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2020-2021

Team: 28

# EUROPEAN HUMAN RIGHTS MOOT COURT COMPETITION

## Specter v. Alethea

*Mr. Specter*  
(Applicant)

VS

*The State of Alethea*  
(Respondent)

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## Submission of the Respondent

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## List of Abbreviations

— Article of the Convention	<b>Article/Art.</b>
— European Convention on Human Rights	<b>the Convention</b>
— European Court of Human Rights	<b>the Court</b>

## Summary of Submissions

- The Respondent State in the present case made a valid derogation from its obligations under Art. 8, 9, 10, 11, Art. 2 of Protocol No. 1, and Art. 2 of Protocol No. 4 and enjoyed a wide margin of appreciation.
- The Government contends that there is no violation of the Applicant's respect for private life, since the processing of his personal data is conducted in accordance with the law and is proportionate to the legitimate aim of protecting public health.
- The Government raises two preliminary objections regarding the admissibility of Mr. Specter's complaint under Art. 11 of the Convention – the Applicant lacks victim status and alternatively, the application is manifestly ill-founded.
- Additionally, should the Court decide that the circumstances of the present case fall within the scope of protection of Art. 11, the State submits that it has complied with both its negative and positive obligations in this regard.
- The Government contest the Applicant's claim that his right to a fair trial under Art. 6 has been breached since his conviction was based on lawfully obtained evidence. The State's actions were in compliance with all of the requirements of Art. 6 in its criminal ambit, and particularly – with the right to adversarial proceedings, equality of arms and the right to a reasoned judgment.
- The Government invites the Court to find that no violations under Art. 13 are present, since the effective domestic court examined the complaint of the Applicant under Art. 8 in substance. Additionally, there is no violation of Art. 13 in conjunction with Art. 11 as the Applicant complained against the national legislation, however Art. 13 does not guarantee such remedy.

## Submissions

### **I. THE STATE OF ALETHEA MADE A VALID DEROGATION FROM THE CONVENTION**

The Respondent State invoked Art. 15 of the Convention and made valid derogation in the present case from its obligations under Art. 8, 9, 10, 11, Art. 2 of Protocol No. 1, and Art. 2 of Protocol No. 4. First, the measures taken were proportionate and necessary in light of the specifics of the situation of epidemic, second, the State notified the Secretary General of the Council of Europe.

The purpose of Art. 15 is to permit states to derogate from their obligations in exceptional situations of crisis or emergencies affecting the whole population and putting at risk the organised life of the community.<sup>1</sup> In such circumstances, the Contracting states enjoy a wide margin of appreciation<sup>2</sup> and may impose measures that could in normal conditions be considered unjustified. Undoubtedly, these measures should be proportionate to the exigencies of the situation<sup>3</sup> and in no way excessive.<sup>4</sup>

First, the measures taken were necessary and proportionate. In the present case, the situation has to be examined in the exceptional context, in which the State was uncertain of the origin, effect and consequences of the virus. The State of Alethea was faced with an unprecedented situation – the Malit-5 pandemic. Half of the State’s population was infected with the virus and 200,000 people died as a result.<sup>5</sup> In such situation, when the health and well-being of the whole population is at stake to such a large extent, it is crucial for the State, including in compliance to its obligations under Art. 2 of the Convention, to take the necessary measures and secure the safety of its people. The measures adopted by Alethea were neither disproportionate, nor excessive and were taken in order to save the lives of its citizens pursuing the legitimate aims of protection of health and public safety.

Second, the derogation complied with the notification requirements of Art. 15. In order for a derogation to be in accordance with the Convention, the State is required to notify the Secretary General of the Council of Europe and provide reasoning for the imposition of the measures and restrictions.<sup>6</sup> Alethea’s declaration to the Secretary General provided the Articles

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<sup>1</sup> Lawless v Ireland (no. 3), app. no. 332/57, para. 28

<sup>2</sup> Mehmet Hasan Altan v Turkey, app.no. 13237/17, para. 91; Brannigan and McBride v the United Kingdom, app. no. 14554/89, para. 43

<sup>3</sup> Şahin Alpay v Turkey, app. no. 16538/17, para. 74

<sup>4</sup> Ireland v the United Kingdom, app. no. 5310/71, para. 100

<sup>5</sup> The Case, para. 5

<sup>6</sup> Lawless v Ireland (no. 3), app. no. 332/57, para. 47; Mehmet Hasan Altan v Turkey, app. no. 14554/89, para. 89

which were derogated, as well as an overview of the implemented measures and reasons for them.<sup>7</sup>

In conclusion, the State made a valid derogation by employing measures which were strictly needed due to the exigencies of the situation, as it will be examined further below.

## **II. THE RESPONDENT HAS NOT VIOLATED THE APPLICANT'S RIGHT TO RESPECT FOR PRIVATE LIFE UNDER ARTICLE 8**

The Applicant claims that the State of Alethea unlawfully processed his personal data, contrary to Art. 8 of the Convention. The Respondent submits that the use of Mr. Specter's photos by the facial recognition system PanOptis and the subsequent storage of the collected data in the proceedings against him did not amount to a violation of his right to respect for private life under Art. 8.

### **1. The use of PanOptis amounts to an interference with the Applicant's right under Article 8 of the Convention**

The Applicant submits that his personal data was obtained, stored and used during the criminal proceedings against him, interfering with his private life. The Respondent acknowledges the fact that the use of PanOptis in the identification process of Mr. Specter and the processing of his Friendzone photos amounted to an interference with his rights under Art. 8. PanOptis is facial recognition system, utilized by the police in criminal proceedings. The system was developed diligently, following strict cyber security protocols.<sup>8</sup> It functions as a search engine, which scans faces from photographs or screenshots of videos and compares them with publicly available images.<sup>9</sup> When a match is present, it stores this information on its database. Only the matched data is stored, due to the way it functions – since the publicly available images on the Internet, which PanOptis uses, are continuously updated, it is impossible to store these public images on a separate PanOptis database.

The Respondent maintains that the interference was justified under Art. 8(2). In order for an interference with the rights under Art. 8 to be justified, it has to meet the three cumulative conditions listed in Art. 8(2) – to be prescribed by law, to pursue a legitimate aim and to be necessary in a democratic society.<sup>10</sup> In the present case, all of these conditions were met.

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<sup>7</sup> The Case, para. 10

<sup>8</sup> The Case, para. 36

<sup>9</sup> The Case, para. 36

<sup>10</sup> Harris, O'Boyle, Warbrick (2014), p. 532; Big Brother Watch and Others v the United Kingdom, app. no. 58170/13, para. 304; Pretty v the United Kingdom, app. no. 2346/02, para. 68

## **2. The interference with Mr. Specter's right under Article 8 is in accordance with the law**

The Court has previously held that any interference with an individual's right to respect for private life must have a legal basis.<sup>11</sup> This condition includes the quality of the applicable law as well.<sup>12</sup> The law must be adequately accessible and foreseeable, namely, formulated with sufficient precision to enable the individual to regulate his conduct.<sup>13</sup> The legal framework in the present case, which regulates the use of PanOptis, is the Law on Police and Criminal Investigations, the Data Protection Law and Art. 306 of the Alethean Criminal Code in connection with the second emergency decree from 14 June 2019. The legal framework was sufficiently clear, precise, adequately accessible and foreseeable and it provided adequate and sufficient safeguards to the Applicant.

### **2.1. The legal framework regulating the use of PanOptis is clear and accessible**

The Court has established that in order for the law to be clear and accessible, it has to regulate with reasonable clarity and manner the scope and the exercise of the discretion conferred on the public authorities.<sup>14</sup> The law must give the citizens an adequate indication as to the circumstances and conditions, which give the public authorities the power to resort to the measures in question.<sup>15</sup>

PanOptis was introduced in 2018 through the Law on Police and Criminal Investigations.<sup>16</sup> The emergency decree from 14 June 2019 of the Minister of Health in conjunction with Art. 306 of the Alethean Criminal Code granted permission to the police to monitor compliance with the imposed emergency measures.<sup>17</sup> Moreover, the Data Protection Law required the processed data to be used only for explicit, specified purposes and to be limited to only what is necessary.<sup>18</sup> The main purpose of the utilization of the facial recognition system PanOptis by the police is the identification of suspects during the instituted criminal proceedings. Its use made possible and highly effective the monitoring of the compliance with the emergency decree.<sup>19</sup>

In the present case, the protest was in violation of the emergency measures. Mr. Specter's identity and presence at the protest was established, using PanOptis to compare footage from

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<sup>11</sup> P.N. v Germany, app. no. 74440/17, para. 61; Leander v Sweden, app. no. 9248/81, para. 50

<sup>12</sup> Halford v the United Kingdom, app. no. 20605/92, para. 49

<sup>13</sup> S. and Marper, app. no. 30562/04, para. 95

<sup>14</sup> Piechowicz v Poland, app. no. 20071/07, para. 216

<sup>15</sup> Centrum för Rättvisa v Sweden, app. no. 35252/08, para. 101

<sup>16</sup> The Case, para. 36

<sup>17</sup> The Case, para. 9

<sup>18</sup> The Case, para. 31

<sup>19</sup> The Case, para. 38

the municipal CCTV cameras pursuant to the Law on Police and Criminal Investigations.<sup>20</sup> Therefore, the legal framework regulating PanOptis provided with sufficient clarity the circumstances in which Mr. Specter's data will be processed by the public authorities.

Furthermore, the domestic law has to be adequately accessible.<sup>21</sup> This means that the citizen must be able to have an adequate indication of the legal rules applicable to a given case.<sup>22</sup> In the case of *Centrum för Rättvisa v Sweden*, the Court found that the accessibility criterion was satisfied because the relevant legal provisions have been officially published and accessible to the public.<sup>23</sup> Similarly, in the case at hand, the use of PanOptis was regulated in the domestic legislation and, moreover, the mechanism of the precise functioning of the program was available on the Government's website.<sup>24</sup> Thus, the Respondent maintains that the legal framework complied with the accessibility criterion.

## **2.2. The domestic law of Alethea regarding PanOptis satisfies the foreseeability criterion**

In its case law, the Court has stated, that domestic law must be sufficiently foreseeable in its terms to give individuals the conditions and circumstances under which the authorities are entitled to resort to measures affecting their rights and freedoms.<sup>25</sup> Each person must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty.<sup>26</sup> Furthermore, the Court noted in *Versini-Campinchi and Crasnianski v France* that the applicant's profession may be a factor to consider as it provides an indication to his or her ability to foresee the legal consequences of his or her actions.<sup>27</sup>

In the case at hand, Mr. Specter is a privacy-rights activist and was well aware of PanOptis functionalities.<sup>28</sup> As established above, the relevant legal framework provided information for the application of PanOptis for identification of infringers of the emergency measures. Therefore, as a participant in the protest, he was able to foresee the consequences of

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<sup>20</sup> The Case, para. 14

<sup>21</sup> *S. and Marper*, app. no. 30562/04, para. 95

<sup>22</sup> *The Sunday Times v the United Kingdom*, app. no. 6538/74, para. 49; *Silver and Others v the United Kingdom*, app. no. 5947/72, para. 87

<sup>23</sup> *Centrum för Rättvisa v Sweden*, app. no. 35252/08, para. 115

<sup>24</sup> The Case, para. 36

<sup>25</sup> *Fernández-Martínez v Spain*, app. no. 56030/07, para. 117; *C.G. and Others v Bulgaria*, app. no. 1365/07, para. 39

<sup>26</sup> *Satakunnan Markkinapörssi Oy and Satamedia Oy v Finland*, app. no. 931/13, para. 143; *Malone v the United Kingdom*, app. no 8691/79, para. 66

<sup>27</sup> *Versini-Campinchi and Crasnianski v France*, app. no 49176/11, para. 55

<sup>28</sup> Clarifications question, Section 1, No. 38

his actions – namely, the use of PanOptis for his identification.

Moreover, the Court has stated that in certain situation there should be a measure of legal protection in domestic law against arbitrary interferences by public authorities.<sup>29</sup> In the present case, the existence of Data Protection Agency regulates the use of artificial intelligence including PanOptis<sup>30</sup> and provides for additional safeguards against arbitrary interferences. The Agency ensures that legal requirements, policies and standards are met.<sup>31</sup> The Alethean nationals can complain about any violation before the Agency in order to have their personal data deleted.<sup>32</sup>

In conclusion, the existence of a special legal basis, permitting data processing, taken together with the provided safeguards for the Applicant against abuse, makes the legislation sufficiently foreseeable for the purposes of Art. 8(2).

### **3. The interference with the Applicant’s right to respect for private life under Article 8(1) pursues a legitimate aim**

In order for an interference to be justified, it has to pursue one of the legitimate aims set out in Art. 8(2) of the Convention.<sup>33</sup> Such a legitimate aim is the protection of public safety as well as public health. The Respondent submits that the interference with the right to respect for private life on account of processing pictures for the purposes of identifying perpetrators of the anti-epidemic measures pursued the legitimate aim of protecting public health.

### **4. The interference with the Applicant’s right under Article 8 is necessary in a democratic society**

The interference with one’s rights under Art. 8 of the Convention is “necessary in a democratic society” if it answers a “pressing social” need and is proportionate to the legitimate aim pursued.<sup>34</sup> It is the Respondent’s submission that the State enjoyed wide margin of appreciation in the current case. Moreover, the processing of the Applicant’s data was proportionate to the legitimate aim pursued – protection of public health and safety.

#### **4.1. The Respondent State enjoys wide margin of appreciation**

The States enjoy a certain margin of appreciation when considering whether the measures taken against the applicant answer a “pressing social need”.<sup>35</sup>

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<sup>29</sup> M.M. v The United Kingdom, app. no. 24029/07, para. 199; Amann v Switzerland, app. no. 27798/95, para. 56; Malone v the United Kingdom, app. no. 8691/79, paras. 67-68; Big Brother Watch and Others v the United Kingdom, app. no. 58170/13, para. 304

<sup>30</sup> The Case, para. 33

<sup>31</sup> The Case, para. 35

<sup>32</sup> Clarification question, Section 1, No. 45

<sup>33</sup> Pretty v the United Kingdom, app. no.2346/02, para. 68

<sup>34</sup> Jansen v Norway, app.no. 2822/16, para. 89; Paradiso and Campanelli v Italy, app. no. 25358/12, para. 181

<sup>35</sup> Catt v the United Kingdom, app. no. 43514/15, para. 109

Regarding the valid derogation, the Court in principle considers that, by reason of their direct and continuous contact with the pressing needs of the moment, the national authorities are better placed to decide on both the presence of such an emergency and on the nature and scope of the derogations necessary to avert it. Accordingly, in this matter, a wide margin of appreciation should be left to the national authorities.<sup>36</sup>

In the case at hand, due to the detrimental consequences of Malit-5 epidemic the State of Alethea decided to derogate from certain obligations under the Convention. Considering the valid derogation under Art. 8, even more invasive interferences with the right to respect for private life can be justified under Art. 8 (2). Therefore, the Respondent State enjoys a wide margin of appreciation in this respect and its actions should be assessed in the light of the given space for maneuver.

#### **4.2. The processing of the Applicant's data was proportionate to the legitimate aim pursued**

In the case of Mr. Specter, the exceptional circumstances of a dangerous new epidemic are present. In order to determine whether the processing of the Applicant's data is proportionate to the legitimate aim in the present case, the competing interests – the right to private life and the protection of public health, need to be balanced. Furthermore, the State also bears positive obligations under Art. 2 of the Convention, to take appropriate steps for the protection of the life of each individual through the adoption of public health measures.<sup>37</sup> Failure to adopt such measures could result in breach of the fundamental right under in Art.2.

As the Court has stated, measures during the state of emergency should answer the urgent needs of the situation<sup>38</sup> Alethean population was highly susceptible to the virus and no vaccine has been invented against the virus.<sup>39</sup> It is estimated that over 7 million people in Alethea have been infected with 1 million having had moderate to serious symptoms of the decease, and 500,000 needing hospitalisations.

The Government acted diligently when the virus began spreading and in according with the most universally accepted measures against spreading of infectious diseases.<sup>40</sup> In the presence of a highly contagious airborne disease such as Malit-5,<sup>41</sup> there is a consensus among

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<sup>36</sup> Mehmet Hasan Altan v Turkey, app. no. 13237/17, para. 91; A. and Others v the United Kingdom, app. no. 3455/05, para. 173; Şahin Alpay v Turkey, app. no. 16538/17, para. 75

<sup>37</sup> Centre for legal resources on behalf of Valentin Câmpeanu v Romania, app. no. 47848/08, para. 130; L.C.B. v the United Kingdom, app. no. 23413/94, para. 36;

<sup>38</sup> Şahin Alpay v Turkey, app. no. 16538/17, para. 74; Mehmet Hasan Altan v Turkey, app. no. 13237/17, para. 91

<sup>39</sup> The Case, para. 4

<sup>40</sup> The case, para. 3

<sup>41</sup> The case, para. 3



all Contracting States that specific measures have been proven critical to limiting transmission. Similarly, during the world-wide outbreak of COVID-19, another airborne viral disease, countries around the globe have implemented measures such as social distancing and mask wearing for disease control.<sup>42</sup> However, despite the compliance with recommended measures, the rapid spread of the virus caused it to reach the level of an epidemic in May 2019, and thus an urgent need for even stricter measures occurred.

In the present case, the higher growth of the virus cases required the most efficient reaction of the State, which aimed at reducing the mortality rate and the negative consequences on the economy. For these reasons, swift and efficient measures for identifying persons who breached the measures and spread the disease were crucial. The Respondent maintains that the exigencies of the epidemic situation required the use of advanced technologies such as PanOptis. In principle, automatic processing has great advantages compared to manual procession of data especially when the safety of the whole population is concerned.<sup>43</sup> The manual processing of personal data requires numerous personnel, which would achieve the same result in a much larger time frame. Moreover, the circumstances in the case at hand make it necessary for the State authorities to identify the potential infringers promptly, in order to minimise the spread of the epidemic.

Furthermore, PanOptis has error rate of only 15 % and since its introduction the overall rate of solved crimes has increased from 70% to 90%. PanOptis provided tremendous protection to crime victims as law enforcement increased its efficiency and, in turn, its accuracy protected the innocent suspects from being wrongly accused.<sup>44</sup> Therefore, the benefits of the use of PanOptis are evident. Furthermore, PanOptis processes data in full compliance with the Data Protection Regulation and Data Protection Agency oversees the use of PanOptis and ensures that legal requirements, policies and standards are met.<sup>45</sup> Additionally, the program shares the gathered material only with the law enforcement authorities for the purposes of criminal proceedings.<sup>46</sup>

The Respondent takes note of the Applicant's argument that PanOptis stored some data indefinitely.<sup>47</sup> However, all the data, which does not match the police database, has been deleted immediately from the police database<sup>48</sup>. Thus, the only data which is being stored is

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<sup>42</sup> WHO (2020)

<sup>43</sup> Rigano, Christopher (2019)

<sup>44</sup> The case, para 38

<sup>45</sup> Clarification question, Section 1, No. 40, The case, para. 33, 35

<sup>46</sup> Clarification question, Section 3, No. 17

<sup>47</sup> The Case, para. 36

<sup>48</sup> The Case, para. 36

that of persons who were matched by PanOptis in the process of identification during criminal proceedings. Furthermore, the Court has stated, that at the outset it fully realises that in order to protect their population, the national authorities can legitimately set up databases as an effective means to prevent certain offences.<sup>49</sup> In times of emergency, this is even more so applicable and justified.

Additionally, in the case of *P.N. v Germany*, the Court considered the collection of data in form of photographs to be less intrusive with the applicant's rights than the retention of DNA profiles.<sup>50</sup> In the cited case, the Court attached particular weight to the fact that the retention of photographs was proportionate to the legitimate aim of protecting the public safety and subsequently found no violation under Art. 8. In the present case, *per argument a fortiori*, when the legitimate aim is the protection of public health, the processing of data is justified.

For these reasons, the Respondent submits that the use of PanOptis is proportionate to the aim pursued – the protection of public health. The State of Alethea invites the Court to find that there has been no violation of the Applicants' rights under Art. 8 of the Convention.

### **III. THE RESPONDENT STATE HAS NOT VIOLATED ARTICLE 11 OF THE CONVENTION**

The Applicant submits that his right to peaceful assembly has been violated. However, it is the Respondent's submission that the complaint is inadmissible. Alternatively, the State complied with both its positive and negative obligations under Art. 11.

#### **1. Mr. Specter's application before the Court is inadmissible**

The Government raise two preliminary objections regarding the admissibility of Mr. Specter's complaint under Art. 11. The State maintains that the Applicant lacks victim status. Alternatively, the application is manifestly ill-founded as it meets the conditions set in Art. 11(2) and there is no lack of proportionality.

##### **1.1. The Applicant lacks victim status as set under Article 34 of the Convention**

Mr. Specter cannot claim to be a victim of a violation of Art. 11 since he was not directly affected by the emergency legislation prohibiting gatherings of more than 100 people.

In its case law, the Court has determined that the term "victim" denotes a person who is directly affected by the act or omission in issue.<sup>51</sup> If an individual is unable to demonstrate that he or she is personally affected by the application of a law, he or she cannot claim to be the

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<sup>49</sup> *Aycagauer v France*, app. no. 8806/12, para. 34

<sup>50</sup> *P.N. v Germany*, app. no. 74440/17, para. 84

<sup>51</sup> *Eckle v Germany*, app. no. 8130/78, para.66; *Roman Zakharov v. Russia*, app. no. 47143/06, para. 164; *Burden v. the United Kingdom*, app. no. 13378/05, para. 33

victim of a violation of the Convention.<sup>52</sup> In *Ocic v Croatia*, the applicant complained that a national legal act contravened the Convention and that it could potentially affect him. However, the Court declared the application inadmissible due to the fact that the applicant had failed to show that he could have been in any way affected by the act in question.

Moreover, the Court has established, that even if the existence of an assembly is not disputed, the admissibility of the complaint under Art. 11 may be called into question in relation to a particular applicant if he or she denies before the Court to have taken part in that assembly.<sup>53</sup> The fact that the applicant was sanctioned for participating in the assembly is not in itself sufficient to bring the complaint within the ambit of Art. 11, if the applicant had consistently claimed that he was mistaken for a participant.<sup>54</sup>

In the present case, during the proceedings before the national courts, Mr. Specter continuously maintained that he did not attend the demonstration on 1 July 2019, denying any affiliation with the event.<sup>55</sup> Therefore, there is no sufficient connection between the Applicant and the demonstration in question to allege any violation of Art. 11. Hence, Mr. Specter is not a victim of a breach of his right to freedom of assembly.

### **1.2. Mr. Specter's complaint under Art. 11 is manifestly ill-founded**

Mr. Specter's application before the Court fails to meet the admissibility criterion set forth in Article 35(3)(a). The Applicant's complaint does not disclose any appearance of a violation of the rights under Art. 11 and therefore it is manifestly ill-founded.

The right to freedom of assembly is not absolute and can be subject to limitations.<sup>56</sup> The Court declares the application inadmissible as manifestly ill-founded if it does not disclose an apparent violation and the conditions set in Art. 11(2) are met.<sup>57</sup> In the present case, the prohibition of public gatherings was prescribed by law and aimed at protecting the population from a deadly virus. The Government maintain that introducing temporary restrictive measures to minimise the spread of a dangerous disease is proportionate to the aim pursued. In these specific and exceptional circumstances, the great restrictions over public gatherings, applied by the national authorities, were justified. Thus, the Applicant's complaint is manifestly ill-founded and, therefore, inadmissible.

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<sup>52</sup> *Ocic v Croatia* (dec.), app. no. 46306/99

<sup>53</sup> *Kasparov and Others v Russia*, app. no. 21613/07, para. 72

<sup>54</sup> *Kasparov and Others v Russia*, app. no. 21613/07, para. 73

<sup>55</sup> *The Case*, para.16

<sup>56</sup> *Federation of Offshore Workers' Trade Unions and Others v Norway*, app. no. 38190/97, dec.; Harris, O'Boyle, Warbrick (2014), p.505; *Kudrevičius and Others v Lithuania*, app. no. 37553/05, para. 159

<sup>57</sup> *Unite the Union v the United Kingdom*, app. no. 65397/13, para. 66; *Federation of Offshore Workers' Trade Unions and Others v Norway*, app. no. 38190/97, dec.

## **2. The Government complied with their negative obligations under Art. 11 of the Convention**

The Applicant submits that his right to freedom of peaceful assembly has been violated. The State is able to concede that the limitation of public gatherings of more than 100 persons and the imposed criminal sanction could be considered as an interference with the Applicant's rights under Art. 11. However, the Respondent maintains that there has been no violation of Mr. Specter's rights under Art. 11 in respect of the emergency legislation and the subsequent sanctions. Both its negative and positive obligations, as required by Art.11<sup>58</sup>. were duly met in the present case by the State of Alethea.

When examining whether there has been an unjustified interference, the term "restrictions" in Art. 11(2) must be interpreted as including both measures taken before, during and after a demonstration.<sup>59</sup> In the present case, the State interfered with the Applicant's right to freedom of assembly before and after the demonstration – by prohibiting gatherings and by imposing punitive measures against attendees. It is the Respondent's submission that this interference was in accordance with Art. 11(2) of the Convention.

### **2.1. The interference was prescribed by law**

The interference with Mr. Specter's rights protected by Art. 11 was prescribed by the accessible and foreseeable legislation of Alethea. The expression "prescribed by law" requires that the impugned measure should have a legal basis in domestic law. The law in question should be accessible to the person concerned and foreseeable as to its effects.<sup>60</sup> If a conviction has a legal basis in national legislation, the Court considers the law accessible by presumption.<sup>61</sup> As regards the foreseeability condition, according to the Court's practice, a law is "foreseeable" if it is formulated with sufficient precision enabling the individual to interpret the provisions and regulate his conduct.<sup>62</sup> In assessing the foreseeability criterion, the Court has regards both to the text of the law and the manner in which it was interpreted and applied by national authorities.<sup>63</sup> The law is considered foreseeable if, first, the interpretation of a legal provision is predictable and, second, if the consequences of an individual's actions can be foreseen in the circumstances of a criminal charge in direct connection with the law in question.<sup>64</sup>

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<sup>58</sup> Öllinger v Austria, app. no. 76900/01, para. 35

<sup>59</sup> Kasparov and Others v Russia, app. no. 21613/07, para. 84

<sup>60</sup> Kudrevičius and Others v Lithuania, app. no. 37553/05, para. 108

<sup>61</sup> Kudrevičius and Others v Lithuania, app. no. 37553/05, para. 111

<sup>62</sup> N.F. v Italy, app. no. 37119/97, para. 28

<sup>63</sup> Jafarov and Others v Azerbaijan, app. no. 27309/14, para. 70

<sup>64</sup> Kudrevičius and Others v Lithuania, app. no. 37553/05, para. 114

In the present case, the Government maintain that both criteria of accessibility and foreseeability of the applicable legal provisions were met.

First, the condition of accessibility is satisfied because the legislation in question, including the emergency decree, was public and accessible to the Applicant. Mr. Specter's conviction was based on Art. 306 of the Criminal Code, which is part of the national law, and the emergency decrees with their subsequent extensions, all of which were published in the Official Gazette.<sup>65</sup>

Second, in regard to the foreseeability criterion, it is the Respondent State's submission that there is a sufficient legal basis for the measures imposed by the Government. Under Art. 23 of the Constitution of Alethea, the President has the right to declare a state of emergency due to epidemics.<sup>66</sup> Art. 24 of the Constitution allows the Government or ministers to adopt emergency decrees, and failure to comply with health regulations during an epidemic is punishable under Art. 306 of the Criminal Code.<sup>67</sup> In the present case, two emergency decrees were adopted by the Ministry of Health pursuant to the abovementioned provisions set forth in the Constitution.<sup>68</sup> The legal acts in question were predictable and the consequences of the Applicant's actions could be foreseen. Therefore, the legal basis for Mr. Specter's conviction met the foreseeability criterion set by the Court.

In conclusion, it is the Respondent State's submission that the Applicant was lawfully convicted under Art. 306 of the Criminal Code. The law was accessible and the interpretation of the provisions was not unpredictable. The Applicant could have foreseen that his actions could amount to "failure to comply with health regulations during an epidemic", attracting the application of Art. 306 of the Alethean Criminal Code in connection with the emergency decrees.

## **2.2. The interference pursued the legitimate aim of protection of public health**

In the present case, by enacting emergency decrees in compliance with the national legislation, the aim pursued by the Government was the protection of public health. Due to the rapid spread of a deadly virus, a significant threat to the general population's health posed the danger of transmitting an infectious and potentially lethal disease. In order to protect the part of the population which is at a higher risk, certain restrictions needed to be imposed. In this regard, it is the Respondent State's submission that the measures taken pursued a legitimate

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<sup>65</sup> The Case, para. 27

<sup>66</sup> The Case, para. 26

<sup>67</sup> The Case, para. 28

<sup>68</sup> The Case, paras.7-8

aim as required by Art. 11(2).

### **2.3. The interference was necessary in a democratic society**

The State of Alethea contends that the emergency legislation prohibiting public gatherings was necessary in a democratic society, corresponded to a pressing social need and was proportionate to the legitimate aim sought.

#### **a) The restriction of public gatherings was proportionate to the aim pursued**

The restrictive measures taken by the authorities, namely the prohibition of gatherings, met the proportionality criterion set in the Court's case law. It has been established that, even in the circumstances of a peaceful assembly, restrictions on the exercise of the right to assembly may become necessary if the health of civilians is at risk.<sup>69</sup>

In the present case, the aim of preventing an outbreak of the highly contagious airborne viral disease Malit-5 and could not be achieved by any means less severe than prohibiting the public gatherings. Furthermore, it is evident from a statistical report published by the Ministry of Health that the event in question put many citizens in direct danger due to the fact that around 1,000 of the people present were infected.<sup>70</sup> Thus, the Government maintain that the restriction of public gatherings was proportionate to the aim of protecting the population's health and preventing a healthcare crisis.

Furthermore, in the case of *Cisse v France*, where the national authorities had imposed significantly more severe measure against hunger-strikers, namely an evacuation of the premises carried out by armed forces, the Court found no violation of Art. 11 and considered the interference proportionate to the aim of protecting public health and safety.<sup>71</sup>

#### **b) The criminal sanctions imposed were justified and proportionate**

The Respondent submits that the sanction imposed on Mr. Specter – the fine of 2,500 EUR, was justified and proportionate. As the Court has stated in *Ziliberberg v Moldova*, since states have the right to impose certain rules for various gatherings, they must be able to apply sanctions to those who participate in unlawful demonstrations.<sup>72</sup> Therefore, in the present case, the imposition of sanctions for the Applicant's participation in an unlawful protest did not constitute a breach of his rights protected by Art. 11 of the Convention.

As for the severity of the sanctions imposed on the Applicant, according to Art. 306 of the Criminal Code, failure to comply with health regulations during an epidemic is subject to

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<sup>69</sup> *Cisse v France*, app. no. 51346/99, paras. 51-52

<sup>70</sup> The Case, para. 21

<sup>71</sup> *Cisse v France*, app. no. 51346/99, paras. 52-53

<sup>72</sup> *Ziliberberg v Moldova*, app. no. 61821/00, dec.

a fine from 500 EUR to 5,000 EUR and/or up to 3 months' imprisonment.<sup>73</sup> However, the sanctions imposed by the domestic court were not disproportionate, as he was not imprisoned. While Mr. Specter risked imprisonment and a fine of up to 5,000 EUR, he was ordered to pay only 2,500 which is the middle of the scale. Having regard to the fact that there is no indication of financial difficulty on the Applicant's side, and that he paid the fine within the time-limit set by the court,<sup>74</sup> it is the State's submission that the sanctions imposed were fair and proportionate.

In conclusion, the Government submit that there has been no violation of the Applicant's right to freedom of assembly as protected by the Convention.

### **3. The authorities did not breach their positive obligations set forth in Art. 11**

National authorities must not only abstain from interfering with this right<sup>75</sup>, but also must take measures in order to protect citizens in the exercise of their rights. The Government maintain that they have complied with both their negative and positive obligations under Art. 11 of the Convention.

However, in the present case, the Applicant continuously claimed that he did not participate in the demonstration, and therefore, cannot require the state to protect him during demonstration he did not attend. Thus, no issue under the positive obligations of Art. 11 arises.

Additionally, the Government maintain that they have nevertheless fulfilled their positive obligation to ensure a peaceful and uninterrupted demonstration as required by Art. 11<sup>76</sup>. In its practice, the Court has determined that the unlawfulness of a demonstration does not eliminate the positive obligations of the authorities.<sup>77</sup> However, states enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with Art. 11 of the Convention.<sup>78</sup>

Although the protesters aimed at shaking the Government's position about Malit-5 and at inciting negative attitude on behalf of the population towards the measures taken by the Government, the demonstration did not in fact pose a threat to public order, the participants and organizers had no violent intentions, and there was no need for police interference. This is why the police did not use force or disperse the protest, while still guaranteeing safety in the

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<sup>73</sup> The Case, para. 28

<sup>74</sup> The Case, para. 18

<sup>75</sup> Ölligner v Austria, app. no. 76900/01, para. 35

<sup>76</sup> Gün and Others v Turkey, app. no 8029/07, para. 72; Kudrevičius and Others v Lithuania, app. no 37553/05 para. 158; Djavit An v Turkey, app. no. 20652/92, para. 57

<sup>77</sup> Gafgaz Mammadov v Azerbaijan, app. no. 60259/11, para. 59

<sup>78</sup> Plattform "Ärzte für das Leben" v Austria, app. no. 10126/82, para. 34; Abdulaziz, Cabales and Balkandali v. the United Kingdom, app. no. 9214/80, para. 67; Protopapa v. Turkey, app. no. 16084/90, para. 108

event of clashes.<sup>79</sup>

Therefore, the lack of police presence is not in violation of the Government's positive obligations. The State authorities acted within their wide margin of appreciation and did not fail to comply with their obligation to protect public health.

#### **IV. THE STATE OF ALETHEA HAS NOT VIOLATED THE APPLICANT'S RIGHT TO A FAIR TRIAL UNDER ARTICLE 6**

The Government contest the Applicant's claim that his right to a fair trial has been breached since his conviction was based on unlawfully obtained evidence. The State has acted in compliance with all of the requirements of Art. 6 of the Convention in its criminal ambit.

##### **1. The State accepts the applicability of Art. 6 under its criminal limb**

The State does not contest the applicability of Art. 6 in its criminal limb due to the presence of a criminal charge. The notion of criminal charge is autonomous<sup>80</sup> and based on three elements – classification in the domestic legislation, nature of the offence and severity of the penalty that the person risks incurring.<sup>81</sup> In the present case, the Applicant was charged and convicted for a crime, under Alethea's national law. Thus, Art. 6 is applicable in its criminal limb.

##### **2. The State has not violated the Applicant's right to a fair trial in respect of the evidence based on PanOptis results**

The Government maintain that Mr. Specter's right to a fair trial has been respected in view of the use of PanOptis. First, the authorities used PanOptis lawfully and, second, the Applicant was able to challenge its use.

##### **2.1. The use of PanOptis in the present case was lawful**

Art. 6 does not lay down any rules on the admissibility of evidence which is a matter for regulation under national law.<sup>82</sup> In its case law, the Court has established that the quality of the evidence must be taken into consideration as well as the circumstances in which it was gathered and whether there was need for supporting evidence.<sup>83</sup> It also takes into account the way in which the evidence was obtained.<sup>84</sup>

In the case at hand, PanOptis was used as a piece of evidence which was collected in

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<sup>79</sup> Clarification question, Section 2, No. 21

<sup>80</sup> *Blokhin v Russia*, app. no. 47152/06, para. 179; *Adolf v Austria*, app. no. 8269/78, para. 30

<sup>81</sup> *Engel and Others v the Netherlands*, app. no. 5370/72, paras. 82-83

<sup>82</sup> *Schenk v Switzerland*, app. no. 10862/84, paras. 45-46; *Moreira Ferreira v Portugal* (no. 2), app. no. 19867/12, para. 83

<sup>83</sup> *Bykov v Russia*, app. no. 4378/02, para. 89; *Dragojević v Croatia*, app. no. 68955/11, para. 129; *Bašić v Croatia*, app. no. 22251/13, para. 44

<sup>84</sup> *Jalloh v Germany*, app. no. 54810/00, paras. 94-95; *Hambardzumyan v Armenia*, app. no. 43478/11, para. 76



accordance with the law. Under Art. 11 of the Code of Criminal Procedure the facial-recognition software system constituted legally obtained electronic evidence.<sup>85</sup> PanOptis which had a minimal error rate was introduced through the Law on Police and Criminal Investigations.<sup>86</sup> Relying on that law, the use of the search engine in the course of the criminal proceedings was widely accepted. Especially at the time of an epidemic<sup>87</sup>, the exigencies of the situation required the adoption of special investigative methods.

The law-enforcement authorities identified the Applicant through one of his public photos<sup>88</sup> and did not breach his Convention right under Art. 8, because the interference was justified, as provided above in section II. Therefore, the State gathered the evidence based on PanOptis results lawfully.

Even if the Court finds that there has been a violation of Art. 8, this state of affairs is not a precondition for finding a violation of Art. 6. It is the consistent practice of the Court over the years, in situations of problematic evidence, where the Court has found a violation of Art. 8, that, no such issue arises under Art. 6, as long as the trial is fair as a whole.<sup>89</sup>

## **2.2. The Applicant had the opportunity to challenge the use of PanOptis before the domestic court in accordance with the right to adversarial proceedings**

The Government contest Mr. Specter's claim that the Applicant was not able to challenge the lawfulness of the evidence and oppose its use. The Court has stated in connection with the right to an adversarial trial that each party should have the opportunity to be aware of and comment on all evidence.<sup>90</sup> The defence should also have the chance to challenge the lawfulness of the evidence and to oppose its use.<sup>91</sup>

In the present case, the Applicant had the opportunity to challenge and oppose the use of PanOptis. Mr. Specter claimed, that PanOptis should be employed as lead, not as actual evidence<sup>92</sup> and as a dangerous tool leading to privacy invasions<sup>93</sup>. His arguments were then addressed in the judgments of the national courts. Hence, during the hearing before the domestic court the State did not infringe the Applicant's right to a fair trial since it gave him the opportunity to challenge the lawfulness of PanOptis and oppose its use.

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<sup>85</sup> The Case, para. 30

<sup>86</sup> The Case, para. 31

<sup>87</sup> The Case, para. 31

<sup>88</sup> The Case, para. 14

<sup>89</sup> *Dragojević v Croatia*, app. no. 68955/11, para. 134; *Khan v the United Kingdom*, app. no. 35394/97, para. 36

<sup>90</sup> *Brandstetter v Austria*, app. no. 13468/87, para. 67

<sup>91</sup> *Allan v the United Kingdom*, app. no. 48539.99, para. 43; *Khan v the United Kingdom*, app. no. 35394/97, para. 36

<sup>92</sup> The Case, para. 16

<sup>93</sup> The Case, para. 19

### **3. The Applicant's conviction was also based on supporting evidence which he was able to challenge in accordance with the right to adversarial proceedings**

It is the Government's submission that in order to guarantee the fairness of the criminal proceedings, the prosecution has gathered supporting evidence which the Applicant had the opportunity to challenge.

#### **3.1. PanOptis conclusions were corroborated with the eye-witness testimony**

In similar cases, where the adduced evidence was controversial, when assessing the overall fairness of the proceedings, the Court has examined whether there existed supporting evidence for the defendant's conviction<sup>94</sup> such as witness statements. Moreover, it has established that the witnesses on behalf of the prosecution and the defence must be regarded as relevant<sup>95</sup> and treated in an equal manner without privileges.<sup>96</sup> The witnesses are considered relevant if they are capable of clarifying uncertain situations constituting the basis of the criminal charge.<sup>97</sup>

Mr. Specter's conviction was also based on the witness statements as well as his past behaviour.<sup>98</sup> The fact that he had breached the regulations of the emergency legislation twice was taken into account when determining his penalty. Furthermore, the statements of the witnesses A. and B. met the requirement regarding their relevance and were treated without privileges.<sup>99</sup> The witnesses participated in the demonstration and could clarify the uncertain situation which constituted the basis of the criminal charge. A. and B. were able to determine whether Mr. Specter was present there and, hence, their testimonies were relevant and lawfully used as supporting evidence.

#### **3.2. The Applicant could challenge the lawfulness and oppose the use of the supporting evidence in accordance with the right to adversarial proceedings**

It is the Respondent State's submission that the fairness of the proceedings was not infringed since Mr. Specter could challenge and oppose the use of the evidence adduced against him. The principle that each party should have the opportunity to challenge the lawfulness of the evidence and to oppose its use<sup>100</sup> is also applicable in respect of the supporting evidence.

Mr. Specter challenged and opposed the statements of the witnesses for the

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<sup>94</sup> Bykov v Russia, app. no. 4378/02, para. 90

<sup>95</sup> Allan v the United Kingdom, app. no. 48539.99, para. 43

<sup>96</sup> Bönisch v Austria, app. no. 8658/79, para. 32; Brandstetter v Austria, app. no. 13468/87, para. 45

<sup>97</sup> Kasparov and Others v Russia, app. no. 21613/07, paras. 64-65

<sup>98</sup> The Case, para. 18

<sup>99</sup> Clarification question, Section 1, No. 15

<sup>100</sup> Allan v the United Kingdom, app. no. 48539.99, para. 43; Khan v the United Kingdom, app. no. 35394/97, para. 36

prosecution.<sup>101</sup> The witnesses presented their statements during the investigation stage and were heard by the Charon City Court where the Applicant was able to cross-examine them.<sup>102</sup> Despite the fact that the court of appeal did not hear them again, it took into account their testimonies and answers provided earlier.<sup>103</sup>

**4. The Applicant's right to equality of arms was not breached in respect of the dismissal of his request to hear Mr. Z.'s testimony**

The Court has established in *Murtazaliyeva v Russia*,<sup>104</sup> that it is required for the evidence to meet the three-element test when it comes to the evidence of the accused. In order not to violate Art. 6, first, the request to examine the testimony should be reasoned and relevant to the criminal charge, second, the national courts must consider the relevance of the witness and to be argumentative in their decision, third, that decision not to examine the witness must not violate the fair character of the proceedings as a whole.<sup>105</sup>

The Respondent underlines that the Applicant proposed his friend Z. as a witness to confirm that he was at his home at the time of the demonstration.<sup>106</sup> Both the first-instance court and the court of appeal, which agreed with the lower court's assessment, rejected the request and concluded there was no need to hear Z. as a witness.<sup>107</sup> Mr. Z.'s rejection was justified as he was incapable of clarifying uncertain situations constituting the basis of the criminal charge – namely the participation in the demonstration. Mr. Specter's friend was calling him daily<sup>108</sup>, however relying only on phone calls makes his testimony irrelevant. The fact that he was dismissed by the domestic court does not place the Applicant at a position of disadvantage. Furthermore, this position should also be viewed in light of the wide margin of appreciation of the domestic courts to assess the evidence and the lack of any appearance of arbitrariness on their part in the case at hand. Also, Mr. Specter could have proposed another witness and yet he did not exercise that right. Thus, the Applicant was not deprived of the chance to produce evidence in his defence and when applying the test set forth in *Murtazaliyeva v Russia*<sup>109</sup>, it is evident that the proceedings were fair as a whole.

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<sup>101</sup> The Case, para. 16

<sup>102</sup> The Case, para. 16, Clarification question, Section 1, No. 1

<sup>103</sup> Clarification question, Section 1, No. 1

<sup>104</sup> *Murtazaliyeva v Russia*, app. no. 36658/05, para. 158

<sup>105</sup> *Murtazaliyeva v Russia*, app. no. 36658/05, para. 158

<sup>106</sup> The Case, para. 16

<sup>107</sup> Clarification question, Section 1, No. 4

<sup>108</sup> The Case, para. 16

<sup>109</sup> *Murtazaliyeva v Russia*, app. no. 36658/05, para. 158

**5. The domestic courts provided reasoned judgment and the proceedings were fair as a whole**

Finally, the State of Alethea submits that the proceedings were fair as a whole since, the Applicant was represented by a lawyer<sup>110</sup> and the judgement of the domestic court was adequate and reasoned with no appearance of arbitrariness, in defining the reasons on which it was based, as required in the Courts' case law.<sup>111</sup> The Charon County Court took into consideration the Applicant's argumentation addressing the significant issues in the case and provided a reasoned judgment. It answered all substantial claims raised by Mr. Specter regarding the challenging of the two pieces of evidence and was in no way arbitrary.

The Court has stated on multiple occasions that it is not a fourth instance to the national courts and has found arbitrariness in national judgments only in extreme cases, such as *Popov v Russia* where the domestic court refused to examine the witnesses of the defence without giving reasons.<sup>112</sup> Such flagrant violation is clearly not evident in the case at hand, and the Court should not act in the capacity of a fourth instance.<sup>113</sup> For these reasons, the fairness of the criminal proceedings was guaranteed.

**V. THE RESPONDENT STATE HAS NOT VIOLATED ARTICLE 13 IN CONJUNCTION WITH ARTICLES 8 AND 11**

The Applicant complains that the Respondent State has violated Art. 13 of the Convention due to the lack of an effective remedy for the alleged violation of his rights under Art. 8 and 11. Contrary to the Applicant's contentions, the Government submit that no violations are present. The domestic courts reviewed effectively and in substance the complaint under Art. 8. Additionally, there is no violation of Art. 13 in conjunction with Art. 11 as Art. 13 does not guarantee a remedy, whereby the applicant can challenge the national law as such.

**1. The complaint before the Constitutional Court constitutes an effective remedy for the Applicant's grievances under Article 8**

The Government point out that Art. 13 guarantees the availability of a remedy at national level to enforce the substance of the Convention rights and freedoms.<sup>114</sup> The Court has held on many occasions that the remedy "should be effective in practice and in law".<sup>115</sup> Art. 13 requires the Contracting States to provide such remedies, that are competent to prevent an alleged

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<sup>110</sup> Correia de Matos v Portugal, app. no. 56402/12, para. 122

<sup>111</sup> Moreira Ferreira v Portugal (No. 2), app. no. 19867/12, para. 84

<sup>112</sup> Popov v Russia, app. no. 26853/04, para. 188

<sup>113</sup> García Ruiz v Spain, app. no. 30544/96, para. 28

<sup>114</sup> Rotaru v Romania, app. no. 28341/95, para. 67; Soering v the United Kingdom, app. no. 14038/88, para. 120

<sup>115</sup> Ramirez Sanchez v France, app. no. 59450/00, para. 158; Schabas (2015), p. 550

violation or to provide an adequate redress to those concerned.<sup>116</sup> The “effectiveness” of a remedy does not depend on the certainty of a favourable outcome for the applicant.<sup>117</sup>

In the present case, the Applicant availed himself of the possibility to raise his grievances before the Constitutional Court in the form of a constitutional complaint. The complaint before the Constitutional Court has been proclaimed to be an effective remedy by the Court for the purposes of Art. 13.<sup>118</sup> The Constitutional Court is an independent body<sup>119</sup>, competent to hear and assess individual complaints.<sup>120</sup> It can address the complaints in substance and order compensation.<sup>121</sup> When examining complains under Art. 13 in conjunction with Art. 8, the national courts have to carry out a balancing exercise and examine whether the interference with the applicants’ rights answered a pressing social need and was proportionate to the legitimate aims pursued.<sup>122</sup>

In the case of Mr. Specter, the Constitutional Court addressed the Applicant’s complaints carefully in its reasoned decision. It did not dismiss the complaint on admissibility grounds, rather rejected it on the merits and found no violation.<sup>123</sup> The Constitutional Court struck a fair balance between the competing public and private competing interest and concluded that in the current circumstances the need to protect the public health during the state of emergency prevailed, on balance over the individual’s right to privacy, enshrined in 8.<sup>124</sup> Consequently, there is no violation of Art. 13 in conjunction with Art. 8 in the present case.

## **2. There is no violation regarding the complaint under Art. 13 taken together with Art. 11**

The Applicant complained, that the emergency legislations violated his right under Article 11, and furthermore, he lacks effective remedy in this regard. However, the Court has held on many occasions that it does not interpret Art. 13 as requiring a remedy against a piece of legislation.<sup>125</sup> When the complaint has been inconsistent with this principle, the Court has

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<sup>116</sup> *Klass and Others v Germany*, app. no. 5029/71, para. 64

<sup>117</sup> *Kudła v Poland*, para. 157; *Costello-Roberts v the United Kingdom*, app. no. 13134/87, para. 40

<sup>118</sup> *The Case*, para. 25

<sup>119</sup> *Silver v the United Kingdom*, app. nos. 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75, 7136/75, para. 116; *Leander v Sweden*, app. no. 9248/81, para. 81

<sup>120</sup> *Vereinigung demokratischer Soldaten Österreichs and Gubi v Austria*, app. no. 15153/89, para. 55; *Leander v Sweden*, app. no. 9248/81, para. 81

<sup>121</sup> *The Case*, para. 25

<sup>122</sup> *C.G. and Others v Bulgaria*, app. no. 1365/07, para. 62; *Smith and Grady v the United Kingdom*, app. nos. 33985/96 and 33986/96, paras. 136-38; *Peck v the United Kingdom*, app. no. 44647/98, paras. 105-106; *Hatton and Others v the United Kingdom*, app. no. 36022/97, paras. 140-141

<sup>123</sup> Clarification question, Section 1, No. 29

<sup>124</sup> *The Case*, para. 20

<sup>125</sup> *Szabó and Vissy v Hungary*, app. no. 37138/14, para. 93; *Ostrovar v Moldova*, app. no. 35207/03, para. 113; *Iordachi and Others v Moldova*, app. no. 25198/02, para. 56; *K.H. and Others v Slovakia*, app. no. 32881/04, para. 72

held that there is no violation of Art.13, due to its established impossibility to bind the Contracting States to incorporate the Convention in their domestic law.<sup>126</sup>

According to Article 24 of the Alethean Constitution, for the duration of a state of emergency, the Government or line ministries are entitled to adopt emergency decrees.<sup>127</sup> The Emergency decrees of 14 May and 14 June 2019 were adopted by the Ministry of Health pursuant to Articles 23 and 24 of the Alethean Constitution. The decrees, and the subsequent extensions, were published in the Official Gazette.<sup>128</sup> As argued above, the emergency legislation constituted a necessary and proportionate measure of the State, pursuing the legitimate aim of the protection of the public health. Therefore, the Constitution of Alethea has provided for the official competence of the representatives of the executive body, as well as the specific procedure, which has to be followed, when such decree is adopted. The regulation of such important state of affairs, such as the declaration of state of emergency, can only be regulated by acts, with the rank of a law. In the case at hand, the Ministry of Health has complied with the requirements set in the Constitution. It has adopted emergency decrees, which qualify as parts of the national legislation with the rank of a law and cannot be challenged as such. Consequently, the Respondent State did not breach Art. 13 in conjunction with Art. 11

## **VI. CONCLUSION**

It is for all of the above reasons that the Respondent State respectfully invites the Court to declare the Applicants' complaints under Art. 11 inadmissible.

Additionally, we respectfully request the Court to adjudge and declare that the Respondent State has not violated any of the Applicants' rights under Articles 6, 8, 11 and 13 of the Convention.

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<sup>126</sup> Ostrovar v Moldova, app. no. 35207/03, para. 113

<sup>127</sup> The Case, para. 26

<sup>128</sup> The Case, para. 27