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COUR EUROPÉENNE DES DROITS DE L'HOMME

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Use of force

Excessive use of police force: *violation*

Soare and Others v. Romania - 24329/02
Judgment 22.2.2011 [Section III]

Facts – The first applicant, accompanied by his brother, both of whom were of Roma ethnic origin, saw his former brother-in-law in the street. The two brothers began to chase after him. Some police officers on patrol apprehended them and one of the officers shot the first applicant in the head, causing serious injuries. The other two applicants witnessed the incident.

The first applicant and the Government gave differing versions of the events. The first applicant claimed that he had been unarmed and that the police officer had shot him while forcing him to crouch down. In the Government's submission, the first applicant had stabbed the police officer who was attempting to arrest him, whereupon the latter had taken out his gun in order to fire a warning shot, but had lost his balance and as a result the shot had hit the first applicant directly in the head. The police officer who had fired the shot suffered superficial abdominal wounds caused by a sharp object.

An investigation was opened the same evening. The other two applicants were invited to attend the police station to give evidence. They arrived at the police station at about 7.30 p.m. and were questioned on three occasions until early morning. They stated that the tragic events that they had witnessed, the time spent in the police station and the lack of food and water had left them physically and mentally exhausted. They also alleged that they had been intimidated by the police, who had pressurised them into saying that the first applicant and his brother had been carrying knives. They lodged a complaint concerning the conditions in which they had been questioned but no action was taken by the prosecutor in response. The investigation took account of the incident report written by the three police officers implicated in the events and the report of the National Forensic Medicine Institute on the police officer's injuries and the state of health of the first applicant, who is now semi-paralysed on the right-side of his body. The various proceedings against the police officer who had fired the shot were discontinued.

Law

1. *The first applicant*

Article 3: (a) *Substantive aspect*

(i) *Legal and administrative framework* – At the time of the events, there were no provisions governing the use of weapons during police operations, apart from a requirement to issue a warning, nor were there any guidelines on the planning and management of such operations. The legal framework in question did not therefore appear to have been sufficient to provide the required level of protection "by law" of the right to life. The police officer who had fired the shot had therefore enjoyed considerable autonomy of action and had had opportunities to take ill-considered initiatives, which would probably not have been the case had he had the benefit of proper training and instructions. The criminal investigation had provided no indication as to the compatibility of the police officer's conduct with any relevant applicable rule or practice. Furthermore, the Government had not indicated that any disciplinary proceedings had been taken against the police officers involved. Therefore, as regards the positive obligation to put in place an adequate legislative and administrative framework, the authorities had not, at the relevant time, done all that could be reasonably expected of them to afford to citizens the level of safeguards required, in particular in cases of the use of potentially lethal force, and to avoid the real and immediate risk to life that was liable to arise, albeit only exceptionally, in police operations.

(ii) *The responsibility of agents of the State, the necessity and proportionality of the force used* – The first applicant and the Government had given differing versions of the facts, which facts were crucial in determining the State's responsibility for events which could have cost the applicant his life. The applicant had done everything in his power to make out a *prima facie* case. It had therefore been for the Government to provide a plausible explanation for the injury caused by a shot fired at close range. However, the authorities could not be considered to have truly attempted to ascertain whether or not the applicant had been armed with a knife and whether or not he had stabbed the police officer. The insufficiency of the facts and evidence gathered by the authorities prevented the Court from assessing the facts of the case. Consequently, the omissions attributable to the investigating authorities led the Court to reject the Government's submission that the applicant's injury had been caused by a police officer who had been attacked with a knife and had accordingly been acting in

self-defence. Since the Government had not demonstrated that the potentially lethal force used against the first applicant had not gone beyond the bounds of what was absolutely necessary, was strictly proportionate and pursued the aims authorised under Article 2 § 2, the State's responsibility was engaged.

Conclusion: violation (unanimously).

(b) *Procedural aspect* – An investigation had been carried out by the military prosecutor's office both into the allegations that the police officer had shot the first applicant and the charge of offensive behaviour brought against the applicant. Following a change in the legislation, the investigation had been handed over to a civilian prosecutor's office, which had discontinued the proceedings relating to the injury inflicted on the first applicant on the ground that the police officer had acted in self-defence. The Court's case-law clearly indicated that the military prosecutor's office had not been independent, since at the relevant time the latter had been a military official, as had the police officers under investigation. The intervention of the civilian prosecutor had not been sufficient to overcome that deficiency, since most of the evidence had been gathered by the military prosecutor during the preliminary, and particularly important, stages of the investigation. The military prosecutor had not acted impartially when investigating the actions of the police officer. He had confined himself to ordering the police officers involved in the incident to write reports on the facts at issue which, in the context of criminal proceedings, could in no way replace interviews with those involved. Moreover, the conduct of the investigation had been deficient in a number of respects: for instance there had been manifest delays in producing the forensic medical report concerning the applicant and neither the applicant nor his lawyer had been informed of the reasons for the decision to discontinue the proceedings. This sufficed to show that the action taken following the incident in question could not be considered to constitute a swift and effective investigation.

Conclusion: violation (unanimously).

Article 14 in conjunction with Articles 2 and 3: While the conduct of the police officer who fired the shot was open to serious criticism, it did not in itself provide a sufficient basis for concluding that it had been racially motivated. There was no evidence to suggest, either, that the police officers implicated in the incident had made racist remarks. Lastly, the fact that, on the evening of the incident, the police officer who had fired the shot had stated that he had been "attacked by a Gypsy" was not sufficient in itself to require the authorities to ascertain whether the incident had been sparked by racist motives.

Conclusion: no violation (four votes to three).

The Court also found, unanimously, that there had been a violation of Article 13 in conjunction with Article 2.

2. *The second and third applicants*

Article 3: *Substantive aspect* – The Government did not dispute that the other two applicants had been kept at the police station from 7.30 p.m. to 5 a.m. without food or water. Furthermore, they had not produced before the Court any document governing the status of witnesses in criminal cases and setting out the manner in which they should be treated when expected, as in the instant case, to remain for several hours at the disposal of the investigating authorities. Regard being had to the circumstances of the case, in particular the duration of the questioning undergone by the other two applicants following the dramatic events and the feelings of anxiety and inferiority that the treatment complained of had caused them, such treatment had to be qualified as degrading.

Conclusion: violation (unanimously).

Article 41: EUR 90,000 in respect of pecuniary damage and EUR 40,000 in respect of non-pecuniary damage to the first applicant; EUR 10,000 in respect of non-pecuniary damage to each of the second and third applicants.

Effective investigation

Effectiveness of investigation into disappearance of applicant's husband during the war in Bosnia and Herzegovina: *no violation*

Palić v. Bosnia and Herzegovina - 4704/04
Judgment 15.2.2011 [Section IV]

Facts – In 1995, during the war in Bosnia and Herzegovina, the applicant's husband, a military commander in a UN "safe zone", disappeared after going to negotiate terms of surrender with an opposing local force (the VRS). In 1999, following repeated attempts to obtain any official news about her husband, the applicant lodged a complaint with the Human Rights Chamber, a domestic human rights body set up by the 1995 Dayton Peace Agreement, which concluded that he had been a victim of enforced disappearance and ordered Republika Srpska, one of the entities of

Bosnia and Herzegovina, to carry out a full investigation and to either release Mr Palić, if still alive, or to hand his remains over to his wife. In 2001 the authorities acknowledged that Mr Palić had been held in a military prison for about a month following his disappearance before being taken away by a VRS security officer. Following findings by the Chamber's successor body, the Human Rights Commission, in September 2005 and January 2006 that the core elements of the Chamber's decision had still not been enforced in that Mr Palić's fate had not been established and no prosecution had been brought, the Republika Srpska authorities set up an *ad hoc* commission to investigate his case (it was alleged by the applicant that one of the members of this commission had attended the surrender negotiations in 1995 prior to Mr Palić's disappearance). Having interviewed numerous witnesses, the *ad hoc* commission adopted a report establishing that, after being held in a military prison, Mr Palić had been taken away by two VRS officers. Six months later the Court of Bosnia and Herzegovina issued an international arrest warrant against the two VRS officers, who had meanwhile taken up Serbian citizenship in Serbia and could not be extradited. A third person allegedly implicated in Mr Palić's disappearance was arrested and transferred to the custody of the International Criminal Tribunal for the former Yugoslavia. Following inquiries by a second *ad hoc* commission Mr Palić's body was identified in August 2009.

Law – Article 2: Notwithstanding initial delays, the investigation had finally led to the identification of the body. Given that almost 30,000 people had gone missing as a result of the war in Bosnia and Herzegovina, that in itself was a significant achievement. Between October 2005 and December 2006 the domestic authorities had taken various investigative steps which had led to international arrest warrants being issued. The investigation had been at standstill ever since as both suspects had in the interim moved to Serbia and taken up Serbian citizenship, and so could not be extradited. It was not necessary to establish whether Bosnia and Herzegovina was obliged to request Serbia to take proceedings in this case, since the applicant herself could have reported the case to the Serbian War Crimes Prosecutor, who had jurisdiction over serious violations of international humanitarian law committed anywhere in the former Yugoslavia. In such circumstances, the Court found that, notwithstanding the lack of any convictions to date, the domestic criminal investigation had been effective in the sense that it had been capable of leading to the identification of those responsible for Mr Palić's death. The procedural obligation under Article 2 was one of means, not of result. As to the independence of the investigation, there was no reason to doubt that the competent prosecutor's office had acted independently. Even though it was of grave concern for the Court that a member of the *ad hoc* commission had allegedly played a role, no matter how minor, in Mr Palić's disappearance, it was not necessary to examine the question of the independence of that commission since it had had no influence on the conduct of the ongoing criminal investigation. As to the requirement for promptness, the Court reiterated that the obligations under Article 2 had to be interpreted in a way which did not impose an impossible or disproportionate burden on the authorities. In a post-conflict situation, what amounted to an impossible and/or disproportionate burden had to be measured by the very particular facts and context. More than 100,000 people had been killed, almost 30,000 people had gone missing and more than 2,000,000 people had been displaced during the war in Bosnia and Herzegovina so that, inevitably, choices had had to be made in terms of post-war priorities and resources. The country had also undergone a fundamental overhaul of its internal structure and political system, with new institutions being created and existing ones restructured. While it was difficult to pinpoint when exactly that process had ended, the Court considered that the domestic legal system should have become capable of effectively dealing with disappearances and other serious violations of international humanitarian law by 2005. The criminal investigation into Mr Palić's disappearance had effectively begun late that year. Since there had been no substantive period of inactivity since then on the part of the domestic authorities, the domestic criminal investigation could be considered to have been conducted with reasonable promptness and expedition.

Conclusion: no violation (five votes to two).

The Court also concluded that there had been no violation of Articles 3 and 5.

ARTICLE 3

Inhuman or degrading treatment

Imprisonment for life with release possible only in the event of terminal illness or serious incapacitation: *communicated*

Vinter and Others v. the United Kingdom - 66069/09, 130/10 and 3896/10
[Section IV]

All three applicants are serving mandatory sentences of life imprisonment following convictions for murder. They have been given "whole life orders" which means that they must remain in prison for life, their only prospect of release being under the Secretary of State's discretionary power to order release on compassionate grounds if satisfied that exceptional circumstances – in practice, terminal illness or serious incapacitation – exist. In their applications to the European Court, the applicants complain that the imposition of whole life orders means their sentences are, in effect, irreducible, in violation of Article 3 of the Convention. They further complain that the imposition of whole life orders without the possibility of regular review by the domestic courts violates Article 5 § 4. Lastly, the second and third applicants allege a violation of Article 7 in that the whole life orders in their cases were made not by the trial judge, but subsequently by the High Court, according to principles which they maintain reflected a harsher sentencing regime than had been in place when their offences were committed.

Communicated under Article 3, Article 5 § 4 and Article 7.

(See also *Kafkaris v. Cyprus* [GC], no. 21906/04, 12 February 2008, Information Note no. 105; and *Iorgov v. Bulgaria (no. 2)*, no. 36295/02, 2 September 2010, Information Note no. 133)

Degrading treatment

Gynaecological examination of minor in custody without consent: *violation*

Yazgül Yılmaz v. Turkey - 36369/06
Judgment 1.2.2011 [Section II]

Facts – In 2002 the applicant, a sixteen-year-old girl, was taken into custody on suspicion of assisting an illegal organisation. A medical and gynaecological examination was requested by the police superintendant responsible for juveniles in order to establish whether there was evidence of assault committed during the police custody and if her hymen was broken. The examination request was not signed by the applicant. The next day she was remanded in custody and criminal proceedings were brought against her; then in October 2002 she was acquitted and released. Shortly afterwards, the applicant, suffering from psychological problems, underwent various medical examinations. Two medical reports concluded that she was suffering from post-traumatic stress and depression. In December 2004 she filed a complaint for abuse of authority against the doctors who had examined her in police custody. No disciplinary proceedings were opened and in March 2005 the public prosecutor's office discontinued the proceedings. A challenge by the applicant was dismissed by the assize court.

Law – Article 3

(a) *Substantive aspect* – There was nothing to suggest that the authorities had tried to obtain the applicant's consent or that of her legal representative for the gynaecological examination. In addition, she could not have been expected to oppose such an examination, having regard to her vulnerability in the hands of the authorities, who had total control over her while she was in police custody. At the time there had been a gap in the law as regards such examinations of female detainees, which were carried out without any safeguards against arbitrariness. Unlike other medical examinations, a gynaecological examination could be traumatising, especially for a minor, who had to be afforded additional guarantees and precautions (for example, by ensuring that consent was given at all stages by her and her representative, and by allowing her to be accompanied and to choose between a male or female doctor). A general practice of automatic gynaecological examinations for female detainees, for the purpose of avoiding false sexual assault accusations against police officers, did not take account of the interests of detained women and did not meet any medical need. The Court noted with interest that the new Code of Criminal Procedure regulated, for the first time, internal bodily examinations, including those of a gynaecological nature, although there was no specific provision for minors. In addition, one of the two reports, drawn up by a panel of doctors in October 2004, had indicated that the medical certificates were not compliant with the medical assessment criteria provided for in the circulars adopted by the Ministry of Health or in the Istanbul Protocol, since they failed to show whether the applicant had sustained any physical or psychological violence. The report had also concluded that to conduct a gynaecological examination without the person's consent could be regarded as sexually traumatic and that the applicant's allegations of assault in police custody were largely corroborated by the subsequent medical examinations. Put together, the above-mentioned evi-

dence created a strong presumption as to the superficial nature of the medical and gynaecological examinations in question. Accordingly, the authorities, who had deprived the applicant of her liberty, had not taken any positive measure to protect her during her police custody and had thus caused her considerable distress. In deciding to subject the girl to a gynaecological examination, they could not have been unaware of its psychological consequences. Having regard to the fact that this examination must have caused her extreme anxiety, given her age and the fact that she was not accompanied, it attained the requisite threshold to be characterised as degrading treatment.

Conclusion: violation (unanimously).

(b) *Procedural aspect* – As regards the effectiveness of the investigation, the Court noted that, following the applicant's complaint, it was the Deputy Director for Health who was entrusted with the case as inspector, whereas he reported to the same hierarchy as the doctors whose actions he was investigating. Following his conclusion that, two years after the events, disciplinary proceedings for misconduct were time-barred, the District Governor's office had decided not to authorise the opening of a criminal investigation against the doctors concerned. That decision had been upheld by the administrative court and the public prosecutor had then decided to discontinue the proceedings. No criminal investigation had therefore been conducted. Moreover, the inspector's report of July 2005, which had found the doctors liable, had not been notified to the applicant. The doctors had thus benefited from the statute of limitations without any judicial finding as to their possible liability for the acts complained of. The Court had already expressed serious doubts about the capacity of the administrative bodies concerned to conduct an independent investigation. In the present case, the shortcomings in the investigation, which had had the result of granting virtual impunity to the presumed perpetrators of the offending acts, had rendered ineffective the criminal action and also any civil action by which the applicant could have obtained compensation for the alleged violations.

Conclusion: violation (six votes to one).

Article 41: EUR 23,500 in respect of non-pecuniary damage.

Police questioning of witnesses for nine and half hours without food or water: *violation*

Soare and Others v. Romania - 24329/02
Judgment 22.2.2011 [Section III]

(See Article 2 above, page 7)

Positive obligations

Failure of detention administration to prevent a detainee's systematic ill-treatment by fellow inmates: *violation*

Premininy v. Russia - 44973/04
Judgment 10.2.2011 [Section I]

Facts – While in a temporary detention facility, the first applicant was subjected to systematic humiliation and ill-treatment by fellow inmates which culminated in a severe beating by cellmates armed with wooden sticks, allegedly supplied by warders. He sustained concussion and numerous abrasions. The prison doctor attributed the injuries to systematic beatings over a period of a week. The first applicant was subsequently found to be suffering from mental-health problems as a result of his continual physical and psychological abuse in detention.

Law – Article 3: *Substantive aspect* – The Court had to establish whether the authorities had known or ought to have known that the first applicant was suffering or was at risk of ill-treatment at the hands of his cellmates, and if so, whether they had taken reasonable steps to eliminate the risk and to protect him. The Court was not convinced by the Government's argument that the applicant's injuries had resulted from an unforeseeable one-off fight with a fellow inmate: there was uncontroverted evidence that he had suffered systematic abuse for at least a week at the hands of fellow inmates. That abuse had resulted in serious bodily injuries and a deterioration in his mental health. The authorities had been aware of the situation and could reasonably have foreseen that his provocative behaviour rendered him more vulnerable than the average detainee to the risk of violence. Nor could they have failed to notice the signs of abuse, given that at least part of his injuries were visible. These factors should have alerted them to the need to introduce specific security and surveillance measures to protect the first applicant from the continual verbal and physical aggression. However, there was no evidence that the authorities had any clear policy on the classification and housing of detainees, or had attempted to monitor violent or vulnerable inmates or taken disciplinary measures against the offenders. It was striking that it was only after the first applicant had been beaten up

that he was removed from his cell. Finally, no meaningful attempts had been made to provide the applicant with psychological rehabilitation in the aftermath of the events. Accordingly, the authorities had not fulfilled their positive obligation to adequately secure the first applicant's physical and psychological integrity and well-being.

Conclusion: violation (unanimously).

The Court also found a violation of Article 3 in respect of the failure to hold an effective investigation into the ill-treatment, but no violation in respect of the first applicant's complaint concerning ill-treatment by warders.

Article 41: EUR 40,000 to the first applicant in respect of non-pecuniary damage.

ARTICLE 5

Article 5 § 1

Lawful arrest or detention

Remand in custody beyond maximum statutory period where application for pre-trial detention was made in time and hearing of that application was imminent: *no violation*

Ignatenco v. Moldova - 36988/07
Judgment 8.2.2011 [Section IV]

Facts – Under domestic law the maximum period for which a suspect could be held by the police without a court order was 72 hours. The applicant was arrested on suspicion of misappropriation and forgery at 12.15 p.m. on 19 June 2007. The prosecution lodged a request for him to be remanded in custody at 8.55 a.m. on 22 June 2007, but the remand hearing did not start until 12.45 p.m. (that is to say, 30 minutes after the expiry of the statutory 72-hour period). The hearing ended at 4 p.m. with an order by the investigating judge for the applicant's detention for a period of ten days, which period was subsequently extended.

Law

Article 5 § 1 – *Detention between 12.15 p.m. and 4 p.m. on 22 June 2007*: The Court had held in previous cases that, while some delay in implementing a court order for the release of a detainee was often inevitable due to practical considerations, stricter criteria had to be applied in cases where release after a fixed period of time was a statutory requirement. In such cases, the authorities were under a duty to take all necessary precautions to ensure that the permitted duration was not exceeded (see *K.-F. v. Germany*, no. 25629/94, 27 November 1997 – finding of a violation in respect of a 45-minute delay). In the present case, the investigating judge had not made an order for the applicant's pre-trial detention until 4 p.m. on 22 June 2007, whereas the statutory maximum period for him to be held without a warrant had expired at 12.15 p.m. Accordingly, there had been no legal basis for the applicant's detention between 12.15 p.m. and 4 p.m. The Court noted, however, that the prosecution had lodged their request for the applicant to be remanded in custody within the required time-limit and the applicant had been required to attend, and indeed had attended, the remand hearing before the investigating judge. The applicant had therefore only been materially affected by the delay for 30 minutes (between 12.15 p.m. and 12.45 p.m.). In these circumstances, where the application for an extension had been lodged within the relevant time-limit, the hearing was imminent and there was only a short delay during which the detention had no legal basis, the present case could be distinguished from *K.-F. v. Germany*.

Conclusion: no violation (unanimously).

Article 5 § 3 – *Subsequent periods of detention*: The domestic courts had failed to give relevant and sufficient reasons for subsequent orders prolonging the applicant's detention. In that connection, the Court expressed grave concern that the applicant's reliance on its case-law was seen by the domestic courts as an attempt to undermine the normal conduct of the domestic proceedings.

Conclusion: violation (unanimously).

Article 41: EUR 2,000 in respect of non-pecuniary damage.

Article 5 § 1 (e)

Persons of unsound mind

Overnight detention in sobering-up centre for aggressive behaviour in local shop: *no violation*

Kharin v. Russia - 37345/03
Judgment 3.2.2011 [Section I]

Facts – In the evening of 11 October 2001 the police received an emergency phone call from a local shop that a drunken man – the applicant – was shouting at the shop assistant and using offensive language. The police escorted the applicant from the shop, but he continued his unruly behav-

iour and attempted to start a fight with the police officers, waving his hands about and using offensive language. At approximately 10.30 p.m. the police took the applicant to the local sobering-up centre where a report was drawn up describing his manifestations of intoxication and violent behaviour. The applicant was released at 9.40 the following morning. He subsequently filed a complaint against the sobering-up centre claiming that his detention had been arbitrary. The district court concluded that the applicant's demeanour – unsteady gait, incoherent speech, inability to stand upright and smell of alcohol – offended human dignity and public morals so that his detention had been justified.

Law – Article 5 § 1 (e): Regard being had to the importance of the right to liberty in a democratic society, an individual's detention could not be justified merely by an offensive physical appearance. That would be just a step away from introducing a system of compulsory confinement for any abnormal appearance which might by some be perceived as offensive or insulting. However, even though the reasoning of the domestic courts in that respect had been inexplicably inadequate, there was sufficient evidence before the Court to show that the main reason for the applicant's detention had been his aggressive and offensive behaviour, which had caused a disturbance in a public place and posed a danger to others. Both the written statement of the shop assistant and the official police records indicated that the applicant had used offensive language and threats in the shop and tried to start a fight with the police officers. In such circumstances, the police had had no alternative but to detain the applicant overnight in a sobering-up centre, which they had done in full conformity with national substantive and procedural rules. Finally, by releasing the applicant immediately after he had sobered up and gone through the administrative formalities, the authorities had struck a fair balance between, on the one hand, the need to safeguard public order and the interests of others and, on the other, the applicant's right to liberty.

Conclusion: no violation (four votes to three).

ARTICLE 6

Article 6 § 1 (criminal)

Fair hearing

Absence of requirement for jury to state reasons when delivering guilty verdict: *inadmissible*

Judge v. the United Kingdom - 35863/10
Decision 8.2.2011 [Section IV]

Facts – The applicant was found guilty of a series of criminal offences by a jury. In accordance with normal practice in Scots law, the jury did not give reasons for their verdict. In his application to the European Court, the applicant complained, *inter alia*, that the jury's failure to provide reasons had deprived him of a fair trial, contrary to Article 6 of the Convention.

Law – Article 6: None of the features which had led the Grand Chamber to find a violation of Article 6 in *Taxquet v. Belgium*[1] were present in the Scottish system. On the contrary, in Scotland the jury's verdict was not returned in isolation but was given in a framework which included addresses by the prosecution and the defence as well as the presiding judge's charge to the jury. Scots law also ensured clear demarcation between the respective roles of the judge and jury: it was the duty of the judge to ensure the proceedings were conducted fairly and to explain the law as it applied in the case to the jury, and the duty of the jury to accept those directions and to determine all questions of fact. In addition, although the jury were "masters of the facts" it was the duty of the presiding judge to accede to a submission of no case to answer if he or she was satisfied that the evidence led by the prosecution was insufficient in law to justify the accused's conviction. These were precisely the procedural safeguards contemplated by the Grand Chamber in *Taxquet*. Lastly, in contrast to the Belgian appeal provisions that had been considered in that case, the Court was also satisfied that the appeal rights available under Scots law would have been sufficient to remedy any improper verdict by the jury, as the Appeal Court enjoyed wide powers of review and could quash any conviction amounting to a miscarriage of justice and, in particular, which was logically inconsistent or lacking in rationality.

In sum, there had, therefore, been sufficient safeguards in place for the applicant to understand why he was found guilty and no basis for his submission that the failure of the jury to given reasons had rendered his trial unfair.

Conclusion: inadmissible (manifestly ill-founded).

The Court also declared inadmissible the applicant's complaints under Article 6 § 1 in conjunction with Article 6 § 3 (d), and under Article 13.

1. *Taxquet v. Belgium* [GC], no. 926/05, 16 November 2010, Information Note no. 135.

ARTICLE 8

Private and family life

Failure to regulate residence of persons who had been "erased" from the permanent-residents register following Slovenian independence: *case referred to the Grand Chamber*

Kurić and Others v. Slovenia - 26828/06
Judgment 13.7.2010 [Section III]

The applicants had previously been citizens of the former Yugoslavia and one of its constituent Republics other than Slovenia. They had acquired permanent residence in Slovenia, but, following its independence, had either not requested or not been granted Slovenian citizenship. On 26 February 1992, pursuant to the newly enacted Aliens Act, the applicants' names were deleted from the Register of Permanent Residents and they became aliens without a residence permit. Approximately 18,000 others were in the same situation. According to the applicants, none of them were ever notified of that decision and they only discovered what had been done later, when they sought to renew their personal documents. The erasure of their names from the register had serious and enduring negative consequences: some applicants became stateless, while others were evicted from their apartments, could not work or travel, lost all their personal possessions and lived for years in shelters and parks. Still others were detained and expelled from Slovenia. In decisions delivered in 1999 and 2003 the Constitutional Court had declared certain provisions of the legislation unconstitutional, in particular since they failed to grant the "erased" retroactive permanent-residence permits or to regulate the situation of those who had been deported.

In a judgment of 13 July 2010 a Chamber of the Court held unanimously that there had been a violation of Article 8. It noted that before their names were erased from the register of permanent residents the applicants had established a private and in most cases a family life in Slovenia. The prolonged refusal of the authorities to regulate their situation in line with the Constitutional Court's decisions had constituted an interference with their private and/or family life, which interference had been unlawful and had persisted for over fifteen years because of failings on the part of the legislative and administrative authorities to comply with judicial decisions. The Chamber also found a violation of Article 13 and indicated under Article 46 that the State should enact appropriate legislation and regulate the situation of individual applicants by issuing them with retroactive residence permits.

On 21 February 2011 the case was referred to the Grand Chamber at the Government's request.

(See Information Note no. 132 for further details)

ARTICLE 9

Manifest religion or belief

Requirement to indicate on wage-tax card possible membership of a Church or religious society entitled to levy church tax: *no violation*

Wasmuth v. Germany - 12884/03
Judgment 17.2.2011 [Section V]

Facts – In Germany, taxpayers have a "wage-tax card" (for tax deduction from salary), on which can be found a box concerning the levy of the church tax which is to be deducted and paid to the Treasury by the employer. On the applicant's wage-tax card, the entry "--" could be found in that box, indicating that he did not belong to a church or religious society entitled to levy church tax and thus informing his employer that no such tax was to be deducted. Arguing, in particular, that this indication breached his right not to manifest his religious beliefs, the applicant unsuccessfully requested the administrative authorities to issue him a wage-tax card without any box concerning religious affiliation. His applications were dismissed by the courts and his constitutional complaint was also unsuccessful.

Law – Article 9: The Court reiterated that the freedom to manifest one's religion or belief also carried a negative aspect, namely the right for an individual not to act in such a way that it could be inferred that he or she had – or did not have – such beliefs. The obligation imposed on the applicant to provide the impugned information on his wage-tax card had thus constituted an interference with his right not to indicate his religious beliefs. However, that obligation had a legal basis in German law and pursued the legitimate aim of protecting the right of churches and religious societies to levy church tax. As to the proportionality of the interference, the reference on the tax card at issue was only of limited informative value, as it simply indicated that the applicant did not belong to one of the six churches or religious societies which were authorised to levy church tax, and did not allow the authorities to draw any conclusions as to his

religious or philosophical practice. Moreover, the authorities had not requested the applicant to give the reasons for his non-membership or verified his religious or philosophical orientation. The tax card was not in principle used in public, outside the relations between the taxpayer and his employer or the tax authorities. In the circumstances of the case, the obligation imposed on the applicant to provide the relevant information had not therefore constituted a disproportionate interference. The Court did not rule out, however, that there might be situations in which interference with an applicant's right not to manifest his religious beliefs could appear more significant and in which the balancing of interests might lead it to a different conclusion. As regards the applicant's complaint that by providing the required information he contributed to the functioning of the church tax system and thereby indirectly supported religious institutions, the Court found that his participation in the system was minimal and that it served precisely to avoid him having unduly to pay church tax.

Conclusion: no violation (five votes to two).

The Court also found that there had been no violation of Article 8.

(See also *Sinan Işık v. Turkey*, no. 21924/05, 2 February 2010, Information Note no. 127, and *Grzelak v. Poland*, no. 7710/02, 15 June 2010, Information Note no. 131)

ARTICLE 14

Discrimination (Article 8)

Difference in treatment between male and female military personnel regarding rights to parental leave: *case referred to the Grand Chamber*

Konstantin Markin v. Russia - 30078/06
Judgment 7.10.2010 [Section I]

Under Russian law civilian fathers and mothers are entitled to three years' parental leave to take care of their minor children and to a monthly allowance for part of that period. The right is expressly extended to female military personnel, but no such provision is made in respect of male personnel. The applicant, a divorced serviceman and father of three, was refused parental leave on the grounds that there was no basis for his claim in domestic law. The Constitutional Court held that the prohibition on servicemen taking parental leave was based on the special legal status of the military and the need to avoid large numbers of military personnel becoming unavailable to perform their duties. The right for servicewomen to take parental leave had been granted on an exceptional basis and took into account the limited participation of women in the military and the special social role of women associated with motherhood.

In a judgment of 13 July 2010, a Chamber of the Court held by six votes to one that there had been a violation of Article 14 in conjunction with Article 8. The Court was not convinced by the Constitutional Court's argument that the different treatment of male and female military personnel was justified by the special social role of mothers in the upbringing of children. Society had moved towards a more equal sharing between men and women of responsibility for the upbringing of their children as demonstrated by the fact that the legislation in an absolute majority of Contracting States now provided that parental leave could be taken by both mothers and fathers. Nor, as regards the applicant's military status, did the Court accept, in the absence of any evidence, that allowing servicemen to take parental leave would adversely affect the fighting power and operational effectiveness of the armed forces. In sum, the reasons adduced by the Constitutional Court had provided insufficient justification for the much stronger restrictions imposed on servicemen. The difference in treatment could not be said to be reasonably and objectively justified and amounted to discrimination on the ground of sex. The Court further indicated under Article 46 that the respondent State should amend its legislation with a view to putting an end to the discrimination against male military personnel as far as their entitlement to parental leave was concerned.

On 21 February 2011 the case was referred to the Grand Chamber at the Government's request.

(See Information Note no. 134 for further details)

Discrimination (Article 1 of Protocol No. 1)

Lower pensionable age for women who had raised children, but not for men: *no violation*

Andrle v. the Czech Republic - 6268/08
Judgment 17.2.2011 [Section V]

Facts – Following his divorce, the applicant obtained custody of his two minor children. In 2003 he sought to retire at the age of 57, but his

request was refused on the grounds that he had not attained the pensionable age, which at the time was 60 for men. The age for women was 57 or lower, depending on the number of children they had raised (section 32 of the State Pension Insurance Act). The applicant appealed on the grounds that the fact that he had raised two children should have been taken into account in calculating his retirement age, but his appeal was dismissed after the Constitutional Court ruled in separate proceedings that the legislation was not incompatible with the Constitution.

Law – Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1: The applicant complained that, unlike the position with women, there was no lowering of the pensionable age for men who had raised children. He did not challenge the difference in pensionable age between men and women in general. The Court accepted that the measure at issue pursued the legitimate aim of compensating for factual inequalities and hardship arising out of the specific historical circumstances of the former Czechoslovakia, where women had been responsible for the upbringing of children and for the household, while being under pressure to work full time. In such circumstances, the national authorities were better placed to determine the moment at which the unfairness to men began to outweigh the need to correct the disadvantaged position of women by way of affirmative action. The Czech Government had already made the first concrete move towards equalising the retirement age by legislative amendments in 2010 which had removed the right to a lower pensionable age for women with one child and directed the reform towards an overall increase in the pensionable age irrespective of the number of children raised. Given the gradual nature of demographic shifts and changes in perceptions of the role of the sexes, and the difficulties of placing the entire pension reform in the wider context, the State could not be criticised for progressively modifying its pension system instead of pushing for a complete change at a faster pace. The applicant's case was to be distinguished from *Konstantin Markin v. Russia* (no. 30078/06, 7 October 2010, Information Note no. 134), which had concerned the issue of parental leave. Parental leave was a short-term measure which, unlike pensions, did not affect the entire lives of members of society. Changes made to the parental-leave system to eliminate differences in treatment between the sexes did not have serious financial ramifications or alter long-term planning, unlike changes to the pension system, which formed part of the State's national economic and social strategies. The original aim of the difference in pensionable age based on the number of children women raised had been to compensate for the factual inequalities between the sexes. In the specific circumstances of the case, that approach continued to be reasonably and objectively justifiable until such time as social and economic changes removed the need for special treatment for women. The timing and the extent of the measures taken to rectify the inequality in question were not manifestly unreasonable and so did not exceed the wide margin of appreciation afforded to the States in this area.

Conclusion: no violation (unanimously).

ARTICLE 35

Article 35 § 2 (b)

Substantially the same application

Application to the Court when individual complaint to European Commission pending: *admissible*

Karoussiotis v. Portugal - 23205/08
Judgment 1.2.2011 [Section II]

Facts – The case concerned proceedings for the return of a child unlawfully removed from Germany to Portugal and the custody of that child. In March 2005 the applicant, a German national, requested the assistance of the German authorities to secure the child's return, as provided for in the Hague Convention. In 2009 a Portuguese court of appeal found that the child was being kept in Portugal illegally but, having regard to European Council Regulation EC 2201/2003 (concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility), considered that it was in the best interests of the child that he should stay in Portugal. The custody proceedings, which had opened in March 2005, are still pending before the Portuguese courts. In April 2008 the applicant brought "infringement proceedings" against Portugal before the European Commission for violation of Regulation EC 2201/2003 because of the excessive length of the proceedings before the Portuguese courts. Those proceedings are also still pending.

Law – Admissibility:

The existence of a similar application before the European Commission – The similarity of the facts and complaints submitted by the applicant to the Court and to the European Commission was undeniable.

It had to be ascertained whether the proceedings before the latter body could be considered, from the procedural viewpoint and that of their potential effects, as an individual application within the meaning of Article 34 of the Convention. Any individual could challenge a member State by lodging a complaint with the European Commission against a measure or practice attributable to a member State deemed by the complainant to be in breach of a provision or legal principle of the European Union. The complaint was ruled admissible if it related to a violation of Community law by a member State. According to the settled case-law of the European Court of Justice, the European Commission had discretion to launch infringement proceedings before the Court of Justice of the European Union. The sole purpose of "infringement proceedings" or "pre-litigation proceedings" was to secure voluntary compliance by the member State concerned with the requirements of European Union law. As regards an action for breach of Community law, if the Court of Justice were to deliver a judgment for breach, it would be able to order the member State concerned to pay a lump sum or a fine up to the amount indicated by the Commission with a view to obliging it to comply with Community law. Thus, any such judgment would have no effect on the complainant's rights as the result would not be to settle an individual situation. For any request for individual redress, the complainant would have to go through the national courts. That is why the complainant did not have to establish that he or she had legal standing and was principally and directly concerned by the breach in question. Having regard to the foregoing, that procedure could not be compared, from either the procedural viewpoint or that of its potential effects, with an individual application under Article 34. When the European Commission ruled, as in the instant case, on a complaint lodged by an individual, it did not constitute a "procedure of international investigation or settlement" for the purposes of Article 35 § 2 (b) of the Convention.

Conclusion: preliminary objection dismissed (unanimously).

The Court also joined to the merits and rejected the Government's preliminary objection concerning the failure to exhaust domestic remedies; it also found that there had been a violation of Article 8.

Article 35 § 3 (b)

No significant disadvantage

Complaint concerning failure to communicate to applicants observations of civil courts on their constitutional appeals: *inadmissible*

Holub v. the Czech Republic - 24880/05
Decision 14.12.2010 [Section V]
Bratři Zátkové, a.s., v. the Czech Republic - 20862/06
Decision 8.2.2011 [Section V]

Facts – In these two cases the applicants complained that the Constitutional Court had ruled on their constitutional appeals against decisions by the civil courts without previously communicating to them the observations submitted by those courts on their appeals.

Law – Article 35 § 3: this complaint was similar to that raised by the applicants in other cases, in particular *Milatová and Others v. the Czech Republic*,[1] in which the Court had found a violation of Article 6 § 1 of the Convention. In this case, however, it was appropriate to examine the issue of the failure to communicate the observations and the existence of a "significant disadvantage" in the light of the new admissibility criterion set out in Article 35 § 3 (b) of the Convention since the entry into force of Protocol No. 14.

(a) *Significant disadvantage* – In their observations to the Constitutional Court, the courts in question had not provided any additional reasoning to that given in the judgments they had already delivered. The applicants had thus been familiar with the points raised. In addition, it did not appear that the Constitutional Court had relied on those submissions in its decisions. Everything suggested that the applicants' constitutional appeals would have been dismissed in any event, with or without the observations in question. In addition, the applicants, who complained that they had been unable to respond to the observations in question, did not specify what new arguments they would have wished to raise in addition to those submitted in the constitutional appeals. In those circumstances,

1. *Milatová and Others v. the Czech Republic*, no. 61811/00, 21 June 2005, Information Note no. 76.

the Court considered that the applicants had not suffered a "significant disadvantage" in the exercise of their right to participate properly in the proceedings before the Constitutional Court. With regard to the *Holub* case, the Court specified that the "disadvantage" referred to this latter point, and not to the financial sum at stake in the civil proceedings.

(b) *Examination of the application on the merits* – Following the Court's judgment in *Milatová and Others*, the Constitutional Court had reviewed its practice. Thus, it had been recommended to judge rapporteurs that they send the parties' observations to the applicants, with a time-limit for their response, if those observations contained new facts, allegations or arguments, even where a doubt existed on the latter point. Furthermore, the Committee of Ministers had held that the Czech Republic had discharged its obligation to take the necessary measures for execution of the *Milatová and Others*[1] judgment. Thus, the applications in the present case did not raise serious questions concerning the application or interpretation of the Convention, or important issues concerning the domestic law. Respect for human rights did not therefore require examination of the applicants' complaints.

(c) *Due consideration by a domestic tribunal* – The applicants' cases had been examined on the merits at first instance and on appeal. They had therefore been able to claim the protection of at least two national courts. The fact that, once their cases had been judged at final instance, it had been impossible for them to have examined certain complaints concerning the actions of the final national courts did not represent an obstacle to application of the new admissibility criterion. To assert otherwise would prevent the Court from dismissing any complaint, however insignificant, concerning a violation imputable to the final national instance, which would be contrary to the aim pursued by the admissibility criterion; the latter was intended to enable the Court to rule more rapidly on cases which did not merit examination on the merits. The Court considered that the applicants' cases had been duly examined by the Czech courts. In this respect, it noted that the concept of a duly examined case was not to be construed as strictly as the requirement of procedural fairness (Article 6).

Conclusion: inadmissible (no significant disadvantage).

1. Resolution ResDH(2006)71, adopted by the Committee of Ministers on 20 December 2006.

ARTICLE 46

Execution of a judgment – Measures of a general character

Respondent State required to take measures to eliminate structural problems relating to pre-trial detention

Kharchenko v. Ukraine - 40107/02
Judgment 10.2.2011 [Section V]

Facts – The applicant was arrested on suspicion of embezzlement of company funds. He was held in a pre-trial detention centre for over two years while the investigation was pending before being released after giving an undertaking not to abscond. The prosecution was ultimately discontinued for lack of evidence. In his application to the European Court, the applicant complained, *inter alia*, of the unlawfulness and length of his detention and of inadequate review procedures (Article 5 §§ 1, 3 and 4).

Law – Article 46: The Court found violations of Article 5 §§ 1, 3 and 4 of the Convention (and also of Article 3, on account of the conditions of detention). Violations of Article 5 could be said to be recurrent in cases against Ukraine and raised the issue of what measures were required for Ukraine to comply with its legal obligation under Article 46 of the Convention. Although two issues of concern had now been addressed by legislative amendments (the prosecutor's power to order and extend pre-trial detention had been repealed and time spent studying the case file was now included in the calculation of the length of pre-trial detention), others remained. Thus, in many cases detention between the end of the investigation and the beginning of the trial was not covered by any court order, while court orders made during the trial fixed no time-limits for further detention (Article 5 § 1 (c)); instead of reviewing whether continued detention was still justified, the domestic courts often referred to the same grounds throughout what were sometimes lengthy periods of detention (Article 5 § 3); and, lastly, procedures for review by the domestic courts of the lawfulness of the detention were unclear, cumbersome and did not protect against arbitrariness (Article 5 § 4). Having regard to the structural nature of these problems, specific reforms in Ukraine's legislation and administrative practice were urgently required. The Court left it to the State, under the supervision of the Committee of Ministers, to determine the

most appropriate way to address the problems and requested the Government to submit a reform strategy within six months from the date the judgment became final.

Article 41: EUR 20,000 in respect of non-pecuniary damage.

ARTICLE 2 OF PROTOCOL No. 4

Article 2 § 1

Freedom of movement

Prohibition on leaving the country on account of a criminal conviction: *violation*

Nalbantski v. Bulgaria - 30943/04
Judgment 10.2.2011 [Section V]

Facts – In 2000 the Bulgarian authorities prohibited the applicant from leaving the country and instructed him to surrender his international passport as criminal proceedings were pending against him. In 2003 he was convicted of theft and sentenced to two years' imprisonment, suspended for four years. On the basis of section 76(2) of the Identity Papers Act, the competent authority decided to take away the applicant's passport until he had been rehabilitated.

Law – Article 2 of Protocol No. 4: The applicant complained that, after 1 January 2007, the date on which Bulgaria joined the European Union, the travel ban imposed on him was no longer lawful because it did not meet the requirements of Article 27 of European Parliament and Council Directive 2004/38/EC, which provided that measures restricting freedom of movement must be proportionate and based exclusively on the personal conduct of the individual concerned. Criminal convictions could not in themselves constitute grounds for taking such measures. Since Bulgaria's accession to the European Union, the domestic courts had had several occasions to rule on the interplay between the Directive and section 76(2) of the Identity Papers Act with the result that the Act had been repealed in 2009. It was, however, unnecessary for the Court to determine whether the travel ban imposed on the applicant was "in accordance with the law", since it found it incompatible with Article 2 of Protocol No. 4 for the following reasons. Travel restrictions on convicted criminals could be justified only in cases where clear indications of a genuine public interest outweighed the individual's right to freedom of movement. That assessment had to be based on concrete elements indicative of a continued existence of a risk that such measures sought to forestall. In the applicant's case, the authorities had given no reasons for taking away his passport and had not considered it necessary to examine his individual situation or explain the need to impose such a measure on him. They had thus failed to carry out the requisite assessment of proportionality of the restriction of the applicant's right to travel abroad and provide sufficient justification for it. In the Court's view, the mere fact that an individual had been criminally convicted and had not yet been rehabilitated could not justify the imposition of restriction of his or her freedom to leave the country.

Conclusion: violation (unanimously).

The Court also found a violation of Article 6 § 1 and Article 13 of the Convention on account of the unreasonable length of the proceedings and the lack of an effective remedy in that respect.

Article 41: EUR 6,500 in respect of non-pecuniary damage.

Ban on foreign travel for former military officer who had had access to "State secrets": *violation*

Soltysyak v. Russia - 4663/05
Judgment 10.2.2011 [Section I]

Facts – Under the Entry and Leave Procedures Act (no. 114-FZ of 15 August 1996) the right of a Russian national to leave the Russian Federation may be restricted for up to five years if he or she has had access to State secrets and has signed an employment contract providing for such a restriction. The applicant, a military officer with access to State secrets, had such a contract. After retiring in May 2004 he applied for a passport to travel abroad to visit his family, but his request was rejected until at least August 2009 on the basis of a decision by the military.

Law – Article 2 of Protocol No. 4: The prohibition imposed on the applicant's travel abroad from May 2004 had constituted an interference with his right to freedom of movement. While that interference may have served the legitimate aim of protecting the interests of national security and, until December 2008, have had a legal basis under domestic law and in the applicant's employment contract, it could not be said to have been "neces-

sary in a democratic society" and proportionate to the aim of protecting national security. Russia was still the only Council of Europe member State to have retained restrictions on international travel for private purposes by persons who had had access to State secrets, despite the Government's commitment to abolish such restrictions as a condition for joining the Council of Europe and the United Nations Human Rights Committee's condemnation of blanket restrictions of this type. Having regard to the established common European and international standard, the Court considered that particularly compelling justification would be required for maintaining the restriction. However, as in *Bartik v. Russia*,[1] the Russian Government had failed to explain how the blanket restriction on travel abroad imposed on all those who had had access to State secrets in the past served the interests of national security, especially as the confidential information in the applicant's possession could have been transmitted in a variety of ways which did not require his presence abroad or direct physical contact. The Government's claim that the applicant could be abducted by foreign intelligence services or terrorist organisations while abroad appeared to be mere conjecture not supported by any actual assessment of the risk in his particular case. While the Court had previously accepted that the rights of military personnel could in certain circumstances be restricted to a greater degree than would be permissible in the case of civilians, neither the applicant's status as a serviceman nor his acknowledgement in 1999 that a restriction might be imposed altered the conclusion that the restriction in question failed to achieve the protective function that had been assigned to it. The applicant had been affected by the restriction for a considerable period following the termination of his contract of employment and had thus borne a disproportionate burden which had undermined the essence of his right under Article 2 of Protocol No. 4. As for the restriction on his right to travel after December 2008, there had been no basis for it in domestic law or in the applicant's employment contract.

Conclusion: violation (unanimously).

Article 41: EUR 3,000 in respect of non-pecuniary damage.

1. *Bartik v. Russia*, no. 55565/00, 21 December 2006, Information Note no. 92.

ARTICLE 4 OF PROTOCOL No. 4

Prohibition of collective expulsion of aliens

Return of migrants intercepted on the high seas to country of departure: *relinquishment in favour of the Grand Chamber*

Hirsi and Others v. Italy - 27765/09
[Section II]

The application concerns the interception on the high seas of vessels transporting Somali and Eritrean unlawful migrants towards the Italian southern borders, and the immediate return to Libya on board Italian military vessels of unlawful immigrants. Relying on Article 3 of the Convention, the applicants complain of the risks of torture or inhuman or degrading treatment to which they would be exposed by a return to Libya, their stay in that country or repatriation to their respective countries. Alleging a violation of Article 4 of Protocol No. 4, they claim that they have been victims of an atypical collective expulsion that had no legal basis. Finally, under Article 13 of the Convention, they complain that it was impossible to challenge before the Italian authorities their return to Libya and the risk of repatriation to their countries of origin.

RULE 39 OF THE RULES OF COURT

Interim measures

Statement issued on 11 February 2011 by the President of the Court

Faced with an alarming rise in the number of requests for interim measures (an increase of over 4,000% between 2006 and 2010) and its implications for an already overburdened Court the President of the Court, Jean-Paul Costa, has issued a statement reminding both Governments and applicants of the Court's proper but limited role in immigration and asylum matters and emphasising their respective responsibilities to co-operate fully with the Court. He stressed that, according to its case-law and practice, the Court would only request a Member State not to deport, extradite or expel a person where, having reviewed all the relevant information, it considered that he or she faced a real risk of serious, irreversible harm if removed. An interim measure requested in this way

had binding legal effect on the State concerned. However, the Court was *not* an appeal tribunal from the asylum and immigration tribunals of Europe. Where national immigration and asylum procedures carried out their own proper assessment of risk and were seen to operate fairly and with respect for human rights, the Court should only be required to intervene in truly exceptional cases.

For the Court to be able effectively to perform its proper role in this area both Governments and applicants had to co-operate fully with the Court. In particular it was *essential* that:

• *Applicants and their representatives* respect the Practice Direction on Requests for Interim Measures. In particular, requests for interim measures should be individuated, fully reasoned, be sent with all relevant documentation including the decisions of the national authorities and courts, and be sent in good time before the expected date of removal. The widespread distribution of application forms to potential applicants was not and should not be seen as a substitute for proper legal representation in compliance with these conditions.

Failure to comply with the conditions set out in the Practice Direction may lead to such cases not being accepted for examination by the Court.

• *Member States* provided national remedies with suspensive effect which operated effectively and fairly, in accordance with the Court's case-law and provided a proper and timely examination of the issue of risk. Where a lead case concerning the safety of return to a particular country of origin was pending before the national courts or the Court of Human Rights, removals to that country should be suspended. Where the Court requested a stay on removal under Rule 39, that request had to be complied with.

Link to the statement

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

The following cases have been referred to the Grand Chamber in accordance with Article 43 § 2 of the Convention:

Kurić and Others v. Slovenia - 26828/06
Judgment 13.7.2010 [Section III]

(See Article 8 above, page 14)

Konstantin Markin v. Russia - 30078/06
Judgment 7.10.2010 [Section I]

(See Article 14 above, page 15)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Hirsi and Others v. Italy - 27765/09
[Section II]

(See Article 4 of Protocol No. 4 above, page 20)

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