



December 2015  
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# Sport and the European Convention on Human Rights

## Right to life (Article 2 of the Convention)

### Harrison and Others v. the United Kingdom

25 March 2014 (decision on the admissibility)

The applicants, relatives of the 96 supporters who died in the Hillsborough disaster in 1989, complained under Article 2 (right to life) of the European Convention on Human Rights that the original inquest had been inadequate and, that although new inquests had been ordered, they had to wait for over 24 years for an Article 2 compliant investigation into the deaths.

Having regard both to the understandable absence of criticism by the applicants of the prompt and effective measures taken so far by various authorities of the United Kingdom to further investigate the deaths of their relatives following the setting up of the Hillsborough Independent Panel in September 2012 and to the pending inquests and investigations, the European Court of Human Rights found that the applications had to be regarded as premature and declared them **inadmissible** pursuant to Article 35 (admissibility criteria) of the Convention. The Court further noted that, if the applicants became dissatisfied with the progress being made or, upon the conclusion of the investigations and inquests, were not content with the outcome, it would remain open to them to lodge further applications with the Court.

## Right to liberty and security (Article 5 of the Convention)

### Ostendorf v. Germany

7 March 2013

The applicant, a football supporter, complained about his four-hour police custody in order to prevent him from organising and taking part in a violent brawl between football hooligans.

The Court held that there had been **no violation of Article 5 § 1** (right to liberty and security) of the Convention, finding that the applicant's police custody had been justified under that Article as detention "in order to secure the fulfilment of an obligation prescribed by law". The Court considered in particular that his custody had served to fulfil the specific and concrete obligation on the applicant to refrain from arranging a brawl between opposing groups of hooligans at a football match.

## Right to a fair trial (Article 6 of the Convention)

### FC Mretebi v. Georgia

31 July 2007

This case concerned large sums of money linked to the transfer of a footballer between Georgian and foreign clubs. In that case the applicant club was refused exemption from the payment of court fees by the Supreme Court; as a result, its appeal was not

examined. The applicant club complained in particular that it had been denied access to a court.

The Court held that there had been a **violation of Article 6 § 1** (right to a fair trial) of the Convention, finding that there had been an unjustified denial of access to court. It observed in particular that the Supreme Court had failed to secure a proper balance between, on the one hand, the interests of the State in securing reasonable court fees and, on the other hand, the interests of the applicant in vindicating its claim through the courts.

### **Liga Portuguesa de Futebol Profissional v. Portugal**

27 April 2012 (decision on the admissibility)

Relying in particular on Article 6 § 1 (right to a fair trial) of the Convention, the applicant in this case, which organises professional football championships in Portugal, complained, inter alia, that in a case against the Portuguese tax authorities, it had not been provided with the opinion of the prosecution service.

Finding that the applicant had not suffered any significant disadvantage in the exercise of his right to participate adequately in the proceedings at issue, on the ground in particular that the opinion of the prosecution service contained no new elements, and after having found that respect for the human rights secured by the Convention did not require an examination of the application on the merits and that the applicant's case had been examined on the merits at first instance and on appeal, the Court declared **inadmissible** the applicant's complaint under Article 6 of the Convention.

### **Pending applications**

#### **Bakker v. Switzerland (application no. 7198/07)**

Application communicated to the Swiss Government on 7 September 2012

In 2005 the anti-doping committee of the Royal Dutch Cycling Union (*Koninklijke Nederlandsche Wieleren Unie*) suspended the applicant, a professional Dutch racing cyclist, for two years and imposed a fine on him after he tested positive for drugs. The Court of Arbitration for Sport (CAS), based in Lausanne, banned him from sports competitions for life. An application lodged by the applicant with the Swiss Federal Court was declared inadmissible on grounds of a procedural flaw. The applicant alleges that the proceedings before the Federal Court infringed his right to a fair trial.

The Court gave notice of the applications to the Swiss Government and put questions to the parties under Article 6 § 1 (right to a fair trial) of the Convention.

#### **Mutu v. Switzerland (no. 40575/10)**

#### **Pechstein v. Switzerland (no. 67474/10)**

Applications communicated to the Swiss Government on 12 February 2013

These cases concern complaints by a professional sportsman and professional sportswoman of unfairness of proceedings before the Court of Arbitration for Sport (CAS), based in Lausanne, and of a lack of impartiality and independence of that court and its arbitrators. Following a positive drugs test, the applicant in the first case, a professional footballer, was ordered by FIFA to pay about 17 million euros in damages to Chelsea Football Club for unilateral breach, without just cause, of the employment contract that he had concluded the previous year. The CAS upheld that decision, and the applicant's application to the Swiss Federal Court for judicial review was dismissed in 2010. As to the applicant in the second case, a world-renowned figure skater, following positive drugs tests, she was given a two-year ban by the Disciplinary Commission of the International Skating Union in 2009. The CAS upheld that decision, and the applicant's application to the Swiss Federal Court for judicial review was dismissed in 2010.

The Court gave notice of the applications to the Swiss Government and put questions to the parties under Article 6 § 1 (right to a fair trial) of the Convention.

## Right to respect for private and family life and home (Article 8 of the Convention)

### **Friend and Others v. the United Kingdom**

24 November 2009 (decision on the admissibility)

These applications concerned statutory bans introduced in the United Kingdom by the Protection of Wild Mammals (Scotland) Act 2002 and the Hunting Act 2004 on the traditional practice of hunting with dogs. The applicants, a non-governmental organisation, and eleven private individuals, challenged the legislation in the domestic courts but their appeals to the House of Lords were dismissed. The applicants complained in particular of a violation of their right to respect for their private life and, in some instances, of their homes.

The Court declared the applicants' complaints under Article 8 (right to respect for private life and home) of the Convention **inadmissible** as being manifestly ill-founded. It observed in particular that, although private life was a broad concept, that did not mean that it protected every activity a person might seek to engage in with other human beings in order to establish and develop relationships with them. Despite the obvious sense of enjoyment and personal fulfilment the applicants derived from it and the interpersonal relations they developed through it, hunting was too far removed from the applicants' personal autonomy and the interpersonal relations they relied on were too broad and indeterminate in scope for the hunting bans to amount to an interference with their rights under Article 8. As further regards those applicants who had alleged that the inability to hunt on their land amounted to interference with their homes, the Court noted in particular that the concept of home did not include land over which the owner permitted or caused a sport to be conducted and it would strain the meaning of home to extend it in that way.

### **Pending applications**

#### **Fédération Nationale des Syndicats Sportifs (FNASS) and Others v. France (no. 48151/11)**

Application communicated to the French Government on 26 June 2013

The applicants in this case are the National Federation of Sports Unions, the National Rugby Players Union (called the *Provale*), the National Professional Footballers Union (*UNFP*), the Association of Professional Handball Players (*AJPH*), the National Basketball Players Union (*SNB*) and 99 professional handball, football, rugby and basketball players. The individual applicants complain, in particular, as professional sportsmen and women, of having to justify their time schedule at all times and of being subjected to drug testing during their periods of leave and in their daily lives. They maintain that the law brings the anti-doping whereabouts time-bands into line with the time-bands for searches. They complain of an unjustified intrusion in their family life. The applicants also submit that the obligation to submit to the permanent whereabouts system is contrary to the principle of freedom to come and go and complain in that respect of an unconditional and geographically and temporally unlimited control system that is not proportionate to the aim pursued, especially as the statistics show an extremely low percentage of tests found to be positive.

The Court gave notice of the application to the French Government and put questions to the parties under 34 (individual applications), 35 (admissibility criteria) and 8 (right to respect for private and family life) of the Convention and under Article 2 (freedom of movement) of Protocol No. 4 to the Convention.

#### **Longo and Ciprelli v. France (no. 77769/13)**

Application communicated to the French Government on 18 June 2014

The applicants are an internationally renowned racing cyclist and her husband and trainer. The first applicant complains about the whereabouts obligation imposed on her,

as she is part of a “target group”, for random anti-doping tests. In her view, this obligation amounts to an unjustified intrusion in her private and family life.

The Court gave notice the application to the French Government and put questions to the parties under Article 8 of the Convention.

## Freedom of thought, conscience and religion (Article 9 of the Convention)

### Dogru v. France and Kervanci v. France

4 December 2008

The applicants, both Muslims, were enrolled in the first year of a state secondary school in 1998-1999. On numerous occasions they attended physical education classes wearing their headscarves and refused to take them off, despite repeated requests to do so by their teacher. The school’s discipline committee decided to expel them from school for breaching the duty of assiduity by failing to participate actively in those classes, a decision that was upheld by the courts.

The Court held that there had been **no violation of Article 9** (freedom of thought, conscience and religion) of the Convention in both cases, finding in particular that the conclusion reached by the national authorities that the wearing of a veil, such as the Islamic headscarf, was incompatible with sports classes for reasons of health or safety was not unreasonable. It accepted that the penalty imposed was the consequence of the applicants’ refusal to comply with the rules applicable on the school premises – of which they had been properly informed – and not of their religious convictions, as they alleged.

### **Pending application**

### Osmanoglu and Kocabas v. Switzerland (no. 29086/12)

Application communicated to the Swiss Government on 18 March 2013

The applicants in this case submit that the obligation to send their daughters to mixed-sex swimming classes, as part of their compulsory schooling in the canton of Basle Urban, is contrary to their religious convictions. They also claim that the fine imposed on them for failing to comply with that obligation had no valid legal basis, did not pursue a legitimate aim and was disproportionate.

The Court gave notice of the application to the Swiss Government and put questions to the parties under Article 9 (freedom of thought, conscience and religion) of the Convention.

## Freedom of expression (Article 10 of the Convention)

### Hachette Filipacchi Presse Automobile and Dupuy v. France

### Société de conception de presse et d’édition et Ponson v. France

5 March 2009

These cases concerned the conviction of the publishers of two magazines and their publication directors for indirectly or unlawfully publishing tobacco advertising, in particular after they had published in the magazines *Action Auto Moto* and *Entrevue* in 2002 photographs of the Formula 1 driver Michael Schumacher wearing the logo of a cigarette brand. The applicants also complained of a difference in treatment in relation to motor sport broadcasts put out by the audiovisual media in a country where tobacco advertising is not forbidden.

The Court held that there had been **no violation of Article 10** (freedom of expression of the Convention). Bearing in mind how important it was to protect public health, the pressing need to take steps to protect our societies from the scourge of smoking, and the existence of a consensus at the European level regarding the prohibition of advertising in respect of tobacco products, it found that the restrictions imposed on the applicants’ freedom of expression in the instant case had answered a pressing social

need and had not been disproportionate to the legitimate aim pursued. The Court also held that there had been **no violation of Article 14** (prohibition of discrimination) **taken in conjunction with Article 10**, finding that the audiovisual media and the print media were not placed in similar or comparable situations. The Court observed in particular that, as the French courts had found, it was not at the time feasible, by technical means, to hide lettering, logos or advertisements on footage used by broadcasters. However, it was possible to refrain from taking photographs of such signs, or to conceal or blur them, on the pages of magazines. The Court further noted that, in connection with a dispute concerning footage of sports events shown several hours or days after it was recorded, the French Court of Cassation had confirmed that the live broadcasting of a race constituted the sole exception to the ban on the indirect advertising of tobacco products.

### **Ressiot and Others v. France**

28 June 2012

This case concerned investigations carried out at the premises of *L'Equipe* and *Le Point* newspapers and at the homes of journalists accused of breaching the confidentiality of a judicial investigation. The authorities wanted to identify the source of the leaks in an investigation into possible doping in cycle racing. The applicants complained that the investigations against them had been carried out in violation of their right to freedom of expression.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding that the French Government had not shown that a fair balance had been struck between the various interests involved and that the measures taken had not been reasonably proportionate to the legitimate aim pursued, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press. It noted in particular that the subject of the articles concerned – doping in professional sport, in this case cycle racing, – and related problems concerned a matter of public interest. Moreover, the articles answered a growing and legitimate public demand for information about doping in sport – particularly in cycle racing.

## Freedom of assembly and association (Article 11 of the Convention)

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### **Association Nouvelle Des Boulogne Boys v. France**

7 March 2011 (decision on the admissibility)

This case concerned the dissolution by Prime Ministerial decree of a Paris Saint Germain (PSG) football team supporters' club after they unfurled an offensive banner in the stands at the French League Cup final between Lens, a team from North-West France, and PSG at the Stade de France stadium on 29 March 2008, which was broadcast live on television. The applicant association complained in particular of interference with its freedom of association.

The Court declared the application **inadmissible** as manifestly ill-founded. It noted in particular that the dissolution measure constituted an interference with the applicant's right to freedom of association which was prescribed by the Sporting Code and which pursued the legitimate aim of preventing disorder or crime. The Court further considered that the offences of which the applicant association was accused were particularly serious and prejudicial to public order. Moreover, the wording on the banner unfurled at the Stade de France stadium on 29 March 2008 had been particularly insulting towards a certain section of the population. The Court therefore found that the dissolution measure had been proportionate to the aim pursued.

### Pending applications

#### [Les Authentiks v. France and Supras Auteuil 91 v. France \(nos. 4696/11 and 4703/11\)](#)

Application communicated to the French Government on 14 October 2013

This case concerns the measure ordered by Prime Minister's decree dissolving two associations of fans of the Paris Saint Germain football team (PSG) following clashes between a number of their members and those of another association of supporters which ended with a fan's death. The applicant associations unsuccessfully appealed against the decree to the *Conseil d'État*. They argue in particular that their dissolution amounts to an interference in their right to freedom of association that has no sufficient factual basis and is not necessary in a democratic society.

The Court gave notice of the applications to the French Government and put questions to the parties under Articles 6 § 1 (right to a fair trial) and 11 (freedom of association) of the Convention.

### Prohibition of discrimination (Article 14 of the Convention)

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#### [Hachette Filipacchi Presse Automobile and Dupuy v. France](#) [Société de conception de presse et d'édition et Ponson v. France](#)

5 March 2009

See above, under "Freedom of expression".

### Protection of property (Article 1 of Protocol No. 1)

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#### [Herrmann v. Germany](#)

26 June 2012 (Grand Chamber)

This case concerned a landowner's complaint about being forced to accept hunting on his premises, even though he was morally opposed to hunting. In his view such obligation amounted in particular to a violation of his right to the peaceful enjoyment of his possessions.

The Court held that there had been a **violation of Article 1 (protection of property) of Protocol No. 1** to the Convention, finding that the obligation to tolerate hunting on their property imposed a disproportionate burden on landowners who were opposed to hunting for ethical reasons.

See also: [Chassagnou and Others v. France](#), judgment (Grand Chamber) of 29 April 1999; [Schneider v. Luxembourg](#), judgment of 10 July 2007.

### Freedom of movement (Article 2 of Protocol No. 4)

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#### Pending application

#### [Fédération Nationale des Syndicats Sportifs \(FNASS\) and Others v. France \(no. 48151/11\)](#)

Application communicated to the French Government on 26 June 2013

See above, under "Right to respect for private and family life and home".

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