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Summary of cases from the jurisprudence of the European Court for Human Rights (ECtHR)

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TITLE:
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YEAR OF PUBLICATION:
2025

PUBLISHED BY:
FOL Movement

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The publication of this report is supported by the German Embassy in Kosovo and implemented by the FOL Movement, the Kosovo Law Institute (IKD) and the Initiative for Progress (INPO). The opinions and recommendations in this report are those of the authors and do not necessarily represent the views of the donor.

Content

List of Abbreviations

CoE	Council of Europe: International organization that promotes democracy, human rights and the rule of law in Europe.
ECHR	European Convention on Human Rights: International treaty that protects the fundamental rights and freedoms of individuals in the member states of the Council of Europe.
ECtHR	European Court of Human Rights: Judicial institution of the Council of Europe that ensures respect for the fundamental rights and freedoms guaranteed by the European Convention on Human Rights.
GC	Grand Chamber of the ECtHR: Judicial body within the ECtHR that examines cases of particular importance or appeals against decisions of smaller chambers of the Court.
Prot.	Protocol to the ECHR: Amendment or addition to the Convention that establishes new rights and obligations for signatory states.
Petitioner	Complainant at the ECtHR: The person or group of persons who submit a complaint to the ECtHR claiming a violation of their rights guaranteed by the ECHR.

Introduction

The European Court of Human Rights (ECtHR) is one of the most important institutions for the protection and promotion of fundamental rights and freedoms in Europe. Its jurisprudence has played a key role in harmonizing and strengthening standards for the protection of human rights in all member states of the Council of Europe (CoE), which are parties to the European Convention on Human Rights (ECHR). The decisions of the ECtHR serve as important precedents and have had a significant impact on the protection of individuals' rights.

Kosovo, despite having declared independence on 17 February 2008 and having built a consolidated institutional and legal system, still faces challenges in the international arena, including recognition and membership in important organizations such as the Council of Europe. The lack of membership in the CoE and of signing the ECHR creates a significant gap, as Kosovo citizens do not have direct access to the ECtHR to seek justice in cases of violations of their rights.

However, Kosovo's commitment to strengthening its international position is reflected in its ongoing efforts to harmonize domestic legislation with European standards and to ensure their effective implementation. Membership in the CoE would be a strategic step for Kosovo, enabling its citizens to have access to the ECtHR and contributing to the strengthening of the rule of law and human rights.

Although Kosovo citizens do not yet have direct access to the ECtHR, the decisions of this court remain an important source of reference for Kosovo lawyers and judges. Its jurisprudence, including cases on property rights, freedom of expression, equality before the law and the prohibition of discrimination, can serve as a guide for the interpretation and implementation of legal norms in Kosovo. The approximation of international standards into the national legal framework would improve the quality of justice and help to enhance Kosovo's reputation as a state that respects human rights and the rule of law.

Despite the challenges, Kosovo can begin to adopt and implement the advanced standards of the ECtHR even before accession to the CoE. This can be achieved through continued reforms in the justice system, improving the legal infrastructure and harmonizing national legislation with European best practices. Furthermore, involving lawyers, judges and policymakers in international training and professional exchanges would help increase capacities for the respect and protection of human rights.

Through the analysis of European jurisprudence, this case study provides a practical guide for law practitioners, judges, lawyers and policymakers, helping to harmonize domestic practices with international standards of justice and human rights.

Methodology

This summary report of cases from the case law of the ECtHR aims to analyze and interpret the most important decisions of the ECtHR in recent years, with a focus on decisions that are relevant to the circumstances of Kosovo.

The purpose of the report is to provide a clear overview of the most advanced practices in the protection of human rights and to help lawyers, researchers and policymakers in Kosovo to adopt these standards in the national legal system.

This compilation also aims to inspire and guide the further development of Kosovo's legal system, contributing to the strengthening of the rule of law and the effective protection of human rights. These elements are fundamental for building a democratic and inclusive society, as well as for Kosovo's progress on its path towards European integration.

For the purposes of this report, the official database of the ECtHR, jurisprudence reports, and publications from specialized human rights organizations were used. The decisions were interpreted by considering the legal reasoning of the ECtHR, the interpretation of the ECHR, and the impact of the decisions on European legal standards.

1. Case of Danileţ v. Romania (no. 16915/21)

Court Decision of February 24, 2024

This case highlights the obligation of Council of Europe member states to protect and guarantee the freedom of expression of judges, particularly when they are dealing with matters of high public interest. The ECtHR reaffirmed that judges should not be punished for expressing opinions on matters affecting the fairness and independence of the judiciary. To the contrary, such actions constitute a violation of Article 10 of the ECHR (freedom of expression)1.

The case of Danileț v. Romania [2]at the ECtHR addresses an important issue involving freedom of expression for judges and the limits imposed by the internal disciplinary rules of the Romanian judicial system.

Danileț, who was a judge and a well-known public figure for his stances in favor of judicial reform in Romania, was punished by the High Council of Justice due to several of his posts and public statements, in which he criticized problems with corruption and political interference in the Romanian judicial system, as well as failures in implementing justice reforms.

On January 9, 2019, Danilet posted the following text on his Facebook page:

> "You *may have noticed a series of attempts to attack, disrupt and discredit institutions, such as the General Directorate of Information and Internal Protection, the Romanian Intelligence Service, the police, the National Anti-Corruption Directorate, the gendarmerie, the High Court of Cassation and the Public Prosecutor's Office of Justice, the High Court of Cassation and Justice and the army. The attacks in question did not simply happen by chance after 'abuses committed by the powers that be'. Do people understand what it means to weaken these institutions or, worse, to return the services, the police, the courts and the army to political control?...".*

On January 10, 2019, again on his Facebook page, the judge posted a link to a press article titled:

> "A *prosecutor sounds the alarm. Living in Romania today poses a great risk. The red line has been crossed when it comes to the justice system,"* which was published on a national news website.

In the interview on which the article in question was based, C.S, a prosecutor, had given his perspective on the way the public prosecution was handling criminal cases and on the difficulties prosecutors faced in handling the cases assigned to them.

1 Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring audiovisual, television or cinematographic broadcasting enterprises to hold licenses.
2 European Court of Human Rights, case Danileț v. Romania, No. 16915/21, 24 February 2024.

Following these posts, the Judicial Inspection Board (JI) initiated disciplinary proceedings against Danilet for violating the honor and reputation of the judiciary. Referring to the provisions of the Code of Ethics for Judges and Prosecutors, the JI claimed that Danilet had failed to fulfill his duty and had thereby damaged the good reputation of the judiciary.

Consequently, the Disciplinary Board considered that Danilet had violated the rules of conduct generally applicable to judges and prosecutors, causing harm to the justice system as a whole, and ordered that his salary be reduced by 5% for two months. According to the board, this sanction would serve as a warning of the possible consequences of adopting similar behaviors in the future.

The applicant appealed this decision to the Supreme Court, arguing that the disciplinary decision was unlawful and unfounded. He claimed that there was no evidence, including statements received from the Judicial Inspection Board, of any harm caused to the good reputation of the judiciary. The duty of discretion, he argued, applied only to the office of a judge and to the pending cases assigned to him, not to his engagement with the community.

Meanwhile, the Supreme Court dismissed the appellant's appeal and upheld the disciplinary decision, reasoning that the Disciplinary Board, in reviewing the legality of the sanction, had taken into account all the essential elements of the disciplinary case.

Meanwhile, the ECtHR, after examining the case, found that the domestic courts had failed to pay due attention to several important factors, in particular with regard to the broader context in which the applicant's statements had been made, his participation in a debate on matters of public interest, the question of whether the value judgments expressed had been sufficiently based on facts and, finally, the potentially chilling effect of the sanction.

Furthermore, the existence of an attack on the dignity and honour of the profession of judge had not been sufficiently demonstrated. In their decisions, the domestic courts had not given the applicant's freedom of expression the weight and importance it deserved in the light of the Court's case-law, even though a means of communication (namely a publicly accessible Facebook account) had been used which could have raised legitimate questions regarding the respect of the duty of restraint by judges. Consequently, the Romanian courts had not provided relevant and sufficient reasons to justify the alleged interference with the applicant's right to freedom of expression.

In this way, the ECtHR:

- It confirmed the importance of freedom of expression for judges, especially when they deal with issues of great public interest, such as corruption and justice reforms.

- Express concern that punitive measures against Danileț could create a chilling effect on other judges, discouraging them from speaking out on issues that affect the independence of the judiciary.

- It stressed that freedom of expression must be balanced with the obligation of judges to maintain public confidence in their impartiality and integrity. However, in this case, the Court considered that the punishment was disproportionate and violated Danileț's right to express his opinions.

Consequently, the ECtHR ruled that the disciplinary punishment against Danileț constituted a violation of Article 10 of the ECHR, emphasizing the importance of freedom of expression for judges as a critical element for protecting the independence of the judicial system and strengthening democracy.

2. Case of Humpert and others v. Germany

(No. 59433/18, 59477/18, 59481/18 and 59494/18) Bottom of Form

Judgment of December 14, 2023

This case highlights the rights and limitations of trade unionism for civil servants in the context of their obligations to the state. The ECtHR ruled that a ban on strikes for teachers with civil servant status in Germany did not constitute a violation of Article 11 of the Convention (freedom of peaceful assembly and of trade union membership) 3, arguing that this restriction was intended to guarantee the effective functioning of the public administration and the sustainability of educational services .

The case of Humpert and Others v. Germany [4]provides an important precedent on the limits of trade union rights for civil servants and how these rights may be restricted in the interest of the effective functioning of the state and the protection of fundamental rights.

The case involved four German public school teachers with civil servant status who were punished for participating in strikes over working conditions organized by their trade union during working hours. They were subsequently subject to disciplinary proceedings by the competent authorities for breach of their duties as civil servants due to their participation in strikes during working hours.

The competent authority issued a disciplinary decision against them, imposing administrative fines for unauthorized absence from work. They were also ordered not to continue the strike.

As a result of these decisions, the applicants applied to the local administrative courts with a view to annulling the disciplinary decisions, but these failed, as all the administrative courts found that the applicants had breached their professional duties by participating in these strikes.

The applicants, all of whom were legally represented, subsequently lodged separate constitutional complaints with the Federal Constitutional Court against the disciplinary decisions imposed on them, confirmed by the administrative courts. They alleged that the decisions, which resulted in the prohibition of strikes by teachers with civil servant status, had violated their right to form associations for the protection and improvement of working and economic conditions. They argued that the administrative courts had failed to interpret national law in accordance with public international law, since the prohibition of strikes

3 Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
4 European Court of Human Rights, Case Humpert and Others v. Germany, Nos. 59433/18 , 59477/18 , 59481/18 and 59494/18), 14 December 2023.

by teachers with civil servant status, who did not hold positions involving the exercise of essential elements of public authority, violated, in particular, Article 11 of the Convention.

The Federal Constitutional Court found that the disciplinary decisions against the applicants had not violated the applicants' right to form associations to protect and improve working conditions. Furthermore, in the Federal Constitutional Court's opinion, the prohibition of strikes by civil servants under German law was also compatible with Article 11 of the Convention and with that court's case-law on the right to strike.

The parties, claiming that the ban on civil servant strikes constituted a violation of Article 11 of the Convention (freedom of peaceful assembly and of trade union membership), filed a complaint with the ECtHR .

After examining the complaint, the ECtHR found that the ban on the teachers' strike was in accordance with German law and aimed to ensure the effective functioning of the public administration. Teachers, as civil servants, had special obligations to guarantee the sustainability of public services, particularly in the education sector.

The Court noted that, although German law did not expressly prohibit civil servants from going on strike, under Article 47 of the Civil Servants' Statute, which applies to civil servants, civil servants commit disciplinary offences if they breach their duties. According to that law, such duties include the duty to devote themselves fully to the exercise of their profession. Consequently, civil servants must not be absent from work without leave.

The court also noted that, although teachers did not have the right to be absent from work, they could defend their professional interests through institutional dialogue and collective bargaining mechanisms.

Consequently, the ECtHR upheld the interpretation of the Federal Constitutional Court of Germany, stressing that the ban was made in accordance with international law and the ECHR.

The court stressed that, although some countries are moving towards allowing strikes for civil servants, the ban in Germany was in line with international practice and within the State's margin of appreciation for regulating public services.

3. Case of Sanchez v. France [Dhm]

(No. 45581/15)

Judgment of May 15, 2023

The ECtHR found that public figures who administer any public space on the internet have an obligation to take measures to prevent the spread of hate speech and discriminatory comments by third parties. The ECtHR confirmed that while freedom of expression is a fundamental right, it is not protected when used to spread hatred and violence against certain groups.

The case of Sanches v. France [5]deals with the liability of a politician for failing to remove Islamophobic comments posted by third parties on his personal "wall" on the social network Facebook during an election campaign.

The applicant was a local councillor and was running for election to Parliament for the National Front (FN) party. In September 2011, the applicant posted a message on his Facebook account, which was followed by comments from third parties with Islamophobic and inflammatory content against persons of the Muslim faith. The comments remained visible for a period of time without being deleted by the applicant, despite him being informed of their content. The following day, the applicant posted a message on his "wall" inviting users to be more careful with the content of their comments; however, he did not intervene in relation to the comments posted.

Consequently, in 2013, the applicant and the aforementioned commentators were convicted of inciting hatred or violence against a group or individual because of their origin or the fact of belonging or not to a particular ethnic group, nation, race or religion.

In particular, the decisions found that the comments clearly identified the group in question, namely persons of the Muslim faith, and that the association of the Muslim community with crime and insecurity was likely to arouse a strong feeling of rejection or hostility towards that group. The applicant was found guilty as the main perpetrator. He had created an online communication service (the Facebook "wall") and made it open to the public, and had therefore assumed responsibility for the content of the offensive comments posted. Furthermore, his status as a politician required him to be even more careful. In the present case, he had not acted immediately to stop the dissemination of those offensive comments. The two commentators were found guilty as accomplices.

In this regard, Sanches appealed to the ECtHR claiming that his sentence violated his right to freedom of expression under Article 10 of the ECHR.

In May 2023, the ECtHR ruled that there had been no violation of Article 10. The Court reasoned that the intervention of the French domestic authorities had been "necessary in a democratic society". According to the ECtHR, the decisions of the domestic courts were sufficiently well-founded and reasoned as to the responsibility attributable to the candidate, in his capacity as a politician, for the unlawful comments posted on his Facebook "wall" by third parties on the eve of the elections.

5 European Court of Human Rights, Case Sanches v. France, No. 45581/15, Judgment of 15 May 2023.

According to the ECtHR, the purpose of the sentence was justified, as it aimed to protect the rights and reputation of others (especially the Muslim community) and to prevent the spread of hate speech.

The ECtHR emphasized that public figures, including politicians, have a greater responsibility to protect democratic norms and the rights of others, due to the influence exerted by their position. The Court emphasized that the Islamophobic comments remained on the applicant's account and were not deleted until after the authorities intervened. The ECtHR considered this failure to act as a breach of the standards of responsibility, noting that the applicant, as the administrator of the account, should have taken measures to prevent the spread of violence. Accordingly, according to the ECtHR, the decision was not excessive and was proportionate to the aim of protecting the rights of others.

This case creates an important precedent for the maintenance of social networks and sets clear standards for the responsibility of administrators of public platforms in protecting human rights and combating discrimination.

4. Case of the UK v. the Netherlands

(No. 71008/16)

Judgment of April 23, 2024

National authorities may detain asylum seekers on the grounds of their unauthorized entry even after their asylum application has been lodged and pending a decision. However, detention for immigration purposes must be based on national law and must not be arbitrary, meaning that there must be a sufficiently close connection between the detention for immigration purposes and the prevention of unauthorized entry. Failure to do so constitutes a violation of Article 5, para. 1 (f) of the 6ECHR (Right to liberty and security - Arbitrary detention of asylum seekers and aliens).

In the case of UK v. Netherlands[7], the ECtHR addresses the issue of the detention of an asylum seeker for immigration reasons, after the end of pre-trial detention and while awaiting a decision on his asylum application.

The applicant is a Syrian national who entered the Netherlands in October 2015 and applied for asylum. Shortly thereafter, he was arrested on suspicion of participation in a terrorist organization between March 2013 and October 2015 and placed in detention.

In August 2016, the criminal court sentenced the accused applicant to ten months in prison (deducting the time he had spent in pre-trial detention). The criminal court's decision was based on several pieces of evidence (e.g., the applicant's statements, the witness statements, a message from the applicant in 2013, a WhatsApp conversation from 2015, and photos and videos found on his mobile phone).

Both the prosecutor and the applicant appealed this decision. Consequently, in a 2017 court decision, the second instance court partially dismissed the appeal due to lack of jurisdiction for one of the charges and, as regards the other charges, acquitted the applicant for lack of sufficient evidence.

The applicant's detention was terminated on 23 September 2016. On the same day, he was detained for immigration purposes pending the assessment of his asylum application, on the grounds that the applicant represented a threat to national security or public order on the basis of his criminal conviction, and to enable the authorities to examine his asylum application.

The applicant remained in immigration detention until December 2016, when a less restrictive measure was imposed: he had to report to the authorities every day and request permission to move outside the municipality where he lived. The Dutch authorities justified his detention by relying on Article 5, paragraph 1(f) of the ECHR, which allows the detention of an individual to prevent his unauthorized entry into a State. They argued that the asylum seeker had not yet formally entered the

6 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty except in the following cases and in accordance with a procedure prescribed by law: when he is arrested or detained lawfully in order to prevent his unauthorized entry into that country, or if deportation or extradition proceedings are being carried out against him.
7 UK v. Netherlands, Application No. 71008/16, 23 April 2024.

Netherlands in the legal sense of entry, even though he was physically present on the territory of the country. This measure was lifted in 2018, and his asylum application was approved.

The ECtHR found that, at the time of the applicant's detention, the national authorities had not taken a decision on his asylum application. In this context, the right to remain in the territory of a State while awaiting the outcome of an asylum application cannot be equated with the right to a residence permit. Therefore, the applicant's detention on the grounds of "unauthorized entry" was in accordance with Article 5, para. 1 (f) of the ECHR.

As regards the arbitrariness of the applicant's detention, the Court examined whether there was a sufficiently close connection between the detention for immigration purposes and the aim of preventing his unauthorized entry. Furthermore, during the applicant's detention on remand (November 2015 - September 2016), the authorities did not take any measures to assess his asylum claim. On the contrary, the authorities conducted asylum interviews when the applicant was in detention for immigration purposes (September 2016 - December 2016). Consequently, this detention for immigration purposes appears disproportionate and unnecessary, since many of the steps required for the assessment of the asylum claim could have been taken during detention under criminal law, without the need to subsequently keep the applicant in detention for immigration purposes.

The Court noted that the Dutch authorities had used national security and public order as justification for the applicant's detention after his release from criminal detention. However, the ECtHR emphasized that detention for public order purposes was not compatible with Article 5(1) (f), as this provision only concerned detention to prevent unauthorized entry or to enable an individual to leave the country.

If a person has completed his criminal detention, he cannot be detained on grounds of national security under the guise of an immigration detention. Consequently, the ECtHR found that the applicant's detention for immigration purposes was extended without sufficient reasons and without the authorities taking active steps to examine his asylum application. If the aim had been to assess his asylum application, the authorities could have taken the necessary steps during the criminal detention and not afterwards.

In view of the above, the Court finds that the Netherlands has violated Article 5 § 1(f) of the ECHR by arbitrarily detaining the applicant for immigration purposes pending his application for asylum on grounds of public order.

This decision strengthens the standards on the limits of immigration detention and emphasizes that detention cannot be used as a covert means to justify detaining an individual for reasons of public order or national security.

5. Case of pricope v. romania
(No. 60183/17)

Judgment of May 30, 2023

Member States must ensure a fair balance between freedom of expression and the right to protection of reputation, ensuring that criticism of public figures is not unfairly penalized.

The case of Pricope v. Romania [8]addresses a conflict between the right to freedom of expression and the protection of individuals' reputation, emphasizing the importance of the public interest.

The applicant was a local journalist and activist who published statements critical of the activities of PV (a well-known local businessman), alleging that the latter was involved in corrupt practices. The applicant alleged in his writings that these activities had negatively affected the automotive industry in his area, leading to the decline of the local factory, which was a key source of employment and the economy in that region.

As a result, P.V brought a defamation action against the applicant, seeking compensation for the damage he alleged had been caused to his personal reputation and the company's image.

In his response to the lawsuit and throughout the proceedings, Pricope elaborated on all the sources he relied on and which had motivated him to write such a thing. He also emphasized that the published articles had nothing to do with his private figure, but only with his public one, and pointed out that he had not used any offensive or derogatory words in his writings.

However, the first instance court initially dismissed the lawsuit, emphasizing that the expressions used fall within the limits of permitted criticism for public figures, limits that are broader in relation to ordinary individuals.

Following P.V's appeal, the second instance court found that the lower court had failed to examine the entire factual context and respond to all the claims presented before it. It annulled the decision and remanded the case for retrial.

The first instance court then reversed the decision, ruling in favor of P.V and pointing out that the plaintiff had contributed to the bankruptcy of the factory through illegal activities. The court also found that the derogatory terms used to describe the plaintiff violated the plaintiff's right to dignity.

According to the court, regardless of the sources used, journalists are obliged to verify the accuracy of the source of information. The court also stressed that the applicant could not claim protection under Article 10 of the Convention as a journalist, because he did not have this status: "he *is an economist and did not study journalism, while journalists have a special status which consists of rights and obligations that they must respect when publishing their articles*".

The applicant then turned to the ECtHR , claiming that the court decisions ordering him to pay damages for articles he had written for the company and the domes-

8 European Court of Human Rights, Case Pricope v. Romania, *(Application no. 60183/17) , Strasbourg, 30 May 2023.*

tic courts' findings that he was not entitled to the protection afforded to journalists had violated his right to freedom of expression.

The ECtHR considered the balance between Pricope's right to freedom of expression, protected by Article 10 of the ECHR, and P.V's right to protection from defamation and to the protection of his reputation, guaranteed by Article 8 [9]of the Convention.

The court considered that the applicant's articles dealt with a matter of public interest, in particular the decline of the most important domestic industry and the role that corruption and mismanagement allegedly played in this regard.

In conclusion, the ECtHR found that the decision of the national courts to restrict the applicant's freedom of expression in this case was not supported by relevant and sufficient reasons for the purposes of the "necessity" test under Article 10 § 2 of the Convention [10].

Consequently, the court held that the applicant's conviction for defamation by the domestic courts had been accompanied by a violation of Article 10 [11]of the Convention (Freedom of expression), since the national courts had not adequately justified the restriction on Pricope's right to freedom of expression.

The ECtHR found that the domestic courts had failed to properly balance the right to freedom of expression with the right to protection of reputation. They had given absolute priority to reputation, ignoring the public interest dimension of the statements. Consequently, the Court noted that these measures could create a chilling effect on journalists and citizens seeking to report on similar matters.

Thus, the decision protected the right of journalists to inform the public on issues related to corruption and economic impacts, setting a precedent for the protection of freedom of expression in similar cases.

9 Everyone has the right to respect for his private and family life, his home and his correspondence.
10 The exercise of freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or sanctions as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the dignity or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.
11 Everyone has the right to freedom of expression. This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring audiovisual, television or cinematographic broadcasting enterprises to hold licenses.

6. Case of Tershana v. Albania (No. 48756/14)

Court Decision of November 04, 2020

Member States are obliged to ensure full, effective and impartial investigations into cases of gender-based violence, and to guarantee effective access to justice for victims, giving them the right to appeal against the decisions of the investigative authorities. Failure to do so constitutes a violation of Article 2 of the ECHR (right to life)[12] from a procedural point of view.

In the case of *Tërshana v. Albania*[13], the ECtHR highlighted the state's obligation to protect individuals from gender-based violence and to ensure a full and effective investigation into the perpetrators of these crimes.

This case concerns a serious attack on the plaintiff in 2009 in Tirana, when an unknown person attacked her by throwing acid at her and burning a large part of her body. As a result of the serious injuries suffered in this attack, the plaintiff lost her ability to work for several years.

The plaintiff had repeatedly raised suspicions that the attack was committed by her ex-husband, due to his revenge against her, as well as his past of threats of death and constant violence. The plaintiff had also testified that the ex-husband had a proven criminal record, and possessed weapons.

Although the plaintiff had presented other evidence suggesting direct links between the attack and her ex-husband, the state authorities failed to gather sufficient evidence to enable the identification of the perpetrator of this attack.

Consequently, on 2 February 2010 the prosecution, with a reasoned decision, decided to suspend the investigation into the offence in question, for further actions to identify the perpetrator. The decision described all the evidence obtained and the statements given by the complainant and other persons, and that the perpetrator of the attack could not be identified. On the other hand, the plaintiff had not received any other official communication after the initiation of the investigation by the prosecution, and had not accepted the decision to suspend the investigation. However, even if she had accepted such a decision, the right of appeal against the decisions of the prosecution was not allowed.

The plaintiff also filed a lawsuit for damages against the Ministry of Justice, seeking compensation from the state as a result of the attack suffered, as well as to be exempted from paying court fees due to lack of financial means and to have the amount of damages determined by experts. However, because she was unable to pay the court fees, she withdrew her lawsuit.

12 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally except in the execution of a judicial sentence of death following conviction for a crime for which such a penalty is provided for by law.
13 European Court of Human Rights, Case Tërshana v. Albania, No. 48756/14, Judgment of 04 November 2020.

Alleging that the authorities had failed to protect her life and her right to respect for her private life under Articles 2[14], 3[15], 8[16], 13 [17]and 14 [18]of the ECHR, the applicant turned to the ECtHR.

Consequently, the ECtHR in its decision found that Albania was not responsible for the attack itself, but for the lack of a full and effective investigation. The ECtHR therefore found that the Albanian authorities were not responsible for a violation of Article 2 from its substantive point of view, but for a violation of this article from a procedural point of view, given the nature of the offence in question, namely gender-based violence. The decision therefore highlighted the failure to carry out the investigative measures with due speed and determination, as well as the applicant's inability to appeal the decision to suspend the investigation.

Consequently, the lack of a full and effective investigation by the Albanian authorities was considered a violation of the right to life, due to the consequences this failure has for victims of domestic and gender-based violence.

The decision also emphasizes the need for increased vigilance in cases involving domestic violence and the importance of an effective response to prevent impunity for perpetrators of these acts.

This case highlights the position of the ECtHR on cases where states fail to fulfil their legal obligations to take appropriate actions and measures to protect the right to life through effective investigations and protective measures, with the aim of strengthening the protection framework for victims of domestic and gender-based violence.

14 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally except in the execution of a judicial sentence of death following conviction for a crime for which such punishment is provided by law.
15 No one shall be subjected to torture or to inhuman or degrading treatment or punishment.
16 Everyone has the right to respect for his private and family life, his home and his correspondence.
17 Everyone whose rights and freedoms as set forth in this Convention are violated has the right to an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
18 The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

7. Case of Simonova v. Bulgaria (No. 30782/16)

Court decision of April 11, 2023

Member States are obliged to balance the public interest with individual rights, particularly when it comes to the demolition of unauthorized buildings involving families with minor children. In such cases, States must take concrete steps to avoid the serious social consequences resulting from such decisions, ensuring that any intervention is proportionate and takes into account the individual circumstances of those affected. On the contrary, such actions constitute a violation of Article 8 of the ECHR (Right to respect for private and family life).[19]

In the case of "Simonova v. Bulgaria"[20] The ECtHR addresses the issue of demolition of unauthorized constructions and the right to respect for the home under Article 8 of the ECHR.

The applicant, Simonova, is a Bulgarian national and the mother of seven minor children. In 2008 she purchased a plot of land and agricultural land, and after construction she and her children began to live there. The building had no electricity, water supply, or sewage system.

In March 2015, following a boundary dispute with the owner of the neighboring land, local authorities issued an order to demolish the building, arguing that it had been built almost entirely on the neighboring land and that it was illegal, as it did not have a certificate of compliance with building regulations and was used for residential rather than agricultural purposes.

After discussions about alternative housing options for the applicant and her children, she refused the assistance of social services and stated that they would be moved to relatives. The execution of the demolition order was postponed until November 2017, when the roof and one of the walls of the house collapsed. Later, the applicant Simonova rebuilt the building and continued to live there.

The local Administrative Court and then the Court of Appeal upheld the demolition order, stating that the construction was in breach of urban planning regulations and the conditions set out in the building permit. Among other things, the court noted that there was no evidence that the building could be legalized, as it did not meet the necessary criteria, and that the public interest in respecting the building regulations outweighed the applicant's personal interests.

The domestic courts also accepted that the demolition of the building would leave the family homeless, but noted that the applicant had had the opportunity to apply for social assistance or alternative accommodation, which she had refused. The courts also stressed that the social situation did not justify her staying in an illegally constructed building.

The applicant then complained to the ECtHR that the March 2015 order to demolish the building in which she

19 A public authority may not interfere with the exercise of this right except to the extent provided by law and when necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.
20 European Court of Human Rights, Case Simonova v. Bulgaria (Application No. 30782/16), 11 April 2023.

lived with her children had disproportionately interfered with her right to respect for her home, based on Article 8 of the ECHR .

The ECtHR found that the interference with the applicant's right to respect for her home was in accordance with the law and pursued a legitimate aim. However, the national authorities failed to strike a fair balance between the public interest and the individual's right to respect for their home, particularly given that the demolition would leave a family with minor children homeless.

According to the ECtHR, the authorities failed to take into account all relevant factors and failed to provide adequate housing for the applicant and her children. According to it, the demolition was not necessary in a democratic society and, consequently, it found a violation of Article 8 of the ECHR because the Bulgarian authorities failed to take into account the applicant's individual circumstances and failed to carry out a proportionality assessment of the interference with the applicant's right to respect for her home.

According to the ECtHR, the demolition order itself did not contain any analysis of whether it would disproportionately affect the applicant in light of her particular circumstances. Furthermore, there is no evidence that, when issuing the order, the competent authority attempted to balance the aim pursued by its order with the applicant's individual circumstances.

According to the ECtHR, the domestic authorities should have regard to the risk that a family consisting of at least four minor children would be left homeless, and that such action should be accompanied by steps aimed at adequately alleviating the serious difficulties arising from it, for example, genuine steps by social or other authorities aimed at ensuring that the applicant and her children will be able to find suitable alternative accommodation immediately.

The authorities therefore did not offer the applicant a complete solution, as the only proposal made was to temporarily place her children in accommodation managed by social services. The delay in implementing the demolition order, although it undoubtedly gave the applicant a certain time limit, did not lead to a proper solution to the problem she was facing.

This case highlights the obligation of national authorities to balance the public interest with individual rights, particularly in situations involving families with minor children and the risk of homelessness as a result of the demolition of unauthorized buildings.

8. Case of Bagirova and others v. Azerbaijan
(No. 37706/17 and others)

Judgment of August 31, 2023

Member States are obliged to follow procedures prescribed by law when expropriating private property and to ensure that interferences with property rights are based on law and proportionate to the aim pursued. If these procedures are not respected, such interferences constitute a violation of Article 1 of Protocol No. 1 to the[21] ECHR (right to property), infringing the principle of legal certainty and the protection of private property.

The case of Bagirova and others v. Azerbaijan[22] of the ECtHR deals with the case of six Azerbaijani citizens who owned property (private houses, parts of houses or apartments) in an area where the national authorities intended to implement a project to improve road traffic infrastructure.

To this end, in 2013, the national authorities issued an order for the vacating and demolition of properties in that area, which were to be purchased under sales contracts (concluded on a voluntary basis).

In 2015, the Cabinet of Ministers adopted an order for the expropriation of these properties for state needs, in particular for the purpose of building roads and other transport networks. The applicants' properties were demolished on various dates in 2015-2016. Following the demolition, some of the applicants entered into purchase and sale contracts and received compensation according to the valuations made by a private appraiser contracted by the state authorities.

In a series of court proceedings (including some initiated by the applicants who had concluded purchase and sale contracts seeking their annulment), the domestic courts ordered the applicants' expropriation against compensation. The applicants argued in the proceedings that there had been no need for the State to expropriate their properties as the roads to be improved in the area were of only local importance. They further argued that the 2015 Cabinet of Ministers' decision had failed to specify the State's need in question and that it had referred to the General City Development Plan which had covered the period up to 2005 and was therefore no longer in force at the time of the events in question.

The applicants further argued that the appointment of an evaluation commission and an independent assessor could only have been made following a decision adopted by the Cabinet of Ministers. They also contested the amounts offered or paid to them, arguing that they had not been in line with the market value of their properties.

21 Every natural or legal person has the right to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
22 European Court of Human Rights, Case of Bagirova and Others v. Azerbaijan (Application No. 37706/17 and others), Judgment of 31 August 2023.

As regards the purchase contracts, the applicants argued that they had no choice but to sign them because living conditions, as a result of the demolition works taking place around them and the frequent cuts in the provision of municipal services, had become very difficult.

The domestic courts rejected all the applicants' claims, finding that the expropriation of the applicants' properties in exchange for the proposed compensation was in accordance with the requirements of domestic law and that the amounts offered or paid to them under the sales contracts had been adequate. The courts considered that those contracts had been concluded voluntarily and in accordance with the provisions of domestic law and that the applicants had not adduced any evidence to the contrary.

Alleging a violation of Article 1 of Protocol No. 1 to the ECHR, the applicants applied to the ECtHR. After examination, the ECtHR held that the order for the expropriation and demolition of the applicants' properties constituted an interference with their right to property under Article 1 of Protocol No. 1 to the ECHR.

According to the ECtHR, the national authorities failed to follow the domestic procedure for the expropriation of private property for state needs. The decision of the Cabinet of Ministers of 11 November 2015 concerned only the preparatory phase of the expropriation procedure and that none of the subsequent procedural steps provided for by domestic law were taken. In particular, the Cabinet of Ministers had never issued a decision on the expropriation and on the involvement of an independent assessor, who had in fact been involved in the procedure without such a decision.

The ECtHR reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions must be lawful. Consequently, the above considerations are sufficient to conclude that the domestic procedure for the expropriation of private property was not followed in the cases at issue. Accordingly, the interference with the peaceful enjoyment of the applicants' possessions was not carried out in accordance with "the conditions laid down by law".

In view of the above, the ECtHR found that the Azerbaijani authorities had violated Article 1, Port. No. 1 of the ECHR, because there was no legal basis for the interference with the applicants' peaceful enjoyment of their possessions.

This decision underlines the obligation of national authorities to follow procedures provided for by law when expropriating private property and to ensure that interferences with property rights are based on law and proportionate to the aim pursued.

9. Case of Macate v. Lithuania (No. 61435/19)

Judgment of January 23, 2023

The court found that restricting children's access to literature dealing with same-sex relationships is incompatible with the notions of equality, pluralism and tolerance in a democratic society. She also stressed that such restrictions could contribute to the spread of stereotypes and discrimination against the LGBTI+ community.

The case of Macate v. Lithuania [23]addresses an issue related to the rights of the LGBTI+ community, highlighting the challenges of balancing individual freedom of expression with the potential impact of certain content on the development and well-being of children.

The applicant was a Lithuanian writer who, in December 2013, published a children's book entitled "Hearts of Glass", which contained six fairy tales. The book was published by the Lithuanian University of Educational Sciences, with partial funding from the Ministry of Culture. The book, which was aimed at nine/ten-year-old children, contained an adaptation of traditional fairy tales. Two of the six fairy tales in the book were about same-sex relationships and marriages.

In March 2014, the Ministry of Culture initiated a complaint alleging that the book "encouraged perversions". The ministry asked the competent authority to assess whether the book could be harmful to children. At the same time, following a letter sent by eight members of the Lithuanian Parliament, the University suspended the distribution of the book.

In April, the assessment concluded that the two contested fairy tales were not in compliance with a national provision according to which any information that "expresses contempt for family values" or "promotes a different concept of marriage and family formation than that provided for in the Constitution or the Civil Code" is considered to have a negative effect on minors.

The authority recommended that the book be labeled with a warning that it could be harmful to children under 14. Consequently, in 2015, the book resumed distribution with the warning label, while the applicant initiated a civil lawsuit against the University, arguing that the depiction of same-sex relationships cannot be considered harmful to children of any age.

Lithuanian courts dismissed her claim, upholding the authorities' decisions and finding that the book could cause harm to children, some messages were too sexually explicit, and the way in which the stories depicted a new family model raised the question of whether children's storybooks depicting same-sex relationships are a way to express one's opinion and provide information.

The applicant then turned to the ECtHR, alleging violations of Article 10 (freedom of expression) and Article 14 (prohibition of discrimination) of the ECHR.

After examining the matter, the ECtHR found that the contested measures constituted an interference with

23 European Court of Human Rights, Case Mocate v. Lithuania, (no. *61435/19*), Judgment of 23 January 2023.

the applicant's exercise of freedom of expression, protected by Article 10 of the ECHR. The Court found that the measures against the author's book were intended to limit children's access to information that presented same-sex relationships as equivalent to those of the opposite sex.

The court found that there was no scientific evidence to suggest that the content of homosexuality or public debates on the status of sexual minorities would have a negative effect on children. Furthermore, according to the court, restricting children's access to information on same-sex relationships contributes to continued stigmatization and is incompatible with the notions of equality, pluralism and tolerance in a democratic society.

This was the first case in which the ECtHR has assessed restrictions on literature dealing with same-sex relationships, written specifically for children. The decision highlights the importance of freedom of expression and protection against discrimination based on sexual orientation, particularly in the context of education and information for children.

10. Case of Zorina International SRL v. Romania (No. 15553/15)

Judgment of June 27, 2023

Member States have the right to impose measures to control the use of property in the framework of fiscal policies, including sanctions against businesses that violate tax rules. If such measures are provided for by law, pursue a legitimate aim, are accompanied by fair judicial review procedures and are proportionate to the gravity of the violation, then they do not constitute a violation of Article 1 of Protocol No. 1 to the ECHR (right to property).

Zorina case Internaltional SRL v. Romania [24], deals with the issue related to administrative measures taken by the Romanian authorities against a commercial company for violating fiscal rules, raising issues related to the right to the peaceful enjoyment of property, under Article 1 of Prot. 1 of the ECHR .

The applicant company is a commercial company based in Romania. In March 2013, following an inspection, the tax authority reported that the commercial company in question had not issued invoices for the amount of 179 RON (approximately 40 EUR), and that the company representative, who was present, had not provided any explanation in this regard during the inspection.

In this regard, the company was fined 8,000 RON (approximately 1,900 euros) and the amount of 179 RON (approximately 40 euros) was confiscated; also, the company's activities were suspended for a period of three months.

The applicant company applied to the domestic courts, claiming that the sanctions imposed on it had seriously jeopardized its commercial activities, which were based mainly on the sale of perishable goods (food and similar). First, it argued that the sum of 179 RON did not represent the value of the goods that had been sold, but was money held in the cash register to enable it to have sufficient change available for customers.

The applicant company therefore requested that the tax authority's report, and therefore the sanctions, be declared invalid. In the alternative, it submitted that the "sanction" imposed had been disproportionately severe in relation to the amount found to have been unaccounted for and requested that the fine be replaced by a warning. It argued that the amount of the fine had been excessive, having regard to the nature of the company's activities, and that, after all, the suspension of its activities for three months had in itself been too onerous to serve the intended purpose.

The applicant company also claimed that between 2009 and 2014 the tax authority had inspected its activities thirty-six times and had not found any irregularities, except for one case presented in the current application.

24 European Court of Human Rights, Zorina International SRL v. Romania (Application No. 15553/15), Judgment of 27 June 2023

On 7 October 2013 the court dismissed the applicant company's claim. It found that its claims regarding the reason why the sum of 179 RON had been found in the cash register could not be proven, since the tax authority's report had been signed as such by the company's representative, who at that time had not been able to provide any explanation for the money in question.

The court further assessed that both sanctions imposed in the tax authority's report were fair and proportionate, given the fact that the fine imposed represented the minimum amount established by law.

The applicant company appealed against the decision of 7 October 2013, repeating its previous arguments. However, the second-instance court also dismissed the appeal and upheld the decision of the lower court. The court held that the role of the contested sanctions was preventive and educational in nature, and not compensatory. According to that court, the legislature had chosen to penalize acts such as that committed by the applicant company by imposing high fines precisely because official statistics revealed a significant increase in tax offences.

The applicant company complained to the ECtHR that the sanctions imposed on it for failing to issue invoices were disproportionate and therefore did not strike a fair balance between the public interest and its property rights, as provided for in Article 1 of Protocol No. 1.

After examining the case, the ECtHR held that the interference with the applicant's property rights fell within the scope of measures to "control the use of property", and more specifically, in relation to the fine, measures "to secure the payment of taxes or contributions or other penalties", within the meaning of Article 1 of Protocol No. 1 to the ECHR . The cumulative sanctions imposed on the applicant were provided for by law and pursued the legitimate aim of combating tax evasion and improving financial responsibility among traders.

After examination, the ECtHR considered that the sanctions imposed on the applicant were linked to Romania's fiscal policy, which sought to encourage greater discipline and responsibility in the field of business and accounting. Furthermore, the applicant had recourse to fair judicial review procedures. The domestic courts upheld the sanctions, considering them proportionate to such an aim. Such an interference is legitimate if it is provided for in national law, is intended to combat tax evasion (in particular where it constitutes a recurring problem at national level), is accompanied by fair judicial review procedures before the domestic courts, and if the sanction is proportionate to the gravity of the offence (for example, temporary suspension of commercial activities).

In these circumstances, the ECtHR found that there had been no violation of Article 1, Port. No. 1 (Protection of Property) of the ECHR, reasoning that the national authorities had struck a fair balance between the general interest and respect for the applicant company's right to property.

This decision underlines that the imposition of sanctions related to tax evasion constitutes an interference with the right to property, which is legitimate if it is provided for in national law, pursues a legitimate aim, is accompanied by fair judicial review processes and is proportionate to the gravity of the criminal offence.

11. Case of Yordanov and others v. Bulgaria
(Nos. 265/17 and 26473/18)

Judgment of September 26, 2023

Member States may not confiscate assets simply on the basis of a lack of evidence of their lawful origin, without establishing a clear link to an illegal offence. Measures for the seizure of assets must respect the standards of proportionality and the right to a fair trial. Otherwise, such actions constitute a violation of Article 1 of Protocol No. 1 to the ECHR (right to property).

The case "Yordanov and Others v. Bulgaria"[25] deals with the confiscation of illegally acquired assets, the legitimacy of this measure and its impact on property rights, as provided for in the ECHR.

In 2012, Bulgaria adopted the Law on the Seizure of Illegally Acquired Assets, which provided for the seizure of assets for which the legal origin has not been determined. This law separated the seizure from any criminal proceedings, allowing proceedings to be initiated even if the affected person had committed unspecified criminal or illegal activities. The 2012 law replaced the 2005 Law on the Seizure of Proceeds of Crime, which required a criminal conviction and a direct link between the offence committed and the property to be confiscated.

The applicants in this case were three Bulgarian citizens (two residing in Bulgaria and one in Belgium) and a commercial company based in Bulgaria. They had been convicted of offences related to tax evasion and the use of forged documents, offences committed between 2005 and 2013.

The Bulgarian courts also ordered the seizure of their assets under the 2012 Law on Seizure of Assets, concluding that the applicants had failed to prove the lawful source of their assets. After the seizure procedure was completed, part of the seized assets were put up for public sale and sold to third parties. However, the link between the criminal offence committed and the assets to be confiscated was never proven. According to the Bulgarian courts, this link was not required under the 2012 law, as this piece of legislation concerned all assets acquired illegally and not necessarily the proceeds of crime.

After examining this case, the ECtHR found that the seizure of the applicants' assets constituted an interference with their rights under Article 1, Port. No. 1 of the ECHR. The interference had a basis in domestic law (the 2012 Law) and pursued a legitimate aim in the public interest, namely the prevention of the unlawful acquisition of property through criminal or administrative offences. In assessing the proportionality of the interference, the Court found that the 2012 Law retained a significant number of the shortcomings of the 2005 Law, including its very broad scope (e.g., a wide list of offences for which seizure proceedings may be initiated)

25 European Court of Human Rights, Case of Yordano and Others v. Bulgaria, Applications Nos. 265/17 and 26473/18), 26 September 2023.

and its retroactive application (the 2012 Law applies to offences committed years before its entry into force, as was the case in one of the applications).

If domestic law authorizes the seizure of "illegally acquired" assets (i.e. assets for which the lawful origin has not been established), the domestic courts must establish a link between the offence (criminal or administrative) that generated the money to purchase the assets, on the one hand, and the assets subject to seizure, on the other. Failure to do so constitutes a violation of Article 1 of Protocol No. 1 to the ECHR.

These shortcomings made it difficult for applicants to prove the legitimate source of income or the origin of any assets.

In particular, the ECtHR reiterated that a seizure under the 2012 law would have been compatible with Article 1, Port. No. 1 of the ECHR only if the national courts had established a link between the criminal activity (or administrative offence) from which the money used to purchase the assets might have been generated , on the one hand, and the assets subject to seizure, on the other.

In the present case, the Bulgarian courts did not find the existence of a link between the offences (criminal or administrative) and the assets in question. Consequently, the required standards of protection were not met and the interference with the applicants' rights was disproportionate.

Based on the above, the ECtHR found that Bulgaria had violated Article 1, Protocol No. 1 of the ECHR, because the domestic courts failed to establish a connection between the offences (administrative or criminal) and the assets subject to seizure, thus disproportionately restricting the right to property.

This decision confirms that measures to seize assets must respect the standards of proportionality and the right to a fair trial. The case shows that states cannot confiscate assets simply on the basis of a lack of evidence of their lawful origin, without establishing a clear link to an illegal act. Furthermore, the retroactive application of laws and the reversal of the burden of proof undermine legal certainty and the principle of the rule of law.

12. Case of Osmani v. Albania (no. 8706/18)

Judgment of 5 December 2023 [Committee]

In the case of expropriation, the national authorities must provide reasons for the amount of compensation and provide appropriate monetary compensation. Failure to do so constitutes a violation of Article 6, para. 1[26] (Right to a fair trial – Right to a reasoned decision) and Article 1 Port. No. 1 (Protection of property) of the ECHR.

In the case of Osmani v. Albania[27], the ECtHR examined a case concerning the expropriation and compensation of property. In 2010, the national authorities requested the applicant (an Albanian national) to vacate his property for the purpose of building a new road. During that year, some of his buildings were demolished, although the formal expropriation procedure was not completed until 2015.

The applicant brought an action before the domestic courts, seeking compensation for the damage suffered and for the de facto expropriation of part of his land. The national authority involved in the construction of the road stated that the amount of compensation was 20 euros per m2. An expert appointed by the court established that the market price per square meter of the applicant's land was 160 euros.

Later, the expert supplemented the assessment by referring to a piece of national legislation, which fixed the reference price of land per square meter in the framework of compensation procedures for land expropriated during the communist regime. According to this legislation, the applicant's land was valued at 86 euros/m^2. The applicant contested this assessment and requested compensation of 200 euros/m^2.

The Tirana District Court ruled in 2012 that the land had been properly expropriated and awarded compensation of around 20 euros/m^2, a decision that the applicant contested, arguing that insufficient reasons had been given for the amount of compensation.

The applicant therefore complained to the ECtHR that the lack of reasoning in the decisions of the Albanian courts amounted to a violation of his rights guaranteed by the ECHR. After examining the case, the ECtHR found that the Albanian authorities had taken the applicant's property by way of a de facto expropriation without giving a clear consideration to the "public interest" and without providing fair compensation. It was therefore not unreasonable for the applicant to expect full compensation for the damage suffered.

According to ECtHR's assessment, the domestic courts did not provide any reasons on the elements that led them to maintain that position and to reject the other submissions, in particular the expert's proposals.

26 Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which shall decide both on the determination of his civil rights and obligations and on the validity of any criminal charge against him. The decision shall be given in public, but the press and the public may be excluded from the courtroom for the whole or part of the trial in the interests of morality, public order or national security in a democratic society, when the interests of minors or the protection of the private life of the parties to the trial so require, or to the extent strictly necessary in the opinion of the court where, in particular circumstances, publicity would damage the interests of justice.
27 European Court of Human Rights, Case Osmani v. Albania, Application No. 8706/18 Judgment of 5 December 2023.

Therefore, the domestic courts failed to engage properly or provide a specific and clear response to the applicant's main claim.

The national courts are under an obligation to examine with particular rigour and care allegations concerning any possible violation of ECHR rights. In the case at hand, the highest Albanian courts dismissed the applicant's claims without addressing his claim for a possible violation of his ECHR rights due to the lack of reasons for calculating the amount of compensation. In conclusion, the national courts did not provide reasons regarding the amount of compensation and they did not award adequate compensation for the property that the domestic authorities had expropriated from the applicant.

Based on the above, the ECtHR found that Albania had violated Article 6, para. 1, as well as Article 1, Port. No. 1 of the ECHR because the national courts had not given a reasoned decision on the amount of compensation and had not provided adequate compensation for the expropriated property.

This case highlights the crucial importance of respecting fundamental human rights in expropriation procedures, particularly the right to due process and protection of property.

13. Case of Altius Insurance LTD v. Cyprus
(No. 41151/20)

Court decision of October 24, 2023

National courts are under an obligation to deal with relatively minor cases within a reasonable time, in accordance with ECHR standards. Failure to do so constitutes a violation of Article 6 § 1 of the ECHR (Right to a trial within a reasonable time). In relation to the right to a trial within a reasonable time, a national remedy for compensation which requires the applicant to divide his compensation claims by level of jurisdiction (i) impedes the assessment of the overall length of the proceedings and (ii) may affect the amount of compensation awarded. This constitutes a violation of Article 13[28] (Right to an effective remedy) read in conjunction with Article 6 of the ECHR.

In the Altius case Insurance Ltd v. Cyprus[29]. The ECtHR considered a case concerning the length of civil proceedings and the effectiveness of the remedies available to address these delays.

The applicant is a commercial company established under Cypriot law, which acted as a defendant in civil proceedings for breach of contract. Consequently, in 2004, against Altius Insurance Ltd. was brought a civil action for breach of contract. The first instance court dismissed the claim in 2010, after several adjournments of hearings and procedural steps taken by both parties. After an appeal, in 2017, the Supreme Court overturned the decision and ordered the plaintiff company to pay almost 2 million euros in damages, plus legal costs and expenses.

In 2018, the applicant brought a civil action to complain about the overall length of domestic judicial proceedings. The action was brought on the basis of a 2010 national law providing for effective remedies for exceeding a reasonable time limit. In a 2020 decision, the Supreme Court dismissed the applicant's claim regarding the length of the first-instance proceedings on the grounds that the appeal had been filed out of time (one year from the first-instance court's decision).

As regards the applicant company's claim regarding the length of the appeal proceedings, the Supreme Court noted that the overall proceedings lasted almost 7 years, thus exceeding the requirement for a reasonable time; consequently, the applicant was awarded compensation of 5,000 euros.

The Court drew attention to its well-established case-law on the right to a trial within a reasonable time. In the case at hand, the proceedings before the national courts lasted over 13 years (2004-2017). The case concerning the breach of contract did not raise exceptionally complex questions of law. The minor delays attributable to the applicant company due to requests for adjournment of the first-instance proceedings could

28 Everyone whose rights and freedoms as set forth in this Convention are violated has the right to an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.
29 European Court of Human Rights, Altius Insurance Ltd v. Cyprus , application no. 41151/20, 24 October 2023.

not be considered as a significant factor justifying their duration. Furthermore, there were no exceptional circumstances justifying their overall duration.

The ECtHR found that the prolongation of civil proceedings by more than 13 years constituted a violation of Article 6, par. 1 of the ECHR, which guarantees the right to a trial within a reasonable time. The ECtHR also noted that the remedies available in the Cypriot judicial system were not effective in addressing these delays, thus violating Article 13 of the ECHR, which guarantees the right to an effective remedy.

As regards Article 13 of the ECHR, the Court emphasized that a national remedy for the length of proceedings is "effective" within the meaning of that provision if individuals can avail themselves of it to expedite proceedings before the national courts or to obtain adequate compensation for delays that have already occurred. Where a domestic legal system has provided for the institution of proceedings against the State, this action must remain an effective, sufficient and accessible remedy in respect of the excessive length of judicial proceedings. The excessive delays and the extent of the compensation are elements to be taken into account when assessing whether the remedy is sufficient in this respect.[30]

In the present case, the remedy under the 2010 Act did not provide an effective means of expediting the proceedings or of avoiding their excessive length, because there was no evidence that the methods laid down under that law would give a de facto result. Also, the division of compensation claims according to the levels of the judiciary (first and second instance) was contrary to the court's approach to examining the overall duration of the proceedings.

A domestic remedy for excessive length of proceedings is "effective" within the meaning of Article 13 ECHR and Article 35, para. 1 [31]ECHR only if it is able to cover all stages of the proceedings complained of and thus take into account their overall duration.

In view of the above, the ECtHR found that Cyprus had violated Article 13 in conjunction with Article 6, paragraph 1, of the ECHR, by failing to provide effective domestic remedies to award compensation in the event of excessive length of judicial proceedings.

This case clearly demonstrates the importance of guaranteeing the right to a trial within a reasonable time, as well as the need for effective remedies to address the unjustified prolongation of judicial proceedings.

30 See *Bara and Kola v. Albania* , Applications Nos. 43391/18 and 17766/19, 12 October 2021.
31 The Court may deal with the case only after all domestic legal remedies have been exhausted in accordance with the generally accepted rules of international law and within a period of four months from the date on which the final decision was taken.

14. Case of Ben Amamou v. Italy (no. 49058/20)

Judgment of June 29, 2023

In a legal proceeding, when a court decides to rely on a new legal argument, which is raised by ex officio (on its own initiative) and on which the rejection of a complaint is based, it is obliged to inform the affected party. This gives the person concerned the opportunity to present his arguments and to challenge this reasoning, in accordance with the principle of adversarial proceedings and equality of arms. Failure to do so constitutes a violation of Article 6, paragraph 1, of the ECHR (Right to a fair trial).

In the case of Ben Amamou v. Italy[32]. The ECtHR examined the application of a Tunisian national, Mr. Ben Amamou, who alleged that the Italian authorities' refusal to provide him with a fair trial in relation to his claim for compensation following a road accident constituted a violation of his rights as set out in the ECHR.

The applicant is a Tunisian national living in Italy. In 2010, the driver of a vehicle in which the applicant was travelling made a sudden maneuver to avoid a collision with an unidentified vehicle. As a result, the applicant suffered bodily injuries which were assessed as serious to the extent of 85% and permanent incapacity for work.

The applicant brought legal proceedings for compensation against the insurer of the vehicle in which he had been travelling. He claimed compensation as a "simple passenger". In April 2015, the court of first instance dismissed his claim, arguing that one of the two conditions laid down in domestic insurance law had not been met, as the accident had been caused by an unidentified vehicle.

The applicant lodged an appeal with the Court of Cassation seeking the interpretation and application of the rules on compensation in cases of accidents involving unidentified or uninsured vehicles. In 2019, the Court of Cassation dismissed the applicant's appeal, stating that, in cases such as the applicant's, the injured party must exclusively contact the company designated by the Guarantee Fund for Road Accident Victims. The Court of Cassation also noted that a "simple passenger" could act directly against the insurer of his carrier only if it was possible to establish (or assume) the joint liability of the driver of the vehicle in which the "simple passenger" was travelling, a condition that was not met in the case at hand.

The court's decision was therefore based on a new interpretation of the rules on liability in road accidents, arguing that the claimant was not entitled to claim compensation from the insurer of the vehicle as long as joint liability had not been established on the part of its driver. This new interpretation changed the previous understanding of the law, which had previously recognized the right of passengers to claim compensation from the insurer of the vehicle in which they were travelling, regardless of whether their driver was directly responsible for the accident.

32 European Court of Human Rights, B *en Amamou v. Italy* (application no. 49058/20), 29 June 2023.

Consequently, the applicant lodged an application with the ECtHR, alleging that the Italian authorities' refusal to properly examine his case and the lack of opportunity to challenge the decisive legal grounds raised ex officio by the court constituted a violation of Article 6(1) of the ECHR.

After examining the case, the ECtHR found that the Court of Cassation had a duty to inform the parties of the new interpretation of the domestic law, given that it had changed during the proceedings and, therefore, the applicant was not supposed to have been aware of this new interpretation. The Court considered that the reason raised ex officio by the Court of Cassation was new and controversial, as it was still the subject of differing doctrinal opinions and conflicting jurisprudence, which continued even after the Court of Cassation's decision in the applicant's case.

Furthermore, the lack of joint liability determined the outcome of the case and was decisive for the rejection of the applicant's appeal. Furthermore, the issues at stake were not insignificant, because the applicant had not been compensated despite the serious damage suffered by him and its consequences. In this regard, following the judgment of the Court of Cassation, the applicant could no longer rely on the guarantee fund for road accident victims, because the relevant claim was time-barred.

Based on the above, inform the applicant (and other parties) about the replacement ex officio of the causes, considering that the applicant was "caught off guard" and had no opportunity to present his arguments on a question which was decisive for the outcome of the proceedings. Thus, he benefited from the right to a fair trial due to the violation of the adversarial principle.

This decision reaffirms the importance of the principle of adversarial proceedings and equality of arms in judicial proceedings, obliging national courts to inform the parties of any significant changes in the legal reasoning, in order to give them the opportunity to defend their interests effectively.

15. Case of Plechlo v. Slovakia (No. 18593/19)

Court judgment of October 26, 2023

Member States are obliged to provide a clear and effective legal framework that guarantees protection against the misuse of telephone interception during criminal investigations. This protection is particularly important when the interception involves third parties who are not the direct object of the investigation or the interception warrant. The lack of appropriate safeguards and effective mechanisms to protect the rights of such individuals constitutes a violation of Article 8 of the ECHR, which protects the right to respect for private and family life.

In the case of Plechlo v. Slovakia[33]. The ECtHR examined a case concerning the tapping and recording of the applicant's telephone conversations. In 2006, the Slovak courts issued an order for the tapping of telephone calls in the context of an investigation (the 2006 investigation) into suspected corruption within the National Property Fund (NPF). At the time, the applicant, Mr. Plechlo, was a senior official in the NPF, but was not the main target of the investigation, which affected him only because he was in contact with the person who was its target.

The wiretap material was retained by the police and included in the file of a special investigation opened in 2012, following anonymous recordings posted on the internet claiming to originate from a surveillance operation carried out by the Slovak secret services in 2005-2006 ("Operation Gorilla"). The 2012 investigation concerned the NPF, but the applicant was not directly involved.

Later, in 2016, based on information obtained from "Operation Gorilla", another investigation was opened into alleged mismanagement of assets and high-level corruption at the NPF. The applicant was one of the main suspects. Some of the wiretapping materials were included in the file and the applicant was charged. The applicant died in 2022 and his relatives acted on his behalf.

Claiming that the inclusion of the applicant's telephone conversations in the subsequent investigations constituted an interference with Article 8 of the ECHR, namely his right to respect for private life and correspondence, the applicant's relatives turned to the ECtHR.

After examining the case, the court recalled that, for an interference to be compatible with Article 8 of the ECHR, it must be provided for by law and, in the context of secret surveillance, must be accompanied by adequate and effective safeguards.[34]

The fact that the applicant had never been informed of the existence of the wiretapping order had left him with no possibility of challenging this measure in court. The Court also noted that the 2006 wiretapping materials were used 10 years later, in a completely different context, without it having been verified whether their use was lawful and justified. According to the ECtHR, in a system of proper protection of human rights, it should

33 Plechlo v. Slovakia , Application No. 18593/19 , 26 October 2023.
34 See Dragojević v. Croatia, Application No. 68955/11, 15 January 2015.

not be possible for wiretapping materials to be used for an indefinite period without control and without adequate safeguards.

Furthermore, there is no mechanism to protect the rights of persons incidentally affected by wiretapping warrants. In fact, national legislation on wiretapping warrants only provides protection for the rights of people directly affected by such warrants.

In view of the above, the Court found that Slovakia had violated Article 8 of the ECHR, because the interference with the applicant's right to respect for his private life and correspondence was not in accordance with the law for the purposes of Article 8, paragraph 2, of the ECHR, because it was not accompanied by adequate and effective safeguards against abuse.

This decision has important implications for the regulation of telephone interception in the member states of the ECHR, reaffirming that state authorities must guarantee adequate protection for persons accidentally affected by interception and provide effective mechanisms for complaint.

16. Case X v. Greece (No. 38588/21)

Court decision of February 13, 2024

In cases of alleged rape, national authorities have an obligation to conduct effective investigations, inform victims of their rights and take measures to avoid further traumatization, including avoiding contact between the victim and the suspect. States must also take into account the specific circumstances of the case, such as the age of the victim, and conduct a context-sensitive assessment of the credibility of different versions of events, taking into account the results of medical examinations. Failure to do so constitutes a violation of Article 3 (Prohibition of torture)[35] and Article 8 of the ECHR (Right to respect for private life).

In the case of X v. Greece[36], by decision dated 13 February 2024, the ECtHR examined the application of Ms. X, a British national born in 2000, who claimed to have been the victim of rape by a hotel bartender while on holiday in Greece in September 2019.

The applicant, Ms. X, is a British national born in 2000, who claims to have been the victim of rape by a hotel bartender in Greece in September 2019, where she went on holiday with her mother. She made a criminal complaint during the night and her claim was dealt with by several male police officers. She was then taken to the police station where the perpetrator was also present, where she identified him, without any formal procedure being followed. After her request for an official interpreter to give her statement, the police officer informed her that no interpreter was available and assisted her with an unofficial interpreter.

Ms. X and her mother were taken to the hospital, where she underwent a physical examination by a male doctor, who noted fresh bruises and injuries. During and after the examination, she was not given any explanation or documentation of the procedures performed. Furthermore, no measures were taken to avoid her contact with the suspect.

The accused was charged with the criminal offence of rape. After giving his defence statement, he was released pending trial. In accordance with the prosecutor's conclusion, in 2021 the criminal court declared the accused innocent on the grounds that the evidence collected during the investigation (witness statements, forensic report, documents and the accused's statement) did not constitute sufficient evidence to bring criminal charges. At the same time, the decision did not impose costs on Ms. X, because it had not been proven that her complaint was entirely false, grossly negligent or distorted.

However, the applicant did not receive any information about the ongoing process at all times. After an unsuccessful attempt to obtain information on the case through the British Embassy in Athens, in January 2021 the consul finally informed the applicant's representative that the accused had been found not guilty. The consul also suggested that the applicant's family appoint a local lawyer. The applicant and her represen-

35 No one may be subjected to torture or to inhuman or degrading punishment or treatment.
36 European Court of Human Rights, X v. Greece (application no. 38588/21), Judgment of 13 February 2024

tative sent an email to the court and the prosecutor's office, requesting information on the case, as well as access to all police and hospital files, as well as information on the procedure.

The prosecution rejected their request on the grounds that the applicant was not a civil party to the case (she had not stated this in her statement and had paid the relevant fee) and that the relevant time limit had expired. However, the prosecution informed her of the decision to release the accused. The prosecution reiterated its statement to the British Embassy in Athens and added that the applicant had not appeared to testify before the investigating judge the day after the incident and had not appointed a lawyer to represent her.

After examining this case, the ECtHR found that rape and serious sexual violence fall within the scope of Article 3.[37] and Article 8[38] of the ECHR.

Positive obligations under Articles 3 and 8 of the ECHR require States to take measures to avoid secondary victimization in criminal proceedings, and to continue to criminalize and effectively prosecute any non-consensual sexual act, especially in the absence of physical resistance by the victim. To be effective, the investigation must be sufficiently thorough and objective. The authorities must take all reasonable measures at their disposal to obtain evidence relating to the offence in question.

According to the ECtHR, although Greece had an appropriate legal and regulatory framework to deal with rape cases, the national authorities failed to apply it in practice. The authorities failed to adopt a sensitive approach, which was required by the intimate nature of the case, the applicant's young age and the fact that she alleged that she had been raped while on holiday in a foreign country. The domestic authorities failed to conduct an effective investigation, they disregarded the rights and needs of the victim, in addition to the risk of secondary victimization and further traumatization.

Based on the above, the ECtHR found that Greece had violated Articles 3 and 8 of the ECHR due to the lack of an adequate response by the investigative and judicial authorities to the applicant's allegations of rape.

The ECtHR stressed that, in cases of alleged rape, national authorities have an obligation to conduct effective investigations, inform victims of their rights and take measures to avoid further traumatization , including avoiding contact between the victim and the suspect. Courts must also take into account the specific circumstances of the case, such as the age of the victim, and carry out a context-sensitive assessment of the credibility of different versions of events, taking into account the results of medical examinations. Investigative and judicial authorities must follow a gender-sensitive approach.

ECtHR decision emphasizes the responsibility of member states to ensure an effective and sensitive response to cases of rape and sexual violence.

37 No one may be subjected to torture or to inhuman or degrading punishment or treatment.
38 Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except to the extent provided by law and such interference is necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

17. Case of Matyushonok v. Ukraine (no. 34590/06)

Court decision dated July 11, 2024 [Committee]

National authorities have an obligation not to subject prisoners to ill-treatment in prison and to investigate allegations of such treatment. Failure to do so may constitute a violation of Article 3 of the ECHR (Prohibition of Torture).

In the case of Matyushonok v. Ukraine,[39] with a decision dated July 11, 2024, the ECtHR examined the application of a Ukrainian citizen, who is currently serving a life sentence for premeditated murder committed as part of a group.

The applicant, together with other defendants, was convicted in 2005 of premeditated murder and other criminal offences, being sentenced to life imprisonment and confiscation of property. They filed an appeal, requesting a reduction of the sentence and taking into account mitigating circumstances, such as sincere repentance and the applicant's age. The prosecutor also recommended a reduction of the sentence from life imprisonment to fixed-term imprisonment.

In February 2006, the Supreme Court heard the case in the absence of the applicant's lawyer and upheld the lower court's decision, thus confirming the applicant's sentence of life imprisonment.

Since October 2003, the applicant has been subject to systematic ill-treatment in prison by officers, in particular beatings. He complained to the head of the prison and sought medical assistance, but his requests were ignored. Furthermore, the conditions of detention were inadequate (lack of hygiene and cleanliness; lack of drinking water; malnutrition) and the authorities did not provide him with the documents he needed to substantiate his claim before the ECtHR.

Consequently, the applicant before the ECtHR alleged a violation of Article 3 of the ECHR (prohibition of torture and inhuman or degrading treatment), arguing that he was subject to systematic ill-treatment in prison and that the authorities had failed to conduct an effective investigation into these allegations.

The Court recalled that, according to its consolidated case-law, the authorities have an obligation not to subject prisoners to ill-treatment and to investigate effectively any allegations in this regard.

Taking into account the materials submitted and the findings in previous similar cases, the Court found that there was sufficient evidence to support the applicant's allegations of a violation of Article 3 of the ECHR.

39 Matyushonok v. Ukraine , Application No. 34590/06 , 11 July 2024.

The ECtHR ruled that Ukraine had violated Article 3 of the ECHR due to the applicant's ill-treatment in prison and the lack of an effective investigation into these allegations.

This decision confirms the standards set by the ECtHR for the rights of prisoners, emphasizing that member states are responsible for the well-being of persons deprived of their liberty, and failure to guarantee acceptable conditions of detention may constitute a violation of the ECHR, and that prisoners must have free and unrestricted access to legal mechanisms to present their complaints, without any form of pressure or hindrance from the authorities.

This decision sets an important precedent for the protection of prisoners' rights across all ECHR jurisdictions, requiring the improvement of prison conditions and the provision of effective mechanisms for investigating ill-treatment in prisons.

18. Case of Wieder and Guarnieri v. The United Kingdom (No. 64371/16 and 64407/16)

Court decision dated September 12, 2023

If the interception of communications of people living abroad is carried out by national intelligence agencies operating within the territory of the State, then that State is exercising its jurisdiction under Article 1 of the ECHR over the interception process. The interception of communications constitutes an interference with the right to private life if the regime of mass interception is affected by fundamental deficiencies (e.g., the lack of an authorization by an independent authority), and consequently the interference constitutes a violation of Article 8 of the ECHR (Right to respect for private and family life).

In the case of Wieder and Guarnieri v. the United Kingdom[40], the ECtHR examined the claims of two applicants, an American citizen and an Italian, who suspected that their electronic communications had been intercepted and analyzed by British intelligence agencies.

One of the researchers was an IT professional, while the other researcher was a privacy and security researcher who had published research on surveillance and privacy in well-known media outlets such as Der Spiegel. Spiegel and The Intercept. As a result of their work and contracts, the applicants alleged that their communications could have been intercepted, extracted, filtered, stored, analyzed, and distributed by UK intelligence agencies in accordance with the national regime, even though both applicants were located outside British territory.

The applicants initially filed their complaints with the Investigatory Powers The Intelligence and Security Tribunal (IPT), which is the judicial body responsible for overseeing the activities of the intelligence services in Britain. This tribunal is the only instance where individuals can challenge the actions of British intelligence in relation to interceptions and surveillance.

In its decision, the IPT dismissed the applicants' complaint, reasoning that the applicants could not prove that their communications had been specifically intercepted by British intelligence, the existing authorization and oversight mechanisms were sufficient to protect the rights of individuals under UK law, and that the interception system was consistent with national security needs and there was no evidence of its being used abusively against the specific applicants.

Despite the IPT defending the legitimacy of the surveillance system, the ECtHR had previously found a violation of Article 8 in another important case – Big Brother Watch and Others v. the United Kingdom (2018 and 2021). In that case, the ECtHR found that the United Kingdom's surveillance regime had fundamental deficiencies and was therefore in breach of the ECHR.

40 Wieder and Guarnieri v. the United Kingdom , Applications Nos. 64371/16 and 64407/16 , 12 September 2023.

The ECtHR assessed for the first time whether the United Kingdom had jurisdiction over this matter under Article 1 of the ECHR[41]. The Court concluded that the main interference with privacy rights occurred during the processing, examination and use of intercepted communications, which were carried out by intelligence agencies within the territory of the United Kingdom. For this reason, the ECtHR concluded that this State had exercised jurisdiction over the matter and that the complaint was admissible.

In view of the above, the Court considered that the interference with the applicants' rights under Article 8 of the Convention occurred within the United Kingdom and therefore fell within its territorial jurisdiction for the purposes of Article 1 of the Convention[42].

In the present case, the ECtHR found that the United Kingdom's surveillance regime was tainted with fundamental deficiencies. Consequently, the Court found that the United Kingdom had violated Article 8 of the Convention, namely due to: i) the lack of independent authorization, i.e. that the intelligence authorities had wide powers to decide on surveillance, without the need for external and independent oversight; ii) the failure to include categories of selectors in the authorization requirement; iii) and the fact that selectors linked to an individual are not subject to prior domestic authorization.

This decision has important implications for the wiretapping regime in ECtHR member states, reaffirming that states have jurisdiction over any wiretapping conducted within their territory, even if the potential victims are located abroad.

41 The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms set forth in Title I of this Convention.
42 The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms set forth in Title I of this Convention.

19. Radio B92 Broadcasting Company ad v. Serbia
(no. 67369/16)

Court judgment dated September 5, 2023

States have the obligation not only to not interfere unjustifiably with the right of the media to report on matters of public interest, but also to create a legal and institutional environment that guarantees pluralism and freedom of the press. The imposition of financial penalties or the obligation to delete articles from the media must be proportionate and justified by a legitimate aim, to avoid a chilling effect, which could affect media freedom.

In the case of Radio B92 AD Broadcasting Company v. Serbia[43], the ECtHR considered a case concerning the freedom of expression of a Serbian media company.

The applicant, the B92 AD Broadcasting Company, owned a television channel and an internet portal. In November 2011, the evening news reported on an ongoing controversy over the procurement of AH1N1 influenza vaccines in 2009. In particular, the company reported that 12 names, including Z.P (the then Deputy Minister of Health), had been removed from the police list of suspects for abuse of office in connection with the controversy, due to political pressure.

In the following days, news reports and similar articles were published on the company's website. The reporting was based on a note from police officers, who handed it over to the company's journalists. During the reporting, the journalists tried to contact interested persons (including the Z.P).

Following the company's refusal to publish the denial, in April 2012, Z.P initiated civil proceedings against the company. The domestic courts found that the online articles had damaged Z.P's honour and reputation and ordered it to pay damages and costs, in addition to removing the contested article from the internet portal and publishing the decision against it. In 2016, the Constitutional Court concluded that the decisions in question had interfered with the company's freedom of expression, but that the interference had been necessary for the protection of the applicant's rights and reputation and that the remedies were proportionate.

After examining the case, the ECtHR found that the final civil judgment given against the applicant company constituted an "interference by a public authority" with its right to freedom of expression. The interference was prescribed by law and pursued the legitimate interest of protecting the reputation or rights of others, in accordance with Article 10 of the ECHR.

43 B92 Radio Broadcasting Company AD v. Serbia, Application No. 67369/16, 5 September 2023.

In assessing the proportionality of the restriction, the ECtHR focused on several aspects. First, it found that the information in question contributed to a debate of general interest. Second, it held that the person in question was a public figure and, as such, should have shown a greater degree of tolerance given that the information related to alleged irregularities in her work and not to her private life.

Furthermore, the ECtHR stressed that the domestic courts had not properly applied the standards that were consistent with the principles of Article 10 of the Convention, and had not based themselves on an acceptable assessment of the relevant facts, because they had failed: i) to examine the elements of the case that were necessary for assessing the applicant's compliance with his duties and responsibilities under Article 10 of the ECHR ; ii) to provide relevant and sufficient reasons to justify the interference.

In conclusion, the ECtHR found that the interference with the company's freedom of expression was not necessary in a democratic society. It noted that the company's reporting was based on an official document and that the issue of vaccine procurement was of high public interest. The Court stressed that the sanctions imposed could have a chilling effect on the exercise of freedom of expression by the media. It therefore held that there had been a violation of Article 10 of the ECHR, which guarantees freedom of expression.

This decision reaffirms the importance of protecting media freedom and sets clear standards for member states regarding interferences with freedom of expression in matters of public interest. It strengthens the obligations of states to guarantee a legal and institutional environment that promotes media pluralism and prevents the chilling effect on journalists.

20. Vučković v. Croatia (no. 15798/20)

Court judgment dated December 12, 2023

In cases of rape and sexual violence, national courts must carefully consider all relevant considerations relevant to the case (including the interests of the victims and the consequences of the attacks on them). If the second-instance court mitigates the more severe sentence imposed by a first-instance court, it must provide appropriate reasons for the mitigation of the sentence.

Failure to combat violence against women effectively may discourage victims from reporting crimes, which constitutes a violation of Article 3 (Prohibition of torture) and Article 8 of the ECHR (Right to respect for private life).

In the case of Vučković v. Croatia[44], the ECtHR set out key standards for how national courts should handle cases of sexual violence and rape.

The applicant is a Croatian national who worked as a nurse. In 2015, she filed a criminal complaint against her colleague (an ambulance driver), accusing him of sexual violence (touching, grabbing parts of her body, trying to force her to perform oral sex) during shifts together during the period April - June 2015. His actions were accompanied by inappropriate language and threats that he would be fired if she told anyone about what had happened. The police questioned the accused, who in June 2015 was transferred to another position, to work as an ambulance driver in another city.

Ultimately, the first-instance court found the defendant guilty of two counts of indecent assault (any act of sexual nature not amounting to sexual intercourse without consent) and sentenced him to 10 months in prison. The court noted in particular as aggravating factors the fact that the sexual acts had been committed repeatedly and within a short period of time.

In 2019, the second instance court confirmed the conviction, but replaced the prison sentence with community service, which was regularly carried out until November 2020. The second instance court found that community service would have served the purpose of the sentence, given that four years had passed since the attacks and the perpetrator had not committed any other crime. The decision was final and unchangeable by constitutional review.

In 2018, the applicant filed a claim for damages against the defendant and her employer, and another claim against her employer for discrimination. Both civil proceedings are still pending in the court of first instance. The applicant had been on medical leave for several periods as a result of the injury to her arm caused by the violence of the MP towards her (June 2015), post-traumatic stress disorder (July - September 2015) and acute psychological state caused after the final decision (October 2019 - January 2020).

After examining the case, the ECtHR found that in cases of rape and sexual violence, national courts must carefully consider all relevant considerations relevant to

44 Vučković v. Croatia, Application No. 15798/20, 12 December 2023.

the case (including the interests of the victims and the consequences of the attacks on them). If a second-instance court mitigates the more severe sentence imposed by a first-instance court, it must provide appropriate reasons for the mitigation of the sentence. Failure to combat violence against women effectively may discourage victims from reporting crimes, which constitutes a violation of Article 3 (Prohibition of torture) and Article 8 of the ECHR (Right to respect for private life).

According to the ECtHR, states have a positive obligation to enact criminal laws that effectively punish rape and to implement them in practice through effective investigation and prosecution, in order to establish the fact, identify and punish those responsible. National criminal courts have an obligation to carefully examine all relevant considerations in the case. The measure of punishment must be proportionate to the seriousness of the act.

According to the ECtHR, the domestic courts never took into account a number of factors that were relevant under domestic law, such as the consequences for the applicant (i.e., the periods of medical report), the perpetrator's conduct (i.e., the threats against the applicant), his lack of remorse and/or any attempt to compensate for the harm caused to the applicant. In changing the prison sentence to community service, the second-instance court did not mention the aggravating factors identified by the first-instance court, such as the high degree of criminal responsibility of the perpetrator or his strong intent in committing the sexual offences in question. Furthermore, the second-instance court did not explain why the passage of time outweighed these aggravating circumstances. Consequently, the second-instance court did not conduct a careful examination of all the relevant assessments in the case.

Based on the above, the ECtHR found that Croatia had violated Articles 3 and 8 of the ECHR because its domestic courts had failed to properly address the repeated acts of sexual violence that the applicant had suffered at her workplace.

This decision strengthens standards on the handling of cases of sexual violence and rape by judicial authorities in the member states of the ECHR. It reaffirms the obligation of states to guarantee an effective legal and judicial system that punishes perpetrators of sexual violence in a fair and proportionate manner, taking into account the interests of the victims and the consequences that the attacks have on them.

21. Gashi and Gina against Albania (No.29943/18)

Court decision of April 4, 2023

A long period of suspension from duty can have a serious negative impact on a person's right to private life and may constitute an interference with these rights. Continued suspension without legal basis constitutes a violation of Article 8 of the ECHR (Right to respect for private and family life).

In the case of Gashi and Gina v. Albania[45], the ECtHR examined the complaints of two Albanian prosecutors regarding their suspension from office following criminal investigations into their asset declarations.

In 2016, Albania launched a comprehensive reform of the justice system, including the re-evaluation of all incumbent prosecutors ("vetting process"). In accordance with the Law on Asset Declaration, which entered into force in 2003, the applicants submitted annual asset declarations to the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interest (HIDAA).

The first applicant, who held a prominent position as Head of the Decriminalization Unit, was dismissed from her post in 2018 following a negative assessment of her asset declaration. In 2018, the first applicant was dismissed from her post and suspended ex lege from her duties by the Independent Qualifications Commission (IQC). Following an appeal to the Special Appeals Chamber (SAC), the latter upheld the decision of the IQC.

The second applicant, a prosecutor at the Tirana District Court, was subject to the vetting process in 2020 and 2021. In May 2018, he was suspended from duty due to a criminal investigation against him and his wife, based on an erroneous classification of his act as a "serious crime" within the meaning of the national law of 2016. These charges were brought against him due to the declarations made in the periodic asset declarations and during the vetting process in respect of the first applicant.

Following the applicants' appeal against the suspension orders, the SAC informed them that it could not take a decision in this regard because a member (I.R) had withdrawn due to a conflict of interest and, due to the lack of a specific regulation at the time, he could not be replaced. In June 2018, the SAC panel (including I.R) did not examine the appeal and held that the Administrative Court of Appeal was the body responsible for reviewing the suspension orders.

Following an appeal by the applicants, the Administrative Court of Appeal dismissed the applicants' request to suspend the execution of these orders by an interim decision. In November 2018, the same court declared the suspension orders unlawful and annulled them, on the ground that the relevant acts had been incorrectly classified as "serious crimes" under the 2016 domestic legislation. It held that the offence with which the applicants were charged – an offence punishable by a fine or imprisonment of up to three years – fell within the jurisdiction of a district court where it could be tried by a single judge, rather than by the Court for Serious Crimes. That decision did not specify whether it would

45 Gashi and Gina v. Albania, Application No. 29943/18, 4 April 2023.

become immediately enforceable, and, consequently, the applicants were not immediately reinstated. According to the applicants, the decision was immediately enforceable, although it was appealable to the Supreme Court of Albania. The Acting Attorney General requested review of the legal issues in the Supreme Court.

In 2019, another office took over the criminal investigation against the applicants and requested the termination of the investigation, which was granted by a final court decision in the same year. The termination decision was based on the impossibility of using the assessment of the first applicant's vetting statement as evidence in any other legal proceedings against her pending the vetting process.

The second applicant was reinstated only in January 2020, upon his request to be reinstated and after several procedural steps to enforce the decision of the Administrative Court of Appeal. Both the first and second applicants continued to be paid throughout the period of their suspension.

The ECtHR found that the second applicant's suspension for almost two years constituted an unjustified interference with his right to private life, denying him the opportunity to pursue his professional career and to live in a stable professional environment.

The suspension no longer had a legal basis after the investigation was discontinued in 2019, but he continued to be out of office, creating unnecessary uncertainty. For this reason, the ECtHR found that Albania had violated Article 8 of the ECHR in respect of the second applicant.

As regards the first applicant, she was suspended from exercising her functions as a prosecutor for two and a half months; she continued to be paid during this period. The first applicant has not shown that the consequences of this suspension, which was so short in time, had been so serious as to fall within the scope of Article 8 of the ECHR. In view of the above, the first applicant's complaint is inadmissible ratione materiae with Article 8 of the ECHR and must be rejected in accordance with Article 35, para. 4 of the ECHR.

Based on the above, the ECtHR found that Albania had violated Article 8 of the ECHR due to the continued suspension of the second applicant without legal basis.

This decision obliges ECHR member states to take measures to protect individuals from unjustified suspensions and to ensure that any interference with their rights complies with the principle of legality and proportionality.

Llist of cases

Article 2	→ Tërshana v. Albania, No. 48756/14, 4 November 2020;
Article 3	→ X v. Greece, No. 38588/21, 13 February 2024; → Matyoshonok v. Ukraine, No. 34590/06, 11 July 2024; → Vučković v. Croatia, No. 15798/20, 12 December 2023;
Article 5	→ UK v. Netherlands, No. 71008/16, 23 April 2024;
Article 6	→ Osmani v. Albania, No. 8706/18, 5 December 2023; → Ben Amamau v. Italy, No. 49058/20, 29 June 2023;
Article 8	→ Simonova v. Bulgaria, No. 30782/16, 11 April 2023; → Wieder and Guarnieri v. the United Kingdom, Nos. 64371/16 and 64407/16, 12 September 2023; → Plechlo v. Slovakia, No. 18593/19, 26 October 2023; → Gashi and Gina v. Albania, No. 29943/18, 4 April 2023;
Article 10	→ Danilet v. Romania, No. 16915/21, 24 February 2024; → Sanches v. France, No. 45581/18, 15 May 2023; → Pricope v. Romania, No. 60183/17, 30 May 2023; → Mocatė v. Lithuania, No. 61435/19, 23 January 2023; → B92 Radio Broadcasting Company AD v. Serbia, No. 67369/16, 5 September 2023.
Article 11	→ Humpert and Others v. Germany, Nos. 59433/18; 59477/18; 59494/18, 14 December 2023;
Article 13	→ Altius Insurance LTD v. Cyprus, No. 41151/20, 24 October 2023;
Article 1 of Protocol 1	→ Bagirova and Others v. Azerbaijan , No. 37706/17 and others, 31 August 2023; → Zorina International SRL v. Romania, No. 15553/15, 27 June 2023; → Yordarov and Others v. Bulgaria, Nos. 265/17 and 26743/18, 26 September 2023.

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