

MINISTRY OF EDUCATION AND SCIENCE OF UKRAINE  
VOLODYMYR DAHL EAST UKRAINIAN  
NATIONAL UNIVERSITY

METHODICAL INSTRUCTIONS  
to perform control work on the course

**"Application to European Court of Human Rights"**  
for higher education holders of the "master's" educational degree,  
for distance form of education  
educational program (specialty) 081 "LAW"

*To print, to the world I allow*

*Vice-rector \_\_\_\_\_*

*Protocol No \_\_\_\_ of \_\_ \_\_\_\_ 2024*

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Kyiv 2024

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APPROVED

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The European Convention on Human Rights (the ECHR) protects human rights and fundamental freedoms across the 46 member states of the Council of Europe. The implementation and application of the ECHR is overseen by the European Court of Human Rights (the ECtHR) in Strasbourg, whose judgments are binding for the Council of Europe member States.

By the end of the course, you will be able to recognise the relevance of direct implementation of human rights standards at a national level and to automatically link national case law to the possible implementation of the ECHR. You will achieve this by demonstrating knowledge of the key principles of the ECHR and its Protocols; understanding how to implement it at a national level; demonstrating knowledge of the general functioning of the ECtHR and being able to lodge an application to the ECtHR.

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## INTRODUCTION

The European Court of Human Rights (ECHR) is one of the critical mechanisms for ensuring compliance with the rights and freedoms enshrined in the European Convention on Human Rights. Since its establishment, the ECHR has become an essential tool for protecting human rights in the member states of the Council of Europe. Human rights are under pressure in many places across the globe — peaceful protests are violently quashed, voting is tampered with, and minorities are often excluded from decision-making processes. All of this threatens the ideal of an open society in which everyone can be free and participate equally. To ensure that an open society can exist and flourish, it is crucial to have a solid system for the protection of human rights, and the ECHR is a cornerstone of that system.

The ECHR supervises compliance with the Convention on a subsidiary basis. This means that national authorities — governments, courts, and parliaments — have a primary role in protecting human rights, with the Court stepping in when national mechanisms fail. This approach requires a deep understanding of both the European and national perspectives on human rights protection.

The purpose of this manual is to provide students with the knowledge and skills necessary for applying to the ECtHR, understanding the procedures, and meeting the requirements for submitting complaints. A proper understanding of the structure, powers, and procedures of the ECtHR is critical for anyone who aspires to protect human rights professionally.

The manual contains control tasks that aim at a comprehensive understanding of the procedure for submitting a complaint to the ECHR, the admissibility criteria, the stages of consideration, and the basic principles of the Court's functioning. The materials will help learners develop the skills needed to prepare applications to the ECHR and analyze judicial practice effectively.

The tasks in the manual are developed with consideration of the most common questions and difficulties that may arise when submitting a complaint to the ECHR. In addition, the manual aims to develop the skills of analyzing specific cases and the Court's practice, which is an essential component of the training of future lawyers.

This course introduces one of the world's most intricate human rights systems: the European Convention on Human Rights. You will learn when and how people can turn to the European Court of Human Rights to complain about human rights violations, how the Court addresses complex dilemmas like freedom of expression, the right to vote, prohibition of discrimination, and the rights of vulnerable groups such as migrants and refugees, as well as how and under what conditions rights can be restricted.

We invite you to embark on this journey of discovery into the European Convention on Human Rights and equip yourself with the tools and knowledge to work towards a fairer and more just society. This manual will be an important resource in this endeavour, allowing you to navigate the complexities of human rights protection in Europe and contribute to the advancement of these fundamental values.

## **REQUIREMENTS FOR REGISTRATION OF CONTROL WORK:**

The control work should be completed in English, in A4 format, using Times New Roman font, size 14 pt, with line spacing of 1.15, and paragraph indentation of 1 cm. The margins should be set as follows: top and bottom - 2 cm; left and right - 2.5 cm. The control work must be written clearly, concisely, and with proper attention to grammar and punctuation.

### **Structure of the Control Work:**

#### **1. Title Page (Appendix 1)**

The title page should include the title of the control work, the student's name, group, academic supervisor's name, and the date of submission.

#### **2. Theoretical Part**

- The answer to the theoretical part should be approximately **3-4 pages** of text, addressing the assigned topic comprehensively.

- Each answer should demonstrate an understanding of the legal concepts involved, supported by relevant arguments, examples, and references to legal sources.

- Subsections with clear headings may be used for a more organized presentation.

#### **3. Solution of the Provided Case (Structured as follows):**

**Eligibility Criteria:** Assess whether all eligibility criteria set out in Article 35 of the ECHR are met. Clearly justify your answer.

**Convention Rights Violated:** Identify which Convention rights were violated and explain why, referring to specific articles and relevant case law where applicable.

**Decision in the Case:** Formulate what, in your opinion, the decision should be, taking into account established jurisprudence of the ECHR and similar precedents.

#### **4. Practical Task**

- Imagine being a lawyer submitting a case to the ECtHR:

- **Review Article 47 of the Rules of Court**, which outlines the information and documents required for an application (see Appendix 2).
- **Download the Application Form** (Appendix 3) and complete it. Note: This file is only displayed correctly in the latest version of Adobe Acrobat Reader DC.
- **Research Task:** Visit the website of the Unified State Register of Judgments and find a case that has passed through three judicial instances in your country. Based on the facts of this case, fill out the application form on behalf of the victim. The completed form must be appended to the control work.

## 5. References

- All sources cited in the control work must be listed in the reference section, formatted according to APA style or another appropriate citation format.
- Include a minimum of **three academic sources**, which may include books, journal articles, and legal cases. Proper citation of the ECHR, relevant judgments, and academic literature is required.
- References should be arranged alphabetically and include all necessary details, such as the author's name, title, publication date, and page numbers (where applicable).

## 6. Appendices

- **Appendix 1:** Title Page (template provided).
- **Appendix 2:** Article 47 of the Rules of Court.
- **Appendix 3:** Application Form to the ECtHR (completed form).

### **Formatting Requirements:**

- **Font:** Times New Roman, 14 pt.
- **Spacing:** 1.15 between lines.
- **Margins:** Top and bottom - 2 cm; left and right - 2.5 cm.
- **Paragraph Indentation:** 1 cm.
- **Page Numbers:** Pages should be numbered consecutively in the bottom right corner.

- **Headings:** Use bold for section headings and italics for subsection headings where necessary.

- **Language and Style:** The work should be written in formal academic English. Avoid using colloquialisms and ensure clarity and coherence throughout.

**Evaluation Criteria:**

**Content Relevance:** Theoretical understanding, accuracy, and the ability to apply legal concepts to practical scenarios (40%).

**Legal Analysis:** The depth of analysis, ability to justify arguments, and use of appropriate case law (30%).

**Structure and Organization:** Logical structure, clarity of presentation, and proper use of headings (10%).

**Practical Task Completion:** Completeness and accuracy of the application form (10%).

**Language and Formatting:** Grammar, punctuation, compliance with formatting requirements, and adherence to citation guidelines (10%).

**Note:** Failure to adhere to the formatting and structure requirements will lead to deductions from the final score.

## VARIANT 1

### 1. The theoretical part. Give a detailed answer to the question:

What is an "Open Society"? What is the connection between an "open society" and human rights

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was arrested and investigated in criminal proceedings concerning five international drug-trafficking networks. The proceedings were widely reported in the media, as they concerned one of the biggest drug-trafficking cases investigated by the Romanian authorities at the time. Were questioned by the police and the public prosecutor. They both stated that the applicant was involved in the drug-trafficking.

On 14 July 2000, at about 00.30 p.m., two police officers took the applicant into custody and transported him to the prosecutor's office attached to the High Court of Cassation and Justice located in Bucharest.

According to the applicant, the prosecutor took his first statement in the presence of an officially appointed lawyer, G.S.C., who had also been assisting two other co-accused, P.A. and F.D. The applicant denied any involvement in drug-trafficking. The applicant maintained the same attitude of denial of the charges throughout the proceedings. At about 1.30 a.m. the prosecutor issued an arrest warrant for a period of three days in the applicant's name.

The next day the applicant was brought before the High Court of Cassation and Justice for the examination of the prosecutor's request concerning his pre-trial detention. He alleges that he was assisted by the same officially appointed lawyer despite the fact that he insisted to be assisted by a lawyer of his own choosing.

The applicant affirmed that he had complained to the prosecutor and then to the judges that he could not be assisted by a lawyer of his choice and that instead he had been assisted by an officially appointed lawyer who also had assisted his co-defendants, P.A. and F.D. However, the criminal case file contains no written trace of any such complaints.

According to the documents submitted by the applicant, he engaged a lawyer practicing in Cluj-Napoca on 15 July 2000.

On 29 July 2000 the applicant, in the presence of his lawyer, was confronted with F.D. According to the record, the latter stated that he had heard about the applicant's involvement in packing and dissimulating drugs from P.A., but that he had never seen him performing these kinds of activities.

On September 2000 the prosecutor issued an indictment concerning twenty-six accused persons, including the applicant, and the next day the case was registered with the Bucharest County Court. F.D. and P.M. had not been indicted although they had recognized their involvement in drug-trafficking.

The applicant's co-accused, P.A., was heard on February 2002 by the court of first instance. He stated among other things that the applicant had helped him in packing drugs. He also stated that the applicant had been his friend since 1994 and that he had provided services for his pharmaceutical company between 1999 and 2001 on the basis of a contract.

On September 2002, I.I., an under-cover agent, gave a statement before the court. She was asked to mention the members of the drug-trafficking network and the role played by each of them. She did not mention anything about the applicant although in her initial statement given before the prosecutor on 9 June 2003 she had stated that many drug transports had left from the applicant's home. She finished her testimony by stating that "there were no other persons involved in drug trafficking". The judge did not ask her additional questions to clarify the role played by the applicant in the drug-trafficking network.

On September 2002 the judicial investigation was closed and the lawyers of the accused and the accused themselves submitted their arguments on the merits of the case; the delivery of the first-instance judgment was postponed to October 2002.

The applicant appealed against the conviction. He disputed his involvement in the criminal offence and disagreed with the way the trial court had established the relevant facts. He submitted in particular that the trial court had mainly based its decision on statements made by the co-accused before the prosecutor. He pointed out that I.I. had changed her statement before the court and that he could not confront F.D. in open court despite his repeated requests.

On June 2003 the Bucharest Court of Appeal reversed the judgment in respect of the applicant and his sentence was reduced to eight years' imprisonment on the grounds that he was an accomplice, had no criminal record and he was more than sixty years old. The Appeal Court held that the applicant had just supported the activities of the gang by providing help with the packing of the drugs which were to be transported, by storing them on the premises of his home and then allowing them to be collected by other members of the network. The court made no reference to the applicant's complaints that he could not confront in open court F.D.

On June 2003, the High Court of Cassation and Justice dismissed an appeal on points of law by the applicant. It upheld the decision of 7 June 2006 endorsing the Bucharest Court of Appeal's reasoning. It concluded by stating that the applicant's allegations that he had not committed any offence related to drug-trafficking had been contradicted by the statements of witness F.D., co-accused P.A. and undercover agent I.I.

By an interlocutory judgment of July 2003, the Bucharest District Court ordered the release of the applicant under probation. He was released from prison on July 2003.

### **3. Fill out a claim to ECtHR**

Imagine being a lawyer suing the ECtHR. To do this, refer to the sample application forms (Appendix 2). Download the application form (Appendix 3).

Warning! This file is only displayed correctly in the latest version Adobe Acrobat Reader DC! Go to the website of the [Unified State Register of Judgments](#) and find there a case that has passed three instances. File a application form (complete the form) on behalf of the victim.

## VARIANT 2

### 1. The theoretical part. Give a detailed answer to the question:

What is the role and place of the ECtHR in the human rights protection system?

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was born in 1977 and was convicted of attempting to undermine the constitutional order and sentenced to life imprisonment without the possibility of parole. At the time of the events relating to the application, he was serving his sentence in the Edirne F-type prison.

Since his imprisonment the applicant has been represented by his lawyer in respect of several applications, including the present application, before the Court.

On an unspecified date, the applicant's lawyer sent a package by post to the applicant. The prison administration believed the contents of the package to be suspect and therefore lodged a request on August 2008 with the public prosecutor for a decision to be taken by an enforcement court to determine whether the material sent to the applicant concerned defence-related documents or whether they concerned any objectionable content so as to prevent them from being handed over to the applicant.

On August 2008 the Edirne Enforcement Court allowed an application by the prosecutor and examined the contents of the package, which contained a book entitled *Globalisation and Imperialism (Küreselleşme ve Emperyalizm)*, a magazine with the title *Rootless Anational Publication (Köxüz Anasyonal Neşriyat)*, and a newspaper with the title *Express International Sha la la (Express Enternasyonal Şalala)*. The court held that the material in question did not relate to the rights of the defence and that therefore they should not be handed over to the applicant pursuant to section 5 of Law no. 5351.

On September 2008 the applicant objected to the decision of the Edirne Enforcement Court before the Edirne Assize Court. He submitted that he had asked his lawyer to bring those books and magazines in question simply because he had wanted to read them. He submitted that it had been the prison administration which had told his lawyer that they could not be brought in person and had therefore to be sent by post. He further argued that while it was correct that they had not been related to his rights of defence, they were not illegal publications and there had been no basis for the prison administration to withhold them from him simply because they had been sent by post by his lawyer.

10. On September 2008, the Edirne Assize Court dismissed the applicant's objections on the basis of the case file, holding that the decision of the Edirne Enforcement Court had been in accordance with law and procedure.

On September 2008, referring to its earlier decision of August 2008, the Edirne Enforcement Court in an examination carried out on the basis of the case file, without holding a hearing and without seeking submissions from the applicant or his lawyer, granted an application on the part of the prison administration and therefore held that an official was to be present during the applicant's consultations with his lawyer. The decision did not specify how long the restriction was to remain in force. The Edirne Enforcement Court further held that, if requested, a separate decision would be taken as to whether the exchange of documents between the applicant and his lawyer would also be subject to a restriction.

On October 2008 the applicant objected to the decision of September 2008 before the Edirne Assize Court. He submitted that the impugned decision did not explain why it was necessary to restrict the privacy of his consultations with his lawyer. He argued in that connection that a provision which provided for such a restriction could only be applied if it had emerged from documents and other evidence that visits by lawyers to a person convicted of organised crime had been serving as a means of communication within the criminal organisation in question. He argued that no such element had been present in his situation and the court had not conducted any examination in that connection. Lastly, he maintained

that there were no legal provisions prohibiting the exchange of legal books and magazines between a prisoner and his lawyer. The applicant did not request that the examination of his case be carried out by holding a hearing.

On October 2008 the Edirne Assize Court dismissed the case on the basis of the case file and without holding a hearing. Without responding to the applicant's arguments, it held that the Edirne Enforcement Court's decision of September 2008 had been in accordance with the law and procedure.

On May 2011 the applicant lodged an application with the Edirne Enforcement Court for the restriction on the conversations between him and his lawyer to be lifted. On June 2011 the applicant's application was dismissed on the basis of the case file. The court held that the decision of September 2008 had become final and that there was no need for a further examination.

The applicant lodged another application on November 2010 and applied for a hearing in accordance with the new amendments to the procedure before the enforcement courts (see paragraph below). On December 2013 the Edirne Enforcement Court dismissed the applicant's application for a hearing, holding that the new amendments to the procedure concerned only the examination of objections against disciplinary sanctions, so that in so far as the restriction of September 2008 had not been a disciplinary sanction, no hearing could be held in respect of that complaint. It further dismissed the applicant's application for the restriction to be lifted, holding that the decision of September 2008 had been final. An appeal against that decision by the applicant was dismissed on August 2014.

On February 2015 the applicant lodged an application again with the Edirne Enforcement Court and repeated his request for the restriction to be lifted. The court dismissed that application on April 2015, holding that there had not been any change in the circumstances of the applicant and the decision relating to the restriction on the consultations with the applicant's lawyer. In that connection, the court held that there was still a risk in view of the previous decisions taken in respect of the applicant by the enforcement courts as well as the

lawyer's conduct. An appeal by the applicant against that decision was rejected on June 2015.

At time of the adoption of this judgment, the restriction on the applicant's right to confidential communications with his lawyer remains in place.

On February 2009 the applicant lodged an application with the Court, complaining about the Edirne Enforcement Court's decision of August 2011.

On November 2018 the Compensation Commission held that the Edirne Enforcement Court's decision not to hand over the book and the periodicals sent to the applicant by his lawyer had infringed the applicant's right to receive information within the meaning of Article 10 of the Convention. They held in that connection that the impugned decision had constituted an interference which had not been based on relevant and sufficient reasons, notably because the domestic court had not explained in its decision in what respect the books and magazines in question had jeopardised the security of the institution.

### **3. Fill out a claim to ECtHR**

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### VARIANT 3

#### 1. The theoretical part. Give a detailed answer to the question:

Execution of ECtHR judgments and the application of ECtHR practices

#### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

From September 2006 until 2 January 2007 secret surveillance activities were carried out with respect to the third applicant in the context of ongoing criminal proceedings. The proceedings were later terminated without the applicant being prosecuted. On December 2008 the information obtained via the secret surveillance in those proceedings was put in the surveillance file (*jälitusprotokoll*) of the criminal proceedings under review in the present case.

The criminal proceedings under review in the instant case were instituted on August 2007 without the applicants being informed of the proceedings. Those proceedings concerned suspicions of high-level corruption as regards the exchange of plots of land in conservation areas for plots in areas where development was permitted.

Between August 2007 and October 2008 the Internal Security Service (*Kaitsepolitsei*) carried out various surveillance activities in respect of the first applicant, the second applicant and the third applicant (with respect to the third applicant, the surveillance activities commenced on December 2007). The third applicant was also acting as a member of the supervisory board of the two applicant companies at the material time. In the course of those activities, communications between the fourth applicant and the persons under surveillance were covertly intercepted and listened to.

The surveillance activities were based on authorisation decisions issued by either a prosecutor (forty-four authorisations altogether in respect of covert

observation and requests for communication data) or by a preliminary investigation judge (twenty-one authorisations altogether in respect of covert listening in on conversations and the interception of communications).

The authorisation decisions issued by (different) preliminary investigation judges provided general reasons as to why the judges considered the secret surveillance necessary. As an example, one authorisation read as follows: “The judge has acquainted himself with the material gathered during the criminal proceedings and is convinced that the prosecutor’s application is justified. The Code of Criminal Procedure allows for evidence to be gathered by means of secret surveillance. Considering the gravity of the offence, the interests of protecting the legal order, and the fact that gathering evidence by other procedural means is either impossible or especially complicated, then, in the interests of elucidating the truth, the application is perfectly justified and lawful.” The other authorisations by preliminary investigation judges included variations of the same wording, occasionally also including references such as “when public officials abuse their position, it damages their credibility in the eyes of society and damages the State’s reputation” and “[t]his offence belongs to the category of offences relating to office. ... Considering that ..., this type of offence is difficult to discover and prove, and [such offences] hamper the legal rights of all people”. The relevant prosecutors’ decisions contained no reasoning at all.

In addition to surveillance activities, during the pre-trial proceedings, there were various queries, inspections, and home and office searches; (forensic) expert reports were ordered, requests for documents were made to various persons, and the material received was examined. Between October 2008 and November 2009, 202 persons (witnesses and suspects) were interviewed, some of them repeatedly. Between March 2010 and March 2010 the prosecutor’s office invited the applicants to inspect a copy of the criminal file (comprising 191 volumes altogether). The applicants’ representatives submitted different applications concerning the time they needed to inspect the files, ranging between six and ten months. By an order of the Office of the Prosecutor General of May 2010, the applicants were given until

November 2010 to inspect the criminal file. Their representatives (except the first applicant's counsel) submitted requests to the Office of the Prosecutor General, asking it to remove the material which the prosecution did not intend to rely on from the criminal file, and to specify which evidence was intended to prove which facts. The Office of the Prosecutor General dismissed those requests, explaining that the applicants had been presented with all the material gathered during the pre-trial proceedings so that they could assess which material was relevant from the perspective of defence rights.

During the pre-trial proceedings, the second applicant discovered a surveillance device in his office on September 2007. On October 2008 the offices of the third applicant, the second applicant company and the first applicant were searched, and on September 2009 the premises of the first applicant company were searched. On October 2009 the fourth applicant was questioned as a suspect.

As two of the accused – the fourth applicant and E.T. – were members of the *Riigikogu* (the Estonian Parliament) at the time the pre-trial proceedings were completed, the consent of a majority of the Members of Parliament had to be obtained to lift their immunity and bring charges against them. The Office of the Prosecutor General initiated the relevant procedure on December 2009, and Parliament gave its consent on March 2011.

Altogether, the pre-trial proceedings lasted three and a half years and ended on March 2011 when the statement of charges against the applicants was submitted to the trial court. None of the applicants claimed that there had been periods of inactivity or other significant interruptions as regards the pre-trial proceedings.

From May 2011 onwards the Harju County Court heard the case over a total of ninety-two hearing days. During that time, numerous witnesses were heard: eighty witnesses requested by the prosecution, twenty-eight witnesses requested by the defence, and two people summoned by the court as experts. In May 2011 dates for hearings in November and December 2009 and January, February, April, May and June 2012 were scheduled. Further dates were

scheduled in February 2012 (for dates in September and October 2012), in June 2012 (for dates in December 2012 and February and April 2013), in April 2013 (for dates in October, November and December 2013), in November 2013 (for dates in December 2013 and January, February, April and May 2014), in December 2013 (for dates in January and February 2014), and in February 2014 (for dates in March 2014). At the request of some representatives, hearings were not scheduled to take place more than three days a week.

The court also took into account the representatives' wishes that hearings not be scheduled too far in advance, as they were simultaneously involved in other criminal proceedings and therefore not always available. At the end of each hearing day, considering the evidence that was to be examined the following day, the court determined which of the accused and their representatives should appear at court the following day. This allowed persons who were not concerned by such evidence not to attend the particular hearing. Occasionally, hearings had to be rescheduled owing to illness or owing to other personal circumstances of either the accused or their representatives. In November 2011 the court noted that there was a risk that the proceedings might take too long, and decided that the number of witnesses to be heard each day must be increased.

An application was made to separate the first applicant's case from the case against two other accused (including E.T.), but the representatives of the second and the fourth applicants objected to the first applicant's case being separated in this way. They submitted that the cases were closely linked, and argued that separating the cases would hinder defence rights and force them to attend other parallel proceedings at the same time. The court dismissed the application to separate the case, referring to the need to guarantee the defence rights of the other accused.

By a judgment of June 2014 the Harju County Court acquitted the applicants of the charges against them. The proceedings before the first-instance court lasted approximately three years and three months. The court found that the surveillance activities had been unlawful and that all the evidence collected by such activities was inadmissible. It did not address the question of whether or not the

secret surveillance authorisations in the case had been sufficiently reasoned at the time they had been issued.

The Office of the Prosecutor General appealed to the Court of Appeal on July 2014. Among other things, it challenged the first-instance court's assessment of the lawfulness of the surveillance activities.

On July 2014 the Tallinn Court of Appeal invited the applicants to notify it of suitable dates in October, November and December 2014, so that hearings could be scheduled. As no dates suitable for everyone could be found out of the dates proposed by the applicants' representatives, the court invited them to propose new dates for 2015. On August 2014 the dates were set for January and February 2015. In the meantime, the Court of Appeal had also granted an application by the prosecutor for a review of the lawfulness of the surveillance activities. It asked for the surveillance files, including all the prosecutors' and preliminary investigation judges' decisions authorising the secret surveillance, to be sent to it.

The Court of Appeal convicted the applicants by a judgment of June 2015. After examining the surveillance files, the court found that the prosecutors' applications for authorisation of secret surveillance had contained sufficient information to assess the need for such activities. It considered that the surveillance activities had been lawful and the evidence thereby obtained admissible. In convicting the first and the second applicant companies, the court relied on Article 14 of the Penal Code (see paragraph 56 below) and found that the third applicant had acted in the interests of the two companies.

Between 17 and 19 July 2015 all of the applicants lodged appeals on points of law with the Supreme Court.

On December 2015 the Supreme Court granted the applicants leave to appeal. On January 2016 it gave the parties a deadline of March 2016 to submit their observations. In the meantime, the Supreme Court had asked for the surveillance files to be forwarded to it. On April 2016 it was decided that the case would be

transferred to the full panel of the Criminal Chamber, and the parties were given an additional deadline of May 2016 to submit their observations.

On June 2016 the Supreme Court delivered its judgment in the applicants' criminal case (no. 3-1-1-14-14). It considered the evidence gathered by means of secret surveillance to be admissible. In substance, it upheld the applicants' conviction.

### **3. Fill out a claim to ECtHR**

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## VARIANT 4

### 1. The theoretical part. Give a detailed answer to the question:

Right to life in the context of the ECHR (illustrate the example of three ECtHR decisions against different participating countries)

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

On December 2005, relying on the provisions of the Anti-discrimination Ordinance (Government Ordinance no. 137/2000 on preventing and punishing all forms of discrimination) and of Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, the applicants brought an action in the Mureş County Court seeking compensation equivalent to the “loyalty bonus” (*spor de fidelitate*) to which they felt they had been entitled in respect of their salary since December 2002. They complained that, although they had met the same requirements as all the other categories of judicial and non-judicial court staff (including judges and ancillary personnel) who had received the loyalty bonus in accordance with Article 4 of Ordinance no. 27/2006 as in force at that time, they had been excluded by Article 16 of the Ordinance from benefitting from that bonus. The action was brought against the applicants’ employer and against the Ministry of Justice and the Ministry of the Economy and Finance.

In a judgment of February 2006 the County Court allowed the claim. It found that the relevant law created a difference in treatment between the applicants and the rest of the judicial and non-judicial court staff and that there was no justification for that different treatment. The court concluded that Article 14 of the Convention and Article 1 Protocol No. 12 to the Convention were applicable and declared that the applicants had been discriminated against because they had not been awarded the loyalty bonus. The court ordered that the applicants be paid compensation for the

discrimination suffered, representing 5% of their monthly salary for the period running from December 2002 until March 2004 and 15% for the period running from April 2008 until the day the discrimination ended. The judgment was immediately enforceable.

On April 2006 the Ministry of Justice and the Ministry of Finance appealed, arguing in the main that the court had overstepped the limits of its judicial authority and had acted as a “lawmaker” when it had awarded the applicants a right which had not been provided to them by law. On this point, they argued that the Anti-discrimination Ordinance did not apply to the manner in which social relations were regulated by law; it only concerned the applicability in practice of those laws.

In a final decision of May 2006 the Târgu Mureş Court of Appeal (hereinafter “the Court of Appeal”) dismissed the appeal as unfounded in so far as it concerned the Ministry of Justice and as out of time in so far as it concerned the Ministry of Finance. It considered firstly that the Anti-discrimination Ordinance applied to the applicants’ situation and on this point it dismissed the defendant party’s allegations of a breach of the principles of the separation of powers by the courts. It further considered that, in the light of Article 2 of the Anti-discrimination Ordinance and of the Court’s case-law on Article 14, the applicants had proved their allegations of discrimination, particularly that they had been treated differently from individuals in similar situations, without justification. In the court’s view, the protected right at stake was the principle of equality of treatment in the system of remuneration for work. On the merits of the case, the court relied on the laws regulating “confidentiality bonus[es]” (*spor de confidențialitate*), noting that the applicants had to respect the confidentiality of the information to which they had access and for this reason concluded that they should be entitled to a “confidentiality bonus”, like other members of the judiciary and ancillary staff. It therefore awarded the applicants such a “confidentiality bonus”.

The use of the term “confidentiality bonus” in the court’s decision was brought to the court’s attention on November 2006 by the defendants by means of an

extraordinary appeal (subsection C below) and on November by the applicants by means of an application for correction of material errors (subsection B below).

Meanwhile, on October 2006 the authorities paid each of the applicants 30% of the amount they were entitled to receive as compensation for the period from December 2002 to July 2006.

On November 2006 the applicants lodged an application for correction of material errors in the final decision adopted by the Court of Appeal in their case. They asked in particular that the word “confidentiality” be replaced with the word “loyalty” throughout the whole decision.

In an interlocutory judgment of December 2006 the same bench – sitting in camera – of the Court of Appeal allowed the application, without notifying the parties. The court considered that the use of the phrase “confidentiality bonus” stemmed from a technical error and did not affect the reasoning of the judgment.

On November 2006 the Ministry of Justice lodged an extraordinary appeal against the final decision of May 2006, claiming that the Court of Appeal had failed to examine the grounds of appeal as stated by the defendants. It pointed out that the subject matter of the dispute was not a confidentiality bonus, as wrongly established by the court, but rather a loyalty bonus. It relied on the provisions of Article 318 § 1 of the Code of Civil Procedure (“the CCP”) (see paragraph 27 below).

On January 2007 the applicants, who had received a copy of the defendant party’s submissions, added their observations to the file. They argued that the defendant had failed to observe the time-limits set by law for lodging the appeal. They further argued that all the reasons for appeal had been thoroughly examined by the Court of Appeal, which had resolved the legal matter brought before it, that is to say – the right to compensation for the damage caused by discrimination. They also raised an objection of unconstitutionality of Articles 318 and 319 of the CCP, which in their view, by allowing for an open-ended possibility of lodging the extraordinary appeal, contradicted the right of access to court guaranteed by Article 21 of the Constitution and by Article 6 § 1 of the Convention, the latter having been incorporated into domestic law by Article 20 of the Constitution. Their objection

was dismissed by the Constitutional Court on 12 May 2009, on the grounds that the said provisions did set the time-limits for the extraordinary appeal and that in any case, the enforcement proceedings were subject to the general statutes of limitation.

The Court of Appeal sitting in a different formation held a hearing on October 2007. The applicants were not present, but requested that the extraordinary appeal be decided in their absence. The Court of Appeal ruled that the subject matter of the dispute had been wrongly determined as being an entitlement to a confidentiality bonus. In its view, the matter could not be considered as a simple material error:

“It cannot be considered that this is a simple material [or] typographical error, which arose because of the striking similarity between the words ‘confidentiality’ and ‘loyalty’, as it had been adjudged in the interlocutory judgment of December 2010 whereby this court ordered the correction of this material error by replacing the word ‘confidentiality’ with the word ‘loyalty’. The court of appeal referred to a completely different legal matter, which had not been brought before it by the parties, and thus dismissed as unfounded the appeal lodged by the Ministry of Justice without examining the arguments put before it by [the Ministry of Justice] by mistakenly copying the reasoning from a different decision, in which it had examined the issue of awarding a confidentiality bonus.”

Consequently, in the same hearing, the Court of Appeal allowed the extraordinary appeal and quashed the final decision. It observed that on July 2006 the Constitutional Court had declared the relevant provisions of the Anti-discrimination Ordinance to be unconstitutional (decisions nos. 818 and 821 of 2006; see paragraph 24 below). It concluded that there were no longer any legal grounds to support the applicants’ action. The Court of Appeal thus allowed the appeal, quashed the judgment rendered by the County Court and rejected the applicants’ initial action. It found as follows:

The provisions of Articles 27 § 1 as well as those of Article 1 and 2 of the [Anti-discrimination Ordinance] were declared unconstitutional by Decision no. 821 of 3 July 2008, as well as by Decision no. 818/2008 of the Constitutional Court. According to Article 31 of Law no. 47/1992 on the organisation and functioning of

the Constitutional Court, the decisions rendered in verification of the constitutionality of a law are binding on everyone. This means that the provisions of Article 27 § 1 of the [Anti-discrimination Ordinance] can no longer be applied.

In these conditions, the first-instance [court's] decision to allow the [applicants'] action can no longer be justified on these legal provisions which have been declared unconstitutional. Therefore, ... the decision lacks legal basis.

For this reason the court will not examine the remaining grounds of unlawfulness, will ... allow the appeal, and will ... reject the action lodged by the [applicants].”

The applicants unsuccessfully lodged several extraordinary appeals against that decision, all of which were rejected by final decisions of the Court of Appeal. For instance, on January 2008 the Târgu Mureş Court of Appeal rejected the applicants' argument that the Ministry of Justice had lodged its extraordinary appeal outside the time-limit set by law.

### **3. Fill out a claim to ECtHR**

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## VARIANT 5

### 1. The theoretical part. Give a detailed answer to the question:

Prohibition of torture and other inhuman treatment or punishment in the context of the ECHR (illustrate the example of three ECtHR decisions against different participating countries)

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was born in 1990 and lives in Alphen aan den Rijn.

On August 2001 the applicant, who was then nineteen years of age, was arrested on suspicion of distribution of child pornography (three pictures of a 16-year-old girl) in April of that year. He was informed that he had the right to consult a lawyer.

At the police station the applicant was taken into police custody (*inverzekeringstelling*) and, before he had consulted his lawyer (who had not been immediately available) but with his consent, police officers commenced the so-called social interview (*sociaal verhoor*), during which questions were put to him about his personal circumstances and his personality but not about the offence of which he was suspected. He told the officers, *inter alia*, that he had a brain disorder: he had cavernous hemangiomas (clusters of abnormal blood vessels) in his brain and spinal cord. This did not affect his functioning other than that it might have a bearing on his trust in others; moreover, while he was allowed to play football he could not head the ball. When the applicant's lawyer became available the police officers suspended the interview to give the applicant the opportunity to consult his lawyer by telephone. After that conversation, the applicant stated that his lawyer would come to see him at the end of the afternoon and that, on the advice of his lawyer, he

would not answer any more questions. The interview was terminated. The applicant met with his lawyer later that day.

The following day, August 2001, the applicant was interviewed twice, including concerning distribution of child pornography, of which he was suspected. At the beginning of the interview, the applicant stated that he would prefer to have his lawyer present. He was told that this was not possible and the interview was started. The applicant replied to the questions put to him.

In the course of the interview the police officers questioning the applicant noted that he made a spasm-like movement with his arm. They asked him whether he was having an epileptic fit. The applicant confirmed that he was. The police officers then decided to interrupt the interview and call a doctor. They heard the applicant say that the seizure could have been caused by a combination of stress and other factors. The interview was resumed.

A final interview was held with the applicant on August 2001. Audio recordings were made of all the interviews.

The applicant was released from police custody on August 2001.

On March 2008 the Regional Court (*rechtbank*) of The Hague found the applicant guilty of distribution of child pornography and sentenced him to a suspended sentence of two weeks' imprisonment and to eighty hours' community service. The Regional Court was of the opinion that the applicant should have been enabled to consult his lawyer prior to being interviewed by the police for the first time. However, it did not appear from the subsequent interviews that they had been conducted without the applicant having been able to consult his lawyer. Given, moreover, that the contents of the interviews that had been conducted after the applicant had received legal assistance had not substantially differed from the content of the interview that had taken place without legal assistance, the Regional Court considered that the finding that a procedural requirement had not been complied with (*vormverzuim*) sufficed. The applicant lodged an appeal (*hoger beroep*).

On July 2016 the Court of Appeal (*gerechtshof*) of The Hague quashed the decision of the Regional Court, convicted the applicant of the same offence and sentenced him to forty hours' community service. As regards the claim that the applicant ought to have been assisted by a lawyer during the police interviews, the Court of Appeal held as follows:

“At the hearing on appeal counsel submitted that at the time of the police interviews the suspect had the mental age of a 15 or 16-year old, and also that he was suffering from a brain disorder which may have caused him to have epileptic seizures. Counsel did not submit (medical) data to substantiate that claim.

In the opinion of the Court of Appeal, the above does not entail an indication for the officers who interviewed the suspect that he had the mental age of a 15 or 16-year old, nor that the brain disorder from which the suspect is apparently suffering was capable of causing an epileptic seizure. After the suspect had, in the eyes of the interviewing officers, made ‘a kind of spastic’ movement, they had consulted a physician before resuming the interview. The Court of Appeal considers that this was the correct course of action. The Court of Appeal does not agree with counsel that the interviewing officers ought reasonably to have considered the suspect as vulnerable or underage. This means in the light of the *Salduz* case-law that the suspect, who was an adult at the time, was not entitled to have a lawyer present at his interview.”

The Court of Appeal based its conviction of the applicant on the following evidence:

- a complaint lodged with the police by the victim, who claimed that in March (when she had been 16 years old), she had shown the applicant various parts of her body via webcam, that she had subsequently been told by a third party that the applicant had sent photographs of her to that third party, and that she had been told by two other parties that they had received photographs of her;

- a further statement made by the victim to the police, according to which she had taken a photograph of a part of her body and sent it to the applicant by mobile telephone;

- a statement made by the applicant to the police on August 2001 to the effect that he had sent several photographs (showing parts of the victim's body), one of which he had taken by means of a screen shot while the others had been sent to him

by the victim, to a third party via mobile telephone and that he had also uploaded them onto an image-hosting website;

- a record drawn up by a police officer whose investigations into the victim's allegations had shown that the photographs showing part of the victim's body were accessible on the world wide web via a profile with a name used by the applicant on the above-mentioned image-hosting website.

The applicant lodged an appeal on points of law with the Supreme Court (*Hoge Raad*), complaining, *inter alia*, of the refusal to allow him to be assisted by his lawyer during police questioning. On 18 November 2010 the Supreme Court dismissed the appeal with summary reasoning, in accordance with section 81 of the Judiciary (Organisation) Act (*Wet op de rechterlijke organisatie*). Under that provision, the Supreme Court may limit its reasoning in a decision to a finding that a complaint does not provide grounds to overturn the judgment appealed against or does not require answers to questions of law in the interests of the uniform application or development of the law.

### **3. Fill out a claim to ECtHR**

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## VARIANT 6

### 1. The theoretical part. Give a detailed answer to the question:

Prohibition of slavery and forced labour in the context of the ECHR (illustrate the example of three ECtHR decisions against different participating countries)

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was born in 1968 and lives in Charlotte, North Carolina (the United States of America).

The case concerns “non-contentious” proceedings for the return of the child instituted on October 2014 in which the domestic courts refused to order the return of the applicant’s son to the United States after the child’s mother (a Croatian national and the applicant’s former wife) had in August 2014 “wrongfully retained” him in Croatia within the meaning of the Hague Convention on the Civil Aspects of International Child Abduction (“the Hague Convention”).

Specifically, on March 2015 the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*), without holding a single hearing, dismissed the applicant’s request for the return of the child. Following an appeal by the applicant, on July 2014 the Zagreb County Court (*Županijski sud u Zagrebu*) quashed the Municipal Court’s decision and remitted the case. In so deciding it, *inter alia*, instructed the Municipal Court to hold a hearing. The relevant part of the County Court’s decision reads as follows:

“... the first-instance court based [its] decision in part on undisputed facts, and in the relevant part on the arguments and evidence submitted by the counterparty ... even though it failed to give an opportunity to the petitioner to comment on them ... [T]herefore, the petitioner’s appeal has to be allowed, the first-instance decision quashed and the case remitted ...

In the fresh proceedings, the first-instance court shall correct the above error by scheduling a hearing (section 309(5) of the Family Act) at which it shall, together with the parties (sections 297-298 of the Civil Procedure Act), examine the circumstances of the case.”

In the fresh proceedings the Municipal Court obtained an opinion from a forensic expert in psychiatry on whether returning the child to the United States would expose him to psychological harm – that is, to a risk envisaged in Article 13 paragraph 1 (b) of the Hague Convention (see paragraph 27 below with further references). On May 2017 that court, without holding a hearing, again dismissed the applicant’s request for his son to be returned to the United States. This decision was upheld on appeal by the Zagreb County Court on October 2017. The Municipal Court justified its decision not to hold a hearing in the following way:

“... the court did not take evidence by hearing the parties because that would significantly protract the proceedings, bearing in mind that in their testimonies – precisely because they have a personal stake in the outcome of the proceedings and their objectivity is very questionable – the parties mostly want to praise and present themselves in the best light while discrediting the opposing party ... [S]uch testimonies are [therefore] generally not at all suitable [in terms of assisting a court in establishing the facts of a case] and reaching a decision.”

Those return proceedings (see paragraphs 6-8 above) were already subject to the examination by the Court. In the first *Adžić* case the Court in the judgment of March 2018 held that the domestic authorities had failed to act expeditiously in the proceedings in question. The Court had accordingly found a violation of the State’s positive obligations under Article 8 of the Convention (see *Adžić v. Croatia*, no. [22643/14](#), §§ 96-99, March 2018). At the time the Court adopted its judgment, i.e. February 2018, the proceedings were still pending before the Constitutional Court (*Ustavni sud Republike Hrvatske*) upon a constitutional complaint lodged by the applicant.

In his constitutional complaint the applicant complained of a violation of his right to fair procedure, in particular of a breach of his right to an oral hearing and a

breach of the principle of equality of arms and the adversarial principle. More specifically, the applicant submitted that the ordinary courts had not held a single hearing in the case and that the first-instance court had not informed him of its decision to obtain an opinion from a forensic expert in psychiatry, thus preventing him from objecting to the choice of expert. He further complained that he had not been involved in the expert's assessment, even though he had previously expressed his willingness to make himself available for such an assessment. The applicant also complained that the domestic court's refusal to order the return of his son constituted a violation of his right to respect for family life.

By a decision of October 2018 the Constitutional Court dismissed the applicant's constitutional complaint. It served its decision on his representative on December 2018. The Constitutional Court examined only the alleged violation of the applicant's right to fair procedure, because it considered that the alleged violation of his right to family life had been addressed by the Court in the first *Adžić* case (see paragraph 9 above).

The other relevant facts of the case are set out in detail in the Court's judgment in the first *Adžić* case (see *Adžić*, cited above, §§ 6-57).

### **3. Fill out a claim to ECtHR**

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## VARIANT 7

### 1. The theoretical part. Give a detailed answer to the question:

Right to liberty and security in the context of the ECHR (illustrate the example of three ECtHR decisions against different participating countries)

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was born in 1973 and lives in Wrocław. The applicant was detained in Wrocław Remand Centre during various periods between 1991 and 2014, including from June 2009 to October 2010. He was released from detention on July 2017.

The applicant submitted that during his detention in Wrocław Remand Centre he had been held in overcrowded cells in which the space per person had been below the Polish statutory minimum standard of 3 sq. m

According to documents from the domestic proceedings and the Government's submissions, the applicant was held in overcrowded cells between August 2009 (a period of approximately one month).

On April 2011 the applicant brought a civil claim before the Wrocław Regional Court against the State Treasury for infringement of his personal rights and for compensation on account of his detention in overcrowded cells in Wrocław Remand Centre. He claimed 20,000 Polish zlotys (PLN) in compensation. His case was transferred to the Wrocław-Śródmieście District Court in Wrocław (hereinafter "the court") and registered under the reference number IX C 295/11.

On May 2011 the court exempted the applicant from the court fees and dismissed his application for legal aid. The court held that the applicant was able to formulate his claims in a clear and understandable manner. Hence, the legal aid was not necessary. The applicant did not challenge that decision.

In the course of the judicial proceedings the applicant lodged several applications and requests with the court, including a letter of 8 August 2012. The court, by an order of 28 August 2012, instructed the applicant that to comply with formal requirements he should submit an additional copy of that letter. The order further stated:

“At the same time the court informs [you] that all pleadings (*pisma*) should be submitted in two copies.”

On October 2012 the Wrocław-Śródmieście District Court dismissed the applicant’s civil claim. The court found that the applicant’s cells had indeed been overcrowded for approximately one month, but that he had failed to demonstrate that the actions of the defendant had been unlawful.

On October 2012 the applicant lodged with the court a letter entitled “application: refers to an appeal against the judgment of the Wrocław-Śródmieście District Court of October 2012” which the court treated as an appeal. That pleading was submitted in one copy.

On an unspecified date the applicant applied for legal aid. On 26 October 2012 the Wrocław-Śródmieście District Court rejected the applicant’s request on the same grounds as previously (see paragraph 10 above).

On October 2012 the applicant was served with the judgment and information about the time and manner of the right to appeal, in the following terms:

“A party who disagrees with the judgment has a right to request the written reasoning of the judgment within seven days of the service of that judgment and later to appeal to the second-instance court *via* the court that issued the judgment, within two weeks, calculated from the service of the reasoned judgment. If the party does not ask for the reasoned judgment, the appeal is to be submitted directly within 21 days of the service of the judgment. Article 369 § 1: The appeal shall be submitted to the court that issued the judgment within two weeks, calculated from the service of the reasoned judgment.”

On November 2012 the applicant received the reasoning of the court’s judgment of October 2012.

On December 2012 the applicant lodged with the court a request for leave to appeal out of time against the judgment of October 2012, as well as two copies of a letter entitled “appeal”. On February 2013 the court dismissed the applicant’s request for leave to appeal, and explained that he had already lodged his appeal on October 2012, which was within the relevant time-limit. The court underlined that the applicant’s appeal of October 2012 did not comply with the formal requirements.

Therefore, on February 2013 the court issued an order and instructed the applicant to comply with the formal requirements of his appeal by submitting a copy thereof within seven days of the service of the court order. The order was served on February 2013.

On February 2013 the applicant submitted a letter in which he informed the court that he was unable to comply with the order because he did not have the text of his appeal that he could copy or rewrite and he did not remember the exact wording of his pleadings. He added that he had not been aware that he should have submitted his appeal in two copies.

On March 2013 the court rejected the applicant’s appeal for failure to submit an exact copy thereof.

On March 2013 the applicant appealed against that decision. When ordered, he rectified the formal requirements of his interlocutory appeal by submitting a copy of it and stating the amount of his claim. On June 2013 the Wrocław Regional Court dismissed the applicant’s interlocutory appeal, holding that the applicant, who had started a civil action and knew that he was deprived of his liberty, could justifiably be expected to keep copies of all letters he sent to the court, especially since he had been informed on August 2012 that all letters to the court should be submitted in two copies. Additionally, after the judgment had been issued the applicant was informed about the means and procedure of submitting appeals.

### 3. Fill out a claim to ECtHR

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## VARIANT 8

### 1. The theoretical part. Give a detailed answer to the question:

Right to a fair trial in the context of the ECHR (illustrate the example of three ECtHR decisions against different participating countries)

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was born in 1972 and is currently detained at the Corradino Correctional Facility, Paola.

On 11 December 2010 the applicant was arrested by the police on suspicion of having murdered his former partner.

On 13 December 2010 he was charged before the Court of Magistrates, as a Court of Criminal Inquiry, with *inter alia*, wilful homicide. He was remanded in custody thereafter.

It appears from the acts of the proceedings that from the applicant's arraignment until August 2012, the applicant filed ten requests for bail which were all rejected after the relevant submissions were made, including oral hearings. Apart from the hearings related to the bail applications and other specific requests, fourteen hearings were held where scores of witnesses gave evidence and another six hearings were held where nothing happened and the case was adjourned.

In the meantime on 10 April 2012 the applicant instituted constitutional redress proceedings before the Civil Court (First Hall) in its constitutional competence. He complained of a violation of Article 5 § 3 of the Convention in so far as he had been detained for more than fifteen months since his arrest.

By a judgment of 27 June 2012 the Civil Court (First Hall) rejected the applicant's claims. By a judgment of 23 November 2012 the Constitutional Court rejected the applicant's appeal and confirmed the appealed judgment.

11. After the applicant had been held in custody for the maximum period of detention allowed by law, he became entitled to bail in accordance with Article 575(6)(a)(iii) of the Criminal Code (see relevant domestic law).

Consequently, following his request of 17 August 2012, by a decree of 22 August 2012, the Court of Magistrates granted the applicant bail subject to the following conditions: that he appears for all the scheduled hearings in the criminal proceedings; that he does not go abroad or abscond; that he does not contact or approach, directly nor indirectly, witnesses for the prosecution; that he does not commit a crime of a voluntary nature while released on bail; that he present himself at the District Police Station every day between eight a.m. and eight p.m.; that he be home not later than ten p.m. and that he does not leave home before six a.m. of the following day; that he inform the Police of any change of address by not later than twelve hours of such a change; that he deposit by way of security the amount of 15,000 euros (EUR) in the court registry; and that he undertake a personal guarantee of EUR 25,000. In the event of any bail condition being breached, the entire amount of EUR 40,000 would be forfeited in favour of the State.

On 3 September 2012 the Attorney General appealed against the decision of 22 August 2012, as he considered the conditions too lenient and that they would not serve as a sufficient deterrent against absconding or interfering with the proper administration of justice. He requested the court to set a higher deposit reflecting the nature of the crimes with which the applicant was accused and to amend the conditions by disallowing the applicant to be in locality R. where the victim and her family resided.

On 6 September 2012 the applicant objected to the Attorney General's appeal, noting that he had remained in detention precisely because he could not fulfil the conditions imposed. At the same time he filed an application requesting the court to reduce the amount to be deposited by him. He explained that since he had been detained for more than twenty months he was unemployed, and thus he could not pay the relevant amount. He submitted two documents showing that he received unemployment benefits in the sums of EUR 1,262.22 and EUR 1,573.34 in 2009 and

2010 respectively and offered to explain his financial situation ( if necessary with further documentary evidence) during an oral hearing. It appears from the acts of the proceedings that he then submitted tax assessment forms of the previous twelve years.

By a decision of 7 September 2012 the Criminal Court, having examined the documents submitted by the applicant, rejected the Attorney General's request to increase the deposit but added the condition that the applicant could not be in the vicinity of locality R. It also rejected the applicant's request considering that the Court of Magistrates had correctly applied its discretion.

On 9 October 2012 the applicant filed another application requesting the court to reduce the amount of the deposit. He complained that although he had been in detention for twenty-two months, and was entitled to bail, he had nevertheless remained in detention since he (and his family) could not afford to pay such an excessive amount by way of deposit. He further noted that the main witnesses had already been heard in the committal proceedings.

On 10 October 2012 the Attorney General objected to the applicant's new request, noting that the applicant was not reliable, and that his inability to pay the deposit showed that he would be unable to pay the personal guarantee if he were to breach his conditions. Moreover, the family of the victim, particularly her daughter, lived in fear of the applicant.

By a decree of 18 October 2012, having seen the request and the reply submitted by the Attorney General, the court rejected the applicant's request.

On 4 December 2012 the applicant filed another application requesting the court to reduce the amount that he had to deposit. He noted that he had remained in detention for three and half months since the decree granting him bail due to his inability to pay. The Attorney General objected in view of the seriousness of the crime.

On 7 December 2012 the court again rejected the applicant's request; it noted that its previous decisions had determined the deposit in order to strike the requisite balance between, on the one hand, the seriousness of the crime and the potential

punishment, and, on the other hand, the obligation of the accused to fulfil the imposed conditions.

On 29 January 2013 the applicant filed yet another application requesting that the amount of deposit be reduced. He noted that he had been in detention for another five months since the decree granting him bail, and yet he was still not in a position to benefit from such bail - to which he was entitled by law - since he could not pay the deposit imposed. The Attorney General objected considering that the amount imposed was adequate in view of the severity of the crime and the circumstances of the case. On 5 February 2013 the applicant filed a note reiterating his request.

By a decree of 5 February 2013 the court, having considered the parties submissions, as well as its decree of 7 December 2012, was of the view that it should not alter the considerations made in the latter decision. It, thus, rejected the applicant's request.

On 22 July 2013 the applicant requested the court to accept his mother Ms J.G. (and other relatives) as surety *in lieu* of the deposit. He referred to a property the relatives had inherited which they were willing to put forward as a guarantee instead of the deposit. The Attorney General requested that the applicant submit relevant evidence of the inheritance and the value of the property and that the court hear relevant witnesses in this connection, before making his final submissions. He further highlighted that a public deed would be required for the purposes of the relevant hypothec.

On 30 July 2013 the applicant submitted all the relevant documents concerning the property at issue which was valued at EUR 95,000.

On 2 August 2013 the court accepted that the applicant's mother stand as surety by means of a hypothec on the above-mentioned property which she owned together with other relatives. Such property was to serve as a guarantee for the applicant observing the conditions imposed; in the event of a breach of any of those conditions, the property would be forfeited in favour of the Government of Malta.

Subsequently on 6 August 2013 the applicant having signed a personal guarantee of EUR 25,000 and his mother having effected the relevant hypothec as

guarantee, the applicant was released from custody after thirty-two months of pre-trial detention.

In the meantime the committal proceedings and hearing of witnesses continued throughout this time; further witnesses were heard during three hearings and another four hearings were adjourned. On 31 July 2013 the prosecuting authority had declared that it did not have further evidence to produce.

In the meantime on 6 February 2013 the applicant instituted a new set of constitutional redress proceedings, complaining of a violation of Article 5 § 3 of the Convention in connection with the “exorbitant sum” requested (in particular reference to the sum set as deposit) which did not allow him to effectively enjoy bail.

By a judgment of 3 July 2013 the Civil Court (First Hall) in its constitutional competence rejected the applicant’s claims.

In the court’s view, in the present case, bearing in mind the seriousness of the crime and the potential punishment, the applicant had not brought enough evidence before the courts of criminal justice to substantiate his claim that those courts had imposed excessive conditions (including that referring to the amount of deposit). It further noted that the Constitutional Court [in the first round of proceedings] had not been convinced that there would be no tampering with evidence. Indeed even though the collection of evidence had come to an end, one had to guarantee that the evidence remained intact and thus relevant guarantees were necessary.

By a judgment of 31 January 2014, the Constitutional Court rejected the applicant’s appeal and confirmed the judgment of the first court.

The Constitutional Court referred to its judgment in the case *The Police v. Austine Eze and Osita Anagboso Obi*, of 25 October 2013, where it had held that there must be proportionality between the amount to be deposited by the applicant for his release on bail and his financial circumstances. The level of bail set out should not be too high and it should ensure the presence of the accused at the various stages of the criminal proceedings. It also made reference to the Court’s judgment in *Mangouras v. Spain* ([GC], no. [12050/04](#), § 79, ECHR 2010) as well as the Constitutional Court’s judgment *Salvatore Gauci v. Attorney General*, of 31 July

1998, where it had been held that in establishing the amount to be deposited as security, the court must also consider other circumstances such as the seriousness of the offence and the danger to society.

The Constitutional Court held that the onus of proving that the amount of deposit was too high for the applicant when considering his financial means lay with the applicant himself. An applicant must provide information to the court on his financial situation and on the real possibility of finding a surety able to guarantee the observance of the conditions imposed. In the present case, the Constitutional Court held that the latter option had not been contemplated by the applicant and it was only after various requests to have the amount reduced that he eventually proposed his mother to act as a surety. It noted that although the applicant's mother did not own the tenement she had used for the purposes of the guarantee, it was already in her possession for a period of time before the last application for the reduction of the amount was filed. Thus, the applicant could not argue that he could not have taken this course of action before. Although the applicant relied on the Court's judgment of *Iwanczuk* (cited above), where a violation had been found on the basis that it took four months for the Polish authorities to adjust the conditions for bail, the Constitutional Court held that (even if this were the case), the applicant – who was legally represented - had not explored all avenues to satisfy the courts with an adequate guarantee for the observance of the conditions of bail. No explanation as to why he only obtained a guarantee in the form of a surety at a subsequent stage was provided by the applicant.

Noting that the applicant had stated that at times he worked as a bus driver and as a horse trainer, apart from other activities, the Constitutional Court distinguished the applicant's case from that of a person who was living on relief payments. The fact that the applicant had at times worked and had a salary or wage made the need to provide information to the court on his means more relevant.

On the fixing of the amount of the deposit, the Constitutional Court referred to Article 576 of the Criminal Code (see relevant domestic law below) which provided the factors to be considered for this purpose. Under Maltese law these included the

seriousness of the offence and the applicable punishment. The Constitutional Court considered that although the law also referred to the financial situation of the person accused, this factor was not to be taken in isolation – it was for the court fixing the amount of deposit to consider all the factors taken together and not separately. In the present case bearing in mind those factors, the amount of deposit of EUR 15,000 was justified especially since the law provided for the opportunity to provide a surety – a course of action subsequently undertaken by the applicant.

In the Constitutional Court's view the criminal courts' concern that the applicant did not give the necessary guarantees that there would not be any tampering with evidence, subsisted throughout the whole criminal proceedings.

By a decision of 7 April 2014 the applicant was found guilty of breaching his bail conditions and his bail was revoked. Further bail requests were lodged and rejected until 26 January 2015 when a bill of indictment was issued against the applicant. From August 2013 until his indictment some ten hearings were held where nothing happened and the case was adjourned.

On 16 June 2015 the Criminal Court was informed that a plea bargain had been concluded between the applicant and the prosecution.

On 20 July 2015, following the applicant's admission to all the charges against him, the Criminal Court pronounced a guilty verdict and sentenced the applicant to thirty-five years imprisonment and to the payment of court experts' fees.

### **3. Fill out a claim to ECtHR**

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## VARIANT 9

### 1. The theoretical part. Give a detailed answer to the question:

Freedom of thought, conscience and religion in the context of the ECHR (illustrate the example of three ECtHR decisions against different participating countries)

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was born in 1977 and lives in Kranj. In 2006 the Swiss law-enforcement authorities of the Canton of Valais conducted a monitoring exercise of users of the so-called “Razorback” network. The Swiss police established that some of the users owned and exchanged child pornography in the form of pictures or videos. Files containing illegal content were exchanged through the so-called “p2p” (peer-to-peer) file-sharing network in which each of the connected computers acted as both a client and a server. Hence, each user could access all files made available for sharing by other users of the network and download them for his or her use. Among the dynamic Internet Protocol (“IP”) addresses recorded by the Swiss police was also a certain dynamic IP address, which was later linked to the applicant.

Based on the data obtained by the Swiss police, on 7 August 2006 the Slovenian police, without obtaining a court order, requested company S., a Slovenian Internet service provider (hereinafter “the ISP”), to disclose data regarding the user to whom the above-mentioned IP address had been assigned at 1.28 p.m. on 20 February 2006. The police based their request on section 149b(3) of the Criminal Procedure Act (hereinafter “the CPA”, see paragraph 36 below), which required the operators of electronic communication networks to disclose to the police information on the owners or users of certain means of electronic communication whose details were not available in the relevant directory. In response, on 10 August 2006

the ISP gave the police the name and address of the applicant's father, who was a subscriber to the Internet service relating to the respective IP address.

On 12 December 2006 the police proposed that the Kranj District State Prosecutor's Office request the investigating judge of the Kranj District Court to issue an order demanding that the ISP disclose both the personal data of the subscriber and traffic data linked to the IP address in question. On 14 December 2006 such a court order was obtained on the basis of section 149b(1) of the CPA and the ISP gave the police the required data.

On 12 January 2007 the investigating judge of the Kranj District Court issued an order to carry out a house search of the applicant's family home. The order indicated the applicant's father as the suspect. During the house search the police and the investigating judge of the Kranj District Court seized four computers and later made copies of their hard disks.

Based on a conversation with the applicant's family members, of which no record is available, the police changed the suspect to the applicant.

Reviewing the hard disks, the police found that one of them contained files with pornographic material involving minors. The police established that the applicant had installed eMule, a file-sharing program, on one of the computers by means of which he had been able to download different files from other users of the program and had also automatically offered and distributed his own files to them. Among the files downloaded by the applicant, a small percentage had contained child pornography.

On 5 March 2008 the investigating judge of the Kranj District Court, opened a judicial investigation against the applicant on the basis of a reasonable suspicion that he had committed the criminal offence of displaying, manufacturing, possessing and distributing pornographic material under section 187(3) of the Criminal Code. The judge noted, among other things, that the applicant's father had been the holder of the identified IP address and that the applicant had allegedly been logging into the respective program under the name of "Benet".

On 17 March 2008 the applicant's counsel lodged an appeal against the decision to open a judicial investigation. He argued, *inter alia*, that the evidence concerning the identity of the user of the respective IP address had been obtained unlawfully. That information concerned the traffic data and should therefore not have been obtained without a judicial warrant.

On 21 March 2008 an interlocutory panel of the court rejected the appeal finding that, although counsel had argued that the identity of the user of the IP address had been obtained unlawfully, he had not requested that certain documents be excluded from the file.

On 29 May 2008, the Kranj District State Prosecutor's Office lodged an indictment against the applicant for the above-mentioned criminal offence. At the hearing of 8 October 2008 the applicant lodged a written request for exclusion of evidence obtained unlawfully, including the information concerning the user of the respective IP address obtained without a court order. On 5 December 2008 the court rejected the applicant's request, finding that the data concerning the user of the respective IP address had been obtained in compliance with section 149b(3) of the CPA.

On 5 December 2008 the Kranj District Court found the applicant guilty of the criminal offence with which he had been charged. Based on the opinion of an expert in computer science, the District Court held that the applicant must have been aware of the 630 pornographic pictures and 199 videos involving minors which he had downloaded through p2p networks and made available for sharing with other users. The applicant was sentenced to a suspended prison term of eight months with a probation period of two years.

Both the applicant and the district state prosecutor appealed against the first-instance judgment. The applicant challenged the facts as established by the District Court. He also alleged that the subscriber information the Slovenian police had acquired without a court order, and thus unlawfully, should have been excluded as evidence. Consequently, all the evidence based on such unlawfully acquired data should also have been excluded.

On 4 November 2009 the Ljubljana Higher Court granted the appeal of the district state prosecutor in part, converting the applicant's suspended sentence into a prison term of six months. The applicant's appeal was dismissed as unfounded. The Higher Court confirmed that the first-instance court had correctly established the facts of the case; moreover, it held that the data concerning the user of the IP address had been obtained lawfully, as no court order was required for such a purpose.

The applicant lodged an appeal on points of law before the Supreme Court, reiterating that a dynamic IP address could not be compared to a telephone number which was not entered in a telephone directory, as a new IP address was assigned to a computer each time the user logged on. Accordingly, such data should be considered as traffic data constituting circumstances and facts connected to the electronic communication and attracting the protection of privacy of communication. The applicant argued that the Swiss police should not have obtained the respective dynamic IP address without a court order, and nor should the Slovenian police have obtained the data on the identity of the subscriber associated with the IP address without such an order.

On 20 January 2011 the Supreme Court dismissed the applicant's appeal on points of law, reasoning that given the general accessibility of websites and the fact that the Swiss police could check the exchanges in the p2p network simply by monitoring the users sharing certain contents, that is without any particular intervention in internet traffic, such communication could not be considered private and thus protected by Article 37 of the Constitution. Moreover, in the Supreme Court's view, the Slovenian police had not acquired traffic data about the applicant's electronic communication, but only data regarding the user of a particular computer through which the Internet had been accessed.

The applicant lodged a constitutional complaint before the Constitutional Court, reiterating the complaints adduced before the lower courts. The Constitutional Court asked the Information Commissioner to express her position on the issue. The Information Commissioner was of the view that the reason

for obtaining the identity of an individual user of electronic communication was precisely that he or she communicated by means of more or less publicly accessible websites. In the Information Commissioner's view, it was impossible to separate traffic data from subscriber data, as traffic data alone did not make any sense if one did not ascertain who the person behind those data was – this latter information was thus considered to be an extremely important element of communication privacy. The Information Commissioner also highlighted that the provisions of the Electronic Communications Act in force at the material time required a court order regarding all data related to electronic communications, irrespective of whether they related to traffic or identification data. In the Information Commissioner's view, section 149b (3) of the CPA, which required only a written request from the police to obtain data on who was communicating, was constitutionally problematic.

On 13 February 2014 the Constitutional Court dismissed the applicant's complaint, holding that his constitutional rights had not been violated. The Constitutional Court's decision was adopted by seven votes to two. Judge J. Sovdat and Judge D. Jadek Pensa wrote dissenting opinions. The decision was served on the applicant on 11 March 2014.

The Constitutional Court pointed out, at the outset, that in addition to the content of communications, Article 37 of the Constitution also protected traffic data, that is any data processed for the transmission of communications in an electronic communications network. It considered that IP addresses were included in such traffic data. The Constitutional Court, however, concluded that the applicant, who had not hidden in any way the IP address through which he had accessed the Internet, had consciously exposed himself to the public and could not legitimately have expected privacy. As a result, the data concerning the identity of the user of the IP address were not protected as communication privacy under Article 37 of the Constitution, but only as information privacy under Article 38 of the Constitution, and no court order was required in order to disclose them in the applicant's case.

### 3. Fill out a claim to ECtHR

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## VARIANT 10

### 1. The theoretical part. Give a detailed answer to the question:

Prohibition of discrimination in the context of the ECHR (illustrate the example of three ECtHR decisions against different participating countries)

### 2. Solution of the provided case according to the scheme:

- Do all the eligibility criteria set out in Art. 35 ECHR is right?
- What Convention rights violated and why?
- What should be the decision in the case?

#### The circumstances of the case:

The applicant was born in 1973 and lives in Tbilisi. On 7 November 2002 the applicant was sentenced to a suspended term of five years' imprisonment for breaching public order and resisting a police officer.

On 4 July 2004 a police officer, the head of the criminal investigation unit at the Gldani-Nadzaladevi district police department in Tbilisi ("the district police department"), ordered a personal search of the applicant to be carried out in urgent circumstances. The relevant decision stated that having examined the inquiry file (*მოკვლევის მასალები*) in respect of the applicant, who was suspected of possession and use of narcotic substances, the police officer had decided, under, *inter alia*, Articles 290, 321, and 325 of the Code of Criminal Procedure of Georgia ("the CCP") (as cited in paragraph 37 below), that a personal search of the applicant should be conducted for the purpose of seizing any unlawful substances. The decision consisted mainly of pre-typed standard phrases with the applicant's first and last names added by hand, noting that he was suspected of unlawful drug possession. It was signed by the police officer himself and the head of the relevant district police department.

According to the official version of events, at around 5.20 p.m. on the same date, as the applicant was entering a billiards hall with two friends, two police officers waiting in a vehicle parked opposite the hall called to him. The applicant approached them. He was then searched, without the police having a judicial

warrant for that purpose. The police report on the personal search, which was drawn up subsequently at the police department, stated:

The applicant was formally arrested at 6 p.m. on suspicion of unlawful use and possession of the narcotic substance heroin. He again refused to sign the arrest record.

On what appears to be the same date (the document is not dated) the head of the relevant district police department wrote a report to the Tbilisi Gldani-Nadzaladevi district prosecutor, informing him of the personal search of the applicant that had taken place at 5.45 p.m. on 4 July 2004. According to that note, the relevant investigative measure had been conducted in urgent circumstances in the absence of a judicial warrant and before the initiation of criminal proceedings. The police officer asked the prosecutor to apply to the Gldani-Nadzaladevi District Court with a request for legalising the search *post-factum*.

According to the investigation file, on the same date, that is on 4 July 2004, on the basis of the above-mentioned request, the Tbilisi Gldani-Nadzaladevi district prosecutor lodged an application with the Gldani-Nadzaladevi District Court in Tbilisi to have the search of 4 July 2004, which it claimed had been urgent, legalised. The request simply provided the place the applicant had been arrested, the substance that had been revealed as a result of the search, and the offence the applicant had been suspected of. In accordance with Article 290 of the CCP and with reference to section 7(4) and sections 8 and 9 of the Law on the Conduct of Undercover Investigations, the prosecutor asked the court to legalise the search. In support of the request the prosecutor submitted three documents. The first was a handwritten note by Officer Sh.Sh., according to which the search had been conducted, on the basis of “operational information” (ოპერატიული ინფორმაცია), by him, by another police officer N.O., and by the driver, police officer M.Ts., and that as a result of the search attended by witnesses, heroin had been found on the applicant. The above note, in contrast to the police report on personal search of the applicant (see

paragraph 9 above) stated that at the time of the arrest, the applicant had been under the influence of drugs.

According to the case-file, the prosecutor's request to have the personal search of the applicant legalised, as submitted to the court, included neither a copy of the decision ordering the search in urgent circumstances nor the inquiry file in respect of the applicant (see paragraph 8 above). It also appears that a copy of the police report on personal search of the applicant was likewise missing from the case-file available to the court (see paragraph 9 above).

On 5 July 2004 the court examined the request and the documents produced by the public prosecutor's office in accordance with Articles 290 and 293 of the CCP and declared the search lawful. It concluded:

The procedure was conducted in writing and the applicant was not allowed to submit his observations regarding the circumstances of the search. The decision stated that no appeal lay against it.

On an unspecified date the applicant was formally charged with buying and possessing a large quantity of drugs, an offence under Article 260 § 2 (a) of the Criminal Code.

On 5 August the two attesting witnesses were questioned again. They maintained their initial statements, describing in more detail the circumstances of the applicant's search. On 7 August 2004 Officer Sh.Sh., who was also questioned in the capacity of a witness, again confirmed that he had acted with two other police officers, N.O. and M.Ts., on the basis of operational information. According to that information, a certain person on land adjacent to a billiards hall was under the influence of drugs.

On 26 August 2004 a forensic examination by the investigating authorities established that the substance discovered during the search was 0.059 grams of heroin. In addition, on 27 August 2004 a narcotics test revealed that the applicant was not a drug addict, although he did require "preventive treatment."

The applicant remained silent during the investigation.

On 10 December 2004 the Gldani-Nadzaladevi District Court opened the applicant's trial. The applicant, describing the events that had taken place in front of the billiards hall, pleaded not guilty. He claimed that he had not been searched either before or after his arrest and that the substance allegedly discovered on him had belonged to the police. He explained that the police had taken him to the police station, where they had "heated up" an injection of drugs (opium) and administered it to him by force. He had then been taken to a toxicology clinic to be tested.

On 21 December 2004 U.K., one of the attesting witnesses, was questioned in court. He claimed that he had not attended the applicant's search on 4 July 2004 but had been approached at around 10 p.m. at the construction site where he had been working by police officers who had taken him directly to the police station. There, they had dictated to him a text which he had signed. In addition, he had signed a hand-written report without reading it. In reply to a question as to whether the police had insulted him, U.K. replied that they had been swearing at the police station and that he had been scared. He also alleged that the police had threatened to arrest him.

On 27 December 2004 Officer Sh.Sh was questioned in court. He confirmed that the applicant had been arrested and searched on the basis of operational information. He maintained that the search had been attended by two witnesses who had been approached in the street. The second police officer, N.O., when questioned in court on 9 March 2005, explained that he had acted on the basis of operational information according to which "there [had been] a person in Mukhiani IV district, who could have been under the influence of drugs". He further stated that he was not sure whether visually it had been evident that the applicant had been under the influence of drugs. Arguing that U.K.'s testimony before the trial court was untrue, he confirmed the official version of the search of the applicant and maintained that the latter's personal search had been conducted immediately at the scene of his arrest.

In the meantime, L.Ts., the second witness to the search, refused to appear before the court. After being served with a summons, on 18 February 2005 he

wrote a brief note to the judge informing her of his inability to attend the hearing on 22 February 2005 because of a planned trip to the United States.

The court also heard evidence from two friends of the applicant who had been with him at the time of his arrest. They stated that all three of them had been standing in front of a billiards hall when the police had called to the applicant and the latter had approached their vehicle. They both claimed that the applicant had been immediately taken away by the police without any search having been conducted on the spot.

In his final statement, the applicant's defence counsel asked the court to dismiss the report on the applicant's personal search as null and void, on account of various procedural irregularities. He also claimed that the second alleged witness to the search, L.Ts., was a police agent, a former police officer who had acted in many similar criminal cases as an attesting witness.

On 18 April 2005 the Gldani-Nadzaladevi District Court found the applicant guilty as charged and sentenced him to six years' imprisonment, to which was added six months from a previous sentence. The court found that the applicant's guilt was proven by the statements given by the two police officers who had arrested and searched him, and by the results of the personal search. As regards U.K.'s contradictory claims, the court concluded that it "had not been unequivocally established that he had not been a witness to the personal search and had only signed the papers at the police station". Consequently, the court decided not to take account of the part of U.K.'s testimony where he had denied being present during the search. The court further held that it could not take into account the statements of the applicant's friends, given that the two men were friends of the accused and therefore wanted to get him out of trouble.

The applicant appealed against that decision to the Tbilisi Court of Appeal, arguing again that he had not been searched at the time of his arrest and that his conviction had been based on planted evidence. He claimed that the first-instance court had not drawn objective conclusions from his friends' statements and the testimony of U.K. in which the latter had claimed not to have witnessed the search.

The applicant also criticised the fact that no evidence had been heard from L.Ts. He provided the witness's address and requested that he be questioned in court. At the same time, he asked the court to re-examine all the witnesses, namely the two police officers, U.K., and his friends.

The appeal court further examined L.Ts., the second attesting witness to the search, who confirmed that he had been present during the search in question at the request of the police, and had seen that a yellowish substance had been discovered in the applicant's trouser pocket. He contested the allegations of the defence that he was a former police officer or had otherwise cooperated with the police in the past. The first attesting witness, U.K., confirmed the evidence he had given before the first-instance court. He refuted the allegation that he had attended the applicant's personal search and claimed that he had been forced to sign several documents at the police station. He alleged that he had been subjected to psychological as well as physical pressure by the police. At the same time, in reply to a question put by the prosecutor, U.K. said that having learnt that the documents he had signed concerned the applicant, he had gone to see the latter's brother and had told him everything. He had then gone with one of the applicant's cousins to the Public Defender's Office and had given them a detailed statement concerning the circumstances of the case.

At the hearing of 18 November 2005 the applicant's defence counsel applied to the appeal court to exclude as inadmissible evidence, among other things, the police report on the applicant's personal search. Defence counsel argued, firstly, that the search had been conducted without a judicial warrant or the authorisation of a senior investigator, in violation of the relevant provisions of the CCP. In support of his argument he referred to the fact that the decision to conduct a personal search had not been duly signed by a senior investigator, had not indicated the exact time at which it had been issued, and had included detailed information about the identity of the applicant, including his name and address, and the type of narcotic substance, heroin, that he allegedly had on his person, facts which had become known to the police only after the

arrest and search of the applicant. Moreover, he alleged that the decision had not been read out to the applicant before the search. Secondly, in his evidence before the first and second-instance courts, U.K. had unequivocally claimed that he had not witnessed the personal search of the applicant and had been forced to sign certain documents at the police station. As for the second witness, L.Ts. had lied about his prior working experience with the police and was thus unreliable. In support of his arguments, the defence submitted a letter from the Ministry of the Interior, according to which L.Ts. had been working for the Ministry in 1996. Thirdly, the defence emphasised that the friends of the applicant had consistently maintained that the latter had not been searched at the place of his arrest. The defence thus requested that the search report be excluded as an inadmissible piece of evidence, in accordance with Article 111 of the CCP.

On 6 December 2005 the appeal court dismissed the applicant's request in its entirety. In connection with the search decision, they concluded that it had been taken by an authorised police officer in line with the requirements of Article 67 of the CCP. They further considered that it was unclear as to whether the decision had indeed been read out to the applicant prior to the personal search being carried out; therefore they were not in a position at that stage of the proceedings to assess that alleged breach of procedure.

On 21 February 2006 the appeal court upheld the first-instance judgment. The court considered that the applicant's guilt was confirmed by the reports of his arrest and the personal search, the statements of the arresting officers, and other evidence in the case file. In connection with the evidence of U.K., the appeal court found the testimony he had given in court not credible as it contradicted the case materials. Furthermore, it was "illogical" and had apparently been given under the influence of the applicant's family. The appeal court also relied on the statement of L.Ts., disregarding the applicant's complaint concerning his being a former police officer. It dismissed the evidence of the two friends of the applicant as unreliable.

On 6 March 2006 the applicant lodged an appeal on points of law. He maintained that serious procedural irregularities had taken place during the pre-

trial investigation had undermined his ability properly to defend his case, and that his conviction was based on unlawful evidence, notably on a falsified decision to carry out a personal search in urgent circumstances, which had served as a basis for the unlawful search and untrue witness statements. He also denounced as unsubstantiated the appeal court's decision refusing his request concerning the inadmissibility of evidence.

On 12 June 2006 the Supreme Court of Georgia declared the applicant's appeal inadmissible on the grounds that it did not satisfy the requirements of Article 547 § 2 of the Code of Criminal Procedure. On 3 January 2011 the applicant was released from prison upon the expiry of his prison sentence.

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on the course

**"Application to European Court of Human Rights"**

VARIANT 1

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specialty 081 "Law" distance learning

***Andrey Stepanov***

***Checked:***

Ph.D., Associate Professor Zholudieva Viktoriia

Kyiv 2024

## **Rules of Court**

### **Rule 47 – Contents of an individual application**

1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out

(a) the name, date of birth, nationality and address of the applicant and, where the applicant is a legal person, the full name, date of incorporation or registration, the official registration number (if any) and the official address;

(b) the name, address, telephone and fax numbers and e-mail address of the representative, if any;

(c) where the applicant is represented, the dated and original signature of the applicant on the authority section of the application form; the original signature of the representative showing that he or she has agreed to act for the applicant must also be on the authority section of the application form;

(d) the name of the Contracting Party or Parties against which the application is made;

(e) a concise and legible statement of the facts;

(f) a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and

(g) a concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 § 1 of the Convention.

2. (a) All of the information referred to in paragraph 1 (e) to (g) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.

(b) The applicant may however supplement the information by appending to the application form further details on the facts, alleged violations of the Convention and the relevant arguments. Such information shall not exceed 20 pages.

3.1. The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by

(a) copies of documents relating to the decisions or measures complained of, judicial or otherwise;

(b) copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;

(c) where appropriate, copies of documents relating to any other procedure of international investigation or settlement;

(d) where the applicant is a legal person as referred to in Rule 47 § 1 (a), a document or documents showing that the individual who lodged the application has the standing or authority to represent the applicant.

3.2. Documents submitted in support of the application shall be listed in order by date, numbered consecutively and be identified clearly.

4. Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.

5.1. Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless

(a) the applicant has provided an adequate explanation for the failure to comply;

(b) the application concerns a request for an interim measure;

(c) the Court otherwise directs of its own motion or at the request of an applicant.

5.2. The Court may in any case request an applicant to provide information or documents in any form or manner which may be appropriate within a fixed time-limit.

6. (a) The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court. The date of dispatch shall be the date of the postmark.

(b) Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of introduction.

7. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

METHODICAL INSTRUCTIONS  
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