



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

Spring Semester 2024

### List of Topics

#### Block 1: Key Swiss Cases

1. ***Communauté Genevoise d’Action Syndicale (CGAS) v. Switzerland*, Chamber Judgment issued on 15 March 2022, relinquished to the Grand Chamber on 5 September 2022, Grand Chamber hearing held on 12 April 2023**

This case was brought under Art. 11 ECHR and concerns the freedom of peaceful assembly. At the start of the COVID-19 pandemic, there was a two-and-a-half month general ban on public meetings, issued by the Federal Council and accompanied by criminal sanctions and without judicial review of proportionality. Relying on Article 11 (freedom of assembly and association) ECHR, the applicant association complained that it was deprived of the right to organise and participate in public events. In a Chamber judgment issued on 15 March 2022, the Court held that there had been a violation of Article 11. The Chamber found that the blanket nature and significant length of the ban, and the nature and severity of the possible penalties, rendered the ban disproportionate to the aims pursued. The Court further observed that the domestic courts had not conducted an effective review of the measures. The respondent State had thus overstepped its margin of appreciation. The case was then referred to the Grand Chamber at the Swiss Government’s request. A Grand Chamber hearing in this case was held on 12 April 2023.

2. ***Alain Pellegrinelli and Others v. Switzerland*, no. 18509/19, lodged on 29 March 2019, communicated on 27 September 2021**

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.

#### Block 2: Reproductive, LGBTQ+ and Adoption Rights

3. ***T.A. v. Switzerland*, no. 13437/22, lodged on 9 March 2022, communicated on 12 May 2022**

The application concerns the refusal to authorise the adoption of a child. The applicant was born 1967 in Ethiopia. She is a Swiss national and resides in Switzerland. In 2016 she adopted an infant of unknown origin in Ethiopia and brought it to Switzerland, despite the Swiss authorities having previously refused to issue a visa for the child. On 3 April 2017 the applicant made a request to the Swiss authorities to allow the adoption. The request was rejected. The courts ruled that the legal requirements for an adoption had not been met, notably regarding the age difference between mother and child. Lastly, the Federal Supreme Court considered that it was not necessary



to examine if the adoption would be in the child's best interest since the origin of its relationship with the applicant in Switzerland was based on an illegal act which had presented the authorities with a *fait accompli*. The applicant complained under Article 8, arguing that a *de facto* family life within the meaning of the Article existed between her and the child.

The applicants complain under Article 8 of the Convention about a breach of their private life on account of the Polish authorities' refusal to recognise the legal and factual link with Ms A. Despite the fact that their adoptive parent, Ms A, is a Polish citizen, they were refused Polish citizenship.

**4. *X. and Z. v. Poland*, no. 9001/21, lodged on 30 January 2021, communicated on 13 September 2021**

The two children of a same-sex couple complain under Article 8 (+14) of the Convention about a breach of their private life on account of the Polish authorities' refusal to recognise the legal and factual link with their non-biological mother, who is a Polish citizen, after they were refused Polish citizenship.

**5. *R.K. against Hungary*, no. 54006/20, lodged on 16 November 2020, communicated on 31 May 2021**

The applicant alleges a violation of his right to private life under Article 8 of the Convention in view of alleged deficiencies of the legislative framework regulating the conditions and procedure for registering the identity of a transgender person, which have prevented him from obtaining legal recognition.

**6. *M.Ž.D. v. Latvia and 2 other applications*, nos. 14318/23, 14329/23 and 14289/23, communicated on 27 June 2023**

The first applicant (application no. 14318/23) lived together with another woman, I.N. The two women and the second applicant (application no. 14329/23) had an informal agreement that they would conceive a child together. An egg was removed from the first applicant and fertilised with sperm from the second applicant. The fertilised egg was transferred to the womb of I.N., who carried the baby to term. I.N. was registered as the child's mother and the second applicant as the child's father. The third applicant is the child, born in 2016 (application no. 14289/23).

Subsequently, I.N. left the household and took the child with her. The case concerns parental and contact rights between the first and second applicants, on the one hand, and the third applicant.

### **Block 3: Freedom of Conscience and Religion**

**7. *Pindo Mulla v. Spain*, no. 15541/20, lodged on 13 March 2020, relinquished to the Grand Chamber on 7 July 2023**

The applicant in this case is a Jehovah's Witness, and as such a core tenet of her religious beliefs is her absolute opposition to blood transfusions. In 2017, she had a surgery, before which she issued three documents that recorded her refusal to undergo blood transfusions. After the surgery, due to haemorrhaging, she was transferred to a hospital. Anaesthesiologists at that hospital contacted the duty judge for instructions, and the duty judge authorised all medical or surgical procedures that were needed to save her life. She was subsequently administered a blood transfusion. Before the Court, she relied on Articles 8 and 9 ECHR, arguing that her refusal of this type of treatment was clearly recorded, but was ignored by the national authorities. On 7 July 2023, the Court announced that it had relinquished jurisdiction in this case to the Grand Chamber of the Court. The Grand Chamber hearing in this case will take place on 10 January 2024.

(In this regard, note also *Lindholm and the Estate after Leif Lindholm v. Denmark*, no. 25636/22, communicated on 11 January 2023).



**8. *G.K. and A.S. v. Switzerland*, nos. 55299/20 and 31515/22, lodged on 11 December 2020 and 21 June 2022, communicated on 27 September 2022**

The applications concern the authorities' refusal to provide the applicants with a fully vegan diet while they were in prison and in a hospital psychiatric unit respectively. The courts took the view that the decisions in question were not open to appeal under the law. The applicants invoke their rights under Articles 8 and 9 ECHR, alone and together with Article 14 ECHR, as well as Articles 6 and 13(+14) of the Convention.

**9. *Missaoui and Akhandaf v. Belgium*, no. 54795/21, lodged on 22 October 2021, communicated 19 May 2022**

The application concerns the prohibition imposed on the applicants, two women of Muslim faith, on the basis of the police regulations of the city of Antwerp, from accessing a swimming pool in the city while wearing full bathing suits. Relying on Article 14 in conjunction with Article 9 of the Convention, the applicants complain of indirect discrimination based on religion.

**10. *Mégard v. France*, no. 32647/22, lodged on 30 June 2022, communicated 19 September 2022**

This case concerns the prohibition of any religious gathering or meeting, with the exception of funeral ceremonies attended by a maximum of 30 people, in the context of French measures to combat the COVID-19 pandemic. The applicant, who frequently attends Catholic worship ceremonies in Nantes, relies on Article 9 ECHR, arguing that his right to manifest his religion has been violated.

**Block 4: Positive Obligations**

**11. *T.V. v. Spain*, application no. 22512/21, lodged on 20 April 2021, communicated on 23 August 2022**

The application concerns the discontinuation of the criminal proceedings against two persons accused of sexually exploiting the applicant, a Nigerian woman who is a recognized victim of human trafficking in Spain. Based on age assessment, the applicant's statements regarding her entry into Spain and her sexual exploitation were not considered credible by the domestic courts. In her application before the Court, the applicant invoked Articles 3, 4, 6 (civil and criminal limb), 8 and 13 of the Convention.

**12. *Andrei-Ionuț Cocîrlău v. Romania*, lodged on 6 September 2019, communicated on 18 July 2022**

The application concerns the criminal proceedings with civil claims brought by the applicant - who is of Roma ethnic origin and who was a minor at the time of the impugned events - against four of his school colleagues because starting from 31 January 2014 the said colleagues had repeatedly accessed his personal Facebook account unlawfully, had changed his access information, had deleted information from his account, had accessed and intercepted his personal correspondence and had sent offensive, threatening and discriminatory messages both to him, namely to another account used by the applicant, and to the applicant's Facebook friends, some of whom went to the same school as the applicant. As a result, the applicant was assaulted verbally and physically and was threatened by some of his Facebook friends. Among other things, the Court has asked whether the domestic authorities are under a positive obligation to protect the applicant's right to respect for his private and family life and for his correspondence as guaranteed by Article 8 of the Convention in this context.



**13. *Nikoghosyan v. Armenia*, no. 28546/18, lodged on 6 June 2018, communicated on 28 May 2023.**

This case concerns the duty to protect under Article 2 ECHR after the applicant's son died after seeking herbal treatment for his type 1 diabetes. The applicant complained that the State failed in its obligation to protect his son's life by failing to supervise the provision of medical services by the (privately practicing) medical herbalist and to subject these services to licensing, and also failed to ensure the accountability of those at fault for his son's death.

**14. *M.C.K. and M.H.K.-B. against Germany*, no. 26657/22, lodged on 27 May 2022, communicated on 20 December 2022**

This application, along with three others, concerns restrictions on in-class lessons (i.e. school closures) during the COVID-19 pandemic. The applicants are pupils from various German schools that were closed several times during the pandemic. They complain that the school closures negatively affected their personal and social development and their mental health, and that it impacted their learning, with effects on their future careers and income. They invoke the right to education, guaranteed by Article 2 of Protocol No. 1, as well as Article 8 ECHR.

**Block 5: Discrimination**

**15. *Semenya v. Switzerland*, no. 10934/21, lodged on 18 February 2021, Chamber judgment issued 11 July 2023, not yet final at the time of writing**

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.

**16. *B.R. v. Switzerland*, no. 2933/23, lodged on 6 January 2023, communicated on 22 May 2023**

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.



## Block 6: Climate Change

17. ***KlimaSeniorinnen v. Switzerland*, no. 53600/20, lodged on 26 November 2020, relinquished to the Grand Chamber on 26 April 2022, Grand Chamber hearing held on 29 March 2023**

Brought by a Swiss association and several of its members, this case concerns the vulnerability of elderly women to adverse health impacts related to global warming. The applicants allege various failings of the Swiss authorities concerning climate protection, including violations of Articles 2 and 8 ECHR, but also of their procedural rights. They seek a general measures order from the Court concerning the level of ambition of Swiss climate policy that would be compatible with their human rights. A hearing in this case was heard on 29 March 2023.

18. ***Müllner v. Austria*, no. 18859/21, lodged in March 2021, not yet communicated at the time of writing**

The applicant in this case suffers from a form of multiple sclerosis that causes him to become wheelchair-bound when subjected to temperatures above 30 degrees Celsius. Before the ECtHR, he complains – relying on Articles 2, 6, 8 and 13 ECHR – that his home State of Austria has not created an adequate legislative and administrative framework to achieve temperature target set out under the Paris Agreement, i.e. the target of limiting the global average temperature increase to 1.5 degrees Celsius above pre-industrial levels, and that it has consistently failed to meet its own national greenhouse gas reductions targets.

19. ***Uricchio v. Italy and 31 other States*, no. 14615/21, and *De Conto v. Italy and 32 other States*, no. 14620/21, lodged in March 2021, not yet communicated at the time of writing**

These two cases were brought by two young women who complain, relying on Articles 2, 8 13 and 14 ECHR, that the greenhouse gas emissions of 33 Council of Europe member States have contributed to global warming, resulting, among other things, in extreme weather events such as heatwaves and storms, which have affected the applicants' living conditions and mental health.

20. ***Greenpeace Nordic and Others v. Norway*, 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.

## Block 7: Data

21. ***Burando Holding B.V. and Port Invest B.V. v. the Netherlands* (nos. 3124/16 and 3205/16), *Janssen de Jong Groep B.V. and Others v. the Netherlands* (no. 2800/16) and *Ships Waste Oil Collector B.V. v. the Netherlands* (no. 2799/16), relinquished to the Grand Chamber on 25 September 2023**

These three cases, relinquished to the Grand Chamber together, concern the transmission of data that was lawfully obtained in a criminal investigation to another law-enforcement authority, the Competition Authority, which then used those data in an investigation into the applicant companies' involvement in price-fixing. Relying on Articles 8 and 13 ECHR, the applicant



companies argue that the transmission and use of the data that were irrelevant to the criminal investigation were not foreseeable and that the available procedural safeguards were insufficient.

**22. *Kyyko v. Ukraine*, no. 26371/16, lodged on 19 April 2016, communicated on 20 June 2023**

The case concerns the applicant's criminal conviction and sentence based, *inter alia*, on evidence obtained through police interception of defendants' mobile phone communications. Among other complaints, the applicant submits that the interception of his telephone communications constituted an interference with his right to respect for his private life and/or correspondence within the meaning of Article 8 ECHR.

**23. *S.O. v. the United Kingdom*, no. 12799/21, lodged on 26 February 2021, communicated on 2 June 2023**

The applicant was convicted of an accidental crime at age 14. She now works for the National Health Service and would have to disclose her conviction to apply for a management position. She argues that the obligation to disclose her childhood conviction violates her right to respect for her private life under Article 8 ECHR.