



The AIRE Centre
Advice on Individual Rights in Europe



**Case Law From the European
Court of Human Rights with
a Focus on 2018: Albania,
Croatia, Bosnia and
Herzegovina, Montenegro,
North Macedonia and Serbia**

Case Law From the European Court of Human Rights with a Focus on 2018: Albania, Croatia, Bosnia and Herzegovina, Montenegro, North Macedonia and Serbia

Prepared by the AIRE Centre

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Contents

| | |
|---|----|
| 2018 at the European Court of Human Rights – the year in review | 5 |
| The Republic of Albania..... | 11 |
| Bosnia and Herzegovina | 18 |
| The Republic of Croatia..... | 24 |
| Montenegro | 36 |
| The Republic of North Macedonia | 42 |
| The Republic of Serbia..... | 52 |

2018 at the European Court of Human Rights – the year in review

The European Court of Human Rights (the Court or ECtHR) has continued to work to protect human rights across Europe throughout 2018. This publication presents an examination of the ECtHR jurisprudence in 2018, looking first at general trends, which is then followed by an examination of cases against countries in the region handed down during 2018.

The number of applications pending before the ECtHR has remained fairly stable at around 56,000. Interestingly, almost 72% of those pending cases concern six countries: the highest number of cases has been filed against Russia, followed by Romania, Ukraine, Turkey, Italy and Azerbaijan. Analysis of the pending applications from these different countries shows that it is the structural situation in certain countries that really increases the Court's workload, giving rise to a huge volume of applications.

How did the ECtHR ensure that cases pending before it were dealt with efficiency in 2018?

Cases before the ECtHR are decided in four different types of formations:¹

Single Judge:

Single judges determine the admissibility of individual communications involving clearly inadmissible cases. This system was set up to help erode the backlog of cases.

Committee:

Composed of three judges, committees rule on the admissibility of cases as well as the merits when the case concerns an issue covered by well-developed case law (the decision must be unanimous).

Chamber:

Composed of seven judges, chambers primarily rule on admissibility and merits of cases that raise issues that have not been ruled on repeatedly (a decision may be made by a majority). Each chamber includes the Section President and the “national judge” (the judge with the nationality of the State against which the application is lodged).

Grand Chamber:

Composed of 17 judges, the Grand Chamber hears a small, select number of cases that have been either referred to it or relinquished by a Chamber, usually when the case involves an important or novel question. The Grand Chamber always includes the President and Vice-President of the Court, the five Section presidents, and the national judge.

¹ Article 26(1) of the ECHR “To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.”

The greatest challenge facing the Court is undoubtedly the 26,000 pending Chamber cases, which cannot be dealt with by a Committee owing to their complexity or to the fact that they raise novel legal issues.

In order to ensure that all applications pending before it are dealt with efficiently, the ECtHR adopted a priority policy in 2009, with a view to speeding up the processing and adjudication of the most important, serious and urgent cases. It established seven categories ranging from urgent cases concerning vulnerable applicants (Category I) to clearly inadmissible cases dealt with by a Single Judge (Category VII).² 20,600 out of the 26,000 cases have priority status. The vast majority of these so-called priority cases are in fact **repetitive** ones, since they concern individuals complaining of prison overcrowding. However, as they raise issues under Article 3 of the Convention (the prohibition of torture, inhuman or degrading treatment or punishment), they take priority.³

Trends in judgments rendered

In the beginning of 2017, the ECtHR had 80,000 applications pending, which was reduced sharply to around 56,000 by the beginning of 2018. However, over the course of the following twelve months the number of pending applications remained relatively stable, ending the year with only one hundred fewer than at the start.

In practice, most applications before the Court were resolved by a decision. One application was struck out by the Grand Chamber. Approximately 200 applications were declared inadmissible or struck out of the list by Chambers, and some 6,650 by Committees. In addition, single judges declared inadmissible or struck out some 33,200 applications (66,150 in 2017). The number of applications decided by judgment delivered fell by 82% from 2017 to 2018, with 2,738 applications decided by judgments delivered in the latter year. The number of decisions on admissibility and strike outs also fell significantly, by 43%, from roughly 70,000 in 2017 to around 40,000 in 2018. This trend contrasts to that of 2017 which saw a significant increase in the number of decided applications in comparison to 2016.

In 2018, the Court delivered 1,014 judgments⁴, compared with 1,068 in 2017. The Grand Chamber delivered 14 judgments and one decision in 2018, with twenty-one cases pending at the end of the year. The Chambers delivered 463 judgments in 2018, concerning 712 applications, with the Committees delivering 537 judgments, concerning 2,000 applications. At the end of the year there were 51,600 Chamber or Committee applications pending before the Court. Further down the ladder, single judges declared 33,200 applications to be inadmissible or struck them off the list, with 4,750 applications pending.

The need to reduce the number of pending cases before the Court inspired the reform process, which began with the drafting and adoption of Protocol 14, and continues to date. The priority of the reform process has been to find ways to streamline the Court's working methods in order to boost its efficiency and productivity. Indeed, the fall in pending applications over the year 2017 should probably not be taken as evidence of any great progress towards the Court's reform goals but are instead owed to the

2 Read more about the ECtHR's priority policy on its website: https://www.echr.coe.int/Documents/Priority_policy_ENG.pdf

3 Category III states that applications which on their face raise as main complaints issues under **Articles 2, 3, 4 or 5 § 1** of the Convention ("core rights"), irrespective of whether they are repetitive, and which have given rise to direct threats to the physical integrity and dignity of human beings are to be considered priority cases.

4 As mentioned above, these judgments concerned 2,738 individual applications, many of them joined together.

large-scale systematic dismissals of cases, concerning particular countries, due to inability to adhere to admissibility criteria, e.g. the applicants' failure to exhaust domestic remedies.

Protocol No. 14, which entered into force in 2010 after the Interlaken Conference, introduced new judicial formations for the simplest cases, established a new admissibility criterion (existence of a "significant disadvantage" for the applicant), and extended the judges' non-renewable term of office to nine years. This attempt to reduce the number of pending cases has been followed by several further conferences focussed on reform, the latest being Copenhagen in 2018. This last conference produced the Copenhagen Declaration which recognised prior reform successes but contained an agreement that by the end of 2019 the Committee of Ministers should decide on whether more profound changes to the mechanisms of the Convention are necessary, signifying that the reform process is by no means over.

Procedure

An important development in the Court's procedure occurred with the entry into force of Protocol No. 16 to the Convention, on 1 August 2018. Protocol No. 16 allows for the highest courts and tribunals of a High Contracting State to make a request to the Court to give advisory opinions on questions of principle relating to the interpretation or application of the Convention. The Protocol has only entered into force in relation to ten countries, which have ratified it.⁵

While introduced in 2010, the first use of the infringement procedure under Article 46 § 4 of the Convention did not take place until towards the end of 2017. This allows the Committee of Ministers, which has the responsibility under the Convention for supervising the execution of the Court's judgments, to refer a question to the ECtHR about whether a Contracting State has purposefully refused to abide by a final judgment of the ECtHR. The Committee of Ministers decided on 5 December 2017 to launch such proceedings against Azerbaijan owing to the authorities' persistent refusal to ensure the unconditional release of an opposition politician, following the ECtHR's 2014 finding that there had been violations of Articles 5 and 18 of the Convention, taken together.⁶ The Grand Chamber will consider the question and the decision is still awaited.

The Court has looked to the expansion of the Superior Courts Network (SCN) as an important tool in bringing domestic courts closer to Strasbourg and disseminating its case law. The network provides a framework for communication between domestic courts and the ECtHR as well as between the domestic courts themselves. There are now seventy-one member courts in thirty-five countries, including more than twenty Constitutional Courts and the same number of Supreme Courts.

Case law

Article 6 (the right to a fair trial) remained the most commonly violated provision of the Convention in 2018 with 24% of all violations falling under this heading. Second to Article 6 was Article 3 (prohibition of torture and inhuman or degrading treatment) with roughly 18% of all violations. The third substantial category of violation was under Article 5 (right to liberty and security) which accounted for roughly 16% of all violations found.

⁵ Albania, Armenia, Estonia, Finland, France, Georgia, Lithuania, San Marino, Slovenia, and Ukraine.

⁶ *Ilgar Mammadov v. Azerbaijan*, judgment of 22 May 2014.

There were 248 judgments against Russia in 2018, the most for any country. Of those judgments 238 involved at least one violation. Russia was followed by Turkey which was the respondent party in 146 judgments, of which 140 involved at least one violation. This roughly follows a trend before the Court with Turkey being the State involved in most judgments since 1959, 3,532 with 3,128 involving a violation, and Russia second with 2,501 judgments of which 2,365 involved at least one violation.

In 2018, a number of influential judgments affecting both the substance of the Convention case law and the procedure of the ECtHR were delivered. The Court's Annual Report 2018, which is the source of the statistics in this section, contains an overview of key cases from 2018, as identified by the Jurisconsult.⁷ Below, we have elaborated further on a small selection of these as an illustration of the vast areas of case law which the European Court has adjudicated over recently.

Selection of case summaries

*Hadzhieva v. Bulgaria*⁸: The applicant in this case was 14 years old at the time of the events, when on 4 December 2002 the police arrested her parents and took them into custody. The applicant remained alone in the flat until she was reunited with her parents on 17 December. The applicant argued that there had been a breach of Article 8 (the right to respect for family and private life, home and correspondence) after she had been left home alone at 14 years old for 13 days after both her parents were taken into custody.

The crucial issue was to determine whether the respondent State had discharged its positive obligations under that Article to secure the protection of the applicant's right to respect for her psychological integrity. The Court agreed with the applicant but only as regards the first two-day period between her parents' arrest and the court hearing on 6 December 2002 during which according to the record, the mother had informed the police that there was someone to take care of her. As regards the two-day period, the Court held that the authorities had failed to comply with their positive obligation under Article 8 to act in order to ensure that the applicant, who was a minor left without parental care, was protected and provided for in her parents' absence.

*Lozovyye v. Russia*⁹: the applicants in this case complained that the national authorities had breached their obligations under Article 8 of the Convention when they were not notified that their son had been murdered. This case was the first time the Court considered Article 8 in relation to the State's duty to inform the next of kin of the death of a close family member. The Court set out that the State's positive obligation under Article 8 in these situations was to "at least undertake reasonable steps to ensure that surviving members of the family are informed." The Court restricted itself to a judgment on the circumstances of the case, a recognition that the obligation in this area will vary depending on the facts. As the authorities knew the applicant's son's identity there were numerous ways they could have established the identity of his next of kin.

7 Annual Report 2018 – European Court of Human Rights, Chapter 2 (provisional version). For a list of key cases from 2018, see p. 159.

8 *Hadzhieva v. Bulgaria*, judgment of 1 February 2018.

9 *Lozovyye v. Russia*, judgment of 24 April 2018.

*Baydar v. the Netherlands*¹⁰: the applicant was convicted of a number of crimes including people trafficking. After lodging an appeal with the Supreme Court he requested that the Court obtain a preliminary ruling from the Court of Justice of the European Union (CJEU). The Supreme Court rejected this request without reasoning as allowed under domestic law. The applicant complained to the Court that this unreasoned decision breached Article 6 § 1, with the Court ruling that there had been no breach of that Article. This is the first case where the Court addressed at length the relationship between the Court's acceptance that a superior court may dismiss an application for appeal on the basis of summary reasoning and the requirement for domestic courts to give reasons for a refusal to refer a question to the CJEU.

*Beuze v. Belgium*¹¹: this case concerned statutory restrictions on a suspect's access to a lawyer under Article 6. The applicant was not able to consult with a lawyer until after he had been formally charged and after that point his lawyer was not able to attend subsequent interviews with the authorities during the investigation. The Court was able to concretely set out the content of the right of access to a lawyer and legal assistance and clarify the tests establishing whether the State was in compliance with Article 6 as well as what is to be considered a 'self-incriminating' statement. While the Court noted that compliance with Article 6 is judged on the proceedings as a whole, failing to notify a suspect of his rights and failing to provide a suspect with his rights take on a particular importance in the judgment of the overall proceedings.

*Vizgirda v. Slovenia*¹²: this judgment clarified the rights guaranteed by Article 6 § 3(a) and (e), in particular the duty of the State to verify the language needs of foreign defendants and supply them with an interpreter. The applicant in this case was a Lithuanian national. He was arrested on suspicion of having robbed a bank in Slovenia shortly after he had arrived in the country. Following his arrest, he was provided with interpretation into Russian, which was not his native language. While the services of the interpreter continued during the investigation phase and trial as well as his appeal against conviction, it was only at the time of his appeal on a point of law that the applicant raised the point that his trial had not been fair because of the difficulties he experienced in following the proceedings in the Russian language. The applicant essentially complained that he was unable to defend himself effectively during the criminal trial because the oral proceedings and the relevant documents were not translated into Lithuanian, his native language, but only into Russian, a language which he had considerable difficulties in understanding. The Court ruled in favour of the applicant and found a breach of Article 6 §§ 1 and 3 of the Convention.

*Molla Sali v. Greece*¹³: this case concerned the intersection of Article 14 (the prohibition of discrimination) and Article 1 of Protocol No. 1 (the protection of property), the applicant having lost three-quarters of her inheritance from her husband after a Greek court ruled that in accordance with the 1913 Treaty of Athens matters of inheritance amongst the Greek Muslim community were to be settled according to Sharia law and that notarised wills drawn up by Greek nationals of Muslim faith were devoid of legal effect. This was the first case heard before the Court involving the application of a domestic court of Sharia law against the will of the applicant, and the first before the Grand Chamber on the issue of

10 *Baydar v. the Netherlands*, judgment of 24 April 2018.

11 *Beuze v. Belgium*, Grand Chamber judgment of 9 November 2018.

12 *Vizgirda v. Slovenia*, judgment of 28 August 2018.

13 *Molla Sali v. Greece*, Grand Chamber judgment of 19 December 2018.

discrimination by association, as the focus of the case was the difference in treatment of the applicant because of the testator's (her deceased husband's) Muslim faith. The Grand Chamber confirmed that Article 14 of the Convention also covers instances in which an individual is treated less favourably on the basis of another person's status or protected characteristics. Accordingly, the Court concluded that there was no justification for the difference in treatment of the minorities, and found a violation of the Convention.

The Republic of 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 2018, the Court has handed down 79 judgments in respect of Albania – 59 of these were handed down by a Chamber, and 20 by a Committee. The Court has also handed down 71 decisions on admissibility/strike outs, of which 33 were decided by a Chamber, and 38 by a Committee. In 2018, there were eight Chamber judgments, one Committee judgment and one decision handed down by the Court, which will be discussed in more detail further down. Further, the Committee of Ministers, which oversees the execution of judgments handed down by the Court, adopted a resolution regarding Albania concerning *Manushaqe Puto* group of cases, closing its examination as it was satisfied that significant progress was made by the Albanian State the last few years with the adoption and subsequent fine-tuning of a domestic compensation mechanism whose proper and efficient functioning was ensured.¹⁴

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 compensation¹⁵. *Rrapo*¹⁶ 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.

Seven judgments have been delivered in relation to Article 3, the prohibition of torture and ill-treatment. In five cases, a violation of Article 3 was found. The cases concerned detention conditions where individuals were held in custody¹⁷, the lack of appropriate medical treatment in prison,¹⁸ the beating of an applicant by police whilst in custody,¹⁹ the failure of domestic authorities to fulfil their positive obligations under the Convention concerning the applicant's allegation of assault²⁰, and failure to effectively investigate allegations of ill treatment²¹. 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,²² and the severity of a beating received by the applicant that was of such degree as to amount to torture within the meaning of Article 3.²³

14 Committee of Ministers Resolution CM/ResDH(2018)349.

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

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

17 *Grori v. Albania*, judgment of 7 July 2009.

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

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

20 *Pulfer v. Albania*, judgment of 20 November 2018.

21 *Pihoni v. Albania*, judgment of 13 February 2018.

22 *Grori v. Albania*, judgment of 7 July 2009.

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

Three judgments have been rendered in respect of Article 5, right to liberty and security; with violations found in two of them. Looking at one of these, *Delijorgji*,²⁴ 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.

62 judgments have been rendered in respect of the Article 6 right to a fair trial. In 57 cases, the Court found a violation of Article 6. The majority of cases have centred on applicants arguing they were subject to an unfair trial and lack of access to a court. For example, in *Caka*²⁵, the failure to secure witnesses for the applicant's trial and to have due regard to the testimonies of four witnesses, during the first instance trial, was a violation of Article 6 § 1 combined with Article 6 § 3(d). In *Laska and Lika*²⁶, 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*²⁷, 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*,²⁸ the Court found that the applicant's inability to challenge an administrative decision of the Appeals Commission, in relation to an 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*,²⁹ 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*³⁰ 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*,³¹ 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*.³² 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.

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

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

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

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

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

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

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

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

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

One judgment has been delivered in respect of Article 7. In *Alimucaj*, the Court found an infringement of the principle of the legality of criminal offences and punishments in respect of an applicant who had imposed on him a heavier penalty than the one he was liable for.³³

There have been three cases concerning Article 8, the right to respect for private and family life.³⁴ In *Bajrami*,³⁵ 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 another case, which also concerned the positive obligation to facilitate reunion between parents and children.³⁶ In *Sharxhi and Others*³⁷, the Albanian authorities did not comply with the applicants' right to respect of their home on account of the seizure, cordoning off and surrounding of the building.

24 judgments have been rendered in respect of Article 13, all in conjunction with Article 6, Article 8 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. No violation was found on the basis that criminal proceedings were considered to be repeated, following previous conclusion by final decision.³⁸

There have been 23 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). In *Sharxhi and Others*³⁹, a violation was found on the basis of the expropriation, denial of access and demolition of the applicants' homes by state authorities.

Cases from 2018

Out of 9 judgments given in 2018, 8 judgments⁴⁰ were adopted by a Chamber of 7 judges and one⁴¹ by a Committee of 3 judges. In one case the Court found a violation of Article 1 of Protocol No. 1 as well as a violation of Article 8⁴². A violation of Article 3 was established in 2 cases⁴³, whereas 5 cases involved a violation of Article 6⁴⁴ one of which was in conjunction with Article 13 of the Convention⁴⁵.

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

34 *Qama v. Albania and Italy*, judgment of 8 January 2013, *Bajrami v. Albania*, judgment of 12 December 2006, and *Sharxhi and Others v. Albania*, judgment of 11 January 2018.

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

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

37 *Sharxhi and Others v. Albania*, judgment of 11 January 2018.

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

39 *Sharxhi and Others v. Albania*, judgment of 11 January 2018.

40 *Sharxhi and others v Albania*, 11 January 2018, *Pihoni v. Albania*, judgment of 13 February 2018, *Hysi v. Albania*, *Malo v. Albania*, *Muca v. Albania* and *Topi v. Albania*, judgments of 22 May 2018, *Froku v. Albania*, judgment of 18 September 2018 and *Pulfer v. Albania*, judgment of 20 November 2018.

41 *Karemani v. Albania*, judgment of 25 September 2018.

42 *Sharxhi and Others v. Albania*, judgment of 11 January 2018.

43 *Pihoni v. Albania*, judgement of 13 February 2018, *Pulfer v. Albania*, judgment of 20 November 2018.

44 *Sharxhi and others v Albania*, 11 January 2018, *Hysi v. Albania*, *Malo v. Albania*, *Muca v. Albania* and *Topi v. Albania*, judgments of 22 May 2018.

45 *Sharxhi and Others v. Albania*, judgment of 11 January 2018.

***Sharxhi and Others v. Albania*, judgment of 11 January 2018 violation of Article 13 (right to an effective remedy) and Article 6 (1) (right to a fair trial) and Article 8 (right to respect for private life and family) and Article 1 of Protocol no. 1 to the Convention (protection of property).**

The case *Sharxhi and Others v. Albania*, originated in an application based on the applicants' complaints for the unlawful demolition of their flats and business premises in an Albanian coastal town. In particular the applicants complained about the seizure, expropriation and subsequent demolition of their properties within a period of one month in 2013, despite a court order telling the authorities to refrain from taking any action that could breach their property rights.

The Court reiterated that in compliance with Article 13 of the Convention, the State Parties should provide an effective remedy at domestic level to address the merits of a complaint under the Convention. However, the Court brought to the attention that the national authorities are entitled to a margin of appreciation. Furthermore, the Court emphasised that in compliance with the principle of the rule of law, state authorities of the Contracting Parties have a duty to ensure the enforcement of juridical remedies when granted. Thus, the Court found a violation of Article 13 in conjunction with Article 6 § 1 and dismissed the preliminary objection of the Government of non-exhaustion of domestic remedies. Moreover, the Court emphasised that the interim measure was issued to prevent the demolition of the building, and protected the applicants from further actions of the state authorities. The failure of national authorities to execute it in practice deprived the applicants of access to national courts and examination of the merits of the case, in contravention with the guarantee of the right to a fair trial prescribed by Article 6 § 1 ECHR.

The Court noted that the prevention of the applicants to access their homes entailed a violation of Article 8 of the Convention.

Taking into account the seizure, surrounding and cordoning off of the residence with yellow tape and demolition entailed an unjustified interference with the peaceful enjoyment of possessions and a de facto expropriation and thus the Court found a violation of the applicants' right under Article 1 of Protocol no. 1.

***Pihoni v. Albania*, judgment of 13 February 2018 violation of Article 3 of the Convention (prohibition of torture)**

The case concerned the applicant's allegation that he had sustained a head injury when the police had intervened in a public brawl. Mr. Pihoni alleged that the police had used excessive force against him and that the authorities had failed to conduct an effective investigation into the incident. Furthermore, he claimed that there had been no use of any blunt objects by himself or the other people involved in the fight.

The Court noted that the prosecutor's decision stated that doubts had arisen as to whether the offence of abuse of power had been committed, on the grounds that the injuries sustained by the applicant might have been caused while he was being escorted to the police station. Nevertheless, the Court brought to the attention that, in his written observations, the applicant did not submit any claim concerning any alleged ill-treatment at this time, and he strongly maintained that the police officers had beaten him in public in the main street of the city. In these circumstances, the Court considered

that it was not apparent that the applicant was still in good health when the authorities arrived at the scene. Thus, the Court decided that there had been no violation of the substantive aspect of Article 3 of the Convention.

Further, following the applicant's complaint, the Court observed that the domestic authorities carried out an inquiry into his allegations of illtreatment. A number of investigative steps were taken by the authorities. However, the Court was not convinced that their response to his allegations was sufficiently thorough or "effective" to meet the requirements of Article 3. The Court also noted that the final decision in the case did not provide any definite answer as to how the applicant's injuries were inflicted. The foregoing considerations were sufficient to enable the Court to conclude that there had been a violation of the procedural aspect of Article 3 of the Convention.

***Hysi v. Albania, Malo v. Albania, Muca v. Albania and Topi v. Albania*, judgments of 22 May 2018
violation of Article 6 (1) of the Convention (right to a fair trial)**

All four cases concerned criminal proceedings held in the absence of the accused. All of them are currently serving sentences of between 13 and 25 years' imprisonment. Three of the applicants were living abroad and only learned of their convictions when being extradited to Albania in 2006/7. Mr. Topi lodged a constitutional appeal against his conviction in absentia, which was declared time-barred in 2007. The other three applicants' constitutional appeals were all dismissed. All the applicants alleged that the proceedings against them had been unfair because they had been held in their absence, without their knowledge and without them ever having waived their right to appear in court. Mr. Topi also alleged that the rejection of his constitutional appeal had breached his right of access to court.

In the *Hysi*, case the Court noted a denial of justice undoubtedly occurs where a person convicted in absentia is unable subsequently to obtain from the court which has heard his case a fresh determination of the merits of the charge, in respect of both law and fact, where it has not been established that he or she has waived his or her right to appear and to defend himself.

It had not been shown that the applicant had sufficient knowledge of the legal proceedings against him. Nor had it been shown that he explicitly or implicitly authorised his family members' actions on appeal or unequivocally waived his right to appear in court by deliberately evading justice. The Court found that the applicant did not have the opportunity of obtaining a fresh determination of the merits of the charges against him by a court which would have heard him in proceedings compliant with the fairness guarantees under Article 6 § 1. Therefore, there had been a violation of Article 6 § 1 of the Convention.

In the judgment in *Malo*, in the light of foregoing considerations the applicant did not in reality have the opportunity of obtaining a fresh determination of the merits of the charges against him by a court in proceedings compliant with the fairness guarantees of Article 6. There had therefore been a violation of Article 6 § 1 of the Convention.

In the third case *Muca*, the Court noted that the applicant's fears as to the impartiality of the District Court's bench could not be held to have been objectively justified. Meanwhile, in terms of convicting the applicant in absentia the Court found that it had not been shown that he had sufficient knowledge of the appeal or of the retrial proceedings against him. Further, there was no indication in the case file that the authorities undertook any effort to notify him. Moreover, the applicant unsuccessfully lodged,

for reasons beyond his control and knowledge, an application for leave to appeal out of time. Therefore that remedy turned out to be ineffective. Thus, there has been a violation of Article 6 of the Convention.

In the fourth judgment *Topi*, the Court made the same findings on the grounds of the conviction in absentia and therefore found a violation of Article 6 of the Convention on this account. The Court considered that holding that the period in which the applicant could make a constitutional appeal started to run from a moment when the applicant was not aware of the existence of the judgment of the Supreme Court resulted with the time period expiring by the time the applicant became aware of that judgment at the earliest on 1 March 2006. As a result, the Constitutional Court had made it impossible for the applicant to effectively exercise his right to file a constitutional complaint. Thus, the impugned decision amounted to an unjustified denial of the applicant's right of access to the Constitutional Court. There has accordingly been a violation of Article 6 § 1 of the Convention.

***Frroku v. Albania*, judgment of 18 September 2018 no violation of Article 5 (right to liberty and security)**

This case concerned a former Member of Parliament's detention in the context of criminal proceedings against him. There were three sets of criminal proceedings, which charges including in particular false statements, premeditated murder and laundering the proceeds from a criminal offence. The Albanian Parliament authorised his arrest and detention in the context of the first and second set of proceedings. Because the police were not in a position to enforce the house arrest, the Parliament authorised his placement in detention in connection with the second and third set of proceedings, which had in the meantime been joined. In subsequent judicial proceedings, the Supreme Court validated the lawfulness of his detention, finding that there was a risk of flight and of tampering with the collection of evidence. The applicant complained that he had been placed in detention in the third set of criminal proceedings against him without a lawful authorisation from Parliament.

In this judgment the Court pointed out that the central issue to be examined was whether the applicant's detention in relation to that set of proceedings was "lawful" within the meaning of Article 5 § 1, including whether it was effected "in accordance with a procedure prescribed by law". The Court reiterated that although the authorities failed to specifically request Parliament's authorisation for arrest in relation to the third set of proceedings, that failure did not render the applicant's detention unlawful. Accordingly, in the present case there had been no violation of Article 5 § 1 of the Convention.

***Pulfer v. Albania*, judgment of 20 November 2018 violation of Article 3 (prohibition of torture)**

The case concerned the Albanian authorities' handling of domestic accusations made by the applicant, in which she alleged that the man from whom she bought her house, had subsequently assaulted her and made illegal attempts to evict her from that house.

In December 2011, Ms Pulfer and her husband moved into a house in the city of Vlora that she had recently bought from S.N. The house had been built unlawfully but its status was subsequently regularised. In January 2012, S.N. attempted to evict Ms Pulfer from the property. Later that same year, in September, he made a second attempt to evict her, allegedly strangling her with a rope and dragging her around the room and into the walls. Two days later, it appeared that Ms Pulfer had gone to stay at her mother's home. In May 2012, S.N. was charged with the crime of self-administered justice. This

charge was dropped in December, in line with Albania's General Amnesty Act, passed the previous month, which prevents the criminal prosecution of offences committed prior to 30 September 2012 and incurring a sentence of fewer than two years. Following Ms Pulfer's alleged assault in September 2012 a second investigation was opened against S.N., who was charged with inflicting bodily harm. This was subsequently combined with a third investigation, instigated the following month in October 2012, into alleged malicious use of telephone calls, following which the applicant made a variety of serious accusations against S.N. In February 2013 this joint investigation was discontinued, in light once again of the General Amnesty Act.

In this judgment the Court noted at the outset that, as regards the criminal-law mechanisms provided by the Albanian legal system in connection with the State's obligations under Article 3 of the Convention, the Criminal Code defines as specific offences inflicting grievous bodily harm and bodily harm, as well as the other offences Ms. Pulfer had accused S.N. of. The Court considered that the Albanian law provided a sufficient regulatory framework to criminally pursue the crimes attributed by the applicant to S.N.

The Court considered that the circumstances of the present case were never established by a competent court of law. The Court has previously held that in cases concerning torture or ill-treatment, amnesties and pardons should not be tolerated. In that sense the Court concluded that although the legal framework in place may have had a sufficiently deterrent effect, the latter was erased by the subsequent amnesty law.

In the Court's view, the manner in which the criminal-law mechanisms were implemented in the instant case, specifically the application of the general amnesty, which resulted in the discontinuation of the first three criminal investigations against the alleged assailant, were defective to the point of constituting a breach of the respondent State's positive obligations under the Convention concerning the applicant's allegations of assault. Therefore, there had been a violation of Article 3 of the Convention.

Bosnia and Herzegovina

General Introduction

Bosnia and Herzegovina (“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 been a party to the Convention and individuals have been able to bring cases against BiH before the European Court of Human Rights (hereinafter: “ECtHR or the Court”).

As of 31 December 2018, the Court has handed down 62 judgments in respect of Bosnia and Herzegovina, of which four were delivered by the Grand Chamber, 38 by a Chamber and 20 by a Committee. The Court has also handed down 99 admissibility decisions, of which 46 were delivered by a Chamber, and 53 by a Committee.

As just mentioned, four judgments against BiH were delivered by the Grand Chamber. The first Grand Chamber judgment was in the case *Sejdić and Finci*⁴⁶ in which the Court for the first time applied Article 1 of Protocol 12, the freestanding prohibition of discrimination, in respect of the discriminatory constitutional provisions in the enjoyment of electoral rights on the grounds of Jewish and Roma origin of the applicants. A violation was found under Article 14 in conjunction with Article 3 of Protocol No. 1, and under Article 1 of Protocol No. 12 to the Convention.

In the following Grand Chamber judgment *Maktouf and Damjanović v. BiH*⁴⁷ the Court held that there had been a violation of Article 7 in relation to the retrospective application of criminal law laying down heavier sentences for war crimes than the law in force when the offences were committed. In this case the applicants had not been afforded effective safeguards against the imposition of a heavier penalty.

A systemic problem was found in the Grand Chamber’s judgment *Ališić and others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia*⁴⁸ under Article 1 of Protocol No. 1 to the Convention and Article 13 which 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. Violations were found in relation to Serbia and Slovenia.

Under Article 10 of the Convention, freedom of expression, only one judgment was handed down in the case *Medžlis Islamske zajednice Brčko and others v. BiH*⁴⁹. In this Grand Chamber judgment the complaint of the applicants about the order to pay damages imposed on them in the context of civil proceedings for defamation was examined, and the Court established that the interference had been proportionate so no violation was found.

The highest number of judgments that have been handed down in respect to BiH concern property rights under Article 1 of Protocol No. 1 and the right to a fair trial under Article 6 of the Convention, due to the failure of the State authorities to enforce final domestic court judgments awarding applicants

⁴⁶ *Sejdić and Finci v. BiH*, GC judgment of 22 December 2009.

⁴⁷ *Maktouf and Damjanović v. BiH*, GC judgment of 18 July 2013.

⁴⁸ *Ališić and others v. Bosnia and Herzegovina and others*, GC judgment of 16 July 2014 (Chamber judgment of 6 November 2012).

⁴⁹ *Medžlis Islamske zajednice Brčko and others v. Bosnia and Herzegovina*, GC judgment of 27 June 2017 (Chamber judgment of 13 October 2015).

different kind of claims. As of 31 December 2018, the Court has handed down 34 judgments regarding Article 1 of Protocol No. 1. The Court also handed down 37 judgments in relation to Article 6 and violations were found in 36 of these cases.

Under Article 1 of Protocol No. 1 the Court delivered an important judgment in which a systemic problem was found in the case *Đokić v. BiH*⁵⁰ concerning the protection of property in relation to the right of repossession of a pre-war “military” flat. The issue in respect to repossession of “military” flats was also considered in another judgment.⁵¹ In relation to the systemic problem of “old” foreign-currency deposits a violation of Article 1 of Protocol No. 1 to the ECHR was also found in the first pilot judgment in respect of BiH in the case *Suljagić v. BiH*⁵². The Court held that the rights under Article 14 in conjunction with Article 1 of Protocol No. 1 of the Convention were violated due to the discrimination of the applicants who were internally displaced persons.⁵³

Relying on the right to a fair hearing within a reasonable time under Article 6 and the right to the protection of property under Article 1 of the Protocol No. 1, the Court has delivered important judgments, such as in the first case against BiH, *Jeličić v. BiH*⁵⁴ (non-enforcement of final domestic court judgment), *Čolić and others*⁵⁵ (statutory suspension of the enforcement of an entire category of final judgments on account of the size of the public debt arising from the judgments), *Runić and others*⁵⁶ (unreasonable delays in enforcement of final judgments), *Đurić and others v. BiH*⁵⁷ (the prolonged non-enforcement of final and enforceable domestic judgments) and other judgments in which the failure to take the necessary measures to comply with the final judgments for a considerable period of time was found⁵⁸. The violations due to the unreasonable excessive length of proceedings or the delayed enforcement of domestic judgments were later established in several repetitive cases.⁵⁹

A breach of the right of access to court under Article 6 was found in a case in which there was no real “determination” of civil rights and obligations before the Constitutional Court in BiH⁶⁰. The Court has also stressed that in detention cases where an applicant is still in custody at the time of the examination of the appeals by the domestic courts, a complaint concerning access to court must be examined under Article 5 § 4 of the Convention.⁶¹

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

51 *Mago and others v. BiH*, judgment of 3 May 2012.

52 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.

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

54 *Jeličić v. BiH*, judgment of 31 October 2006.

55 *Čolić v. BiH*, judgment of 10 November 2011.

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

57 *Đurić and others v. BiH*, judgment of 20 January 2015.

58 *Kunić and others v. BiH*, judgment of 14 November 2017; *Spahić and others v. BiH*, judgment of 14 November 2017.

59 *Dorić v. BiH*, judgment of 7 November 2017; *Pražina v. BiH*, judgment of 5 December 2017; *Mandić and Popović v. BiH*, judgment of 19 December 2017.

60 *Avdić and others v. BiH*, judgment of 19 November 2013.

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

The alleged non-compliance with the State authorities' positive obligation under Article 3 of the Convention to investigate the destiny of a person who disappeared during the war activities in BiH in the period 1992–1995 was considered in one judgment.⁶² A number of decisions have been delivered in relation to the same issue.⁶³

The question whether there would be a real risk that the applicants, as asylum seekers, if deported, would be subjected to ill-treatment in breach of Article 3 of the Convention was raised in 3 judgments.⁶⁴ An important issue relating to the applicants' physical well-being in prison was raised in one case under Article 3 of the Convention.⁶⁵

In relation to Article 5 the most important judgment focused on the security of mentally ill offenders⁶⁶ and the detention of asylum seekers in Bosnia and Herzegovina. In relation to the asylum seekers the Court repeated that no preventive detention on security grounds is legitimate within the meaning of Article 5 § 1 of the Convention.⁶⁷

Only one judgment has been handed down in respect of Article 8 in which the Court examined the positive obligation to facilitate reunion between parents and children.⁶⁸

In one judgment under Article 9 of the Convention⁶⁹, within the complaint on limitation on the manifestation of his religion, the Court determined the justification and the proportionality of punishment imposed on the applicant for wearing a skullcap in a courtroom.

Under Article 4 of Protocol No. 7 to the Convention the Court found a breach of the applicant's right not to be tried and punished twice (in both minor-offences proceedings and criminal proceedings) for the same offence as contrary to the rule of *ne bis in idem*.⁷⁰

Cases from 2018

Between January and December 2018 the ECtHR delivered six judgments and six decisions on admissibility in respect to BiH. All six judgments were delivered by a Committee composed of three judges. The Court dealt with cases in relation to the rights under Article 6 (*the right to a fair trial*), Article 1 of Protocol No. 1 to the Convention (*right to peaceful enjoyment of property*), and Article 5 of the Convention (*right to liberty and security*). Having in mind the previous cases against BiH, it can be concluded that they continue to involve issues covered by Article 6.

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

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

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

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

66 *Tokić and others v. BiH*, judgment of 8 July 2008.

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

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

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

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

This section will look in more into detail at the judgments and decisions on admissibility adopted in respect to BiH in 2018 and will provide short summaries of the facts and decisions of the Court.

Judgments

Article 6 of the Convention and Article 1 of Protocol 1 to the Convention

The case of *Roman Catholic Archdiocese of Vrhbosna v. BiH*⁷¹ concerned the non-enforcement of a domestic decision given in the favour of the applicant.

In this case, the Archdiocese of Bosnia (“*Vrhbosanska nadbiskupija*”) made a claim to be reinstated into possession and use of the remaining part of the Archdiocese High School building and surrounding land in Travnik, BiH. Beginning in 1990, the Archdiocese of Bosnia had requested that Travnik Municipality return certain property that had been confiscated in 1946 in the nationalization process. In 1998, the Archdiocese was reinstated into one part of the Archdiocese High School Building, with the rest remaining in the municipality’s control. The applicant challenged this and also claimed there had been differential treatment which amounted to discrimination in the enjoyment of its rights protected under Annex 6 to the General Framework Agreement for Peace in BiH, as in 1997 Travnik Municipality returned to the Islamic Community all its previously-owned property that had been confiscated in the same manner as property confiscated from the Archdiocese. By a decision of 9 May 2003, the Human Rights Chamber for BiH found that the Federation of BiH had discriminated against the applicant in its enjoyment of the right to freedom of religion guaranteed by Article 9 of the Convention. In order to remedy the situation it ordered the Federation of BiH to ensure the relocation of public schools housed in the Archdiocese High School building in Travnik, and to reinstate the applicant in the premises within one year. On 30 October 2012 the Constitutional Court of Bosnia and Herzegovina determined that the Federation of Bosnia and Herzegovina had not yet fully enforced the decision of 9 May 2003. The public school had still not been relocated at the date of adopting the judgment of the Court.

The Court stated the general principles relating to the non-enforcement or delayed enforcement of final domestic judgments and noted that it had in earlier cases already found violations of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of issues similar to those in the present case. In view of the case-law and the fact that the final decision had not been enforced for more than fourteen years, the Court accordingly considered that there had been a breach of both Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

The applicant in the case *Martinović v. BiH*⁷² complained that the delayed enforcement of the final and enforceable domestic decisions rendered in her favour violated her rights under Article 6 of the Convention and Article 1 of Protocol No. 1. The Court set out the general principles relating to the non-enforcement or delayed enforcement of final domestic judgments and held that it had repeatedly found violations of Article 6 of the Convention and Article 1 of Protocol No. 1 in respect of issues similar to those in the present case. In view of the fact that the final decisions under consideration had not been enforced for more than six years, the Court concluded that there had been a breach of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1.

⁷¹ *Roman Catholic Archdiocese of Vrhbosna v. BiH*, judgment of 5 June 2018.

⁷² *Martinović v. BiH*, judgment of 25 September 2018.

Other judgments in which the Court found a violation due to the non-enforcement of the final and enforceable domestic judgment were *Josić v. BiH*⁷³ and *Kaltak v. BiH*⁷⁴. In addition, in *Zahirović and others*⁷⁵ the Court stressed that it is not open to authorities to cite lack of funds as an excuse for not honoring a judgment debt and reiterated that the impossibility of obtaining the execution of a final judgment in an applicant's favour constituted an interference with the right to the peaceful enjoyment of possessions.

Article 5, right to liberty and security

The case *Salihić v. BiH*⁷⁶ originated in an application based on the applicant's complaints that his placement in a Social Care Home had not been ordered in accordance with "a procedure prescribed by law" within the meaning of Article 5 of the Convention, as he had been held in psychiatric detention without a decision of a competent civil court. The Constitutional Court of BiH decided that the applicant's right to liberty and security had been violated, thereby acknowledging the breach complained of but did not offer compensation.

The Court reiterated that Article 5 of the Convention is in the first rank of fundamental rights that protect the physical security of an individual and as such its importance in a democratic society is paramount. It also recalled that in another case⁷⁷ against BiH the Court found a violation of Article 5 § 1 of the Convention in circumstances very similar to those of the case and went on to make the same finding in the present case.

Decisions

The applicant in the case *Smajić v. BiH*⁷⁸ made two complaints under Article 6 §§ 1 and 3 (c) (*right to a fair trial and right to legal assistance of own choosing*). Firstly, he alleged that he had been denied access to a lawyer after his arrest and during his initial questioning in 2010. He said that his lawyer had telephoned the police station where he was being held but had been told that he was not there. Secondly, he complained that the local courts had arbitrarily applied the relevant domestic law. Further, he complained that he had been convicted for expressing his opinion on a matter of public concern, in breach of Article 10 (*freedom of expression*). He also invoked Articles 9 and 14 of the Convention.

Following the examination of the case, the Court supported the findings of the Constitutional Court of BiH and established that both complaints about the proceedings' fairness were manifestly ill-founded and rejected them as inadmissible. Further, it found that the domestic courts had examined the present case with care, in relation to his complaint about a breach of his freedom of expression. It stated that the domestic decisions had been in conformity with the principles under Article 10, giving relevant and sufficient reasons for his conviction and also noted that the content of the applicant's posts on the Internet had touched upon the very sensitive matter of ethnic relations in post-conflict Bosnian society. Furthermore, the penalties imposed on him had not been excessive.

73 *Josić v. BiH*, judgment of 25 of September 2018.

74 *Kaltak v. BiH*, judgment of 25 September 2018.

75 *Zahirović and others v. BiH*, judgment of 16 October 2018.

76 *Salihić v. BiH*, judgment of 6 February 2018.

77 *Hadžimejlić and Others v. BiH*, judgment of 3 November 2015.

78 *Smajić v. BiH*, decision of 8 February 2018.

In the case *Rekić v. BiH*⁷⁹ the applicant complained under Article 6 § 1 of the Convention that he had been denied effective access to a court as a result of the discontinuation of criminal proceedings against third parties. The Court noted that the applicant had at his disposal two avenues to obtain a determination by a court of his civil claim for damages. One avenue was to lodge a civil claim in the context of the criminal proceedings which he initiated, and the other avenue was to bring civil proceedings for damages before the civil courts. However, since he failed to make use of either of them, the Court concluded that the application was manifestly ill-founded and was therefore rejected as inadmissible.

The applicants in the cases *Škandro v. BiH*⁸⁰ and *Karašin v. BiH*⁸¹ complained about the non-enforcement of final domestic judgments under Article 6. As in both cases the applicants and their representatives failed to disclose important information, and, moreover, provided no explanation for this omission, the Court considered that the applications constituted an abuse of the right of individual application and were therefore rejected as inadmissible.

Another case in which the Court considered that the applications constituted an abuse of the right of individual application within the meaning of Article 35 § 3 (a) *in fine* of the Convention was the case *Čaluk and others v. BiH*⁸². It concerned a complaint under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention about the failure by the national authorities to enforce final court decisions given in the applicants' favour. However, it was established that following a decision of the Constitutional Court, the final judgments in the applicants' favour were fully enforced between 16 July 2015 and 25 July 2016. However, the applicants did not inform the Court about that development.

The Court decided to reject the applications in the case *Muminović and others v. BiH*⁸³ for non-exhaustion of domestic remedies. This case concerned State-owned companies and statutory companies based in the Federation of BiH. The applicants complained about the non-enforcement of domestic judgments, but in particular stated that the Federation of BiH, the Tuzla Canton and the City of Mostar, as the sole or majority owners of companies Krivaja, TTU and Sigurnost, respectively, should pay the judgment debts of those companies. However, the Court noted that the applicants submitted that the owners of the companies under consideration should be held liable for the debts arising from the judgment debts in their favour and thus effectively invited the Court to lift the corporate veil in respect of those companies. In this regard, the applicants alleged, *inter alia*, that the authorities at issue had abused the corporate form and had misused the companies' assets. The Court observed that the applicants failed to use a legal remedy under domestic law such as a civil action that might have been brought for the lifting of the corporate veil in such circumstances, thus confirming that the existence of mere doubts as to the prospects of success of a remedy which is not obviously futile is not a valid reason for failing to use it.

79 *Rekić v. BiH*, decision of 29 March 2018.

80 *Škandro v. BiH*, decision of 18 October 2018.

81 *Karašin v. BiH*, decision of 18 October 2018.

82 *Čaluk and others v. BiH*, decision of 18 October 2018.

83 *Muminović and others v. BiH*, decision of 20 December 2018.

The Republic of Croatia

General Introduction

The Republic of Croatia signed and ratified the European Convention on Human Rights (hereinafter: Convention) on 5 November 1997 and has since been a party to proceedings before the European Court of Human Rights (hereinafter: Court).

The Court has to date delivered 400 judgments with respect to Croatia, finding a violation of at least one Convention right in 317. Croatia has concluded a total of 30 friendly settlements of disputes with the applicants in the past twenty one years.

The Grand Chamber has ruled on eight cases against Croatia. *Blečić v. Croatia*⁸⁴ was the first case with respect to Croatia ruled on by the Grand Chamber. *Marguš v. Croatia*⁸⁵, 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. Lastly, the Grand Chamber's relatively recent judgment in the case of *Muršić v. Croatia*⁸⁶ 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.

The two most recent Grand Chamber judgments with respect to Croatia, delivered in 2018, are also extremely relevant. The case of *Zubac v. Croatia*⁸⁷ regarded the right of access to the Supreme Court and the case of *Radomilja and Others v. Croatia*⁸⁸ concerned the right to peaceful enjoyment of possessions regarding nationalised property. They are both considered in further detail below.

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 249 judgments on Article 6, 76 dealt 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 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 judgment in the case of *Dvorski v. Croatia*⁸⁹ (criminal suspect's right of access to a lawyer of his own choosing), as well as Chamber judgments in the cases of *Ajdarić v. Croatia*⁹⁰ (assessment of evidence and insufficient reasoning in criminal conviction), *Šikić v. Croatia*⁹¹ (definition and application of the civil aspect of Article 6 of the Convention), *Klauz v. Croatia*⁹² (right to a fair trial and

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

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

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

87 *Zubac v. Croatia*, Grand Chamber judgment of 5 April 2018.

88 *Radomilja and Others v. Croatia*, Grand Chamber judgment of 20 March 2018.

89 *Dvorski v. Croatia*, Grand Chamber judgment of 20 October 2015.

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

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

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

costs of civil proceedings). In 2018, the Court delivered a judgment in the case of *Goran Kovačević v. Croatia*⁹³ concerning very similar factual and legal issues as the *Dvorski* case, but, as opposed to the latter judgment, it found no violation of the Convention in the *Kovačević* case.

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 66 such judgments to date. Again, most of them regarded the lack of an effective legal remedy for the protection of the right to a trial within a reasonable time.

The Court has delivered 57 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*⁹⁴ (civil aspects of child abduction), *Gluhaković v. Croatia*⁹⁵ (right of the parent not living with the child to maintain contact with her), *X v. Croatia* (exclusion of the applicant, who had been divested of her capacity to act,⁹⁶ from proceedings resulting in the adoption of her daughter), *Ćosić v. Croatia*⁹⁷ (right to a home), and *Dragojević v. Croatia*⁹⁸ (violation of the right to privacy due to insufficiently reasoned court orders on the wiretapping and covert surveillance of the applicant). The Court's 2018 judgment in the case of *Pojatina v. Croatia*⁹⁹, regarding homebirths, was also extremely important. The Court found that the legislation concerning homebirths was not in violation of the Convention.

The Court has delivered 52 judgments with respect to Croatia concerning 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*,¹⁰⁰ the most noteworthy Court judgments on this Convention right include the ones in the cases of *Statileo v. Croatia*¹⁰¹ (rights of landlords under protected tenancy legislation), *Vajagić v. Croatia*¹⁰² (right to compensation for expropriated land), and *Radanović v. Croatia*¹⁰³ (return of property that was temporarily taken over and used).

The Court has delivered 26 judgments on the right to liberty and security of person enshrined in Article 5 of the Convention. Most of them dealt with deprivation of liberty, notably ordering and extending pre-trial detention and the total duration of detention/investigative prison.

As many as 19 of the Court's 23 judgments on Article 2 of the Convention (the right to life) with respect to Croatia dealt with the procedural aspect of the right to life, notably, the implementation of

93 *Goran Kovačević v. Croatia*, judgment of 12 April 2018.

94 *Karadžić v. Croatia*, judgment of 15 December 2005.

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

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

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

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

99 *Pojatina v. Croatia*, judgment of 4 October 2018.

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

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

102 *Vajagić v. Croatia*, judgment of 20 June 2006.

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

effective investigations and introduction of mechanisms for protecting the right to life in the national system. *Marta Jularić v. Croatia*¹⁰⁴ 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*,¹⁰⁵ which regarded protection from domestic violence.

Cases from 2018

In 2018, the Court delivered a total of 24 judgments, and 28 decisions on the admissibility or strike outs of applications. The Court found Croatia in violation of at the least one Convention right in 16 of the 24 judgments and no breach of any Convention rights in eight judgments delivered in 2018. The Court also delivered a judgment (in the case of *Mindek v. Croatia*)¹⁰⁶ in which it ruled on the respondent State's request for the revision of its 2016 judgment in that case.

In 2018, the Court reviewed a total of 531 applications against Croatia and communicated 49 new cases to the Office of the Croatian Agent before the Court. 85 applications (16%) were assigned to single judges or Committees of three judges deciding on their admissibility. The rest were assigned to a Committee or Chamber for consideration on the merits.

Out of the judgments actually handed down in 2018, the following two cases were adjudicated by a Grand Chamber of seventeen judges: *Zubac v. Croatia* and *Radomilja and Others v. Croatia*.¹⁰⁷

The following eleven cases were adjudicated by a Chamber of seven judges: *V.D. v. Croatia (No. 2)*, *Narodni List D.D. v. Croatia*, *Pojatina v. Croatia*, *Mindek v. Croatia*, *S.M. v. Croatia*, *Bikić v. Croatia*, *Jureša v. Croatia*, *Čakarević v. Croatia*, *Hoti v. Croatia*, *Goran Kovačević v. Croatia*, and *Milić and Others v. Croatia*.¹⁰⁸

The remaining eleven cases – *Vuković v. Croatia*, *Kobaš v. Croatia*, *Vojnović v. Croatia*, *Buvač v. Croatia*, *Štitić v. Croatia*, *Mateljan v. Croatia*, *Tilocca v. Croatia*, *Smolić v. Croatia*, *Gregurić v. Croatia*, *Parazajder v. Croatia*, and *Slava Jurišić v. Croatia* - were adjudicated by a Committee of three judges.¹⁰⁹

The Court did not find violations of the ECHR in eight cases against Croatia in 2018 - *Milić and Others v. Croatia*, *Radomilja and Others v. Croatia*, *Zubac v. Croatia*, *Goran Kovačević v. Croatia*, *Jureša v. Croa-*

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

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

106 *Mindek v. Croatia*, judgment 11 September 2018.

107 *Zubac v. Croatia*, Grand Chamber judgment of 5 April 2018; *Radomilja and Others v. Croatia*, Grand Chamber judgment of 20 March 2018.

108 *V.D. v. Croatia (No. 2)*, judgment of 15 November 2018; *Narodni List d.d. v. Croatia*, judgment of 08 November 2018; *Pojatina v. Croatia*, judgment of 04 October 2018; *Mindek v. Croatia*, judgment of 11 September 2018; *S.M. v. Croatia*, judgment of 19 July 2018; *Bikić v. Croatia*, judgment of 29 May 2018; *Jureša v. Croatia*, judgment of 22 May 2018; *Čakarević v. Croatia*, judgment of 26 April 2018, *Hoti v. Croatia*, judgment of 26/04/2018; *Goran Kovačević v. Croatia*, judgment of 12 April 2018; and *Milić and Others v. Croatia*, judgment of 25 January 2018.

109 *Vuković v. Croatia*, judgment of 15 November 2018; *Kobaš v. Croatia*, judgment of 04 October 2018; *Vojnović v. Croatia*, judgment of 04 October 2018; *Buvač v. Croatia*, judgment of 06 September 2018; *Štitić v. Croatia*, judgment of 06 September 2018; *Mateljan v. Croatia*, judgment of 12 July 2018; *Tilocca v. Croatia*, judgment of 05 April 2018; *Smolić v. Croatia*, judgment of 15 March 2018; *Gregurić v. Croatia*, judgment of 15 March 2018; *Parazajder v. Croatia*, judgment of 01 March 2018; and *Slava Jurišić v. Croatia*, judgment of 08 February 2018.

*tia, Bikić v. Croatia, Pojatina v. Croatia, and V.D. v. Croatia (No. 2).*¹¹⁰

In 2018, the Court rendered twenty five decisions finding applications against Croatia inadmissible. Three such decisions - in the cases of *Seražin v. Croatia, Majcan v. Croatia, and Mladost Turist A.D. v. Croatia*, were adopted by a Chamber of seven judges, while the other twenty two decisions – in the cases of *Bjelik and Others v. Croatia, Vrbanić v. Croatia, Krstanović v. Croatia, Nijemčević v. Croatia, Turković and Others v. Croatia, Jurić v. Croatia, Prgić v. Croatia, D.K. v. Croatia, Todorović v. Croatia, Stojaković v. Croatia, Lambaša v. Croatia, Grizelj v. Croatia, Bojić v. Croatia, Spreicer v. Croatia, Trbojević v. Croatia, Godler v. Croatia, Leštek v. Croatia, Petek v. Croatia, Bosanac v. Croatia, Gradinščak v Croatia, Mise v. Croatia, and Miščević v. Croatia* – were adopted by a Committee of three judges.

Some of these cases will now be considered in more detail.

Right to Life – Article 2 of the Convention

The Court delivered one judgment and one admissibility decision regarding the right to life under Article 2 of the Convention in 2018. Both cases regarded the respondent State's positive obligation to conduct effective investigations of allegations about the violent deaths of victims. Both cases regarded investigations of crimes reportedly committed during the Homeland War in which the applicants' relatives died.

In its judgment in the case of *Milić v. Croatia*,¹¹¹ the Court reiterated its view that civil proceedings were not relevant for the State's procedural obligation under Article 2 of the Convention and could not affect the running of the six-month period in the case regarding the alleged ineffective investigation of the crime. The Court dismissed part of the application regarding the investigation conducted before 11 August 2015, because the applicants should have been aware of the ineffectiveness of the investigation a long time before they filed their application with the Court. As per the actions of the domestic authorities after 11 August 2015, the Court found that the police had checked all the information in the anonymous report, but that they had not produced any concrete results, that they had questioned the witnesses, followed all available leads and pursued all avenues of criminal enquiry and, in conclusion, that the national authorities complied with their procedural obligation under Article 2 of the Convention.

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

In 2018, the Court delivered two judgments and one admissibility decision regarding complaints under Article 3 by Croatia. It found in one case that Croatia had violated Article 3 of the Convention and in the other case that it had not violated the procedural limb of Article 3 of the Convention. It rendered a decision declaring inadmissible an application claiming that the investigation of ill-treatment was ineffective.

¹¹⁰ *Milić and Others v. Croatia*, judgment of 25 January 2018; *Radomilja and Others v. Croatia*, Grand Chamber judgment of 20 March 2018; *Zubac v. Croatia*, Grand Chamber judgment of 5 April 2018; *Goran Kovačević v. Croatia*, judgment of 12 April 2018; *Jureša v. Croatia*, judgment of 22 May 2018; *Bikić v. Croatia*, judgment of 29 May 2018; *Pojatina v. Croatia*, judgment of 4 October 2018; and *V.D. v. Croatia (No. 2)*, judgment of 15 November 2018.

¹¹¹ *Milić and Others v. Croatia*, judgment of 25 January 2018.

The Court's judgment in the case of *V.D. v. Croatia (No. 2)*¹¹² needs to be singled out because of its relevance both in terms of the Court's case-law and the judgment execution procedure before the Council of Europe Committee of Ministers. Namely, the Court in this case reviewed the effectiveness of the (reopened) investigation undertaken by the relevant authorities after the Court delivered its judgment in the case of *V.D. v. Croatia*¹¹³ with a view to enforcing its judgment. In its judgment in the *V.D. v. Croatia (No. 2)*¹¹⁴ case, the Court found that the investigation conducted after its first judgment had been effective, that the relevant authorities had undertaken all the appropriate steps to establish what had happened to the applicant and whether the police had exceeded their powers and committed a crime against him. The Court found no violation of the procedural limb of Article 3 in this case.

In the judgment in the case of *Štitić v. Croatia*¹¹⁵ the Court found a violation of Article 3 of the Convention, primarily because Croatia did not comply with its obligation to conduct an effective investigation, and this judgment is also important to emphasise. The applicant had made serious threats and then filed a criminal complaint against police officers, claiming he had been ill-treated during arrest and police custody. The relevant authorities dismissed his complaint, wherefore ultimately no-one was held accountable for the injuries he had sustained. The Court noted that the competent prosecutor had ordered an investigation into the allegations of the applicant's criminal complaint to the very same police administration in which the police officers he had reported were working, which brought into question the independence of the investigation. Furthermore, the prosecutors had dismissed the report exclusively on the basis of the statements and reports of the police themselves, which indicated that the investigation was insufficiently thorough and effective. After the applicant launched a criminal prosecution, the national courts dismissed his request to conduct an investigation, failing to explain why the evidence he adduced was irrelevant. Specifically, the criminal prosecution authorities again failed to invest serious efforts in assessing the most important aspect of the case – whether the force used by the police officers was necessary and/or excessive in the given situation. Instead, the national authorities limited their assessments to reading the applicant's medical documentation and the statements given by the implicated police officers, which obviously did not suffice to clarify all the relevant circumstances of the applicant's ill-treatment. The Court therefore concluded that the respondent State had violated Article 3 of the Convention because it had not fulfilled its procedural obligation under that Article.

Article 4 of the Convention – Prohibition of Slavery and Forced Labour

The Court in 2018 delivered its first judgment with respect to Croatia in which it found a violation of Article 4 of the Convention. However the judgment in the case of *S.M. v. Croatia*¹¹⁶ is not final yet, given that the Court granted the request for its referral to the Grand Chamber.

The applicant filed a criminal complaint against T.M., claiming he had physically and psychologically forced her into prostitution between the summer of 2011 and September of the same year. The prosecution indicted T.M. on charges of forcing another into prostitution, as an aggravated offence of

112 *V.D. v. Croatia (No. 2)*, judgment of 15 November 2018.

113 *V.D. v. Croatia*, judgment of 8 November 2011.

114 *V.D. v. Croatia (No. 2)*, judgment of 15 November 2018.

115 *Štitić v. Croatia*, judgment of 6 September 2018.

116 *S.M. v. Croatia*, judgment of 19 July 2018.

organising prostitution. T.M. was acquitted due to lack of evidence. The applicant complained to the Court that Croatia lacked an appropriate legal and regulatory framework for the protection of her rights under Article 4 of the Convention, that she had not been provided with appropriate assistance and support to alleviate the fear and pressure she had felt while testifying against T.M. and that the national authorities had not complied with their procedural obligations under the Convention.

The Court found the Croatian legal framework on trafficking in humans and forced prostitution was adequate and that the applicant had been provided with assistance and support and thus dismissed her first two complaints. The Court found that the police and prosecutors had responded promptly, conducted the investigation and questioned the applicant, and her friend during the criminal proceedings. It, however, noted that the national authorities had not taken a number of other steps (e.g. they did not make further attempts to identify the applicant's clients and interview them, they also did not hear evidence from the mother of the applicant's friend or her boyfriend, or from the applicant's landlord and neighbours), wherefore it found a violation of the Convention.

Article 6 of the Convention – Right to a Fair Trial

In 2018, the Court delivered seven judgments and 14 decisions on the admissibility/strike outs of applications alleging violations of the right to a fair trial. The Court did not find Croatia in violation of Article 6 in three of the seven judgments and found it had breached at least one aspect of the right to a fair trial in the other four judgments.

The Grand Chamber judgment in the case of *Zubac v. Croatia*,¹¹⁷ which concerned the right of access to the Supreme Court, is undoubtedly the most relevant Court judgment regarding an Article 6 case against Croatia in 2018. The father of the applicant's husband had concluded a contract on the exchange of his house in Dubrovnik for a house in Trebinje in Bosnia and Herzegovina in 1992. After her father in law died, the applicant and her husband initiated proceedings seeking to have the contract for the exchange of the houses declared null and void and to obtain the possession of the house in Dubrovnik. The applicant's husband indicated the value of the subject matter of the dispute at HRK10,000. The applicant pursued the proceedings after her husband died. During the proceedings, the applicant indicated that the value of the subject matter of the dispute was HRK 105,000. The respondents objected to the change of the value of the subject matter of the dispute, arguing that it had been increased only in order to enable the claimant to lodge an appeal on points of law. After the evidence was presented and the parties heard, the Dubrovnik Municipal Court delivered a judgment dismissing the applicant's motion to void the contract. It calculated the court fees by reference to the higher indicated value of the dispute i.e. at HRK 105,000. The Dubrovnik County Court upheld its judgment on appeal. The applicant lodged an appeal on points of law to the Supreme Court, contesting the decisions of the lower courts. The Croatian Supreme Court dismissed the appeal as inadmissible *ratione valoris*, because the value of the subject matter of the dispute fell short of the legal threshold of HRK 100,000. It held that the value of the subject matter of the dispute was HRK 10,000, as indicated in the lawsuit. The applicant filed a complaint with the Constitutional Court, complaining that her right of access to a court had been violated. The Constitutional Court dismissed the complaint as inadmissible on the grounds that the case raised no constitutional issues.

117 *Zubac v. Croatia*, Grand Chamber judgment of 5 April 2018.

The Grand Chamber first noted that the case at hand did not concern the question of whether the domestic system was allowed, under Article 6(1) of the Convention, to place restrictions on access to the Supreme Court, nor the scope of the possible arrangements providing for such restrictions. Rather, the case at issue concerned the question whether in the particular circumstances of the case, the Supreme Court, by declaring the applicant's appeal on points of law inadmissible, applied excessive formalism and disproportionately affected her possibility of obtaining a final determination of her property dispute by that court, as otherwise guaranteed under the relevant domestic law. The Grand Chamber further recognised that the application of a statutory *ratione valoris* threshold for appeals to the Supreme Court was a legitimate and reasonable procedural requirement having regard to the very essence of the Supreme Court's role to deal only with matters of the requisite significance. The Court emphasised that the nature of the restriction at issue, which followed from the relevant domestic law and practice of the Supreme Court, did not in itself appear to be the result of inflexible procedural rules. The Grand Chamber concluded that it could not be said that the Supreme Court's decision amounted to a disproportionate hindrance impairing the very essence of the applicant's right of access to a court as guaranteed under Article 6(1) of the Convention or transgressed the national margin of appreciation.

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

In 2018, the Court delivered five judgments and three admissibility decisions regarding complaints of Article 8 violations by Croatia.

The Court's judgment in the case of *Vojnović v. Croatia*¹¹⁸ warrants mention. The applicant occupied a flat situated in a decayed building in the wider city centre of Zagreb in 2004. In 2005, in the context of the denationalisation process, an individual became the owner of the building. The owner planned to sell the building to real estate investors interested in this site in the heart of the city. The applicant reported various incidents to the police from December 2005 to March 2011, when she moved out; she reported that a bullet had been shot into her flat, unusual noises in the building next door, in which no one was living, threats by an individual who claimed he represented the investor and offered the applicant money to move out, and two cases of arson in the building. The applicant also reported she had been threatened by the new owner of the building she was living in, and continued reporting incidents after she had signed a contract with the new owner, under which she would move out of the building in exchange for a specific amount of money, claiming she had signed the contract as a result of threats. The police acted on each complaint but did not initiate criminal prosecution against anyone. The Court stressed that, where an individual made a credible assertion of having been subjected to repeated acts of harassment, however trivial the isolated incidents might be, it fell on the domestic authorities to assess the situation in its entirety, including the risk that similar incidents would continue. It said that this assessment should, above all, take due account of the psychological effect that the risk of repeated harassment, intimidation and violence may have on the victim's everyday life and that, where it was established that a particular individual has been systematically targeted and future abuse was likely to follow, apart from responses to specific incidents, the authorities may be called upon to implement an appropriate action of a general nature to combat the underlying problem. In the context of the case at hand, the Court noted that the applicant had alleged that she had been subjected to repeated instances of threats and harassment and that two instances of arson in the building – which had put at risk the physical and mental integrity of the applicant and the other tenants, as well as their property – had

118 *Vojnović v. Croatia*, judgment of 4 October 2018.

been aimed at intimidating her and the other neighbours into moving out of their flats. The Court considered that alleged acts of violence such as those required the State to adopt adequate positive measures in the sphere of criminal-law protection. The Court concluded that the domestic authorities had failed in their obligation to effectively and expeditiously respond to the allegations by the applicant of harassment, arson and threats and found that the manner in which the criminal-law mechanisms were implemented in the circumstances of the present case was defective to the point of constituting a violation of the respondent State's procedural obligations under Article 8 of the Convention.

The Court's decision finding the application in the case of *Turković and Others v. Croatia*¹¹⁹ inadmissible also warrants mention in the context of Article 8 rights. The applicants lived in the same household in the vicinity of the main Zagreb waste disposal site, Jakuševac-Prudinec. The disposal site was first created in the 1960s, when those living in nearby areas started unlawfully disposing of their waste there. The applicants repeatedly complained to the police of fire at the disposal site and odours coming from it. In May 2014, one of the applicants filed a criminal complaint against unidentified responsible Zagreb City officials, alleging that, owing to waste being dumped illegally on various occasions, the disposal site had spread to the area near his house, and posed a threat to the lives and well-being of all individuals living in the vicinity. After a comprehensive investigation of his allegations, the Zagreb Municipal State Attorney's Office dismissed the complaint, having found, on the basis of the numerous inspections conducted at the site and interviews with all those concerned, that the relevant officials of the City of Zagreb had always taken the necessary measures to control the operation and management of the disposal site and that the relevant agencies that continuously supervised the site had not found that there were emissions or other irregularities capable of causing long-lasting and severe damage to the environment or endangering people's lives or health. In their submissions to the Court, the applicants complained, under Articles 8 and 13 of the Convention, of the State's failure to protect them from the threat of ecological disaster posed by the nearby waste disposal site.

Having examined the exhaustion of domestic legal remedies, one of the fundamental admissibility requirements, the Court stressed that in some instances it has held that an applicant cannot be dispensed from the obligation to use a remedy found by the Court to be the most appropriate avenue to address a particular Convention grievance, irrespective of the particular domestic arrangement of the available remedies to address the substance of his or her complaint. Accordingly, in various contexts, including in environmental protection, when, from the perspective of the Court's case-law, applicants have failed to use the appropriate remedy and have instead used another remedy, the Court has declared their complaints inadmissible for non-exhaustion of domestic remedies. In the case at hand, the applicants filed a criminal complaint against Zagreb City officials, alleging mismanagement and environmental hazards with regard to the operation of the site. That criminal complaint was rejected because it was considered that the elements of criminal responsibility in respect of the City of Zagreb officials had not been established. The applicants failed to exhaust any other available legal remedies.

The Court said it did not consider that the solution to the difficulties complained of by the applicants in relation to the nuisance emanating from the disposal site lied in criminal prosecution and coercion

119 *Turković and Others v. Croatia*, decision of 10 July 2018.

and that the relevant remedy should instead be sought in relation to the available civil avenues.¹²⁰ Given that the applicants had not exhausted any of the listed legal remedies, the Court declared their complaint under Article 8 of the Convention inadmissible because they had failed to exhaust the available domestic legal remedies.

Article 10 – Freedom of Expression

The Court in 2018 delivered two judgments on freedom of expression cases, the cases of *Slava Jurišić v. Croatia*¹²¹ and *Narodni List v. Croatia*.¹²² The latter judgment is important because the Court held that when acting in their official capacity, judges may be subject to wider limits of acceptable criticism if such criticism was in public interest and that the freedom of the press in such cases overrode the judges' right to a private life. The judgment was not final at the time this report was completed.

Namely, the weekly *Narodni list* in October 2008 published an article titled “Judge B. should be put in the pillory” in which it criticised a local (county court) judge. The weekly refused to publish an apology requested by the judge. The judge brought a civil action for defamation against the applicant company and sought non-pecuniary damages for the violation of his right to privacy. During the proceedings, *Narodni list* essentially claimed that freedom of expression allowed use of harsher language. The County Court upheld the Municipal Court judgment, awarding the judge HRK 50,000 (cca €7,500) in damages and ordered the newspaper to pay his costs of proceedings. The Court qualified the damages as interference in the applicant company's freedom of expression, but found that the measure was lawful and pursued a legitimate aim, to protect judge B.'s reputation. It, however, also held that the measure was not necessary in a democratic society and emphasised the high degree of protection afforded to the freedom of the press. The Court found that the article concerned a matter of public interest but that it was not insulting although it was caustic and contained rather serious criticism, exaggerations and a harsh metaphor, it being understood that the use of a caustic tone in comments aimed at a judge was not in principle incompatible with the provisions of Article 10 of the Convention. In view of all of the above, the Court could not accept that the injury to Judge B.B.'s reputation in the present case was of such a level of seriousness as to justify an award of that size and found that Croatia had violated *Narodni list's* freedom of expression.

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

The Court in 2018 delivered five judgments and eight admissibility decisions/strike outs on applications claiming Croatia had violated the right to peaceful enjoyment of possessions under Article 1 of Protocol No. 1 to the Convention.

120 Specifically, in its earlier judgment in the case of *Cokarić v. Croatia*, the Court observed that Croatian law provided two adequate legal remedies for environmental complaints: requests for elimination of risk of damage and compensation for damages exceeding the usual limits that occurred during the performance of activities in the general interest, for which a permit of the competent authority has been obtained (paragraphs 1 and 3 of Section 1047 of the Civil Obligations Act). It noted that additional protection was afforded by Section 167 of the Property Act, allowing parties to file damage claims seeking protection from harmful emissions.

121 *Slava Jurišić v. Croatia*, judgment of 8 February 2018.

122 *Narodni List d.d. v. Croatia*, judgment of 8 November 2018.

The most important one was the judgment the Grand Chamber delivered in the case of *Radomilja and Others v. Croatia*,¹²³ in which it found that Croatia had not violated the applicants' rights under Article 1 of Protocol No. 1 to the Convention. The applicants alleged that their right to peaceful enjoyment of their possessions had been violated because the domestic courts had refused to acknowledge the ownership of property they had acquired by adverse possession. The property at issue comprised plots of land continuously in their possession for over 100 years. The Grand Chamber first noted that the Chamber had not deliberated whether continued possession could be considered "possessions" in terms of Article 1 of Protocol No. 1 to the Convention, in view of national law, under which the land at issue had been nationalised between 6 April 1941 and 8 October 1991, and domestic case-law on the issue. Namely, the legislation of the former Yugoslavia prohibited the acquisition of ownership of socially owned property by adverse possession. The Grand Chamber noted that the applicants had not referred to the above-mentioned period at all, and that they had explicitly excluded it from their constitutional complaints. The Grand Chamber therefore concluded that the Chamber had acted beyond the scope of the case as delimited by the applicants when it included that period in its deliberation of the applicants' right. The Grand Chamber found that the applicants' complaint regarding the period between 6 April 1941 and 8 October 1991 inadmissible as it constituted a "new complaint" to the Grand Chamber (*vis-à-vis* the Chamber) and did not comply with the six-month time limit under Article 35 of the Convention, since it was not included in the complaint. As per the rest of the complaint, the Grand Chamber said that the case regarded the interpretation and application of the domestic law by the domestic courts, which refused to recognise the applicants' ownership by adverse possession. It said it was in the first place for the national authorities, notably the courts, to interpret and apply domestic law, particularly when the cases turned upon difficult questions of interpretation of domestic law, such as adverse possession in this case.

The Grand Chamber reiterated that, in principle, it could not be said that an applicant had a sufficiently established claim amounting to an "asset" for the purposes of Article 1 of Protocol No. 1, where there was a dispute as to the correct interpretation and application of domestic law and where the question whether or not he or she complied with the statutory requirements was to be determined in judicial proceedings before domestic courts. It therefore concluded that the applicants' claims to be declared the owners of the land in question did not have a sufficient basis in the national law to qualify as "possessions" within the meaning of Article 1 of Protocol No. 1 to the Convention and that Croatia had violated the applicants' rights.

*Mladost Turist AD v. Croatia*¹²⁴ is another case concerning this Convention right that warrants attention. The applicant company was established in Belgrade in 1978 as an "organisation of associated labour". On 30 April 1991, it transformed itself under Serbian law into a commercial (joint stock) company whose shareholders were all private individuals. The applicant company claimed that during the socialist period it had held a quasi-ownership right over eleven plots of land in social ownership located in Tisno (Croatia), namely the right of use of that land. At the time, the plots in question had formed the "Beograd" Children and Youth Resort operated by the applicant company.

By a number of decrees adopted in the period between 17 July and 1 October 1991 the Government of Croatia prohibited companies or other legal entities with their seat in other republics of the former SFRY

123 *Radomilja and Others v. Croatia*, Grand Chamber judgment of 20 March 2018.

124 *Mladost Turist AD v. Croatia*, decision of 22 February 2018.

from undertaking any transactions involving assets (including immovable property) located in Croatia. By Government of Croatia decree of 26 June 1992, which entered into force on the same day, all such assets of legal entities with their seats in Serbia or Montenegro were transferred to the State. On 8 June 1994, the Šibenik Municipal Court recorded in the land register the State as the owner of the plots of land at issue. With the entry into force on 1 January 1997 of the Property Act, holders of existing quasi-ownership rights over socially-owned property (the rights to administer, use and dispose of it) *ex lege* became its owners. This did not apply to such rights which had been extinguished before that date, primarily by virtue of earlier legislative acts whereby social ownership of certain types of property (such as flats, agricultural land and sports facilities) was transformed into private ownership. By a gift contract of 18 April 2001, the State transferred ownership of the land in question to an elementary school.

On 2 June 2004, the Agreement on Succession Issues between the successor States to the SFRY entered into force. Annex G to the Succession Agreement deals with private property and acquired rights. Article 2(1) of Annex G provides that successor States will recognise, protect and restore the rights to immovable property located on their territory to which citizens or other legal entities of the SFRY were entitled on 31 December 1990, and that anyone who is unable to enjoy such rights will be entitled to compensation. In 2007, the applicant company brought a civil action against the State and the elementary school in the Šibenik Municipal Court, seeking restitution of the land in question. It referred to Article 2(1) of Annex G to the Succession Agreement. After the claim was dismissed by domestic courts at all levels, the applicant company filed an application with the Court. The Court noted that Croatia had not yet concluded any bilateral agreements or adopted any implementing legislation to give effect to Article 2 of Annex G to the Succession Agreement. It therefore concluded that neither the applicant company's claim to be declared the owner of the land in question nor its claim for compensation had a sufficient basis in national law, or in the international agreements, which are part of the internal legal order, to be regarded as an "asset" and therefore a "possession" attracting the guarantees of Article 1 of Protocol No. 1 to the Convention. The Court thus concluded that the applicant company's complaint was incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35.

Article 4 of Protocol No. 7 to the Convention – ne bis in idem

The Court in 2018 rendered six decisions declaring inadmissible applications against Croatia alleging violations of the *ne bis in idem* principle. Its decision in the case of *Seražin v. Croatia*¹²⁵ is undoubtedly the most important one.

The application was filed by a supporter of the Dinamo Zagreb Football Club and a member of the "Bad Blue Boys" fan club. He was on various occasions found in violation of the Prevention of Disorder at Sports Events Act. On 8 August 2012, he lit a flare at the Zagreb stadium Maksimir during a Dinamo-Sheriff match and hurled it on the field. The police hauled the applicant to the misdemeanour judge on duty and filed two motions against him, the motion to indict and a protective measure prohibiting him from attending all soccer matches. The same day, after the applicant confessed to the minor offences, the Minor Offences Court rendered its judgment and sentenced him to 25 days' imprisonment suspended for one year. Furthermore, under the Prevention of Disorder at Sports Events Act, it imposed a protective measure prohibiting him from attending all Dinamo matches in Croatia and all matches taking place at Maksimir for a period of one year.

¹²⁵ *Seražin v. Croatia*, decision of 9 October 2018.

The applicant was subsequently involved in similar incidents and fights with fans in France, Ukraine and Bosnia and Herzegovina. Given the incident in August 2012, the relevant police authorities in April 2013 asked the Minor Offences Court to impose an exclusion measure against the applicant under the Prevention of Disorder at Sports Events Act. They explained that the applicant was registered in their hooliganism database a category B hooligan, as an extreme supporter of Dinamo, and a member of the “Bad Blue Boys”, who was prone to physical violence, had already been prosecuted for hooliganism under the Act and minor offences of breach of peace and public order.

On 3 April 2014 the Zagreb Minor Offences Court allowed the request of the police and prohibited the applicant from attending all football matches of Dinamo Zagreb and the Croatian national team in Croatia and abroad for one year. It also ordered him to 1) report to the police station nearest to his place of residence (or, if he was away from home, to the nearest police station) two hours before every relevant football match 2) to provide information on his whereabouts during the football match and the two hours after it ended, and 3) to give his travel documents to the police seven days before every relevant sports competition. In his appeal to the High Minor Offences Court and subsequently to the Constitutional Court, the applicant argued, in particular, that the subsequent imposition of the exclusion measure against him for conduct which he had already been found guilty of and sentenced for amounted to a breach of the *ne bis in idem* principle. After his complaints were dismissed by the national courts, the applicant complained to the European Court of Human Rights.

The Court found that the offences for which the applicant had been punished in domestic proceedings under the Prevention of Disorder at Sports Events Act were minor offences and thus fell under the scope of a criminal penalty in the meaning of the Convention. When it deliberated the character of the protective and exclusion measures imposed on the applicant, the Court noted that these two distinct measures were not directly dependent on each other. More specifically, the measure prohibiting the applicant from attending matches was not a (direct) consequence of his conviction for a minor offence. The preventive measure was imposed in administrative proceedings and primarily aimed at protecting a larger number of people, i.e. spectators rather than additionally punishing the applicant. Given that the purpose of the preventive measure is not to punish the persons it is imposed on, it cannot be considered a criminal penalty in character. The Court thus did not consider that the application of the exclusion measure involved the determination of a “criminal charge” and concluded that Article 4 of Protocol No. 7 did not apply in the present case and that the applicant’s complaint was incompatible *ratione materiae* with the provisions of the Convention.

Montenegro

General Introduction

Montenegro ratified the European Convention on Human Rights (hereinafter: Convention) on 6 June 2006. However, in its judgment in the case of *Bijelić v. Montenegro and Serbia*, the European Court of Human Rights (hereinafter: the Court or ECtHR) said that it had jurisdiction with respect to Montenegro as of 3 March 2004, the day the former State Union of Serbia and Montenegro ratified the Convention.

The Court had delivered 50 judgments and 60 admissibility decisions with respect to Montenegro by 31 December 2018. It found Montenegro in violation of at least one Article of the Convention in 47 of the 50 judgments. Of the judgments, 34 were delivered by a Chamber and 16 by a Committee. Of the admissibility decisions, 21 were decided by a Chamber and the rest by a Committee.

A large number of the judgments against Montenegro have involved Article 6, the right to a fair trial. In its judgment in the case of *Tomić and Others v. Montenegro*¹²⁶, the Court did not find a violation of Article 6, having concluded that it was not its role to question the interpretation of the domestic law by the national courts, that it was not in principle its function to compare different decisions of national courts, even if given in apparently similar proceedings and that it had to respect the independence of those courts. It also held that certain divergences in interpretation could be accepted as an inherent trait of any judicial system, but that profound and long-standing differences in the practice of the highest domestic court may themselves be contrary to the principle of legal certainty, a principle which was implied in the Convention and which constituted one of the basic elements of the rule of law.

The Court did not find a violation of Article 6(1) of the Convention in the case of *Vujović v. Montenegro*¹²⁷. The Court held that the applicant had adversely contributed to the length of the impugned proceedings for almost seven months by not appearing at two main hearings. The Court therefore concluded that the remaining length of approximately six years at three levels of jurisdiction could not be considered as excessive or unreasonably long.

The Court did not find a violation of the Convention in the case of *Petrović and Others v. Montenegro*¹²⁸, having concluded that the domestic courts had provided in their judgments specific and explicit reasons for the dismissals of the applicants' claim and that Montenegro had not breached Article 6(1) of the Convention.

The Court ruled on one case alleging violation of the right to life under Article 2 of the Convention by Montenegro. In the case of *Randelović and Others v. Montenegro*¹²⁹, the Court underlined that the obligation in Article 2 to protect the right to life imposed a procedural obligation upon the State to investigate deaths, not only when they occurred at the hands of State agents, but also at the hands of private or unknown individuals and that the essential purpose of an investigation was to "secure the effective

126 *Tomić and Others v. Montenegro*, judgment of 17 April 2012.

127 *Vujović v. Montenegro*, judgment of 15 May 2018.

128 *Petrović and Others v. Montenegro*, judgment of 17 July 2018.

129 *Randelović and Others v. Montenegro*, judgment of 19 September 2017.

implementation of the domestic laws which protect the right to life” and ensure the accountability of those responsible.

The Court delivered judgments in the following three cases against Montenegro alleging violations of Article 3 (prohibition of torture): *Bulatović v. Montenegro*, *Milić and Nikezić v. Montenegro* and *Siništaj and Others v. Montenegro*.¹³⁰

The Court delivered judgments in the following two cases against Montenegro alleging violations of Article 5 (right to liberty and security of person): *Bulatović v. Montenegro* and *Mugoša v. Montenegro*.¹³¹

As mentioned above, many judgments concern Article 6, and the Court found Montenegro in breach of this provision in most of its judgments (34 out of 50)¹³². These violations concerned the length of proceedings, enforcement of final decisions of domestic courts and access to court.

The Court delivered judgments in the following four cases against Montenegro alleging violations of Article 8 (right to respect for private and family life): *Mijušković v. Montenegro*, *Antović and Mirković v. Montenegro*, *Alković v. Montenegro* and *Miličević v. Montenegro*.¹³³

The Court ruled on the following six cases alleging Montenegro violated Article 1 of Protocol No. 1 to the Convention: *Mijanović v. Montenegro*, *A. and B. v. Montenegro*, *Bijelić v. Montenegro*, *Lakičević v. Montenegro*, *Kešelj and Others v. Montenegro* and *KIPS DOO and Drekalović v. Montenegro*.¹³⁴

The Court found Montenegro in violation of Article 10 of the Convention guaranteeing the freedom of expression in the following two cases: *Koprivica v. Montenegro* and *Šabanović v. Montenegro*.¹³⁵

130 *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.

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

132 *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; *Stanka Mirković and 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; *Brajović and Others v. Montenegro*, judgment of 30 January 2018; *Kešelj and Others v. Montenegro*, judgment of 13 February 2018; *Vujović and Lipa D.O.O. v. Montenegro*, judgment of 20 February 2018; *Rajak v. Montenegro*, judgment of 27 February 2018; *Montemlin Šajo v. Montenegro*, judgment of 20 March 2018; *Novaković v. Montenegro*, judgment of 20 March 2018; *Arčon and Others v. Montenegro*, judgment of 3 April 2018; *Jasavić v. Montenegro*, judgment of 19 June 2018; *Kips DOO and Drekalović v. Montenegro*, judgment of 26 June 2018; and, *Lekić v. Montenegro*, judgment of 9 October 2018.

133 *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; *Miličević v. Montenegro*, judgment of 6 November 2018.

134 *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; *Kešelj and Others v. Montenegro*, judgment of 13 February 2018; and *Kips DOO and Drekalović v. Montenegro*, judgment of 26 June 2018.

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

The Court found Montenegro in violation of Article 13 of the Convention (right to an effective remedy) in the following five cases: *Milić v. Montenegro and Serbia*, *Stakić v. Montenegro*, *Mirković and Others v. Montenegro*, *Đuković v. Montenegro* and *Sinex d.o.o. v. Montenegro*.¹³⁶

The Court also found Montenegro in violation of Article 14 of the Convention (prohibition of discrimination) in one case: *Alković v. Montenegro*¹³⁷.

In only one case against Montenegro has there been a separate judgment in relation to just satisfaction – *Koprivica v. Montenegro*¹³⁸.

Cases from 2018

The European Court of Human Rights ruled on 23 cases against Montenegro in 2018; it delivered judgments in 13 cases and admissibility decisions on 10 cases.

The following five judgments were adjudicated by a Chamber of seven judges: *Brajović and Others v. Montenegro*, *Vujović and Lipa v. Montenegro*, *Petrović and Others v. Montenegro*, *Kips DOO and Drekalović v. Montenegro* and *Miličević v. Montenegro*.¹³⁹

The remaining eight judgments - *Kešelj and Others v. Montenegro*, *Rajak v. Montenegro*, *Montemlin Šajo v. Montenegro*, *Novaković v. Montenegro*, *Arčon and Others v. Montenegro*, *Vujović v. Montenegro*, *Jasavić v. Montenegro* and *Lekić v. Montenegro*¹⁴⁰ - were adjudicated by a Committee of three judges.

The Court did not find violations of the ECHR in two cases against Montenegro in 2018 - *Vujović v. Montenegro* and *Petrović and Others v. Montenegro*.¹⁴¹

In 2018, the Court rendered ten decisions finding applications against Montenegro inadmissible or striking them out. One such decision, in the case of *Ivanović and Daily press v. Montenegro*, was adopted by a Chamber of seven judges, while the other nine decisions – in the cases of *Bulatović v. Montenegro*, *Srdanović v. Montenegro*, *Backović v. Montenegro*, *Zogović v. Montenegro*, *Šikmanović v. Montenegro*, *Bakić v. Montenegro*, *Vujisić v. Montenegro*, *Bogojević v. Montenegro* and *Romanjoli v. Montenegro* – were adopted by a Committee of three judges.

136 *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; *Stanka Mirković and Others v. Montenegro*, judgment of 7 March 2017; *Sineks d.o.o. v. Montenegro*, judgment of 5 September 2017.

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

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

139 *Brajović and Others v. Montenegro*, judgment of 30 January 2018; *Vujović and Lipa D.O.O. v. Montenegro*, judgment of 20 February 2018; *Kips DOO and Drekalović v. Montenegro*, judgment of 26 June 2018 and *Miličević v. Montenegro*, judgment of 6 November 2018.

140 *Kešelj and Others v. Montenegro*, judgment of 13 February 2018; *Rajak v. Montenegro*, judgment of 27 February 2018; *Montemlin Šajo v. Montenegro*, judgment of 20 March 2018; *Novaković v. Montenegro*, judgment of 20 March 2018; *Arčon and Others v. Montenegro*, judgment of 3 April 2018; *Jasavić v. Montenegro*, judgment of 19 June 2018 and *Lekić v. Montenegro*, judgment of 9 October 2018.

141 *Vujović v. Montenegro*, judgment of 15 May 2018 and *Petrović and Others v. Montenegro*, judgment of 17 July 2018.

Overview of the Most Important Judgments Delivered in 2018

***Brajić and Others v. Montenegro*, judgment of 30 January 2018, violation of Article 6(1) (right of access to a court)**

The applicants were Montenegrin nationals, who had intervened, as injured parties, in criminal proceedings against X. They complained they had been denied access to a court in violation of Article 6 of the Convention because the Court of Appeal had not ruled on their appeal with respect to costs and expenses.

The Court reiterated its principle that Article 6(1) “secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal”. It went on to say that this “right to a court”, of which the right of access was an aspect, could be relied on by anyone who considered on arguable grounds that an interference with the exercise of his or her civil rights was unlawful and complained that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6(1) of the Convention. It stated that the right to a court included not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court.

Finally, the Court reiterated, although Article 6(1) did not compel the States to set up courts of appeal or of cassation, those States that did institute such courts were required to ensure that persons amenable to the law enjoyed before them the fundamental guarantees contained in Article 6.

The Court in this case considered that the applicants had been effectively deprived of having their civil claim determined by a tribunal, within the meaning of Article 6(1) and found a violation of that Article.

***KIPS DOO and Drekalović v. Montenegro*, judgment of 26 June 2018, violation of Article 6(1) (right to a trial within a reasonable time) and Article 13 of the Convention (right to an effective legal remedy) and Article 1 of Protocol No. 1 to the Convention (protection of property).**

The application was filed by KIPS DOO, a company headquartered in Podgorica, and its founder, Executive Director and owner Risto Drekalović. The case regarded the authorities’ refusal to issue a building permit to the applicants to build a shopping centre. The applicants also complained of the length of the administrative proceedings related to the completion of the urban plot of land and the length of the enforcement proceedings and lack of an effective domestic remedy in that regard.

The Court reiterated its principle that repeated re-examination of a single case following remittal may in itself disclose a serious deficiency in a State’s judicial system.

In view of the criteria laid down in its jurisprudence and the relevant facts of the present case, the Court opined that the length of the proceedings complained of failed to satisfy the reasonable time requirement and that there had accordingly been a violation of Article 6(1) of the Convention. The proceedings at issue commenced on 15 August 2005, when the applicants lodged their administrative appeal and on 23 June 2017, when the first applicant instituted an administrative dispute. To the Court’s best knowledge, they were still pending at the time of the judgment, and had hence been ongoing for more than 11 years and 10 months, during which time the domestic bodies remitted the case seven times.

The Court found a violation of Article 13 of the Convention, taken together with Article 6(1), on account of the lack of an effective remedy under domestic law at the relevant time for the applicants' complaints concerning the length of the proceedings related to the completion of the urban plot of land.

The Court also reiterated that the Contracting States should enjoy a wide margin of appreciation in the area of land development and town planning in order to implement their town and country planning policies.

The Court went on to say that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – was a factor to be taken into account in assessing the State's conduct and that, where an issue in the general interest was at stake, it was incumbent on the public authorities to act in good time, in an appropriate and consistent manner and that the margin of appreciation that the authorities had in no way dispensed them from that duty.

In the case at hand, the Court found that the interference in the applicants' right to peaceful enjoyment of possessions was not proportionate given that the respondent State's authorities failed to act in good time, in an appropriate manner and with utmost consistency thus making it impossible for the applicants to meet the said conditions and obtain the building permit. The Court held that the that the applicants had been faced with the uncertainty arising from the practices applied by the authorities, reflected in constantly changing the Detailed Urbanistic Plans, introducing new conditions, such as buying an additional cadastral plot of land in order to "complete" the newly-created urban plot, and by unlawfully refusing to calculate the relevant charges.

In view of the above, the Court concluded that, notwithstanding the margin of appreciation afforded to the State, a fair balance had not been preserved in the present case and that the applicants had been required to bear an individual and excessive burden, in violation of Article 1 of Protocol No. 1 to the Convention.

Milićević v. Montenegro, judgment of 6 November 2018, violation of Article 8 of the Convention (right to respect for private and family life)

The applicant complained to the Court under Article 2 of the Convention that the State had failed to take preventive measures and thus protect him from an attack by a mentally ill person (X), a risk of which the police had been aware.

The Court reiterated its principle that the concept of private life within the meaning of Article 8 of the Convention included a person's physical and psychological integrity. It went on to say that, while the essential object of Article 8 was to protect the individual against arbitrary interference by the public authorities, "there may in addition be positive obligations inherent in effective respect for private life, which may involve the adoption of measures in the sphere of relations between individuals" and that, to that end, States were to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals.

The Court reiterated that its task was not to substitute itself for the competent domestic authorities in determining the most appropriate methods for protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation.

The Court found that the lack of sufficient measures taken by the authorities in reaction to X's behaviour amounted to a breach of the State's positive obligations under Article 8 of the Convention to secure respect for the applicant's private life.

***Vujović and Lipa DOO v. Montenegro*, judgment of 20 February 2018, violation of Article 6(1) (right of access to a court)**

This case concerned the violation of the applicants' right of access to a court in that the Court of Appeal refused to examine on the merits the second applicant's appeal of a decision to initiate bankruptcy proceedings.

The Court noted that the provisions of the Insolvency Act, valid at the relevant time, provided that, once the insolvency proceedings were opened, all rights in respect of company representation were transferred to the insolvency administrator and that he or she represented the insolvency debtor. The Court concluded that the applicants could not have appealed directly and independently against the decision which directly affected them but only through an insolvency administrator, wherefore it found a violation of Article 6(1) of the Convention.

Overview of the Most Important Admissibility Decisions in 2018

***Ivanović and Daily press v. Montenegro*, decision of 28 June 2018, declared inadmissible**

The applicants claimed a violation of their freedom of expression under Article 10 arising from final civil court judgments. The applicants had been ordered to pay damages to former Prime Minister Milo Đukanović over a series of articles they had published, in response to an assault on the first applicant, in which they described Đukanović and his family as criminals. The Court concluded that these judgments interfered in the applicants' freedom of expression and that it had to examine whether the "interference" was necessary in a democratic society i.e. whether the judgments were proportionate to the legitimate aim pursued. The applicants' allegations were very serious and the Court departed from the general principle in its caselaw - that the more serious the allegation is, the more solid the factual basis should be. It, however, found, that the applicants had not verified the truth or reliability of their allegations.

The Court considered that the fact of directly accusing specific individuals by mentioning their names and positions had placed the applicants under an obligation to provide a sufficient factual basis for their assertions. It found that the conclusions reached by the High Court on the basis of its balancing exercise could not be regarded as unreasonable and, consequently, that the reasons adduced by the domestic courts for ordering the applicants to pay damages to the plaintiff were "relevant and sufficient" within the meaning of its caselaw. The Court therefore did not find any reason to substitute its view for that of the final decision of the High Court.

The Court considered that the awarded damages were not excessive, that the compensation had been awarded against the applicants jointly, and that the first-instance court had taken into account that the daily newspaper published by the second applicant had a high circulation. It therefore concluded that their decisions were in line with the Court's caselaw that an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered and that the applicants' complaint was manifestly ill-founded and had to be rejected in accordance with Article 35(3)(a) and 4) of the Convention.

The Republic of North 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 'the ECtHR') has handed down 153 judgments and 450 admissibility/strike outs decisions against Macedonia, out of which 12 judgments and 24 decisions were given in 2018.¹⁴² Of the judgments, 134 were adopted by a Chamber, 17 by a Committee in so-called "repetitive" or WECL cases and 2 by a Grand Chamber. Of the admissibility decisions, 186 cases were decided by a Chamber and 264 cases by a Committee.

108 judgments have been given in respect of Article 6 of the Convention, the right to a fair trial, finding violations in 102 cases. They mostly dealt with the length of proceedings and lack of enforcement of the judgments. The Court held that the applicants first have to lodge a length complaint before the Supreme Court, which was considered to be an effective remedy, prior to bringing their case before it,¹⁴³ even when the compensation was inadequate.¹⁴⁴ Many civil cases raised issues concerning impartiality,¹⁴⁵ the principle of equality of arms,¹⁴⁶ the lack of judicial certainty and consistent case-law,¹⁴⁷ lack of reasoning,¹⁴⁸ the right of access to a court,¹⁴⁹ and the right to an oral hearing.¹⁵⁰ On the other hand, presumption of innocence,¹⁵¹ the equality of arms and the right to defence in connection to the admission of statements by absent or anonymous witnesses¹⁵² and the defendant's presence at trial,¹⁵³ the

142 The list of judgments includes *Stavropegic Monastery of Saint John Chrysostom v. Macedonia*, judgment of 29 November 2018; *Church of Real Orthodox Christians and Ivanovski v. Macedonia*, judgment of 29 November 2018; *Makraduli v. Macedonia*, judgment of 19 July 2018; *Smičkovski v. Macedonia*, judgment of 5 July 2018; *Euromak Metal DOO v. Macedonia*, judgment of 14 June 2018; *Sejdiji v. Macedonia*, judgment of 7 June 2018; *Ljatifi v. Macedonia*, judgment of 17 May 2018; *Bektashi Community and Others v. Macedonia*, judgment of 12 April 2018; *Selami and Others v. Macedonia*, judgment of 1 March 2018; *Ramkovski v. Macedonia*, judgment of 8 February 2018; *Asani v. Macedonia*, judgment of 1 February 2018; *Taseva Petrovska v. Macedonia*, judgment of 11 January 2018.

143 *Adži-Spirkoska and Others v. Macedonia*, Chamber decision of 3 November 2011.

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

145 *Mitrov v. Macedonia*, judgment of 2 June 2016; *Mitrinovski v. Macedonia*, judgment of 30 April 2015; *Bajaldžiev v. Macedonia*, judgment of 25 October 2011; *Nikolov v. Macedonia*, judgment of 20 December 2007.

146 *Taseva Petrovska v. Macedonia*, judgment of 11 January 2018; *Naumoski v. Macedonia*, judgment of 27 November 2012; *Grozdanoski v. Macedonia*, judgment of 31 May 2007.

147 *Krstanoski and Others v. Macedonia*, judgment of 7 December 2017; *Stoilkovska v. Macedonia*, judgment of 18 July 2013.

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

149 *Centre for the Development of Analytical Psychology v. Macedonia*, judgment of 15 June 2017; *Balažoski v. Macedonia*, judgment of 25 April 2013; *Spasovski v. Macedonia*, judgment of 10 June 2010; *Demerdžieva and Others v. Macedonia*, judgment of 10 June 2010; *Boris Stojanovski v. Macedonia*, judgment of 6 May 2010; *Petkoski and Others v. Macedonia*, judgment of 8 January 2008; *Fetaovski v. Macedonia*, judgment of 19 June 2008. No violation in this regard was established only in *Ivanovski v. Macedonia*, judgment of 21 January 2016.

150 *Selmani and Others v. Macedonia*, judgment of 9 February 2017; *Mitkova v. Macedonia*, judgment of 15 October 2015.

151 No violations in this respect were found in *Ramkovski v. Macedonia*, judgment of 8 February 2018; *Poletan and Azirovik v. Macedonia*, judgment of 12 May 2016; *Miladinov and Others v. Macedonia*, judgment of 24 April 2014.

152 *Asani v. Macedonia*, judgment of 1 February 2018; *Dončev and Burgov v. Macedonia*, judgment of 12 June 2014; *Iljazi v. Macedonia*, judgment of 3 October 2013; *Papadakis v. Macedonia*, judgment of 26 February 2013; *Trampevski v. Macedonia*, judgment of 10 July 2012; *Atanasov (II) v. Macedonia*, judgment of 19 April 2011; *Solakov v. Macedonia*, judgment of 31 October 2001.

153 *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.

assessment of expert opinions,¹⁵⁴ the admissibility of unlawfully obtained evidence,¹⁵⁵ the use of *agent provocateur*¹⁵⁶ and the right to an interpreter¹⁵⁷ were addressed in many criminal cases before the ECtHR.

A violation was found in 8 out of 19 judgments on Article 1 of Protocol No.1, the protection of property, as regards the denial of the right to restore into possession a confiscated plot of land, even if the statutory requirements were met,¹⁵⁸ the insufficient compensation for the expropriation of the applicants' land in favour of a company,¹⁵⁹ and the confiscation of vehicles which served as instruments to commit an offence.¹⁶⁰ The extraordinary quashing of a final restitution order, aimed to correct "manifest omissions" by the administrative bodies, did not amount to a violation.¹⁶¹

The Court gave 4 judgments on Article 2, right to life,¹⁶² finding a violation even when no death occurred but only an injury was inflicted to the applicant by a police officer.¹⁶³ No violation was established in a case of actions or omissions of those allegedly involved in the failure to report a crime which resulted into the death of the applicant's son who got killed by a member of the special police forces.¹⁶⁴ 18-month delay in the enforcement of a custodial sentence of a perpetrator, was considered as an integral part of the procedural obligation of the State under Article 2.¹⁶⁵

In 11 out of 12 judgments on Article 3, the prohibition of torture, the Court found a breach of the procedural limb.¹⁶⁶ In addition to *El-Masri*, in *Hajrulahu* the Court also qualified the treatment as torture, since the applicant was intimidated with the aim of extracting a confession, which caused him emotional, psychological and physical pain and suffering.¹⁶⁷ In many cases¹⁶⁸ the Court highlighted that the victims of alleged violations are not required to pursue the prosecution of State agents on their own and this is rather a duty of the prosecutor, and in one case it considered as excessive formalism the

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

155 *Hajrulahu v. Macedonia*, judgment of 29 October 2015.

156 *Gorgievski v. Macedonia*, judgment of 16 July 2009.

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

158 *Stojanovski and Others v. Macedonia*, judgment of 23 October 2014.

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

160 *Vasilevski v. Macedonia*, judgment of 28 April 2016; *Andonoski v. Macedonia*, judgment of 17 September 2015. There was no violation in *Sulejmani v. Macedonia*, judgment of 28 April 2016.

161 *Spiridonovska and Popovski v. Macedonia*, judgment of 19 October 2017; *Toleski v. Macedonia*, judgment of 15 June 2017; *Vikentijević v. Macedonia*, judgment of 6 February 2014.

162 *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.

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

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

165 *Kitanovska Stanojković and Others v. Macedonia*, judgment of 13 October 2016.

166 *Selami and Others v. Macedonia*, judgment of 1 March 2018; *Asllani v. Macedonia*, judgment of 10 December 2015; *Hajrulahu v. Macedonia*, judgment of 29 October 2015; *Andonovski 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.

167 *Hajrulahu v. Macedonia*, judgment of 29 October 2015.

168 *Asllani v. Macedonia*, judgment of 10 December 2015; *Andonovski v. Macedonia*, judgment of 23 July 2015; *Kitanovski v. Macedonia*, judgment of 22 January 2015; *Gorgiev v. Macedonia*, judgment of 19 April 2012.

insistence that the applicant discovers the identity of all police officers against whom he brought criminal charges.¹⁶⁹ The handcuffing of a mentally-ill applicant during her transfer to a hospital amounted to degrading treatment infringing the substantive aspect of Article 3.¹⁷⁰

Violations were found in all 10 judgments given on Article 5, right to liberty and security.¹⁷¹ The Grand Chamber judgment in *El-Masri v. Macedonia*,¹⁷² concerned an arbitrary, *incommunicado* detention of a German national, his “extraordinary rendition” and his transfer to Afghanistan, where he was further ill-treated. Apart from the excessive length of pre-trial detention, and the lack of reasoning of collective detention orders,¹⁷³ the ECtHR discussed the right of the defendant to effectively participate in the proceedings in which his initial house arrest was replaced with prison detention,¹⁷⁴ the absence of reasonable suspicion that the applicant had committed an offence,¹⁷⁵ the unlawful arrest given alleged non-compliance with the court order for payment of a fine and the failure to inform the applicant of the reasons for his arrest,¹⁷⁶ the omission to award compensation in respect of the unlawful imprisonment,¹⁷⁷ as well as the unjustified continued confinement in a psychiatric institution.¹⁷⁸

A violation was established in 5 out of 6 judgments on Article 8, the right to respect for private and family life, which involved the right to respect for reputation,¹⁷⁹ the lack of enforcement of orders for maintaining contacts between parents and their children,¹⁸⁰ and the moral and physical integrity of the person.¹⁸¹ The forcible removal of journalists from the Parliament gallery while they were reporting on a debate about approval of the State budget for 2013 infringed Article 10, freedom of expression.¹⁸² Only one case on Article 11, freedom of assembly and association concerned dissolution of a civil association¹⁸³, while 4 cases involved ban on registration of religious communities (violating Article 11 in light of Article 9).¹⁸⁴

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

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

171 *Sejdiji v. Macedonia*, judgment of 7 June 2018; *Selami and Others v. Macedonia*, judgment of 1 March 2018; *Ramkovski v. Macedonia*, judgment of 8 February 2018; *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.

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

173 *Sejdiji v. Macedonia*, judgment of 7 June 2018; *Ramkovski v. Macedonia*, judgment of 8 February 2018; *Miladinov and Others v. Macedonia*, judgment of 24 April 2014; *Vasilkoski and Others v. Macedonia*, judgment of 28 October 2010.

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

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

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

177 *Selami and Others v. Macedonia*, judgment of 1 March 2018; *Velinov v. Macedonia*, judgment of 19 September 2013.

178 *37 Trajče Stojanovski v. Macedonia*, judgment of 22 October 2009.

179 *Karajanov v. Macedonia*, judgment of 6 April 2017; *Ivanovski v. Macedonia*, judgment of 21 January 2016; *Popovski v. Macedonia*, judgment of 31 October 2013.

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

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

182 *Selmani and Others v. Macedonia*, judgment of 9 February 2017.

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

184 *Stavropegic Monastery of Saint John Chrysostom v. Macedonia*, judgment of 29 November 2018; *Church of Real Orthodox Christians and Ivanovski v. Macedonia*, judgment of 29 November 2018; *Bektashi Community and Others v. Macedonia*, judgment of 12 April 2018; *“Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peč Patriarchy)” v. Macedonia*, judgment of 16 November 2017.

Cases from 2018

Out of 12 judgments given in 2018, 7 judgments¹⁸⁵ were adopted by a Chamber of 7 judges and the remaining 5¹⁸⁶ by a Committee of 3 judges. In one case the Court found a violation of Article 1 of Protocol No. 1,¹⁸⁷ Article 10,¹⁸⁸ as well as a violation of Article 3, together with Article 5 § 5.¹⁸⁹ A violation of Article 5 § 3 was established in 2 cases,¹⁹⁰ whereas 3 cases involved a violation of Article 11 in light of Article 9¹⁹¹ and other 3 cases an infringement of Article 6.¹⁹²

In only one judgment until now, *Ljatifi v. Macedonia*,¹⁹³ the Court dealt with complaints concerning the freedom of movement, establishing a breach of Article 1 of Protocol No. 7 to the Convention. The applicant, a Serbian national, who fled Kosovo to Macedonia in 1999, was required to leave the country as she posed “a risk to national security” after her asylum status had been terminated. The domestic administrative courts had upheld the Ministry of Interior’s decision, noting that it was based on a classified document obtained from the Intelligence Agency. . It only referred to the applicant’s alleged knowledge of and support for other people’s involvement in the commission of multiple offences, without any indication of the identity of those people or their relationship to the applicant. In the Court’s view, the applicant had been unable to present her case adequately in the ensuing judicial review proceedings given that the classified document had never been disclosed to her and the Ministry’s decision had not provided her with the slightest indication of the factual grounds for considering her a security risk.

Additionally, the courts were not provided with the impugned document or any further factual details for the purpose of verifying the executive’s assertion that the applicant had really posed a national security risk. They thus confined themselves to a purely formal examination of the case, without giving any explanation of the importance of preserving the confidentiality of that document. In this context, the Court stressed that even where national security is at stake, the concepts of lawfulness and the rule of law in a democratic society require that deportation measures affecting fundamental human rights be subject to some form of adversarial proceedings before an independent authority or a court competent to effectively scrutinise the reasons for them and review the relevant evidence, if need be with appropriate procedural limitations on the use of classified information. This led to the Court’s finding of a violation of paragraph 1 (a) and (b) of Article 1 of Protocol No. 7.

185 *Makraduli v. Macedonia*, judgment of 19 July 2018; *Euromak Metal DOO v. Macedonia*, judgment of 14 June 2018; *Ljatifi v. Macedonia*, judgment of 17 May 2018; *Bektashi Community and Others v. Macedonia*, judgment of 12 April 2018; *Selami and Others v. Macedonia*, judgment of 1 March 2018; *Ramkovski v. Macedonia*, judgment of 8 February 2018; *Asani v. Macedonia*, judgment of 1 February 2018.

186 *Stavropegic Monastery of Saint John Chrysostom v. Macedonia*, judgment of 29 November 2018; *Church of Real Orthodox Christians and Ivanovski v. Macedonia*, judgment of 29 November 2018; *Smičkovski v. Macedonia*, judgment of 5 July 2018; *Sejdiji v. Macedonia*, judgment of 7 June 2018; *Taseva Petrovska v. Macedonia*, judgment of 11 January 2018.

187 *Euromak Metal DOO v. Macedonia*, judgment of 14 June 2018.

188 *Makraduli v. Macedonia*, judgment of 19 July 2018.

189 *Selami and Others v. Macedonia*, judgment of 1 March 2018.

190 *Sejdiji v. Macedonia*, judgment of 7 June 2018; *Ramkovski v. Macedonia*, judgment of 8 February 2018.

191 *Stavropegic Monastery of Saint John Chrysostom v. Macedonia*, judgment of 29 November 2018; *Church of Real Orthodox Christians and Ivanovski v. Macedonia*, judgment of 29 November 2018; *Bektashi Community and Others v. Macedonia*, judgment of 12 April 2018.

192 *Smičkovski v. Macedonia*, judgment of 5 July 2018; *Asani v. Macedonia*, judgment of 1 February 2018; *Taseva Petrovska v. Macedonia*, judgment of 11 January 2018.

193 *Ljatifi v. Macedonia*, judgment of 17 May 2018.

On freedom of political expression, *Makraduli v. Macedonia*¹⁹⁴ concerned the criminal conviction of the applicant, vice-president of the opposition party and an MP, for defamation against the Prime Minister's cousin, who was at the time a senior member of the ruling political party and head of the Security and Counter Intelligence Agency. The Court emphasised the high level of protection of political speech, which applies to elected representatives, with the authorities thus having a particularly narrow margin of appreciation. It reiterated that the limits of acceptable criticism are wider for State officials than for private individuals and that a politician inevitably and knowingly lays himself open to close scrutiny by both journalists and the public at large, and he must display a greater degree of tolerance and restrain in resorting to criminal proceedings. Although the domestic courts had acknowledged the plaintiff's status as a State official, they had not accepted the wider acceptable criticism as far as such officials are concerned. They considered the allegations of misuse of police wiretapping equipment/powers to make gains on the stock market and corrupt practices in the public sale of State-owned land, made by the applicant at press conferences held at his party's headquarters to be factual statements rather than value judgments. The ECtHR criticised that the domestic courts required the applicant to fulfill a more demanding standard than that of due diligence, by requiring that he demonstrated the truth of his assertions and that such approach was followed by the Constitutional Court, even though it categorised the impugned statements as "opinions".

In the Court's view, notwithstanding the fact that the fine imposed could no longer be executed given the legislative amendments of November 2012 which had decriminalised defamation, the applicant's conviction, had a chilling effect on the political debate he raised by putting the matters of general interest, namely transparency and prevention of abuse of power by public servants, which, is the role of politicians and MPs, as representatives of the electorate. Moreover, the standards applied in the impugned proceedings had not been compatible with the principles embodied in Article 10 and the domestic courts had failed to strike a fair balance between the competing interests at stake. Consequently, the interference had been disproportionate to the aim pursued and not "necessary in a democratic society" within the meaning of Article 10 § 2.

In *Euromak Metal DOO v. Macedonia*,¹⁹⁵ the Court found a violation of Article 1 of Protocol No. 1 as the applicant company had been deprived of its right to deduct the input value-added tax ("VAT") it had paid on received goods in spite of its full compliance with its VAT obligations and it was unjustifiably ordered to pay the input VAT which it had previously lawfully deducted, together with interest. This had been done because its suppliers had failed to meet their own VAT reporting obligations. The fact that the applicant company had not settled its obligations towards the State stemming from the impugned orders issued by the tax revenue authorities, which had been upheld by the administrative courts, given that its bank account had been blocked pursuant to those orders and the company had eventually ceased to exist, had not had any impact on the Court's finding that the tax assessment had affected the applicant company's property rights.

A breach of the principle of equality of arms contrary to Article 6 §§ 1 and 3 (d) was established in 2 judgments delivered in 2018.¹⁹⁶

194 *Makraduli v. Macedonia*, judgment of 19 July 2018.

195 *Euromak Metal DOO v. Macedonia*, judgment of 14 June 2018.

196 *Asani v. Macedonia*, judgment of 1 February 2018; *Smičkovski v. Macedonia*, judgment of 5 July 2018.

In *Asani v. Macedonia*,¹⁹⁷ the Court held that the applicants' defence rights were unacceptably restricted, after it had applied the relevant principles developed in the Grand Chamber judgments in *Al-Khawaja*¹⁹⁸ and *Schatschaschwili*,¹⁹⁹ which concern the compatibility with Article 6 §§ 1 and 3 (d) of proceedings in which statements made by a witness who was not present and questioned at the trial were used as evidence. The testimony given by the anonymous witnesses was regarded as decisive in the present case, as without it the chances of the applicants' conviction of murder and sentence to life imprisonment would have been significantly reduced. Considering the exclusion of the applicants and their lawyers from attending their examination before both the investigating judge and the trial judge, unlike the public prosecutor, who attended both examinations, the Court held that the possibility offered to the applicants to put written questions to the anonymous witnesses could not be regarded as a sufficient procedural safeguard to counterbalance the constraints they had been confronted with in the exercise of their defence rights.

Furthermore, insufficient efforts had been made to secure the attendance at the trial of a third witness, whose pre-trial statement had carried significant weight in relation to the applicants' guilt and the domestic courts relied on, after he had become untraceable as he had fled the State and an international arrest warrant had been issued against him. Moreover, despite the allegations made that he had subsequently been in Macedonia the domestic courts had not provided valid reasons for his non-attendance at the trial. The ECtHR also noted that the trial judge had never examined him in order to make his own assessment of the veracity of the account being given by him. The absence of an explicit objection by the applicants to the pre-trial statement being read out at the trial court could not be interpreted as an unequivocal waiver on their part of their right to examine him, particularly since neither the applicants nor their lawyers had the opportunity at any stage of the proceedings to confront and question that witness or to have him orally examined in their presence.

*Smičkovski v. Macedonia*²⁰⁰ concerned the criminal proceedings in which the applicant had been found guilty and sentenced to a suspended prison sentence of one year for causing grievous bodily injury. The Court concluded that by dismissing all requests by the defence, and in particular the request to question a crucial eyewitness, without providing relevant reasons, whilst at the same time accepting all the prosecution arguments and evidence, the trial court had created an unfair advantage in favour of the prosecution and had deprived the applicant of any practical opportunity to effectively challenge the charges against him. The dismissal of such request, which could have arguably strengthened the defense position or even led to the applicant's acquittal, had been based on a reasoning which according to the Court was considered to be manifestly contrary to the available facts of the case and therefore could not be accepted as relevant and valid.

In *Taseva Petrovska v. Macedonia*²⁰¹ the applicant, a professor of law at a private university, complained about the lack of adversarial trial in the proceedings before the Higher Administrative Court, in which she had challenged the decision given by the Ministry of Justice to reject her request to be recognised as having the same status as a person who had passed the Bar examination. The ECtHR found

197 *Asani v. Macedonia*, judgment of 1 February 2018.

198 *Al-Khawaja and Tahery v. the United Kingdom*, judgment of 15 December 2011.

199 *Schatschaschwili v. Germany*, judgment of 15 December 2015.

200 *Smičkovski v. Macedonia*, judgment of 5 July 2018.

201 *Taseva Petrovska v. Macedonia*, judgment of 11 January 2018.

that the fact that she had not been allowed to comment on the Ministry's observations submitted in reply to her appeal, as they had not been forwarded to her had amounted to a violation of Article 6 § 1. It also referred to its previous judgments in *Grozdanoski*²⁰² and *Naumoski*,²⁰³ which concerned similar circumstances.

In *Selami and Others v. Macedonia*²⁰⁴ the applicant had been arrested on suspicion of involvement in the killing of two policemen and he was subsequently indicted for membership of a terrorist group but the criminal proceedings were discontinued. The case concerned his family's complaint that Mr Selami's compensation awarded in the domestic proceedings had been unreasonably low, given his unjustified detention and the serious injuries he had sustained. On the facts of the case, the Court noted that the applicant had been ill-treated at the hands of the police in connection with his arrest and questioning and he had been a victim of torture. The Court found a violation of Article 3 in its procedural aspect, and a violation of Article 5 § 5 (right to compensation), as the amount of EUR 9,800 which had been awarded by the domestic courts could not be considered as appropriate redress. In addition, the Court noted that the domestic courts had failed to acknowledge, expressly or in substance, that the ill-treatment the applicant had suffered amounted to "torture". The Court in particular addressed the issue whether the applicants were "indirect victims" of the alleged violations. It held that while three of them (his former wife and children) lacked standing to bring a claim on Mr Selami's behalf, the fourth applicant, Mr Selami's son and sole heir, could be qualified as an "indirect victim" because he had a strong moral interest in the case and the claims were transferable to him in that he had continued the compensation claim on his behalf, after his death, and had inherited the award of damages.

*Ramkovski v. Macedonia*²⁰⁵ and *Sejdiji v. Macedonia*²⁰⁶ concerned the continued detention of the applicants, who had been convicted of a series of offenses, concerning charges of organised crime including criminal conspiracy. The Court noted the existence of the practice of issuing collective detention orders, which had already been found to be incompatible, in itself, with the Article 5 § 3 of the Convention. The same summary formula had been constantly used in all the extension orders and decisions on the applicants' appeals, and the courts had not carried out an individual case-by-case assessment of the grounds for detention in respect of each member of the group. The ECtHR further concluded that by failing to address concrete facts or to properly consider alternative preventive measures, and by relying essentially on the gravity of the charges and the severity of the sentence faced, the authorities had extended the applicants' pre-trial detention on grounds which could not be regarded as "relevant and sufficient", thus continuing the previous case-law of *Vasilkoski and Others*²⁰⁷ and *Miladinov and Others*.²⁰⁸

In *Ramkovski v. Macedonia*, the Court found no breach of the presumption of innocence under Article 6 § 2 of the Convention as regards the wording of the orders used to justify extending the applicants' pre-trial detention, since they had only referred to a reasonable suspicion that the accused had commi-

202 *Grozdanoski v. Macedonia*, judgment of 31 May 2007.

203 *Naumoski v. Macedonia*, judgment of 27 November 2012.

204 *Selami and Others v. Macedonia*, judgment of 1 March 2018.

205 *Ramkovski v. Macedonia*, judgment of 8 February 2018.

206 *Sejdiji v. Macedonia*, judgment of 7 June 2018.

207 *Vasilkoski and Others v. Macedonia*, judgment of 28 October 2010.

208 *Miladinov and Others v. Macedonia*, judgment of 24 April 2014.

tted the crimes they had been charged with in the bill of indictment and they did not contain an explicit and unqualified declaration which would amount to the determination of the applicants' guilt before they had been proved guilty under the law.

A violation of Article 11 in light of Article 9 was established in 3 cases²⁰⁹ which concerned the authorities' refusal to register the applicants' associations as legal entities. Such interferences were "prescribed by law" as the respective associations had allegedly failed to meet the formal requirements of the Legal Status of Churches, Religious Communities and Religious Groups Act of 2007, and they pursued a "legitimate aim" of the protection of the rights and freedoms of others. However, the reasons adduced by the national courts, mainly regarding the formal deficiencies for registration, were not "relevant and sufficient" to justify those interferences. In addition, in the cases of *Stavropegic Monastery of Saint John Chrysostom*²¹⁰ and *Church of Real Orthodox Christians and Ivanovski*,²¹¹ the Court held that domestic courts' finding that the registration would have violated the freedom of religion of other believers who were affiliated with already registered religious entities was of a general nature and it had not been supported by any convincing explanation. In both cases, the Court reiterated its principles summarised in the *Orthodox Ohrid Archdiocese* case,²¹² recognising the States' wide margin of appreciation and the equality of all religious organisations before the law. It was highlighted that 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. Since in the *Stavropegic Monastery* case the applicant association's constitutional appeal had been rejected due to alleged lack of jurisdiction, the Court rejected the Government's non-exhaustion objection in *Church of Real Orthodox Christians*, thus taking note of the Constitutional Court's practice of declining jurisdiction to deal with appeals of associations or organisations, and rejecting appeals of individuals submitted in their name and on behalf of non-registered religious associations they were associated with.

The first request for recognition of the applicant association in *Bektashi Community and Others v. Macedonia*²¹³ was refused on a purely formal ground, namely that it had not been registered prior to 1998, but only listed in 2000. Therefore, the Court held that the domestic authorities had not identified any "pressing social need" and, the interference was not "necessary in a democratic society". Indeed, the domestic courts refused to recognise the continuing legal status of the applicant association under the new legislation which entered into force in 2007, although it had been an officially recognised religious organisation since 1993 mainly because its name was similar to the name with the word 'Bektashi' which had already been used by another religious entity registered in the court register and its doctrinal sources had been identical to those of the already registered "Islamic Religious Community" and this could have created confusion among believers. Such an assessment was incompatible with the State's role as a neutral and impartial organiser of the exercise of various religions, faiths and beliefs, which excludes any discretion on the part of the State to assess the legitimacy of religious beliefs or the ways in which they are expressed. The Court also criticised the Constitutional Court's decision

209 *Stavropegic Monastery of Saint John Chrysostom v. Macedonia*, judgment of 29 November 2018; *Church of Real Orthodox Christians and Ivanovski v. Macedonia*, judgment of 29 November 2018; *Bektashi Community and Others v. Macedonia*, judgment of 12 April 2018.

210 *Stavropegic Monastery of Saint John Chrysostom v. Macedonia*, judgment of 29 November 2018.

211 *Church of Real Orthodox Christians and Ivanovski v. Macedonia*, judgment of 29 November 2018.

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

213 *Bektashi Community and Others v. Macedonia*, judgment of 12 April 2018.

that the non-registration of the applicant association had been necessary “to prevent religious conflicts” as no evidence had been produced that it presented any danger for a democratic society. Although the interference was lawful and aimed at protection of the rights and freedoms of others, the reasons for refusing registration were not particularly weighty and compelling, leading to a violation of Article 11, read in the light of Article 9.

In 4 out of 17 decisions adopted against Macedonia in 2018 the Court entered into examination of the merits of the case. 2 of them addressed the right to a hearing before an impartial tribunal under Article 6 § 1 of the Convention.²¹⁴

*Hasani v. Macedonia*²¹⁵ concerned the proceedings in which the applicant, who had fled Kosovo in 1999, challenged the Ministry of Interior’s final decision terminating her asylum status and ordering her to leave Macedonia, which was regarded as a measure of expulsion taken against her. Nonetheless, the ECtHR considered that throughout the asylum proceedings the applicant had not discharged the burden of proof as to the existence of an individual, real risk of ill-treatment under Article 3 she would have been subjected to if the measure complained of had been implemented. As to her complaints under Article 8, the Court acknowledged that there was family life between the applicant, her cohabitating partner and their four minor children (all Macedonian nationals), but it took note that the applicant had not raised the impact of her removal on her family life. The Court highlighted the authorities’ positive obligation to allow her to reside in Macedonia, where she had lived for a considerable length of time since the age of 13, in order to maintain and further develop her family life. At the same time, it noted that the applicant had not taken any action to obtain personal identification documents from Kosovo notwithstanding that more than nine years had lapsed since the Ministry’s order and she had not presented anything to argue that her situation had been different from that of her parents and siblings who had obtained such documents. The Court, therefore, concluded that the applicant had no “arguable claim” and her application was accordingly rejected as manifestly ill-founded.

In *Maliki v. Macedonia*,²¹⁶ the applicant, who had been convicted *in absentia* for murder of his wife and sentenced to fifteen years’ imprisonment, complained in respect of the reopened criminal proceedings (following his return to Macedonia). Applying the principles set out in *Schatschaschwili* and *Al-Khawaja and Tahery*, the ECtHR noted that despite the fact that the trial court had not provided a good reason for the non-attendance of two witnesses, their testimonies had not been “sole” or “decisive” evidence for the conviction, as the circumstances of the applicant’s case had also been established on the basis of evidence produced by other witnesses or corroborated by them. Moreover, the applicant had failed to cross-examine one of the witnesses, and he had neither challenged reliability of other material evidence adduced against him nor advanced any reasons how their examination would have strengthened his position. Against this background, the ECtHR concluded that the defence rights had not been restricted to an extent incompatible with the guarantees provided in Article 6 §§ 1 and 3 (d) and it rejected this complaint as manifestly ill-founded.

214 *Andonov v. Macedonia*, Committee decision of 11 September 2018; *Bajramovski v. Macedonia*, Chamber decision of 26 June 2018.

215 *Hasani v. Macedonia*, Committee decision of 26 June 2018.

216 *Maliki v. Macedonia*, Committee decision of 11 September 2018.

In *Bajramovski v. Macedonia*,²¹⁷ the applicant alleged a lack of impartiality on the part of the first-instance court because the defendant in the civil case brought by him had been a judge of that court at the material time. His complaint was declared inadmissible for non-exhaustion of domestic remedies given the applicant's failure to raise his concerns at any stage of the proceedings and the fact that he had failed to avail himself of the possibility to ask the Supreme Court to assign the case to another competent court. The same complaint regarding the appeal court was also dismissed since the applicant did not adduce any evidence to substantiate his doubts as regards the personal bias of two judges who had been former colleagues of the applicant's opponent in the first-instance court and who in the meantime became judges of the appeal court. Moreover, such doubts could not have been regarded as objectively justified, as neither of them had sat on the panel that decided his appeal.

In *Andonov v. Macedonia*,²¹⁸ the Court observed that the applicant's allegations that the three-judge panel of the Court of Appeal, which had examined his appeal lodged during the reopened civil proceedings, had lacked the requisite impartiality as it had included a judge, with whom he allegedly had a difficult personal relationship, were of a rather general nature, without any particular details regarding the nature and reasons of the alleged conflict. Moreover, the applicant's request for the exclusion of that particular judge had been duly examined in accordance with the relevant procedure. Since the applicant failed to adduce any proof as to judge's personal bias, the Court rejected the application as manifestly ill-founded.

²¹⁷ *Bajramovski v. Macedonia*, Chamber decision of 26 June 2018.

²¹⁸ *Andonov v. Macedonia*, Committee decision of 11 September 2018.

The Republic of Serbia

General Introduction

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

As of 31 December 2018, the European Court of Human Rights ('ECtHR' or 'the Court') has delivered 192 judgments²¹⁹ and 556 decisions in respect of Serbia. The ECtHR found violations in 179 cases²²⁰. Of the judgments, 75 cases were decided by a Committee in so called "repetitive" or "well established case law" (WECL) cases, 115 cases were decided by a Chamber and two by the Grand Chamber. Of the decisions, 430 cases were decided by a Committee and 126 cases were decided by a Chamber.

147 judgments have been given in respect of Article 6 of the Convention, the right to a fair trial. Violations were found in 140 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,²²¹ the definition of impartiality in tribunals and courts,²²² fairness of proceedings in a criminal trial,²²³ the need for judicial certainty and public confidence in the judiciary,²²⁴ the right to a public hearing and the meaning of this,²²⁵ the presumption of innocence²²⁶, the composition of a court,²²⁷ proceedings relating to legal capacity²²⁸ and the right of access to a court where procedural exclusions exist in domestic law²²⁹.

75 judgments have been given in respect of Article 1 of Protocol No. 1, on the protection of property. A violation was found in 74 of those cases.²³⁰

219 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.

220 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 of 26 March 2013; *Đekić 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; *Cvetković v. Serbia*, judgment of 7 February 2017 and *Grujić v. Serbia*, judgment of 28 August 2018.

221 *Hajnal v. Serbia*, judgment of 19 June 2012 and *Dimović and Others v. Serbia*, judgment of 11 December 2018.

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

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

224 *Vinčić and Others v. Serbia*, judgment of 1 December 2009; *Rakić and Others v. Serbia*, judgment of 5 October 2010; *Živić v. Serbia*, judgment of 13 December 2011, *Mirković and Others v. Serbia*, judgment of 26 June 2018.

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

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

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

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

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

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

Most of the cases concern inefficient enforcement of domestic decisions against socially owned companies. The first such judgment was *Kačapor and Others v. Serbia*.²³¹ Since this case the Court has adopted 63 similar judgments, many by a Committee of three judges as they are considered to be “well established case law”.²³² The Court found a violation of right to property in two cases relating to pension rights²³³ and in one case on unauthorised construction.²³⁴

In the Grand Chamber pilot judgment of *Ališić and Others*²³⁵ 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 Convention²³⁶.

In the *Grudić*²³⁷ 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)²³⁸.

In the *Iseni* judgment, the ECtHR found a violation of the right to property since the Constitutional Court decision regarding expropriation of the applicant’s flat has not been enforced for more than seven years²³⁹.

On Article 3, the prohibition of ill-treatment, nine judgments have been given. Violations were found in six of these cases²⁴⁰. The cases involved issues of the requirement to investigate,²⁴¹ 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.²⁴² 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.²⁴³ In *Hajnal*, the Court found a violation of both the

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

232 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.

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

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

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

236 On 28 December 2016, the Serbian Parliament adopted the Law on the implementation of *Ališić* judgment. In the *Muratović* decision, of 21 March 2017, the Court found that Serbian Law meets the criteria set out in the judgment *Ališić and Others*.

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

238 In *Skenderi and Others* 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 proportional. Also, the Court rejected remaining applications since the applicants did not lodge constitutional appeals - effective domestic legal remedy.

239 *Iseni v. Serbia*, judgment of 9 October 2018.

240 No violation of Article 3 was found in *Đermanović 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.

241 *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.

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

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

substantive and procedural obligation under Article 3.²⁴⁴ In the *Milanović*²⁴⁵ case the applicant was a member of the Hare Krishna movement, and the Court found a violation of Article 3 and Article 14 taken in conjunction with Article 3 of the Convention in relation to attacks on him.

On Article 2 of the Convention, the right to life, four judgments were given and a violation was found in three of these²⁴⁶. *Mučibabić* concerned loss of life through dangerous activity under state authority control, as well as a violation of the procedural obligation to investigate.²⁴⁷ *Mladenović*²⁴⁸ concerned the procedural obligation to investigate, and the requirements of that obligation. *Petrović*²⁴⁹ 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 six of those cases²⁵⁰. The Court considered issues such as whether detention is necessary or whether other means can be used to prevent an individual from absconding,²⁵¹ the requirement of bringing a detained individual before a judge or other officer authorised by law,²⁵² detention on the basis of a non-domestic decision which had not been recognised domestically²⁵³ and the presumption of innocence.²⁵⁴

16 judgments were given in respect of Article 8, the right to respect for private and family life. Violations were found in 12 of these cases²⁵⁵. These cases raised issues of the State's positive obligation to reunify parents and children,²⁵⁶ the importance of the correct assessment of legal capacity,²⁵⁷ interference with personal correspondence of prisoners,²⁵⁸ the importance of the determination of paternity,²⁵⁹ the need to use procedural tools to serve respondents²⁶⁰, and the importance of a parent to obtain

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

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

246 *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.

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

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

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

250 No violation was found in *Luković v. Serbia*, judgment of 26 March 2013, the case involving the question of whether the applicant's detention had been excessively long.

251 *Lakatoš and Others v. Serbia*, judgment of 7 January 2014 and *Đermanović v. Serbia*, judgment of 23 February 2010.

252 *Milošević v. Serbia*, judgment of 28 April 2009.

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

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

255 The Court found no violation in *Damnjanovic v. Serbia*, judgment of 18 November 2008; *Zdravković v. Serbia*, judgment of 20 September 2016; *Cvetković v. Serbia*, judgment of 7 February 2017 and *Grujić v. Serbia*, judgment of 28 August 2018.

256 *Zdravković v. Serbia*, judgment of 20 September 2016; *Krivošej v. Serbia*, judgment of 13 April 2010; *Tomić v. Serbia*, judgment of 26 June 2007 and *Grujić v. Serbia*, judgment of 28 August 2018.

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

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

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

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

confirmation of the fate of their child.²⁶¹ The issue of the adoption of measures in the sphere of the relations between private individuals, in order to preserve physical and moral integrity, has also been the subject of a judgment.²⁶² In *Zorica Jovanovic*²⁶³ the Court found a violation of Article 8 on account of the State's failure to provide parents with 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 a draft law. Since the draft law has not been adopted yet, in September 2017 and December 2018 the Committee of Ministers adopted interim resolutions. In the most recent decision of December 2018 the Committee of Ministers strongly urged Serbian authorities to take all necessary steps to ensure that the legislative process is brought to an end as a matter of utmost priority.

On Article 10, freedom of expression, the Court gave seven judgments. Violations were found in all of these. The cases distinguished the rights to privacy in a private and public sphere,²⁶⁴ the importance of the watchdog role of journalists,²⁶⁵ the fact that Article 10 protects information and ideas that offend, shock or disturb,²⁶⁶ that the nature and severity of sanctions given are relevant,²⁶⁷ the particular importance of free speech for political parties and active members, especially during election campaigns,²⁶⁸ a request for information on electronic surveillance operations,²⁶⁹ and whether the level of sanctions ordered against an applicant following defamation of the applicant's counsel were necessary and proportionate.²⁷⁰

The Court rendered judgments on two occasions under Article 14, the prohibition of discrimination. In *Milanović* the Court found a violation of Article 14 taken in conjunction with Article 3 of the Convention.²⁷¹ The second judgment under Article 14 was in *Vučković v Serbia*, however this was followed by a Grand Chamber judgment in which it was held that the applicants had not exhausted domestic remedies.²⁷² In *Paunović and Milivojević*,²⁷³ the Court found a violation of Article 3 Protocol No. 1, the right to free elections, since the termination of the applicant's mandate was found to be outside the applicable legal framework. A violation of Article 4 of Protocol No. 7, the right not to be tried or punished twice, was found in *Milenković*,²⁷⁴ since there had been a duplication of proceedings.

²⁶¹ *Zorica Jovanović v. Serbia*, judgment of 26 March 2013.

²⁶² *Isaković Vidović v. Serbia*, judgment of 1 July 2014.

²⁶³ *Zorica Jovanović v. Serbia*, judgment of 26 March 2013.

²⁶⁴ *Bodrožić and Vujan v. Serbia*, judgment of 20 November 2007 and *Milislavjević v. Serbia*, judgment of 4 April 2017.

²⁶⁵ *Ibid.*

²⁶⁶ *Bodrožić v. Serbia*, judgment of 23 June 2009.

²⁶⁷ *Filipović v. Serbia*, judgment of 20 November 2007.

²⁶⁸ *Lepojić v. Serbia*, judgment of 6 November 2007.

²⁶⁹ *Youth Initiative for Human Rights v. Serbia*, judgment of 25 June 2013.

²⁷⁰ *Tešić v. Serbia*, judgment of 11 February 2014.

²⁷¹ *Milanović v. Serbia*, judgment of 14 December 2010.

²⁷² *Vučković v. Serbia*, judgment of 28 August 2012 and judgment of 25 March 2014 (GC).

²⁷³ *Paunović and Milivojević v. Serbia*, judgment of 24 May 2016.

²⁷⁴ *Milenković v. Serbia*, judgment of 1 March 2016.

Cases from 2018

Judgments

In 2018, the Court delivered 13 judgments against Serbia. The ECtHR found violation in 12 of these cases²⁷⁵. Out of the 13 judgments, ten were decided by a Committee in so called “repetitive” or WECL cases and three cases were decided by a Chamber²⁷⁶.

In eleven cases the Court examined applications under Article 6 of the Convention²⁷⁷. In one case the Court examined the application under Article 1 of Protocol No. 1 of the Convention²⁷⁸ and in one case under Article 8 of the Convention²⁷⁹.

In one case the Court found a violation of the right to a trial within a reasonable time (Article 6 of the Convention), because of inefficient enforcement of domestic decisions against socially owned companies²⁸⁰. This case was decided by a Committee as WECL. This is a continuation of the case-law that was initiated with the *Kačapor and Others v. Serbia*²⁸¹ case and continued in a series of judgments and decisions on friendly settlements. In this case, the ECtHR 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 ECtHR, Serbia was ordered to pay from its own assets compensation for pecuniary damages to the applicant in the amount prescribed by the domestic judgment that was not executed and caused the initiation of proceedings, however, reduced by sums that had already been paid on the same basis at the national level. In addition, the applicant was awarded an amount of €2,000 as compensation for non-pecuniary damages and expenses related to the proceedings.

In 2018, the Court delivered six judgments on Article 6 § 1 of the Convention²⁸², continuing the case-law of *the Savić v. Serbia*²⁸³ 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

275 No violation of Article 8 of the Convention was found in *Grujić v. Serbia*, judgment of 28 August 2018.

276 Cases decided by the Chamber are *Mirković and Others v. Serbia*, judgment of 26 June 2018; *Grujić v. Serbia*, judgment of 28 August 2018 and *Dimović and Others v. Serbia*, judgment of 11 December 2018.

277 *Hrustić and Others v. Serbia*, judgment of 9 January 2018; *Šaćirović and Others v. Serbia*, judgment of 20 February 2018; *Mirković and Others v. Serbia*, judgment of 26 June 2018; *Čorić and Others v. Serbia*, judgment of 25 September 2018; *Knežević and Others v. Serbia*, judgment of 9 October 2018; *Grbić v. Serbia*, judgment of 23 October 2018; *Mijatović and Others v. Serbia*, judgment of 23 October 2018; *Ilić v. Serbia*, judgment of 23 October 2018; *Ljajić v. Serbia*, judgment of 23 October 2018; *Stanivuković and Others v. Serbia*, judgment of 27 November 2018 and *Dimović and Others v. Serbia*, judgment of 11 December 2018.

278 *Iseni v. Serbia*, judgment of 9 October 2018.

279 *Grujić v. Serbia*, judgment of 28 August 2018.

280 *Ljajić v. Serbia*, judgment of 23 October 2018.

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

282 *Hrustić and Others v. Serbia*, judgment of 9 January 2018; *Šaćirović and Others v. Serbia*, judgment of 20 February 2018; *Čorić and Others v. Serbia*, judgment of 25 September 2018; *Mijatović and Others v. Serbia*, judgment of 23 October 2018; *Ilić v. Serbia*, judgment of 23 October 2018 and *Stanivuković and Others v. Serbia*, judgment of 27 November 2018.

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

of just satisfaction for a violation of the right to a trial within a reasonable time²⁸⁴ or failure of the Constitutional Court to deliver a decision establishing a violation of the right to a trial within a reasonable time²⁸⁵. All judgments have been adopted by a Committee of three judges as they are considered to be “WECL”. 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 some cases²⁸⁶, 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 applications, stating that the applicants could not complain (any more) that they were victims of a violation of the right, since the establishment of a 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 the 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 State in question 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 victims and concluded that the length of the proceedings was excessive and that they did not meet the “reasonable time” requirement.

In some cases²⁸⁷ the Constitutional Court found no violation of applicants’ right to a trial within a reasonable time and rejected the constitutional appeals. The State disputed the admissibility of the applications, stating that the applicants had not properly exhausted domestic remedies since they failed to raise their length complaints properly in their constitutional appeals. The Court carefully examined the applicants’ constitutional appeals and concluded that the applicants had either indicated the key developments and decisions taken in the course of their proceedings or used phrases such as “as

284 *Čorić and Others v. Serbia*, judgment of 25 September 2018; *Mijatović and Others v. Serbia*, judgment of 23 October 2018 and *Ilić v. Serbia*, judgment of 23 October 2018.

285 *Hrustić and Others v. Serbia*, judgment of 9 January 2018; *Šačirović and Others v. Serbia*, judgment of 20 February 2018 and *Stanivuković and Others v. Serbia*, judgment of 27 November 2018.

286 *Čorić and Others v. Serbia*, judgment of 25 September 2018; *Mijatović and Others v. Serbia*, judgment of 23 October 2018 and *Ilić v. Serbia*, judgment of 23 October 2018.

287 *Hrustić and Others v. Serbia*, judgment of 9 January 2018; *Šačirović and Others v. Serbia*, judgment of 20 February 2018 and *Stanivuković and Others v. Serbia*, judgment of 27 November 2018.

it is evident that the respondent protracts the proceedings by different acts”, “a labour dispute which lasts since 2006, which amounts to a violation of a right to a trial within a reasonable time”, “protraction of the proceedings and irresponsibility”, “by violation Article 10 of the Code of Civil Procedure the court violated a right to a trial within a reasonable time”, “the proceedings lasted more than seven years”, “the applicant filed his claim almost eleven years ago”, “within reasonable time”, “the proceedings lasted more than ten years”, “excessive length”, in relation to those proceedings on several occasions in their constitutional appeals. They all had also explicitly relied on Article 32 of the Serbian Constitution which corresponds to Article 6 of the Convention. The Court emphasised that complaints about the length of proceedings, unlike some other complaints under the Convention, normally do not require much elaboration. If, exceptionally, the Constitutional Court needed any additional information or documents, it could have requested the applicants to provide them. The ECtHR concluded that the applicants provided the national authorities with the opportunity to examine length complaints and that the applicants had properly exhausted domestic remedies. Deciding on the merits, the ECtHR reiterated that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute. In view of the material in the case files and having regard to the particular circumstances of the proceedings in question, the ECtHR considered that in the instant cases the length of the proceedings failed to meet the “reasonable time” requirement.

In one case, *Knežević and Others v Serbia*²⁸⁸ the Court established a violation of the right to a trial within a reasonable time due to the insufficient sums of compensation awarded by the regular courts in accordance with the Amendments to the Court Organization Act (Zakon o izmenama i dopunama Zakona o uređenju sudova). This case was decided by a Committee as WECL. The ECtHR applied the same principles as in *Savić* judgment.

On Article 6 § 1 of the Convention, the right to a fair trial, the Court also gave judgment in *Grbić v Serbia*²⁸⁹ and a violation was found. The case was decided by a Committee as WECL and represent a continuation of the case-law of *Milojević and Others v Serbia*²⁹⁰ where the Court examined the quality of the legal provision on the ground of which the applicant was dismissed and the conduct of the domestic courts in applying this provision.

In *Mirković and Others v Serbia*²⁹¹ the ECtHR examined inconsistency of the case law under Article 6 § 1 of the Convention and a violation was found. The case was decided by a Chamber. Alleging rejections of their civil claims by the domestic courts and the simultaneous acceptance of identical claims lodged by other claimants, the applicants complained that there have been breaches of their right to legal certainty. The Court accepted the State’s objection regarding non exhaustion of domestic remedies and rejected four applications (the third, fourth, fifth and twelfth applications). Deciding on the merits, the Court reiterated principles from the *Nejdet Şahin and Perihan Şahin v. Turkey* judgment [GC]²⁹² and

288 *Knežević and Others v. Serbia*, judgment of 9 October 2018.

289 *Grbić v. Serbia*, judgment of 23 October 2018.

290 *Milojević and Others v. Serbia*, judgment of 12 January 2018.

291 *Mirković and Others v. Serbia*, judgment of 26 June 2018.

292 *Nejdet Şahin and Perihan Şahin v. Turkey*, Grand Chamber judgment of 20 October 2011.

the *Stanković and Trajković v. Serbia* judgment²⁹³. The Court noted that, in the present case, the parties had not disputed the fact that there were inconsistencies in the adjudication of civil claims brought by many individuals who were in identical or similar situations to the applicants. The Court also observed that according to the relevant case-law provided by the parties such inconsistencies continued for four years - between 2012 and 2016. The ECtHR also noted that during that period the inconsistencies in the case-law had not been the same - two distinct periods could be discerned. The Court noted that the applicants' situation concerned both periods and with the exception of the thirteenth applicant, all their judgments were given by the Belgrade Court of Appeal. The judgment on appeal in respect of the thirteenth applicant was given by the Kragujevac Court of Appeal. Although domestic law in Serbia provided a judicial machinery capable of resolving inconsistencies in adjudication, the Court noted that the Supreme Court of Cassation's case-law on the matter as well as the efforts of that court to harmonise the case-law did not in the present case have any effect until, at best, the later part of 2016. Besides, even though in the Serbian legal system the Constitutional Court plays an important part in the protection of an individual's right to legal certainty, the Court noted that the inconsistencies in the adjudication here in issue existed within this court as well. Under these circumstances, the Court found that the undisputed inconsistencies in the adjudication of civil claims during the relevant period cannot be considered as having been institutionally resolved. These inconsistencies created a state of continued uncertainty, which in turn must have reduced the public's confidence in the judiciary, such confidence being one of the essential components of a State based on the rule of law. The said inconsistencies were not eliminated until July 2016 by virtue of the procedures provided in the Courts Organisation Act and the Rules of the Court and other provisions providing for machinery capable of overcoming conflicting decisions within the courts at the domestic level. The Court, without deeming it appropriate to pronounce as to what the actual outcome of the applicants' lawsuits should have been, considered that the four years of judicial uncertainty in question deprived the applicants of a fair hearing, uncertainty the Supreme Court of Cassation or the Constitutional Court failed to resolve with their decisions. Given the "profound and long-standing" character of the differences in adjudication, the ECtHR found that in respect of the remaining applicants there has been a violation of their right to legal certainty enshrined in Article 6 § 1 of the Convention.

In *Dimović and Others v Serbia*²⁹⁴ the ECtHR examined the application under Article 6 § 1 of the Convention in conjunction with Article 6 § 3 (d) and a violation was found. The case was decided by a Chamber. The applicants complained of the fairness of their trial. In particular, they alleged that their conviction had been solely or mainly based on a statement of R.K., whom they had been unable to question. At the same time, the applicants claimed that the counterbalancing measures taken had been insufficient to allow a fair and proper assessment of the reliability of the untested evidence. Deciding on the merits, the Court reiterated principles from *Al-Khawaja and Tahery v. the United Kingdom*²⁹⁵ and *Seton v. the United Kingdom*²⁹⁶. The Court noted that the impugned witness had been available for questioning during the first trial and had died only before the retrial. As regards the second step of the Al-Khawaja test, the Court considered the other pieces of evidence on which the trial court relied to be irrelevant for the determination of the criminal charges against the present applicants. After analyzing the evidence on which the domestic appeals court relied, the Court found that the statement of R.K. of

293 *Stanković and Trajković v. Serbia*, judgment of 22 December 2015.

294 *Dimović and Others v. Serbia*, judgment of 11 December 2018.

295 *Al-Khawaja and Tahery v. the United Kingdom*, GC judgment of 15 December 2011.

296 *Seton v. the United Kingdom*, judgment of 31 March 2016.

4 April 2008 was not “decisive” in respect of the third applicant, but that it was “decisive” in respect of the other two applicants. As to the third step of the *Al-Khawaja* test, the ECtHR observed that R.K. fell seriously ill after the pre-trial investigation had been ended and an indictment had been issued. The investigating authorities therefore could not be reproached for not carrying out a confrontation between him and the applicants during the investigation stage. At that moment, it was simply not foreseeable that R.K. would not attend a subsequent trial. For the same reason, the Court noted that the applicants could not be reproached for not seeking a confrontation with R.K. during that stage, although they were entitled to do so under domestic law. The fact that the impugned statement of R.K. was taken in the presence and under the supervision of the investigating judge could not in itself be regarded as a substitute for the applicants’ right to examine him, but it constituted one of the procedural safeguards of the right of a fair trial. The Court reiterated that an additional safeguard in this context could be to show at the trial a video recording of the absent witness’ questioning at the investigation stage so as to allow the court, prosecution and defence to observe the witness’ demeanour under questioning and to form their own impression of his or her reliability. However, when R.K. made his impugned statement, domestic law did not provide for the possibility of video recording of the questioning of witnesses and co-accused at the investigation stage. Lastly, the ECtHR noted that in the national courts’ judgments there is no indication that they approached the reliability of the statement of R.K. made on 4 April 2008 with any specific caution. Notably, the national courts did not take into consideration the fact that the statement in question had later been retracted, neither is there any indication that the national courts were aware that a statement of an absent witness, such as R.K., carried less weight. The ECtHR concluded that there has been no breach of Article 6 § 1 of the Convention read in conjunction with Article 6 § 3 (d) in respect of the third applicant and that there has been a breach of that Article in respect of the first applicant and the second applicant.

The Court gave one judgment, *Iseni v. Serbia*²⁹⁷, in a case under Article 1 Protocol No. 1, protection of property and a violation was found. The case was decided by a Committee. The ECtHR found a violation of the right to property since the Constitutional Court decision regarding expropriation of the applicant’s flat had not been enforced for more than seven years.

The Court gave one judgment, *Grujić v. Serbia*²⁹⁸, in a case under Article 8, the right to respect for private and family life and no violation was found. The case was decided by a Chamber. The applicant complained about the non-enforcement of two decisions granting him contact rights with his children. After analysing the facts of the case and applying them to the Court’s principles the ECtHR concluded that the national authorities took all the steps necessary which could reasonably be required of them in order to enforce the applicant’s right to have contact with his children.

Decisions

In 2018, the ECtHR adopted 37 decisions in relation to the Republic of Serbia. The Court struck 29 applications out of its list in due to the conclusion of friendly settlements. Applications were declared

²⁹⁷ *Iseni v. Serbia*, judgment of 9 October 2018.

²⁹⁸ *Grujić v. Serbia*, judgment of 28 August 2018.

inadmissible in seven cases²⁹⁹. In four cases decisions were adopted by a Committee, while a Chamber adopted decisions in three cases³⁰⁰.

In the *Bihorac Hajdaragić*³⁰¹, *Bogićević-Ristić*³⁰², *Matović*³⁰³ and *Nišević Tadić*³⁰⁴ decisions the ECtHR rejected the applications as an abuse of the right of petition.

In the decision of *Eliseev and Ruski Elitni klub v Serbia*,³⁰⁵ the Court found that the application in respect of the first applicant was inadmissible for lack of victim status. In respect of the second applicant, the ECtHR found that the complaint under Article 1 of the Protocol 1 must be rejected for non-exhaustion of domestic remedies and that the complaint under Article 6 was incompatible *ratione materiae* with the provisions of the Convention.

In the *Bistrović Nastić*³⁰⁶ decision the applicant's complaint about physical access to the building housing the criminal court which had dealt with her civil claim was rejected since the applicant failed to exhaust domestic remedies.

Finally, in the *JKP Vodovod Kraljevo*³⁰⁷ decision the ECtHR found that the applicant company could not be regarded as a "non-governmental organisation" within the meaning of Article 34 of the Convention, since it did not enjoy sufficient independence from the political authorities. Consequently the applications were found to be incompatible *ratione personae* with the provisions of the Convention.

299 *Eliseev and Ruski Elitni Klub v. Serbia*, decision of 10 July 2018; *Bistrović-Nastić v. Serbia*, decision of 11 September 2018; *Nišević Tadić v. Serbia*, decision of 25 September 2018; *Matović v. Serbia*, decision of 25 September 2018; *Bogićević-Ristić v. Serbia*, decision of 2 October 2018; *JKP Vodovod Kraljevo v. Serbia*, decision of 16 October 2018 and *Bihorac Hajdaragić v. Serbia*, decision of 6 November 2018.

300 *Eliseev and Ruski Elitni Klub v. Serbia*, decision of 10 July 2018; *Bistrović-Nastić v. Serbia*, decision of 11 September 2018 and *JKP Vodovod Kraljevo v. Serbia*, decision of 16 October 2018.

301 *Bihorac Hajdaragić v. Serbia*, decision of 6 November 2018.

302 *Bogićević-Ristić v. Serbia*, decision of 2 October 2018.

303 *Matović v. Serbia*, decision of 25 September 2018.

304 *Nišević Tadić v. Serbia*, decision of 25 September 2018.

305 *Eliseev and Ruski Elitni klub v. Serbia*, decision of 10 July 2018.

306 *Bistrović Nastić v. Serbia*, decision of 11 September 2018.

307 *JKP Vodovod Kraljevo v. Serbia*, decision of 16 October 2018.

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