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COUR EUROPÉENNE DES DROITS DE L'HOMME

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Suicide d'un détenu par la prise de psychotropes prescrits pour traiter ses troubles mentaux : *violation*

Jasińska – Poland/Pologne - 28326/05
Judgment/Arrêt 1.6.2010 [Section IV]

En fait – La requérante est la grand-mère de R.Ch., traité depuis l'enfance pour des troubles psychiques et des céphalées. En 2002, celui-ci fut emprisonné pour vol. En août 2004, il fut transféré à l'hôpital, où il décéda après avoir reconnu qu'il avait absorbé 60 comprimés de psychotropes, prescrits par un médecin de la prison. L'autopsie révéla que le décès était dû à une intoxication médicamenteuse. L'enquête pénale ouverte par le parquet fut clôturée au motif que le requérant s'était suicidé après avoir rassemblé les comprimés en les cachant sous sa langue au fur et à mesure des distributions. En 2006, la requérante attaqua les autorités mais l'enquête pénale fut close car rien ne permettait de soupçonner l'implication de tiers ou une négligence des autorités.

En droit – Article 2 : il est communément admis que R.Ch. souffrait depuis longtemps de troubles mentaux et de céphalées violentes. De plus, lors d'une expertise médicale en 2002 il avait déclaré avoir tenté de se suicider et, trois jours avant son décès, un rapport du médecin avait relevé un état dépressif. Dès lors, les autorités pénitentiaires, qui avaient des indications quant à la dégradation de sa santé mentale, auraient dû se poser la question du risque de suicide. Or les prescriptions de médicaments étaient renouvelées sans interrogations sur d'autres mesures de suivi. Du reste, après les procès de R.Ch., nul placement en institution spécialisée ou en cellule d'isolement n'avait jamais été évoqué. La Cour se demande néanmoins si le régime de détention était approprié en l'espèce. Les autorités ayant mené les procédures après le décès n'ont pas cherché à éclaircir les circonstances exactes de l'administration des psychotropes et de la surveillance par le personnel médical, qui devait en principe s'assurer que les détenus avalaient leurs cachets. En outre, le Gouvernement n'a pas expliqué de manière plausible comment R.Ch. avait pu échapper à la vigilance des autorités pénitentiaires en amassant une quantité mortelle de psychotropes. Ainsi, il y a eu une défaillance claire du système, qui a permis à un détenu purgeant sa première peine de prison, fragile mentalement et dont l'état de santé se dégradait, de collecter à l'insu du personnel médical une dose mortelle de médicaments psychotropes pour se suicider. L'obligation d'assurer des soins médicaux appropriés à un détenu ne doit pas se limiter à la prescription d'un traitement adéquat, sans vérification qu'il a été correctement administré et suivi. Cette responsabilité est d'autant plus importante s'agissant de détenus atteints de troubles mentaux. Partant, les autorités ont manqué à leur obligation positive de protéger le droit à la vie de R.Ch.

Conclusion : violation (unanimité).

Article 41 : 16 000 EUR pour préjudice moral.

(Voir aussi *Renolde c. France*, nº 5608/05, 16 octobre 2008, Note d'information nº 112)

ARTICLE 3

Inhuman or degrading treatment/Traitement inhumain ou dégradant

Lack of adequate medical treatment in prison for a period of less than fourteen days: *no violation*

Absence de traitement médical adéquat en prison ne dépassant pas quatorze jours : *non-violation*

Gavriliță – Romania/Roumanie - 10921/03
Judgment/Arrêt 22.6.2010 [Section III]

En fait – En octobre 2000, le requérant fut placé en détention provisoire dans les locaux de la police. En mars 2001, il fut transféré dans le centre de détention. En octobre 2001, le tribunal départemental le condamna à trois ans de prison ferme pour trafic de drogues. Cette décision fut confirmée par la cour d'appel. Le requérant fut libéré sous contrôle judiciaire en avril 2003. Il se plaint d'avoir contracté la tuberculose dans le centre de détention.

En droit – Article 3 : le jour de son transfert au centre de détention, le requérant ne présentait aucun signe de tuberculose, ni aucune autre maladie pulmonaire. La Cour estime probable que l'intéressé contracta la tuberculose dans ce centre de détention. Les autorités pénitentiaires procèdent à des contrôles de dépistage systématique de la tuberculose lors de l'entrée des détenus en prison. Aucun élément du dossier n'indique que le requérant se soit plaint auprès des autorités du centre de détention, avant cette date, de problèmes de santé pouvant donner des indices d'une telle affection. Dès que

la tuberculose fut dépistée, le médecin en chef de l'hôpital du centre de détention recommanda le transfert du requérant à l'hôpital du centre de détention et l'administration d'un traitement spécifique pour cette affection. Au centre de détention, le requérant bénéficia d'un traitement non spécifique pour fièvre et céphalées. Ce n'est qu'après sa libération qu'une thérapeutique contre la tuberculose lui fut administrée. La période pendant laquelle le requérant s'est trouvé sans un traitement médical adéquat ne dépasse pas quatorze jours, de la date du dépistage de la maladie à la date de la mise en liberté de l'intéressé. Par ailleurs, pendant ce laps de temps, il bénéficia d'un traitement contre l'état fébrile. Quant au traitement suivi durant plusieurs mois après sa libération, il était nécessaire à sa pathologie. Concernant les conditions de détention, rien n'atteste qu'à l'époque des faits les conditions de vie se caractérisaient par une insalubrité, une absence des conditions d'hygiène ou un dépassement de la capacité d'hébergement de la cellule pour pouvoir affirmer que cela ait pu influer d'une manière négative sur l'état de santé ou le bien-être du requérant.

Conclusion: non-violation (cinq voix contre deux).

(Voir aussi *Ghavtadze c. Géorgie*, n° 23204/07, 3 mars 2009, Note d'information n° 117)

Inhuman treatment/Traitement inhumain

Threats of physical harm by police to establish whereabouts of missing child: *violation*

Menaces de violences physiques proférées par la police afin de retrouver un enfant qui avait été enlevé : *violation*

Gäfgen – Germany/Allemagne - 22978/05
Judgment/Arrêt 1.6.2010 [GC]

(See Article 34 below/Voir l'article 34 ci-dessous – page 18)

Degrading treatment/Traitement dégradant

Inadequate medical care in detention facility and use of metal cage during appeal hearing: *violations*

Soins médicaux inadéquats dans un centre de détention et usage d'une cage métallique lors d'une audience d'appel : *violations*

Ashot Harutyunyan – Armenia/Arménie - 34334/04
Judgment/Arrêt 15.6.2010 [Section III]

Facts – The applicant suffered from various illnesses including an acute duodenal ulcer, diabetes, diabetic angiopathy and a heart condition. In January 2004 he was convicted of defrauding a business partner and given a seven-year prison sentence. He appealed. During each of the twelve hearings before the court of appeal he was kept in a metal cage, an experience he said he found humiliating. His conviction was ultimately upheld by the Court of Cassation. From his arrest in May 2003 until his transfer to prison in August 2004, he was held in a detention facility where he alleged he did not receive the treatment his numerous infirmities required. In particular, despite a recommendation by a doctor from the facility in June 2003 for him to have surgery for his ulcer, no operation was ever carried out. He further claimed that, between August 2003 and August 2004 he was held in an ordinary cell in the detention facility, and not provided with regular check-ups, medication or a special diet. Both his own and his lawyer's numerous requests for him to receive medical assistance and to be transferred to hospital were ignored until in July 2004 he had a heart attack. His lawyer was subsequently informed that the applicant had received treatment and that his condition was satisfactory.

Law – Article 3: (a) *Lack of medical care in detention* – Given the number of serious illnesses from which the applicant suffered, he had clearly been in need of regular care and supervision. There was, however, no medical record to prove that the surgery recommended by his doctors had ever been carried out. There was no record in the applicant's medical file of his receiving any check-up or assistance from the detention facility's medical staff between August 2003 and August 2004. Especially worrying was the fact that his heart attack in July 2004 had coincided with several unsuccessful attempts by his lawyer to draw the authorities' attention to the applicant's need for medical care. In any event, a failure to provide requisite medical assistance in detention could be incompatible with Article 3 even if it did not lead to a medical emergency or otherwise cause severe or prolonged pain. The applicant was clearly in need of regular medical care and supervision, which was denied to him over a prolonged period. His lawyer's complaints had met with no substantive response and his own requests for medical assistance had gone unanswered. This must have caused him considerable anxiety and distress, beyond the unavoidable level of suffering inherent in detention.

Conclusion: violation (unanimously).

(b) *Use of metal cage* – Nothing in the applicant's behaviour or personality could have justified such a security measure: he had no previous convictions, no record of violent behaviour (no security measures had been used at first-instance) and he was accused of a non-violent crime. Indeed, it seemed that the applicant had been placed in a metal cage simply because that had been the seat where defendants in criminal cases were always placed. The average observer could easily have believed that an extremely dangerous criminal was on trial. Such exposure to the public, including family and friends, must have been humiliating and aroused feelings of inferiority, while at the same time impairing his powers of concentration and mental alertness in proceedings where his criminal liability was at stake. Such a stringent and humiliating measure, which was not justified by any real security risk, had amounted to degrading treatment.

Conclusion: violation (unanimously).

Article 6 §§ 1 and 2: While disapproving of the use of the cage, the Court noted that the applicant had had two lawyers to assist him and there was nothing to suggest that the cage had prevented him from communicating confidentially and freely with them or the court. He had therefore been able to defend his case effectively and it could not be said that the measure had placed him at a substantial disadvantage. Nor did the use of the cage suggest that he had been presumed guilty, as it was a permanent security measure that was used in all criminal cases examined in the court of appeal. There had therefore been no infringement of the principle of equality of arms or breach of the presumption of innocence.

Conclusion: no violation (unanimously).

Article 41: EUR 16,000 in respect of non-pecuniary damage.

ARTICLE 6

Article 6 § 1 (criminal/pénal)

Fair hearing/Procès équitable

Use in trial of evidence obtained under duress: *no violation*

Utilisation au procès de preuves obtenues sous la contrainte : *non-violation*

Gäfgen – Germany/Allemagne - 22978/05
Judgment/Arrêt 1.6.2010 [GC]

(See Article 34 below/Voir l'article 34 ci-dessous – page 18)

Independent and impartial tribunal/Tribunal indépendant et impartial

Assessment of question of pure fact evidence by an almost identically composed bench of the Court of Cassation in two successive appeals: *violation*

Appréciation des éléments de pur fait par la Cour de cassation, en formation quasi identique lors de deux pourvois successifs : *violation*

Mancel and/et Branquart – France - 22349/06
Judgment/Arrêt 24.6.2010 [Section V]

En fait – En 2000, un tribunal correctionnel condamna les requérants pour prise illégale d'intérêts et complicité de ce délit. La cour d'appel rendit un arrêt de relaxe, lequel fut cassé et annulé en 2002 par la Cour de cassation, qui renvoya l'affaire devant une autre cour d'appel. Celle-ci conclut à la culpabilité des requérants et les condamna. En 2005, la Cour de cassation rejeta les pourvois des requérants contre cet arrêt.

En droit – Article 6 § 1 : les requérants craignaient un manque d'impartialité de la Cour de cassation dès lors que sept des neuf juges ayant siégé au sein de la formation qui a statué en 2005 sur le pourvoi des requérants contre l'arrêt de condamnation avaient siégé à la chambre qui s'était prononcée en 2002 sur le pourvoi du ministère public contre l'arrêt de relaxe. Partant, la Cour est appelée à déterminer si, compte tenu de la tâche qui incombait aux magistrats de la Cour de cassation lors du premier pourvoi, ceux-ci ont fait preuve ou ont pu légitimement apparaître comme ayant fait preuve d'un parti pris quant à la décision qu'ils ont ensuite rendue lors du deuxième pourvoi. La Cour doit statuer en tenant compte de la particularité du rôle de la Cour de cassation, qui ne consiste pas à revenir sur l'appréciation des éléments de pur fait mais à exercer un contrôle de légalité et à vérifier que la décision en cause est justifiée et adéquatement motivée. En l'espèce, lors du premier pourvoi la haute juridiction s'est prononcée au regard des éléments factuels sur la réalité de l'infraction reprochée aux requérants, en caractérisant à la fois l'élément matériel et moral du délit. Dans le cadre du deuxième pourvoi, elle a été amenée une nouvelle fois à vérifier l'appréciation, cette fois par la

cour d'appel de renvoi, des éléments constitutifs de l'infraction. Dès lors, il existait des raisons objectives de craindre que la Cour de cassation ait fait preuve d'un parti pris ou de préjugés quant à la décision qu'elle devait rendre lors du second pourvoi, formé par les requérants. Partant, il y a eu atteinte au droit à un tribunal impartial.

Conclusion: violation (quatre voix contre trois).

Article 41: constat de violation suffisant en lui-même pour le préjudice moral.

Article 6 § 2

Presumption of innocence/Présomption d'innocence

Permanent use of metal cage as a security measure during appeal hearings: *no violation*

Usage permanent d'une cage métallique pour des raisons de sécurité lors des audiences d'appel: *non-violation*

Ashot Harutyunyan – Armenia/Arménie - 34334/04
Judgment/Arrêt 15.6.2010 [Section III]

(See Article 3 above/Voir l'article 3 ci-dessus – page 8)

ARTICLE 8

Applicability/Applicabilité

Cohabiting same-sex couple living in a stable relationship constitute "family life": *Article 8 applicable*

Cohabitation de deux personnes de même sexe entretenant une relation stable est constitutive d'une vie familiale: *article 8 applicable*

Schalk and/et Kopf – Austria/Autriche - 30141/04
Judgment/Arrêt 24.6.2010 [Section I]

(See Article 14 below/Voir l'article 14 ci-dessous – page 16)

ARTICLE 9

Freedom of religion/Liberté de religion

Obligation to disclose religious convictions to avoid having to take religious oath in criminal proceedings: *violation*

Obligation de révéler ses convictions religieuses pour ne pas prêter le serment religieux en tant que témoin dans une procédure pénale: *violation*

Dimitras and Others/et autres – Greece/Grèce - nos 42837/06 et al.
Judgment/Arrêt 3.6.2010 [Section I]

En fait – En 2006 et 2007, les requérants furent appelés à comparaître comme témoins ou plaignants dans le cadre de procédures pénales. Dans ce contexte, ils furent invités, en vertu du code de procédure pénale, à prêter serment en apposant la main droite sur l'Evangile. Ils durent alors informer les autorités judiciaires qu'ils n'étaient pas chrétiens orthodoxes et souhaitaient plutôt faire une déclaration solennelle, demande qui fut accueillie à chaque fois. Dans plusieurs cas, le texte standard des procès-verbaux de comparution comportant les termes «chrétien orthodoxe» fut rayé et remplacé par des mentions telles que «athée» et «a fait une déclaration solennelle». Certains procès-verbaux étaient par ailleurs incorrects, indiquant à tort que l'intéressé était chrétien orthodoxe et avait prêté serment.

En droit – Article 9: certains éléments donnent à penser que les requérants ont été considérés par principe comme étant chrétiens orthodoxes et qu'ils ont dû indiquer qu'ils n'appartenaient pas à cette religion, et dans certains cas qu'ils étaient athées ou de confession juive, pour pouvoir obtenir la radiation du texte standard des procès-verbaux. Il y a donc eu ingérence dans l'exercice de leur liberté de religion. Cette ingérence était prévue par la loi et poursuivait un but légitime, à savoir la protection de l'ordre et, en particulier, la garantie de la bonne administration de la justice. Sur la question de savoir si elle était proportionnée au but légitime poursuivi, la Cour estime que les dispositions en cause se concilient mal avec les exigences de la liberté de religion, dès lors que le code de procédure pénale crée une présomption selon laquelle le témoin est chrétien orthodoxe et souhaite prêter le serment religieux. La formulation même des articles pertinents dudit code implique que l'intéressé produise des informations plus précises sur ses convictions religieuses pour se voir soustraire à cette présomption et à l'obligation de prêter le serment religieux. En outre, le code de procédure pénale prévoit qu'un témoin doit en tout état de cause indiquer sa religion pour pouvoir être auditionné lors d'une procédure pénale, alors que dans le cadre de la procédure civile un témoin peut choisir entre la prestation de serment religieux et la déclaration solennelle, de sorte qu'il n'a pas à

révéler ses convictions religieuses. Les dispositions législatives appliquées en l'espèce ont obligé les requérants à révéler leurs convictions religieuses pour pouvoir faire une déclaration solennelle, ce qui a porté atteinte à leur liberté de religion. L'ingérence litigieuse n'était ni justifiée dans son principe ni proportionnée à l'objectif visé.

Conclusion : violation (unanimité).

La Cour constate également une violation de l'article 13 (unanimité).

Article 41 : 15 000 EUR conjointement aux requérants pour préjudice moral ; Etat défendeur tenu d'éliminer, dans son ordre juridique interne, tout obstacle éventuel à un redressement adéquat de la situation des requérants.

(Voir aussi *Alexandridis c. Grèce*, nº 19516/06, 21 février 2008, Note d'information nº 105)

Dissolution of religious community without relevant and sufficient reasons: *violation*

Dissolution d'une communauté religieuse en l'absence de motifs pertinents et suffisants : *violation*

Jehovah's Witnesses of Moscow/Témoins de Jéhovah de Moscou – Russia/Russie - 302/02
Judgment/Arrêt 10.6.2010 [Section I]

Facts – The applicant community – the Moscow branch of the Jehovah's Witnesses – obtained legal-entity status in December 1993. In October 1997 the Federal Law on Freedom of Conscience and Religious Associations entered into force. It required all religious associations with legal-entity status to amend their articles of association in line with the new statutory requirements and to re-register with the justice department. The applicant community made five unsuccessful applications for re-registration but, even after obtaining a court ruling in 2002 that the refusals to re-register it were unlawful, remained unregistered. In the meantime, following complaints by a non-governmental organisation aligned with the Russian Orthodox Church, a prosecutor brought a civil action for the community's dissolution. The proceedings ended in 2004 when a district court ordered its dissolution and a permanent ban on its activities after upholding various allegations of misconduct. An appeal by the applicant community was dismissed.

Law – Article 9 in the light of Article 11 (dissolution): The dissolution order, which had effectively stripped the applicant community of its legal personality and prohibited it from exercising the rights it had previously enjoyed, had amounted to interference. That interference was prescribed by law and pursued the legitimate aim of protecting health and the rights of others. It had not, however, been necessary in a democratic society as, firstly, the domestic courts had failed to adduce relevant and sufficient reasons to justify the measure and, secondly, it had been disproportionate to the legitimate aim pursued.

(a) *Absence of relevant and sufficient reasons* – Many of the district court's findings in support of the dissolution order had not been substantiated and were not grounded on an acceptable assessment of the relevant facts. For instance, there had been no evidence to support allegations that the applicant community or its members had engaged in coercion, lured children into the organisation or encouraged suicide. Indeed, some of the court's findings had attested to preconceived ideas about Jehovah's Witnesses that had resulted in its wrongly excluding defence evidence. The remaining allegations that had been made against the applicant community – that it had breached its members' right to respect for their private life, infringed the parental rights of non-community parents, encouraged members to refuse blood transfusions and incited them not to comply with civic duties – were also rejected by the Court for the following reasons:

(i) *Respect for private life and, in particular, the right to choose one's occupation*: Many religions determined doctrinal standards of behaviour and, by obeying such precepts, believers manifested their desire to comply strictly with the religious beliefs they professed. The community members had testified that they followed the doctrines and practices of the Jehovah's Witnesses of their own free will and personally determined for themselves their place of employment, the balance between work and free time, and the amount of time devoted to preaching or other religious activities. Those who had carried out religious service at the community centre were not employees but unpaid volunteers, and so were not subject to employment regulations. Voluntary work or part-time employment or missionary activities were not contrary to the Convention principles and the Court was unable to discern any pressing social need that could have justified the interference.

(ii) *Parental rights of non-community parents*: While it was true that children of mixed marriages had participated in the community's activities despite objections from the non-community parent, this did not appear to have stemmed from any improper

conduct on the part of the community or its members but to have been approved and encouraged by the parent who was a Jehovah's Witness. The States were required by Article 2 of Protocol No. 1 to respect the rights of parents to ensure education and teaching in conformity with their own religious convictions and Article 5 of Protocol No. 7 established that spouses enjoyed equality of rights in their relations with their children. The domestic legislation did not make a child's religious education conditional on the existence of an agreement between the parents. Accordingly, any disagreements between the parents over the necessity and extent of a child's participation in religious practices and education were private family-law disputes that had to be resolved in accordance with the set procedure.

(iii) *Blood transfusions*: Freedom to accept or refuse specific medical treatment, or to select an alternative form of treatment, was vital to self-determination and personal autonomy. Many established jurisdictions had examined the cases of Jehovah's Witnesses who had refused a blood transfusion and found that, although the public interest in preserving the life or health of a patient was undoubtedly legitimate and very strong, it had to yield to the patient's stronger interest in directing the course of his or her own life. Russian law itself explicitly provided a right to refuse medical treatment or to request its discontinuation provided the patient had been given full accessible information about the possible consequences. There was no evidence that the applicant community had applied any improper pressure or undue influence on its members. Where the patient was a child, domestic law enabled a parent's decision to refuse treatment to be reversed by the courts. In sum, no pressing social need or relevant and sufficient reasons capable of justifying a restriction on the individual's right to personal autonomy in the sphere of religious beliefs and physical integrity had been shown.

(iv) *Alleged incitement to refuse civic duties*: The religious admonishment to refuse military service was in full compliance with domestic law, which permitted conscientious objection, and no instances of any community members unlawfully refusing alternative civilian service had been cited at the trial. The domestic courts had not cited any domestic legal provision that would require Jehovah's Witnesses to pay respect to State symbols (as opposed to refraining from desecrating them); nor was there any duty in law to participate in celebrations during State holidays. Accordingly, it had not been shown that community members had been incited to refuse to carry out lawfully established civil duties.

(b) *Proportionality* – Before its dissolution in 2004, the applicant community had existed and legally operated in Moscow for more than twelve years, without any of its elders or individual members being found responsible for any criminal or administrative offence or civil wrong. However, in common with other religious organisations perceived by the Moscow authorities as "non-traditional"[1], it appeared to have been singled out for differential treatment. Forced dissolution and a ban on activities was the only sanction the domestic courts could apply to religious organisations found to have breached the requirements of the Law on Freedom of Conscience and Religious Associations, and was thus applied indiscriminately without regard to the gravity of the breach in question. That drastic measure had denied thousands of Jehovah's Witnesses in Moscow the possibility of joining fellow believers in prayer and observance. Accordingly, even assuming there had been compelling reasons for the interference, it had been disproportionate to the legitimate aim pursued.

Conclusion: violation (unanimously).

Article 11 in the light of Article 9 (refusal to re-register): The grounds invoked by the domestic authorities for refusing re-registration of the applicant community had had no lawful basis. The authorities had failed to give adequate reasons for their decisions or had imposed unduly burdensome requirements without any basis in law. By the time the re-registration requirement was introduced, the applicant had lawfully existed and operated in Moscow as an independent religious community for many years, without it or any of its individual members being found to have breached any domestic law or regulation governing associative life and religious activities. In these circumstances, the reasons for refusing re-registration should have been particularly weighty and compelling. In denying re-registration, the authorities had not acted in good faith and had neglected their duty of neutrality and impartiality towards the applicant community.

Conclusion: violation (unanimously).

1. See *Moscow Branch of the Salvation Army v. Russia*, no. 72881/01, 5 October 2006, Information Note no. 90, and *Church of Scientology Moscow v. Russia*, no. 18147/02, 5 April 2007, Information Note no. 96.

The Court also found that the length of the dissolution proceedings had been unreasonable, in violation of Article 6 § 1 (unanimously).

Articles 41: EUR 20,000 to the applicant community and the four individual applicants jointly in respect of non-pecuniary damage. A review of the domestic judgments in the light of the Convention principles would be the most appropriate means of remedying the violations that had been identified in the applicant community's case.

ARTICLE 10

Freedom of expression/Liberté d'expression

Conviction of non-violent demonstrators for shouting slogans in support of an illegal organisation: *violation*

Manifestants non-violents condamnés pour avoir crié des slogans en faveur d'une organisation illégale : *violation*

Gül and Others/et autres – Turkey/Turquie - 4870/02
Judgment/Arrêt 8.6.2010 [Section II]

Facts – In 2000 the applicants were convicted by a State Security Court of aiding and abetting members of an illegal organisation and sentenced to three years and nine months' imprisonment, after it found that they had participated in demonstrations and shouted slogans in support of an illegal organisation, including: "Political power grows out of the barrel of a gun" and "It is the barrel of the gun that will call to account".

Law – Article 10: The interference with the applicants' freedom of expression had been prescribed by law and pursued the legitimate aim of protecting national security and public order. As regards proportionality, the slogans had been shouted during lawful, non-violent demonstrations. Although, taken literally, some of the phrases had been violent in tone, they were well-known, stereotyped leftist slogans which could not be interpreted as a call for violence or an uprising. In a pluralist democratic society, tolerance was required also of ideas that offended or shocked. There had been no indication that there had been a clear and imminent danger such as to require the lengthy criminal prosecution the applicants had faced. The applicants had initially been sentenced to three years and nine months' imprisonment and, although following a change in the legislation those proceedings had since been reopened, that sentence and the lengthy criminal proceedings had been disproportionate. The applicants' conduct could not be considered to have had an impact on national security or public order. The interference had not, therefore, been necessary in a democratic society.

Conclusion: violation (five votes to two).

Article 41: EUR 3,000 to each applicant in respect of non-pecuniary damage.

Seizure of book for almost two years and eight months on basis of unreasoned judicial decisions: *violation*

Mesure de saisie d'un livre appliquée pendant près de deux ans et huit mois sur la base de décisions judiciaires non motivées : *violation*

Sapan – Turkey/Turquie - 44102/04
Judgment/Arrêt 8.6.2010 [Section II]

En fait – Le requérant est le propriétaire d'une maison d'édition qui, en 2001, publia un ouvrage analysant l'apparition du phénomène de star en Turquie puis étudiant le cas d'un chanteur très connu dans ce pays. Estimant que le livre portait atteinte à son image et à sa personnalité, le chanteur pria le tribunal d'en ordonner la saisie, demande qui fut accueillie. Plus tard, il introduisit devant la même juridiction une action en dommages et intérêts contre l'auteur du livre et le requérant. Ce dernier demanda à trois reprises la levée de la saisie mais le juge le débouta chaque fois, sans motiver sa décision. En mai 2004, le juge rejeta finalement la demande de dommages et intérêts et ordonna la levée de la saisie. En 2005, la Cour de cassation cassa ce jugement, considérant que l'ouvrage avait porté atteinte aux droits de la personnalité du chanteur. La procédure demeure pendante au niveau interne.

En droit – Article 10 : la saisie de l'ouvrage s'analyse en une ingérence dans l'exercice de la liberté d'expression du requérant, ingérence qui était prévue par la loi et poursuivait l'objectif de la protection des droits d'autrui. La Cour note que le livre en cause est la reproduction partielle d'une thèse de doctorat et rappelle l'importance de la liberté académique. L'auteur ayant analysé, à travers le chanteur et par le biais d'outils scientifiques, le phénomène de star et son apparition en Turquie, on ne saurait considérer ce livre comme faisant partie des publications de la presse à sensation ou

de la presse du cœur, qui visent généralement à satisfaire la curiosité d'un certain public quant à la vie strictement privée d'une célébrité. Du reste, toutes les photographies illustrant le livre sont des clichés qui avaient déjà été publiés et pour lesquels le chanteur avait posé. Le juge a ordonné la saisie du livre au motif qu'il portait atteinte aux droits de la personnalité du chanteur. Il s'est référé à certains passages du livre et s'est basé sur la loi mais a fait siens les arguments du demandeur et n'a pas motivé sa décision. De plus, il a écarté les trois demandes de levée de la saisie sans aucune motivation. Ainsi, malgré des expertises rendues entretemps en faveur du requérant, la mesure frappant le livre sera restée en vigueur pendant près de deux ans et huit mois, jusqu'à la décision au fond de mai 2004. En conséquence, on ne saurait estimer que le juge a pris le soin d'examiner dans le détail les critères à prendre en compte en vue d'une juste appréciation des droits en cause, à savoir le droit à la liberté de communiquer des informations et la protection de la réputation d'autrui. Partant, la saisie litigieuse ne peut être considérée comme ayant été nécessaire dans une société démocratique, dès lors qu'elle ne reposait pas sur une motivation suffisante et pertinente.

Conclusion: violation (unanimité).

Article 41: 2 000 EUR pour préjudice moral.

ARTICLE 11

Freedom of association/Liberté d'association

Refusal to re-register community as religious organisation without lawful basis: *violation*

Refus, dépourvu de base légale, de réenregistrer une communauté en tant qu'organisation religieuse: *violation*

Jehovah's Witnesses of Moscow/Témoins de Jéhovah de Moscou – Russia/Russie - 302/02
Judgment/Arrêt 10.6.2010 [Section I]

(See Article 9 above/Voir l'article 9 ci-dessus – page 11)

ARTICLE 12

Right to marry/Droit au mariage

Inability of same-sex couple to marry: *no violation*

Impossibilité d'épouser une personne du même sexe: *non-violation*

Schalk and/et Kopf – Austria/Autriche - 30141/04
Judgment/Arrêt 24.6.2010 [Section I]

(See Article 14 below/Voir l'article 14 ci-dessous – page 16)

ARTICLE 14

Discrimination (Article 5 § 1 (a))

Refusal to release a convicted prisoner on licence: *inadmissible*

Refus d'admettre un condamné au bénéfice de la libération conditionnelle: ***irrecevable***

Celikkaya – Turkey/Turquie - 34026/03
Decision/Décision 1.6.2010 [Section II]

En fait – Le requérant a fait l'objet de diverses condamnations. Entre 1987 et 1996 ses peines ont été cumulées et plafonnées. En outre, ce multi-récidiviste a été maintenu en détention après la promulgation de la loi n° 4616, dite d'amnistie.

En droit – Article 14 combiné avec l'article 5 § 1 a): le requérant a été condamné à une peine d'emprisonnement au terme d'une procédure prévue par la loi, par un tribunal compétent au sens de l'article 5 § 1 a), mais il est opposé au calcul de la remise de peine effectué par le procureur en application de la loi n° 4616. L'article 5 § 1 a) ne garantit pas, en tant que tel, le droit pour un condamné de jouir d'une loi d'amnistie ou de bénéficier de façon anticipée d'une remise en liberté conditionnelle ou définitive. Le fait que les juridictions concernées aient souscrit aux arguments du procureur n'entache pas la détention du requérant d'arbitraire au regard de l'article 5 § 1 a). Il leur incombait en premier lieu d'interpréter et d'appliquer le droit interne et il n'appartient pas à la Cour de se substituer à elles pour évaluer les faits qui les ont conduites à adopter une décision plutôt qu'une autre. Cependant, la Cour ne peut que marquer son accord avec le procédé de calcul adopté en l'espèce, lequel ne prête à aucune confusion et cadre avec les règles en vigueur à l'époque des faits. Concernant le caractère discriminatoire de la détention du requérant après l'entrée en vigueur de la loi n° 4616, il est difficile de distinguer des circonstances de fait qui différeraient essentiellement de celles de deux détenus admis au bénéfice de la libération conditionnelle. Ainsi, la Cour ne peut se convaincre de l'absence de caractère

discriminatoire. Toutefois, il n'y a pas lieu de spéculer plus avant sur ce point car, en droit turc, s'agissant des modalités d'exécution des peines, aucune mesure ni erreur, fût-elle favorable à un détenu, ne confère aucun droit acquis et est susceptible d'être corrigée à tout moment, d'office. Ainsi, les situations des deux détenus ne relèvent pas de l'exercice d'un droit acquis sur le terrain de l'article 5 § 1 a) et n'ont de ce fait aucune valeur comparative relativement à la situation du requérant. S'il y a eu inégalité, il s'agit d'une inégalité apparente de fait, dont l'intéressé ne saurait légitimement se prévaloir au regard de l'article 14.

Conclusion : irrecevable (défaut manifeste de fondement).

Discrimination (Article 8)

Unmarried woman of a certain age debarred from adopting a second child: *no violation*

Interdiction faite à une célibataire d'un certain âge d'adopter un second enfant : *non-violation*

Schwizgebel – Switzerland/Suisse - 25762/07
Judgment/Arrêt 10.6.2010 [Section I]

En fait – A la suite de l'adoption d'un enfant en 2002, la requérante, célibataire et âgée de quarante-sept ans et demi, sollicita une autorisation d'accueil d'un second enfant en vue de son adoption. Or toutes ses requêtes furent rejetées jusqu'en dernier ressort par le Tribunal fédéral en 2006.

En droit – Article 14 combiné avec l'article 8

a) *Applicabilité* – La présente affaire pose le problème de la procédure d'accès à l'adoption. La législation autorise expressément l'adoption par une personne seule qui a atteint l'âge de trente-cinq ans. Sachant que l'autorisation est indispensable pour qui veut adopter un enfant, les circonstances de l'espèce tombent sous l'empire de l'article 8. En outre, la requérante allègue avoir été victime d'une discrimination fondée sur son âge dans l'exercice d'un droit reconnu par la législation interne. L'âge de l'intéressée a revêtu un caractère déterminant pour le rejet de ses demandes par les instances internes. L'article 14 combiné avec l'article 8 trouve à s'appliquer en l'espèce.

b) *Fond* – La requérante peut se prétendre victime d'un traitement différencié par rapport à une femme seule moins âgée qui, dans les mêmes circonstances, serait susceptible d'obtenir l'autorisation d'accueillir un second enfant en vue de son adoption. Le rejet de sa demande d'autorisation de placement d'un enfant aux fins d'une adoption poursuivait le but légitime de protéger le bien-être et les droits de cet enfant. En 1998, la requérante, âgée de quarante et un ans, fut autorisée à accueillir un premier enfant. Concernant l'adoption du second enfant, en 2006 le Tribunal fédéral estima la différence d'âge entre la requérante et l'enfant à adopter, située entre quarante-six et quarante-huit ans, excessive et nullement dans l'intérêt de ce dernier. Il n'existe pas de dénominateur commun entre les systèmes juridiques des Etats membres du Conseil de l'Europe concernant le droit d'adopter seule, en tant que personne célibataire, les limites d'âge inférieur et supérieur fixées pour les personnes adoptantes et la différence d'âge entre celles-ci et l'enfant à adopter. Ainsi, les autorités suisses disposaient d'une grande marge d'appréciation, et la législation ainsi que les décisions prises semblent se situer clairement dans le cadre des solutions adoptées par la majorité des Etats membres du Conseil de l'Europe et être en conformité avec le droit international en vigueur. Les décisions des autorités internes n'ont pas été arbitraires, étant intervenues dans le cadre de procédures contradictoires et motivées. Elles étaient inspirées non seulement par l'intérêt supérieur de l'enfant à adopter, mais également par celui de l'enfant déjà adopté. Par ailleurs, le critère de la différence d'âge entre l'adoptant et l'adopté n'était pas fixé de manière abstraite par la législation, mais a été appliqué par le Tribunal fédéral de manière souple et eu égard aux circonstances des espèces. Les arguments des instances internes ne sont pas déraisonnables ou arbitraires concernant le fait que la prise en charge d'un second enfant, même d'un âge comparable au premier, constituerait un fardeau supplémentaire pour la requérante ou que les problèmes sont plus nombreux dans des familles comprenant plusieurs enfants adoptés. Il est évident dans ce type d'affaires que le recours à des données statistiques est nécessaire et qu'une part de spéculation est inévitable. Si l'on tient compte de la marge d'appréciation considérable des Etats dans ce domaine et de la nécessité de protéger l'intérêt supérieur des enfants, le refus d'autoriser le placement d'un deuxième enfant n'a pas transgressé le principe de proportionnalité. La différence de traitement litigieuse n'est pas discriminatoire au sens de l'article 14.

Conclusion : non-violation (unanimité).

Inability of same-sex couple to marry: *no violation*
Impossibilité d'épouser une personne du même sexe : *non-violation*

Schalk and/et Kopf – Austria/Autriche - 30141/04
Judgment/Arrêt 24.6.2010 [Section I]

Facts – In 2002 the applicants, a same-sex couple, requested the competent authorities permission to get married. Under domestic law a marriage could only be concluded between persons of opposite sex and the applicants' request was consequently dismissed. Following their subsequent constitutional complaint, the Constitutional Court held that neither the Austrian Constitution nor the European Convention required that the concept of marriage, which was geared to the possibility of parenthood, should be extended to relationships of a different kind and that the protection of same-sex relationships under the Convention did not give rise to an obligation to change the law on marriage. On 1 January 2010 the Registered Partnership Act entered into force in Austria, aiming to provide same-sex couples with a formal mechanism for recognising and giving legal effect to their relationships. While the Act provided registered partners with many of the same rights and obligations as spouses, some differences remained, in particular registered partners were unable to adopt or undergo artificial insemination.

Law – Article 12: The Court first examined whether the right to marry granted to "men and women" under the Convention could be applied to the applicants' situation. Even though only six of the Council of Europe member States allowed same-sex marriage, the provision of the Charter of Fundamental Rights of the European Union granting the right to marry did not include a reference to men and women, so allowing the conclusion that the right to marry must not in all circumstances be limited to marriage between two persons of the opposite sex. It could, therefore, not be concluded that Article 12 did not apply to the applicants' complaint. At the same time the Charter left the decision whether or not to allow same-sex marriages to regulation by member States' national law. The Court underlined that national authorities were best placed to assess and respond to the needs of society in this field, given that marriage had deep-rooted social and cultural connotations differing largely from one society to another. In conclusion, Article 12 did not impose an obligation on the respondent State to grant same-sex couples access to marriage.

Conclusion: no violation (unanimously).

Article 14 in conjunction with Article 8: Given the rapid evolution of social attitudes in Europe towards same-sex couples over the past decade, it would have been artificial for the Court to maintain the view that such couples could not enjoy "family life". It therefore concluded that the relationship of the applicants, a cohabiting same-sex couple living in a stable partnership, fell within the notion of "family life", just as the relationship of a different-sex couple in the same situation did. The Court had repeatedly held that different treatment based on sexual orientation required particularly serious reasons by way of justification. It had to be assumed that same-sex couples were just as capable as different-sex couples of entering into stable committed relationships; they were consequently in a relevantly similar situation as regards the need for legal recognition of their relationship. However, given that the Convention was to be read as a whole, having regard to the conclusion reached that Article 12 did not impose an obligation on States to grant same-sex couples access to marriage, the Court was unable to share the applicants' view that such an obligation could be derived from Article 14 taken in conjunction with Article 8. What remained to be examined was whether the State should have provided the applicants with an alternative means of legal recognition of their partnership any earlier than 2010. Despite the emerging tendency to legally recognise same-sex partnerships, this area should still be regarded as one of evolving rights with no established consensus, where States enjoyed a margin of appreciation in the timing of the introduction of legislative changes. The Austrian law reflected this evolution; though not in the vanguard, the Austrian legislature could not be reproached for not having introduced the Registered Partnership Act any earlier. Finally, the fact that the Registered Partnership Act retained some substantial differences compared to marriage in respect of parental rights corresponded largely to the trend in other member States adopting similar legislation. Moreover, since the applicants did not claim that they were directly affected by any restrictions concerning parental rights, the Court did not have to examine every one of those differences in detail as that was beyond the scope of the case.

Conclusion: no violation (four votes to three).

Discrimination (Article 9)

Failure to provide a pupil excused from religious instruction with ethics classes and associated marks: *violation*

Absence de cours d'éthique et de notation correspondante pour un élève dispensé d'instruction religieuse : *violation*

Grzelak – Poland/Pologne - 7710/02
Judgment/Arrêt 15.6.2010 [Section IV]

Facts – The first two applicants, who are declared agnostics, are parents of the third applicant. In conformity with the wishes of his parents, the latter did not attend religious instruction during his schooling. His parents systematically requested the school authorities to organise a class in ethics for him. However, no such class was provided throughout his entire schooling at primary and secondary level (1998-2009) because there were not enough pupils interested. His school reports and certificates contained a straight line instead of a mark for "religion/ethics".

Law – Article 14 in conjunction with Article 9

(a) *Admissibility*: The complaint was incompatible *ratione personae* with respect to the first and second applicants.

(b) *Merits*: The absence of a mark for "religion/ethics" on the third applicant's school reports fell within the ambit of the negative aspect of freedom of thought, conscience and religion as it might be read as showing his lack of religious affiliation. Article 14 taken in conjunction with Article 9 was therefore applicable. The third applicant had complained of the discriminatory nature of the non-provision of courses in ethics and resultant absence of a mark for "religion/ethics" in his school reports. The Court considered it appropriate to limit its examination of the alleged difference in treatment between the third applicant, a non-believer who was willing but unable to attend ethics classes, and those pupils who attended religion classes to the latter aspect of the complaint, namely the absence of a mark. Domestic law providing for a mark to be given for "religion/ethics" on school reports could not, as such, be considered to infringe Article 14, taken in conjunction with Article 9, as long as the mark constituted neutral information on the fact that a pupil had followed one of the optional courses offered at a school. However, a regulation of this kind had also to respect the right of pupils not to be compelled, even indirectly, to reveal their religious beliefs or lack thereof. When reviewing the issue of a mark for "religion/ethics" on school reports, the Constitutional Court had proceeded on the assumption that any interested pupil would be able to follow a class in either of the two subjects concerned and held that an outside observer would thus not be in a position to determine whether a pupil had followed a class in religion or in ethics. However, that analysis, while unquestionable in substance, appeared to overlook other situations which might arise in practice, like that of the third applicant. The absence of a mark for "religion/ethics" would be understood by any reasonable person as an indication that the third applicant had not followed religious education classes, which were widely available, and that he was thus likely to be regarded as a person without religious beliefs. This finding took on particular significance in respect of a country like Poland where the great majority of the population owed allegiance to one particular religion. Moreover, from September 2007 onwards, in accordance with the new rule, marks obtained for religious education or ethics were to be included in the calculation of the "average mark" obtained by a pupil in a given school year and at the end of a given level of schooling. The rule might have a real adverse impact on the situation of pupils who, despite their wishes, were not provided with a course in ethics. Such pupils would either find it more difficult to increase their average mark or might feel pressurised – against their conscience – to attend a religion class in order to improve their average. In sum, the absence of a mark for "religion/ethics" on the third applicant's school certificates throughout the entire period of his schooling had amounted to a form of unwarranted stigmatisation. In those circumstances, the Court was not satisfied that the difference in treatment between non-believers who wished to follow ethics classes and pupils who followed religious classes had been objectively and reasonably justified and that there had existed a reasonable relationship of proportionality between the means used and the aim pursued. The State's margin of appreciation had been exceeded in this matter as the very essence of the third applicant's right not to manifest his religion or convictions under Article 9 had been infringed.

Conclusion: violation (six votes to one).

Article 2 of Protocol No. 1: In Poland religious education and ethics were organised on a parallel basis. Both subjects were optional and the choice depended on the wishes of parents or pupils, subject to the proviso that a certain minimum number of pupils were interested in following any of the two subjects. The system of teaching religion and ethics as provided for by Polish law – in its model application – fell within the margin of appreciation accorded to States as to the planning and setting of the curriculum. Accordingly, the alleged failure to provide ethics classes did not disclose any appearance of a violation of the rights of the

first and second applicants under Article 2 of Protocol No. 1.

Conclusion: inadmissible (manifestly ill-founded).

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage.

ARTICLE 34

Victim/Victime

Acknowledgment by national authorities of inhuman treatment but without compensation or adequate punishment of offenders: *victim status upheld*

Reconnaissance par les autorités nationales de l'existence d'un traitement inhumain, mais sans indemnisation ni sanction suffisante des coupables : *confirmation de la qualité de victime*

Gäfgen – Germany/Allemagne - 22978/05
Judgment/Arrêt 1.6.2010 [GC]

Facts – In 2002 the applicant suffocated an eleven-year-old boy and hid his corpse near a pond. Meanwhile, he sought a ransom from the boy's parents and was arrested shortly after having collected the money. He was taken to a police station where he was questioned about the victim's whereabouts. The next day the deputy chief police officer ordered one of his subordinate officers to threaten the applicant with physical pain and, if necessary, to subject him to such pain in order to make him reveal the boy's location. Following these orders, the police officer threatened the applicant that he would be subjected to considerable pain by a person specially trained for such purposes. Some ten minutes later, for fear of being exposed to such treatment, the applicant disclosed where he had hid the victim's body. He was then accompanied by the police to the location, where they found the corpse and further evidence against the applicant, such as the tyre tracks of his car. In the subsequent criminal proceedings, a regional court decided that none of his confessions made during the investigation could be used as evidence since they had been obtained under duress contrary to Article 3 of the European Convention. At the trial, the applicant again confessed to murder. The court's findings were based on that confession and on other evidence, including evidence secured as a result of the statements extracted from the applicant during the investigation. The applicant was ultimately convicted to life imprisonment and his subsequent appeals were dismissed, the Federal Constitutional Court having nonetheless acknowledged that extracting his confession during the investigation constituted a prohibited method of interrogation both under the domestic law and the Convention. In 2004 the two police officers involved in threatening the applicant were convicted of coercion and incitement to coercion while on duty and were given suspended fines of EUR 60 and EUR 90, respectively. In 2005 the applicant applied for legal aid in order to bring proceedings against the authorities for compensation for the trauma the investigative methods of the police had caused him. The courts initially dismissed his application, but their decisions were quashed by the Federal Constitutional Court in 2008. At the time of the European Court's judgment, the remitted proceedings were still pending before the regional court.

Law – Article 34: The national authorities had acknowledged the breach of the Convention both in the criminal proceedings against the applicant and in the subsequent conviction of the police officers. However, it was necessary to establish whether they had afforded the applicant appropriate and sufficient redress for the violation suffered. Although the criminal proceedings against the police officers, which had lasted for some two years and three months, had been sufficiently prompt and expeditious, the officers had been sentenced to very modest and suspended fines since the domestic court took into account a number of mitigating circumstances, including the urgent need to save the victim's life. While the applicant's case could not be compared to other cases involving arbitrary acts of brutality by State agents, imposing almost token fines could not be considered an adequate response to a breach of Article 3. Such punishment, which was manifestly disproportionate to a breach of one of the core rights of the Convention, did not have the necessary deterrent effect in order to prevent further violations of that right in future difficult situations. Moreover, even though both police officers had initially been transferred to posts which no longer involved direct association with the investigation of criminal offences, one of them had later been appointed chief of his section, which raised serious doubts as to whether the authorities' reaction adequately reflected the seriousness of a breach of Article 3. Finally, as to the proceedings for compensation, the applicant's request for legal aid was still pending after over three years. Consequently, no hearing had been held and no judgment given on the

merits of his claim. In such circumstances, the domestic courts' failure to decide the merits of the applicant's compensation claim without the requisite expedition brought into question the effectiveness of those proceedings. In conclusion, the Court held that the different measures taken by the domestic authorities had failed to comply fully with the requirement of redress as established by its case-law and that, consequently, the applicant could still claim to be the victim of a violation of his Convention right.

Conclusion: victim status upheld (eleven votes to six).

Article 3: It was uncontested between the parties that the applicant was threatened by the police officer with intolerable pain by a person specially trained for such purposes if he refused to disclose the victim's whereabouts. Since the deputy chief officer had ordered his subordinates on several occasions to threaten the applicant or, if necessary, to use force against him, his order could not be regarded as a spontaneous act, but as a premeditated and calculated one. The interrogation under the threat of ill-treatment had lasted for about ten minutes in an atmosphere of heightened tension and emotions when the officers believed that the victim's life could still be saved. The applicant was handcuffed and thus in a state of vulnerability, so the threat he had received must have caused him considerable fear, anguish and mental suffering. Despite the police officers' motives, the Court reiterated that torture and inhuman or degrading treatment could not be inflicted even in circumstances where the life of an individual was at risk. In conclusion, the method of interrogation to which the applicant had been subjected was found to be sufficiently serious to amount to inhuman treatment prohibited by Article 3.

Conclusion: violation (eleven votes to six).

Article 6: The use of evidence obtained by methods in breach of Article 3 raised serious issues regarding the fairness of criminal proceedings. The Court was therefore called upon to determine whether the proceedings against the applicant as a whole had been unfair because such evidence had been used. At the start of his trial, the applicant was informed that his earlier statements would not be used as evidence against him because it had been obtained by coercion. Nonetheless he confessed to the crime again during the trial, stressing that he was confessing freely out of remorse and in order to take responsibility for the crime he had committed. The Court had therefore no reason to assume that the applicant would not have confessed if the domestic courts had decided at the outset to exclude the disputed evidence. In the light of these considerations the Court concluded that, in the particular circumstances of the applicant's case, the failure of the domestic courts to exclude the evidence obtained following a confession extracted by means of inhuman treatment had not had a bearing on the applicant's conviction and sentence or on the overall fairness of his trial.

Conclusion: no violation (eleven votes to six).

Article 41: No claim made in respect of damage.

Hinder the exercise of the right of petition/ Entraver l'exercice du droit de recours

Failure of the authorities to comply with an interim measure indicated by the Court under Rule 39: *violation*

Inobservation par les autorités d'une mesure provisoire indiquée par la Cour au titre de l'article 39 de son règlement : *violation*

Kamaliyevy – Russia/Russie - 52812/07
Judgment/Arrêt 3.6.2010 [Section I]

Facts – The first applicant is a national of Uzbekistan who has lived in Russia since the late 1990s. He married the second applicant, a Russian national. In March 2006 the Deputy General Prosecutor of Uzbekistan requested the first applicant's extradition on the ground that he was charged with belonging to an extremist religious organisation, incitement of religious hatred and attempted subversion of the constitutional regime. In December 2006 the Russian Deputy General Prosecutor refused to extradite him. In November 2007, during an identity check, the first applicant was arrested in Tyumen as an unlawfully resident alien. A district court found him guilty of a violation of the residence rules for aliens, in that he had failed to take any steps to get a residence permit or to obtain nationality by legal means. It imposed a fine and ordered his expulsion from Russia. On 3 December 2007 the first applicant applied to the European Court requesting suspension of his extradition to Uzbekistan. In view of the crimes he had been charged with there, he alleged that he would be exposed to a risk of torture. On the same day, the Court indicated to the Russian Government that, under Rule 39 of the Rules of Court, it was adopting an interim measure suspending the extradition. On 5 December 2007 the first applicant was deported to Uzbekistan where he is currently serving a prison sentence.

Law – Article 34: The respondent Government had contended that the competent authorities had done everything in their power to comply with the measure indicated by the Court; however, in view of the short notice and the difference in time between Strasbourg, Moscow and Tyumen the information had failed to reach the intended recipients before the expulsion had occurred. The letter concerning the application of Rule 39 had been published on the Court's secure website at 9.50 p.m. Moscow time on 3 December 2007. The Government had not indicated when they had actually acquainted themselves with its content, but presumably no later than on the morning of 4 December 2007. They had then forwarded the information to the relevant authorities. Moreover, on 4 December 2007 the applicants' representative herself had forwarded the Court's notification to the Tyumen Prosecutor's Office and the local department of the Ministry of the Interior. In the course of the same day, the representative had been informed of the regional court's decision to uphold the deportation order on appeal and had alerted the Court. She had also indicated that the next flight to Uzbekistan from Tyumen was scheduled for 5 December 2007, 2 a.m. local time (midnight in Moscow and 10 p.m. CET). By a second letter, published on its secure website on 4 December 2007 at 10.30 p.m. Moscow time, the Court had informed the Government of these developments. To sum up, the first applicant had been put on a plane about twenty-six hours after the notification of the interim measure to the respondent Government. This time-period included one full working day, when all the relevant offices had been open and no difficulties in communication had been reported. The Court was cognisant of the inevitable difficulties which arose when differences in time were involved; however in the present case they had clearly not been of such nature as to explain the failure to transmit the message to the service responsible. Indeed, in the first letter of 3 December 2007 the Court had already indicated the first applicant's place of detention and it should have been relatively simple to identify the responsible body. The Court also remarked that the first applicant's deportation had been upheld by the regional court and the necessary formalities to carry it out had been completed in an even shorter period of time. The Government had relied on the need to contact various ministries in Moscow and to obtain information from the local services before any steps could be ordered. The working day of 4 December 2007 had thus not been sufficient to comply with the measure indicated by the Court. The Court did not find such an excuse compatible with the nature of urgent requests aimed at preventing a person's imminent deportation. By definition, these decisions were not complex to implement, since all that was needed was to inform the local authority responsible for carrying out the deportation and/or the administration of the detention centre of the temporary ban on the person's removal from the territory of the Contracting State. In view of all the information in its possession, the Court was not satisfied that the Government had taken all reasonable steps to comply with the Court's ruling. Nor had they shown that there had been an objective impediment to compliance with the interim measure indicated under Rule 39 of the Rules of Court.

Conclusion: violation (unanimously).

The Court also found that there had been no violation of Article 8 (four votes to three).

Article 41: Reserved.

ARTICLE 35

Article 35 § 1

Six-month period/Délai de six mois

Six-month period to be calculated by reference to criteria specific to the Convention: *inadmissible*

Calcul du délai de six mois selon les critères propres à la Convention : *irrecevable*

Büyükdere and Others/et autres – Turkey/Turquie - 6162/04 et al.
Judgment/Arrêt 8.6.2010 [Section II]

En fait – A la suite de la privatisation de leur entreprise, les requérants perdirent leur statut de fonctionnaire. Ils intentèrent plusieurs actions devant les tribunaux administratifs compétents en vue d'obtenir des indemnités de fin de contrat de travail mais leurs demandes furent rejetées. Ils se pourvurent devant le Conseil d'Etat, qui confirma les jugements de première instance.

En droit – Article 35 § 1 : dans la requête n° 6162/04, l'arrêt du Conseil d'Etat du 19 juin 2003, qui constitue la décision interne définitive, a été notifié au requérant le 25 juillet 2003. Or celui-ci a saisi la Cour le 26 janvier 2004, soit plus de six mois après la notification de la décision interne définitive. Il s'ensuit que cette requête est tardive et qu'elle doit être rejetée, en application de l'article 35 §§ 1

et 4. (Voir aussi *Otto c. Allemagne* (déc.), nº 21425/06, 10 novembre 2009, Note d'information nº 124.)

La Cour conclut à la recevabilité des autres requêtes et à la violation de l'article 6 § 1 de la Convention.

Original of the application form submitted outside the eight-week time-limit set in the Practice Direction on the Institution of Proceedings: *inadmissible*

Original du formulaire de requête déposé en dehors du délai de huit semaines fixé par l'Instruction pratique sur l'introduction de l'instance : *irrecevable*

Kemevuako – Netherlands/Pays-Bas - 65938/09
Decision/Décision 1.6.2010 [Section III]

Facts – The applicant, an Angolan national, complained of the refusal by the Netherlands authorities to grant him a residence permit. The final judgment in the domestic proceedings was sent to him on 15 June 2009. On 14 December 2009 the applicant's representative sent a fax to the Registry, stating that he wanted to lodge a complaint under Article 8 of the European Convention on behalf of the applicant. He was then notified by the Registry that he had to return the application form to the Court by 4 March 2010, eight weeks from the date of the Registry's letter of 7 January 2010. The representative was further informed that if he failed to do so, the date of submission of the completed application form would be taken as the date of introduction of the application. On 4 March 2010 the applicant's representative sent a completed application form to the Registry by fax. The original of the form, as well as copies of all relevant documents, were received by the Registry by post on 12 March 2010. The envelope containing all these documents was postmarked 10 March 2010.

Law – Article 35 § 1: The Court first considered whether the complaint had been lodged within a period of six months from the date on which the final decision had been taken. In accordance with the established practice of the Convention organs and Rule 47 § 5 of the Rules of Court, the Court normally considered the date of the introduction of an application to be the date of the first communication indicating an intention to lodge an application and giving some indication of the nature of the application. Such first communication, which might take the form of a letter sent by fax, would interrupt the running of the six-month period. However, as the Court had held, it would be contrary to the spirit and aim of the six-month rule if, by any initial communication, an application could set into motion the proceedings under the Convention and then remain inactive for an unexplained and unlimited length of time. Applicants had therefore to pursue their applications with reasonable expedition after any initial introductory contact. A failure to do so might lead the Court to decide that the interruption of the six-month period was to be invalidated and that it was the date of the submission of the completed application which was to be considered as the date of its introduction. The Court was to be provided with the original of the application form, and also of the authority form if the applicant was represented. Transmissions by fax of these documents were, without the originals of these documents, insufficient to constitute a complete or valid application (see Rule 47 § 5 of the Rules of Court and paragraphs 1, 4 and 5 of the Practice Direction on the Institution of Proceedings). The fact, therefore, that the completed application form in the present case had been transmitted to the Registry by fax on 4 March 2010 was irrelevant as long as the original form had not also been despatched within the eight-week period, which ended on 4 March 2010. Although the cover letter accompanying the application form, as well as that form itself, had indeed been dated 4 March 2010, the envelope containing the original completed application form, as well as the signed authority form and copies of all relevant documents, had been postmarked 10 March 2010. In this respect, the Court had held that, in order for the date featuring on a first communication to be considered as the date of introduction of an application, it should be posted at the latest on the day after the date which appeared on the communication. If that communication was postmarked more than one day later, it was the date of the postmark – rather than the date featuring on the letter or application form – that would be considered as the date of introduction. The Court saw no reason to apply a different criterion in respect of the question whether the original application form had been submitted within the eight-week period. The date on which the envelope containing the original application form had been postmarked, namely 10 March 2010, should therefore be considered as the date of introduction of the present case. The six-month period having started to run on 15 June 2009, the application had been out of time.

Conclusion: inadmissible (out of time).

Article 35 § 3 (b)

No significant disadvantage/Absence de préjudice important

Fulfilment of new three-part inadmissibility test under Protocol No. 14 – no significant disadvantage to applicant: *inadmissible*

Réunion des trois conditions du nouveau critère de recevabilité du Protocole nº 14 dont l'absence de préjudice important : *irrecevable*

Ionescu – Romania/Roumanie - 36659/04
Decision/Décision 1.6.2010 [Section III]

En fait – La Haute Cour de cassation et de justice annula un pourvoi contre le jugement du tribunal de première instance, lequel rejetait une demande de dommages et intérêts d'un montant de 90 EUR présentée par le requérant pour non-respect d'obligations contractuelles.

En droit – Article 6 § 1 : concernant la procédure menée devant le tribunal de première instance, elle a respecté les exigences de l'équité.

Conclusion : irrecevable (défaut manifeste de fondement).

Concernant l'absence de publicité de la procédure suivie devant la Haute Cour de cassation et de justice, les griefs sont sous-jacents à celui concernant l'annulation du pourvoi et peuvent s'inscrire dans le cadre du droit d'accès à un tribunal. Le grief n'est ni incompatible avec les dispositions de la Convention ou de ses Protocoles, ni manifestement mal fondé ou abusif, au sens de l'article 35 § 3 a) de la Convention telle qu'amendée par le Protocole nº 14. Cependant, eu égard à l'entrée en vigueur dudit Protocole, la Cour estime nécessaire d'examiner d'office s'il y a lieu d'appliquer le nouveau critère de recevabilité prévu par l'article 35 § 3 b) de la Convention amendée. Le principal élément de ce critère est la question de savoir si le requérant n'a subi aucun préjudice important. Il ressort des opinions dissidentes de certains arrêts que l'absence d'un tel préjudice renvoie à des éléments tels que l'impact monétaire de la question litigieuse ou l'enjeu de l'affaire pour le requérant. Le préjudice financier allégué par le requérant du fait du non-respect des clauses contractuelles était réduit. Il s'agit d'un montant de 90 EUR, tous préjudices confondus, alors qu'aucun élément du dossier n'indique qu'il se trouvait dans une situation économique telle que l'issue du litige aurait eu des répercussions importantes sur sa vie personnelle. Dans ces conditions, le requérant n'a pas subi un préjudice important dans l'exercice de son droit d'accès à un tribunal. S'agissant du second élément, le respect des droits de l'homme n'exige pas la poursuite de l'examen au fond de ce grief car l'affaire ne présente plus qu'un intérêt historique à la suite de l'abrogation des dispositions nationales concernant l'examen préalable de l'admissibilité des pourvois, et la Cour a déjà eu plusieurs occasions de se prononcer sur l'application par les juridictions internes des règles de procédure. Enfin, concernant la troisième condition exigeant que l'affaire ait été dûment examinée par un tribunal interne, le requérant a eu la possibilité de soulever ses moyens dans le cadre d'un débat contradictoire devant le tribunal de première instance. Les trois conditions du nouveau critère de recevabilité sont donc réunies.

Conclusion : irrecevable (aucun préjudice important).

ARTICLE 37

Article 37 § 1

Special circumstances requiring further examination/Motifs particuliers exigeant la poursuite de l'examen de la requête

Unilateral declaration by Government denying applicant opportunity to obtain finding of violation of Article 6 § 1 needed to seek review of domestic decision: *strike out refused*

Déclaration unilatérale du Gouvernement qui priverait le requérant de la possibilité d'obtenir un constat de violation de l'article 6 § 1, requis pour demander la révision d'une décision interne : *rejet de la demande de radiation*

Hakimi – Belgium/Belgique - 665/08
Judgment/Arrêt 29.6.2010 [Section II]

En fait – En 2006, une cour d'appel condamna le requérant par défaut à une peine d'emprisonnement et à une amende. L'arrêt, signifié à l'intéressé le jour même, ne faisait pas mention du délai d'opposition applicable, à savoir quinze jours. Quelques semaines plus tard, le requérant forma opposition contre l'arrêt de condamnation. La cour d'appel le débouta pour tardiveté. En 2007, la Cour de cassation rejeta le pourvoi formé par l'intéressé.

En droit – Article 6 § 1 *:* a) *Remarques préliminaires sur la demande de radiation* – Le règlement amiable proposé par la Cour a été rejeté par le requérant au motif qu'il souhaitait obtenir la garantie de pouvoir

bénéficier de la procédure de réouverture de son dossier. Par ailleurs, le Gouvernement a soumis à la Cour une déclaration unilatérale sollicitant la radiation de l'affaire en contrepartie de la reconnaissance de la violation de l'article 6 § 1 et du versement d'une somme. Il y soulignait l'inexistence du droit à la réouverture de la procédure, le défaut de compétence du ministre de la Justice s'agissant de garantir pareille réouverture et le pouvoir discrétionnaire de la Cour de cassation dans l'appréciation de son octroi. Compte tenu des termes de la déclaration du Gouvernement et des circonstances de l'espèce, la Cour n'estime pas opportun de rayer l'affaire du rôle sur la seule base de la déclaration. En particulier, elle n'exclut pas que le requérant ait besoin, pour pouvoir demander, le cas échéant, la révision de l'arrêt litigieux de la cour d'appel, d'un arrêt de la Cour constatant explicitement une violation de l'article 6 § 1. Partant, elle poursuit l'examen de la requête, qui ne se heurte à aucun motif d'irrecevabilité.

b) *Fond* – En l'espèce, la signification de l'arrêt au requérant ne portait pas mention du délai d'opposition. La Cour se base sur son constat, dans une affaire similaire, selon lequel le refus par la cour d'appel de rouvrir la procédure qui s'était déroulée par défaut et le rejet pour tardiveté de l'opposition formée par le requérant avaient privé ce dernier du droit d'accès à un tribunal.

Conclusion : violation (unanimité).

Article 41 : constat de violation suffisant en lui-même pour le préjudice moral.

ARTICLE 46

Execution of a judgment – Individual measures/Exécution des arrêts – Mesures individuelles

Respondent State required to take measures to review decisions dissolving and refusing to re-register religious community

Etat défendeur tenu de prendre des mesures en vue du réexamen de décisions portant dissolution d'une communauté religieuse et refus de la réenregistrer

Jehovah's Witnesses of Moscow/Témoins de Jéhovah de Moscou – Russia/Russie - 302/02
Judgment/Arrêt 10.6.2010 [Section I]

(See Article 9 above/Voir l'article 9 ci-dessus – page 11)

ARTICLE 2 OF PROTOCOL No. 1 / ARTICLE 2 DU PROTOCOLE Nº 1

Right to education/Droit à l'instruction

Measures taken by authorities of "Moldavian Republic of Transdniestra" against schools refusing to use Cyrillic script: *admissible*

Mesures prises par les autorités de la "République moldave de Transdnistrie" contre les écoles refusant d'employer l'alphabet cyrillique : *recevable*

Catan and Others/et autres – Moldova and Russia/Moldova et Russie - 43370/04, 8252/05 and/et 18454/06
Decision/Décision 15.6.2010 [Section IV]

Facts – According to its Constitution of 1978 the Moldavian Soviet Socialist Republic had two official languages: Russian and "Moldavian" (Romanian/Moldovan written with the Cyrillic script). In 1989 the Latin alphabet was reintroduced in Moldova for written Romanian/Moldovan, which became the first official language. In August 1991 the Republic of Moldova became an independent State. In parallel, separatists in Transdniestra sought to break away from the newly formed republic by adopting a "declaration of independence" in respect of the "Moldavian Republic of Transdniestra" (the "MRT"), which has not been recognised by the international community. Legislation introduced by the "MRT" authorities in 1992 requires "Moldavian" to be written with the Cyrillic alphabet and the use of the Latin script in schools has been forbidden since 1994. In 1999 the "MRT" ordered that all schools belonging to "foreign States" and functioning on "its" territory had to register with the "MRT" authorities, failing which they would not be recognised and would be deprived of their rights. In July 2004 the "MRT" authorities began taking steps to close down all schools using the Latin script. There now remain only six schools in Transdniestria using the Moldovan (Romanian) language and the Latin script.

The applicants were pupils (or their parents or teachers) attending three schools in the "MRT". Two of the schools had been built with Moldovan public funds, were registered with the Moldovan Ministry of Education and were using the Latin script and a curriculum approved by that Ministry. Both these schools refused to register with the "MRT" authorities, as this would have meant having to use the Cyrillic script and the "MRT" curriculum. The third school, which was already

using the Cyrillic script, petitioned the "MRT" authorities to be allowed to use the Latin script. All three schools were forced to transfer to new premises following stand-offs with the "MRT" authorities involving the intervention of the police to evict pupils, parents and teachers inside the buildings. The secondary-school pupils of the first school were moved to premises that had previously been used as a kindergarten and the school became a target for systematic vandalism. The second school was split up into three separate buildings in different parts of the town, with a main building that had no access to public transport and lacked a number of basic facilities. Faced with the occupation of the building by the "MRT" regime, the Moldovan Ministry of Education decided to transfer the third school temporarily to a village under Moldovan control some twenty kilometres away. This meant pupils and teachers being subjected to daily bag searches and identity checks by "MRT" officials. Numbers in all three schools have declined dramatically. In their application to the European Court, the applicants complain, *inter alia*, of the restrictions on their right to use the Moldovan language and Latin script and of the impact of these restrictions on the cultural identity and integrity of the Moldovan community in the "MRT" (Article 8 of the Convention), of the difficulties encountered by pupils wishing to be educated in the Moldovan official language and in accordance with the curriculum of the Moldovan Ministry of Education (Article 2 of Protocol No. 1) and of discriminatory treatment (Article 14 of the Convention).

Admissible under Article 8 of the Convention, Article 2 of Protocol No. 1, and Article 14 of the Convention in conjunction with Articles 3 and 8 of the Convention and Article 2 of Protocol No. 1. The issue of whether the applicants came within the jurisdiction of either or both of the respondent States was joined to the merits.