



## FLASH NEWS

19/18

# EUROPEAN COURT OF HUMAN RIGHTS

OVERVIEW FROM 3/12 TO 14/12/2018

### SI / LEKIĆ vs. SLOVENIA [GC]

**Protection of property - Payment by the officers and partners of the debts of their automatically delisted company**

**No violation** of Article 1 of Protocol No. 1 (protection of property) to the ECHR.

The applicant was a partner, employee and managing director of a limited liability company. He argued that the delisting from the companies register, without liquidation, and the subsequent incurring of his personal liability, in respect of a debt of this company, had infringed his economic rights and constituted unlawful deprivation of property. He also pleaded breach of the principle of legal certainty owing to the removal of the shield of legal personality.

Judgement of 11.12.2018 (application no. 36480/07) ([FR](#) / [EN](#))

### CH / BELLI AND ARQUIER-MARTINEZ vs. SWITZERLAND

**Prohibition of discrimination - Obligation to reside in a country to receive non-contributory social benefits**

**Non-violation** of Article 14 (prohibition of discrimination) in conjunction with Article 8 (right to respect for private and family life) of the ECHR.

The applicants, a Swiss national born with a disability and her mother, residing in Brazil, challenged the abolition of her right to non-contributory social benefits on the ground that she no longer resided in Switzerland. They criticized the fact that the residence criterion depends on the type of disability (by birth) and that disabled persons who contributed to the system received benefits while residing abroad. They also claimed that a forced return to Switzerland would involve a separation of the mother from either her daughter or her husband.

Judgement of 11.12.2018 (application no. 65550/13) ([FR](#))  
Press release ([FR](#) / [EN](#))

### LT / M.A. AND OTHERS vs. LITHUANIA

**Prohibition of torture - Asylum procedure - Presentation of asylum applications prevented by border guards**

**Violation** of Articles 3 (prohibition of torture) and 13 (right to an effective remedy) of the ECHR.

The applicants, members of a family who had left Chechnya and currently residing in Poland, complained that the Lithuanian border control authorities had refused, on three occasions, to let them enter the territory from Belarus to allow them to file an asylum application. They also criticised the lack of an effective remedy against this refusal because they had no suspensive effect and condemned their dismissal to Belarus, from where they could be repatriated to Chechnya, where they risked treatment contrary to Article 3 of the ECHR.

Judgement of 11.12.2018 (application no. 59793/17) ([EN](#))

Press release ([FR](#) / [EN](#))

See the Flash News ECHR no. 7/17 for another case concerning the applicants (case M.A. and Others vs. Poland, application no. 42902/17)

### HU / MAGYAR JETI ZRT vs. HUNGARY

**Freedom of expression - Internet - Hyperlink to defamatory content - Liability of the hyperlink creator**

**Violation** of Article 10 (freedom of expression) of the ECHR.

The applicant, a company operating an information website, claimed that by engaging its liability because it had published an article with a hyperlink to an interview on YouTube, which was subsequently judged to have defamatory content, the domestic courts had unduly restricted its rights.

Judgement of 04.12.2018 (application no. 11257/16) ([EN](#))

Press release ([FR](#) / [EN](#))

## **PL / SŁOMKA vs. POLAND**

### **Freedom of expression - Right to a fair trial - Contempt of court during a trial by a member of the public - Custodial sentence**

**Violation** of Articles 6 (right to a fair hearing) and 10 (right to freedom of expression) of the ECHR.

The applicant, a Polish national, was sentenced to fourteen days of imprisonment for contempt of court on the ground that during the trial of communist era generals who imposed martial law in 1981, he jumped behind the judges' desk and shouted protest slogans. He complained, inter alia, that the proceedings leading to this prison sentence had been unfair. He felt that the judges who imposed the penalty were not impartial because they were also the people he had outraged.

Judgement of 06.12.2018 (application no. 68924/12) ([EN](#))  
Press release ([FR](#) / [EN](#))

## **AZ / MURSALIYEV AND OTHERS c. AZERBAIJAN**

### **Freedom of movement - Prohibition of leaving the territory for witnesses in criminal proceedings**

**Violation** of Article 2 of Protocol No. 4 (freedom of movement) to the ECHR and Article 13 (right to an effective remedy) of the ECHR.

The applicants, eleven Azerbaijani nationals who had been heard as witnesses in various criminal proceedings, and not as suspects or accused, had been prohibited from leaving the country by the investigating authorities. They considered these prohibitions a violation of their right to leave their own country and considered that the domestic courts had not properly examined their complaints.

Judgment of 13.12.2018 (application nos. 66650/13, 24749/16, 43327/16, 62775/16, 68722/16, 76071/16, 8051/17, 8702/17, 12870/17, 21246/17, and 37696/17) ([EN](#))  
Press release ([FR](#) / [EN](#))

## **OTHER INFORMATION**

### **Inter-State case brought by Ukraine against Russia - Provisional measures**

On 4 December 2018, pursuant to Rule 39 of its rules, the ECtHR granted a request for interim measures in a new inter-State case brought by Ukraine against Russia concerning events in the Kerch Strait on 25 November 2018.

In the interest of the parties and the smooth conduct of the proceedings, the ECtHR invited Russia to ensure that the captured members of the Ukrainian Navy, whose health condition so requires, including those who were injured during of the naval incident, receive appropriate medical treatment.

Ukraine vs. Russia (VIII), brought on 29.11.2018 (application no. 55855/18)  
Press release ([FR/EN](#))

### **First request for an accepted advisory opinion - Protocol No. 16**

On 3 December 2018, the panel of five judges of the Grand Chamber accepted the first request for an advisory opinion under Protocol No. 16 to the ECHR, which entered into force on 1 August 2018.

This request, submitted by the French Court of Cassation and received on 16 October 2018, relates to the transcription, in the civil status registers, of the birth certificate of a child born abroad from surrogacy, in that this document designates the "intended" mother as the legal mother.

Press release ([FR/EN](#))  
[Link](#) to the table of signatures and ratifications

### **Permanent prohibition for a counsel to represent applicants in the ECtHR**

By a decision communicated on 12 December 2018, the ECtHR decided, pursuant to Rule 36 (4) (b) of its rules, to permanently prohibit a Ukrainian lawyer from representing or assisting applicants in connection with pending and future applications, because of her fraudulent and abusive behaviour.

Press release ([FR/EN](#))