



## Seminar “Communicate Cases (and their Solutions) before the ECtHR”

Spring Semester 2025

### List of Topics

#### Removals and pushbacks

1. ***C.O.C.G. and Others against Lithuania* (application no. 17764/22), lodged on 8 April 2022, communicated on 2 December 2022**

The application concerns summary returns (pushbacks) from Lithuania to Belarus and deprivation of liberty of asylum seekers. The applicants are four Cuban nationals. On several occasions they attempted to cross the Belarussian-Lithuanian border on foot, but each time Lithuanian border guards pushed them back, at gunpoint, into the Belarussian territory, without giving them an opportunity to submit asylum applications. On 8 April 2022 the applicants crossed the Belarussian-Lithuanian border. On the same day, the Court notified the Lithuanian Government, under Rule 39 of the Rules of Court, that the applicants should not be expelled from Lithuania until 6 May 2022. The applicants were apprehended by border guards that night and taken to a border checkpoint, but the following morning the guards drove them to the border area and pushed them to Belarus. The applicants entered Lithuanian territory again on an unspecified later date and were apprehended by border guards. They lodged asylum applications; the asylum proceedings are still pending. The applicants complain under Articles 2 and 3 of the Convention; Article 4 of Protocol No. 4; Article 34; Article 13; Article 5 §§ 1, 2, 4.

2. ***H.M.M. and Others v. Latvia* (application no. 42165/21), lodged on 20 August 2021, communicated on 3 May 2022**

The application concerns events in the vicinity of the Latvian-Belarussian border. The applicants are twenty-six Iraqi nationals of Kurdish origin. The applicants complain that in August 2021 they were returned to the Latvian-Belarussian border zone without their asylum claims having been registered and reviewed by the Latvian authorities and that they did not have access to basic amenities such as food, water, shelter, or medical assistance in that zone. Furthermore, a number of the applicants claim that between August and December 2021 they suffered frequent pushbacks from Latvia to Belarus. Some of the applicants claim to have been beaten by the guards and to have had their personal belonging taken and their phones destroyed.

3. ***R.A. and Others v. Poland* (application no. 42120/21), lodged on 20 August 2021, communicated on 27 September 2021**

The applicants are a group of 32 Afghan nationals who allegedly fled Afghanistan after the Taliban came to power. Relying on Article 3 of the Convention, the applicants complain that the Polish authorities have denied them access to asylum procedures and that they are exposed to the risk of chain refoulement and treatment contrary to Article 3 of the Convention if returned to Belarus and Afghanistan, respectively. Under the same Convention provision, the applicants also complain about their material and health conditions. Citing Article 34 of the Convention, they complain about Poland's failure to implement the *interim measure* indicated by the Court on 25 August 2021. Finally, they complain that they were subjected to collective expulsion contrary to Article 4 of Protocol No. 4 to the Convention and that they had no effective remedy by which they could have lodged their respective complaints.

4. ***B.K. v. Switzerland* (application no. 23265/23), lodged on 18 September 2023, communicated on 22 May 2024**

The application concerns the applicant's return to Kosovo. The applicant arrived in Switzerland in 1989, at the age of 5 months, and was granted a residence permit. At the age of twenty, he was sentenced to 2 years and two months for assault, complicity in theft, bodily harm and other charges.



Following this conviction, the Migration Office of the Canton of Ticino revoked the applicant's residence permit. The applicant challenged this decision before the domestic courts. The Federal Court by its final judgment confirmed the dismissal of the applicant's request for review and ordered the applicant's return. On 26 July 2023, the applicant was returned to Kosovo. Before the Court, the applicant claims a violation of Article 8 of the Convention on the grounds of his long presence and integration in Switzerland. Under Articles 2 and 3 of the Convention, he alleges that his heart problems could not be treated in Kosovo, particularly in the event that emergency heart surgery were required.

**5. *Z.S. v. Switzerland* (application no. 20272/23), lodged on 16 May 2023, communicated on 30 August 2024 (suggested for a Bachelor Thesis)**

The application concerns the expulsion of a Burkinabe national born in 1970, who entered Switzerland in 2006. In May 2019 his eldest daughter (born in 2000) filed a criminal complaint against the applicant, accusing him of committing sexual acts against her over a period of several months. By judgment of 29 June 2021 the Court of First Instance of the Canton of Jura sentenced him to six years' imprisonment and ordered his expulsion for ten years. He challenged this decision before the domestic courts, but to no avail. The applicant complains that if he were returned to Burkina Faso he would be exposed to a real risk of being subjected to treatment contrary to Articles 2 and 3 of the Convention due to the unstable security situation in that country. He also complains that his expulsion would violate Article 8 of the Convention because of his family life in Switzerland.

**6. *Z and Others v. Finland* (application no. 42758/23), lodged on 15 December 2023, communicated on 25 June 2024**

The applicants, who are a father (the first applicant) and two children (the second and third applicants), are Russian nationals who were all born in Russia and currently live in Finland. The first applicant and the children's mother have been separated since the children were three and five years old. The children lived with the mother. In September 2022 the first applicant took the children from Russia to Finland without their mother's consent. On 23 January 2023 the children's mother instituted proceedings for their return before the Finnish Courts under the Hague Convention on the Civil Aspects of International Child Abduction. The first applicant opposed the mother's request, he submitted that the children had been forced to attend a military school in Russia where they had been "brainwashed" by being taught how to use guns and by being exposed to war propaganda. By a final decision of 27 September 2023, the Supreme Court ordered the return of both children to Russia. The applicants complain under Article 8 of the Convention that the order for the return of the children was in breach of their right to respect for their family life. They also complain under Article 3 of the Convention that the second and third applicants risk being exposed to ill-treatment if returned to Russia.

**Immunity from civil suits for war crimes**

**7. *Ziada v. the Netherlands* (application no. 613/24), lodged on 23 December 2023, communicated on 18 June 2024**

The applicant is a Dutch national who is originally from the Palestinian territories and has been resident in the Netherlands since 2005. He challenges the Dutch courts' decision to grant immunity from civil suit to individuals accused of war crimes in Gaza. Six close family members of the applicant's family, ranging from ages 12 to 70, were among the thousands of civilians killed by the Israeli Defence Force during 'Operation Protective Edge' in 2014. Before the Dutch civil courts, the applicant requested a declaratory decision that two Israeli public officials, who were commanding officers at the relevant time, acted unlawfully towards him and that they were jointly liable to him for the damage he incurred, and will incur, as a result. He also applied for an order to pay damages. On 25 August 2023 the Supreme Court held that according to customary international law, the public officials were entitled by law to invoke immunity from civil jurisdiction in foreign courts for acts committed in the exercise of their public functions, irrespective of the nature and seriousness of the conduct complained of, and irrespective of the availability of an



alternative forum to pursue the claim. The applicant complains under Article 6 of the Convention that his access to court to pursue a civil claim against the two Israeli public officials was unduly restricted.

### Climate change and environment

**8. *Müllner v. Austria* (application no. 18859/21), lodged on 8 April 2021, communicated on 18 June 2024**

The application concerns complaints about Austria's alleged failure to mitigate the impacts of climate change, in particular global warming, by taking effective measures to reduce its greenhouse gas emissions and to limit the increase in the global average temperature to 1.5°C above pre-industrial levels. The applicant suffers from multiple sclerosis. He claims that his symptoms worsen with the increase of external temperatures, leading to temporary paralysis and restricted mobility, an effect known as Uhthoff's Syndrome. In his application to the Court, the applicant claims that the effects of the climate crisis expose him to a real and serious risk for his physical, psychological and moral integrity, personal dignity and the overall quality of his private and family life. He complains under Article 6, 8 and 13 ECHR (and subsidiarily under Article 2).

**9. *Greenpeace Nordic and Others v. Norway* (application no. 34068/21), lodged on 15 June 2021, communicated on 16 December 2021**

This case was brought by two non-governmental organisations and six individuals whose complaints, relying on Articles 2, 8, 13 and 14 ECHR, concern Norwegian proceedings which failed to successfully contest a decision made by the Norwegian Government to grant new petroleum exploration licences in the Arctic. They allege that their (members') lives, health and well-being are being directly affected by the escalating climate crisis. The six individual applicants also allege that, as young people, they are being disproportionately affected by the climate crisis. Under Article 14 ECHR, they argue that they have faced disproportionate impacts in light of both their age and the fact that two of the applicants belong to the Sami minority.

**10. *Meucci v. Italy* (application no. 1838/21), lodged on 10 December 2020, communicated on 5 September 2024**

The application concerns the opening and operation of "Fosso del Cassero" landfill site in the proximity of the applicant's home and her alleged exposure to the pollution generated by it. Relying on Article 8 of the Convention, the applicant complains that in failing to take the requisite protective measures to prevent, minimise or eliminate the effects of the pollution from the landfill, the State authorities have caused serious damage to the environment, endangering her health and well-being and preventing her from enjoying her home. Relying on Article 13 taken in conjunction with Article 8, the applicant complains that no effective remedy exists in the Italian domestic legal framework to obtain, amongst other things, the cessation of the polluting activities.

**11. *Di Caprio and 3 Others v. Italy* (application no. 39742/14 and others), communicated on 5 February 2019**

The expression "Terra dei Fuochi" first appeared in a 2003 report by the Legambiente onlus association (a non-profit association aimed at protecting the environment), in which it denounced the illegal dumping and burning of hazardous waste in the municipalities of Qualiano, Villaricca and Giugliano, in the province of Naples. The pollution situation of the land in question, referred to as the "Terra dei Fuochi" phenomenon, is due, among other things, to the improper use of formally legal landfills and the existence of illegal landfills, the abandonment of waste and diffuse pollution. Furthermore, the burial of waste often affects groundwater, leading to pollution, in particular of drinking water and water used for irrigation. Finally, the areas concerned are also affected by the illicit burning of waste, leading to air pollution and exposure of people to polycyclic aromatic hydrocarbons and dioxins. The "Terra dei Fuochi" has approximately 2,963,000 inhabitants, or 52% of the population of the Campania region. Relying on Articles 2 and 8 of the Convention, the individual applicants and the applicant association complain, *inter alia*, that the authorities failed to take the measures which, in their view, would have reasonably mitigated the



risks to their health arising from the pollution of the land; and failed to provide information concerning these risks.

### Freedom of expression

**12. *Tsaava and Others v. Georgia* (application no. 13186/20 and others), referred to the GC at the request of the applicants**

The applicants are 26 Georgian nationals. The case concerns the dispersal of a protest on 20-21 June 2019 from the front of the Parliament building in Tbilisi. The protest was sparked by a prominent member of the Russian Duma's sitting in the Speaker's chair in the Georgian Parliament and delivering a speech in Russian as part of a session of the Interparliamentary Assembly on Orthodoxy. The applicants were either participants in the demonstration, or journalists reporting on the protests. They allege, in particular, excessive use of force by the authorities resulting in their injury. They rely on Articles 3 (prohibition on inhuman and degrading treatment), 10 (freedom of expression), 11 (freedom of assembly) and 13 (right to an effective remedy) of the Convention.

**13. *Danileț v. Romania* (application no. 16915/21), referred to the GC at the Romanian Government's request**

The case concerns the disciplinary sanction imposed on the applicant, when he was a judge at Cluj County Court, by the National Judicial and Legal Service Commission (CSM) for posting two messages on his Facebook account. In these messages he expressed in rather harsh words dissatisfaction with the way Romanian politicians controlled the institutions, amongst which also the judiciary. The CSM considered that Mr Danileț had impaired the honour and good reputation of the judiciary. The High Court dismissed Mr Danileț's appeal and upheld the CSM's decision. Before the Court, Mr Danileț complained of a violation of his right to freedom of expression (Article 10 ECHR). He further submitted that the disciplinary sanction had damaged his social and professional reputation and had had a negative impact on his career (Article 8 ECHR).

**14. *Cerqueira v. Portugal* (application no. 9601/23), lodged on 23 February 2023, communicated on 13 September 2024**

The applicant is a medical practitioner. The application concerns the applicant's criminal conviction for having written, on his website, blog and Facebook profile, defamatory statements about P.C., a Chinese medical practitioner and acupuncture physician. On 14 January 2021 the Lisbon District Court fined the applicant 3,000 euros (EUR) and ordered him to pay EUR 15,000 to P.C. for non-pecuniary damage. On 25 October 2022 the Appeal Court of Lisbon upheld the judgment. The domestic courts found that the applicant had overstepped the limits of permissible criticism. The applicant relies on Article 10 ECHR, complaining that his conviction and the award of damages on account of his criticism of P.C. were in breach of his right to freedom of expression.

**15. *Rodriguez Quintero and Other v. Spain* (applications nos. 473/24 and 485/24), lodged on 22 December 2023 and 28 December 2023 respectively, communicated on 3 July 2024**

The applications concern the applicants' dismissals on disciplinary grounds based on social media exchanges used as evidence in other proceedings brought by a third employee against their company. The applicants complain mainly under Articles 6, 8 and 10 of the Convention that the national courts' judgments upholding the company's decision to use those social media exchanges from other judicial proceedings as the basis for their dismissals amounted to violations of their rights to a fair trial, to respect for private life and freedom of expression.

**16. *De Pedro Guri v. Spain* (application no. 44582/21), lodged on 31 August 2021, communicated on 12 June 2024**

The application concerns the refusal of the national courts to comply with the applicant's request to the search engine Google to dereference two press articles that appeared when searching for his name. The articles in question reported on the applicant's private conversations that had given rise to criminal proceedings against him. Relying on Article 8 and Article 6 § 2 ECHR, the applicant



complains, first, that the refusal to delist the articles in question violated his right to respect for his private life and reputation and, secondly, that the Audiencia Nacional and the Supreme Court infringed his right to the presumption of innocence by presenting the information published as true, even though the criminal proceedings against him had ended with a dismissal of charges.

**17. *Mortensen v. Denmark* (application no. 16756/24), lodged on 7 June 2024, communicated on 24 June 2024**

By a High Court judgment, which became final on 7 February 2024, the applicant was convicted of defamation for having written in a post on Twitter (now X), that the controversial leader of a political party, P., “is allowed to be a Nazi ... [whereas another person was convicted for calling a police officer an idiot]”. The applicant was sentenced to 10 day-fines of 1,000 Danish Kroner (DKK) each, and ordered to pay compensation to P. in the amount of DKK 30,000. The applicant complained that the High Court judgment was in violation of his rights under Article 10 of the Convention.

**Prohibition on begging**

**18. *Alain Pellegrinelli and Others v. Switzerland* (Application no. 18509/19), lodged on 29 March 2019, communicated on 27 September 2021 (suggested for a Bachelor Thesis)**

The application concerns the complaints by the first, second and third applicants (Alain Pellegrinelli, Yves Daniel, Roberth Lacatus) who regularly or occasionally revert to begging in public in the Canton of Vaud to ensure their survival. They complain about the total prohibition of begging in the Canton of Vaud as adopted on 27 September 2016 (Article 23 of the cantonal criminal code). The Federal Court considered that there were no grounds to change its case-law established in the context of the total prohibition of begging in the Canton of Geneva. The total prohibition is justified by public interest and proportionate to the aim pursued. It furthermore considered that freedom of expression has not been violated because no communicative value could be attributed to the practice of begging.

**Discrimination**

**19. *Konichenko v. Ukraine* (application no. 57699/22), lodged on 4 December 2022, communicated on 30 October 2023**

The case concerns refusal to allow the applicant to cross the Ukrainian border because of the ban on travelling abroad for men aged 18 to 60, introduced in Ukraine on 24 February 2022 following the full-scale invasion of Ukraine by Russia. On several occasions the applicant tried to leave the territory of Ukraine but was refused by the State Border Guard. The applicant challenged these refusals before the domestic courts, but to no avail. He complains that the restriction on his travelling abroad during times of war was in breach of his right to liberty of movement under Article 2 of Protocol No. 4. He alleges, relying on Article 14 of the Convention, that the ban on leaving the country is discriminatory since there has been no ban on women travelling abroad.

**20. *Semenya v. Switzerland* (application no. 10934/21), lodged on 18 February 2021, Chamber judgment issued 11 July 2023, pending before the Grand Chamber**

On 11 July 2023, a Chamber of the ECtHR ruled in the case of Semenya v. Switzerland (application no. 10934/21). It held, by a majority, that there had been a violation of Articles 14 (+ Article 8) and Article 13 ECHR in case of an international-level runner who complained about regulations of her sport’s governing body requiring her to take hormone treatment to decrease her natural testosterone level to be able to compete in the female category. Having refused to undergo the treatment in question, she was no longer able to compete internationally. Her legal actions challenging the regulations in question before the Court of Arbitration for Sport (CAS) and the Federal Court were rejected. The seminar topic, however, does not concern the Chamber judgment as such, because it has already been indicated that this case will be taken to the Court’s Grand Chamber.



**21. *B.R. v. Switzerland* (application no. 2933/23), lodged on 6 January 2023, communicated on 3 May 2023 (suggested for a Bachelor Thesis)**

This case, brought by an applicant suffering from the rare disease spinal muscular atrophy type 2, concerns claims brought under Articles 3, 8 and 14 of the Convention. It challenges the refusal of the applicant's health insurance to cover the costs of treating her with the very expensive, but effective, drug "Spinraza". The drug was not made available to patients who, like the applicant, require continuous ventilation, absent a high benefit. Before the Court, she argues that this violated her rights under Article 3 and 8 ECHR, that her case was not duly examined, and that she had been the victim of discrimination based on her state of health in violation of Article 14 ECHR.

**Public health**

**22. *Andrée Jelk-Peila v. Switzerland* (application no. 57596/21), lodged on 23 November 2021, communicated on 17 April 2024 (suggested for a Bachelor Thesis)**

The case concerns the measures taken by the Swiss authorities in the fight against the Covid-19. The applicant is a member of the "Climate Strike" collective. On 5 May 2020, the applicant applied for a demonstration permit for an action planned for 15 May 2020. The gathering was planned to bring together 28 to 32 people, including extras, journalists, spokespersons and a photographer. By decision of 11 May 2020, the Department of Security, Employment and Health of the Canton of Geneva rejected the application and banned the organization of the demonstration, considering in particular that the public interest linked to the health emergency was overriding. The applicant challenged this decision before the domestic courts, but to no avail. Before the Court, the applicant alleged that there had been a violation of the right to peaceful assembly (Article 11 ECHR).

**23. *Rucki v. Latvia* (application no. 37284/23), communicated on 4 April 2024**

The applications concern the Covid-19 related restrictions and the applicants' rights to respect for private life. On 9 October 2021 the Government declared an emergency situation from 11 October 2021 until 28 February 2022 and adopted a general administrative act which as from 15 November 2021 allowed employees and officials of State and municipal authorities to perform their work duties only if they had presented a certificate of primary or booster vaccination against Covid-19 or a certificate of recovery. A refusal to comply with those requirements resulted in a suspension and a loss of pay. At the material time, the applicants held one of the following posts: a civil servant, a pre-school teacher, a public transport driver, a nurse, a security manager and a border guard. The applicants raise complaints under Article 8 ECHR alleging that the obligation to obtain a certificate of vaccination against Covid-19 breached their personal integrity, had an impact on their professional lives and was overall disproportionate.