July 2013
This Factsheet does not bind the Court and is not exhaustive

Companies: victims or culprits

A. Companies as victims

Companies' property affected by legislative changes

Stran Greek Refineries and Stratis Andreadis v. Greece

9 December 1994

Under a 1972 contract concluded with the Greek State, which at the time (between 1967 and 1974) was governed by a military junta, the company (Stran) undertook to construct a crude oil refinery near Athens. The project stagnated as the State did not fulfil its undertaking and, once democracy was restored in the country, the Government, relying on a 1975 law, invited Stran to agree to terminate the 1972 contract as it was damaging for the national economy. Stran had already incurred certain expenses and sued the State for compensation. Neither the 1979 judgment of the first instance court nor an arbitration award of 1984, both finding in Stran's favour, were honoured by the State. In April 1990, the Greek courts annulled the arbitration award, referring to a new law, adopted in May 1987, which covered the renegotiation of oil concessions. Stran complained that the adoption and application of the 1987 law had the effect of depriving it of its property rights, in particular in respect of the debt recognised in their favour by the first instance court and the arbitration award.

The Court found a **violation of Article 1 of Protocol No 1** (protection of property) to the Convention. It held in particular that the State had been obliged to pay the applicants the sum awarded by the arbitration award. Instead of paying, by adopting a law on the basis of which the arbitration clause could be declared void and the arbitration award annulled, the legislature had upset, to the detriment of the company Stran, the balance that had to be struck between the protection of the right to property and the requirements of public interest.

Oklešen and Pokopališko Pogrebne Storitve Leopold Oklešen S.P. v. Slovenia

30 November 2010

The applicant company, which held a valid license for the provision of funerals and landscaping since 1995, complained that, as a result of a municipal decree adopted in 2000, it could no longer carry out its business given that another – municipal - enterprise was entrusted with the sole provision of those services in the municipality.

The Court found that there had been **no violation of the company's property rights**. It held that the local authorities' decision to designate a municipal company as the sole provider of funeral services fell within their discretion and was in accordance with the applicable national legislation. In addition, the applicant company had been aware, throughout the period it had been providing funeral services, that that had only been a temporary arrangement, pending the implementation of the national legislation which required the municipality to regulate funeral provision as public utility.

Confiscation of companies' property

Sud Fondi Srl and Others v. Italy

20 January 2009

The applicants, Sud Fondi s.r.l, Mabar s.r.l and Iema s.r.l, are three Italian companies with head offices in Bari (Italy), where they own land and buildings. The applicant companies complained that their property had been illegally confiscated.

In the principal judgment of 20 January 2009, the Court had found that the applicants' assets had been confiscated in an arbitrary manner, in **violation of both Article 7** (no punishment without law) **and Article 1 of Protocol No. 1** (protection of property). The Court awarded the following sums for pecuniary damage in its just satisfaction judgment on 10 May 2012: 37,000,000 euros (EUR) to Sud Fondi s.r.l., EUR 9,500,000 to Mabar s.r.l. and EUR 2,500,000 to Iema s.r.l.

Trademark dispute between companies

Anheuser-Busch Inc. v. Portugal

11 January 2007

The applicant is an American company which produces and sells "Budweiser" beer in a number of countries around the world - in the United States at least since 1876, and in Europe since the 1980s. It entered into lengthy disputes over the "Budweiser" name with a Czech company called Budejovicky Budvar which claimed it had been selling beer under that name since 1265. In the context of their dispute in Portugal, in June 1995 the Portuguese authorities registered the "Budweiser" trademark in the applicant company's name and cancelled the registration of that trademark in the name of Budejovicky Budvar, which - the latter claimed - it had registered in 1968. However, the Portuguese Supreme Court ultimately found in favour of the Czech company, concluding that the appellation of origin "Ceskobudejovicky Budvar", which had later become known as "Budweiser", was protected by a 1986 Bilateral Agreement between Portugal and the Czech Republic on the protection of appellations of origin. The applicant company complained before the Court that it had been deprived of its possession as a result of the application of a bilateral treaty that had come into force after it had filed its application to register the trademark.

The Court held that while Article 1 of Protocol No 1 (protection of property) was applicable to intellectual property, the applicant company had contested the way in which the national courts had applied domestic law, and not the retrospective application of a law which had deprived them of a pre-existing possession. It had not been established that the applicant company had a right of priority in respect of the "Budweiser" mark when the 1986 Bilateral Agreement had come into force, and the only effective registration of the trademark at that time had been that of the appellation of origin registered under Budejovicky Budvar's name. In the absence of any arbitrariness by the Portuguese Supreme Court when deciding the case, the Court found that the applicant company had been given full opportunity to present its position at the national level and that it had done so. Consequently, there had been **no violation of Article 1 of Protocol No 1.**

Publishing companies

Sanctions for defamation

Verlagsgruppe News GmbH v. Austria (no. 1 and no. 2)

14 December 2006

The applicant company owns and publishes a weekly Austrian magazine called *News*. In the first case, the company was found guilty of defaming a politician and, in the second

case, the Austrian courts prohibited it from publishing any photograph of the managing director of a well-known pistols company in connection with reports on pending tax evasion proceedings against him.
Violation of Article 10 (freedom of expression): The Court held that the Austrian courts had restricted the applicant company's freedom of expression relying on reasons which could not be regarded as relevant or sufficient, contrary to the Convention requirements.

Hachette Filipacchi Associés v. France

14 June 2007
The case concerned an order made against the applicant publishing company, Hachette Filipacchi Associés, on account of the publication in the weekly magazine *Paris-Match* of a photograph of the dead body of the Prefect of Corsica, Claude Erignac, just after he was murdered in Ajaccio in February 1998. The French courts granted the injunction sought by the widow and children of Prefect Erignac, who complained that the publication of the photograph of the bloodied and mutilated body of their husband and father was not information which could possibly be useful to the public but was prompted purely by commercial considerations and constituted a particularly intolerable infringement of their right to respect for their private life.
No violation of Article 10 (freedom of expression): The Court considered that the distress of Mr Erignac's close relatives should have led journalists to exercise prudence and caution, given that he had died in violent circumstances which were traumatic for his family, who had explicitly opposed publication of the photograph. The result of the publication, in a magazine with a very high circulation, had been to heighten the trauma felt by the victim's close relatives in the aftermath of the murder. Finally, the Court held that the obligation for the applicant company to publish a statement informing readers that Mrs Erignac and her children had found the photograph "deeply distressing" had not had a dissuasive effect on the exercise of the freedom of the press.

Times Newspapers Ltd v. the United Kingdom (nos. 1 & 2)

10 March 2009
The Times Newspapers Ltd complained that the UK Internet publication rule exposed them to ceaseless liability for libel (i.e. each time an article is accessed in electronic archives, a new cause of action in defamation arises) following the publication of two articles, in September and October 1999, reporting on a massive money-laundering scheme carried out by an alleged Russian mafia boss. Both articles were uploaded onto The Times website on the same day as they were published in the paper version of the newspaper. During the subsequent libel proceedings against the applicant company, it was required to add a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to Times Newspapers Legal Department.
No violation of Article 10: The Court noted that the domestic courts had not suggested that the articles be removed from the archive altogether. Accordingly, the Court did not consider that the requirement to publish an appropriate qualification to the Internet version of the articles constituted a disproportionate interference with the right to freedom of expression.

Mosley v. the United Kingdom

10 May 2011
The case concerned the publication of articles, images and video footage in the *News of the World* newspaper and on its website which disclosed details of Max Mosley's sexual activities. Mr Mosley complained about the authorities' failure to impose a legal duty on the newspaper to notify him in advance of further publication of the material so that he could seek an interim injunction
No violation of Article 8 (right to respect for private and family life): The Court held in particular that the European Convention on Human Rights did not require media to give prior notice of intended publications to those who feature in them.

Axel Springer AG v. Germany

7 February 2012 (Grand Chamber)

The applicant company is the publisher of a national daily newspaper with a large-circulation which in September 2004 published a front-page article about the star of a popular television series who had been arrested at the Munich beer festival for possession of cocaine; the newspaper also published three pictures of the actor in question on another page. The actor obtained an immediate injunction restraining any further publication of the article or photographs.

Violation of Article 10 (freedom of expression): The published articles concerned the arrest and conviction of a well-known actor, a public figure, and that was information of general interest. The articles had been based on information provided by the public prosecutor's office and its truthfulness was not disputed. The applicant company had not acted in bad faith and had not revealed details about the actor's private life, but had mainly informed about the circumstances of his arrest and the outcome of the criminal proceedings. There had been no disparaging comments or unsubstantiated allegations. The sanctions imposed on the applicant company had been capable of having a chilling effect on the media and were not justified.

Payment of lawyers' contingency fees

MGN Limited v. the United Kingdom

18 January 2011

The applicant company, Mgn Limited, was the publisher of a British national daily newspaper - *The Daily Mirror*. It was ordered to pay compensation to model Naomi Campbell for an article with pictures which it had published describing her as a drug addict. The courts also ordered it to pay "success fees" of around 350,000 Pounds Sterling which corresponded to a conditional fee agreement between Ms Campbell and her lawyers. The publishing company complained, among other things, about the "success fees" arguing a breach of its freedom of expression rights.

The Court found a **violation of Article 10** (freedom of expression) as a result of the application of the "success fees" system to Ms Campbell's case. The "success fees" system had been initially set up for people who could not afford a lawyer and thus risked not having access to a court. Unlike them, Ms Campbell had been a wealthy individual, and thus not someone who risked not having access to a court because of financial difficulties.

Protection of sources

Financial Times Ltd and Others v. the United Kingdom

15 December 2009

The case concerned the complaint by four UK newspapers and a news agency that they had been ordered to disclose documents to "Interbrew", a Belgian brewing company, and that the information in those documents could lead to the identification of journalistic sources at the origin of a leak to the press about a takeover bid.

The Court emphasised the possible chilling effect on the media if journalists were seen to assist in the identification of anonymous sources. It also underlined the public interest in protecting journalistic sources and concluded that there had been a **violation of Article 10** (freedom of expression).

Sanoma Uitgevers B.V. v. the Netherlands

14 September 2010 (Grand Chamber)

The case concerned photographs, to be used for an article on illegal car racing, which a Dutch magazine publishing company was compelled to hand over to police investigating another crime, despite the journalists' strong objections to being forced to divulge material capable of identifying confidential sources.

Violation of Article 10 (freedom of expression): The Court found that the interference with the applicant company's freedom of expression had not been "prescribed by law", there having been no procedure with adequate legal safeguards available to the applicant company to enable an independent assessment as to whether the interest of the criminal investigation overrode the public interest in the protection of journalistic sources.

See also the factsheet on the "Protection of journalistic sources".

Licensing of broadcasting companies

Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria

11 October 2007

The limited liability company Glas Nadezhda EOOD applied to the State Telecommunications Commission for a licence to set up a radio station to broadcast Christian programmes in and around Sofia. The Commission refused to grant the licence.
Violation of Articles 10 (freedom of expression) **and 13** (right to an effective remedy): The Court held in particular that the National Radio and Television Committee's vagueness concerning certain criteria for programmes, in addition to the lack of reasons given for the denial of a broadcasting licence to the company, had deprived the applicants from legal protection against arbitrary interference with their freedom of expression.

Meltext Ltd and Mesrop Movsesyan v. Armenia

17 June 2008

The second applicant has been broadcasting since 1991 when he established "A1+",the first independent TV company in Armenia. "A1+" acquired a State TV license in 1994, and as of 1995 it started experiencing difficulties with the State in the context of its broadcasts. In particular, public officials threatened it on a daily basis with depriving it of its license and criticised the content of its production perceived to be anti-governmental. During the run-up to the 1995 presidential elections, "A1+" refused to broadcast only Government propaganda and, as a result, its State broadcasting licence was suspended. Subsequently, Mr Movsesyan set up Meltex Ltd and, within that structure, launched "A1+" again. In January 1997, Meltex was granted a five-year broadcasting licence. As the result of legislative changes in 2000 and 2001, a newly set commission granted the operating band of Meltex to a different company without giving reasons for the selection. On 3 April 2002 "A1+" stopped broadcasting. The applicants complained about being refused broadcasting licences on seven separate occasions.
The Court considered that a procedure which did not require a licensing body to justify its decisions, as had been the case with the rules under the Armenian Broadcasting Act applied by the commission, did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression. Accordingly, there had been a **violation of Article 10** (freedom of expression), as a result of the repeated refusals by the authorities - based on a law which did not meet the Convention requirements of lawfulness - to grant the applicant company a broadcasting license.

Centro Europa 7 S.r.l. and Di Stefano v. Italy

7 June 2012 (Grand Chamber)

The case concerned an Italian TV company's inability to broadcast, despite having a broadcasting licence, because no television frequencies were allocated to it.
Violation of Article 10 (freedom of expression and information) **and of Article 1 of Protocol No. 1** (protection of property): The Court found in particular that the laws in force at the time had lacked clarity and precision and had not enabled the TV company to foresee, with sufficient certainty, the point at which it might be allocated frequencies enabling it to broadcast. The Court concluded that the Italian authorities had failed to

put in place an appropriate legislative and administrative framework guaranteeing effective media pluralism.

Cessation of company's activity

Sacilor-Lormines v. France

9 November 2006

The applicant company held concessions and mining leases until 1991 when it decided to halt production as demand for its phosphoric pig iron had receded. With a view to the complete cessation of its activity, the company brought administrative proceedings to surrender the concessions in the context of which numerous regulatory measures were imposed upon it. The company also lodged many applications seeking annulment of the refusal by the Minister responsible for mining to accept its surrender of several concessions. In the course of those proceedings the Conseil d'Etat gave one opinion and delivered a number of judgments. The applicant company complained of the unfairness of the proceedings in the Conseil d'Etat and of the length of those proceedings.

Several violations of Article 6 § 1 (right to a fair trial): on account of the applicant company's objectively well-founded doubts concerning the *Conseil d'Etat* formation (composition) which delivered the judgment of 19 May 2000; as a result of the participation, or at least presence, of the Government commissioner (*commissaire du gouvernement*) at the deliberations of the bench of the *Conseil d'Etat;* and in view of the excessive length of the proceedings.

No violation of Article 6 § 1 in respect of whether the independence and impartiality of the *Conseil d'Etat* was undermined by the fact that it exercised judicial functions concurrently with its administrative functions under the Code of Administrative Justice.

Insolvency proceedings

Agrokompleks v. Ukraine

6 October 2011

The case concerned the insolvency proceedings initiated by a private company (Agrokompleks) against the biggest oil refinery in Ukraine (LyNOS), in an attempt to recover its outstanding debts. Agrokompleks complained, among other things, about the unfairness of the insolvency proceedings, alleging that the courts were not independent nor impartial, given the intense political pressure surrounding the case as the State authorities had a strong interest in its outcome.

Three **violations of Article 6 § 1** (right to a fair trial): courts deciding the case lacked independence; reopening of finally settled court decision on amount owed by LyNOS breached legal certainty; and proceedings lasted too long.

Violation of Article 1 of Protocol No. 1 (protection of property): no fair balance had been struck between the demands of the public interest and the need to protect the company's right to the peaceful enjoyment of its possessions.

Tax assessment proceedings

Västberga Taxi Aktiebolag and Vulic v. Sweden

23 July 2002

Västberga Taxi Aktiebolag is a taxi company which was dissolved in 1997 due to a lack of assets. The company and its director, who was its main shareholder, complained that during the tax assessment proceedings they had been deprived of their Article 6 rights (right to a fair hearing, right to be presumed innocent until proven guilty) as the tax authorities' decision that the company owed taxes had been enforced immediately, even prior to a court determination of the disputes.

Violation of Article 6 § 1: The Court, noting that Article 6 did not apply to the dispute over the tax itself, considered the proceedings to the extent to which they determined a "criminal charge" against the applicants. It concluded that the applicants had not had access to a court because the court determination of the main issues in dispute between the parties had been unduly delayed.
No violation of Article 6 § 2 (presumption of innocence)

OAO Neftyanaya Kompaniya YUKOS v. Russia

20 September 2011
The applicant company was an oil company and one of Russia's largest and most successful businesses after it was privatised in 1995-96. In late 2002, YUKOS became the subject of a series of tax audits and tax proceedings, as a result of which it was found guilty of repeated tax fraud. YUKOS complained of irregularities in the proceedings concerning its tax liability and its subsequent enforcement. It claimed over 81 billion euros in compensation.
The Court found one **violation of Article 6 §§ 1 and 3 (b)** (right to a fair trial) concerning the 2000 tax assessment proceedings against YUKOS, because it had had insufficient time to prepare its case before the lower courts. It further found a **violation of Article 1 of Protocol No. 1** (protection of property), concerning the 2000-2001 tax assessments as regards the imposition and calculation of penalties and separate violation of that Article in that the enforcement proceedings had been disproportionate. It found **no violation** in respect of YUKOS' complaints concerning the rest of the 2000-2003 tax assessments, as well as the complaint that it had been treated differently from other companies. Finally, the Court found **no violation of Article 18** (limitation on use of restriction on rights), **in conjunction with Article 1 of Protocol No. 1**, concerning whether the Russian authorities had misused the legal proceedings to destroy YUKOS and seize its assets. It also held that the **question of the application of Article 41** (just satisfaction) was **not ready for decision**.

Bernh Larsen Holding As and Others v. Norway

14.03.2013
The case concerned the complaint by three Norwegian companies about a decision of the tax authorities ordering tax auditors to be provided with a copy of all data on a computer server used jointly by the three companies.
No violation of Article 8 (right to respect for private and family life, home and correspondence): The Court agreed with the Norwegian courts' argument that, for efficiency reasons, tax authorities' possibilities to act should not be limited by the fact that a tax payer was using a "mixed archive", even if that archive contained data belonging to other tax payers. Moreover, there were adequate safeguards against abuse.

See also the factsheet on "Taxation and the European Convention on Human Rights".

Revoking a bank's licence

Capital Bank AD v. Bulgaria

24 November 2005
The applicant bank complained that the courts which had decided on its dissolution had not examined whether it had been indeed insolvent, as claimed by the Bulgarian National Bank in 1997 when it revoked its license, as well as that the proceedings in which that issue had been decided were not adversarial, and that the decision of the Bulgarian National Bank to revoke its license had been unlawful.
As regards the applicant bank's first complaint under **Article 6 § 1** (right to a fair trial), the Court found that the domestic courts' acceptance of the BNB's finding of insolvency, without subjecting it to any criticism or discussion, together with the fact that it was impossible to scrutinize this finding in direct review proceedings, amounted to a **violation** of that provision. The Court found a further **violation of Article 6 § 1** in that, being represented by people (the special administrators and later the liquidators)

dependent on the other party in the proceedings (the BNB), the applicant bank was unable to properly defend its position and protect its interests. The Court also came to the conclusion that the revoking of the applicant bank's licence was not surrounded by sufficient guarantees against arbitrariness and was thus **not lawful within the meaning of Article 1 of Protocol No. 1** (protection of property).

Non-enforcement of arbitration award

Regent Company v. Ukraine

3 April 2008

The applicant, a privately owned commercial company registered in the Seychelles and with an address in London (UK), complained that an arbitration award, given by the International Commercial Arbitration Court in its favour, had not been enforced in Ukraine.

The Court found a **violation of Article 6** (right to a fair trial) and a **violation of Article 1 of Protocol No. 1** (protection of property). It noted that one of the main reasons for the non-enforcement had been the insolvency of the company, State-owned and State-managed, against which the arbitration award had been made. It held that, while certain delays could occur during the process of honouring State debts from the State budget, there could be no excuse for the continuous non-enforcement of the award.

Restitution to companies of erroneously paid sums

Aon Conseil et Courtage S.A. and Christian de Clarens S.A. v. France

25 January 2007

The applicants, Aon Conseil et Courtage S.A. and Christian de Clarens S.A., are two French companies, based in Paris. They complained about the dismissal of their request for reimbursement of sums erroneously paid in respect of VAT for the first semester of 1978.

Violation of Article 1 of Protocol No. 1 (protection of property) in respect of both companies: The Court found in particular that the refusal of the claim against the State and the absence of domestic procedures affording a sufficient remedy to ensure the protection of the right to the peaceful enjoyment of one's possessions had upset the fair balance that ought to have been maintained between the community's general interest and the protection of the companies' fundamental rights.

Providing information to the public

Open Door and Dublin Well Woman v. Ireland

29 October 1992

The applicants were two Irish companies which complained about being prevented, by means of a court injunction, from providing to pregnant women information about abortion abroad.

Violation of Article 10 (freedom of expression): The Court found that the restriction imposed on the applicant companies had created a risk to the health of women who did not have the resources or education to seek and use alternative means of obtaining information about abortion. In addition, given that such information was available elsewhere, and that women in Ireland could, in principle, travel to Great Britain to have an abortion, the restrictions had been largely ineffective.

Loss of property

A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom

30 August 2007 (Grand Chamber)

The applicants are two UK companies, which owned a plot of 23 hectares of agricultural land with development potential in Berkshire (the United Kingdom). They lost that land to a neighbouring landowner who had occupied the plot between 1984 and 1999 without their permission. The UK courts found that, in accordance with the law, given that the neighbouring landowner had occupied the property for at least 12 year, even if contrary to the rights of the real owner, they had obtained title by adverse possession.

No violation of Article 1 of Protocol No. 1 (protection of property)

B. Companies at the origin of a human rights breach

Closed-shop agreement between a company and a trade union

Young, James and Webster v. the United Kingdom

13 August 1981

The applicants' complaint concerned the "closed shop" agreement between British Rail and three railway workers' unions. A closed shop is an undertaking or workplace in which, as a result of an agreement or arrangement between one or more trade unions and one or more employers or employers' associations, employees of a certain class are in practice required to be or become members of a specified union.

Violation of Article 11 (freedom of assembly and association): closed shop agreements had to protect individuals' freedom of thought (see also Sibson v. the United Kingdom, 20 April 1993).

Environmental pollution and hazards

Taskin and Others v. Turkey

10 November 2004

The applicants complained about the Turkish authorities' decision to grant a permit to a company to operate a gold mine in the Izmir region and about the related decision-making process. After the initial granting by the Ministry of the Environment of a permit to the company, the Supreme Administrative Court ultimately annulled that decision referring to the State's positive obligation to protect people's right to life and to a healthy environment. Nevertheless, the applicants complained that the issuing of permit had breached in particular their right to private and family life.

The Court found that, as the Supreme Administrative Court had annulled in 1997 the permit issued to the company, there had been **no violation of Article 8** (right to respect for private and family life) as regards the material aspect. However, in respect of the decision-making process, the Court found that the gold mine had remained operational for 10 months after the Supreme Administrative Court's judgment annulling its permit to operate. The Turkish authorities had not only failed to enforce that judgment, but in a decision of March 2002, the Council of Ministers authorised the continuation of production at the gold mine. There had therefore been a **violation of Article 8**.

Fadeyeva v. Russia

9 June 2005

The applicant lived near a State-owned steel-plant and complained that the operation of that plant (Severstal) in close proximity to her home endangered her health and well-being.

Violation of Article 8 (right to respect for private and family life): The Court noted that, although the situation around the plant called for special treatment of those living in its immediate proximity, the State had not offered the applicant any effective solution to help her move from the dangerous area. Although the plant had operated in breach of domestic environmental standards, the State had not designed nor applied effective measures capable of reducing the industrial pollution to acceptable levels.

Tatar v. Romania

27 January 2009

The applicants lived near a gold mine operated by a company and complained that, as a result of an accident on its premises, cyanide-contaminated water was released by the mine into the environment and negatively affected their lives.

The Court observed that pollution could interfere with people's private life by harming their well-being and that States had a duty to protect people from dangerous activities for the environment and people's health. The applicants had failed to prove a causal link between exposure to sodium cyanide and their asthma. The Court observed, however, that the existence of a serious and material risk for people's health and well-being entailed a duty on the part of the State to assess the risks, both at the time it granted the operating permit and subsequent to the accident, and to take appropriate measures. The company had been able to continue its industrial operations after the accident, in breach of the precautionary principle, according to which the absence of certainty with regard to current scientific and technical knowledge could not justify any delay on the part of the State in adopting effective and proportionate measures. The Court concluded that the Romanian **authorities had failed in their duty** to assess, to a satisfactory degree, the risks that the company's activity might entail, **and to take suitable measures in order to protect the rights** of those concerned to respect for their private lives and homes, within the meaning of **Article 8** (right to respect for private and family life), and more generally their right to enjoy a healthy and protected environment.

See also the factsheet on "Environment-related cases".

Internet publications (individual criminal responsibility of company representatives)

Perrin v. the United Kingdom

18 October 2005 (decision on the admissibility)

The case concerned the conviction and sentencing to 30 months' imprisonment of a French national based in the UK – and operating a US-based Internet company with sexually explicit content – for publishing obscene articles on the Internet.

Complaint under Article 10 (freedom of expression) rejected as **inadmissible**: The Court was satisfied that the criminal conviction was necessary in a democratic society in the interests of the protection of morals and/or the rights of others and that the sentence was not disproportionate

War-crimes related prosecution (individual criminal responsibility of company representatives)

Van Anraat v. the Netherlands

6 July 2010 (decision on the admissibility)

The applicant, a businessman acting through companies based in several different countries, bought and then supplied to the Iraqi Government, over the course of several years, tons of a chemical used to produce mustard gas. After 1984 he was the Iraqi Government's sole supplier of the chemical. Mustard gas is known to have been used by the Iraqi military against Iranian armed forces and civilians during the Iran-Iraq War (1980-1988) and in attacks against the Kurdish population of northern Iraq. The applicant was convicted in the Netherlands of being an accessory to war crimes committed by Saddam Hussein and others. He complained to the Court under Article 6 (right to a fair trial) or Article 7 (no punishment without law) of the Convention that section 8 of the Netherlands War Crimes Act, in referring to international law, did not comply with the requirement that criminal acts be described with sufficient precision (lex certa).

The Court declared the application **inadmissible**: It found that, at the time when the applicant supplied the chemical to the Iraqi Government, a norm of customary international law existed prohibiting the use of mustard gas as a weapon of war in an international conflict. When the applicant was committing the acts which ultimately led to his prosecution, there was nothing unclear about the criminal nature of the use of mustard gas either against an enemy in an international conflict or against a civilian population in border areas affected by an international conflict. Therefore, the applicant could reasonably have been expected to be aware of the state of the law and, if need be, to take appropriate advice.

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