

# **Article 3 of the European Convention on Human Rights:**

## **A PRACTITIONER'S HANDBOOK**

**OMCT Handbook Series Vol. 1**

Alexander Morawa, Nicole Bürli  
Peter Coenen and Laura Ausserladscheider Jonas



**2<sup>nd</sup> edition**

# **ARTICLE 3 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

## **AUTHORS**

Alexander Morawa, Nicole Bürli, Peter Coenen,  
and Laura Ausserladscheider Jonas

Print: Sté Crea Concept  
Layout: mostra-design.com

First Edition: 2006

Second Edition: 2014

© 2014 World Organisation Against Torture (OMCT)

ISBN: 2-88894-055-8

World Organisation Against Torture (OMCT)

P.O. Box 21

8, rue du Vieux-Billard

CH-1211 Geneva 8

Switzerland

Tel: +41 (0) 22 809 49 39

Fax: +41 (0) 22 809 49 29

E-mail: [omct@omct.org](mailto:omct@omct.org)

Website: <http://www.omct.org/>

**SERIES EDITOR:** Helena Solà Martín

**DIRECTOR OF PUBLICATIONS:** Gerald Staberock

The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 311 local, national, and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to develop effective international litigation strategies to assist victims of torture and ill-treatment in obtaining legal remedies where none are available domestically, and to support them in their struggle to end impunity in states where torture and ill-treatment remain endemic or tolerated practices. In furtherance of these objectives, OMCT has published a Handbook Series of four volumes, each one providing a guide to the practice, procedure, and jurisprudence of the regional and international mechanisms that are competent to examine individual complaints concerning the violation of the absolute prohibition of torture and ill-treatment. This updated edition of the Handbook on Article 3 of the European Convention on Human Rights is the first volume of the series.

# **Article 3 of the European Convention on Human Rights:**

## **A PRACTITIONER'S HANDBOOK**

**OMCT Handbook Series Vol. 1**

Alexander Morawa, Nicole Bürli  
Peter Coenen and Laura Ausserladscheider Jonas

**OMCT**  
SOS-Torture Network

**2<sup>nd</sup> edition**



## ACKNOWLEDGEMENT

We would like to express our sincere gratitude to Christopher Keeler, Jonas Hertner, and Ivan Shalev for their editorial assistance and comments on the draft. Our gratitude also extends to Marina Gente and Anne-Laurence Lacroix for their support at various stages of this project.

We would also like to thank those who have contributed to the first edition. First and foremost we would like to express our deepest gratitude to Uğur Erdal and Hasan Bakırcı who authored the first edition. We would also like to thank Victoria Lee and Aubra Fletcher for their editorial assistance and to Giulia Grazioli, Sanne Rooseboom and Yvonne Troya for their legal and thematic research during various stages of the project. We are very grateful to Agnes van Steijn, case lawyer at the Registry of the European Court of Human Rights for reading several drafts of the Guide.

We are grateful to the following lawyers who very kindly permitted us to include documents drafted by them as appendices to this Guide: Roeland Böcker of the Ministry for Foreign Affairs of the Netherlands, for the Government's observations submitted to the Court in the case of *Van der Ven v. the Netherlands*; Professors Kevin Boyle and Françoise Hampson, the applicants' legal representatives in the case of *Akkum and Others v. Turkey*, for the observations submitted to the Court on behalf of the applicants; Philip Leach, Cihan Aydın and Reyhan Yalçındağ, the applicant's legal representatives in the case of *Kışmır v. Turkey*, for the observations submitted to the Court on behalf of the applicant.

Our gratitude also extends to the third party interveners (NGOs) in the case of *A and Others v. Secretary of State for the Home Department and A and Others (FC) and Another v. Secretary of State for the Home Department*, and in the case of *Ramzy v. The Netherlands*, for permission to reproduce their submissions in the appendices.

We would like to thank Roderick Liddell, Head of External Relations and Communication at the European Court of Human Rights, for allowing us to reproduce various documents available on the Council of Europe's website which appear in several of the *Textboxes* of this Guide. Finally, my thanks to Veronica de Nogales Leprevost for contributing the cover design for the OMCT Handbook Series.

## DISCLAIMER

The views expressed in this book are solely those of the authors. They do not represent the views of any organisation, institution or Government.

## FOREWORD

*'Nothing can justify torture and cruel, inhuman, or degrading treatment under any circumstances'.* International law could not be clearer on this point.

Yet implementation remains the primary challenge around the world; and torture, cruel, inhuman, or degrading treatment remains sadly a reality in most regions of the world.

This is true also for Europe and the member states to the Council of Europe. Every year hundreds of cases are submitted invoking a violation of Article 3 of the Convention dealing with a broad range of torture and ill-treatment in custody, the failures to investigate and to hold account perpetrators, ill-treatment of migrants and complicity in torture as we have seen in the context of the global responses to terrorism over the last decade. It is difficult in all this to overstate the importance of the European Court of Human Rights to bring justice to victims and to maintain and develop effective international law against torture, cruel and inhuman or degrading treatment.

This updated practitioner's handbook is intended to provide a practical tool to enable, encourage, and support civil society as well as litigators to use regional human rights remedies effectively to protect victims of torture and ensure accountability, remedies, and reparations. It is fair to say that the European Court of Human Rights has developed until today a rich body of jurisprudence on the absolute prohibition of torture, cruel and inhuman or degrading treatment and has evolved in its working procedures, for example by developing follow-up measures and providing effective interim measures. The progressive development of law is another factor marking the importance of the court as it allows human rights organisations and lawyers to use the European Court of Human Rights for the purposes of strategic litigation, seeking to redress systemic and institutional problems in their home countries across the region.

This is needed because torture is often not redressed domestically despite its universal repudiation and criminalization. Practiced outside the public eye, torture allegations raise serious evidentiary challenges for victims and their defenders. Whether practiced by State officials in an isolated case or worse as part of a systemic policy, litigators often find themselves confronted with a culture of silence. This is a significant barrier to accessing justice. State institutions often chose to protect their law enforcement authorities supporting a false corps spirit within. Instead states should see torture as it is, namely as a crime under international law. The fact that it is committed in the name of the state should make our response not more lenient but more vigilant. Fighting torture raises additional challenges.

Mobilising public opinion or sympathy even in the judicial system can be difficult if the victim is accused of serious crimes. Furthermore seeking remedies and reparations for victims of torture often result in threats to victims, witnesses, and human rights defenders. In light of these challenges, pursuing remedies before the European Court of Human Rights is often the last and only realistic way of redressing torture.

The first publication of this Handbook was drafted in 2006 by Uğur Erdal and Hasan Bakirci two experts on the European Human Rights System. The second edition was revised by Alexander Morawa, Professor at the University of Lucerne, Nicole Bürli, Human Rights Advisor at the OMCT, Peter Coenen, Research Fellow at the University of Lucerne, and Laura Ausserladscheider Jonas, Associate Director of the Lucerne Summer Academy for Human Rights Implementation. The second edition details changes over the last eight years in the Court's procedures and substantive jurisprudence.

We hope that this publication will be of practical help to lawyers, human rights defenders and in particular the members of the SOS torture network of the OMCT and will contribute to closing the implementation gap and bringing us closer to the legal promise that indeed '*nothing can justify torture under any circumstances*'.

Gerald Staberock  
Secretary General  
July 2014



## TABLE OF CONTENT

<i>Acknowledgement</i>	5
<i>Disclaimer</i>	5
<i>Foreword</i>	6
<i>Introduction</i>	15
<b>PART I: OVERVIEW OF THE COUNCIL OF EUROPE, THE CONVENTION AND THE COURT</b>	17
<b>1.1 The Council of Europe</b>	<b>19</b>
<b>1.2 The European Court of Human Rights</b>	<b>21</b>
<b>1.3 The Judges and the Registry of the Court</b>	<b>23</b>
1.3.1 The Judges	23
1.3.2 The Registry	24
<b>1.4 Structure of the Court</b>	<b>25</b>
1.4.1 The Grand Chamber	25
1.4.2 The Sections and the Chambers	26
1.4.3 The Committees	27
1.4.4 Single Judge Formation	27
<b>1.5 Instruments of the Court</b>	<b>27</b>
1.5.1 The European Convention on Human Rights	27
1.5.2 The Protocols	29
1.5.3 The Rules of Court	30
1.5.4 Practice Directions	31
1.5.5 Decisions of the Commission and Decisions and Judgments of the Court	31
<b>PART II: HOW TO BRING A CASE BEFORE THE COURT</b>	<b>35</b>
<b>2.1. Practice and Procedure before the Court</b>	<b>37</b>
2.1.1 Summary	37
2.1.2 Lodging the Application	38
2.1.3 The Court's Processing of New Applications	40
2.1.4 Expediting Cases: The Court's Priority Policy	42
2.1.5 Interim Measures (Rule 39)	43
a. Summary	43
b. Discussion	44
c. Application Procedure for Interim Measures	47
d. Enforcement	49

2.1.6 Decisions by Single Judges	49
2.1.7 Judge Rapporteurs	50
2.1.8 Decisions by Committees	50
2.1.9 Inadmissibility and its Consequences	51
2.1.10 Communication of Application and Examination by a Chamber	52
2.1.11 Legal Representation	54
2.1.12 Language	56
2.1.13 Legal Aid	56
2.1.14 Third-Party Interventions ( <i>Amicus Curiae</i> )	57
2.1.15 Written Pleadings	59
a. Governments Observations	59
b. Applicant's Observations	60
2.1.16 Separate Admissibility Decision	61
2.1.17 Hearings	62
2.1.18 Establishment of Facts	63
a. The Court's Powers in the Establishment of Facts	63
b. Fact-finding Hearings or Missions	64
c. Admissibility of Evidence	66
i. Medical Evidence	67
ii. Witnesses	72
iii. Reports Compiled by International Organisations	73
iv. Other Evidence	75
d. Burden of Proof	75
i. Obligation to Account for Injuries Caused During Custody	76
ii. Obligation to Assist the Court in Establishing Facts	80
iii. Concluding Remarks	83
e. Standard of Proof	84
i. Beyond Reasonable Doubt	84
ii. Real Risk	86
2.1.19 Friendly Settlement	86
a. Introduction	86
b. Friendly Settlement Declaration	87
c. Enforcement	90
d. Friendly Settlements in Article 3 Cases	90
e. Unilateral Declaration	91
2.1.20 Strike Out	92
a. Absence of Intention to Pursue the Application (Article 37 § 1 (a))	92

b. Resolution of the Matter (Article 37 § 1 (b))	93
c. Strike Out “for any other reason” (Article 37 § 1 (c))	94
2.1.21 Costs and Fees	94
2.1.22 Finding of a Violation	95
2.1.23 Referral and Relinquishment to the Grand Chamber	96
2.1.24 Execution of Judgments	98
a. Just Satisfaction	98
i. Pecuniary Damage	99
ii. Non-pecuniary Damage	100
iii. Costs and Expenses	101
b. Individual Measures	101
c. General Measures and the Pilot Judgment Procedure	102
<b>2.2 Admissibility</b>	<b>103</b>
2.2.1 Introduction	103
2.2.2 Victim Status (Article 34)	106
a. Introduction	106
b. Direct Victim	106
c. Potential Victim	107
d. Indirect Victims	107
e. Standing of Next of Kin	109
f. Death of the Victim	110
g. The Loss of Victim Status	111
2.2.3 Incompatibility of the Application (Article 35 § 3)	112
a. Incompatibility <i>Ratione Temporis</i>	113
b. Incompatibility <i>Ratione Loci</i>	115
c. Incompatibility <i>Ratione Personae</i>	118
d. Incompatibility <i>Ratione Materiae</i>	120
2.2.4 Exhaustion of Domestic Remedies (Article 35 § 1)	120
a. General Rules	120
b. Only Available and Effective Remedies Need to be Exhausted	123
i. Criminal Remedies	124
ii. Civil and Administrative Remedies	127
c. Extraordinary Remedies Do Not Need to Be Exhausted	129
d. Special Circumstances	130
e. Compliance With Rules of Domestic Procedure	131
f. Concluding Remarks	131
2.2.5 The Timeliness of the Application (Article 35 §1)	132
a. The Six (Four)-Month Period in General	132
b. The Date of Introduction	133

c. The Starting Point of the Six (Four)-Month Period	134
i. Where Domestic Remedies Exist	134
ii. Where There are no Domestic Remedies	135
iii. Where Domestic Remedies Turn Out to be Ineffective	136
iv. Continuing Situations	139
d. Concluding Remarks	140
2.2.6 “Well-Foundedness” of the Application (Article 35 § 3)	141
a. General Observations	141
b. The Substantiation of Allegations	142
c. The Severity of Ill-treatment	143
d. Concluding Remarks	144
2.2.7 The “Substantial Disadvantage” Criterion (Article 35 § 3b)	145
2.2.8 Other Aspects of Admissibility	147
a. Abuse of the Right of Application (Article 35 § 3)	147
b. Anonymous Applications (Article 35 § 2a)	150
c. Applications Previously Considered by the Court or Submitted to Another International Procedure (Article 35 § 2b)	151
<b>PART III: THE SUBSTANCE OF ARTICLE 3</b>	<b>153</b>
<b>3.1 The Absolute Nature of Article 3</b>	<b>155</b>
<b>3.2 The Scope of Article 3</b>	<b>156</b>
3.2.1 Torture	159
3.2.2 Inhuman Treatment	162
3.2.3 Degrading Treatment	164
<b>3.3 Detention</b>	<b>168</b>
3.3.1 Arrest and Interrogation	168
3.3.2 General Prison Conditions	171
3.3.3 Health	174
a. Serious Physical Illness and Injuries	175
b. Physical Disability	176
c. Mental Disability	177
d. Drug Addiction	177
3.3.4 Solitary Confinement	178
3.3.5 Death and Life Sentence	181
a. Death Penalty	181
b. Life Sentence	184

<b>3.4 Non-refoulement</b>	<b>186</b>
3.4.1 Extradition and Expulsion	186
a. Political Opponents	188
b. Persons Accused of Terrorism	188
c. Minorities	189
d. Irregular Migrants	189
e. Religious Prosecution	190
f. Health Issues	190
g. Ill-treatment by Third Parties	191
h. Removal under the Dublin Regulation	191
3.4.2 Risk Assessment	192
3.4.3 Diplomatic Assurances	193
3.4.4 Internal Relocation Alternative	197
<b>3.5 Forced Disappearance</b>	<b>198</b>
3.5.1 Ill-treatment of Relatives of a Disappeared Person	198
3.5.2 Ill-treatment of the Disappeared Person	200
<b>3.6 Discrimination</b>	<b>202</b>
3.6.1 Racial Discrimination	203
3.6.2 Discrimination on the Basis of Political Opinion	204
3.6.3 Religious Discrimination	205
3.6.4 Discrimination on the Basis of Gender	206
3.6.5 Discrimination on the Basis of Sexual Orientation	207
<b>3.7 Violence Against Women</b>	<b>207</b>
3.7.1 Sexual Harassment by State Authorities	207
3.7.2 Rape	208
3.7.3 Domestic Violence	209
3.7.4 Forced Sterilization	210
3.7.5 Reprisal and Social Exclusion	211
<b>3.8 Violence Against Children</b>	<b>212</b>
3.8.1 Corporal Punishment	212
3.8.2 Neglect and Abuse	213
3.8.3 Harassment	214
3.8.4 Detention	215
<b>3.9 Positive Obligations</b>	<b>216</b>
3.9.1 Adequate Regulation of All Law-enforcement Activities	218
3.9.2 Adequate Training	219
3.9.3 Operational Planning of Law-Enforcement Activities	220
3.9.4 Humane Conditions of Detention	220

3.9.5 Special Duties in Favour of Particularly Vulnerable Individuals	220
3.8.6 Duty to Investigate	222
3.9.7 Duty to Punish Offenders and Inadmissibility of Amnesties	223

<b>BIBLIOGRAPHY</b>	<b>225</b>
---------------------	------------

<b>TABLE OF CASES</b>	<b>229</b>
-----------------------	------------

<b>APPENDICES</b>	<b>242</b>
-------------------	------------

1. Convention for the Protection of Human Rights and Fundamental Freedoms	245
2. Protocol No. 1 (20.iii. 1952)	257
3. Rules of Court	259
4. Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms	302
5. Notes for filling in the application form	304
6. Model application form	311
7. Written submission by AI, APT, HRW, Interights, ICJ, OSJI and Redress ( <i>Ramzy v The Netherlands</i> )	328
8. Rule 39 application form ( <i>Ramzy v The Netherlands</i> )	339

## INTRODUCTION

The purpose of this *Handbook* is to provide practical advice to persons wishing to bring a case to the European Court of Human Rights under Article 3 of the European Convention on Human Rights. Article 3 of the Convention prohibits the use of *torture or inhuman or degrading treatment or punishment* by Contracting Parties. This prohibition is absolute, allowing for no derogation or exceptions under any circumstances. The European Court has held that the Article 3 prohibition enshrines “one of the fundamental values of the democratic societies making up the Council of Europe.”<sup>i</sup>

The *Handbook* is intended for advocates and practitioners of varying levels of experience including those who have little or no prior experience of litigating cases in Strasbourg. Indeed, applicants themselves should be able to use it to lodge an application with the Court. Naturally, the risks of oversimplification had to be avoided particularly in relation to some of the more complex areas of substance and procedure. It is hoped that the more experienced readers will find the *Handbook* useful as a reference tool, especially on such issues as the evidential rules and the establishment of facts, which, in the opinion of OMCT, have not traditionally received the attention they deserve and which have not previously been the subject of article-specific treatment.

Although the focus of this *Handbook* is Article 3, the analyses it contains should in theory enable a prospective applicant to formulate an application under any Article of the Convention. Nevertheless, due to its article-specific nature, all the substantive and procedural areas covered here are discussed in the context of the Court’s Article 3 jurisprudence. In this connection, ample use has been made of the Court’s judgments concerning ill-treatment to illustrate the operation of procedural rules and the application of substantive law to factual scenarios. Additionally, special emphasis has been placed on giving practical and strategic litigation advice in relation to matters that may pose particular challenges to Article 3 litigants.

For practical reasons, a simple method of reference was employed when referring to the decisions and reports of the European Commission of Human Rights and decisions and judgments of the Court. Thus, the reference “*Marguš v. Croatia* [GC], no. 4455/19, 27 Mai 2014” includes [the applicant’s name] v. [the respondent State], the application number, and the date of the judgment. The initials “GC” in square brackets in some case references indicate that the decision or judgment was adopted by the Grand Chamber of the Court.

---

i Soering v. the United Kingdom, no. 14038/88, 7 July 1989, § 88.

Throughout this book, the European Court of Human Rights is referred to as ‘the Court’ or ‘the Strasbourg Court’; the Convention for the Protection of Human Rights and Fundamental Freedoms as “the European Convention on Human Rights”, “the Convention”, or the “European Convention”; and the word “ill-treatment”, unless otherwise specified, is employed as a collective term for all forms treatment prohibited by Article 3, i.e. torture, inhuman treatment and degrading treatment. Whenever inhuman or degrading *punishment* is meant, it is referred to as such. Finally, the person lodging the application and corresponding with the Court is referred to simply as ‘the applicant’ even though in practice that person may be the applicant’s lawyer.

A number of documents have been appended to the *Handbook* including, reference materials such as the European Convention, Practice Directions, and so forth. The appendices also include a model Article 3 application to which applicants may refer in formulating their own applications.

Section 1 of the *Handbook* presents an overview of the Council of Europe, the Court, the Convention, and provides a general description of the Court’s structure. The latter is intended to give the reader a bird’s-eye view of these proceedings and may be particularly useful to persons who have no prior experience with the Court.

Section 2 describes the different stages an application goes through before the Court and provides detailed information on how to fill in the application form and how the application should be substantiated. Section 2 also deals with the admissibility and standing requirements of the Convention. The issue of substantiation is analysed in detail since the large percentage of applications declared inadmissible as “manifestly ill-founded” on this ground suggests that applicants are not according sufficient attention to admissibility requirements.

Section 3 examines the substance of Article 3 by explaining the Court’s case law in a variety of areas, including detention, arrest, forced disappearance, etc. This section contains references to relevant case law which applicants can use and refer to when substantiating their own application. Although section 3 covers many areas in which Article 3 is relevant, it is not an exhaustive list. Situations not covered in this handbook might still give rise to an Article 3 violation.

# **PART I**

## **OVERVIEW OF THE COUNCIL OF EUROPE, THE CONVENTION AND THE COURT**



## 1.1 The Council of Europe

The Convention for the Protection of Human Rights and Fundamental Freedoms, more commonly referred to as the “European Convention on Human Rights” and hereinafter as “the Convention”, was drafted under the auspices of the Council of Europe, an inter-governmental body set up by the Treaty of London on 5 May 1949.<sup>1</sup>

According to Article 1 of the Statute of the Council of Europe, the aim of the organisation “is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress”. In pursuit of this aim, each member State resolved, in Article 3 of the same Statute, to “accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms.” This special importance which member States accorded to human rights – a newly emerging concept at a time when the majority of the world’s States jealously guarded the sovereign privilege to deal with their citizens as they wished – was subsequently taken to a new level with the opening for signature in Rome on 4 November 1950 of the Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms. The Convention, which was the first international legal instrument to safeguard human rights through an enforcement mechanism, entered into force on 3 September 1953.

At the time of writing, the Council of Europe has 47 member States. Membership in the Council of Europe is contingent on ratification of the Convention and its Protocols. The Council of Europe’s headquarters is located in Strasbourg, France.

The Statute of the Council of Europe established two organs – the Committee of Ministers and the Parliamentary Assembly. The Committee of Ministers, which consists of the Ministers of Foreign Affairs of the Member States, is the decision-making body of the Council of Europe. Its functions include supervising the execution of judgments of the European Court of Human Rights. The Parliamentary Assembly is the parliamentary organ of the Council of Europe. It consists of a number of members of national Parliaments from each member State, with a President elected each year from amongst them. The Parliamentary Assembly’s functions include the election of the judges of the European Court of Human Rights from a list of three candidates submitted by each Contracting Party. Furthermore, the Parliamentary Assembly is responsible for the adoption of Conventions and

---

<sup>1</sup> The treaty was signed by ten European States, i.e. Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom. In August 1949, Greece and Turkey joined the Council, increasing the number of its members to twelve. Subsequent ratifications have brought the number of member States to 47. The Council of Europe has granted observer status to the Holy See, the United States, Canada, Japan and Mexico.

additional Protocols. Another important function of the Parliamentary Assembly is to examine whether a candidate State has fulfilled the criteria for accession to the Council of Europe.

The Council of Europe is headed by a Secretary General who is appointed by the Parliamentary Assembly on the recommendation of the Committee of Ministers, for a period of five years. The Secretary General has the overall responsibility for the strategic management of the Council of Europe's work programme and budget and oversees the day-to-day running of the organisation and Secretariat. The Secretary General also has the power, under Article 52 of the Convention, to request that a Contracting Party furnish explanations relating to the manner in which its internal law ensures the effective implementation of the Convention.<sup>2</sup>

The office of the Council of Europe's Commissioner for Human Rights was established on 7 May 1999 by a resolution of the Committee of Ministers. That Resolution requires the Commissioner to:

- promote education in, and awareness of, human rights in the member States;
- identify possible shortcomings in the law and practice of member States with regard to compliance with human rights; and
- help promote the effective observance and full enjoyment of human rights, as embodied in the various Council of Europe instruments.

The Office of the Commissioner is a non-judicial institution that does not take up individual complaints. The Commissioner cannot, therefore, accept any requests to present individual complaints before national or international courts, nor before national administrations of member States of the Council of Europe. Nevertheless, he or she can draw conclusions and take initiatives of a general nature that are based on individual complaints.<sup>3</sup>

During discussions on the drafting of Protocol No. 14, it was agreed that the Commissioner should play a more active role in assisting the European Court of Human Rights on certain questions, particularly in cases that highlight structural or systematic weaknesses in the Contracting Parties' institutions and which lead

---

<sup>2</sup> For example, the Secretary General exercised his powers under this Article in his request of 25 November 2005 to the Contracting Parties for information concerning allegations of CIA abductions of terror suspects involving the use of 'Council of Europe' airspace or airports. Specifically, the Secretary General asked the Contracting Parties to provide information on whether "any public official or other person acting in an official capacity has been involved in any manner – whether by action or omission – in the unacknowledged deprivation of liberty of any individual, or transport of any individual while so deprived of their liberty, including where such deprivation of liberty may have occurred by or at the instigation of any foreign agency".

<sup>3</sup> For further information see <http://www.coe.int/en/web/commissioner/home> (last visited 23 July 2014).

to repetitive violations of the Convention. It was thus decided to amend Article 36 of the Convention so as to enable the Commissioner to intervene as a third party in cases before the European Court of Human Rights through the submission of written comments and by taking part in hearings.<sup>4</sup>

## 1.2 The European Court of Human Rights

The European Court of Human Rights is the oldest, best established, and most effective of the three regional human rights systems in existence today. Its judgments are binding in the member States of the Council of Europe. Failure to abide by the judgments of the Court can in theory have significant political consequences for the concerned member State, including exclusion from the Council of Europe. In reality, such sanctions have never been applied because Contracting Parties generally have a good record of compliance with the Court's judgments.

The Court is presided over by its President, who is also one of the judges of the Court. The functions of the President include representing the Court and issuing practice directions. The President is assisted by two Vice Presidents,<sup>5</sup> who are also judges. The President and his or her deputies are elected by the Plenary Court for a period of three years; they may be re-elected.<sup>6</sup> The expression 'Plenary Court' means 'the European Court of Human Rights sitting in plenary session',<sup>7</sup> i.e. a meeting attended by all the judges. The Plenary Court meets at least once a year to discuss administrative matters but it does not perform judicial functions. It deals with internal administrative matters which include, *inter alia*, the adoption of the Rules of Court,<sup>8</sup> the election of the President and the Vice Presidents of the Court, the setting up of the Sections, and the election of the Presidents of Sections and the Registrar and his or her deputies. At this stage, it is important to know that the Court is divided into five Sections.<sup>9</sup> When a Section examines an application, it does so either in a formation of seven judges (a 'Chamber'), or in a formation of three judges (a 'Committee').<sup>10</sup>

---

4 Article 36 § 3 of the Convention.

5 Rule 8 § 1 of the Rules of Court.

6 Article 25 of the Convention. See also Rule 8 § 1 of the Rules of Court.

7 Rule 1 (b) of the Rules of Court.

8 For information on the Rules of Court see section 1.7.3 below.

9 The fifth Section was created on 1 April 2006.

10 See section 1.5.3 below.

*Textbox i: Dates of Ratification of the European Convention on Human Rights and Additional Protocols as of 31 January 2006<sup>11</sup>*

<i>Dates of entry into force</i>	<b>Convention</b>	<b>Protocol No. 1</b>	<b>Protocol No. 4</b>	<b>Protocol No. 6</b>	<b>Protocol No. 7</b>	<b>Protocol No. 12</b>	<b>Protocol No. 13</b>
<b>States</b>	CETS No. 005	CETS No. 009	CETS No. 046	CETS No. 114	CETS No. 117	CETS No. 117	CETS No. 187
Albania	02/10/96	02/10/96	02/10/96	01/10/00	01/01/97	01/04/05	01/06/07
Andorra	22/01/96	06/05/08	06/05/08	01/02/96	01/08/08	01/09/08	01/07/03
Armenia	26/04/02	26/04/02	26/04/02	01/10/03	01/07/02	01/04/05	-
Austria	03/09/58	03/09/58	18/09/69	01/03/85	01/11/88	-	01/05/04
Azerbaijan	15/04/02	15/04/02	15/04/02	01/05/02	01/07/02	-	-
Belgium	14/06/55	14/06/55	21/09/70	01/01/99	01/07/12	-	01/10/03
Bosnia and Herzegovina	12/07/02	12/07/02	12/07/02	01/08/02	01/10/02	01/04/05	01/11/03
Bulgaria	07/09/92	07/09/92	04/11/00	01/10/99	01/02/01	-	01/07/03
Croatia	05/11/97	05/11/97	05/11/97	01/12/97	01/02/98	01/04/05	01/07/03
Cyprus	06/10/62	06/10/62	03/10/89	01/02/00	01/12/00	01/04/05	01/07/03
Czech Republic	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	-	01/11/04
Denmark	03/09/53	18/05/54	02/05/68	01/03/85	01/11/88	-	01/07/03
Estonia	16/04/96	16/04/96	16/04/96	01/05/98	01/07/96	-	01/06/04
Finland	10/05/90	10/05/90	10/05/90	01/06/90	01/08/90	01/04/05	01/03/05
France	03/05/74	03/05/74	03/05/74	01/03/86	01/11/88	-	01/02/08
Georgia	20/05/99	07/06/02	13/04/00	01/05/00	01/07/00	01/04/05	01/09/03
Germany	03/09/53	13/02/57	01/06/68	01/08/89	-	-	01/02/05
Greece	28/11/74	28/11/74	-	01/10/98	01/11/88	-	01/06/05
Hungary	05/11/92	05/11/92	05/11/92	01/12/92	01/02/93	-	01/11/03
Iceland	03/09/53	18/05/54	02/05/68	01/06/87	01/11/88	-	01/03/05
Ireland	03/09/53	18/05/54	29/10/68	01/07/94	01/11/01	-	01/07/03
Italy	26/10/55	26/10/55	27/05/82	01/01/89	01/02/92	-	01/07/09
Latvia	27/06/97	27/06/97	27/06/97	01/06/99	01/09/97	-	01/05/12
Liechtenstein	08/09/82	14/11/95	08/02/05	01/12/90	01/05/05	-	01/07/03
Lithuania	20/06/95	24/05/96	20/06/95	01/08/99	01/09/95	-	01/05/04
Luxembourg	03/09/53	18/05/54	02/05/68	01/03/85	01/07/89	01/07/06	01/07/06
Malta	23/01/67	23/01/67	05/06/02	01/04/91	01/04/03	-	01/07/03
Moldova	12/09/97	12/09/97	12/09/97	01/10/97	01/12/97	-	01/02/05
Monaco	30/11/05	-	30/11/05	01/12/05	01/02/05	-	01/03/06
Montenegro	06/06/06	06/06/06	06/06/06	06/06/06	06/06/06	06/06/06	06/06/06
Netherlands	31/08/54	31/08/54	23/06/82	01/05/86	-	01/04/05	01/06/06

<sup>11</sup> For the ratification of the European Convention and its additional protocols see the webpage of the Council of Europe's Treaty Office: <http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?C-M=8&CL=ENG> (last visited 23 July 2014).

Norway	03/09/53	18/05/54	02/05/68	01/11/88	01/01/89	–	01/12/05
Poland	19/01/93	10/10/94	10/10/94	01/11/00	01/03/03	–	01/09/14
Portugal	09/11/78	09/11/78	09/11/78	01/11/86	01/03/05	–	01/02/04
Romania	20/06/94	20/06/94	20/06/94	01/07/94	01/09/94	–	01/08/03
Russia	05/05/98	05/05/98	05/05/98	–	01/08/98	–	–
San Marino	22/03/89	22/03/89	22/03/89	01/04/89	01/06/89	01/04/05	01/08/03
Serbia	03/03/04	03/03/04	03/03/04	01/04/04	01/06/04	01/04/05	01/07/04
Slovakia	01/01/93	01/01/93	01/01/93	01/01/93	01/01/93	–	01/12/05
Slovenia	28/06/94	28/06/94	28/06/94	01/07/94	01/09/94	01/11/10	01/04/04
Spain	04/10/79	27/11/90	16/09/09	01/03/85	01/12/09	01/06/08	01/04/10
Sweden	03/09/53	18/05/54	02/05/68	01/03/85	01/11/88	–	01/08/03
Switzerland	28/11/74	–	–	01/11/87	01/11/88	–	01/07/03
The former Yugoslav Republic of Macedonia	10/04/97	10/04/97	10/04/97	01/05/97	01/07/97	01/04/05	01/11/04
Turkey	18/05/54	18/05/54	–	01/12/03	–	–	01/06/06
Ukraine	11/09/97	11/09/97	11/09/97	01/05/00	01/12/97	01/07/06	01/07/03
United Kingdom	03/09/53	18/05/54	–	01/06/99	–	–	01/02/04

## 1.3 The Judges and the Registry of the Court

### 1.3.1 The Judges

The Court consists of a number of judges equal to the number of the Contracting Parties.<sup>12</sup> Currently there are 47 judges.<sup>13</sup> There is no restriction on the number of judges of the same nationality.<sup>14</sup> The judges sit on the Court in their personal capacity and do not represent the State Party of which they are a national, or any other State.

Judges are elected by the Parliamentary Assembly of the Council of Europe to sit for a period of nine years. They may not be re-elected. They retire when they reach the age of 70.

Pursuant to Rules 24 § 2 (b) and 26 § 1 (a) of the Rules of Court, judges elected in respect of the Contracting Party concerned shall sit as an *ex officio* member of the Grand Chamber or the Chamber.<sup>15</sup> In case a judge is unable to sit on the case, for reasons set out in Rule 28 of the Rules of Court, the judge in question is required to give notice to the President of the Chamber. The President of the Chamber will

<sup>12</sup> Article 20 of the Convention.

<sup>13</sup> A current list of judges may be consulted at <http://www.echr.coe.int/Pages/home.aspx?p=court/judges> (last visited 23 July 2014).

<sup>14</sup> For example, the present judge elected in respect of Liechtenstein is a national of Switzerland.

<sup>15</sup> For the purposes of this Guide, such judges will be referred to as 'national judges'.

then choose an *ad hoc* judge “from a list submitted in advance by the Contracting Party containing the names of three to five persons whom the Contracting Party has designated as eligible to serve as *ad hoc* judges for a renewable period of two years and as satisfying the conditions set out in paragraph 1 (c) of this Rule.”<sup>16</sup>

Judges also act as judge rapporteurs and, with the assistance of Registry lawyers, examine the applications introduced with the Court. The President of the Section to which the case has been assigned designates judge rapporteurs.<sup>17</sup> The identity of a judge rapporteur in a particular case is never disclosed to the parties.

### 1.3.2 The Registry

The Registry of the Court is staffed by lawyers (‘legal secretaries’), administrative and technical staff and translators. The task of the Registry is to provide legal and administrative support to the Court in the exercise of its judicial functions. Within the Registry there are 20 legal divisions. At the present, there are about 640 staff members, that are 270 lawyers and 370 support staff.<sup>18</sup>

All Registry lawyers are employees of the Council of Europe who have been recruited on the basis of open competitions and appointed by the Secretary General of the Council of Europe. Their knowledge of the national law and the language of the Contracting Party as well as their knowledge of the official languages of the Council of Europe, i.e. English and French, play a central role in their recruitment. Nevertheless, members of the Registry do not represent any State and they are expected to adhere to strict conditions of independence and impartiality.

The Registry lawyers are responsible for preparing case files for examination by the Court. Their responsibilities therefore include handling all communication with the applicants relating to the complaints. Most of their time, however, is spent drafting the Court’s decisions and judgments under the instructions of the judge rapporteurs. Registry lawyers are also responsible for carrying out research – mostly relating to the domestic law of the Contracting Parties – on behalf of the judges and attending deliberations.

At the Head of the Registry stands the Registrar of the Court who functions under the authority of the President of the Court. The Registrar is assisted by two Deputy Registrars. They are elected by the Plenary Court.<sup>19</sup>

---

<sup>16</sup> Rule 29 of the Rules of Court.

<sup>17</sup> Rule 49 §§ 2 of the Rules of Court.

<sup>18</sup> For the organisation of the Registry see: <http://www.echr.coe.int/Pages/home.aspx?p=court/how-works> (23 July 2014).

<sup>19</sup> Rules 15 and 16 of the Rules of Court.

## 1.4 Structure of the Court

The Court has four different decision bodies: the Grand Chamber, Chambers, Committees and Single Judges.<sup>20</sup> In the following, the function and organization of these four different formations will briefly be explained.

### 1.4.1 The Grand Chamber

The Grand Chamber consists of 17 judges and at least three substitute judges.<sup>21</sup> It includes the President and the Vice Presidents of the Court, the Presidents of the Sections, and the national Judge. In cases referred to the Grand Chamber pursuant to Article 30, the Grand Chamber also includes members of the Chamber that relinquished jurisdiction. However, in cases referred to the Grand Chamber under Article 43, the Grand Chamber does not include any judge who participated in the original Chamber's deliberations on the admissibility or merits of the case, except for the President of that Chamber and the national judge. The judges and the substitute judges who are to complete the Grand Chamber in each case referred to it, are designated from among the remaining judges by a drawing of lots. In the performance of its duties, the Grand Chamber is assisted by the Registrar or a Deputy Registrar of the Court.

The Grand Chamber may deal with an application in two situations. Firstly, if a case which is pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber in question may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects within one month of notification of the Chamber's intention.<sup>22</sup> Such cases may, for example, concern issues that have not been dealt with by the Court previously. They also include cases in which the Court is considering reversing earlier case law.

The second situation where the Grand Chamber may consider an application is when one of the parties to the case (or indeed both Parties) requests, within a period of three months from the date of delivery of the judgment, that the case be referred to the Grand Chamber.<sup>23</sup>

---

20 Article 27 of the Convention.

21 Rule 24 § 1 of the Rules of Court.

22 See Article 30 of the Convention and Rule 72 of the Rules of Court.

23 Article 43 of the Convention and Rule 73 of the Rules of Court.

### 1.4.2 The Sections and the Chambers

As mentioned above, the Court is divided into five Sections. Each judge is a member of a Section. The Sections, which are set up by the Plenary Court for a period of three years, are geographically and gender balanced and they reflect the different legal systems of the Contracting Parties.<sup>24</sup> Each Section has its own President, assisted or replaced where necessary, by a Vice President. Section Presidents are elected by the Plenary Court whereas Vice Presidents are elected by the Sections themselves.<sup>25</sup>

However, a case brought before a Section is not dealt with by the full Section but by a Chamber of seven judges formed from among the judges in the Section.<sup>26</sup> Each Chamber includes the Section President and the national judge concerned. The other five members of the Chamber are designated from among the remaining members of the Section. The remaining judges who are not designated as members of the Chamber sit in the case as substitute judges.

Where possible – depending on the case load of the Section – an application introduced against a particular Contracting Party will be assigned to the Section which includes among its members the judge elected in respect of that Contracting Party, i.e. the national judge. If such a course of action has not been taken, the national judge in question sits as an *ex officio* member of the Chamber.<sup>27</sup>

In the performance of its duties, each Section is assisted by a senior member of the Registry, i.e. the Section Registrar. Section Registrars are assisted by Deputy Section Registrars.

Sections that deal with Inter-State cases<sup>28</sup> and cases lodged by individuals that are not clearly inadmissible. They meet once a week to deliberate on the cases assigned to them. Section deliberations are confidential and are not attended by anyone other than the judges and members of the Registry.

Protocol 14 also established a new filtering section complementing the five existing sections. The filtering section is made up of the judges appointed as single judges and the Registry rapporteurs who have been appointed by the President of

---

24 Rule 25 § 2 of the Rules of Court. For the compositions of the five Sections see: <http://www.echr.coe.int/Pages/home.aspx?p=court/judges&c=> (last visited 23 July 2014).

25 Rule 8 §§ 1–2 of the Rules of Court.

26 See also Rule 26 of the Rules of Court.

27 Rule 26 § 1 (a) of the Rules of Court.

28 I.e. cases introduced by a Contracting Party against another Contracting Party pursuant to Article 33 of the Convention. Such applications are very rare; at the time of writing, there had only been 20 such applications.

the Court to assist the single judges. This filtering section has been established in order to reduce the backlog of cases that are clearly inadmissible.<sup>29</sup>

### **1.6.3 The Committees**

Committees of three judges are established within each Section for a period of twelve months, by rotation among its members.<sup>30</sup> They deal with cases that are inadmissible and do not need further examination. In addition, Committees also decide cases on the merits if there is already well-established case law on the matter.<sup>31</sup> Committees cannot deal with Inter-State cases. Decisions by Committee are final and cannot be appealed. Such decisions must however be taken unanimously; if there is no unanimity amongst the three judges, the Committee will refer the case to a Chamber to decide on admissibility and, if applicable, to rule on the merits.

### **1.4.4 Single Judge Formation**

Applications that are manifestly inadmissible are referred to the single judge formation. According to Article 26 of the Convention and Rules 27A and 52A, a single judge can declare inadmissible or strike out an application where such a decision can be taken without further examination. Typically, cases decided by a single judge are cases that clearly do not fulfil the admissibility requirements such as the time limit of six months, or the exhaustion of domestic remedies. A single judge may also strike out a case of the Court's list of cases when the applicant, for instance, withdraws the application. Single judges are assisted by non-judicial rapporteurs who are usually experienced lawyers from the Registry.

## **1.5 Instruments of the Court**

### **1.5.1 The European Convention on Human Rights**

As pointed out earlier, the Convention entered into force on 3 September 1953. It represents the minimum human rights standards to which European States could agree to more than 50 years ago and is primarily concerned with the protection of civil and political rights, rather than economic, social, or cultural rights.

The Convention consists of three Sections and a total of 59 Articles. The rights and freedoms are listed in Section 1 (Articles 1-18); Section 2 (Articles 19-51) deals with the establishment of the Court as well as its duties and powers; Section 3 (Articles 52-59) contains miscellaneous provisions concerning such issues as

---

29 For more information on the Filtering Section see: <http://www.echr.coe.int/Pages/home.aspx?p=court/howitworks> (last visited 2014).

30 See also Rule 27 § 2 of the Rules of Court.

31 Article 28 § 1 a) and b) of the Convention.

territorial application, reservations, denunciations, signature, and ratification. The Convention is included as Appendix No. 1 of this Guide and can also be accessed online.<sup>32</sup>

The substantive rights and freedoms guaranteed by the Convention are set out in Articles 2–14 of the Convention. They are:

- Article 2 Right to life;
- Article 3 Prohibition of torture;
- Article 4 Prohibition of slavery and forced labour;
- Article 5 Right to liberty and security;
- Article 6 Right to a fair trial;
- Article 7 No punishment without law;
- Article 8 Right to respect for private and family life;
- Article 9 Freedom of thought, conscience and religion;
- Article 10 Freedom of expression ;
- Article 11 Freedom of assembly and association;
- Article 12 Right to marry;
- Article 13 Right to an effective remedy;
- Article 14 Prohibition of discrimination.

These Articles are declaratory in the sense that they do not, on their own, impose any obligations on the Contracting Parties. For example, Article 3 of the Convention simply states: “No one shall be subjected to torture or to inhuman and degrading treatment or punishment”; it does not expressly bestow on the Contracting Parties an obligation to ensure, for example, that no one is subjected to torture. Rather, as some commentators have stated, “[i]t is Article 1 which transforms this declaration of rights into a set of obligations for the States which ratify the Convention”.<sup>33</sup> Pursuant to Article 1 of the Convention, Contracting Parties undertake to secure to everyone within their jurisdiction the rights and freedoms set out in the Convention. Difficulties which have arisen in establishing the boundaries of the Contracting Parties’ “jurisdiction” within the meaning of this Article have been resolved by the Court in its case law.

Under Article 32, the Court’s jurisdiction extends to all matters concerning the interpretation and application of the Convention and the Protocols. Because the

---

32 The Convention and its Protocols can be accessed at: <http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=> (last visited 23 July 2014).

33 See Robin C. A. White and Clare Ovey, *Jacobs & White: The European Convention on Human Rights*, 5<sup>th</sup> edition, Oxford University Press, 2010, p. 84.

Court regards the Convention as a “living instrument”,<sup>34</sup> it interprets and defines Convention rights in light of present-day conditions, not conditions obtaining when it was drafted more than 50 years ago. In the same vein, the Court strives to interpret and apply the Convention “in a manner which renders its rights practical and effective, not theoretical and illusory”.<sup>35</sup>

For instance, the Court held the following in its judgment in the case of *Christine Goodwin v. the United Kingdom*:

[S]ince the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any evolving convergence as to the standards to be achieved.<sup>36</sup>

The *Goodwin* case provides a good example of what is meant by *interpretation in light of present day conditions*. *Goodwin* concerned the legal status of transsexuals in the United Kingdom. It was the increased acceptance among Contracting Parties in respect of transsexuality which had a direct bearing on the Court’s finding of a violation of Article 8 on a matter which had previously not been found to breach the Convention. Naturally, the evolving ethical and legal standards of the Council of Europe will have an equal bearing on Article 3. For instance, it is possible that official conduct that was formerly not considered to be severe enough to reach the threshold for a finding of a violation of Article 3 might in light of current standards be considered to constitute ill-treatment in breach of this Article. Similarly, conduct that was formerly considered to constitute merely inhuman or degrading treatment might under current standards be regarded by the Court as torture, the most severe type of breach of the Article. Applicants should keep this in mind when assessing the merits of their cases, and of course, when arguing them before the Court.

### 1.5.2 The Protocols

Following the entry into force of the Convention in 1953, a number of Protocols have been adopted within the Council of Europe by virtue of which some of the Contracting Parties have undertaken to protect a number of additional rights and freedoms within their jurisdictions. Protocol Nos. 2, 3, 5, 8, 9, 10, 11, and 14 are Protocols which amended Convention proceedings and do not include any additional rights or freedoms. These Protocols have been signed by all Contracting Parties.

---

34 See, among other authorities, *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, 4 February 2005, § 121.

35 Ibid.

36 *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, 11 July 2002, § 74, and the cases cited therein.

The remaining Protocols, and the rights and freedoms they guarantee, are as follows:

- Protocol No.1, which entered into force on 18 May 1954: protection of property, the right to education, and the right to free elections.
- Protocol No. 4, which entered into force on 2 May 1968: prohibition of imprisonment for debt, freedom of movement, prohibition of expulsion of nationals, and the prohibition of collective expulsion of aliens.
- Protocol No. 6, which entered into force on 1 March 1985, provides for the abolition of the death penalty but includes a provision to allow the Contracting Parties to prescribe the death penalty in their legislation in time of war or of imminent threat of war.
- Protocol No. 7, which entered into force on 1 November 1988: procedural safeguards relating to expulsion of aliens, the right of appeal in criminal matters, the right to compensation for wrongful conviction, the right not to be tried or punished twice for the same offence, and equality between spouses.
- Protocol No. 12, which entered into force on 1 April 2005: created a free-standing prohibition of discrimination. Unlike Article 14 of the Convention, which prohibits discrimination in the enjoyment of “the rights and freedoms set forth in the Convention”, Protocol No. 12 prohibits discrimination in the enjoyment of “any right set forth by law” and not just those rights guaranteed under the Convention.
- Protocol No. 13, which entered into force on 1 July 2003: abolished the death penalty in all circumstances.

Applicants should note that the Protocols mentioned above have not been ratified by all the Contracting Parties. It follows that a complaint made under an Article of one of the Protocols against a State that has not ratified that Protocol will be declared inadmissible. The table of *Dates of Entry into Force of the Convention and its Protocols* reproduced in *Textbox i* above should be consulted.

### 1.5.3 The Rules of Court

The Rules of Court, which are frequently referred to throughout this Guide, set out in greater detail the organisation and the functioning of the Court as well as the Court's procedure. They are indispensable for any applicant or lawyer wishing to make an application to the Court and must be consulted before making the application and throughout the course of the proceedings. The Rules of Court are found at Appendix No. 2 and they can also be accessed online.<sup>37</sup>

---

37 The Rules of Court may be accessed at [http://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules&c=#n1347875693676\\_pointer](http://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules&c=#n1347875693676_pointer) (last visited 23 July 2014).

The Rules of Court are prepared by the Court and they enter into force after their adoption by the Plenary Court. The Rules of Court that are in force at the time of writing entered into force on 1 July 2014. It must be noted that the Rules of Court are continually revised in the light of the Court's evolving practice.

#### 1.5.4 Practice Directions

The President of the Court has the power to issue practice directions that supplement the Rules of Court.<sup>38</sup> They are described by the Registry of the Court as documents to provide guidance to the parties on various aspects of their contacts with the Court and at the same time to introduce more standardised procedures with a view to facilitating the Court's processing of the cases. Observance by applicants and their legal representatives of the practice directions will speed up the examination of their applications by avoiding unnecessary and time consuming correspondence with the Court and will prevent an application from being rejected for failure to comply with procedural requirements.<sup>39</sup>

To date, six practice directions have been issued. They are:

- a. the practice direction on "Institution of Proceedings";
- b. the practice direction on "Requests for Interim Measures";
- c. the practice direction on "Just Satisfaction Claims";
- d. the practice direction on "Requests for Anonymity";
- e. the practice direction on "Secured Electronic Filing"; and
- f. the practice direction on "Written Pleadings"

#### 1.5.5 Decisions of the Commission and Decisions and Judgments of the Court<sup>40</sup>

Although there is not a formal doctrine of precedent within the Convention system and the Court does not see itself bound by previous judgments, the Court stated that "it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases."<sup>41</sup> Thus, the Court's cases possess strong authoritative power. The development of the Court's case law has parallels with the development of the common law in Anglo-Saxon legal systems; in formulating its judgments, the Court – very much like a court in a common law system – reviews its previous

<sup>38</sup> Rule 32 of the Rules of Court.

<sup>39</sup> The practice directions are available on the Council of Europe's Web site at: [http://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules&c=#n1347875693676\\_pointer](http://www.echr.coe.int/Pages/home.aspx?p=basictexts/rules&c=#n1347875693676_pointer) (last visited 23 July 2014).

<sup>40</sup> Although, strictly speaking, decisions and judgments are not "Instruments of the Court", it is appropriate to deal with them in this subsection.

<sup>41</sup> *Beard v. the United Kingdom* [GC], no. 24882/94, 18 January 2001, § 81.

decisions and judgments as well as the decisions of the Commission and applies them to similar situations.

Furthermore, as pointed out above, pursuant to Article 32 of the Convention, the Court's jurisdiction extends to all matters concerning the interpretation and application of the Convention and the Protocols. As will be seen in subsequent parts of this Guide, there is a very large body of case law on Article 3 of the Convention. For example, the Court has read into this Article a positive obligation – which is not apparent from the wording of the Article itself – obliging Contracting Parties to carry out effective investigations into allegations of ill-treatment.<sup>42</sup> At first sight, Article 3 appears only to contain an obligation that a State ensure that its authorities refrain from inflicting ill-treatment, i.e. a negative obligation. Likewise, what constitutes torture, inhuman or degrading treatment or punishment can only be gathered from the case law. Indeed, it would have been practically impossible for Article 3 to contain an exhaustive list of every conceivable form of treatment it prohibits.

For the reasons mentioned above, in every decision and judgment adopted by the Court, there will be references to, and quotations from, previous decisions and judgments of the Convention institutions. It is imperative, therefore, that practitioners acquaint themselves with the Convention case law in order to be able to refer to pertinent decisions and judgments in support of their applications. The case law of the Court and of the Commission can be searched with the help of the HUDOC database which is available on the Court's website.<sup>43</sup> In a number of Council of Europe member States, important decisions and judgments are translated into the national language.

Finally, it should be noted that the Court occasionally refers to decisions and judgments of other international human rights mechanisms and benefits from their experience. For example, in its judgments in the case of *Opuz v. Turkey*<sup>44</sup> the Court made references to the jurisprudence of the Inter-American Court of Human Rights on the issue of forced disappearances and on the issue of jurisdiction, respectively. Similarly, the Court's judgments also make references to the International Covenant on Civil and Political Rights and the Human Rights Committee.<sup>45</sup> Of relevance for the purposes of the present Guide is the fact that the Court also

---

42 See section 10.2.2 below.

43 HUDOC available at: <http://www.echr.coe.int/Pages/home.aspx?p=caselaw/HUDOC&c=> (last visited 23 July 2014).

44 *Opuz v. Turkey*, no. 33401/02, 9 June 2009, §§ 83–86.

45 See e.g. *Hirst v. the United Kingdom (No.2)* [GC], no. 74025/01, 6 October 2005, § 27.

relies on reports prepared by the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and reports prepared by non-governmental organisations (NGOs) when establishing the facts of cases. For example, in cases concerning allegations of unsatisfactory prison conditions, the Court regularly relies on reports prepared by the CPT following that organisation's visits to prisons in the territory of the respondent Contracting Party.<sup>46</sup> Furthermore, when examining the conditions in the receiving country in expulsion cases, the Court takes note of the reports prepared by NGOs.<sup>47</sup>

---

<sup>46</sup> See e.g. *Van der Ven v. the Netherlands*, no. 50901/99, 4 February 2003.

<sup>47</sup> See *Said v. the Netherlands*, no. 2345/02, 5 July 2005, in which the Court referred to Amnesty International reports on Eritrea.



# **PART II**

## **HOW TO BRING A CASE BEFORE THE COURT**



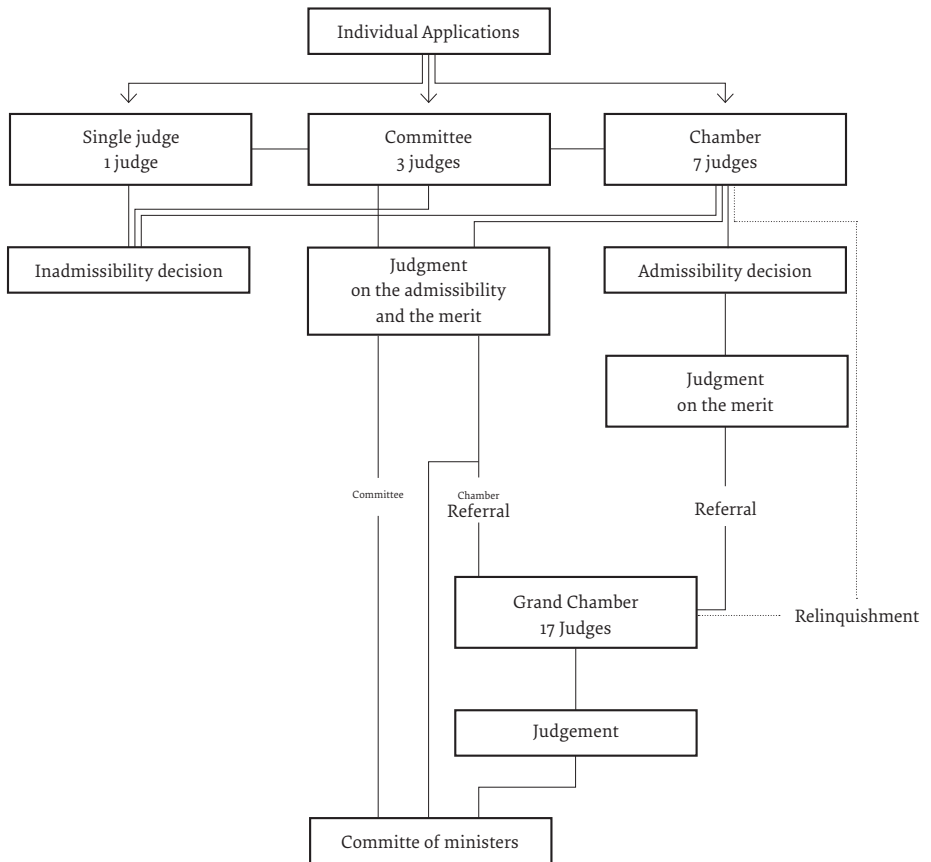
## 2.1. Practice and Procedure before the Court

### 2.1.1 Summary

Cases before the Court are processed through the different judicial formations as illustrated in the flow chart below in Textbox ii.

*Textbox ii: Case-processing before the Court<sup>48</sup>*

*Simplified case-processing flow chart by judicial formation*



48 Available online: <http://www.echr.coe.int/Pages/home.aspx?p=court/howitworks> (last visited 23 July 2014).

### 2.1.2 Lodging the Application

After exhausting all domestic remedies, an application can be lodged before the Court within six months after receipt of the final domestic decision. It is important to add that upon entry into force of Protocol 15, this time-limit will be reduced to four months.<sup>49</sup> Applications have to be introduced using a special form, which is available online.<sup>50</sup> A copy of this form as well as a model application prepared on the basis of hypothetical facts is at Appendix 5. An application has to be lodged by submitting the completed application form by mail. Only upon receipt of this application form is an application considered being lodged. It is important to note that since January 2014, only a completed application form interrupts the running six-month period.<sup>51</sup> A simple letter does no longer satisfy the requirements of Article 35(1) of the Convention and cannot stop the six-month period. Only in exceptional cases may the Court decide that a different date shall be considered to be the date of introduction.<sup>52</sup> Applicants finding the six-month period insufficient to compile the necessary documents and to prepare the application form should inform the Court of the difficulties and request an extension of the time limit.

When completing the application form, applicants should also pay attention to the “Notes for filling in the application form”. This note can also be found in Appendix 5.<sup>53</sup> Further reference must be made to the “Practice Direction on the Institution of Proceedings” which also provides useful guidance on how to fill in an application form. This practice direction is included in Appendix 4.<sup>54</sup> Using the standard application form and completing it in compliance with the instructions in these documents will help the Court to examine the application and will ensure that all relevant information and documents required by Rule 47 of the Rules of Court are included in the application.

Ideally, the application form should be typed. It can be filled in handwritten if legible. It is imperative that the facts, complaints, and steps taken to exhaust domestic remedies are set out clearly and concisely and, as far as possible, in chronological order. If the space reserved in the application form is not sufficient, applicants may

---

49 Protocol 15 Protocol No. 15 Amending the Convention on the Protection of Human Rights and Fundamental Freedoms is available at: <http://www.echr.coe.int/Pages/home.aspx?p=basictexts> (last visited 23 July 2014).

50 European Court of Human Rights, “Apply to the Court”, available at: <http://www.echr.coe.int/pages/home.aspx?p=applicants&c=> (last visited 23 July 2014).

51 Rule 47 § 6 (a) of the Rules of Court.

52 Ibid.

53 Also available online: <http://www.echr.coe.int/Pages/home.aspx?p=applicants> (last visited 23 July 2014).

54 Also available online: [http://www.echr.coe.int/Documents/PD\\_institution\\_proceedings\\_ENG.pdf](http://www.echr.coe.int/Documents/PD_institution_proceedings_ENG.pdf) (last visited 23 July 2014).

continue on separate sheets. However, the application cannot exceed 20 pages, not including accompanying decisions and documents.

According to Rule 47 of the Rules of Court and the application form an application needs to set out the following:

- a. The name, date of birth, nationality, address, telephone, e-mail address, and sex of the applicant (Part A and B of the application form).

In addition, applicants, who already have a case pending before the Court, have to provide the application number as well as place a barcode label of this application in the designated box.

- b. The name, address, nationality, telephone and fax numbers and e-mail address of the representative, if any (Part C of the application form).

A statement of authority is also provided in Part C. The applicant must sign that he or she authorizes his or her representative to act on his or her behalf.

- c. The name of the Contracting Party or Parties against which the application is made (Part D of the application form).
- d. A concise and legible statement of the facts (Part E of the application form).
- e. A concise and legible statement of alleged violation(s) of the Convention and the relevant arguments (Part F of the application form).

When completing Part F of the application form, the Convention and the relevant Protocols should be consulted and their terminology must be observed. If the applicant wishes to invoke a provision of a Protocol to the Convention, he or she should ensure that the respondent State has ratified the relevant Protocol and that it was in force at the relevant point in time.

- f. A concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 (1) of the Convention. (Part G of the application form).

Here, the applicant should demonstrate that domestic proceedings are exhausted and that the application before the Court has been lodged within six months after receipt of the final domestic judgment.

- g. Statement concerning other international proceedings (Part H of the application).

In this part of the application form, applicants need to set out if they have submitted an application to another international tribunal such as the UN Committee against Torture. The applicant also needs to indicate whether he or she had any other applications before the Court.

h. List of supporting documents that are attached to the application (Part I of the application).

Applicants are required to list supporting documents, e.g. the applicants' complaints to domestic authorities, decisions of the domestic courts, and other documentary evidence such as medical records, witness statements, etc. Only copies – not originals – of these documents should be submitted to the Court. All documents have to be numbered. In addition, it might also be useful to submit copies of domestic judgments to which the applicant refers to, but it is not necessary to include copies of cases from the European Court of Human Rights

i. Additional Comments

The application form provides a small additional space for any comments the applicant wishes to make.

j. Declaration and Signature

If an applicant is represented by a lawyer or other representative, the signature of the representative is required and not that of the applicant.

The completed form must be sent by mail.

The Court's contact details are as follows:

The Registrar  
European Court of Human Rights  
Council of Europe  
F-67075 Strasbourg Cedex  
France

*Website:* [www.echr.coe.int](http://www.echr.coe.int)

It is important to add that incomplete applications will not be accepted. If a single part of the form has not been filled in properly or if information or requisite documents are missing, the Court might not register the application.

### **2.1.3 The Court's Processing of New Applications**

Upon receipt of an application, the Court will open a file and assign an application number. The first digits in the application number before the forward-slash indicate the position of the application amongst the applications lodged in the same year. The digits after the forward-slash indicate the year in which the application was lodged. For example, application no. 123/05 is the 123<sup>rd</sup> application lodged in the year 2005. The applicant will receive a letter from the Registry, confirming that the application has been registered and indicating a case number to which the applicant must refer in all future correspondence with the Court. Due

to the large number of applications, the Court cannot acknowledge the receipt of the application immediately. The standard Registration Letter is reproduced in Textbox iii below.

*Textbox iii: Registration Letter<sup>55</sup>*

FIRST/SECOND/THIRD/FOURTH/FIFTH SECTION

ECHR-LE11R/DATE

**Application no.**

**V.**

Dear Sir,

I acknowledge receipt of your letter of [DATE], with enclosures, including a completed application form.

The Court will deal with the case as soon as practicable. It will do so on the basis of the information and documents submitted by you. The proceedings are primarily in writing and you will only be required to appear in person if the Court invites you to do so. You will be informed of any decision taken by the Court.

You should inform me of any change in your address or that of your client. Furthermore, you should, of your own motion, inform the Court about any major developments regarding the above case, and submit any further relevant decisions of the domestic authorities.

Please note that no acknowledgment will be made as to the receipt of subsequent correspondence. No telephone enquiries either please. *If you wish to be assured that your letter is actually received by the Court then you should send it by recorded delivery with a prepaid acknowledgment of receipt form.*

Yours faithfully,  
For the Registrar

xxx  
Legal Secretary

Internally, the application will be forwarded to the legal division of the Registry in which the lawyers who handle cases against the relevant Contracting Party are working. The application is then assigned to one of the Registry's lawyers who will be working as the case lawyer for that application. This means that applications against Switzerland, for instance, are usually forwarded to the Swiss Division and will be handled by a Swiss case lawyer familiar with Swiss legislation. A notable exception to this practice is the handling of applications directed against Russia, Turkey, Romania, Ukraine and Poland. In 2011, the Court set up a Filtering Section centralizing the handling of the incoming cases from these five countries,

55 Source: Council of Europe.

accounting for over half of the pending cases.<sup>56</sup> The Filtering Section's function is to carry out thorough, accurate and immediate sifting of cases to ensure that all applications are allocated to the appropriate judicial body. The Filtering Section can considerably reduce the time taken to respond to applicants as well as the backlog of unexamined cases.

The assigned case lawyer will carry out an examination of the file and at this stage he or she may ask the applicant to submit further documents, information, or clarifications. Any time limits indicated by the Registry for submission of additional information must be complied with and if there are difficulties in obtaining the requested information, the Registry should be informed and an extension of the time limit should be sought.

#### **2.1.4 Expediting Cases: The Court's Priority Policy**

According to Rule 41 of the Rules of Court, the Court can determine the order in which cases are to be dealt with. In doing so, the Court shall have regard to the importance and urgency of the issues raised on the basis of the following criteria:<sup>57</sup>

1. Urgent applications (in particular risk to life or health of the applicant, other circumstances linked to the personal or family situation of the applicant, particularly where the wellbeing of a child is at issue, application of Rule 39 of the Rules of Court);
2. Applications raising questions capable of having an impact on the effectiveness of the Convention system (in particular a structural or endemic situation that the Court has not yet examined, pilot-judgment procedure) or applications raising an important question of general interest (in particular a serious question capable of having major implications for domestic legal systems or for the European system), inter-State cases;
3. Applications that, on their face, raise as main complaints issues under Articles 2, 3, 4 or 5 § 1 of the Convention ('core rights'), irrespective of whether they are repetitive, and which have given rise to direct threats to the physical integrity and dignity of human beings.
4. Potentially well-founded applications based on other Articles;
5. Applications raising issues already dealt with in a pilot/leading judgment ('repetitive cases');
6. Applications identified as giving rise to a problem of admissibility; and

---

56 European Court of Human Rights, "Filtering Section Progress Report", available at: [http://www.echr.coe.int/Documents/Filtering\\_Section\\_ENG.pdf](http://www.echr.coe.int/Documents/Filtering_Section_ENG.pdf) (last visited 23 July 2014).

57 European Court of Human Rights, "The Court's Priority Policy", available at: [http://www.echr.coe.int/Documents/Priority%20policy\\_ENG.pdf](http://www.echr.coe.int/Documents/Priority%20policy_ENG.pdf)

7. Applications that are manifestly inadmissible.

8. The Court classifies cases according to this system. If an applicant wishes his application to be treated with expedition full reasons should be given. The applicant should also make reference to the Court's classification system.

The Court has granted priority in several Article 3 cases. For instance, the Court often gives priority in extradition cases such as the case of *Nizomkhon Dzhurayev v. Russia* in which the applicant faced extradition to Tajikistan where he risked being subjected to ill-treatment.<sup>58</sup>

The Court may also grant priority to cases in which the issue at stake needs to be resolved urgently because, for example, the applicant is seriously ill or old. In the case of *Mouisel v. France*,<sup>59</sup> which concerned the detention of an applicant suffering from leukaemia allegedly in violation of Article 3 of the Convention, the Court granted the case priority and it was concluded by a judgment in just over two years.<sup>60</sup> Rule 41 has also been applied to conditions of detention. In the case of *X v. Turkey* the court expedited the case because the applicant was held in solitary confinement.<sup>61</sup>

It is important to note that even priority cases can take several years until the Court makes a decision. In the case of *X v. Turkey*, for example, the application was lodged in May 2009, but the Court rendered a decision in October 2012. Hence, the Court needed 3 years and 3 months to issue a judgment. In contrast, the case of *Pretty v. the United Kingdom*,<sup>62</sup> where the Court had to decide about assisted suicide of a terminally ill person, the Court decided within four months only. Thus cases given priority could be processed very speedily, but there is no guarantee.

## 2.1.5 Interim Measures (Rule 39)

### a) Summary

Since even applications that have been given priority can take several years, an applicant whose life is at risk or who is under a substantial risk of serious ill-treatment should ask for interim measures to be taken. Interim measures require the respondent State to immediately refrain from carrying out any act which could be detrimental to the Court's examination of an applicant's case.

Interim measures under Rule 39 of the Rules of Court are predominantly granted in expulsion and extradition cases in order to prevent the removal of the applicant

58 *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, 3 October 2013, §§ 3–4.

59 *Mouisel v. France*, no. 67263/01, 14 November 2002.

60 *Ibid.*, §§ 3–4.

61 *X v. Turkey*, no. 24626/09, 9 October 2012, §§ 1–2.

62 *Pretty v. The United Kingdom*, no. 2346/02, 29 April 2002.

to a country where he or she may be subjected to treatment in violation of Articles 2 and/or 3 of the Convention. According to the Court's established case law, Contracting Parties have a duty to comply with any interim measure indicated to them.<sup>63</sup> Interim measures are often sought but rarely granted. For an interim measure to be granted, the applicant must demonstrate an imminent risk of irreparable damage to life or limb in terms of Articles 2 or 3 of the Convention.<sup>64</sup>

This section includes practical information for filing interim measure requests. Furthermore, the reader may refer to the sample application for an interim measure and the Practice Direction on Interim Measures in Appendices 8 and 4, respectively.

## **b) Discussion**

As pointed out above, Rule 39 of the Rules of Court authorizes interim measures and provides as follows:

- a. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
- b. Notice of these measures shall be given to the Committee of Ministers.
- c. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated.

The Court applies a threefold test when considering interim measures:<sup>65</sup>

1. there must be a threat of irreparable harm of a very serious nature;
2. the harm threatened must be imminent and irremediable; and
3. there must be an arguable (*prima facie*) case.

Most interim measures have been applied in cases in which an applicant risks expulsion or extradition to a country where he or she might face ill-treatment or death. In this context, one of the most noteworthy cases concerning the indication of interim measures is that of *Soering v. the United Kingdom*,<sup>66</sup> which concerned the extradition by the British authorities of a German national to the United States where the authorities wanted to put him on trial for murder. If convicted, the applicant was liable to be sentenced to death. Mr. Soering argued that his surrender to the authorities of the United States of America might, if implemented, give rise to a breach by the United Kingdom of Article 3 of the Convention because he would

---

63 See, e.g. *Al-Saadoon and Mufidhi v. the United Kingdom*, no. 61498/08, 2 March 2010, §§ 160–166.

64 See e.g. *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, 4 February 2005, § 104.

65 Philip Leach, *Taking a Case to the European Court of Human Rights*, Oxford University Press, 2011, p. 31.

66 *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989.

be exposed to the so-called “death row phenomenon”, which he alleged constituted treatment contrary to that Article. His application to the Commission for interim measures was accepted, and the Commission indicated to the United Kingdom Government that it would be advisable not to extradite the applicant to the United States while the proceedings were pending in Strasbourg.<sup>67</sup> The United Kingdom Government complied with the interim measure and the Court subsequently held that the United Kingdom would be in breach of Article 3 of the Convention if it were to extradite the applicant to the United States because the circumstances of death row would represent treatment prohibited by that Article.<sup>68</sup> Without the interim measure, Mr. Soering might have been extradited before the Convention institutions had had a chance to examine the application, and the risk of ill-treatment as alleged by the applicant may have materialised. Rule 39 has also been invoked in the case of *Shamayev and 12 Others v. Georgia and Russia*,<sup>69</sup> which concerned the extradition of a number of Chechens from Georgia to Russia. The Court concluded that in the light of the extremely alarming phenomenon of persecution – in the form of threats, harassment, detention, enforced disappearances and killings – the extradition to Russia would constitute a violation of Article 3 of the Convention.<sup>70</sup> Interim measures were also applied in the case of *D. v. the United Kingdom*,<sup>71</sup> which concerned the removal of a person suffering from AIDS from the United Kingdom. The Court held that the United Kingdom would be in breach of Article 3 of the Convention if it were to proceed with the removal of the applicant.

The Court will be much less inclined to issue an interim measure if the country of destination in an expulsion case is another Contracting Party. This is because there is a presumption that the receiving State will comply with its Convention obligations and also because of the fact that the Court will be able to scrutinise any alleged failures by that state to uphold its Convention obligations.<sup>72</sup> Nevertheless, and as was shown in the case of *Shamayev and 12 Others v. Georgia and Russia*,<sup>73</sup> the fact that the receiving country is a Contracting Party will not necessarily prevent the Court from indicating interim measures if it perceives that the risk to an applicant is serious.

---

67 Ibid., § 4.

68 Ibid., § 111.

69 *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005, § 4.

70 Ibid., §§ 356–368.

71 *D. v. The United Kingdom*, no. 30240/96, 2 May 1997, § 54.

72 See *A.G. v. Sweden*, no. 27776/95, Commission decision of 26 October 1995.

73 *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005.

In expulsion cases, respondent Governments often seek to counter applicants' claims by proffering so called diplomatic assurances. The country of destination provides the expelling respondent Government a diplomatic assurance that guarantees that the applicant will not be subjected to the treatment he or she complains of. However, it must be stressed that the Court will approach diplomatic assurances with caution if it perceives that there is a real risk of ill-treatment in the receiving country. For example, in its judgment in the case of *Chahal v. the United Kingdom*<sup>74</sup> the Court observed that the British authorities had sought and received assurances from the Indian authorities to the effect that the applicant, if returned to India, would not be subjected to ill-treatment. The Court, while not doubting the good faith of the Indian Government in providing the assurances, observed that despite the efforts of that Government, the Indian National Human Rights Commission, and the Indian courts to bring about reform, the violation of human rights by members of the security forces in Punjab and elsewhere in India was a recalcitrant and enduring problem. Against this background, the Court was not persuaded that the Indian diplomatic assurances would have provided Mr Chahal with an adequate guarantee of safety.<sup>75</sup> For more on diplomatic assurances, see Section 3.3.2

Besides expulsion and extradition, interim measures have also been applied to a broad range of other issues. In the case of *Aleksanyan v. Russia*,<sup>76</sup> the Court required Russia to transfer the applicant into a specialist AIDS hospital. In the case of *Paladi v. Moldova*,<sup>77</sup> interim measures were invoked in order to prevent the applicant's transfer from a neurological centre to a prison hospital. Perhaps the most far-reaching interim measure indicated by the Court was the one issued in the case of *Öcalan v. Turkey*,<sup>78</sup> which concerned the arrest and subsequent trial, by a State Security Court, of the leader of the PKK (Kurdistan Workers' Party) for offences that were punishable by death under the Turkish legislation in force at the time. The Court requested the Turkish Government to take

interim measures within the meaning of Rule 39 of the Rules of Court, notably to ensure that the requirements of Article 6 were complied with in proceedings which had been instituted against the applicant in the State Security Court and that the applicant was able to exercise his right of individual application to the Court effectively through lawyers of his own choosing.<sup>79</sup>

---

74 *Chahal v. The United Kingdom* [GC], no. 22414/93, 15 November 1996, § 37.

75 *Ibid.*, §§ 92 and 105.

76 *Aleksanyan v. Russia*, no. 46468/06, 22 December 2008, § 4.

77 *Paladi v. Moldova*, no. 39806/05, 10 March 2003, § 4.

78 *Öcalan v. Turkey* [GC], no. 46221/99, 12 May 2005.

79 *Ibid.*, § 5.

The Court subsequently invited the Government to clarify specific points concerning the measures that had been taken pursuant to Rule 39 to ensure that the applicant had a fair trial. The Government informed the Court that it was “not prepared to reply to the Court’s questions, as they went far beyond the scope of interim measures within the meaning of Rule 39”.<sup>80</sup> However, the Government did comply with another interim measure requiring the Government “to take all necessary steps to ensure that the death penalty is not carried out so as to enable the Court to proceed effectively with the examination of the admissibility and merits of the applicant’s complaints under the Convention”.<sup>81</sup>

Although almost all interim measures are directed towards the respondent Government, there have been some exceptions. In the case of *Ilaşcu and Others v. Moldova and Russia*,<sup>82</sup> for instance, the President of the Grand Chamber decided on 15 January 2004 to urge the applicant, under Rule 39, to call off his hunger strike. The applicant complied with the request on the same day.

It is important to note that providing the Court with adequate evidence for it to grant an interim measure does not necessarily mean that the same evidence is sufficient for the Court to subsequently find a violation of Articles 2 or 3 of the Convention. For example, the evidence submitted by the applicant in the case of *Thampibillai v. the Netherlands*<sup>83</sup> was sufficient for the Court to indicate to the respondent Government “that it was desirable in the interests of the parties and the proper conduct of the proceedings that the applicant should not be expelled to Sri Lanka pending the Court’s decision”.<sup>84</sup> However, The evidence was not sufficient for the Court to conclude in its judgment that substantial grounds had been established “for believing that the applicant, if expelled, would be exposed to a real risk of being subjected to torture or inhuman or degrading treatment within the meaning of Article 3 of the Convention”.<sup>85</sup>

### **c) Application Procedure for Interim Measures**

Requests for interim measures should comply with the requirements set out in the Practice Direction on “Requests for Interim Measures”.<sup>86</sup> Furthermore, the reader

---

80 Ibid.

81 Ibid.

82 *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, 8 July 2004, § 11.

83 *Thampibillai v. the Netherlands*, no. 61350/00, 17 February 2004.

84 Ibid., § 5.

85 Ibid., § 68.

86 European Court of Human Rights, “Requests for Interim Measures” available at: [http://www.echr.coe.int/Documents/PD\\_interim\\_measures\\_ENG.pdf](http://www.echr.coe.int/Documents/PD_interim_measures_ENG.pdf).

may refer to the sample application for an interim measure at Appendix 8 and the Practice Direction on Interim Measures in Appendix 4.

An application for interim measures should be sent as soon as possible after the final domestic decision has been taken. In extradition or deportation cases, it is advisable to submit an application and send any relevant material concerning the request before the final decision is given. The applicant should also clearly indicate as to when the final decision will be taken. In cases concerning expulsion or deportation, applicants should also indicate the expected date and time of the removal, the applicant's address or place of detention.

To enable the Court to examine such requests in good time, they should in so far as possible be submitted during working hours and by a swift means of communication such as facsimile, e-mail, or courier. In cases where time is crucial, it is important that the communication be clearly marked "Rule 39-Urgent" and that it be written in English or French. Furthermore, it is advisable to contact the Court by telephone and inform its Registry that the request is being made. Indeed, many requests for interim measures are made only hours before the scheduled departure. During holiday periods (i.e. around Christmas and the New Year) the Court's Registry maintains a skeletal staff to deal with any urgent requests for application of Rule 39.

A request for an interim measure should normally be accompanied by a completed application form but in circumstances where time does not permit the preparation of that form, as much information as possible should be provided in the communication in which the request is made. Such information should include the steps taken by the applicant to exhaust domestic remedies and copies of relevant decisions. In any event, a request should, to the greatest extent possible, be supported by adequate and relevant evidence to show the extent of the risk involved in the country of destination. In a press release, the President of the Court stated that in a large number of requests the Court cannot apply interim measures because requests are incomplete or not sufficiently substantiated.<sup>87</sup> It is therefore important that applicants ensure that their request for interim measures is as detailed as possible.

---

87 European Court of Human Rights, "Governments, applicants and their lawyers urged to co-operate fully with European Court, following "alarming rise" in requests to suspend deportation, press release European Court of Human Rights", 2011, available at: [http://www.codexnews.com/codex/contents.nsf/WNPPrintArticles/35ABEBAB98B97A08C2257837005D3E74/\\$file/President%27s+Statement+on+Rule+39+Requests.pdf](http://www.codexnews.com/codex/contents.nsf/WNPPrintArticles/35ABEBAB98B97A08C2257837005D3E74/$file/President%27s+Statement+on+Rule+39+Requests.pdf).

If the request for an interim measure is accepted, the Court will inform the respondent Government and the Committee of Ministers and will generally grant priority to the application over other pending cases.

#### **d) Enforcement**

According to the Court's jurisprudence, Rule 39 obliges member States to comply with interim measures. In the case of *Makharadze and Sikharulidze v. Georgia*<sup>88</sup> the Court stated that

Article 34 can be breached if the authorities of a Contracting State failed to take all steps which could reasonably have been taken in order to comply with the interim measure indicated by the Court under Rule 39 of the Rules of Court.<sup>89</sup>

The Court approaches Rule 39, therefore, from the perspective of the effective exercise of the right of individual application, which is guaranteed under Article 34 of the Convention.<sup>90</sup> Although interim measures are binding, there has been an increase of non-compliance. In the case of *Labsi v. Slovakia*,<sup>91</sup> for instance, the applicant was expelled to Algeria despite the application of interim measures. The Court noted that it was

prevented by the applicant's expulsion to Algeria from conducting a proper examination of his complaints in accordance with its settled practice in similar cases. It was further prevented from protecting the applicant against treatment contrary to Article 3 of which he had been found to face a real risk in his country of origin at the relevant time [...]. As a result, the applicant has been hindered in the effective exercise of his right of individual application guaranteed by Article 34 of the Convention.<sup>92</sup>

In sum, Article 34 of the Convention obliges member States to comply with interim measures. Unfortunately, not all member States have complied with the Court's request.

#### **2.1.6 Decisions by Single Judges**

Due to the large number of applications, the Court needs an efficient admissibility procedure. In order to realize this, the Court has two formations that can declare an application inadmissible, the Committee formation and the single judge formation.

If an application is deemed manifestly inadmissible, it is referred to the single judge formation. According to Article 26 of the Convention and Rules 27A and 52A, a single judge can declare inadmissible or strike out an application where such

---

88 *Makharadze and Sikharulidze v. Georgia*, no. 35254/07, 22 November 2011.

89 *Ibid.*, § 98.

90 This jurisprudence has recently been confirmed in *Manni v. Italy*, no. 9961/10, 27 March 2012, § 57.

91 *Labsi v. Slovakia*, no. 33809/08, 15 May 2012.

92 *Ibid.*, § 150.

a decision can be taken without further examination. Typically, cases decided by a single judge are cases that clearly do not fulfil the admissibility requirements such as the time limit of six months, or the exhaustion of domestic remedies. A single judge may also strike out a case of the Court's list of cases when the applicant, for instance, withdraws the application. Single judges are assisted by non-judicial rapporteurs who are usually experienced lawyers from the Registry.

Single judges are appointed by the President of the Court and shall examine cases with respect to a specific member State. Single judges cannot examine cases involving the State of which they are a national. In other words, the Italian judge cannot act as a single judge for cases against Italy. Inadmissibility decisions by a single judge are not communicated to the respondent Government. The applicant, on the other hand, receives a letter informing him or her of such a decision. Specific reasons for the inadmissibility decision are, however, not provided.

### **2.1.7 Judge Rapporteurs**

If a case is not assigned to a single judge the President of the Chamber to which the case was assigned to will designate an application to a judge rapporteur. The judge rapporteur will decide whether to submit an application to a Committee or a Chamber. The identity of the judge rapporteur in a specific case is not disclosed to the parties. The judge rapporteur may request the parties to submit further documents or factual information. It is also the judge rapporteur in close collaboration with the case lawyer, who drafts the decision for the attention of the Committee or the Chamber.

### **2.1.8 Decisions by Committees**

If a judge rapporteur thinks the case is either inadmissible or “manifestly well-founded”, he or she assigns the case to a Committee. A Committee is comprised of three judges who belong to the same Section. Most Committee cases are declared inadmissible.<sup>93</sup> In addition to inadmissibility decisions, the Committee can also decide on cases that are “manifestly well-founded”. These are cases that concern an issue for which there is well-established case law. These cases are also often referred to as repetitive or clone cases.<sup>94</sup>

Committee decisions need to be unanimous. If there is no unanimity amongst the three judges of the Committee, the application will be referred to a Chamber of seven judges. If the Committee declares an application inadmissible, the applicant will be informed of the decision by means of a letter that contains only the

---

93 See e.g. *Hallmeijer v. the Netherlands* (dec.), no. 67590/12, 22 October 2013.

94 See e.g. *Triantafyllou v. Greece*, no. 26021/10, 14 November 2013.

briefest of indications of the reasons for the decision. An example of such a letter is reproduced in Textbox iv below.

*Textbox iv: Committee Inadmissibility Decision<sup>95</sup>*

FIRST/SECOND/THIRD/FOURTH/FIFTH SECTION

ECHR-LE11.0R(CD1)

**Application no.**

**v.**

Dear Sir,

I write to inform you that on [DATE] the European Court of Human Rights, sitting as a Committee of three judges (xxx, *President*, xxx and xxx) pursuant to Article 27 of the Convention, decided under Article 28 of the Convention to declare the above application inadmissible because it did not comply with the requirements set out in Articles 34 and 35 of the Convention.

In the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court found that they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

This decision is final and not subject to any appeal to either the Court, including its Grand Chamber, or any other body. You will therefore appreciate that the Registry will be unable to provide any further details about the Committee's deliberations or to conduct further correspondence relating to its decision in this case. You will receive no further documents from the Court concerning this case and, in accordance with the Court's instructions, the file will be destroyed one year after the date of the decision.

The present communication is made pursuant to Rule 53 § 2 of the Rules of Court.

Yours faithfully,

For the Committee

xxx

Section Registrar

### 2.1.9 Inadmissibility and its Consequences

Inadmissibility decisions – whether adopted by a single judge, a Committee or a Chamber – are final. The parties cannot request that the case be referred to the Grand Chamber pursuant to Article 43 of the Convention. Furthermore, a new application lodged by the applicant based on the same facts will be declared inadmissible pursuant to Article 35 § 2 (b) as being “substantially the same as a matter that has already been examined by the Court”.<sup>96</sup> There are, however, two circumstances in which the Court may re-examine an application based on the same facts.

<sup>95</sup> Source: Council of Europe.

<sup>96</sup> See also section 2.2.8 c).

First, and as mentioned earlier, if the application is declared inadmissible for non-exhaustion of a domestic remedy, after exhausting that particular domestic remedy, the applicant may submit a new application based on the same complaints. Exhaustion of the domestic remedy will result in a new domestic decision, which is regarded as “relevant new information” within the meaning of Article 35 § 2 (b). This happens rarely in practice because by the time the Court examines the application and declares it inadmissible, the applicant will most likely have missed the time limit prescribed in national legislation within which to make use of the necessary domestic remedy. As explained above, applicants are expected to comply with domestic rules of procedure when exhausting domestic remedies. Where an action instituted by an applicant is dismissed because of his or her non-compliance with a procedural requirement this will be regarded by the Court as a failure to exhaust the domestic remedy. The rationale for this is that, as a result of the applicant's non-compliance, he or she has not afforded the national authorities an opportunity to deal with the substance of the complaints.

The second possibility for the Court to re-examine an application occurs pursuant to the operation of Article 37 § 2 of the Convention. According to that provision, “[t]he Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.” However, this possibility should by no means be perceived as an opportunity to appeal against a decision of inadmissibility. The Court will only restore an inadmissible case to its list of cases if its decision on the admissibility was based on a factual error which is relevant to the conclusion or where new circumstances have arisen justifying the Court's resumption of the examination of the case. Such factual errors may include overlooking a letter introducing the application which affected the calculation of the six-month time limit or where the Court relied on a fact that was not correct.<sup>97</sup>

### **2.1.10 Communication of Application and Examination by a Chamber**

If the judge rapporteur deems an application admissible but not “manifestly well-founded”, he or she assigns the case to a Chamber. On the basis of the report prepared by the judge rapporteur, the seven judges of a Chamber consider the application.<sup>98</sup> The Chamber can also declare a case inadmissible. If the application is not declared inadmissible, the President of the Chamber will communicate the case to the respondent Government.<sup>99</sup> In so doing, the Court invites the Government to

---

97 Karen Reid, *A Practitioner's Guide to the European Convention on Human Rights*, 4<sup>th</sup> ed., Sweet and Maxwell, 2011, p. 52.

98 Rule 49 § 3 (c) of the Rules of Court.

99 Rule 54 § 2 (b) of the Rules of Court.

respond to the applicant's allegations and submit its observations on the admissibility and merits of the case pursuant to Rule 54 § 2 (c). It is also possible that at this stage one or more of the complaints will be declared inadmissible and the remainder of the application is communicated.

In certain circumstances, prior to or instead of the case being communicated, the Chamber, its President, or the judge rapporteur may ask both or one of the parties to submit any factual information, documents and other material which they consider to be relevant.<sup>100</sup> Such a course of action will usually occur in cases in which the Court needs to refer to documents, information or clarifications which the applicant him or herself is unable to obtain without the respondent Government's assistance. Upon receipt of the documentation and/or information, the case will either be communicated or declared inadmissible.

In communicating the case, the Court will usually ask the respondent Government a set of questions. The nature of the questions will depend on the applicant's allegations and the circumstances of the case; for instance in an application concerning ill-treatment in police custody, questions along the following lines may be expected:

- “Did the applicant comply with the admissibility requirements set out in Article 35 of the Convention?”
- “Was the applicant subjected to treatment in police custody in breach of Article 3 of the Convention?”
- “Did the authorities carry out an effective official investigation into the applicant's complaints of ill-treatment in compliance with the requirements of Articles 3 and 13 of the Convention?”<sup>101</sup>

Since it has become practice that the Court examines the admissibility and merits jointly, the respondent Government is asked to submit its observations on admissibility, merits, its position regarding a friendly settlement of the case and any proposals it might wish to make in that connection. The respondent Government will be asked to respond within twelve weeks of the notification (in urgent cases, a shorter time limit may be fixed). It is not uncommon for Governments – nor, indeed, for applicants – to request an extension of the deadline. The first such request is usually granted.

---

<sup>100</sup> Rule 54 § 2 (a) of the Rules of Court.

<sup>101</sup> For other questions in communicated cases see e.g. *Chirica v. Moldova* (communicated case), no. 36348/08, 23 October 2013; *Shestopalov v. Russia* (communicated case), no. 46248/07, 15 October 2013; *Kotkov v. Russia* (communicated case), no. 73094/10, 10 September 2013.

Cases before a Committee are communicated to the respondent Government if the case is not declared inadmissible. Since Committee cases are repetitive cases to which well established case law exists, the Court does not expect the Government to reply.<sup>102</sup>

### 2.1.11 Legal Representation

Upon communication of the application to the respondent Government, the applicant must be represented by a lawyer.<sup>103</sup> The application form may be completed and submitted to the Court by the applicant him- or herself, but after the communication of the application to the respondent Government, representation by a lawyer is mandatory. Consequently, in *Grimaylo v. Ukraine*,<sup>104</sup> the Court struck out the application from its list of cases because of the applicant's refusal to appoint a lawyer to represent him. Although Mr. Grimaylo insisted on representing himself or appointing his wife to represent him, the Court was of the opinion that a lawyer's participation was essential, given the complexity of the case from a legal and factual point of view.

There are two exceptions to the requirement of legal representation. First, the President of the Chamber may exceptionally grant leave from this obligation.<sup>105</sup> In the case of *Portmann v. Switzerland*,<sup>106</sup> the applicant was exempted from the obligation to be represented by a lawyer since he was unable to find a lawyer who would take his case. Second, if an application is subject to well-established case law according to Article 28 of the Convention and therefore decided by a Committee, the Court's practice is to grant leave from the requirement of legal representation.<sup>107</sup>

As a general rule, the representative should be an lawyer authorised to practise in any of the Contracting Parties and resident in the territory of one of them.<sup>108</sup> The Court may also authorize other representatives, such as academic lawyers, who are not authorized to practice in a Convention State. In this case, specific authorisation by the Court needs to be sought.

Although legal representation is not required at the time of lodging the application, it is strongly recommended for a number of reasons. The most important reason is the risk that a Single Judge or a Committee declares an application inadmissible

---

102 See Philip Leach, *Taking a Case to the European Court of Human Rights*. Oxford University Press, 2011, p. 43.

103 Rule 36 § 2 of the Rules of Court.

104 *Grimaylo v. Ukraine* (dec.), no. 69364/01, 7 February 2006.

105 Rule 36 § 4 of the Rules of Court.

106 *Portmann v. Switzerland*, no. 38455/06, 11 October 2011, § 5.

107 Philip Leach, *Taking a Case to the European Court of Human Rights*, Oxford University Press, 2011, p. 21.

108 Rule 36 § 4 of the Rules of Court.

solely on the basis of the content of the application form. Although the case lawyer in the Registry of the Court will usually give the applicant adequate opportunity to support his or her case with the necessary documentation, he or she cannot re-draft the application or the arguments set out in the application form. Indeed, it is not uncommon that application forms are submitted containing little or even no legal argumentation. Similarly, a legal representative who is retained at a later stage, after the application form has already been submitted to the Court, cannot re-draft the application or the arguments set out in the application form. As will be seen below in the section on admissibility, one of the grounds for inadmissibility is the “manifestly ill-founded” test applied to applicants’ complaints.<sup>109</sup> An application may be deemed to be manifestly ill-founded, *inter alia*, if it is not supported by legal argumentation and/or sufficient evidence. A person without legal training may not be able to provide this. It must be emphasised here that once an application is declared inadmissible, there is virtually *nothing* an applicant can do to overturn that decision.<sup>110</sup>

In most countries that are parties to the Convention, a potential applicant without financial means will be able to obtain the services of a lawyer free of charge, to assist him or her with the application. Alternatively, in certain countries it may be possible to obtain legal aid from the national authorities. Furthermore, domestic legislation of some Contracting Parties allows lawyers to practise on a no-win, no-fee basis. Alternatively, potential applicants may enter into agreements with their lawyers whereby they undertake to pay a percentage of any award made by the Court by way of just satisfaction pursuant to Article 41 of the Convention. Applicants may also be able to obtain legal assistance from non-governmental organisations (NGOs) with experience in human rights litigation.

In order to represent his or her client in Convention proceedings, the representative must be duly authorized through a signature by the applicant in the application form. A power of attorney prepared by a notary public is also acceptable provided it expressly indicates that the advocate is authorised to represent his or her client in proceedings before the European Court of Human Rights. If the applicant is represented, the Court will correspond with the representative and not with the applicant. Furthermore, it is the Court’s policy to correspond with only one representative, even if more than one lawyer represents the applicant.

---

<sup>109</sup> See section 2.2.6 below.

<sup>110</sup> In some circumstances, if the reason for inadmissibility is the applicant’s failure to exhaust domestic remedies, he or she may submit another application to the Court after having exhausted the relevant domestic remedy. This will only be possible, however, if the applicant does not, in the meantime, miss the deadline in domestic law to avail him or herself of that remedy. See also section 2.2.4 below.

### **2.1.12 Language**

The official languages of the Court are English and French.<sup>111</sup> However, applicants may fill in the application form in one of the official languages of the Contracting Parties and may continue to correspond with the Court in that language until the communication of the application to the respondent State. After reaching that stage, all correspondence with the Court should be conducted in English or in French. Applicants may, however, seek leave from the President of the Chamber to continue to use the official language of a Contracting Party when communicating with the Court, when appearing before it at a hearing, or in drafting their observations.<sup>112</sup>

As a general rule, also the Contracting Parties are required to communicate with the Court and to submit their observations in English or French. They may seek leave from the President of the Chamber to use their official national languages for their oral or written submissions, in which case they will be required to submit also an English or French translation of those submissions. However, Contracting Parties usually do submit their observations in English or French and if the applicant does not understand English or French, he or she may arrange for the translation of the observations into his or her own national language and include the expenses in the claim for just satisfaction. In the alternative, he or she may ask the President of the Chamber to invite the respondent Contracting Party to provide a translation of the observations into an official language of the Contracting Party that he or she understands.<sup>113</sup> Witnesses or experts who appear before the Court may use their own language if they do not have sufficient knowledge in either French or English.<sup>114</sup> Judgments and decisions of the Chambers and the Grand Chamber are handed down in English or French.

### **2.1.13 Legal Aid**

If a decision has been taken to communicate the case to the respondent Government, the Court will inform the applicant that he or she can apply for free legal aid under the Court's legal aid scheme for applicants who have insufficient means to pay for legal representation.<sup>115</sup> The applicant will be invited to inform the Court as soon as possible whether an application for legal aid will be made, in which case the necessary forms will be sent to him or her. Requests for legal aid must be supported by a declaration of means, certified by the relevant domestic authorities, which will be indicated by the Court.

---

111 Rule 34 § 1 of the Rules of Court.

112 Rule 34 § 3 (a) of the Rules of Court.

113 Rule 34 § 5 of the Rules of Court.

114 Rule 34 § 6 of the Rules of Court.

115 Rule 100 § 1 of the Rules of Court.

Legal aid will be granted to an applicant only where the President of the Chamber is satisfied:

- a. that it is necessary for the proper conduct of the case before the Chamber; and
- b. that the applicant has insufficient means to meet all or part of the costs entailed.<sup>116</sup>

Legal aid may be granted to an unrepresented applicant only to cover reasonable expenses associated with the case, e.g. translation, postage, fax, stationery, etc. If the applicant is represented, the Court will also grant a specified sum in respect of the representative's fees.

It is important to know that legal aid fees are modest and usually a contribution to costs and expenses. Nevertheless, the applicant's representative should always apply for legal aid if the applicant cannot afford to pay all or part of the costs.

### **2.1.14 Third-Party Interventions (*Amicus Curiae*)**

After an application has been communicated to the respondent Government, persons or organisations who are not parties to a case before the Court may, at the discretion of the President of the Court, intervene in the proceedings as third parties. Such third-party interventions are usually made by means of *amicus curie* briefs providing additional arguments in support of one of the parties to the case. Article 36 of the Convention provides the authority for such interventions:

[t]he President of the Court may, in the interest of the proper administration of justice, invite ... any person concerned who is not the applicant to submit written comments or take part in hearings.

Rule 44 of the Rules of Court governs procedures relating to third-party interventions. According to this Rule, once the case has been communicated to the respondent Government, the President of the Chamber may invite or grant leave to any person concerned who is not the applicant to submit written comments or, in exceptional cases, to take part in a hearing. Requests for leave to intervene as a third party must be duly reasoned and submitted in writing in one of the official languages of the Court. Requests have to be made within twelve weeks after the communication of the application to the respondent State. In cases before the Grand Chamber, the twelve-week period starts running from the date of notification to the parties of the decision of the Chamber under Rule 72 § 1 to relinquish jurisdiction in favour of the Grand Chamber or of the decision of the panel of the Grand Chamber under Rule 73 § 2 to accept a request by a party for referral of

---

<sup>116</sup> Rule 101 of the Rules of Court.

the case to the Grand Chamber.<sup>117</sup> The President of the Chamber may, in exceptional circumstances, extend the time limit if sufficient cause is shown.

Third-party observations need to be drafted in one of the official languages of the Court. They will be forwarded to the parties to the case, who will be entitled, subject to any conditions, including time-limits set by the President of the Chamber, to reply through written observations or, where appropriate, at the hearing.

The purpose of an *amicus curiae* intervention is to assist the Court in its deliberations on a case, or a specific issue in a case. In this connection, many NGOs have expertise or specialist information on specific human rights issues relevant to the case in which they seek to intervene. In practice, most third-party interventions are submitted by NGOs. Such information or expertise may not always be within the reach of an applicant, his or her legal representative, or indeed of the Court. A prospective third party must specify in the request for leave to intervene what added value its intervention will have for the Court's examination of the case. For example, an NGO with experience in the subject matter pertinent to the case in which it seeks to intervene could emphasise that experience. Similarly, an NGO with specialised knowledge of other human rights mechanisms may try to persuade the Court of the utility of a comparative legal analysis of a particular issue relevant to the case. In this connection it must be pointed out that the Court is frequently prepared to take account of case law of other international<sup>118</sup> and domestic courts (occasionally even of courts of countries not parties to the Convention<sup>119</sup>) which may serve as guidance on issues which it has not yet had occasion to consider in its own jurisprudence.

An example of a case in which third-party interventions played a role is *Nachova and Others v. Bulgaria*.<sup>120</sup> The Court received third-party interventions from three non-governmental organisations: the European Roma Rights Centre (ERRC), INTERIGHTS and Open Society Justice Initiative (OSJI). The ERRC's submission informed the Court of incidents of ill-treatment and killing of Roma by law enforcement agents and private individuals. INTERIGHTS criticised the Court's standard of beyond reasonable doubt as erecting insurmountable obstacles to establishing discrimination. The OSJI, for their part, commented on the obligation of States, in international and comparative law, to investigate

---

117 For issues relating to referral and relinquishment to the Grand Chamber see section 2.1.22.

118 See e.g. *Rantsev v. Cyprus and Russia*, no. 25965/04, 7 January 2010, §§ 142 and 266, in which the third-party intervener as well as the Court referred to judgments of the International Criminal Tribunal for the Former Yugoslavia on the topic of human trafficking.

119 See e.g. *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, 11 July 2002, §§ 56 and 84, in which both, Liberty, as the third-party intervener, and the Court referred to legislation in Australia and New Zealand when dealing on the topic of gender reassignment.

120 *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6 July 2005, § 8.

racial discrimination and violence. The information and the arguments submitted by these NGOs were summarised in the judgment.<sup>121</sup> Whereas the information submitted by the ERRC provided background information for the Court about the problems facing Roma in Bulgaria, the arguments submitted by INTERIGHTS led the Court to explain its reliance on the standard of proof beyond reasonable doubt and to address – for the first time in its history – the criticisms which have been levelled against the Court for its insistence on this high standard of proof. Finally, it cannot be excluded that the OSJI's *amicus* brief had some bearing on the Court's conclusion that “the authorities’ duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure the enjoyment of the right to life without discrimination.”<sup>122</sup>

For further reference, the joint intervention of the AIRE Centre, INTERIGHTS, Amnesty International, the Association for the Prevention of Torture, Human Rights Watch, the International Commission of Jurists, and Redress in the case of *Ramzy v. the Netherlands*<sup>123</sup> is reprinted in the Appendices.

## 2.1.15 Written Pleadings

### a) Governments Observations

If the application has been communicated to the respondent State, the Government will submit its observations on the case. The respondent Government will in most cases submit its observations in one of the official languages of the Court, i.e. English or French. However, the President of the Chamber may invite the respondent Contracting Party to provide a translation into an official language of that Party in order to facilitate the applicant's understanding of those submissions.<sup>124</sup> An applicant may make a request to that effect. Furthermore, the President of the Chamber may also ask the respondent State to provide a translation into, or a summary in, English or French of all or certain annexes to its written submissions or of any other relevant documents.<sup>125</sup> In the alternative, the applicant can arrange for the translation of the respondent Contracting Party's observations and of any documents and subsequently claim the costs under Article 41 of the Convention.<sup>126</sup>

---

121 Ibid., §§ 59 and 138–143.

122 Ibid., § 161.

123 *Ramzy v. the Netherlands*, no. 25424/05, 20 July 2010.

124 Rule 34 § 5 of the Rules of Court.

125 Rule 34 § 4 (c) of the Rules of Court.

126 See section 2.1.20.

## **b) Applicant's Observations**

The observations and any documents submitted to the Court by the respondent Government will be forwarded to the applicant's lawyer, who must respond to them within a certain time limit (usually six weeks). It is possible to request an extension of the time limit, but any such request must be reasoned and made within the time limit. Failure to submit the observations – or to request an extension – within the given time limit, may result in the exclusion of those observations from the case file unless the President of the Chamber decides otherwise.<sup>127</sup> For purposes of observing the time limit, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt by the Registry. Applicants must send three copies of the observations by mail and, if possible, a copy by facsimile.

When drafting observations, it should be kept in mind that the Court's proceedings are primarily written proceedings. Only in a minority of cases will the Court hold a hearing. This observation is usually the applicant's final submission to the Court. Hence all issues need to be addressed in this observation.

In principle, the applicant's observations should be drafted in one of the official languages of the Court. However, the applicant may seek leave from the President of the relevant Chamber for the continued use of the official language of a Contracting Party.<sup>128</sup> In preparing observations, applicants should refer to the *Practice Direction on Written Pleadings*.<sup>129</sup> The form that should be followed in preparing the observations and the contents required are set out in Part II of the Practice Direction. It is imperative that the observations are legible and, as such, it is recommended that they be typed. It is also important that the arguments set out in observations are well structured; an unstructured, free flowing set of observations, no matter how strong the legal arguments contained therein, will frustrate the opportunity to support the case.

In their observations, applicants should respond to any objections raised by the respondent Government to the admissibility of the application. For example, if the Government contends that the applicant has failed to comply with the requirement of exhaustion of domestic remedies, it is the applicant who, at this stage of the proceedings, bears the burden of establishing that:

---

127 Rule 38 § 1 of the Rules of Court.

128 Rule 34 § 3 (a) of the Rules of Court.

129 European Court of Human Rights, "Practice Direction on Written Pleadings", available online: [http://www.echr.coe.int/Documents/PD\\_written\\_pleadings\\_ENG.pdf](http://www.echr.coe.int/Documents/PD_written_pleadings_ENG.pdf). Also reprinted in Appendix 4.

the remedy advanced by the Government was in fact exhausted or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement [...].<sup>130</sup>

A failure by the applicant to counter the Government's objections to the admissibility of the application may result in the application being declared inadmissible for non-exhaustion of domestic remedies. If the respondent Government has disputed the facts, the applicant should add further information and evidence to support the facts as alleged and provide further evidence to show that his or her version of the events is more credible than that of the Government. In turn, if the respondent Government does not contest certain facts, the applicant should only include a brief statement in that regard. In addition, the applicant may adduce further material corroborating the evidence previously submitted. For example, if the Government has disputed the accuracy or the contents of medical reports detailing injuries, the applicant should consider obtaining an independent medical opinion to counter the Government's arguments. In their observations applicants should also describe any developments that might have taken place since the introduction of the application.

Just satisfaction claims as well as costs schedules should also be submitted. Just satisfaction claims and costs should be as detailed as possible and supported by sufficient documentary evidence. Pecuniary claims might for instance be supported by documented loss of earnings or income. Non-pecuniary claims could be documented through medical reports proofing suffering and distress.<sup>131</sup> In addition, expenses, such as costs of travel (for instance to a hearing in Strasbourg), telephone, photocopying, or translation can be claimed if documented.

### 2.1.16 Separate Admissibility Decision

Some cases are declared (partially) admissible in a separate decision. If this is the case, the Court may ask the parties to respond to specific questions, to submit observations on a particular issue, or to submit additional evidence.<sup>132</sup> Alternatively, the Court might inform the parties that it requires no further information or observations but that the parties may nevertheless submit any additional evidence or observations that they wish. Any material thus submitted by a party will be transmitted to the other party for information or for comment, but only if the Court deems it necessary.

<sup>130</sup> *Akdivar and Others v. Turkey* [GC], no. 21893/93, 16 September 1996, § 68.

<sup>131</sup> Philip Leach, *Taking a Case to the European Court of Human Rights*, Oxford University Press, 2011, p. 45.

<sup>132</sup> *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005, § 11.

At this stage of the proceedings the scope of the case will have been determined by the Court's admissibility decision; that is to say, if only some of the complaints have been declared admissible, the applicant should not address the complaints declared inadmissible in his or her observations on the merits. Further observations on the merits give the applicant a final opportunity to support his or her case with adequate evidence and argumentation. For this reason, applicants are advised to avail themselves of this opportunity even if the Court does not specifically require further observations at this stage.

### **2.1.17 Hearings**

The Chamber and the Grand Chamber may hold hearings on the admissibility and/or the merits of cases in Strasbourg. Although it is the Court's practice to ask the parties whether they would want an oral hearing of the case, hearings are held in very few cases only. The Court usually decides to hold hearings if it needs further clarification or if the case is of special legal or political importance. Prior to hearings, the Registry issues a press release that informs on the date of the hearing. Since 2007, hearings can also be followed online. The Court publishes webcasts of hearings on its webpage.<sup>133</sup>

Such hearings require the attendance of the parties or their representatives and sometimes also the attendance of witnesses and experts. Prior to a hearing, the Court asks the applicant's representative to submit his or her oral statement in writing in order to provide translations. Such a pre-submission of the oral statement is not mandatory but advisable for the facilitation of translations. The Court also asks the applicant's representative to provide a full list of names of persons who will attend the hearing on the applicant's behalf. As described above, the Court requires that a lawyer represent the applicant. The Court may also allow the applicant to make additional statements on his or her own behalf.<sup>134</sup>

On the day of the hearing, the President of the relevant Chamber will usually hold a short informal meeting informing the parties about the procedures. At the hearing, the applicant's representative is usually given 30 minutes to present his or her oral arguments, followed by a 30 minute response by the Government. The adherence to the given time limit is crucial as the President of the Chamber may stop the speaker after 30 minutes. In an oral submission, the applicant's representative will complement the written submission and where applicable address specific questions the Court sent them prior the hearing. After the oral arguments, judges may ask questions. Sometimes, the Court adjourns the meeting for ten to 15 minutes

---

133 European Court of Human Rights, Webcasts of Hearings, available at: <http://www.echr.coe.int/Pages/home.aspx?p=hearings>.

134 See e.g. *Hartman v. the Czech Republic*, no. 53341/99, 10 July 2003, § 8.

in order for the parties to prepare their answers. Upon resuming the hearing, the applicant's representative and the government are each given approximately 10 minutes to answer the questions of the judges and to address the statements of the other side. The parties are informed of the Court's decision at a subsequent date and not on the day of the hearing.

Although such hearings are open to the public, the (Grand) Chamber may, of its own motion or at the request of a party or any other person concerned, decide to exclude the public and the press from all or part of a hearing in the interests of, *inter alia*, morals, public order and protection of the private life.<sup>135</sup>

## 2.1.18 Establishment of Facts

### a) The Court's Powers in the Establishment of Facts

In most instances, national courts will already have established the facts of a case. The duty of the Strasbourg Court will then usually be limited to examining whether or not those factual findings are compatible with the requirements of the Convention.<sup>136</sup> The Court has often made it clear that it is

sensitive to the subsidiary nature of its role and must be cautious in taking on the role of a first-instance tribunal of fact, where this is not rendered unavoidable by the circumstances of a particular case. Where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and as a general rule it is for those courts to assess the evidence before them. Though the Court is not bound by the findings of domestic courts, in normal circumstances it requires cogent elements to lead it to depart from the findings of fact reached by those courts. The same principles apply *mutatis mutandis* where no domestic court proceedings have taken place because the prosecuting authorities have not found sufficient evidence to initiate such proceedings. Nonetheless, where allegations are made under Articles 2 and 3 of the Convention the Court must apply a particularly thorough scrutiny even if certain domestic proceedings and investigations have already taken place.<sup>137</sup>

It follows that under certain circumstances, particularly in the context of Article 2 and 3 violations, the Court will not hesitate to establish any disputed facts itself. Such circumstances may include situations where domestic authorities have failed to carry out effective investigations into allegations of ill-treatment or where they have failed to punish those responsible. The *Adalı v. Turkey*<sup>138</sup> judgment cited above illustrates the point that a purported lack of evidence, which might have prevented domestic authorities from bringing criminal proceedings against

---

<sup>135</sup> Rule 63 of the Rules of Court.

<sup>136</sup> See Paul Mahoney, "Determination and Evaluation of Facts in Proceedings Before the Present and Future European Court of Human Rights", in Salvino Busutil, (ed.), *Mainly Human Rights: Studies in Honour of J. J. Cremona*, Fondation Internationale Malte, 1999, pp. 119–134.

<sup>137</sup> *Adalı v. Turkey*, no. 38187/97, 31 March 2005, § 213.

<sup>138</sup> *Ibid.*

persons implicated in ill-treatment, will not deter the Court from independently investigating the allegations if such a course of action appears justified under the circumstances. Furthermore, whatever the outcome of the domestic proceedings, the conviction or acquittal of those implicated in ill-treatment does not absolve the respondent State from its responsibility under the Convention to account for any injuries found on a person at the time of his or her release from detention. For example, in the case of *Ribitsch v. Austria*,<sup>139</sup> the Court observed that the police officers allegedly responsible for the ill-treatment had been acquitted because of the high standard of proof required in the domestic legislation. In this connection the Court observed that significant weight had been given by the domestic court to the explanation that the injuries were caused by a fall against a car door. The Court, finding this explanation unconvincing, considered that even if Mr Ribitsch had fallen while he was being moved under escort, this could only have provided a very incomplete, and therefore insufficient, explanation of the injuries he sustained.<sup>140</sup>

The following sub-sections will deal with the evidential issues and the methods employed by the Court in establishing facts.

### **b) Fact-finding Hearings or Missions**

The Court can hold fact-finding hearings or missions pursuant to Article 38 § 1 (a) of the Convention, which provides the following:

If the Court declares the application admissible, it shall pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities.

Furthermore, the Annex to the Rules of Court sets out the procedure to be followed in such hearings and regulates the conduct of those participating in them. According to Rule 1 § 3 of the Annex to the Rules of Court,

[a]fter a case has been declared admissible or, exceptionally, before the decision on admissibility, the Chamber may appoint one or more of its members or of the other judges of the Court, as its delegate or delegates, to conduct an inquiry, carry out an on-site investigation or take evidence in some other manner. The Chamber may also appoint any person or institution of its choice to assist the delegation in such manner as it sees fit.

The Court may independently decide to hold a fact-finding hearing, but applicants can also invite the Court to do so. Any such request must be reasoned, and the applicant should explain how a fact-finding hearing would help establish the facts. The applicant should also submit a list of the proposed witnesses together

---

<sup>139</sup> *Ribitsch v. Austria*, no. 18896/91, 4 December 1995.

<sup>140</sup> *Ibid.*, § 34.

with information about their relevance to the events in question. In the context of Article 3 complaints, such witnesses may include the perpetrators of the ill-treatment, doctors who carried out medical examinations of the applicant, investigating authorities to whose attention the allegations of ill-treatment were brought or eye-witnesses.

If the Court decides to hold a fact-finding hearing, it is imperative for an applicant to be represented by a lawyer who is capable of asking pertinent questions and adequately cross-examining witnesses. It is not uncommon for previously undisclosed documents to be produced during a fact-finding hearing and the representative must be able to study such documents on very short notice and formulate new questions in light of them.

The Court's Registry will arrange simultaneous interpretation. The costs associated with fact-finding hearings will be borne by the Council of Europe. Following the hearing, the parties will receive the verbatim records of the hearing and will usually be able to submit further observations on the basis of the information obtained in the hearing.

It is important to add that fact-finding hearings are relatively rare, not least because of the Court's heavy case load. In addition, neither witnesses nor governmental officials can be obliged to attend fact-finding hearings, which can limit their success. Furthermore, fact-finding hearings are also cost intensive as they involve several judges, members of the registry and interpreters.

Despite such concerns, the Court has held a number of fact-finding hearings and missions. For instance in the case of *Davydov and Others v. Ukraine*,<sup>142</sup> a delegation of the Court undertook a fact-finding mission to Zamkova Prison, in which the 13 applicants were imprisoned. They alleged that on two occasions in 2001 and 2002 the prison was stormed by members of the special police on a training exercise conducted under the supervision of the prison authorities. At these events, detainees were subject to serious ill-treatment. Some of the prisoners suffered from serious injuries including broken bones, severed tendons, concussion and trauma to the spine. In addition, the applicants alleged that the general conditions in the penitentiary were bad due to overcrowding, lack of an adequate diet, medical treatment or heating and arbitrary use of disciplinary penalties and solitary confinement.<sup>143</sup>

---

141 *Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, 1 July 2010.

142 *Ibid.*, §§ 11–20.

143 *Ibid.*, § 198.

The Court decided to hold a fact-finding hearing and inspect the following premises and documentation at Zamkova Prison: (1) detention and isolation units; (2) medical service units; (3) registers of prisoners; (4) registers of complaints submitted by prisoners to the local and General Prosecutor's Offices; (5) registers of the medical complaints relevant to the material time; (6) solitary confinement unit registers; and (7) registers of disciplinary sanctions applied to the applicants.<sup>143</sup> Another example provides the case of *Ilaşcu and Others v. Moldova and Russia*.<sup>144</sup> Upon allegations of ill-treatment and prison conditions contrary to the Convention, four judges of the Court undertook a fact-finding visit to the Russian occupied area of Transnistria where they hold hearings on the premises of the OSCE Mission to Moldova, in a prison in Tiraspol, and at the headquarters of the "Operative Group of Russian Forces in the Transdnistrian [sic] Region of the Republic of Moldova". The witnesses heard included the applicants, political figures, officials from Moldova, representatives of the prison service in Tiraspol and officers of the Russian army.<sup>145</sup>

### c) Admissibility of Evidence

The Court has a very liberal attitude towards the admissibility of evidence; it has adopted a system of free evaluation of evidence<sup>146</sup> whereby no evidence is inadmissible and no witness is incompetent to testify. The Court made it clear in its judgment in the case of *Ireland v. the United Kingdom* that it is:

not bound, under the Convention or under the general principles applicable to international tribunals, by strict rules of evidence. In order to satisfy itself, the Court is entitled to rely on evidence of every kind, including, insofar as it deems them relevant, documents or statements emanating from governments, be they respondent or applicant, or from their institutions or officials.<sup>147</sup>

Furthermore, the Court stated that

being master of its own procedure and of its own rules [...] [it] has complete freedom in assessing not only the admissibility and the relevance but also the probative value of each item of evidence before it.<sup>148</sup>

This liberal approach of the Court to the admissibility of evidence is unavoidable because in many human rights cases there is an understandable lack of direct

---

<sup>144</sup> *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, 8 July 2004.

<sup>145</sup> On-the-Spot Inquiry *Ilaşcu and Others v. Moldova & Russia* 10–15.03.03, Press Release of the European Court of Human Rights, published 18 February 2003.

<sup>146</sup> See e.g. *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6 July 2005, § 147.

<sup>147</sup> *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 209.

<sup>148</sup> *Ibid.*, § 210.

evidence. Furthermore, for an international court which in most cases is located far from the location where the incident has occurred, there will be inevitable difficulties in accessing first-hand evidence, and therefore decisions will have to be made largely on the basis of the evidence submitted by the parties.

Before the Court can reach a decision under Article 3 of the Convention on an allegation of ill-treatment, it must first establish the facts of the case, i.e. the accuracy of the applicant's allegations and the circumstances surrounding those allegations. The Court will expect the applicant to adduce evidence in support of his or her allegations, in circumstances where the applicant is unable to do so, the Court may obtain such evidence of its own motion, either by asking the respondent Government to provide it or by taking evidence *in situ*. The types of evidence which may be adduced in order to substantiate allegations of ill-treatment include – but are not limited to – medical and forensic reports, x-rays and other similar medical records, witness statements, photographs, custody records, reports compiled by inter-governmental and non-governmental organisations, and documents showing that the applicant's allegations of ill-treatment have been brought to the attention of the domestic authorities. These types of evidence will be discussed below.

#### i) Medical Evidence

Where allegations of ill-treatment are contested, medical findings constitute the most objective and convincing type of evidence.<sup>149</sup> In this regard, the applicant should note that the *most* probative kind of medical evidence is evidence that is obtained *immediately upon, or very shortly after*, the applicant's ill-treatment and which is consistent with the applicant's allegations. In practical terms, this usually means that medical evidence should be obtained upon the applicant's release from State custody, since ill-treatment most often occurs in the custodial setting. This is in line with the fact that the applicant must establish a direct causal link between his or her injuries and the fact of having been in the control of the State. Therefore, the longer the applicant waits before seeking medical assistance, the more difficult it is going to be for him or her to prove that the injuries were sustained during, or were connected with, his or her custody. If the applicant succeeds in establishing that his or her injuries occurred while in State custody, then the burden of proof shifts to the respondent State to disprove the allegations, or to prove that the use of force which caused the injuries was warranted and proportionate under the circumstances. Moreover, for purposes of showing exhaustion of domestic remedies,

---

<sup>149</sup> See David Rhys Jones and Sally Verity Smith, "Medical Evidence in Asylum and Human Rights Appeals", in *International Journal of Refugee Law*, vol. 16, 2004. pp. 381–410.

it is equally important that the applicant has shared such evidence with the relevant domestic authorities in the context of a complaint as soon as possible after the occurrence of the ill-treatment. These issues are discussed further below in the context of the Court's case law.

As mentioned above, by far the strongest medical evidence is a medical report drawn up immediately after the period of detention during which the person was ill-treated. However, in some cases the applicant might not have been medically examined at the time of release. Furthermore, there may be problems associated with medical reports drawn up while the person is still in the custody of the State. For example, the applicant's medical examination might have been carried out in the presence of police officers, in which case the applicant may conceivably have been too frightened to inform the doctor of the extent or cause of his or her injuries. The medical examinations and reports drawn up in the course of those examinations themselves may sometimes be very short and therefore not capable of proving or disproving the applicant's allegations of ill-treatment.<sup>150</sup> For example, in the case of *Elçi and Others v. Turkey*, the Court observed that "[t]he collective medical examination of the applicants prior to being brought before the Public Prosecutor can only be described as superficial and cursory [...] The Court does not therefore attach great weight to it".<sup>151</sup> Similarly, in the case of *Ochelkov v. Russia*, the Court found a violation of Article 3 of the Convention because it was

dissatisfied with the quality of the medical expert evidence collected in the proceedings. It does not escape the Court's attention that although the investigators ordered a medical examination of the applicant in February 2003 and later interviewed the expert who had issued that report, they never asked the expert to identify the cause of the applicant's injuries." [...] The Court therefore cannot but conclude that the investigators' efforts were focused rather on the dismissal, in hasty and perfunctory fashion, of the applicant's complaint than on a thorough verification of the substance of his allegations. [...] The Court is thus of the view that the investigator's inertia and reluctance to look for corroborating evidence precluded the creation of an accurate, reliable and precise record of the events of 14 and 15 February 2003.<sup>152</sup>

In this context, it may be useful to consult the CPT Standards on Police Custody. These standards provide, *inter alia*, that all medical examinations should be

---

150 See Camille Giffard, *The Torture Reporting Handbook: How to Document and Respond to Allegations of Torture within the International System for the Protection of Human Rights*, Human Rights Centre of the University of Essex, 2000. An online version of the Handbook may be consulted: <http://www.essex.ac.uk/torturehandbook/handbook%28english%29.pdf>.

151 *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, 13 November 2003, § 642.

152 *Ochelkov v. Russia*, no. 17828/05, 11 April 2013, §§ 124–126.

153 European Committee for the Prevention of Torture, "Standards on Police Custody" available at <http://www.cpt.coe.int/en/documents/eng-standards.doc>, p. 6.

conducted out of a hearing and possibly out of the sight of police officers. In addition, results of examinations as well as statements by the detainee and doctors should be formally recorded and made available to the detainee and his or her lawyer.<sup>153</sup>

When examining allegations of ill-treatment, the Court takes these standards into account. For example, in the case of *Akkoç v. Turkey*,<sup>154</sup> the applicant alleged that she had been subjected to ill-treatment in police custody which included being doused with hot and cold water and subjected to electric shocks and blows to the face. Upon release she was brought together with sixteen other detainees before a doctor who stated in a “medical report” that they had not suffered any physical blows. A few days after her release, she was medically examined at a university hospital where x-rays of her head were taken showing that her chin had been broken. The Commission, after holding a fact-finding hearing in Turkey and hearing a number of persons who had witnessed the applicant’s state of health following her release from police custody, concluded that she had indeed been subjected to the treatment described in her application form. This conclusion was subsequently upheld by the Court, which found a violation of Article 3 of the Convention. In its judgment the Court stated the following:

The Court further endorses the comments expressed by the Commission concerning the importance of independent and thorough examinations of persons on release from detention. The European Committee for the Prevention of Torture (CPT) has also emphasised that proper medical examinations are an essential safeguard against ill-treatment of persons in custody. Such examinations must be carried out by a properly qualified doctor, without any police officer being present and the report of the examination must include not only the detail of any injuries found, but the explanations given by the patient as to how they occurred and the opinion of the doctor as to whether the injuries are consistent with those explanations. The practices of cursory and collective examinations illustrated by the present case undermines [sic] the effectiveness and reliability of this safeguard.<sup>155</sup>

The lack of medical evidence in an ill-treatment case will not necessarily mean that the applicant will be unable to prove his or her allegations of ill-treatment. In the case of *Tekin v. Turkey* the Court observed that

[i]t is true that, as the Government have pointed out, the applicant was unable to provide any independent evidence, for example medical reports, to substantiate his allegations of ill-treatment. However, in this respect the Court notes that the State authorities took no steps to ensure that Mr Tekin was seen by a doctor during his time in detention or upon his release, despite the fact that he had complained of ill-treatment to the public prosecutor [...] who was under a duty under Turkish law to investigate this complaint.<sup>156</sup>

---

<sup>154</sup> *Akkoç v. Turkey*, nos. 22947/93 and 22948/93, 10 October 2000.

<sup>155</sup> *Ibid.*, § 118.

<sup>156</sup> *Tekin v. Turkey*, no. 22496/93, 9 June 1998, § 41.

The Court found the applicants' allegations of ill-treatment to be substantiated but it based its decision on evidence obtained by the Commission which had held fact-finding missions in Turkey during which members of the Commission questioned the applicants and a number of eye-witnesses.<sup>157</sup> The lack of medical evidence obtained immediately after the period of detention may therefore be compensated by obtaining evidence *in situ*. However, and as pointed out earlier, the Court holds fact-finding hearings in only a small number of cases and for this reason applicants should consider obtaining independent medical reports as soon as possible after their release from custody.

The probative value of independent medical reports is increased if those reports have been brought to the attention of the national authorities. Bringing the evidence to the attention of the national authorities is also critically important for the requirement of exhaustion of domestic remedies. For example, in the case of *Dizman v. Turkey*,<sup>158</sup> the applicant had been taken away from a café by plain-clothes police officers who ill-treated him in a deserted field. He was then released and taken to a hospital by his relatives the same day. The medical examination and x-rays taken in the course of that examination revealed that his jaw had been broken and required surgery. The following day the applicant submitted the x-rays to the attention of the prosecutor and made an official complaint about the ill-treatment. In response, the prosecutor sent the applicant to the Forensic Medicine Directorate where he obtained another medical report, confirming that his jaw had been broken. The police officers were subsequently tried but acquitted for lack of sufficient evidence, in particular, due to the fact that the medical report in question had been obtained two days after the alleged event. The Strasbourg Court accepted the accuracy of the applicant's allegations of ill-treatment and noted that neither the respondent Government nor any other domestic authority had contacted the hospital where the applicant claimed to have been examined and where x-rays were taken immediately after his release in order to verify the accuracy of the applicant's statement.<sup>159</sup>

Similarly, in the case of *Balogh v. Hungary*,<sup>160</sup> the applicant alleged that he had been beaten in the course of his interrogation by police. However, the applicant did not obtain a medical examination until two days after his release. He claimed that:

---

157 For a review of the issue of the role of medical evidence in international human rights tribunals, see Camille Giffard and Nigel Rodley, "The Approach of International Tribunals to Medical Evidence in Cases Involving Allegations of Torture", in Michael Peel and Vincent Iacopino, (eds.), *The Medical Documentation of Torture*, Greenwich Medical Media Limited, 2002, pp. 19–43.

158 *Dizman v. Turkey*, no. 27309/95, 20 September 2005.

159 *Ibid.*, §§ 75–76.

160 *Balogh v. Hungary*, no. 47940/99, 20 July 2004.

he had had no experience with the police or with any other authorities before the incident. He was not therefore aware of the importance of contacting officials at once about his injuries. Although his injuries required immediate medical attention, he felt humiliated and ashamed because of the incident. Being unfamiliar with the towns which he subsequently passed through on his way home, he did not seek medical help until he returned to his home town. However, he was in constant pain throughout this period on account of the severity of his injuries.<sup>161</sup>

The respondent Government submitted, for its part, that “[d]ue to the applicant’s belatedness in seeking medical help ... the medical expert ... could not determine with certainty whether the applicant’s injuries had been inflicted before, during or after his interrogation”.<sup>162</sup> The Court rejected the Government’s submissions and held that

the applicant, having been interrogated in police custody on 9 August 1995, was said by his four companions to have left the police station with a red and swollen face. All these witnesses deposed, in consistent terms, that he must have been beaten [...] It is true that the applicant did not seek medical help in the evening of the alleged incident or on the next day, but waited until 11 August 1995 before doing so. However, in view of the fact that the applicant immediately sought medical assistance on his arrival in his home town, the Court is reluctant to attribute any decisive importance to this delay, which, in any event, cannot be considered so significant as to undermine his case under Article 3.<sup>163</sup>

This case illustrates that independent medical reports that are corroborated by witness statements will have an even higher evidential value than medical reports standing on their own. Moreover, before relying on a medical report obtained some time after the release, the Court will take into account the degree of consistency of the applicant’s allegations and will expect the applicant to describe with a certain level of precision the causal link between the medical report and the ill-treatment. This is further illustrated in the case of *Gurepka v. Ukraine*<sup>164</sup> in which the applicant submitted to the Court a medical report, drawn up six days after his release from detention, showing that the conditions of detention had had a negative effect on his health. The Court rejected the allegation as being manifestly ill-founded

In so far as the applicant complains of his detention in a cold cell and his ensuing health problems allegedly caused by it, the Court finds that the applicant has failed to demonstrate that the impugned treatment, formulated by the applicant in very general terms, attained the minimum level of severity proscribed by Article 3 of the Convention, particularly in the absence of any medical or other evidence ... The sick leave certificate presented by the applicant as to his illness from 7 December 1998, that is 6 days after his release, does not constitute sufficient proof of a causal link with the alleged ill-treatment.<sup>165</sup>

---

161 Ibid., § 37.

162 Ibid., § 40.

163 Ibid., §§ 48–49.

164 *Gurepka v. Ukraine*, no. 61406/00, 6 September 2005.

165 Ibid., § 35.

Where possible, medical evidence obtained from institutions specialising in identifying and treating ill-treatment should also be submitted to the Court in support of allegations of ill-treatment.<sup>166</sup>

It is important to note that the Court requires applicants to bring medical evidence first to the attention of the national authorities to give them the opportunity to investigate allegations of ill-treatment. Failure to do so may result in the complaint being declared inadmissible for non-exhaustion of domestic remedies. This is illustrated in the case of *Saraç v. Turkey*<sup>167</sup> in which the applicant argued that she had been taken into police custody where she was hung from her arms and hit repeatedly on the head with truncheons until she lost consciousness. While unconscious, her feet were burnt by cigarettes. Following this, she was raped with a truncheon on two occasions. She was then taken by car to an isolated place and abandoned. Thirteen days after the event in question the applicant went to the Human Rights Foundation of Turkey and sought medical assistance. Following medical examinations carried out over a period of three days in two different hospitals and the Nuclear Medical Centre in Istanbul, including gynaecological and neurological tests, x-rays, thorax graphics, scintigraphic imaging, and examinations by an ear, nose and throat consultant as well as a psychiatrist, the doctors concluded in a medical report that the applicant's allegations of ill-treatment, such as post-traumatic stress, depression, marks on her feet caused by cigarette burns, and a pelvic complaint were compatible with the medical findings. The Strasbourg Court, observing that neither this report nor any relevant evidence in support of the allegations of ill-treatment had ever been conveyed to the public prosecutor, concluded that the applicant had failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.<sup>168</sup>

## ii) Witnesses

According to Rule 1 of the Annex to the Rules of Court:

The Chamber may, *inter alia*, invite the parties to produce documentary evidence and decide to hear as a witness or expert or in any other capacity any person whose evidence or statements seem likely to assist it in carrying out its tasks.

Other than hearing witnesses directly, the Court also accepts statements taken from any eyewitnesses or other persons whose testimonies may help it establish the facts of cases. Naturally, statements taken from such witnesses by domestic

---

166 For a review of the medical techniques in documenting ill-treatment, see Michael Peel and Vincent Iacopino (eds.), *The Medical Documentation of Torture*, Greenwich Medical Media Limited, 2002.

167 *Saraç v. Turkey* (dec.), no. 35841/97, 2 September 2004.

168 *Ibid.*

authorities will have a higher evidential value. For example, in the case of *Akdeniz v. Turkey*,<sup>169</sup> the Court accepted the applicant's allegation that her son had been detained and ill-treated by soldiers solely on the basis of statements taken by the investigating prosecutor from a number of eye-witnesses to the events. In fact, the prosecutor himself had concluded, on the basis of the same eyewitness evidence, that the applicant's allegations were true but had failed to prosecute those responsible.<sup>170</sup>

The Court also takes into account eyewitness statements taken by an applicant him- or herself or by his or her lawyer.<sup>171</sup> However, such statements need to be corroborated by other evidence. Furthermore, as both parties to a case will be given the opportunity to comment on any documents submitted in Convention proceedings, the Court may attach greater evidential value to an unauthenticated document if its accuracy and veracity are not contested by the parties. For instance, in the case of *Koku v. Turkey*<sup>172</sup> the applicant submitted to the Court a chronology of events in which attacks against, and killings of, members of a pro-Kurdish political party were detailed. He argued that his brother, who had been a member of that party, was kidnapped and his disappearance was not investigated by the authorities. The body of his brother was found some months after the kidnapping. The Court, noting that the respondent Government had not contested the accuracy of the document submitted by the applicant, and noting further that the alleged kidnapping and disappearance happened at a time when dozens of other politicians of the same political party were being kidnapped, injured, and killed, accepted that the authorities had failed to protect the right to life of the applicant's brother and found a violation of Article 2 of the Convention.<sup>173</sup>

### iii) Reports Compiled by International Organisations

The Court regularly relies on reports compiled by governmental and non-governmental organisations. For example, in examining allegations relating to prison conditions, the Court frequently relies on the reports of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) based on that organisation's visits to prisons in the territory of the respondent Contracting Party.<sup>174</sup> Furthermore, reports prepared by such organisations enable

169 *Akdeniz v. Turkey*, no. 25165/94, 31 May 2005.

170 *Ibid.*, §§ 81–82.

171 See e.g. *Nizomkhon Dzhurayev v. Russia*, no. 31890/11, 3 October 2013, §§ 19–27, in which the Court included witness statements collected by the applicant's lawyer who travelled to Tajikistan to collect information in respect of the ill-treatment of detainees and, specifically, of those who had been questioned in the criminal proceedings initiated against the applicant and his co-accused.

172 *Koku v. Turkey*, no. 27305/95, 31 May 2005.

173 *Ibid.*, § 131.

174 See e.g. *Iacov Stanciu v. Romania*, no. 35972/05, 24 July 2012, §§ 125–127.

the Court to take into account the general human rights situation in a Contracting Party when examining allegations of ill-treatment against that Party. For example, in its judgment in the case of *Elçi and Others v. Turkey*,<sup>175</sup> the Court relied on the CPT's reports on Turkey when examining the testimony of the Government's witnesses during the fact-finding hearing. The Court observed the following:

In its second public statement, issued on 6 December 1996, the CPT noted that some progress had been made over the intervening four years. However, its findings after its visit in 1994 demonstrated that torture and other forms of ill-treatment were still important characteristics of police custody. In the course of visits in 1996, CPT delegations once again found clear evidence of the practice of torture and other forms of severe ill-treatment by the police. It referred to its most recent visit in September 1996 to police establishments. It noted the cases of seven persons who had been very recently detained at the headquarters of the anti-terrorism branch of the Istanbul Security Directorate and which ranked among the most flagrant examples of torture encountered by CPT delegations in Turkey. It concluded that resort to torture and other forms of severe ill-treatment remained a common occurrence in police establishments in Turkey.<sup>176</sup>

In reference to this information, the Court stated that the Government witnesses before the Commission Delegates had “constantly denied the applicants’ allegations, but in such a strident manner as to cast doubt on their testimony in the light of the accepted background knowledge for the period”.<sup>177</sup> Similarly, in its judgment in the case of *Khashiyev and Akayeva v. Russia*<sup>178</sup> the Court, in concluding that the applicants’ version of the events was accurate, consulted reports prepared by human rights groups and documents prepared by international organisations that supported their version of events.

Furthermore, in expulsion and extradition cases the Court may consult the Guidelines, Position Papers, and Country Reports published by the United Nations High Commissioner for Refugees (UNHCR).<sup>179</sup> The Court also has regard to information and reports compiled by non-governmental organisations. For example, in the case of *Kalantari v. Germany*<sup>180</sup> the Court examined evidence submitted to it by the World Organisation Against Torture (OMCT) showing that the applicant would be at risk of persecution if expelled to Iran. In *Said v. the Netherlands*,<sup>181</sup> the Court concluded that the expulsion of the applicant to Eritrea would expose him to a real risk of being subjected to treatment contrary to Article 3 of the Convention relying

---

175 *Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, 13 November 2003.

176 *Ibid.*, § 599.

177 *Ibid.*, § 643.

178 *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005, § 144.

179 See e.g. *S.A. v. Sweden*, no. 66523/10, 27 June 2013, §§ 21–22 and 44.

180 *Kalantari v. Germany*, no. 51342/99, 11 October 2001, §§ 35–36.

181 *Said v. the Netherlands*, no. 2345/02, 5 July 2005, §§ 31–35.

in part on material compiled by Amnesty International showing the existence of such a risk.

#### iv) Other Evidence

In cases concerning allegations of ill-treatment, the Court has examined a wide variety of evidence submitted to it by the parties or obtained by the Court itself. Such evidence has included, *inter alia*, photographs of the applicant's body,<sup>182</sup> video footage of the prison cell in which the applicant was allegedly detained,<sup>183</sup> plans of the detention facility where the applicant was detained and raped and which she described in her application form,<sup>184</sup> a piece of cloth used to blindfold the applicant in police custody while he was being ill-treated,<sup>185</sup> autopsy reports showing that the person had been subjected to ill-treatment prior to his killing,<sup>186</sup> and photographs showing that a body had been mutilated.<sup>187</sup> It must be stressed that such objects, individually, do not constitute conclusive evidence and in most cases they will be regarded as circumstantial evidence. However, sufficient circumstantial evidence may persuade the Court, in the absence of any direct evidence – which can be very difficult to obtain in human rights cases – to find an applicant's allegations established.<sup>188</sup>

#### c) Burden of Proof

Convention proceedings do not always lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation). In this connection, reference may be made to the Court's judgment in *Ireland v. the United Kingdom*:

In order to satisfy itself as to the existence or not in Northern Ireland of practices contrary to Article 3, the Court will not rely on the concept that the burden of proof is borne by one or other of the two Governments concerned. In the cases referred to it, the Court examines all the material before it, whether originating from the Commission, the Parties or other sources, and, if necessary, obtains material *proprio motu*.<sup>189</sup>

Nevertheless, according to the Court's established case law, an applicant bears the initial burden of producing evidence in support of his or her complaints at the time the application is introduced. Once the applicant satisfies this burden

182 *Mathew v. the Netherlands*, no. 24919/03, 29 September 2005, §§ 158–165.

183 *Ostrovar v. Moldova*, no. 35207/03, 13 May 2005, § 72.

184 *Aydın v. Turkey* [GC], no. 23178/94, 25 September 1997, § 39.

185 *Tekin v. Turkey*, no. 22496/93, Commission Report of 17 April 1997, § 190.

186 *Süheyla Aydın v. Turkey*, no. 25660/94, 24 May 2005, § 188.

187 *Akkum and Others v. Turkey*, no. 21894/93, 24 March 2005, §§ 51–52.

188 *Imakayeva v. Russia*, no. 7615/02, 9 November 2006, §§ 139–143; *Bazorkina v. Russia*, no. 69481/01, 27 July 2006, §§ 108–112.

189 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 160.

and the Court decides that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3,<sup>190</sup> the burden may shift to the Government to disprove the applicant's allegations. The Court's case law provides for such a shift in two circumstances. They are examined below.

#### i) Obligation to Account for Injuries Caused During Custody

The difficulties associated with proving ill-treatment have perhaps best been described by Judge Bonello in his dissenting opinion in the case of *Sevtap Veznedaroğlu v. Turkey*, in which he stated the following:

Expecting those who claim to be victims of torture to prove their allegations 'beyond reasonable doubt' places on them a burden that is as impossible to meet as it is unfair to request. Independent observers are not, to my knowledge, usually invited to witness the rack, nor is a transcript of proceedings in triplicate handed over at the end of each session of torture; its victims cower alone in oppressive and painful solitude, while the team of interrogators has almost unlimited means at its disposal to deny the happening of, or their participation in, the gruesome pageant. The solitary victim's complaint is almost invariably confronted with the negation 'corroborated' by many.<sup>191</sup>

Indeed, in most cases of ill-treatment, the only evidence the victim will be able to produce is his or her own testimony. However, the Court is aware of this difficulty and has created its own unique set of rules to mitigate it. Thus, according to the Court's established case law, if the victim of ill-treatment is able to make a *prima facie* case showing that he or she suffered injuries while in custody, the Court will shift the burden onto the Government to explain those injuries.

*Ribitsch v. Austria*<sup>192</sup> was the first case in which the burden was expressly shifted onto the respondent Government to explain injuries caused during police custody. Here, it was not disputed that the applicant had suffered injuries in custody. However, the respondent Government submitted that because of the required high standard of proof in the proceedings before the national courts, it had not been possible to establish that the policemen had been responsible for the applicant's injuries. The Government also argued that in order for a violation of the Convention to be found, it was necessary for the ill-treatment to be proved beyond reasonable doubt. The Commission rejected the Government's argument and found that where a person sustains injuries in police custody, it is for the Government to produce

---

190 See section 2.2 for the admissibility of applications.

191 *Sevtap Veznedaroğlu v. Turkey*, no. 32357/96, 11 April 2000, partly dissenting opinion of Judge Bonello, § 14.

192 *Ribitsch v. Austria*, no. 18896/91, 4 December 1995.

evidence establishing facts which cast doubt on the allegations of the victim, particularly if the victim's account is supported by medical certificates. In this case, the explanations put forward by the Government were not sufficient to cast a reasonable doubt on the applicant's allegations concerning ill-treatment.<sup>193</sup> The Court adopted the Commission's approach and found that Article 3 of the Convention had been violated.<sup>194</sup>

The Court also followed this approach in its judgment in the case of *Selmouni v. France*; the Court stated that:

where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention.<sup>195</sup>

Three aspects of the Court's finding in *Selmouni* require further exploration. They are: 1) the question of *when* police custody starts and, concurrently, when the obligation to account for a detainee's fate starts, 2) the *duration* of the period during which the obligation is in force, and 3) the meaning of the term "plausible explanation".<sup>196</sup>

As regards the first question, it must be stressed that the term "police custody" does not necessarily imply that the person has been placed in a detention facility.<sup>197</sup> In its judgment in the case of *Yasin Ateş v. Turkey*,<sup>198</sup> which concerned the killing of the applicant's son during a military operation following his arrest, the Court held that a lack of evidence in support of the applicant's allegation that his son had been killed by agents of the State did not:

mean that the respondent Government are absolved from their responsibility to account for Kadri Ateş's death, which occurred while he was under arrest. In this connection the Court reiterates that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them.<sup>199</sup>

Referring to its earlier case law, the Court went on to hold:

States are under an obligation to account for the injuries or deaths which occurred, not only in custody, but also in areas within the exclusive control of the authorities of the State because, in both situations, the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities.<sup>200</sup>

---

193 Ibid., § 31.

194 Ibid., § 40.

195 *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 87.

196 Ibid.

197 See *mutatis mutandis H.L. v. the United Kingdom*, no. 45508/99, 5 October 2004, § 91.

198 *Yasin Ateş v. Turkey*, no. 30949/96, 31 May 2005.

199 Ibid., § 93.

200 Ibid., § 94.

It follows, therefore, that a Contracting Party's obligation will begin as soon as its agents detain a person, regardless of whether that person is subsequently placed in a detention facility.

Regarding the second aspect – the duration of the obligation to account for a detainee's fate – the Contracting Parties' obligation to protect a detained person continues until that person is released. It appears from the Court's case law that it is incumbent on the Contracting Party to show that the person is released. This issue is well illustrated by the judgment in the case of *Süheyla Aydın v. Turkey*,<sup>201</sup> in which the applicant's husband was arrested and detained at a police station. He was then brought before a judge at the courthouse who ordered his release on 4 April 1994. However, he never emerged from that courthouse and on 9 April 1994 his body was found in a field some 40 kilometres away. The Government argued that the applicant's husband had been released on 4 April 1994 and responsibility for his subsequent death could not be attributed to agents of the State. The Commission held a fact-finding hearing in Turkey to hear a number of witnesses, but the respondent Government failed to identify and summon police officers who had accompanied the applicant's husband to the court house on 4 April 1994. Furthermore, the Government failed to produce any documents to prove that the applicant's husband had indeed been released. The Court concluded in its judgment of 24 May 2005 that:

[i]n the light of the above-mentioned failure of the Government to identify and summon the police officers who accompanied Necati Aydın to the Diyarbakır Court on 4 April 1994, coupled with the absence of a release document, the Court concludes that the Government have failed to discharge their burden of proving that Necati Aydın was indeed released from the Diyarbakır Court building on 4 April 1994. The Court finds it established that Necati Aydın remained in the custody of the State. It follows that the Government's obligation is engaged to explain how Necati Aydın was killed while still in the hands of State agents. Given that no such explanation has been put forward by the Government, the Court concludes that the Government have failed to account for the killing of Necati Aydın.<sup>202</sup>

In this judgment the Court also referred to Article 11 of the Declaration on the Protection of all Persons from Enforced Disappearance (United Nations General Assembly resolution 47/133 of 18 December 1992). This Article provides that

[a]ll persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.<sup>203</sup>

---

201 *Süheyla Aydın v. Turkey*, no. 25660/94, 24 May 2005.

202 *Ibid.*, § 154.

203 *Ibid.*, § 153.

Finally, regarding the third aspect – the nature of the “plausible explanation” for the injuries caused during custody – the Commission has held that in cases where injuries occurred in the course of police custody, it is “not sufficient for the Government to point at other possible causes of injuries, but it is incumbent on the Government to produce evidence showing facts which cast doubt on the account given by the victim and supported by medical evidence”.<sup>204</sup> Similarly, in the above mentioned case of *Ribitsch v. Austria*,<sup>205</sup> the respondent Government’s explanations “were not sufficient to cast a reasonable doubt on the applicant’s allegations concerning ill-treatment he had allegedly undergone while in police custody”.<sup>206</sup> In establishing whether a respondent Government has produced “plausible explanations”, the Court *inter alia* refers to investigations – in particular forensic and medical examinations – carried out at the national level. For example, in the case of *Salman v. Turkey*, in which the detained person died in police custody, the Court observed that no plausible explanation had been provided by the respondent Government

for the injuries to the left ankle, bruising and swelling of the left foot, the bruise to the chest and the broken sternum. The evidence does not support the Government’s contention that the injuries might have been caused during the arrest, or that the broken sternum was caused by cardiac massage.<sup>207</sup>

In reaching that conclusion, the Court noted a number of medical reports prepared by international forensic experts on the basis of the post-mortem reports prepared following the death of the detained person.<sup>208</sup>

In the case of *Akkum and Others v. Turkey*,<sup>209</sup> the Court, examining whether the Government had explained the killings of the applicant’s two relatives, assessed the oral evidence taken by the Commission’s delegates and also took particular note of the investigation carried out at the domestic level. Having established that no meaningful investigation had been conducted at the domestic level that was capable, firstly, of establishing the true facts surrounding the killings and the mutilation of one of the bodies, and secondly, of leading to the identification and punishment of those responsible, the Court concluded that the Government had failed to account for the killings and for the mutilation in violation of Articles 2 and 3 of the Convention.<sup>210</sup>

---

204 See *Klaas v. Germany*, no. 15473/89, 22 September 1993, § 103.

205 *Ribitsch v. Austria*, no. 18896/91, 4 December 1995.

206 *Ibid.*, § 31.

207 *Salman v. Turkey*, no. 21986/93, 27 June 2000, § 102.

208 *Ibid.*

209 *Akkum and Others v. Turkey*, no. 21894/93, 24 March 2005.

210 *Ibid.*, §§ 212–232.

It also appears from the Court's case law that when a respondent Government fails to conduct a medical examination before placing a person in detention, it will to some extent have forfeited the argument that the injuries present at the time of release pre-dated the period of detention. Thus, in its judgment in the case of *Abdulsamet Yaman v. Turkey*<sup>211</sup> the Court observed that the applicant had not been medically examined at the beginning of his detention and had not had access to a doctor of his choice while in police custody. Following his transfer from police custody, he had undergone two medical examinations that resulted in a medical report and the inclusion of a medical note in the prison patients' examination book. Both the report and the note referred to scabs, bruises, and lesions on various parts of the applicant's body.<sup>212</sup> Those injuries, in the absence of a plausible explanation from the respondent Government, were sufficient for the Court to conclude that they were the result of ill-treatment for which the Government bore responsibility in violation of Article 3 of the Convention.<sup>213</sup>

In conclusion, based on the case law examined above, the Court expects a respondent Government to provide a satisfactory and convincing explanation for injuries and deaths caused in custody. It is not sufficient for a respondent Government to point to other potential causes without providing adequate evidence in support of its submissions. Any medical evidence submitted by a respondent Government will be scrutinised by the Court before it can be accepted as proof of the cause of injury or death in custody. It is also open to applicants to submit to the Court medical reports to rebut those put forward by the respondent Government. Furthermore, the Court itself can ask a forensic expert to comment on any medical evidence submitted by the parties. The Commission did just this in the *Salman v. Turkey*<sup>214</sup> case mentioned above when it requested an expert opinion on the medical issues in the case "from Professor Cordner, Professor of Forensic Medicine at Monash University, Victoria (Australia) and Director of the Victorian Institute of Forensic Medicine".<sup>215</sup>

## ii) Obligation to Assist the Court in Establishing Facts

According to Rule 44A of the Rules of Court, the parties to a case before the Court have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the

---

211 *Abdulsamet Yaman v. Turkey*, no. 32446/96, 2 November 2004.

212 *Ibid.*, § 45.

213 *Ibid.*, §§ 46–48.

214 See *Salman v. Turkey*, no. 21986/93, 27 June 2000.

215 *Ibid.*, § 6.

proper administration of justice.<sup>216</sup> The Court has encountered difficulties in establishing the facts in a number of cases in which respondent Governments have failed to cooperate either by withholding documents or other evidence requested by the Court, or by failing to submit all the relevant documents in their possession. In this connection, the Court has stated that

it is of the utmost importance for the effective operation of the system of individual petition, instituted under Article 34 of the Convention, that States should furnish all necessary facilities to make possible a proper and effective examination of applications.<sup>217</sup>

The Court acknowledged in its judgment in the case of *Timurtaş v. Turkey*<sup>218</sup> that where an individual applicant accuses State agents of violating his or her rights under the Convention, it is in certain instances solely the respondent Government that has access to information capable of corroborating or refuting these allegations. The failure of a respondent Government to submit such information in its possession – or to submit it timely – without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 § 1 (a) of the Convention.<sup>219</sup> The case of *Timurtaş* concerned the disappearance of the applicant's son after the latter had allegedly been taken into custody by soldiers. The respondent Government denied that the applicant's son had been detained. The applicant submitted to the Commission a photocopy of a document that he argued was a post-operation military report. The report detailed the arrest and detention of his son by the soldiers who took part in the operation. When requested by the Commission to submit the original of the document, the respondent Government argued that a document with the same reference number did indeed exist but that they could not submit it to the Commission as it contained military secrets. In the Government's opinion, the photocopy of the original document had been manipulated by the applicant to insert the name of his son. The Court stated in its judgment that the Government was in a pre-eminent position to assist the Commission by providing access to the document which it claimed was the genuine one; it was insufficient for the Government to rely on the allegedly secret nature of the document. In light of the respondent Government's failure to submit the original document, the Court drew

---

216 Rule 44A of the Rules of Court even extends this duty to Contracting Parties with are not a party to the case at hand.

217 *Tanrikulu v. Turkey* [GC], no. 23763/94, 8 July 1999, § 70.

218 *Timurtaş v. Turkey*, no. 23531/94, 13 June 2000.

219 *Ibid.*, § 66.

an inference as to the well-foundedness of the applicant's allegations and accepted that the photocopied document was indeed a photocopy of the authentic post-operation report. Consequently, the Court found it established that the applicant's son had indeed been detained by the soldiers and had died in their custody.<sup>220</sup>

The approach adopted by the Court in the case of *Timurtaş v. Turkey* has become established practice, and the Court continues to draw inferences from the failures of respondent Governments to submit documents and other evidence as to the well-foundedness of applicants' allegations. Furthermore, on 13 December 2004 a new Rule was added to the Rules of Court in light of the approach adopted by the Court in *Timurtaş*:

Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant important information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.<sup>221</sup>

Furthermore, the respondent Government's failure to cooperate with the Court by withholding relevant documents led the Court to shift the burden of proof to the Government. The case of *Akkum and Others v. Turkey*<sup>222</sup> concerned the killing of two of the applicants' relatives in an area where a military operation had taken place, as well as the mutilation of the ears of one of those relatives. When the documents submitted by the parties proved insufficient to establish the facts of the case, the Commission held a fact-finding mission in Turkey and heard, *inter alia*, a number of military personnel who had taken part in the operation. Their testimonies made it clear that there existed another military report which was potentially capable of shedding light on the events in question but which the Government had not made available to the Commission. The Commission requested that the Government submit the report, but the Government failed to respond. The applicants, for their part, argued that in the circumstances of the case, the Government was required to provide a plausible explanation of how their relatives had been killed. In support of their arguments, they referred to the case law of the Inter-American Court of Human Rights and the Human Rights Committee. The Court accepted the applicants' arguments and held that it was inappropriate to conclude that they had failed to submit sufficient evidence in support of their allegations, given that such evidence was in the hands of the respondent Government. The Court considered it legitimate to draw a parallel between the situation of detainees, for whose well-being the State is responsible, and the situation of persons found injured or dead in an area within the exclusive control of the authorities of the State. According to the Court, that parallel was based on

---

220 Ibid., § 86.

221 Rule 44C of the Rules of Court.

222 *Akkum and Others v. Turkey*, no. 21894/93, 24 March 2005.

the salient fact that in both situations the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities. It is appropriate, therefore, that in cases such as the present one, where it is the non-disclosure by the Government of crucial documents in their exclusive possession which is preventing the Court from establishing the facts, it is for the Government either to argue conclusively why the documents in question cannot serve to corroborate the allegations made by the applicants, or to provide a satisfactory and convincing explanation of how the events in question occurred, failing which an issue under Article 2 and/or Article 3 of the Convention will arise.<sup>223</sup>

Observing that the Government had failed to make any argument from which it could be deduced that the documents withheld by them contained no information bearing on the applicants' claims, the Court went on to examine the investigation carried out at the national level in order to establish whether the respondent Government had discharged its burden. Having established that the domestic investigation was defective in many ways, the Court found that the Government had failed to account for the killings and also for the mutilation of one of the bodies, in violation of Articles 2 and 3 of the Convention.

### iii) Concluding Remarks

There is an understandable difficulty in obtaining evidence in ill-treatment cases. Because of the nature of ill-treatment, perpetrators are usually the only persons to witness it and they are therefore in a position to cover up their criminal actions. Such a cover-up will make it very difficult to establish the accuracy of allegations even if the authorities do have the will to investigate them. In certain circumstances, perhaps less frequent, perpetrators will not be deterred from ill-treating people publicly and will not even make attempts to cover up their actions because of the tolerance displayed by the authorities towards such actions. In such cases the authorities will not secure the evidence implicating State agents in the ill-treatment. Whatever the reasons, the fact remains that in most instances the victim will have difficulties supporting his or her case with "hard" evidence. It is in light of this fact that the Court's unique rules of evidence pertaining to the burden of proof must be examined. Burden-shifting compensates for the superior situation of a respondent Contracting Party *vis-à-vis* an individual and maximises the opportunity for the Court to establish the truth.

Needless to say, a respondent Government will not bear the burden of disproving each allegation of ill-treatment made against it. The rules discussed above relating to the burden of proof are employed by the Court only after it has decided that the allegations are not manifestly ill-founded. Furthermore, the Court will also require the applicant to be consistent in his or her allegations throughout the proceedings. For example, in the case of *Akkum and Others v. Turkey*,<sup>224</sup> the

---

223 Ibid., § 211.

applicants were consistent in their allegations throughout the proceedings before the Convention institutions and did everything within their power to substantiate those allegations.

This case can be contrasted with the case of *Toğcu v. Turkey*,<sup>225</sup> which concerned the disappearance of the applicant's son after the latter had allegedly been detained by police officers. In his application form and later observations the applicant presented seriously contradictory versions of events leading up to his son's alleged detention by the police. The Government, for its part, failed to submit to the Court a number of important documents including custody records. The Court stated that it was faced with a situation in which it was unable to establish what had taken place and that this inability had emanated from, on the one hand, the contradictory information submitted by the applicant, and, on the other hand, the incomplete investigation file submitted by the Government. While noting the difficulties for an applicant to obtain the necessary evidence from the hands of the respondent Government, the Court concluded that to shift the burden of proof onto a respondent Government required that the applicant have already made out a *prima facie* case. In light of the contradictory versions of events put forward by the applicant, the Court concluded that he failed to make his case to the extent necessary for the burden to shift to the Government to explain that the documents withheld by them contained no relevant information concerning his son's disappearance.<sup>226</sup>

### **e) Standard of Proof**

#### **i) Beyond Reasonable Doubt**

The Court, in assessing the evidence before it, employs a very high standard of proof, i.e. the “beyond reasonable doubt” standard.<sup>227</sup> Nevertheless, it should be noted that this high standard is to a certain extent mitigated by the Court's reliance on inferences and the fact that the Court will under certain circumstances shift the burden of proof to the respondent Government as explained above.

The Commission explained the “proof beyond reasonable doubt” standard in the following terms: “A reasonable doubt means not a doubt based on a merely theoretical possibility or raised in order to avoid a disagreeable conclusion, but a doubt for which reasons can be drawn from the facts presented”.<sup>228</sup>

---

224 Ibid.

225 *Toğcu v. Turkey*, no. 27601/95, 9 April 2002, § 69.

226 Ibid., §§ 96–97. For a review of the issue of burden of proof in Convention proceedings see Uğur Erdal, “Burden and Standard of Proof in Proceedings under the European Convention”, in *European Law Review*, vol. 26, 2001, pp. 68–84.

227 *Kasymakhunov v. Russia*, no. 29604/12, 14 November 2013, § 100.

228 *The Greek Case*, nos. 3321/67, 3322/67, 3323/67 and 3344/67, Yearbook of the European Convention on Human Rights, 1969, p. 196, § 30.

This standard was also adopted by the Court in its judgment in the inter-State case of *Ireland v. the United Kingdom*, in which it stated that

[...] to assess [the] evidence, the Court adopts the standard of proof 'beyond reasonable doubt' but adds that such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the Parties when evidence is being obtained has to be taken into account.<sup>229</sup>

The high standard adopted by the Court has been the focus of intense criticism from a substantial number of the Court's own judges over the years. For example, eight of the seventeen judges of the Grand Chamber in the case of *Labita v. Italy* stated the following in their dissenting opinion:

We are accordingly of the view that the standard used for assessing the evidence in this case is inadequate, possibly illogical and even unworkable since, in the absence of an effective investigation, the applicant was prevented from obtaining evidence and the authorities even failed to identify the warders allegedly responsible for the ill-treatment complained of. If States may henceforth count on the Court's refraining in cases such as the instant one from examining the allegations of ill-treatment for want of sufficient evidence, they will have an interest in not investigating such allegations, thus depriving the applicant of proof 'beyond reasonable doubt'... Lastly, it should be borne in mind that the standard of proof 'beyond all reasonable doubt' is, in certain legal systems, used in criminal cases. However, this Court is not called upon to judge an individual's guilt or innocence or to punish those responsible for a violation; its task is to protect victims and provide redress for damage caused by the acts of the State responsible. The test, method and standard of proof in respect of responsibility under the Convention are different from those applicable in the various national systems as regards responsibility of individuals for criminal offences[...].<sup>230</sup>

The Court acknowledged the criticisms in its judgment of 6 July 2005 in the case of *Nachova and Others v. Bulgaria* and stated the following:

In assessing evidence, the Court has adopted the standard of proof 'beyond reasonable doubt'. However, it has never been its purpose to borrow the approach of the national legal systems that use that standard. Its role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention. The specificity of its task under Article 19 of the Convention – to ensure the observance by the Contracting States of their engagement to secure the fundamental rights enshrined in the Convention – conditions its approach to the issues of evidence and proof. In the proceedings before the Court, there are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. It adopts the conclusions that are, in its view, supported by the free evaluation of all evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of

229 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 161.

230 *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, joint partly dissenting opinion of Judges Pastro Ridruejo, Bonello, Makarczyk, Tulkens, Strážnická, Butkevych, Casadevall and Zupančič, § 1; Similarly, Judge Bonello in his dissenting opinion in the case of *Sevtaş Veznedaroğlu v. Turkey*, no. 32357/96, 11 April 2000.

sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Moreover, the level of persuasion necessary for reaching a particular conclusion and, in this connection, the distribution of the burden of proof are intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake. The Court is also attentive to the seriousness that attaches to a ruling that a Contracting State has violated fundamental rights.<sup>231</sup>

This approach has been followed in several judgments. For instance, in the case of *Mathew v. the Netherlands* the Court added that the term “beyond reasonable doubt” has an autonomous meaning in the context of Convention proceedings.<sup>232</sup> However, the term remains undefined, and the Court has yet to state with precision the nature of the standard in Convention proceedings.

## ii) Real Risk

The Court does not apply the “beyond reasonable doubt” standard in cases of expulsion and extradition. In these cases, the applicant has to prove that there are substantial grounds of a real risk of a treatment contrary to Article 3 of the Convention. For instance, in the case of *Labsi v. Slovakia* the Court held the following:

Expulsion by a Contracting State may engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person concerned, if deported, faces a real risk of being subjected to treatment contrary to Article 3. In such a case, Article 3 implies an obligation not to deport the person in question to that country.<sup>233</sup>

The reason for the “real risk” threshold in cases that involve expulsion and extradition lies in the fact that the alleged ill-treatment or torture lies in the future. To require that torture or ill treatment will occur “beyond reasonable doubt” would be too high a threshold that could almost never be met.

## 2.1.19 Friendly Settlement

### a) Introduction

The friendly settlement procedure under the Convention – very much like an out of court settlement in national law – affords the parties an opportunity to resolve an issue, usually on payment to the applicant by the respondent Contracting Party of a specified sum of money or on the basis of an undertaking by the respondent Contracting Party to provide an appropriate resolution of the issue, or both. The basis for friendly settlements is found in Article 39 of the Convention,<sup>234</sup> the relevant parts of which provide as follows:

---

231 *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6 July 2005, § 147.

232 *Mathew v. the Netherlands*, no. 24919/03, 29 September 2005, § 156.

233 *Labsi v. Slovakia*, no. 33809/08, 15 May 2012, § 118.

234 See also Rule 62 of the Rules of Court.

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.
2. Proceedings conducted under paragraph 1 b. shall be confidential.

Furthermore, Article 39 provides that if a friendly settlement is reached, the Court shall strike the case out of its list by means of a decision that shall be confined to a brief statement of the facts and of the solution reached. The parties will be informed that, regarding the requirement of strict confidentiality under Rule 62 § 2, any submissions made in this respect should be set out in a separate document, the contents of which must not be referred to in any submissions made in the context of the contentious proceedings. If the parties let it be known that they are interested in reaching a settlement, the Registry will be prepared to make a suggestion for an appropriate arrangement.

### **b) Friendly Settlement Declaration**

The terms of a friendly settlement will be set out in a declaration that will be signed by the parties and submitted to the Court. The parties' declarations in the case of *Sakı v. Turkey*<sup>235</sup> are reproduced in the *Textbox vi* below and may serve as an illustration of the form and contents of friendly settlement declarations in a case which concerns complaints under Article 3 of the Convention.

On receipt of the declarations, the Court will examine the terms with a view to establishing whether respect for human rights as defined in the Convention and the protocols is upheld in the declaration; pursuant to Article 37 § 1 (c), the Court may continue the examination of the application if respect for human rights so requires and in spite of the parties' intention to settle the case.

A friendly settlement declaration signed by a Government may include the Government's expression of regret for the actions that had led to the bringing of the application. For example, in the case of *Sakı v. Turkey*,<sup>236</sup> the respondent Turkish Government submitted in its declaration that it

[...] regret[ed] the occurrence, as in the present case, of individual cases of ill-treatment by the authorities of persons detained in custody notwithstanding existing Turkish legislation and the resolve of the Government to prevent such occurrences.<sup>237</sup>

Furthermore, the Turkish Government also accepted in the same declaration that

recourse to ill-treatment of detainees constitutes a violation of Article 3 of the Convention.<sup>238</sup>

---

<sup>235</sup> *Sakı v. Turkey*, no. 29359/95, 30 October 2001.

<sup>236</sup> *Ibid.*

<sup>237</sup> *Ibid.*, § 12.

<sup>238</sup> *Ibid.*

## and undertook

to issue appropriate instructions and adopt all necessary measures to ensure that the prohibition of such forms of ill-treatment – including the obligation to carry out effective investigations – is respected in the future.<sup>239</sup>

Governments may be willing to settle cases for a number of reasons. For example, they may wish to settle a case in which complaints are based on national legislation which the Court has previously identified as incompatible with the Convention or which the respondent Contracting Party has itself acknowledged is incompatible with the Convention. For example, in the case of *Zarakolu v. Turkey*, the applicant, owner of a publishing company, was convicted under the Prevention of Terrorism Act for having disseminated propaganda in support of a terrorist organization in a book published by her company. The application lodged by the applicant was struck out of the Court's list of cases as the parties subsequently reached a settlement on the basis of a declaration made by the Turkish Government which included, *inter alia*, the following acknowledgement:

The Government note that the Court's rulings against Turkey in cases involving prosecutions under the provisions of the Prevention of Terrorism Act relating to freedom of expression show that Turkish law and practice urgently need to be brought into line with the Convention's requirements under Article 10 of the Convention. This is also reflected in the interference underlying the facts of the present case. The Government undertake to this end to implement all necessary reform of domestic law and practice in this area, as already outlined in the National Programme of 24 March 2001.<sup>240</sup>

As pointed out above, friendly settlement declarations may include terms pursuant to which a respondent Government may undertake specific action to resolve the issue. For example, the case of *K.K.C. v. the Netherlands*, which concerned the intended expulsion of the applicant – a Russian national of Chechen origin – to Russia, where the applicant argued there was a real risk he would be subjected to treatment contrary to Article 3 of the Convention, was struck out on the basis of the settlement reached between the parties. Pursuant to the terms of the declaration, the respondent Government undertook to issue the applicant a residence permit without restrictions.<sup>241</sup>

Parties are expected to stipulate in their respective declarations that the settlement will constitute the final resolution of the case and that they will not request the referral of the case to the Grand Chamber under Article 43 § 1 of the Convention.<sup>242</sup>

---

239 Ibid.

240 *Zarakolu v. Turkey*, no. 32455/96, 27 May 2003, § 19.

241 *K.K.C. v. the Netherlands*, no. 58964/00, 21 December 2001, § 26.

242 See section 2.1.22.

## Textbox vi: Example of Friendly Settlement Declaration

**THE PARTIES' DECLARATIONS IN THE CASE OF SAKI V. TURKEY (NO. 29359/95)<sup>243</sup>****THE GOVERNMENT'S DECLARATION**

I declare that the Government of the Republic of Turkey offer to pay *ex gratia* to Ms Özgül Saki the amount of 55,000 French francs with a view to securing a friendly settlement of the application registered under no. 29359/95. This sum, which also covers legal expenses connected with the case, shall be paid, free of any taxes that may be applicable, to a bank account named by the applicant. The sum shall be payable within three months from the date of delivery of the judgment by the Court pursuant to Article 39 of the European Convention on Human Rights. This payment will constitute the final resolution of the case.

The Government regret the occurrence, as in the present case, of individual cases of ill-treatment by the authorities of persons detained in custody notwithstanding existing Turkish legislation and the resolve of the Government to prevent such occurrences.

It is accepted that the recourse to ill-treatment of detainees constitutes a violation of Article 3 of the Convention and the Government undertake to issue appropriate instructions and adopt all necessary measures to ensure that the prohibition of such forms of ill-treatment – including the obligation to carry out effective investigations – is respected in the future. The Government refer in this connection to the commitments which they undertook in the Declaration agreed on in Application no. 34382/97 and reiterate their resolve to give effect to those commitments. They note that new legal and administrative measures have been adopted which have resulted in a reduction in the occurrence of ill-treatment in circumstances similar to those of the instant application as well as more effective investigations.

The Government consider that the supervision by the Committee of Ministers of the execution of Court judgments concerning Turkey in this and similar cases is an appropriate mechanism for ensuring that improvements will continue to be made in this context. To this end, necessary co-operation in this process will continue to take place.

Finally, the Government undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.

**THE APPLICANT'S DECLARATION**

I note that the Government of Turkey are prepared to pay *ex gratia* the sum of 55,000 French francs covering both pecuniary and non-pecuniary damage and costs to the applicant, Ms Özgül Saki, with a view to securing a friendly settlement of application no. 29359/95 pending before the Court. I have also taken note of the declaration made by the Government.

I accept the proposal and waive any further claims in respect of Turkey relating to the facts of this application. I declare that the case is definitely settled.

This declaration is made in the context of a friendly settlement which the Government and the applicant have reached.

I further undertake not to request the reference of the case to the Grand Chamber under Article 43 § 1 of the Convention after the delivery of the Court's judgment.

243 *Saki v. Turkey*, no. 29359/95, 30 October 2001, §§ 12–13.

### **c) Enforcement**

According to Article 46 § 1 of the Convention, Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. This also applies to friendly settlements. Furthermore, paragraph 2 of the same provision stipulates that final judgments of the Court shall be transmitted to the Committee of Ministers which will supervise their execution. It follows, therefore, that the Committee of Ministers is responsible for the supervision of a judgment in which the case was struck out on the basis of a friendly settlement. In case of a failure by the respondent Government to uphold the terms of its friendly settlement declaration, applicants may seek assistance from the Committee of Ministers.

### **d) Friendly Settlements in Article 3 Cases**

Friendly settlements in cases involving serious human rights violations, such as the prohibition of torture, inhuman or degrading treatment or the right to life are not uncontroversial. However, friendly settlements afford the Court an opportunity to clear up its docket in order to focus on cases that justify merits decisions. In addition, the friendly settlement procedure is considerably shorter than a regular procedure.

An analysis of the Court's decisions that have been struck out on the basis of a friendly settlement shows that they involve minor violations of Article 3 of the Convention. Most such decisions concern the conditions of detention or other issues where there exists well-established case law. The damages awarded often range between 1000 and 6000 euros. In addition, friendly settlements are often concluded after there has been a pilot judgment. For instance, the pilot judgment in the case of *Orchowski v. Poland*,<sup>244</sup> condemning the serious and chronic overcrowding of Polish prisons, resulted in dozens of friendly settlements.<sup>245</sup>

If a friendly settlement is proposed by the parties, the Court has powers to review the conditions of the settlement and may refuse to strike a case out if it considers that respect for human rights as defined in the Convention and the Protocols requires an examination on the merits. It is also important to note that the applicant may negotiate with the respondent Government to obtain specific undertakings, such as an undertaking to carry out an effective investigation into his or her allegations of ill-treatment. If the respondent Government refuses to carry out such an investigation as part of the friendly settlement agreement, the applicant may argue that striking the case out solely on the basis of monetary payment represents

---

<sup>244</sup> *Orchowski v. Poland*, no.17885/04, 22 October 2009.

<sup>245</sup> See e.g. *Mech v. Poland* (dec.), no. 55354/12, 4 February 2014; *Siwiak v. Poland* (dec.), no. 18250/13, 4 February 2014; *Walczyk v. Poland* (dec.), no. 74907/11, 15 October 2013; *Gołek v. Poland* (dec.), no. 25024/09, 1 October 2013.

insufficient redress and request that the Court continue to examine the merits of the case.<sup>246</sup> In this context it must be reiterated that civil or administrative proceedings that are aimed solely at awarding damages rather than identifying and punishing those responsible are not regarded as effective remedies in the context of Article 3 complaints.<sup>247</sup>

### **e) Unilateral Declaration**

The Court has also used its powers to strike an application out on the basis of so-called “unilateral declarations” submitted by respondent Governments, usually following the applicants’ rejection of a respondent Government’s offer of friendly settlement. Since 2012, unilateral declarations are governed by Rule 62A of the Rules of Court.

Unilateral declarations submitted in cases involving very serious human rights abuses are examined with particular care. In the case of *Tashin Acar v. Turkey*,<sup>248</sup> which dealt with the forced disappearance and ill-treatment of a Kurd by Turkish authorities, the Court developed several, non-exhaustive, factors under which a unilateral declaration is admissible: (i) the nature of the complaints made, (ii) whether the issues raised are comparable to issues already determined by the Court in previous cases, (iii) the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, (iv) the impact of these measures on the case at issue, (v) whether the facts are in dispute between the parties, (vi) whether in their unilateral declaration the respondent Government have made any admission(s) in relation to the alleged violations of the Convention, and (vii) the manner in which they intend to provide redress to the applicant.<sup>249</sup>

The applicant is given the possibility to submit comments as well as to refuse a unilateral declaration. However, the Court might nonetheless conclude that the unilateral declaration satisfies the abovementioned criteria and that therefore the case can be struck out of its list on the basis of Article 37 § 1 (c).

Unlike the execution of friendly settlements, the Committee of Ministers is not empowered to supervise the fulfilment of unilateral declarations. If the government fails to comply with its declaration, the applicant may ask the Court to restore

---

<sup>246</sup> The same argument would also be relevant if the Court decides to strike the case out on the basis of a unilateral declaration submitted by the respondent Government and despite the applicant’s rejection of the settlement offer.

<sup>247</sup> See *Tepe v. Turkey* (dec.), no. 31247/96, 22 January 2002. For an analysis of the Court’s friendly settlement practice also see Helen Keller, Magdalena Forowicz and Lorenz Engi, *Friendly Settlements before the European Court of Human Rights*, Oxford University Press, 2010.

<sup>248</sup> *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, 6 May 2003.

<sup>249</sup> *Ibid.*, § 76.

the application to the Court's list. If the unilateral declaration does not contain a time-limit, the Court usually allows three months for the fulfilment.<sup>250</sup>

### 2.1.20 Strike Out

Based on Article 37 of the Convention, the Court can strike cases out of its list under the following circumstances:

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
  - a. the applicant does not intend to pursue his application; or
  - b. the matter has been resolved; or
  - c. for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

An application may be struck out of the Court's list of cases by a Single Judge,<sup>251</sup> a Committee<sup>252</sup> or by a Chamber.<sup>253</sup>

#### **a) Absence of Intention to Pursue the Application (Article 37 § 1 (a))**

Article 37 § 1 of the Convention provides for an applicant's withdrawal of his or her case. However, in dealing with a request for withdrawal, the Court must first examine whether respect for human rights as defined in the Convention and the Protocols nevertheless requires that the Court continue the examination of the application. For example, the case of *Tyrer v. the United Kingdom* concerned the applicant's complaint regarding corporal punishment under Article 3 of the Convention. The applicant informed the Commission that he wished to withdraw his application. The Commission decided it could not accede to this request, "since the case raised questions of a general character affecting the observance of the Convention which necessitated a further examination of the issues involved".<sup>254</sup> The applicant took no further part in the proceedings but the Court examined the complaints

---

250 European Court of Human Rights, Case Processing, Unilateral Declarations, available online [http://www.echr.coe.int/Pages/home.aspx?p=court/howitworks&c=#newComponent\\_1346158325959\\_pointer](http://www.echr.coe.int/Pages/home.aspx?p=court/howitworks&c=#newComponent_1346158325959_pointer).

251 Rule 52A of the Rules of Court.

252 Article 28 of the Convention.

253 Rule 53 of the Rules of Court.

254 *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, § 21.

*ex officio* and concluded that the applicant had been subjected to degrading treatment in violation of Article 3.<sup>255</sup>

The Court will also strike an application out if the applicant fails to respond to letters and/or fails to submit his or her observations and any other documents requested by the Court. The applicant's inactivity is interpreted as a lack of intention on his or her part to pursue the case. Before striking the case out in such a situation, the Court will give the applicant adequate opportunities to reply and will warn him or her in a letter – sent by registered post – of the possibility that the case might be struck out of the Court's list.<sup>256</sup>

The case of *Nehru v. the Netherlands* illustrates the fact that in situations where the Court is unable to contact an applicant over an extended period of time – in this case almost 3 years – the Court is likely to consider the application to have been abandoned. In *Nehru*, the applicant, a Sri Lankan national, whose request for an interim measure under Rule 39 of the Rules of Court to suspend his expulsion had been rejected by the Court on 10 November 1999, was deported to Canada by the Netherlands authorities on 18 November 1999. A day later, on 19 November 1999, the applicant was deported from Canada to Sri Lanka. Nothing further was heard from him either by his lawyer or by the Court. In its decision of 27 August 2002, the Court noted that it could neither find that the applicant no longer wished to pursue his application nor that the matter had been resolved. It went on to state the following:

Although the Court would not exclude that an expulsion carried out speedily might frustrate an applicant's attempts to obtain the protection to which he or she is entitled under the Convention, the Court notes that there is no indication that the applicant, during the period that has elapsed since his expulsion from the Netherlands, has sought in one way or another to contact his lawyer in the Netherlands in relation to his application. In these circumstances, the Court cannot but conclude that there is no indication whatsoever that the applicant intends to pursue his application.<sup>257</sup>

Consequently, the Court decided to strike the case out of its list on the basis of Article 37 of the Convention.

### **b) Resolution of the Matter (Article 37 § 1 (b))**

In its judgment in the case of *Ohlen v. Denmark*, the Court stated that

[i]n order to conclude that the matter has been resolved within the meaning of Article 37 § 1 (b) or that for any other reason established by the Court, it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1

255 Ibid., § 35.

256 See e.g. *Starodub v. Ukraine* (dec.), no. 5483/02, 7 June 2005, in which the applicant failed to respond to the Court's letter for more than a year and a half.

257 *Nehru v. the Netherlands* (dec.), no. 52676/99, 27 August 2002.

(c), and that there is therefore no longer any objective justification for the applicant to pursue his application, the Court considers that it must examine whether the circumstances complained of directly by the applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed.<sup>258</sup>

Thus, in a case where the applicant complains of his or her impending expulsion to a country where he or she runs a real risk of being subjected to ill-treatment in violation of Article 3, the Court will conclude that the matter at issue has been resolved if the respondent Contracting Party subsequently issues the applicant a residence permit thereby eliminating the possibility of deportation. After all, in such a situation, where the applicant no longer faces expulsion, the risk of ill-treatment also no longer exists.<sup>259</sup>

### **c) Strike Out “for any other reason” (Article 37 § 1 (c))**

This provision gives the Court a large measure of discretion and may, for example, be used in a situation where the applicant wishes to pursue his or her application even though in the view of the Court this is no longer necessary. Thus, the Court struck out three cases introduced by Iranian nationals and their families in which they complained that their expulsion to Iran by the Turkish Government would expose them to treatment contrary to Articles 2, 3, and 8 of the Convention. However, after submitting their applications they moved to and settled in Finland, Norway, and Canada respectively. They nevertheless informed the Court that they wished to pursue their applications and maintained that, notwithstanding their resettlement in third countries, the Court should still examine their complaints on the merits. However, given that they no longer faced forced return to Iran, the Court found that the applicants could no longer claim to be victims within the meaning of Article 34 of the Convention and decided that it was no longer justified to continue the examination of the applications.<sup>260</sup>

#### **2.1.21 Costs and Fees**

The Court does not require applicants to pay any fees at any stage of the Convention proceedings. If an applicant is successful with his or her application and the Court finds that there has been a violation of the Convention, the Court may order the respondent State to reimburse the expenses incurred by the applicant in connection with the examination of his or her Convention complaints, pursuant to Article 41 of the Convention, including lawyer's fees, translation and postage costs, and costs for

---

258 See *Ohlen v. Denmark*, no. 63214/00, 24 February 2005, § 26.

259 See e.g. *Sokratian v. the Netherlands* (dec.), no. 41/03, 8 September 2005.

260 See e.g. *M.T. v. Turkey* (dec.), no. 46765/99, 30 May 2002; *A.E. v. Turkey* (dec.), no. 45279/99, 30 May 2002; *A. Sh. v. Turkey* (dec.), no. 41396/98, 28 May 2002.

attending any possible hearings in Strasbourg. As explained above, applicants may also apply for legal aid from the Court to cover – at least partially – their costs.<sup>261</sup>

### 2.1.22 Finding of a Violation

If the Chamber deems the application admissible, under the joint procedure it will immediately move on to the judgment stage. It will receive a draft judgment prepared under the instructions of the judge rapporteur, declaring the application admissible and concluding whether there has been a violation of any of the Articles of the Convention invoked by the applicant. A typical judgment concerning an Article 3 complaint will consist of the following components:

Name of the case and of the Section, application number, names of judges of the Chamber and name of the Section Registrar, date(s) of deliberations;

PROCEDURE: A summary of the proceedings, containing the name of the applicant and that of the respondent Contracting Party;

THE FACTS, consisting of

I. THE CIRCUMSTANCES OF THE CASE: other details of the applicant, together with the facts as submitted by the parties. If the facts are disputed between the parties they will be set out separately. Documents submitted by the parties, in so far as they are relevant, may also be summarised under this heading; and

II. RELEVANT DOMESTIC LAW AND PRACTICE;

THE LAW, consisting of

I. The applicant's complaints; the parties' arguments; any objections by the Government to the admissibility of the case; the Court's conclusion on the admissibility; establishment of facts and the Court's conclusion on the merits; and

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION: The applicant's claims for pecuniary and non-pecuniary damage and for costs and expenses; the Government's response to the applicant's claims and the Court's conclusion on just satisfaction;

OPERATIVE PART: A recapitulation of the conclusions reached and any violations found; and, finally,

SEPARATE OPINIONS<sup>262</sup>

The Court's judgments will be given in one of the official languages of the Court, i.e. English and French. In some cases, the judgment may be translated into the other official language.<sup>263</sup> In exceptional cases, the judgment may be pronounced, i.e. read aloud, at a public hearing. The judgment will be transmitted to the Committee of Ministers for its execution. Certified copies of the judgment will be transmitted to the parties, the Secretary General of the Council of Europe, to any third party, and to any other person directly concerned.<sup>264</sup>

261 See section 2.1.13.

262 See also Rules 74–75 of the Rules of Court.

263 Rule 76 of the Rules of Court.

264 Rule 77 § 3 of the Rules of Court.

Rule 79 of the Rules of Court provides that parties may request the interpretation of a judgment within one year of the delivery of that judgment. Furthermore, Rule 80 of the Rules of Court provides for situations in which a new fact is discovered: if the fact by its nature might have a decisive influence on the Court's deliberations, if it was unknown to the Court at the time of delivery of its judgment, and if it could not reasonably have been known to the party, that party may ask the Court to revise the judgment. Requests of this nature must be made within a period of six months after that party learned of the fact. They are, however, quite rare.

Finally, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation, or obvious mistakes.<sup>265</sup>

### **2.1.23 Referral and Relinquishment to the Grand Chamber**

After a Chamber issued a judgment, any party to the case may, in exceptional circumstances, request that the case be referred to the Grand Chamber. Pursuant to Article 43 of the Convention, the parties can request such a referral within a period of three months from the date of the judgment of the Chamber. It must be pointed out that the judgments adopted by the Grand Chamber are final and cannot be referred back to the Chamber.

A request for referral to the Grand Chamber will be examined by a panel of five judges of the Grand Chamber and will only accept the request in the following circumstances:

[I]f the case raises a serious issue affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.<sup>266</sup>

The Panel of the Grand Chamber will be composed of the President of the Court, two Presidents of Sections designated by rotation (to be replaced by the Vice-Presidents of their Section if they are prevented from sitting), two judges and two substitute judges. The substitute judges are designated by rotation from among the judges elected by the remaining Sections to sit on the panel for a period of six months (Rule 24 § 5 (a) of the Rules of Court). The Panel shall not include any judge who took part in the consideration of the admissibility or merits of the case in question or the judge elected in respect of, or who is a national of, a Contracting Party concerned by a referral request (Rule 24 § 5 (b-c)). Any member of the Panel unable to sit for these reasons shall be replaced by one of the substitute judges (Rule 24 § 5 (d)).

---

<sup>265</sup> Rule 81 of the Rules of Court.

<sup>266</sup> Article 43 § 2 of the Convention.

Decisions of the Panel are final. Since the Panel does not provide reasons for referral decisions, it is difficult to determine exactly what considerations are decisive in any particular case. In any event, it appears from Article 43 that the referral procedure should not be regarded as an appeal on points of fact. It is not surprising, therefore, that the nature and the number of the cases referred to the Grand Chamber illustrate that the Panel will only accept requests for referral in exceptional cases. Indeed, in 2005 the Panel examined a total of 183 requests for referrals and accepted only 20.<sup>267</sup>

If the request is accepted by the Panel, the case referred to the Grand Chamber will embrace in principle all aspects of the application previously examined by the Chamber in its judgment. The scope of its jurisdiction is limited only by the Chamber's decision on admissibility. This means that the Grand Chamber is precluded from examining complaints that have been declared inadmissible by the Chamber. However, regarding the complaints declared admissible by the Chamber, the Grand Chamber may also examine, where appropriate, issues relating to their admissibility in the same manner as this is possible in normal Chamber proceedings: for example by virtue of Article 35 § 4 *in fine* of the Convention (which empowers the Court to "reject any application which it considers inadmissible [...] at any stage of the proceedings"), or where such issues have been joined to the merits or where they are otherwise relevant at the merits stage.<sup>268</sup> The Grand Chamber will generally hold a hearing in Strasbourg before adopting its judgment.

Chambers can also relinquish jurisdiction in favour of the Grand Chamber. According to Article 30 of the Convention a relinquishment is possible if a case

raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, [...] unless one of the parties to the case objects.

For instance, in the case of *O'Keeffe v. Ireland*,<sup>269</sup> which dealt with the failure by the state to put appropriate mechanisms in place to protect National School pupils from sexual abuse by a teacher, a Chamber by the Fifth Section decided to relinquish jurisdiction in favour of the Grand Chamber.

---

267 Fifty-six of the 121 requests were made by Governments and five by both parties. See for further information the Annual Activity Report 2005 of the Grand Chamber at <http://www.echr.coe.int/NR/rdonlyres/AF356FA8-1861-4A6B-95E9-28ED53787710/0/2005GrandChamberactivityreport.pdf>.

268 *K. and T. v. Finland* [GC], no. 25702/94, 12 July 2001, §§ 140–141.

269 *O'Keeffe v. Ireland* [GC], no. 35810/09, 28 January 2014, § 6.

### 2.1.24 Execution of Judgments

While the Court's decisions and judgments are binding upon States, they enjoy a degree of discretion on how to comply with a judgment by the Court. It is primarily for the respondent state, under the supervision of the Committee of Ministers, to identify execution measures.<sup>270</sup> However, Article 46 of the Convention obliges respondent states to put an end to the breach, make reparation and, as far as possible, restore the situation existing prior to the violation if the Court finds the respondent state in breach of a Convention right.<sup>271</sup> This means, member States have to realize the principle of *restitutio in integrum*.<sup>272</sup> The aim of Article 46 of the Convention is thus to "put the applicant, as far as possible, in the position he would have been in had the requirements of the Convention not been disregarded."<sup>273</sup> The Court explained that

a judgment in which the Court finds a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects.<sup>274</sup>

The Court developed three different remedies through which judgments can be executed and, if possible, the original situation be restored: (a) just satisfaction, (b) individual measures, and (c) general measures. These three types of remedies are explained below by reference to the Court's Article 3 jurisprudence.

#### a) Just Satisfaction

Just satisfaction is the Court's principle remedy.<sup>275</sup> It is regulated in Article 41 of the Convention, which provides:

---

270 Committee of Ministers, Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights, 6<sup>th</sup> Annual Report of the Committee of Ministers 2012, p. 24, available online: [http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM\\_annreport2012\\_en.pdf](http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2012_en.pdf).

271 Philip Leach, *Taking a Case to the European Court of Human Rights*, 3<sup>rd</sup> edn, Oxford University Press, 2011, p. 475.

272 Dinah Shelton, *Remedies in International Human Rights Law*, Oxford University Press, 2006, p. 272; Antoine Buyse, *Post-Conflict Housing Restitution. The European Human Rights Perspective with a Case Study on Bosnia and Herzegovina*, Intersentia, 2008, pp. 116–117; Tom Barkhuysen and Michiel L van Emmerik, "A Comparative View on the Execution of Judgments of the European Court of Human Rights", in Theodora A Christou and Juan Pablo Raymond (eds), *European Court of Human Rights. Remedies and Execution of Judgments*, British Institute of International and Comparative Law, 2005, p. 4.

273 See e.g. *Youth Initiative For Human Rights v. Serbia*, no 48135/06, 25 June 2013, § 31.

274 *Scozzari and Giunta v. Italy*, nos. 39221/98 and 41963/98, 13 July 2000, § 249.

275 Mark W Janis, Richard S Kay and Anthony Bradley, *European Human Rights Law*, 3<sup>rd</sup> edn, Oxford University Press, 2008, p. 98; Philip Leach, "Beyond the Bug River – A New Dawn for Redress Before the European Court of Human Rights", in *European Human Rights Law Review*, vol. 2, 2005, p. 150.

If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

The text of Article 41 makes it clear that claims for just satisfaction will be granted only if the internal law of the respondent State allows only partial reparation to be made and if it is necessary to do so. Claims for just satisfaction need to be made when submitting written observations to the respondent government's submission. Rule 60 of the Rules of the Court sets out the formal conditions regarding a submission of claims for just satisfaction. If the applicant does not make an application for just satisfaction, the Court usually does not grant any award.<sup>276</sup> According to Rule 60, claims need to be itemised and accompanied by supporting documents. The Court can award just satisfaction in respect of three types of loss and damage: (i) pecuniary damage, (ii) non-pecuniary damage, and (iii) costs and expenses.

#### i) Pecuniary Damage

The Court typically awards pecuniary damage in respect of the loss of enjoyment of property,<sup>277</sup> costs of medical treatment,<sup>278</sup> or for lost earnings.<sup>279</sup> Pecuniary damage is only granted if there is a causal link between human rights violation and the damage suffered. Such a causal link was missing, for example, in the case of *Khudobin v. Russia*, in which the Court stated the following:

The applicant contended that he required constant medical treatment after his release [from detention], yet it is unclear to what extent the expenses he claimed in that respect were related to the effects of the lack of medical assistance in the detention facility and not to his chronic diseases, for which the authorities could not be held responsible. In these circumstances the Court accepts the Government's argument that the applicant's claims under this head are not sufficiently substantiated and rejects them.<sup>280</sup>

Similarly in the case of *Khodorkovskiy and Lebedev v. Russia*,<sup>281</sup> the Court reasoned that

Although the Court found several violations of the second applicant's rights under Articles 3, 6 and 8 in the present case, the loss of his earnings can be attributed to many other factors, primarily to the tax proceedings involving Yukos, which eventually led to its bankruptcy and liquidation. The second applicant's detention throughout 2004 and 2005 undoubtedly played some part in those proceedings. However, the Court does not need to speculate in this respect. It observes that the link between the violations found in the present case and the loss of the second applicant's earnings,

276 See e.g. *Necula v. Romania*, no. 33003/11, 18 February 2014, § 64.

277 See e.g. *Saliba and Others v. Malta*, 20287/10, 22 January 2013, §§ 15–23.

278 *Zelilof v. Greece*, no. 17060/03, 24 May 2007, §§ 79–81.

279 *Mikheyev v. Russia*, no. 77617/01, 26 January 2006, § 157.

280 *Khudobin v. Russia*, no. 59696/00, 26 October 2006, § 142.

281 *Khodorkovskiy and Lebedev v. Russia*, no. 11082/06, 25 July 2013.

if any, is too remote and uncertain. The Court concludes that the second applicant's claims for pecuniary damages are unjustified and must be rejected.<sup>282</sup>

The Court applies the causal link requirement strictly. Claims for pecuniary damage often fail before the Court. An applicant is therefore advised to clearly document and explain that the loss of earnings or a medical bill etc. were caused by the human rights violation.

Normally, the Court's award reflects the full amount of the damage. However, if the actual damage cannot be precisely calculated, the Court will make an estimate based on the facts at its disposal. In doing so, it is also possible that the Court find reasons in equity to award less than the full amount of the loss.<sup>283</sup>

## ii) Non-pecuniary Damage

When the Court finds an Article 3 violation it typically grants non-pecuniary damage that provides financial compensation for non-material harm such as mental or physical suffering. In the case of *Dybeku v. Albania*,<sup>284</sup> for instance, the Court reasoned:

As regards non-pecuniary damage, the Court observes that it has found that the applicant's rights under Article 3 of the Convention have been violated. It considers that the applicant suffered damage of a non-pecuniary nature, as a result of his detention in inhuman and degrading conditions, inappropriate to his state of health [...], which is not sufficiently redressed by the finding of a violation of his rights under the Convention.<sup>285</sup>

Likewise, in the case of *Kalashnikov v. Russia*<sup>286</sup> the Court stated that

The Court considers that the length of the applicant's detention on remand in such prison conditions, as well as the length of the criminal proceedings, must have caused him feelings of frustration, uncertainty and anxiety which cannot be compensated solely by the finding of a violation.<sup>287</sup>

In terms of the amount the Court grants, it will make an assessment on an equitable basis and might not award the full loss suffered. Thus, applicants should be aware that even where his or her claim is based on supporting documents, the Court might award a lower amount than the sum claimed.

---

282 Ibid., § 940.

283 See Practice Directions, Just satisfaction claims, available online: [www.echr.coe.int/Documents/PD\\_satisfaction\\_claims\\_ENG.pdf](http://www.echr.coe.int/Documents/PD_satisfaction_claims_ENG.pdf)

284 *Dybeku v. Albania*, no. 41153/06, 18 December 2007.

285 Ibid., §§ 67–68.

286 *Kalashnikov v. Russia*, no. 47095/99, 15 July 2002.

287 Ibid., § 142. See also *Zenkov v. Russia*, no. 37858/08, 30 April 2014, § 67.

### iii) Costs and Expenses

The Court also awards documented costs and expenses that arose in the connection with the domestic procedure and the procedure before the Court. Such costs and expenses typically include costs of legal assistance,<sup>288</sup> court fees,<sup>289</sup> translation,<sup>290</sup> photocopying,<sup>291</sup> postal costs,<sup>292</sup> and travel costs.<sup>293</sup> The Court only awards costs and expenses insofar they relate to a violation. Hence, it is advisable to clearly relate each cost and expense to a specific complaint.

In order for costs and expenses to be reimbursable, the Court requires them to be actual, necessary, and reasonable.<sup>294</sup>

### b) Individual Measures

The Court or the Committee of Ministers, tasked with the supervision of the execution of judgments, can also require a respondent State to take individual measures. A frequent individual measure is the reopening of domestic procedures. In the case of *Alfatli and Others v. Turkey*, the Court found that “in principle, the most appropriate form of relief would be to ensure that the applicant is granted in due course a retrial by an independent and impartial tribunal.”<sup>295</sup> The vast majority of member States allow within their domestic laws for the reopening of criminal proceedings.<sup>296</sup> A number of member States also provide for the reopening of proceedings with regard to civil and administrative procedures.<sup>297</sup> The reopening

288 See e.g. *Kakabadze and Others v. Georgia*, no. 1484/07, 2 October 2012, § 108.

289 See e.g. *Sannino v. Italy*, no. 30961/03, 27 April 2006, §§ 72–76.

290 See e.g. *Nilsen and Johnsen v. Norway*, no. 23118/93, 25 November 1999, § 60.

291 See e.g. *Pétur Thór Sigurðsson v. Iceland*, no. 39731/98, 10 April 2003, § 108.

292 See e.g. *Mitev v. Bulgaria*, no. 40063/98, 22 December 2004, § 170.

293 See e.g. *Nilsen and Johnsen v. Norway*, no. 23118/93, 25 November 1999, § 60.

294 See e.g. *Asalya v. Turkey*, no. 43875/09, 15 April 2014, § 128; *Zinchenko v. Ukraine*, no. 63763/11, 13 March 2014 § 120.

295 *Alfatli and Others v. Turkey*, no. 32984/96, 30 October 2003, § 52.

296 Elisabeth Lambert Abdelgawad, “The Execution of the Judgments of the European Court of Human Rights: Towards a Non-coercive and Participatory Model of Accountability”, in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 69, 2009, p. 481.

297 A study conducted by Tom Barkhuysen and Michiel I van Emmerik, “A Comparative View on the Execution of Judgments of the European Court of Human Rights”, in Theodora A Christou and Juan Pablo Raymond (eds), *European Court of Human Rights. Remedies and Execution of Judgments*, British Institute of International and Comparative Law, 2005, pp. 9–10 found that Bulgaria, Lithuania, Norway, Malta, Switzerland, Denmark, Germany, Finland, Luxembourg, Sweden, Croatia, Poland, Andorra, Iceland, Hungary, Russia, Slovakia, Czech Republic, Turkey and Romania provide for a reopening of civil procedures. Recommendations of the Committee of Ministers also show that this possibility exists in the Ukraine (*Hunt v. Ukraine*, no. 31111/04, Committee of Ministers, ResDH (2008) 64, 25 June 2008), Romania (*Ionescu and Mihaila v. Romania*, no. 36782/97, Committee of Ministers, ResDH (2011) 248, 2 December 2011), Armenia (*Nikoghosyan and Melkonyan v. Armenia*, nos. 11724/04 and 13350/04, Committee of Ministers, ResDH (2011) 89, 14 September 2011), Georgia (*FC Mretebi v. Georgia*, no. 38736/04, Committee of Ministers, ResDH (2010) 163, 2 December 2010), Belgium (*Da Luz Domingues Ferreira v. Belgium*, no. 50049/99, Committee of Ministers, →

of proceedings can be crucial for a *restitutio in integrum*.<sup>298</sup> Thus the Committee of Ministers opined that the reopening of proceedings has proved the most efficient, if not the only, means of achieving *restitutio in integrum*.<sup>299</sup> In their submission, applicants can state as to what extent domestic procedures could be re-opened and if this would constitute full redress.

The Court or the Committee of Ministers could also require States to take other individual measures such as the non-enforcement of a domestic judgment, a specific treatment in prison (e.g. refrain from handcuffing<sup>300</sup>), the termination of criminal proceedings,<sup>301</sup> the lift of a travel ban,<sup>302</sup> the granting of permanent residence permit,<sup>303</sup> investigations into cases of torture,<sup>304</sup> the trial of perpetrators of torture,<sup>305</sup> or the restitution of property.<sup>306</sup>

### c) General Measures and the Pilot Judgment Procedure

The Court or the Committee of Ministers may also ask the State to take general measures such as amending laws or changing practices. Usually, it is the Committee of Ministers that translates the finding of a judgment into general measures. Typical general measures are the amendment of legislation as well as the translation and the dissemination of a judgment.<sup>307</sup> In the context of Article 3, the Committee of Minister's Resolution on the case of *Gongadze v. Ukraine*<sup>308</sup> is illustrative.

---

ResDH (2009) 119, 3 December 2009), San Marino (*Stefanelli v. San Marino*, no. 35396/97, Committee of Ministers, ResDH (2004) 4, 24 April 2004), Austria (*Schelling, Birnleitner, Bakker, Abrahamian, Brugger, Emmer-Reissig and Hofbauer (No. 2) v. Austria*, no. 55193/00; et al., Committee of Ministers, ResDH (2011) 187, 2 December 2011), Portugal (*Panasenko, Bogumil and Czekalla v. Portugal*, nos. 10418/03, 35228/03 and 38830/97), Committee of Ministers, ResDH (2011) 143, 14 September 2012), and Moldova (*Metropolitan Church of Bessarabia and Others and Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova*, nos. 45701/99 and 952/03, Committee of Ministers, ResDH (2010) 8, 4 March 2010).

298 Marco Borghi, "Switzerland" in Robert Blackburn and Jörg Polakiewicz (eds), *Fundamental Rights in Europe. The European Convention on Human Rights and its Member States, 1950–2000*, Oxford University Press, 2001, p. 876.

299 Committee of Ministers, Recommendation Rec. (2000) 2 of the Committee of Ministers to member States on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights, 19 January 2000, available online: <https://wcd.coe.int/ViewDoc.jsp?id=334147&Sector=secCM&Language=lanEnglish&Ver=original> (last visited 26 November 2013).

300 *Kashavelov v. Bulgaria*, no. 891/05, Committee of Ministers, ResDH (2013) 98, 6 June 2013.

301 *Yankov and 9 Others v. Bulgaria*, nos. 39084/97, 47823/99, 58971/00, 57847/00, 39270/98, 42987/98, 44062/98, 74792/01, 29381/04 and 33606/05, Committee of Ministers, ResDH (2013) 102, 6 June 2013.

302 *Riener v. Bulgaria*, no. 46343/99, Committee of Ministers, ResDH (2013) 100, 6 June 2013.

303 *R.C. v. Sweden*, no. 41827/07, Committee of Ministers, ResDH (2013) 75, 30 April 2013.

304 *Gongadze v. Ukraine*, no. 34056/02, Committee of Ministers, ResDH (2008) 35, 5 June 2008.

305 *Ibid.*

306 *Gladysheva v. Russia*, no. 7097/10, 6 October 2011, § 106.

307 See e.g. *Gencel and 205 Other Cases v. Turkey*, nos. 53431 et al., Committee of Ministers, ResDH (2013) 256, 5 December 2013.

308 *Gongadze v. Ukraine*, no. 34056/02, 8 November 2005.

This case dealt with the forced disappearance of a journalist who raised awareness about the lack of freedom of speech in Ukraine. The Committee of Ministers required the respondent State to amend their laws in order to guarantee the independence of investigative bodies.<sup>309</sup>

A very special general measure is the pilot judgment procedure. The Court developed this type of procedure in order to deal with large groups of identical cases that stem from the same structural problem. If the Court receives a significant number of applications deriving from the same root cause, it can select one or more cases for decision while putting on hold the rest of the similar cases. In this decision, i.e. the pilot judgment, the Court tries to find a solution that extends beyond the particular facts of the single case. Usually a pilot judgment contains significant changes in national legislation. Such a pilot judgment aims at supporting national authorities in eliminating the structural problems and in remedying human rights violations. The Court, for instance, applied the pilot judgment procedure in the case of *Torreggiani and Others v. Italy*,<sup>310</sup> which addressed the systemic dysfunction of the Italian prison system. Several hundred applications against Italy were pending before the Court alleging inhuman prison conditions because detainees only had 3 square meters of personal space in their prison cell. In its judgment, the Court asked the national authorities to put in place within one year, preventive and compensatory remedies that are able to redress the overcrowding in Italian prisons.<sup>311</sup> General measures are not claimed by the applicant, but are raised *ex officio* by the Court or the Committee of Ministers.

## 2.2 Admissibility

### 2.2.1 Introduction

Before the Court considers an application on the merits, the applicant must satisfy a number of admissibility criteria. The Court's standing and admissibility rules are contained in Articles 34 and 35 of the Convention. These rules constitute a *de facto* filtering mechanism by means of which the Court removes a large number of cases

---

309 *Gongadze v. Ukraine*, no. 34056/02, Committee of Ministers, ResDH (2008)35, 5 June 2008.

310 *Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, 8 January 2013.

311 *Ibid.*, § 99. Further reading on the pilot judgment procedure: Philip Leach, Helen Hardman and Svetlana Stephenson, "Can the European Court's Pilot Judgment Procedure Help Resolve Systemic Human Rights Violations? *Burdov* and the Failure to Implement Domestic Court Decisions in Russia", in *Human Rights Law Review*, vol. 10, 2010, pp. 346–359; Antoine Buyse, "The Pilot Judgment Procedure at the European Court of Human Rights: Possibilities and Challenges", in *The Greek Law Journal*, vol. 57, 2009, pp. 1890–1902; Markus Fyrnys, "Expanding Competences by Judicial Lawmaking: The Pilot Judgment Procedure of the European Court of Human Rights", in *German Law Journal*, vol. 12, 2011, pp. 1231–1259.

from its heavily overburdened docket. From the standpoint of the applicant, the admissibility rules therefore constitute a main hurdle to having a case heard in Strasbourg. The recent and ongoing reform efforts are, by and large, aimed at empowering the Court to dispose of inadmissible cases more easily and efficiently.<sup>312</sup>

In 2012 86,201 applications were declared inadmissible or struck out of the list of cases by a Single Judge, Committee or Chamber, a 70% increase compared to 2011 (50,677). Single Judges issued inadmissibility decisions in 81,764 cases in 2012, an increase of 74% compared to 2011 (46,930).<sup>313</sup> These figures do not even include cases disposed of administratively before reaching the admissibility stage (18,700 in 2012<sup>314</sup>). One must compare this with 1,678 applications (compared with 1,511 in 2011 – an increase of 11%) that were decided on the merits out of a total of 1,093 judgments delivered, since a significant portion of these applications were joined.<sup>315</sup>

Therefore, the importance for applicants of carefully reviewing the Court's admissibility criteria cannot be underestimated. In this regard, prospective applicants should pay careful attention to the Court's practice and jurisprudence on admissibility issues. Applicants should also consult and comply conscientiously with the Rules of Court<sup>316</sup> and pay careful attention to the Court's Practice Directions such as the "Institution of Proceedings"<sup>317</sup> and the 'Notes for filling in the application form'<sup>318</sup> in order to avoid having the case declared inadmissible on purely procedural grounds. The Court renders further assistance in its extensive admissibility guide available online and in 25 languages.<sup>319</sup> This admissibility guide also makes reference to the most important case law with regard to the admissibility criteria.

The Court's rules of admissibility<sup>320</sup> incorporate the following elements, in particular: for an application to be considered admissible, the applicant must convince the Court 1) that he or she has a victim status; 2) that the application is 'compatible',

---

312 See e.g. Michael O'Boyle, "On Reforming the Operation of the European Court of Human Rights", in *European Human Rights Law Review*, vol. 1, 2008, pp. 1–11; Christina G. Hioureas, "Behind the Scenes of Protocol No. 14: Politics in Reforming the European Court of Human Rights", in *Berkley Journal of International Law*, vol. 24, 2006, pp. 718–757; Patricia Egli, "Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms: Towards a More Effective Control Mechanism?", in *Journal of Transnational Law and Policy*, vol. 17, 2008, pp. 1–34.

313 European Court of Human Rights, *Analysis of Statistics 2012*, Council of Europe, 2013, p. 4.

314 Ibid.

315 Ibid., p. 5.

316 See Appendix No. 2.

317 See Appendix No. 4.

318 See Appendix No. 4.

319 Admissibility guide, available online: [http://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis&c=#n1347458601286\\_pointer](http://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis&c=#n1347458601286_pointer).

320 See generally, Karen Reid, *A Practitioner's Guide to the European Convention on Human Rights*, 4<sup>th</sup> ed., Sweet and Maxwell, 2011, pp. 26–56; Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights*, 3<sup>rd</sup> ed., Oxford University Press, 2012, pp. 29–39.

or rather not ‘incompatible’, with the Convention *ratione temporis*, *ratione loci*, *ratione materie*, and *ratione persone*; 3) that he or she has exhausted domestic remedies; 4) that the complaint complies with the rule that it must be submitted within six month (or four months, after the entry into force of Protocol No. 15 to the Convention) after the final domestic decision; 5) that the complaints are sufficiently “substantiated” on their face to disclose a violation of the Convention; 6) that the damage suffered is substantial; (7) that the applicant suffered a substantial disadvantage and finally that the application is not 8) ‘abusive’; 9) ‘anonymous’; or 10) ‘substantially the same’ as one which has been or is being considered by another international procedure of investigation or settlement. Virtually all of these criteria have been interpreted extensively by the Court and some of them have important exceptions. Some of these exceptions apply specifically in the context of violations of Articles 2 and 3. The admissibility requirements are discussed below in sections 2.2.2–2.2.8

The Court, through its rules of admissibility, imposes a very high standard of diligence on applicants wishing to have their “day in court” in Strasbourg. However, it is important to note that the obligation of due diligence starts well before proceedings commence in Strasbourg. In fact, as will be seen in this section, due diligence needs to be exercised from the very beginning of the case in the national system if it is to have a chance of succeeding before the Court: an applicant who has not presented properly documented complaints to the appropriate domestic authorities on a timely basis and in compliance with domestic rules of procedure will have a difficult time convincing the Court that his or her application merits consideration. To be sure, the principle of subsidiarity,<sup>321</sup> which stipulates “that the High Contracting Parties [...] have the primary responsibility to secure the rights and freedoms defined in this Convention,”<sup>322</sup> requires that Contracting Parties be given a proper opportunity to redress complaints through their own domestic system before being held to account internationally.

321 See Dinah Shelton, “Subsidiarity and Human Rights Law”, in *Human Rights Law Journal*, vol. 27, 2006, p. 5; Mark Villiger, “The Principle of Subsidiarity in the European Convention on Human Rights”, in Marcelo G. Kohen (ed.), *Promoting Justice, Human Rights and Conflict Resolution through International Law; Liber Amicorum Lucius Caflisch*, Brill, 2007, p. 623; Herbert Petzold, “The Convention and the Principle of Subsidiarity”, in Ronald St. J. MacDonald, Franz Matscher and Herbert Petzold (eds.), *The European System for the Protection of Human Rights*, Kluwer, 1993, pp. 41–62.

322 Protocol No. 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms, ETS No. 213, 24 June 2013, Article 1 amending the Preamble to the Convention. See also *Scordino v. Italy*, (No. 1) [GC], no. 36813/97, 26 March 2006, § 140.

## 2.2.2 Victim Status (Article 34)

### a) Introduction

Article 34 governs the question of standing before the Court. It states that the Court may receive applications from

any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention or the protocols thereto.

The term “person” covers not only natural persons but also legal persons, such as trade unions,<sup>323</sup> political parties,<sup>324</sup> companies<sup>325</sup> or other associations.<sup>326</sup> However, governmental organisations or State-owned companies cannot bring an application to the Court against their own State under the theory that a Contracting Party cannot complain against itself to the Court.<sup>327</sup>

The Court distinguishes between three different types of victims: direct victims, potential victims and indirect victims.

### b) Direct Victim

Most applicants before the Court are direct victims who have been personally affected by a measure, act or omission of a Contracting Party. Hence, a direct victim is for instance a person who has been tortured or has been held in detention. A person may lose his or her victim status if the violation is appropriately remedied by the Contracting Party.<sup>328</sup>

The term “victim” is interpreted autonomously and is not dependent on notions of “standing” or “interest” under domestic law.<sup>329</sup> It denotes a person who is *directly affected*<sup>330</sup> by a governmental act or omission or, in other words, a person who can show “a sufficiently direct link between the applicant and the harm which they consider they have sustained on account of the alleged violation.”<sup>331</sup>

---

323 *Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, 2 July 2002.

324 *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98, 41342/98, 41343/98 and 41344/98, 13 February 2003.

325 *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, 30 June 2005.

326 *The Holy Monasteries v. Greece*, nos. 13092/87 and 13984/88, 9 December 1994.

327 *RENFE v. Spain*, no. 35216/97, Commission decision, 8 September 1997.

328 *See Eckle v. Germany*, no. 8130/78, 15 July 1982, § 66.

329 *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, 27 April 2004, § 35, and *Sanles Sanles v. Spain* (dec.), no. 48335/99, 26 October 2000.

330 *Amuur v. France*, no. 19776/92, 25 June 1996, § 36.

331 *Ibid.* See also *Comité des médecins à diplômes étrangers v. France and Others v. France* (dec.), nos. 39527/98 and 39531/98, 30 March 1999.

However, the existence of a violation of the Convention is “conceivable even in the absence of prejudice;”<sup>332</sup> prejudice means a “damage or detriment to one’s legal rights or claims”.<sup>333</sup> Prejudice in the sense of a material or immaterial damage is only necessary in the context of compensation (Article 41 ECHR).

### c) Potential Victim

A potential victim is a person who is at risk of being affected by a law or act of the State. For instance, an individual who is under threat of being tortured if extradited is a potential victim.

It is important to note that the Convention does not provide for an *actio popularis* that would “permit individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention.”<sup>334</sup> In other words, individuals cannot complain in the abstract about legislation or governmental acts which have not been applied to them personally through a measure of implementation, for instance, criminal prosecution. Therefore, if applicants wish to challenge legislation that has not been applied to them, they must be able to prove that the mere existence of the legislation has a direct effect on the exercise of their Convention rights.

### d) Indirect Victims

An act or an omission may, in addition to directly victimising one or more persons, also have indirect repercussions on other persons who are closely connected to the direct victim(s).<sup>335</sup> This occurs primarily in cases involving persons who are disappeared or killed by State agents and in some deportation and expulsion cases. Family members and the next of kin of killed or disappeared persons are usually considered indirect victims. In such circumstances, the indirectly affected persons may bring complaints as victims in their own right.

The case of *İpek v. Turkey* concerned the disappearance of the applicant’s two sons who were last seen in the hands of State security forces. The applicant alleged that he had suffered acute distress and anguish as a result of his inability to find out what had happened to his sons and because of the way the authorities had responded and treated him in relation to his enquiries. The Court held that the question of whether a family member of a disappeared person is a victim of treatment in breach of Article 3 depends on the existence of special factors which give the

---

332 *Amuur v. France*, no. 19776/92, 25 June 1996, § 36.

333 Black’s Law Dictionary, 9<sup>th</sup> ed., West/Thomson Reuters, 2009, p. 1299.

334 *Aksu v. Turkey*, nos. 4149/04 and 41029/04, 15 March 2012, § 50, and *Tănase v. Moldova* [GC], no. 7/08, 27 April 2010, § 104.

335 See generally Marko Novakovic, “The Concept of Indirect Victim in the Practice of ECHR”, in *Foreign Legal Life*, vol. 1, 2011, pp. 261–270.

suffering of the applicant a dimension and character distinct from the emotional distress which is inevitably caused to the relatives of a victim of a serious human rights violation. Relevant elements include the proximity of the family tie (a certain weight will attach to the parent-child bond), the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person, and the way in which the authorities responded to those attempts. The Court emphasised that the essence of such a violation did not so much lie in the fact of the disappearance of the family member but rather concerned the authorities' reactions and attitudes to the situation when it was brought to their attention. According to the Court, it was especially in respect of the latter that a relative could claim to be a victim of the authorities' conduct. Having found that the applicant had suffered, and continued to suffer distress and anguish as a result of the disappearance of his two sons and of his inability to find out what had happened to them, and in view of the manner in which his complaints had been dealt with by the authorities, the Court concluded that there had been a violation of Article 3 in respect of the applicant.<sup>336</sup>

In *Chahal v. the United Kingdom*, which concerned Mr. Chahal's imminent deportation to India, his wife and children were also allowed to join the case as applicants and argued that Mr. Chahal's deportation would violate their right to respect for family life under Article 8 of the Convention.<sup>337</sup> In *Çakıcı v. Turkey*, on the other hand, the Court found that the brother of a disappeared man was not an indirect victim. In this case, the brother

was not present when the security forces took his brother, as he lived with his own family in another town. It appears also that, while the applicant was involved in making various petitions and enquiries to the authorities, he did not bear the brunt of this task, [...] [n]or have any aggravating features arising from the response of the authorities been brought to the attention of the Court in this case.<sup>338</sup>

The next of kin of killed or disappeared persons can not only claim their own rights as indirect victims, they can also allege Article 2 and 3 violations of their killed or disappeared relatives (section e below). In addition, the application of a person who dies while the Strasbourg proceedings are pending may be pursued by a close relative (section f below).<sup>339</sup>

---

336 *İpek v. Turkey*, no. 25760/94, 17 February 2004, §§ 178–183.

337 *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996.

338 *Çakıcı v. Turkey*, no. 23657/94, 8 July 1999, § 99.

339 See *Aksoy v. Turkey*, no. 21987/93, 18 December 1996, § 7, in which the father of a victim of ill-treatment continued the application lodged by his son who died in the course of the Court's proceedings.

### e) Standing of Next of Kin

The Court stated in *İlhan v. Turkey* that “complaints must be brought by or on behalf of persons who claim to be victims of a violation of one or more of the provisions of the Convention. Such persons must be able to show that they were “directly affected” by the measure complained of.”<sup>340</sup> It follows, therefore, that an application can be introduced, for example, by a close relative of the deceased or a close relative of the disappeared. The applicant in such a case will have the requisite standing to bring complaints concerning the events which led to, or which are related to, the disappearance or the death of his or her relative. Indeed, if this were not the case, the protection provided in Article 2 of the Convention would be ineffective because, for obvious reasons, persons who are deceased or disappeared are themselves not capable of bringing complaints to the attention of the Court. Close relatives of deceased persons whom the Court held to have the requisite standing in Article 2 cases have included a wife,<sup>341</sup> a father,<sup>342</sup> a brother,<sup>343</sup> a son,<sup>344</sup> a daughter,<sup>345</sup> and a nephew.<sup>346</sup>

In ill-treatment cases, a close relative of the victim may have the requisite standing if the victim is in a particularly vulnerable position<sup>347</sup> due to his or her status, for instance as a detainee or conscript, or as a result of the ill-treatment. In the case of *İlhan v. Turkey*, the brother of the applicant had suffered brain damage and a long-term impairment of function as a result of being severely beaten by Turkish law enforcement officers. The applicant made it clear that he was complaining on behalf of his brother who, considering his state of health, was not in a position to pursue the application himself. The Court held that “it would generally be appropriate for an application to name the injured person as the applicant and for a letter of authority to be provided allowing another member of the family to act on his or her behalf. This would ensure that the application was brought with the consent of the victim of the alleged breach and would avoid *actio popularis* applications”.<sup>348</sup> However, having regard to the special circumstances of the case, i.e. the mental impairment of the applicant's brother, the Court concluded that the applicant could

340 *İlhan v. Turkey* [GC], no. 22277/93, 27 June 2000, § 52.

341 See *Süheyla Aydın v. Turkey*, no. 25660/94, 24 May 2005.

342 *İpek v. Turkey*, no. 25760/94, 17 February 2004.

343 *Koku v. Turkey*, no. 27305/95, 31 May 2005.

344 *Akkum and Others v. Turkey*, no. 21894/93, 24 March 2005.

345 Austrian Constitutional Court, judgment of 6 March 2001, B 159/00, VfSlg 16.109, excerpts in: Markus Vasek, “Family Members of a Deceased Asylum Seeker May Legitimately File a Complaint to Assert the Right to Life”, in *Vienna Journal on International Constitutional Law*, vol. 16, 2011, pp. 77–81.

346 *Yaşa v. Turkey*, no. 22495/93, 2 September 1998.

347 See Alexander H. E. Morawa, “‘Vulnerability’ as a Concept in International Human Rights Law”, in *Journal of International Relations and Development*, vol. 10, 2003, pp. 139–55.

348 *İlhan v. Turkey* [GC], no. 22277/93, 27 June 2000, § 53.

be regarded as having validly introduced the application on his brother's behalf even in the absence of a letter of authority.<sup>349</sup>

### **f) Death of the Victim**

Under certain circumstances, the Court may allow a close family member to “adopt” the application of an applicant who dies while the proceedings are pending or to allow another person to do so if they can claim the existence of a legitimate interest in doing so.<sup>350</sup> Such a situation arose in the case of *Aksoy v. Turkey*. While the Court was considering Mr. Aksoy's application – in which he complained of having been tortured in police custody – he was shot and killed by unknown assailants. The Court subsequently allowed the applicant's father to pursue the case.<sup>351</sup> Close family members are, routinely, parents, spouses or children of victims.<sup>352</sup> Distant persons, such as executors of wills, have to show an intent as well as a legitimate interest in pursuing the application.<sup>353</sup> As for that interest, the Court has noted that

the transferability or otherwise of the applicant's claim is not always decisive, for it is not only material interests which the successors of deceased applicants may pursue by their wish to maintain the application. Cases before the Court generally also have a moral or principled dimension, and persons close to an applicant may thus have a legitimate interest in obtaining a ruling even after that applicant's death.<sup>354</sup>

In cases where no close relative wishes to pursue the application subsequent to the applicant's death, the Court may decide to strike the application out of its list of cases, considering that the demise of the applicant constitutes a fact “of a kind to provide a solution of the matter.”<sup>355</sup> However, where the subject matter of the case raises issues of general importance, the Court may continue to examine the case following the death of the applicant and despite the absence of a family member or an heir to adopt the case.<sup>356</sup> Instructive in this context is the case of *Karner v. Austria*.

---

349 Ibid., § 55. The fact that an applicant lacks legal capacity for the purposes of national law and procedure for brain damage or other reasons, will not prevent him or her from exercising the right of individual application under Article 34 of the Convention; see *Winterwerp v. the Netherlands*, no. 6301/73, 24 October 1979, §§ 65–66.

350 See *X v. France*, no. 18020/91, 31 March 1992, § 26; *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, 13 December 2000; *Yanchev v. Bulgaria* (dec.), no. 16403/07, 20 March 2012.

351 *Aksoy v. Turkey*, no. 21987/93, 18 December 1996, § 7.

352 *Vocaturu v. Italy*, no. 11891/85, 24 May 1991, § 2; *G. v. Italy*, no. 12787/87, 27 February 1992, § 2; *Pandolfelli and Palumbo v. Italy*, no. 13218/87, 27 February 1992, § 2; *X v. France*, no. 18020/91, 31 March 1992, § 26, and *Raimondo v. Italy*, no. 12954/87, 22 February 1994, § 2.

353 *S.G. v. France* (striking out), no. 40669/98, 18 September 2001, §§ 6 and 16; *Thévenon v. France* (dec.), no. 2476/02, 28 February 2006; *Léger v. France* (striking out) [GC], no. 19324/02, 30 March 2009, §§ 47–51, and *Mitev v. Bulgaria* (dec.), no. 42758/07, 29 June 2010.

354 *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, 29 April 2013, § 73, and *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, 13 December 2000.

355 *Scherer v. Switzerland*, no. 17116/90, 25 March 1994, § 32.

356 See *Karner v. Austria*, no. 40016/98, 24 July 2003.

Mr. Karner complained, under Article 14 (prohibition of discrimination) taken together with Article 8 (right to respect for private and family life and for home) of the Convention, that the Supreme Court's decision not to recognise his right to succeed to a tenancy after the death of his companion amounted to discrimination on the ground of his sexual orientation. After lodging the application with the Court, the applicant passed away. Although there were no heirs wishing to pursue the applicant, the Court continued the examination of the case because

[t]he Court considers that the subject matter of the present application – the difference in treatment of homosexuals as regards succession to tenancies under Austrian law – involves an important question of general interest not only for Austria but also for other States Parties to the Convention. [...] Thus, the continued examination of the present application would contribute to elucidate, safeguard and develop the standards of protection under the Convention.<sup>357</sup>

In contrast, in the case of *Hirsi Jamaa and Others v. Italy*, the relatives of one of the deceased applicants were not able to continue the application. Here, several Somali and Eritrean applicants complained about their return by Italy to Libya and ultimately to their countries of origin. Two of them passed away after filing the application. The Court held that since their complaints were

identical to those submitted by the other applicants, on which it will express its opinion [...] the Court sees no grounds relating to respect for human rights secured by the Convention and its Protocols which, in accordance with Article 37 § 1 in fine, would require continuation of the examination of the deceased applicants' application.<sup>358</sup>

### g) The Loss of Victim Status

The question whether or not an applicant can claim to be a victim of the alleged violation "is relevant at all stages of the proceedings under the Convention."<sup>359</sup> The applicant may lose status as a victim if he or she has succeeded in obtaining a favourable decision from the domestic courts in respect of his or her Convention complaints. However, a decision or measure favourable to the applicant is not always sufficient to deprive him or her of victim status; in order for this to happen, the national authorities must have acknowledged the breach, either expressly or in substance, and then afforded redress for it.<sup>360</sup>

357 Ibid., § 27.

358 *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, 23 February 2012, § 58.

359 *E. v. Austria*, no. 10668/83, Commission decision, 13 May 1987; *Burdov v. Russia*, no. 59498/00, 7 May 2005, § 30.

360 *Eckle v. Germany*, no. 8130/78, 15 July 1982, § 66; *Lüdi v. Switzerland*, no. 12433/86, 15 June 1992, § 34; *Dalban v. Romania* [GC], no. 28114/95, 28 September 1999, § 44; *Scordino v. Italy (No. 1)* [GC], no. 36813/97, 29 March 2006, §§ 179–180; *Gäfgen v. Germany* [GC], no. 22978/05, 1 June 2010, § 115.

In the context of Article 3, it is of particular relevance whether the domestic authorities conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible<sup>361</sup> and whether an award of compensation was made or is at the very least concretely possible.<sup>362</sup> In *Ciorap v. Moldova* (No. 2), for instance, the Court found that an award of compensation by a domestic court was “considerably below the minimum generally awarded by the Court in cases in which it has found a violation of Article 3”<sup>363</sup> and continued the examination of the application. There may also be situations in which the prosecution and punishment of the perpetrators were insufficient in the eyes of the Court to establish that the applicant has lost victim status. This point is well illustrated by the Court’s judgment in the case of *Mikheyev v. Russia*, where the respondent Government notified the Court – after the case had been pending before the Court for a number of years – that the police officers who ill-treated the applicant had been convicted by a domestic court of abuse of official power and sentenced to four years’ imprisonment. The Court noted, however, that the domestic decision did not, in the circumstances of the case, affect the applicant’s victim status for the following reasons:

In the present case, the Court notes firstly that the judgment of 20 November 2005 is not yet final, and may be reversed on appeal. Secondly, although the fact of ill-treatment was recognised by the first-instance court, the applicant has not been afforded any redress in this respect. Thirdly, the judgment of 30 November 2005 dealt only with the ill-treatment itself and did not examine the alleged flaws in the investigation, which is one of the main concerns of the applicant in the present case.<sup>364</sup>

In the context of the removal of aliens through deportation or extradition, the Court has held that the regularisation of an applicant’s stay or the fact that the applicant was no longer under the threat of being deported or extradited – even if the case was still pending before the Court – was “sufficient” in principle to remedy a complaint under Articles 3 (non-refoulement) or 8 (family life).<sup>365</sup>

### 2.2.3 Incompatibility of the Application (Article 35 § 3)

Under Article 35 § 3 of the Convention, the Court will declare a complaint inadmissible if it is not compatible with the provisions of the Convention or its Protocols. A complaint may be incompatible for one or more of the following four reasons: *ratione temporis* (time), *ratione loci* (place), *ratione personae* (person) or *ratione materiae* (subject matter). In essence, these requirements mean that a complaint

361 *Çamdereli v. Turkey*, no. 28433/02, 17 July 2008, §§ 28–29.

362 See e.g. *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20 December 2007, § 56.

363 *Ciorap v. Moldova* (No. 2), no. 7481/06, 20 July 2010, §§ 23–25.

364 *Mikheyev v. Russia*, no. 77617/01, 22 January 2006, §§ 61 and 89–90.

365 *Yang Chun Jin alias Yang Xiaolin v. Hungary* (striking out), no. 58073/00, 8 March 2001, §§ 20–23; *Fjodorova and Others v. Latvia* (dec.), no. 69405/01, 6 April 2006.

must concern events which took place at the right point in time and in the right place and must be filed by, and relate to, the right person and involve the right subject matter. Thus, complaints relating to events which took place before entry into force of the Convention in the Contracting Party are inadmissible *ratione temporis*; complaints relating to events over which the Contracting Party has no jurisdiction, such as in principle those occurring outside its territory are inadmissible *ratione loci*; complaints by persons who are not victims or which complain about the acts of entities over which the Contracting Party has no jurisdiction, or against States that are not Contracting Parties, are inadmissible *ratione personae*; complaints claiming the infringement of rights that are not protected by the Convention will be dismissed *ratione materiae*. There are a number of important exceptions to these general rules particularly concerning continuing violations<sup>366</sup> and the liability of Contracting Parties for extraterritorial acts.<sup>367</sup> They are explained below.

### a) Incompatibility *Ratione Temporis*

By virtue of a generally recognised rule of international law, a Contracting Party can only be required to answer to facts and events that occurred subsequent to the entry into force of the Convention and Protocols with regard to the Party in question.<sup>368</sup> The Court has held that the Convention “imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to that date.”<sup>369</sup> Accordingly, the Court cannot examine a complaint relating to events that occurred before the ratification of the Convention and Protocols by the respondent State. The case of *Kalashnikov v. Russia*<sup>370</sup> may serve as an example. The applicant complained under Article 3 of the Convention about his ill-treatment by Russian special forces in July 1996 while in detention on remand. Considering that the Convention entered into force with respect to Russia on 5 May 1998, the Court observed that the applicant’s complaint related to a period prior to that date. It therefore declared this complaint inadmissible as being incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3.

Although the Convention can have no retroactive effect, there is an important exception to this general rule. If a complaint relates to a continuing situation, that is to say, a violation of the Convention caused by an act which was committed

366 See e.g. *Loizidou v. Turkey* (preliminary objections), no.15318/89, 23 March 1995, which concerned the applicant’s inability to use her property in Cyprus since 1974. For dates of entry into force of the Convention and Protocols in Contracting Parties, see *Textbox i*.

367 See e.g. *Issa v. Turkey*, no. 31821/96, 16 November 2004, which concerned the killing of a number of persons in Iraq, allegedly by members of the Turkish security forces.

368 *Nielsen v. Denmark*, judgment of 2 September 1959, Yearbook II (1958–1959), p. 412.

369 *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, 21 October 2013, § 130, and *Kopecký v. Slovakia* [GC], no. 44912/98, 28 September 2004, § 38.

370 *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001.

prior to the entry into force of the Convention in respect of a Contracting Party, but which continues after the entry into force of the Convention owing to the consequences of the original act,<sup>371</sup> then the Court will have jurisdiction to examine the complaint. A continuing Article 3 violation was for instance found in the case of *Moldovan and Others v. Romania*. This case was related to the destruction of houses and belongings of Romanian citizens of Roma origin by police officers. Although the destruction had taken place before Romania ratified the Convention and the application with regard to property rights was therefore inadmissible *ratione temporis*, the Court did find on going suffering that amounted to a violation of Article 3 of the Convention.<sup>372</sup> The Court reasoned that

following this incident, having been hounded from their village and homes, the applicants had to live, and some of them still live, in crowded and improper conditions – cellars, hen-houses, stables, etc. – and frequently changed address, moving in with friends or family in extremely overcrowded conditions.<sup>373</sup>

Continuing violations of Article 3 of the Convention involving events that occurred before the Convention was in force are often discussed in the context of procedural obligations. In other words, the Court can find a violation of the procedural limb of Article 3 if the authorities did not carry out effective investigations into acts that occurred prior to the entry into force of the Convention. Two notable examples in this context are *Šilih v. Slovenia* and *Janowiec and Others v. Russia*, in which the Court found that the duty to conduct an effective investigation into acts contrary to Articles 2 and 3 of the Convention,<sup>374</sup> “had evolved into a separate and autonomous duty.”<sup>375</sup> The Court circumscribed the so-called *Šilih*-criteria as follows:

Firstly, where the death occurred before the critical date, the Court's temporal jurisdiction will extend only to the procedural acts or omissions in the period subsequent to that date. Secondly, the procedural obligation will come into effect only if there was a “genuine connection” between the death as the triggering event and the entry into force of the Convention. Thirdly, a connection which is not “genuine” may nonetheless be sufficient to establish the Court's jurisdiction if it is needed to ensure that the guarantees and the underlying values of the Convention are protected in a real and effective way.<sup>376</sup>

This statement reveals that there are two criteria to be fulfilled: the “genuine connection” criterion and the “Convention value” criterion. With regard to the former,

---

371 Peter van Dijk and Godefridus J. H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, Kluwer Law International, 1998, p. 11.

372 Ibid., §§ 104–114.

373 *Moldovan and Others v. Romania* (No. 2), nos. 41138/98 and 64320/01, 12 July 2005, § 103.

374 See generally Juliet Chevalier-Watts, “Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?”, in *European Journal of International Law*, vol. 21, 2010, pp. 701–721.

375 *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, 21 October 2013, § 132.

376 Ibid., § 141, with reference to *Šilih v. Slovenia* [GC], no. 71463/01, 9 April 2009, §§ 162–163.

the Court specified that there is a genuine connection between the triggering event and the entry into force of the Convention when a significant portion of the procedural steps were or ought to be carried out after the critical date.<sup>377</sup> In *Janowiec and Others v. Russia*, the Court further determined that the lapse of time between the triggering event and the critical date must remain reasonably short meaning it should not exceed ten years.<sup>378</sup>

Regarding the “Convention values” test, the Grand Chamber specified in *Janowiec and Others v. Russia* in October 2013 that the “required connection may be found to exist if the triggering event was of a larger dimension than an ordinary criminal offence and amounted to the negation of the very foundations of the Convention. This would be the case with serious crimes under international law, such as war crimes, genocide or crimes against humanity, in accordance with the definitions given to them in the relevant international instruments.”<sup>379</sup> However, that retro-active application, when applying the “Convention values” test, cannot extend beyond the date of the adoption of the Convention on 4 November 1950, since “for it was only then that the Convention began its existence as an international human rights treaty.”<sup>380</sup> Thus, the Convention could not apply to the alleged massacre committed by Soviet forces at Katyn Forest in Poland in April and May 1940 as was the subject-matter in the *Janowiec* case.

The Court has also found that it had jurisdiction to examine a respondent State’s compliance – in the post-entry into force period – with the procedural limb of Article 3 which required it to conduct an effective investigation into police brutality,<sup>381</sup> rape<sup>382</sup> and ill-treatment inflicted by a private individual.<sup>383</sup>

### **b) Incompatibility *Ratione Loci***

According to Article 1 of the Convention, “the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention” and the additional Protocols. Article 1 is of the utmost importance because it defines the scope of the Convention and of the obligations of the Contracting Parties. These obligations apply, however, only to those within the jurisdiction of the Contracting Party. Accordingly, a person claiming to be the victim of a violation of the Convention must first demonstrate that he or she was within

---

377 *Šilih v. Slovenia* [GC], no. 71463/01, 9 April 2009, § 163.

378 *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, 21 October 2013, § 146

379 *Ibid.*, § 150.

380 *Ibid.*, § 151.

381 *Yatsenko v. Ukraine*, no. 75345/01, 16 February 2012, § 40; *Stanimirović v. Serbia*, no. 26088/06, 18 October 2011, §§ 28–29.

382 *P.M. v. Bulgaria*, no. 49669/07, 24 January 2012, § 58.

383 *Otašević v. Serbia*, no. 32198/07, 5 February 2013.

the jurisdiction of the respondent State at the time of the alleged violation of the Convention.<sup>384</sup> It follows that the issue of jurisdiction is a “threshold” requirement in the Convention; the question of State responsibility or imputability will arise only after the Court is satisfied that the matters complained of are within the jurisdiction of the respondent State.<sup>385</sup>

The jurisdictional competence of a State is primarily territorial.<sup>386</sup> However, the term “jurisdiction” should not be interpreted as strictly coextensive with the Contracting Parties’ “territory”. Rather, it is well established in the jurisprudence of the Convention organs that Contracting Parties may be held accountable for certain types of extraterritorial conduct.<sup>387</sup> Activities by authorities of a Contracting State outside its territory could fall within the Court’s jurisdiction if the event in question was under the effective control of the Contracting Party. An illustrative case in this regard is the case of *Cyprus v. Turkey*.<sup>388</sup> The case relates to the military operations in northern Cyprus by Turkey. Cyprus maintained that the Turkish occupation violated *inter alia* Article 3 of the Convention. Turkey disputed its responsibility and argued that the alleged acts and omissions were imputable exclusively to the Turkish Republic of Northern Cyprus, an independent State established by the Turkish-Cypriot community.<sup>389</sup> The Court rejected this view and reasoned that

in conformity with the relevant principles of international law [...] the responsibility of a Contracting Party could also arise when as a consequence of military action – whether lawful or unlawful – it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration.<sup>390</sup>

The Court further recalled that a finding that Turkey was not responsible would result in a vacuum of the human rights protection in the territory because it would deprive inhabitants of that territory of the benefit of the Convention rights they would otherwise have enjoyed.<sup>391</sup>

---

384 See generally Angelika Nussberger, “The Concept of ‘Jurisdiction’ in the Jurisprudence of the European Court of Human Rights”, in *Current Legal Problems*, vol. 65, 2012, pp. 241–268.

385 *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, 8 July 2004, § 311.

386 *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989, § 86.

387 See e.g. analysis by Hugh King, “The Extraterritorial Human Rights Obligations of States”, in *Human Rights Law Review*, vol. 9, 2009, pp. 521–556; Morten Peschardt Pedersen, “Territorial Jurisdiction in Article 1 of the European Convention on Human Rights”, in *Nordic Journal of International Law*, vol. 73, 2004, pp. 279–305.

388 *Cyprus v. Turkey*, no. 25781/94, 10 May 2001.

389 *Ibid.*, para. 69.

390 *Ibid.*, para. 76.

391 *Ibid.*, para. 78.

More recently, in the case of *Al-Saadoon and Mufdhi v. the United Kingdom*<sup>392</sup> the Court held that two Iraqi nationals detained in British-controlled military prisons in Iraq fell within the jurisdiction of the United Kingdom, since the United Kingdom exercised total and exclusive control over the prisons and the individuals detained in them. Additionally, in the case of *Medvedyev and Others v. France*<sup>393</sup> the Court held that the applicants, who were apprehended on board a vessel in international waters, were within French jurisdiction by virtue of the exercise by French agents of full and exclusive control over a ship and its crew from the time of its interception.

While “effective control” over a territory has always been a crucial element for jurisdiction, the Court lifted the barrier of territorially defined jurisdiction in favour of a more flexible and modern “effective control”-standard in the case of *Al-Skeini and Others v. the United Kingdom*.<sup>394</sup> Addressing the complaints of relatives of Iraqi citizens killed in the course of military operations by British forces in southern Iraq:

[F]ollowing the removal from power of the Ba’ath regime and until the accession of the Interim Government, the United Kingdom (together with the United States) assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom assumed authority and responsibility for the maintenance of security in South East Iraq. In these exceptional circumstances, the Court considers that the United Kingdom, through its soldiers engaged in security operations in Basrah during the period in question, exercised authority and control over individuals killed in the course of such security operations, so as to establish a jurisdictional link between the deceased and the United Kingdom for the purposes of Article 1 of the Convention.<sup>395</sup>

This standard was developed and further refined in the case of *Catan and Others v. Moldova and Russia*, which concerned the Russian-controlled Transdnistria-region of Moldova:

One exception to the principle that jurisdiction under Article 1 is limited to a State’s own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State’s own armed forces, or through a subordinate local administration. Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact

392 *Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08, 30 June 2009, §§ 86–89.

393 *Medvedyev and Others v. France* [GC], no. 3394/03, 29 March 2010, § 67.

394 *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, 7 July 2011. See also Barbara Miltner, “Revisiting Extraterritoriality after Al-Skeini: The ECHR and its Lessons”, in *Michigan Journal of International Law*, vol. 33, 2012, p. 693; Marko Milanovic, “Al-Skeini and Al-Jedda in Strasbourg”, in *European Journal of International Law*, vol. 23, 2012, pp. 121–139; Miša Zgonec-Rožej, “Al-Skeini v. United Kingdom”, in *American Journal of International Law*, vol. 106, 2012, pp. 131–137.

395 *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, 7 July 2011, § 149.

that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and action.<sup>396</sup>

Finally, *ratione loci* considerations also apply in the context of diplomatic and consular representatives abroad. The former Commission had already established that “authorised agents of a State, including diplomatic or consular agents, bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property.”<sup>397</sup> The same is true for agents’ actions “on board craft and vessels registered in, or flying the flag of” a respondent State<sup>398</sup> or where “in accordance with custom, treaty or other agreement, authorities of the Contracting State carry out executive or judicial functions on the territory of another State.”<sup>399</sup> Furthermore, State responsibility under the Convention may be triggered by the use of force by a State’s agents operating outside its territory, for instance where an individual is taken into custody abroad as in the case of PKK leader Öcalan.<sup>400</sup>

### c) Incompatibility *Ratione Personae*

Article 35 § 3 of the Convention requires the Court to reject as inadmissible an application that is not compatible *ratione personae* with the provisions of the Convention or its Protocols. This requirement implies that the Court cannot examine an application against a State that is not a party to the Convention or the relevant Protocol<sup>401</sup> or against an inter-governmental organization which has not acceded to the Convention.<sup>402</sup> However, actions by member States based upon a legal act of an international organization, are not beyond the reach of the Court.<sup>403</sup>

396 *Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, 19 October 2012, § 106. See also Anthony Cullen and Steven Wheatley, “The Human Rights of Individuals in *de facto* Regimes under the European Convention on Human Rights”, in *Human Rights Law Review*, vol. 10, 2013, pp. 691–728.

397 *M. v. Denmark* (dec.), no. 17392/90, 14 October 1992, § 1; see also *X v. Federal Republic of Germany*, no. 1611/62, Commission decision, 25 September 1965, Yearbook of the European Convention on Human Rights, vol. 8, pp. 158 and 169; *X v. the United Kingdom*, no. 7547/76, Commission decision, 15 December 1977.

398 *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, 12 December 2001, § 73.

399 *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, 7 July 2011, § 135, with reference to *Drozdz and Janousek v. France and Spain*, no. 12747/87, 26 June 1992.

400 *Öcalan v. Turkey* [GC], no. 46221/99, 12 May 2005, § 91.

401 *Rachel Horsham v. the United Kingdom*, Commission decision, no. 23390/94, 4 September 1995, § 3.

402 *Behrami and Behrami v. France and Saramati v. France, Germany and Norway* (dec.) [GC], nos. 71412/01 and 78166/01, 2 May 2007, § 143.

403 “The State is considered to retain Convention liability in respect of treaty commitments subsequent to the entry into force of the Convention.” *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, 30 June 2005, § 154, *Matthews v. the United Kingdom* [GC], no. 24833/94, 18 February 1999, §§ 29 and 32–34, and *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, 12 July 2001, § 47. See generally Tobias Lock, “Beyond Bosphorus: The European Court of Human Rights’ Case Law on the Responsibility of member States of International Organisations under the European Convention on Human Rights”, in *Human Rights Law Review*, vol. 10, 2010, pp. 529–545.

In the case of *Nada v. Switzerland*, the respondent government argued that the application was incompatible *ratione personae* because the travel ban they had imposed on the applicant for his alleged connection to the Al-Qaeda was based on a United Nations Security Council Resolution and thus attributable to the United Nations.<sup>404</sup> The Court was not convinced by this argument and reasoned that Security Council Resolutions required States to act in their own names and to implement them at the national level. The travel ban was thus attributable to Switzerland and the application compatible *ratione personae*.<sup>405</sup>

The Court has further declared inadmissible numerous complaints directed against private persons for whom the respondent State was not responsible.<sup>406</sup> In the case of *Papon v. France*, the applicant complained of the hostile media campaign to which he had been subjected and the attitude of the civil parties before and during his trial.<sup>407</sup> The Court rejected this complaint as incompatible *ratione personae* holding that the State authorities could not be held responsible for the actions of private persons. However, particularly if the State delegates core powers to private actors - such as law enforcement activities or prison management - the State will remain entirely responsible for their actions. Also, due diligence requires State agents to monitor, supervise and remedy possible human rights violations of certain private actors. In addition, a Contracting State could be held liable for the acts of private persons under the procedural limb of Article 3 of the Convention. Illustrative in this context is the case of *M.C. v. Bulgaria*.<sup>408</sup> The applicant alleged that she was raped by two friends and that the authorities did not prosecute the alleged perpetrators. The Court reiterated that, under Article 3 of the Convention, member States had a positive obligation both to enact criminal legislation to effectively punish rape and to apply this legislation through effective investigation and prosecution.<sup>409</sup>

Moreover, applications directed towards an entity that is not a party to the Convention are incompatible *ratione personae*. In the case of *Kyriakoula Stephens v. Cyprus, Turkey and the United Nations*<sup>410</sup> the applicant complained that her house has been severely damaged by the fighting between Turkish and Greek-Cypriot forces and that she was denied access to her house, which was under the control of the United Nations. The Court reasoned that the United Nations' legal personality

404 *Nada v. Switzerland* [GC], no. 10593/08, 12 September 2012, § 102.

405 *Ibid.*, §§ 120–123.

406 *Durini v. Italy*, Commission decision, 19217/91, 12 January 1994.

407 *Papon v. France* (No. 2) (dec.), no. 54210/00, 15 November 2001.

408 *M.C. v. Bulgaria*, no. 39272/98, 4 December 2003.

409 *Ibid.*, para. 153.

410 *Kyriakoula Stephens v. Cyprus, Turkey and the United Nations* (dec.), no. 45267/06, 11 December 2008.

is separate from that of its member States and is not a contracting party to the European Convention. Thus the Court is not competent *ratione personae* to review its acts.

#### **d) Incompatibility *Ratione Materiae***

For a complaint to be compatible *ratione materiae* with the Convention, the right relied on by the applicant must be protected by the Convention and the Protocols. In contrast, complaints about rights that are clearly not covered by the Convention as well as rights that are found not to fall within the scope of the Convention articles are declared inadmissible. Cases involving Article 3 of the Convention declared inadmissible *ratione materiae* are rare. An indication as to what kinds of Article 3 complaints are incompatible *ratione materiae* is the case of *Budina v. Russia*.<sup>411</sup> The applicant in this case alleged that her old-age pension was insufficient to maintain an adequate standard of living. Although the Court reiterated that the “mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights” does not render a complaint incompatible *ratione materiae*, the Court declared the application inadmissible because the applicant failed to substantiate concrete suffering. Thus the Court concluded that the high threshold of Article 3 had not been met. Consequently, an Article 3 complaint might be incompatible *ratione materiae* if the threshold for torture or ill-treatment is not met.<sup>412</sup> Having said this, it is important to note that the Convention is understood as a living instrument and its scope has consistently been developed. This means that complaints that do not fall within the scope of the Convention right today might do so in the future.

### **2.2.4 Exhaustion of Domestic Remedies (Article 35 § 1)**

#### **a) General Rules**

According to Article 35 § 1, the Court “may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law [...]” Applicants thus must exhaust domestic remedies before they can complain before the Strasbourg Court.<sup>413</sup> This means that applicants must avail themselves of the normal avenues of judicial relief that exist in the national system and they must have appealed their case to the highest instance possible within that system.<sup>414</sup>

---

<sup>411</sup> *Budina v. Russia* (dec.), no. 45603/05, 18 June 2009.

<sup>412</sup> *Ibid.*

<sup>413</sup> See generally Cesare P. R. Romano, “The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures”, in Nerina Boschiero, Tullio Scovazzi, Cesare Pitea and Chiara Ragni (eds.), *International Courts and the Development of International Law*, Springer, 2013, pp. 561–572.

<sup>414</sup> See *Akdivar and Others v. Turkey*, no. 21893/93, 16 September 1996, § 66.

Applicants cannot raise claims before the Court that were not previously raised, at least in substance, with the national authorities.<sup>415</sup> The purpose of this rule, which is a consequence of the Convention's subsidiary character,<sup>416</sup> is to "afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Convention institutions."<sup>417</sup> Furthermore, if an application is brought to the Court, it "should have the benefit of the views of the national courts, as being in direct and continuous contact with the forces of their countries."<sup>418</sup>

In the context of Article 3 violations, the normal remedy consists of an effective official investigation into the allegations of ill-treatment followed by the prosecution and punishment of the perpetrators.<sup>419</sup> Therefore, in order to comply with the exhaustion requirement, applicants in Article 3 cases must have taken all reasonable steps to ensure that their complaints reached the appropriate national authorities, and must have shared relevant evidence with the authorities on a timely basis and diligently pursued their cases at all stages of the national proceedings.

The only remedies that Article 35 requires to be exhausted are those that "relate to the breaches alleged and at the same time are available and sufficient [...] not only in theory but also in practice."<sup>420</sup> Given that the exhaustion rule requires flexible handling and is unsuitable for excessive formalism,<sup>421</sup> the Court has explained that it must "take realistic account not only of the existence of formal remedies in the legal system of the member State concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicants."<sup>422</sup> However, a mere doubt as to the effectiveness of domestic remedies, even in circumstances where the national authorities systematically fail to act on complaints of ill-treatment, does not absolve the applicant of the requirement of exhausting remedies.<sup>423</sup> In addition, civil or administrative remedies which are only aimed at monetary compensation for the victim but which are not capable of identifying the perpetrator or establishing individual criminal responsibility

---

415 See *Cardot v. France*, no. 11069/84, 19 March 1991, § 34.

416 *Kudła v. Poland* [GC], no. 30210/96, 25 October 2000, § 152; *Handyside v. the United Kingdom*, no. 5493/72, 7 December 1976, § 48.

417 *Hentrich v. France*, no. 13616/88, 22 September 1994, § 33; *Remli v. France*, no. 16839/90, 23 April 1996, § 33.

418 *Burden v. the United Kingdom* [GC], no. 13378/05, 29 April 2008, § 42.

419 See *Assenov and Others v. Bulgaria*, no. 24760/94, 28 September 1998, § 102.

420 *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 75; *Vernillo v. France*, no. 11889/85, 20 February 1991, § 27; *Johnston and Others v. Ireland*, no. 9697/82, 18 December 1986, § 22.

421 *Cardot v. France*, no. 11069/84, 19 March 1991, § 34.

422 *Akdivar and Others v. Turkey* [GC], no. 21893/93, 16 September 1996, § 69.

423 See *Epözdemir v. Turkey* (dec.), no. 57039/00, 31 January 2002.

are not generally considered “effective” for purposes of Article 3 and do not need to be exhausted.<sup>424</sup>

It is noteworthy that the Court on occasion refuses to deal with State's assertions that remedies had not been exhausted where issues are closely related to the merits of an Article 3 complaint. It said, for instance, in the case of *Baklanov v. Ukraine* concerning alleged hazing in the Ukrainian army that caused mental disability:

[T]he issue of exhaustion of domestic remedies is closely linked to the merits of the applicant's complaint under the procedural limb of Article 3 of the Convention regarding the effectiveness of the domestic investigation into his complaint of ill-treatment. The Court therefore joins the Government's objection to the merits of the aforementioned complaint. The Court also considers that this complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits.<sup>425</sup>

In principle, applicants are not required to pursue multiple parallel remedies, should they be available. The Court has held that “when a remedy has been pursued, use of another remedy which has essentially the same objective is not required.”<sup>426</sup>

As a procedural matter, the applicant has the initial burden of proving exhaustion. In fact, the Court will examine the issue of exhaustion *ex officio* in its first examination of the complaint on the basis of the application form. It is therefore imperative that the applicant demonstrates clearly, in the application form, that he or she has exhausted the relevant domestic remedies in relation to the complaints made. A failure to show exhaustion, or to explain why a nominally available remedy was not pursued, will most likely result in the complaint being declared inadmissible by a Committee or Single Judge. If the Court is satisfied that an applicant has made a *prima facie* case showing that he or she has complied with the exhaustion requirement, then the burden shifts to the Contracting Party to show that an effective remedy was available and not exhausted by the applicant.<sup>427</sup> The applicant will then have the opportunity to comment further on the respondent Government's submission. After the admissibility of the application has been considered, the Government is estopped from making further arguments on exhaustion or any other admissibility issues.<sup>428</sup> A Government that for the first time raises an objection of non-exhaustion in their (additional) observations on the merits of the case

---

424 See *Tepe v. Turkey* (dec.), no. 31247/96, 22 January 2002.

425 *Baklanov v. Ukraine*, no. 44425/08, 24 October 2013, §§ 45–46.

426 *Kozacioğlu v. Turkey* [GC], no. 2334/03, 19 February 2009, § 40; *Micallef v. Malta* [GC], no. 17056/06, 15 October 2009, § 58; *Aquilina v. Malta* [GC], no. 25642/94, 29 April 1999, § 39; and *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008, § 84.

427 *Akdivar and Others v. Turkey*, no. 21893/93, 16 September 1996, § 68.

428 *Savitchi v. Moldova*, no. 11039/02, 11 October 2005, § 28.

will no longer be heard.<sup>429</sup> The Court itself can, however, declare a case inadmissible at any stage of the proceedings.

The Court has already developed a body of case law in respect of most Contracting Parties that discusses the domestic remedies that are generally available in those countries; those that are found ineffective to remedy particular violations are routinely disposed of in subsequent cases by mere reference to precedent.<sup>430</sup> It is important for applicants to refer to this case law when arguing exhaustion in their application forms. This pertains in particular to jurisprudence that indicates that the question of exhaustion of certain identified remedies is “closely related to the merits of the applicant’s complaint,” thus rendering the application admissible.<sup>431</sup> In other words, where the Court has taken similar matters into consideration in earlier cases, follow-up applications should and must make use of that case law facilitating access to the Court. While taking this case law into account, the Court will nevertheless have regard to the particular circumstances of each case in its findings on whether remedies have been exhausted.

### **b) Only Available and Effective Remedies Need to be Exhausted**

As mentioned above, only available and effective remedies have to be exhausted. For a remedy to be available, an applicant must be able to initiate it without having to rely on public authorities. The Court, for instance, found that the possibility of lodging a complaint with the Ombudsman, who in turn could challenge the law before the Constitutional Court, was not a remedy available to the applicant because it was not open to the applicant to directly launch a complaint to the court.<sup>432</sup> In addition, for a remedy to be ‘available’, it must exist at the time the application is lodged. If a new and relevant remedy is introduced in the Contracting Party after the application has been lodged, applicants will not normally be required to exhaust that new remedy. An important exception to that general rule is the pilot judgment procedure<sup>433</sup> aimed at repetitive cases indicating that “there is a systemic or structural dysfunction in the country concerned which has given or could

429 *Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999, § 44, and *Alexov v. Bulgaria*, no. 54578/00, 22 May 2008, § 152.

430 *Dovletkayev and Others v. Russia*, nos. 7821/07, 10937/10, 14046/10 and 32782/10, 24 October 2013, § 183, with reference to *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, 24 February 2005, §§ 119–121, regarding civil action to obtain redress for damage sustained as a result of the alleged illegal acts or unlawful conduct of State agents in Russia in the context of Article 2-violations.

431 *Grimailovs v. Latvia*, no. 6087/03, 25 June 2013, § 89; *Timofejevi v. Latvia*, no. 45393/04, 11 December 2012, § 84.

432 See e.g. *Tănase v. Moldova* [GC], no. 7/08, 27 April 2010, § 122.

433 *Broniowski v. Poland* [GC], no. 31443/96, 22 June 2004. See also Rule 61 of the Rules of Court.

give rise to similar applications before the Court.”<sup>434</sup> Here, the consequence of a pilot judgment may be that the Court could adjourn or “freeze” related cases for a period of time on the condition that the Government act promptly to introduce a new domestic remedy as part of the national measures required to satisfy the judgment. If the remedy is introduced and is found to be in principle suitable, the frozen applications will be declared admissible and applicants required making use of the new domestic remedy.

A remedy is considered to be effective if it is capable of rendering redress for the applicant with regard to the alleged human rights violation.<sup>435</sup> The issue of the ‘effectiveness’ of domestic remedies is examined below under separate headings for criminal, civil, and administrative remedies.

### i. Criminal Remedies

As the Court expressly stated in the case of *Akdivar and Others v. Turkey*,<sup>436</sup> the rule of exhaustion of domestic remedies is based on the assumption, reflected in Article 13 of the Convention, that effective remedies are in fact available in the domestic systems of Contracting Parties for alleged breaches of Convention rights regardless of the specific manner in which the provisions of the Convention have been incorporated into national law. Thus, the issue of effectiveness of criminal remedies in respect of complaints of ill-treatment is closely linked to the Contracting Parties’ positive obligation under Article 3 and their obligation under Article 13 to provide an effective remedy.<sup>437</sup> As pointed out earlier, in the context of Article 3 violations adequate redress will include an effective official investigation capable of leading to the identification and punishment of those responsible. Whereas certain rights and freedoms guaranteed in the Convention may not have been incorporated into the national laws of all Contracting Parties, most types of ill-treatment nevertheless constitute criminal offences in all Contracting Parties. Furthermore, in most Contracting Parties, ill-treatment inflicted by State agents is either classified as a criminal offence separate from the offence of ill-treatment inflicted by private persons, or is considered an aggravating element of ill-treatment offences. At first sight it would therefore appear that the national laws of the Contracting Parties themselves provide for an effective remedy – as required by Article 13 of the Convention – in respect of complaints of ill-treatment. However, the mere existence of national legislation criminalising acts of ill-treatment is not sufficient

---

434 Factsheet: Pilot Judgments (October 2013), p. 2, available online: <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>.

435 See e.g. Philip Leach, *Taking a Case to the European Court of Human Rights*, 3<sup>rd</sup> ed., Oxford University Press, 2009, p. 395.

436 *Akdivar and Others v. Turkey*, no. 21893/93, 16 September 1996, § 65.

437 See sections 6.2 and 10 below. See also *Buldan v. Turkey* (dec.) no. 28298/95, 4 June 2002.

in and of itself to guarantee a remedy for victims and problems often arise in the context of the enforcement of those national laws. One of the most common problems is the reluctance of authorities to investigate allegations of ill-treatment by State agents.<sup>438</sup> In such circumstances, an applicant who has brought his or her complaint of ill-treatment before the relevant investigating authority, which remains passive in the face of those allegations, will be expected to submit his or her application to the Court as soon as he or she becomes aware of the ineffectiveness of the remedy. Failure to do so may result in the application being declared inadmissible for non-compliance with the six-month rule.<sup>439</sup>

An example of ineffective criminal procedures involving Article 3 of the Convention provides the case of *Menteş and Others v. Turkey*.<sup>440</sup> This case concerned the deliberate destruction of the applicants' home and possessions by members of the security forces in south-east Turkey. The Turkish Government had submitted to the Court a number of decisions of the Turkish Administrative Courts, in which the plaintiffs had been awarded compensation for the destruction of their homes and possessions in a non-fault based procedure under Article 125 of the Constitution that did not require them to establish that their property had been destroyed deliberately. Having examined the decisions, the Court found that

despite the extent of the problem of village destruction, there appears to be no example of compensation being awarded in respect of allegations that property has been purposely destroyed by members of the security forces or of prosecutions having been brought against them in respect of such allegations.<sup>441</sup>

The Court, concluding that the remedy in question was not effective for the purposes of the Convention because it did not establish culpability and therefore it did not lead to the prosecution and punishment of those responsible for the destruction, proceeded to dismiss the Government's objection to the admissibility of the application.

Other examples in which the Court found ineffective criminal procedures are a series of Russian cases concerning disappearances that took place in Chechnya and Ingushetia between 1999 and 2006. For instance, the Court considered common shortcomings of the criminal investigations<sup>442</sup> and ruled that applicants need not

438 See for example, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57045/00, 24 February 2005, § 145, in which the Court observed that although the domestic courts had found that the killings of the first applicant's relatives had been perpetrated by servicemen and awarded the first applicant damages against the State, they did not prosecute those servicemen. In the same judgment the Court also found a violation of Article 3 of the Convention on account of a lack of thorough and effective investigation into the applicants' allegations of ill-treatment, see § 180.

439 For further information, see section 2.5.2 (c).

440 *Menteş and Others v. Turkey*, no. 23186/94, 28 November 1997.

441 *Ibid.*, § 59.

442 The shortcomings identified included "delays in the opening of the proceedings and in the taking of essential steps; lengthy periods of inactivity; failure to take vital investigative steps, →

exhaust these “futile”<sup>443</sup> remedies, also noting the “absence of tangible progress in any of the criminal investigations over the years.”<sup>444</sup>

The Court has also dealt with applications introduced when criminal investigations continued for long periods of time without yielding any tangible results. In such cases, the respondent Government, who will in all likelihood object to the admissibility of the application on the basis of the applicant's failure to await the conclusion of the proceedings, will be expected to prove that the proceedings in question are being conducted diligently and that they are capable of providing redress to the applicant. For example, in the case of *Batı and Others v. Turkey*, the applicants introduced their application with the Court while the criminal proceedings against the police officers suspected of having inflicted ill-treatment on them were still pending. Observing that the proceedings in question – a criminal trial – had continued for eight years during which time the judicial authorities had failed to take a number of important steps such as summoning and questioning the defendants directly and ensuring that the injuries of the applicants were medically examined, the Court held that the applicants had satisfied the obligation to exhaust the relevant remedies and were not required to await the conclusion of the criminal trial.<sup>445</sup>

According to the Court's established case law, a mere doubt as to the prospect of success of a particular remedy is not sufficient to exempt an applicant from the requirement of exhausting that remedy.<sup>446</sup> The Court's decision on admissibility in *Epözdemir v. Turkey*<sup>447</sup> provides a good example of this point. The *Epözdemir* case concerned the killing of the applicant's husband by a group of four village guards. An autopsy was carried out and the body buried. The family of the deceased were not informed of the death of Mr. Epözdemir – despite the fact that the applicant had already informed the relevant prosecutor that her husband was missing – and no action was taken by the authorities to investigate the circumstances of the

---

especially those aimed at the identification and questioning of the military and security officers who could have witnessed or participated in the abduction; failure to involve the military prosecutors even where there was sufficient evidence of the servicemen's involvement in the crimes; inability to trace the vehicles, their provenance and passage through military roadblocks; belated granting of victim status to the relatives; and failure to ensure public scrutiny by informing the next of kin of the important investigative steps and by granting them access to the results of the investigation.” *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, 18 December 2012, § 123.

443 See *Vakhayeva and Others v. Russia*, no. 1758/04, 29 October 2009, § 157; *Shokkarov and Others v. Russia*, no. 41009/04, 3 May 2011, § 107, and *Umarova and Others v. Russia*, no. 25654/08, 31 July 2012, § 94.

444 *Yandiyev and Others v. Russia*, nos. 34541/06, 43811/06 and 1578/07, 10 October 2013, § 109.

445 *Batı and Others v. Turkey*, nos. 33097/96 and 57834/00, 3 June 2004, § 148. On the basis of those failures the Court also found a violation of Article 13 of the Convention.

446 *Whiteside v. the United Kingdom*, no. 20357/92, Commission decision of 7 March 1994.

447 See *Epözdemir v. Turkey* (dec.), no. 57039/00, 31 January 2002.

killing notwithstanding an *ex officio* obligation under domestic law to do so. The applicant subsequently – by pure coincidence – found out that her husband had been killed by the village guards and asked the prosecutor to mount a prosecution. Her request was rejected, the prosecutor stating that although it was established that her husband had been killed by the village guards, it was not possible to establish which one of the four village guards had fired the fatal shot. The applicant did not avail herself of the opportunity to appeal the prosecutor's decision and instead applied directly to the Court in Strasbourg. In its decision declaring the application inadmissible, the Court held by a majority, that although the decision not to prosecute the four named village guards suggested that the clear wording of domestic legislation on joint enterprises in the commission of the offence of homicide had been disregarded by the prosecutor, the applicant could have brought this issue to the attention of the appeal judge and thus could have substantially increased her prospects of success. The applicant had not shown, therefore, that an appeal would have been devoid of any chance of success.<sup>448</sup>

In jurisdictions where the commission of the offence of ill-treatment gives rise to an *ex officio* duty of the investigating authorities to investigate the incident without waiting for the victim to lodge a formal complaint, the victim may be required to co-operate with the authorities by assisting them, for example, in identifying and locating eye-witnesses. The conduct of the applicant in exhausting domestic remedies may therefore also play a role in the Court's examination of the question as to whether those remedies have been exhausted.

## ii. Civil and Administrative Remedies

In its judgment in the case of *Assenov and Others v. Bulgaria* the Court found that the applicant had exhausted all the possibilities available to him within the criminal justice system, as he had made numerous appeals to the prosecuting authorities at all levels, requesting a full criminal investigation into the allegations of ill-treatment carried out by police and requesting that the officers concerned be prosecuted. In the absence of a criminal prosecution in connection with his complaints, the applicant was therefore not required to embark upon another attempt to obtain redress by bringing a civil action for damages.<sup>449</sup> In reaching this conclusion,

---

<sup>448</sup> Compare to *İlhan v. Turkey* [GC], no. 22277/93, 27 June 2000, § 63, where the investigating authorities had remained totally passive in investigating the circumstances of the severe ill-treatment to which soldiers had subjected the applicant's brother. The Grand Chamber, in rejecting the Government's objection to the admissibility of the case, held that the matter had been sufficiently brought to the attention of the relevant domestic authority, which had an *ex officio* obligation to investigate the circumstances of the ill-treatment without waiting for a formal complaint from the applicant.

<sup>449</sup> See *Assenov and Others v. Bulgaria*, no. 24760/94, 28 September 1998, § 86.

the Court also considered the fact that under Bulgarian law it was not possible for a complainant to initiate a criminal prosecution in respect of offences allegedly committed by agents of the State in the performance of their duties. The Court went on to state in paragraph 102 of its judgment:

Where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in [...] [the] Convention, requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible... If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.

It follows, therefore, that in the context of Article 3 complaints, a civil or an administrative action in respect of illegal acts attributable to a State or its agents may only be regarded as an effective remedy where that remedy is capable of establishing the circumstances of the ill-treatment and of leading to the identification and punishment of those responsible. Civil or administrative proceedings aimed solely at awarding damages rather than identifying and punishing those responsible will not in principle be regarded as effective remedies in the context of Article 3 complaints.<sup>450</sup> However, recent jurisprudence has accepted that administrative court proceedings aimed at monetary compensation for inadequate conditions in detention were an effective remedy<sup>451</sup> “as part of the range of possible remedies.”<sup>452</sup> They could not, however, be “considered an effective mechanism in order to put an end to such treatment rapidly,”<sup>453</sup> as required by the Convention. The Court has explained:

In the context of complaints about inhuman or degrading conditions of detention, [...] two types of relief are possible: an improvement in the material conditions of detention, and compensation for the damage or loss sustained on account of such conditions.<sup>[454]</sup> If an applicant has been held in conditions in breach of Article 3,

---

450 See *Tepe v. Turkey* (dec.), no. 31247/96, 22 January 2002; *Yaşa v. Turkey*, no. 22495/93, 2 September 1998, § 74.

451 See *Timofejevi v. Latvia*, no. 45393/04, 11 December 2012, § 69; *Ignats v. Latvia* (dec.), no. 38494/05, 24 September 2013, § 112; *Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009, § 116; *Lienhardt v. France* (dec.), no. 12139/10, 13 September 2011, and *Rhazali and Others v. France* (dec.), no. 37568/09, 10 April 2012.

452 *Aden Ahmed v. Malta*, no. 55352/12, 23 July 2013, § 58, with reference to *Z and Others v. the United Kingdom* [GC], no. 29392/95, 10 May 2001, § 109; *Keenan v. the United Kingdom*, no. 27229/95, 3 April 2001, § 130, and *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, 14 March 2002, §§ 97–98.

453 *Aden Ahmed v. Malta*, no. 55352, 23 July 2013, § 59.

454 See *Roman Karasev v. Russia*, no. 30251/03, 25 November 2010, § 79, and *Benediktov v. Russia*, no. 106/02, 10 May 2007, § 29.

a domestic remedy capable of putting an end to the ongoing violation of his or her right not to be subjected to inhuman or degrading treatment is of the greatest value. However, once the applicant has left the facility in which he or she has endured the inadequate conditions, he or she should have an enforceable right to compensation for the violation that has already occurred.<sup>455</sup>

Petitions to State agencies competent to supervise the general lawfulness of the enforcement of domestic criminal judgments, such as prosecutors (general), can only be considered an effective remedy if that prosecutor's status under domestic law offers "adequate safeguards for an independent and impartial review of the applicant's complaints."<sup>456</sup>

In the context of custody, the Court further found that domestic remedies have been exhausted when detainees approach the proper authority within the detention facility. In *Melnik v. Ukraine*,<sup>457</sup> for instance, the applicant complained to the doctor of the detention facility that he had contracted tuberculosis. The authorities were thereby made sufficiently aware of the applicant's health situation and had had the opportunity to examine the conditions of his detention. The Court further noted that the problems arising from the conditions of detention and an alleged lack of proper medical treatment did not only concern the situation of the applicant, but were of a systemic nature.<sup>458</sup> This case also underlines the focus of the Court in recent years on structural problems, be it substantive or procedural, that require more general and proactive remedies exceeding the scope of individual cases.<sup>459</sup> Prison overcrowding caused by structural deficiencies in a national criminal justice system, especially if already identified by domestic courts or the Court in pilot judgments itself, render existing administrative procedures "theoretical and illusory and incapable of providing redress in respect of the applicant's complaint."<sup>460</sup>

### **c) Extraordinary Remedies Do Not Need to Be Exhausted**

If the remedy is not directly accessible to individuals, it will normally be regarded as an 'extraordinary remedy'. According to the Court, extraordinary remedies do not satisfy the requirements of 'accessibility' and 'effectiveness' and therefore do not require exhaustion for purposes of Article 35 § 1 of the Convention.<sup>461</sup>

---

455 *Aden Ahmed v. Malta*, no. 55352, 23 July 2013, § 57.

456 *Merit v. Ukraine*, no. 66561/01, 30 March 2004, § 63; and *Salov v. Ukraine*, no. 65518/01, 6 September 2005, § 58.

457 *Melnik v. Ukraine*, no. 72286/01, 28 March 2006.

458 *Ibid.*, § 70, with reference to *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001.

459 *See Koktysh v. Ukraine*, no. 43707/07, 10 December 2009, § 86.

460 *Orchowski v. Poland*, no. 17885/04, 22 October 2009; *Norbert Sikorski v. Poland*, no. 17599/05, pilot judgments, 22 October 2009, §§ 111 and 121, respectively.

461 *Moyá Alvarez v. Spain* (dec.), no. 44677/98, 23 November 1999.

For example, if access to a particular domestic remedy is dependent on the discretionary power of a public authority, it will not be considered an accessible remedy.<sup>462</sup> For examples, applications to the constitutional court in Italy for purposes of challenging a law's constitutionality, is considered an extraordinary remedy because only other courts, and not individuals, are able to refer a case to the Constitutional Court. Therefore, this particular remedy was not directly accessible to individuals;<sup>463</sup> the same is true for applications to the Ministry of Justice in Turkey for written orders to public prosecutors requiring them to ask the Court of Cassation to set aside judgments are considered extraordinary remedies.<sup>464</sup>

#### **d) Special Circumstances**

The Court acknowledged in *Akdivar and Others v. Turkey* that the existence of “special circumstances” may absolve an applicant from the requirement of exhaustion of domestic remedies.<sup>465</sup> Such circumstances may exist, for example, in situations where the national authorities have remained totally passive in the face of serious allegations of misconduct by State agents, such as when State agents have failed to undertake investigations or offer assistance<sup>466</sup> or where they have failed to execute a court order.<sup>467</sup> Furthermore, in a case which concerned the destruction of the applicants' property by the Turkish security forces, the Court found that the indifference displayed by the investigating authorities to the applicants' complaints, coupled with the applicants' feelings of upheaval and insecurity following the destruction of their homes, constituted special circumstances which absolved them from the obligation to exhaust domestic remedies.<sup>468</sup>

In several cases where the Court has found that the existence of special circumstances absolved the applicants from the exhaustion requirement, the Court has also stressed that its ruling was confined to the particular circumstances of those cases and was not to be interpreted as a general statement that remedies were ineffective in the respondent Contracting Party or that applicants were absolved from the obligation under Article 35 to have normal recourse to the system of remedies.<sup>469</sup> Furthermore, according to the Court, it is only in exceptional circumstances that it could accept that applicants seek relief before the Court without first having made any attempt to seek redress before the local courts.<sup>470</sup>

---

462 *Kutcherenko v. Ukraine* (dec.), no. 41974/98, 4 May 1999.

463 *Immobiliare Saffi v. Italy* [GC], no. 22774/93, 28 July 1999, § 42.

464 *Zarakolu v. Turkey* (dec.), no. 37061/97, 5 December 2002.

465 *Akdivar and Others v. Turkey*, no. 21893/93, 16 September 1996.

466 *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 76.

467 *A.B. v. the Netherlands*, no. 37328/97, 29 January 2002, §§ 69 and 73.

468 *Selçuk and Asker v. Turkey*, nos. 23184/94 and 23185/94, 24 April 1998, §§ 70–71.

469 *Ibid.*, § 71. See also *Akdivar and Others v. Turkey*, no. 21893/93, 16 September 1996, § 77.

470 *Akdivar and Others v. Turkey*, no. 21893/93, 16 September 1996, § 77.

The Court has acknowledged in a number of judgments that the application of the rule of exhaustion must make due allowance for the fact that it is being applied in the context of machinery for the protection of human rights that the Contracting Parties have agreed to establish and that the rule must be applied with some degree of flexibility and without excessive formalism.<sup>471</sup> However, the fact remains that a mere doubt as to the effectiveness of domestic remedies does not absolve the applicant of the requirement of exhausting remedies.

### **e) Compliance With Rules of Domestic Procedure**

When exhausting domestic remedies, applicants are expected to comply with the relevant procedural rules in their domestic jurisdiction. Thus, when an appeal is dismissed without the national court having examined the substance of the appeal because, for example, the applicant failed to lodge it within the applicable time limit, that applicant will be deemed by the Court not to have complied with the rule of exhaustion of domestic remedies.

The Court further requires that in order for an application to be admissible, complaints made therein must have been raised, at least in substance, before the domestic courts.<sup>472</sup> It is not strictly necessary to refer to the Convention Article(s) in domestic proceedings, provided that the substance of the Convention complaint is adequately brought to the attention of the relevant national authorities.<sup>473</sup>

### **g) Concluding Remarks**

As described above, applicants are expected to show in their application forms that they have exhausted relevant domestic remedies and that in doing so they have complied with the relevant domestic rules of procedure and invoked the substance of the Convention complaint in the course of the domestic proceedings.

In the context of Article 3, identifying the relevant domestic remedy is perhaps easier than is the case with other Articles of the Convention. As pointed out above, the most appropriate domestic remedy for allegations of ill-treatment will be a criminal investigation since such an investigation will be the best means to establish the accuracy of the allegations as well as being potentially capable of leading to the identification and punishment of those responsible. Furthermore, any decision which is not favourable to the applicant, such as a decision to discontinue the

---

471 See e.g. *Ayder v. Turkey*, no. 23656/94, 8 January 2004, § 92.

472 *Cardot v. France*, no. 11069/84, 19 March 1991, § 34.

473 See e.g. *Hudson v. Former Yugoslav Republic of Macedonia* (dec.), no. 67128/01, 24 March 2005, in which the applicant's complaint under Article 3 of the Convention arising from the conditions of his detention in prison was declared inadmissible by the Court because of the applicant's failure to bring those complaints to the attention of the national authorities.

investigation or to acquit those responsible for the ill-treatment must be appealed against if and when the national legislation provides for such a course of action. It must be reiterated in this connection that according to the Court's established case law, a mere doubt as to the prospect of success of a particular remedy is not sufficient to exempt an applicant from the requirement of exhausting that remedy.

If the applicant has not exhausted a particular remedy, he or she must explain in the application form the reasons for his or her decision not to do so. Such explanations may include, for example, the fact that the particular remedy has already been examined by the Court in another case that concerned similar facts and the Court has concluded that the remedy is indeed ineffective. If the remedy in question has not yet been examined by the Court, on the other hand, and if it is the applicant's belief that the particular remedy is not capable of providing redress, he or she should consider providing examples of domestic court decisions demonstrating the ineffectiveness of that remedy. This may be done by showing that the remedy in question has been tried in the past under similar circumstances and provided no relief.

In case of any doubts about the effectiveness of a particular domestic remedy, the applicant should consider exhausting the remedy in question while at the same time introducing his or her application with the Court. Finally, it should be noted that the rule of exhaustion interacts in important ways with the six(four)-month rule. Therefore, applicants are advised to read this section on exhaustion together with the following section describing the six-month rule.

## **2.2.5 The Timeliness of the Application (Article 35 §1)**

### **a) The Six (Four)-Month Period in General**

According to Article 35 §1 “[t]he Court may only deal with the matter [...] within a period of six months from the date on which the final decision was taken.” Pursuant to Article 4 of Protocol No. 15, not yet in force, the words “within a period of six months” shall be replaced by the words “within a period of four months;” this effectively reduces future applicants to four months within which they have to petition the Court.

The purpose of the six (four)-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases are dealt with in a reasonable time and that past decisions are not continually open to challenge.<sup>473</sup> With regard to Article 3 the Court further explained that

---

<sup>474</sup> *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009, § 156, and *Walker v. the United Kingdom* (dec.), no. 34979/97, 25 January 2000.

with the lapse of time, memories of witnesses faded, witnesses might die or become untraceable, evidence deteriorated or ceased to exist, and the prospects that any effective investigation could be undertaken would increasingly diminish; and the Court's own examination and judgment might be deprived of meaningfulness and effectiveness. The Court accordingly concluded that where disappearances were concerned, applicants could not wait indefinitely before coming to Strasbourg but had to make proof of a certain amount of diligence and initiative and introduce their complaints without undue delay.<sup>475</sup>

A complaint must be filed with the Court within six (four) months of the date on which the final domestic decision was taken in the case. The six (four)-month period starts running from: 1) the date the domestic judgment is rendered orally in public;<sup>476</sup> 2) the date of service of the written decision if the applicant is entitled to such service;<sup>477</sup> or 3) the date when the decision was finalized and signed in situations where judgments are not rendered orally or served.<sup>478</sup> If no domestic remedies are available, the six (four)-month period starts running from the date of the incident or act of which the applicant complains.<sup>479</sup> Where domestic remedies turn out to be ineffective, the period starts running from the moment the applicant became aware, or should have become aware, that remedies were ineffective.<sup>480</sup> For continuing situations the six (four)-month period does not start to run until after the situation ends, but a complaint can be filed prior to the end of the situation. This will be explained in more detail in section c below.

The date of introduction of an application with the Court is the date of the postal stamp on the envelope.<sup>481</sup> As of January 2014 the six (four)-month period is only met if a completed application form is sent. A simple introductory letter will no longer suffice. In addition, the Court no longer accepts applications sent by fax. The six (four)-month period also includes weekends and national holidays; e.g. if the starting date of the six-month period is 1 January, the application must be introduced by 1 July.

## **b) The Date of Introduction**

Rule 47 (6) of the Rules of Court provides that the date of introduction of an application shall be the date on which a properly completed form is placed in the post (i.e. the postmark date). As of January 2014, a new application form has been introduced and certain new criteria for providing the required information became effective.

475 *Berry and Others v. the United Kingdom* (dec.), nos. 19064/07, 31588/09 and 38619/09, 16 October 2012, § 65.

476 *Loveridge v. the United Kingdom* (dec.), no. 39641/98, 23 October 2001.

477 *Worm v. Austria*, no. 2714/93, 29 August 1997, §§ 32–33.

478 *Papachelas v. Greece* [GC], no. 31423/96, 25 March 1999, § 30.

479 *Vayıç v. Turkey* (dec.), no. 18078/02, 28 June 2005.

480 *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002.

481 *Arslan v. Turkey* (dec.), no. 36747/02, 21 November 2002.

This includes the requirement that the information contained in the application form “should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document” and a new maximum number of 20 pages for additional factual or legal statements.<sup>482</sup> One must also bear in mind that only substantive complaints contained in a timely communication to the Court are considered submitted in time;<sup>483</sup> later allegations can only be examined if they are particular aspects of the initial complaints raised within the time-limit.

It must also be stressed that the six (four)-month rule, together with the rule of exhaustion of domestic remedies, is probably the most frequently used formal ground of inadmissibility; the Court applies it of its own motion<sup>484</sup> and a respondent Government cannot waive it.<sup>485</sup>

### **c) The Starting Point of the Six (Four)-Month Period**

The six (four)-month rule is closely connected with the rule of exhaustion of domestic remedies as the moment on which the six (four)-month period starts to run depends on the existence or the lack of domestic remedies. As a general rule, a complaint must be submitted to the Court within six (four) months from the day following the final domestic court decision rendered in relation to that complaint.<sup>486</sup> However, different practices of the domestic courts in the Contracting Parties – and, indeed, varying practices between different courts within the same Contracting Party – have made it impossible to apply a uniform rule in every case and have led the Commission and the Court to devise the following rules in relation to each scenario with which they have been confronted.

#### **i. Where Domestic Remedies Exist**

The six (four)-month period starts to run from the day on which the judgment was rendered orally in public, meaning that the following day is the first day of the six (fourth)-month period.<sup>487</sup> However, where an applicant is entitled to be served *ex officio* with a written copy of the final domestic decision, the six-month period starts to run on the date of service of the written judgment,<sup>488</sup>

---

482 Rule 47 2 (a) and (b) of the Rules of Court (1 January 2014).

483 *Richard Roy Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001.

484 *Soto Sanchez v. Spain* (dec.), no. 66990/01, 20 May 2003.

485 *Walker v. the United Kingdom* (dec), no. 34979/97, 25 January 2000.

486 In calculating the six-month time limit, regard must also be had to the explanations in section iii below; the time spent on exhausting an ineffective remedy may result in the six-month time limit being missed.

487 *Loveridge v. the United Kingdom* (dec.), no. 39641/98, 23 October 2001.

488 *Worm v. Austria*, no. 22714/93, 29 August 1997, §§ 32–33.

irrespective of whether the judgment concerned, or parts thereof, were previously pronounced orally.<sup>489</sup> As seen above, one of the principles underlying the rule is to allow a prospective applicant to refer to the full reasoning set out in the domestic court decision when formulating the complaints he or she wishes to lodge with the Court in Strasbourg. An applicant will obviously be better able to do so when he or she has been provided with the written copy of the judgment.

If domestic law does not provide for oral pronouncement or service – or if it is not the practice of the domestic courts to serve their decisions notwithstanding legislation to the contrary<sup>490</sup> – the Court will take as the starting point the date on which the decision was finalised and signed, that being the date when the parties or their legal representatives were definitely able to discover its content.<sup>491</sup>

## ii. Where There are no Domestic Remedies

In cases where there are no domestic remedies, an applicant will be expected to introduce his or her application within six (four) months from the date of the incident or act of which the applicant complains. The Court has said: “Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant.”<sup>492</sup> For example, an applicant who complains about the excessive length of his or her pre-trial detention which is lawful under domestic legislation, will be expected to lodge an application, at the latest, within six (four) months from the date of release, if he or she cannot challenge the lawfulness of the detention before the domestic authorities.<sup>493</sup> Obviously, it is open to an applicant in such a situation to bring the application before he or she is released.

Similarly, where an applicant argues that existing domestic remedies are ineffective or that there are special circumstances which absolve him or her from the obligation to exhaust those remedies, he or she will be expected to introduce the application within six (four) months of the date of the incident complained of, or of the date when he or she first became aware of the ineffectiveness of the remedy or the special circumstances in question.

489 *Worm v. Austria*, no. 22714/93, Commission decision of 27 November 1995.

490 As is the situation in Turkey where decisions of the Criminal Division of the Court of Cassation are not served on defendants despite the clear wording of the domestic legislation requiring the Court of Cassation to serve them; see *Caralan v. Turkey* (dec.), no. 27529/95, 14 November 2002.

491 *Papachelas v. Greece* [GC], no. 31423/96, 25 March 1999, § 30.

492 *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002.

493 See, e.g. *Vayıç v. Turkey* (dec.), no. 18078/02, 28 June 2005. See also “Continuing Situations” in section iv below.

### iii. Where Domestic Remedies Turn Out to be Ineffective

Difficulties arise in the determination of the starting point of the six (four)-month period in cases where domestic authorities remain inactive in the face of complaints of ill-treatment or where domestic criminal investigations continue for long periods of time without yielding any tangible results. According to the Court, if the domestic remedy invoked by the applicant is adequate in theory, but in the course of time proved to be ineffective, the applicant is no longer obliged to exhaust it.<sup>494</sup> In this case, the six (four)-month period is calculated from the time when the applicant becomes aware, or should have become aware that the remedy he sought was ineffective.<sup>495</sup> The challenge for the applicant is to determine the point in time when it becomes apparent, or should have become apparent, that the remedy was ineffective for purposes of the Convention.

The Court will declare a case inadmissible for non-respect of the six (four)-month rule if it finds that the applicant continued to pursue a domestic remedy for more than six (four) months when it should have been clear to him or her that the remedy was ineffective. It appears from a number of cases introduced against Turkey, for example, that the applicants should not have awaited the outcome of criminal investigations that were marked by long periods of inactivity on the part of the investigating authorities. Thus, in the case of *Bulut and Yavuz v. Turkey*, concerning the killing on 29 July 1994 of the applicants' husband and father allegedly by persons acting with the connivance of the State, the applicants claimed in their application form – submitted to the Court on 1 March 2001 – that they had applied to the office of the public prosecutor in order to obtain information on numerous occasions. On each occasion they had been told that no one had yet been prosecuted for the killing. The final time they checked with the investigating authorities was on 26 October 2000, when they were once again informed that no one had yet been prosecuted for the killing. The applicants argued that the domestic authorities were, nominally at least, still investigating the killing and this investigation would, pursuant to Article 102 of the Turkish Criminal Code, continue until 20 years had elapsed from the date of the killing. They submitted that the six-month time limit did not apply in their case given that there had as yet not been a domestic decision to discontinue the investigation. The Court rejected these arguments holding that the applicants should have displayed a greater diligence and initiative in staying the ineffectiveness of the investigation until October 2000, that was due to their own negligence.<sup>496</sup>

---

494 *Mikheyev v. Russia*, no. 77617/01, 22 January 2006, § 86.

495 *Yuriy Volkov v. Ukraine*, no. 45872/06, 19 December 2013, § 77.

496 *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002.

By contrast, in the case of *Edwards v. the United Kingdom*,<sup>497</sup> the Court held that it was reasonable for the applicants to have awaited for a long period for the outcome of a non-statutory inquiry set up to investigate the circumstances of the death on 29 November 1994 of their son in prison. Although in this case the applicants had waited for a period of over four years before introducing their application they were found by the Court to have been justified in doing so. Had the applicants chosen to introduce their application prior to the publication of the Inquiry Report, there would have been a strong argument for finding that their complaints concerning the substantive and procedural aspects of Article 2 of the Convention were premature.<sup>498</sup>

The Court reached a similar conclusion in the case of *Dovletukayev and Others v. Russia*.<sup>499</sup> This case originated in an application by close relatives of five men who were allegedly abducted by State agents in Chechnya and whose bodies were subsequently discovered under various circumstances; one was never discovered. The Court examined the record in detail and held

the conduct of the applicants vis-à-vis the investigation in each of their criminal cases has been determined not by their perception of the remedy as ineffective, but rather by their expectation that the authorities would, of their own motion, provide them with an adequate answer in the face of their serious complaints. They furnished the investigative authorities with timely and sufficiently detailed accounts of their relatives' abductions, assisted them with finding witnesses and other evidence and fully cooperated in other ways.<sup>[500]</sup> They thus reasonably expected further substantive developments from the investigation. It could not be said that they failed to show the requisite diligence by waiting for the pending investigation to yield results.<sup>[501]</sup> The Court thus considers that investigations were being conducted, albeit sporadically, during the periods in question, and that the applicants did all that could be expected of them to assist the authorities.<sup>502</sup>

There may also be circumstances in which an applicant has doubts about the effectiveness of a particular domestic remedy even before he or she instigates it. Time spent on exhausting a remedy which, according to the Court's case law, is considered an extraordinary remedy and which therefore need not be exhausted, may result in the application being declared inadmissible for non-respect of the six-month rule. The Court stated in the case of *Berdzenishvili v. Russia* that applications for a retrial made to domestic courts or authorities, or similar extraordinary remedies, cannot,

---

497 *Edwards v. the United Kingdom* (dec.), no. 46477/99, 7 June 2001.

498 *Ibid.*

499 *Dovletukayev and Others v. Russia*, nos. 7821/07, 10937/10, 14046/10 and 32782/10, 24 October 2013.

500 The Court distinguished these facts from *Nasirkhayeva v. Russia* (dec.), no. 1721/07, 31 May 2011, where the applicant lodged her complaint with domestic authorities six years after the events.

501 See, *mutatis mutandis*, *Abuyeva and Others v. Russia*, no. 27065/05, 2 December 2010, § 179.

502 *Dovletukayev and Others v. Russia*, nos. 7821/07, 10937/10, 14046/10 and 32782/10, 24 October 2013, §§ 181–182.

as a general rule, be taken into account for the purposes of Article 35 of the Convention. The proceedings which were held to be extraordinary in *Berdzenishvili* were supervisory reviews of judgments which could be brought at any time after a judgment becomes enforceable, even years later. The Court considered that if the supervisory-review procedure was considered a remedy to be exhausted, the uncertainty thereby created would have rendered nugatory the six-month rule. In the light of the above, the Court held that the applicant, who had sought a supervisory review of the Supreme Court's judgment convicting him, should have introduced his application with the Court within six months of the Supreme Court judgment.<sup>503</sup>

Thus, it is apparent that the above that the Court applies "the six-month rule autonomously and according to the facts of each individual case, so as to ensure the effective exercise of the right to individual application".<sup>504</sup> In addition, it is difficult to draw general uniform guidance from which a potential applicant, in the midst of exhausting a doubtful remedy, may benefit. The Court has also "refrained from indicating a specific period for establishing when an investigation has become ineffective for the purposes of assessing the date the six-month period starts to run from. The determination of such a period by the Court depends on the circumstances of each case and other factors such as the diligence and interest displayed by the applicants."<sup>505</sup> Nevertheless, the Court has explained its general standards, where a death has occurred or in disappearance cases, as follows: "[A]pplicant relatives are expected to take steps to keep track of the investigation's progress, or lack thereof, and to lodge their applications with due expedition once they are, or should have become, aware of the lack of any effective criminal investigation."<sup>506</sup> However, the Court has also "refrained from indicating a specific period for establishing when an investigation has become ineffective for the purposes of assessing the date the six-month period starts to run from. The determination of such a period by the Court depends on the circumstances of each case and other factors such as the diligence and interest displayed by the applicants."<sup>507</sup>

---

503 *Berdzenishvili v. Russia* (dec.), no. 31697/03, 29 January 2004.

504 *Fernandez-Molina and Others v. Spain* (dec.), no. 64359/01, 8 October 2002.

505 *Dovletukayev and Others v. Russia*, nos. 7821/07, 10937/10, 14046/10 and 32782/10, 24 October 2013, § 178.

506 *Bulut and Yavuz v. Turkey* (dec.), no. 73065/01, 28 May 2002. See also *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, 29 January 2002 [cases involving the death of victims] and *Eren and Others v. Turkey* (dec.), no. 42428/98, 4 July 2002, and *Üçak and Kargili and Others v. Turkey* (dec.), nos. 75527/01 and 11837/02, 28 March 2006 [disappearance cases].

507 *Dovletukayev and Others v. Russia*, nos. 7821/07, 10937/10, 14046/10 and 32782/10, 24 October 2013, § 178.

## iv. Continuing Situations

The six-month time limit does not start to run if the Convention complaint stems from a continuing situation, a concept recognized early on in the jurisprudence.<sup>508</sup> The Court said in the case of *Varnava and Others v. Turkey* “if there is a situation of on going breach, the time-limit in effect starts afresh each day and it is only once the situation ceases that the final period of six months will run to its end.”<sup>509</sup>

Examples of continuing situations in Article 3 relevant situations include expulsion orders which have not been enforced while the applicant remains in the country and the state still wishes to remove him or her,<sup>510</sup> forced disappearance<sup>511</sup> as well as detention.<sup>512</sup>

Such situations are continuing because of the absence of a domestic remedy capable of putting an end to them or because of the ineffectiveness of existing remedies. It follows, therefore, that the six-month time limit will not start running until the end of the situation. As pointed out earlier, this does not mean that an application cannot be lodged before the situation comes to an end. For example, the case of *Assanidze v. Georgia*,<sup>513</sup> concerning the continuing detention of the applicant despite his acquittal by the Supreme Court of Georgia on 29 January 2001 and the order issued by that court for his immediate release, illustrates how absurd it would be if the Court expected a person to continue to suffer indefinitely before he or she is allowed to introduce an application. In *Assanidze*, the Grand Chamber of the Court explained that

to detain a person for an indefinite and unforeseeable period, without such detention being based on a specific statutory provision or judicial decision, is incompatible with the principle of legal certainty [...] and arbitrary, and runs counter to the fundamental aspects of the rule of law.

Considering that the applicant was still in prison when the Court adopted its judgment on 24 March 2004 and “having regard to the particular circumstances of the case and the urgent need to put an end to the violation,”<sup>514</sup> the Court considered that the respondent State must secure the applicant's release at the earliest possible date.

508 See e.g. *Agrotexim Hellas S.A. and Others v. Greece*, no. 14807/89, Commission decision of 12 February 1992; *Cone v. Romania*, no. 35935/02, 24 June 2008, § 22.

509 *Varnava and Others v. Turkey*, nos. 16064/90, 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 10 January 2008, §159.

510 *P.Z. and Others v. Sweden* (dec.), no 68194/19, 29 May 2012, § 34.

511 *Varnava and Others v. Turkey*, nos. 16064/90, 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 10 January 2008, §§ 116–118.

512 *Mitev v. Bulgaria* (dec.), no. 40063/98, 30 January 2003.

513 *Assanidze v. Georgia* [GC], no. 71503/01, 8 April 2004, § 175.

514 *Ibid.*, § 203.

Having said this, in situations of forced disappearance the Court still requires relatives of disappeared persons to lodge an application “within, at most, several years of the incident.”<sup>515</sup> In addition, if there were any domestic investigations into the disappearances, the relatives may wait some years longer until hope of progress of domestic proceedings has evaporated. Where more than ten years have elapsed since the disappearance, applicants have to show that there were some advances being achieved to justify further delay in going to Strasbourg.<sup>516</sup>

### **d) Concluding Remarks**

It is for the applicant to provide the Court with information that enables it to establish whether he or she has complied with the six (four)-month rule. Failure to provide such information may result in the application being declared inadmissible. For this reason, it is recommended that applicants enclose with the application a photocopy of the envelope – with a legible postal stamp – in which the final domestic court decision was sent to them or any other document showing the date of service of the final domestic court decision.

In case of doubt about the effectiveness of a particular remedy, the jurisprudence should be consulted carefully to check whether the remedy in question has been examined before. Another possible course of action is to introduce the application while at the same time exhausting the doubtful remedy and keeping the Court informed of developments. Obviously, if the remedy in question has been exhausted before the Court examines the application, it should be informed about the outcome in order to eliminate the risk of the application being declared inadmissible for non-exhaustion. If, on the other hand, the Court examines the application before the remedy is exhausted and declares the case inadmissible for non-exhaustion of that remedy, the applicant may bring a new application once he or she has exhausted the remedy, since the domestic decision obtained will be regarded as relevant new information within the meaning of Article 35 § 2 (b) of the Convention. If an applicant waits to lodge the application until a doubtful remedy has been exhausted, and if the Court subsequently rules that the remedy was in fact an ineffective one which did not require exhaustion, the application may well be declared inadmissible for non-respect of the six(four)-month rule, with no possibility for the applicant to lodge a new application based on the same facts. Even if the domestic track is likely ineffective, proceeding to exhaust the domestic remedy while concurrently introducing an application with the Court will eliminate the risk that the time limit will have expired should the Court consider that the remedy at issue does require exhaustion.

---

515 *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009, § 166.

516 *Ibid.*

## 2.2.6 ‘Well-Foundedness’ of the Application (Article 35 § 3)

### a) General Observations

An application is ‘well-founded’ only if the Court is satisfied that there is a case to answer. The concept is related to that of an “arguable claim” of a human rights violation under Article 13 of the Convention.<sup>517</sup> If the application on its face does not disclose a violation of the Convention, either because 1) the allegations are not sufficiently substantiated by the evidence (proffered by the applicant in the application form); or 2) because the complaint, even if substantiated, does not fall within the scope of Convention rights because, for instance, the ill-treatment complained of is not sufficiently severe to constitute a violation of Article 3, then the application will be dismissed as ‘manifestly ill-founded’.

According to Article 35 § 3 of the Convention, the Court may declare any individual application that has passed the formal admissibility requirements and is not incompatible with the Convention inadmissible if it considers it to be ‘manifestly ill-founded’. Applications can be declared inadmissible on this ground both by Committees and Single Judges – i.e. without the application being communicated to the respondent Government, and without a formal decision, but rather by simple letter to the applicant – or by Chambers, and even in exceptional cases by the Grand Chamber.<sup>518</sup>

Applications relating to Article 3 violations should, firstly, be supported by evidence of the ill-treatment such as medical reports, eye-witness affidavits, custody records, court transcripts, domestic complaints, and any other documents showing that the ill-treatment occurred *and* that the complaints and relevant evidence were brought to the attention of the national authorities. Secondly, applicants must show that the alleged ill-treatment was severe enough to cross the threshold of the Article 3 prohibition.

For purposes of the present handbook two of the above-mentioned requirements are of particular relevance: the risk of a failure to substantiate the allegations, and situations where the ill-treatment complained of is not sufficiently severe to amount to a breach of Article 3.

<sup>517</sup> See Françoise J. Hampson, “The Concept of an “Arguable Claim” Under Article 13 of the European Convention on Human Rights”, in *International and Comparative Law Quarterly*, vol. 39, 1990, pp. 891–899.

<sup>518</sup> See e.g. *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, 10 July 2002.

## b) The Substantiation of Allegations

Before the Court can decide whether there has been a violation of the Convention, it must first establish the facts at issue. According to the Court, Convention proceedings do not in all cases lend themselves to rigorous application of the principle of *affirmanti incumbit probatio* (he who alleges something must prove that allegation).<sup>519</sup> In the cases referred to it, the Court will examine all the material before it, whether originating from the parties or other sources, and if necessary, will obtain material *proprio motu*.<sup>520</sup> Nevertheless, according to the established case law of the Court, an applicant does bear the initial burden of producing evidence in support of his or her complaints at the time the application is lodged. Once this burden has been met, the Court will communicate the application to the respondent State – provided, of course, that the other requirements of admissibility are also met.

The Court's general standard of proof,<sup>521</sup> which also applies to allegations of ill-treatment, is that they “must be supported by appropriate evidence.”<sup>522</sup> In order to avoid any risk of an inadmissibility finding at the initial stages, it is imperative that allegations of ill-treatment be adequately supported by documents and argumentation at the time the application is lodged. In fact – and that topic is related to the requirement of exhaustion of *domestic* remedies – it is crucial that applicants make use of suitable complaints- and reporting-mechanisms (for instance, in prison) precisely in order to obtain the documentary evidence based on investigations and (medical) examinations that is required by the Court.<sup>523</sup> Where an applicant is not in a position to provide such documentation, for example because the documents are in the possession of the national authorities or because the applicant is unable to obtain the evidence without the assistance of the national authorities, the Court should be informed. Depending on the persuasiveness of the explanations and other material submitted by the applicant, the Court may seek to obtain the documents from the national authorities with the help of the respondent Government. It may do so either by communicating the application to the respondent Government or by requesting the Government, pursuant to Rule 54 § 2 (a) of the Rules of Court, to submit the documents in question.

---

519 See, e.g. *Timurtaş v. Turkey*, no. 23531/94, 13 June 2000, § 66.

520 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 160.

521 See Uğur Erdal, “Burden and Standard of Proof in Proceedings under the European Convention”, in *European Law Review*, vol. 26, 2001, pp. 68–85. See also Juliane Kokott, *The Burden of Proof in Comparative and International Human Rights Law*, Kluwer, 1998.

522 *Premiņiny v. Russia*, no. 44973/04, 10 February 2011, § 78.

523 See e.g. *Stasi v. France*, no. 25001/07, 20 October 2011, where an applicant failed to bring his alleged mistreatment by fellow prisoners on grounds of his sexual orientation to the attention of the prison authorities or medical staff. The application was admitted but the Court found no violation of Article 3, including its procedural.

Submissions of fact need to take into account the standards developed in the Court's jurisprudence as to the 'elements' of breaches of Article 3 with respect to the terms 'torture', 'inhuman', 'degrading' as well as 'treatment' and 'punishment'. For instance, whether an act or omission of a State agent will be qualified as 'degrading'<sup>524</sup> depends on whether "its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3."<sup>525</sup> Even if "the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3",<sup>526</sup> applicants who allege such a breach would be well-advised to adduce any evidence that could provide a solid basis for not only the acts themselves, but also their motivations and effects.<sup>527</sup>

### c) The Severity of Ill-treatment

The threshold-question of whether treatment is sufficiently severe to bring it within the reach of Article 3 is one of the areas that is under constant evolution. For instance, in 2010 in *Floreau v. Romania*,<sup>528</sup> the Court found ill-treatment beyond the threshold of severity required by Article 3 because a prisoner had to tolerate his fellow prisoners' smoking even in the prison infirmary and the prison hospital against his doctor's advice. The Court justified this decision, at least in part, because the applicant suffered from chronic hepatitis and arterial hypertension. For litigants before the Court it is of the essence to link their victim's particular circumstances with both the specific acts or omissions that lead to the complaint and the prevailing general circumstances to substantiate their claims.

Substantiation of the accuracy and veracity of allegations of ill-treatment is not on its own sufficient for the Court to conclude that the complaint is "well founded" (or, if the complaint gets beyond the admissibility stage, that there has been a violation of Article 3). This is because Article 3 does not prohibit every form of ill-treatment but only ill-treatment that reaches a minimum level of severity. In its judgment in the inter-state case of *Ireland v. the United Kingdom*, adopted in 1978, the Court established a test to determine whether a particular form of ill-treatment violated Article 3. According to this test,

---

524 Yutaka Arai-Yokoi, "Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR", in *Netherlands Quarterly Human Rights*, vol. 21, 2003, pp. 385–422; Elaine Webster, *Exploring the Prohibition of Degrading Treatment within Article 3 of the European Convention on Human Rights* (PhD thesis, 2010), at: <https://www.era.lib.ed.ac.uk/bitstream/1842/4062/1/Webster2010.pdf>.

525 *Kalashnikov v. Russia*, no. 47095/99, 15 July 2002, § 95; *Raninen v. Finland*, no. 20972/92, 16 December 1997, § 55.

526 *Peers v. Greece*, no. 28524/95, 19 April 2001, § 74.

527 On the substantiation of allegations, the establishments of the facts, and the documents an applicant should submit see section 2.1.17 b) above.

528 *Floreau v. Romania*, no. 37186/03, 14 September 2010.

ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.<sup>529</sup>

Since the Convention is a living instrument that must be interpreted in the light of present day conditions, certain acts previously falling outside the scope of Article 3 might today (or in future) attain the required level of severity to be considered a violation of the Article.<sup>530</sup> The Court explained in *Selmouni* that “the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.”<sup>531</sup>

#### **d) Concluding Remarks**

If the Court concludes that the applicant has failed to support his or her case with adequate evidence and has failed, therefore, to present a *prima facie* case, the application will be declared inadmissible as being manifestly ill-founded. Similarly, if the Court concludes that the treatment of which the applicant complains has not reached the minimum level of severity to constitute a breach of Article 3, the application will be considered manifestly ill-founded.

In order to avoid having an application fail for lack of substantiation, the applicant should make out the strongest possible case from the beginning by submitting all relevant evidence that can support the allegations with the completed application form. If the evidence submitted by the applicant is rebutted or challenged by the respondent Government, the applicant will have the opportunity to counter the Government's allegations by adducing further evidence and/or arguments. Such additional evidence may take the form of additional medical reports confirming the applicants' earlier medical submissions or challenging the submissions of the Government.

Similarly, persuading the Court that the treatment in question has reached the required minimum level of severity may in many cases also be achieved by resorting to medical reports. It is thus advantageous for the applicant to consider obtaining detailed medical reports describing the physical and mental effects of the ill-treatment to which they were subjected. If the applicant is suffering from psychological disturbances as a result of the ill-treatment, it is particularly important that these effects be documented since the finding of such effects requires

---

529 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 162.

530 *Henaf v. France*, no. 65436/01, 27 November 2003, § 55.

531 *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 100.

the Court to make an assessment of a number of subjective elements. A psychological assessment, carried out by a trained specialist, preferably a psychiatrist, “linking” the applicant’s psychological problems to his or her allegations will assist the Court in its examination and is strongly recommended. Applicants should also refer to the chapter on the establishment of facts in order to see what kind of facts and documents can support the substantiation of an application.

The Court’s assessment of the severity of the treatment will take into account all the circumstances of the case such as the duration of the treatment, the physical and mental effects and, in some cases, the sex, age, and state of health of the victim. Consequently, in some cases the Court might consider a particular form of treatment severe enough to cross the severity threshold, where the applicant can show characteristics that make him or her particularly vulnerable to such treatment. Thus in some cases, ill-treatment of a child, pregnant woman, or elderly or infirm person might constitute a breach of Article 3 while the same treatment, when meted out to a healthy adult, might not be sufficient to constitute prohibited ill-treatment.<sup>532</sup> If relevant to the case, applicants are therefore advised to call to the attention of the Court, through argument and evidence, any particular characteristic which exacerbates their suffering.

Finally, applicants should support their arguments that the treatment in question reaches the required minimum by referring to the Court’s case law in which similar allegations have been examined. This is particularly appropriate for complaints relating to prison conditions and other circumstances where the threshold level of severity might be an issue.

### **2.2.7 The “Substantial Disadvantage” Criterion (Article 35 § 3b)**

An amendment to Article 35 (3) (b) of the Convention by Protocol No. 14 allows the Court to reject a case in which “the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.” This new admissibility criterion introduces the principle *de minimis non curat praetor* into the Convention machinery<sup>533</sup> and may be considered a tool to “save the Court from having to

532 See e.g. *Mathew v. the Netherlands*, no. 24919/03, 29 September 2005, § 203, where the Court observed that the applicant with health problems was not a person fit to be detained in the conditions of which he complained.

533 Xavier-Baptiste Ruedin, “*De minimis non curat* the European Court of Human Rights: The Introduction of New Admissibility Criterion (Article 12 of Protocol No. 14)”, in *European Human Rights Law Review*, vol. 1, 2008, pp. 80–105.

determine “minor” complaints”<sup>534</sup> and to allow it to “concentrate on cases [...] which raise *prima facie* issues of importance.”<sup>535</sup> The new criterion certainly has the potential of adding a degree of discretion<sup>536</sup> to the Court’s arsenal of admissibility standards, although an initial assessment suggests that the Court is using the tool cautiously.<sup>537</sup>

The provision contains two safeguard clauses: the first provides that respect for human rights may indeed command the examination of an application that would otherwise be minor in character; and the second excludes any rejection for lack of significant disadvantage of cases that have not been duly considered by a judicial body at the domestic level. The second safeguard clause will be deleted once Protocol No. 15 enters into force.<sup>538</sup>

In practice, as the Court explained in *Korolev v. Russia*, “[i]t is common ground that [the] terms [significant disadvantage] are open to interpretation and that they give the Court some degree of flexibility.”<sup>539</sup> “[A] violation of a right,” the Court added, “however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court.”<sup>540</sup> The Court thus explicitly linked the “disadvantage” criterion of Article 35 (3) (b) of the Convention to the “minimum level of severity” standard established in its jurisprudence Article 3. Other language employed, for instance that “[t]he assessment of this minimum level is, in the nature of things, relative and depends on all the circumstances of the case,”<sup>541</sup> reminds us of the same jurisprudence.<sup>542</sup>

534 Alastair Mowbray, “European Convention on Human Rights: Institutional Reforms Proposals and Recent Cases”, in *Human Rights Law Review*, vol. 3, 2003, pp. 301–21.

535 Michael O’Boyle, “On Reforming the Operation of the European Court of Human Rights”, in *European Human Rights Law Review*, vol. 1, 2008, p. 5.

536 See Rudolf Bernhardt, “The Admissibility Stage: The Pros and Cons of a Certiorari Procedure for Individual Applications”, in Ulrike Deutsch and Rüdiger Wolfrum (eds.), *The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions*, Springer, 2009, pp. 29–36.

537 Alexander H. E. Morawa, “The European Court of Human Rights’ Rejection of Petitions where the Applicant has not Suffered a Significant Disadvantage. A Discussion of Desirable and Undesirable Efforts to Safeguard the Operability of the Court”, in *Journal of Transnational Legal Issues*, vol. 1, 2012, pp. 1–24.

538 Article 5 of Protocol No. 15.

539 *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010.

540 *Ibid.*

541 *Vyacheslavovich Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011.

542 *Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010 explicitly refers, *mutatis mutandis*, to *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989, § 100.

543 *Korolev v. Russia* (dec.) no. 25551/05, 1 July 2010. See also *Finger v. Bulgaria* (dec.), no. 37346/05, 10 May 2011, § 70, and *Luchaninova v. Ukraine*, no. 16347/02, 9 June 2011, § 47. In *Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011, the Court reasoned: “Although the applicant’s subjective perception is relevant, this element does not suffice for the Court to conclude that the applicant suffered a significant disadvantage.”

The Court announced that it would “[take] account of both the applicant’s subjective perceptions and what is objectively at stake in a particular case.”<sup>543</sup> In general cases, which are not *ipso facto* transferable to Article 2 or 3 cases, the Court took note of the monetary disadvantage suffered by applicants and held that “the absence of any [substantial] disadvantage can be based on criteria such as the financial impact of the matter in dispute.”<sup>544</sup> Even so, “the impact of a pecuniary loss must not be measured in abstract terms: even modest pecuniary damage may be significant in the light of the person’s individual circumstances and the economic situation of the country or region in which he or she lives”<sup>545</sup> The Court said in *Shefer v. Russia*, “individual perceptions encompass not only the monetary aspect of a violation, but also the general interest of the applicant in pursuing the case.”<sup>546</sup> In *Finger v. Bulgaria* the Court emphasized that “the application of the new admissibility requirement should ensure avoiding the rejection of cases which, notwithstanding their trivial nature, raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law.”<sup>547</sup>

The Court has also rejected cases under Article 35 § 3b when the examination of an application “on the merits would not bring any new element to the Court’s existing case-law.”<sup>548</sup> It is highly unlikely, however, given the priority status of applications alleging breaches of Articles 2 or 3, that the Court would utilize this ground in the present context. Furthermore, one can safely say that such breaches would trigger the safeguard clause, pursuant to which the Court “is compelled to continue examining an application if it raises questions of a general character affecting the observance of the Convention.”<sup>549</sup> In fact, as of today the substantial disadvantage criterion has never been applied to Article 3 allegations.

## 2.2.8 Other Aspects of Admissibility

### a) Abuse of the Right of Application (Article 35 § 3)

According to Article 35 § 3 of the Convention, the Court will declare an application inadmissible if it considers the application to be an abuse of the right of application. What constitutes an abuse within the meaning of this Article is determined on a case-by-case basis. The practice discloses that an abuse is an action that is *manifestly* contrary to the purpose of the right of individual application as provided

544 *Adrian Mihai Ionescu v. Romania* (dec.), no. 36659/04, 1 June 2010, § 34. See also *Giuran v. Romania*, no. 24360/04, 21 June 2011, § 18.

545 *Burov v. Moldova* (dec.), no. 38875/03, 14 June 2011, § 29, and *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011, § 33.

546 *Shefer v. Russia* (dec.), no. 45175/04, 13 March 2012, § 2.

547 *Finger v. Bulgaria* (dec.), no. 37346/05, 10 May 2011, § 72.

548 *Burov v. Moldova* (dec.), no. 38875/03, 14 June 2011, § 33.

549 *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011, § 34.

for in the Convention and impedes the proper conduct of the proceedings before the Court.<sup>550</sup> In *Petrović v. Serbia* the Court qualified abuse generally as “the harmful exercise of a right for purposes other than those for which it is designed.”<sup>551</sup> The standards are rather applicant-friendly when it comes to insult against the Court itself, prompting a rejection for abusiveness only if the Court “is of the opinion that [an] applicant’s allegations [against it] are intolerable, exceeding the bounds of normal criticism, albeit misplaced, and amount to contempt of court.”<sup>552</sup>

This ground of inadmissibility has been used by the Court as a tool to weed out vexatious applications that hinder it in carrying out its Article 19 duty to ensure observance of the obligations undertaken by the Contracting Parties in the Convention. It must be stressed that any attempt to mislead the Court in its examination of the application, for example by forging documents,<sup>553</sup> by deliberately concealing relevant facts or by knowingly submitting incomplete and therefore misleading information to the Court,<sup>554</sup> will result in inadmissibility. In particular, if missing information concerns the very core of the case and no sufficient explanation is given for the failure to disclose that information,<sup>555</sup> the Court may conclude that there has been an abuse of the right of application. Also, an intentional breach of the duty of confidentiality in friendly settlement negotiations, provided for under Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, may be considered as an abuse of the right of application.<sup>556</sup> “The rule of confidentiality in respect of friendly-settlement negotiations is especially important because it aims to protect the parties and the Court itself from any political or other kind of pressure.”<sup>557</sup>

The Court receives a considerable number of applications that concern frivolous and repeated complaints by vexatious applicants. In the case of *Philis v. Greece* the Commission observed that the applicant had already introduced five applications

550 See *Miroļubovs and Others v. Latvia*, no. 798/05, 15 September 2009, §§ 62 and 65.

551 *Petrović v. Serbia* (dec.), no. 56551/11, 18 October 2011.

552 *Milan Řehák v. the Czech Republic* (dec.), 67208/01, 18 May 2004, the applicant here interestingly criticized, *inter alia*, the fact that an application of his had been rejected by a Committee of the Court, stating that “not even criminal communist tribunals sent their decisions without reasoning,” but then progressed to insult the Court’s personnel as KGB agents and the like.

553 See *Varbanov v. Bulgaria*, no. 31365/96, 5 October 2000, § 36; *Popov v. Moldova* (No. 1), no. 74153/01, 18 January 2005, § 48; *Rehak v. Czech Republic* (dec.), no. 67208/01, 18 May 2004; *Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006. In *Mohammad Hossein Bagheri and Malihe Maliki* (dec.), no. 30164/06, 15 May 2007, for instance, the applicants had relied in forged decisions of Iranian Revolutionary Tribunals to support their claims of a treat of persecution upon return to their country of origin.

554 See *Hüttner v. Germany* (dec.), no. 23130/04, 9 June 2006.

555 *Poznanski and Others v. Germany* (dec.), no. 25101/05, 3 July 2007.

556 *Popov v. Moldova* (No. 1), no. 74153/01, 18 January 2005, § 48; *Miroļubovs and Others v. Latvia*, no. 798/05, 15 September 2009, § 66, 15 September 2009, and *Benjocki and Others v. Serbia* (dec.), nos. 5958/07, 6561/07, 8093/07 and 9162/07, 15 December 2009.

557 *Rauf Abbasov and Others v. Azerbaijan*, no. 36609/08, 28 May 2013, § 29.

with the Commission concerning the same complaint all of which had been declared inadmissible. Apart from finding that the latest application constituted an abuse of the right of application, the Commission added:

It cannot be the task of the Commission, a body set up under the Convention to ensure the observance of the engagements undertaken by the High Contracting Parties in the present Convention, to deal with a succession of ill-founded and frivolous complaints, creating unnecessary work which is incompatible with its real functions, and which hinders it in carrying them out.<sup>558</sup>

In a number of cases the Court has examined whether the use of offensive language in the proceedings before the Court – language that was directed either against the respondent Government or its agents,<sup>559</sup> the regime in the respondent Contracting Party,<sup>560</sup> or the Court and its Registry,<sup>561</sup> constituted an abuse of the right of application.<sup>562</sup> Finding that the use of offensive language in proceedings is undoubtedly inappropriate, the Court also held that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts.<sup>563</sup>

Finally, in a number of cases the Commission and the Court have rejected claims made by respondent Governments that applications constituted an abuse of the right of application because they had been made for political purposes. For example, in the case of *Aslan v. Turkey*, the respondent Government argued that the application, being devoid of any sound legal basis, had been lodged for purposes of political propaganda against the Turkish Government. The Commission concluded that the Government's argument could only be accepted if it was clear that the application was based on untrue facts. However, as this was far from clear at that stage of the proceedings, the Commission found it impossible to reject the application on this ground.<sup>564</sup>

In extreme cases, the Court can either ban an applicant or attorney from submitting cases to it, or inform the national bar association of misconduct.<sup>565</sup>

---

558 *Philis v. Greece*, no. 28970/95, Commission decision of 17 October 1996.

559 See *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002.

560 See *Iordachi and Others v. Moldova* (dec.) no. 25198/02, 5 April 2005.

561 See *Řehák v. the Czech Republic* (dec.), no. 67208/01, 18 May 2004.

562 See also Rule 44D of the Rules of Court according to which, “[i]f the representative of a party makes abusive, frivolous, vexatious, misleading or prolix submissions, the President of the Chamber may exclude that representative from the proceedings, refuse to accept all or part of the submissions or make any other order which he or she considers it appropriate to make, without prejudice to Article 35 § 3 of the Convention”.

563 See *Varbanov v. Bulgaria*, no. 31365/96, 5 October 2000, § 36.

564 *Aslan v. Turkey*, no. 22497/93, Commission decision of 20 February 1995.

565 *Petrović v. Serbia* (dec.), no. 56551/11, 18 October 2011, “the President of the Second Section decided to ban the applicant, a licensed lawyer, from representing clients before the Court, at that time and in the future.”

## **b) Anonymous Applications (Article 35 § 2a)**

The Court will not accept anonymous applications, that is submissions that do not indicate any element enabling the Court to identify the applicant.<sup>566</sup> Rule 47 § 1 (a) of the Rules of Court thus requires that the name, date of birth, nationality, sex, occupation, and address of the applicant be set out in the application form. The Convention organs have, for instance, rejected petitions submitted by non-governmental organizations on behalf of unidentified classes of victims, such as patients and doctors allegedly harmed by health-related legislation.<sup>567</sup> The Court, however, applies these rules with a degree of flexibility. In *Shamayev and Others v. Georgia and Russia*, for instance, several individuals complaining about human rights violations in the context of an armed conflict used pseudonyms and were accepted as applicants since their “application concerned real, specific and identifiable individuals and that their complaints, relating to alleged violations of the rights guaranteed to them under the Convention, were based on actual events.”<sup>568</sup>

The public nature of the Convention proceedings entails that the Court's decisions and judgments list the name, the year of birth, and the place of residence of the applicants. However, some applicants do not wish that their identity be disclosed to the public. In such circumstances, they may ask the Court to refer to them in public documents by their initials or by a single letter such as “X”, “Y”, “Z”, etc.<sup>569</sup> Any such requests, however, must be supported by a statement of the reasons justifying such a departure from the rule of public access to information in proceedings before the Court. The President of the Chamber may authorise anonymity in exceptional and duly justified cases.<sup>570</sup>

Applicants should note that even where the Court grants a request for anonymity, their identities will always be disclosed to the concerned Contracting Party because the Contracting Party cannot, for obvious reasons, be expected to respond to anonymous complaints. In other words, an applicant can be anonymous *vis-à-vis* the general public but not *vis-à-vis* the other party to the complaint.

---

566 “*Blondje v. the Netherlands* (dec.), no. 7245/09, 15 September 2009.

567 *Federation of French Medical Trade Unions and the National Federation of Nurses v. France*, no. 10938/84, Commission decision on the admissibility of 12 May 1986.

568 *Shamayev and Others v. Georgia and Russia* (dec.), no. 36378/02, 16 September 2003; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005, § 275.

569 See paragraph 8b of the Practice Direction on the “Institution of Proceedings” which can be found in Appendix No. 4.

570 Rule 47 § 4 of the Rules of Court.

### c) Applications Previously Considered by the Court or Submitted to Another International Procedure (Article 35 § 2b)

A complaint that has already been examined either by the Court itself or which has already been submitted to another procedure of international investigation or settlement, and which contains no new information will be declared inadmissible.<sup>571</sup> According to the Court,

this provision is intended to avoid the situation where several international bodies would be simultaneously dealing with applications which are substantially the same. A situation of this type would be incompatible with the spirit and the letter of the Convention, which seeks to avoid a plurality of international proceedings relating to the same cases.<sup>572</sup>

Other international procedures covered by the clause must be international (inter-governmental),<sup>573</sup> independent, and qualify as “judicial or quasi-judicial proceedings similar to those set up by the Convention”<sup>574</sup> to cause the application to be declared inadmissible. The Human Rights Council, for instance, would not qualify as such a procedure,<sup>575</sup> both on account of its composition and the particularities of its proceedings.<sup>576</sup> Conversely, the UN treaty bodies, such as the Human Rights Committee<sup>577</sup> and the UN Working Group on Arbitrary Detention, would be considered judicial or quasi-judicial.<sup>578</sup> Special UN procedures qualify as another procedure only to the extent that they can establish individual responsibility and assess the individual facts of a case.<sup>579</sup> The Committee established under the European Convention against Torture (CPT) is not a quasi-judicial procedure by virtue of its confidential character nor can individuals participate in its proceedings nor are they entitled to receive information about their outcome.<sup>580</sup> Thus the CPT is not considered “another international procedure in terms of Article 35 § 2 (b) of the Convention.

571 Article 35 § 2 (b) of the Convention.

572 *Smirnova and Smirnova v. Russia* (dec.), nos. 46133/99 and 48183/99, 3 October 2002, with reference to *Calcerrada Fornieles and Cabeza Mato v. Spain*, no. 17512/90, Commission decision of 6 July 1992.

573 *Lukanov v. Bulgaria*, no. 21915/93, Commission decision on the admissibility of 12 January 1995.

574 *Mikolenko v. Estonia* (dec.), no. 16944/03, 5 January 2006.

575 *Ibid.*

576 *Celniku v. Greece*, no. 21449/04, 5 July 2007, § 40.

577 *Pauger v. Austria*, no. 24872/94, Commission decision of 9 January 1995. See also Catherine Phuong, “The Relationship Between the European Court of Human Rights and the Human Rights Committee: Has the ‘Same Matter’ Already Been ‘Examined’?”, in *Human Rights Law Review*, vol. 7, 2007, pp. 385–395.

578 *Peraldi v. France* (dec.), no. 2096/05, 7 April 2009, B.

579 *Tabarik Malsagova and Others v. Russia* (dec.), no. 27244/03, 6 March 2008 with reference to the Working Group on Enforced or Involuntary Disappearances.

580 *Pace v. Italy*, no. 22728/03, 17 July 2008, § 26: “La Cour relève que le CPT n’est pas une instance judiciaire ou quasi judiciaire et que son rôle, tel que défini par la Convention qui l’a institué, →

Furthermore, in its admissibility decision in the case of *Jeličić v. Bosnia and Herzegovina*,<sup>581</sup> the Court found that the Human Rights Chamber of Bosnia and Herzegovina was not an international tribunal within the meaning of Article 35 § 2 (b) of the Convention because its mandate did not concern obligations between States but strictly those undertaken by Bosnia and Herzegovina and its constituent entities.

The Court will not declare a complaint inadmissible on this ground if it is based on facts which have been examined by another international procedure or by the Court itself, if the complaint raised in relation to those facts is a different one. It thus appears that the Court interprets the concept of “substantially the same application” favorably for potential applicants.<sup>582</sup> However, unless the new application contains “relevant new information”, it will be declared inadmissible by the Court. “Relevant new information” within the meaning of this provision may include a domestic court decision obtained by an applicant whose previous application was declared inadmissible by the Court for non-exhaustion of that particular remedy.

---

est de nature préventive. En outre, les informations recueillies par le CPT ont un caractère confidentiel et les particuliers ne disposent ni d'un droit de participation à la procédure, ni d'un droit à être informés des recommandations qui peuvent être formulées par le CPT, à moins qu'elles ne soient rendues publiques.” See also Paragraph 92 of the Explanatory Report to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment expressly addresses this issue. According to this paragraph, “it is not envisaged that a person whose case has been examined by the committee would be met with a plea based on Article [35 § 2(b) of the Convention] if he subsequently lodges a petition with the European [Court] of Human Rights alleging that he has been the victim of a violation of that Convention”.

<sup>581</sup> See *Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005.

<sup>582</sup> See *Kovačić and Others v. Slovenia* (dec.), nos. 44574/98, 45133/98 and 48316/99, 9 October 2003.

# **PART III**

## THE SUBSTANCE OF ARTICLE 3



### 3.1 The Absolute Nature of Article 3

Article 3 of the Convention enshrines one of the most fundamental values of democratic societies.<sup>583</sup> Unlike most other provisions in the Convention, Article 3 does not have any exceptions or limitations. In *Al-Adsani v. the United Kingdom*, the Grand Chamber referred to the International Criminal Tribunal for the Former Yugoslavia's (ICTY) discussion of the status of the prohibition of torture in international law. In *Prosecutor v. Furundzija*,<sup>584</sup> the ICTY observed that

It should be noted that the prohibition of torture laid down in human rights treaties enshrines an absolute right, which can never be derogated from, not even in time of emergency [...] This is linked to the fact, discussed below, that the prohibition on torture is a peremptory norm or *jus cogens*.<sup>585</sup> [...] the other major feature of the principle proscribing torture relates to the hierarchy of rules in the international normative order. Because of the importance of the values it protects, this principle has evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even 'ordinary' customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special or even general customary rules not endowed with the same normative force.<sup>586</sup>

The Court has stated on numerous occasions that even in the most difficult of circumstances, for example in the fight against organized crime or terrorism, the prohibition of torture is absolute.<sup>587</sup> An illustrative example in this context is *A. v. the Netherlands*,<sup>588</sup> which originated in an application by a terror suspect who was about to be expelled to Libya because he was found to represent a danger to national security. The Court reiterated that

the absolute nature of the prohibition under Article 3, irrespective of the conduct of the person concerned, however undesirable or dangerous this may be. The Court has also reaffirmed the principle that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion in order to determine whether the responsibility of a State is engaged under Article 3.<sup>589</sup>

The absolute nature of Article 3 thus means that there can never be any proportionality or balancing considerations upon which Article 3 could be limited. Even in cases where the victim has committed a grave offence, the serious and heinous nature of that offence can never justify ill-treatment.<sup>590</sup> This was also one of the

<sup>583</sup> See e.g. *Novoselov v. Russia*, no. 66460/01, 2 June 2005, § 38.

<sup>584</sup> *Al-Adsani v. the United Kingdom*, no. 35763/97, 21 November 2001, § 30.

<sup>585</sup> ICTY, *Prosecutor v. Anto Furundzija* (Trial Judgement), IT-95-17/1-T, 10 December 1998, § 144.

<sup>586</sup> *Ibid.*, § 153.

<sup>587</sup> See e.g. *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, § 119; *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 95; *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996, § 79.

<sup>588</sup> *A. v. the Netherlands*, no. 4900/06, 20 July 2010.

<sup>589</sup> *Ibid.*, § 142.

<sup>590</sup> *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, § 119; *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 95; *Gäfgen v. Germany* [GC], no. 22978/05, 1 June 2010, § 87.

key findings in the case of *Gäfgen v. Germany* in which the applicant was threatened with torture by the police if he did not establish the whereabouts of the child he had abducted. The Court stated that

it is necessary to underline that, having regard to the provision of Article 3 and to its long-established case law [...], the prohibition on ill-treatment of a person applies irrespective of the conduct of the victim or the motivation of the authorities. Torture, inhuman or degrading treatment cannot be inflicted even in circumstances where the life of an individual is at risk. No derogation is allowed even in the event of a public emergency threatening the life of the nation. Article 3, which has been framed in unambiguous terms, recognises that every human being has an absolute, inalienable right not to be subjected to torture or to inhuman or degrading treatment under any circumstances, even the most difficult. The philosophical basis underpinning the absolute nature of the right under Article 3 does not allow for any exceptions or justifying factors or balancing of interests, irrespective of the conduct of the person concerned and the nature of the offence at issue.<sup>591</sup>

This statement also reveals that derogation from Article 3 is never possible, not even in those cases where there is an emergency threatening the life of the nation. Article 15, which regulates the derogation from certain Convention rights, specifically states in paragraph 2 that no derogation from Article 3 is possible. In this context, the Court explained in the case of *Ireland v. the United Kingdom*:

The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment, irrespective of the victim's conduct. Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4 (P1, P4), Article 3 (art. 3) makes no provision for exceptions and, under Article 15 para. 2 (art. 15-2), there can be no derogation therefrom even in the event of a public emergency threatening the life of the nation.<sup>592</sup>

In sum, the prohibition of ill-treatment is so fundamental that neither limitations, including a proportionality test, nor derogations are ever possible.

### 3.2 The Scope of Article 3

Article 3 of the Convention is, as held by the Court on numerous occasions, one of the most fundamental values of democratic societies.<sup>593</sup> It reads: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

---

591 *Gäfgen v. Germany* [GC], no. 22978/05, 1 June 2010, § 107.

592 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 163.

593 See e.g. *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 95; *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, § 119.

Article 3 applies to torture, inhuman treatment, inhuman punishment, degrading treatment, and degrading punishment. The Court has never given a precise, inclusive definition of the notions of torture, inhuman or degrading treatment or punishment. The meaning of these concepts has, however, crystallized in the Court's case law and the Court explicitly recognized that there is a difference between torture on the one hand and inhuman or degrading treatment or punishment on the other hand. In *Selmouni v. France*, the Court stated the following:

In order to determine whether a particular form of ill-treatment should be qualified as torture, the Court must have regard to the distinction, embodied in Article 3, between this notion and that of inhuman or degrading treatment. [...] it appears that it was the intention that the Convention should, by means of this distinction, attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.<sup>594</sup>

An analysis of the Court's case law further reveals that the distinction between torture and other forms of ill-treatment principally derives from the intensity of the suffering inflicted. Accordingly, torture constitutes an aggravated and intentional inhuman treatment causing very serious and cruel suffering.<sup>595</sup> In contrast, treatment or punishment is 'inhuman' if it causes intense physical or mental suffering.<sup>596</sup> Finally, degrading treatment or punishment arouses in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing.<sup>597</sup>

To fall within the scope of Article 3 of the Convention, ill-treatment must attain a minimum level of severity. In *Ireland v. the United Kingdom*, the Court held:

The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc.<sup>598</sup>

This formula has been reiterated by the Court in many other cases and still serves as the benchmark for assessing whether the minimum level of severity for a possible violation of Article 3 of the Convention has been reached.<sup>599</sup>

Article 3 of the Convention furthermore expressly includes both treatment and punishment. With respect to treatment, the Court in *Pretty v. the United Kingdom* stated that "the Court's case-law refers to "ill-treatment" that [...]

594 *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 96; *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 167.

595 See e.g. *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 167; *Belousov v. Ukraine*, no. 4494/07, 7 November 2013, § 66.

596 See e.g. *Kudla v. Poland* [GC], no. 30210/96, 26 October 2000, § 91.

597 *Ibid.*

598 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 162.

599 See e.g. *Price v. the United Kingdom*, no. 33394/96, 10 July 2001, § 24; *Mouisel v. France*, no. 67263/01, 14 November 2002, § 37; *Naumenko v. Ukraine*, no. 42023/98, 10 February 2004 § 108; *Jalloh v. Germany* [GC], no. 54810/00, 11 July 2006, § 67.

involves actual bodily injury or intense physical or mental suffering.”<sup>600</sup> The Court further explained that treatment, which humiliates or debases an individual, shows a lack of respect for, or diminishes, his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance, may be characterized as degrading treatment and could thus also fall within the prohibition of Article 3.<sup>601</sup>

With respect to punishment, the Court has held in *Kudła v. Poland* that measures depriving a person of his or her liberty often involve a certain element of suffering and/or humiliation.<sup>602</sup> Here, the Court stressed that for a punishment to fall within the ambit of Article 3 of the Convention, “the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.”<sup>603</sup> Accordingly, not all punishment is prohibited under Article 3 of the Convention. The Court, in *Tyrer v. the United Kingdom*, with respect to degrading treatment, explicitly stated:

It would be absurd to hold that judicial punishment generally, by reason of its usual and perhaps almost inevitable element of humiliation, is “degrading” within the meaning of Article 3 (art. 3). Some further criterion must be read into the text. Indeed, Article 3 (art. 3), by expressly prohibiting “inhuman” and “degrading” punishment, implies that there is a distinction between such punishment and punishment in general.<sup>604</sup>

Another important issue with respect to the scope of Article 3 of the Convention, addressed by the Court in *Pretty v. the United Kingdom*, is whether the suffering flowing from natural illness can be covered by Article 3. In this case, the Court held that “suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible.”<sup>605</sup> This statement reveals that the responsibility of the State only develops if its actions would cause or increase the suffering of the person concerned. Such state action was not found and consequently the Convention did not oblige the United Kingdom to provide any form of assisted suicide.

---

600 *Pretty v. the United Kingdom*, no. 2346/02, 29 April 2002, § 52.

601 *Ibid.*

602 *Kudła v. Poland* [GC], no. 30210/96, 26 October 2000, § 93.

603 *Ibid.*, § 92. See also *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, § 30; *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989, § 100; *V. v. the United Kingdom* [GC], no. 24888/94, 16 December 1999, § 71; *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10 April 2012, § 202.

604 *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, § 30.

605 *Pretty v. the United Kingdom*, no. 2346/02, 29 April 2002, § 52.

The three concepts of torture, inhuman treatment and degrading treatment are discussed in more details below.

### 3.2.1 Torture

As already mentioned above, torture is the most serious and intense form of ill-treatment. In *Ireland v. the United Kingdom*,<sup>606</sup> the Court stated that

whilst there exists on the one hand violence which is to be condemned both on moral grounds and also in most cases under the domestic law of the Contracting States but which does not fall within Article 3 (art. 3) of the Convention, it appears on the other hand that it was the intention that the Convention, with its distinction between “torture” and “inhuman or degrading treatment”, should by the first of these terms attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering.<sup>607</sup>

The Court furthermore referred to Article 1 of Resolution 3452 (XXX) adopted by the General Assembly of the United Nations on 9 December 1975, which declares: “Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment”.<sup>608</sup> When distinguishing between torture and other forms of ill-treatment, the Court also frequently refers to the UN Convention Against Torture (CAT).<sup>609</sup> Article 1 of the CAT defines torture as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Article 16 of the CAT, which refers to cruel, inhuman or degrading treatment or punishment reads as follows:

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in Articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

---

606 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978.

607 *Ibid.*, § 167.

608 *Ibid.*

609 *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 97.

As can be seen from the definition of torture in Article 1 of the CAT, this definition encompasses three different preconditions: First, severe physical or mental pain or suffering is inflicted; second, severe pain or suffering was inflicted intentionally; and third, severe pain or suffering is inflicted for a specific purpose, such as obtaining information or a confession, as punishment, to intimidate or for a discriminatory purpose. The European Court of Human Rights also applies these three preconditions. The first and the second precondition can be seen in the Court's statement from *Ireland v. the United Kingdom*, where it referred to "deliberate inhuman treatment causing very serious and cruel suffering."<sup>610</sup> The Court referred to the third precondition in the case of *Virabyan v. Armenia*, in which it stated that

there is a purposive element, as recognised in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which came into force on 26 June 1987, which defines torture in terms of the intentional infliction of severe pain or suffering with the aim, inter alia, of obtaining information, inflicting punishment or intimidating<sup>611</sup>

In *Dikme v. Turkey*, a case where the applicant claimed to have been tortured while in police custody, the Court examined these three criteria more in-depth.<sup>612</sup> After expressly referring to the definition of torture contained in Article 1 of the CAT, the Court stated that the first precondition, the severity of the pain and suffering inflicted is relative and dependent on the circumstances of the case.<sup>613</sup> Relative factors in this respect are the duration of the treatment, its physical and/or mental effects and, in some cases, the victim's sex, age, and state of health.<sup>614</sup> The Court found that in the *Dikme* case this criterion was fulfilled, since the applicant "lived in a permanent state of physical pain and anxiety owing to his uncertainty about his fate and to the blows repeatedly inflicted on him during the lengthy interrogation sessions to which he was subjected throughout his time in police custody."<sup>615</sup> The Court also concluded that the second and the third criterion had been fulfilled because "such treatment was intentionally meted out to the first applicant by agents of the State in the performance of their duties, with the aim of extracting a confession or information about the offences of which he was suspected."<sup>616</sup>

---

610 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 167.

611 *Virabyan v. Armenia*, no. 40094/05, 2 October 2012, § 156. See also *Salman v. Turkey*, no. 21986/93, 27 June 2000, § 114.

612 *Dikme v. Turkey*, no. 20869/92, 11 July 2000, § 94.

613 *Ibid.*

614 *Ibid.*

615 *Ibid.*, § 95.

616 *Ibid.*

This means that the treatment was not only intentional, thus fulfilling the second criterion, but had also been applied for a certain goal, thereby fulfilling the third criterion. Based on this analysis, the Court held that the ill-treatment of the applicant in *Dikme v. Turkey* amounted to torture.<sup>617</sup>

In *Selmouni v. France* the Court further explained that the Convention is a “living instrument which must be interpreted in the light of present-day conditions.”<sup>618</sup> In this regard, the Court held that “certain acts which were classified in the past as “inhuman and degrading treatment” as opposed to “torture” could be classified differently in the future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.”<sup>619</sup> Therefore, the Court concluded that a large number of blows that had been inflicted on the applicant were of such an intensity to cause severe pain for the purpose of “torture”.<sup>620</sup> The Court further noted that the applicant was

dragged along by his hair; that he was made to run along a corridor with police officers positioned on either side to trip him up; that he was made to kneel down in front of a young woman to whom someone said “Look, you’re going to hear somebody sing”; that one police officer then showed him his penis, saying “Here, suck this”, before urinating over him; and that he was threatened with a blowlamp and then a syringe ... Besides the violent nature of the above acts, the Court is bound to observe that they would be heinous and humiliating for anyone, irrespective of their condition.<sup>621</sup>

The Court, finally concluded that the “physical and mental violence, considered as a whole, committed against the applicant’s person caused “severe” pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture for the purposes of Article 3 of the Convention.”<sup>622</sup>

The case of *Karabet and Others v. Ukraine*<sup>623</sup> provides a more recent example of the Court’s case law regarding torture. The applicants claimed that they had been beaten, humiliated and degraded by being forced to strip naked and adopt humiliating poses; that they had been subjected to unnecessary painful means of restraint; that they had been deprived of food and water for long periods of time; that they had been exposed to low temperatures without adequate clothing; and that there had been a lack of medical examinations and assistance during the operation.

---

<sup>617</sup> Ibid., § 96.

<sup>618</sup> *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 101.

<sup>619</sup> Ibid.

<sup>620</sup> Ibid., § 102.

<sup>621</sup> Ibid., § 103.

<sup>622</sup> Ibid., § 105.

<sup>623</sup> *Karabet and Others v. Ukraine*, nos. 38906/07 and 52025/07, 17 January 2013.

## The Court, in this case held that

the gratuitous violence resorted to by the authorities was intended to crush the protest movement, to punish the prisoners for their peaceful hunger strike and to nip in the bud any intention of raising complaints. In the Court's opinion, the treatment the applicants were subjected to must have caused them severe pain and suffering, within the meaning of Article 1, paragraph 1, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, even though it did not apparently result in any long-term damage to their health.<sup>624</sup>

The Court's case law reveals that an applicant claiming torture needs to substantiate the following:

1. Infliction of severe physical or mental pain or suffering. Relevant factors that can determine the level of pain suffered are, *inter alia*, the duration of the treatment, its physical and/or mental effects/injuries, the victim's sex, age, and state of health;
2. Intentional infliction of severe pain or suffering. Treatment or negligence that caused severe pain, but was not intended to do so does not qualify as torture; and
3. Infliction of pain or suffering that has a specific purpose, such as punishment, intimidation, obtaining information or a confession etc.

### 3.2.2 Inhuman Treatment

Article 3 of the Convention prohibits inhuman treatment and punishment. As mentioned before, the difference between torture on the one hand, and inhuman and degrading treatment on the other hand, is one of degree. Not all acts of ill-treatment, which violate Article 3 of the Convention, reach the severity threshold of torture. However, ill-treatment might still amount to inhuman treatment or punishment. In *Labita v. Italy*, the Grand Chamber gave some guidance regarding the meaning of inhuman treatment:

Treatment has been held by the Court to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering.<sup>625</sup>

In *Ireland v. the United Kingdom*, the Court had to decide whether the five interrogation techniques of wall-standing, hooding, subjection to noise, deprivation of sleep, and deprivation of food and drink as applied by the United Kingdom in Northern Ireland in the 1970s amounted to inhuman treatment.<sup>626</sup>

---

624 Ibid., § 332.

625 *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, § 120.

626 *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 167.

The Court stated the following:

The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3 (art. 3).<sup>627</sup>

The Court found that the five techniques did not amount to torture, because they did not evoke suffering of the intensity and cruelty necessary to be qualified as torture.<sup>628</sup>

The case of *Campbell and Cosans v. the United Kingdom*<sup>629</sup> shows that even the mere threat of ill-treatment can violate Article 3 of the Convention. The applicants complained of the threat of corporal punishment at their school. The applicants themselves had not actually been the victims of physical ill-treatment. However, the Court concluded that

provided it is sufficiently real and immediate, a mere threat of conduct prohibited by Article 3 (art. 3) may itself be in conflict with that provision. Thus, to threaten an individual with torture might in some circumstances constitute at least "inhuman treatment".<sup>630</sup>

The Court came to a similar conclusion in the case of *Gäfgen v. Germany*.<sup>631</sup> Here, the police threatened the applicant with torture if he did not establish the whereabouts of the child he had abducted. The Grand Chamber found that the threats of torture constituted inhuman treatment but did not amount to torture.<sup>632</sup> The Court found that the severity of the pressure exerted and the intensity of the mental suffering caused was not sufficient for a finding of torture, but instead amounted to inhuman treatment.<sup>633</sup>

A further case that is instructive for the Court's approach with regard to inhuman treatment deals with the destruction of property. In the case of *Selçuk and Asker v. Turkey*, Turkish security forces destroyed the applicants' homes. The Court found:

Their homes and most of their property were destroyed by the security forces, depriving the applicants of their livelihoods and forcing them to leave their village. It would appear that the exercise was premeditated and carried out contemptuously and without respect for the feelings of the applicants. They were taken unprepared;

---

627 Ibid.

628 Ibid.

629 *Campbell and Cosans v. the United Kingdom*, nos. 7511/76 and 7743/76, 25 February 1982.

630 Ibid., § 26.

631 *Gäfgen v. Germany* [GC], no. 22978/05, 1 June 2010.

632 Ibid., § 108.

633 Ibid.

they had to stand by and watch the burning of their homes; inadequate precautions were taken to secure the safety of Mr and Mrs Asker; Mrs Selçuk's protests were ignored, and no assistance was provided to them afterwards.<sup>634</sup>

The Court reasoned that the suffering caused to the applicants amounted to the minimum severity needed for a finding of a violation of Article 3 of the Convention.<sup>635</sup>

As the foregoing cases reveal, inhuman treatment does not require intention or a specific purpose as torture does. Thus the mere infliction of severe pain or suffering suffices for inhuman treatment in terms of Article 3 of the Convention.

### 3.2.3 Degrading Treatment

In *Jalloh v. Germany*,<sup>636</sup> the Court held that “treatment has been considered “degrading” when it was such as to arouse in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance or driving them to act against their will or conscience.”<sup>637</sup> Furthermore, the Court has found that “in this connection, the question whether such treatment was intended to humiliate or debase the victim is a factor to be taken into account, although the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3.”<sup>638</sup> In addition, it can be enough that the victim is humiliated in his or her own eyes, even if not in the eyes of others.<sup>639</sup> The assessment of whether treatment is degrading is relative and depends on an evaluation of all the circumstances of the factual situation. Factors that are relevant for assessing whether a particular form of treatment or punishment reaches the threshold of severity to be covered by Article 3 of the Convention, are the nature and context of the treatment and/or punishment, the manner and method of its execution, its duration, its physical and mental effects and, in some instances, the sex, age, and state of health of the victim.<sup>640</sup>

The case of *Stanev v. Bulgaria*<sup>641</sup> is instructive for the approach the Court takes. In this case, the Court found that the applicant, who suffered from schizophrenia,

---

634 *Selçuk and Asker v. Turkey*, nos. 23184/94 and 23185/94, 24 April 1998, § 77.

635 *Ibid.*, § 78.

636 *Jalloh v. Germany* [GC], no. 54810/00, 11 July 2006.

637 *Ibid.*, § 68.

638 *Ghorbanov and Others v. Turkey*, no. 28127/09, 3 December 2013, § 30. See also *Peers v. Greece*, no. 28524/95, 19 April 2001, §§ 67–68 and 74; *Kalashnikov v. Russia*, no. 47095/99, 15 July 2002, § 95.

639 *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, § 32.

640 *Costello-Roberts v. the United Kingdom*, no. 13134/87, 25 March 1993, § 30; *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, §162; *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, §§ 29–30; *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989, § 100.

641 *Stanev v. Bulgaria*, no. 36760/06, 17 January 2012.

was the victim of degrading treatment due to the living condition in the social care home where the authorities had placed the applicant.<sup>642</sup> The Court came to this conclusion based on the fact that the food in the care home was insufficient and of a very poor quality; because the care home was insufficiently heated and the applicant had to sleep in his coat in the winter; the fact that the applicant was only allowed to shower once a week and that the sanitary facilities were in a very poor state and the conditions were unhygienic; and because the home did not return the occupants their own clothes after washing and made them wear other occupants' clothes, arousing feelings of inferiority.<sup>643</sup> The Court took into account the long period of approximately seven years that the applicant had to live in these conditions.<sup>644</sup> Accordingly, the Court concluded that the applicant was the victim of degrading treatment. The Court found a violation, even in the absence of any deliberate purpose on the part of the authorities.

In the case of *Tyrer v. the United Kingdom*, the Court gave more guidance on the notion of degrading punishment. In this case, a 15-year-old boy was sentenced to corporal punishment. He was made to take down his pants and his underpants and bend over a table, while two policemen were holding him and a third policeman applied the punishment with a birch. Although the birching did not cut the skin of the applicant, it raised the skin and the applicant was sore for about a week and half following the punishment. The Court held that judicial punishment inevitably carries with it a certain element of humiliation.<sup>645</sup> Therefore, a distinction has to be made between punishment in general and punishment that is degrading. The Court explains that with respect to degrading punishment, this extra element implies that

for a punishment to be “degrading” and in breach of Article 3 (art. 3), the humiliation or debasement involved must attain a particular level and must in any event be other than that usual element of humiliation [...]. The assessment is, in the nature of things, relative: it depends on all the circumstances of the case and, in particular, on the nature and context of the punishment itself and the manner and method of its execution.<sup>646</sup>

In addition, the Court attached special importance to the circumstance that the “indignity of having the punishment administered over the bare posterior aggravated to some extent the degrading character of the applicant’s punishment”.<sup>647</sup>

---

<sup>642</sup> Ibid., § 212.

<sup>643</sup> Ibid., § 209.

<sup>644</sup> Ibid., § 210.

<sup>645</sup> *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, § 30.

<sup>646</sup> Ibid.

<sup>647</sup> Ibid., § 35.

In contrast to the *Tyrer* case, in *Costello-Roberts v. the United Kingdom* the Court did not find the punishment to amount to degrading treatment.<sup>648</sup> This case dealt with the punishment of a young boy in accordance with the rules in force in the boarding school he attended. As a result of receiving five warnings for (relatively minor) violations of the disciplinary rules at the school, the applicant was given three spansks through his shorts on the buttocks with a rubber-soled gym shoe by the headmaster in private. In this case, the Court attached importance to the fact that the applicant had not adduced any evidence of long-lasting effects of the treatment complained of.<sup>649</sup> Although such long-lasting effects are not a necessary precondition for a finding of a violation of Article 3, in this case the Court found that the required threshold of severity required for a finding of a violation of Article 3 was not met.<sup>650</sup>

There has been a recent series of cases, in which the Court found detention conditions of asylum seekers to be degrading. In *S.D. v. Greece*, the Court held that confining an asylum seeker to a prefabricated cabin for two months without allowing him outdoors or to make a telephone call, and with no clean sheets and insufficient hygiene products, amounted to degrading treatment.<sup>651</sup> In *Tabesh v. Greece*, the Court found that detaining an asylum seeker for three months on police premises pending the application of an administrative measure, without access to recreational activities and without proper meals was considered to be degrading treatment.<sup>652</sup> Similarly, in *A.A. v. Greece*, the Court found that the detention of an asylum seeker, for three months in an overcrowded place in appalling conditions of hygiene and cleanliness, with no leisure or catering facilities, where the dilapidated state of repair of the sanitary facilities rendered them virtually unusable and where the detainees slept in extremely filthy and crowded conditions amounted to degrading treatment.<sup>653</sup> Finally in *M.S.S. v. Belgium and Greece*, the Grand Chamber found that the conditions of detention of the applicant, an asylum seeker, amounted to degrading treatment.<sup>654</sup> The asylum seekers were held in a sector of a detention facility near the airport, that was locked most of the time; the detainees had no access to water and were forced to drink from the toilets; they were confined to a very small area; often there was only one bed in a cell for fourteen to seventeen people; there were not enough mattresses and detainees had to sleep on the floor; the detainees could not lie down and sleep at the same time; there was a lack of

---

648 *Costello-Roberts v. the United Kingdom*, no. 13134/87, 25 March 1993. For a more recent example regarding corporal punishment see *Bouyid v. Belgium*, no. 23380/09, 21 November 2013.

649 *Costello-Roberts v. the United Kingdom*, no. 13134/87, 25 March 1993, § 32.

650 *Ibid.*

651 *S.D. v. Greece*, no. 53541/07, 11 June 2009, §§ 49–54.

652 *Tabesh v. Greece*, no. 8256/07, 26 November 2009, §§ 38–44.

653 *A.A. v. Greece*, no. 12186/08, 22 July 2010, §§ 57–65.

654 *M.S.S. v. Belgium and Greece*, no. 30696/09, 21 January 2011, §§ 231–234.

ventilation and the cells were unbearably hot; the detainees had insufficient access to sanitary facilities and the sanitary and other facilities were dirty; and finally, the detainees did not have access to outdoor exercise.<sup>655</sup> The Grand Chamber found that the periods the applicant spent in these conditions (four days and one week) was not insignificant.<sup>656</sup> The Grand Chamber concluded that

the conditions of detention experienced by the applicant were unacceptable. It considers that, taken together, the feeling of arbitrariness and the feeling of inferiority and anxiety often associated with it, as well as the profound effect such conditions of detention indubitably have on a person's dignity, constitute degrading treatment contrary to Article 3 of the Convention. In addition, the applicant's distress was accentuated by the vulnerability inherent in his situation as an asylum seeker.<sup>657</sup>

The applicant further complained that his living conditions in Greece upon his release from detention, amounted to a violation of Article 3. The applicant complained that because of the inaction of the government, he had been living in inhuman and degrading conditions for months. The Court held that

the Greek authorities have not had due regard to the applicant's vulnerability as an asylum seeker and must be held responsible, because of their inaction, for the situation in which he has found himself for several months, living in the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court considers that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation. It considers that such living conditions, combined with the prolonged uncertainty in which he has remained and the total lack of any prospects of his situation improving, have attained the level of severity required to fall within the scope of Article 3 of the Convention.<sup>658</sup>

It is apparent from the cases on detention described above that the Court also found degrading treatment in cases in which there was no element of degradation such as humiliation. This is the result of the Court's classification of torture, inhuman, and degrading treatment. The difference between inhuman and degrading treatment is the degree of suffering or pain inflicted. This means that the Court classifies treatment that is severe but not inhuman as degrading, irrespective if the applicant suffered debasement or humiliation. Hence this is somewhat at odds with the Court's definition of degrading treatment.

---

<sup>655</sup> Ibid., § 230.

<sup>656</sup> Ibid., § 232.

<sup>657</sup> Ibid., § 233.

<sup>658</sup> Ibid., § 263.

In conclusion, a treatment is degrading in terms of Article 3 of the Convention if:

1. it arouses in its victims feelings of fear, anguish and inferiority capable of humiliating and debasing the victim and possibly breaking his or her physical or moral resistance or driving him or her to act against their will or conscience; or
2. it does not attain the level of severe suffering and pain required for inhuman treatment but nonetheless reaches a threshold that exceeded the unavoidable level of suffering inherent in detention, arrest or any other situation where one is under the power of governmental officials.

The chapters following below explain the Court's case law on torture, inhuman and degrading treatment and punishment with regard to the following areas: detention (chapter 3.3), *non-refoulement* (chapter 3.4), forced disappearance (chapter 3.5), discrimination (chapter 3.6), violence against women (chapter 3.7), violence against children (chapter 3.8), positive obligations (chapter 3.9).

## 3.3 Detention

### 3.3.1 Arrest and Interrogation

The Court has repeatedly recognized that persons in custody are in a particularly vulnerable position<sup>659</sup> and the State has a duty to protect their physical well-being.<sup>660</sup> Although Article 3 of the Convention does not prohibit the use of force in order to effectuate an arrest, the Court has held that such force must not be excessive.<sup>661</sup> For instance, in *Buhaniuc v. Moldova*, the Court reiterated that in the process of arresting a person, any recourse to physical violence must be made strictly necessary by the conduct of the person concerned.<sup>662</sup> Physical force that is not strictly necessitated by the conduct of the arrestee, diminishes the person's dignity and is a violation of Article 3 of the Convention.<sup>663</sup> Such acts have been found to amount to inhuman or degrading treatment<sup>664</sup> and in some cases even to torture.<sup>665</sup>

In the context of arrest and interrogation, the Court often faces difficulties in establishing the facts and circumstances surrounding allegations of ill-treatment.

---

659 See e.g. *Tarariyeva v. Russia*, no. 4353/03, 14 December 2006, § 73–74.

660 See e.g. *Sarban v. Moldova*, no. 3456/05, 4 October 2005, § 77; *Mouïsel v. France*, no. 67263/01, 14 November 2002, § 40.

661 See e.g. *Polyakov v. Russia*, no. 77018/01, 29 January 2009, § 25; *Ryabtsev v. Russia*, no. 13642/06, 14 November 2013, § 65.

662 *Buhaniuc v. The Republic of Moldova*, no. 56074/10, 28 January 2014, § 33.

663 *Ibid.* See also *Ribitsch v. Austria*, no. 18896/91, 4 December 1995, § 38.

664 *Tomasi v. France*, no. 12850/87, 27 August 1992, § 115.

665 *Aksoy v. Turkey*, no. 21987/93, 18 December 1996, § 64.

In *Ryabtsev v. Russia*,<sup>666</sup> the applicant was arrested in a sting operation. During the arrest, the applicant was pushed down a staircase and allegedly ill-treated by the authorities while in custody with a view to obtaining a confession. The applicant, during this initial period of arrest and interrogation, sustained injuries to his scalp and to his hand and suffered a broken nose and a broken finger, all of which were recorded in a medical certificate. Before the Court, the nature of the injuries was disputed between the parties. Whereas the applicant stated that the injuries to his nose, hand, and finger were the result of ill-treatment during his interrogation, the State asserted that all the injuries sustained by the applicant were the result of his accidental fall from the stairs during his arrest. The Court found that the applicant in his submissions to the Court had sufficiently established that his injuries were sustained during his time in custody. The burden of proof therefore shifted to the State. This means that the Court requires the State to prove that the applicant's injuries were not caused by governmental authorities.<sup>667</sup> Since the State was unable to sufficiently explain how the applicant's injuries were caused, the Court found a violation of Article 3 of the Convention.

The *Ryabtsev* illustrates the problem the Court faces with ill-treatment in detention, i.e. the disagreement regarding the evidence and the nature of the injuries sustained by the applicant. Such allegations of ill-treatment are notoriously hard to prove by the applicant, because of the evidentiary imbalance between the parties. Thus the State is under an obligation to explain the causes and circumstances of the applicant's injuries. This was also the Court's opinion in the case of *Bursuc v. Romania*, in which the Court established that "where a person is injured while in detention or otherwise under the control of the police, any such injury will give rise to a strong presumption that the person was subjected to ill-treatment."<sup>668</sup> Similarly, in *Selmouni v. France* the Court held that it is for the State to provide a plausible explanation of how injuries of a detained applicant were caused.<sup>669</sup>

Not only physical, but also psychological force applied during arrest and interrogation can amount to a violation of Article 3. In the case of *El Masri v. the Former Yugoslav Republic of Macedonia*, for instance, the Court found that "Article 3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault."<sup>670</sup> In this case, the applicant was the victim of extraordinary

---

666 *Ryabtsev v. Russia*, no. 13642/06, 14 November 2013.

667 *Ibid.*, §§ 74–75.

668 *Bursuc v. Romania*, no. 42066/98, 12 October 2004, § 80.

669 *Selmouni v. France* [GC], no. 25803/94, 28 July 1999, § 87.

670 *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 39630/09, 13 December 2012, § 202. See also *Iljina and Sarulienė v. Lithuania*, no. 32293/05, 15 March 2011, § 47.

rendition. The applicant had been arrested at the Macedonian border and was held by Macedonian security forces in a hotel in Skopje, before being handed over to the US Centre Intelligence Agency (CIA) at Skopje airport. During his time in the hotel in Skopje, the applicant was under constant guard by Macedonian security forces, interrogated in a foreign language that he did not fully understand threatened with a firearm and was only allowed to have contacts with his interrogators.<sup>671</sup> The Court held the following:

There is no doubt that the applicant's solitary incarceration in the hotel intimidated him on account of his apprehension as to what would happen to him next and must have caused him emotional and psychological distress. The applicant's prolonged confinement in the hotel left him entirely vulnerable. He undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate during the interrogation sessions to which he was subjected.<sup>672</sup>

The Court also found that the threat of physical torture could amount to mental suffering sufficiently serious to amount to inhuman treatment. In the case of *Gäfgen v. Germany*, the Court condemned threats of physical torture during interrogations aimed at establishing the whereabouts of the child the applicant had abducted. The Grand Chamber held that the threats against the applicant

were made in the context of the applicant being in the custody of law-enforcement officials, apparently handcuffed, and thus in a state of vulnerability. It is clear that D. and E. acted in the performance of their duties as State agents and that they intended, if necessary, to carry out that threat under medical supervision and by a specially trained officer [...]. The threat took place in an atmosphere of heightened tension and emotions in circumstances where the police officers were under intense pressure, believing that J's life was in considerable danger.<sup>673</sup>

Even though the Grand Chamber acknowledged that the threats had been issued because the officers firmly believed that the life of the child could be saved, the Grand Chamber reiterated the absolute character of Article 3 of the Convention.<sup>674</sup> The Court concluded that the method of interrogation was sufficiently serious to amount to inhuman treatment.

The treatment of minors during arrest and interrogation is a particularly important issue. In *Dushka v. Ukraine*<sup>675</sup> the Court found a violation of Article 3 because the 17-year-old applicant had been interrogated without his parents or lawyer present. The boy further alleged that he had been ill-treated by the authorities to coerce

---

671 *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 39630/09, 13 December 2012, § 200.

672 *Ibid.*, § 202.

673 *Gäfgen v. Germany* [GC], no. 22978/05, 1 June 2010, § 106.

674 *Ibid.*, § 107.

675 *Dushka v. Ukraine*, no. 29175/04, 3 February 2011.

a confession from him. The Court attached special importance to the fact that neither his parents nor a lawyer were informed of his arrest and the fact that the applicant lacked any representation before the court that sentenced him to administrative detention.<sup>676</sup> The Court found that the

fact that the applicant, a minor at the material time, first confessed to the robbery during his administrative detention in a setting lacking procedural guarantees, such as availability of a lawyer, and retracted his confession upon his release, points to the conclusion that his confession may not have been given freely.<sup>677</sup>

In conclusion, the Court recognizes the vulnerable position of persons during and immediately following their arrest and has held that any force needs to be made strictly necessary by the conduct of the arrested person. Any other use of force, whether physical or psychological is prohibited and violates Article 3 of the Convention.

### 3.3.2 General Prison Conditions

The European Court of Human Rights has dealt with many cases concerning the conditions of detention of prisoners. In its extensive case law on this issue the Court found Article 3 violations for instance in cases of insufficient personal space in the cell,<sup>678</sup> prison overcrowding,<sup>679</sup> inappropriate sanitary facilities,<sup>680</sup> poor quality of food,<sup>681</sup> the lack of adequate medical care,<sup>682</sup> as well as insufficient time spent outside the cell.<sup>683</sup> The Court has repeatedly reiterated that a detained person needs to have access to outdoor exercise, natural light or air, ventilation, adequate heating arrangements as well as the possibility to use the toilet in private.<sup>684</sup> The cases below illustrate the Court's case law on Article 3 in the context of prison conditions.

In the case of *Kalashnikov v. Russia*,<sup>685</sup> the applicant's cell measured 17 square meters and contained eight bunk beds for about 24 inmates. This meant that inmates had to sleep in turns. Furthermore, the television and the light were turned on constantly. The toilets were not closed off and the person using the toilet could be seen by his cellmates and prison guards. The dining table in the cell, where prisoners had to take their meals was only a meter away from the toilet. The temperatures

676 Ibid., § 50.

677 Ibid., § 52. On the issue of ill-treatment of minors see also chapter 3.8

678 See e.g. *Khudoyorov v. Russia*, no. 6847/02, 8 November 2005, §§ 104–109.

679 See e.g. *Kalashnikov v. Russia*, no. 47095/99, 15 July 2002, § 102.

680 See e.g. *Iovchev v. Bulgaria*, no. 41211/98, 2 February 2006, §§ 132–138.

681 See e.g. *Segheti v. the Republic of Moldova*, no. 39584/07, 15 October 2013, § 31, *Ciorap v. the Republic of Moldova* (No. 3), no. 32896/07, 4 December 2012, §§ 33–37.

682 See e.g. *Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, 21 June 2007, § 107.

683 See e.g. *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2011.

684 See e.g. *Aden Ahmed v. Malta*, no. 55352/12, 23 July 2013, § 88; *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2013, § 149.

685 *Kalashnikov v. Russia*, no. 47095/99, 15 July 2002.

in the cell were almost unbearable because the cell had no ventilation. In addition, the applicant was surrounded by heavy smokers and therefore constantly exposed to smoke. The cell was furthermore infested with cockroaches and ants. Finally, the applicant contracted a variety of skin diseases and fungal infections, losing his toenails and some of his fingernails. The Court thus concluded that “the applicant’s conditions of detention, in particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant’s health and well-being, combined with the length of the period [4 years and 10 months] during which the applicant was detained in such conditions, amounted to degrading treatment.”<sup>686</sup>

In the pilot judgment of *Ananyev and Others v. Russia*,<sup>687</sup> the Court laid down three requirements concerning personal space of detainees: (i) each detainee must have an individual sleeping place in the cell; (ii) each detainee must be afforded at least three square meters of floor space; and (iii) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items. The absence of these elements creates a strong presumption that the prison conditions amounted to degrading treatment in terms of Article 3.<sup>688</sup>

In the case of *Canali v. France*<sup>689</sup> the limited opportunities to spend time outside the cell and the poor sanitary facilities and hygiene rendered the prison conditions insufficient. In particular, the fact that the applicant was locked in his cell for the most part of the day with one hour in the morning or afternoon of exercise in a 50 square meter courtyard as well as the sanitary facilities that did not protect the applicant’s privacy amounted to degrading treatment.<sup>690</sup>

The applicants in the case of *Mandić and Jović v. Slovenia*<sup>691</sup> complained about their prison conditions in a Ljubljana prison. The personal space available to the applicants was only 2.7 square meters. They were confined to their cell almost 22 hours a day and only allowed to two hours daily outdoor exercise and two hours per week in the recreation room. The yard, however, did not have a roof and was therefore impractical to use in bad weather. In addition, the temperatures in the cells averaged 28°C and occasionally even exceeded 30°C. The Court concluded that

having regard to fact [sic] that for the most part of their detention [the applicants] had less than 3 square metres [sic] of personal space inside their cell for almost the entire day and night, the Court considers that the distress and hardship endured

---

686 Ibid., § 102.

687 *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012.

688 Ibid., § 148.

689 *Canali v. France*, no. 40119/09, 25 April 2013.

690 Ibid., §§ 51–53.

691 *Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2011.

by the applicants exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 and therefore amounted to degrading treatment.<sup>692</sup>

Finally, the Court has decided several cases in which the applicant had been mistreated by fellow inmates. The Court routinely holds that States need to take measures to ensure that detainees are not subjected to torture or inhuman or degrading treatment or punishment, including ill-treatment administered by private individuals. This demands at least an effective investigation into credible allegations of inmate-on-inmate violence.<sup>693</sup> In assessing whether the State has complied with its obligation to investigate such allegations, the Court tends to assess whether the authorities reacted promptly to the complaints at the relevant time,<sup>694</sup> which includes the opening of investigations, delays in taking statements<sup>695</sup> and the length of time taken for the initial investigation.<sup>696</sup> It is of crucial importance that victims of abuse by fellow prisoners utilize the complaints-mechanisms available in prison, also in order to secure a proper medical examination and corresponding documentary evidence, not only to exhaust domestic remedies, but also to build their case in Strasbourg.

Below is a list of non-exhaustive elements an applicant can address in order to substantiate his or her complaint about prison conditions:

- Personal space: How big is the cell? How many inmates are sharing the cell?
- Air: Is there fresh air in the cell? Is there ventilation?
- Light: Is there natural light? Are the lights turned off during the night?
- Sleeping arrangement: Are there beds/mattresses? Are beds shared by several inmates? Do prisoners have to take turns in sleeping?
- Sanitary facilities: What are the hygienic conditions of the sanitary facilities? How frequent can toilets and showers be accessed? Are toilets closed off or can the person using the toilet be seen by fellow-inmates and prison guards?
- Hygiene: Is the cell invested with vermin? Does the applicant have any infections, such as skin disease or fungal infection as a result of the precarious hygienic conditions?

---

692 Ibid., § 80.

693 See e.g. *Ay v. Turkey*, no. 30951/96, 22 March 2005, § 60; *M.C. v. Bulgaria*, no. 39272/98, 4 December 2003, § 151.

694 See e.g. *Labita v. Italy* [GC], no. 26772/95, 6 April 2000, §§ 130–136.

695 See e.g. *Timurtaş v. Turkey*, no. 23531/94, 13 June 2000, § 89; *Tekin v. Turkey*, no. 22496/93, 9 June 1998, § 67.

696 *Indelicato v. Italy*, no. 31143/96, 18 October 2001, § 37.

- Food: What is the condition of the food? What type of food is served? Is the quantity of food enough?
- Outdoor exercise: How frequently and for how long can the cell be left? How big is the prison yard/space for outdoor exercise? What is the general condition of the prison yard? Is it exposed to weather conditions (e.g. rain, sun)?
- Social contacts: Is there the possibility of social contacts to fellow inmates? Has the applicant the possibility of contact with family members and lawyers? Has the applicant been ill-treated by other inmates or prison guards? If so, what were the reaction and measures by prison authorities?
- Effect on the applicant's health: Do prison conditions negatively affect the applicant's mental or physical health?<sup>697</sup>

### 3.3.3 Health

The Court repeatedly iterated that authorities are under an obligation to protect the health of persons deprived of their liberty. In the case of *Kudła v. Poland*, the Court held that a

State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured by, among other things, providing him with the requisite medical assistance.<sup>698</sup>

In the case of *Zarzycki v. Poland* the Court further argued:

Persons in custody are in a vulnerable position and the authorities are under a duty to protect them. Where the authorities decide to place and maintain in detention a person with disabilities, they should demonstrate special care in guaranteeing such conditions as correspond to his special needs resulting from his disability.<sup>699</sup>

The Court has held in various cases that the lack of appropriate medical care of detainees may amount to treatment contrary to Article 3 of the Convention.<sup>700</sup> According to the Council of Europe's recommendations on dealing with health care in prison, the main characteristics of the right to health in prison include

---

697 Ill-treatment issues involving an applicant's health are discussed in section 3.2.3 below.

698 *Kudła v. Poland* [GC], no. 30210/96, 26 October 2000, § 94.

699 *Zarzycki v. Poland*, no. 15351/03, 12 March 2013, § 102.

700 See e.g. *İlhan v. Turkey* [GC], no. 22277/93, 27 June 2000; *Sarban v. Moldova*, no. 3456/05, 4 October 2005.

701 Committee of Ministers, Recommendation No. R (98) 7 Concerning the Ethical and Organisational Aspects of Health Care in Prison, 8 April 1998; Recommendation No. R (87) 3 on the European Prison Rules, 12 February 1987; Rec(2006)2 on the European Prison Rules, 11 January 2006.

the access to a doctor, equivalence of care, a patient's consent and confidentiality and professional independence.<sup>701</sup>

Taking these elements into account, the Court developed three criteria that have to be considered in relation to the compatibility of an applicant's health with his stay in detention: (i) the medical condition of the prisoner, (ii) the adequacy of the medical assistance and care provided in detention, and (iii) the advisability of maintaining the detention measure in view of the state of health of an applicant.<sup>702</sup>

Finally, particular elements must be taken into consideration for prisoners with serious physical illness (section a), physical disability (section b), mental disability (section c), and drug addictions (section d).

### **a) Serious Physical Illness and Injuries**

In the case of *Khudobin v. Russia*<sup>703</sup> the applicant, who was HIV-positive, suffered from several chronic diseases, including epilepsy, pancreatitis, viral hepatitis B and C, as well as various mental illnesses and contracted several serious diseases including measles, bronchitis and acute pneumonia during his detention. Throughout his detention the authorities failed to monitor his diseases and provide adequate medicinal treatment. His request to undergo a thorough medical examination was refused. The Court concluded that the lack of qualified and timely medical assistance amounted to degrading treatment in violation of Article 3 of the Convention.<sup>704</sup>

The case of *Xiros v. Greece*<sup>705</sup> concerned the complaints of an applicant imprisoned for participating in activities of a terrorist organisation. He had serious health problems after a bomb exploded in his hand, leaving him with impaired vision, hearing, and mobility. During his detention, his vision deteriorated further. The applicant thus applied for a stay of execution of his sentence to enable him to undergo treatment in a specialist eye clinic. This request was rejected. The Court found that Article 3 of the Convention has been violated, because of the inadequate medical care. The treatments provided in prison for his sight problems were not as good as the medical care available in a hospital.<sup>706</sup>

The case of *Mouisel v. France*<sup>707</sup> originated in an application by a detainee who was sentenced to fifteen years' imprisonment and who suffered from chronic lymphatic

702 See e.g. *Dybeku v. Albania*, no. 41153/06, 18 December 2007, § 41.

703 *Khudobin v. Russia*, no. 59696/00, 26 October 2006.

704 *Ibid.*, 92–97.

705 *Xiros v. Greece*, no. 1033/07, 9 September 2010.

706 *Ibid.*, §§ 78–94.

707 *Mouisel v. France*, no. 67263/01, 14 November 2002.

leukemia. The applicant underwent chemotherapy sessions at a hospital. During the journey as well as during his treatment he was put in chains and his wrists were attached to the bed. The applicant further complained about the aggressive behaviour of the prison guards. After he decided to stop his medical treatment in 2000, the applicant was transferred to another prison and treated in a specialized clinic. Finally, the applicant was released on license in March 2001 subject to an obligation to undergo medical treatment or care. In finding a violation of Article 3, the Court held that although the applicant's condition had become increasingly incompatible with his continued detention, the authorities failed to take any special measures. The Court further reasoned "the health of a detainee is now among the factors to be taken into account in determining how a custodial sentence is to be served, particularly as regards its length."<sup>708</sup>

### **b) Physical Disability**

If authorities decide to place a person with disability in detention they need to demonstrate special care in guaranteeing that prison conditions correspond to the special needs resulting from his or her disability.<sup>709</sup> This was the finding in the case of *D.G. v. Poland*<sup>710</sup> that originated from an applicant who was a paraplegic bound to his wheelchair and suffering from serious malfunctions of the urethral and anal sphincters. The applicant alleged that the prison facilities were not adapted to the use of a wheelchair which resulted in problems of access to the toilet. In addition, the applicant did not receive a sufficient supply of incontinence pads. The Court thus found a violation of Article 3 of the Convention because the conditions of detention "interfered with the applicant's ability to be independent, at least in some of his daily routines, placing him in a position of absolute dependence on his fellow inmates and causing him both mental and physical suffering"<sup>711</sup> as the detention facility was not adapted for persons in wheelchairs.

In contrast, in the case of *Zarzycki v. Poland* the Court did not find a violation with regard to the applicant's prison condition.<sup>712</sup> The applicant, who had both forearms amputated, complained that his treatment in detention was degrading. The applicant alleged that during his incarceration he was not provided with the adequate medical assistance for his special needs and was not refunded for the cost of more advanced bio-mechanical prosthetic arms. In addition, the applicant had to rely on the help of other inmates for certain daily hygiene and dressing tasks.

---

708 Ibid., § 43.

709 See e.g. *Z.H. v. Hungary*, no. 28973/11, 8 November 2012, § 29; *Price v. the United Kingdom*, no. 33394/96, 10 July 2001, § 26.

710 *D.G. v. Poland*, no. 45705/07, 12 February 2013.

711 Ibid., § 145.

712 *Zarzycki v. Poland*, no. 15351/03, 12 March 2013.

713 Ibid., § 124.

The Court did not find a violation of Article 3 of the Convention because “the basic-type mechanical prostheses were available and indeed provided to the applicant free of charge and because a refund of a small part of the cost of bio-mechanic prostheses was also available”.<sup>713</sup> In addition, the authorities also provided regular and adequate assistance compatible with the applicant’s special needs.

### c) Mental Disability

Mental disabilities of prisoners as well as their inability, in some cases, to complain about their detention must be taken into consideration when deciding on treatment or punishment in the context of Article 3 of the Convention. A relevant case in this regard is *Dybeku v. Albania*.<sup>714</sup> The applicant in this case suffered from chronic paranoid schizophrenia and has received in-patient treatment in various psychiatric hospitals for many years. The applicant, who served life imprisonment for murder and possession of illegal explosives, was treated as an ordinary prisoner despite his severe state of health. As the authorities deemed it impossible to provide him with adequate treatment, the applicant was just treated with drugs. Although, the applicant’s health subsequently deteriorated, the authorities rejected a request to undertake a psychiatric examination. The Court was of the opinion that the applicant’s health issues could not be addressed by simply sending him to the prison hospital. Furthermore, resource constraints could not justify conditions that are so severe as to amount to an Article 3 violation. The Court concluded that the detention’s negative effects on the applicant’s health qualified as inhuman and degrading treatment.<sup>715</sup>

In contrast to the case of *Dybeku v. Albania*, the Court did not find a violation of Article 3 in the case of *Kudła v. Poland*.<sup>716</sup> The applicant suffered from chronic depression and tried to commit suicide twice while in prison. The Court held that because the applicant had been examined by specialist doctors and had frequently received psychiatric assistance, no violation of Article 3 could be found.<sup>717</sup>

### d) Drug Addiction

In *McGlinchey and Others v. the United Kingdom*,<sup>718</sup> the applicant was a heroin addict who suffered from heroin-withdrawal symptoms such as vomiting and significant weight loss while in prison. During her detention, the applicant was first treated by a doctor and after one week in prison, admitted to the hospital where she died.

---

<sup>714</sup> *Dybeku v. Albania*, no. 41153/06, 18 December 2007.

<sup>715</sup> *Ibid.*, §§ 43–52.

<sup>716</sup> *Kudła v. Poland* [GC], no. 30210/96, 26 October 2000.

<sup>717</sup> *Ibid.*, §§ 82–100.

<sup>718</sup> *McGlinchey and Others v. the United Kingdom*, no. 50390/99, 29 April 2003.

Her relatives complained that the applicant had suffered inhuman and degrading treatment contrary to Article 3 of the Convention in prison prior to her death. The Court held that the applicant's loss of weight and dehydration were serious risks for her health and had caused her distress and suffering. The Court furthermore held that the applicant was not provided with the requisite health care. The authorities had therefore violated Article 3 of the Convention.<sup>719</sup>

### 3.3.4 Solitary Confinement

In certain cases, lengthy solitary confinement of prisoners can lead to a violation of Article 3 of the Convention. However, the threshold for solitary confinement to amount to inhuman or degrading treatment is high. In its landmark decision *Ennslin, Baader, Raspe v. Germany*, the Commission held:

The segregation of a prisoner from the prison community does not in itself constitute a form of inhuman treatment. In many States Parties to the Convention, more stringent security arrangements exist for dangerous prisoners. These arrangements (strict isolation, removal of association, dispersal in special, very small units etc.), which are intended to prevent the risk of escape, attack or disturbance of the prison community, or even to protect a prisoner from his fellow-prisoners, are based on separation from the prison community together with tighter controls.<sup>720</sup>

The Commission further stated that in determining whether solitary confinement falls within the ambit of Article 3 of the Convention, “regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned.”<sup>721</sup> With regard to the subject matter in *Ennslin, Baader, Raspe v. Germany*, the Commission concluded that the applicants, leaders of the terrorist organization Rote Armee Fraktion, were not subjected to complete sensory isolation. Rather, they were able to have contact with each other, their lawyers and families; they had access to books, radio and television; their cells were well lit and had windows that could be opened from the inside; and they had been enabled to exercise outside daily. Due to these circumstances, the Commission concluded that there had not been a violation of Article 3 of the Convention.<sup>722</sup>

Based on the Commissions' finding in *Ennslin, Baader, Raspe v. Germany*, the Court consistently upheld this high threshold. For instance, the Court found that eight years and two months of relative social isolation did not amount to an Article 3 violation. In the case of *Ramirez Sanchez v. France*,<sup>723</sup> the applicant was convicted for

---

719 Ibid., §§ 53–58.

720 *Ennslin, Baader, Raspe v. Germany*, no. 7572/76, Commission decision of 8 July 1978.

721 Ibid.

722 Ibid.

723 *Ramirez Sanchez v. France*, no. 59450/00, 4 July 2006.

terrorist attacks and murder and subsequently sentenced to life imprisonment. The applicant was placed in a one-person cell and was prohibited from contacts with prisoners or warders. Except for a two-hour daily walk and an hour in the cardiac-training room, the applicant was prohibited from any activities outside his cell. However, the applicant had received twice-weekly visits from a doctor, a once-monthly visit from a priest, frequent visits from one or more of his 58 lawyers, and more than 640 visits from his wife over a period of four years and ten months.<sup>724</sup> Therefore, he has not been in complete isolation. There were also no signs that the applicant's physical or mental health had been adversely affected. The applicant himself never made such allegation and refused psychological help offered to him.<sup>725</sup> Moreover, concerns that the applicant might use communications inside or outside the prison to re-establish contacts with his terrorist cell and concerns that the applicant might prepare an escape made solitary confinement necessary.<sup>726</sup> The Court thus did not find a violation of Article 3 of the Convention.<sup>727</sup> Nevertheless, the Court stated that solitary confinement could not be imposed indefinitely as this could have a negative long-term effect on a prisoner.<sup>728</sup>

Conversely, in the case of *A.B. v. Russia* the Court found that the applicant's solitary confinement amounted to inhuman or degrading treatment.<sup>729</sup> The applicant, who was in remand prison for an alleged non-violent economic crime, has been detained in nearly absolute social isolation for more than three years.<sup>730</sup> The Court found a violation of Article 3 of the Convention because the applicant was not dangerous, either to himself or to others;<sup>731</sup> the government only put forward a vague risk to life and limb as the reason for isolation;<sup>732</sup> the government never assessed whether this presumed risk to life and limb still existed;<sup>733</sup> and the applicant's physical or psychological aptitude for long-term isolation was never assessed by a medical specialist.<sup>734</sup>

---

724 Ibid., § 131.

725 Ibid., § 144.

726 Ibid., § 149.

727 Ibid., § 150.

728 Ibid., § 145.

729 *A.B. v. Russia*, no. 1439/06, 14 October 2010, § 113.

730 Ibid., § 103.

731 Ibid., § 105.

732 Ibid., § 105.

733 Ibid., § 109.

734 Ibid. The Court also found an Article 3 violation in the context of solitary confinement in the cases of *Mathew v. the Netherlands*, no. 24919/03, 29 September 2005; *Gorbulya v. Russia*, no. 31535/09, 6 March 2014.

The Court also repeatedly held that solitary confinement is one of the most serious measures that can be imposed within a prison and thus needs to be the exception. In doing so, the Court frequently refers to the European Prison Rules, a set of recommendations adopted by the Committee of Ministers of the Council of Europe.<sup>735</sup> Article 53 of these rules states the following:

Special high security or safety measures

53.1 Special high security or safety measures shall only be applied in exceptional circumstances.

53.2 There shall be clear procedures to be followed when such measures are to be applied to any prisoner.

53.3 The nature of any such measures, their duration and the grounds on which they may be applied shall be determined by national law.

53.4 The application of the measures in each case shall be approved by the competent authority for a specified period of time.

53.5 Any decision to extend the approved period of time shall be subject to a new approval by the competent authority.

53.6 Such measures shall be applied to individuals and not to groups of prisoners.

53.7 Any prisoner subjected to such measures shall have a right of complaint in the terms set out in Rule 70.

The Court applied these criteria in the case of *Babar Ahmad and Others v. the United Kingdom*.<sup>736</sup> The applicants, who had been indicted in the United States for various terrorism-related charges, alleged that their extradition from the United Kingdom to the United States would violate their Convention rights. The applicants complained that their placement in the ADX in Florence, a supermax prison, would violate Article 3 of the Convention. Since this Federal maximum-security prison is especially designed for the most dangerous prisoners in need of the strictest security regime, inmates are held in solitary confinement.<sup>737</sup> Deciding whether an extradition to the United States and associated risk of solitary confinement would amount to an Article 3 violation, the Court stated the following:

First, solitary confinement measures should be ordered only exceptionally and after every precaution has been taken, as specified in paragraph 53.1 of the European Prison Rules. Second, the decision imposing solitary confinement must be based on genuine grounds both *ab initio* as well as when its duration is extended. Third, the authorities' decisions should make it possible to establish that they have carried out an assessment of the situation that takes into account the prisoner's circumstances, situation and behaviour and must provide substantive reasons in their support. The statement of reasons should be increasingly detailed and compelling as time goes by. Fourth, a system of regular monitoring of the prisoner's physical and mental

---

735 Council of Europe, Recommendation Rec(2006)2 of the Committee of Ministers to member States of the European Prison Rules, 11 January 2006.

736 *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10 April 2012.

737 *Ibid.*, §§ 98–103.

condition should also be put in place in order to ensure that the solitary confinement measures remain appropriate in the circumstances. Lastly, it is essential that a prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement.<sup>738</sup>

The Court recognized that the regime at the ADX is very restrictive and designed to minimize physical contacts and social interaction between the inmates. However, the Court emphasized that the inmates had a large variety of in-cell stimulation such as television, radio, newspapers, books, hobby and craft items, and educational programming. Further, they had regular contacts through phone calls, visits and correspondence with family members, and could communicate with other detainees through the ventilation system and during recreation periods. For these reasons, the Court held that the conditions of detention at the ADX did not amount to complete sensory or total social isolation but rather partial and relative isolation.<sup>739</sup> Consequently, the Court did not find a violation of Article 3 of the Convention.<sup>740</sup>

The case law explained above shows that an applicant who wants to claim that his or her solitary confinement is contrary to Article 3 of the Convention should substantiate his or her claim with the following (non-exhaustive) elements:

1. the length of the solitary confinement as well as the grade of isolation. The latter can be shown by a detailed list of contacts (and non-contacts) with other inmates, lawyers, family members etc. The Court is more likely to find an Article 3 violation in cases of very long or indefinite solitary confinement as well as in cases of complete isolation;
2. the impact of the solitary confinement on the applicant's physical and mental health;
3. the conduct of the applicant by presenting facts showing that solitary confinement is not necessary for security, disciplinary or protective reasons;
4. references to the European Prison Rules with explanations as to how Article 35 has not been met.

### 3.3.5 Death and Life Sentence

#### a) Death Penalty

When the European Convention on Human Rights was drafted, the death penalty was explicitly allowed. Still, Article 2 of the Convention on the right to life, reads as follows:

---

<sup>738</sup> Ibid., § 212.

<sup>739</sup> Ibid., § 222.

<sup>740</sup> Ibid., § 224. For a critique on the Court's decision see e.g., Natasa Mavronicola and Francesco Messineo, "Relatively Absolute? The Undermining of Article 3 ECHR in *Ahmad v UK*", in *Modern Law Review*, vol. 76, 2013, pp. 589–603.

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

The Convention thus contains an exception for the death penalty. This was also reiterated by the Court in the context of Article 3 of the Convention. In the case of *Soering v. the United Kingdom*,<sup>741</sup> the Court found that the applicant's extradition to the United States, where he was likely to be sentenced to the death penalty for murder, did not amount to ill-treatment. The Court was of the view that by introducing an additional protocol, the contracting parties intended to abolish capital punishment through an optional instrument, which allows each member State to choose the moment when to assume this obligation.<sup>742</sup> Consequently the Court at that time opposed the view that the death penalty *per se* amounts to inhuman or degrading treatment.<sup>743</sup> It added

[t]hat does not mean however that circumstances relating to a death sentence can never give rise to an issue under Article 3 (art. 3). The manner in which it is imposed or executed, the personal circumstances of the condemned person and a disproportionality to the gravity of the crime committed, as well as the conditions of detention awaiting execution, are examples of factors capable of bringing the treatment or punishment received by the condemned person within the proscription under Article 3 (art. 3). Present-day attitudes in the Contracting States to capital punishment are relevant for the assessment whether the acceptable threshold of suffering or degradation has been exceeded.<sup>744</sup>

Over the years, the universal resistance amongst the member States of the Council of Europe to the death penalty has increased. This led to the adoption of Protocol No. 6 to the Convention in 1982, which abolishes the death penalty in times of peace. Protocol No. 6 allows for a limited exception to the abolition of the death penalty in times of war or imminent threat of war. Currently, Protocol No. 6 has been ratified by 46 of the 47 members of the Council of Europe.<sup>745</sup> Although the Russian Federation has signed Protocol No. 6, it did not yet ratify it. However, it accepted a moratorium on the death penalty shortly after its accession to the Council of Europe in 1996.

---

741 *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989.

742 *Ibid.*, § 103.

743 *Ibid.*, § 104.

744 *Ibid.* *Nota bene* the Court found that the so-called "death row phenomenon" amounted to ill-treatment. Hence the applicant could not be extradited to the United States.

745 The current list of signatures, ratifications and entry into force of Protocol No. 6 can be found on the website of the Council of Europe, under the following link: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=114&CM=7&DF=13/02/2014&CL=ENG>.

Protocol No. 6 was followed by Protocol No. 13, which entered into force in 2003 and abolishes the death penalty under all circumstances. Protocol No. 13 has been signed by 45 members of the Council of Europe and ratified by 43 member States.<sup>746</sup> Protocol No. 13 provides as follows:

Preamble

The member States of the Council of Europe signatory hereto,  
Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

[...]

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

Article 1: Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2: Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

The changed attitude regarding the permissibility of the death penalty is also reflected in the Court's case law. Based on the fact that virtually all members of the Council of Europe have signed Protocols No. 6 and 13, the Court found the death penalty no longer compatible with Articles 2 and 3 of the Convention. One of the first judgments to affirm this was *Ocalan v. Turkey*.<sup>747</sup> In this case, the leader of the Kurdish Workers Party (PKK) was apprehended by Turkish security forces in Kenya and brought to Turkey where he was sentenced to death. Turkey had, at the time, not ratified Protocol No. 6. In the Chamber judgment, the Court pointed to the fact that among the members of the Council of Europe there had been an evolution towards the complete abolition of the death penalty:

Such a marked development could now be taken as signalling the agreement of the Contracting States to abrogate, or at the very least to modify, the second sentence of Article 2 § 1, particularly when regard is had to the fact that all Contracting States have now signed Protocol No. 6 and that it has been ratified by forty-one States. It may be questioned whether it is necessary to await ratification of Protocol No. 6 by the three remaining States before concluding that the death penalty exception in Article 2 § 1 has been significantly modified. Against such a consistent background, it can be said that capital punishment in peacetime has come to be regarded as an unacceptable ... form of punishment that is no longer permissible under Article 2.<sup>748</sup>

<sup>746</sup> The current list of signatures, ratifications and entry into force of Protocol No. 13 can be found on the website of the Council of Europe, under the following link: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=187&CM=7&DF=13/02/2014&CL=ENG>.

<sup>747</sup> *Öcalan v. Turkey* [GC], no. 46221/99, 12 May 2005.

<sup>748</sup> *Ibid.*, § 163. *Nota bene*, in this case, the Grand Chamber did not determine as to whether the death penalty would amount to inhuman or degrading treatment in terms of Article 3 of the Convention.

The Court made similar considerations in the case of *Al-Saadoon and Mufdhi v. the United Kingdom*.<sup>749</sup> This case originated in an application by two Iraqi nationals, accused of involvement in the murder of two British soldiers after the invasion in Iraq. The applicants complained that their transfer from the United Kingdom to the Iraqi authorities would put them under the risk of death by hanging. The Court made the following statement:

The Court takes as its starting point the nature of the right not to be subjected to the death penalty. Judicial execution involves the deliberate and premeditated destruction of a human being by the State authorities. Whatever the method of execution, the extinction of life involves some physical pain. In addition, the foreknowledge of death at the hands of the State must inevitably give rise to intense psychological suffering. The fact that the imposition and use of the death penalty negates fundamental human rights has been recognised by the member States of the Council of Europe.<sup>750</sup>

The Court subsequently found that there has “been an evolution towards the complete *de facto* and *de jure* abolition of the death penalty within the member States of the Council of Europe”.<sup>751</sup> Consequently, the Court held that the death penalty, which the applicants would face if expelled, amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention. In sum, the death penalty is under no circumstances compatible with Articles 2 and 3 of the Convention.<sup>752</sup>

## b) Life Sentence

A further relevant issue in the context of far-reaching judicial sentences are life sentences. Even though member States enjoy large discretion regarding their criminal justice system and although the Court refrains from pronouncing on the appropriate length of sentences,<sup>753</sup> the Court has found that grossly disproportionate sentences could amount to ill-treatment. In the case of *Harkins and Edwards v. the United Kingdom* the Court had to determine whether a life sentence is grossly disproportionate. The Court distinguishes between three types of sentences: (1) a life sentence with eligibility for release after a minimum period has been served; (2) a discretionary sentence of life imprisonment without the possibility of parole; and (3) a mandatory sentence of life imprisonment without the possibility of parole.<sup>754</sup>

---

749 *Al-Saadoon and Mufdhi v. the United Kingdom*, no. 61498/08, 2 March 2010.

750 *Ibid.*, § 115.

751 *Ibid.*, § 116.

752 It is important to add that in the context of expulsion or extradition, the Court does not find a violation of Article 3 if the receiving State issues a diplomatic assurance warranting that capital punishment would not be sought or imposed. See e.g. *Rrapo v. Albania*, no. 58555/10, 25 September 2012, §§ 70–74.

753 *T. v. the United Kingdom* [GC], no. 24724/94, 16 December 1999, § 117; *V. v. the United Kingdom* [GC], no. 24888/94, 16 December 1999, § 118; *Sawoniuk v. the United Kingdom* (dec.), no. 63716/00, 29 May 2001.

754 *Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012, § 135.

The first type of life sentence does not raise any issues under Article 3 of the Convention. The second and third types are usually imposed for very serious offences, such as murder or manslaughter, for which a perpetrator has to spend a significant period in prison. According to the Court, the imposition of (discretionary or mandatory) life imprisonment without the possibility of parole (second and third types) only raises issues under Article 3 when (i) continued imprisonment is no longer justified on any legitimate penological grounds, such as punishment or public protection; and (ii) when a sentence is *de facto* and *de jure* irreducible.<sup>755</sup> The Court also notes that mandatory life sentences are not *per se* incompatible with the Convention, but more likely to be grossly disproportionate than discretionary sentences.<sup>756</sup> With regard to the subject-matter in the *Harkins and Edwards* case, the Court did not find the mandatory life sentence without parole grossly disproportionate, because the applicants were over eighteen years old, had not been diagnosed with a psychiatric disorder and because both applicants had committed grave crimes, i.e. killing, which was a very serious aggravating factor.<sup>757</sup>

In the case of *Vinter and Others v. the United Kingdom*,<sup>758</sup> the Court further clarified that a life sentence was compatible with Article 3 of the Convention if there was a prospect of release and a possibility of review.<sup>759</sup> The Grand Chamber reasoned that it would be incompatible with human dignity if a detainee never had a chance to someday regain his or her freedom. In addition, a prisoner could not be detained unless there were legitimate grounds for that detention. Thus, there needs to be a system of review that can evaluate as to whether these grounds still exist after the sentence has been pronounced. Although the Grand Chamber does not state what form this review should take, it refers to international legal materials indicating that such reviews have to be undertaken no later than 25 years after the imposition of the sentence.<sup>760</sup>

Similar considerations apply to preventive detention of dangerous offenders. On several occasions, the Court found that preventive detention first and foremost raises issues under Article 5 § 1 of the Convention and only in exceptional circumstances would it amount to an Article 3 violation. An illustrative case in this regard is *Haidn v. Germany*.<sup>761</sup> This case involved a sex offender who was sentenced

---

<sup>755</sup> Ibid., § 137.

<sup>756</sup> Ibid., § 138.

<sup>757</sup> Ibid., §§ 139–140.

<sup>758</sup> *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, 9 July 2013.

<sup>759</sup> Ibid., § 110.

<sup>760</sup> Ibid., § 120. For a further analysis of this case see Marek Szydło, “Vinter v. the United Kingdom”, in *American Journal of International Law*, vol. 106, 2012, pp. 624–630.

<sup>761</sup> *Haidn v. Germany*, no. 6587/04, 13 January 2011.

to preventive detention after he had completed his three-and-a-half-year prison sentence. The applicant was considered to pose a serious risk to others and admitted to a psychiatric unit. The Court did not find that the minimum level of severity required for inhuman or degrading treatment had been met because the applicant was entitled to a biyearly review by domestic courts.<sup>762</sup> Thus, preventive detention *per se* does not violate Article 3 of the Convention. However, persons under preventive detention need to have the possibility of review and release.

### 3.4 Non-refoulement

#### 3.4.1 Extradition and Expulsion

The principle of *non-refoulement* is well established in customary international law and prohibits States from expelling, deporting or extraditing persons to countries where they face torture or other forms ill-treatment. *Non-refoulement* is not only a fundamental rule of refugee law, it is also guaranteed by the European Convention under Article 3. Although States have the right to control the entry, residence and removal of aliens<sup>763</sup> and although the Convention contains no right to political asylum,<sup>764</sup> the Court has recognized that Article 3 would be meaningless, if a person could be expelled to a State where he or she would run the risk of being exposed to ill-treatment.<sup>765</sup> The Court addressed the prohibition of *refoulement* for the first time in its landmark judgment of *Soering v. the United Kingdom*.<sup>766</sup> This case concerned the extradition of the applicant, who risked being sentenced to death and being subjected to the death row in the United States because he was suspected of having killed the parents of his girlfriend. The Court had to address two major arguments against *non-refoulement* brought forward by the United Kingdom government. First, the United Kingdom reasoned that the European Convention, unlike the UN Convention against Torture, does not contain the principle of *non-refoulement*. The Court refuted this argument by stating that “in so far as a measure of extradition

762 Ibid., §§ 108–113.

763 See e.g. *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, nos. 9214/80, 9473/81 and 9474/81, 28 May 1985, § 67; *Boujlifa v. France*, no. 25404/94, 21 October 1997, § 42.

764 *Vilvarajah and Others v. the United Kingdom*, nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991, § 102; *Ahmed v. Austria*, no. 25964/94, 17 December 1996, § 38.

765 See e.g. *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, § 125. See also *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989, §§ 90–91; *Vilvarajah and Others v. the United Kingdom*, nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991, § 103; *Ahmed v. Austria*, no. 25964/94, 17 December 1996, § 39; *H.L.R. v. France* [GC], no. 24573/94, 29 April 1997, § 34; *Jabari v. Turkey*, no. 40035/98, 11 July 2000, § 38; *Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007, § 135.

766 *Soering v. the United Kingdom*, no. 14038/88, 7 July 1989.

has consequences adversely affecting the enjoyment of a Convention right, it may, assuming that the consequences are not too remote, attract the obligations of a Contracting State under the relevant Convention guarantee.”<sup>767</sup> Second, the United Kingdom argued that the text of Article 1 of the Convention, which states that Contracting Parties shall secure rights and freedoms “to everyone within their jurisdiction”, contains a limitation, in that the rights of the Convention only apply in the territory of the Contracting States and is limited to actions of the Contracting States. The United Kingdom thus concluded that it could not be held responsible under the Convention, since the applicant was not ill-treated by a Contracting State but rather by a non-member State. The Court did not accept this argument either and found that, notwithstanding the fact that the Convention does not govern the actions of non-member States and the fact that the United Kingdom cannot be held responsible for actions of the United States, this does not “absolve the Contracting Parties from responsibility under Article 3 (art. 3) for all and any foreseeable consequences of extradition suffered outside their jurisdiction.”<sup>768</sup> The Court explained this by pointing to the fundamental values of the Convention. Concretely, the Court reasoned:

It would hardly be compatible with the underlying values of the Convention, that “common heritage of political traditions, ideals, freedom and the rule of law” to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, [...], would plainly be contrary to the spirit and intendment of the Article.<sup>769</sup>

The Court also argued that the principle of *non-refoulement* is connected to the absolute nature of Article 3. It stated that Article 3 of the Convention would not be absolute if member States could circumvent their obligations by expelling or extraditing individuals to States where their rights would be violated.<sup>770</sup> The Court concluded that where an individual shows that there are substantial grounds for believing that he or she, if extradited, faces a real risk of being subjected to torture, inhuman or degrading treatment or punishment in the receiving country, he or she cannot be extradited.<sup>771</sup> The sending State, in such a situation, is under an obligation not to extradite or expel that person.

---

<sup>767</sup> Ibid., § 85.

<sup>768</sup> Ibid., § 86.

<sup>769</sup> Ibid., § 88.

<sup>770</sup> Ibid.

<sup>771</sup> Ibid., § 91.

It has since been settled in the case law of the Court that extradition or expulsion may give rise to an issue under Article 3, if substantial grounds are shown for believing that the person in question would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country.<sup>772</sup> As described below, the Court found an Article 3 violation with respect to a variety of situations.

### **a) Political Opponents**

The principle of *non-refoulement* is especially important in the context of political opposition. For instance, in the case of *Baysakov and Others v. Ukraine*,<sup>773</sup> the Court found a violation of Article 3 of the Convention when four Kazakh opposition activists who were to be extradited from Ukraine to Kazakhstan. The Court reasoned that people associated with the political opposition in Kazakhstan are subjected to various forms of pressure aimed at preventing them from engaging in opposition activities as well as punishing them if they do so.<sup>774</sup> In the case of *Y.P. and L.P. v. the France*,<sup>775</sup> the Court found a potential violation of Article 3 if the applicant, a member of the opposition party Belarusian Popular Front, were deported to Belarus. Because he participated in demonstrations and distributed leaflets, the applicant has already been imprisoned and ill-treated by the police forces several times. The Court found that the applicant was under considerable risk of being ill-treated as an opponent of the regime if deported. The Court also found that the passage of time - the applicant spent the last five years in France - did not lessen the risk of ill-treatment.<sup>776</sup>

### **b) Persons Accused of Terrorism**

The absolute nature of Article 3 prohibits the extradition or expulsion even if the applicant is accused of terrorism and poses a threat to the national security of the host State. In the case of *Saadi v. Italy*,<sup>777</sup> for instance, the Court decided that the applicant could not be deported to Tunisia where he had been sentenced to imprisonment for membership of a terrorist organization because he risked facing torture in detention. The potential threat the applicant posed for the national security of Italy was irrelevant.<sup>778</sup> Similarly, in the case of *Labsi v. Slovakia*<sup>779</sup> the Court held that a terrorist suspect facing a serious risk of ill-treatment in Algeria

---

772 *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, 4 February 2005, § 67.

773 *Baysakov and Others v. Ukraine*, no. 54131/08, 18 February 2010.

774 *Ibid.*, § 52.

775 *Y.P. and L.P. v. France*, no. 32476/06, 2 September 2010.

776 *Ibid.*, § 71.

777 *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008.

778 *Ibid.*, § 138.

779 *Labsi v. Slovakia*, no. 33809/08, 15 May 2012.

could not be expelled. The applicant was convicted for membership in a terrorist organisation and for forgery in both France and Algeria.<sup>780</sup> Accordingly, national security and the conduct of the applicant are not criteria to be considered when deciding about expulsion or extradition.

### c) Minorities

In the case of *Makhmudzhan Ergashev v. Russia*,<sup>781</sup> the Court for the first time examined a case that originated in the tensions between the Uzbek and Kyrgyz communities in Kyrgyzstan. The case concerned the expulsion of a person belonging to the Uzbek minority from Russia to Kyrgyzstan. In its decision, the Court found that the applicant was under a real risk of being ill-treated by the Kyrgyzstani authorities if expelled. The Court held that

it follows from the evidence before the Court that the situation in the south of the country is characterised by torture and other ill-treatment of ethnic Uzbeks by law-enforcement officers, which increased in the aftermath of the June 2010 events and has remained widespread and rampant, being aggravated by the impunity of law-enforcement officers. The problem must be viewed against the background of the rise of ethno-nationalism in the politics of Kyrgyzstan, particularly in the south, the growing inter-ethnic tensions between Kyrgyz and Uzbeks, continued discriminatory practices faced by Uzbeks at the institutional level and under-representation of Uzbeks in, inter alia, law-enforcement bodies and the judiciary.<sup>782</sup>

The Court subsequently found a violation of Article 3 of the Convention if the decision to expel the applicant were enforced.

### d) Irregular Migrants

An important judgment upholding the absolute nature of the *non-refoulement* principle is the case of *Hirsi Jamaa and Others v. Italy*.<sup>783</sup> This case concerned the application by eleven Somali and thirteen Eritrean nationals who, together with about two hundred other individuals, fled Libya for Italy. Before they reached Italy, they were transferred onto Italian military ships and returned to Tripoli. The Court found a violation of Article 3 on two grounds. First, it held that the applicants faced a real risk of being ill-treated by the Libyan authorities as irregular migrants.<sup>784</sup> Second, the applicants were under the risk of being deported from Libya to Somalia or

---

<sup>780</sup> Ibid., §§ 8–9.

<sup>781</sup> *Makhmudzhan Ergashev v. Russia*, no. 49747/11, 16 October 2012.

<sup>782</sup> Ibid., § 72.

<sup>783</sup> *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, 23 February 2012.

<sup>784</sup> Ibid., §§ 122–138.

Eritrea, where they were likely to face torture and detention in inhuman conditions merely for having left the country irregularly.<sup>785</sup> Italy did not ensure that Libya, as the intermediary country, offered sufficient protection against repatriation and thus breached Article 3 of the Convention.<sup>786</sup>

*Hirsi Jamaa and Others v. Italy* is an important judgment condemning new ways of addressing migrant flows to Europe. The Court took a clear stand by declaring the interception at sea without individual processing of asylum claims incompatible with Article 3 of the Convention.<sup>787</sup>

### e) Religious Prosecution

In the case of *M.E. v. France*,<sup>788</sup> the Court found that the applicant was under a real risk of ill-treatment if expelled from France to Egypt. The applicant was a Coptic Christian who asked for asylum in France. Since he delayed his application for asylum, his request was dealt with under the fast-track procedure while he was in a detention centre. In its decision, the Court noted that reports by NGOs and international organizations revealed that numerous Coptic Christians were subjected to violence and prosecutions of perpetrators are relatively rare.<sup>789</sup> The applicant himself had not only been subjected to violence before he moved to France, but was also convicted for proselytism in Egypt. The Court consequently found a violation of Article 3 of the Convention.

### f) Health Issues

In some cases, the Court found a violation of Article 3 of the Convention if a serious ill person were to be expelled. For instance, in the case of *D. v. the United Kingdom*,<sup>790</sup> the applicant was in the last stages of HIV/AIDS and about to be deported to Saint-Kitts. Since the applicant had no family support, no shelter and no adequate medical treatment in Saint-Kitts, the Court found that a removal from the United Kingdom at that stage of his disease would hasten his death and expose him to a real risk of dying under inhuman circumstances.<sup>791</sup> However, in cases where the applicant is not in the last stages of a fatal disease or in cases in which such an applicant could receive treatment and support in his or her home country, the

---

785 Ibid., §§ 146–158.

786 Ibid.

787 On *non-refoulement* and migration control see e.g. Guy S. Goodwin-Gill, “The Rights to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement”, in *International Journal of Refugee Law*, vol. 23, 2011, pp. 443–457; Violeta Moreno-Lax, “Hirsi Jamaa and Others v Italy or the Strasbourg Court versus Extraterritorial Migration Control?”, in *Human Rights Law Review*, vol. 12, 2012, pp. 574–598.

788 *M.E. v. France*, no. 50094/10, 6 June 2013.

789 Ibid., § 50.

790 *D. v. the United Kingdom*, no. 30240/96, 2 May 1997.

Court most likely would not find a violation. For instance, in the case of *N. v. the United Kingdom*,<sup>792</sup> the applicant alleged ill-treatment if expelled to Uganda because she was not able to get necessary medical treatment against HIV/AIDS. The Court was of the view that the respondent government was not under an obligation to account for disparities in medical treatment in other States by providing medical treatment to aliens who did not have a residence permit.<sup>793</sup> Consequently, the Court found that there would be no violation of Article 3 if the applicant were removed to Uganda.

In sum, the Court applies a high threshold if health is alleged as the reason for *non-refoulement*.<sup>794</sup> The Court has consistently ruled that aliens who are subject to expulsion or extradition could not continue to benefit from medical assistance provided by the expelling or extraditing State. Only exceptional cases, in which humanitarian grounds against the removal are compelling, raise issues under Article 3 of the Convention.<sup>795</sup> The Court found such humanitarian grounds in cases in which the applicant was in a final stage of a terminal illness and under a risk of dying in inhuman or degrading circumstances in his or her home country. The mere discontinuation of medical life-prolonging treatment is not enough for finding an Article 3 violation.<sup>796</sup>

### **g) Ill-treatment by Third Parties**

The alleged ill-treatment in the receiving country does not necessarily have to emanate from public officials. Article 3 of the Convention is also applicable in cases in which the government is unable or unwilling to offer sufficient protection against ill-treatment by individuals or a group of persons. In the case of *Sufi and Elmi v. the United Kingdom*, for instance, the Court found a potential violation of Article 3 of the Convention if the applicants were expelled to Somalia, where they risked ill-treatment by Al-Shabaab militia groups.<sup>797</sup>

### **h) Removal under the Dublin Regulation**

The Dublin Regulation establishes the responsibility of member States for examining an asylum application lodged in one of its member States by a third-country national.

---

791 Ibid., §§ 51–53.

792 *N. v. the United Kingdom* [GC], no. 26565/05, 27 May 2008.

793 Ibid., § 44.

794 Veelke Derckx, “Expulsion of Illegal Residents (Aliens) with Medical Problems and Article 3 of the European Convention on Human Rights”, in *European Journal of Health Law*, vol. 13, 2006, p. 318.

795 *N. v. the United Kingdom* [GC], no. 26565/05, 27 May 2008, §§ 42–43.

796 See e.g. *Bensaid v. the United Kingdom*, no. 44599/98, 6 February 2001; *Amegnigan v. the Netherlands* (dec.), no. 25629/04, 25 November 2004; *Aoulmi v. France*, no. 50278/99, 17 January 2006.

797 *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011, §§ 293–296. See also *H.L.R. v. France* [GC], no. 24573/94, 29 April 1997, § 40.

The aim of the Dublin Regulation is to avoid asylum seekers from being sent from one country to another, as well as to prevent abuse of the system by claiming asylum in several countries. Based on the Dublin Regulation, asylum seekers who reside in a State that is not responsible for dealing with the asylum request, can be sent to the responsible member State. This practice has, however, produced several cases before the Court. In the landmark judgment *M.S.S. v. Belgium and Greece*,<sup>798</sup> the applicant complained *inter alia* that his removal from Belgium to Greece violated Article 3 of the Convention because the asylum system and detention conditions in Greece were degrading and inhuman. Highlighting Belgium's obligations under Article 3 of the Convention, the Court found that the Belgian authorities could not simply assume that the applicant would be treated in conformity with the Convention.<sup>799</sup> Rather, they should have been aware of the serious deficiencies in the Greek asylum procedure. This means that member States cannot give automatic effect to the Dublin Regulation, but have to evaluate in each case if an expulsion is compatible with Article 3 of the Convention.<sup>800</sup>

### 3.4.2 Risk Assessment

In order to evaluate whether the applicant would be under a real risk of being ill-treated if extradited or expelled, the Court needs to assess the situation in the receiving country.<sup>801</sup> In *Mamatkulov and Askarov v. Turkey* the Court explained that

the Court will assess the issue in the light of all the material placed before it or, if necessary, material obtained *proprio motu*. Since the nature of the Contracting States' responsibility under Article 3 in cases of this kind lies in the act of exposing an individual to the risk of ill-treatment, the existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the Contracting State at the time of the extradition; the Court is not precluded, however, from having regard to information which comes to light subsequent to the extradition.<sup>802</sup>

In *Saadi v. Italy*, the Grand Chamber made clear that its examination of whether a real risk of ill-treatment exists in the receiving State is a rigorous one.<sup>803</sup> The burden of proving the existence of the risk of ill-treatment in principle lies with the applicant.<sup>804</sup> In those cases where the applicant sufficiently establishes

798 *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011.

799 *Ibid.*, § 359.

800 *Ibid.*, §§ 338–340.

801 *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, 4 February 2005, § 67.

802 *Ibid.*, § 69.

803 *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, § 128.

804 *Ibid.*, § 129; See also *N. v. Finland*, no. 38885/02, 26 July 2005, § 167.

this risk, the burden shifts to the State to prove otherwise.<sup>805</sup> To assess the situation in a receiving State, the Court will look at the general situation in that country and the personal circumstances of the applicant.<sup>806</sup> In evaluating the general situation, the Court attaches importance to recent reports of NGOs and governmental sources.<sup>807</sup> However, the mere fact that the situation in the receiving State is alarming is not sufficient for establishing a real risk of ill-treatment.<sup>808</sup> Furthermore, the mere reliance on reports on the general situation in a country is insufficient.<sup>809</sup> Such allegations need to be corroborated by other evidence. Often, the applicant alleges being a member of a specific group that is systemically exposed to a practice of ill-treatment in the receiving State. In that case, the applicant will have to prove both, the substantial grounds for believing that this practice exists and his or her membership to that group.<sup>810</sup>

In sum, where an applicant proves the existence of substantial grounds for believing that he or she would face a real risk of being subjected to treatment contrary to Article 3 in the receiving State, the respondent State is obliged not to expel or extradite the applicant.

### 3.4.3 Diplomatic Assurances

States seeking to expel individuals often seek diplomatic assurances from the receiving State to guarantee that the person concerned will be treated in accordance with the conditions set by the sending State. Whether diplomatic assurances can be an adequate protection to alleviate the risk of ill-treatment in the receiving State is a controversial question. The Court has always been aware of the difficulties faced by Contracting States in protecting their territories and safeguarding their security. However, the Grand Chamber in *Saadi v. Italy* stated that despite

---

805 *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, § 129.

806 *Vilvarajah and Others v. the United Kingdom*, nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991, § 108.

807 *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, § 131. See also *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996, §§ 99–100; *Muslim v. Turkey*, no. 53566/99, 26 April 2005, § 67; *Said v. the Netherlands*, no. 2345/02, 5 July 2005, § 54; *Al-Moayad v. Germany* (dec.), no. 35865/03, 20 February 2007, §§ 65–66.

808 *Vilvarajah and Others v. the United Kingdom*, nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991, § 111; *Katani and Others v. Germany* (dec.), no. 67679/01, 31 May 2001.

809 *Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, 4 February 2005, § 73; *Muslim v. Turkey*, no. 53566/99, 26 April 2005, § 68.

810 *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, 23 February 2012, § 119. See also *Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007, §§ 138–149.

“the danger of terrorism today and the threat it presents to the community”,<sup>811</sup> the absolute nature of Article 3 of the Convention cannot be called into question. In this case, a Tunisian national alleged that a decision to deport him from Italy to Tunisia would expose him to a risk of treatment contrary to Article 3 of the Convention. The applicant was to be deported to Tunisia, where a military Court sentenced him *in absentia* to twenty years imprisonment for membership of a terrorist organization and for incitement to terrorism. The Italian embassy in Tunis requested assurances from the Tunisian government, that the applicant, if deported, would not be subjected to treatment contrary to Article 3 of the Convention. The Italian embassy on two occasions received a *note verbale*. The second *note verbale* stated the following:

The Minister for Foreign Affairs hereby confirms that the Tunisian laws in force guarantee and protect the rights of prisoners in Tunisia and secure to them the right to a fair trial. The Minister would point out that Tunisia has voluntarily acceded to the relevant international treaties and conventions.<sup>812</sup>

The Court did not find this assurance a sufficient guarantee against ill-treatment. The Tunisian authorities had merely stated that Tunisian law guaranteed prisoner's rights and that Tunisia had acceded to relevant international treaties and conventions. In this regard, the Court held that

the existence of domestic laws and accession to international treaties guaranteeing respect for fundamental rights in principle are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where, as in the present case, reliable sources have reported practices resorted to or tolerated by the authorities which are manifestly contrary to the principles of the Convention.<sup>813</sup>

The Court further developed the requirements for diplomatic assurances in the case of *Othman (Abu Qatada) v. the United Kingdom*.<sup>814</sup> In this case, the United Kingdom wanted to deport Abu Qatada, a Jordanian citizen suspected of having links with the Al Qaeda network, to Jordan. Abu Qatada had been convicted in Jordan for terrorism-related offences. In 2005, the United Kingdom and Jordan signed a Memorandum of Understanding, detailing specific and credible assurances, under which Abu Qatada could be deported to Jordan without violating the principle of *non-refoulement*. In assessing whether diplomatic assurances provide sufficient protection against the real risk of ill-treatment the Court stated that “the preliminary question is whether the general human rights situation in the

---

811 *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, § 137. See also *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996, § 79; *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005, § 335.

812 *Saadi v. Italy* [GC], no. 37201/06, 28 February 2008, § 55.

813 *Ibid.*, § 147.

814 *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January 2012.

receiving State excludes accepting any assurances whatsoever.”<sup>815</sup> However, the Court noted that only in rare cases will the general situation in a country be so alarming that no weight at all can be given to assurances.<sup>816</sup>

If the situation in the receiving State is not such that assurances are absolutely excluded, the Court will then assess the quality of the assurances and whether, in light of the receiving State’s practices, these assurances can be relied upon.<sup>817</sup> The Court lists a number of factors established in its previous case law, that have to be taken into account when assessing diplomatic assurances:<sup>818</sup>

1. whether the terms of the assurances have been disclosed to the Court;<sup>819</sup>
2. whether the assurances are specific or are general and vague;<sup>820</sup>
3. who has given the assurances and whether that person can bind the receiving State;<sup>821</sup>
4. if the assurances have been issued by the central government of the receiving State, whether local authorities can be expected to abide by them;<sup>822</sup>
5. whether the assurances concerns treatment which is legal or illegal in the receiving State;<sup>823</sup>
6. whether assurances have been given by a Contracting State;<sup>824</sup>
7. the length and strength of bilateral relations between the sending and receiving States, including the receiving State’s record in abiding by similar assurances;<sup>825</sup>

815 Ibid., § 188.

816 Ibid. See also *Gaforov v. Russia*, no. 25404/09, 21 October 2010, § 138; *Sultanov v. Russia*, no. 15303/09, 4 November 2010, § 73; *Yuldashev v. Russia*, no. 1248/09, 8 July 2010, § 85; *Ismoilov and Others v. Russia*, no. 2947/06, 24 April 2008, § 127.

817 *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January 2012, § 189.

818 Ibid.

819 *Ryabikin v. Russia*, no. 8320/04, 19 June 2008, § 119; *Muminov v. Russia*, no. 42502/06, 11 December 2008, § 97; *Pelit v. Azerbaijan*, no. 281/2005, 29 May 2007.

820 *Klein v. Russia*, no. 24268/08, 1 April 2010, § 55; *Khaydarov v. Russia*, no. 21055/09, 20 May 2010, § 111.

821 *Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005, § 344; *Kordian v. Turkey* (dec.), no. 6575/06, 4 July 2006; *Abu Salem v. Portugal* (dec.), no. 26844/04, 9 May 2006; *Ben Khemais v. Italy*, no. 246/07, 24 February 2009, § 59; *Garayev v. Azerbaijan*, no. 53688/08, 10 June 2010, § 74; *Baysakov and Others v. Ukraine*, no. 54131/08, 18 February 2010, § 51; *Soldatenko v. Ukraine*, no. 2440/07, 23 October 2008, § 73.

822 *Chahal v. the United Kingdom* [GC], no. 22414/93, 15 November 1996, §§ 105–107.

823 *Cipriani v. Italy* (dec.), no. 221142/07, 30 March 2010; *Youb Saoudi v. Spain* (dec.), no. 22871/06, 18 September 2006; *Ismaili v. Germany*, no. 58128/00, 15 March 2001; *Nivette v. France* (dec.), no. 44190/98, 3 July 2001; *Einhorn v. France* (dec.), no. 71555/01, 16 October 2001.

824 *Chentiev and Ibragimov v. Slovakia* (dec.), nos. 21022/08 and 51946/08, 14 September 2010; *Gasayev v. Spain* (dec.), no. 48514/06, 17 February 2009.

825 *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10 April 2012, §§ 107–108; *Al-Moayyad v. Germany* (dec.), no. 35865/03, 20 February 2007, § 68.

8. whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms, including providing unfettered access to the applicant's lawyers;<sup>826</sup>
9. whether there is an effective system of protection against torture in the receiving State, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and to punish those responsible;<sup>827</sup>
10. whether the applicant has previously been ill-treated in the receiving State;<sup>828</sup> and
11. whether the reliability of the assurances has been examined by the domestic courts of the sending/Contracting State.<sup>829</sup>

Considering these factors in *Othman (Abu Qatada) v. the United Kingdom*, the Court found the Memorandum of Understanding between the United Kingdom and Jordan provided sufficient protection for the applicant. The Court *inter alia* observed that the Memorandum of Understanding contained detailed and transparent assurances.<sup>830</sup> In addition, the assurances had been given in good faith and the bilateral relations between the two countries have historically been very strong.<sup>831</sup> The Court further attached importance to the fact that the assurances were approved by the King, the highest level of government in Jordan, and had the support of other high-ranking governmental and security officials.<sup>832</sup> Moreover, the Court found that the applicant's high profile would make it more likely that Jordan would abide by the assurances.<sup>833</sup> Finally, the Court attached importance to the fact that the United Kingdom had tasked and funded a local NGO with overseeing the treatment of the applicant and the compliance of Jordan with the Memorandum of Understanding.<sup>834</sup> The Court thus concluded that the applicant did not run a real risk of ill-treatment upon his return to Jordan and there was consequently no violation of Article 3 of the Convention.

---

826 *Chentiev and Ibragimov v. Slovakia* (dec.), nos. 21022/08 and 51946/08, 14 September 2010; *Gasayev v. Spain* (dec.), no. 48514/06, 17 February 2009; *Ben Khemais v. Italy*, no. 246/07, 24 February 2009, § 61; *Ryabikin v. Russia*, no. 8320/04, 19 June 2008, § 119; *Kolesnik v. Russia*, no. 26876/08, 17 June 2010, § 73.

827 *Ben Khemais v. Italy*, no. 246/07, 24 February 2009, §§ 59–60; *Soldatenko v. Ukraine*, no. 2440/07, 23 October 2008, § 73; *Koktysh v. Ukraine*, no. 43707/07, 10 December 2009, § 63.

828 *Koktysh v. Ukraine*, no. 43707/07, 10 December 2009, § 64.

829 *Gasayev v. Spain* (dec.), no. 48514/06, 17 February 2009; *Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10 April 2012, § 106; *Al-Moayad v. Germany* (dec.), no. 35865/03, 20 February 2007, §§ 66–69.

830 *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January 2012, § 194.

831 *Ibid.*, § 195.

832 *Ibid.*

833 *Ibid.*, § 196.

834 *Ibid.*, § 203.

The Court's ruling in this case is controversial. The acceptance of diplomatic assurances can seriously undermine the principle of *non-refoulement*. Neither the Court nor the Contracting States have effective means to protect the expelled applicant. Although the Court attaches stringent conditions to the cases in which diplomatic assurances can alleviate a real risk of ill-treatment, diplomatic assurances constitute an exception to the principle of *non-refoulement*.

### 3.4.4 Internal Relocation Alternative

When assessing the situation in the receiving country, the Court also considers whether the applicant could relocate to a safe region in the receiving country. The Court considered this so called internal relocation alternative in the case of *Sufi and Elmi v. the United Kingdom*.<sup>835</sup> The application originated by two Somali who feared ill-treatment by the al-Shabaab militia if deported to Somalia. When reasoning on the requirements for any internal relocation alternative, the Court noted that certain guarantees have to be in place: (i) the person to be removed must be able to travel safely to the area concerned; (ii) the person concerned must be able to gain admittance to the area concerned; and (iii) the person concerned must be able to settle in the area concerned.<sup>836</sup> Determining whether the applicants could gain admittance to southern or central Somalia, the Court stated that the applicants would most likely have to settle in a camp for refugees or internally displaced persons, which would expose them to treatment in breach of Article 3 because of the humanitarian conditions in these camps. In addition, the applicants did not have any close family connection in southern or central Somalia. The Court was therefore not convinced that the applicants could settle in a safe region in Somalia. Hence, the Court found a potential violation of Article 3 of the Convention.

As is apparent from the above reasoning, the Court only accepted the internal relocation alternative if certain guarantees with regard to travel, admittance and settlement were in place. In more recent judgments, however, the Court did not rigorously apply these criteria. It is in fact unclear whether the Court adheres to the guarantee threshold or whether it lowered the standard to a mere probability of settling and gaining admittance in a safe area.<sup>837</sup> In eight similar judgments directed towards Sweden, the Court had to decide whether the deportation of failed asylum-seekers from Sweden to Iraq would violate Article 3 of the Convention. While six applicants alleged ill-treatment on the basis of their Christian belief, two applicants feared honour-related

<sup>835</sup> *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011.

<sup>836</sup> *Ibid.*, § 266.

<sup>837</sup> See the leading case *M.Y.H. and Others v. Sweden*, no. 50859/10, 27 June 2013, dissenting opinion of Judge Power-Forde joined by Judge Zupančič.

crimes following their relationship with women not approved by their families. The Court did not find a violation of Article 3 of the Convention because it deemed it possible that all ten applicants could relocate to safe regions in Iraq. Unfortunately, the Court did not explain why it concluded that the applicants could safely travel to the areas concerned. There is no mentioning in the judgment as to whether it is the respondent State's obligation to arrange for a deportation to a safe area.

While the internal relocation alternative is not necessary at odds with the principle of *non-refoulement*, it needs to underlie strict requirements. The threshold for reliance upon the internal relocation alternative needs to be at the level of a 'guarantee'. Thus only if safe transit, admittance and settlement can be guaranteed is the internal relocation alternative compatible with the principle of *non-refoulement*. It is, therefore, hoped that the Court adheres to its 'guarantee' threshold.

### 3.5 Forced Disappearance

Cases involving enforced disappearance mostly raise issues under the right to life (Article 2 of the Convention) and the right to liberty (Article 5 of the Convention).<sup>838</sup> There have, however, also been cases in which the Court found Article 3 to be relevant. In this context, the Court distinguishes between Article 3 rights of the relatives of a missing person (section 3.5.1) and Article 3 rights of the disappeared person (section 3.5.2).

#### 3.5.1 Ill-treatment of Relatives of a Disappeared Person

The Court has repeatedly found that the Article 3 rights of relatives of disappeared persons have been violated on the basis of the suffering caused to them by the uncertainty regarding the fate of their loved ones. On many occasions, the Court has stated that the phenomenon of disappearances imposes a particular burden on the relatives of missing persons who are kept in ignorance of the fate of the disappeared person and suffer the anguish of uncertainty.<sup>839</sup> Factors that the Court takes into consideration when deciding whether relatives of a disappeared person suffered an Article 3 violation are (i) the particular circumstances of the relationship; (ii) the extent to which the family member witnessed the events in question; and (iii) the involvement of the family member in the attempts to obtain information

---

<sup>838</sup> See e.g. *Varnava and Others v. Turkey* [GC], nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009.

<sup>839</sup> *Ibid.*, § 200.

about the disappeared person. The first and second factor played a major role in *Kurt v. Turkey*, an application that was initiated by the mother of a disappeared man. The applicant had not only witnessed her son's detention, but also saw him covered in bruises potentially stemming from ill-treatment by governmental authorities. When the applicant was not able to find the location of her son, she feared for his safety. Consequently, the Court found that the applicant's Article 3 rights were violated.

The third above-mentioned criteria played an important role in the case of *Taniş and Others v. Turkey*.<sup>840</sup> This case involved the disappearance of two political party leaders under circumstances that were disputed between the parties. An on-site fact finding mission by the Court revealed that the missing persons had been subjected to harassment by the authorities prior to their disappearance. On the day of their disappearance they were approached by men claiming to be police officers who urged them to enter their car, the men refused. One of the missing persons then received a phone call from an officer summoning him to an interview at the gendarmerie station. Later the same day, both missing men were seen entering the gendarmerie station. Although the government stated that they left the premises half an hour later, no one has had any news from the disappeared men since. The criminal investigations conducted upon the complaint lodged by the relatives of the missing men were terminated without result. The Court reasoned that

The essence of such a violation does not so much lie in the fact of the "disappearance" of the family member but rather in the authorities' reactions and attitudes to the situation when it is brought to their attention. It is especially in respect of the latter that a relative may claim directly to be a victim of the authorities' conduct.<sup>841</sup>

The Court thus found that the Article 3 rights of the relatives have been violated.

The Court's case law reveals that applicants claiming an Article 3 violation because one of their relatives has disappeared should provide the Court with at least the following:

1. a description of the relationship with the disappeared person. In this context, the Court evaluates the intimacy of the relationship between the applicant and the disappeared person;
2. a detailed description of the disappearance and the extent to which the applicant witnessed the event. The likelihood that the Court finds an Article 3 violation increases if the applicant had witnessed the disappearance;

---

<sup>840</sup> *Taniş and Others v. Turkey*, no. 65899/01, 2 August 2005, § 219.

<sup>841</sup> *Ibid.* See also, *Ruslan Umarov v. Russia*, no. 12712/02, 3 July 2008, § 125.

3. a detailed description of the steps taken to find out the whereabouts of the disappeared person as well as a description of the authorities reactions/findings or investigation results. The more steps (such as going to the police, lodging a complaint with the public prosecutor etc.) the applicant has taken, that have not resulted in any meaningful proceedings, the more solid the evidence that the authorities have been deliberately inactive and unwilling to reveal the truth.

### 3.5.2 Ill-treatment of the Disappeared Person

In *Çiçek v. Turkey*, a mother complained on behalf of her son that he had been the victim of a violation of Article 3 of the Convention, as a result of his enforced disappearance.<sup>842</sup> The Court held that disappearance *per se* does not give rise to an Article 3 violation. Rather, additional ill-treatment has to be proven beyond a reasonable doubt.<sup>843</sup> This understanding of ill-treatment stands in stark contrast with the jurisprudence of the Inter-American Court of Human Rights (IACtHR), which found in *Velásquez Rodríguez v. Honduras* that “the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment which harms the psychological and moral integrity of the person”.<sup>844</sup> The IACtHR added that although it had not been directly shown that the applicant had been subjected to physical torture, the kidnapping and imprisonment of the applicant sufficed for a finding of a violation of the American Convention on Human Rights.<sup>845</sup> The United Nations Human Rights Committee has also held on many occasions that enforced disappearances *per se* are a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment as protected by Article 7 of the International Covenant on Civil and Political Rights.<sup>846</sup>

Recently, there has been some evidence in the European Court's case law suggesting that prolonged incommunicado detention as part of forced disappearance in itself could be a violation of Article 3 of the Convention. In the case of *El Masri v. the Former Yugoslav Republic of Macedonia*,<sup>847</sup> Khaled El Masri applied to the Court alleging (among others) a violation of his rights protected by Article 3 of the Convention.

---

842 *Çiçek v. Turkey*, no. 25704/94, 27 February 2001.

843 *Ibid.*, § 154.

844 *Velásquez Rodríguez v. Honduras*, Inter-Am.Ct.H.R. (Ser. C) No. 4, 29 July 1988, § 187.

845 *Ibid.*, § 187.

846 *Human Rights Committee, S. Jegatheeswara Sarma v. Sri Lanka*, Comm. No. 950/2000, U.N. Doc. CCPR/C/78/D/950/2000, 31 July 2003; *Boucherf v. Algeria*, Comm. No. 1196/2003, U.N. Doc. CCPR/C/86/D/1196/2003, 27 April 2006; *El-Megreisi v. Libyan Arab Jamahiriya*, Comm. No. 440/1990, U.N. Doc. CCPR/C/50/D/440/1990, 23 March 1994; *Celis Laureano v. Peru*, Comm. No. 540/1993, U.N. Doc. CCPR/C/51/D/540/1993, 4 July 1994.

847 *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, 13 December 2012.

El Masri was abducted by the Macedonian police and held incommunicado in a hotel in Macedonia for 23 days, before he was handed over at Skopje airport to the American Central Intelligence Agency (CIA) and flown to Afghanistan. The Grand Chamber found a violation of Article 3 as a result of El Masri's incommunicado detention at the hotel. The Grand Chamber held that the applicant's "suffering was further increased by the secret nature of the operation and the fact that he was kept incommunicado for twenty-three days in a hotel, an extraordinary place of detention outside any judicial framework."<sup>848</sup> In doing so, the Grand Chamber referred to the UN General Assembly's Resolution 60/148, which reads as follows, in so far as relevant:

The General Assembly [...] [r]eminds all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person.<sup>849</sup>

The Grand Chamber further explained that although there was no evidence of physical force being used against the applicant during his detention at the hotel, "It reiterates that Article 3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault."<sup>850</sup> The Grand Chamber continued by stating:

There is no doubt that the applicant's solitary incarceration in the hotel intimidated him on account of his apprehension as to what would happen to him next and must have caused him emotional and psychological distress. The applicant's prolonged confinement in the hotel left him entirely vulnerable. He undeniably lived in a permanent state of anxiety owing to his uncertainty about his fate during the interrogation sessions to which he was subjected.<sup>851</sup>

The Grand Chamber concluded that the treatment in the hotel amounted to inhuman and degrading treatment in violation of Article 3 of the Convention.

The Court in *Aslakhanova v. Russia*, reiterated that ill-treatment must attain a minimum level of severity for it to fall within the scope of Article 3 and that allegations of ill-treatment must be supported by appropriate evidence in accordance with the standard of proof applied to this evidence, beyond a reasonable doubt.<sup>852</sup>

---

<sup>848</sup> Ibid., § 203.

<sup>849</sup> General Assembly, Resolution on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/RES/60/148, 21 February 2006.

<sup>850</sup> *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, 13 December 2012, § 202.

<sup>851</sup> Ibid.

<sup>852</sup> *Aslakhanova and Others v. Russia*, nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, 18 December 2012, § 141.

However, regarding the standard of proof required the Court added that “such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact.”<sup>853</sup> With regard to the incommunicado detention of the applicant, the Court held that “the mere fact of being held incommunicado in unacknowledged detention, would have caused Mr. Shidayev considerable anguish and distress, and put him in acute and constant fear of being subjected to ill-treatment or even killed. In view of all the known circumstances of the present case, that treatment reached the threshold of inhuman and degrading treatment.”<sup>855</sup>

The Court’s holding *Aslakhanova v. Russia* and *El Masri v. the Former Yugoslav Republic of Macedonia* could signal a shift in its case law concerning incommunicado detention and forced disappearance and could mean that the Court’s assessment of such situations is brought more in line with the jurisprudence of the IACtHR and the UN Human Rights Committee.

### 3.6 Discrimination

According to the Court, discrimination can in itself amount to ill-treatment and violate Article 14 in conjunction with Article 3 of the Convention. The Court adopted this view in the case of *Cyprus v. Turkey*<sup>856</sup> in which it stated that

with respect to an allegation of racial discrimination, that a special importance should be attached to discrimination based on race and that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special affront to human dignity. [...] differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question.<sup>857</sup>

With regard to the specific circumstances of the case the Court further opined that

it is an inescapable conclusion that the interferences at issue were directed at the Karpas Greek-Cypriot community for the very reason that they belonged to this class of persons. The treatment to which they were subjected during the period under consideration can only be explained in terms of the features which distinguish them from the Turkish-Cypriot population, namely their ethnic origin, race and religion. The Court would further note that it is the policy of the respondent State to pursue discussions within the framework of the inter-communal talks on the basis of bi-zonal and bi-communal principles [...]. The respondent State’s attachment to these principles must be considered to be reflected in the situation in which the Karpas

---

853 Ibid.

854 Ibid., § 142.

855 *Cyprus v. Turkey*, no. 25781/94, 10 May 2001.

856 Ibid., § 306.

857 Ibid., §§ 309–311.

Greek Cypriots live and are compelled to live: isolated, restricted in their movements, controlled and with no prospect of renewing or developing their community. The conditions under which that population is condemned to live are debasing and violate the very notion of respect for the human dignity of its members. In the Court's opinion, and with reference to the period under consideration, the discriminatory treatment attained a level of severity which amounted to degrading treatment. The Court concludes that there has been a violation of Article 3 of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus have been subjected to discrimination amounting to degrading treatment.<sup>858</sup>

On the basis of these considerations the Court developed its jurisprudence and found discriminatory treatments on the basis of (a) race, (b) political opinion, (c) religion, (d) gender, and (e) sexual orientation. The relevant case-law on these topics will be discussed below.

### 3.6.1 Racial Discrimination

The Court has held in *Moldovan and Others v. Romania*<sup>859</sup> that the racial discrimination to which the applicants had been publicly subjected and the way in which their grievances were dealt with by the various authorities constituted an interference with their human dignity that amounted to degrading treatment. This case surrounded a dispute that broke out between Roma men and non-Roma villagers that resulted in one villager being stabbed in the chest. Upon this, the villagers burned the houses of the Roma and beat two Roma men to death. The applicants alleged that the police had encouraged the crowd to destroy more Roma property in the village. Thus, the following day the villagers completely destroyed 13 Roma houses and personal property. Several applicants suffered from further bodily injuries through rocks that had been thrown at them as well as from beatings and the use of pepper spray. The Roma residents of the village lodged criminal complaints against those allegedly responsible, including several police officers. All charges against police officers were dropped. Five villagers were convicted for murder and 12 charged with other offences. Two of the five villagers charged with murder eventually received a presidential pardon. Although the government had allocated funds for the reconstruction of the destroyed homes, only eight houses were reconstructed. In addition, the rebuilt houses were uninhabitable as there were incomplete walls and roofs. Thus, several Roma families had to live in hen-houses, pigsties, and windowless cellars. The Court found that the long suffering (more than ten years) of the applicants as well as the general attitude of the authorities caused considerable mental suffering, diminished the applicants' human dignity, and arose feelings of humiliation and debasement. Thus the Court concluded that

858 *Moldovan and Others v. Romania* (No. 2), nos. 41138/98 and 64320/01, 12 July 2005.

859 *Ibid.*, §§ 102–114.

the government violated Article 3 of the Convention.<sup>860</sup> It is important to add that in this case the Court did not address whether also Article 14 prohibition of discrimination had been violated.

Another illustrative case on racial discrimination is *Makhashevy v. Russia*.<sup>861</sup> The applicants, who were ethnic Chechens, alleged that they had been unlawfully detained and ill-treated on the basis of their ethnic origin. The applicants had submitted witness statements and documents supporting their allegations regarding the ethnic insults. In finding a violation of Article 14 in connection with Article 3 of the Convention the Court reasoned that

no explanations were given to the reasons necessitating the authorities' intervention and the use of force against the applicants. Taking into account these elements, along with the evidence of verbal racial insults to which the applicants were subjected during the ill-treatment, the Court considers that the applicants made a *prima facie* case that their arrest and detention in the police station were not racially neutral.<sup>862</sup>

### 3.6.2 Discrimination on the Basis of Political Opinion

The Court found ill-treatment and discriminatory treatment on the basis of political opinion in the the case of *Virabyan v. Armenia*.<sup>863</sup> The application was lodged by a member of the main opposition party in Armenia. While taking part in several anti-government demonstrations, the applicant was arrested and brought into custody. The police alleged that it had received an anonymous phone call stating that the applicant was in possession of a firearm. In addition, the police alleged that the applicant had used foul language and was abrasive. Hence the applicant was charged with assaulting the police. The applicant contested these facts and alleged that he had cooperated with the police but was nonetheless brutally beaten, handcuffed, kicked at and hit with a metal object until he lost consciousness. The applicant was later found badly injured and had to undergo surgery. In its reasoning the Court considered that the procedural limb of Article 3 in conjunction with Article 14 of the Convention obliges authorities to investigate the existence of a possible link between political attitudes and an act of violence. The Court further reasoned that

pluralism, tolerance and broadmindedness are hallmarks of a "democratic society" [...]. Political pluralism, which implies a peaceful co-existence of a diversity of political opinions and movements, is of particular importance for the survival of a democratic society based on the rule of law, and acts of violence committed by agents

---

860 *Makhashevy v. Russia*, no. 20546/07, 31 July 2012.

861 *Ibid.*, § 178.

862 *Virabyan v. Armenia*, no. 40094/05, 2 October 2012.

863 *Ibid.*, § 200. See also, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, 22 October 2007.

of the State which are intended to suppress, eliminate or discourage political dissent or to punish those who hold or voice a dissenting political opinion pose a special threat to the ideals and values of such society.<sup>864</sup>

Contrary to their obligations arising from the Convention, the domestic authorities did almost nothing to investigate the discriminatory motive behind the ill-treatment. Two police officers were merely questioned as to whether they were aware of the applicant's political affiliation. Two other police officers, identified by the applicant as perpetrators, were not questioned. Consequently, the Court found a violation of Article 3 in conjunction with Article 14 of the Convention.<sup>865</sup>

### 3.6.3 Religious Discrimination

In the case of *Milanović v. Serbia*<sup>866</sup> the applicant complained of a number of religiously motivated attacks perpetrated against him. The applicant has been a leading member of the Vaishnava Hindu religious community in Serbia, otherwise known as Hare Krishna, since 1984. From 2001 to 2007 the applicant repeatedly received anonymous telephone threats. On three occasions, he was attacked and stabbed in the abdomen or chest by unidentified individuals. In one of the attacks the perpetrators scratched a crucifix on the applicant's head. The police questioned witnesses and several potential suspects, but could not identify any of the attackers. In a report in 2005 the police referred to the applicant's religious affiliation and his "rather strange appearance". In a further report issued in 2010 the police noted the attacks on the applicant always occurred around a major Orthodox religious holiday and that the applicant had publicized the incidents while "emphasizing" his own religious affiliation. They therefore observed that self-infliction of the applicant's injuries could not be excluded.<sup>867</sup>

The Court emphasized that the State has a duty to conduct a reasonable investigation into possible religious motivations in violent acts:

Treating religiously motivated violence and brutality on an equal footing with cases that have no such overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention.<sup>868</sup>

The Court found it unacceptable that the State in this case had been aware that the attacks against the applicant were probably religiously motivated, yet failed to take any action to protect the applicant and let the investigation last for years

---

864 Ibid., §§ 133–144.

865 *Milanović v. Serbia*, no. 44614/07, 14 December 2010.

866 Ibid., § 64.

867 Ibid., § 97.

868 Ibid., § 99.

without prosecuting or identifying the perpetrators.<sup>869</sup> The Court therefore found a violation of the Convention.

### 3.6.4 Discrimination on the Basis of Gender

The Court has also ruled in cases regarding gender-based discrimination. In the case of *T.M. and C.M. v. the Republic of Moldova*<sup>870</sup> the applicants were victims of domestic violence. They claimed that the authorities' failure to offer them effective and timely protection from the abuse amounted to gender-based discrimination amounting to a violation of Article 3 in conjunction with Article 14 of the Convention.<sup>871</sup> The Court first "points out its finding that the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional."<sup>872</sup> The Court found that the authorities had refused to acknowledge the complaints of the applicants and failed to take action to prevent the abuse the applicants were suffering. Since the physical injuries were not severe enough, the prosecutor never started criminal investigations. According to the Court, this state inaction demonstrated a lack of understanding of the specific nature of domestic violence. The Court criticized this understanding of domestic violence by stating that

the prosecutor's position that no criminal investigation could be initiated unless the injuries caused to the victim were of a certain degree of severity (see paragraph 12 above) also raises questions regarding the efficiency of the protective measures, given the many types of domestic violence, not all of which result in physical injury, such as psychological or economic abuse.<sup>873</sup>

The Court for the first time acknowledged that domestic violence could also include non-physical violence such as economic abuse. By finding that the respondent State had also violated Article 14 in conjunction with Article 3, the Court observed that the lack of investigations

clearly demonstrates that the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to condoning such violence and reflected a discriminatory attitude towards her as a woman. The findings of the United Nations Special rapporteur on violence against women, its causes and consequences [...] as well as statistical data gathered by the National Bureau of Statistics [...] only support the impression that the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women.<sup>874</sup>

---

869 *T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, 28 January 2014.

870 *Ibid.*, § 53.

871 *Ibid.*, § 57. See also *Opuz v. Turkey*, no. 33401/02, 9 June 2009, § 191.

872 *Ibid.*, § 47.

873 *Ibid.*, § 62. More on gender based ill-treatment in chapter 3.6 below.

874 *X v. Turkey*, no. 24626/09, 9 October 2012.

### 3.6.5 Discrimination on the Basis of Sexual Orientation

In the 2012 case of *X v. Turkey*,<sup>875</sup> the Court for the first time found that a complaint related to discrimination on the basis of sexual orientation amounted to a violation of Article 14 in conjunction with Article 3 of the Convention. The application was lodged by a homosexual prisoner who was initially placed in a shared cell with heterosexual prisoner, but asked to be transferred to a shared cell with homosexual inmates because he was intimidated and bullied. The applicant was then placed in a small and dirty individual cell. He was also deprived of any contact with other prisoners. Complaints regarding his prison conditions were unsuccessful. The applicant also unsuccessfully complained against a warder for homophobic conduct and insults. The applicant's solitary confinement did not only amount to an Article 3 violation taken by its own, but also to a violation of Article 14 in conjunction with Article 14 of the Convention. The solitary confinement had been imposed on the applicant solely on the ground of his sexual orientation. Furthermore, the Court was not convinced that the applicant's isolation was based on his physical well being. Rather, the main reason for exclusion from prison life was the applicant's homosexuality.<sup>875</sup>

## 3.7 Violence Against Women

The Court has repeatedly dealt with violence against women under Article 3 of the Convention. Most notable are cases dealing with violence by State authorities (section 3.7.1), rape (section 3.7.2), domestic violence (section 3.7.3), forced sterilization (section 3.7.4) and reprisal and social exclusion (section 3.7.5).

### 3.7.1 Sexual Harassment by State Authorities

The Court repeatedly acknowledged that sexual harassment amounts to inhuman treatment in terms of Article 3 of the Convention. For instance, in the case of *Valašinas v. Lithuania*<sup>876</sup> the applicant complained about the strip search he had to undergo while in prison. During a body search, the applicant was obliged to strip naked in the presence of a women prison officer with the intention of humiliating him. In addition, guards examined his sexual organs as well as the food he received from his relatives without wearing gloves. Although the Court held that strip searches might be necessary on occasion in order to ensure prison security or prevent disorder or crime, the Court made clear that strip searches must be conducted in an appropriate manner. The Court found that the body search of the applicant lacked respect and diminished his human dignity.

---

<sup>875</sup> Ibid., §§ 48–58.

<sup>876</sup> *Valašinas v. Lithuania*, no. 44558/98, 24 July 2001.

Consequently, the applicant's right protected by Article 3 of the Convention had been violated.<sup>877</sup>

In the case of *Yazgöl Yılmaz v. Turkey*,<sup>878</sup> the applicant alleged that she was sexually harassed while in police custody. The applicant, a 16-year-old girl, was taken into police custody on suspicion of assisting the Kurdistan Workers' Party. The applicant was forced to undergo a gynaecological examination in order to establish whether she had been subject to sexual assault while detained. The applicant did not agree to the medical exam and it was not carried out with the consent of the applicant's guardian. After her release from custody, the applicant suffered from post-traumatic stress disorder and depression. The Court found that the gynaecological examination of the applicant and the inadequate investigations amounted to inhuman treatment because the law did not provide the necessary safeguards concerning examinations of female detainees. The practice of automatic gynaecological examination was neither in the interest of female detainees, nor was it medically justified. Such examinations rather aim at protecting the interest of police officers from being falsely accused of sexual assault.<sup>879</sup> The Court also noted that gynaecological examination without the person's consent could be regarded as sexually traumatic. Given the young age of the applicant and the fact that she was not accompanied, the Court concluded that the examination must have caused extreme anxiety attaining the threshold of degrading treatment.

### 3.7.2 Rape

The Court has had several occasions to denounce rape as torture in terms of Article 3 of the Convention. A landmark judgment in this regard is *Aydın v. Turkey*<sup>880</sup> which was brought by a 17-year-old Kurdish woman who was raped by security forces. The applicant was arrested in her village with her father and her sister-in-law and questioned about supposed terrorist activities. During her detention the applicant was blindfolded, beaten, stripped naked, placed in a tyre and hosed with pressurized water and raped by a member of the security forces in the gendarmerie headquarters. She was released with her family after three days. They complained about their treatment in custody to the Public Prosecutor who took their statement and sent them to the State hospital for examination. In its finding, the Court concluded the following:

Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape

---

877 Ibid., §§ 114–118.

878 *Yazgöl Yılmaz v. Turkey*, no. 36369/06, 1 February 2011.

879 Ibid., §§ 43–54.

880 *Aydın v. Turkey* [GC], no. 23178/94, 25 September 1997.

leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally.<sup>881</sup>

Consequently, the Court concluded that the “especially cruel act of rape” amounted to torture in breach of Article 3 of the Convention.<sup>882</sup>

The Court has also dealt with rape by private individuals. In this context, the Court found that the lack of investigations into allegations of rape amounts to inhuman or degrading treatment. For instance, in the case of *M.C. v. Bulgaria*,<sup>883</sup> the Court was dealing with an application by a 14-year-old woman who was raped by two men. The authorities did not prosecute the alleged perpetrators because there was no evidence that the victim resisted physically. In its reasoning the Court stated that

the obligation of the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals.<sup>884</sup>

Thus, the Court concluded that the Convention gives rise to a positive obligation to conduct investigations into allegations of violence, including rape.<sup>885</sup> The Court also addressed the definition of rape. With reference to comparative law, the Court concluded that the essential element of rape was the lack of consent.<sup>886</sup> Physical force by the perpetrator or physical resistance by the victim, respectively, is not required. Thus, the Court found that the respondent State had violated Article 3 of the Convention for not prosecuting the alleged perpetrators because the victim did not physically resist.<sup>887</sup>

### 3.7.3 Domestic Violence

In the landmark judgment of *Opuz v. Turkey*,<sup>888</sup> the Court found that the State’s failure to protect the applicant from domestic violence was contrary to Article 3 of the Convention. Although the applicant and her mother were assaulted and threatened over many years by H.O., the applicant’s husband, the authorities did not provide redress. After H.O. stabbed his wife, he was only charged with a fine of 385 euros. The prosecutor did not bring any other charges against the applicant’s husband

---

881 Ibid., § 83.

882 Ibid., § 86.

883 *M.C. v. Bulgaria*, no. 39272/98, 4 December 2003.

884 Ibid., § 149.

885 Ibid., § 151.

886 Ibid., § 159.

887 Ibid., § 187.

888 *Opuz v. Turkey*, no. 33401/02, 9 June 2009.

because the applicant withdrew her complaints. However, the applicant stated to the police that she only withdrew her complaint because her husband harassed her into doing so and threatened to kill her. Finally, when the applicant and her mother tried to move away, H.O. killed his mother-in-law. Although H.O. was sentenced to life imprisonment for murder, he was not imprisoned because his appeal was pending. H.O. continued to threaten the applicant. In its decision, the Court found that Turkey had failed to put in place a system for punishing domestic violence. In order to comply with the Convention, there should have been a legal framework allowing the prosecution of the perpetrator despite the fact that the applicant withdrew her complaint.<sup>889</sup> For the first time in a domestic violence case, the Court also found a violation Article 14 in conjunction with Article 3 because the violence the applicant was subjected to was gender-based. In this context, the Court stated the following:

Bearing in mind its finding above that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women. Despite the reforms carried out by the Government in recent years, the overall unresponsiveness of the judicial system and impunity enjoyed by the aggressors, as found in the instant case, indicated that there was insufficient commitment to take appropriate action to address domestic violence.<sup>890</sup>

The Court provided similar reasoning in the case of *E.S. and Others v. Slovakia*.<sup>891</sup> This case originated in a criminal complaint lodged by the applicant against her husband for assaulting her and her children and for sexually abusing one of her daughters. Although he was convicted of violence and sexual abuse, the applicant's request to restrict her husband's access to the property was dismissed. The applicant's husband could only be ordered to leave the property once they were divorced. Consequently, the applicant and her children were forced to move away from friends and family in order to protect themselves. The Court found a violation of Article 3 of the Convention because the authorities did not protect the applicant and her children from domestic violence.<sup>892</sup>

### 3.7.4 Forced Sterilization

There have been a number of cases in which the Court found a violation of Article 3 of the Convention in cases involving forced sterilization. This has been the finding in the case of *V.C. v. Slovakia*.<sup>893</sup> The applicant, a Roma woman, was sterilized in a

---

889 Ibid., § 186.

890 Ibid., § 200.

891 *E.S. and Others v. Slovakia*, no. 8227/04, 15 September 2009.

892 Ibid., §§ 43–44.

893 *V.C. v. Slovakia*, no. 18968/07, 8 November 2011.

public hospital after she had delivered her second child. While in labour and being told that a third pregnancy would risk her or her child's life, the applicant signed a request for sterilization. However, the applicant did not clearly understand the term 'sterilization'. The applicant was also not informed about the consequences of sterilization as well as alternative solutions. Hence, the Court reasoned that

the sterilisation procedure, including the manner in which the applicant was requested to agree to it, was liable to arouse in her feelings of fear, anguish and inferiority and to entail lasting suffering. As to the last-mentioned point in particular, the applicant experienced difficulties in her relationship with her partner and, later, husband as a result of her infertility. She cited her infertility as one of the reasons for her divorce in 2009. The applicant suffered serious medical and psychological after-effects from the sterilisation procedure, which included the symptoms of a false pregnancy and required treatment by a psychiatrist. Owing to her inability to have more children the applicant has been ostracised by the Roma community.<sup>894</sup>

Consequently, the Court found the applicant's forced sterilization in violation of Article 3 of the Convention.<sup>895</sup>

### 3.7.5 Reprisal and Social Exclusion

Reprisals and social exclusions can also amount to inhuman or degrading treatment. For instance, in the case of *N v. Sweden*,<sup>896</sup> the Court had to decide on the risk of ill-treatment of the applicant, an Afghan woman awaiting deportation. The applicant sought asylum in Sweden because she feared ill-treatment by her husband, her family and the Afghan society in consequence of her attempt to divorce her husband and her extra-marital affair. The Court noted that women were under a particular risk of suffering violence in Afghanistan. They were not only socially excluded if unprotected by a male family member, but also faced serious violence, penalties, or even death if accused of adultery or if not complying with their husband's demands.<sup>897</sup> Since the applicant was still married and her husband did not wish to divorce, he could decide to resume their married life together against the applicant's wishes.<sup>898</sup> In addition, the applicant did not have any social network or male protection in her home country and therefore lacked means of survival.<sup>899</sup> The Court thus found that the cumulative risks of reprisals give rise to an Article 3 violation if Sweden deported the applicant.<sup>900</sup>

---

<sup>894</sup> *Ibid.*, § 118.

<sup>895</sup> See also *I.G. and Others v. Slovakia*, no. 15966/04, 13 November 2012; *N.B. v. Slovakia*, no. 29518/10, 12 June 2012.

<sup>896</sup> *N v. Sweden*, no. 23505/09, 20 July 2010.

<sup>897</sup> *Ibid.*, §§ 52–55.

<sup>898</sup> *Ibid.*, § 57.

<sup>899</sup> *Ibid.*, § 60.

<sup>900</sup> *Ibid.*, § 62.

## 3.8 Violence Against Children

Children are victims of many forms of violence and ill-treatment. They are used as slaves, as soldiers, or as workers. They face neglect, abuse and even death. Violence against children happens in school, in detention centres, at home, or in hospitals.<sup>901</sup> The growing jurisprudence of the Court articulates the special obligation of States to protect minors from corporal punishment (section 3.8.1), from neglect and abuse (section 3.8.2), harassment (section 3.8.3) and from violence in detention (section 3.8.4).<sup>902</sup>

### 3.8.1 Corporal Punishment

The issue of corporal punishment of children arose in the case of *Tyrer v. the United Kingdom*.<sup>903</sup> The applicant, a 15-year-old boy, was found guilty before the local juvenile court for causing bodily harm to a senior pupil at his school. The applicant was sentenced to three strokes of the birch in accordance with the relevant legislation. The sentence was enforced at the police station by three police officers. The applicant was forced to take down his trousers and bend over a table. While two policemen held him down, a third officer struck him three times with a birch. The Court found that judicial corporal punishment amounted to degrading punishment in breach of Article 3 of the Convention. The Court reasoned that

The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalised violence that is in the present case violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State (see paragraph 10 above). Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the main purposes of Article 3 (art. 3) to protect, namely a person's dignity and physical integrity. Neither can it be excluded that the punishment may have had adverse psychological effects. The institutionalised character of this violence is further compounded by the whole aura of official procedure attending the punishment and by the fact that those inflicting it were total strangers to the offender.<sup>904</sup>

The Court further noted that the punishment was aggravated by the fact that the punishment was administered over the bare posterior.<sup>905</sup>

---

901 Council of Europe, *Building a Europe for and with Children*, available online: [http://www.coe.int/t/dg3/children/other%20languages/DefaultOther\\_en.asp](http://www.coe.int/t/dg3/children/other%20languages/DefaultOther_en.asp), p. 5.

902 On the Court's jurisprudence with regard to children's rights see e.g. Geraldine Van Bueren, *Child Rights in Europe*, Council of Europe 2007.

903 *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978.

904 *Ibid.*, § 33.

905 *Ibid.*, § 35.

The Court also had the possibility to decide on national laws that allow physical punishment of children by their parents. For instance, in the case of *A. v. the United Kingdom*,<sup>906</sup> the applicant's stepfather was acquitted from assault causing actual bodily harm because he administered 'reasonable punishment' directed towards correcting the 9-year-old applicant. The Court found that severely beating a child with a garden cane on several occasions reaches the level of severity prohibited by Article 3 of the Convention.<sup>907</sup> In addition, the Court reasoned that "[c]hildren and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity,"<sup>908</sup> but English law did "not provide adequate protection to the applicant against treatment or punishment contrary to Article 3".<sup>909</sup> It can be concluded that corporal punishment of children is not compatible with the Convention and member States are obliged to effectively protect children from physical violence.

### 3.8.2 Neglect and Abuse

According to the Court's established case law, neglect and abuse of children amounts to inhuman or degrading treatment. This has been the finding in the case of *Z. and Others v. the United Kingdom*.<sup>910</sup> In this case, four young children were placed into protective foster care four and a half years after concerns of neglect were first reported to the social services. For years, authorities did not place the children in care, even though it was reported by the school, social workers and the family doctor that two of the children stole food from the school bins; that the house was neglected (mattresses were soaked with urine, dirty diapers were lying around etc.); that the physical and psychological well-being of the children declined; and that one child had unusual bruises. Not removing the children from their parents caused severe suffering and "physical and psychological injuries directly attributable to a crime of violence"<sup>911</sup> and amounted to State negligence. Hence, there was no doubt that the system failed to protect the applicant children from serious and long-term neglect and abuse, resulting in a breach of Article 3 of the Convention.

Another illustrative case on child abuse is *E. and Others v. the United Kingdom*,<sup>912</sup> in which three sisters and their brother alleged that the authorities did not protect them from physical and sexual abuse by their mother's boyfriend. Although their mother's boyfriend was convicted for having assaulted two of the girls, he went

---

906 *A. v. the United Kingdom*, no. 25599/94, 23 September 1998.

907 *Ibid.*, § 21.

908 *Ibid.*, § 22.

909 *Ibid.*, § 24.

910 *Z. and Others v. the United Kingdom* [GC], no. 29392/95, 10 May 2001.

911 *Ibid.*, § 74.

912 *E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002.

back to live with the family in breach of his probation order. Social workers who regularly visited the family met the mother's boyfriend at several occasions in the family home, but did not intervene. As a consequence, the applicants experienced serious violence and sexual abuse for about 10 years. This caused severe post-traumatic stress disorder and personality problems. In its reasoning, the Court noted that the

lack of investigation, communication and co-operation by the relevant authorities disclosed in this case must be regarded as having had a significant influence on the course of events and that proper and effective management of their responsibilities might, judged reasonably, have been expected to avoid, or at least, minimise the risk or the damage suffered.<sup>913</sup>

Consequently the respondent government's neglect violated Article 3 of the Convention.<sup>914</sup>

Children do not only face abuse by their parents at home, but also by teachers in school. The particular vulnerability of children to be subjected to sexual abuse recently prompted the Grand Chamber to issue a landmark decision in the case of *O'Keeffe v. Ireland*<sup>915</sup> finding that Ireland violated the substantive limb of Article 3 for not protecting the applicant from sexual abuse by her teacher in an Irish National School. The Court was convinced that the Irish State must have been aware of the sexual abuse of children in National Schools since there had been many allegations and prosecutions of such crimes. Nevertheless, the government entrusted the church with the education of children without establishing a system of control.<sup>916</sup>

### 3.8.3 Harassment

The Court addressed harassment by the authorities and private individuals in the case of *P. and S. v. Poland*.<sup>917</sup> This case originated in an application by a 14-year-old who became pregnant after having been raped and after having been encountering harassment in seeking a legal abortion. The applicant received contradictory information as to the procedure to be followed in the hospital. Doctors sent her to the priest who pressured her not to have an abortion and an abortion was subsequently denied on the basis of conscientious objections. The hospital issued a press release on the case confirming that they refused to carry out an abortion, causing local and national papers to publish articles on the case which in turn evoked internet discussions. The publication of the applicant's case by the hospital and newspapers

---

913 Ibid., § 100.

914 Ibid., §§100–101.

915 *O'Keeffe v. Ireland* [GC], no. 35810/09, 28 January 2014.

916 Ibid., §§ 153–169. See also *E.S. and Others v. Slovakia*, no. 8227/04, 15 September 2009; *P.M. v. Bulgaria*, no. 49669/07, 24 January 2012; *C.A.S. and C.S. v. Romania*, no. 26692/05, 20 March 2012; *R.I.P. and D.L.P. v. Romania*, no. 27782/10, 10 May 2012.

917 *P. and S. v. Poland*, no. 57375/08, 30 October 2012.

also resulted in harassments by anti-abortion activists. Instead of protecting the applicant and her mother from harassments, the police took them to the police station where they were questioned for hours and the family court had ordered the applicant to enter a juvenile shelter as an interim measure in order to divest her mother of parental rights on the grounds that the mother was pressuring her daughter into having an abortion. Although the applicant was eventually allowed to have the abortion, the procedure took place 500 kilometres from the applicant's home, in clandestine manner and without proper post-abortion care. The government then brought criminal proceedings against the applicant for having had sexual intercourse with a minor, the rapist, and the criminal investigations against the perpetrator were discontinued. The Court found that the harassing behaviour by the State met the severity threshold and was consequently a violation of Article 3.<sup>918</sup>

### 3.8.4 Detention

According to the Court's case law, Article 3 of the Convention provides minors with enhanced protection in police custody and detention. For instance, in the case of *Okkali v. Turkey*,<sup>919</sup> the Court found that the 12-year-old applicant had been subjected to inhuman treatment because the authorities did not consider the applicant's vulnerability as a child in the criminal proceedings against a police officer that ill-treated the applicant.<sup>920</sup> In addition, the applicant, who was arrested for supposedly having stolen money, not only spent one and a half hours in police custody without a lawyer or his parents present, but was also physically beaten by the interrogating police officer. The criminal complaint lodged against the police officer was downgraded from torture to assault and ill-treatment and the officer received a reduced, minimal sentence for good behaviour. Actions for damages were declared inadmissible as they became time-barred. Thus, the relative impunity granted to the officers as well as the State's failure to take the applicant's vulnerability into account amounted to an Article 3 violation.<sup>921</sup>

The Court made similar considerations in the case of *Dushka v. Ukraine*.<sup>922</sup> This case originated in an application by a 17-year-old man who was sentenced to administrative detention for robbery. While in detention, the applicant was severely ill-treated by police officers trying to coerce a confession to the robbery. In particular, he was handcuffed to a radiator and beaten with a plastic water bottle. As a result, he lost consciousness several times. Following these incidents, the

---

918 Ibid., 168.

919 *Okkali v. Turkey*, no. 52067/99, 17 October 2006.

920 Ibid., §§ 69–70.

921 Ibid., § 78.

922 *Dushka v. Ukraine*, no. 29175/04, 3 February 2011.

applicant wrote self-incriminating statements dictated by the police. After his release, the applicant tried to initiate criminal proceedings against the police officer, but the prosecutor's office refused to take any actions, citing a lack of evidence. The Court found a procedural and substantive violation of Article 3 of the Convention. One reason for the Court's finding was the lack of attention that has been given to the applicant's vulnerable age. Although he was a minor, neither his parents nor a lawyer were informed of his arrest.<sup>923</sup> Likewise, the applicant did not have any representation before the Court that sentenced him to administrative detention.<sup>924</sup>

Another illustrative case in which the Court found that the respondent government did not take into account the special situation of a minor is *Güveç v. Turkey*.<sup>925</sup> The 15-year-old applicant was tried before an adult court for membership in the Kurdistan Workers' Party. He was held in pre-trial detention for more than four-and-a-half years in an adult prison. Despite his severe psychological problems and repeated suicide attempts, he did not receive medical care. In addition, the applicant's legal representative has not been present at interrogations by the police, the prosecutor or the judge. The Court found that the length of his detention with adults as well as the lack of medical care amounted to an Article 3 violation.<sup>926</sup>

### 3.9 Positive Obligations

Human rights produce both positive as well as negative obligations. While positive obligations require a State to actively engage in the protection of human rights, negative obligations require the State to abstain from human rights violations. In the context of Article 3 of the Convention, negative obligations have traditionally been most important. The prohibition of torture first and foremost obliges the State to refrain from any ill-treatment. However, the Court progressively formulated positive obligations arising from Article 3 of the Convention.

Negative and positive obligations under the Convention are highly interrelated.<sup>927</sup> The Court has underlined that fact, for instance, in cases concerning a State's failure to protect individuals from environmental hazards emanating from private or corporate economic activity. In *Powell and Ryner v. the United Kingdom*, it held:

---

923 Ibid., § 53.

924 Ibid., § 47; See also *Cigêrhun Öner v. Turkey* (No. 2), no. 2858/07, 23 November 2010; *Yazgül Yılmaz v. Turkey*, no. 36369/06, 1 February 2011.

925 *Güveç v. Turkey*, no. 70337/01, 20 January 2009.

926 Ibid., 98–99.

927 See generally Alastair Mowbray, *The Development of Positive Obligations Under the European Convention on Human Rights by the European Court of Human Rights*, Hart Publishing, Oxford, 2004.

Whether the present case be analysed in terms of a positive duty on the State to take reasonable and appropriate measures to secure the applicants' rights under paragraph 1 of Article 8 (art. 8-1) or in terms of an 'interference by a public authority' to be justified in accordance with paragraph 2 (art. 8-2), the applicable principles are broadly similar.<sup>928</sup>

In the context of the rights to personal integrity and life, the Court points out that "Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction."<sup>929</sup> Therefore, the Court will evaluate "whether, given the circumstances of the case, the State did all that could have been required of it to prevent [an] applicant's life from being avoidably put at risk."<sup>930</sup> This duty extends "in certain well-defined circumstances [to] a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual," but only if "the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."<sup>931</sup> Similarly, in the context of Article 3, the Court has ruled that states are "to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals;"<sup>932</sup> an identical "knew or ought to have known" -standard applies.<sup>933</sup>

It is important to note that recently, the Court developed its jurisprudence with regard to positive obligations in the context of Article 3. In the case of *O'Keeffe v. Ireland*<sup>934</sup> the Court found that the State has an inherent positive obligation to protect children from ill-treatment. This case originated in an application by an Irish national who was sexually abused by a teacher in a National School, which was State-funded but privately managed under Catholic patronage. Since the State was aware of sexual abuse of children, and nevertheless entrusted primary education to National schools without any safeguards or controls, Ireland failed to fulfil its positive obligation to protect the applicant from sexual abuse.

928 *Powell and Rayner v. the United Kingdom*, no. 9310/81, 21 February 1990, § 41. See also *López Ostra v. Spain*, no. 16798/90, 9 December 1994, § 55.

929 *L.C.B. v. the United Kingdom* no. 23413794.

930 *L.C.B. v. the United Kingdom* no. 23413/94, 9 June 1998, § 36.

931 *Osman v. the United Kingdom*, no. 23452/94, 28 October 1998, §§ 115–116.

932 *Z. and Others v. the United Kingdom* [GC], no. 29392/95, 10 May 2001, § 73.

933 See *Mahmut Kaya v. Turkey*, no. 22535/93, 28 March 2000, § 115.

934 *O'Keeffe v. Ireland* [GC], no. 35810/09, 28 January 2014.

Thus, the Court found a violation of the substantial limb of Article 3 of the Convention.<sup>935</sup> This case provides an important finding because the Court, for the first time, found an Article 3 violation under the substantial limb as opposed to the procedural limb, although the acts of ill-treatment were not committed by a governmental official but a private individual.

The following parts relate specifically to a select number of positive obligations that States have, pursuant to the case law under the Convention, when realizing their duty to prevent, mitigate, and remedy breaches of Article 3.

### 3.9.1 Adequate Regulation of All Law-Enforcement Activities

The Court has repeatedly held that all law-enforcement activities must be properly authorised under national law. An illustrative example in this regard is the case of *Makaratzis v. Greece*.<sup>936</sup> This case originated in an application by a Greek national who was injured by police officers upon his arrest. The incident happened after the applicant had driven through a red traffic light, had broken through five police roadblocks and had collided with several other vehicles. When he eventually stopped his car at a petrol station but refused to get out, the applicant alleged that the police fired at the car. Finally, a police officer managed to break into the applicant's car and arrest him. The applicant was immediately driven to the hospital where he was treated for injury to his right arm, his right foot, his left buttock, and the right side of the chest. The applicant also claims that he was shot in the sole of his foot while being dragged out of his car, but the Government contested this allegation. The applicant's mental health had deteriorated considerably since the accident. Immediately after the incident, several police officers left the scene without revealing their identity or disclosing all necessary information with regard to the weapons that had been used. The public prosecutor initiated proceedings against seven officers. Since not all officers who had been involved in the incident could be identified, the court could not establish that the seven accused officers were the one firing at the applicant. Finding a violation of Article 2 of the Convention, the Court held that "policing operations must be sufficiently regulated by it [national law], within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force."<sup>937</sup>

The domestic framework must provide for "adequate and effective safeguards against arbitrariness and abuse of force, and even against avoidable accident."<sup>938</sup>

---

935 Ibid., § 187.

936 *Makaratzis v. Greece*, no. 50385/99, 20 December 2004.

937 Ibid., § 58. See also *Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, 8 June 2004, § 56.

938 *Makaratzis v. Greece*, no. 50385/99, 20 December 2004. See also *Arapkhanov v. Russia*, no. 2215/05, 3 October 2013, § 110.

The absence of a regulatory framework will make a showing by a respondent government that their agents “took appropriate care to ensure that any risk to the life of the applicants [...] was kept to a minimum”<sup>939</sup> much more difficult.

The regulatory framework governing State compliance with Article 3 must also encompass processes and procedures for victims and potential victims to complain to the authorities, to be heard, and to receive adequate protection. Thus, responsiveness must be provided for and practiced in real life. This covers both situations where individuals are in the care or control of government agencies - such as prisons, police facilities, military barracks, (mental) health institutions, educational establishments or the like - and those where a threat emanates from a third party.

### 3.9.2 Adequate Training

Article 3 also contains the obligation for proper training in human rights standards. State agents must be aware of the basic standards enshrined in that provision. This includes, for instance, the need to train prison warders that “[r]ecourse to physical force which has not been made strictly necessary by the detainee’s own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.”<sup>940</sup> Thus, the prison administration is required to train their staff in the principle of the use of the least intrusive means of use of force and its implication, for instance, on the handling of prison riots. Consider the following requirements for adequate training enunciated by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which the Court endorsed in cases such as *D.F. v. Latvia* in 2013:<sup>941</sup>

Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners, based on the notions of secure custody and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Further, management must be prepared fully to support staff in the exercise of their authority.<sup>942</sup>

939 *Arapkhanov v. Russia*, no. 50385/99, 20 December 2004, § 119. See also *Leonidis v. Greece*, no. 43326/05, 8 January 2009, § 60.

940 *Sapožkovs v. Latvia*, no. 8550/03, 11 February 2014, § 64, with reference to *Dedovskiy and Others v. Russia*, no. 7178/03, § 81 and *Korobov and Others v. Estonia*, no. 10195/08, 28 March 2013, § 97.

941 *D.F. v. Latvia*, no. 11160/07, 29 October 2013.

942 *Ibid.*, § 30.

The Court will take such general standards from the CPT into account, and routinely consider them authoritative to a certain degree, even more than the Committee's country-specific observations, which have more evidentiary value.<sup>943</sup>

### 3.9.3 Operational Planning of Law-Enforcement Activities

One positive duty of the State in the context of law enforcement operations is due diligence in planning. *McCann and Others v. the United Kingdom* is illustrative here: Special British police had used lethal force against suspected IRA terrorists present in Gibraltar based on various assumptions as to the terrorists' intentions and actions, all of which had prompted the officers to consider them an imminent danger to others. The Court, "having regard to the decision not to prevent the suspects from travelling into Gibraltar, to the failure of the authorities to make sufficient allowances for the possibility that their intelligence assessments might, in some respects at least, be erroneous and to the automatic recourse to lethal force when the soldiers opened fire, [...] is not persuaded that the killing of the three terrorists constituted the use of force which was no more than absolutely necessary in defence of persons from unlawful violence".<sup>944</sup>

### 3.9.4 Humane Conditions of Detention

At the core of every person's right to be free from inhuman or degrading punishment is the positive obligation of prison administrations and other detention facilities to provide persons deprived of their liberty with acceptable conditions of detention. The preventive character of that right and the State's corresponding positive obligations is underscored by the fact that the Court in its case law routinely refers to and adopts the conclusions of the CPT,<sup>945</sup> the work of which is entirely preventive in nature. Here, States face a positive obligation to bring their prison systems in line with minimum European standards irrespective of financial or other constraints. For instance with respect to overcrowding, hygiene, privacy, access to medical assistance, and other factors, the Court, in cooperation with the CPT, has advanced the standards substantially and now consistently rules that

the extreme lack of space [is] a central factor in its analysis of compliance of the applicant's detention conditions with Article 3. The fact of the applicant being obliged to live, sleep and use the toilet in the same cell with [...] many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in the applicant the feelings of fear, anguish and inferiority capable of humiliating and debasing him.<sup>946</sup>

---

943 Ibid., § 81.

944 *McCann and Others v. the United Kingdom*, no. 18984/91, 27 September 1995, § 220.

945 For a recent example with ample references to the CPT's findings in the evidentiary and substantive sections of a Court judgment, see *Rzakhanov v. Azerbaijan*, no. 4242/07, 4 July 2013.

946 *Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005, § 39. See also *Peers v. Greece*, no. 28524/95, 19 April 2001, § 72; *Kudła v. Poland* [GC], no. 30210/96, 26 October 2000, § 92.

### 3.9.5 Special Duties in Favour of Particularly Vulnerable Individuals

The jurisprudence of the Court in general, and in the context of Article 3 in particular, shows an awareness of the special needs of certain individuals, or groups of individuals, who are either more susceptible to particular forms of disadvantages in the broader sense, or vulnerable in the narrower sense, due to their status or position in a particular place or time. Let us explore this in a concrete example: prisoners suspected or convicted of sexual offences or prisoners who have previously collaborated with law-enforcement authorities. The Court acknowledged in *D.F. v. Latvia* that such persons “are at a particular risk of inter-prisoner violence in Latvian prisons.”<sup>947</sup> D.F. was a police informant later charged with sexual assault against minors and held in prison, and thus vulnerable on two counts; he was subject to a “heightened risk of ill-treatment by [his] fellow inmates”<sup>948</sup> and “it is clear that every day the applicant had to spend with the general prison population only served to increase the risk of violence against him, as knowledge of the nature of the charges against him and his past ties with the police spread to more and more prisoners.”<sup>949</sup> Consequently, the authorities were required to adopt measures that would “provide effective protection, in particular, of vulnerable persons in custody under the exclusive control of the authorities, and should also include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge.”<sup>950</sup> D.F. complained in particular about the “absence of specific safety measures”<sup>951</sup> for his protection, in particular his transfer to a safer prison, a positive duty on the State. The Court set the following standards for such measures:

The Court considers that, in order for a domestic preventive mechanism to be effective, it should allow the authorities concerned to respond as a matter of particular urgency, in a manner proportionate to the perceived risk faced by the person concerned. As has been made clear by the applicant’s example, a request to the law-enforcement agencies to confirm that there had been previous collaboration with the police can turn into a lengthy and heavily bureaucratic procedure. The lack of sufficient coordination among investigators, prosecutors and penal institutions to prevent possible ill-treatment of detainees who, owing to a record of informing in respect of criminal offences, have become particularly vulnerable and liable to be attacked violently in prison, contributed to that to a significant extent. The Court has previously identified and criticised the absence of a systematic approach to dealing with the difficulties faced by police informers in Latvian prisons.<sup>952</sup>

<sup>947</sup> *D.F. v. Latvia*, no. 11160/07, 29 October 2013.

<sup>948</sup> *Ibid.*, § 84.

<sup>949</sup> *Ibid.*, § 81.

<sup>950</sup> *Ibid.*, § 83, with reference to *Đurđević v. Croatia*, no. 52442/09, 19 July 2011, § 102. See also *Pantea v. Romania*, no. 33343/96, 3 June 2003, § 190, and *Preminyin v. Russia*, no. 44973/04, 10 February 2011, § 84.

<sup>951</sup> *D.F. v. Latvia*, no. 11160/07, 29 October 2013, § 88.

<sup>952</sup> *Ibid.*, §§ 91–92, with reference to *J.L. v. Latvia*, no. 23893/06, 17 April 2012, § 87.

### 3.8.6 Duty to Investigate

It is important to stress that Article 3 of the Convention does not only contain a substantive limb, but also a procedural limb. This means that member States can be held responsible for not carrying out investigations into alleged ill-treatment and violence, irrespective of the accused. The Court has developed a number of criteria to use when testing whether an investigation into alleged breaches of Article 3 rights on the domestic plane are adequate and sufficient:

- a. the investigation must be an “adequate official investigation, which must be independent and impartial;”<sup>953</sup> investigators must in principle be independent from the executive<sup>954</sup> and “the persons responsible for and carrying out the investigation [have to] be independent of those implicated in the events being investigated,”<sup>955</sup> which implies a preference for a judicial or at least quasi-judicial inquiry. The Court has specified that “the persons responsible for and carrying out the investigation must be independent and impartial, in law and in practice.”<sup>956</sup> At least in cases of serious human rights violations, the Court has added that “there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability.”<sup>957</sup>
- b. the investigation must be capable, firstly, of ascertaining the circumstances surrounding the incident and secondly, of leading to the identification and punishment of those responsible. This is not an obligation of result, but of means. If, for instance, of a number of police officers involved in a car chase that involved the extensive firing of automatic weapons and killed or seriously injured a person, only a few are identified and only a marginal number of bullets are recovered and taken into evidence, the investigation would be considered flawed.<sup>958</sup> The same is true, for example, if a police officer claims to have shot the victims in self-defence, but during the investigation the knives that the victims had allegedly carried at the time of the incident were neither seized nor was a ballistic investigation conducted.<sup>959</sup>

---

953 *Makaratzis v. Greece*, no. 50385/99, 20 December 2004, § 73.

954 See *Oğur v. Turkey* [GC], no. 21594/93, 20 May 1999, §§ 91–92; *Mehmet Emin Yüksel v. Turkey*, no. 40154/98, 20 July 2004, § 37.

955 *Sapožkovs v. Latvia*, no. 8550/03, 11 February 2014, § 70.

956 *Nachova v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6 July 2005, § 112. See also *Güleç v. Turkey*, no. 21593/93, 27 July 1998, §§ 81–82; *Oğur v. Turkey* [GC], no. 21594/93, 20 May 1999, §§ 91–92; *Ergi v. Turkey*, no. 23818/94, 28 July 1998, §§ 83–84.

957 *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, 13 December 2012, § 192. See also *Anguelova v. Bulgaria*, no. 38361/97, 13 June 2000, § 140; *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, 7 July 2011, § 167; *Association 21 December 1989 and Others v. Romania*, nos. 33810/07 and 18817/08, 24 May 2011, § 135.

958 *Makaratzis v. Greece*, no. 50385/99, 20 December 2004, § 76.

959 *Grămadă v. Romania*, no. 14974/09, 11 February 2014, § 72.

- c. the authorities must act of their own motion once a complaint alleging a breach has come to their attention. They cannot leave it to the initiative of victims or their relatives either to lodge a formal complaint or to request particular lines of inquiry or investigative procedures.<sup>960</sup> However, “the victim should be able to participate effectively in the investigation in one form or another”<sup>961</sup> or, in the context of Article 2, the proceedings should be “accessible to the victim’s family.”<sup>962</sup>
- d. the authorities must have taken all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence.<sup>963</sup>
- e. the investigation must be characterized by promptness and reasonable expedition.<sup>964</sup>
- f. the investigation must be thorough, which means that the authorities must “always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or to use as the basis of their decisions.”<sup>965</sup>
- g. “Any deficiency in the investigation which undermines its capability of establishing the circumstances of the case or the person responsible is liable to fall foul of the required standard of effectiveness;”<sup>966</sup> in other words, it is in principle the State’s obligation to secure progress and process of an investigation.
- h. in Article 2 and 3 cases, Article 13 requires the payment of compensation where appropriate.<sup>967</sup>

### 3.9.7 Duty to Punish Offenders and Inadmissibility of Amnesties

States have an obligation to punish offenders of ill-treatment. The case of *Nikolova and Velichkova v. Bulgaria*<sup>968</sup> dealt with the inadequacy of criminal sentence imposed

960 *Nachova v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6 July 2005, § 111; *İlhan v. Turkey* [GC], no. 22277/93, 27 June 2000, § 63.

961 See *Ognyanova and Choban v. Bulgaria*, no. 46317/99, 23 February 2006, § 107; *Khadzhaliyev and Others v. Russia*, no. 3013/04, 6 November 2008, § 106; *Denis Vasilyev v. Russia*, no. 32704/04, 17 December 2009, § 157.

962 *Arapkhanov v. Russia*, no. 2215/05, 3 October 2013, § 125.

963 *Tanrikulu v. Turkey* [GC], no. 23763/94, 8 July 1999; § 104; *Gül v. Turkey*, no. 22676/93, 14 December 2000, § 89.

964 *Aslakhanova and Others v. Russia*, nos. 2944/06, 300/07, 50184/07, 332/08 and 42509/10, 18 December 2012, § 121.

965 *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, 13 December 2012, § 183.

966 *Kelly and Others v. the United Kingdom*, no. 30054/96, 4 May 2001, §§ 96–97. See also *Anguelova v. Bulgaria*, no. 38361/97, 13 June 2002, § 139; *Boicenco v. Moldova*, no. 41088/05, 11 July 2006, § 123.

967 See e.g. *Toğcu v. Turkey*, no. 27601/95, 31 May 2005, para. 136.

968 *Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20 December 2007.

on police officers that were responsible for ill-treatment that caused death. The Court reasoned that by punishing the officers with suspended terms of imprisonment more than seven years after their wrongful act and not dismissing them from the police after the beginning of criminal procedure “fostered the law-enforcement officers’ ‘sense of impunity’ and their ‘hope that all [would] be covered up.’”<sup>969</sup>

The duty to punish offenders also prohibits amnesties that protect persons from prosecution for serious human rights abuses. In the case of *Marguš v. Croatia*,<sup>670</sup> which addressed amnesty for war crimes committed in 1991 by a Croatian army member, the Court stated that

amnesty was generally incompatible with the duty incumbent on States to investigate acts such as torture and that the obligation to prosecute criminals should not therefore be undermined by granting impunity to the perpetrator in the form of an amnesty law that might be considered contrary to international law.<sup>971</sup>

The Court further reasoned that granting amnesty in respect of the killing and ill-treatment of civilians would run contrary to the obligations under Articles 2 and 3 of the Convention as it would lead to impunity for those responsible. Such a result would not only violate the protection guaranteed by under Articles 2 and 3 of the Convention, but also render illusory the guarantees of the right to life and the right not to be ill-treated.<sup>972</sup>

---

969 Ibid., § 63.

970 *Marguš v. Croatia*, no. 4455/10, 27 May 2014.

971 Ibid., § 126.

972 Ibid., §§ 127–128.

## BIBLIOGRAPHY

- Arai-Yokoi, Yutaka, "Grading Scale of Degradation: Identifying the Threshold of Degrading Treatment or Punishment under Article 3 ECHR", in *Netherlands Quarterly Human Rights*, vol. 21, 2003
- Barkhuysen, Tom and Emmerik, Michiel L van, "A Comparative View on the Execution of Judgments of the European Court of Human Rights", in Theodora A Christou and Juan Pablo Raymond (eds.), *European Court of Human Rights. Remedies and Execution of Judgments*, British Institute of International and Comparative Law, 2005
- Bernhardt, Rudolf, "The Admissibility Stage: The Pros and Cons of a Certiorari Procedure for Individual Applications", in Ulrike Deutsch and Rüdiger Wolfrum (eds.), *The European Court of Human Rights Overwhelmed by Applications: Problems and Possible Solutions*, Springer, 2009
- Black's Law Dictionary, 9<sup>th</sup> ed., West/Thomson Reuters, 2009
- Borghì, Marco, "Switzerland" in Robert Blackburn and Jörg Polakiewicz (eds.), *Fundamental Rights in Europe. The European Convention on Human Rights and its Member States, 1950–2000*, Oxford University Press, 2001
- Buyse, Antoine, "The Pilot Judgment Procedure at the European Court of Human Rights: Possibilities and Challenges", in *The Greek Law Journal*, vol. 57, 2009
- , Antoine, *Post-Conflict Housing Restitution. The European Human Rights Perspective with a Case Study on Bosnia and Herzegovina*, Intersentia, 2008
- Chevalier-Watts, Juliet, "Effective Investigations under Article 2 of the European Convention on Human Rights: Securing the Right to Life or an Onerous Burden on a State?", in *European Journal of International Law*, vol. 21, 2010
- Cullen, Anthony and Wheatley, Steven, "The Human Rights of Individuals in *de facto* Regimes under the European Convention on Human Rights", in *Human Rights Law Review*, vol. 10, 2013
- Derckx, Veelke, "Expulsion of Illegal Residents (Aliens) with Medical Problems and Article 3 of the European Convention on Human Rights", in *European Journal of Health Law*, vol. 13, 2006
- Dijk, Peter van and Hoof, Godefridus J. H. van, *Theory and Practice of the European Convention on Human Rights*, Kluwer Law International, 1998
- Egli, Patricia, "Protocol No. 14 to the European Convention for the Protection of Human Rights and Fundamental Freedoms: Towards a More Effective Control Mechanism?", in *Journal of Transnational Law and Policy*, vol. 17, 2008
- Erdal, Uğur, "Burden and Standard of Proof in Proceedings under the European Convention", in *European Law Review*, vol. 26, 2001
- Frynys, Markus, "Expanding Competences by Judicial Lawmaking: The Pilot Judgment Procedure of the European Court of Human Rights", in *German Law Journal*, vol. 12, 2011
- Giffard, Camille and Rodley, Nigel, "The Approach of International Tribunals to Medical Evidence in Cases Involving Allegations of Torture", in Michael Peel and Vincent Iacopino, (eds.), *The Medical Documentation of Torture*, Greenwich Medical Media Limited, 2002
- , *The Torture Reporting Handbook: How to Document and Respond to Allegations of Torture within the International System for the Protection of Human Rights*, Human Rights Centre of the University of Essex, 2000.
- Goodwin-Gill, Guy S., "The Rights to Seek Asylum: Interception at Sea and the Principle of Non-Refoulement", in *International Journal of Refugee Law*, vol. 23, 2011
- Hampson, Françoise J., "The Concept of an "Arguable Claim" Under Article 13 of the European Convention on Human Rights", in *International and Comparative Law Quarterly*, vol. 39, 1990
- Herbert Petzold, "The Convention and the Principle of Subsidiarity", in Ronald St. J. MacDonald, Franz Matscher and Herbert Petzold (eds.), *The European System for the Protection of Human Rights*, Kluwer, 1993
- Hioureas, Christina G., "Behind the Scenes of Protocol No. 14: Politics in Reforming the European Court of Human Rights", in *Berkley Journal of International Law*, vol. 24, 2006

- Janis, Mark W, Kay, Richard S and Bradley, Anthony, *European Human Rights Law*, 3<sup>rd</sup> edn, Oxford University Press, 2008
- Keller, Helen, Forowicz, Magdalena and Engi, Lorenz, *Friendly Settlements before the European Court of Human Rights*, Oxford University Press, 2010
- King, Hugh, "The Extraterritorial Human Rights Obligations of States", in *Human Rights Law Review*, vol. 9, 2009
- Kokott, Juliane, *The Burden of Proof in Comparative and International Human Rights Law*, Kluwer, 1998
- Lambert Abdelgawad, Elisabeth, "The Execution of the Judgments of the European Court of Human Rights: Towards a Non-coercive and Participatory Model of Accountability", in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 69, 2009
- Leach, Philip, "Beyond the Bug River – A New Dawn for Redress Before the European Court of Human Rights", in *European Human Rights Law Review*, vol. 2, 2005
- , Hardman, Helen, and Stephenson, Svetlana, "Can the European Court's Pilot Judgment Procedure Help Resolve Systemic Human Rights Violations? *Burdov* and the Failure to Implement Domestic Court Decisions in Russia", in *Human Rights Law Review*, vol. 10, 2010
- , *Taking a Case to the European Court of Human Rights*. 3<sup>rd</sup> edn, Oxford University Press, 2011
- Lock, Tobias, "Beyond Bosphorus: The European Court of Human Rights' Case Law on the Responsibility of Member States of International Organisations under the European Convention on Human Rights", in *Human Rights Law Review*, vol. 10, 2010
- Mahoney, Paul, "Determination and Evaluation of Facts in Proceedings Before the Present and Future European Court of Human Rights", in Salvino Busutil, (ed.), *Mainly Human Rights: Studies in Honour of J. J. Cremona*, Fondation Internationale Malte, 1999
- Mavronicola, Natasa and Messineo, Francesco, "Relatively Absolute? The Undermining of Article 3 ECHR in *Ahmad v UK*", in *Modern Law Review*, vol. 76, 2013
- Milanovic, Marko, "Al-Skeini and Al-Jedda in Strasbourg", in *European Journal of International Law*, vol. 23, 2012
- Miltner, Barbara, "Revisiting Extraterritoriality after Al-Skeini: The ECHR and its Lessons", in *Michigan Journal of International Law*, vol. 33, 2012
- Morawa, Alexander H. E., "'Vulnerability' as a Concept in International Human Rights Law", in *Journal of International Relations and Development*, vol. 10, 2003
- , "The European Court of Human Rights' Rejection of Petitions where the Applicant has not Suffered a Significant Disadvantage. A Discussion of Desirable and Undesirable Efforts to Safeguard the Operability of the Court", in *Journal of Transnational Legal Issues*, vol. 1, 2012
- Moreno-Lax, Violeta, "Hirsi Jamaa and Others v Italy or the Strasbourg Court versus Extraterritorial Migration Control?", in *Human Rights Law Review*, vol. 12, 2012
- Mowbray, Alastair, "European Convention on Human Rights: Institutional Reforms Proposals and Recent Cases", in *Human Rights Law Review*, vol. 3, 2003
- , *Cases, Materials, and Commentary on the European Convention on Human Rights*, 3<sup>rd</sup> ed., Oxford University Press, 2012
- , *The Development of Positive Obligations Under the European Convention on Human Rights by the European Court of Human Rights*, Hart Publishing, Oxford, 2004
- Novakovic, Marko, "The Concept of Indirect Victim in the Practice of ECHR", in *Foreign Legal Life*, vol. 1, 2011
- Nussberger, Angelika, "The Concept of 'Jurisdiction' in the Jurisprudence of the European Court of Human Rights", in *Current Legal Problems*, vol. 65, 2012

- O'Boyle, Michael, "On Reforming the Operation of the European Court of Human Rights", in *European Human Rights Law Review*, vol. 1, 2008
- Pedersen, Morten Peschardt, "Territorial Jurisdiction in Article 1 of the European Convention on Human Rights", in *Nordic Journal of International Law*, vol. 73, 2004
- Peel, Michael and Iacopino, Vincent (eds.), *The Medical Documentation of Torture*, Greenwich Medical Media Limited, 2002
- Phuong, Catherine, "The Relationship Between the European Court of Human Rights and the Human Rights Committee: Has the 'Same Matter' Already Been 'Examined'?", in *Human Rights Law Review*, vol. 7, 2007
- Reid, Karen, *A Practitioner's Guide to the European Convention on Human Rights*, 4<sup>th</sup> ed., Sweet and Maxwell, 2011
- Rhys Jones, David and Smith, Sally Verity, "Medical Evidence in Asylum and Human Rights Appeals", in *International Journal of Refugee Law*, vol. 16, 2004
- Romano, Cesare P. R., "The Rule of Prior Exhaustion of Domestic Remedies: Theory and Practice in International Human Rights Procedures", in Nerina Boschiero, Tullio Scovazzi, Cesare Pitea and Chiara Ragni (eds.), *In International Courts and the Development of International Law*, Springer, 2013
- Ruedin, Xavier-Baptiste, "De minimis non curat the European Court of Human Rights: The Introduction of New Admissibility Criterion (Article 12 of Protocol No. 14)", in *European Human Rights Law Review*, vol. 1, 2008
- Shelton, Dinah, "Subsidiarity and Human Rights Law", in *Human Rights Law Journal*, vol. 27, 2006
- , *Remedies in International Human Rights Law*, Oxford University Press, 2006
- Szydło, Marek, "Vinter v. the United Kingdom", in *American Journal of International Law*, vol. 106, 2012
- Vasek, Markus, "Family Members of a Deceased Asylum Seeker May Legitimately File a Complaint to Assert the Right to Life", in *Vienna Journal on International Constitutional Law*, vol. 16, 2011
- Villiger, Mark, "The Principle of Subsidiarity in the European Convention on Human Rights", in Marcelo G. Kohen (ed.), *Promoting Justice, Human Rights and Conflict Resolution through International Law; Liber Amicorum Lucius Caflisch*, Brill, 2007
- Webster, Elaine, *Exploring the Prohibition of Degrading Treatment within Article 3 of the European Convention on Human Rights* (PhD thesis, 2010), at: <https://www.era.lib.ed.ac.uk/bitstream/1842/4062/1/Webster2010.pdf>.
- White, Robin C. A. and Ovey, Clare, *Jacobs & White: The European Convention on Human Rights*, 5<sup>th</sup> edition, Oxford University Press, 2010
- Zgonec-Rožej, Miša, "Al-Skeini v. United Kingdom", in *American Journal of International Law*, vol. 106, 2012



## TABLE OF CASES

*A v. the United Kingdom*, no. 25599/94, 23 September 1998  
*A. v. the Netherlands*, no. 4900/06, 20 July 2010  
*A.A. v. Greece*, no. 12186/08, 22 July 2010  
*A.B. v. Russia*, no. 1439/06, 14 October 2010  
*A.B. v. the Netherlands*, no. 37328/97, 29 January 2002  
*A.E. v. Turkey (dec.)*, no. 45279/99, 30 May 2002  
*A.G. v. Sweden*, no. 27776/95, Commission decision of 26 October 1995  
*A. Sh. v. Turkey (dec.)*, no. 41396/98, 28 May 2002  
*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, nos. 9214/80, 9473/81 and 9474/81, 28 May 1985  
*Abdulsamet Yaman v. Turkey*, no. 32446/96, 2 November 2004  
*Abu Salem v. Portugal (dec.)*, no. 26844/04, 9 May 2006  
*Abuyeva and Others v. Russia*, no. 27065/05, 2 December 2010  
*Adalı v. Turkey*, no. 38187/97, 31 March 2005  
*Aden Ahmed v. Malta*, no. 55352/12, 23 July 2013  
*Adrian Mihai Ionescu v. Romania (dec.)*, no. 36659/04, 1 June 2010  
*Agrotexim Hellas S.A. and Others v. Greece*, no. 14807/89, Commission decision of 12 February 1992  
*Ahmed v. Austria*, no. 25964/94, 17 December 1996  
*Akdeniz v. Turkey*, no. 25165/94, 31 Mai 2005  
*Akdivar and Others v. Turkey [GC]*, no. 21893/93, 16 September 1996  
*Akkoç v. Turkey*, nos. 22947/93 and 22948/93, 10 October 2000  
*Akkum and Others v. Turkey*, no. 21894/93, 24 March 2005  
*Aksoy v. Turkey*, no. 21987/93, 18 December 1996  
*Aksu v. Turkey*, nos. 4149/04 and 41029/04, 15 March 2012  
*Al-Adsani v. the United Kingdom*, no. 35763/97, 21 November 2001  
*Al-Moayad v. Germany (dec.)*, no. 35865/03, 20 February 2007  
*Al-Saadoon and Mufdhi v the United Kingdom*, no. 61498/08, 2 March 2010  
*Al-Saadoon and Mufdhi v. the United Kingdom (dec.)*, no. 61498/08, 30 June 2009  
*Al-Skeini and Others v. the United Kingdom [GC]*, no. 55721/07, 7 July 2011  
*Aleksanyan v. Russia*, no. 46468/06, 22 December 2008  
*Alexov v. Bulgaria*, no. 54578/00, 22 May 2008  
*Alfatli and Others v. Turkey*, no. 32984/96, 30 October 2003  
*Amegnigan v. the Netherlands (dec.)*, no. 25629/04, 25 November 2004  
*Amuur v. France*, no. 19776/92, 25 June 1996  
*Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2013  
*Angelova v. Bulgaria*, no. 38361/97, 13 June 2002  
*Aoulmi v. France*, no. 50278/99, 17 January 2006.  
*Aquilina v. Malta [GC]*, no. 25642/94, 29 April 1999  
*Arapkhanov v. Russia*, no. 2215/05, 3 October 2013  
*Arslan v. Turkey (dec.)*, no. 36747/02, 21 November 2002

- Asalya v. Turkey*, no. 43875/09, 15 April 2014
- Aslakhanova and Others v. Russia*, nos. 2944/06, 300/07, 50184/07, 332/08 and 42509/10, 18 December 2012
- Aslan v. Turkey*, no. 22497/93, Commission decision of 20 February 1995
- Assanidze v. Georgia* [GC], no. 71503/01, 8 April 2004
- Assenov and Others v. Bulgaria*, no. 24760/94, 28 September 1998
- Association 21 December 1989 and Others v. Romania*, nos. 33810/07 and 18817/08, 24 May 2011
- Ay v. Turkey*, no. 30951/96, 22 March 2005
- Ayder v. Turkey*, no. 23656/94, 8 January 2004
- Aydın v. Turkey* [GC], no. 23178/94, 25 September 1997.
- Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09, 10 April 2012
- Baklanov v. Ukraine*, no. 44425/08, 24 October 2013
- Balogh v. Hungary*, no. 47940/99, 20 July 2004
- Banković and Others v. Belgium and Others (dec.)* [GC], no. 52207/99, 12 December 2001
- Bati and Others v. Turkey*, nos. 33097/96 and 57834/00, 3 June 2004
- Bayram and Yıldırım v. Turkey (dec.)*, no. 38587/97, 29 January 2002
- Baysakov and Others v. Ukraine*, no. 54131/08, 18 February 2010
- Bazorkina v. Russia*, no. 69481/01, 27 July 2006
- Beard v. the United Kingdom* [GC], no. 24882/94, 18 January 2001
- Behrami and Behrami v. France and Saramati v. France, Germany and Norway (dec.)* [GC], nos. 71412/01 and 78166/01, 2 May 2007
- Belousov v. Ukraine*, no. 4494/07, 7 November 2013
- Ben Khemais v. Italy*, no. 246/07, 24 February 2009
- Benediktov v. Russia*, no. 106/02, 10 May 2007
- Benjocki and Others v. Serbia (dec.)*, nos. 5958/07, 6561/07, 8093/07 and 9162/07, 15 December 2009
- Bensaid v. the United Kingdom*, no. 44599/98, 6 February 2001
- Berdzenishvili v. Russia (dec.)*, no. 31697/03, 29 January 2004
- Berry and Others v. the United Kingdom (dec.)*, nos. 19064/07, 31588/09 and 38619/09, 16 October 2012
- Bitiyeva and X v. Russia*, nos. 57953/00 and 37392/03, 21 June 2007
- Blondje v. the Netherlands (dec.)*, no. 7245/09, 15 September 2009
- Boicenco v. Moldova*, no. 41088/05, 11 July 2006
- Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, 30 June 2005
- Boucher v. Algeria*, U.N. Human Rights Committee, Comm. No. 1196/2003, U.N. Doc. CCPR/C/86/D/1196/2003, 27 April 2006
- Boujlifa v. France*, no. 25404/94, 21 October 1997
- Bouyid v. Belgium*, no. 23380/09, 21 November 2013
- Broniowski v. Poland* [GC], no. 31443/96, 22 June 2004
- Budina v. Russia (dec.)*, no. 45603/05, 18 June 2009
- Buhaniuc v. The Republic of Moldova*, no. 56074/10, 28 January 2014
- Buldan v. Turkey (dec.)* no. 28298/95, 4 June 2002
- Bulut and Yavuz v. Turkey (dec.)*, no. 73065/01, 28 May 2002
- Burden v. the United Kingdom* [GC], no. 13378/05, 29 April 2008

*Burdov v. Russia*, no. 59498/00, 7 Mai 2005.  
*Burov v. Moldova (dec.)*, no. 38875/03, 14 June 2011  
*Bursuc v. Romania*, no. 42066/98, 12 October 2004  
*C.A.S. and C.S. v. Romania*, no. 26692/05, 20 March 2012  
*Çakıcı v. Turkey*, no. 23657/94, 8 July 1999  
*Calcerrada Fornieles and Cabeza Mato v. Spain*, no. 17512/90, Commission decision of 6 July 1992  
*Çamdereli v. Turkey*, no. 28433/02, 17 July 2008  
*Campbell and Cosans v. the United Kingdom*, nos. 7511/76 and 7743/76, 25 February 1982  
*Canali v. France*, no. 40119/09, 25 April 2013  
*Caralan v. Turkey (dec.)*, no. 27529/95, 14 November 2002  
*Cardot v. France*, no. 11069/84, 19 March 1991  
*Catan and Others v. Moldova and Russia*, nos. 43370/04, 8252/05 and 18454/06, 19 October 2012  
*Celis Laureano v. Peru*, U.N. Human Rights Committee, Comm. No. 540/1993, U.N. Doc. CCPR/C/51/D/540/1993, 4 July 1994.  
*Celniku v. Greece*, no. 21449/04, 5 July 2007  
*Chahal v. The United Kingdom [GC]*, no. 22414/93, 15 November 1996  
*Chentiev and Ibragimov v. Slovakia (dec.)*, nos. 21022/08 and 51946/08, 14 September 2010  
*Chirica v. Moldova (communicated case)*, no. 36348/08, 23 October 2013  
*Christine Goodwin v. the United Kingdom [GC]*, no. 28957/95, 11 July 2002  
*Çiçek v. Turkey*, no. 25704/94, 27 February 2001  
*Ciğerhun Öner v. Turkey (No. 2)*, no. 2858/07, 23 November 2010  
*Ciorap v. Moldova (No. 2)*, no. 7481/06, 20 July 2010  
*Ciorap v. the Republic of Moldova (No. 3)*, no. 32896/07, 4 December 2012  
*Cipriani v. Italy (dec.)*, no. 221142/07, 30 March 2010  
*Comité des médecins à diplômes étrangers v. France and Others v. France (dec.)*, nos. 39527/98 and 39531/98, 30 March 1999.  
*Cone v. Romania*, no. 35935/02, 24 June 2008  
*Costello-Roberts v. the United Kingdom*, no. 13134/87, 25 March 1993  
*Cyprus v. Turkey*, no. 25781/94, 10 Mai 2001  
*D. v. the United Kingdom*, no. 30240/96, 2 Mai 1997  
*D.F. v. Latvia*, no. 11160/07, 29 October 2013  
*D.G. v. Poland*, no. 45705/07, 12 February 2013  
*Da Luz Domingues Ferreira v. Belgium*, no. 50049/99, Committee of Ministers, ResDH (2009) 119, 3 December 2009  
*Dalban v. Romania [GC]*, no. 28114/95, 28 September 1999  
*Davydov and Others v. Ukraine*, nos. 17674/02 and 39081/02, 1 July 2010  
*Dedovskiy and Others v. Russia*, no. 7178/03, 15 Mai 2008  
*Denis Vasilyev v. Russia*, no. 32704/04, 17 December 2009  
*Dennis and Others v. the United Kingdom (dec.)*, no. 76573/01, 2 July 2002  
*Dikme v. Turkey*, no. 20869/92, 11 July 2000  
*Dizman v. Turkey*, no. 27309/95, 20 September 2005  
*Dovletukayev and Others v. Russia*, nos. 7821/07, 10937/10, 14046/10 and 32782/10, 24 October 2013

- Droz and Janousek v. France and Spain*, no. 12747/87, 26 June 1992
- Đurđević v. Croatia*, no. 52442/09, 19 July 2011
- Durini v. Italy*, no. 19217/91, Commission decision, 12 January 1994
- Dushka v. Ukraine*, no. 29175/04, 3 February 2011
- Dybeku v. Albania*, no. 41153/06, 18 December 2007
- E. and Others v. the United Kingdom*, no. 33218/96, 26 November 2002
- E. v. Austria*, no. 10668/83, Commission decision, 13 May 1987
- E.S. and Others v. Slovakia*, no. 8227/04, 15 September 2009
- Eckle v. Germany*, no. 8130/78, 15 July 1982
- Edwards v. the United Kingdom (dec.)*, no. 46477/99, 7 June 2001
- Einhorn v. France (dec.)*, no. 71555/01, 16 October 2001
- El-Masri v. the former Yugoslav Republic of Macedonia [GC]*, no. 39630/09, 13 December 2012.
- El-Megreisi v. Libyan Arab Jamahiriya*, U.N. Human Rights Committee, Comm. No. 440/1990, U.N. Doc. CCPR/C/50/D/440/1990, 23 March 1994
- Elçi and Others v. Turkey*, nos. 23145/93 and 25091/94, 13 November 2003.
- Ennsln, Baader, Raspe v. Germany*, no. 7572/76, Commission decision, 8 July 1978
- Epözdemir v. Turkey (dec.)*, no. 57039/00, 31 January 2002.
- Eren and Others v. Turkey (dec.)*, no. 42428/98, 4 July 2002
- Ergi v. Turkey*, no. 23818/94, 28 July 1998
- Fatgan Katani and Others v. Germany (dec.)*, no. 67679/01, 31 May 2001
- FC Mretebi v. Georgia*, no. 38736/04, Committee of Ministers, ResDH (2010) 163, 2 December 2010
- Federation of French Medical Trade Unions and the National Federation of Nurses v. France*, no. 10938/84, Commission decision on the admissibility of 12 May 1986.
- Fernandez-Molina and Others v. Spain (dec.)*, no. 64359/01, 8 October 2002
- Finger v. Bulgaria (dec.)*, no. 37346/05, 10 May 2011
- Fjodorova and Others v. Latvia (dec.)*, no. 69405/01, 6 April 2006
- Floreu v. Romania*, no. 37186/03, 14 September 2010
- G. v. Italy*, no. 12787/87, 27 February 1992
- Gäfgen v. Germany [GC]*, no. 22978/05, 1 June 2010
- Gaforov v. Russia*, no. 25404/09, 21 October 2010
- Gaftoniuc v. Romania (dec.)*, no. 30934/05, 22 February 2011
- Garayev v. Azerbaijan*, no. 53688/08, 10 June 2010
- Gasayev v. Spain (dec.)*, no. 48514/06, 17 February 2009
- Gencel and 205 Other Cases v. Turkey*, nos. 53431 et al., Committee of Ministers, ResDH (2013)256, 5 December 2013.
- Ghorbanov and Others v. Turkey*, no. 28127/09, 3 December 2013
- Giuran v. Romania*, no. 24360/04, 21 June 2011
- Gladysheva v. Russia*, no. 7097/10, 6 October 2011
- Golek v. Poland (dec.)*, no. 25024/09, 1 October 2013
- Gongadze v. Ukraine*, no. 34056/02, 8 November 2005
- Gongadze v. Ukraine*, no. 34056/02, Committee of Ministers, ResDH (2008)35, 5 June 2008
- Gorbulya v. Russia*, no. 31535/09, 6 March 2014

*Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, 27 April 2004  
*Grămadă v. Romania*, no. 14974/09, 11 February 2014  
*Gratzinger and Gratzingerova v. the Czech Republic (dec.)*, no. 39794/98, 10 July 2002  
*Grimailovs v. Latvia*, no. 6087/03, 25 June 2013  
*Grimaylo v. Ukraine (dec.)*, no. 69364/01, 7 February 2006  
*Gül v. Turkey*, no. 22676/93, 14 December 2000  
*Güleç v. Turkey*, no. 21593/93, 27 July 1998  
*Gurepka v. Ukraine*, no. 61406/00, 6 September 2005  
*Güveç v. Turkey*, no. 70337/01, 20 January 2009  
*H.L. v. the United Kingdom*, no. 45508/99, 5 October 2004  
*H.L.R. v. France [GC]*, no. 24573/94, 29 April 1997  
*Haidn v. Germany*, no. 6587/04, 13 January 2011  
*Hallmeijer v. the Netherlands (dec.)*, no. 67590/12, 22 October 2013  
*Handyside v. the United Kingdom*, no. 5493/72, 7 December 1976.  
*Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012  
*Hartman v. the Czech Republic*, no. 53341/99, 10 July 2003  
*Henaf v. France*, no. 65436/01, 27 November 2003  
*Hentrich v. France*, no. 13616/88, 22 September 1994  
*Hilda Hafsteinsdóttir v. Iceland*, no. 40905/98, 8 June 2004  
*Hirsi Jamaa and Others v. Italy [GC]*, no. 27765/09, 23 February 2012  
*Hirst v. the United Kingdom (No.2) [GC]*, no. 74025/01, 6 October 2005  
*Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, 29 April 2013  
*Hudson v. Former Yugoslav Republic of Macedonia (dec.)*, no. 67128/01, 24 March 2005  
*Hunt v. Ukraine*, no 31111/04. Committee of Ministers, ResDH (2008) 64, 25 June 2008  
*Hüttner v. Germany (dec.)*, no. 23130/04, 9 June 2006  
*I.G. and Others v. Slovakia*, no. 15966/04, 13 November 2012  
*Iacov Stanciu v. Romania*, no. 35972/05, 24 July 2012  
*Ignats v. Latvia (dec.)*, no. 38494/05, 24 September 2013  
*Ilaşcu and Others v. Moldova and Russia [GC]*, no. 48787/99, 8 July 2004  
*İlhan v. Turkey [GC]*, no. 22277/93, 27 June 2000  
*Iljina and Sarulienė v. Lithuania*, no. 32293/05, 15 March 2011  
*Imakayeva v. Russia*, no. 7615/02, 9 November 2006  
*Immobiliare Saffi v. Italy [GC]*, no. 22774/93, 28 July 1999  
*Indelicato v. Italy*, no. 31143/96, 18 October 2001  
*Ionescu and Mihaila v. Romania*, no. 36782/97, Committee of Ministers, ResDH (2011) 248, 2 December 2011  
*Iordachi and Others v. Moldova (dec.)* no. 25198/02, 5 April 2005  
*Iovchev v. Bulgaria*, no. 41211/98, 2 February 2006  
*İpek v. Turkey*, no. 25760/94, 17 February 2004  
*Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978  
*Ismaili v. Germany*, no. 58128/00, 15 March 2001  
*Ismoilov and Others v. Russia*, no. 2947/06, 24 April 2008  
*Issa v. Turkey*, no. 31821/96, 16 November 2004

*J.L. v. Latvia*, no. 23893/06, 17 April 2012  
*Jabari v. Turkey*, no. 40035/98, 11 July 2000  
*Jalloh v. Germany* [GC], no. 54810/00, 11 July 2006  
*Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, 21 October 2013  
*Jeličić v. Bosnia and Herzegovina* (dec.), no. 41183/02, 15 November 2005  
*Johnston and Others v. Ireland*, no. 9697/82, 18 December 1986  
*Juta Mentzen also known as Mencena v. Latvia* (dec.), no. 71074/01, 7 December 2004  
*K. and T. v. Finland* [GC], no. 25702/94, 12 July 2001  
*K.K.C. v. the Netherlands*, no. 58964/00, 21 December 2001  
*Kakabadze and Others v. Georgia*, no. 1484/07, 2 October 2012  
*Kalantari v. Germany*, no. 51342/99, 11 October 2001  
*Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001  
*Kalashnikov v. Russia*, no. 47095/99, 15 July 2002  
*Karabet and Others v. Ukraine*, nos. 38906/07 and 52025/07, 17 January 2013  
*Karalevičius v. Lithuania*, no. 53254/99, 7 April 2005  
*Karner v. Austria*, no. 40016/98, 24 July 2003  
*Kashavelov v. Bulgaria*, no. 891/05, Committee of Ministers, ResDH (2013) 98, 6 June 2013  
*Kasymakhunov v. Russia*, no. 29604/12, 14 November 2013  
*Keenan v. the United Kingdom*, no. 27229/95, 3 April 2001  
*Kelly and Others v. the United Kingdom*, no. 30054/96, 4 May 2001  
*Kérétchachvili v. Georgia* (dec.), no. 5667/02, 2 May 2006  
*Khadzhaliyev and Others v. Russia*, no. 3013/04, 6 November 2008  
*Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57045/00, 24 February 2005  
*Khaydarov v. Russia*, no. 21055/09, 20 May 2010  
*Khodorkovskiy and Lebedev v. Russia*, no. 11082/06, 25 July 2013  
*Khudobin v. Russia*, no. 59696/00, 26 October 2006  
*Khudoyorov v. Russia*, no. 6847/02, 8 November 2005  
*Klaas v. Germany*, no. 15473/89, 22 September 1993  
*Klein v. Russia*, no. 24268/08, 1 April 2010  
*Koktysh v. Ukraine*, no. 43707/07, 10 December 2009  
*Koku v. Turkey*, no. 27305/95, 31 Mai 2005  
*Kolesnik v. Russia*, no. 26876/08, 17 June 2010  
*Kopecký v. Slovakia* [GC], no. 44912/98, 28 September 2004  
*Kordian v. Turkey* (dec.), no. 6575/06, 4 July 2006  
*Korobov and Others v. Estonia*, no. 10195/08, 28 March 2013  
*Korolev v. Russia* (dec.), no. 25551/05, 1 July 2010  
*Kotkov v. Russia* (communicated case), no. 73094/10, 10 September 2013  
*Kovačić and Others v. Slovenia* (dec.), nos. 44574/98, 45133/98 and 48316/99, 9 October 2003.  
*Kozacıoğlu v. Turkey* [GC], no. 2334/03, 19 February 2009  
*Kudła v. Poland* [GC], no. 30210/96, 25 October 2000  
*Kutcherenko v. Ukraine* (dec.), no. 41974/98, 4 May 1999  
*Kyriakoula Stephens v. Cyprus, Turkey and the United Nations* (dec.), no. 45267/06, 11 December 2008

*L.C.B. v. the United Kingdom*, no. 23413/94, 9 June 1998  
*Labita v. Italy* [GC], no. 26772/95, 6 April 2000  
*Labita v. Italy* [GC], no. 26772/95, 6 April 2000  
*Labsi v. Slovakia*, no. 33809/08, 15 Mai 2012  
*Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011  
*Léger v. France* (striking out) [GC], no. 19324/02, 30 March 2009  
*Leonidis v. Greece*, no. 43326/05, 8 January 2009  
*Lienhardt v. France* (dec.), no.12139/10, 13 September 2011  
*Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, 22 October 2007  
*Loizidou v. Turkey* (preliminary objections), no.15318/89, 23 March 1995  
*López Ostra v. Spain*, no. 16798/90, 9 December 1994  
*Loveridge v. the United Kingdom* (dec.), no. 39641/98, 23 October 2001  
*Luchaninova v. Ukraine*, no. 16347/02, 9 June 2011  
*Lüdi v. Switzerland*, no. 12433/86, 15 June 1992  
*Lukanov v. Bulgaria*, no. 21915/93, Commission decision on the admissibility, 12 January 1995  
*M. v. Denmark* (dec.), no. 17392/90, 14 October 1992  
*M.C. v. Bulgaria*, no. 39272/98, 4 December 2003  
*M.E. v. France*, no. 50094/10, 6 June 2013  
*M.S.S. v. Belgium and Greece* [GC], no. 30696/09, 21 January 2011  
*M.T. v. Turkey* (dec.), no. 46765/99, 30 May 2002  
*M.Y.H. and Others v. Sweden*, no. 50859/10, 27 June 2013  
*Mahmut Kaya v. Turkey*, no. 22535/93, 28 March 2000  
*Makaratzis v. Greece*, no. 50385/99, 20 December 2004  
*Makharadze and Sikharulidze v. Georgia*, no. 35254/07, 22 November 2011  
*Makhashev v. Russia*, no. 20546/07, 31 July 2012  
*Makhmudzhan Ergashev v. Russia*, no. 49747/11, 16 October 2012  
*Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, 13 December 2000  
*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99, 4 February 2005  
*Mandić and Jović v. Slovenia*, nos. 5774/10 and 5985/10, 20 October 2011  
*Manni v. Italy*, no. 9961/10, 27 March 2012  
*Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002  
*Marguš v. Croatia*, no. 4455/10, 27 Mai 2014  
*Mathew v. the Netherlands*, no. 24919/03, 29 September 2005  
*Matthews v. the United Kingdom* [GC], no. 24833/94, 18 February 1999  
*McCann and Others v. the United Kingdom*, no. 18984/91, 27 September 1995  
*McGlinchey and Others v. the United Kingdom*, no. 50390/99, 29 April 2003  
*Mech v. Poland* (dec.), no. 55354/12, 4 February 2014  
*Medvedyev and Others v. France* [GC], no. 3394/03, 29 March 2010  
*Mehmet Emin Yüksel v. Turkey*, no. 40154/98, 20 July 2004  
*Melnik v. Ukraine*, no. 72286/01, 28 March 2006  
*Menteş and Others v. Turkey*, no. 23186/94, 28 November 1997  
*Merit v. Ukraine*, no. 66561/01, 30 March 2004

- Metropolitan Church of Bessarabia and Others and Biserica Adevărat Ortodoxă din Moldova and Others v. Moldova*, nos. 45701/99 and 952/03, Committee of Ministers, ResDH (2010) 8, 4 March 2010
- Micallef v. Malta* [GC], no. 17056/06, 15 October 2009
- Mikheyev v. Russia*, no. 77617/01, 22 January 2006
- Mikolenko v. Estonia (dec.)*, no. 16944/03, 5 January 2006.
- Milan Řehák v. the Czech Republic (dec.)*, 67208/01, 18 May 2004
- Milanović v. Serbia*, no. 44614/07, 14 December 2010
- Miroļubovs and Others v. Latvia*, no. 35939/10, 22 January 2013
- Miroļubovs and Others v. Latvia*, no. 798/05, 15 September 2009
- Mitev v. Bulgaria (dec.)*, no. 40063/98, 30 January 2003
- Mitev v. Bulgaria (dec.)*, no. 42758/07, 29 June 2010
- Mitev v. Bulgaria*, no. 40063/98, 22 December 2004
- Mohammad Hossein Bagheri and Malihe Maliki (dec.)*, no. 30164/06, 15 May 2007
- Moldovan and Others v. Romania (No. 2)*, nos. 41138/98 and 64320/01, 12 July 2005
- Mouisel v. France*, no. 67263/01, 14 November 2002
- Moyá Alvarez v. Spain (dec.)*, no. 44677/98, 23 November 1999
- Muminov v. Russia*, no. 42502/06, 11 December 2008
- Müslim v. Turkey* no. 53566/99, 26 April 2005
- N v. Sweden*, no. 23505/09, 20 July 2010
- N. v. Finland*, no. 38885/02, 26 July 2005
- N. v. the United Kingdom* [GC], no. 26565/05, 27 May 2008
- N.B. v. Slovakia*, no. 29518/10, 12 June 2012
- Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, 6 July 2005
- Nada v. Switzerland* [GC], no. 10593/08, 12 September 2012
- Nasirkhayeva v. Russia (dec.)*, no. 1721/07, 31 May 2011
- Naumenko v. Ukraine*, no. 42023/98, 10 February 2004
- Necula v. Romania*, no. 33003/11, 18 February 2014
- Nehru v. the Netherlands (dec.)*, no. 52676/99, 27 August 2002
- Nielsen v. Denmark*, judgment of 2 September 1959, Yearbook of the European Convention on Human Rights, 1959
- Nikoghosyan and Melkonyan v. Armenia*, nos. 11724/04 and 13350/04, Committee of Ministers, ResDH (2011) 89, 14 September 2011
- Nikolova and Velichkova v. Bulgaria*, no. 7888/03, 20 December 2007
- Nikolova v. Bulgaria* [GC], no. 31195/96, 25 March 1999
- Nilsen and Johnsen v. Norway*, no. 23118/93, 25 November 1999
- Nivette v. France (dec.)*, no. 44190/98, 3 July 2001
- Nizomkhon Dzhurayev v. Russia*, no. 31890/11, 3 October 2013
- Norbert Sikorski v. Poland*, no. 17599/05, 22 October 2009
- Norbert Sikorski v. Poland*, no. 17599/05, pilot judgment, 22 October 2009
- Novoselov v. Russia*, no. 66460/01, 2 June 2005
- O'Keeffe v. Ireland* [GC], no. 35810/09, 28 January 2014
- Öcalan v. Turkey* [GC], no. 46221/99, 12 Mai 2005

*Ochelkov v. Russia*, no. 17828/05, 11 April 2013  
*Ognyanova and Choban v. Bulgaria*, no. 46317/99, 23 February 2006  
*Oğur v. Turkey [GC]*, no. 21594/93, 20 May 1999  
*Ohlen v. Denmark*, no. 63214/00, 24 February 2005  
*Okkali v. Turkey*, no. 52067/99, 17 October 2006  
*Opuz v. Turkey*, no. 33401/02, 9 June 2009  
*Orchowski v. Poland*, no. 17885/04, 22 October 2009  
*Osman v. the United Kingdom*, no. 23452/94, 28 October 1998  
*Ostrovar v. Moldova*, no. 35207/03, 13 Mai 2005  
*Otašević v. Serbia*, no. 32198/07, 5 February 2013  
*Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January 2012  
*P. and S. v. Poland*, no. 57375/08, 30 October 2012  
*P.M. v. Bulgaria*, no. 49669/07, 24 January 2012  
*P.Z. and Others v. Sweden (dec.)*, no. 68194/19, 29 May 2012  
*Pace v. Italy*, no. 22728/03, 17 July 2008  
*Paladi v. Moldova*, no. 39806/05, 10 March 2003  
*Panasenko, Bogumil and Czekalla v. Portugal*, nos. 10418/03, 35228/03 and 38830/97, Committee of Ministers, ResDH (2011) 143, 14 September 2012  
*Pandolfelli and Palumbo v. Italy*, no. 13218/87, 27 February 1992  
*Pantea v. Romania*, no. 33343/96, 3 June 2003  
*Papachelas v. Greece [GC]*, no. 31423/96, 25 March 1999  
*Papon v. France (No. 2) (dec.)*, no. 54210/00, 15 November 2001  
*Pauger v. Austria*, no. 24872/94, Commission decision, 9 January 1995  
*Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, 14 March 2002  
*Peers v. Greece*, no. 28524/95, 19 April 2001  
*Pelit v. Azerbaijan*, no. 281/2005, 29 May 2007  
*Peraldi v. France (dec.)*, no. 2096/05, 7 April 2009  
*Petrović v. Serbia (dec.)*, no. 56551/11, 18 October 2011  
*Pétur Thór Sigurðsson v. Iceland*, no. 39731/98, 10 April 2003  
*Philis v. Greece*, no. 28970/95, Commission decision of 17 October 1996  
*Polyakov v. Russia*, no. 77018/01, 29 January 2009  
*Popov v. Moldova (No. 1)*, no. 74153/01, 18 January 2005  
*Portmann v. Switzerland*, no. 38455/06, 11 October 2011  
*Powell and Rayner v. the United Kingdom*, no. 9310/81, 21 February 1990  
*Poznanski and Others v. Germany (dec.)*, no. 25101/05, 3 July 2007  
*Premininy v. Russia*, no. 44973/04, 10 February 2011  
*Pretty v. The United Kingdom*, no. 2346/02, 29 April 2002  
*Price v. the United Kingdom*, no. 33394/96, 10 July 2001  
*Prince Hans-Adam II of Liechtenstein v. Germany [GC]*, no. 42527/98, 12 July 2001  
*Prosecutor v. Anto Furundzija (Trial Judgement)*, ICTY, IT-95-17/1-T, 10 December 1998  
*R.C. v. Sweden*, no. 41827/07, Committee of Ministers, ResDH (2013) 75, 30 April 2013  
*R.I.P and D.L.P. v. Romania*, no. 27782/10, 10 May 2012

- Rachel Horsham v. the United Kingdom*, no. 23390/94, Commission decision, 4 September 1995
- Raimondo v. Italy*, no. 12954/87, 22 February 1994
- Ramirez Sanchez v. France*, no. 59450/00, 4 July 2006
- Ramzy v. the Netherlands*, no. 25424/05, 20 July 2010
- Raninen v. Finland*, no. 20972/92, 16 December 1997
- Rantsev v. Cyprus and Russia*, no. 25965/04, 7 January 2010
- Rauf Abbasov and Others v. Azerbaijan*, no. 36609/08, 28 May 2013
- Refah Partisi (the Welfare Party) and Others v. Turkey [GC]*, nos. 41340/98, 41342/98, 41343/98 and 41344/98, 13 February 2003
- Rehak v. Czech Republic (dec.)*, no. 67208/01, 18 May 2004
- Řehák v. the Czech Republic (dec.)*, no. 67208/01, 18 May 2004
- Remli v. France*, no. 16839/90, 23 April 1996
- RENFE v. Spain*, no. 35216/97, Commission decision, 8 September 1997
- Rhazali and Others v. France (dec.)*, no. 37568/09, 10 April 2012
- Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, 24 January 2008
- Ribitsch v. Austria*, no. 18896/91, 4 December 1995
- Richard Roy Allan v. the United Kingdom (dec.)*, no. 48539/99, 28 August 2001
- Riener v. Bulgaria*, no. 46343/99, Committee of Ministers, ResDH (2013) 100, 6 June 2013
- Roman Karasev v. Russia*, no. 30251/03, 25 November 2010
- Rrapo v. Albania*, no. 58555/10, 25 September 2012
- Ruslan Umarov v. Russia*, no. 12712/02, 3 July 2008
- Ryabikin v. Russia*, no. 8320/04, 19 June 2008
- Ryabtsev v. Russia*, no. 13642/06, 14 November 2013
- Rzakanov v. Azerbaijan*, no. 4242/07, 4 July 2013
- S. Jegatheeswara Sarma v. Sri Lanka*, U. N. Human Rights Committee, Comm. No. 950/2000, U.N. Doc. CCPR/C/78/D/950/2000, 31 July 2003
- S.A. v. Sweden*, no. 66523/10, 27 June 2013
- S.D. v. Greece*, no. 53541/07, 11 June 2009
- S.G. v. France (striking out)*, no. 40669/98, 18 September 2001
- Saadi v. Italy [GC]*, no. 37201/06, 28 February 2008
- Said v. the Netherlands*, no. 2345/02, 5 July 2005
- Sakı v. Turkey*, no. 29359/95, 30 October 2001
- Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007
- Saliba and Others v. Malta*, 20287/10, 22 January 2013
- Salman v. Turkey*, no. 21986/93, 27 June 2000
- Salman v. Turkey*, no. 21986/93, 27 June 2000
- Salov v. Ukraine*, no. 65518/01, 6 September 2005
- Sanles Sanles v. Spain (dec.)*, no. 48335/99, 26 October 2000
- Sannino v. Italy*, no. 30961/03, 27 April 2006
- Sapožkovs v. Latvia*, no. 8550/03, 11 February 2014
- Saraç v. Turkey (dec.)*, no. 35841/97, 2 September 2004
- Sarban v. Moldova*, no. 3456/05, 4 October 2005

*Savitchi v. Moldova*, no. 11039/02, 11 October 2005  
*Sawoniuk v. the United Kingdom (dec.)*, no. 63716/00, 29 May 2001  
*Schelling, Birnleitner, Bakker, Abrahamian, Brugger, Emmer-Reissig and Hofbauer (No. 2) v. Austria*, no. 55193/00; et al., Committee of Ministers, ResDH (2011) 187, 2 December 2011  
*Scherer v. Switzerland*, no. 17116/90, 25 March 1994  
*Scordino v. Italy (No. 1) [GC]*, no. 36813/97, 29 March 2006  
*Scozzari and Giunta v. Italy*, nos. 39221/98 and 41963/98, 13 July 2000  
*Segheti v. the Republic of Moldova*, no. 39584/07, 15 October 2013  
*Selçuk and Asker v. Turkey*, nos. 23184/94 and 23185/94, 24 April 1998  
*Selmouni v. France [GC]*, no. 25803/94, 28 July 1999  
*Şentürk v. Turkey*, no. 13423/09, 9 April 2013,  
*Sevtap Veznedaroğlu v. Turkey*, no. 32357/96, 11 April 2000  
*Shamayev and Others v. Georgia and Russia (dec.)*, no. 36378/02, 16 September 2003  
*Shamayev and Others v. Georgia and Russia*, no. 36378/02, 12 April 2005  
*Shefer v. Russia (dec.)*, no. 45175/04, 13 March 2012  
*Shestopalov v. Russia (communicated case)*, no. 46248/07, 15 October 2013  
*Shokkarov and Others v. Russia*, no. 41009/04, 3 May 2011  
*Šilih v. Slovenia [GC]*, no. 71463/01, 9 April 2009  
*Siwiak v. Poland (dec.)*, no. 18250/13, 4 February 2014  
*Smirnova and Smirnova v. Russia (dec.)*, nos. 46133/99 and 48183/99, 3 October 2002  
*Soering v. the United Kingdom*, no. 14038/88, 7 July 1989  
*Sokratian v. the Netherlands (dec.)*, no. 41/03, 8 September 2005  
*Soldatenko v. Ukraine*, no. 2440/07, 23 October 2008  
*Soto Sanchez v. Spain (dec.)*, no. 66990/01, 20 May 2003  
*Stanev v. Bulgaria*, no. 36760/06, 17 January 2012  
*Stanimirović v. Serbia*, no. 26088/06, 18 October 2011  
*Starodub v. Ukraine (dec.)*, no. 5483/02, 7 June 2005  
*Stasi v. France*, no. 25001/07, 20 October 2011  
*Stefanelli v. San Marino*, no. 35396/97, Committee of Ministers, ResDH (2004) 4, 24 April 2004  
*Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, 28 June 2011  
*Süheyla Aydın v. Turkey*, no. 25660/94, 24 May 2005  
*Sultanov v. Russia*, no. 15303/09, 4 November 2010  
*T. v. the United Kingdom [GC]*, no. 24724/94, 16 December 1999  
*T.M. and C.M. v. the Republic of Moldova*, no. 26608/11, 28 January 2014  
*Tabarik Malsagova and Others v. Russia (dec.)*, no. 27244/03, 6 March 2008  
*Tabesh v. Greece*, no. 8256/07, 26 November 2009  
*Tahsin Acar v. Turkey (preliminary objection ) [GC]*, no. 26307/95, 6 Mai 2003  
*Tănase v. Moldova [GC]*, no. 7/08, 27 April 2010  
*Taniş and Others v. Turkey*, no. 65899/01, 2 August 2005  
*Tanrıkulu v. Turkey [GC]*, no. 23763/94, 8 July 1999  
*Tarariyeva v. Russia*, no. 4353/03, 14 December 2006  
*Tekin v. Turkey*, no. 22496/93, 9 June 1998

- Tekin v. Turkey*, no. 22496/93, Commission Report, 17 April 1997
- Tepe v. Turkey (dec.)*, no. 31247/96, 22 January 2002
- Thampibillai v. the Netherlands*, no. 61350/00, 17 February 2004
- The Greek Case*, nos. 3321/67, 3322/67, 3323/67 and 3344/67, Yearbook of the European Convention on Human Rights, 1969, p. 196
- The Holy Monasteries v. Greece*, nos. 13092/87 and 13984/88, 9 December 1994
- Thévenon v. France (dec.)*, no. 2476/02, 28 February 2006
- Timofejevi v. Latvia*, no. 45393/04, 11 December 2012
- Timurtaş v. Turkey*, no. 23531/94, 13 June 2000
- Toğcu v. Turkey (striking out)*, no. 27601/95, 9 April 2002
- Toğcu v. Turkey* no. 27601/95, 31 Mai 2005
- Tomasi v. France*, no. 12850/87, 27 August 1992
- Torreggiani and Others v. Italy*, nos. 43517/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10 and 37818/10, 8 January 2013
- Triantafyllou v. Greece*, no. 26021/10, 14 November 2013
- Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978
- Üçak and Kargili and Others v. Turkey (dec.)*, nos. 75527/01 and 11837/02, 28 March 2006
- Umarova and Others v. Russia*, no. 25654/08, 31 July 2012
- V. v. the United Kingdom [GC]*, no. 24888/94, 16 December 1999
- V.C. v. Slovakia*, no. 18968/07, 8 November 2011
- Vakhayeva and Others v. Russia*, no. 1758/04, 29 October 2009
- Valašinas v. Lithuania*, no. 44558/98, 24 July 2001
- Van der Ven v. the Netherlands*, no. 50901/99, 4 February 2003
- Varbanov v. Bulgaria*, no. 31365/96, 5 October 2000
- Varnava and Others v. Turkey [GC]*, nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 18 September 2009
- Varnava and Others v. Turkey*, nos. 16064/90, 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, 10 January 2008
- Vayıç v. Turkey (dec.)*, no. 18078/02, 28 June 2005.
- Velásquez Rodríguez v. Honduras*, Inter-Am.Ct.H.R. (Ser. C) No. 4, 29 July 1988
- Vernillo v. France*, no. 11889/85, 20 February 1991
- Vilvarajah and Others v. the United Kingdom*, nos. 13163/87, 13164/87, 13165/87, 13447/87 and 13448/87, 30 October 1991
- Vinter and Others v. the United Kingdom [GC]*, nos. 66069/09, 130/10 and 3896/10, 9 July 2013
- Virabyan v. Armenia*, no. 40094/05, 2 October 2012
- Vocaturro v. Italy*, no. 11891/85, 24 May 1991
- Vyacheslavovich Ladygin v. Russia (dec.)*, no. 35365/05, 30 August 2011
- Walczyk v. Poland (dec.)*, no. 74907/11, 15 October 2013
- Walker v. the United Kingdom (dec.)*, no. 34979/97, 25 January 2000
- Whiteside v. the United Kingdom*, no. 20357/92, Commission decision of 7 March 1994
- Wilson, National Union of Journalists and Others v. the United Kingdom*, nos. 30668/96, 30671/96 and 30678/96, 2 July 2002
- Winterwerp v. the Netherlands*, no. 6301/73, 24 October 1979

*Worm v. Austria*, no. 22714/93, 29 August 1997  
*Worm v. Austria*, no. 22714/93, Commission decision of 27 November 1995  
*X v. Federal Republic of Germany*, no. 1611/62, Commission decision, 25 September 1965, Yearbook of the European Convention on Human Rights, vol. 8, pp. 158 and 169  
*X v. France*, no. 18020/91, 31 March 1992  
*X v. the United Kingdom*, no. 7547/76, Commission decision, 15 December 1977  
*X v. Turkey*, no. 24626/09, 9 October 2012  
*Xiros v Greece*, no. 1033/07, 9 September 2010.  
*Y.P. and L.P. v. France*, no. 32476/06, 2 September 2010  
*Yanchev v. Bulgaria (dec.)*, no. 16403/07, 20 March 2012  
*Yandiyev and Others v. Russia*, nos. 34541/06, 43811/06 and 1578/07, 10 October 2013  
*Yang Chun Jin alias Yang Xiaolin v. Hungary (striking out)*, no. 58073/00, 8 March 2001  
*Yankov and 9 Others v. Bulgaria*, nos. 39084/97, 47823/99, 58971/00, 57847/00, 39270/98, 42987/98, 44062/98, 74792/01, 29381/04 and 33606/05, Committee of Ministers, ResDH (2013) 102, 6 June 2013  
*Yaşa v. Turkey*, no. 22495/93, 2 September 1998  
*Yasin Ateş v. Turkey*, no. 30949/96, 31 May 2005  
*Yatsenko v. Ukraine*, no. 75345/01, 16 February 2012  
*Yazgül Yılmaz v. Turkey*, no. 36369/06, 1 February 2011  
*Youb Saoudi v. Spain (dec.)*, no. 22871/06, 18 September 2006  
*Youth Initiative For Human Rights v. Serbia*, no 48135/06, 25 June 2013  
*Yuldashev v. Russia*, no. 1248/09, 8 July 2010  
*Yuriy Volkov v. Ukraine*, no. 45872/06, 19 December 2013  
*Z. and Others v. the United Kingdom [GC]*, no. 29392/95, 10 May 2001  
*Z.H. v. Hungary*, no. 28973/11, 8 November 2012  
*Zarakolu v. Turkey (dec.)*, no. 37061/97, 5 December 2002  
*Zarakolu v. Turkey*, no. 32455/96, 27 May 2003  
*Zarzycki v. Poland*, no. 15351/03, 12 March 2013  
*Zelilof v. Greece*, no. 17060/03, 24 Mai 2007  
*Zenkov v. Russia*, no. 37858/08, 30 April 2014  
*Zinchenko v. Ukraine*, no. 63763/11, 13 March 2014.



# APPENDICES



# CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS<sup>1</sup>

Rome, 4.XI.1950

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10<sup>th</sup> December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the governments of European countries which are likeminded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

## ARTICLE 1

### **Obligation to respect Human Rights**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

## SECTION I

### **RIGHTS AND FREEDOMS**

## ARTICLE 2

### **Right to life**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
  - a. in defence of any person from unlawful violence;
  - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
  - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

## ARTICLE 3

### **Prohibition of torture**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

## ARTICLE 4

### **Prohibition of slavery and forced labour**

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.

---

1 Amended by Protocols Nos. 11 and 14 and supplemented by Protocols Nos. 1, 4, 6, 7, 12 and 13.

3. For the purpose of this Article the term “forced or compulsory labour” shall not include:
  - a. any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - b. any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - c. any service exacted in case of an emergency or calamity threatening the life or wellbeing of the community;
  - d. any work or service which forms part of normal civic obligations.

## **ARTICLE 5**

### **Right to liberty and security**

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - a. the lawful detention of a person after conviction by a competent court;
  - b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
  - e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

## **ARTICLE 6**

### **Right to a fair trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:
  - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - b. to have adequate time and facilities for the preparation of his defence;
  - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### **ARTICLE 7**

##### **No punishment without law**

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

#### **ARTICLE 8**

##### **Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **ARTICLE 9**

##### **Freedom of thought, conscience and religion**

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

#### **ARTICLE 10**

##### **Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

## **ARTICLE 11**

### **Freedom of assembly and association**

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

## **ARTICLE 12**

### **Right to marry**

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

## **ARTICLE 13**

### **Right to an effective remedy**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

## **ARTICLE 14**

### **Prohibition of discrimination**

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## **ARTICLE 15**

### **Derogation in time of emergency**

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.
2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.
3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

## **ARTICLE 16**

### **Restrictions on political activity of aliens**

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

## **ARTICLE 17**

### **Prohibition of abuse of rights**

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

## **ARTICLE 18**

### **Limitation on use of restrictions on rights**

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

**SECTION II**  
**EUROPEAN COURT OF HUMAN RIGHTS**

**ARTICLE 19**

**Establishment of the Court**

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

**ARTICLE 20**

**Number of judges**

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

**ARTICLE 21**

**Criteria for office**

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. The judges shall sit on the Court in their individual capacity.
3. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a fulltime office; all questions arising from the application of this paragraph shall be decided by the Court.

**ARTICLE 22**

**Election of judges**

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

**ARTICLE 23**

**Terms of office and dismissal**

1. The judges shall be elected for a period of nine years. They may not be reelected
2. The terms of office of judges shall expire when they reach the age of 70.
3. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
4. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

**ARTICLE 24**

**Registry and rapporteurs**

1. The Court shall have a Registry, the functions and organisation of which shall be laid down in the rules of the Court.
2. When sitting in a single-judge formation, the Court shall be assisted by rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.

**ARTICLE 25**

**Plenary Court**

The plenary Court shall

- a. elect its President and one or two Vice-Presidents for a period of three years; they may be reelected;
- b. set up Chambers, constituted for a fixed period of time;
- c. elect the Presidents of the Chambers of the Court; they may be reelected;
- d. adopt the rules of the Court;
- e. elect the Registrar and one or more Deputy Registrars;
- f. make any request under Article 26, paragraph 2.

## **ARTICLE 26**

### **Single-judge formation, Committees, Chambers and Grand Chamber**

1. To consider cases brought before it, the Court shall sit in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.
2. At the request of the plenary Court, the Committee of Ministers may, by a unanimous decision and for a fixed period, reduce to five the number of judges of the Chambers.
3. When sitting as a single judge, a judge shall not examine any application against the High Contracting Party in respect of which that judge has been elected.
4. There shall sit as an *ex officio* member of the Chamber and the Grand Chamber the judge elected in respect of the High Contracting Party concerned. If there is none or if that judge is unable to sit, a person chosen by the President of the Court from a list submitted in advance by that Party shall sit in the capacity of judge.
5. The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the High Contracting Party concerned.

## **ARTICLE 27**

### **Competence of single judges**

1. A single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination.
2. The decision shall be final.
3. If the single judge does not declare an application inadmissible or strike it out, that judge shall forward it to a committee or to a Chamber for further examination.

## **ARTICLE 28**

### **Competence of Committees**

1. In respect of an application submitted under Article 34, a committee may, by a unanimous vote,
  - a. declare it inadmissible or strike it out of its list of cases, where such decision can be taken without further examination; or
  - b. declare it admissible and render at the same time a judgment on the merits, if the underlying question in the case, concerning the interpretation or the application of the Convention or the Protocols thereto, is already the subject of well-established caselaw of the Court.
2. Decisions and judgments under paragraph 1 shall be final.
3. If the judge elected in respect of the High Contracting Party concerned is not a member of the committee, the committee may at any stage of the proceedings invite that judge to take the place of one of the members of the committee, having regard to all relevant factors, including whether that Party has contested the application of the procedure under paragraph 1.(b).

## **ARTICLE 29**

### **Decisions by Chambers on admissibility and merits**

1. If no decision is taken under Article 27 or 28, or no judgment rendered under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34. The decision on admissibility may be taken separately.
2. A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33. The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

## **ARTICLE 30**

### **Relinquishment of jurisdiction to the Grand Chamber**

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

## **ARTICLE 31**

### **Powers of the Grand Chamber**

The Grand Chamber shall

- a. determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43;
- b. decide on issues referred to the Court by the Committee of Ministers in accordance with Article 46, paragraph 4; and
- c. consider requests for advisory opinions submitted under Article 47.

## **ARTICLE 32**

### **Jurisdiction of the Court**

1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.
2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

## **ARTICLE 33**

### **Inter-State cases**

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.

## **ARTICLE 34**

### **Individual applications**

The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

## **ARTICLE 35**

### **Admissibility criteria**

1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.
2. The Court shall not deal with any application submitted under Article 34 that
  - a. is anonymous; or
  - b. is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.
3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
  - a. the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly illfounded, or an abuse of the right of individual application; or

- b. the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal.
4. The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

#### **ARTICLE 36**

##### **Third party intervention**

1. In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.
2. The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.
3. In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

#### **ARTICLE 37**

##### **STRIKING OUT APPLICATIONS**

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
  - a. the applicant does not intend to pursue his application; or
  - b. the matter has been resolved; or
  - c. for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

2. The Court may decide to restore an application to its list of cases if it considers that the circumstances justify such a course.

#### **ARTICLE 38**

##### **Examination of the case**

The Court shall examine the case together with the representatives of the parties and, if need be, undertake an investigation, for the effective conduct of which the High Contracting Parties concerned shall furnish all necessary facilities.

#### **ARTICLE 39**

##### **Friendly settlements**

1. At any stage of the proceedings, the Court may place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the Protocols thereto.
2. Proceedings conducted under paragraph 1 shall be confidential.
3. If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.
4. This decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision.

#### **ARTICLE 40**

##### **Public hearings and access to documents**

1. Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.
2. Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

**ARTICLE 41**

**Just satisfaction**

If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

**ARTICLE 42**

**Judgments of Chambers**

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

**ARTICLE 43**

**REFERRAL TO THE GRAND CHAMBER**

1. Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.
2. A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

**ARTICLE 44**

**Final judgments**

1. The judgment of the Grand Chamber shall be final.
2. The judgment of a Chamber shall become final
  - a. when the parties declare that they will not request that the case be referred to the Grand Chamber; or
  - b. three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
  - c. when the panel of the Grand Chamber rejects the request to refer under Article 43.
3. The final judgment shall be published.

**ARTICLE 45**

**REASONS FOR JUDGMENTS AND DECISIONS**

1. Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.
2. If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

**ARTICLE 46**

**Binding force and execution of judgments**

1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.
3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the committee.
4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case.

#### **ARTICLE 47**

##### **ADVISORY OPINIONS**

1. The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols thereto.
2. Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the Protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.
3. Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the committee.

#### **ARTICLE 48**

##### **Advisory jurisdiction of the Court**

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

#### **ARTICLE 49**

##### **Reasons for advisory opinions**

1. Reasons shall be given for advisory opinions of the Court.
2. If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.
3. Advisory opinions of the Court shall be communicated to the Committee of Ministers.

#### **ARTICLE 50**

##### **Expenditure on the Court**

The expenditure on the Court shall be borne by the Council of Europe.

#### **ARTICLE 51**

##### **Privileges and immunities of judges**

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.

### **SECTION III**

#### **MISCELLANEOUS PROVISIONS**

#### **ARTICLE 52**

##### **Inquiries by the Secretary General**

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

#### **ARTICLE 53**

##### **Safeguard for existing human rights**

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.

#### **ARTICLE 54**

##### **Powers of the Committee of Ministers**

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

#### **ARTICLE 55**

##### **Exclusion of other means of dispute settlement**

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

#### **ARTICLE 56**

##### **Territorial application**

1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, nongovernmental organisations or groups of individuals as provided by Article 34 of the Convention.

#### **ARTICLE 57**

##### **Reservations**

1. Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this Article.
2. Any reservation made under this Article shall contain a brief statement of the law concerned.

#### **ARTICLE 58**

##### **Denunciation**

1. A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.
4. The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

#### **ARTICLE 59**

##### **Signature and ratification**

1. This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.
2. The European Union may accede to this Convention.
3. The present Convention shall come into force after the deposit of ten instruments of ratification.

4. As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.
5. The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

DONE AT ROME THIS 4TH DAY OF NOVEMBER 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

# PROTOCOL TO THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Paris, 20.III.1952

THE GOVERNMENTS SIGNATORY HERETO, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Have agreed as follows:

## **ARTICLE 1**

### **Protection of property**

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

## **ARTICLE 2**

### **Right to education**

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

## **ARTICLE 3**

### **Right to free elections**

The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

## **ARTICLE 4**

### **Territorial application**

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

## **ARTICLE 5**

### **Relationship to the Convention**

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional Articles to the Convention and all the provisions of the Convention shall apply accordingly.

## **ARTICLE 6**

### **Signature and ratification**

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

DONE AT PARIS ON THE 20TH DAY OF MARCH 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.



## RULES OF COURT

1 July 2014

Registry of the Court

Strasbourg



---

### THE EUROPEAN COURT OF HUMAN RIGHTS,

Having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto,

Makes the present Rules:

#### Rule 1<sup>1</sup> – Definitions

For the purposes of these Rules unless the context otherwise requires:

1. the term “Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;
2. the expression “plenary Court” means the European Court of Human Rights sitting in plenary session;
3. the expression “Grand Chamber” means the Grand Chamber of seventeen judges constituted in pursuance of Article 26 § 1 of the Convention;
4. the term “Section” means a Chamber set up by the plenary Court for a fixed period in pursuance of Article 25 (b) of the Convention and the expression “President of the Section” means the judge elected by the plenary Court in pursuance of Article 25 (c) of the Convention as President of such a Section;
5. the term “Chamber” means any Chamber of seven judges constituted in pursuance of Article 26 § 1 of the Convention and the expression “President of the Chamber” means the judge presiding over such a “Chamber”;
6. the term “Committee” means a Committee of three judges set up in pursuance of Article 26 § 1 of the Convention and the expression “President of the Committee” means the judge presiding over such a “Committee”;

---

1 As amended by the Court on 7 July 2003 and 13 November 2006.

7. the expression “single-judge formation” means a single judge sitting in accordance with Article 26 § 1 of the Convention;
8. the term “Court” means either the plenary Court, the Grand Chamber, a Section, a Chamber, a Committee, a single judge or the panel of five judges referred to in Article 43 § 2 of the Convention;
9. the expression “*ad hoc* judge” means any person chosen in pursuance of Article 26 § 4 of the Convention and in accordance with Rule 29 to sit as a member of the Grand Chamber or as a member of a Chamber;
10. the terms “judge” and “judges” mean the judges elected by the Parliamentary Assembly of the Council of Europe or *ad hoc* judges;
11. the expression “Judge Rapporteur” means a judge appointed to carry out the tasks provided for in Rules 48 and 49;
12. the term “non-judicial rapporteur” means a member of the Registry charged with assisting the single-judge formations provided for in Article 24 § 2 of the Convention;
13. the term “delegate” means a judge who has been appointed to a delegation by the Chamber and the expression “head of the delegation” means the delegate appointed by the Chamber to lead its delegation;
14. the term “delegation” means a body composed of delegates, Registry members and any other person appointed by the Chamber to assist the delegation;
15. the term “Registrar” denotes the Registrar of the Court or the Registrar of a Section according to the context;
16. the terms “party” and “parties” mean
  - a. the applicant or respondent Contracting Parties;
  - b. the applicant (the person, non-governmental organisation or group of individuals) that lodged a complaint under Article 34 of the Convention; (q) the expression “third party” means any Contracting Party or any person concerned or the Council of Europe Commissioner for Human Rights who, as provided for in Article 36 §§ 1, 2 and 3 of the Convention, has exercised the right to submit written comments and take part in a hearing, or has been invited to do so; (r) the terms “hearing” and “hearings” mean oral proceedings held on the admissibility and/or merits of an application or in connection with a request for revision or an advisory opinion, a request for interpretation by a party or by the Committee of Ministers, or a question whether there has been a failure to fulfil an obligation which may be referred to the Court by virtue of Article 46 § 4 of the Convention; (s) the expression “Committee of Ministers” means the Committee of Ministers of the Council of Europe; (t) the terms “former Court” and “Commission” mean respectively the European Court and European Commission of Human Rights set up under former Article 19 of the Convention.

## **TITLE I – ORGANISATION AND WORKING OF THE COURT**

### **CHAPTER I – JUDGES**

#### **Rule 2<sup>2</sup> – Calculation of term of office**

1. Where the seat is vacant on the date of the judge's election, or where the election takes place less than three months before the seat becomes vacant, the term of office shall begin as from the date of taking up office which shall be no later than three months after the date of election.
2. Where the judge's election takes place more than three months before the seat becomes vacant, the term of office shall begin on the date on which the seat becomes vacant.
3. In accordance with Article 23 § 3 of the Convention, an elected judge shall hold office until a successor has taken the oath or made the declaration provided for in Rule 3.

---

2 As amended by the Court on 13 November 2006 and 2 April 2012.

**Rule 3 – Oath or solemn declaration**

1. Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration:  
“I swear” – or “I solemnly declare” – “that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations.”
2. This act shall be recorded in minutes.

**Rule 4<sup>3</sup> – Incompatible activities**

1. In accordance with Article 21 § 3 of the Convention, the judges shall not during their term of office engage in any political or administrative activity or any professional activity which is incompatible with their independence or impartiality or with the demands of a full-time office. Each judge shall declare to the President of the Court any additional activity. In the event of a disagreement between the President and the judge concerned, any question arising shall be decided by the plenary Court.
2. A former judge shall not represent a party or third party in any capacity in proceedings before the Court relating to an application lodged before the date on which he or she ceased to hold office. As regards applications lodged subsequently, a former judge may not represent a party or third party in any capacity in proceedings before the Court until a period of two years from the date on which he or she ceased to hold office has elapsed.

**Rule 5<sup>4</sup> – Precedence**

1. Elected judges shall take precedence after the President and Vice-Presidents of the Court and the Presidents of the Sections, according to the date of their taking up office in accordance with Rule 2 §§ 1 and 2.
2. Vice-Presidents of the Court elected to office on the same date shall take precedence according to the length of time they have served as judges. If the length of time they have served as judges is the same, they shall take precedence according to age. The same rule shall apply to Presidents of Sections.
3. Judges who have served the same length of time shall take precedence according to age.
4. *Ad hoc* judges shall take precedence after the elected judges according to age.

**Rule 6 – Resignation**

Resignation of a judge shall be notified to the President of the Court, who shall transmit it to the Secretary General of the Council of Europe. Subject to the provisions of Rules 24 § 4 *in fine* and 26 § 3, resignation shall constitute vacation of office.

**Rule 7 – Dismissal from office**

No judge may be dismissed from his or her office unless the other judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that he or she has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.

**CHAPTER II<sup>5</sup> – PRESIDENCY OF THE COURT AND THE ROLE OF THE BUREAU**

**Rule 8<sup>6</sup> – Election of the President and Vice-Presidents of the Court and the Presidents and Vice-Presidents of the Sections**

1. The plenary Court shall elect its President, two Vice-Presidents and the Presidents of the Sections for a period of three years, provided that such period shall not exceed the duration of their terms of office as judges.
2. Each Section shall likewise elect for a period of three years a Vice-President, who shall replace the President of the Section if the latter is unable to carry out his or her duties.

---

3 As amended by the Court on 29 March 2010.

4 As amended by the Court on 14 May 2007.

5 As amended by the Court on 7 July 2003.

6 As amended by the Court on 7 November 2005, 20 February 2012, 14 January 2013 and 14 April 2014.

3. A judge elected in accordance with paragraphs 1 or 2 above may be re-elected but only once to the same level of office. This limitation on the number of terms of office shall not prevent a judge holding an office as described above on the date of the entry into force of the present amendment to Rule 8 from being re-elected once to the same level of office.
4. The Presidents and Vice-Presidents shall continue to hold office until the election of their successors.
5. The elections referred to in paragraph 1 of this Rule shall be by secret ballot. Only the elected judges who are present shall take part. If no candidate receives an absolute majority of the votes cast, an additional round or rounds shall take place until one candidate has achieved an absolute majority. After each round, any candidate receiving fewer than five votes shall be eliminated; and if more than two candidates have received five votes or more, the one who has received the least number of votes shall also be eliminated. If there is more than one candidate in this position, only the candidate who is lowest in the order of precedence in accordance with Rule 5 shall be eliminated. In the event of a tie between two candidates in the final round, preference shall be given to the judge having precedence in accordance with Rule 5.
6. The rules set out in the preceding paragraph shall apply to the elections referred to in paragraph 2 of this Rule. However, where more than one round of voting is required until one candidate has achieved an absolute majority, only the candidate who has received the least number of votes shall be eliminated after each round.

#### **Rule 9 – Functions of the President of the Court**

1. The President of the Court shall direct the work and administration of the Court. The President shall represent the Court and, in particular, be responsible for its relations with the authorities of the Council of Europe.
2. The President shall preside at plenary meetings of the Court, meetings of the Grand Chamber and meetings of the panel of five judges.
3. The President shall not take part in the consideration of cases being heard by Chambers except where he or she is the judge elected in respect of a Contracting Party concerned.

#### **Rule 9a – Role of the Bureau**

1.
  - a. The Court shall have a Bureau, composed of the President of the Court, the Vice-Presidents of the Court and the Section Presidents. Where a Vice-President or a Section President is unable to attend a Bureau meeting, he or she shall be replaced by the Section Vice-President or, failing that, by the next most senior member of the Section according to the order of precedence established in Rule 5.
  - d. The Bureau may request the attendance of any other member of the Court or any other person whose presence it considers necessary.
2. The Bureau shall be assisted by the Registrar and the Deputy Registrars.
3. The Bureau's task shall be to assist the President in carrying out his or her function in directing the work and administration of the Court. To this end the President may submit to the Bureau any administrative or extra-judicial matter which falls within his or her competence.
4. The Bureau shall also facilitate coordination between the Court's Sections.
5. The President may consult the Bureau before issuing practice directions under Rule 32 and before approving general instructions drawn up by the Registrar under Rule 17 § 4.
6. The Bureau may report on any matter to the Plenary. It may also make proposals to the Plenary.
7. A record shall be kept of the Bureau's meetings and distributed to the Judges in both the Court's official languages. The secretary to the Bureau shall be designated by the Registrar in agreement with the President.

#### **Rule 10 – Functions of the Vice-Presidents of the Court**

The Vice-Presidents of the Court shall assist the President of the Court. They shall take the place of the President if the latter is unable to carry out his or her duties or the office of President is vacant, or at the request of the President. They shall also act as Presidents of Sections.

---

7 Inserted by the Court on 7 July 2003.

**Rule 11 – Replacement of the President and the Vice-Presidents of the Court**

If the President and the Vice-Presidents of the Court are at the same time unable to carry out their duties or if their offices are at the same time vacant, the office of President of the Court shall be assumed by a President of a Section or, if none is available, by another elected judge, in accordance with the order of precedence provided for in Rule 5.

**Rule 12<sup>8</sup> – Presidency of Sections and Chambers**

The Presidents of the Sections shall preside at the sittings of the Section and Chambers of which they are members and shall direct the Sections' work. The Vice-Presidents of the Sections shall take their place if they are unable to carry out their duties or if the office of President of the Section concerned is vacant, or at the request of the President of the Section. Failing that, the judges of the Section and the Chambers shall take their place, in the order of precedence provided for in Rule 5.

**Rule 13<sup>9</sup> – Inability to preside**

Judges of the Court may not preside in cases in which the Contracting Party of which they are nationals or in respect of which they were elected is a party, or in cases where they sit as a judge appointed by virtue of Rule 29 § 1 (a) or Rule 30 § 1.

**Rule 14 – Balanced representation of the sexes**

In relation to the making of appointments governed by this and the following chapter of the present Rules, the Court shall pursue a policy aimed at securing a balanced representation of the sexes.

**CHAPTER III – THE REGISTRY****Rule 15<sup>10</sup> – Election of the Registrar**

1. The plenary Court shall elect its Registrar. The candidates shall be of high moral character and must possess the legal, managerial and linguistic knowledge and experience necessary to carry out the functions attaching to the post.
2. The Registrar shall be elected for a term of five years and may be re-elected. The Registrar may not be dismissed from office, unless the judges, meeting in plenary session, decide by a majority of two-thirds of the elected judges in office that the person concerned has ceased to fulfil the required conditions. He or she must first be heard by the plenary Court. Any judge may set in motion the procedure for dismissal from office.
3. The elections referred to in this Rule shall be by secret ballot; only the elected judges who are present shall take part. If no candidate receives an absolute majority of the votes cast, an additional round or rounds of voting shall take place until one candidate has achieved an absolute majority. After each round, any candidate receiving fewer than five votes shall be eliminated; and if more than two candidates have received five votes or more, the one who has received the least number of votes shall also be eliminated. In the event of a tie in an additional round of voting, preference shall be given, firstly, to the female candidate, if any, and, secondly, to the older candidate.
4. Before taking up office, the Registrar shall take the following oath or make the following solemn declaration before the plenary Court or, if need be, before the President of the Court:  
 "I swear" – or "I solemnly declare" – "that I will exercise loyally, discreetly and conscientiously the functions conferred upon me as Registrar of the European Court of Human Rights."

This act shall be recorded in minutes.

---

8 As amended by the Court on 17 June and 8 July 2002.

9 As amended by the Court on 4 July 2005.

10 As amended by the Court on 14 April 2014.

#### **Rule 16<sup>11</sup> – Election of the Deputy Registrars**

1. The plenary Court shall also elect one or more Deputy Registrars on the conditions and in the manner and for the term prescribed in the preceding Rule. The procedure for dismissal from office provided for in respect of the Registrar shall likewise apply. The Court shall first consult the Registrar in both these matters.
2. Before taking up office, a Deputy Registrar shall take an oath or make a solemn declaration before the plenary Court or, if need be, before the President of the Court, in terms similar to those prescribed in respect of the Registrar. This act shall be recorded in minutes.

#### **Rule 17 – Functions of the Registrar**

1. The Registrar shall assist the Court in the performance of its functions and shall be responsible for the organisation and activities of the Registry under the authority of the President of the Court.
2. The Registrar shall have the custody of the archives of the Court and shall be the channel for all communications and notifications made by, or addressed to, the Court in connection with the cases brought or to be brought before it.
3. The Registrar shall, subject to the duty of discretion attaching to this office, reply to requests for information concerning the work of the Court, in particular to enquiries from the press.
4. General instructions drawn up by the Registrar, and approved by the President of the Court, shall regulate the working of the Registry.

#### **Rule 18<sup>12</sup> – Organisation of the Registry**

1. The Registry shall consist of Section Registries equal to the number of Sections set up by the Court and of the departments necessary to provide the legal and administrative services required by the Court.
2. The Section Registrar shall assist the Section in the performance of its functions and may be assisted by a Deputy Section Registrar.
3. The officials of the Registry shall be appointed by the Registrar under the authority of the President of the Court. The appointment of the Registrar and Deputy Registrars shall be governed by Rules 15 and 16 above.

#### **Rule 18a<sup>13</sup> – Non-judicial rapporteurs**

1. When sitting in a single-judge formation, the Court shall be assisted by non-judicial rapporteurs who shall function under the authority of the President of the Court. They shall form part of the Court's Registry.
2. The non-judicial rapporteurs shall be appointed by the President of the Court on a proposal by the Registrar. Section Registrars and Deputy Section Registrars, as referred to in Rule 18 § 2, shall act *ex officio* as non-judicial rapporteurs.

#### **Rule 18b<sup>14</sup> – Jurisconsult**

For the purposes of ensuring the quality and consistency of its case-law, the Court shall be assisted by a Jurisconsult. He or she shall be a member of the Registry. The Jurisconsult shall provide opinions and information, in particular to the judicial formations and the members of the Court.

### **CHAPTER IV – THE WORKING OF THE COURT**

#### **RULE 19 – SEAT OF THE COURT**

1. The seat of the Court shall be at the seat of the Council of Europe at Strasbourg. The Court may, however, if it considers it expedient, perform its functions elsewhere in the territories of the member States of the Council of Europe.
2. The Court may decide, at any stage of the examination of an application, that it is necessary that an investigation or any other function be carried out elsewhere by it or one or more of its members.

---

11 As amended by the Court on 14 April 2014.

12 As amended by the Court on 13 November 2006 and 2 April 2012.

13 Inserted by the Court on 13 November 2006 and amended on 14 January 2013.

14 Inserted by the Court on 23 June 2014.

**Rule 20 – Sessions of the plenary Court**

1. The plenary sessions of the Court shall be convened by the President of the Court whenever the performance of its functions under the Convention and under these Rules so requires. The President of the Court shall convene a plenary session if at least one-third of the members of the Court so request, and in any event once a year to consider administrative matters.
2. The quorum of the plenary Court shall be two-thirds of the elected judges in office. 3. If there is no quorum, the President shall adjourn the sitting.

**Rule 21 – Other sessions of the Court**

1. The Grand Chamber, the Chambers and the Committees shall sit full time. On a proposal by the President, however, the Court shall fix session periods each year.
2. Outside those periods the Grand Chamber and the Chambers shall be convened by their Presidents in cases of urgency.

**Rule 22 – Deliberations**

1. The Court shall deliberate in private. Its deliberations shall remain secret.
2. Only the judges shall take part in the deliberations. The Registrar or the designated substitute, as well as such other officials of the Registry and interpreters whose assistance is deemed necessary, shall be present. No other person may be admitted except by special decision of the Court.
3. Before a vote is taken on any matter in the Court, the President may request the judges to state their opinions on it.

**Rule 23 – Votes**

1. The decisions of the Court shall be taken by a majority of the judges present. In the event of a tie, a fresh vote shall be taken and, if there is still a tie, the President shall have a casting vote. This paragraph shall apply unless otherwise provided for in these Rules.
2. The decisions and judgments of the Grand Chamber and the Chambers shall be adopted by a majority of the sitting judges. Abstentions shall not be allowed in final votes on the admissibility and merits of cases.
3. As a general rule, votes shall be taken by a show of hands. The President may take a roll-call vote, in reverse order of precedence.
4. Any matter that is to be voted upon shall be formulated in precise terms.

**Rule 23a<sup>15</sup> – Decision by tacit agreement**

Where it is necessary for the Court to decide a point of procedure or any other question other than at a scheduled meeting of the Court, the President may direct that a draft decision be circulated among the judges and that a deadline be set for their comments on the draft. In the absence of any objection from a judge, the proposal shall be deemed to have been adopted at the expiry of the deadline.

**CHAPTER V – THE COMPOSITION OF THE COURT****Rule 24<sup>16</sup> – Composition of the Grand Chamber**

1. The Grand Chamber shall be composed of seventeen judges and at least three substitute judges.
2. a. The Grand Chamber shall include the President and the Vice-Presidents of the Court and the Presidents of the Sections. Any Vice-President of the Court or President of a Section who is unable to sit as a member of the Grand Chamber shall be replaced by the Vice-President of the relevant Section.
- b. The judge elected in respect of the Contracting Party concerned or, where appropriate, the judge designated by virtue of Rule 29 or Rule 30 shall sit as an ex officio member of the Grand Chamber in accordance with Article 26 §§ 4 and 5 of the Convention.

---

15 Inserted by the Court on 13 December 2004.

16 As amended by the Court on 8 December 2000, 13 December 2004, 4 July and 7 November 2005, 29 May and 13 November 2006 and 6 May 2013.

- c. In cases referred to the Grand Chamber under Article 30 of the Convention, the Grand Chamber shall also include the members of the Chamber which relinquished jurisdiction.
  - d. In cases referred to it under Article 43 of the Convention, the Grand Chamber shall not include any judge who sat in the Chamber which rendered the judgment in the case so referred, with the exception of the President of that Chamber and the judge who sat in respect of the State Party concerned, or any judge who sat in the Chamber or Chambers which ruled on the admissibility of the application.
  - e. The judges and substitute judges who are to complete the Grand Chamber in each case referred to it shall be designated from among the remaining judges by a drawing of lots by the President of the Court in the presence of the Registrar. The modalities for the drawing of lots shall be laid down by the Plenary Court, having due regard to the need for a geographically balanced composition reflecting the different legal systems among the Contracting Parties.
  - f. In examining a request for an advisory opinion under Article 47 of the Convention, the Grand Chamber shall be constituted in accordance with the provisions of paragraph 2 (a) and (e) of this Rule.
  - g. In examining a request under Article 46 § 4 of the Convention, the Grand Chamber shall include, in addition to the judges referred to in paragraph 2 (a) and (b) of this Rule, the members of the Chamber or Committee which rendered the judgment in the case concerned. If the judgment was rendered by a Grand Chamber, the Grand Chamber shall be constituted as the original Grand Chamber. In all cases, including those where it is not possible to reconstitute the original Grand Chamber, the judges and substitute judges who are to complete the Grand Chamber shall be designated in accordance with paragraph 2 (e) of this Rule.
- 3. If any judges are prevented from sitting, they shall be replaced by the substitute judges in the order in which the latter were selected under paragraph 2 (e) of this Rule.
  - 4. The judges and substitute judges designated in accordance with the above provisions shall continue to sit in the Grand Chamber for the consideration of the case until the proceedings have been completed. Even after the end of their terms of office, they shall continue to deal with the case if they have participated in the consideration of the merits. These provisions shall also apply to proceedings relating to advisory opinions.
  - 5.
    - a. The panel of five judges of the Grand Chamber called upon to consider a request submitted under Article 43 of the Convention shall be composed of the President of the Court. If the President of the Court is prevented from sitting, he or she shall be replaced by the Vice-President of the Court taking precedence;  
two Presidents of Sections designated by rotation. If the Presidents of the Sections so designated are prevented from sitting, they shall be replaced by the Vice-Presidents of their Sections;  
two judges designated by rotation from among the judges elected by the remaining Sections to sit on the panel for a period of six months;  
at least two substitute judges designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.
    - b. When considering a referral request, the panel shall not include any judge who took part in the consideration of the admissibility or merits of the case in question.
    - c. No judge elected in respect of, or who is a national of, a Contracting Party concerned by a referral request may be a member of the panel when it examines that request. An elected judge appointed pursuant to Rules 29 or 30 shall likewise be excluded from consideration of any such request.
    - d. Any member of the panel unable to sit, for the reasons set out in (b) or (c) shall be replaced by a substitute judge designated in rotation from among the judges elected by the Sections to serve on the panel for a period of six months.

**Rule 25 – Setting-up of Sections**

1. The Chambers provided for in Article 25 (b) of the Convention (referred to in these Rules as “Sections”) shall be set up by the plenary Court, on a proposal by its President, for a period of three years with effect from the election of the presidential office-holders of the Court under Rule 8. There shall be at least four Sections.
2. Each judge shall be a member of a Section. The composition of the Sections shall be geographically and gender balanced and shall reflect the different legal systems among the Contracting Parties.
3. Where a judge ceases to be a member of the Court before the expiry of the period for which the Section has been constituted, the judge's place in the Section shall be taken by his or her successor as a member of the Court.
4. The President of the Court may exceptionally make modifications to the composition of the Sections if circumstances so require.
5. On a proposal by the President, the plenary Court may constitute an additional Section.

**Rule 26<sup>17</sup> – Constitution of Chambers**

1. The Chambers of seven judges provided for in Article 26 § 1 of the Convention for the consideration of cases brought before the Court shall be constituted from the Sections as follows.
  - a. Subject to paragraph 2 of this Rule and to Rule 28 § 4, last sentence, the Chamber shall in each case include the President of the Section and the judge elected in respect of any Contracting Party concerned. If the latter judge is not a member of the Section to which the application has been assigned under Rules 51 or 52, he or she shall sit as an *ex officio* member of the Chamber in 1.
  - b. The other members of the Chamber shall be designated by the President of the Section in rotation from among the members of the relevant Section.
  - c. The members of the Section who are not so designated shall sit in the case as substitute judges.
2. The judge elected in respect of any Contracting Party concerned or, where appropriate, another elected judge or *ad hoc* judge appointed in accordance with Rules 29 and 30 may be dispensed by the President of the Chamber from attending meetings devoted to preparatory or procedural matters. For the purposes of such meetings the first substitute judge shall sit.
3. Even after the end of their terms of office, judges shall continue to deal with cases in which they have participated in the consideration of the merits.

**Rule 27<sup>18</sup> – Committees**

1. Committees composed of three judges belonging to the same Section shall be set up under Article 26 § 1 of the Convention. After consulting the Presidents of the Sections, the President of the Court shall decide on the number of Committees to be set up.
2. The Committees shall be constituted for a period of twelve months by rotation among the members of each Section, excepting the President of the Section.
3. The judges of the Section, including the President of the Section, who are not members of a Committee may, as appropriate, be called upon to sit. They may also be called upon to take the place of members who are unable to sit.
4. The President of the Committee shall be the member having precedence in the Section.

**Rule 27a<sup>19</sup> – Single-judge formation**

1. A single-judge formation shall be introduced in pursuance of Article 26 § 1 of the Convention. After consulting the Bureau, the President of the Court shall decide on the number of single judges to be appointed and shall appoint them. The President shall draw up in advance the list of Contracting Parties in respect of which each judge shall examine applications throughout the period for which that judge is appointed to sit as a single judge.

---

17 As amended by the Court on 17 June and 8 July 2002 and 6 May 2013.

18 As amended by the Court on 13 November 2006 and 16 November 2009.

19 Inserted by the Court on 13 November 2006 and amended on 14 January 2013.

2. The following shall also sit as single judges
  - a. the Presidents of the Sections when exercising their competences under Rule 54 §§ 2 (b) and 3;
  - b. Vice-Presidents of Sections appointed to decide on requests for interim measures in accordance with Rule 39 § 4.
3. Single judges shall be appointed for a period of twelve months. They shall continue to carry out their other duties within the Sections of which they are members in accordance with Rule 25 § 2.
4. Pursuant to Article 24 § 2 of the Convention, when deciding, each single judge shall be assisted by a non-judicial rapporteur.

**Rule 28<sup>20</sup> – Inability to sit, withdrawal or exemption**

1. Any judge who is prevented from taking part in sittings which he or she has been called upon to attend shall, as soon as possible, give notice to the President of the Chamber.
2. A judge may not take part in the consideration of any case if
  - a. he or she has a personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;
  - b. he or she has previously acted in the case, whether as the Agent, advocate or adviser of a party or of a person having an interest in the case, or as a member of another national or international tribunal or commission of inquiry, or in any other capacity;
  - c. he or she, being an *ad hoc* judge or a former elected judge continuing to sit by virtue of Rule 26 § 3, engages in any political or administrative activity or any professional activity which is incompatible with his or her independence or impartiality;
  - d. he or she has expressed opinions publicly, through the communications media, in writing, through his or her public actions or otherwise, that are objectively capable of adversely affecting his or her impartiality;
  - e. for any other reason, his or her independence or impartiality may legitimately be called into doubt.
3. If a judge withdraws for one of the said reasons, he or she shall notify the President of the Chamber, who shall exempt the judge from sitting.
4. In the event of any doubt on the part of the judge concerned or the President as to the existence of one of the grounds referred to in paragraph 2 of this Rule, that issue shall be decided by the Chamber. After hearing the views of the judge concerned, the Chamber shall deliberate and vote, without that judge being present. For the purposes of the Chamber's deliberations and vote on this issue, he or she shall be replaced by the first substitute judge in the Chamber. The same shall apply if the judge sits in respect of any Contracting Party concerned in accordance with Rules 29 and 30.
5. The provisions above shall apply also to a judge's acting as a single judge or participation in a Committee, save that the notice required under paragraphs 1 or 3 of this Rule shall be given to the President of the Section.

**Rule 29<sup>21</sup> – *Ad hoc* judges**

1. a. If the judge elected in respect of a Contracting Party concerned is unable to sit in the Chamber, withdraws, or is exempted, or if there is none, the President of the Court shall choose an *ad hoc* judge, who is eligible to take part in the consideration of the case in accordance with Rule 28, from a list submitted in advance by the Contracting Party containing the names of three to five persons whom the Contracting Party has designated as eligible to serve as *ad hoc* judges for a renewable period of two years and as satisfying the conditions set out in paragraph 1 (c) of this Rule.

The list shall include both sexes and shall be accompanied by biographical details of the persons whose names appear on the list. The persons whose names appear on the list may not represent a party or a third party in any capacity in proceedings before the Court.

---

20 As amended by the Court on 17 June and 8 July 2002, 13 December 2004, 13 November 2006 and 6 May 2013.

21 As amended by the Court on 17 June and 8 July 2002, 13 November 2006, 29 March 2010 and 6 May 2013.

- b. The procedure set out in paragraph 1 (a) of this Rule shall apply if the person so appointed is unable to sit or withdraws.
  - c. An *ad hoc* judge shall possess the qualifications required by Article 21 § 1 of the Convention and must be in a position to meet the demands of availability and attendance provided for in paragraph 5 of this Rule. For the duration of their appointment, an *ad hoc* judge shall not represent any party or third party in any capacity in proceedings before the Court.
2. The President of the Court shall appoint another elected judge to sit as an *ad hoc* judge where
    - a. at the time of notice being given of the application under Rule 54 § 2
    - b. the Contracting Party concerned has not supplied the Registrar with a list as described in paragraph 1 (a) of this Rule, or
    - c. the President of the Court finds that less than three of the persons indicated in the list satisfy the conditions laid down in paragraph 1 (c) of this Rule.
  3. The President of the Court may decide not to appoint an *ad hoc* judge pursuant to paragraph 1 (a) or 2 of this Rule until notice of the application is given to the Contracting Party under Rule 54 § 2 (b). Pending the decision of the President of the Court, the first substitute judge shall sit.
  4. An *ad hoc* judge shall, at the beginning of the first sitting held to consider the case after the judge has been appointed, take the oath or make the solemn declaration provided for in Rule 3. This act shall be recorded in minutes.
  5. *Ad hoc* judges are required to make themselves available to the Court and, subject to Rule 26 § 2, to attend the meetings of the Chamber.

**Rule 30<sup>22</sup> – Common interest**

1. If two or more applicant or respondent Contracting Parties have a common interest, the President of the Chamber may invite them to agree to appoint a single judge elected in respect of one of the Contracting Parties concerned as common-interest judge who will be called upon to sit *ex officio*. If the Parties are unable to agree, the President shall choose the common-interest judge by lot from the judges proposed by the Parties.
2. The President of the Chamber may decide not to invite the Contracting Parties concerned to make an appointment under paragraph 1 of this Rule until notice of the application has been given under Rule 54 § 2.
3. In the event of a dispute as to the existence of a common interest or as to any related matter, the Chamber shall decide, if necessary after obtaining written submissions from the Contracting Parties concerned.

**TITLE II – PROCEDURE**

**CHAPTER I – GENERAL RULES**

**Rule 31 – Possibility of particular derogations**

The provisions of this Title shall not prevent the Court from derogating from them for the consideration of a particular case after having consulted the parties where appropriate.

**Rule 32 – Practice directions**

The President of the Court may issue practice directions, notably in relation to such matters as appearance at hearings and the filing of pleadings and other documents.

---

22 As amended by the Court on 7 July 2003.

**Rule 33<sup>23</sup> – Public character of documents**

1. All documents deposited with the Registry by the parties or by any third party in connection with an application, except those deposited within the framework of friendly-settlement negotiations as provided for in Rule 62, shall be accessible to the public in accordance with arrangements determined by the Registrar, unless the President of the Chamber, for the reasons set out in paragraph 2 of this Rule, decides otherwise, either of his or her own motion or at the request of a party or any other person concerned.
2. Public access to a document or to any part of it may be restricted in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties or of any person concerned so require, or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances where publicity would prejudice the interests of justice.
3. Any request for confidentiality made under paragraph 1 of this Rule must include reasons and specify whether it is requested that all or part of the documents be inaccessible to the public.
4. Decisions and judgments given by a Chamber shall be accessible to the public. Decisions and judgments given by a Committee, including decisions covered by the proviso to Rule 53 § 5, shall be accessible to the public. The Court shall periodically make accessible to the public general information about decisions taken by single-judge formations pursuant to Rule 52A § 1 and by Committees in application of Rule 53 § 5.

**Rule 34<sup>24</sup> – Use of languages**

1. The official languages of the Court shall be English and French.
2. In connection with applications lodged under Article 34 of the Convention, and for as long as no Contracting Party has been given notice of such an application in accordance with these Rules, all communications with and oral and written submissions by applicants or their representatives, if not in one of the Court's official languages, shall be in one of the official languages of the Contracting Parties. If a Contracting Party is informed or given notice of an application in accordance with these Rules, the application and any accompanying documents shall be communicated to that State in the language in which they were lodged with the Registry by the applicant.
3.
  - a. All communications with and oral and written submissions by applicants or their representatives in respect of a hearing, or after notice of an application has been given to a Contracting Party, shall be in one of the Court's official languages, unless the President of the Chamber grants leave for the continued use of the official language of a Contracting Party.
  - b. If such leave is granted, the Registrar shall make the necessary arrangements for the interpretation and translation into English or French of the applicant's oral and written submissions respectively, in full or in part, where the President of the Chamber considers it to be in the interests of the proper conduct of the proceedings.
  - c. Exceptionally the President of the Chamber may make the grant of leave subject to the condition that the applicant bear all or part of the costs of making such arrangements.
  - d. Unless the President of the Chamber decides otherwise, any decision made under the foregoing provisions of this paragraph shall remain valid in all subsequent proceedings in the case, including those in respect of requests for referral of the case to the Grand Chamber and requests for interpretation or revision of a judgment under Rules 73, 79 and 80 respectively.
4.
  - a. All communications with and oral and written submissions by a Contracting Party which is a party to the case shall be in one of the Court's official languages. The President of the Chamber may grant the Contracting Party concerned leave to use one of its official languages for its oral and written submissions.
  - b. If such leave is granted, it shall be the responsibility of the requesting Party
    - i. to file a translation of its written submissions into one of the official languages of the Court within a time-limit to be fixed by the President of the Chamber. Should that Party not file the translation within that time-limit, the Registrar may make the necessary arrangements for such translation, the expenses to be charged to the requesting Party;

---

23 As amended by the Court on 17 June and 8 July 2002, 7 July 2003, 4 July 2005, 13 November 2006 and 14 May 2007.

24 As amended by the Court on 13 December 2004.

- ii. to bear the expenses of interpreting its oral submissions into English or French. The Registrar shall be responsible for making the necessary arrangements for such interpretation.
  - c. The President of the Chamber may direct that a Contracting Party which is a party to the case shall, within a specified time, provide a translation into, or a summary in, English or French of all or certain annexes to its written submissions or of any other relevant document, or of extracts therefrom.
  - d. The preceding sub-paragraphs of this paragraph shall also apply, *mutatis mutandis*, to third-party intervention under Rule 44 and to the use of a non-official language by a third party.
5. The President of the Chamber may invite the respondent Contracting Party to provide a translation of its written submissions in the or an official language of that Party in order to facilitate the applicant's understanding of those submissions.
  6. Any witness, expert or other person appearing before the Court may use his or her own language if he or she does not have sufficient knowledge of either of the two official languages. In that event the Registrar shall make the necessary arrangements for interpreting or translation.

**Rule 35 – Representation of Contracting Parties**

The Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers.

**Rule 36<sup>25</sup> – Representation of applicants**

1. Persons, non-governmental organisations or groups of individuals may initially present applications under Article 34 of the Convention themselves or through a representative.
2. Following notification of the application to the respondent Contracting Party under Rule 54 § 2 (b), the applicant should be represented in accordance with paragraph 4 of this Rule, unless the President of the Chamber decides otherwise.
3. The applicant must be so represented at any hearing decided on by the Chamber, unless the President of the Chamber exceptionally grants leave to the applicant to present his or her own case, subject, if necessary, to being assisted by an advocate or other approved representative.
4.
  - a. The representative acting on behalf of the applicant pursuant to paragraphs 2 and 3 of this Rule shall be an advocate authorised to practise in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber.
  - b. In exceptional circumstances and at any stage of the procedure, the President of the Chamber may, where he or she considers that the circumstances or the conduct of the advocate or other person appointed under the preceding sub-paragraph so warrant, direct that the latter may no longer represent or assist the applicant and that the applicant should seek alternative representation.
5.
  - a. The advocate or other approved representative, or the applicant in person who seeks leave to present his or her own case, must even if leave is granted under the following sub-paragraph have an adequate understanding of one of the Court's official languages.
  - b. If he or she does not have sufficient proficiency to express himself or herself in one of the Court's official languages, leave to use one of the official languages of the Contracting Parties may be given by the President of the Chamber under Rule 34 § 3.

**Rule 37<sup>26</sup> – Communications, notifications and summonses**

1. Communications or notifications addressed to the Agents or advocates of the parties shall be deemed to have been addressed to the parties.
2. If, for any communication, notification or summons addressed to persons other than the Agents or advocates of the parties, the Court considers it necessary to have the assistance of the Government of the State on whose territory such communication, notification or summons is to have effect, the President of the Court shall apply directly to that Government in order to obtain the necessary facilities.

---

25 As amended by the Court on 7 July 2003.

26 As amended by the Court on 7 July 2003.

### **Rule 38 – Written pleadings**

1. No written observations or other documents may be filed after the time-limit set by the President of the Chamber or the Judge Rapporteur, as the case may be, in accordance with these Rules. No written observations or other documents filed outside that time-limit or contrary to any practice direction issued under Rule 32 shall be included in the case file unless the President of the Chamber decides otherwise.
2. For the purposes of observing the time-limit referred to in paragraph 1 of this Rule, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt at the Registry.

### **Rule 38a<sup>27</sup> – Examination of matters of procedure**

Questions of procedure requiring a decision by the Chamber shall be considered simultaneously with the examination of the case, unless the President of the Chamber decides otherwise.

### **Rule 39<sup>28</sup> – Interim measures**

1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.
4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.

### **Rule 40 – Urgent notification of an application**

In any case of urgency the Registrar, with the authorisation of the President of the Chamber, may, without prejudice to the taking of any other procedural steps and by any available means, inform a Contracting Party concerned in an application of the introduction of the application and of a summary of its objects.

### **Rule 41<sup>29</sup> – Order of dealing with cases**

In determining the order in which cases are to be dealt with, the Court shall have regard to the importance and urgency of the issues raised on the basis of criteria fixed by it. The Chamber, or its President, may, however, derogate from these criteria so as to give priority to a particular application.

### **Rule 42 – Joinder and simultaneous examination of applications (former Rule 43)**

1. The Chamber may, either at the request of the parties or of its own motion, order the joinder of two or more applications.
2. The President of the Chamber may, after consulting the parties, order that the proceedings in applications assigned to the same Chamber be conducted simultaneously, without prejudice to the decision of the Chamber on the joinder of the applications.

### **Rule 43<sup>30</sup> – Striking out and restoration to the list (former Rule 44)**

1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases in accordance with Article 37 of the Convention.
2. When an applicant Contracting Party notifies the Registrar of its intention not to proceed with the case, the Chamber may strike the application out of the Court's list under Article 37 of the Convention if the other Contracting Party or Parties concerned in the case agree to such discontinuance.

---

27 Inserted by the Court on 17 June and 8 July 2002.

28 As amended by the Court on 4 July 2005, 16 January 2012 and 14 January 2013.

29 As amended by the Court on 17 June and 8 July 2002 and 29 June 2009.

30 As amended by the Court on 17 June and 8 July 2002, 7 July 2003, 13 November 2006 and 2 April 2012.

3. If a friendly settlement is effected in accordance with Article 39 of the Convention, the application shall be struck out of the Court's list of cases by means of a decision. In accordance with Article 39 § 4 of the Convention, this decision shall be transmitted to the Committee of Ministers, which shall supervise the execution of the terms of the friendly settlement as set out in the decision. In other cases provided for in Article 37 of the Convention, the application shall be struck out by means of a judgment if it has been declared admissible or, if not declared admissible, by means of a decision. Where the application has been struck out by means of a judgment, the President of the Chamber shall forward that judgment, once it has become final, to the Committee of Ministers in order to allow the latter to supervise, in accordance with Article 46 § 2 of the Convention, the execution of any undertakings which may have been attached to the discontinuance or solution of the matter.
4. When an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court. If an award of costs is made in a decision striking out an application which has not been declared admissible, the President of the Chamber shall forward the decision to the Committee of Ministers.
5. Where an application has been struck out in accordance with Article 37 of the Convention, the Court may restore it to its list if it considers that exceptional circumstances so justify.

#### **Rule 44<sup>31</sup> – Third-party intervention**

1. a. When notice of an application lodged under Article 33 or 34 of the Convention is given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), a copy of the application shall at the same time be transmitted by the Registrar to any other Contracting Party one of whose nationals is an applicant in the case. The Registrar shall similarly notify any such Contracting Party of a decision to hold an oral hearing in the case.
- b. If a Contracting Party wishes to exercise its right under Article 36 § 1 of the Convention to submit written comments or to take part in a hearing, it shall so advise the Registrar in writing not later than twelve weeks after the transmission or notification referred to in the preceding sub-paragraph. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.
2. If the Council of Europe Commissioner for Human Rights wishes to exercise the right under Article 36 § 3 of the Convention to submit written observations or take part in a hearing, he or she shall so advise the Registrar in writing not later than twelve weeks after transmission of the application to the respondent Contracting Party or notification to it of the decision to hold an oral hearing. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.

Should the Commissioner for Human Rights be unable to take part in the proceedings before the Court himself, he or she shall indicate the name of the person or persons from his or her Office whom he or she has appointed to represent him. He or she may be assisted by an advocate.

3. a. Once notice of an application has been given to the respondent Contracting Party under Rules 51 § 1 or 54 § 2 (b), the President of the Chamber may, in the interests of the proper administration of justice, as provided in Article 36 § 2 of the Convention, invite, or grant leave to, any Contracting Party which is not a party to the proceedings, or any person concerned who is not the applicant, to submit written comments or, in exceptional cases, to take part in a hearing.
- b. Requests for leave for this purpose must be duly reasoned and submitted in writing in one of the official languages as provided in Rule 34 § 4 not later than twelve weeks after notice of the application has been given to the respondent Contracting Party. Another time-limit may be fixed by the President of the Chamber for exceptional reasons.
4. a. In cases to be considered by the Grand Chamber, the periods of time prescribed in the preceding paragraphs shall run from the notification to the parties of the decision of the Chamber under Rule 72 § 1 to relinquish jurisdiction in favour of the Grand Chamber or of the decision of the panel of the Grand Chamber under Rule 73 § 2 to accept a request by a party for referral of the case to the Grand Chamber.
- b. The time-limits laid down in this Rule may exceptionally be extended by the President of the Chamber if sufficient cause is shown.

---

31 As amended by the Court on 7 July 2003 and 13 November 2006.

5. Any invitation or grant of leave referred to in paragraph 3 (a) of this Rule shall be subject to any conditions, including time-limits, set by the President of the Chamber. Where such conditions are not complied with, the President may decide not to include the comments in the case file or to limit participation in the hearing to the extent that he or she considers appropriate.
6. Written comments submitted under this Rule shall be drafted in one of the official languages as provided in Rule 34 § 4. They shall be forwarded by the Registrar to the parties to the case, who shall be entitled, subject to any conditions, including time-limits, set by the President of the Chamber, to file written observations in reply or, where appropriate, to reply at the hearing.

**Rule 44a<sup>32</sup> – Duty to cooperate with the Court**

The parties have a duty to cooperate fully in the conduct of the proceedings and, in particular, to take such action within their power as the Court considers necessary for the proper administration of justice. This duty shall also apply to a Contracting Party not party to the proceedings where such cooperation is necessary.

**Rule 44b<sup>33</sup> – Failure to comply with an order of the Court**

Where a party fails to comply with an order of the Court concerning the conduct of the proceedings, the President of the Chamber may take any steps which he or she considers appropriate.

**Rule 44c<sup>34</sup> – Failure to participate effectively**

1. Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate.
2. Failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason for the Chamber to discontinue the examination of the application.

**Rule 44d<sup>35</sup> – Inappropriate submissions by a party**

If the representative of a party makes abusive, frivolous, vexatious, misleading or prolix submissions, the President of the Chamber may exclude that representative from the proceedings, refuse to accept all or part of the submissions or make any other order which he or she considers it appropriate to make, without prejudice to Article 35 § 3 of the Convention.

**Rule 44e<sup>36</sup> – Failure to pursue an application**

In accordance with Article 37 § 1 (a) of the Convention, if an applicant Contracting Party or an individual applicant fails to pursue the application, the Chamber may strike the application out of the Court's list under Rule 43.

**CHAPTER II – INSTITUTION OF PROCEEDINGS**

**Rule 45 – Signatures**

1. Any application made under Articles 33 or 34 of the Convention shall be submitted in writing and shall be signed by the applicant or by the applicant's representative.
2. Where an application is made by a non-governmental organisation or by a group of individuals, it shall be signed by those persons competent to represent that organisation or group. The Chamber or Committee concerned shall determine any question as to whether the persons who have signed an application are competent to do so.
3. Where applicants are represented in accordance with Rule 36, a power of attorney or written authority to act shall be supplied by their representative or representatives.

---

32 Inserted by the Court on 13 December 2004.

33 Inserted by the Court on 13 December 2004.

34 Inserted by the Court on 13 December 2004.

35 Inserted by the Court on 13 December 2004.

36 Inserted by the Court on 13 December 2004.

**Rule 46 – Contents of an inter-State application**

Any Contracting Party or Parties intending to bring a case before the Court under Article 33 of the Convention shall file with the Registry an application setting out

1. the name of the Contracting Party against which the application is made;
2. a statement of the facts;
3. a statement of the alleged violation(s) of the Convention and the relevant arguments;
4. a statement on compliance with the admissibility criteria (exhaustion of domestic remedies and the six-month rule) laid down in Article 35 § 1 of the Convention;
5. the object of the application and a general indication of any claims for just satisfaction made under Article 41 of the Convention on behalf of the alleged injured party or parties; and
6. the name and address of the person or persons appointed as Agent; and accompanied by
7. copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.

**Rule 47<sup>37</sup> – Contents of an individual application**

1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out
  - a. the name, date of birth, nationality and address of the applicant and, where the applicant is a legal person, the full name, date of incorporation or registration, the official registration number (if any) and the official address;
  - b. the name, occupation, address, telephone and fax numbers and e-mail address of the representative, if any;
  - c. the name of the Contracting Party or Parties against which the application is made;
  - d. a concise and legible statement of the facts;
  - e. a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and
  - f. a concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 § 1 of the Convention.
2.
  - a. All of the information referred to in paragraph 1 (d) to (f) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.
  - b. The applicant may however supplement the information by appending to the application form further details on the facts, alleged violations of the Convention and the relevant arguments. Such information shall not exceed 20 pages.
- 3.1 The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by
  - a. copies of documents relating to the decisions or measures complained of, judicial or otherwise;
  - b. copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;
  - c. where appropriate, copies of documents relating to any other procedure of international investigation or settlement;
  - d. where represented, the original of the power of attorney or form of authority signed by the applicant.

---

37 As amended by the Court on 17 June and 8 July 2002, 11 December 2007, 22 September 2008 and 6 May 2013.

- 3.2 Documents submitted in support of the application shall be listed in order by date, numbered consecutively and be identified clearly.
4. Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.
- 5.1 Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless
  - a. the applicant has provided an adequate explanation for the failure to comply;
  - b. the application concerns a request for an interim measure;
  - c. the Court otherwise directs of its own motion or at the request of an applicant.
- 5.2 The Court may in any case request an applicant to provide information or documents in any form or manner which may be appropriate within a fixed time-limit.
6.
  - a. The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court. The date of dispatch shall be the date of the postmark.
  - b. Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of introduction.
7. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

### **CHAPTER III – JUDGE RAPPORTEURS**

#### **Rule 48<sup>38</sup> – Inter-State applications**

1. Where an application is made under Article 33 of the Convention, the Chamber constituted to consider the case shall designate one or more of its judges as Judge Rapporteur(s), who shall submit a report on admissibility when the written observations of the Contracting Parties concerned have been received.
2. The Judge Rapporteur(s) shall submit such reports, drafts and other documents as may assist the Chamber and its President in carrying out their functions.

#### **Rule 49<sup>39</sup> – Individual applications**

1. Where the material submitted by the applicant is on its own sufficient to disclose that the application is inadmissible or should be struck out of the list, the application shall be considered by a single-judge formation unless there is some special reason to the contrary.
2. Where an application is made under Article 34 of the Convention and its examination by a Chamber or a Committee exercising the functions attributed to it under Rule 53 § 2 seems justified, the President of the Section to which the case has been assigned shall designate a judge as Judge Rapporteur, who shall examine the application.
3. In their examination of applications, Judge Rapporteurs
  - a. may request the parties to submit, within a specified time, any factual information, documents or other material which they consider to be relevant;
  - b. shall, subject to the President of the Section directing that the case be considered by a Chamber or a Committee, decide whether the application is to be considered by a single-judge formation, by a Committee or by a Chamber;
  - c. shall submit such reports, drafts and other documents as may assist the Chamber or the Committee or the respective President in carrying out their functions.

---

<sup>38</sup> As amended by the Court on 17 June and 8 July 2002.

<sup>39</sup> As amended by the Court on 17 June and 8 July 2002, 4 July 2005, 13 November 2006 and 14 May 2007.

**Rule 50 – Grand Chamber proceedings**

Where a case has been submitted to the Grand Chamber either under Article 30 or under Article 43 of the Convention, the President of the Grand Chamber shall designate as Judge Rapporteur(s) one or, in the case of an inter-State application, one or more of its members.

**CHAPTER IV – PROCEEDINGS ON ADMISSIBILITY****Inter-State applications Rule 51<sup>40</sup> – Assignment of applications and subsequent procedure**

1. When an application is made under Article 33 of the Convention, the President of the Court shall immediately give notice of the application to the respondent Contracting Party and shall assign the application to one of the Sections.
2. In accordance with Rule 26 § 1 (a), the judges elected in respect of the applicant and respondent Contracting Parties shall sit as *ex officio* members of the Chamber constituted to consider the case. Rule 30 shall apply if the application has been brought by several Contracting Parties or if applications with the same object brought by several Contracting Parties are being examined jointly under Rule 42.
3. On assignment of the case to a Section, the President of the Section shall constitute the Chamber in accordance with Rule 26 § 1 and shall invite the respondent Contracting Party to submit its observations in writing on the admissibility of the application. The observations so obtained shall be communicated by the Registrar to the applicant Contracting Party, which may submit written observations in reply.
4. Before the ruling on the admissibility of the application is given, the Chamber or its President may decide to invite the Parties to submit further observations in writing.
5. A hearing on the admissibility shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion.
6. Before fixing the written and, where appropriate, oral procedure, the President of the Chamber shall consult the Parties.

**Individual applications Rule 52<sup>41</sup> – Assignment of applications to the Sections**

1. Any application made under Article 34 of the Convention shall be assigned to a Section by the President of the Court, who in so doing shall endeavour to ensure a fair distribution of cases between the Sections.
2. The Chamber of seven judges provided for in Article 26 § 1 of the Convention shall be constituted by the President of the Section concerned in accordance with Rule 26 § 1.
3. Pending the constitution of a Chamber in accordance with paragraph 2 of this Rule, the President of the Section shall exercise any powers conferred on the President of the Chamber by these Rules.

**Rule 52a<sup>42</sup> – Procedure before a single judge**

1. In accordance with Article 27 of the Convention, a single judge may declare inadmissible or strike out of the Court's list of cases an application submitted under Article 34, where such a decision can be taken without further examination. The decision shall be final. The applicant shall be informed of the decision by letter.
2. In accordance with Article 26 § 3 of the Convention, a single judge may not examine any application against the Contracting Party in respect of which that judge has been elected.
3. If the single judge does not take a decision of the kind provided for in the first paragraph of the present Rule, that judge shall forward the application to a Committee or to a Chamber for further examination.

**Rule 53<sup>43</sup> – Procedure before a Committee**

1. In accordance with Article 28 § 1 (a) of the Convention, the Committee may, by a unanimous vote and at any stage of the proceedings, declare an application inadmissible or strike it out of the Court's list of cases where such a decision can be taken without further examination.

---

40 As amended by the Court on 17 June and 8 July 2002.

41 As amended by the Court on 17 June and 8 July 2002.

42 Inserted by the Court on 13 November 2006.

43 As amended by the Court on 17 June and 8 July 2002, 4 July 2005, 14 May 2007 and 16 January 2012.

2. If the Committee is satisfied, in the light of the parties' observations received pursuant to Rule 54 § 2 (b), that the case falls to be examined in accordance with the procedure under Article 28 § 1 (b) of the Convention, it shall, by a unanimous vote, adopt a judgment including its decision on admissibility and, as appropriate, on just satisfaction.
3. If the judge elected in respect of the Contracting Party concerned is not a member of the Committee, the Committee may at any stage of the proceedings before it, by a unanimous vote, invite that judge to take the place of one of its members, having regard to all relevant factors, including whether that Party has contested the application of the procedure under Article 28 § 1 (b) of the Convention.
4. Decisions and judgments under Article 28 § 1 of the Convention shall be final.
5. The applicant, as well as the Contracting Parties concerned where these have previously been involved in the application in accordance with the present Rules, shall be informed of the decision of the Committee pursuant to Article 28 § 1 (a) of the Convention by letter, unless the Committee decides otherwise.
6. If no decision or judgment is adopted by the Committee, the application shall be forwarded to the Chamber constituted under Rule 52 § 2 to examine the case.
7. The provisions of Rule 42 § 1 and Rules 79 to 81 shall apply, *mutatis mutandis*, to proceedings before a Committee.

#### **Rule 54<sup>44</sup> – Procedure before a Chamber**

1. The Chamber may at once declare the application inadmissible or strike it out of the Court's list of cases. The decision of the Chamber may relate to all or part of the application.
2. Alternatively, the Chamber or the President of the Section may decide to
  - a. request the parties to submit any factual information, documents or other material considered by the Chamber or its President to be relevant;
  - b. give notice of the application or part of the application to the respondent Contracting Party and invite that Party to submit written observations thereon and, upon receipt thereof, invite the applicant to submit observations in reply;
  - c. invite the parties to submit further observations in writing.
3. In the exercise of the competences under paragraph 2 (b) of this Rule, the President of the Section, acting as a single judge, may at once declare part of the application inadmissible or strike part of the application out of the Court's list of cases. The decision shall be final. The applicant shall be informed of the decision by letter.
4. Paragraphs 2 and 3 of this Rule shall also apply to Vice-Presidents of Sections appointed as duty judges in accordance with Rule 39 § 4 to decide on requests for interim measures.
5. Before taking a decision on admissibility, the Chamber may decide, either at the request of a party or of its own motion, to hold a hearing if it considers that the discharge of its functions under the Convention so requires. In that event, unless the Chamber shall exceptionally decide otherwise, the parties shall also be invited to address the issues arising in relation to the merits of the application.

#### **Rule 54a<sup>45</sup> – Joint examination of admissibility and merits**

1. When giving notice of the application to the respondent Contracting Party pursuant to Rule 54 § 2 (b), the Chamber may also decide to examine the admissibility and merits at the same time in accordance with Article 29 § 1 of the Convention. The parties shall be invited to include in their observations any submissions concerning just satisfaction and any proposals for a friendly settlement. The conditions laid down in Rules 60 and 62 shall apply, *mutatis mutandis*. The Court may, however, decide at any stage, if necessary, to take a separate decision on admissibility.
2. If no friendly settlement or other solution is reached and the Chamber is satisfied, in the light of the parties' arguments, that the case is admissible and ready for a determination on the merits, it shall immediately adopt a judgment including the Chamber's decision on admissibility, save in cases where it decides to take such a decision separately.

---

44 As amended by the Court on 17 June and 8 July 2002 and 14 January 2013.

45 Inserted by the Court on 17 June and 8 July 2002 and amended on 13 December 2004 and 13 November 2006.

**Inter-State and individual applications Rule 55 – Pleas of inadmissibility**

Any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application submitted as provided in Rule 51 or 54, as the case may be.

**Rule 56<sup>46</sup> – Decision of a Chamber**

1. The decision of the Chamber shall state whether it was taken unanimously or by a majority and shall be accompanied or followed by reasons.
2. The decision of the Chamber shall be communicated by the Registrar to the applicant. It shall also be communicated to the Contracting Party or Parties concerned and to any third party, including the Council of Europe Commissioner for Human Rights, where these have previously been informed of the application in accordance with the present Rules. If a friendly settlement is effected, the decision to strike an application out of the list of cases shall be forwarded to the Committee of Ministers in accordance with Rule 43 § 3.
3. Inserted by the Court on 17 June and 8 July 2002 and amended on 13 December 2004 and 13 November 2006. 2. As amended by the Court on 17 June and 8 July 2002 and 13 November 2006.

**Rule 57<sup>47</sup> – Language of the decision**

1. Unless the Court decides that a decision shall be given in both official languages, all decisions of Chambers shall be given either in English or in French.
2. Publication of such decisions in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

**Chapter V – Proceedings after the Admission of an Application****Rule 58<sup>48</sup> – Inter-State applications**

1. Once the Chamber has decided to admit an application made under Article 33 of the Convention, the President of the Chamber shall, after consulting the Contracting Parties concerned, lay down the time-limits for the filing of written observations on the merits and for the production of any further evidence. The President may however, with the agreement of the Contracting Parties concerned, direct that a written procedure is to be dispensed with.
2. A hearing on the merits shall be held if one or more of the Contracting Parties concerned so requests or if the Chamber so decides of its own motion. The President of the Chamber shall fix the oral procedure.

**Rule 59<sup>49</sup> – Individual applications**

1. Once an application made under Article 34 of the Convention has been declared admissible, the Chamber or its President may invite the parties to submit further evidence and written observations.
2. Unless decided otherwise, the parties shall be allowed the same time for submission of their observations.
3. The Chamber may decide, either at the request of a party or of its own motion, to hold a hearing on the merits if it considers that the discharge of its functions under the Convention so requires.
4. The President of the Chamber shall, where appropriate, fix the written and oral procedure.

**Rule 60<sup>50</sup> – Claims for just satisfaction**

1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.
2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant's observations on the merits unless the

---

46 As amended by the Court on 17 June and 8 July 2002 and 13 November 2006.

47 As amended by the Court on 17 June and 8 July 2002.

48 As amended by the Court on 17 June and 8 July 2002.

49 As amended by the Court on 17 June and 8 July 2002.

50 As amended by the Court on 13 December 2004.

President of the Chamber directs otherwise.

3. If the applicant fails to comply with the requirements set out in the preceding paragraphs the Chamber may reject the claims in whole or in part.
4. The applicant's claims shall be transmitted to the respondent Contracting Party for comment.

**Rule 61<sup>51</sup> – Pilot-judgment procedure**

1. The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications.
2.
  - a. Before initiating a pilot-judgment procedure, the Court shall first seek the views of the parties on whether the application under examination results from the existence of such a problem or dysfunction in the Contracting Party concerned and on the suitability of processing the application in accordance with that procedure.
  - b. A pilot-judgment procedure may be initiated by the Court of its own motion or at the request of one or both parties.
  - c. Any application selected for pilot-judgment treatment shall be processed as a matter of priority in accordance with Rule 41 of the Rules of Court.
3. The Court shall in its pilot judgment identify both the nature of the structural or systemic problem or other dysfunction as established as well as the type of remedial measures which the Contracting Party concerned is required to take at the domestic level by virtue of the operative provisions of the judgment.
4. The Court may direct in the operative provisions of the pilot judgment that the remedial measures referred to in paragraph 3 above be adopted within a specified time, bearing in mind the nature of the measures required and the speed with which the problem which it has identified can be remedied at the domestic level.
5. When adopting a pilot judgment, the Court may reserve the question of just satisfaction either in whole or in part pending the adoption by the respondent Contracting Party of the individual and general measures specified in the pilot judgment.
6.
  - a. As appropriate, the Court may adjourn the examination of all similar applications pending the adoption of the remedial measures required by virtue of the operative provisions of the pilot judgment.
  - b. The applicants concerned shall be informed in a suitable manner of the decision to adjourn. They shall be notified as appropriate of all relevant developments affecting their cases.
  - c. The Court may at any time examine an adjourned application where the interests of the proper administration of justice so require.
7. Where the parties to the pilot case reach a friendly-settlement agreement, such agreement shall comprise a declaration by the respondent Contracting Party on the implementation of the general measures identified in the pilot judgment as well as the redress to be afforded to other actual or potential applicants.
8. Subject to any decision to the contrary, in the event of the failure of the Contracting Party concerned to comply with the operative provisions of a pilot judgment, the Court shall resume its examination of the applications which have been adjourned in accordance with paragraph 6 above.
9. The Committee of Ministers, the Parliamentary Assembly of the Council of Europe, the Secretary General of the Council of Europe, and the Council of Europe Commissioner for Human Rights shall be informed of the adoption of a pilot judgment as well as of any other judgment in which the Court draws attention to the existence of a structural or systemic problem in a Contracting Party.
10. Information about the initiation of pilot-judgment procedures, the adoption of pilot judgments and their

---

51 Inserted by the Court on 21 February 2011.

execution as well as the closure of such procedures shall be published on the Court's website.

**Rule 62<sup>52</sup> – Friendly settlement**

1. Once an application has been declared admissible, the Registrar, acting on the instructions of the Chamber or its President, shall enter into contact with the parties with a view to securing a friendly settlement of the matter in accordance with Article 39 § 1 of the Convention. The Chamber shall take any steps that appear appropriate to facilitate such a settlement.
2. In accordance with Article 39 § 2 of the Convention, the friendly-settlement negotiations shall be confidential and without prejudice to the parties' arguments in the contentious proceedings. No written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be referred to or relied on in the contentious proceedings.
3. If the Chamber is informed by the Registrar that the parties have agreed to a friendly settlement, it shall, after verifying that the settlement has been reached on the basis of respect for human rights as defined in the Convention and the Protocols thereto, strike the case out of the Court's list in accordance with Rule 43 § 3.
4. Paragraphs 2 and 3 apply, *mutatis mutandis*, to the procedure under Rule 54A.

**Rule 62a<sup>53</sup> – Unilateral declaration**

1. a. Where an applicant has refused the terms of a friendly-settlement proposal made pursuant to Rule 62, the Contracting Party concerned may file with the Court a request to strike the application out of the list in accordance with Article 37 § 1 of the Convention.
- b. Such request shall be accompanied by a declaration clearly acknowledging that there has been a violation of the Convention in the applicant's case together with an undertaking to provide adequate redress and, as appropriate, to take necessary remedial measures.
- c. The filing of a declaration under paragraph 1 (b) of this Rule must be made in public and adversarial proceedings conducted separately from and with due respect for the confidentiality of any friendly-settlement proceedings referred to in Article 39 § 2 of the Convention and Rule 62 § 2.
2. Where exceptional circumstances so justify, a request and accompanying declaration may be filed with the Court even in the absence of a prior attempt to reach a friendly settlement.
3. If it is satisfied that the declaration offers a sufficient basis for finding that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue its examination of the application, the Court may strike it out of the list, either in whole or in part, even if the applicant wishes the examination of the application to be continued.
4. This Rule applies, *mutatis mutandis*, to the procedure under Rule 54A.

**CHAPTER VI – HEARINGS**

**Rule 63<sup>54</sup> – Public character of hearings**

1. Hearings shall be public unless, in accordance with paragraph 2 of this Rule, the Chamber in exceptional circumstances decides otherwise, either of its own motion or at the request of a party or any other person concerned.
2. The press and the public may be excluded from all or part of a hearing in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Chamber in special circumstances where publicity would prejudice the interests of justice.
3. Any request for a hearing to be held in camera made under paragraph 1 of this Rule must include reasons and specify whether it concerns all or only part of the hearing.

**Rule 64<sup>55</sup> – Conduct of hearings**

1. The President of the Chamber shall organise and direct hearings and shall prescribe the order in which those

---

52 As amended by the Court on 17 June and 8 July 2002 and 13 November 2006.

53 Inserted by the Court on 2 April 2012.

54 As amended by the Court on 7 July 2003.

55 As amended by the Court on 7 July 2003.

appearing before the Chamber shall be called upon to speak.

- Any judge may put questions to any person appearing before the Chamber.

#### **Rule 65<sup>56</sup> – Failure to appear**

Where a party or any other person due to appear fails or declines to do so, the Chamber may, provided that it is satisfied that such a course is consistent with the proper administration of justice, nonetheless proceed with the hearing.

#### **Rules 66 to 69 deleted Rule 70<sup>57</sup> – Verbatim record of a hearing**

1. If the President of the Chamber so directs, the Registrar shall be responsible for the making of a verbatim record of the hearing. Any such record shall include:
  - the composition of the Chamber;
  - a list of those appearing before the Chamber;
  - the text of the submissions made, questions put and replies given;
  - the text of any ruling delivered during the hearing.
- If all or part of the verbatim record is in a non-official language, the Registrar shall arrange for its translation into one of the official languages.
- The representatives of the parties shall receive a copy of the verbatim record in order that they may, subject to the control of the Registrar or the President of the Chamber, make corrections, but in no case may such corrections affect the sense and bearing of what was said. The Registrar shall lay down, in accordance with the instructions of the President of the Chamber, the time-limits granted for this purpose.
- The verbatim record, once so corrected, shall be signed by the President of the Chamber and the Registrar and shall then constitute certified matters of record.

### **CHAPTER VII – PROCEEDINGS BEFORE THE GRAND CHAMBER**

#### **Rule 71<sup>58</sup> – Applicability of procedural provisions**

- Any provisions governing proceedings before the Chambers shall apply, *mutatis mutandis*, to proceedings before the Grand Chamber.
- The powers conferred on a Chamber by Rules 54 § 5 and 59 § 3 in relation to the holding of a hearing may, in proceedings before the Grand Chamber, also be exercised by the President of the Grand Chamber.

#### **Rule 72<sup>59</sup> – Relinquishment of jurisdiction in favour of the Grand Chamber**

- Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, the Chamber may relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case has objected in accordance with paragraph 4 of this Rule.
- Where the resolution of a question raised in a case before the Chamber might have a result inconsistent with the Court's case-law, the Chamber shall relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case has objected in accordance with paragraph 4 of this Rule.
- Reasons need not be given for the decision to relinquish.
- The Registrar shall notify the parties of the Chamber's intention to relinquish jurisdiction. The parties shall have one month from the date of that notification within which to file at the Registry a duly reasoned objection. An objection which does not fulfil these conditions shall be considered invalid by the Chamber.

#### **Rule 73 – Request by a party for referral of a case to the Grand Chamber**

- In accordance with Article 43 of the Convention, any party to a case may exceptionally, within a period of three months from the date of delivery of the judgment of a Chamber, file in writing at the Registry a request

---

<sup>56</sup> As amended by the Court on 7 July 2003.

<sup>57</sup> As amended by the Court on 17 June and 8 July 2002.

<sup>58</sup> As amended by the Court on 17 June and 8 July 2002.

<sup>59</sup> As amended by the Court on 6 February 2013.

that the case be referred to the Grand Chamber. The party shall specify in its request the serious question affecting the interpretation or application of the Convention or the Protocols thereto, or the serious issue of general importance, which in its view warrants consideration by the Grand Chamber.

2. A panel of five judges of the Grand Chamber constituted in accordance with Rule 24 § 5 shall examine the request solely on the basis of the existing case file. It shall accept the request only if it considers that the case does raise such a question or issue. Reasons need not be given for a refusal of the request.
3. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

## **CHAPTER VIII – JUDGMENTS**

### **Rule 74<sup>60</sup> – Contents of the judgment**

1. A judgment as referred to in Articles 28, 42 and 44 of the Convention shall contain
  - a. the names of the President and the other judges constituting the Chamber or the Committee concerned, and the name of the Registrar or the Deputy Registrar;
  - b. the dates on which it was adopted and delivered; (c) a description of the parties; (d) the names of the Agents, advocates or advisers of the parties; (e) an account of the procedure followed; (f) the facts of the case; (g) a summary of the submissions of the parties; (h) the reasons in point of law; (i) the operative provisions; (j) the decision, if any, in respect of costs; (k) the number of judges constituting the majority; (l) where appropriate, a statement as to which text is authentic.
2. Any judge who has taken part in the consideration of the case by a Chamber or by the Grand Chamber shall be entitled to annex to the judgment either a separate opinion, concurring with or dissenting from that judgment, or a bare statement of dissent.

### **Rule 75<sup>61</sup> – Ruling on just satisfaction**

1. Where the Chamber or the Committee finds that there has been a violation of the Convention or the Protocols thereto, it shall give in the same judgment a ruling on the application of Article 41 of the Convention if a specific claim has been submitted in accordance with Rule 60 and the question is ready for decision; if the question is not ready for decision, the Chamber or the Committee shall reserve it in whole or in part and shall fix the further procedure.
2. For the purposes of ruling on the application of Article 41 of the Convention, the Chamber or the Committee shall, as far as possible, be composed of those judges who sat to consider the merits of the case. Where it is not possible to constitute the original Chamber or Committee, the President of the Section shall complete or compose the Chamber or Committee by drawing lots.
3. The Chamber or the Committee may, when affording just satisfaction under Article 41 of the Convention, direct that if settlement is not made within a specified time, interest is to be payable on any sums awarded.
4. If the Court is informed that an agreement has been reached between the injured party and the Contracting Party liable, it shall verify the equitable nature of the agreement and, where it finds the agreement to be equitable, strike the case out of the list in accordance with Rule 43 § 3.

### **Rule 76<sup>62</sup> – Language of the judgment**

1. Unless the Court decides that a judgment shall be given in both official languages, all judgments shall be given either in English or in French.
2. Publication of such judgments in the official reports of the Court, as provided for in Rule 78, shall be in both official languages of the Court.

### **Rule 77<sup>63</sup> – Signature, delivery and notification of the judgment**

---

60 As amended by the Court on 13 November 2006.

61 As amended by the Court on 13 December 2004 and 13 November 2006.

62 As amended by the Court on 17 June and 8 July 2002.

63 As amended by the Court on 13 November 2006 and 1 December 2008.

1. Judgments shall be signed by the President of the Chamber or the Committee and the Registrar.
2. The judgment adopted by a Chamber may be read out at a public hearing by the President of the Chamber or by another judge delegated by him or her. The Agents and representatives of the parties shall be informed in due time of the date of the hearing. Otherwise, and in respect of judgments adopted by Committees, the notification provided for in paragraph 3 of this Rule shall constitute delivery of the judgment.
3. The judgment shall be transmitted to the Committee of Ministers. The Registrar shall send copies to the parties, to the Secretary General of the Council of Europe, to any third party, including the Council of Europe Commissioner for Human Rights, and to any other person directly concerned. The original copy, duly signed and sealed, shall be placed in the archives of the Court.

#### **Rule 78 – Publication of judgments and other documents**

In accordance with Article 44 § 3 of the Convention, final judgments of the Court shall be published, under the responsibility of the Registrar, in an appropriate form. The Registrar shall in addition be responsible for the publication of official reports of selected judgments and decisions and of any document which the President of the Court considers it useful to publish.

#### **Rule 79 – Request for interpretation of a judgment**

1. A party may request the interpretation of a judgment within a period of one year following the delivery of that judgment.
2. The request shall be filed with the Registry. It shall state precisely the point or points in the operative provisions of the judgment on which interpretation is required.
3. The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.
4. If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

#### **Rule 80 – Request for revision of a judgment**

1. A party may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when a judgment was delivered, was unknown to the Court and could not reasonably have been known to that party, request the Court, within a period of six months after that party acquired knowledge of the fact, to revise that judgment.
2. The request shall mention the judgment of which revision is requested and shall contain the information necessary to show that the conditions laid down in paragraph 1 of this Rule have been complied with. It shall be accompanied by a copy of all supporting documents. The request and supporting documents shall be filed with the Registry.
3. The original Chamber may decide of its own motion to refuse the request on the ground that there is no reason to warrant considering it. Where it is not possible to constitute the original Chamber, the President of the Court shall complete or compose the Chamber by drawing lots.
4. If the Chamber does not refuse the request, the Registrar shall communicate it to the other party or parties and shall invite them to submit any written comments within a time-limit laid down by the President of the Chamber. The President of the Chamber shall also fix the date of the hearing should the Chamber decide to hold one. The Chamber shall decide by means of a judgment.

#### **Rule 81 – Rectification of errors in decisions and judgments**

Without prejudice to the provisions on revision of judgments and on restoration to the list of applications, the Court may, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious mistakes.

### **CHAPTER IX – ADVISORY OPINIONS**

#### **Rule 82**

In proceedings relating to advisory opinions the Court shall apply, in addition to the provisions of Articles 47,

48 and 49 of the Convention, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

**Rule 83<sup>64</sup>**

The request for an advisory opinion shall be filed with the Registrar. It shall state fully and precisely the question on which the opinion of the Court is sought, and also

- a. the date on which the Committee of Ministers adopted the decision referred to in Article 47 § 3 of the Convention;
- b. the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.
- c. The request shall be accompanied by all documents likely to elucidate the question.

**Rule 84<sup>65</sup>**

1. On receipt of a request, the Registrar shall transmit a copy of it and of the accompanying documents to all members of the Court.
2. The Registrar shall inform the Contracting Parties that they may submit written comments on the request.

**Rule 85<sup>66</sup>**

1. The President of the Court shall lay down the time-limits for filing written comments or other documents.
2. Written comments or other documents shall be filed with the Registrar. The Registrar shall transmit copies of them to all the members of the Court, to the Committee of Ministers and to each of the Contracting Parties.

**Rule 86**

After the close of the written procedure, the President of the Court shall decide whether the Contracting Parties which have submitted written comments are to be given an opportunity to develop them at an oral hearing held for the purpose.

**Rule 87<sup>67</sup>**

1. A Grand Chamber shall be constituted to consider the request for an advisory opinion.
2. If the Grand Chamber considers that the request is not within its competence as defined in Article 47 of the Convention, it shall so declare in a reasoned decision.

**Rule 88**

1. Reasoned decisions and advisory opinions shall be given by a majority vote of the Grand Chamber. They shall mention the number of judges constituting the majority.
2. Any judge may, if he or she so desires, attach to the reasoned decision or advisory opinion of the Court either a separate opinion, concurring with or dissenting from the reasoned decision or advisory opinion, or a bare statement of dissent.

**Rule 89<sup>68</sup>**

The reasoned decision or advisory opinion may be read out in one of the two official languages by the President of the Grand Chamber, or by another judge delegated by the President, at a public hearing, prior notice having

---

64 As amended by the Court on 4 July 2005.

65 As amended by the Court on 4 July 2005.

66 As amended by the Court on 4 July 2005.

67 As amended by the Court on 4 July 2005.

68 As amended by the Court on 4 July 2005.

been given to the Committee of Ministers and to each of the Contracting Parties. Otherwise the notification provided for in Rule 90 shall constitute delivery of the opinion or reasoned decision.

**Rule 90<sup>69</sup>**

The advisory opinion or reasoned decision shall be signed by the President of the Grand Chamber and by the Registrar. The original copy, duly signed and sealed, shall be placed in the archives of the Court. The Registrar shall send certified copies to the Committee of Ministers, to the Contracting Parties and to the Secretary General of the Council of Europe.

**CHAPTER X<sup>70</sup> – PROCEEDINGS UNDER ARTICLE 46 §§ 3, 4 AND 5 OF THE CONVENTION**

**Sub-chapter I – Proceedings under Article 46 § 3 of the Convention**

**Rule 91**

Any request for interpretation under Article 46 § 3 of the Convention shall be filed with the Registrar. The request shall state fully and precisely the nature and source of the question of interpretation that has hindered execution of the judgment mentioned in the request and shall be accompanied by

- a. information about the execution proceedings, if any, before the Committee of Ministers in respect of the judgment;
- b. a copy of the decision referred to in Article 46 § 3 of the Convention;
- c. the name and address of the person or persons appointed by the Committee of Ministers to give the Court any explanations which it may require.

**Rule 92**

1. The request shall be examined by the Grand Chamber, Chamber or Committee which rendered the judgment in question.
2. Where it is not possible to constitute the original Grand Chamber, Chamber or Committee, the President of the Court shall complete or compose it by drawing lots.

**Rule 93**

The decision of the Court on the question of interpretation referred to it by the Committee of Ministers is final. No separate opinion of the judges may be delivered thereto. Copies of the ruling shall be transmitted to the Committee of Ministers and to the parties concerned as well as to any third party, including the Council of Europe Commissioner for Human Rights.

**Sub-chapter II – Proceedings under Article 46 §§ 4 and 5 of the Convention**

**Rule 94**

In proceedings relating to a referral to the Court of a question whether a Contracting Party has failed to fulfil its obligation under Article 46 § 1 of the Convention the Court shall apply, in addition to the provisions of Article 31 (b) and Article 46 §§ 4 and 5 of the Convention, the provisions which follow. It shall also apply the other provisions of these Rules to the extent to which it considers this to be appropriate.

**Rule 95**

Any request made pursuant to Article 46 § 4 of the Convention shall be reasoned and shall be filed with the Registrar. It shall be accompanied by

- a. the judgment concerned;
- b. information about the execution proceedings before the Committee of Ministers in respect of the judgment concerned, including, if any, the views expressed in writing by the parties concerned and communications submitted in those proceedings;
- c. copies of the formal notice served on the respondent Contracting Party or Parties and the decision referred to in Article 46 § 4 of the Convention;
- d. the name and address of the person or persons appointed by the Committee of Ministers to give the

---

<sup>69</sup> Court any explanations which it may require;  
As amended by the Court on 4 July 2005.

<sup>70</sup> Inserted by the Court on 13 November 2006 and 14 May 2007.

- e. copies of all other documents likely to elucidate the question.

**Rule 96**

A Grand Chamber shall be constituted, in accordance with Rule 24 § 2 (g), to consider the question referred to the Court.

**Rule 97**

The President of the Grand Chamber shall inform the Committee of Ministers and the parties concerned that they may submit written comments on the question referred.

**Rule 98**

1. The President of the Grand Chamber shall lay down the time-limits for filing written comments or other documents.
2. The Grand Chamber may decide to hold a hearing.

**Rule 99**

The Grand Chamber shall decide by means of a judgment. Copies of the judgment shall be transmitted to the Committee of Ministers and to the parties concerned as well as to any third party, including the Council of Europe Commissioner for Human Rights.

**CHAPTER XI – LEGAL AID**

**Rule 100 (former Rule 91)**

1. The President of the Chamber may, either at the request of an applicant having lodged an application under Article 34 of the Convention or of his or her own motion, grant free legal aid to the applicant in connection with the presentation of the case from the moment when observations in writing on the admissibility of that application are received from the respondent Contracting Party in accordance with Rule 54 § 2 b, or where the time-limit for their submission has expired.
2. Subject to Rule 105, where the applicant has been granted legal aid in connection with the presentation of his or her case before the Chamber, that grant shall continue in force for the purposes of his or her representation before the Grand Chamber.

**Rule 101 (former Rule 92)**

Legal aid shall be granted only where the President of the Chamber is satisfied (a) that it is necessary for the proper conduct of the case before the Chamber; (b) that the applicant has insufficient means to meet all or part of the costs entailed.

**Rule 102 (former Rule 93<sup>71</sup>)**

1. In order to determine whether or not applicants have sufficient means to meet all or part of the costs entailed, they shall be required to complete a form of declaration stating their income, capital assets and any financial commitments in respect of dependants, or any other financial obligations. The declaration shall be certified by the appropriate domestic authority or authorities.
2. The President of the Chamber may invite the Contracting Party concerned to submit its comments in writing.
3. After receiving the information mentioned in paragraph 1 of this Rule, the President of the Chamber shall decide whether or not to grant legal aid. The Registrar shall inform the parties accordingly.

**Rule 103 (former Rule 94)**

1. Fees shall be payable to the advocates or other persons appointed in accordance with Rule 36 § 4. Fees may, where appropriate, be paid to more than one such representative.

---

71 As amended by the Court on 29 May 2006.

2. Legal aid may be granted to cover not only representatives' fees but also travelling and subsistence expenses and other necessary expenses incurred by the applicant or appointed representative.

**Rule 104 (former Rule 95)**

On a decision to grant legal aid, the Registrar shall fix (a) the rate of fees to be paid in accordance with the legal-aid scales in force; (b) the level of expenses to be paid.

**Rule 105 (former Rule 96)**

The President of the Chamber may, if satisfied that the conditions stated in Rule 101 are no longer fulfilled, revoke or vary a grant of legal aid at any time.

**TITLE III – TRANSITIONAL RULES**

**Former rules 97 and 98 deleted**

**Rule 106 – Relations between the Court and the Commission (former Rule 99)**

1. In cases brought before the Court under Article 5 §§ 4 and 5 of Protocol No. 11 to the Convention, the Court may invite the Commission to delegate one or more of its members to take part in the consideration of the case before the Court.
2. In cases referred to in paragraph 1 of this Rule, the Court shall take into consideration the report of the Commission adopted pursuant to former Article 31 of the Convention.
3. Unless the President of the Chamber decides otherwise, the said report shall be made available to the public through the Registrar as soon as possible after the case has been brought before the Court.
4. The remainder of the case file of the Commission, including all pleadings, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No. 11 shall remain confidential unless the President of the Chamber decides otherwise.
5. In cases where the Commission has taken evidence but has been unable to adopt a report in accordance with former Article 31 of the Convention, the Court shall take into consideration the verbatim records, documentation and opinion of the Commission's delegations arising from such investigations.

**Rule 107 – Chamber and Grand Chamber proceedings (former Rule 100)**

1. In cases referred to the Court under Article 5 § 4 of Protocol No. 11 to the Convention, a panel of the Grand Chamber constituted in accordance with Rule 24 § 5 shall determine, solely on the basis of the existing case file, whether a Chamber or the Grand Chamber is to decide the case.
2. If the case is decided by a Chamber, the judgment of the Chamber shall, in accordance with Article 5 § 4 of Protocol No. 11, be final and Rule 73 shall be inapplicable.
3. Cases transmitted to the Court under Article 5 § 5 of Protocol No. 11 shall be forwarded by the President of the Court to the Grand Chamber.
4. For each case transmitted to the Grand Chamber under Article 5 § 5 of Protocol No. 11, the Grand Chamber shall be completed by judges designated by rotation within one of the groups mentioned in Rule 24 § 3<sup>72</sup>, the cases being allocated to the groups on an alternate basis.

**Rule 108 – Grant of legal aid (former Rule 101)**

Subject to Rule 96, in cases brought before the Court under Article 5 §§ 2 to 5 of Protocol No. 11 to the Convention, a grant of legal aid made to an applicant in the proceedings before the Commission or the former Court shall continue in force for the purposes of his or her representation before the Court.

**Rule 109 – Request for revision of a judgment (former Rule 102<sup>73</sup>)**

1. Where a party requests revision of a judgment delivered by the former Court, the President of the Court shall assign the request to one of the Sections in accordance with the conditions laid down in Rule 51 or 52, as the case may be.

---

<sup>72</sup> As amended by the Court on 13 December 2004.

<sup>73</sup> As amended by the Court on 13 December 2004.

2. The President of the relevant Section shall, notwithstanding Rule 80 § 3, constitute a new Chamber to consider the request.
3. The Chamber to be constituted shall include as *ex officio* members
  - a. the President of the Section; and, whether or not they are members of the relevant Section,
  - b. the judge elected in respect of any Contracting Party concerned or, if he or she is unable to sit, any judge appointed under Rule 29;
  - c. any judge of the Court who was a member of the original Chamber that delivered the judgment in the former Court.
4.
  - a. The other members of the Chamber shall be designated by the President of the Section by means of a drawing of lots from among the members of the relevant Section.
  - b. The members of the Section who are not so designated shall sit in the case as substitute judges.

#### **TITLE IV – FINAL CLAUSES**

##### **Rule 110 – Amendment or suspension of a Rule (former Rule 103)**

1. Any Rule may be amended upon a motion made after notice where such a motion is carried at the next session of the plenary Court by a majority of all the members of the Court. Notice of such a motion shall be delivered in writing to the Registrar at least one month before the session at which it is to be discussed. On receipt of such a notice of motion, the Registrar shall inform all members of the Court at the earliest possible moment.
2. A Rule relating to the internal working of the Court may be suspended upon a motion made without notice, provided that this decision is taken unanimously by the Chamber concerned. The suspension of a Rule shall in this case be limited in its operation to the particular purpose for which it was sought.

##### **Rule 111 – Entry into force of the Rules (former Rule 104<sup>74</sup>)**

The present Rules shall enter into force on 1 November 1998.

#### **ANNEX TO THE RULES<sup>75</sup> (CONCERNING INVESTIGATIONS)**

##### **Rule A1 – Investigative measures**

1. The Chamber may, at the request of a party or of its own motion, adopt any investigative measure which it considers capable of clarifying the facts of the case. The Chamber may, *inter alia*, invite the parties to produce documentary evidence and decide to hear as a witness or expert or in any other capacity any person whose evidence or statements seem likely to assist it in carrying out its tasks.
2. The Chamber may also ask any person or institution of its choice to express an opinion or make a written report on any matter considered by it to be relevant to the case.
3. After a case has been declared admissible or, exceptionally, before the decision on admissibility, the Chamber may appoint one or more of its members or of the other judges of the Court, as its delegate or delegates, to

---

74 The amendments adopted on 8 December 2000 entered into force immediately. The amendments adopted on 17 June 2002 and 8 July 2002 entered into force on 1 October 2002. The amendments adopted on 7 July 2003 entered into force on 1 November 2003. The amendments adopted on 13 December 2004 entered into force on 1 March 2005. The amendments adopted on 4 July 2005 entered into force on 3 October 2005. The amendments adopted on 7 November 2005 entered into force on 1 December 2005. The amendments adopted on 29 May 2006 entered into force on 1 July 2006. The amendments adopted on 14 May 2007 entered into force on 1 July 2007. The amendments adopted on 11 December 2007, 22 September and 1 December 2008 entered into force on 1 January 2009. The amendments adopted on 29 June 2009 entered into force on 1 July 2009. The amendments relating to Protocol No. 14 to the Convention, adopted on 13 November 2006 and 14 May 2007, entered into force on 1 June 2010. The amendments adopted on 21 February 2011 entered into force on 1 April 2011. The amendments adopted on 16 January 2012 entered into force on 1 February 2012. The amendments adopted on 20 February 2012 entered into force on 1 May 2012. The amendments adopted on 2 April 2012 entered into force on 1 September 2012. The amendments adopted on 14 January and 6 February 2013 entered into force on 1 May 2013. The amendments adopted on 6 May 2013 entered into force on 1 July 2013 and 1 January 2014. The amendments adopted on 14 April and 23 June 2014 entered into force on 1 July 2014.

75 Inserted by the Court on 7 July 2003.

conduct an inquiry, carry out an on-site investigation or take evidence in some other manner. The Chamber may also appoint any person or institution of its choice to assist the delegation in such manner as it sees fit.

4. The provisions of this Chapter concerning investigative measures by a delegation shall apply, *mutatis mutandis*, to any such proceedings conducted by the Chamber itself.
5. Proceedings forming part of any investigation by a Chamber or its delegation shall be held in camera, save in so far as the President of the Chamber or the head of the delegation decides otherwise.
6. The President of the Chamber may, as he or she considers appropriate, invite, or grant leave to, any third party to participate in an investigative measure. The President shall lay down the conditions of any such participation and may limit that participation if those conditions are not complied with.

#### **Rule A2 – Obligations of the parties as regards investigative measures**

1. The applicant and any Contracting Party concerned shall assist the Court as necessary in implementing any investigative measures.
2. The Contracting Party on whose territory on-site proceedings before a delegation take place shall extend to the delegation the facilities and cooperation necessary for the proper conduct of the proceedings. These shall include, to the full extent necessary, freedom of movement within the territory and all adequate security arrangements for the delegation, for the applicant and for all witnesses, experts and others who may be heard by the delegation. It shall be the responsibility of the Contracting Party concerned to take steps to ensure that no adverse consequences are suffered by any person or organisation on account of any evidence given, or of any assistance provided, to the delegation.

#### **Rule A3 – Failure to appear before a delegation**

Where a party or any other person due to appear fails or declines to do so, the delegation may, provided that it is satisfied that such a course is consistent with the proper administration of justice, nonetheless continue with the proceedings.

#### **Rule A4 – Conduct of proceedings before a delegation**

1. The delegates shall exercise any relevant power conferred on the Chamber by the Convention or these Rules and shall have control of the proceedings before them.
2. The head of the delegation may decide to hold a preparatory meeting with the parties or their representatives prior to any proceedings taking place before the delegation.

#### **Rule A5 – Convocation of witnesses, experts and of other persons to proceedings before a delegation**

1. Witnesses, experts and other persons to be heard by the delegation shall be summoned by the Registrar.
2. The summons shall indicate
  - a. the case in connection with which it has been issued;
  - b. the object of the inquiry, expert opinion or other investigative measure ordered by the Chamber or the President of the Chamber;
  - c. any provisions for the payment of sums due to the person summoned.
3. The parties shall provide, in so far as possible, sufficient information to establish the identity and addresses of witnesses, experts or other persons to be summoned.
4. In accordance with Rule 37 § 2, the Contracting Party in whose territory the witness resides shall be responsible for servicing any summons sent to it by the Chamber for service. In the event of such service not being possible, the Contracting Party shall give reasons in writing. The Contracting Party shall further take all reasonable steps to ensure the attendance of persons summoned who are under its authority or control.
5. The head of the delegation may request the attendance of witnesses, experts and other persons during on-site proceedings before a delegation. The Contracting Party on whose territory such proceedings are held shall, if so requested, take all reasonable steps to facilitate that attendance.
6. Where a witness, expert or other person is summoned at the request or on behalf of a Contracting Party, the costs of their appearance shall be borne by that Party unless the Chamber decides otherwise. The costs of the appearance of any such person who is in detention in the Contracting Party on whose territory on-site proceedings before a delegation take place shall be borne by that Party unless the Chamber decides otherwise. In all other cases, the Chamber shall decide whether such costs are to be borne by the Council of Europe or

awarded against the applicant or third party at whose request or on whose behalf the person appears. In all cases, such costs shall be taxed by the President of the Chamber.

**Rule A6 – Oath or solemn declaration by witnesses and experts heard by a delegation**

1. After the establishment of the identity of a witness and before testifying, each witness shall take the oath or make the following solemn declaration:  
“I swear” – or “I solemnly declare upon my honour and conscience” – “that I shall speak the truth, the whole truth and nothing but the truth.”  
This act shall be recorded in minutes.
2. After the establishment of the identity of the expert and before carrying out his or her task for the delegation, every expert shall take the oath or make the following solemn declaration: “I swear” – or “I solemnly declare” – “that I will discharge my duty as an expert honourably and conscientiously.”  
This act shall be recorded in minutes.

**Rule A7 – Hearing of witnesses, experts and other persons by a delegation**

1. Any delegate may put questions to the Agents, advocates or advisers of the parties, to the applicant, witnesses and experts, and to any other persons appearing before the delegation.
2. Witnesses, experts and other persons appearing before the delegation may, subject to the control of the head of the delegation, be examined by the Agents and advocates or advisers of the parties. In the event of an objection to a question put, the head of the delegation shall decide.
3. Save in exceptional circumstances and with the consent of the head of the delegation, witnesses, experts and other persons to be heard by a delegation will not be admitted to the hearing room before they give evidence.
4. The head of the delegation may make special arrangements for witnesses, experts or other persons to be heard in the absence of the parties where that is required for the proper administration of justice.
5. The head of the delegation shall decide in the event of any dispute arising from an objection to a witness or expert. The delegation may hear for information purposes a person who is not qualified to be heard as a witness or expert.

**Rule A8 – Verbatim record of proceedings before a delegation**

1. A verbatim record shall be prepared by the Registrar of any proceedings concerning an investigative measure by a delegation. The verbatim record shall include:
  - a. the composition of the delegation;
  - b. a list of those appearing before the delegation, that is to say Agents, advocates and advisers of the parties taking part;
  - c. the surname, forenames, description and address of each witness, expert or other person heard;
  - d. the text of statements made, questions put and replies given;
  - e. the text of any ruling delivered during the proceedings before the delegation or by the head of the delegation.
2. If all or part of the verbatim record is in a non-official language, the Registrar shall arrange for its translation into one of the official languages.
3. The representatives of the parties shall receive a copy of the verbatim record in order that they may, subject to the control of the Registrar or the head of the delegation, make corrections, but in no case may such corrections affect the sense and bearing of what was said. The Registrar shall lay down, in accordance with the instructions of the head of the delegation, the time-limits granted for this purpose.

4. The verbatim record, once so corrected, shall be signed by the head of the delegation and the Registrar and shall then constitute certified matters of record.

## **PRACTICE DIRECTIONS**

### **REQUESTS FOR INTERIM MEASURES<sup>76</sup>**

#### **(Rule 39 of the Rules of Court)**

By virtue of Rule 39 of the Rules of Court, the Court may issue interim measures which are binding on the State concerned. Interim measures are only applied in exceptional cases.

The Court will only issue an interim measure against a Member State where, having reviewed all the relevant information, it considers that the applicant faces a real risk of serious, irreversible harm if the measure is not applied.

Applicants or their legal representatives<sup>77</sup> who make a request for an interim measure pursuant to Rule 39 of the Rules of Court should comply with the requirements set out below.

#### **I. Accompanying information**

Any request lodged with the Court must state reasons. The applicant must in particular specify in detail the grounds on which his or her particular fears are based, the nature of the alleged risks and the Convention provisions alleged to have been violated.

A mere reference to submissions in other documents or domestic proceedings is not sufficient. It is essential that requests be accompanied by all necessary supporting documents, in particular relevant domestic court, tribunal or other decisions, together with any other material which is considered to substantiate the applicant's allegations.

The Court will not necessarily contact applicants whose request for interim measures is incomplete, and requests which do not include the information necessary to make a decision will not normally be submitted for a decision.

Where the case is already pending before the Court, reference should be made to the application number allocated to it.

In cases concerning extradition or deportation, details should be provided of the expected date and time of the removal, the applicant's address or place of detention and his or her official case- reference number. The Court must be notified of any change to those details (date and time of removal, address etc.) as soon as possible.

The Court may decide to take a decision on the admissibility of the case at the same time as considering the request for interim measures.

#### **II. Requests to be made by facsimile or letter<sup>78</sup>**

Requests for interim measures under Rule 39 should be sent by facsimile or by post. The Court will not deal with requests sent by e-mail. The request should, where possible, be in one of the official languages of the Contracting Parties. All requests should be marked as follows in bold on the face of the request: "Rule 39 – Urgent Person to contact (name and contact details): ... [*In deportation or extradition cases*] Date and time of removal

---

76 Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 5 March 2003 and amended on 16 October 2009 and on 7 July 2011.

77 It is essential that full contact details be provided.

78 According to the degree of urgency and bearing in mind that requests by letter must not be sent by standard post.

and destination: ...”

### III. Making requests in good time

Requests for interim measures should normally be received as soon as possible after the final domestic decision has been taken, in order to enable the Court and its Registry to have sufficient time to examine the matter. The Court may not be able to deal with requests in removal cases received less than a working day before the planned time of removal.<sup>79</sup>

Where the final domestic decision is imminent and there is a risk of immediate enforcement, especially in extradition or deportation cases, applicants and their representatives should submit the request for interim measures without waiting for that decision, indicating clearly the date on which it will be taken and that the request is subject to the final domestic decision being negative.

### IV. Domestic measures with suspensive effect

The Court is not an appeal tribunal from domestic tribunals, and applicants in extradition and expulsion cases should pursue domestic avenues which are capable of suspending removal before applying to the Court for interim measures. Where it remains open to an applicant to pursue domestic remedies which have suspensive effect, the Court will not apply Rule 39 to prevent removal.

### V. Follow-up

Applicants who apply for an interim measure under Rule 39 should ensure that they reply to correspondence from the Court's Registry. In particular, where a measure has been refused, they should inform the Court whether they wish to pursue the application. Where a measure has been applied, they must keep the Court regularly and promptly informed about the state of any continuing domestic proceedings. Failure to do so may lead to the case being struck out of the Court's list of cases.

## INSTITUTION OF PROCEEDINGS<sup>80</sup>

### (Individual applications under Article 34 of the Convention) I. General

1. An application under Article 34 of the Convention must be submitted in writing. No application may be made by telephone. Except as provided otherwise by Rule 47 of the Rules of Court, only a completed application form will interrupt the running of the six-month time-limit set out in Article 35 § 1 of the Convention. An application form is available online from the Court's website<sup>81</sup>. Applicants are strongly encouraged to download and print the application form instead of contacting the Court for a paper copy to be sent by post. By doing this, applicants will save time and will be in a better position to ensure that their completed application form is submitted within the six-month time-limit. Help with the completion of the various fields is available online.
2. An application must be sent to the following address: The Registrar European Court of Human Rights Council of Europe F-67075 Strasbourg Cedex
3. Applications sent by fax will not interrupt the running of the six-month time-limit set out in Article 35 § 1 of the Convention. Applicants must also dispatch the signed original by post within the same six-month time-limit.
4. An applicant should be diligent in corresponding with the Court's Registry. A delay in replying or failure to reply may be regarded as a sign that the applicant is no longer interested in pursuing his or her application.

### II. Form and contents

5. The submissions in the application form concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the time-limit set out in Article 35 § 1 of the Convention must

79 The list of public and other holidays when the Court's Registry is closed can be consulted on the Court's internet site: [www.echr.coe.int/contact](http://www.echr.coe.int/contact).

80 Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 and amended on 22 September 2008, 24 June 2009 and 6 November 2013. This practice direction supplements Rules 45 and 47.

81 [www.echr.coe.int](http://www.echr.coe.int)

respect the conditions set out in Rule 47 of the Rules of Court. Any additional submissions must not exceed 20 pages (see Rule 47 § 2) and should:

- a. be in an A4 page format with a margin of not less than 3.5 cm;
  - b. be wholly legible and, if typed, the text should be at least 12 pt in the body of the document and 10 pt in the footnotes, with one and a half line spacing;
  - c. have all numbers expressed as figures;
  - d. have pages numbered consecutively;
  - e. be divided into numbered paragraphs;
  - f. be divided into headings corresponding to “Facts”, “Complaints or statements of violations”, “Information about the exhaustion of domestic remedies and compliance with the time-limit set out in Article 35 § 1”.
6. All fields in the application form must be filled in by use of words. Avoid using symbols, signs or abbreviations. Explain in words even if the answer is negative or the question does not appear relevant.
  7. An applicant who has already had a previous application or applications decided by the Court or who has an application or applications pending before the Court must inform the Registry accordingly, stating the application number or numbers.
  8.
    - a. Where an applicant does not wish to have his or her identity disclosed, he or she should state the reasons for his or her request in writing, pursuant to Rule 47 § 4.
    - b. The applicant should also state whether, in the event of anonymity being authorised by the President of the Chamber, he or she wishes to be designated by his or her initials or by a single letter (e.g., “X”, “Y”, “Z”, etc.).
  9. The applicant or the applicant's representative must sign the application form. If represented, the applicant must sign the letter of authority, which forms part of the application form. Neither the application form nor the letter can be signed *per procuracionem* (p.p.).

### III. Grouped applications and multiple applicants

10. Where an applicant or representative lodges complaints on behalf of two or more applicants whose applications are based on different facts, a separate application form should be filled in for each individual giving all the information required. The documents relevant to each applicant should also be annexed to that individual's application form.
11. Where there are more than five applicants, the representative should provide – in addition to the application forms and documents – a table setting out for each applicant the required personal information, an example of which may be downloaded from the Court's website<sup>82</sup>. Where the representative is a lawyer, this table should also be provided in electronic form.
12. In cases of large groups of applicants or applications, applicants or their representatives may be directed by the Court to provide the text of their submissions or documents by electronic or other means. Other directions may be given by the Court as to steps required to facilitate the effective and speedy processing of applications.

### IV. Failure to comply with requests for information or directions

13. Failure, within the specified time-limit, to provide further information or documents at the Court's request or to comply with the Court's directions as to the form or manner of the lodging of an application – including grouped applications or applications by multiple applicants – may result, depending on the stage reached

---

82 [www.echr.coe.int](http://www.echr.coe.int).

in the proceedings, in the complaint(s) not being examined by the Court or the application(s) being declared inadmissible or struck out of the Court's list of cases.

## **WRITTEN PLEADINGS<sup>83</sup>**

### **I. FILING OF PLEADINGS GENERAL**

1. A pleading must be filed with the Registry within the time-limit fixed in accordance with Rule 38 of the Rules of Court and in the manner described in paragraph 2 of that Rule.
2. The date on which a pleading or other document is received at the Court's Registry will be recorded on that document by a receipt stamp.
3. With the exception of pleadings and documents for which a system of electronic filing has been set up (see the relevant practice directions), all other pleadings, as well as all documents annexed thereto, should be submitted to the Court's Registry in three copies sent by post or in one copy by fax<sup>2</sup>, followed by three copies sent by post.
4. Pleadings or other documents submitted by electronic mail shall not be accepted.
5. Secret documents should be filed by registered post.
6. Unsolicited pleadings shall not be admitted to the case file unless the President of the Chamber decides otherwise (see Rule 38 § 1)

#### **Filing by fax**

7. A party may file pleadings or other documents with the Court by sending them by fax.
8. The name of the person signing a pleading must also be printed on it so that he or she can be identified.

#### **Electronic filing**

9. The Court may authorise the Government of a Contracting Party or, after the communication of an application, an applicant to file pleadings and other documents electronically. In such cases, the practice direction on written pleadings shall apply in conjunction with the practice directions on electronic filing.

## **II. FORM AND CONTENTS**

### **Form**

10. A pleading should include:
  - a. the application number and the name of the case;
  - b. a title indicating the nature of the content (e.g., observations on admissibility [and the merits]; reply to the Government's/the applicant's observations on admissibility [and the merits]; observations on the merits; additional observations on admissibility [and the merits]; memorial etc.).
11. In addition, a pleading should normally:
  - a. be in an A4 page format having a margin of not less than 3.5 cm wide;
  - b. be typed and wholly legible, the text appearing in at least 12 pt in the body and 10 pt in the footnotes, with one-and-a-half line spacing;
  - c. have all numbers expressed as figures;
  - d. have pages numbered consecutively;
  - e. be divided into numbered paragraphs;
  - f. be divided into chapters and/or headings corresponding to the form and style of the Court's decisions and judgments ("Facts"/"Domestic law [and practice]"/"Complaints"/"Law"; the latter chapter should be followed by headings entitled "Preliminary objection on ...", "Alleged violation of Article ...", as the case may be);
  - g. place any answer to a question by the Court or to the other party's arguments under a separate heading;
  - h. give a reference to every document or piece of evidence mentioned in the pleading and annexed thereto;

---

83 Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 and amended on 22 September 2008 and 29 September 2014. 2. Fax no. +33 (0)3 88 41 27 30; other fax numbers can be found on the Court's website ([www.echr.coe.int](http://www.echr.coe.int)).

- i. if sent by post, have its text printed on one side of the page only and pages and attachments placed together in such a way as to enable them to be easily separated (they must not be glued or stapled).
12. If a pleading exceptionally exceeds thirty pages, a short summary should also be filed with it.
13. Where a party produces documents and/or other exhibits together with a pleading, every piece of evidence should be listed in a separate annex.

### **Contents**

14. The parties' pleadings following communication of the application should include:
  - a. any comments they wish to make on the facts of the case; however, (i) if a party does not contest the facts as set out in the statement of facts prepared by the Registry, it should limit its observations to a brief statement to that effect; (ii) if a party contests only part of the facts as set out by the Registry, or wishes to supplement them, it should limit its observations to those specific points; (iii) if a party objects to the facts or part of the facts as presented by the other party, it should state clearly which facts are uncontested and limit its observations to the points in dispute;
  - b. legal arguments relating firstly to admissibility and, secondly, to the merits of the case; however, (i) if specific questions on a factual or legal point were put to a party, it should, without prejudice to Rule 55, limit its arguments to such questions; (ii) if a pleading replies to arguments of the other party, submissions should refer to the specific arguments in the order prescribed above.
15. a. The parties' pleadings following the admission of the application should include:
  - i. a short statement confirming a party's position on the facts of the case as established in the decision on admissibility;
  - ii. legal arguments relating to the merits of the case;
  - iii. a reply to any specific questions on a factual or legal point put by the Court.
- b. An applicant party submitting claims for just satisfaction at the same time should do so in the manner described in the practice direction on filing just satisfaction claims.
16. In view of the confidentiality of friendly-settlement proceedings (see Article 39 § 2 of the Convention and Rule 62 § 2), all submissions and documents filed as part of the attempt to secure a friendly settlement should be submitted separately from the written pleadings.
17. No reference to offers, concessions or other statements submitted in connection with the friendly settlement may be made in the pleadings filed in the contentious proceedings.

### **III. TIME-LIMITS GENERAL**

18. It is the responsibility of each party to ensure that pleadings and any accompanying documents or evidence are delivered to the Court's Registry in time.

#### **Extension of time-limits**

19. A time-limit set under Rule 38 may be extended on request from a party.
20. A party seeking an extension of the time allowed for submission of a pleading must make a request as soon as it has become aware of the circumstances justifying such an extension and, in any event, before the expiry of the time-limit. It should state the reason for the delay.
21. If an extension is granted, it shall apply to all parties for which the relevant time-limit is running, including those which have not asked for it.

### **IV. FAILURE TO COMPLY WITH REQUIREMENTS FOR PLEADINGS**

22. Where a pleading has not been filed in accordance with the requirements set out in paragraphs 8 to 15 of this practice direction, the President of the Chamber may request the party concerned to resubmit the pleading in compliance with those requirements.

23. A failure to satisfy the conditions listed above may result in the pleading being considered not to have been properly lodged (see Rule 38 § 1).

## **JUST SATISFACTION CLAIMS<sup>84</sup>**

### **I. INTRODUCTION**

1. The award of just satisfaction is not an automatic consequence of a finding by the European Court of Human Rights that there has been a violation of a right guaranteed by the European Convention on Human Rights or its Protocols. The wording of Article 41, which provides that the Court shall award just satisfaction only if domestic law does not allow complete reparation to be made, and even then only “if necessary” (*s’il y a lieu* in the French text), makes this clear.
2. Furthermore, the Court will only award such satisfaction as is considered to be “just” (*équitable* in the French text) in the circumstances. Consequently, regard will be had to the particular features of each case. The Court may decide that for some heads of alleged prejudice the finding of violation constitutes in itself sufficient just satisfaction, without there being any call to afford financial compensation. It may also find reasons of equity to award less than the value of the actual damage sustained or the costs and expenses actually incurred, or even not to make any award at all. This may be the case, for example, if the situation complained of, the amount of damage or the level of the costs is due to the applicant’s own fault. In setting the amount of an award, the Court may also consider the respective positions of the applicant as the party injured by a violation and the Contracting Party as responsible for the public interest. Finally, the Court will normally take into account the local economic circumstances.
3. When it makes an award under Article 41, the Court may decide to take guidance from domestic standards. It is, however, never bound by them.
4. Claimants are warned that compliance with the formal and substantive requirements deriving from the Convention and the Rules of Court is a condition for the award of just satisfaction.

### **II. Submitting claims for just satisfaction: formal requirements**

5. Time-limits and other formal requirements for submitting claims for just satisfaction are laid down in Rule 60 of the Rules of Court, the relevant part of which provides as follows:

“1. An applicant who wishes to obtain an award of just satisfaction under Article 41 of the Convention in the event of the Court finding a violation of his or her Convention rights must make a specific claim to that effect.

2. The applicant must submit itemised particulars of all claims, together with any relevant supporting documents, within the time-limit fixed for the submission of the applicant’s observations on the merits unless the President of the Chamber directs otherwise.

3. If the applicant fails to comply with the requirements set out in the preceding paragraphs, the Chamber may reject the claims in whole or in part.

...”

Thus, the Court requires specific claims supported by appropriate documentary evidence, failing which it may make no award. The Court will also reject claims set out on the application form but not resubmitted at the appropriate stage of the proceedings and claims lodged out of time.

### **III. SUBMITTING CLAIMS FOR JUST SATISFACTION: SUBSTANTIVE REQUIREMENTS**

6. Just satisfaction may be afforded under Article 41 of the Convention in respect of: (a) pecuniary damage; (b) non-pecuniary damage; and (c) costs and expenses.

#### **1. Damage in general**

7. A clear causal link must be established between the damage claimed and the violation alleged. The Court will not be satisfied by a merely tenuous connection between the alleged violation and the damage, nor by mere speculation as to what might have been.
8. Compensation for damage can be awarded in so far as the damage is the result of a violation found. No

---

84 Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 28 March 2007.

award can be made for damage caused by events or situations that have not been found to constitute a violation of the Convention, or for damage related to complaints declared inadmissible at an earlier stage of the proceedings.

9. The purpose of the Court's award in respect of damage is to compensate the applicant for the actual harmful consequences of a violation. It is not intended to punish the Contracting Party responsible. The Court has therefore, until now, considered it inappropriate to accept claims for damages with labels such as "punitive", "aggravated" or "exemplary".

## **2. Pecuniary damage**

10. The principle with regard to pecuniary damage is that the applicant should be placed, as far as possible, in the position in which he or she would have been had the violation found not taken place, in other words, *restitutio in integrum*. This can involve compensation for both loss actually suffered (*damnum emergens*) and loss, or diminished gain, to be expected in the future (*lucrum cessans*).
11. It is for the applicant to show that pecuniary damage has resulted from the violation or violations alleged. The applicant should submit relevant documents to prove, as far as possible, not only the existence but also the amount or value of the damage.
12. Normally, the Court's award will reflect the full calculated amount of the damage. However, if the actual damage cannot be precisely calculated, the Court will make an estimate based on the facts at its disposal. As pointed out in paragraph 2 above, it is also possible that the Court may find reasons in equity to award less than the full amount of the loss.

## **3. Non-pecuniary damage**

13. The Court's award in respect of non-pecuniary damage is intended to provide financial compensation for non-material harm, for example mental or physical suffering.
14. It is in the nature of non-pecuniary damage that it does not lend itself to precise calculation. If the existence of such damage is established, and if the Court considers that a monetary award is necessary, it will make an assessment on an equitable basis, having regard to the standards which emerge from its case-law.
15. Applicants who wish to be compensated for non-pecuniary damage are invited to specify a sum which in their view would be equitable. Applicants who consider themselves victims of more than one violation may claim either a single lump sum covering all alleged violations or a separate sum in respect of each alleged violation.

## **4. Costs and expenses**

16. The Court can order the reimbursement to the applicant of costs and expenses which he or she has incurred – first at the domestic level, and subsequently in the proceedings before the Court itself – in trying to prevent the violation from occurring, or in trying to obtain redress therefor. Such costs and expenses will typically include the cost of legal assistance, court registration fees and suchlike. They may also include travel and subsistence expenses, in particular if these have been incurred by attendance at a hearing of the Court.
17. The Court will uphold claims for costs and expenses only in so far as they are referable to the violations it has found. It will reject them in so far as they relate to complaints that have not led to the finding of a violation, or to complaints declared inadmissible. This being so, applicants may wish to link separate claim items to particular complaints.
18. Costs and expenses must have been actually incurred. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation. Any sums paid or payable by domestic authorities or by the Council of Europe by way of legal aid will be deducted.
19. Costs and expenses must have been necessarily incurred. That is, they must have become unavoidable in order to prevent the violation or obtain redress therefor.
20. They must be reasonable as to quantum. If the Court finds them to be excessive, it will award a sum which,

on its own estimate, is reasonable.

21. The Court requires evidence, such as itemised bills and invoices. These must be sufficiently detailed to enable the Court to determine to what extent the above requirements have been met.

#### **5. Payment information**

22. Applicants are invited to identify a bank account into which they wish any sums awarded to be paid. If they wish particular amounts, for example the sums awarded in respect of costs and expenses, to be paid separately, for example directly into the bank account of their representative, they should so specify.

#### **IV. THE FORM OF THE COURT'S AWARDS**

23. The Court's awards, if any, will normally be in the form of a sum of money to be paid by the respondent Contracting Party to the victim or victims of the violations found. Only in extremely rare cases can the Court consider a consequential order aimed at putting an end or remedying the violation in question. The Court may, however, decide at its discretion to offer guidance for the execution of its judgment (Article 46 of the Convention).
24. Any monetary award under Article 41 will normally be in euros (EUR, €) irrespective of the currency in which the applicant expresses his or her claims. If the applicant is to receive payment in a currency other than the euro, the Court will order the sums awarded to be converted into that other currency at the exchange rate applicable on the date of payment. When formulating their claims applicants should, where appropriate, consider the implications of this policy in the light of the effects of converting sums expressed in a different currency into euros or contrariwise.
25. The Court will of its own motion set a time-limit for any payments that may need to be made, which will normally be three months from the date on which its judgment becomes final and binding. The Court will also order default interest to be paid in the event that that time-limit is exceeded, normally at a simple rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

#### **SECURED ELECTRONIC FILING BY GOVERNMENTS<sup>85</sup>**

##### **I. SCOPE OF APPLICATION**

1. The Governments of the Contracting Parties that have opted for the Court's system of secured electronic filing shall send all their written communications with the Court by uploading them on the secured website set up for that purpose and shall accept written communications sent to them by the Registry of the Court by downloading them from that site, with the following exceptions:
  - a. all written communications in relation to a request for interim measures under Rule 39 of the Rules of Court shall be sent simultaneously by two means: through the secured website and by fax;
  - b. attachments, such as plans, manuals, etc. that may not be comprehensively viewed in an electronic format may be filed by post;
  - c. the Court's Registry may request that a paper document or attachment be submitted by post.
2. If the Government have filed a document by post or fax, they shall, as soon as possible, file electronically a notice of filing by post or fax, describing the document sent, stating the date of dispatch and setting forth the reasons why electronic filing was not possible.

##### **II. TECHNICAL REQUIREMENTS**

3. The Government shall possess the necessary technical equipment and follow the user manual sent to them by the Court's Registry.

##### **III. Format and naming convention**

4. A document filed electronically shall be in PDF format, preferably in searchable PDF.
5. Unsigned letters and written pleadings shall not be accepted. Signed documents to be filed electronically shall be generated by scanning the original paper copy. The Government shall keep the original paper copy in their files.

---

85 Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 22 September 2008 and amended on 29 September 2014.

86 For example, 65051/01 Karagoyozov *Observ Adm Merits*.

6. The name of a document filed electronically shall be prefixed by the application number, followed by the name of the applicant as spelled in Latin script by the Registry of the Court, and contain an indication of the contents of the document<sup>86</sup>.

#### **IV. Relevant date with regard to time-limits**

7. The date on which the Government have successfully uploaded a document on the secured website shall be considered as the date of dispatch within the meaning of Rule 38 § 2 or the date of filing for the purposes of Rule 73 § 1.
8. To facilitate keeping track of the correspondence exchanged, every day shortly before midnight the secured server generates automatically an electronic mail message listing the documents that have been filed electronically within the past twenty-four hours.

#### **V. DIFFERENT VERSIONS OF ONE AND THE SAME DOCUMENT**

9. The secured website shall not permit the modification, replacement or deletion of an uploaded document. If the need arises for the Government to modify a document they have uploaded, they shall create a new document named differently (for example, by adding the word “modified” in the document name). This opportunity should only be used where genuinely necessary and should not be used to correct minor errors.
10. Where the Government have filed more than one version of the same document, only the document filed in time shall be taken into consideration. Where more than one version has been filed in time, the latest version shall be taken into consideration, unless the President of the Chamber decides otherwise.

#### **REQUESTS FOR ANONYMITY<sup>87</sup>**

##### **(Rules 33 and 47 of the Rules of Court) General principles**

The parties are reminded that, unless a derogation has been obtained pursuant to Rules 33 or 47 of the Rules of Court, documents in proceedings before the Court are public. Thus, all information that is submitted in connection with an application in both written and oral proceedings, including information about the applicant or third parties, will be accessible to the public.

The parties should also be aware that the statement of facts, decisions and judgments of the Court are usually published in HUDOC<sup>88</sup> on the Court's website (Rule 78).

##### **Requests in pending cases**

Any request for anonymity should be made when completing the application form or as soon as possible thereafter. In both cases the applicant should provide reasons for the request and specify the impact that publication may have for him or her.

##### **Retroactive requests**

If an applicant wishes to request anonymity in respect of a case or cases published on HUDOC before 1 January 2010, he or she should send a letter to the Registry setting out the reasons for the request and specifying the impact that this publication has had or may have for him or her. The applicant should also provide an explanation as to why anonymity was not requested while the case was pending before the Court.

In deciding on the request the President shall take into account the explanations provided by the applicant, the level of publicity that the decision or judgment has already received and whether or not it is appropriate or practical to grant the request.

11. When the President grants the request, he or she shall also decide on the most appropriate steps to be taken to protect the applicant from being identified. For example, the decision or judgment could, *inter alia*, be removed from the Court's website or the personal data deleted from the published document.

---

87 Practice direction issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 14 January 2010.

88 <http://hudoc.echr.coe.int/>.

**Other measures**

The President may also take any other measure he or she considers necessary or desirable in respect of any material published by the Court in order to ensure respect for private life.

**ELECTRONIC FILING BY APPLICANTS<sup>89</sup>****I. SCOPE OF APPLICATION**

1. After the communication of a case, applicants who have opted to file pleadings electronically shall send all written communications with the Court by using the Court's Electronic Communications Service (ECS) and shall accept written communications sent to them by the Registry of the Court by means of ECS, with the following exceptions:
  - a. all written communications in relation to a request for interim measures under Rule 39 of the Rules of Court shall be sent only by fax or post;
  - b. attachments, such as plans, manuals, etc., that may not be comprehensively viewed in an electronic format may be filed by post;
  - c. the Court's Registry may request that a paper document or attachment be submitted by post.
2. If an applicant has filed a document by post or fax, he or she shall, as soon as possible, file electronically a notice of filing by post or fax, describing the document sent, stating the date of dispatch and setting forth the reasons why electronic filing was not possible.

**II. TECHNICAL REQUIREMENTS**

3. Applicants shall possess the necessary technical equipment and follow the user manual sent to them by the Court's Registry.

**III. FORMAT AND NAMING CONVENTION**

4. A document filed electronically shall be in PDF format, preferably in searchable PDF.
5. Unsigned letters and written pleadings shall not be accepted. Signed documents to be filed electronically shall be generated by scanning the original paper copy. Applicants shall keep the original paper copy in their files.
6. The name of a document filed electronically shall be prefixed by the application number, followed by the name of the applicant as spelled in Latin script by the Registry of the Court, and contain an indication of the contents of the document<sup>90</sup>.

**IV. RELEVANT DATE WITH REGARD TO TIME LIMITS**

7. The date on which an applicant has successfully filed the document electronically with the Court shall be considered as the date, based on Strasbourg time, of dispatch within the meaning of Rule 38 § 2 or the date of filing for the purposes of Rule 73 § 1.
8. To facilitate keeping track of the correspondence exchanged and to ensure compliance with the time limits set by the Court, the applicant should regularly check his or her e-mail account and ECS account.

**V. DIFFERENT VERSIONS OF ONE AND THE SAME DOCUMENT**

9. The ECS shall not permit the modification, replacement or deletion of a filed document. If the need arises for the applicant to modify a document he or she has filed, they shall create a new document named differently (for example, by adding the word "modified" in the document name). This opportunity should only be used where genuinely necessary and should not be used to correct minor errors.
10. Where an applicant has filed more than one version of the same document, only the document filed in time shall be taken into consideration. Where more than one version has been filed in time, the latest version shall be taken into consideration, unless the President of the Chamber decides otherwise.

---

89 Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 29 September 2014. This practice direction will become operational in 2015 on a date to be decided following a test phase.

90 The following is an example: 65051/01 Karagyozov Observ Adm Merits.



## PROTOCOL NO. 15 AMENDING THE CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Strasbourg, 24.VI.2013

---

### **Preamble**

The member States of the Council of Europe and the other High Contracting Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"), signatory hereto,

Having regard to the declaration adopted at the High Level Conference on the Future of the European Court of Human Rights, held in Brighton on 19 and 20 April 2012, as well as the declarations adopted at the conferences held in Interlaken on 18 and 19 February 2010 and Izmir on 26 and 27 April 2011;

Having regard to Opinion No. 283 (2013) adopted by the Parliamentary Assembly of the Council of Europe on 26 April 2013;

Considering the need to ensure that the European Court of Human Rights (hereinafter referred to as "the Court") can continue to play its pre-eminent role in protecting human rights in Europe,

Have agreed as follows:

### **Article 1**

At the end of the preamble to the Convention, a new recital shall be added, which shall read as follows:

"Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention,"

### **Article 2**

In Article 21 of the Convention, a new paragraph 2 shall be inserted, which shall read as follows:

1. "Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22."
2. Paragraphs 2 and 3 of Article 21 of the Convention shall become paragraphs 3 and 4 of Article 21 respectively.
3. Paragraph 2 of Article 23 of the Convention shall be deleted. Paragraphs 3 and 4 of Article 23 shall become paragraphs 2 and 3 of Article 23 respectively.

### **Article 3**

In Article 30 of the Convention, the words "unless one of the parties to the case objects" shall be deleted.

### **Article 4**

In Article 35, paragraph 1 of the Convention, the words "within a period of six months" shall be replaced by the words "within a period of four months".

#### **Article 5**

In Article 35, paragraph 3, sub-paragraph b of the Convention, the words "and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal" shall be deleted.

#### **Final and transitional provisions**

#### **Article 6**

1. This Protocol shall be open for signature by the High Contracting Parties to the Convention, which may express their consent to be bound by:
  - a. signature without reservation as to ratification, acceptance or approval; or
  - b. signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.
2. The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

#### **Article 7**

This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which all High Contracting Parties to the Convention have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 6.

#### **Article 8**

1. The amendments introduced by Article 2 of this Protocol shall apply only to candidates on lists submitted to the Parliamentary Assembly by the High Contracting Parties under Article 22 of the Convention after the entry into force of this Protocol.
2. The amendment introduced by Article 3 of this Protocol shall not apply to any pending case in which one of the parties has objected, prior to the date of entry into force of this Protocol, to a proposal by a Chamber of the Court to relinquish jurisdiction in favour of the Grand Chamber.
3. Article 4 of this Protocol shall enter into force following the expiration of a period of six months after the date of entry into force of this Protocol. Article 4 of this Protocol shall not apply to applications in respect of which the final decision within the meaning of Article 35, paragraph 1 of the Convention was taken prior to the date of entry into force of Article 4 of this Protocol.
4. All other provisions of this Protocol shall apply from its date of entry into force, in accordance with the provisions of Article 7.

#### **Article 9**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe and the other High Contracting Parties to the Convention of:

- a. any signature;
  - b. the deposit of any instrument of ratification, acceptance or approval;
  - c. the date of entry into force of this Protocol in accordance with Article 7; and
  - d. any other act, notification or communication relating to this Protocol.
- e. in witness whereof, the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 24<sup>th</sup> day of June 2013, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to the other High Contracting Parties to the Convention.

## NOTES FOR FILLING IN THE APPLICATION FORM

### I. WHAT YOU SHOULD KNOW BEFORE FILLING IN THE APPLICATION FORM

#### What complaints can the Court examine?

The European Court of Human Rights is an international court which can only examine complaints from persons, organisations and companies claiming that their rights under the European Convention on Human Rights have been infringed. The Convention is an international treaty by which a large number of European States have agreed to secure certain fundamental rights. The rights guaranteed are set out in the Convention itself, and also in Protocols Nos. 1, 4, 6, 7, 12 and 13, which only some of the States have accepted. You should read these texts, all of which are enclosed.

The Court cannot deal with every kind of complaint. Its powers are defined by the admissibility criteria set out in the Convention which limit who can complain, when and about what. More than 90% of the applications examined by the Court are declared inadmissible. You should therefore check that your complaints comply with the admissibility requirements described below.

The Court can only examine your case where:

- the complaints relate to **infringements of one or more of the rights** set out in the Convention and Protocols;
- the complaints are **directed against a State which has ratified** the Convention or the Protocol in question (not all States have ratified every Protocol so check the list of ratifications on the Court's website at [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants));
- the complaints relate to matters which involve the responsibility of a public authority (legislature, administrative body, court of law etc.); the Court cannot deal with complaints directed against private individuals or private organisations;
- the complaints concern **acts or events occurring after the date of ratification** by the State of the Convention or the Protocol in question (see the dates for each State on the list of ratifications on the Court's website at [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants));
- you are **personally and directly affected** by the breach of a fundamental right (you have “victim status”);
- you have given the domestic system the opportunity to put right the breach of your rights (“exhaustion of domestic remedies”); this generally means that before applying to the Court **you must have raised the same complaints in the national courts**, including the highest court. This involves complying with national rules of procedure, including time-limits. You do not have to make use of remedies which are ineffective or apply for special discretionary or extraordinary remedies outside the normal appeal procedures;
- you have lodged your complete application with the **Court within six months from the final domestic decision** in the national system. The six-month period normally runs from the date on which the decision of the highest competent national court or authority was given, or was served on you or your lawyer. Where there is no available effective remedy for a complaint, the six-month period runs from the date of the act, event or decision complained about. The six-month period is only interrupted when you send the Court a complete application which complies with the requirements of Rule 47 of the Rules of Court (see the text set out in the Application Pack). The period ends on the last day of the six months even if it is a Sunday or public holiday. To sum up, the application form, together with all the required information and documents, must be dispatched to the Court on or before the final day of the six-month period, so make sure you send them through the post in good time;
- your complaints are based on solid evidence; **you have to substantiate your claims** by telling your story clearly and supporting it with documents, decisions, medical reports, witness statements and other material;
- you are able to show that the matters about which you complain have interfered unjustifiably with a fundamental right. You cannot just complain that a court's decision was wrong or that a domestic tribunal made a mistake; the Court is not a court of appeal from national courts and cannot annul or alter their decisions;
- your complaints have not already been examined by the Court or another international body. You should also be aware that the Court receives tens of thousands of complaints every year. It does not have the resources to examine trivial or repeated complaints which have no substance and which are not the kind

of cases an international supervisory body should be looking into. Such complaints may be rejected as being an abuse of petition, as can also happen where applicants use offensive or insulting language. Where the matter complained about does not cause an applicant any real harm or significant disadvantage, raises no new human rights issues that need to be addressed at international level and has already been looked at by a domestic court, the case may also be rejected. For further information on these criteria, you can consult a lawyer or go to the Court's website, which gives information about admissibility criteria and answers to frequently asked questions.

## II. HOW TO FILL IN THE APPLICATION FORM

BE LEGIBLE. Preferably you should type.

FILL IN ALL FIELDS APPLICABLE TO YOUR SITUATION. If not, your application form is not complete and will not be accepted.

Do not use symbols or abbreviations: explain your meaning clearly in words.

BE CONCISE.

### Language

The Court's **official languages** are English and French but alternatively, if it is easier for you, you may write to the Registry in an official language of one of the States that have ratified the Convention. During the initial stage of the proceedings you may also receive correspondence from the Court in that language. Please note, however, that at a later stage of the proceedings, namely if the Court decides to ask the Government to submit written comments on your complaints, all correspondence from the Court will be sent in English or French and you or your representative will also be required to use English or French in your subsequent submissions.

### Notes relating to the fields in the application form

Reminder: For an application to be accepted by the Court, all applicable fields must be completed in the manner indicated and all the necessary documents must be provided as set out in Rule 47. Please bear this in mind when filling in the form and attaching your supporting documents.

### The application form – section by section

Please note that the terms used in the application form and notes are based on the Convention – any lack of gender-sensitive language is not meant to exclude anyone.

Box for the barcode

If you have already been in correspondence with the Court on the same matter and have been given a set of barcode labels, you should stick a barcode label in the box on the left-hand side near the top of the first page of the application form.

#### A. The applicant (Individual)

This section applies to an applicant who is an individual person, as opposed to a legal entity such as a company or association (section B).

**1-8.** If there is more than one individual applicant, this information must be provided for each additional applicant, on a separate sheet. Please number the individual applicants if there are more than one. See also the section below on "Grouped applications and multiple applicants".

#### B. The applicant (Organisation)

This section concerns applicants that are legal entities such as a company, non-governmental organisation or association, etc.

**9-15.** The identity and contact details of the applicant organisation must be filled in. If there is more than one such applicant, this information must be provided for each additional applicant, on a separate sheet. Please number the applicants if there are more than one.

Identification number: please indicate the official identification number or number assigned to the organisation in the official register or record, if any.

The date of registration, formation or incorporation of the entity should also be included for ease of identification, where such a procedure has been followed.

#### **Grouped applications and multiple applicants**

Where an applicant or representative lodges complaints on behalf of two or more applicants whose applications are based on different facts, a separate application form should be filled in for each individual, giving all the information required. The documents relevant to each applicant should also be annexed to that individual's application form.

Where there are more than five applicants, the representative should provide, in addition to the application forms and documents, a table setting out the required identifying details for each applicant, an example of which may be downloaded from the Court's website (see [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants)). Where the representative is a lawyer, this table should also be provided in electronic form (on a CD-ROM or memory stick).

In cases of large groups of applicants or applications, applicants or their representatives may be directed by the Registry to provide the text of their submissions or documents by electronic or other means. Other directions may be given by the Registry as to the steps required to facilitate the effective and speedy processing of applications.

Failure to comply with directions by the Registry as to the form or manner in which grouped applications or applications by multiple applicants are to be lodged may lead to the cases not being allocated for examination by the Court (see Rule 47 § 5.2).

#### **C. Representative(s) of the applicant**

##### **Non-lawyer**

**16-23.** Some applicants may choose not to, or may not be able to, take part in the proceedings themselves for reasons such as health or incapacity. They may be represented by a person without legal training, for example a parent representing a child, or a guardian or family member or partner representing someone whose practical or medical circumstances make it difficult to take part in the proceedings (e.g. an applicant who is in hospital or prison). The representative's reason for representing the applicant or relationship with the applicant must be indicated, together with his or her identity and contact details.

Official representative or person competent to act on behalf of an applicant organisation

**16-23.** An applicant organisation must act through an individual with whom the Court can correspond, such as an officer of a company, chairperson or director. This person should, where possible, provide documentary proof of his or her entitlement to bring the case on behalf of the organisation.

##### **Lawyer**

**24-30.** Details identifying the lawyer who is acting on behalf of the applicant before the Court must be provided, with full contact information. An applicant does not have to instruct a lawyer at the stage of lodging the application, although it may be advisable to do so. The applicant is informed if the case reaches a stage of the proceedings where representation by a lawyer is required. At this point – after a decision by the Court to give notice of the application to

the Government concerned for written observations – you may be eligible for free legal aid if you have insufficient means to pay a lawyer's fees and if the grant of such aid is considered necessary for the proper conduct of the case. Information is sent to applicants about this at the relevant time.

#### **Authority**

**31.** An individual applicant must sign the authority empowering the representative to act on his or her behalf, unless, for example, the applicant is a child or lacks legal capacity and is unable to sign. If a representative who is not a lawyer has instructed a lawyer on behalf of an applicant who is unable to sign, the representative should sign the authority on the applicant's behalf.

**31.** The representative of an applicant organisation must sign here to authorise a lawyer to act on behalf of the organisation.

**32.** The date required is the date of signature by the individual applicant, or by the representative of an applicant organisation.

#### **D. State(s) against which the application is directed**

**33.** Tick the box(es) of the State(s) against which the application is directed.

This is the State which you consider is responsible for the matters about which you are complaining. Please bear in mind that complaints before the Court can be brought only against the countries listed, which have all joined the Convention system.

#### **E., F. and G.: Subject matter of the application**

**34-40.** Be concise. Put down the essential information concerning your case: the key facts and decisions, and how your rights have been violated, without irrelevant background or side issues. Do not include lengthy quotations: you can always give a reference to an accompanying document. The facts of your case and your complaints should be set out in the space provided in the application form so as to enable the Court to determine the nature and scope of the application without reference to any other material.

While an applicant may make additional submissions on the facts and complaints and append them to the application form, they must not exceed 20 pages in total (this does not include accompanying decisions and documents). Please note that if a case is communicated to the respondent Government for observations, the applicant is given an opportunity to submit detailed arguments in reply.

All submissions must:

- be wholly legible;
- if typed, be set out in a font size of at least 12 pt in the body of the text and 10 pt in the footnotes;
- in the case of annexes, be set out in A4 page format with a margin of not less than 3,5 cm;
- have pages numbered consecutively;
- be divided into numbered paragraphs.

As a general rule, any information contained in the application form and documents which are lodged with the Registry, including information about the applicant or third parties, will be accessible to the public. Moreover, such information may be accessible on the Internet via the Court's HUDOC database if the Court includes it in a statement of facts prepared for the notification of the case to the respondent Government, a decision on admissibility or striking out, or a judgment. Accordingly, you should only provide such details concerning your private life or that of third parties as are essential for an understanding of the case.

In addition, if you do not wish your identity to be disclosed to the public, you must say so and set out the reasons for such a departure from the normal rule of public access to information in the proceedings. The Court may authorise anonymity in exceptional and duly justified cases.

### **E. Statement of the facts**

**34-36.** Be clear and concise. Give exact dates.

Be chronological. Set out events in the order in which they occurred.

If your complaints relate to a number of different matters (for example different sets of court proceedings), please deal with each factual matter separately.

You must provide documents to support your case, in particular copies of relevant decisions or documentary records of any measures about which you complain: for example, a notice of eviction or a deportation order. You must also provide documentary evidence to support your claims, such as medical reports, witness statements, transcripts, documents of title to property, or records of periods spent in custody. If you cannot obtain copies of particular documents you should explain why not.

### **F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

**37.** For each complaint raised, you must specify the Article of the Convention or Protocol invoked and give brief explanations as to how it has been infringed.

Explain as precisely as you can what your complaint under the Convention is. Indicate which Convention provision you rely on and explain why the facts that you have set out entail a violation of that provision. Explanations of this kind must be given for each individual complaint.

Example: Article 6 § 1: the civil proceedings concerning my claim for compensation for an injury took an unreasonable length of time as they lasted over ten years, from 10 January 2002 until 25 April 2012.

### **G. Information concerning exhaustion of domestic remedies and the six-month time-limit (Article 35 § 1 of the Convention)**

**38.** Here you must show that you have given the State a chance to put matters right before having recourse to the international jurisdiction of the Court. This means you must explain that you have used the available effective remedies in the country concerned.

For each complaint raised under the Convention or the Protocols, please state the following:

- the exact date of the final decision, the name of the court or tribunal and the nature of the decision;
- the dates of the other lower court or tribunal decisions leading up to the final decision;
- the case file number in the domestic proceedings.

Remember to append copies of all the decisions taken by courts or other decision-making bodies, from the lowest to the highest; you must also provide copies of your claims or applications to the courts and your statements of appeal so that you can show that you raised the substance of your Convention complaints at each level.

You must also show that you have lodged each complaint with the Court within six months of the final decision in the process of exhausting domestic remedies for that complaint. So it is crucial to identify the date of the final decision. You must provide proof of this, either through a copy of the decision containing the date or, if you did not receive a copy of the final decision on the date it was delivered or made public, proof of the date of service, e.g. evidence of the date of receipt, or a copy of the registered letter or envelope. Where no appropriate remedies were available, you must show that you have lodged the complaint within six months of the act, measure or decision complained of and submit documentary evidence of the date of the act, measure or decision.

**39-40.** Here you should state if there was an available remedy which you did not use. If so, you should give the reasons why you did not make use of it.

Further useful information about exhaustion of domestic remedies and compliance with the six-month time-limit may be found in the Practical Guide on Admissibility Criteria ([www.echr.coe.int/applicants](http://www.echr.coe.int/applicants)).

#### **H. Information concerning other international proceedings (if any)**

**41-42.** You must indicate whether you have submitted the complaints in your application to any other procedure of international investigation or settlement, for example a United Nations body such as the ILO or the UN Human Rights Committee, or an international arbitration panel. If you have, you should give details, including the name of the body to which you submitted your complaints, the dates and details of any proceedings which took place and details of any decisions that were taken. You should also submit copies of relevant decisions and other documents.

**43-44.** Previous or pending applications before the Court:

You should also specify whether you as an applicant have, or have had, any other applications before the Court and, if so, give the application number(s). This is vital to assist the Court in filing, retrieving and processing the different applications under your name.

#### **I. List of accompanying documents**

**45.** You must enclose a numbered and chronological list of all judgments and decisions referred to in sections E., F., G. and H. of the application form, as well as any other documents you wish the Court to take into consideration as evidence supporting your claims of a violation of the Convention (transcripts, witness statements, medical reports etc.).

You should enclose full and legible copies of all documents.

No documents will be returned to you. It is thus in your interests to submit copies, not originals.

You **MUST**:

- arrange the documents in order by date and by procedure;
- number the pages consecutively;
- NOT staple, bind or tape the documents.

REMINDER: It is the applicant's responsibility to take steps in good time to obtain all the information and documents required for a complete application. If you do not provide one or more of the necessary documents your application will not be regarded as complete and it will not be examined by the Court, unless you have given an adequate explanation of why you were unable to provide the missing document(s).

#### **Declaration and signature**

**47-48.** The applicant, or the authorised representative, must sign the declaration. No one else can do so.

**49.** Confirmation of correspondent

The Registry will only correspond with one applicant or one representative, so if there are a number of applicants and no representative has been appointed, one applicant should be identified as the person with whom the Registry should correspond. Where the applicant is represented, the Registry will only correspond with one representative. So, for example, an applicant who has more than one lawyer must identify the lawyer who will conduct the correspondence with the Court.

### III. INFORMATION ON LODGING THE APPLICATION AND HOW IT IS PROCESSED

#### A. Means of lodging the application

Applications to the Court may be made only by post (not by telephone). This means that the paper version of the application form with the original signatures of the applicant(s) and/or the authorised representative(s) must be sent by post. The receipt of a faxed application is not counted as a complete application as the Court needs to receive the original signed application form. **No purpose will be served by your coming to Strasbourg in person to state your case orally.**

The application form may be downloaded from the Court's website [www.echr.coe.int/applicants](http://www.echr.coe.int/applicants).

Send the application form to:

The Registrar  
European Court of Human Rights  
Council of Europe  
67075 STRASBOURG CEDEX  
FRANCE

#### B. PROCESSING OF THE APPLICATION

A file will be opened and correspondence and documents stored by the Court only where a complete application form with supporting documents has been received.

On receipt of the application form, the Registry of the Court will verify that it contains all the information and documents required. If it does not, you will receive a reply stating that Rule 47 has not been complied with, that no file has been opened and no documents have been kept. It is open to you to submit a fresh application: this means submitting a completed application form and all relevant documents and decisions, even if you have sent some of the information previously. No partial submissions will be accepted.

The Registry cannot provide you with information about the law of the State against which you are making your complaint or give legal advice concerning the application and interpretation of national law.

When sending off your application, you should keep a copy of the form as you have filled it in, together with the original documents, so that if the Registry informs you that the application was incomplete you will be able, if you wish, to resubmit a fresh and complete application without difficulty or undue delay. There is no guarantee that if an application form is rejected as incomplete there will be enough time for an applicant to submit a new application before the six-month time-limit. For that reason, you should take care to submit a complete application form together with all the necessary supporting documents in good time.

If the application form submitted is complete, you may receive a reply from the Registry telling you that a **file (the number of which must be mentioned in all subsequent correspondence) has been opened in your name** and sending you a set of barcodes which you should attach to any future correspondence.

The Registry may also contact you with a request for further information or clarifications. It is in your interests to reply rapidly to any correspondence from the Registry as a newly opened file which is inactive will be destroyed after six months. Furthermore, you should note that where a case has been allocated for examination by the Court, any delay or failure to reply to correspondence from the Registry or to provide further information or documents may be taken to mean that you no longer wish to pursue your case. This may then result in the application not being examined by the Court or being declared inadmissible or struck out of the Court's list of cases.

#### C. NO COURT FEES

Your case will be dealt with **free of charge**. You will automatically be informed of any decision taken by the Court.



ENG - 2014/1

**Application Form****About this application form**

This application form is a formal legal document and may affect your rights and obligations. Please follow the instructions given in the Notes for filling in the application form. Make sure you fill in all the fields applicable to your situation and provide all relevant documents.

Warning: If your application is incomplete, it will not be accepted (see *Rule 47 of the Rules of Court*). Please note in particular that Rule 47 § 2 (a) provides that: "All of the information referred to in paragraph 1 (d) to (f) [*statement of facts, alleged violations and information about compliance with the admissibility criteria*] that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document."

**Barcode label**

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

**Reference number**

If you already have a reference number from the Court in relation to these complaints, please indicate it in the box below.

**A. The applicant (Individual)**

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to Section B.

1. Surname

2. First name(s)

3. Date of birth

 e.g. 27/09/2012  
D D M M Y Y Y Y

4. Nationality

5. Address


6. Telephone (including international dialling code)

7. Email (if any)

8. Sex

☒ male

☐ female
**B. The applicant (Organisation)**

This section should only be filled in where the applicant is a company, NGO, association or other legal entity.

9. Name

10. Identification number (if any)

11. Date of registration or incorporation (if any)

 e.g. 27/09/2012  
D D M M Y Y Y Y

12. Activity

13. Registered address

14. Telephone (including international dialling code)

15. Email

**C. Representative(s) of the applicant**

If the applicant is not represented, go to Section D.

**Non-lawyer/Organisation official**Please fill in this part of the form if you are representing an applicant but *not a lawyer*.

In the box below, explain in what capacity you are representing the applicant or state your relationship or official function where you are representing an organisation.

16. Capacity / relationship / function

17. Surname

18. First name(s)

19. Nationality

20. Address

21. Telephone (including international dialling code)

22. Fax

23. Email

**Lawyer**Please fill in this part of the form if you are representing the applicant *as a lawyer*.

24. Surname

25. First name(s)

26. Nationality

27. Address

28. Telephone (including international dialling code)

29. Fax

30. Email

**Authority**

The applicant must authorise any representative to act on his or her behalf by signing the authorisation below (see the Notes for filling in the application form).

I hereby authorise the person indicated to represent me in the proceedings before the European Court of Human Rights, concerning my application lodged under Article 34 of the Convention.

31. Signature of applicant

32. Date

e.g. 27/09/2012

**D. State(s) against which the application is directed**

33. Tick the name(s) of the State(s) against which the application is directed

- |  |  |
|--|--|
| <input type="checkbox"/> ALB - Albania                   | <input type="checkbox"/> ITA - Italy                                       |
| <input type="checkbox"/> AND - Andorra                   | <input type="checkbox"/> LIE - Liechtenstein                               |
| <input type="checkbox"/> ARM - Armenia                   | <input type="checkbox"/> LTU - Lithuania                                   |
| <input type="checkbox"/> AUT - Austria                   | <input type="checkbox"/> LUX - Luxembourg                                  |
| <input type="checkbox"/> AZE - Azerbaijan                | <input type="checkbox"/> LVA - Latvia                                      |
| <input type="checkbox"/> BEL - Belgium                   | <input type="checkbox"/> MCO - Monaco                                      |
| <input type="checkbox"/> BGR - Bulgaria                  | <input type="checkbox"/> MDA - Republic of Moldova                         |
| <input type="checkbox"/> BIH - Bosnia and Herzegovina    | <input type="checkbox"/> MKD - "The former Yugoslav Republic of Macedonia" |
| <input type="checkbox"/> CHE - Switzerland               | <input type="checkbox"/> MLT - Malta                                       |
| <input type="checkbox"/> CYP - Cyprus                    | <input type="checkbox"/> MNE - Montenegro                                  |
| <input type="checkbox"/> CZE - Czech Republic            | <input type="checkbox"/> NLD - Netherlands                                 |
| <input type="checkbox"/> DEU - Germany                   | <input type="checkbox"/> NOR - Norway                                      |
| <input type="checkbox"/> DNK - Denmark                   | <input type="checkbox"/> POL - Poland                                      |
| <input type="checkbox"/> ESP - Spain                     | <input type="checkbox"/> PRT - Portugal                                    |
| <input type="checkbox"/> EST - Estonia                   | <input type="checkbox"/> ROU - Romania                                     |
| <input type="checkbox"/> FIN - Finland                   | <input type="checkbox"/> RUS - Russian Federation                          |
| <input type="checkbox"/> FRA - France                    | <input type="checkbox"/> SMR - San Marino                                  |
| <input checked="" type="checkbox"/> GBR - United Kingdom | <input type="checkbox"/> SRB - Serbia                                      |
| <input type="checkbox"/> GEO - Georgia                   | <input type="checkbox"/> SVK - Slovak Republic                             |
| <input type="checkbox"/> GRC - Greece                    | <input type="checkbox"/> SVN - Slovenia                                    |
| <input type="checkbox"/> HRV - Croatia                   | <input type="checkbox"/> SWE - Sweden                                      |
| <input type="checkbox"/> HUN - Hungary                   | <input type="checkbox"/> TUR - Turkey                                      |
| <input type="checkbox"/> IRL - Ireland                   | <input type="checkbox"/> UKR - Ukraine                                     |
| <input type="checkbox"/> ISL - Iceland                   |  |

**Subject matter of the application**

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E., F. and G.) (Rule 47 § 2 (a)). The applicant may supplement this information by appending further details to the application form. Such additional explanations must not exceed 20 pages (Rule 47 § 2 (b)); this page limit does not include copies of accompanying documents and decisions.

**E. Statement of the facts**

34.

On 10 January 2002 my client (hereinafter referred to as "the applicant") was arrested in the city centre of X by officers from the Anti-Terrorist Branch on suspicion of involvement in terrorist activities (see appendix A for a copy of the record of arrest) and was taken to the City Hospital for a medical examination. According to the medical report drawn up at the end of the examination, there were no signs of any injuries on his body (see appendix B). The applicant was then placed in the detention facility of the police station. During his detention the applicant was questioned by police officers on a number of occasions. When he denied the allegations against him, the police officers became agitated and subjected him to serious ill-treatment which included being stripped naked, hosed down with pressurised cold water, suspended from his arms and being beaten with a truncheon on his chest. Also, electric shocks were administered to his toes. On 13 January 2002, while he was being ill-treated, the applicant was forced to sign a statement in which he confessed to having committed terrorism-related offences (see appendix C).

34.1 On 14 January 2002 the police officers took the applicant back to the City Hospital where they remained in the room while he was being examined by a doctor. When the doctor asked the applicant to remove his clothes, the police officers told him not to do so. As a result, the doctor stated in a medical report that there were no signs of any ill-treatment on the applicant (see appendix D). The applicant was then taken to the court house where he informed the judge of his ordeal and informed the judge that he had been forced to sign a confession under ill-treatment. The judge ordered his release (see appendix E for a copy of the order of release).

34.2 On his release the applicant was met outside the court building by his father and a lawyer who took him to the applicant's family doctor. The doctor recorded in his report that there were extensive bruises under his armpits which were compatible with the applicant's account of having been suspended from his arms, and the marks on his chest were compatible with having been beaten with an object. Furthermore, the doctor also observed that the applicant's toes bore signs of electric burns (see appendix F). According to the medical record, the injuries had been caused at least 24 hours previously.

34.3 On the same day the applicant went back to the court where he submitted a petition to the prosecutor in which he detailed the ill-treatment to which he had been subjected (see appendix G for a copy of the petition). With his petition he also enclosed copies of the three medical reports (i.e. appendices B, D and F). He asked the prosecutor to investigate his allegations and prosecute the police officers responsible for the ill-treatment. He further informed the prosecutor that his father and his lawyer would be willing to testify to the effect that he had been released with injuries.

34.4 On 21 January 2002 the prosecutor filed an indictment with the City Criminal Court in which he accused the applicant of membership in a terrorist organisation (see appendix H for a copy of the indictment). On 1 March 2002 a hearing was held in the City Criminal Court in the course of which the trial judge ordered the applicant's detention on remand pending the outcome of the trial (see appendix I for a copy of the verbatim record of the hearing). The trial continued until 1 March 2005 during which time there were 12 hearings. Throughout the trial the applicant professed his innocence and told the court that his confession had been extracted under ill-treatment (see appendix J for copies of the verbatim records of the 12 hearings). On 1 March 2005 the applicant was found guilty of the offences with which he had been charged and sentenced to a prison term of 12 years (see appendix K for a copy of the judgment).

Within the statutory time limit the applicant appealed against his conviction and argued, inter alia, that the conviction was wrongful as it was based on the confession extracted from him under ill-treatment (see appendix L for a copy of the appeal petition). The applicant remained in detention on remand until his conviction was upheld by the Court of Appeal on 1 October 2005. The decision of the Court of Appeal was served on the applicant on 8 October 2005 (see appendix M for a copy of the Court of Appeal's decision). On 21 October 2005 the applicant was transferred to the County Prison to serve his prison sentence, and he is currently detained there.

**Statement of the facts (continued)**

35.

35.1 During his detention on remand in the City Prison between 1 March 2002 and 21 October 2005, the applicant was kept in a cell measuring 20 square metres (m<sup>2</sup>) together with 19 other prisoners. As there were only 10 beds, the inmates had to take turns to sleep. There was only one window, measuring 75 x 120 cm. This window, which was the only source of fresh air and natural light, would only be open for two hours per day. The 20 prisoners had to share one toilet and one wash basin which were located in the corner of the cell and not enclosed by any sort of partition. The food would only be served once a day and was hardly edible. Moreover, the dirty crockery was not collected until the following day. As a result of the poor sanitary conditions, the cell was infested with rats, ants and lice. Once a fortnight the prisoners were allowed to take a shower which was limited to five minutes at most. The applicant was only allowed one hour of outdoor exercise in a small yard per day. As a result of the conditions in the prison the applicant's mental and physical health deteriorated and he is still suffering from serious health problems (see appendix N for the medical report, drawn up on 1 August 2005 showing the effects of the conditions of his detention). Although the problems the applicant suffered in the cell and his health problems were brought to the attention of the trial court as well as of the Court of Appeal on a number of occasions, no action was taken to remedy the situation, for example by moving the applicant to another prison or by releasing him pending the outcome of the trial.

35.2 In the meantime, on 30 October 2004 the applicant sent a letter to the prosecutor and asked for information about the investigation into his allegations of ill-treatment (see appendix O for a copy of the applicant's letter). The applicant enclosed with his letter two statements which were drawn up by his father and the lawyer who had met him outside the court house upon his release and in which they detailed the applicant's injuries and stated that they had taken the applicant to the family doctor immediately after his release (see appendix T). In his letter of 1 January 2005 the prosecutor informed the applicant that the investigation was classified as confidential and for this reason he could not disclose any details (see appendix P for a copy of the prosecutor's letter). On 1 April 2005 the applicant received the decision of the prosecutor not to prosecute the police officers. The prosecutor's decision was based on a report that had apparently been drawn up on 15 November 2004 by the police chief of the police station where the applicant had been detained and ill-treated. According to the police chief's report, the police officers involved had been questioned by their commanding officer and had vehemently denied any wrongdoing. The prosecutor's decision also stated that according to the medical report of the City Hospital (appendix D), there were no signs of any injury on the applicant's body. As to the medical report obtained from the applicant's family doctor (appendix F), the prosecutor decided to exclude it since it had been drawn up by a private practitioner as opposed to a doctor employed by the State. The decision also stated that it would become final if no appeal was lodged against it within the statutory period of two weeks (see appendix Q for a copy of the prosecutor's decision not to prosecute the police officers). On 4 April 2005 the applicant appealed against the prosecutor's decision not to prosecute the police officers (see appendix R for a copy of the appeal petition). The appeal, which is the final remedy under domestic law, was dismissed on 1 September 2005 by the Assize Court (see appendix S for a copy of the decision). In accordance with the domestic procedure, the decision was served on the applicant on 30 September 2005.

36.

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

37. Article invoked	Explanation
	The applicant submits that there have been three separate violations of Article 3 of the Convention as well as a violation of Article 13 of the Convention on account of the treatment to which he was subjected since his arrest on 10 January 2002. These arguments will be separately dealt with below.
Violation of Article 3 on Account of the ill-treatment in Police Custody	<p>37.1 The applicant submits that the ill-treatment to which he was subjected whilst in the custody of the police officers was in breach of Article 3 of the Convention. In this connection the applicant refers to the established case-law of the European Court of Human Rights (hereinafter referred to as “the Court”) according to which “where an individual is taken into police custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention” (see, <i>inter alia</i>, <i>Selmouni v. France</i> [GC], no. 25803/94, 28 July 1999, § 87). The applicant was arrested and detained in police custody on 10 January 2002 (see appendix A) and remained there until his release on 14 January 2002 (see appendix E). According to the medical report drawn up on 10 January 2002, i.e. immediately after he was arrested and before he was placed in the police custody, his body bore no marks of ill-treatment (see appendix B). On the other hand, the report prepared by his family doctor within hours of his release on 14 January 2002 (see appendix F) details the extensive injuries on his body. It is submitted, therefore, that the injuries detailed in that medical report had been caused while the applicant was detained in the custody of the police.</p> <p>37.2 The applicant argues that the medical report issued upon his release from police custody on 14 January 2002 (appendix D) cannot be relied on in evidence as discrediting his allegations of ill-treatment. That medical examination was carried out in the presence of police officers who had been responsible for the ill-treatment. Their presence prevented the applicant from informing the doctor about the ill-treatment and from showing the doctor his injuries. In this connection the applicant refers to the Council of Europe’s European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) Standards on Police Custody. According to these Standards, “medical examination of persons in police custody should be conducted out of the hearing, and preferably out of the sight, of police officers. Further, the results of every examination as well as relevant statements by the detainee and the doctor’s conclusions should be formally recorded by the doctor and made available to the detainee and his lawyer”. The Court has taken these Standards into account in evaluating medical reports in cases concerning allegations of ill-treatment (see, for example, <i>Akkoç v. Turkey</i>, nos. 22947/93 and 22948/93, 10 October 2000, § 118).</p>

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

37. Article invoked

Explanation

37.3 As regards the prosecutor's failure to take the medical report obtained from the applicant's family doctor (appendix F) into account because it was prepared by a private medical practitioner – as opposed to a doctor working for a State hospital – the applicant submits that medical reports drawn up by private medical practitioners are relevant for the Court's examinations of allegations of ill- treatment. Furthermore, the Court expects national investigating authorities to take such reports into account. In this connection the applicant refers to the Court's judgment in the case of *Dizman v. Turkey* in which the medical report obtained by Mr Dizman following his release formed the basis of the Court's conclusion that he had been ill-treated (*Dizman v. Turkey*, no. 27309/95, 20 September 2005, § 76). Like Mr Dizman had done, the applicant in the present application also brought the medical report to the attention of the investigating prosecutor and asked the prosecutor to prosecute the police officers. Furthermore, the applicant would draw the Court's attention to the fact that the independent medical report in question was obtained immediately after his release. There is no suggestion that the applicant suffered those injuries in that short time, i.e. after his release but before his examination by his family doctor. In any event, as can be seen in the applicant's petition submitted to the prosecutor on 14 January 2002 (appendix G), the applicant informed the prosecutor that his father and the lawyer were willing to testify to the effect that they had seen him released with injuries and had taken him immediately to the family doctor (see appendix T for copies of the statements). Furthermore, the medical report which states that the applicant's injuries were one day old places the timing of those injuries to the period of detention in police custody. No steps were taken by the prosecutor to question his father or the lawyer or to question the doctors who had drawn up the medical reports on 14 January 2002 to eliminate the contradictions between those reports.

37.4 In the light of the foregoing the applicant submits that he has satisfied the initial burden of proving that his injuries were caused in police custody. It follows, therefore, that the respondent Government's obligation is engaged to provide a plausible explanation of how the applicant's injuries were caused, failing which a clear issue arises under Article 3 of the Convention. To this end, the applicant maintains that the injuries were the consequence of the ill- treatment and reserves the right to respond to any arguments which may be advanced by the respondent Government and to adduce further evidence.

37.5 As regards the nature of his injuries, the applicant submits that they were serious and have been inflicted deliberately, thereby causing him very serious and cruel suffering (see *Ireland v. the United Kingdom*, no. 5310/71, 18 January 1978, § 167). The ill-treatment included being stripped naked, hosed down with pressurised cold water, being suspended from his arms and being beaten up with a truncheon on his chest. Also, electric shocks were administered to his toes. According to the Court, being suspended from the arms "could only have been deliberately inflicted; indeed, a certain amount of preparation and exertion would have been required to carry it out" (see *Aksoy v. Turkey*, no. 21987/93, 18 December 1996, § 64). Furthermore, the applicant draws the Court's attention to the fact that he was ill-treated in order to force him to sign a confession. In the light of the above, the applicant invites the Court to conclude that the ill-treatment to which he was subjected amounted to torture within the meaning of Article 3 of the Convention.

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments	
37. Article invoked	Explanation
Violation of Article 3 on Account of the Conditions of Detention on Remand	<p>37.6 The applicant submits that his suffering on account of the conditions of his detention on remand in the City Prison between 1 March 2002 and 21 October 2005 went beyond the inevitable element of suffering or humiliation involved in a given form of legitimate treatment or punishment and reached the threshold of severity necessary to classify it as inhuman and degrading. In this connection the applicant refers to the findings of the CPT following its delegates' visit to the City Prison in 2004 while the applicant was being detained there. According to the CPT's report, the conditions in the prison were inhuman and degrading. Furthermore, it was stated in the CPT's report that 7 m<sup>2</sup> per prisoner was an approximate and desirable guideline for a detention cell, whereas the applicant was only afforded 1 m<sup>2</sup> of personal space.</p> <p>37.7 Prison conditions similar to those the applicant endured in the City Prison have already been found by the Court to be inhuman and degrading. In this connection the applicant refers in particular to the Court's judgments in the cases of Kalashnikov v. Russia (no. 47095/99, 15 July 2002, § 97) and Labzov v. Russia (no. 62208/00, 28 February 2002, §§ 44-46) in which the Court found that personal space afforded to prisoners measuring between 0.9 - 1.9 m<sup>2</sup> and 1 m<sup>2</sup>, respectively, in themselves gave rise to issues under Article 3 of the Convention. In the present application, the applicant was allowed 1 m<sup>2</sup> of personal space, in which he spent more than three years and seven months. The applicant submits that the fact that he was obliged to live, sleep and use the toilet in the same cell with so many other inmates is sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.</p> <p>37.8 The applicant invites the Court to take into account the cumulative effects of the conditions of his detention. As evidenced in the medical report of 1 August 2005 (appendix N) the conditions in the City Prison have adversely affected the applicant's mental and physical health.</p> <p>37.9 In the light of the above, the applicant maintains that there has been a separate violation of Article 3 of the Convention on account of the unacceptable conditions of his detention.</p>
Violation of Article 3 on Account of the Lack of an Effective Investigation	<p>37.10 According to the Court's established case-law, "where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention' requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible" (Assenov v. Bulgaria, no. 24760/94, 28 September 1998, § 102; see also more recently Bekos and Koutropoulos v. Greece, no. 15250/02, 13 December 2005, §§ 53-57).</p>

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

37. Article invoked

Explanation

37.11 Modalities of an effective investigation into allegations of ill-treatment, as identified in the Court's case-law, are summarised in the Court's judgment in the case of *Batand Others v. Turkey* (nos. 33097/96 and 57834/00, 3 June 2004, §§ 133-137). According to the Court in *Batand Others*, and in so far as relevant for the purposes of the present application, investigating authorities faced with allegations of ill-treatment must

- show due diligence by promptly initiating an investigation and by taking reasonable steps to expedite the investigation;
- take reasonable steps to secure the evidence;
- carry out the investigation in an independent and impartial manner; and - enable the victim's effective access to the investigation.

37.12 In the present application no steps appear to have been taken in the investigation prior to the drafting of the report by the police chief on 15 November 2004, more than two years after the applicant brought his complaints to the prosecutor's attention (see appendix Q for a copy of the decision not to prosecute). Furthermore, no steps appear to have been taken between 15 November 2004 until 1 April 2005 when the prosecutor rendered his decision not to prosecute the police officers. Indeed, the report prepared by the police chief following his questioning of the police officers responsible for the ill-treatment remains the only step taken in the investigation which continued for a period of almost three years. Similarly, no consideration has been given by the trial court judge to the allegations of ill-treatment repeatedly voiced by the applicant in the course of the trial (see appendix J for copies of the verbatim records). It cannot be said, therefore, that the investigating authorities have acted promptly or that they have shown due diligence to expedite the investigation.

37.13 No steps have been taken by the prosecutor to secure the evidence. For example, no thought was apparently given to questioning the applicant or to having him examined by a doctor to obtain an additional medical certificate with a view to eliminating the contradictions between the two medical reports (see appendices D and F for copies of the medical reports). Similarly, no attempt has been made by the prosecutor to question the applicant's father and the lawyer who had met the applicant outside the court house upon his release and taken him to the family doctor (see appendix T).

37.14 It cannot be said that the investigation was independent or impartial. The police officers whom the applicant accused of having ill-treated him were questioned by their superior. On account of the hierarchical connection, the police chief cannot be regarded as an independent or impartial investigator. Strikingly, no steps were taken by the prosecutor to question the police officers directly.

37.15 Finally, there has been no public scrutiny of the investigation. In particular, the applicant has not been given any information about the investigation despite his request thereto (see appendix O). The applicant submits that the denial of information and access to the documents in the investigation file cannot be justified on account of the allegedly confidential nature of the investigation.

## APPENDICES

European Court of Human Rights - Application form

7/11

**F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments**

[illegible]

G. For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

[illegible]

## APPENDICES

39. Is or was there an appeal or remedy available to you which you have not used?

☐ Yes

☐ No

40. If you answered Yes above, please state which appeal or remedy you have not used and explain why not.

**H. Information concerning other international proceedings (if any)**

41. Have you raised any of these complaints in another procedure of international investigation or settlement?

☐ Yes

☐ No

42. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given).

43. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

☐ Yes☒ No

44. If you answered Yes above, please write the relevant application number(s) in the box below.

---

---

---

**I. List of accompanying documents**

You should enclose full and legible *copies* of all documents.

No documents will be returned to you. It is thus in your interests to submit copies, not originals.

You **MUST**:

- arrange the documents in order by date and by procedure;
- number the pages consecutively;
- **NOT** staple, bind or tape the documents.

45. In the box below, please list the documents in chronological order with a concise description.

1. Record of Arrest of 10 January 2002
2. Medical report drawn up at the City Hospital on 10 January 2002
3. The confession extracted from the applicant under torture on 13 January 2002
4. Medical report drawn up at the City Hospital on 14 January 2002
5. Judge's order of release of 14 January 2002
6. Medical report drawn up by the family doctor on 14 January 2002
7. Complaint petition submitted to the prosecutor on 14 January 2002
8. Indictment of 21 January 2002
9. Verbatim record of the first hearing held on 1 March 2002
10. Verbatim records of the 12 hearings
11. City Criminal Court's judgment of 1 March 2005 convicting the applicant
12. The applicant's petition of appeal against his conviction
13. Decision of the Court of Appeal dismissing the appeal
14. Medical report of 1 August 2005
15. The applicant's letter of 30 October 2004 addressed to the prosecutor
16. The prosecutor's reply of 1 January 2005
17. The prosecutor's decision of 1 April 2005 not to prosecute the police officers
18. The petition of appeal of 4 April 2005 against the prosecutor's decision not to prosecute
19. Assize Court's decision of 1 September 2005 dismissing the applicant's appeal
20. Statements drawn up by the applicant's father and the lawyer.
- 21.
- 22.
- 23.
- 24.
- 25.

**Any other comments**

Do you have any other comments about your application?

#### 46. Comments


### Declaration and signature

I hereby declare that, to the best of my knowledge and belief, the information I have given in the present application form is correct.

47. Date

e.g. 27/09/2012

The applicant(s) or the applicant's representative(s) must sign in the box below.

48. Signature(s) ☐ Applicant(s) ☐ Representative(s) - tick as appropriate

### Confirmation of correspondent

If there is more than one applicant or more than one representative, please give the name and address of the one person with whom the Court will correspond.

49. Name and address of ☐ Applicant ☐ Representative - tick as appropriate


The completed application form should be signed and sent by post to:

The Registrar  
European Court of Human Rights  
Council of Europe  
67075 STRASBOURG CEDEX  
FRANCE



ENG - 2014/1

## Authority Form

Warning: This authority form should only be used if the applicant did not have a representative at the time of filling in the application form or if the applicant wishes to change the representative named in an application form already submitted to the Court. If the applicant is represented at the time of lodging the application, the authority form on page 2 of the full application form should be used.

### Barcode label

If you have already received a sheet of barcode labels from the European Court of Human Rights, please place one barcode label in the box below.

### Reference number

If you already have a reference number from the Court in relation to the complaints for which you are submitting this authority form, please indicate it in the box below.

### A. The applicant (Individual)

This section refers to applicants who are individual persons only. If the applicant is an organisation, please go to Section B.

1. Surname

2. First name(s)

3. Date of birth

D	D	M	M	Y	Y	Y	Y		

e.g. 27/09/2012

4. Nationality

5. Address

6. Telephone (including international dialling code)

7. Email (if any)

8. Sex

- ☐ male  
☐ female

### B. The applicant (Organisation)

This section should only be filled in where the applicant is a company, NGO, association or other legal entity.

9. Name

10. Identification number (if any)

11. Date of registration or incorporation (if any)

D	D	M	M	Y	Y	Y	Y		

e.g. 27/09/2012

12. Activity

13. Registered address

14. Telephone (including international dialling code)

15. Email

**C. Representative(s) of the applicant****Non-lawyer/Organisation official**

Please fill in this part of the form if you are representing an applicant but *are not a lawyer*.

In the box below, explain in what capacity you are representing the applicant or state your relationship or official function where you are representing an organisation.

16. Capacity / relationship / function

17. Surname

18. First name(s)

19. Nationality

20. Address

21. Telephone (including international dialling code)

22. Fax

23. Email

**Lawyer**

Please fill in this part of the form if you are representing the applicant *as a lawyer*.

24. Surname

25. First name(s)

26. Nationality

27. Address

28. Telephone (including international dialling code)

29. Fax

30. Email

**Authority**

The applicant must authorise any representative to act on his or her behalf by signing the authorisation below (see the Notes for filling in the application form).

I hereby authorise the person indicated to represent me in the proceedings before the European Court of Human Rights, concerning my application lodged under Article 34 of the Convention.

31. Signature of applicant

32. Date

D	D	M	M	Y	Y	Y	Y

e.g. 27/09/2012

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 25424/05

Ramzy

Applicant

v.

The Netherlands

Respondent

WRITTEN COMMENTS

BY

AMNESTY INTERNATIONAL LTD., THE ASSOCIATION FOR THE PREVENTION OF  
TORTURE, HUMAN RIGHTS WATCH, INTERIGHTS, THE INTERNATIONAL  
COMMISSION OF JURISTS, OPEN SOCIETY JUSTICE INITIATIVE AND REDRESS  
PURSUANT TO ARTICLE 36 § 2 OF THE EUROPEAN CONVENTION ON HUMAN  
RIGHTS AND RULE 44 § 2 OF THE RULES OF THE EUROPEAN COURT OF HUMAN  
RIGHTS

22 November 2005

## I. INTRODUCTION

1. These written comments are respectfully submitted on behalf of Amnesty International Ltd, the Association for the Prevention of Torture, Human Rights Watch, INTERIGHTS, the International Commission of Jurists, Open Society Justice Initiative and REDRESS (“the Intervenor”) pursuant to leave granted by the President of the Chamber in accordance with Rule 44 § 2 of the Rules of Court.<sup>1</sup>

2. Brief details of each of the Intervenor are set out in Annex 1 to this letter. Together they have extensive experience of working against the use of torture and other forms of ill-treatment around the world. They have contributed to the elaboration of international legal standards, and intervened in human rights litigation in national and international fora, including before this Court, on the prohibition of torture and ill-treatment. Together the intervenors possess an extensive body of knowledge and experience of relevant international legal standards and jurisprudence and their application in practice.

## II. OVERVIEW

3. This case concerns the deportation to Algeria of a person suspected of involvement in an Islamic extremist group in the Netherlands. He complains that his removal to Algeria by the Dutch authorities will expose him to a “real risk” of torture or ill-treatment in violation of Article 3 of the European Convention on Human Rights (the “Convention”). This case, and the interventions of various governments, raise issues of fundamental importance concerning the effectiveness of the protection against torture and other ill-treatment, including in the context of the fight against terrorism. At a time when torture and ill-treatment – and transfer to states renowned for such practices – are arising with increasing frequency, and the absolute nature of the torture prohibition itself is increasingly subject to question, the Court’s determination in this case is of potentially profound import beyond the case and indeed the region.

4. These comments address the following specific matters: (i) the absolute nature of the prohibition of torture and other forms of ill-treatment under international law; (ii) the prohibition of transfer to States where there is a substantial risk of torture or ill-treatment (“*non-refoulement*”)<sup>2</sup> as an essential aspect of that prohibition; (iii) the absolute nature of the *non-refoulement* prohibition under Article 3, and the approach of other international courts and human rights bodies; (iv) the nature of the risk required to trigger this prohibition; (v) factors relevant to its assessment; and (vi) the standard and burden of proof on the applicant to establish such risk.

5. While these comments take as their starting point the jurisprudence of this Court, the focus is on international and comparative standards, including those enshrined in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”), the International Covenant on Civil and Political Rights (“ICCPR”), as well as applicable rules of customary international law, all of which have emphasised the absolute, non-derogable and peremptory nature of the prohibition of torture and ill-treatment and, through jurisprudence, developed standards to give it meaningful effect. This Court has a long history of invoking other human rights instruments to assist in the proper interpretation of the Convention itself, including most significantly for present purposes, the UNCAT.<sup>3</sup> Conversely, the lead that this Court has taken in the development of human rights standards in respect of *non-refoulement*, notably through the *Chahal v. the United Kingdom* (1996) case, has been followed extensively by other international

<sup>1</sup> Letter dated 11 October 2005 from Vincent Berger, Section Registrar to Helen Duffy, Legal Director, INTERIGHTS. The World Organization Against Torture (OMCT) and the Medical Foundation for the Care of the Victims of Torture provided input into and support with this brief.

<sup>2</sup> “Other ill-treatment” refers to inhuman or degrading treatment or punishment under Article 3 of the Convention and to similar or equivalent formulations under other international instruments. “*Non-refoulement*” is used to refer to the specific legal principles concerning the prohibition of transfer from a Contracting State to another State where there is a risk of such ill-treatment, developed under human rights law in relation to Article 3 of the Convention and similar provisions. Although the term was originally borrowed from refugee law, as noted below its scope and significance in that context is distinct. The term “transfer” is used to refer to all forms of removal, expulsion or deportation.

<sup>3</sup> *Aydin v. Turkey* (1997); *Soering v. the United Kingdom* (1989); *Selmouni v. France* (1999); and *Mahmut Kaya v. Turkey* (2000). For full reference to these and other authorities cited in the brief see Annex 2 Table of Authorities.

courts and bodies, and now reflects an accepted international standard.<sup>4</sup>

### III. THE 'ABSOLUTE' PROHIBITION OF TORTURE AND ILL-TREATMENT

6. The prohibition of torture and other forms of ill-treatment is universally recognised and is enshrined in all of the major international and regional human rights instruments.<sup>5</sup> All international instruments that contain the prohibition of torture and ill-treatment recognise its absolute, non-derogable character.<sup>6</sup> This non-derogability has consistently been reiterated by human rights courts, monitoring bodies and international criminal tribunals, including this Court, the UN Human Rights Committee ("HRC"), the UN Committee against Torture ("CAT"), the Inter-American Commission and Court, and the International Criminal Tribunal for the Former Yugoslavia ("ICTY").<sup>7</sup>

7. The prohibition of torture and other forms of ill-treatment does not therefore yield to the threat posed by terrorism. This Court, the HRC, the CAT, the Special Rapporteur on Torture, the UN Security Council and General Assembly, and the Committee of Ministers of the Council of Europe, among others, have all recognised the undoubted difficulties States face in countering terrorism, yet made clear that all anti-terrorism measures must be implemented in accordance with international human rights and humanitarian law, including the prohibition of torture and other ill-treatment.<sup>8</sup> A recent United Nations World Summit Outcome Document (adopted with the consensus of all States) in para. 85 reiterated the point.

8. The absolute nature of the prohibition of torture under treaty law is reinforced by its higher, *jus cogens* status under customary international law. *Jus cogens* status connotes the fundamental, peremptory character of the obligation, which is, in the words of the International Court of Justice, "intransgressible."<sup>9</sup> There is ample international authority recognising the prohibition of torture as having *jus cogens* status.<sup>10</sup> The prohibition of torture also imposes obligations *erga omnes*, and every State has a legal interest in the performance of such obligations which are owed to the international community as a whole.<sup>11</sup>

9. The principal consequence of its higher rank as a *jus cogens* norm is that the principle or rule cannot

<sup>4</sup> See e.g. CAT Communication T.P.S. v. Canada (2000); Inter-American Commission on Human Rights, *Report on the Situation of Human Rights of Asylum Seekers Within the Canadian Refugee Determination System* (2000); UN Special Rapporteur on Torture, *Reports to General Assembly* (2005, §§ 38-39; 2004, § 28; and 2002, § 32).

<sup>5</sup> Universal Declaration of Human Rights (Article 5); ICCPR (Article 7); American Convention on Human Rights (Article 5); African Charter on Human and Peoples' Rights (Article 5); Arab Charter on Human Rights (Article 13), UNCAT and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The prohibition against torture is also reflected throughout international humanitarian law, in e.g. the Regulations annexed to the Hague Convention IV of 1907, the Geneva Conventions of 1949 and their two Additional Protocols of 1977.

<sup>6</sup> The prohibition of torture and ill-treatment is specifically excluded from derogation provisions: see Article 4(2) of the ICCPR; Articles 2(2) and 15 of the UNCAT; Article 27(2) of the American Convention on Human Rights; Article 4(c) Arab Charter of Human Rights; Article 5 of the Inter-American Convention to Prevent and Punish Torture; Articles 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>7</sup> See HRC General Comment No. 29 (2001); CAT's Concluding observations on the Reports of: the Russian Federation (2001, § 90), Egypt (2002, § 40), and Spain (2002, § 59); Inter-American cases, e.g. *Castillo-Petrez et al. v. Peru* (1999, § 197); *Cantoral Benavides v. Peru* (2000, § 96); *Maritzá Urrutia v. Guatemala*, (2003, § 89); this Court's cases, e.g. *Tomasí v. France*, (1992); *Aksoy v. Turkey*, (1996); and *Chahal v. the United Kingdom*, (1996); ICTY cases, e.g. *Prosecutor v. Furundžija* (1998).

<sup>8</sup> This Court, see e.g. *Klass and Others v. Germany* (1978); *Leander v. Sweden* (1987) and *Rotaru v. Romania* (2000); HRC, General Comment No. 29 (2001, § 7), and Concluding observations on Egypt's Report, (2002, § 4); CAT Concluding observations on Israel's Report (1997, §§ 2-3 and 24); Report to the General Assembly (2004, § 17) and *Statement in connection with the events of 11 September 2001* (2001, § 17); General Assembly Resolutions 57/27(2002), 57/219 (2002) and 59/191 (2004); Security Council Resolution 1456 (2003, Annex, § 6); Council of Europe Guidelines on Human Rights and the Fight Against Terrorism (2002); Special Rapporteur on Torture, *Statement to the Third Committee of the G.A.* (2001). Other bodies pronouncing on the issue include, for example, Human Rights Chamber for Bosnia and Herzegovina (see e.g. *Boudellaa and others v. Bosnia and Herzegovina and the Federation of Bosnia and Herzegovina*, 2003, §§ 264 to 267).

<sup>9</sup> Advisory Opinion of the ICJ on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, (2004, § 157). See also Article 5,3 Vienna Convention on the Law of Treaties (1969) which introduces and defines the concept of "peremptory norm."

<sup>10</sup> See e.g. the first report of the Special Rapporteur on Torture to the UNHCR (1997, § 3); ICTY judgments *Prosecutor v. Delalić and others* (1998), *Prosecutor v. Kunarac* (2001, § 466), and *Prosecutor v. Furundžija* (1998); and comments of this Court in *Al-Adani v. the United Kingdom* (2001).

<sup>11</sup> See ICJ Reports: *Barcelona Traction, Light and Power Company, Limited* Second Phase (1970, § 33); *Case Concerning East Timor* (1995, § 29); *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (1996, § 31). See also Articles 40-41 of the International Law Commission's Draft Articles on State Responsibility ("ILC Draft Articles") and the commentary to the Draft Articles. See ICTY case *Prosecutor v. Furundžija*, (1998, § 151); Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, (2000, § 155); and HRC General Comment 31(2004, § 2).

be derogated from by States through any laws or agreements not endowed with the same normative force.<sup>12</sup> Thus, no treaty can be made nor law enacted that conflicts with a *jus cogens* norm, and no practice or act committed in contravention of a *jus cogens* norm may be “legitimated by means of consent, acquiescence or recognition”; any norm conflicting with such a provision is therefore void.<sup>13</sup> It follows that no interpretation of treaty obligations that is inconsistent with the absolute prohibition of torture is valid in international law.

10. The fact that the prohibition of torture is *jus cogens* and gives rise to obligations *erga omnes* also has important consequences under basic principles of State responsibility, which provide for the interest and in certain circumstances the obligation of all States to prevent torture and other forms of ill-treatment, to bring it to an end, and not to endorse, adopt or recognise acts that breach the prohibition.<sup>14</sup> Any interpretation of the Convention must be consistent with these obligations under broader international law.

#### IV. THE PRINCIPLE OF NON-REFOULEMENT

11. The expulsion (or ‘*refoulement*’) of an individual where there is a real risk of torture or other ill-treatment is prohibited under both international conventional and customary law. A number of States, human rights experts and legal commentators have specifically noted the customary nature of *non-refoulement*<sup>15</sup> and asserted that the prohibition against *non-refoulement* under customary international law shares its *jus cogens* and *erga omnes* character. As the prohibition of all forms of ill-treatment (torture, inhuman or degrading treatment or punishment) is absolute, peremptory and non-derogable, the principle of *non-refoulement* applies without distinction.<sup>16</sup> Indicative of the expansive approach to the protection, both CAT and HRC are of the opinion that *non-refoulement* prohibits return to countries where the individual would not be directly at risk but from where he or she is in danger of being expelled to another country or territory where there would be such a risk.<sup>17</sup>

12. The prohibition of *refoulement* is explicit in conventions dedicated specifically to torture and ill-treatment. Article 3 of UNCAT prohibits States from deporting an individual to a State “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Article 13(4) of the Inter-American Convention to Prevent and Punish Torture provides, more broadly, that deportation is prohibited on the basis that the individual “will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State.”

13. The principle of *non-refoulement* is also explicitly included in a number of other international instruments focusing on human rights, including the EU Charter of Fundamental Rights and Inter-American Convention on Human Rights (“I-ACHR”).<sup>18</sup> In addition, it is reflected in other international instruments addressing international cooperation, including extradition treaties, and specific forms of terrorism.<sup>19</sup> Although somewhat different in its scope and characteristics, the principle is also reflected in

<sup>12</sup> See Article 53 of the Vienna Convention on the Law of Treaties 1969; also ICTY *Furundžija* (1998, §§ 153-54).

<sup>13</sup> Jennings and Watts, *Oppenheim's International Law* (Vol. 1, Ninth ed.) 8 (1996). See also Article 53, Vienna Convention.

<sup>14</sup> See ILC Draft Articles (40 and 41 on *jus cogens*; and Articles 42 and 48 on *erga omnes*); see also Advisory Opinion of the ICJ on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, (2004, § 159). In respect of the *erga omnes* character of the obligations arising under the ICCPR thereof, see Comment 31 (2004, § 2).

<sup>15</sup> See E. Lauterpacht and D. Bethlehem (2001, §§ 196-216).

<sup>16</sup> See e.g. HRC General Comment No. 20 (1992, § 9).

<sup>17</sup> CAT General Comment No. 1 (1996, § 2); *Arveds Hamayak Karhan v. Sweden* (1997); and HRC General Comment 31 (2004).

<sup>18</sup> Article 19 EU Charter of Fundamental Rights; Article 22(8) I-ACHR; Article 3(1) Declaration on Territorial Asylum, Article 8 Declaration on the Protection of All Persons from Enforced Disappearances, Principle 5 Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions, and Council of Europe Guidelines.

<sup>19</sup> Article 9 International Convention against the Taking of Hostages, Article 3 European Convention on Extradition, Article 5 European Convention on the Suppression of Terrorism, and Article 4(5) Inter-American Convention on Extradition contain a general clause on *non-refoulement*. See also Article 3 Model Treaty on Extraditions.

refugee law.<sup>20</sup>

14. This principle is also implicit in the prohibition of torture and other ill-treatment in general human rights conventions, as made clear by consistent authoritative interpretations of these provisions. In *Soering* and in subsequent cases, this Court identified *non-refoulement* as an 'inherent obligation' under Article 3 of the Convention in cases where there is a "real risk of exposure to inhuman or degrading treatment or punishment." Other bodies have followed suit, with the HRC, in its general comments and individual communications, interpreting Article 7 of the ICCPR as implicitly prohibiting *refoulement*.<sup>21</sup> The African Commission on Human Rights and the Inter-American Commission on Human Rights have also recognised that deportation can, in certain circumstances, constitute such ill-treatment.<sup>22</sup>

15. The jurisprudence therefore makes clear that the prohibition on *refoulement*, whether explicit or implicit, is an inherent and indivisible part of the prohibition on torture or other ill-treatment. It constitutes an essential way of giving effect to the Article 3 prohibition, which not only imposes on states the duty not to torture themselves, but also requires them to "prevent such acts by not bringing persons under the control of other States if there are substantial grounds for believing that they would be in danger of being subjected to torture."<sup>23</sup> This is consistent with the approach to fundamental rights adopted by this Court, and increasingly by other bodies, regarding the positive duties incumbent on the state.<sup>24</sup> Any other interpretation, enabling states to circumvent their obligations on the basis that they themselves did not carry out the ill-treatment would, as this Court noted when it first considered the matter, 'plainly be contrary to the spirit and intention of [Article 3].'<sup>25</sup>

### **The Absolute Nature of the Prohibition on *Refoulement***

16. The foregoing demonstrates that the prohibition on *refoulement* is inherent in the prohibition of torture and other forms of ill-treatment. UN resolutions, declarations, international conventions, interpretative statements by treaty monitoring bodies, statements of the UN Special Rapporteur on Torture and judgments of international tribunals, including this Court, as described herein, have consistently supported this interpretation. It follows from its nature as inherent to it, that the *non-refoulement* prohibition enjoys the same status and essential characteristics as the prohibition on torture and ill-treatment itself, and that it may not be subject to any limitations or exceptions.

17. The jurisprudence of international bodies has, moreover, explicitly given voice to the absolute nature of the principle of *non-refoulement*. In its case law, this Court has firmly established and re-affirmed the absolute nature of the prohibition of *non-refoulement* under Article 3 of the Convention.<sup>26</sup> In paragraph 80 of the *Chahal* case, this Court made clear that the obligations of the State under Article 3 are "equally absolute in expulsion cases" once the 'real risk' of torture or ill-treatment is shown. The CAT has followed suit in confirming the absolute nature of the prohibition of *refoulement* under Article 3 in the context of particular cases.<sup>27</sup> Likewise, other regional bodies have also interpreted the prohibition on torture and ill-treatment as

<sup>20</sup> The principle of *non-refoulement* applicable to torture and other ill-treatment under human rights law is complementary to the broader rule of *non-refoulement* applicable where there is a well founded fear of 'persecution' under refugee law, which excludes those who pose a danger to the security of the host State. However, there are no exceptions to *non-refoulement*, whether of a refugee or any other person, when freedom from torture and other ill-treatment is at stake. See Articles 32 and 33 of the Convention Relating to the Status of Refugees, 1951, *Chahal* case (1996, § 80), the New Zealand case of *Zaoui v. Attorney General* (2005); and *Lauterpacht and Bethlehem* (2001, §§ 244 and 250).

<sup>21</sup> See HRC General Comments No. 20 (1990, at § 9), and No. 31 (2004, §12). For individual communications, see e.g. *Chital Ng v. Canada*, (1994, § 14.1); *Cox v. Canada* (1994); *G.T. v. Australia* (1997).

<sup>22</sup> See African Commission on Human Rights, *Modise v. Botswana*, and I-A Comm. HR Report on *Terrorism and Human Rights* (2004).

<sup>23</sup> Report of the Special Rapporteur to the Third Committee of the GA (2001, § 28).

<sup>24</sup> See Special Rapporteur on Torture Report (1986, § 6) and Report (2004, § 27); HRC General Comments No. 7 (1982) and No. 20 (1992); Articles 40-42 and 48 of the ILC Draft Articles; ICJY *Furundžija* judgment (1998, § 148).

<sup>25</sup> *Soering v. UK* (1989, § 88).

<sup>26</sup> *Soering v. UK* (1989, § 88); *Almid v. Austria* (1996 § 41); *Chahal v. UK* (1996).

<sup>27</sup> See CAT *Tapia Paz v. Sweden*, (1997, at § 9.8) and *Pantine Muzongo Paken Kisoki v. Sweden* (1996).

including an absolute prohibition of *refoulement*.<sup>28</sup>

*Application of the non-refoulement principle to all persons*

18. It is a fundamental principle that *non-refoulement*, like the protection from torture or ill-treatment itself, applies to *all persons* without distinction. No characteristics or conduct, criminal activity or terrorist offence, alleged or proven, can affect the right not to be subject to torture and ill-treatment, including through *refoulement*. In the recent case of *N. v. Finland* (2005), this Court reiterated earlier findings that “[a]s the prohibition provided by Article 3 against torture, inhuman or degrading treatment or punishment is of absolute character, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration (emphasis added).” The same principle is reiterated in other decisions of this Court and of other bodies.<sup>29</sup>

*Application of the non-refoulement principle in the face of terrorism or national security threat*

19. The jurisprudence of other regional and international bodies, like that of this Court, rejects definitively the notion that threats to national security, or the challenge posed by international or domestic terrorism, affect the absolute nature of the prohibition on *non-refoulement*. In *Chahal*, this Court was emphatic that no derogation is permissible from the prohibition of torture and other forms of ill-treatment and the obligations arising from it (such as *non-refoulement*) in the context of terrorism. This line of reasoning has been followed in many other cases of this Court and other bodies including the recent case of *Agiza v. Sweden* in which CAT stated that “the Convention’s protections are absolute, even in the context of national security concerns.”<sup>30</sup>

20. Thus no exceptional circumstances, however grave or compelling, can justify the introduction of a “balancing test” when fundamental norms such as the prohibition on *non-refoulement* in case of torture or ill-treatment are at stake. This is evident from the concluding observations of both HRC and CAT on State reports under the ICCPR and UNCAT, respectively.<sup>31</sup> On the relatively few occasions when states have introduced a degree of balancing in domestic systems, they have been heavily criticised in concluding observations of CAT,<sup>32</sup> or the HRC.<sup>33</sup> This practice follows, and underscores, this Court’s own position in the *Chahal* case where it refused the United Kingdom’s request to perform a balancing test that would weigh the risk presented by permitting the individual to remain in the State against the risk to the individual of deportation.

***Non-Refoulement as Jus Cogens***

21. It follows also from the fact that the prohibition of *refoulement* is inherent in the prohibition of torture and other forms of ill-treatment, and necessary to give effect to it, that it enjoys the same customary law, and *jus cogens* status as the general prohibition. States and human rights legal experts have also specifically asserted that the prohibition against *non-refoulement* constitutes customary international law, and enjoys *jus cogens* status.<sup>34</sup> As noted, one consequence of *jus cogens* status is that no treaty obligation, or

<sup>28</sup> See *Modise* case and *Report on Terrorism and Human Rights*.

<sup>29</sup> See *inter alia* *Ahmed v. Austria* (1996); and *CAT Tapia Paz v. Sweden* (1997, § 14.5); *M. B. B. v. Sweden* (1998, § 6.4).

<sup>30</sup> See *CAT Agiza v. Sweden* (2005, § 13.8); *Aemei v. Switzerland* (1997, § 9.8); *M.B.B. v. Sweden*, § 6.4; *Arana v. France*, (2000, § 11.5).

<sup>31</sup> E.g. CAT’s Concluding Observations on Germany (2004), commending the reaffirmation of the absolute ban on exposure to torture, including through *refoulement*, even where there is a security risk.

<sup>32</sup> See CAT’s Concluding Observations on Sweden’s Report (2002, § 14); and on Canada’s Report (2005, § 4(a)).

<sup>33</sup> See also HRC Concluding Observations on Canada’s Report (1999, § 13) condemning the Canadian *Suresh* case, which upheld a degree of balancing under Article 3, based on national law, and *Mansour Abani v. Canada*, (2002, § 10.10) where HRC also clearly rejected Canada’s balancing test in the context of deportation proceedings.

<sup>34</sup> See Lauterpacht and Bethlehem (2001, § 195); Bruin and Wouters (2003, § 4.6); Allain (2002); Report of Special Rapporteur on Torture to the GA (2004); IACHR Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System (2000, § 154). There has also been considerable support among Latin American States for the broader prohibition of *non-refoulement* in refugee law as

interpretation thereof, inconsistent with the absolute prohibition of *refoulement*, has validity under international law.

22. Certain consequences also flow from the *jus cogens* nature of the prohibition of torture itself (irrespective of the status of the *non-refoulement* principle), and the *erga omnes* obligations related thereto. The principle of *non-refoulement* is integral - and necessary to give effect - to the prohibition of torture. To deport an individual in circumstances where there is a real risk of torture is manifestly at odds with the positive obligations not to aid, assist or recognise such acts and the duty to act to ensure that they cease.<sup>35</sup>

## V. THE OPERATION OF THE RULE

### The General Test

23. When considering the obligations of States under Article 3 in transfer cases, this Court seeks to establish whether “*substantial grounds are shown for believing that the person concerned, if expelled, faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in the receiving country.*”<sup>36</sup> This test is very similar to those established by other bodies. Article 3 (1) of the UNCAT requires that the person not be transferred to a country where there are “*substantial grounds for believing that he would be in danger of being subjected to torture.*” The HRC has similarly affirmed that the obligation arises “*where there are substantial grounds for believing that there is a real risk of irreparable harm.*”<sup>37</sup> The Inter-American Commission for Human Rights has likewise referred to “*substantial grounds of a real risk of inhuman treatment.*”<sup>38</sup>

24. The legal questions relevant to the Court’s determination in transfer cases, assuming that the potential ill-treatment falls within the ambit of Article 3, are: first, the nature and degree of the risk that triggers the *non-refoulement* prohibition; second, the relevant considerations that constitute ‘substantial grounds’ for believing that the person faces such a risk; third, the standard by which the existence of these ‘substantial grounds’ is to be evaluated and proved. The comments below address these questions in turn.

25. A guiding principle in the analysis of each of these questions, apparent from the work of this Court and other bodies, is the need to ensure the effective operation of the *non-refoulement* rule. This implies interpreting the rule consistently with the human rights objective of the Convention; the positive obligations on States to prevent serious violations and the responsibility of the Court to guard against it; the absolute nature of the prohibition of torture and ill-treatment and the grave consequences of such a breach transpiring; and the practical reality in which the *non-refoulement* principle operates. As this Court has noted: “The object and purpose of the Convention as an instrument for the protection of individual human beings require that *its provisions be interpreted and applied so as to make its safeguards practical and effective.*”<sup>39</sup>

### Nature and Degree of the Risk

26. This Court, like the CAT, has required that the risk be “real”, “foreseeable”, and “personal”.<sup>40</sup> There is no precise definition in the Convention case law of what constitutes a “real” risk, although the Court has established that “mere possibility of ill-treatment is not enough”,<sup>41</sup> just as certainty that the ill-treatment will occur is not required.<sup>42</sup> For more precision as to the standard, reference can usefully be made to the jurisprudence of other international and regional bodies which also apply the ‘real and foreseeable’ test.

“imperative in regard to refugees and in the present state of international law [thus it] should be acknowledged and observed as a rule of *jus cogens*” (Cartagena Declaration of Refugees of 1984, Section III, § 5).

<sup>35</sup> ILC Draft Articles, Article 16.

<sup>36</sup> *N v. Finland* (2005).

<sup>37</sup> HRC General Comment 31 (2004).

<sup>38</sup> *Report on Terrorism and Human Rights* (2002), *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, (2000), § 154).

<sup>39</sup> *Soering v. the United Kingdom*, (1989, § 87), emphasis added.

<sup>40</sup> CAT General Comment 1 (1997); *Soering v. the United Kingdom* (1989, § 86); *Shamayev and 12 others v. Russia* (2005).

<sup>41</sup> See *Vitharajah*, (1991, § 111).

Notably, the CAT has held that the risk “must be assessed on grounds that go beyond mere theory or suspicion”, but this does not mean that the risk has to be “highly probable”.<sup>43</sup>

27. The risk must also be “personal”. However, as noted in the following section, personal risk may be deduced from various factors, notably the treatment of similarly situated persons.

### **Factors Relevant to the Assessment of Risk**

28. This Court and other international human rights courts and bodies have repeatedly emphasised that the level of scrutiny to be given to a claim for *non-refoulement* must be “rigorous” in view of the absolute nature of the right this principle protects.<sup>44</sup> In doing so, the State must take into account “all the relevant considerations” for the substantiation of the risk.<sup>45</sup> This includes both the human rights situation in the country of return and the personal background and the circumstances of the individual.

#### *General Situation in the Country of Return*

29. The human rights situation in the state of return is a weighty factor in virtually all cases.<sup>46</sup> While this Court, like CAT,<sup>47</sup> has held that the situation in the state is not sufficient *per se* to prove risk, regard must be had to the extent of human rights repression in the State in assessing the extent to which personal circumstances must also be demonstrated.<sup>48</sup> Where the situation is particularly grave and ill-treatment widespread or generalised, the general risk of torture or ill-treatment may be high enough that little is required to demonstrate the personal risk to an individual returning to that State. The significant weight of this factor is underlined in Article 3(2) of UNCAT: “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

#### *Personal Background or Circumstances*

30. The critical assessment in *non-refoulement* cases usually turns on whether the applicant has demonstrated “specific circumstances” which make him or her personally vulnerable to torture or ill-treatment. These specific circumstances may be indicated by previous ill-treatment or evidence of current persecution (e.g. that the person is being pursued by the authorities), but neither is necessary to substantiate that the individual is ‘personally’ at risk.<sup>49</sup> A person may be found at risk by virtue of a characteristic that makes him or her particularly vulnerable to torture or other ill-treatment. The requisite ‘personal’ risk does not necessarily require information specifically about that person therefore, as opposed to information about the fate of persons in similar situations.

#### *Perceived Association with a Vulnerable Group as a Strong Indication of the Existence of Risk*

31. It is clearly established in the jurisprudence of the CAT that, in assessing the “specific circumstances” that render the individual personally at risk, particular attention will be paid to any evidence

<sup>42</sup> *Snoring*, (1989, § 94).

<sup>43</sup> See e.g. *CAT X.Y.Z. v. Sweden* (1998); *A.L.N. v. Switzerland* (1998); *K.N. v. Switzerland*; and *A.R. v. The Netherlands* (2003).

<sup>44</sup> *Chahal v. the United Kingdom*, 91996, § 79; *Jahari v. Turkey* (2000, § 39).

<sup>45</sup> UNCAT Article 33 (2).

<sup>46</sup> As held by CAT, the absence of a pattern of human rights violations “does not mean that a person cannot be considered to be in danger of being subjected to torture in his or her specific circumstances.” See e.g. *Said Mortosa /Aemai v. Switzerland* (1997).

<sup>47</sup> CAT has explained that although a pattern of systematic abuses in the State concerned is highly relevant, it “does not as such constitute sufficient ground” for a situation to fall under Article 3 because the risk must be ‘personal’.

<sup>48</sup> *Vitharajah* (1991, § 108).

<sup>49</sup> See e.g. *Shamayev and 12 others v. Russia* (2005, § 352); *Said v. the Netherlands* (2005, § 48-49).

that the applicant belongs, or is *perceived* to belong,<sup>50</sup> to an identifiable group which has been targeted for torture or ill-treatment. It has held that regard must be had to the applicant's political or social affiliations or activities, whether inside *or outside* the State of return, which may lead that State to identify the applicant with the targeted group.<sup>51</sup>

32. Organisational affiliation is a particularly important factor in cases where the individual belongs to a group which the State in question has designated as a "terrorist" or "separatist" group that threatens the security of the State, and which for this reason is targeted for particularly harsh forms of repression. In such cases, the CAT has found that the applicant's claim comes within the purview of Article 3 even in the absence of other factors such as evidence that the applicant was ill-treated in the past,<sup>52</sup> and even when the general human rights situation in the country may have improved.<sup>53</sup>

33. In this connection, it is also unnecessary for the individual to show that he or she is, or ever was, personally sought by the authorities of the State of return. Instead, the CAT's determination has focused on the assessment of a) how the State in question treats members of these groups, and b) whether sufficient evidence was provided that the State would believe the particular individual to be associated with the targeted group. Thus in cases involving suspected members of ETA, *Sendero Luminoso*, PKK, KAWA, the People's Mujahadeen Organization and the Zapatista Movement, the CAT has found violations of Article 3 on account of a pattern of human rights violations against members of these organisations, where it was sufficiently established that the States concerned were likely to identify the individuals with the relevant organisations.<sup>54</sup>

34. In respect of proving this link between the individual and the targeted group, the CAT has found that the nature and profile of the individual's activities in his country of origin *or abroad*<sup>55</sup> is relevant. In this respect, human rights bodies have indicated that a particularly important factor to be considered is the extent of publicity surrounding the individual's case, which may have had the effect of drawing the negative attention of the State party to the individual. The importance of this factor has been recognized both by this Court and the CAT.<sup>56</sup>

### **Standard and Burden of Proving the Risk**

35. While the Court has not explicitly addressed the issue of standard and burden of proof in transfer cases, it has held that in view of the fundamental character of the prohibition under Article 3, the examination of risk "must necessarily be a thorough one".<sup>57</sup> It has also imposed on States a positive obligation to conduct a 'meaningful assessment' of any claim of a risk of torture and other ill-treatment.<sup>58</sup> This approach is supported by CAT,<sup>59</sup> and reflects a general recognition by this and other tribunals that, because of the specific nature of torture and other ill-treatment, the burden of proof cannot rest alone with the person alleging it, particularly in the view of the fact that the person and the State do not always have equal access to the evidence.<sup>60</sup> Rather, in order to give meaningful effect to the Convention rights under Article 3 in transfer cases, the difficulties in obtaining evidence of a risk of torture or ill-treatment in another

<sup>50</sup> It is not necessary that the individual *actually* is a member of the targeted group, if believed so to be and targeted for that reason. See CAT *A. v. The Netherlands* (1998).

<sup>51</sup> See CAT General Comment 1 (1997, § 8 (e)).

<sup>52</sup> *Gorki Ernesto Tapia Paez v. Sweden* (1997).

<sup>53</sup> See *José Arcauz Arana v. France* (2000), finding that gross, flagrant or mass violations were unnecessary in such circumstances.

<sup>54</sup> See *inter alia* CAT, *Cecilia Chipana v. Venezuela* (1998); *Ahmed Hussein Mustafa Kamil Agiza v. Sweden* (2005); *Kareh Yaragh Tala v. Sweden* (1998); *Séid Mortesa Asemi v. Switzerland* (1996).

<sup>55</sup> See e.g. *Séid Mortesa Asemi v. Switzerland* (1997); *M.K.O. v. The Netherlands* (2001).

<sup>56</sup> *N. v. Finland* (2005, § 165); *Venkadajalasarma v. the Netherlands* (2004); *Said v. the Netherlands* (2005, § 54); *Thamphithillai v. the Netherlands* (2004, § 63). See also CAT *Sadiq Shek Elmi v. Australia* (1999, § 6.8).

<sup>57</sup> *Said v. the Netherlands* (2005, § 49), *N. v. Finland* (2005); *Jahari v. Turkey* (2000, § 39).

<sup>58</sup> See *Jahari v. Turkey* (2000).

<sup>59</sup> E.g. CAT General Comment 1 (1997, § 9(b)).

State - exacerbated by the inherently clandestine nature of such activity and the individual's remoteness from the State concerned - should be reflected in setting a reasonable and appropriate standard and burden of proof and ensuring flexibility in its implementation.

36. The particular difficulties facing an individual seeking to substantiate an alleged risk of ill-treatment have been recognized by international tribunals, including this Court. These are reflected, for example, in the approach to the extent of the evidence which the individual has to adduce. The major difficulties individuals face in accessing materials in the context of transfer is reflected in the Court's acknowledgment that substantiation only "to the greatest extent practically possible" can reasonably be required.<sup>61</sup> Moreover, CAT's views have consistently emphasised that, given what is at stake for the individual, lingering doubts as to credibility or proof should be resolved in the individual's favour: "even though there may be some remaining doubt as to the veracity of the facts adduced by the author of a communication, [the Committee] must ensure that his security is not endangered."<sup>62</sup> In order to do this, it is not necessary that all the facts invoked by the author should be proved.<sup>63</sup>

37. An onus undoubtedly rests on individuals to raise, and to seek to substantiate, their claims. It is sufficient however for the individual to substantiate an 'arguable' or '*prima facie*' case of the risk of torture or other ill-treatment for the *refoulement* prohibition to be triggered. It is then for the State to dispel the fear that torture or ill-treatment would ensue if the person is transferred. This approach is supported by a number of international tribunals addressing questions of proof in transfer cases. For example, the CAT suggests that it is sufficient for the individual to present an 'arguable case' or to make a '*plausible allegation*'; then it is for the State to prove the lack of danger in case of return.<sup>64</sup> Similarly, the HRC has held that the burden is on the individual to establish a '*prima facie*' case of real risk, and then the State must refute the claim with 'substantive grounds'.<sup>65</sup> Most recently, the UN Sub-Commission for the Promotion of Human Rights considered that once a general risk situation is established, there is a 'presumption' the person would face a real risk.<sup>66</sup>

38. Requiring the sending State to rebut an arguable case is consistent not only with the frequent reality attending individuals' access to evidence, but also with the duties on the State to make a meaningful assessment and satisfy itself that any transfer would not expose the individual to a risk of the type of ill-treatment that the State has positive obligation to protect against.

### **An Existing Risk Cannot be Displaced by "Diplomatic Assurances"**

39. States may seek to rely on "diplomatic assurances" or "memoranda of understanding" as a mechanism to transfer individuals to countries where they are at risk of torture and other ill-treatment. In practice, the very fact that the sending State seeks such assurances amounts to an admission that the person would be at risk of torture or ill-treatment in the receiving State if returned. As acknowledged by this Court in *Chahal*, and by CAT in *Agiza*, assurances do not suffice to offset an existing risk of torture.<sup>67</sup> This view is shared by a growing number of international human rights bodies and experts, including the UN Special

<sup>60</sup> See e.g. HRC, *Albert Womah Makong v. Cameroon* (1994); I-ACHR, *Velasquez Rodriguez v. Honduras* (1988, § 134 *et seq.*).

<sup>61</sup> E.g. *Said v. the Netherlands* (2005, § 49); *Bahaddar v. the Netherlands*, (1998, § 45).

<sup>62</sup> Emphasis added.

<sup>63</sup> *Seid Mortesa Aemi v. Switzerland* (1997).

<sup>64</sup> CAT General Comment 1 (1997, § 5): "The burden of proving a danger of torture is upon the person alleging such danger to present an 'arguable case'. This means that there must be a factual basis for the author's position sufficient to require a response from the State party." In *Agiza v. Sweden* (2005, § 13.7) the burden was found to be on the State to conduct an "effective, independent and impartial review" once a 'plausible allegation' is made. Similarly, in *A.S. v. Sweden* (2000, § 8.6) it was held that if sufficient facts are adduced by the author, the burden shifts to the State "to make sufficient efforts to determine whether there are substantial grounds for believing that the author would be in danger of being subjected to torture."

<sup>65</sup> See HRC, *Jonny Rubin Byaburanga v. Denmark*, (2004, §§ 11.2-3).

<sup>66</sup> UN Sub-Commission for the Promotion and Protection of Human Rights, Resolution 2005/12 on Transfer of Persons, (2005, § 4); see similarly, European Commission for Human Rights in the *Craş Varus* case (1991).

<sup>67</sup> *Chahal v. the UK* (1996, § 105); *Agiza v. Sweden* (2005, § 13.4).

Rapporteur on Torture,<sup>68</sup> the Committee for Prevention of Torture,<sup>69</sup> the UN Sub-Commission,<sup>70</sup> the Council of Europe Commissioner on Human Rights,<sup>71</sup> and the UN Independent Expert on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism.<sup>72</sup> Most recently, the UN General Assembly, by consensus of all States, has affirmed “that diplomatic assurances, where used, do not release States from their obligations, under international human rights, humanitarian and refugee law, in particular the principle of *non-refoulement*.”<sup>73</sup> Reliance on such assurances as sufficient to displace the risk of torture creates a dangerous loophole in the *non-refoulement* obligation, and ultimately erodes the prohibition of torture and other ill-treatment.

40. Moreover, assurances cannot legitimately be relied upon as a factor in the assessment of relevant risk. This is underscored by widespread and growing concerns about assurances as not only lacking legal effect but also as being, in practice, simply unreliable, with post-return monitoring mechanisms incapable of ensuring otherwise.<sup>74</sup> While effective system-wide monitoring is vital for the long-term prevention and eradication of torture and other ill-treatment, individual monitoring cannot ameliorate the risk to a particular detainee.

41. The critical question to be ascertained by the Court, by reference to all circumstances and the practical reality on the ground, remains whether there is a risk of torture or ill-treatment in accordance with the standards and principles set down above. If so, transfer is unlawful. No ‘compensating measures’ can affect the peremptory *jus cogens* nature of the prohibition against torture, and the obligations to prevent its occurrence, which are plainly unaffected by bilateral agreements.

## VI. CONCLUSION

42. The principle of *non-refoulement*, firmly established in international law and practice, is absolute. No exceptional circumstances concerning the individual potentially affected or the national security of the State in question can justify qualifying or compromising this principle. Given the inherent link between the two, and the positive nature of the obligation to protect against torture and ill-treatment, no legal distinction can be drawn under the Convention between the act of torture or ill-treatment and the act of transfer in face of a real risk thereof. Any unravelling of the *refoulement* prohibition would necessarily mean an unravelling of the absolute prohibition on torture itself, one of the most fundamental and incontrovertible of international norms.

43. International practice suggests that the determination of transfer cases should take account of the absolute nature of the *refoulement* prohibition under Article 3, and what is required to make the Convention’s protection effective. The risk must be real, foreseeable and personal. Great weight should attach to the person’s affiliation with a vulnerable group in determining risk. Evidentiary requirements in respect of such risk must be tailored to the reality of the circumstances of the case, including the capacity of the individual to access relevant facts and prove the risk of torture and ill-treatment, the gravity of the potential violation at stake and the positive obligations of states to prevent it. Once a *prima facie* or arguable case of risk of torture or other ill-treatment is established, it is for the State to satisfy the Court that there is in fact no real risk that the individual will be subject to torture or other ill-treatment.

<sup>68</sup> See Report of Special Rapporteur on Torture to the General Assembly, (2004, § 40).

<sup>69</sup> See CPT 15<sup>th</sup> General Report, (2004-2005, §§ 39-40).

<sup>70</sup> See above note 70, at § 4.

<sup>71</sup> Report by Council of Europe Commissioner for Human Rights (2005, §§ 12-3).

<sup>72</sup> Report of the UN Independent Expert (2005, §§ 19-20).

<sup>73</sup> See UN Declaration (2005, § 8).

<sup>74</sup> Courts in Canada (*Malhioub*), the Netherlands (*Kaplan*), and the United Kingdom (*Zakari*) have blocked transfers because of the risk of torture despite the presence of diplomatic assurances. There is credible evidence that persons sent from Sweden to Egypt (*Alqiza & Al-Zari*) and from the United States to Syria (*Alwar*) have been subject to torture and ill-treatment despite assurances: for more information on practice, see Human Rights Watch, ‘Still at Risk’ (2005); Human Rights Watch, ‘Empty Promises’ (2004).

VERY URGENT!!!

## RULE 39 APPLICATION AGAINST THE NETHERLANDS

EUROPEAN COURT OF HUMAN RIGHTS  
THE REGISTRAR - SECTION III  
COUNCIL OF EUROPE 67075 STRASBOURG CEDEX FRANCE  
ALSO BY FAX: +33388412730

AMSTERDAM, OUR REF.  
DIRECT TEL.NR: DIRECT FAXNR:  
15 JULY 2005 20050934.MF/MW/BF  
+3120 3446200 +3120 3446201

**Betref: Ramzy v the Netherlands – REQUEST FOR RULE 39**  
**New case**

Dear Sir,

We, counsels for the applicant, Mr Mohammed RAMZY, introduce a new application ex Article 34 of the Convention, against the Netherlands. The applicant was born on 23 November 1982. He is an asylum seeker from Algeria who is on trial in the Netherlands on charges of Islamist terrorism. He is presently in aliens detention in Penitentiary Institution Ter Apel.

The applicant is about to be expelled to Algeria.

His asylum case was terminated in last and final instance on 6 July 2005. On 12 July 2005 he has been presented by the Dutch immigration authorities to the Algerian Embassy for travel documents. In practice this means that he will be put on an airplane to Algeria at very short notice.

The applicant files this application on grounds that there are substantive grounds to believe that there is a real risk of him being exposed to torture and/or inhuman and/or degrading treatment contrary to Article 3 of the Convention if he is expelled from the Netherlands to Algeria.

The applicant requests the Court to apply Rule 39 of its Rules of Court and to indicate to the Government of the Netherlands an interim measure not to expel him to Algeria while his application is pending before the Court.

### OVERVIEW OF PRESENT IMMIGRATION PROCEEDINGS

The applicant's asylum request was rejected by the Minister for Aliens Affairs and Integration on 25 August 2004. On 14 September 2004 the applicant was also declared an undesired alien on the grounds that he was considered to be a threat to national security and in the interest of "the Netherlands' international relations". The applicant lodged an administrative appeal (*bezwaar*) against this decision. These proceedings are still pending before the domestic courts.

On 2 November 2004 the Haarlem Regional Court issued an interim order at the request of the applicant prohibiting the minister to expel the applicant until a decision was taken on his appeal against the decision of 25 August 2004 and on the administrative appeal against the decision of 14 September 2004.

The minister lodged an extraordinary appeal (*doorbreking van het appèlverbod*) against this interim order to the Administrative Jurisdiction Division of the Council of State [AJDCS] (*Afdeling Bestuursrechtspraak van de Raad van State*). On 19 November 2004 the AJDCS annulled the Haarlem Regional Court's interim order as regards the minister's decision of 14 September 2004.

On 23 December 2004 the Haarlem Regional Court considered the applicant's appeal well-grounded (*gegrond verklaard*) and overturned the minister's impugned decision of 25 August 2004 referring the case to the minister for a new decision (see below).

The minister lodged a further appeal (*hoger beroep*) against the judgment of the Haarlem Regional Court to the AJDCS. On 6 July 2005 the AJDCS quashed the judgment of the Haarlem Regional Court. This decision is final and not subject to any appeal.

The applicant can be expelled at a very short notice. On 12 July 2005 he was taken to the Algerian embassy, assumingly for a *laissez-passer*, where he spent an hour waiting, handcuffed, while his expulsion was being negotiated by the Netherlands immigration authorities with the Algerian embassy.

### BACKGROUND OF THE CASE

The applicant made a first application for asylum in the Netherlands on 30 January 1998. This application was rejected by the State Secretary of Justice on 7 October 1998. The applicant did not appeal that decision.

On 9 September 1999 the applicant filed a second request for asylum. On 14 September 1999 the application was declared inadmissible by the State Secretary of Justice. The applicant's appeal against this decision was rejected by the Zwolle Regional Court on 6 October 1999.

### CRIMINAL CASE

On 12 June 2002, the applicant was arrested in his house in Groningen upon suspicion of belonging to a criminal organisation with the alleged aim of:

- prejudicing the State of the Netherlands by providing assistance to the enemy conducting a holy war (jihad) against among others the Netherlands;
- drug trafficking;
- using false (identity) documents;
- forging (identity) documents;
- human trafficking.

The applicant was also suspected and subsequently separately charged with having co-committed the crimes abovementioned themselves, i.e. not only within his membership of a criminal organisation. The applicant was tried together with a group of eleven co-suspects who had all been arrested in approximately the same period of time. The basis for the suspicion against the applicant and the other co-suspects were reports dated 22 and 24 April 2002 from the General Intelligence and Security Service (*Algemene Inlichtingen en Veiligheidsdienst*, further: AIVD) and the former Internal Security Service (*Binnenlandse Veiligheidsdienst*, further: BVD). The reports were supported, among others, by taps of telephone conversations gathered by the AIVD/BVD. The suspects supposedly belonged to an organisation that adhered to Salafism. A number of them allegedly were part of the *Groupe Salafiste pour le Predication et le Combat* (GSPC) organisation, an Algerian extremist Islamist group. This group, suspected to be an al-Qaeda cell, allegedly recruited persons for the jihad and conducted preparatory/auxiliary activities for terrorist acts. The suspects met regularly at the Al-Fourqaan mosque in the city of Eindhoven. At the trial, the prosecutor finally only maintained the charges against the applicant as to the membership of a criminal organisation with the aims described above and pleaded that the applicant be acquitted for the other, separate, charges. On 5 June 2003 the applicant was fully acquitted of all charges by the Rotterdam Regional Court, together with all others co-suspects. The court held that the reports from the AIVD/BVD, adduced by the prosecutor, could not be used as evidence since neither the applicant's defence counsel nor the court itself could verify the validity, correctness and sources of its contents. The court did consider that the telephone taps of the AIVD/BVD, whose contents the defence for the applicant had been able to verify, could be used in evidence at the trial even it was not certain whether this was obtained in accordance with domestic law. The Rotterdam Regional Court also ruled that even if the AIVD/BVD information could have been used as evidence it would not have provided sufficient proof for a conviction. The court ordered the applicant's immediate release.

The public prosecutor lodged an appeal against the Rotterdam Regional Court's judgment. Counsel for the applicant in the criminal case addressed the prosecutor at the Hague Court of Appeal (*Advocaat-Generaal*) requesting him to ensure that the applicant is not expelled pending the criminal proceedings in view of his right to be present at trial. The *Advocaat-Generaal* responded that he saw no problem with the applicant's expulsion. He suggested that the applicant could apply for a visa once a trial date in appeal would be known. The case has not yet been tried in appeal and no date for a trial hearing has been set.

The applicant's "high-profile terrorist trial" was followed closely by mass media and the public. The trial and its outcome also received wide international press coverage (attached). In at least two publications the applicant's name was mentioned.

### THE ASYLUM CASE

Following the applicant's release from criminal detention he was immediately apprehended by the Foreigners Police (*Vreemdelingenpolitie*) and taken into aliens detention (*vreemdelingenbewaring*). He was, however, released on 21 July 2003 as no decision had been taken on his asylum request by the minister within six weeks. The latter is a statutory obligation in case an asylum seeker who has lodged his asylum request is placed in aliens detention.

Upon release the applicant was ordered (*aangezegd*) to leave the country. The applicant indeed tried to do so and attempted to get to Turkey. He first travelled to Germany. From Germany the applicant arrived by airplane to Turkey where he requested asylum. Turkey, however, did not consider his request on the merits and sent the applicant back to Germany. Upon return to Germany, the applicant applied for asylum there.

However, on 14 May 2004 the German authorities made a claim under the Dublin Agreement to the Netherlands authorities to take the applicant back for a (further) consideration of his asylum request, which was still pending before the Netherlands Immigration Service (*IND*). On 16 June 2004 the Netherlands authorities accepted Germany's claim. The applicant was surrendered to the Netherlands on 15 July 2004.

Prior to the applicant's forced return to the Netherlands from Germany, the AIVD, on 14 July 2004, issued a new report with respect to the applicant. It stated that he must be considered as a threat to national security, since his extremist Islamic views and opinions had remained unchanged. Upon return to the Netherlands the applicant was immediately taken again into aliens detention and has remained there ever since, despite numerous appeals to court by his counsel for his release.

### Arguments and submissions in the asylum case

In support of his asylum request the applicant submitted that since he was suspected and was in fact still on trial in the Netherlands for belonging to a terrorist Islamist organisation, he had or must also have come under negative attention of the Algerian authorities. To that effect he referred to the wide (inter)national press and internet coverage on his, public, trial.

The applicant was also personally referred to under his own name as a person suspected of "playing some role in the assassination of Massood, leader of the anti-Taliban Northern Alliance, and being part of a larger Dutch-based terrorist cell that recruited young Muslims to go on suicide missions against non-Muslim targets outside the Netherlands" (AP). The extensive international press coverage explicitly mentioned the suspicion of the applicant belonging to the GSPC (see further press coverage, attached).

Counsel for the applicant further contended that there is a co-operation and exchange of information in place between the Netherlands, EU and the Algerian intelligence services. This inevitably led to a justified assumption that information on the applicant – a person suspected of Islamist terrorist activities – has been indeed provided to the latter. This naturally course could not be proven by the applicant, considering that the exact contents of such exchanged information is not disclosed by the security services.

However, the likelihood of this already followed from, e.g., the AIVD year report 2003 which reports that foreign intelligence services monitor their nationals residing in or migrating to the Netherlands. Counsel for the applicant further referred to the EU Counter Terrorism Group (CTG), which was formed following the "9/11" attacks in the United States and which inter alia coordinates intelligence information, also with countries outside the EU where terrorism occurs. Counsel finally pointed to the EU Euro-Mediterranean Agreement with Algeria which Article 90 (Fight against terrorism) provides:

In accordance with the international conventions to which they are party and with their respective laws and regulations, both Parties agree to cooperate with a view to preventing and penalising acts of terrorism:

- through the implementation in its entirety of United Nations Security Council resolution 1373 and other related resolutions;
- through the exchange of information on terrorist groups and their support networks in accordance with international and national law;
- by pooling experience of means and practices for combating terrorism, including experience in the technical and training fields. Counsel for the applicant concluded that it was impossible for the applicant to prove that the Algerian authorities knew that he was a suspected Islamist terrorism for the GSPC and would treat him as such upon return. He had however, in view of the aforementioned, sufficiently substantiated that the Algerian authorities were at least aware of the applicant's terrorism trial in the Netherlands.

The applicant contended that his expulsion would be contrary to Article 3 of the Convention considering the practice of the Algerian authorities of torturing persons suspected of being Islamist terrorists. His counsel referred in this respect to Amnesty International's year reports on 2003/2004, US State Department Country Report on Human Rights, i.e. on Algeria and Human Rights Watch Reports.

### **The minister's decision**

The minister, in his decision of 25 August 2004, considered – in short - that the applicant had not pointed to specific, individual facts and circumstances which demonstrate that the Algerian authorities knew about the fact that he was a terrorism suspect in the Netherlands and that a trial was taking place against him. He had, in the minister's view, not substantiated that he be seen as a terrorism suspect himself upon return to Algeria.

The minister further observed that "even if the latter were the case, the applicant's situation would not be worse than other terrorism suspects. Participation in armed Islamic groupings was a common criminal law offence and was treated as such in Algeria. Even though death sentence could be imposed for terrorist crimes, this sentence had not been applied since 1993, and death sentences are usually reversed to life imprisonment in appeal. Prosecution for such acts therefore did not fall under the protection of the Geneva Convention and the punishment for such acts could not be considered disproportionately severe or discriminatory".

Finally, the minister considered that the applicant did not run a risk being treated contrary to Article 3 of the Convention if returned to Algeria, since he had failed to show that there was an individual specific 'negative' attention against him on the part of the Algerian authorities, which would justify the fear for a real risk of torture.

### **The Haarlem Regional Court**

In his appeal to the Haarlem Regional Court, the applicant submitted additional arguments that he had done everything in his power which could reasonably be expected from him to substantiate the fact that the Algerian authorities must have become aware of the criminal trial and the nature of suspicions against him.

Counsel for the applicant referred among others to a letter from Amnesty International of 27 May 2003 in which Amnesty argued that in cannot be excluded that the Rotterdam terrorism trial was followed closely by the Algerian authorities in the Netherlands.

Counsel for the applicant further contended that it was, conversely, relatively easy for the Netherlands authorities to find out whether there is a search order for the applicant in Algeria. To that effect counsel submitted a process-verbal of the Foreigners Police in a case of another Algerian, which showed that such research had indeed been successfully carried out before in another case by the Dutch authorities through their Criminal Research Service (CRI).

In its judgment of 23 December 2004, the Haarlem Regional Court held that in view of the public and mass media attention for the applicant's trial and considering the increasing international co-operation between intelligence services, the applicant had sufficiently substantiated (*aannemelijk gemaakt*) that the suspicion of terrorism against him had or must have become known to the Algerian authorities.

As far as Article 3 of the Convention was concerned, the Haarlem Regional Court held that although there had been improvements in the human rights situation in Algeria since the nineties, there was still a particular risk of torture at the hands of the police of persons suspected of belonging to armed Islamist extremist groups

– to which the applicant is suspected to belong. In reaching this conclusion, the Haarlem Court analysed official country reports (*algemene ambtsberichten*) of the Ministry of Foreign Affairs (MFA) and the Year Report on 2004 of Amnesty International concerning Algeria.

### **The Administrative Jurisdiction Division of the Council of State**

In its judgment of 6 July 2005 the AJDCS, quashing the Haarlem Regional Court's judgment, limited its consideration to stating that the applicant had not substantiated that he personally ran the real risk of being tortured in Algeria. It considered that even if the Algerian authorities had become acquainted with the charges against the applicant in the Netherlands, it did not follow from the MFAs official reports that the applicant ran the risk he alleged. The AJDCS observed that the applicant "had merely referred to the suspicion which had arisen against him and the criminal proceedings that followed from it, speculating as to the possible consequences of his return to Algeria". The AJDCS concluded that it was not up to the minister to substantiate that the alleged risk does not exist. The AJDCS made no assessment of the other sources adduced by the applicant, and restricted its findings to the MFA official country report.

### **COMPLAINTS**

The applicant complains that there is a real risk that he will be exposed to torture or inhuman or degrading treatment contrary to Article 3 of the Convention if he is expelled from the Netherlands to Algeria. The applicant submits that his case meets the criteria set out in the Court's established case law in this specific area (*Soering v the United Kingdom*, *Hilal v the United Kingdom*, *Chahal v the United Kingdom*, *Cruz Varas v Sweden*, *Jabari v Turkey*, *Muslim v Turkey* and, most recently, *Said v. the Netherlands*)

The applicant submits first of all that he has substantiated that the Algerian authorities have, or must have, become aware of the criminal trial against him in the Netherlands upon suspicion of belonging to an extremist Islamist group involved in jihad. This matter is in fact no longer in contention, considering the Haarlem Regional Court's acknowledgement in this respect. The AJDCS in its judgment, does not express itself explicitly on whether it considers that the Algerian authorities are aware of the applicant's trial and the nature of suspicions against him. The AJDCS does not, however, reject the Haarlem Regional Court's finding in this respect.

The applicant contends that in view of this knowledge by the Algerian authorities, he runs a real personal risk of being subjected to torture and/or other inhuman and degrading treatment when he falls in the hands of the Algerian security forces. The fact that he, an expelled asylum seeker, will be interrogated of the Algerian security forces directly upon return is also not in dispute in view of information provided thereon in the MFA official report.

The applicant observes that the Netherlands authorities, and in particular the minister and the AJDCS made an inadequate assessment of the risks involved for the applicant. In particular the AJDCS's judgment lacks a sufficient and consistent reasoning in its finding that even if the Algerian authorities are aware of the suspicions against him, he ought to have adduced even more individual circumstances to substantiate the existence of his personal risk.

The minister and the AJDCS have failed to reason by what other means the applicant could have adduced more than he has already done to point to the fact that he personally falls under the category of persons who are tortured and/or killed by the security forces. In doing so, the Netherlands have burdened the applicant with a *probatio diabolica*.

The applicant relies *mutatis mutandis* on the Court's judgment in the case *Said v the Netherlands* (1 July 2005, § 51) and submits that even though the materials and reports on treatment of terrorism suspects submitted by him do not relate to him personally - they concern information of a more general nature - it is impossible to see what more he might reasonably have been expected to submit in the way of substantiation of his fears that he – a suspect of extremist Islamist terrorism - will find himself in the same situation as other (to be) tortured terrorism suspects in Algeria. This is the more true since the Netherlands Government have the resources available to carry out a research as to whether a criminal case is pending against him in Algeria.

In order to substantiate the risk of torture and possibly even his death at the hands of the security forces, the applicant refers to the sources describing the treatment of Islamist terrorism suspects and forcibly returned asylum seekers in Algeria (overview and quotations attached).

The reports mentioned describe the manner in which suspects of Islamist extremism/terrorism are tortured, ill-treated, killed or made to disappear at the hands of the security forces in Algeria. There is no functioning legal protection against these atrocities, which often occur outside the official supervision and legal system and which are surrounded by virtual impunity for its perpetrators - State security agents.

In support of his contentions, the applicant further relies on recent affidavits submitted by experts in the expulsion case to Algeria of Mr Mohamed HAKAT, a person suspected of Islamist terrorism. His case is currently pending before the Canadian authorities. The applicant furthermore submits a copy of the letter from Mr Hakat's counsel to the Canadian Immigration Authorities elaborating on the situation in Algeria of suspects of terrorism.

- Letter to Stéphanie Chenier, Acting Manager – CBSA Ottawa, dated 21 April 2005 from Mr Hakat's counsel, Paul D. Copeland;
- Affidavit of Prof. Mr E.G.H. Joffe, dated 20 April 2005, director of the Centre for North African Studies at the Centre of International Studies in the University of Cambridge, affiliated lecturer at the Centre for International Studies at Cambridge, teaching a postgraduate course on the contemporary Middle East and North Africa;
- Affidavit of Mr J.P. Entails, April 2005, professor of Political Science and Director of the Middle East Studies Program at Fordham University, NYC, USA. These documents and submissions elaborate and show the concrete concerns for persons suspected of Islamist extremist activities/terrorism links when returned to Algeria. It must be noted that Mr Hakat's situation, e.g. publicity of his trial, nature of charges/suspensions are to a large extent comparable to the applicant's. -/- We would like to ask you to register this application and inform us of further proceedings. We also look forward to your decision on the applicant's request for application of Rule 39. Yours faithfully, on behalf of the applicant, M. Ferschtman M.F. Wijngaarden B.J.P.M. Ficq

#### **Enclosures**

Judgement of the AJDCS of 6 July 2005;

The applicant's reply to the minister's appeal of 6 February 2005 (only by mail);

The minister's (further) appeal pleadings to the AJDCS of 19 January 2005 (only by mail);

Judgment of the Haarlem Regional Court of 23 December 2004;

The applicant's appeal pleadings to the Haarlem Regional Court of 2 December 2004 (only by mail);

Decision of the Minister on Aliens Affairs and Integration of 25 August 2004;

Correspondence between the applicant's defence counsel and the Advocaat-Generaal of 13 and 16 June 2003;

Judgment in the applicant's criminal case in the Netherlands of 5 June 2003;

Reports concerning the applicant from the AIVD/BVD of 22 and 24 April 2002;

Overview and excerpts from human rights reports concerning Algeria;

Overview of press coverage of the applicant's trial (parts only by mail);

Letter to Stéphanie Chenier Acting Manager – CBSA Ottawa, of 21 April 2005 from Mr Hakat's counsel, Paul D. Copeland (only by mail);

Affidavit of Mr E.G.H. Joffe, of 20 April 2005 (only by mail);

Affidavit of Mr J.P. Entails, of April 2005 (only by mail);

Power of authority by the applicant to his counsels.