution of judgments), including the taken of remedial measures. Regarding the role of the Committee of Ministers, see a note on the case of *Burmych*, where a large number of cases were transmitted to the Committee of Ministers, below.

The Superior Courts Network, launched in 2015 as a network for the exchange of information on ECHR case law between the highest national courts and the ECtHR, continued expanding in 2017.

The First Focal Points Forum was held in Strasbourg in June 2017. Fifty representatives from Focal Points, and others from 44 superior courts, as well as opposite numbers in the Registry, attended the event to discuss the function and future of the Superior Courts Network. Membership now stands at 64 courts, across 34 Member States.

Case law

Article 6, the right to a fair trial, was as for earlier years the most commonly invoked Article in 2017. Specifically, applicants complained of the length of proceedings at domestic level and non-enforcement of domestic judgments. Further, in the context of Article 3, the grounds which were most litigated included inhuman or degrading treatment, and the lack of effective investigation. For example, applicants have complained of the State failing to take appropriate care and cater for their needs i.e. physically or mentally, throughout a period of detention. Finally, many applicants argued a violation of their right to liberty and security under Article 5, for example being arrested and detained for several hours without charge.

The largest number of cases, across all areas, was brought against Romania, followed by Russia and Turkey.

In 2017, a number of influential judgments affecting both the substance of the Convention case law and the procedures of the ECtHR were delivered, and below we have elaborated further on a small selection of these.

Selection of case summaries

Lopes de Sousa Fernandes v. Portugal, Grand Chamber judgment of 19 December 2017, no. 56080/13: The applicant alleged a violation of Article 2, the right to life, on the basis that her husband had acquired an infection in hospital and medical personnel had been careless and negligent in their treatment of him. The substantive positive obligation in the case of medical negligence was found to be limited to the setting-up of an adequate regulatory framework compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives. In the circumstances of the case, the relevant framework in Portugal did not disclose any shortcomings, and no violation of Article 2 was found in the substantive aspect. In contrast, in respect of the procedural obligation, the Court considered that the domestic system as a whole, when faced with an arguable case of medical negligence resulting in the death of the applicant's husband, failed to provide an adequate and timely response consonant with the State's obligation under Article 2. A violation was found of the procedural limb.

Tagayeva and Others v. Russia, judgment of 13 April 2017, no. 26562/07 and 6 other applications: The applicants raised various issues related to the terrorist attack, siege and storming of school no. 1 in Beslan, Russia, in September 2004, and the State's response to that attack.

The planning and control of the operation to free hostages had failed to take all feasible precautions with a view to avoiding and/or minimising incidental loss of civilian life. In respect of certain of the applicants, the Court found evidence supporting a prima facie complaint that the State agents used indiscriminate weapons on the building while terrorists and hostages were intermingled. The Government did not provide a satisfactory and convincing explanation about the use of force and circumstances of the deaths and injuries complained of by the applicants. The use of lethal force by the State agents was found to contribute, to some extent, to the casualties among the hostages.

The Court then considered whether the use of lethal force could be considered justified. The Court found that it was not for the Court, with detached reflection, to substitute its own opinion of the situation for that of security officers who were required to intervene to save human lives in an extremely difficult situation. Errors of judgment or mistaken assessments, unfortunate in retrospect, will not themselves entail responsibility under Article 2. However, the use of explosive and indiscriminate weapons, as happened in this case, could not be regarded as absolutely necessary in the circumstances. A violation of Article 2 was found on account of the massive use of lethal force. The weakness of the legal framework governing the use of force contributed to that finding.

The Court also concluded there had been a breach of Article 2 in respect of all applicants, as the investigation was not capable of leading to a determination of whether the force used in the case was justified, and therefore it was not effective.

Becker v. Norway, judgment of 5 October 2017, no. 21272/12: This was a significant development in the sphere of freedom of the press, as protected by Article 10, the right to free expression. The applicant was a journalist who alleged she had been compelled to give evidence that would have enabled one or more journalistic sources to be identified, in violation of her right under Article 10 of the Convention to receive and impart information. The applicant was not expressly ordered to reveal the identity of the source of information in her news article. The domestic court's ruling was limited to ordering her to testify on her contact with Mr X, who had himself declared he was the source. However, the Court considered that the possible effects of such an order were of such a nature that the general principles developed with respect to orders of source disclosure were applicable to the case.

The Court had regard to the importance of the protection of journalistic sources for press freedom and found that the reasons adduced in favour of compelling the applicant to testify on her contact with Mr X (the prevention of crime and disorder), though relevant, were insufficient. The Court was not convinced there was an overriding requirement in the public interest. A violation of Article 10 was found.

Bărbulescu v. Romania, Grand Chamber judgment of 5 September 2017, no. 61496/08: The interests at stake in this case were, on the one hand, the applicant's right to respect for his private life under Article 8, and on the other hand, his employer's right to engage in monitoring of communications, including the corresponding disciplinary powers, in order to ensure the smooth running of the company. By virtue of the State's positive obligations under Article 8 of the Convention, national authorities were required to balance these interests. The contents of the applicant's instant messenger communications had been used in subsequent disciplinary proceedings against him.

It was questionable whether the national authorities had struck a fair balance between the interests at stake. The domestic courts failed to determine whether the applicant had received prior notice that his communications may be monitored, and they did not have regard to the fact that the applicant had not been informed of the nature or extent of the monitoring, or the degree of intrusion into his private life and correspondence. The national courts had failed to determine the specific reason justifying the monitoring measures, whether less intrusive measures could have been used and whether the communications might have been accessed without the applicant's knowledge. A violation of Article 8 was found.

Merabishvili v. Georgia, Grand Chamber judgment of 28 November 2017, no. 72508/13: This concerned the arrest and pre-trial detention of a former Prime Minister of Georgia. He had been arrested on charges of abuse of power, election fraud and misuse of funds. The Court found that the restriction on the applicant's right to liberty had amounted to a continuous situation and, in all the circumstances, the predominant purpose of the restriction had changed over time. At the beginning, it had been based on the investigation of offences based on a reasonable suspicion. However, later, the predominant purpose became the obtaining of information about the death of another individual and bank accounts. The ulterior purpose was not prescribed the Convention. A violation of Article 18 in conjunction with Article 5 was found.

Burmych and Others v. Ukraine, Grand Chamber judgment of 12 October 2017, no. 46952/13, 47786/13, 54125/13, 56605/13, 3653/14: The applicants complained of non- or delayed enforcement of domestic decisions given in their favour. They alleged a violation of their rights under Article 6, the right to a fair trial, and Article 1 of Protocol No. 1, the protection of property, as well as under Article 13, the right to an effective remedy.

The Court reiterated its findings in the *Ivanov* pilot judgment, namely the structural problems were large-scale and complex in nature and that it required the implementation of comprehensive and complex measures – possibly legislative and administrative in nature. The Court noted the failure over a number of years by Ukraine had left the systemic problem of non-enforcement of domestic judicial decisions unresolved, subsequently causing a large number of follow-up applications which raised issues identical to the instant case.

The situation led the Court to adopt a practice of dealing with *Ivanov* follow-up cases in a faster, simplified procedure which allowed applicants to obtain a swift decision affording them financial remedies. The pilot-judgment procedure was created in response to the growth of the Court's caseload, caused by systemic structural dysfunctions – with the overarching aim of ensuring the long-term effectiveness of the Convention's machinery. The dual purpose of the pilot judgment was to reduce the threat to the effective functioning of the Convention system and to solve underlying issues domestically – which included granting redress to both actual and potential victims.

Finally, the Court stated it was for the Committee of Ministers to supervise the execution of the judgment and ensure the State met its obligations under Article 46. Subsequently, the Court struck out 12,143 applications against Ukraine and considered the Committee of Ministers better placed than itself to ensure Ukraine executed the Court's judgment.

Mammadov v. Azerbaijan, Grand Chamber judgment of 22 May 2014, no. 15172/13: The case, which was originally decided in 2014, concerned the arrest and detention of a prominent Azerbaijani opposition politician. The applicant argued he was arrested and detained without a reasonable suspicion and his right to be presumed innocent was breached. The Court found the Government had not demonstrated reasonable suspicion of a criminal offence, in order to detain the applicant, and that he had been proved guilty before he had been proved guilty under the law. Accordingly, a violation of Article 5 § 1 and Article 6 § 2 was found.

In December 2017, the Committee of Ministers used, for the first time, infringement proceedings against Azerbaijan, due to the authorities continued refusal to ensure the unconditional release of the applicant. The Committee has formally asked the Court the question whether the State has failed to fulfill its obligations to execute a judgment. The use of such a provision has existed since Protocol 14 entered into force, and is meant to be used only in 'exceptional circumstances'. These proceedings are on-going and have not yet been finalised.

ALBANIA

General Introduction

This document sets out the judgments handed down by the European Court of Human Rights (the Court or ECtHR) in respect of the Republic of Albania, since the State's ratification of the European Convention on 2 October 1996.

As of 31 December 2016, the Court has handed down 70 judgments and 62 decisions in respect of Albania. In 2017, there were no Chamber judgments and decisions handed down by the Court. However, eight cases were struck out by a Committee. Further, the Committee of Ministers, which oversees the execution of judgments handed down by the Court, adopted a resolution regarding Albania concerning three cases, closing its examination as it was satisfied that appropriate measures had been taken by the Albanian State.¹

Below is a brief narrative/overview of the types of cases in which Albania have been involved.

In relation to Article 2 of the Convention, the right to life, the following are two key cases: In *Ceka*, the applicant's case was struck out as the Court held the State had acknowledged the breach claimed, and paid adequate compensation². *Rrapo*³ concerned the extradition of the applicant. However, the Court found the diplomatic note that had been offered contained sufficient assurances that no violation of the right to life would occur upon extradition.

Five judgments have been delivered in relation to Article 3. In three cases, a violation of Article 3 was found. The cases concerned detention conditions where individuals were held in custody⁴, the lack of appropriate medical treatment in prison,⁵ and the beating of an applicant by police whilst in custody.⁶ In the judgments, the Court noted the following: the incompatibility of conditions of detention with the state of health, *i.e.* the placement of a mentally-ill prisoner with healthy inmates and lack of appropriate medical assistance,⁷ and the severity of a beating received by the applicant was of such degree as to amount to torture within the meaning of Article 3.⁸

Two judgments have been rendered in respect of Article 5, right to liberty and security; with violations found in both. Looking at one of these, *Delijorgji*,⁹ the Court found violations under Article 5 § 1 and 5 § 4; stemming from the length of detention pending trial, the length of time it took to examine the applicant's request for release, and the lack of reasons given to the applicant in relation to placing him under house arrest.

1 Committee of Ministers Resolution CM/ResDH(2017)417.

2 *Ceka v. Albania*, judgment of 23 October 2012.

3 *Rrapo v. Albania*, judgment of 25 September 2012.

4 *Groni v. Albania*, judgment of 7 July 2009.

5 *Groni v. Albania*, judgment of 7 July 2009; *Dybeku v. Albania*, judgment of 18 December 2007.

6 *Kaciu and Kotorri v. Albania*, judgment of 23 October 2012.

7 *Groni v. Albania*, judgment of 7 July 2009.

8 *Kaciu and Kotorri v. Albania*, judgment of 23 October 2012.

9 *Delijorgji v. Albania*, judgment of 28 April 2015.

36 judgments have been rendered in respect of the Article 6 right to a fair trial. In 33 cases, the Court found a violation of Article 6. The majority of cases have centred around applicants arguing they were subject to an unfair trial and lack of access to a court. For example, in *Caka*¹⁰, the failure to secure witnesses for the applicant's trial and have due regard to the testimonies of four witnesses, during the court at first instance, was a violation of Article 6 § 1 combined with Article 6 § 3(d). In *Laska and Lika*¹¹, the failure to remedy irregularities during the investigation stage (relating to the identification of potential suspects) rendered a violation of Article 6 § 1. In *Cani*¹², the refusal to allow the applicant to put his case before both the Court of Appeal and Supreme Court violated Article 6 § 1. In *Dauti*,¹³ the Court found that the applicant's inability to challenge an administrative decision of the Appeals Commission, in relation to the award of benefits, was a breach of the right of access to a court. Further, the Court considered that the Appeals Commission could not be regarded as an "independent and impartial tribunal" as required by Article 6 § 1 of the Convention and its decisions, according to the law in force at the material time, could not be challenged before a domestic court. In the case of *Qufaj*,¹⁴ the European Court found a violation of the applicant company's right to a fair trial due to the failure to enforce a final judicial decision (violation of Article 6§1). The *Luli*¹⁵ case concerned the excessive length of civil proceedings before various bodies between 1996 and the time of the judgment. The Court criticised, in particular, the failure of the judicial system to manage properly a multiplication of proceedings on the same issue. Another relevant case is *Bici*,¹⁶ which concerned the length of proceedings before the Durrës Property Restitution and Compensation Commission – the proceedings related to recognition, restitution and/or compensation of property. The Court found a violation of Article 6 § 1 on the basis that those proceedings had lasted for 11 years, 9 months and 18 days before one court.

In a group of cases, the Court raised concern regarding the structural failures to enforce domestic final judicial and administrative decisions. In light of the scale of the problem, the Court delivered a pilot judgment in *Manushaqe Puto and others*.¹⁷ The Court found that there was no effective domestic remedy that allowed for adequate and sufficient redress on account of the prolonged non-enforcement of commission decisions awarding compensation. Albania was required under Article 46 to take general measures as a matter of urgency, in order to secure in an effective manner, the right to compensation.

One judgment has been delivered in respect of Article 7. In *Alimucaj*, the Court found an infringement of the principle of legality of criminal offences and punishments. This was in respect of the applicant having imposed on him a heavier penalty than the one he was liable for.¹⁸

10 *Balliu v. Albania*, judgment of 16 June 2005; *Caka v. Albania*, judgment of 8 December 2009.

11 *Laska and Lika v. Albania*, judgment of 20 April 2010.

12 *Cani v. Albania*, judgment of 6 March 2011.

13 *Dauti v. Albania*, judgment of 3 February 2009; *Driza v. Albania*, judgment of 13 November 2007.

14 *Qufaj v. Albania*, judgment of 18 November 2004.

15 *Luli and Others v. Albania*, judgment of 1 April 2014.

16 *Bici v. Albania*, judgment of 3 December 2015.

17 *Manushaqe Puto and others v. Albania*, judgment of 31 July 2012.

18 *Alimucaj v. Albania*, judgment of 7 February 2012.

There have been two cases concerning Article 8, the right to respect for private and family life.¹⁹ In *Bajrami*,²⁰ the Albanian authorities' failure to take the necessary measures to reunite the applicant with his daughter – who was taken to Greece by the mother without the applicant's consent – was in violation of Article 8. No violation was found in the second case, which also concerned the positive obligation to facilitate reunion between parents and children.²¹

22 judgments have been rendered in respect of Article 13, all in respect of Article 6 and/or Article 1 of Protocol No. 1. One judgment has been delivered in respect of Article 4 of Protocol No. 7, the right not to be tried or punished twice. A violation was found on the basis that criminal proceedings were considered to be repeated, following previous conclusion by final decision.²²

There have been 15 judgments in relation to Article 1 of Protocol No.1. Many of these cases have involved the non-enforcement of domestic judgments; and that a judgment debt can constitute possession for the purposes of the Convention (see e.g. *Manushaqe Puto and Others* mentioned above under Article 6).

BOSNIA AND HERZEGOVINA

General introduction

Bosnia and Herzegovina (hereinafter: “BiH”) ratified the European Convention of Human Rights and Fundamental Freedoms (hereinafter: “*Convention or the ECHR*”) on 12 July 2002 and since that date it has become a party to the Convention and the European Court of Human Rights (hereinafter: “*ECtHR of the Court*”).

Since the State's ratification of the Convention as of 31 December 2017, the Court has handed down 56 judgments and 87 admissibility decisions in respect of BiH.

Of the total number of judgments in respect to BiH four judgments were delivered by the Grand Chamber. These cases concerned the rights under Article 14 and Article 1 of Protocol No. 12, under Article 7, Article 10 and Article 1 of Protocol No. 1 to the Convention.

The highest number of judgments, that have been handed down, are in respect to property rights under Article 1 of Protocol No. 1 and the right to a fair trial under Article 6; due to the failure of the State authorities to enforce domestic court judgments awarding applicants different kind of claims. As of 31 December 2017, the Court had handed down 24 judgments regarding Article 1 of Protocol No. 1. The Court also handed down 32 judgments in relation to Article 6 – and violations were found in 30 of those cases. Although the total number of cases decided before the Court is not significant comparing to other countries in the region, the Court has dealt with serious systemic problems in some cases, such as the return of old foreign currency savings or repossession of pre-war flats.

19 *Qama v. Albania and Italy*, judgment of 8 January 2013; *Bajrami v. Albania*, judgment of 12 December 2006.

20 *Bajrami v. Albania*, judgment of 12 December 2006.

21 *Qama v. Albania and Italy*, judgment of 8 January 2013.

22 *Xheraj v Albania*, judgment of 29 July 2008.

The problem of non-enforcement of a final domestic court judgment, awarding the applicant her claim to release “old” foreign currency savings deposited at a domestic commercial bank under Article 6, was noted in *Jeličić*²³ – the first judgment against BiH. Further, in *Čolić and others* the Court held that there had been a violation of Article 1 of Protocol 1 and Article 6; due to the non-enforcement of final domestic court judgments awarding the applicants compensation in respect of so called “war damage”.²⁴ This case concerned the statutory suspension of the enforcement of an entire category of final judgments on account of the size of public debt arising from these judgments. The case-law of the Court evolved in a subsequent judgment, in which it was stated that the delays in enforcement were unreasonable and thus had violated Article 6.²⁵ Further, in relation to this issue, judgments have been delivered in many repetitive cases.

In relation to the systemic problem of “old” foreign-currency deposits (as mentioned above), a violation of Article 1 of Protocol No. 1 was also found in the first pilot judgment in respect of BiH in the case *Suljagić v. BiH*²⁶. Another major case, also a systemic problem, which relates to the issue of “old” foreign-currency savings is *Ališić and others v. BiH, Croatia, Serbia, Slovenia and Macedonia*²⁷. Again, the pilot judgment procedure was applied. This case concerned the applicants’ inability to withdraw their “old” foreign-currency savings from their accounts at banks, since the dissolution of the Socialist Federal Republic of Yugoslavia and related to the violation of the right to effective legal remedy and the right to peaceful enjoyment of property.

Another systemic problem was established in the cases of repossession of military flats, such as in the case *Đokić v. BiH*²⁸. This case concerned the applicant’s inability to repossess his pre-war military flat in Sarajevo and to be registered as its owner, regardless of a legally valid purchase contract, which lead to a finding of a violation of Article 1 of Protocol No. 1.

Relating to the right of access to court under Article 6, the Court delivered a judgment in the case *Avdić and Others* where it was established that there was no real “determination” of civil rights and obligations before the Constitutional Court in BiH, and thus the right of access to court remained illusory.²⁹ In another case, also regarding the right to access to court, the Court found that the applicant did not suffer a disproportionate restriction on his right of access to court in the case *Lončar v. BiH*³⁰.

One judgment has been rendered under Article 2, in which no violation was found. In *Palić v. BiH*³¹ the Court examined, for the first time, whether BiH met its procedural obligations to conduct an ef-

23 *Jeličić v. BiH*, judgment of 10 October 2006.

24 *Čolić and others v. BiH*, judgment of 10 November 2009.

25 *Runić and others v. BiH*, judgment of 15 November 2011.

26 Although both judgments relate to the applicants’ impossibility to withdraw the “old” foreign currency savings, the main difference between *Suljagić v. BiH* and *Jeličić v. BiH* lies in the fact that the applicant *Jeličić* received a final domestic court judgment awarding her foreign currency savings claim, while the applicant *Suljagić* did not receive such a judgment, but challenged the lawfulness of the domestic legislation providing for the general settlement scheme for foreign currency savings by means of government bonds.

27 *Ališić and others v. BiH and others*, GC judgment of 16 July 2014 (Chamber judgment of 6 November 2012).

28 *Đokić v. BiH*, judgment of 27 May 2010.

29 *Avdić and Others v. BiH*, judgment of 19 November 2013.

30 *Lončar v. BiH*, judgment of 25 February 2014.

31 *Palić v. BiH*, judgment of 15 February 2011.

fective and independent criminal investigation following the disappearance of persons during the war. It also found that the authorities' reactions could not be categorised as inhuman and degrading treatment within the meaning of Article 3 of the Convention. In relation to the question of the alleged non-compliance with the State authorities' positive obligation to investigate the destiny of persons who disappeared during the war activities in BiH in the period 1992–1995, the Court has delivered a number of decisions.³²

Under Article 3 of the Convention, the Court has delivered four judgments. These have specifically been in relation to the alleged human rights violations of asylum seekers. In one case, the Court found that there would be a violation of Article 3 in the event of the applicant being deported to Syria.³³ However, relating to other countries of the applicants' origin, such as Iraq and Tunis, the Court considered that there would be no real risk that the applicants, if deported, would be subjected to ill-treatment in breach of Article 3 of the Convention.³⁴ In one case, the Court held that the applicants' physical well-being had not been adequately secured after their arrival in the prison until they had been provided with separate accommodation in the prison hospital unit, finding that the resulting suffering of the applicants had gone beyond the threshold of severity amounted to breach of Article 3.³⁵

In relation to Article 5 the Court has delivered several judgments focusing on the security of mentally ill offenders³⁶ and the detention of asylum seekers in BiH. In the cases of the asylum seekers,³⁷ relying on its well-established case-law, the Court repeated that no preventive detention on security grounds is legitimate within the meaning of Article 5 § 1 of the Convention.

The Court delivered a judgment finding a violation of Article 7, which guarantees that no one shall be found guilty of a criminal offence on account of any act which did not constitute a criminal offence under national or international law at the time when it was committed.³⁸ The Court consequently found that the applicants had not been afforded effective safeguards against the imposition of a heavier penalty, amounting to a breach. In another important case *Šimšić v. BiH*³⁹ the applicant complained under Article 7 of the Convention that crimes against humanity, of which he had been held guilty, since the offence had not constituted a criminal offence under national law during the 1992–95 war. The Court observed that while the impugned acts had not constituted a crime against humanity under domestic law, they were still a crime against humanity under international law.

Only one judgment has been handed down in respect of Article 8. This case concerned the applicant's right to respect for her private and family life.⁴⁰ In this case, the Court examined the positive obligation to facilitate a reunion between parents and children and emphasised that the adequacy of a measure

32 *Mujkanović and others v. BiH*, dec. of 3 June 2014; *Fazlić and others v. BiH*, dec. of 3 June 2014; *Šeremet*, dec. of 8 July 2014; *Hamidović v. BiH*, dec. of 2 September 2014; *Žerajić and Gojković v. BiH*, dec. of 13 November 2014.

33 *Al Husin v. BiH*, judgment of 7 February 2012.

34 *Al Hanchi v. BiH*, judgment of 15 November 2011; *Al Hamdani v. BiH*, judgment of 7 February 2012.

35 *Rodić and others v. BiH*, judgment of 27 May 2008.

36 *Tokić and others v. BiH*, 8 July 2008.

37 *Al Hamdani v. BiH*, judgment of 7 February 2012; *Al Husin v. BiH*, judgment of 7 February 2012.

38 *Maktouf and Damjanović v. BiH*, judgment of 18 July 2013.

39 *Šimšić v. BiH*, decision of 10 April 2012.

40 *Šobota-Gajić v. BiH*, judgment of 6 November 2007.

was to be judged by the swiftness of its implementation as the passage of time could have irremediable consequences for relations between the children and the parent who does not live with them.

There were five judgments rendered under Article 14, and four under Article 1 of Protocol No. 12. These judgments concerned discriminatory constitutional provisions in the enjoyment of electoral rights. The first judgment in respect of BiH addressing alleged discrimination was *Sejdić and Finci v. BiH*⁴¹ in which the Court for the first time applied Article 1 of Protocol 12 in respect of the complaints that the applicants could not stand for election to the Presidency due to the fact that they were not members of “constituent peoples” in BiH. The Court held the applicants had been discriminated against in the enjoyment of their rights to stand for election to the Presidency of BiH and the House of Peoples of the BiH Parliament, on grounds of their Jewish and Roma origin. Further, the Court stated that the applicants’ continued ineligibility to stand for election lacked an objective and reasonable justification and therefore breached Article 14 taken in conjunction with Article 3 of Protocol No. 1. The constitutional provisions, which rendered the applicants’ ineligible to stand for Presidency of BiH, were also considered discriminatory and a breach of Article 1 of Protocol No. 12. Following the judgment *Sejdić and Finci*, the Court consistently applied its case-law in several subsequent judgments.⁴² Furthermore, in the judgment *Šekerović and Pašalić v. BiH*⁴³ the Court established that there was a violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1, due to the discrimination of the applicants who were internally displaced person.

The Court has examined one application under Article 4 of Protocol No. 7. It was found that irrespective of the different classification of two offences under domestic law, the applicant had been tried and punished twice in both minor-offence and criminal proceedings contrary to the rule of *ne bis in idem*.⁴⁴

Cases decided in 2017

Between January and December 2017, the ECtHR delivered eleven judgments and five decisions on admissibility in respect to BiH. One judgment was delivered by the Grand Chamber, five by a Chamber and five by a Committee of three judges. The Court dealt with the cases under Article 10, Article 9, Article 5 and Article 6 of the Convention. Having in mind the previous cases in respect to BiH, it can be concluded that they continue to involve issues covered by Article 6, the right to a fair trial.

This section will look in more into detail at the judgments and decisions on admissibility adopted in respect to BiH in 2017, and will provide short summaries of the facts and decisions of the Court.

⁴¹ *Sejdić and Finci v. BiH*, judgment of 22 December 2009.

⁴² *Zornić v. BiH*, judgment of 15 July 2014, *Pilav v BiH*, judgment of 9 June 2016, *Šlaku v. BiH*, judgment of 26 May 2016.

⁴³ *Šekerović and Pašalić v. BiH*, judgment of 8 March 2011.

⁴⁴ *Muslija v. BiH*, judgment of 14 January 2014.

Judgments

Article 10, freedom of expression

The Grand Chamber of the Court rendered a judgment in the case *Medžlis Islamske zajednice Brčko and others v. BiH*,⁴⁵ finding that no violation had occurred. The applicants, a religious community of Muslims and three NGOs of ethnic Bosniacs in the Brčko District in BiH, sent a letter to the highest district authorities. The letter expressed their concerns about the appointment procedure in relation to the position of director of the multi-ethnic public radio station and alleged that an editor at the station, who had been proposed for the position, had carried out actions which were disrespectful to both Muslims and ethnic Bosniacs. Soon afterwards, the letter was published in three different daily newspapers. The editor brought civil defamation proceedings against the applicants in which they were held liable for defamation and ordered to retract the letter, failing which they were to pay compensation for non-pecuniary damage. It was noted that the judgments of the domestic courts amounted to an interference with the applicants' freedom of expression, and the interference had been prescribed by law and pursued a legitimate aim, namely that of the protection of the reputation of others. The Court further examined whether the interference was necessary in a democratic society.

In examining this issue, the Court established that the accusations attained the requisite level of seriousness and thus could endanger the rights of the editor under Article 8. Therefore, the Court had to verify whether the domestic authorities had struck a fair balance between the two values guaranteed by the Convention, namely, on the one hand, the applicant's freedom of expression protected by Article 10 and, on the other, the editor's right to respect for her reputation under Article 8. The Court shared the opinion of the domestic authorities that the applicants' liability for defamation should be assessed only in relation to their private correspondence with local authorities, rather than the publication of the letter in the media – as it had not been proven that they had been responsible for its publication.

The Court reiterated that when an NGO drew attention to matters of public interest, it was exercising a role of similar importance to that of the press and could be characterised as a social watchdog. Also, it was noted that in balancing the competing interests involved, it was appropriate to take account of the criteria that generally applied to the dissemination of defamatory statements by the media in the exercise of its public watchdog function. It was also noted that the applicants implicitly presented themselves as having direct access to that information, and in those circumstances, they had assumed responsibility for the statements.

Another important factor was whether the thrust of the impugned statements had been primarily to accuse the editor, or whether it had been to notify the competent State officials of conduct which to them appeared irregular or unlawful. The applicants maintained that their intention had been to inform the competent authorities about certain irregularities and to prompt them to investigate and verify the allegations made in the letter. However, the Court stated that the impugned letter did not contain any request for investigation and verification of their allegations.

The Court found that although the allegations were submitted to a limited number of State officials by way of private correspondence, this did not eliminate their potential harmful effect on the career

⁴⁵ *Medžlis Islamske zajednice Brčko and others v. BiH*, Grand Chamber judgment of 17 June 2017.

prospects of the editor as a civil servant and her professional reputation as a journalist. Irrespective of how the letter reached the media, it was concluded that its publication opened a possibility for public debate and aggravated the harm to her dignity and professional reputation.

Also, the Court found no reason to depart from the findings of the domestic courts that the applicants had not proved the truthfulness of their statements, which they knew or ought to have known were false, and accordingly concluded that the applicants did not have a sufficient factual basis for their impugned allegations about the editor in their letter. It was satisfied that the disputed interference was supported by relevant and sufficient reasons and that the authorities of the respondent State had struck a fair balance between the applicants' interest in free speech on one hand, and the editor's interest in protection of her reputation on the other. Therefore, the State had acted within their margin of appreciation.

Article 9, freedom of thought, conscience and religion

*Hamidović v. BiH*⁴⁶ concerned the refusal of the applicant to remove his skullcap whilst giving evidence before a criminal court. The case centered around an attack on the US embassy in Sarajevo in 2011. In September 2012 Mr Hamidović, who belonged to the Wahhabi/Salafi community in BiH, was summoned to appear as a witness. When addressing the court, the presiding judge asked him to remove his skullcap, explaining that wearing a skullcap was contrary to the dress code for judicial institutions and that no religious symbols or clothing were permitted in court. However, Mr Hamidović refused, claiming that it was his religious duty to wear a skullcap at all times. The judge therefore expelled him from the courtroom, convicted him of contempt of court and sentenced him to a fine, which was subsequently converted into 30 days' imprisonment as Mr Hamidović had failed to pay. He served the sentence.

Relying on Articles 9 (*freedom of religion*) and 14 (*prohibition of discrimination*) of the ECHR, Mr Hamidović complained that punishing him for contempt of court had been disproportionate, and that the interference had not been lawful, as no statutory provision expressly prohibited the wearing of the skullcap in the courtroom. He alleged that The House Rules on which the domestic decisions had relied could not introduce into the legal system bans that had not been prescribed in statute.

It was noted that the punishment imposed on the applicant for wearing a skullcap in a courtroom constituted a limitation on the manifestation of his religion, which was also in line with the ruling of the Constitutional Court. The Court did not depart from the finding of the Constitutional Court that the interference was lawful and that there was a basis in law for restricting the wearing of the skullcap in the courtroom. The applicant had argued that the interference with the exercise of his freedom to manifest his religion did not correspond to any of the aims listed in Article 9 § 2. The Court held that secularism is a belief protected by Article 9 and that an aim to uphold secular and democratic values can be linked to the legitimate aim of the "protection of the rights and freedoms of others" within the meaning of Article 9 § 2. The Court's task was to determine whether the measures taken at national level were justified in principle and proportionate.

The Court saw no reason to doubt that the applicant's act was inspired by his sincere religious belief that he must wear a skullcap at all times, without any hidden agenda to make a mockery of the trial,

⁴⁶ *Hamidović v. BiH*, judgment of 5 December 2017.

incite others to reject secular and democratic values or cause a disturbance. Pluralism, tolerance and broadmindedness are hallmarks of a “democratic society”. Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail. The role of the authorities is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. Further, it was stated that there was no indication that the applicant was not willing to testify or that he had a disrespectful attitude. In these circumstances, his punishment for contempt of court on the sole ground of his refusal to remove his skullcap was not necessary in a democratic society, and a violation of Article 9 was found. The Court did not examine the case under Article 14.

Article 5, right to liberty and security

The case *Čović v. BiH*⁴⁷ originated in an application based on the applicant’s complaints that the rejection of his constitutional appeal due to a failure of the Constitutional Court to reach a majority, had denied him an effective procedure. Thus, his detention was not lawful as required by Article 5 § 4 of the Convention.

The Court reiterated that the purpose of Article 5 § 4 is to secure to persons who are arrested and detained the right to judicial supervision of the lawfulness of the measure to which they are thereby subjected. The Court noted that the same legal issue as the one raised in the present case was examined, in a different context, in an earlier final judgment against BiH (*Avdić and Others*⁴⁸). It was noted that the Constitutional Court took a formal decision on the applicant’s appeal, but it effectively declined to decide on its admissibility and/or merits. The impugned decision contained reasons both for and against the finding of a violation and the only reason why the applicant’s appeal was dismissed was the court’s failure to reach a majority. Therefore, the Court found that the issue of the constitutionality of the applicant’s detention remain unaddressed. That situation had left the applicant without any final determination of his case and, accordingly, restricted the very essence of his right of access to a court. It repeated that by dismissing the applicant’s appeal simply because it was unable to reach a majority on any of the proposals under consideration, the Constitutional Court failed to satisfy the requirement that the circumstances voluntarily created by the authorities must be such as to afford applicants a realistic possibility of using the remedy and there had accordingly been a violation of Article 5 § 4 of the Convention.

Article 6, the right to fair trial

*Panorama Ltd and Miličić v. BiH*⁴⁹ concerned the non-enforcement of domestic judgments in the applicants’ favour, in relation to property claims from the 1992-95 war.

Both applicants were successful in claims against the State, one for the seizure and another for the destruction of property. The judgments in their favour became final in January 2009 and November 2007, respectively. At the time the applicants’ claims were examined domestic law provided that default interest did not apply to war damages. However, the civil courts applied the general rules of tort

47 *Čović v. BiH*, judgment of 3 October 2017.

48 *Avdić and Others v. BiH*, judgment of 19 November 2013.

49 *Panorama Ltd and Miličić v. BiH*, judgment of 25 July 2017.

law and awarded default interest to the applicants. The principal award and legal fees were thus paid to both applicants, but the Federal Ministry of Finance refused to authorise payment of the interest and the final judgments in their favour in this respect had not been enforced. The applicants relied on Article 6 § 1 (*right to a fair hearing within a reasonable time*) and Article 1 of Protocol No. 1 (*protection of property*).

The Court further noted that the second applicant was instructed by the enforcement court to bring a civil action for damages against the bank under the ordinary rules of tort law for its failure to fully enforce the judgment in his favour. In this connection the Court reiterated that requiring an applicant to pursue another set of civil proceedings after he has already obtained a final judgment in his favour would place an excessive burden on him. More than eight and almost ten years had passed since the respective domestic decisions in issue became final and accordingly, the Court concluded that there has been a breach of Article 6 § 1.

In the case *Kahriman*⁵⁰ the applicant complained about the unreasonable length of proceedings under Article 6 § 1. Even though the Government maintained that the applicant could no longer claim to be a “victim” for the reason that the Constitutional Court had acknowledged the alleged breach, the Court repeated that a decision or measure favourable to the applicant is not in principle sufficient to deprive him of his status as a “victim” unless the national authorities have acknowledged a violation, and afforded redress for it. Since the applicant claimed compensation for breach of the “reasonable time” requirement and the Constitutional Court nevertheless did not award any damages, the applicant could still claim to be a “victim”. The Court established that the civil procedure lasted approximately nine years for three levels of jurisdiction and found that the length of the proceedings was excessive and failed to meet the “reasonable time” requirement in violation of Article 6 § 1.

In the case of *Damjanović and Euromag d.o.o.*,⁵¹ the Court found a breach of Article 6 § 1 in respect of the second applicant. Namely, the applicants claimed that the length of administrative proceedings had been incompatible with the “reasonable time” requirement. In determining the competence *ratione personae* the Court recalled that disregarding a company’s legal personality is justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for a company to apply to the Court through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators. In the present case, the second applicant applied to the Court through its director, whereas the first applicant, although one of the founders of the company, was not a party to the domestic proceedings. Consequently, the first applicant could not claim to be a “victim”, within the meaning of Article 34 of the Convention.

The judgments in the cases of *Kunić and others*⁵² and *Spahić and others v. BiH*⁵³ are the latest in a series of cases against BiH that the Court has handed down on in relation to complaints regarding the inability to access courts due to the extended failure to enforce legally binding and enforceable judgments. The decisions of the Constitutional Court of B&H which had determined that there had been a violation of Article 6 and Article 1 of Protocol No. 1 due to the failure to enforce legally binding judg-

50 *Kahriman v. BiH*, judgment of 17 October 2017.

51 *Damjanović and Euromag doo v. BiH*, judgment of 31 October 2017.

52 *Kunić and others v. BiH*, judgment of 14 November 2017.

53 *Spahić and others v. BiH*, judgment of 14 November 2017.

ments, and failure by the competent cantonal governments to take steps ordered by those decisions to secure payment of cantonal debt, had not been complied with within a reasonable time. By failing for a considerable period of time to take the necessary measures to comply with the final judgments in the instant case, the authorities deprived the provisions of Article 6 § 1 of all useful effect and also prevented the applicants from receiving the money to which they were entitled. This failure further amounted to a disproportionate interference with their peaceful enjoyment of possessions.

In *Dorić v. BiH*⁵⁴, *Prazina*⁵⁵ and *Mandić and Popović*⁵⁶ the Court considered that the length of the proceedings, or the delayed enforcement of the final and enforceable domestic judgments, was excessive and failed to meet the “reasonable time” requirement and breached Article 6 § 1.

Decisions

In the case *Stevančević*⁵⁷ the applicant complained about his inability to regain possession of his pre-war flat, while more than two years before lodging the application he had received compensation for that flat. The Court accordingly noted that the compensation paid to the applicant was adequate for any pecuniary loss the applicant had sustained. In the light of this finding, the Court considered that this application constituted an abuse of the right of individual application and therefore it was rejected.

The applicant in the case of *Vidović*⁵⁸ complained that the right to a fair hearing, under the criminal limb of Article 6 § 1 of the Convention, was breached due to the seizure of her computer and that her inability to act as a defence counsel for B.S. and F.R. violated the right to a defence of one’s own choosing under Article 6 § 3 (c) of the Convention. With regards to the applicability of Article 6, the Court noted that the impugned criminal proceedings were initiated against B.S. and F.R. The applicant acted as their defense counsel until a decision of the State Court. The computer used by the applicant’s investigator was also seized as part of the measures aimed at obtaining evidence in the proceedings against B.S. and F.R. but the Court stated that the proceedings complained of did not involve the “determination of a criminal charge” against the applicant. Thus, this complaint was incompatible *ratione materiae* with the provisions of the Convention.

In the case of *Knežević and Others*,⁵⁹ the Court adopted a decision to strike the case from the list of cases since the application involved an issue already solved within the meaning of the Convention so no further examination of the case was needed.

The case *Šahman v. BiH*⁶⁰ concerned an allegation under Article 6 §§ 1 and 3 (c) of the Convention that she has not been allowed to be represented by a lawyer of her own choosing in the criminal proceedings against her which has irretrievably prejudiced her defence rights and undermined the fairness of the proceedings as a whole. Since the Court found that the criminal proceedings brought

54 *Dorić v. BiH*, judgment of 7 November 2017.

55 *Prazina v. BiH*, judgment of 5 December 2017.

56 *Mandić and Popović v. BiH*, judgment of 19 December 2017.

57 *Stevančević v. BiH*, decision of 10 January 2017.

58 *Vidović v. BiH*, decision of 10 January 2017.

59 *Knežević and others v. BiH*, decision of 14 March 2017.

60 *Šahman v. BiH*, decision of 25 April 2017.

against the applicant were still pending before the domestic court at first instance it was concluded that the application was premature.

CROATIA

General Introduction

The Republic of Croatia signed and ratified the European Convention on Human Rights (ECHR or the Convention) on 5 November 1997.

The European Court of Human Rights (ECtHR or the Court) has to date delivered 377 judgments with respect to Croatia, finding a violation of at least one Convention right in 301 of them. Croatia has concluded a total of 26 friendly settlements with applicants in the past twenty years. Six of the 377 judgments delivered with respect to Croatia were handed down by the Grand Chamber. *Blečić v. Croatia*⁶¹ was the first case ruled on by the Grand Chamber.

*Marguš v. Croatia*⁶², also ruled on by the Grand Chamber, should be singled out as the case in which the Court dealt with the application of the *ne bis in idem* principle to war crimes or other grave violations of international and humanitarian law for the first time, not only with respect to Croatia, but in general as well. The Grand Chamber's recent judgment in the case of *Muršić v. Croatia*⁶³ in a way summarises and reaffirms the Court's standards regarding imprisonment conditions and applicability of the prohibition of torture and inhuman treatment or punishment, under Article 3 of the Convention.

A breakdown of the Court's judgments – with respect to Croatia by Article – shows that most of them concerned Article 6 of the Convention (right to a fair trial). Of the 199 judgments on Article 6, 99 dealt exclusively with the right to a hearing within a reasonable time, part of the right to a fair trial enshrined in Article 6 of the Convention. The other 100 cases dealt with other rights under Article 6 of the Convention, such as the right to a fair trial, equality of arms, violation of the right to presumption of innocence or the rights to defence in criminal proceedings. The most important judgments on Article 6 definitely include the Grand Chamber judgments in the cases of: *Dvorski v. Croatia* (criminal suspect's right of access to a lawyer of his own choosing),⁶⁴ as well as Chamber judgments in the cases of *Ajdarić v. Croatia* (assessment of evidence and insufficient reasoning in criminal conviction),⁶⁵ *Šikić v. Croatia* (definition and application of the civil aspect of Article 6 of the Convention),⁶⁶ and *Klauz v. Croatia* (right to a fair trial and costs of civil proceedings).⁶⁷

The above judgments are closely related to the Court's judgments on the right to an effective legal remedy under Article 13 of the Convention. The Court has handed down 33 such judgments to date, and

61 *Blečić v. Croatia*, Grand Chamber judgment of 8 March 2006.

62 *Marguš v. Croatia*, Grand Chamber judgment of 27 May 2014.

63 *Muršić v. Croatia*, Grand Chamber judgment of 20 October 2016.

64 *Dvorski v. Croatia*, judgment of 20 October 2015.

65 *Ajdarić v. Croatia*, judgment of 13 December 2011.

66 *Šikić v. Croatia*, judgment of 15 July 2010.

67 *Klauz v. Croatia*, judgment of 18 July 2013.

most of them have concerned the lack of an effective legal remedy for the protection of the right to a trial within a reasonable time.

The Court delivered 40 judgments with respect to Croatia in which it ruled on Article 8 rights. It, notably, dealt with the right to private and family life, right to a home and right to privacy of correspondence. Its most important judgments on Article 8 of the Convention with respect to Croatia include the ones handed down in the cases of *Karadžić v. Croatia* (civil aspects of child abduction),⁶⁸ *Gluhaković v. Croatia* (right of the parent not living with the child to maintain contact with her),⁶⁹ *X v. Croatia* (exclusion of the applicant, who had been divested of her capacity to act, from proceedings resulting in the adoption of her daughter),⁷⁰ *Ćosić v. Croatia* (right to a home),⁷¹ and *Dragojević v. Croatia* (violation of the right to privacy due to insufficiently reasoned court orders on the wiretapping and covert surveillance of the applicant).⁷²

The Court delivered 33 judgments in respect of Article 1 of Protocol No. 1 (the right to peaceful enjoyment of possessions). In addition to the aforementioned Grand Chamber judgment in the case of *Blečić v. Croatia*,⁷³ the most noteworthy ECtHR judgments on this Convention right includes: *Statileo v. Croatia* (obligation under protected tenancy legislation for the landlord to let property for indefinite period without adequate rent),⁷⁴ *Vajagić v. Croatia* (right to compensation for expropriated land),⁷⁵ and *Radanović v. Croatia* (restitution of property temporarily taken over and used).⁷⁶

The Court has delivered 28 judgments on the right to liberty and security of person, enshrined in Article 5 of the Convention. Most of them dealt with the deprivation of liberty, notably the ordering and extending pre-trial detention and total duration of detention.

As many as ten of the Court's 12 judgments on Article 2 of the Convention (the right to life) with respect to Croatia has dealt with the procedural aspect of the right to life, notably, the implementation of effective investigations and introduction of mechanisms for protecting the right to life in the national system. *Marta Jularić v. Croatia*⁷⁷ was the first such judgment. Only two Court judgments dealt with the substantive aspect of the right to life; the first was the case of *Branko Tomašić and Others v. Croatia*,⁷⁸ which regarded protection from domestic violence.

Cases Decided in 2017

In 2017, the Court handed down 28 judgments and 15 decisions declaring applications against Croatia inadmissible. The Court found a violation of at least one Convention right in 19 of these judgments

68 *Karadžić v. Croatia*, judgment of 15 March 2006.

69 *Gluhaković v. Croatia*, judgment of 12 April 2011.

70 *X v. Croatia*, judgment of 17 July 2008.

71 *Ćosić v. Croatia*, judgment of 15 January 2009.

72 *Dragojević v. Croatia*, judgment of 15 January 2015.

73 *Blečić v. Croatia*, judgment of 8 March 2006.

74 *Statileo v. Croatia*, judgment of 10 July 2014.

75 *Vajagić v. Croatia*, judgment of 20 July 2006.

76 *Radanović v. Croatia*, judgment of 21 December 2006.

77 *Marta Jularić v. Croatia*, judgment of 20 January 2011.

78 *Branko Tomašić v. Croatia*, judgment of 15 January 2009.

and no violations in eight of the cases. It also delivered a judgment in the case of *Vijatović v. Croatia* in which it ruled on just satisfaction under Article 41 of the Convention. In *Vijatović*, the Court found a violation of the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1, however did not rule on just satisfaction for the violation.⁷⁹

The Court processed a total of 502 applications against Croatia in 2017 and communicated 93 new cases to Croatia's Agent.

Herewith the breakdown of the Court's judgments and decisions by Convention right.

Right to Life – Article 2 of the Convention

In 2017, the Court delivered six judgments in cases against Croatia on the procedural aspect of the right to life under Article 2 of the Convention. In five cases, it found that the respondent State complied with the procedural aspect of protection under Article 2 and conducted effective investigations into suspicious deaths. Further, in *M and Others v. Croatia*,⁸⁰ it found that an effective investigation had not been conducted. Interestingly, the *M and Others* case is legally and factually related to the cases of *Borojević v. Croatia*⁸¹ and *Trivkanović v. Croatia*,⁸² in which the Court had found no violation of Convention rights.

Namely, the *M and Others*, *Borojević* and *Trivkanović* cases are parts of a Croatian war crime trial against the former Sisak Chief of Police V.M., who was sentenced to 14 years' imprisonment. Whereas it had concluded in *Borojević* and *Trivkanović* that the conviction of one man for command responsibility satisfied the Article 2 requirements, in *M and Others*, it ruled that the respondent State should have conducted an investigation covering not only those having command responsibility, but the direct perpetrators as well.

The case of *Molnar v. Croatia* should be singled out among the Court's decisions on admissibility of applications alleging Article 2 violations.⁸³ The applicant complained of a deficient investigation into the circumstances in which his son, a police officer, had died. The applicant's son had on several occasions warned his superiors about unlawful practices and possible corruption in the police. His allegations gave rise to several disciplinary proceedings against the relevant police officers. On 21 January 2013, the applicant's son did not come to work and he could not be reached on his mobile telephone. Following an extensive search by the police, on the same day at around 7 p.m. the applicant's son's dead body was found at a remote place near a river, placed in the back seat of his car with a gunshot wound to his forehead.

An extensive investigation was carried out and the authorities concluded that the applicant's son had committed suicide. The Varaždin State Attorney's Office notified the applicant thereof and he filed a criminal complaint against an unknown perpetrator, arguing that his son had been murdered. Fol-

79 *Vijatović v. Croatia*, judgment of 21 December 2017.

80 *M and Others v. Croatia*, judgment of 2 May 2017.

81 *Borojević v. Croatia*, judgment of 4 April 2017.

82 *Trivkanović v. Croatia*, judgment of 6 July 2017.

83 *Molnar v. Croatia*, decision of 12 September 2017.

lowing the applicant's criminal complaint, the Varaždin County State Attorney's Office carried out a number of interviews with those involved in the case, including the Forensic Centre's ballistics expert.

On 20 January 2015, the Varaždin County State Attorney's Office rejected the applicant's criminal complaint on the grounds that it had been undoubtedly established that the applicant's son had not been murdered but that he had committed suicide. The decision of the Varaždin County State Attorney's Office was served on the applicant's lawyer on 22 January 2015. The Court noted that the applicant had lodged his application with the Court more than a year and four months after the service of the Varaždin County State Attorney's Office's decision and had in the meantime sent a letter to the Supreme Court complaining of the manner in which the investigation into the circumstances of his son's death had been conducted. In the Court's view this was, however, clearly not a remedy to be exhausted and could not therefore interrupt the running of the six-month time-limit. The Court thus concluded that the applicant's complaint had been introduced out of time and had to be rejected in accordance with Article 35 of the Convention.

Article 3 of the Convention – Prohibition of Torture and Inhuman Treatment or Punishment

The Court handed down three judgments and adopted one admissibility decision on Article 3 in 2017. It found no violation of Article 3 in two judgments, and a violation of this Article in conjunction with Article 14 of the Convention (prohibition of discrimination) in the third judgment.

The latter judgment, in the case of *Škorjanec v. Croatia*, warrants attention. On 9 June 2003, the applicant and her partner Š.Š. (an ethnic Roma) first had an argument with two individuals they did not know and were then physically assaulted by them.⁸⁴ Although the applicant is not an ethnic Roma, the assailants hurled racist insults at them during the assault. The applicant sustained light physical injuries (contusion). She complained to the Court that the domestic authorities had not effectively investigated the hate crime against her because her partner was a Roma. The Court found that the Croatian legal system provided adequate legal mechanisms to afford an acceptable level of protection in such cases because the Criminal Code explicitly described hate crime as an aggravating form of the offence of causing bodily injury.

It, however, noted that the prosecuting authorities confined their investigation and analysis to the hate-crime element of the violent attack against Š.Š. and had failed to carry out a thorough assessment of the relevant situational factors and the link between the applicant's relationship with Š.Š. and the racist motive for the attack on them. The Court stressed that this, coupled with the prosecuting authorities' insistence that the applicant herself was not of Roma origin and their failure to identify whether she was perceived by the attackers as being of Roma origin herself, resulted in a deficient assessment of the circumstances of the case. The Court also found a violation of Article 14 of the Convention due to the manner in which the domestic authorities conducted the investigation with respect to the applicant.

Article 5 of the Convention – Right to Liberty and Security of Person

In 2017, the Court handed down two judgments and one admissibility decision on Article 5 cases against Croatia. It found a violation of the right to liberty and security in both judgments, due to way in which the domestic authorities took decisions to extend the applicants' pre-trial detention.

⁸⁴ *Škorjanec v. Croatia*, judgment of 28 March 2017.

The Court adopted a decision declaring the application in the case of *Grobenski v. Croatia* inadmissible.⁸⁵ It reviewed a number of Convention rights and aspects of the right to liberty in this case, in which the applicant complained that his Convention rights had been violated, by his pre-trial detention ordered by the domestic court, because the grounds of reasonable suspicion as the basis for his pre-trial detention had been established on the basis of his allegedly unlawfully obtained confession to several grand theft offences. Further, the applicant complained he had been unable to challenge the lawfulness of his detention, in particular the evidence giving rise to reasonable suspicion.

The Court first noted that the domestic court had ordered the applicant's pre-trial detention in accordance with the Criminal Procedure Code. Furthermore, the Court noted that the domestic courts had referred to the extensive material obtained during the investigation (including the records from the crime scene investigation, witnesses identifying the applicant in an identification parade and the available witness statements) and had given specific and quite detailed reasons when examining the grounds for the applicant's detention.

As to the applicant's complaint that he had confessed to the crimes in the absence of his counsel, the Court set out that it should not necessarily be inferred from the alleged unlawfulness of a particular piece of evidence that the suspicion against the applicant was unsubstantiated when he was remanded in custody or that the purpose of his detention was otherwise not in accordance with Article 5 of the Convention – especially since the applicant later repeated his confession.

As far as domestic proceedings, reviewing the lawfulness of the applicant's pre-trial detention are concerned, the Court stressed that there was nothing in its case-law under Article 5 § 4 of the Convention suggesting that domestic courts were required to conduct a full assessment of the lawfulness of the evidence presented against an accused in the context of decisions on pre-trial detention. Further, such an assessment could entail rendering the proceedings ineffective from the perspective of the requirement of speed under Article 5 § 4 of the Convention. The Court therefore found the application manifestly ill-founded.

Article 6 of the Convention – Right to a Fair Trial

The Court delivered ten judgments and five admissibility decisions with respect to the right to a fair trial in 2017. The Court found a violation of at least one aspect of the right to a fair trial in seven judgments, and no violations of that right in three judgments.

Note should be taken of the judgment in the case of *Matanović v. Croatia* in which the Court found Croatia in violation of Article 6.⁸⁶ In this case, the Court reviewed the right to a fair trial in conjunction with Article 7 of the Convention (*nullum crimen nulla pena sine lege*) and Article 8 of the Convention (right to respect for private life). It found that the applicant's right to a fair trial under Article 6 and right to respect for his private life under Article 8 had been violated by the non-disclosure of evidence obtained by special investigative measures in criminal proceedings against him. The Court referred to the absence of an appropriate procedure by which the relevance of evidence and the necessity of its disclosure could be properly assessed.

⁸⁵ *Grobenski v. Croatia*, decision of 12 September 2017.

⁸⁶ *Matanović v. Croatia*, judgment of 4 July 2017.

On the other hand, it found that the applicant's right to a fair trial had not been violated by the use of an *agent provocateur* during the criminal proceeding. The applicant was the vice-president of the Croatian Privatisation Fund, who was convicted to 11 years' imprisonment for bribery. He complained of unlawful use of secret surveillance measures, the results of which were used at the trial at which he was convicted. He also complained of entrapment by an *agent provocateur* and lack of procedural safeguards under Article 6 in that respect, and that he had not been allowed access to part of the evidence obtained by secret surveillance. In relation to secret surveillance measures, the Court recalled its earlier findings in *Dragojević v. Croatia*, where it concluded that the procedure for ordering and supervising the implementation of the interception of the applicant's telephone was not shown to have fully complied with the requirements of lawfulness, resulting in a violation of the applicant's right to private life.⁸⁷

In relation to the use of an informant and the applicant's complaint that he had been incited to commit the offence by undercover investigators, the Court found that the prosecuting authorities had not incited him to commit a crime, that they were passive and that their actions remained within the bounds of undercover work rather than that of *agents provocateurs*. With respect to the recordings included in the applicant's case file but not relied upon for his conviction, the Court noted that, due to the applicant's failure to make any such specific argument concerning the possible relevance of the evidence at issue at any point during the domestic proceedings, the Court was not able to conclude that the alleged impossibility for the applicant to access the recordings belonging to the second category of evidence was of itself sufficient to find a breach of his right to equality of arms.

The Court's judgment in the case of *Krunoslava Zovko v. Croatia*, in which it did not find a violation of Article 6, also warrants attention.⁸⁸ The applicant had requested of the Croatian Health Insurance Fund (CHIF) to recognise her right to sick leave to recuperate from her work-related car accident injuries, although her general practitioner had found that the neck pains she had been complaining of were unrelated to the accident two years earlier. After her medical documentation was reviewed twice by experts, who found that her pain was unrelated to the car accident, the CHIF dismissed the applicant's claim. The applicant launched an administrative action before the Administrative Court in Zagreb, which dismissed it as unfounded.

The applicant complained to the Court about the overall fairness of the administrative procedure, claiming she had been totally excluded from the procedure of commissioning and obtaining the expert reports used to decide the merits of her claim to sick leave entitlement, and that the experts who produced the reports on the matter were biased because they were working full-time for the CHIF, that it was in the CHIF's interest that she not be granted long sick leave because it would have to bear the costs of her sick leave.

The Court upheld the State's arguments that the CHIF experts had reviewed all of the applicant's complaints about her health and adequately responded to them. The applicant was notified of their findings and had an opportunity to challenge the expert reports and the relevant decisions of the administrative authorities before the Zagreb Administrative Court, which she used. Thus, the applicant had effectively participated in the procedure of commissioning and obtaining the expert reports. The very fact that the experts were CHIF staff was insufficient to bring their impartiality into question.

⁸⁷ *Dragojević v. Croatia*, judgment of 15 January 2015.

⁸⁸ *Krunoslava Zovko v. Croatia*, judgment of 23 May 2017.

With respect to Article 6 admissibility decisions, note should be taken of the Court's decision in the case of *Marušić v. Croatia*, in which it dismissed the application as Article 6 and the safeguards it contains was not applicable.⁸⁹ The applicant, a former Zagreb Medical School Professor, complained to the Court that the proceedings the School's Integrity Court had conducted against her had been unfair. The Integrity Court found that the applicant had literally translated texts from a medical textbook by a US author and published them in her textbook without citing the author or his textbook, whereby she had violated the Medical School's Code of Ethics, and issued her a public reprimand. The Court accepted the respondent State's argument that it did not have jurisdiction to assess the fairness of the proceeding, because the applicant had not risked suspension of or prohibition on continuing with her professional activities, and the proceedings exclusively focused on compliance with ethical standards and assessing the applicant's conduct in that context. Hence, the outcome of the proceedings were not decisive for her civil right, which is required for Article 6 to come into play, and the application was declared inadmissible.

Article 8 of the Convention – Right to Family and Private Life

The Court delivered three judgments and two decisions on Article 8 rights with respect to Croatia.

In *Ž.B. v. Croatia*, the Court found that the applicant's right to respect for private life under Article 8 of the Convention had been breached by the discontinuation of domestic violence criminal proceedings.⁹⁰ Back in 2007, the applicant filed a criminal complaint against her husband accusing him of domestic violence. The first-instance court found him guilty, but two first-instance judgments were quashed and the case was remitted twice for further examination. The new Criminal Code (the '2011 CC'), which abolished the criminal offence of domestic violence, entered into force in the meantime; domestic violence acts were punishable under the Anti-Domestic Violence Act as minor offences. When the new Criminal Code entered into force, criminal proceedings over domestic violence were discontinued, because the Code no longer incriminated it.

The applicant complained to the Court that the domestic authorities had not prosecuted the offender adequately. The Court found that, although the 2011 CC abolished the separate criminal offence of domestic violence, it provided that instances of violence within a family constituted an aggravating form of a number of other offences (bodily harm, threat, rape, etc.).

The Court, therefore, concluded that the 2011 CC created a continuity of criminal proscription previously provided for by the prior CC and that it provided an adequate legislative framework for punishing domestic violence. It also noted that the relevant criminal prosecution authorities failed to consider re-classifying the charges against the applicant's husband and charging him with making serious threats and causing bodily harm to a family member under the new Criminal Code; this led to the relevant court's discontinuation of the proceedings and a situation in which the circumstances of the alleged domestic violence against the applicant were never finally established by a competent court of law, resulting in the ex-husband's virtual impunity. The applicant's rights under the Convention were thus violated.

⁸⁹ *Marušić v. Croatia*, decision of 23 May 2017.

⁹⁰ *Ž.B. v. Croatia*, judgment of 11 July 2017.

As per the rights of parents and children, which also fall within the scope of Article 8 of the Convention, the Court found a violation of the applicant's right to family life in its judgment in the case of *K.B. and Others v. Croatia*.⁹¹ Namely, the domestic courts rendered decisions on the contact arrangements between the applicant and her two underage sons, who were living with their father, her ex-husband, who had been granted custody. Those contacts, however, did not materialise as specified in the court decision because of the children's resistance. The applicant complained that the State had failed to fulfil its positive obligations to facilitate contact between her and her children and had thereby violated her and her sons' right to respect for their family life. The Court found that the domestic courts had taken measures in the applicant's case with a delay and ineffectively, wherefore the desired outcome (contacts between the children and the parent they were not living with) had not materialised. It, inter alia, emphasised that the relevant domestic court had taken an excessively long time to decide on the applicant's appeal of the decision setting out the contact arrangements, that the domestic courts had failed to provisionally regulate custody and contact rights in the divorce and custody proceedings, and that they had failed to promptly order an expert evaluation of the children regarding the causes of their resistance to having contact with the applicant and refer them for treatment.

Article 10 – Right to Freedom of Expression

In 2017, the Court delivered one decision on the right to freedom of expression, notably in the case of *Marunić v. Croatia*, in which it found a violation of the applicant's right to freedom of expression.⁹² The applicant was the director of a public utility company. The Chairman of the company Assembly criticised the way she performed her job in the media in 2007. The applicant responded to the criticisms, also in the media; she warned that the company was illegally charging for parking on specific lots and publicly called on the state auditors, as well as the Office for Prevention of Corruption and Organised Crime and State Attorney's Office to check the company operations. After her media appearance, the applicant was dismissed because she damaged the reputation of the company. She launched civil proceedings against the company challenging her dismissal, but the Croatian courts ruled that her dismissal was lawful. As opposed to the Croatian courts, the ECtHR held that the applicant had been entitled to respond to public criticism in the same manner in which they were voiced (publicly and in the media) and that she had not breached her duty of loyalty towards the company as her employer, wherefore it found that the domestic authorities had violated her right to freedom of expression under Article 10 of the Convention.

Article 1 of Protocol No. 1 to the Convention – Right to Peaceful Enjoyment of Possessions

In 2017, the Court handed down two judgments and three decisions on the right to peaceful enjoyment of possessions, which is enshrined in Article 1 of Protocol No. 1 to the Convention.

In the case of *Boljević v. Croatia*, the Court found that the domestic authorities had violated the applicant's right to peaceful enjoyment of possessions.⁹³ Namely, 180,000 EUR belonging to the applicant were confiscated from him in proceedings before the Administrative Offences Council because he failed to declare, as he had been under the obligation to, such a large amount of cash to the customs

⁹¹ *K.B. and Others v. Croatia*, judgment of 14 March 2017.

⁹² *Marunić v. Croatia*, judgment of 28 March 2017.

⁹³ *Boljević v. Croatia*, judgment of 31 January 2017.

officer on entry into Croatia in 2009. The applicant claimed that the state authorities' decision to confiscate his money just because he had failed to declare it to the customs officer at the border was excessive. The Court found that the confiscation of the money had been legal because it was based on the provisions of the relevant domestic laws and that it pursued a legitimate aim – the fight against money laundering. The Court, however, found that the measure was not proportionate because the only minor offence the applicant had committed was that he had failed to declare the money at the state border. The Court noted that bringing cash into Croatia was not prohibited, that the sum that could be transferred across the border was not limited, and that the applicant had not been accused of any criminal offence regarding the money. The Court thus ruled that the State had violated the applicant's right to peaceful enjoyment of possessions because, although the confiscation of the money was lawful and pursued a legitimate aim, it was not proportionate and posed an excessive burden on the applicant.

Article 2 of Protocol No. 4 to the Convention – Right to Freedom of Movement

In 2017, the Court adopted one admissibility decision on this right in the case of *Folnegović v. Croatia*.⁹⁴ In the period between 1996 and 2013, the competent prosecuting authorities in Croatia opened in total fifteen criminal cases against the applicant in connection with a suspicion that he had created a network for illegal and fraudulent offering of loans in Switzerland to Croatian citizens. It was alleged that fifty-six individuals had fallen victim to such criminal activities and that the applicant had also caused damage to the State. The total alleged pecuniary gain was estimated to be 645,847.06 EUR.

In the course of the criminal proceedings against him, the applicant several times failed to appear before the competent criminal courts. Owing to the inability of the Croatian authorities to secure the applicant's presence, four sets of criminal proceedings against him were conducted *in absentia*. In those criminal proceedings he was convicted and sentenced to prison terms ranging from one to three years. An administrative travel ban was imposed on the applicant and his travel document was confiscated. The applicant complained that such an action by the state authorities breached his right to freedom of movement. The Court dismissed the complaint as ill-founded, explaining that, in its view, the application of the administrative travel ban should be viewed against the overall circumstances of the case, which indicate that for a prolonged period of time the applicant unjustifiably avoided appearing before the competent criminal courts in connection with several sets of criminal proceedings against him concerning serious charges of creating a network for illegal and fraudulent offering of loans that affected a number of victims and involved a significant amount of pecuniary gain allegedly obtained by the applicant. The Court concluded that, in these circumstances, there was nothing suggesting that the domestic courts had failed to appropriately evaluate the existence of a substantial risk of the applicant's absconding that warranted the imposition of the administrative travel ban.

94 *Folnegović v. Croatia*, decision of 10 January 2017.

MACEDONIA

General introduction

Since the State's ratification of the European Convention on Human Rights ('the Convention' or 'the ECHR') on 10 April 1997, the European Court of Human Rights ('the Court' or 'ECtHR') has handed down 141 judgments and 426 admissibility decisions against Macedonia, out of which eight judgments and sixteen decisions were given in 2017.⁹⁵ Of the judgments, 130 were adopted by a Chamber, 13 by a Committee and two by a Grand Chamber.⁹⁶ Of the admissibility decisions, 185 cases were decided by a Chamber and 241 cases were decided by a Committee.

104 judgments have been given in respect of Article 6 of the Convention, the right to a fair trial, finding violations in 96 cases. These cases mostly dealt with the length of proceedings and lack of enforcement of the judgments. In addition, many cases also raised issues concerning the impartiality of judges⁹⁷, including in cases of dismissal and lustration of judges⁹⁸, the principle of equality of arms⁹⁹, particularly with respect to examination of witnesses¹⁰⁰ and assessment of expert opinions¹⁰¹, as well as the presence at trial.¹⁰² The admissibility of unlawfully obtained evidence¹⁰³, the use of evidence obtained by protected or anonymous witnesses,¹⁰⁴ the right to defence¹⁰⁵, the right to an interpreter¹⁰⁶ and the presumption of innocence¹⁰⁷ were also dealt with in many criminal cases. In addition, the need for judicial certainty and consistent case-law¹⁰⁸, the lack of reasoning¹⁰⁹, the right of access to a court¹¹⁰ and the right to an oral hearing¹¹¹ were also examined in several civil and administrative cases.

95 The list of judgments includes *Krstanoski and others v Macedonia*, judgment of 7 December 2017; "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" *v Macedonia*, judgment of 16 November 2017; *Spiridonovska and Popovski v Macedonia*, judgment of 19 October 2017; *Petrović v Macedonia*, judgment of 22 June 2017; *Centre for the Development of Analytical Psychology v Macedonia*, judgment of 15 June 2017; *Toleski v Macedonia*, judgment of 15 June 2017; *Karajanov v Macedonia*, judgment of 6 April 2017; *Selmani and others v Macedonia*, judgment of 9 February 2017.

96 Contrary to *El-Masri v Macedonia*, Grand Chamber judgment of 13 December 2012, discussed below, no violation of any Convention article was found in respect of Macedonia in the case of *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia*, Grand Chamber judgment of 16 July 2014.

97 *Mitrov v Macedonia*, judgment of 2 June 2016; *Bajaldžiev v Macedonia*, judgment of 25 October 2011; *Nikolov v Macedonia*, judgment of 20 December 2007.

98 *Ivanovski v Macedonia*, judgment of 21 January 2016; *Mitrinovski v Macedonia*, judgment of 30 April 2015.

99 *Naumoski v Macedonia*, judgment of 27 November 2012; *Grozdanoski v Macedonia*, judgment of 31 May 2007.

100 *Dončev and Burgov v Macedonia*, judgment of 12 June 2014.

101 *Duško Ivanovski v Macedonia*, judgment of 24 April 2014; *Stoimenov v Macedonia*, judgment of 5 April 2007.

102 *Eftimov v Macedonia*, judgment of 2 July 2015; *Atanasov v Macedonia*, judgment of 17 February 2011; *Nasteska v Macedonia*, judgment of 27 May 2010; *Mitrevski v Macedonia*, judgment of 21 June 2006

103 *Hajrullahu v Macedonia*, judgment of 29 October 2015.

104 *Papadakis v Macedonia*, judgment of 26 February 2013; *Trampevski v Macedonia*, judgment of 10 July 2012.

105 No violation was found in *Solakov v Macedonia*, judgment of 31 October 2001.

106 No violation was found in *Sandel v Macedonia*, judgment of 27 May 2010.

107 No violations in this respect were found in *Poletan and Azirovik v Macedonia*, judgment of 12 May 2016; *Miladinov and others v Macedonia*, judgment of 24 April 2014.

108 *Stoilkovska v Macedonia*, judgment of 18 July 2013.

109 *Atanasovski v Macedonia*, judgment of 14 January 2010.

110 *Balažoski v Macedonia*, judgment of 25 April 2013; *Demerdžieva and Others v Macedonia*, judgment of 10 June 2010; *Fetaovski v. Macedonia*, judgment of 19 June 2008.

111 *Mitkova v Macedonia*, judgment of 15 October 2015.

A total of 19 judgments have been given in respect of Article 1 of Protocol No.1 and a violation was found in 8 of them. In *Stojanovski and others*, the applicants were denied their right to restore into their possession a confiscated plot of land, although they had met the statutory requirements.¹¹² In *Arsovski*, the expropriation of the applicants' land in favour of a private company had made them bear an excessive and disproportionate burden as the compensation awarded had been insufficient.¹¹³ The extraordinary quashing of a final restitution order rendered in favour of the applicant in *Vikentijević*¹¹⁴ which was later declared null and void, did not amount to a violation, taking into account the principle of the proper administration of justice. The confiscation of vehicles in applicants' possession which served as instruments to commit an offence led to a violation in two judgments.¹¹⁵

The Court gave four judgments on Article 2, right to life.¹¹⁶ In *Sašo Gorgiev*¹¹⁷, a violation was found even though no death occurred in a case where the applicant had suffered an injury inflicted by a police officer, who was later convicted of "serious crimes against public security" and sentenced to two years' imprisonment. *Neškoska* concerned the failure to carry out an effective investigation into the death of the applicant's son, who got killed by a member of the special police forces during the celebration of the parliamentary elections results in 2011.¹¹⁸ The Court established that the actions or omissions of those who had allegedly been involved in the failure to report a crime or an offence, were not prejudicial to the effective conduct of the investigation and it found no violation. *Kitanovska Stanojković and others*¹¹⁹ concerned delayed enforcement of the sentence of imprisonment.

In 10 out of 11 judgments on Article 3, the Court has found a breach of the procedural limb.¹²⁰ In addition to *El-Masri, Hajrullahu* is the only judgment, where the Court considered that the treatment to which the applicant had been subjected amounted to torture, given that he had been abducted and held *incommunicado* within three days in a house, an extraordinary place of detention, and he had been further intimidated with the aim of extracting a confession, which caused him emotional, psychological and physical pain and suffering.¹²¹ In *Kitanovski*, the ECtHR found a violation of both the substantive and procedural obligation,¹²² in light of the lack of investigative action upon the criminal complaint filed by the applicant against members of the "Alpha" police unit, but also the fact that the same prosecutor who had filed criminal charges against the applicant had previously examined

112 *Stojanovski and others v Macedonia*, judgment of 23 October 2014.

113 *Arsovski v Macedonia*, judgment of 15 January 2013.

114 *Vikentijević v Macedonia*, judgment of 6 February 2014.

115 *Vasilevski v Macedonia*, judgment of 28 April 2016; *Andonoski v Macedonia*, judgment of 17 September 2015. No violation was found in *Sulejmani v Macedonia*, judgment of 28 April 2016.

116 *Kitanovska Stanojković and others v Macedonia*, judgment of 13 October 2016; *Neškoska v Macedonia*, judgment of 21 January 2016; *Kitanovski v Macedonia*, judgment of 22 January 2015; *Sašo Gorgiev v Macedonia*, judgment of 19 April 2012.

117 *Sašo Gorgiev v Macedonia*, judgment of 19 April 2012.

118 *Neškoska v Macedonia*, judgment of 21 January 2016.

119 *Kitanovska Stanojković and others v Macedonia*, judgment of 13 October 2016.

120 *Asllani v Macedonia*, judgment of 10 December 2015; *Hajrullahu v Macedonia*, judgment of 29 October 2015; *Andonoski v Macedonia*, judgment of 23 July 2015; *Kitanovski v Macedonia*, judgment of 22 January 2015; *El-Masri v Macedonia*, Grand Chamber judgment of 13 December 2012; *Gorgiev v Macedonia*, judgment of 19 April 2012; *Sulejmanov v Macedonia*, judgment of 24 April 2008; *Dželadinov and others v Macedonia*, judgment of 10 April 2008; *Trajkoski v Macedonia*, judgment of 7 February 2008; *Jašar v Macedonia*, judgment of 15 February 2007.

121 *Hajrullahu v Macedonia*, judgment of 29 October 2015.

122 *Kitanovski v Macedonia*, judgment of 22 January 2015.

his complaint, which casted doubt on his impartiality. In many cases¹²³ the Court highlighted that the victims of alleged violations are not required to pursue the prosecution of State agents on their own, since this is rather a duty of the public prosecutor, including in *Gorgiev*¹²⁴ where the State's positive obligations was discussed relating to a incident in which a prisoner had sustained injuries by a bull while working on the prison farm. The excessive formalism in the domestic courts' insistence that the applicant discovers the identity of all police officers against whom he had brought subsidiary criminal charges led to a breach of the procedural obligation in *Trajkoski*.¹²⁵ *Ilievska* is the only case where the Court has found a violation only in respect of the substantive aspect due to the degrading treatment to which the applicant had been exposed during her transfer to the Bardovci psychiatric hospital, as a result of her handcuffing, which was not a proportionate measure taking into account her health condition.¹²⁶

Violations were found in all seven judgments given on Article 5, right to liberty and security.¹²⁷ The Grand Chamber judgment in *El-Masri v Macedonia*,¹²⁸ concerned an "extraordinary rendition" of a German national and his transfer to Afghanistan, where he was further ill-treated. His unacknowledged and incommunicado detention in an extraordinary place of detention outside any judicial framework was found to contribute to the arbitrariness of his deprivation of liberty. The most common issues have concerned the excessive length of pre-trial detention, and the lack of reasoning of collective detention orders¹²⁹, but the Court also discussed the right of the defendant to effectively participate in the proceedings in which his initial house arrest was replaced with prison detention,¹³⁰ the unlawful arrest and deprivation of liberty given alleged non-compliance with the court order for payment of a fine and the subsequent omission to award compensation in respect of unlawful imprisonment, as well as the failure to inform the applicant of the reasons for his arrest or imprisonment or of any charge against him¹³¹ and the absence of reasonable suspicion that the applicant had committed an offence¹³². Only one case concerned the unjustified continued confinement in a psychiatric institution.¹³³

The Court has found a violation in five out of six judgments which concerned complaints under Article 8.¹³⁴ These cases involved the applicant's right to respect for his reputation,¹³⁵ exercise of parental

123 *Asllani v Macedonia*, judgment of 10 December 2015; *Andonovski v Macedonia*, judgment of 23 July 2015; *Kitanovski v Macedonia*, judgment of 22 January 2015.

124 *Gorgiev v Macedonia*, judgment of 19 April 2012.

125 *Trajkoski v Macedonia*, judgment of 7 February 2008.

126 *Ilievska v Macedonia*, judgment of 7 May 2015.

127 *Miladinov and others v Macedonia*, judgment of 24 April 2014; *Velinov v Macedonia*, judgment of 19 September 2013; *El-Masri v Macedonia*, Grand Chamber judgment of 13 December 2012; *Vasilkoski and others v Macedonia*, judgment of 28 October 2010; *Mitreski v Macedonia*, judgment of 25 March 2010; *Trajče Stojanovski v Macedonia*, judgment of 22 October 2009; *Lazoroski v Macedonia*, judgment of 8 October 2009.

128 *El-Masri v Macedonia*, Grand Chamber judgment of 13 December 2012.

129 *Miladinov and others v Macedonia*, judgment of 24 April 2014; *Vasilkoski and others v Macedonia*, judgment of 28 October 2010.

130 *Mitreski v Macedonia*, judgment of 25 March 2010.

131 *Velinov v Macedonia*, judgment of 19 September 2013.

132 *Lazoroski v Macedonia*, judgment of 8 October 2009.

133 *Trajče Stojanovski v Macedonia*, judgment of 22 October 2009.

134 *Karajanov v Macedonia*, judgment of 6 April 2017; *Ivanovski v Macedonia*, judgment of 21 January 2016; *Mitovi v Macedonia*, judgment of 16 April 2015; *Popovski v Macedonia*, judgment of 31 October 2013; *El-Masri v Macedonia*, Grand Chamber judgment of 13 December 2012.

135 *Ivanovski v Macedonia*, judgment of 21 January 2016; *Popovski v Macedonia*, judgment of 31 October 2013.

rights, maintaining contacts with children and the lack of enforcement of contact orders,¹³⁶ the moral and physical integrity of the person, the right to personal development, as well as the right to establish and develop relationships with other human beings and the outside world.¹³⁷

On Article 9, the Court did not find any violation in *Kosteski*,¹³⁸ whereas Article 11 was infringed in two cases.¹³⁹ *Association of Citizens Radko and Paunkovski*, concerned unjustified interference given the dissolution of an association shortly after its foundation on the basis of a decision of the Constitutional Court declaring its Statute and Programme null and void for being unconstitutional and for inciting national or religious hatred and intolerance.¹⁴⁰ The execution of this judgment was, however, closed in 2017, as following several refusals of the applicant association's registration for procedural reasons and appeals against these decisions, the registration application had been finally accepted on 5 October 2016.¹⁴¹

Cases from 2017

Out of eight judgments given in 2017, five judgments¹⁴² were adopted by a Chamber of seven judges and the remaining three¹⁴³ by a Committee of three judges. In one case the Court found a violation of Article 10,¹⁴⁴ Article 11 in light of Article 9¹⁴⁵, and a violation of Article 8,¹⁴⁶ in four cases a violation of Article 6,¹⁴⁷ whereas in three cases the Court found no violation of Article 6¹⁴⁸ and in four cases no violation of Article 1 of Protocol No.1.¹⁴⁹

*Selmani and others v Macedonia*¹⁵⁰ is the first judgment rendered in respect of Macedonia in which the Court found a **violation of the freedom of expression guaranteed by Article 10 regarding the forc-**

136 *Mitovi v Macedonia*, judgment of 16 April 2015. On the contrary, no violation in this respect was found in *Mitrova and Savić v Macedonia*, judgment of 11 February 2016.

137 *El-Masri v Macedonia*, Grand Chamber judgment of 13 December 2012.

138 *Kosteski v Macedonia*, judgment of 13 April 2006.

139 "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" v *Macedonia*, judgment of 16 November 2017; *Association of Citizens Radko and Paunkovski v Macedonia*, judgment of 15 January 2009.

140 *Association of Citizens Radko and Paunkovski v Macedonia*, judgment of 15 January 2009.

141 [http://hudoc.exec.coe.int/eng#{"EXECDocumentTypeCollection":\["CEC"\],"EXECState":\["MKD"\],"EXECIdentifier":\["004-40878"\]}](http://hudoc.exec.coe.int/eng#{).

142 "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" v *Macedonia*, judgment of 16 November 2017; *Petrović v Macedonia*, judgment of 22 June 2017; *Centre for the Development of Analytical Psychology v Macedonia*, judgment of 15 June 2017; *Karajanov v Macedonia*, judgment of 6 April 2017; *Selmani and others v Macedonia*, judgment of 9 February 2017.

143 *Krstanoski and others v Macedonia*, judgment of 7 December 2017; *Spiridonovska and Popovski v Macedonia*, judgment of 19 October 2017; *Toleski v Macedonia*, judgment of 15 June 2017.

144 *Selmani and others v Macedonia*, judgment of 9 February 2017.

145 "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" v *Macedonia*, judgment of 16 November 2017.

146 *Karajanov v Macedonia*, judgment of 6 April 2017

147 *Centre for the Development of Analytical Psychology v Macedonia*, judgment of 15 June 2017; *Toleski v Macedonia*, judgment of 15 June 2017; *Karajanov v Macedonia*, judgment of 6 April 2017; *Selmani and others v Macedonia*, judgment of 9 February 2017.

148 *Krstanoski and others v Macedonia*, judgment of 7 December 2017; *Spiridonovska and Popovski v Macedonia*, judgment of 19 October 2017; *Petrović v Macedonia*, judgment of 22 June 2017.

149 *Krstanoski and others v Macedonia*, judgment of 7 December 2017; *Spiridonovska and Popovski v Macedonia*, judgment of 19 October 2017; *Petrović v Macedonia*, judgment of 22 June 2017; *Toleski v Macedonia*, judgment of 15 June 2017.

150 *Selmani and others v Macedonia*, judgment of 9 February 2017.

ible removal of the applicants, all of them journalists, from the Parliamentary gallery from where they had been reporting on the parliamentary session on the Budget Act held on 24 December 2012.

The Court took into consideration the protests of two opposing groups in front of the Parliament building and the strained atmosphere inside which culminated when a group of MPs created a disturbance and caused the Speaker to order the security personnel to take measures in order to restore order and ensure the proper functioning of the Parliament. It specifically referred to the “watch-dog” role of the media and their task of imparting information on the event, and the right of the public to receive such information. The Court found no indication that the disorderly behaviour of the MPs in the chamber would have put the applicants’ lives and physical integrity in danger. It held that the applicants had not been effectively able to view the foreseeable removal of opposition MPs, as an issue of legitimate public concern, and their removal prevented them from obtaining first-hand and direct knowledge based on their personal experience of the events. Having considered all the circumstances prior to and during the parliamentary debate and having weighed both public interests, namely the interests of the security service in maintaining order in Parliament and ensuring public safety, and the interests of the public in receiving information on an issue of general interest, the Court assessed that the applicants’ removal had not been necessary in a democratic society and had not met the requirement of “pressing social need” and therefore, although the reasons provided by the Constitutional Court had been relevant, they had not been sufficient to justify the applicants’ removal.

Additionally, this is the first case where the Court established a **violation of Article 6 § 1 of the Convention on account of the Constitutional Court to hold an oral hearing**, although Article 55 of its Rules provided that, as a rule, an individual constitutional complaint under Article 110 § 3 of the Constitution was to be decided at a public hearing in the presence of the parties. Having in mind that the Constitutional Court was the only body which decided the merits of the case and the facts of the case relevant for its outcome, had been contested between the parties, the Court held that administration of justice would have been better served by affording the applicants the right to explain their personal experience in a hearing before the Constitutional Court. Moreover, even though the applicants had requested an oral hearing their request had been refused and the Constitutional Court had not given any reasons why it considered that no hearing had been necessary. In view of the foregoing considerations, the Court found that there had been no exceptional circumstances that could justify dispensing with an oral hearing.

A case of particular importance was the judgment in the case of “*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*” v. *Macedonia*¹⁵¹, which concerned the **refusal by the domestic authorities to register the applicant association**. Its request for registration as a religious group was dismissed on two occasions for several quite formalistic reasons. The first decision given by the competent administrative body was upheld by the Supreme Court, which held that its name had implied a creation of a parallel religious institution, rather than a religious group as claimed, given that its name had been substantially the same as the name of the Macedonian Orthodox Church (MOC). The second decision given by the first-instance registration court which had been confirmed by the Skopje Court of Appeal reasoned that the MOC had the “historical, religious, moral and substantive right” to use that name. In the constitutional appeals, the applicant raised the grievances of which he complained before the Court. The Constitutional Court rejected both appeals and provided extended

151 “*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*” v. *Macedonia*, judgment of 16 November 2017.

reasons for its decisions. In its first decision, it explicitly stated that it had no jurisdiction to examine the applicant's complaint, while the second constitutional appeal lodged by the applicant association was rejected due to the applicant's non-compliance with certain formal statutory requirements before the competent registration court.

In its analysis, the Court recognized the States' wide margin of appreciation in their relations with religious communities and stressed the need for the State to take action to reconcile the interests of the various religious groups that coexist in a democratic society, while remaining neutral and impartial. It stated that the reasons adduced regarding the formal deficiencies for registration had not been neither relevant nor sufficient. Moreover, the Court observed that the Macedonian Constitution enshrined the separation between Church and State and the equality of all religious organizations before the law. It highlighted that the national authorities must display particular vigilance to ensure that national public opinion is not protected at the expense of the assertion of minority views, no matter how unpopular they may be and the role of the authorities in a situation of a conflict between or within religious groups is not to remove the cause of tension by eliminating pluralism, but to ensure that the competing groups tolerate each other. The Court reiterated that there can be no justification for preventive measures to suppress freedom of assembly or expression, and as at no stage of the domestic proceedings it had been alleged that the applicant had advocated the use of violence or any anti-democratic means in pursuing its aims. It was concluded that the manner in which the domestic authorities had refused the recognition of the applicant association had not been necessary in a democratic society and it constituted **a violation of Article 11 of the Convention, interpreted in the light of Article 9.**

However, the Court's judgment has not yet become final, since the Government's request for referral to the Grand Chamber filed under Article 43 § 1 of the Convention is still pending and awaiting for the decision of a panel of five judges of the Grand Chamber whether to grant it or not.

Another important case was *Karajanov v Macedonia*,¹⁵² which concerned the **unfairness of the domestic authorities' decisions in the lustration proceedings against the applicant.** In 2013 the Fact Verification Commission established that the applicant had collaborated with State security bodies in the 1960s, when he had given information about his brother, his brother's wife and other persons living in Sweden, and while editor-in-chief of a newspaper and afterwards, he had provided information to the security services about a colleague, the colleague's articles and his relations with other people. The applicant challenged the Commission's decision arguing that its findings had been wrong since the case files had obviously been about another person with the same name and not him and he submitted several documents which, among other things, attested that he had a sister rather than a brother, and that he had been doing a military service in Bosnia and Herzegovina and had never visited Sweden. Moreover, he challenged the veracity and authenticity of certain documents and denied any collaboration with the security services. Lastly, he complained that his reputation, dignity and personal integrity had been compromised with the publication of the Commission's decision on its website. The Administrative Court in a hearing held in private dismissed the applicant's claim, holding that the Commission had correctly established the facts and applied the relevant law. On appeal, the applicant reiterated his arguments and further on stated that the Administrative Court had disregarded his evidence that the case file relied on had not concerned him and it had not been analysed in adversarial proceedings in the presence of the applicant or any other relevant witness or expert, but the Higher Administrative

152 *Karajanov v Macedonia*, judgment of 6 April 2017.

Court dismissed his appeal and upheld the lower court's decision finding no grounds to depart from the established facts and the reasoning provided.

The Court found that the civil limb of Article 6 was applicable to the lustration proceedings in the present case, for the same arguments set out in the judgment of *Ivanovski v Macedonia*¹⁵³. The Court found that the domestic courts who had examined his action for judicial review had exercised full jurisdiction over the facts and law had failed to provide a **substantial reasoning** as to the authenticity of the evidence against him and his arguments about mistaken identity, and they failed to point to any concrete issue of fact to confirm his alleged collaboration with the security services. Their rejection to evaluate the authenticity of the evidence before them was detrimental to the exercise of the **applicant's right to effectively present his case**. In addition, **the applicant had been deprived of the right to an oral hearing**, despite his explicit request in that regard and having in mind that the disputed issues of fact and law could not have been dealt with better in writing than in oral argument and there were not any exceptional circumstances that justified dispensing with an oral hearing. Finally, it found that the applicant's right to a fair hearing was infringed.

Furthermore, the Court found a **violation of the right to respect for the applicant's private and family life holding that the publication of the lustration decision on the Commission's website** before it had become final constituted an interference as although it was in accordance with the 2012 Lustration Act, it had not served any of the legitimate aims listed in Article 8 § 2 of the Convention, but also in light of the fact that the applicant was seventy-seven years old when the Commission delivered its decision, he held no public office nor was he a candidate for any such office at the time. The Court also referred to the *amicus curiae* brief adopted by the Venice Commission, which expressed its view that the publication of the Lustration Commission findings prior to their review by a court was irreconcilable with Article 8.

In addition to the payment of non-pecuniary damages awarded by the Court, the applicant claimed retrial and the Administrative Court upheld his request for reopening of the impugned administrative-dispute proceedings, which had been lodged under Section 43 of the Administrative Disputes Act. The reopened proceedings were still pending before the Administrative Court at the time of the printing of this publication.

In the case of *Centre for the Development of Analytical Psychology v Macedonia*¹⁵⁴ the Court established a **violation of Article 6 § 1 in respect of the denied access to a court** of the applicant legal person as a result of the dismissal of its claims related to a contract with the State Health Insurance Fund for lack of standing in the proceedings. After a private psychiatric practice had complied with the order issued by the Ministry of Health's Inspectorate to re-register, it had been assigned a new tax number and the Health Insurance Fund refused to sign a new contract with the new practice, as the previous one had expired. In the meantime, the new practice initiated compensation proceedings against the Fund for non-adherence to the terms of the contract. The domestic courts dismissed the applicant's company's claim, finding that it had no standing in the proceedings as the new practice could not be considered the previous practice's successor as they had different individual tax numbers and they constituted different legal entities, despite the applicant's arguments about the existence of a legal

153 *Ivanovski v Macedonia*, judgment of 21 January 2016.

154 *Centre for the Development of Analytical Psychology v Macedonia*, judgment of 15 June 2017.

relationship and continuity between them. Taking into consideration the domestic case-law, the Court noted that the Supreme Court found, in nearly identical circumstances involving the same parties and the same contract, that the applicant had standing to sue in the proceedings and it saw no reason to depart from the conclusion of the highest national court. Moreover, in the particular circumstances of the case the domestic courts imposed an unjustifiable procedural obstacle on the applicant company by adopting an excessively formalistic approach when dismissing its claims for lack of standing, which impaired the very essence of its right of access to a court and left it no opportunity to have its claims examined on the merits.

Following the approach taken in *Vikentijević*, in two other judgments¹⁵⁵ the Court found that **the extraordinary quashing of a final restitution order rendered in favour of the applicants had not been in contravention with the principle of legal certainty and in violation of their property rights**, as in exercising their power of review the competent courts had advanced reasons of a substantial and compelling character that justified the measure. In both cases, the Court found that the measures complained of amounted to an interference with the applicants' possessions but they were in accordance with Section 267 (1) (3) of the Administrative Procedure Act, which provided that a final administrative decision could be set aside if it was impossible to enforce it. In *Spiridonovska and Popovski v Macedonia*¹⁵⁶, the intervention made upon initiative of the Solicitor General to correct fundamental errors in the calculation of the surface area of the plot in question in the Restitution Commission's decision which made the enforcement of the first restitution decision impossible had not been unjustified and disproportionate even though the quashing took place seven years after the initial decision had become final, as it pursued a legitimate aim of protecting of third parties' rights. In *Toleski v Macedonia*,¹⁵⁷ the Court considered that the applicant had been divested of his property "in the public interest" and the authorities acted without undue delay aiming to protect the rights of third parties and even if there had been "manifest omission" of the Solicitor General to intervene properly before the Restitution Commission, once the deficiencies had been noted by the review bodies, his later intervention had still been justified as it had served the proper administration of justice.

In *Krstanoski and others v Macedonia*¹⁵⁸ the Court found that the restitution authorities accepted the applicants' claims and awarded them compensation for the plots of land confiscated from their predecessors, based on facts established by on-site inspections and the finding that the plots in question could not be restored to the applicants' possession and thus, rejected the applicants' complaints under Article 6 that the restitution authorities had consistent practice in respect of identical claims as manifestly ill-founded. Similarly, it rejected their complaints under Article 1 of Protocol No.1 as incompatible *ratione materiae*, concluding that the State's refusal to grant the applicants' claim to title to the property had not amounted to an interference with their property rights. The Court only found a **violation of Article 6 § 1 of the Convention in respect of the excessive length of the domestic proceedings of over four years at two levels of jurisdiction**, especially having in mind that the applicants' cases had not been particularly complex and that domestic law required restitution disputes to be conducted with special diligence.

155 *Spiridonovska and Popovski v Macedonia*, judgment of 19 October 2017; *Toleski v Macedonia*, no. 17800/10, judgment of 15 June 2017.

156 *Spiridonovska and Popovski v Macedonia*, judgment of 19 October 2017.

157 *Toleski v Macedonia*, judgment of 15 June 2017.

158 *Krstanoski and others v Macedonia*, judgment of 7 December 2017.

In *Petrović v Macedonia*¹⁵⁹, the Court found a violation of Article 6 § 1 concerning the length of the restitution proceedings, which were still pending before the Higher Administrative Court when the application was lodged. The Court reiterated that the length complaint before the Supreme Court represents an effective remedy, as stipulated in *Adži-Spirkoska and others*¹⁶⁰. It refused to assess its impact on the pending restitution proceedings, as the applicant had not challenged the acceleratory aspect of the remedy, by failing to raise it in his appeal against the decision of the first-instance panel of the Supreme Court. Although the overall duration of the proceedings related to the applicant's length complaint exceeded the statutory six-month period, given the delays related to the transfer of the case file since that the applicant was a dual citizen, the Court did not consider it unreasonable in the circumstances of the case and it was of the view that it did not render the length remedy ineffective and contrary to Article 13.

In four out of 16 decisions adopted against Macedonia in 2017 the Court entered into examination of the merits of the case.

In the *Ziberi and others* decision¹⁶¹, the Court discussed the impartiality of expert evidence relied on in the criminal proceedings in which the applicants had been convicted of terrorism. The domestic courts referred to the Court's judgment in *Stoimenov v Macedonia*¹⁶², arguing that it was inapplicable to the present case, given that the expert reports had been drawn up following a court order and they had not constituted the sole evidence in the case. The Court paid special attention to the fact that the experts had given oral evidence at a hearing held before the trial court, the applicants' representatives had been given the opportunity to cross-examine them, a video recording had been made of the on-site inspection carried out by the police, and the inspection had taken place in the presence of an investigating judge. All these considerations led the Court to believe that sufficient safeguards had been in place to secure the effective rights of the applicants. Moreover, they had failed to provide any indication of a lack of impartiality or independence, while the domestic courts had given extensive and sufficient reasoning for dismissing the applicants' arguments against the expert methodology employed in their case. Against this background, the Court rejected as manifestly ill-founded the applicant's complaints that the appointment as experts of members of the Ministry's Criminal Investigations Bureau who had been at the same time employees of the Ministry had violated the principle of equality of arms and had rendered the proceedings unfair.

In *Runteva v Macedonia*¹⁶³, the applicant, who had been convicted for a serious traffic offence, complained under Article 5 § 1 that she had been imprisoned forty-seven days longer than the reduced prison term imposed by the Supreme Court, further commuted on account of the presidential pardon and she had accordingly been unlawfully regarded as an offender during her release on parole. The Court found that the entire period of her deprivation of liberty had been based on a court order and lawful within the meaning of Article 5 § 1 (a) of the Convention. Furthermore, as regards her complaint under Article 5 § 5 about the domestic courts' judgments dismissing her compensation claim for the alleged unlawful imprisonment, the Court noted that the outcome of the compensation proceedings had not

159 *Petrović v Macedonia*, judgment of 22 June 2017.

160 *Adži-Spirkoska and others v Macedonia*, , decision of 3 November 2011.

161 *Ziberi and others v. Macedonia* Committee decision of 23 May 2017.

162 *Stoimenov v Macedonia*, judgment of 5 April 2007.

163 *Runteva v Macedonia*, Chamber decision of 3 October 2017.

been arbitrary or manifestly unreasonable and Article 5 § 5 was not to be considered applicable in the present case given the previous Court's finding regarding the complaint under Article 5 § 1.

The decision in *Gerovska Popčevska v Macedonia*¹⁶⁴ concerned proceedings which the Public Revenues Office launched upon request of the State Anti-Corruption Commission, in which the Office held that the applicant had failed to prove that the monetary funds paid into her bank account had been lawfully obtained and had imposed a personal income tax charge amounting to 70% of the assets which had been belatedly reported to the Commission. The applicant, a former judge, complained about alleged unfairness and the retroactive application of law in those proceedings. The Court concluded that having in regard the nature of the developments in the proceedings following the communication of the case, in particular that the Ministry's decision that the impugned proceedings should be reopened had resulted in the quashing of the payment order, which had been declared null and void *ab initio* and the applicant had successfully applied to be reimbursed the money, the possible effects of the situation of which the applicant had complained to it had been satisfactorily remedied and as the matter had been resolved, it struck the case out of the list of cases.

The *Dejanovik* decision¹⁶⁵ concerned an access to a court complaint under Article 6 in relation to both the civil and the criminal proceedings which had been brought by the applicant's company against another company, which aimed at obtaining compensation. Whereas the civil proceedings had been completed to the advantage of the applicant's company, no decision on the merits had been made in relation to the applicant's separate but identical claim in the criminal proceedings. As the applicant had failed to pursue the matter before the civil courts, despite the explicit direction by the first-instance court in this respect, the Court held that the applicant had not been denied access to a court with respect to his compensation claim and his complaint had been rejected as manifestly ill-founded.

¹⁶⁴ *Gerovska Popčevska v Macedonia*, Committee decision of 17 October 2017.

¹⁶⁵ *Dejanovik v Macedonia*, Committee decision of 23 May 2017.

MONTENEGRO

General introduction

Montenegro ratified the European Convention on Human Rights and Fundamental Freedoms (hereinafter: „Convention“) on 6 June 2006. However, the European Court for Human Rights (hereinafter: „Court“) found in the case *Bijelić v. Montenegro and Serbia*, that its competence regarding Montenegro is valid starting from 3 March 2004, i.e. from the date of ratification of the Convention by former State Union of Serbia nad Montenegro.

As of 31 December 2017 the Court, in respect of Montenegro, has handed down 37 judgments and 50 decisions on admissibility.

Out of a total of 37 judgments given in respect of Montenegro, the Court found in 35 judgments a violation of at least one Article of the Convention. In the case of *Tomić and Others v. Montenegro*¹⁶⁶ the Court however found no violation of Article 6 as it took the view that it was not its role to question the interpretation of domestic law by the national courts, and that it was not in principle its function to compare different decisions of national courts – even if given in apparently similar proceedings; it must respect the independence of those courts. It was also considered that certain divergences in interpretation could be accepted as an inherent trait of any judicial system. However, profound and long-standing differences in the practice of the highest domestic court could in itself be contrary to the principle of legal certainty, a principle which is implied in the Convention and which constitutes one of the basic elements of the rule of law. One judgment referred to just satisfaction – *Koprivica v. Montenegro*.¹⁶⁷

With regards to Article 2 of the Convention (right to life), the Court handed down one judgment in the case of *Randelović v. Montenegro*.¹⁶⁸ The Court emphasised that the obligation prescribed by Article 2 to protect right to life, imposes a procedural obligation to investigate the death, not only by State employees, but also by unknown individuals, and that the basic purpose of the investigation is to “secure the effective implementation of the domestic laws which protect the right to life” and ensure the accountability of those responsible.

Three judgments were given in respect of Article 3 of the Convention (prohibition of torture), judgments *Bulatović v. Montenegro*, *Milić and Nikezić v. Montenegro* and *Siništaj and Others v. Montenegro*¹⁶⁹.

As regards Article 5 of the Convention (right to liberty and security), two judgments have been given, in the cases of *Bulatović v. Montenegro and Mugoša v. Montenegro*¹⁷⁰.

¹⁶⁶ *Tomić and others v. Montenegro*, judgment of 17 April 2012.

¹⁶⁷ *Koprivica v. Montenegro*, judgment of 23 June 2015.

¹⁶⁸ *Randelović v. Montenegro*, judgment of 19 September 2017.

¹⁶⁹ *Bulatović v. Montenegro*, judgment of 22 July 2014; *Milić and Nikezić v. Montenegro*, judgment of 28 April 2015; *Siništaj and Others v. Montenegro*, judgment of 24 November 2015

¹⁷⁰ *Mugoša v. Montenegro*, judgment of 21 June 2016.

In the majority of cases (total 23), the Court found that there was a violation of Article 6 of the Convention¹⁷¹. These violations related to the length of proceedings, execution of final domestic judgments and access to court.

With regards to Article 8 of the Convention (right to respect for private and family life), three judgments have been given – *Mijušković v. Montenegro*, *Antović and Mirković v. Montenegro* and *Alković v. Montenegro*¹⁷².

In relation to Article 1 of the Protocol 1 of the Convention (protection of property), four judgments have been given: *Mijanović v. Montenegro*, *A. and B. v. Montenegro*, *Bijelić v. Montenegro*, and *Lakičević v. Montenegro*¹⁷³.

In terms of Article 10 of the Convention (freedom of expression), the Court found a violation in two cases: *Koprivica v. Montenegro* and *Šabanović v. Montenegro*.¹⁷⁴

Regarding Article 13 of the Convention (right to an effective remedy), the Court found a violation in five cases: *Milić v. Montenegro and Serbia*, *Stakić v. Montenegro*, *Mirković and 3 Others v. Montenegro*, *Đuković v. Montenegro*, and *Sinex d.o.o. v. Montenegro*.¹⁷⁵

In addition, in relation to Article 14 of the Convention (prohibition of discrimination), the Court found a violation in the case of *Alković v. Montenegro*.¹⁷⁶

Cases before the European Court of Human Rights in 2017

The European Court of Human Rights in 2017 decided 19 cases against Montenegro. Out of these 19 cases, 13 were judgments and six were decisions on inadmissibility.

¹⁷¹ *Bijelić v. Montenegro and Serbia*, judgment of 28 April 2009; *Garžičić v. Montenegro*, judgment of 21 September 2010; *Živaljević v. Montenegro*, judgment of 8 March 2011; *Barać and Others v. Montenegro*, judgment of 13 December 2011; *Boucke v. Montenegro*, judgment of 21 February 2012; *Stakić v. Montenegro*, judgment of 2 October 2012; *Novović v. Montenegro*, judgment of 23 October 2012; *Milić v. Montenegro and Serbia*, judgment of 11 December 2012; *Velimirović v. Montenegro*, judgment of 2 October 2012; *Vukelić v. Montenegro*, judgment of 4 June 2013; *Mijanović v. Montenegro*, judgment of 17 September 2013; *Bujković v. Montenegro*, judgment of 10 March 2015; *Mugoša v. Montenegro*, judgment of 21 June 2016; *Radunović and 2 Others v. Montenegro*, judgment of 25 October 2016; *Mirković and 3 Others v. Montenegro*, judgment of 7 March 2017; *Đuković v. Montenegro*, judgment of 13 June 2017; *Svorcan v. Montenegro*, judgment of 13 June 2017; *Tomašević v. Montenegro*, judgment of 13 June 2017; *Jovović v. Montenegro*, judgment of 18 July 2017; *Sineks d.o.o. v. Montenegro*, judgment of 5 September 2017; *Vučinić v. Montenegro*, judgment of 5 September 2017; *Nedić v. Montenegro*, judgment of 10 October 2017; *Tripčević v. Montenegro*, judgment of 7 November 2017; *Dimitrijević v. Montenegro*, judgment of 12 December 2017.

¹⁷² *Mijušković v. Montenegro*, judgment of 21 September 2010; *Antović and Mirković v. Montenegro*, judgment of 28 November 2017; *Alković v. Montenegro*, judgment of 5 December 2017.

¹⁷³ *Mijanović v. Montenegro*, judgment of 17 September 2013; *A. and B. v. Montenegro*, judgment of 5 March 2013; *Bijelić v. Montenegro and Serbia*, judgment of 28 April 2009 and *Lakičević and Others v. Montenegro*, judgment of 21 September 2010.

¹⁷⁴ *Koprivica v. Montenegro*, judgment of 22 November 2011; *Šabanović v. Montenegro*, judgment of 31 May 2011.

¹⁷⁵ *Milić v. Montenegro and Serbia*, judgment of 11 December 2012; *Stakić v. Montenegro*, judgment of 2 October 2012; *Đuković v. Montenegro*, judgment of 13 June 2017; *Mirković and 3 Others v. Montenegro*, judgment of 13 June 2017; *Sineks d.o.o. v. Montenegro*, judgment of 5 September 2017.

¹⁷⁶ *Alković v. Montenegro*, judgment of 5 December 2017.

As regards the judgments of the Court, in five judgments the Court decided as a Chamber of seven judges, in cases *Mirković and Others v. Montenegro*,¹⁷⁷ *Randelović v. Montenegro*,¹⁷⁸ *Tripčević v. Montenegro*,¹⁷⁹ *Antović and Mirković v. Montenegro*,¹⁸⁰ and *Alković v. Montenegro*.¹⁸¹ While the remaining eight cases were decided by a Committee composed of three judges – cases *Đuković v. Montenegro*,¹⁸² *Svorčan v. Montenegro*,¹⁸³ *Tomašević v. Montenegro*,¹⁸⁴ *Jovović v. Montenegro*,¹⁸⁵ *Sineks d.o.o. v. Montenegro*,¹⁸⁶ *Vučinić v. Montenegro*,¹⁸⁷ *Nedić v. Montenegro* and *Dimitrijević v. Montenegro*.¹⁸⁸

During 2017, there were six decisions on inadmissibility, two of which were reached in a Chamber of seven judges: *Čalović v. Montenegro* and *Koloso v. Montenegro*. The remaining four cases were decided by a Committee of three judges: *Šćepanović v. Montenegro*, *Minić v. Montenegro*, *Darmanović v. Montenegro* and *Petrović v. Montenegro*.

Overview of the most important judgments reached in 2017

***Stanka Mirković and Others v. Montenegro*, judgment of 7 March 2017 – violations found of Article 6 and Article 13**

This case concerned the length of civil proceedings the applicants had been involved in. The applicants had filed a request with the Restitution and Compensation Commission, seeking compensation for land expropriated from their legal predecessor in 1946. Between December 2004 and December 2015, the applicants case had been repeatedly remitted and quashed. Relying on Article 6 § 1 (right to a fair hearing within a reasonable time) and Article 13 (right to an effective remedy), the applicants complained about the overall length of administrative proceeding.

The Court took the view that neither the complexity of the case nor the applicants' conduct explained the length of the administrative proceedings, which lasted 10 years, 6 months and 11 days, where the courts reached twenty-one decisions and remitted the case nine times.

The Court considered that, even if the proceedings could have been slightly expedited on occasions, that would not have prevented the repeated remittals of the case and the consequent overall delay. A request for review could not have expedited the proceedings going on before various administrative bodies beforehand, nor could it have prevented the repeated remittals of the case and the consequent overall delay.

177 *Mirković and Others v. Montenegro*, judgment of 7 March 2017.

178 *Randelović v. Montenegro*, judgment of 19 September 2017

179 *Tripčević v. Montenegro*, judgment of 7 November 2017

180 *Antović and Mirković v. Montenegro*, judgment of 28 November 2017

181 *Alković v. Montenegro*, judgment of 5 December 2017

182 *Đuković v. Montenegro*, resolution CM/ ResDH(2017)412

183 *Alković v. Montenegro*, judgment of 5 December 2017

184 *Tomašević v. Montenegro*, judgment of 13 June 2017

185 *Jovović v. Montenegro*, judgment of 18 July 2017

186 *Sineks d.o.o. v. Montenegro*, judgment of

187 *Vučinić v. Montenegro*, judgment of 5 September 2017

188 *Nedić v. Montenegro*, judgment of 10 October 2017 and *Dimitrijević v. Montenegro*, judgment of 12 December 2017

The Court found a violation of Article 6 § 1 of the Convention, for length of proceedings before administrative bodies, as well as of Article 13 of the Convention for lack of effective remedy.

***Randelović v. Montenegro*, judgment of 19 September 2017 – violation of the procedural aspect of Article 2**

The applicant complained that the Montenegrin authorities had failed to conduct a prompt and effective investigation into the deaths or disappearances of the applicants' family members. The family members had boarded a boat on the Montenegrin coast, with the intention of reaching Italy; however, the boat sank in August 1999. The applicants complained under various Articles of the Convention, that the relevant Montenegrin bodies had failed to promptly and effectively investigate the deaths and/or disappearances of their family members, and prosecute those responsible.

The obligation found in Article 2 to protect the right to life imposes a procedural obligation upon the State to investigate deaths, not only when they occur at the hands of State agents, but also at the hands of private or unknown individuals.

While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, a prompt response by the authorities in investigating an alleged infringement of the right to life may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.

The passage of time inevitably erodes the amount and quality of evidence available and the appearance of a lack of diligence casts doubt on the good faith of the investigative efforts.

In Article 2 cases, concerning proceedings instituted to elucidate the circumstances of an individual's death, lengthy proceedings are a strong indication that the proceedings were defective to the point of constituting a violation of the respondent State's procedural obligations under the Convention.

The Court considered in this particular case that the delays could not be regarded as compatible with the State's obligation under Article 2, and that the investigation and the subsequent criminal proceedings had not complied with the requirements of promptness and efficiency.

The Court hence found a violation of the procedural aspect of Article 2 of the Convention.

***Tripcovici v. Montenegro*, judgment of 7 November 2017 – violation of Article 6**

The applicants were co-owners of two plots of land in Montenegro. Their neighbour had built a metal fence which went over onto the applicants' property, making access impossible from one plot of land to the other. In June 2011, the applicants brought their case to court for trespass and the neighbour was ordered to remove the fence. Subsequently, in December 2011 the High Court overturned the previous judgment on the basis of the applicants submitting their claim on the first day back of the courts sitting after a two-day bank holiday, so out of time. Relying on Article 6 § 1 (right to a fair hearing) and Article 1 of Protocol No.1 (protection of property), the applicants complained the decision was unfair due to insufficient reasoning – as to the reasons why the time-limit expiring on the first working day after a national holiday, did not apply in their case.

Judgments of courts and tribunals should adequately state the reasoning on which they are based. The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case. It is also primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic law.

It is not the Court's role to question the national courts' interpretation of domestic law, or to deal with errors of fact or law allegedly committed by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention, and unless the interpretation of domestic law is arbitrary or manifestly unreasonable. The Court's role is otherwise confined to ascertaining whether the effects of that interpretation are compatible with the Convention.

In Article 108 of the Civil Procedure Code of Montenegro it is stipulated, with clearly defined terminology, that the time-limit for submitting complaints expires on the first working day after national holiday. There were no valid reasons in the reasoning of the Decision of the High Court or observations of the Government why this provision would not be applied in the present case.

The Court hence found a violation of Article 6 § 1 of the Convention.

***Antović and Mirković v. Montenegro*, judgment of 28 November 2017 – violation of Article 8**

This case concerned a complaint about the right to respect for private life by two professors at the University of Montenegro's School of Mathematics, after video surveillance had been installed in areas where they were taught. The applicants argued this violated their rights under Article 8.

University amphitheatres are the workplaces of teachers. It is where they not only teach students, but also interact with them, thus developing mutual relations and constructing their social identity. It has already been held that covert video surveillance of an employee at his or her workplace must be considered, as such, as a considerable intrusion into the employee's private life.

Any interference can only be justified under Article 8 § 2 if it is in accordance with the law, pursues one or more of the legitimate aims to which that provision refers and is necessary in a democratic society in order to achieve such aim. The Court noted that the domestic courts did not examine the question of the acts being in accordance with the law given that they did not consider the impugned video surveillance to be an interference with the applicants' private life in the first place.

The Court hence found a violation of Article 8.

***Alković v. Montenegro*, judgment of 5 December 2017 – violation of Article 8 in conjunction with Article 14**

This case concerned the harassment a Roma Muslim man and his family experienced from their neighbours. Relying in particular on Article 8 (right to respect for private and family life and the home) taken in conjunction with Article 14 (prohibition of discrimination), Mr Alković complained about the authorities' failure to effectively investigate the series of attacks against him by his neighbours.

For an "investigation to be regarded as 'effective', it should in principle be capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible.

It is on the authorities under Article 14, taken in conjunction with Articles 2, 3 or 8, to investigate the existence of a possible link between racist attitudes and acts of violence. Where any evidence of racist verbal abuse comes to light in an investigation of violent acts, it must be checked and, if confirmed, a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives for the violence.

The manner in which the criminal-law mechanisms were implemented in the present case by the judicial authorities was defective to the point of constituting a violation of the respondent State's obligations under Article 8 of the Convention.

The Court hence found a violation of Article 8 in conjunction with Article 14 of the Convention.

Overview of the most important decisions reached in 2017

***Ćalović v. Montenegro*, decision of 14 September 2017 – application declared inadmissible**

The application concerned the agreement between the police and a telecommunications company, granting access for the former to the latter's database.

The application was declared inadmissible as contrary to the purpose of the right to individual petition under Article 34 and Article 35 §§ 3 and 4 of the Convention.

The applicant had not submitted an explanation to the Court as to why she did not provide information on the outcome of civil proceedings, in which the impugned agreement was found null and void, or regarding proceedings in the domestic courts with an effect on the application before the Court.

The Court therefore declared the application inadmissible.

***Kolosov v. Montenegro*, decision of 28 September 2017 – application declared inadmissible**

The application concerned divorce proceedings and interim measures concerning property in relation to this, and the complaint related to access to court and protection of property. The Court found the decision by the High Court in Podgorica to dismiss the applicant's complaint was not arbitrary or manifestly ill-founded.

The Court has also found that there was no violation of the right to a fair trial and right to a peaceful enjoyment of possession; finding that the applicant had failed to submit a complaint within the time-limit defined by law.

The Court hence declared the application inadmissible.

WECL cases (well-established case-law)

The Court, in eight cases, decided by a Committee of three judges, reached judgments in which it found violations of the reasonable time requirement in Article 6 § 1 of the Convention.

SERBIA

General introduction

The Republic of Serbia ratified the European Convention on Human Rights ('Convention') on 3 March 2004.

As of 31 December 2017, the European Court of Human Rights ('ECtHR' or 'Court') has handed down 179 judgments¹⁸⁹ and 520 admissibility decisions in respect of Serbia. The ECtHR found violations in 167 cases¹⁹⁰. Of the judgments, 65 cases were decided by a Committee in so called "repetitive" or well established case law (WECL) cases, 112 cases were decided by a Chamber and 2 by a Grand Chamber. Of the admissibility decisions, 397 cases were decided by a Committee and 123 cases were decided by a Chamber.

136 judgments have been given in respect of Article 6 of the Convention, the right to a fair trial. Violations were found in 129 cases. The cases largely concerned length of proceedings and lack of enforcement of domestic judgments. The cases also raised issues in relation to use of confessions in a trial,¹⁹¹ the definition of impartiality in tribunals and courts,¹⁹² fairness of proceedings in a criminal trial,¹⁹³ the need for judicial certainty and public confidence in the judiciary,¹⁹⁴ the right to a public hearing and the meaning of this,¹⁹⁵ the presumption of innocence¹⁹⁶, the composition of a court,¹⁹⁷ proceedings relating to legal capacity¹⁹⁸ and the right of access to a court where procedural exclusions exist in domestic law.¹⁹⁹

74 judgments have been given in respect of Article 1 of Protocol No. 1, on the protection of property. A violation was found in 73 of those cases.²⁰⁰

Most of the cases concern inefficient enforcement of domestic decisions against socially owned companies. The first such judgment was *Kačapor and Others v. Serbia*.²⁰¹ Since this case the Court has

189 The number of judgments in this material includes judgments adopted by Committees of 3 judges in the so called "repetitive or WECL cases", a Chamber of 7 judges and a Grand Chamber of 17 judges.

190 Judgments with no violation are: *Damjanović v. Serbia*, judgment of 18 November 2008; *Molnar Gabor v. Serbia*, judgment of 8 December 2009; *Juhas Đurić v. Serbia*, judgment of 7 June 2011; *Dobrić v. Serbia*, judgment of 21 June 2011; *Mitić v. Serbia*, judgment 22 January 2013; *Luković v. Serbia*, judgment 26 March 2013; *Dekić and Others v. Serbia*, judgment of 29 April 2014; *Stanković and Trajković v. Serbia*, judgment of 22 December 2015; *Cupara v. Serbia*, judgment of 12 July 2016; *Zdravković v. Serbia*, judgment of 20 September 2016 and *Cvetković v. Serbia*, judgment of 7 February 2017.

191 *Hajnal v Serbia*, judgment of 19 June 2012.

192 *Šorgić v Serbia*, judgment of 3 November 2011.

193 *Stanimirović v Serbia*, judgment of 18 October 2011.

194 *Vinčić and Others v Serbia*, judgment of 1 December 2009; *Rakić and Others v Serbia*, judgment of 5 October 2010 and *Živić v Serbia*, judgment of 13 December 2011.

195 *Motion Pictures Guarantors Ltd v Serbia*, judgment of 8 June 2010.

196 *Matijašević v Serbia*, judgment of 19 September 2006.

197 *Momčilović v Serbia*, judgment of 2 April 2013.

198 *Salontaji Drobnjak v Serbia*, judgment of 13 October 2009.

199 *Maširević v Serbia* judgment of 11 February 2014.

200 No violation was found in *Molnar Gabor v. Serbia*, judgment of 8 December 2009.

201 *Kačapor and Others v Serbia*, judgment of 15 January 2008.

adopted 63 similar judgments, many by a Committee of three judges as they are considered to be “well established case law”.²⁰² The Court found a violation of right to property in two cases relating to pension rights²⁰³ and in one case on unauthorised construction.²⁰⁴

In the Grand Chamber pilot judgment *Ališić and Others*²⁰⁵ the ECtHR found a violation of the right to property resulting from the inability of the applicants to use their savings for more than twenty years and obliged Slovenia and Serbia to undertake general measures under Article 46 of the Convention. On 28 December 2016, the Serbian Parliament adopted the Law on the implementation of *Ališić* judgment.

In the recent *Muratović*²⁰⁶ decision the Court found that Serbian Law meets the criteria set out in the judgment *Ališić and Others*. In the *Grudić*²⁰⁷ judgment the ECtHR found a violation of the right to property since the interference with the applicants’ “possessions” (the suspension of payment of pensions to individuals granted these pensions) had not been in accordance with the relevant domestic law (suspensions were based on the Opinions of the Ministry). In the recent *Skenderi and Others*²⁰⁸ decision the ECtHR examined similar topics. Nevertheless, in *Skenderi and Others* the Court declared inadmissible the first applicant’s complaints since it found that the three-year prescription period, an issue which did not arise in *Grudić*, was lawful, pursued a legitimate aim and was proportional²⁰⁹. Also, the Court rejected remaining applications since the applicants did not lodge constitutional appeals – effective domestic legal remedy²¹⁰. On 7 December 2017, the Committee of Ministers adopted a Resolution on execution of the *Grudić* judgment and closed the further examination of this case²¹¹.

On Article 3, the prohibition of ill-treatment, nine judgments have been given. Violations were found in 6 of these cases²¹². The cases involved issues of the requirement to investigate,²¹³ and also of the test as to whether authorities should have known of a risk to an individual and whether they failed to act as they should have.²¹⁴ In *Habimi*, while a violation of the procedural limb of Article 3 was found, there was no substantive violation although this was primarily because of the lack of facts resulting from an inadequate investigation by the authorities.²¹⁵ In *Hajnal*, the Court found a violation of both the

202 42 judgments have been delivered by Committee in WECL procedure regarding non-enforcement against socially owned companies. In numerous similar cases, friendly settlements were concluded.

203 *Pejčić v Serbia*, judgment of 8 October 2013 and *Krstić v Serbia*, judgment of 10 December 2013.

204 *Kostić v Serbia*, judgment of 25 November 2008.

205 *Ališić and Others v Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia*, Grand Chamber judgment of 14 July 2014.

206 *Muratović v. Serbia*, decision of 21 March 2017.

207 *Grudić v Serbia*, judgment of 27 April 2012.

208 *Skenderi and Others*, decision of 4 July 2017.

209 *Ibid.*, §§ 99-102.

210 *Ibid.*, §§ 103-109.

211 [http://hudoc.exec.coe.int/eng#{"EXEClidentifier":\["001-179894"\]}](http://hudoc.exec.coe.int/eng#{)

212 No violation of Article 3 was found in *Dermanović v Serbia*, judgment of 23 February 2010; *Otašević v Serbia*, judgment of 5 February 2013 and *Đekić and Others v Serbia*, judgment of 29 April 2014.

213 *Krsmanović v. Serbia*, judgment of 19 December 2017; *Habimi and Others v Serbia*, judgment of 3 June 2014; *Lakatoš and Others v Serbia*, judgment of 7 January 2014; *Hajnal v Serbia*, judgment of 19 June 2012; *Stanimirović v Serbia*, judgment of 18 October 2011.

214 *Milanović v Serbia*, judgment of 14 December 2010.

215 *Habimi and Others v Serbia*, judgment of 3 June 2014.

substantive and procedural obligation under Article 3.²¹⁶ In the *Milanović*²¹⁷ case the applicant was a member of the Hare Krishna movement, the Court found a violation of Article 3 and Article 14 taken in conjunction with Article 3 of the Convention.

On Article 2 of the Convention, the right to life, 4 judgments were given and a violation was found in three cases²¹⁸. *Mučibabić* concerned loss of life through dangerous activity under state authority control, as well as a violation of the procedural obligation to investigate.²¹⁹ *Mladenović*²²⁰ concerned the procedural obligation to investigate, and the requirements of that obligation. *Petrović*²²¹ also concerned the investigative duty and the state authorities were criticised for their lack of independence, promptness and thoroughness in investigating available evidence.

The Court gave judgments in seven cases under Article 5, the right to liberty and security, and a violation was found in 6 of those cases²²². The Court considered issues such as whether detention is necessary or whether other means can be used to prevent an individual from absconding,²²³ the requirement of bringing a detained individual before a judge or other officer authorised by law,²²⁴ detention on the basis of a non-domestic decision which had not been recognized domestically²²⁵ and the presumption of innocence.²²⁶

15 judgments were given in respect of Article 8, the right to respect for private and family life. Violations were found in 12 of these cases²²⁷. These cases raised issues of the State's positive obligation to reunify parents and children,²²⁸ the importance of the correct assessment of legal capacity,²²⁹ interference with personal correspondence of prisoners,²³⁰ the importance of the determination of paternity,²³¹ the need to use procedural tools to serve respondents²³², and the importance of a parent to obtain confirmation of the fate of their child.²³³ The issue of the adoption of measures in the sphere of the

216 *Hajnal v Serbia*, judgment of 19 June 2012.

217 *Milanović v Serbia*, judgment of 14 December 2010.

218 *Mitić*, where there was no violation, concerned the suicide of a prisoner and involved consideration of both the obligation under Article 2, judgment of 22 January 2013.

219 *Mučibabić v Serbia*, judgment of 12 July 2016.

220 *Mladenović v Serbia*, judgment of 22 May 2012.

221 *Petrović v Serbia*, judgment of 15 July 2014.

222 No violation was found in *Luković v Serbia*, judgment of 23 March 2013, a case involving the question of whether the applicant's detention had been excessively long.

223 *Lakatoš and Others v Serbia*, judgment of 7 January 2014; *Dermanović v Serbia*, judgment of 23 February 2010.

224 *Milosević v Serbia*, judgment of 28 April 2009.

225 *Mitrović v. Serbia*, judgment of 21 March 2017.

226 *Vrenčev v Serbia*, judgment of 23 September 2008.

227 The Court found no violation in *Damnjanović v Serbia*, judgment of 18 November 2008; *Zdravković v Serbia*, judgment of 20 September 2016 and *Cvetković v. Serbia*, judgment of 7 February 2017.

228 *Zdravković v Serbia*, judgment of 20 September 2016; *Krivošej v Serbia*, judgment of 13 April 2010; *Tomić v Serbia*, judgment of 26 June 2007.

229 *Salontaji-Drobnjak v Serbia*, judgment of 13 October 2009.

230 *Stojanović v Serbia*, judgment of 19 May 2009.

231 *Jevremović v Serbia*, judgment of 17 July 2007.

232 *VAM v Serbia*, judgment of 13 March 2007.

233 *Zorica Jovanović v Serbia*, judgment of 26 March 2013.

relations between private individuals, in order to preserve physical and moral integrity, has also been the subject of a judgment.²³⁴ In *Zorica Jovanović*²³⁵ the Court found a violation of Article 8 on account of the State's failure to provide parents confirmation of the fate of their child, after their new born baby had been pronounced dead. The Court obliged Serbia to take all appropriate measures within one year, preferably by means of a *lex specialis*, to secure the establishment of a mechanism aimed at providing individual redress to all parents in a situation such as or sufficiently similar to the applicant's. In October 2016 the Ministry of Justice prepared the draft law. Since the draft law has not been adopted yet, in September 2017 the Committee of Ministers adopted interim resolution. In most recent decision of December 2017 the Committee of Ministers strongly urged Serbian authorities to take urgent action to ensure that the draft law is adopted without any further delay.

On Article 10, freedom of expression, the Court gave seven judgments. Violations were found in all cases. The cases distinguished the rights to privacy in a private and public sphere,²³⁶ the importance of the watchdog role of journalists,²³⁷ the fact that the Article protects information, ideas that offend, shock or disturb,²³⁸ that the nature and severity of sanctions given are relevant,²³⁹ the particular importance of free speech for political parties and active members, especially during election campaigns,²⁴⁰ a request for information on electronic surveillance operations,²⁴¹ and whether the level of sanctions ordered against an applicant following defamation of the applicant's counsel were necessary and proportionate.²⁴²

The Court rendered judgment on 2 occasions under Article 14. In *Milanović* the Court found violation of Article 14 taken in conjunction with Article 3 of the Convention.²⁴³ The second judgment under Article 14 was in *Vučković v Serbia*, however a Grand Chamber judgment followed this in which it was held that the applicants had not exhausted domestic remedies.²⁴⁴ In *Paunović and Milivojević*,²⁴⁵ the Court found a violation of Article 3 Protocol No. 1 since the termination of the applicant's mandate was found to be outside the applicable legal framework. Violation of Article 4 of Protocol No. 7 was found in *Milenković*,²⁴⁶ since there had been a duplication of proceedings.

234 *Isaković Vidović v Serbia*, judgment of 1 July 2014.

235 *Zorica Jovanović v Serbia*, judgment of 26 March 2013.

236 *Bodrožić and Vujin v Serbia*, judgment of 20 November 2007 and *Milislavljević v. Serbia*, judgment of 4 April 2017.

237 *Ibid.*

238 *Bodrožić v Serbia*, judgment of 23 June 2009.

239 *Filipović v Serbia*, judgment of 20 November 2007.

240 *Lepojić v Serbia*, judgment of 6 November 2007.

241 *Youth Initiative for Human Rights v Serbia*, judgment of 25 June 2013.

242 *Tešić v Serbia*, judgment of 11 February 2014.

243 *Milanović v Serbia*, judgment of 14 December 2010.

244 *Vučković v Serbia*, judgment of 28 August 2012 and judgment of 25 March 2014 (GC).

245 Judgment of 24 May 2016.

246 Judgment of 1 March 2016.

Cases decided in 2017

Judgments

In 2017, the Court delivered 26 judgments against Serbia. The Court found violation in 25 cases²⁴⁷. As of 26 judgments, 21 cases were decided by a Committee in the so called “repetitive” or WECL cases and 5 cases were decided by a Chamber²⁴⁸.

In 13 cases the Court found a violation of the right to a trial within a reasonable time (Article 6) and/or right to property (Article 1 of Protocol No. 1), because of inefficient enforcement of domestic decisions against socially owned companies. 12 of those cases were decided by a Committee as WECL²⁴⁹ and one case was decided by a Chamber²⁵⁰. This is a continuation of the case-law that was initiated with the *Kačapor and Others v. Serbia*²⁵¹ case and continued in a series of judgments and decisions on friendly settlements. In these cases, the Court found that the state exercised effective control over socially owned companies and that, accordingly, the state had to bear responsibility for their debts. In line with the previous case-law of the Court, in all 13 judgments over the course of 2017, Serbia was ordered to pay from its own assets compensation for pecuniary damages to the applicants in the amount prescribed by domestic judgments that was not executed and caused the initiation of proceedings, however, reduced by sums that may have already been paid on the same basis at the national level. In addition, the applicants were awarded an amount of €2,000 as compensation for non-pecuniary damages and expenses related to the proceedings.

In five cases, the Court dealt with the issue of a violation of the right to a trial within a reasonable time in civil, criminal and administrative proceedings²⁵². All judgments have been adopted by a Committee of three judges as they are considered to be “well established case law”. Violation of Article 6 of the Convention has been established in each case and judgments awarding compensation for non-pecuniary damages have been adopted.

In 2017, the Court delivered four judgments²⁵³, continuing the case-law of *Savić v. Serbia*²⁵⁴ case and establishing a violation of the right to a trial within a reasonable time due to the insufficient sums of compensation awarded by the Constitutional Court as a form of just satisfaction for a violation of the right to a trial within a reasonable time. All judgments have been adopted by a Committee of three judges.

247 No violation of Article 8 of the Convention was found in *Cvetković v. Serbia*, judgment of 7 February 2017.

248 Cases decided by a Chamber are: *Krsmanović v. Serbia*, judgment of 19 December 2017; *Krndija v. Serbia*, judgment of 27 June 2017; *Milsavljević v. Serbia*, judgment of 4 April 2017; *Mitrović v. Serbia*, judgment of 21 March 2017 and *Cvetković v. Serbia*, judgment of 7 February 2017

249 *Mives DOO v. Serbia*, judgment of 10 January 2017; *Nikolić and Others v. Serbia*, judgment of 24 January 2017; *Tehnogradnja DOO v. Serbia*, judgment of 14 March 2017; *Koka Hybro Komerc DOO Brojler v. Serbia*, judgment of 14 March 2017; *Živković v. Serbia*, judgment of 4 April 2017; *Pavlović and Pantović*, judgment of 4 April 2017; *Ignjatović v. Serbia*, judgment of 25 April 2017; *Janković v. Serbia*, judgment of 16 May 2017; *Radulović v. Serbia*, judgment of 3 October 2017; *Batić and Others v. Serbia*, judgment of 17 October 2017; *Maksović v. Serbia*, judgment of 17 October 2017 and *Bilić v. Serbia*, judgment of 17 October 2017.

250 *Krndija v. Serbia*, judgment of 27 June 2017.

251 *Kačapor and Others v. Serbia*, judgment of 15 January 2008.

252 *Marković v. Serbia*, judgment of 28 March 2017; *Blagojević v. Serbia*, judgment of 28 March 2017; *Jovanović v. Serbia*, judgment of 28 March 2017, *Stokić v. Serbia*, judgment of 17 October 2017 and *Joksimović v. Serbia*, judgment of 7 November 2017.

253 *Ković and Others v. Serbia*, judgment of 4 April 2017, *Borović and Others*, judgment of 11 April 2017, *Momčilović and Others*, judgment of 5 December 2017 and *Milovanović v. Serbia*, judgment of 19 December 2017

254 *Savić v. Serbia*, judgment of 5 April 2016.

es as they are considered to be “well established case law”. A violation of Article 6 of the Convention has been established in each case and compensation for non-pecuniary damages has been awarded. Before lodging their applications to the Court, all of the applicants filed constitutional appeals and complained of a violation of the right to trial within a reasonable time. In all cases, the Constitutional Court passed decisions establishing that the applicants had their right to a trial within a reasonable time violated, awarding them compensation for non-pecuniary damages. As in the *Savić and Others* case, the State disputed the admissibility of the application, stating that the applicants could not complain (any more) that they were victims of a violation of the right, since the establishment of the violation by the Constitutional Court and the determination of compensation for non-pecuniary damage represented sufficient compensation for the violation of their right to a trial within a reasonable time. As in the *Savić* case, the Court considered that this objection was closely linked to the substance of the applicants’ complaints and must therefore be joined to the merits.

Deciding on the merits, the Court reiterated the principles from *Savić*, noting that the applicant’s victim status depended on whether the redress afforded by Constitutional Court was adequate and sufficient, having regard to just satisfaction.

The Court assessed that the sum of compensation for damages established by the Constitutional Court were significantly lower than the amounts awarded in similar cases in the case-law by the ECtHR. Again, it was highlighted that the reasonableness of the awarded sums was being assessed in the context of all the circumstances relating to the case. These included not only the length of the proceedings in regards to this particular case, but also the value awarded in the context of the living standard in the subject state and the fact that compensation under national systems is generally granted and paid off much faster than in the case of ECtHR decisions. In view of the material in the case files and having regard to the particular circumstances of the proceedings in question, the Court considered that the sums awarded to applicants could not be considered as sufficient and did not therefore amount to appropriate redress for the violations suffered. The ECtHR concluded that the applicants did not lose the status of victim and concluded that the length of the proceedings was excessive and that they did not meet the “reasonable time” requirement.

On Article 5 § 1 of the Convention, the right to liberty and security, the Court gave one judgment: *Mitrović v. Serbia*²⁵⁵ and a violation was found. The case was decided by a Chamber. The applicant was sentenced to eight years of imprisonment for murder by a court judgment in the “Republic of Serbian Krajina”, after which he was sentenced to serve a sentence in the “District Prison in Beli Manastir”. After signing the Erdut Agreement, on 20 June 1996, the applicant was transferred to the Sremska Mitrovica Penal Correctional Facility on the territory of the Republic of Serbia for “security reasons”. The authorities of the Republic of Serbia did not conduct any proceedings for the recognition and enforcement of a foreign court decision.

The applicant remained in prison in Sremska Mitrovica until 5 February 1999, when he was released on annual leave until 15 February 1999. After he had not returned to the prison on the scheduled day, a warrant was issued. The applicant was arrested on 7 July 2010, when he attempted to enter Serbia from Croatia. He was sent to prison in Sremska Mitrovica to serve the rest of his sentence. The applicant remained in prison in Sremska Mitrovica until 15 November 2012, when he was pardoned by order of

255 *Mitrović v. Serbia*, judgment of 21 March 2017.

the President of the Republic of Serbia. On 7 March 2011, the applicant initiated a civil procedure for compensation of damages for the unlawful deprivation of liberty, but his claim was rejected.

The applicant complained to the Court under Article 5 § 1 (a) of the Convention that his deprivation of liberty from 7 July 2010 until 15 November 2012 was not lawful. The ECtHR noted that the applicant was convicted for murder by a court that worked outside the legal system of Serbia, namely in a court of the then existing “Republic of Serbian Krajina”. As soon as he was convicted, he was transferred to a prison in Serbia to serve his sentence. The Court further stated that the Serbian authorities did not conduct any proceedings for the recognition of a foreign decision, as prescribed by the relevant provisions of the Criminal Procedure Code of the SFRY, which was then in force. The Court concluded that the deprivation of liberty on the basis of a decision of a foreign court not recognized by the authorities of Serbia in the appropriate proceedings, *ipso facto*, was unlawful under the rules of domestic law and that there was a violation of Article 5, paragraph 1 of the Convention.

The Court gave one judgment, *Milisavljević v. Serbia*²⁵⁶, in a case under Article 10, freedom of expression, and a violation was found. The case was decided by a Chamber.

The applicant was convicted in connection with an article written under the title “The Hague Investigator” and published in the daily “*Politika*”. The Serbian courts concluded that the applicant committed the offence of insult when citing in relation to N.K. that “she is called a witch and a prostitute”, for which the court issued a warning.

The ECtHR noted that among the parties it was not disputed that the applicant’s conviction amounted to “interference by public authority” with her right to freedom of expression, nor that such interference pursued one of the aims, namely “protection of reputation or rights of others”. The ECtHR further reiterated that, when considering the necessity of the interference in a democratic society in the interests of “protecting the reputation or rights of others”, the Court may be required to ascertain whether the domestic authorities have achieved the right balance in protecting the two values guaranteed by the Convention that may come into mutual conflict in certain cases - on the one hand, freedom of expression and, on the other hand, the right to respect for private life. The ECtHR pointed out that a distinction has to be made between private individuals and persons acting in a public context, as political or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures, in respect of whom limits of critical comment are wider, as they are inevitably and knowingly exposed to public scrutiny and must therefore display a particularly high degree of tolerance.

The Court concluded that the reaction of the domestic authorities to the applicant’s article and, in particular, to the disputed words, was disproportionate to the legitimate aim pursued, therefore, it was not necessary in a democratic society. The ECtHR stressed that although the contested words were offensive, it was clear from the wording of the sentence that the applicant described how others experienced N.K., and not the applicant herself, regardless of the fact that the disputed offensive words were not placed between brackets as allegations. In the Court’s view, the domestic courts did not invoke the entire context of the text and the circumstances under which it was written, but their findings were rather limited to the fact that the contested words were not in the form of a quote.

²⁵⁶ *Milisavljević v. Serbia*, judgment of 4 April 2017.

The Court also emphasised that it could not accept the Government's argument that the applicant's sentence was lenient. In the Court's view, what mattered was not that the applicant was issued a judicial warning "only", but that she was convicted for an insult at all. Irrespective of the severity of the penalty which is liable to be imposed, a recourse to criminal prosecution of journalists for purported insults, with the attendant risk of a criminal conviction and a criminal penalty, for criticising a public figure in a manner which can be regarded as personally insulting, is likely to deter journalists from contributing to the public discussion of issues affecting the life of the community.

The Court gave one judgment, *Krsmanović v. Serbia*²⁵⁷, in a case under Article 3, the prohibition of ill-treatment, and a violation was found. The applicant was arrested on 1 April 2003 as part of the "Sablja" operation, when he was interrogated by the police, after which he was detained and spent a year and two months imprisoned. On 18 May 2004, the applicant's mother filed a complaint to the Inspector General's Service of the Ministry of Interior Affairs, stating that her son was tortured by members of the Special Anti-Terrorist Unit and police officers. On 21 March 2007, the Inspector General's Service dismissed the complaint filed by the applicant's mother alleging her son's ill-treatment due to a lack of evidence pointing to the perpetration of a criminal offence. On 1 July 2007, the applicant filed a criminal complaint with the competent prosecutor's office against a number of unknown perpetrators, as well as against three police officers identified only by surname. In the further course of the proceedings, the applicant, after having the criminal complaint dismissed by the prosecution, took over the criminal proceedings as a subsidiary prosecutor and requested that an investigation be opened against certain individuals. Since his request for opening an investigation was refused, the applicant lodged a constitutional appeal, which was rejected by the Constitutional Court.

In his application to the Court, the applicant complained that the authorities of the Republic of Serbia had not conducted an effective investigation into his allegations of abuse by police officers during his arrest and detention.

The Court dismissed the State's objection to the lack of competence *ratione temporis* and failure to comply with the 6-month time-limit. Deciding on the merits of the applicant's complaint of a violation of the procedural aspect of Article 3, the Court reiterated its opinion that where an individual raises an arguable claim that he or she has been seriously ill-treated by the police or other such agents of the State in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention, requires by implication that there should be an effective official investigation.

The Court reiterated that even though the obligation to investigate is not an obligation of result, but of means, there are several criteria an investigation has to satisfy for the purposes of the procedural obligation under Articles 2 and 3 of the Convention. Firstly, an effective investigation is one which is adequate, that is an investigation which is capable of leading to the identification and punishment of those responsible.

Secondly, for an investigation to be considered effective it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events, which means not only a lack of hierarchical or institutional connection but also a practical independence.

²⁵⁷ *Krsmanović v. Serbia*, judgment of 19 December 2017.

Thirdly, the investigation has to be thorough, which means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.

Fourthly, there is an obligation to react promptly and take action as soon as an official complaint has been lodged. Even when strictly speaking no complaint has been made, an investigation must be started if there are sufficiently clear indications that ill-treatment has been used.

Fifthly, an effective investigation is one which affords a sufficient element of public scrutiny to secure accountability. While the degree of public scrutiny may vary, the complainant must be afforded effective access to the investigatory procedure in all cases. By applying these general views on the particular case, the ECtHR concluded the complaints submitted by the applicant and his mother, the medical evidence and the video in question justified an “arguable claim” within the meaning of Article 3 of the Convention that the applicant had been subjected to ill-treatment during his arrest and while in detention.

The Court further concluded that the Serbian authorities were under an obligation to conduct an effective investigation. The ECtHR noted that certain investigative steps into the applicant’s alleged ill-treatment were carried out by three different authorities – the Inspector General’s Service, the prosecutor’s office and an investigative judge. Nevertheless, all three investigations were terminated because of an alleged absence of evidence, either of ill-treatment or of someone’s guilt. The Court noted that the investigations were mainly confined to interviews with several police officers involved in the incident. The applicant and his mother were not allowed to participate effectively in those investigations or to have the police officers questioned to possibly corroborate their allegations. Besides, little attention was given to the applicant’s allegations, despite them being substantiated by a medical certificate, and their allegations were not seriously assessed. The Court further concluded that whilst it was true that the domestic authorities were presented with sufficient evidence of the applicant’s ill-treatment, they failed to identify those involved. In the Court’s view, after being alerted to the applicant’s allegations of ill-treatment, the investigative authorities should have conducted interviews with the other people present during his arrest or in the detention facility or corroborated his statement with the statements of those interviewed. However, they failed to do so.

In the final analysis the Court concluded the fact that the investigations conducted by the State authorities proved incapable of even identifying the State agents who abused the applicant – even though it had been proven that the applicant was subjected to ill-treatment while under the control of the police – reinforced the Court’s doubts as to the effectiveness of the investigation. These findings were enough for the Court to consider that the applicant did not have the benefit of an effective investigation.

Decisions

In 2017, the Court adopted 26 decisions in relation to the Republic of Serbia. The Court struck the applications out of its list in 14 cases due to the conclusion of friendly settlements and resolution of issues at the national level²⁵⁸. Applications were declared inadmissible in 12 cases, while the Chamber

²⁵⁸ *Dorđević and Others v. Serbia*, decision of 17 January 2017.

adopted a decision on these matters in 5 of the aforementioned cases²⁵⁹.

In the *Muratović* decision²⁶⁰, the Court found that Serbian Law on the Implementation of *Ališić and Others*²⁶¹ judgment meets the criteria set out in the that judgment and declared the application inadmissible.

In the *Skenderi and Others*²⁶² decision the ECtHR examined similar topics as in *Grudić* where the Court previously found a violation of right to property since the interference with the applicants' "possessions" (the suspension of payment of pensions to individuals granted these pensions) had not been in accordance with the relevant domestic law. However, in *Skenderi and Others* the Court declared inadmissible the first applicant's complaints since it found that the three-year prescription period, an issue which did not arise in *Grudić*, was lawful, pursued a legitimate aim and was proportional²⁶³. Also, the Court rejected remaining applications since the applicants did not lodged constitutional appeals – effective domestic legal remedy.

In the decision of *Croatian Chamber of Economy*,²⁶⁴ the Court found that the application was incompatible *ratione personae* since the applicant did not enjoy a sufficient degree of autonomy from the Croatian Government for it to be considered a non-governmental organisation within the meaning of Article 34 of the Convention.

In the *Fejzić and Others*²⁶⁵ decision the applicants' complaint concerning the lack of investigation into their relatives' deaths was dismissed since the applicants failed to introduce their complaint before the Court within the six-month time limit.

In the *Đorđević and Others*²⁶⁶ decision the Court decided to strike the applications out of its list of cases since the case had been resolved at national level. The applicants complained that there had been an unlawful interference with their right to freedom of expression and the right to freedom of peaceful assembly guaranteed by Articles 10 and 11 of the Convention, on account of the change of the location of the assembly Pride Parade in 2009 and the prohibition of the assemblies Pride Parade planned in 2011, 2012 and 2013. The Court noted that the structural problem (Public Assembly Act 1992) resolved by the Constitutional Court was at the core of the applicants' complaints and that the relevant legislation changed by the proactive attitude of the Constitutional Court. The Court furthermore noted that there had also been a positive change in the public perception of the issues concerned. The Court concluded that the redress provided by the Constitutional Court was, in the circumstances, adequate and sufficient and decided to strike the applications out of its list of cases.

259 *Muratović v. Serbia*, decision of 21 March 2017; *Croatian Chamber of Economy*, decision of 25 April 2017; *Skenderi and Others v. Serbia*, decision of 4 July 2017; *Tordaj v. Serbia*, decision of 19 September 2017 and *Fejzić and Others v. Serbia*, decision of 26 September 2017.

260 *Muratović v. Serbia*, decision of 21 March 2017

261 *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and Macedonia*, Grand Chamber judgment of 14 July 2014.

262 *Skenderi and Others*, decision of 4 July 2017.

263 *Ibid.*, §§ 99-102.

264 *Croatian Chamber of Economy*, decision of 25 April 2017.

265 *Fejzić and Others v. Serbia*, decision of 26 September 2017.

266 *Đorđević and Others v. Serbia*, decision of 17 January 2017.

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The AIRE Centre is a non-governmental organisation that promotes awareness of European law rights and provides support for victims of human rights violations. A team of international lawyers provides information, support and advice on European Union and Council of Europe legal standards. It has particular experience in litigation before the European Court of Human Rights in Strasbourg and has participated in over 150 cases. Over the last 20 years the AIRE Centre has conducted and participated in a number of seminars in Central and Eastern Europe for the benefit of lawyers, judges, government officials and non-governmental organisations.

The AIRE Centre has been focusing on the countries of Western Balkans in particular, where it has been for over decade and a half conducting a series of long-term rule of law programmes in partnership with domestic institutions and courts. Our aim throughout these programmes has been to promote the national implementation of the European Convention on Human Rights, assist the process of European integration by strengthening the rule of law and full recognition of human rights, and encourage regional cooperation amongst judges and legal professionals.



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