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COUR EUROPÉENNE DES DROITS DE L'HOMME

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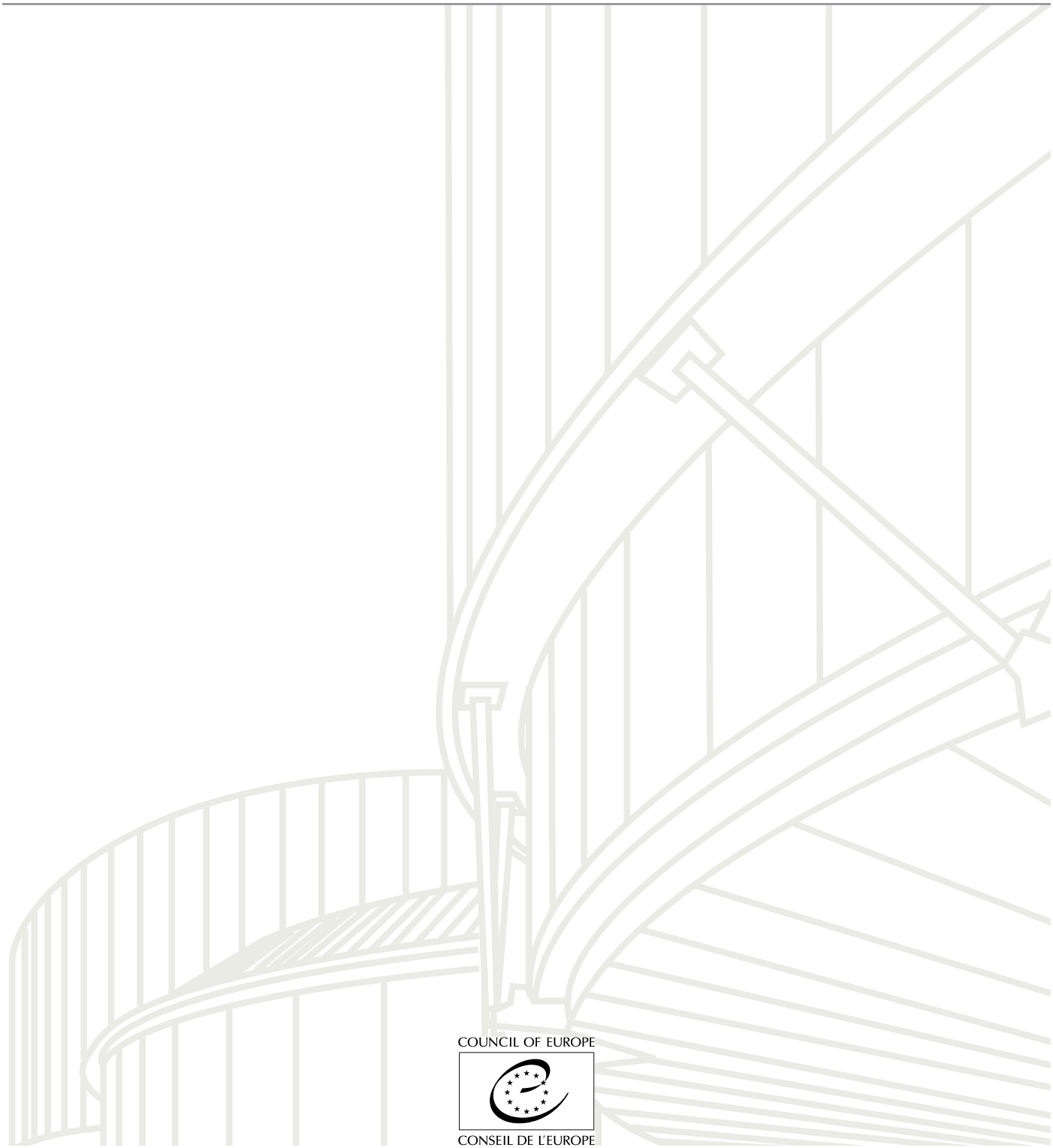

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ARTICLE 1

Jurisdiction of States

Absence of territorial jurisdiction in respect of immigrant applicant who had voluntarily returned to his country of origin

Khan v. the United Kingdom - 11987/11
Decision 28.1.2014 [Section IV]

Facts – The applicant, a Pakistani national, came to the United Kingdom in 2006 on a student visa. In 2009 he and four other Pakistani nationals were arrested on suspicion of conspiracy to carry out acts of terrorism. They were released by the police without charge but were served with a notice of intention to deport and taken into immigration detention. The applicant voluntarily left the United Kingdom in August 2009. In December 2009 he was notified by letter of the Secretary of State's decision to cancel his leave to remain in the United Kingdom on the grounds that his presence would not be conducive to the public good for reasons of national security. The letter also informed him that he was judged to be involved in Islamist extremist activity. His appeal against the decision to cancel his leave was dismissed by the Special Immigration Appeals Commission (SIAC). In his application to the European Court the applicant complained, *inter alia*, of violations of Articles 2, 3, 5 and 6 of the Convention..

Law – Article 1: Whether Articles 2, 3, 5 and 6 were engaged turned on whether the applicant could be said to be "within the jurisdiction" of the United Kingdom. A State's jurisdictional competence under Article 1 was primarily territorial, although the Court had recognised two principal exceptions to that principle, namely circumstances of "State agent authority and control" and "effective control over an area".[1] In the present case, where the applicant had returned voluntarily to Pakistan, neither exception applied, particularly as he had not complained about the acts of British diplomatic and consular agents in Pakistan and remained free to go about his life in the country without any control by agents of the United Kingdom. Moreover, and contrary to the applicant's submission, there was no principled reason to distinguish between someone who was in the jurisdiction of a Contracting State but had left voluntarily and someone who was never in the jurisdiction of that State. Nor was there any support in the Court's case-law for the applicant's argument that the State's obligations under Article 3 required it to take that provision into account when making adverse decisions against individuals, even when those individuals were not within its jurisdiction. Lastly, jurisdiction could not be established simply on the basis of the proceedings before SIAC. The mere fact that the applicant had availed himself of his right to appeal against the decision to cancel his leave to remain had no direct bearing on whether his complaints relating to the alleged real risk of his ill-treatment, detention and trial in Pakistan fell within the jurisdiction of the United Kingdom: it was the subject matter of the applicants' complaints alone that was relevant.

Conclusion: inadmissible (incompatible *ratione loci*).

1. See *Al-Skeini and Others v. the United Kingdom* [GC], 55721/07, 7 July 2011, Information Note 143.

ARTICLE 2

Life
Positive obligations (substantive aspect)

Death of six children as a result of failure to secure and supervise firing range containing unexploded ordnance: *violation*

Oruk v. Turkey - 33647/04
Judgment 4.2.2014 [Section II]

Facts – In October 1993 a mortar rocket exploded in a village near a military firing range containing unexploded ordnance, killing six children, including the applicant's son. A rough sketch of the place where the explosion took place was made by the gendarmerie, many statements were taken and an expert's report commissioned. In December 1993 the public prosecutor declined jurisdiction and transmitted the case file to the military prosecutor's office. In December 1995 the military prosecutor discontinued the proceedings. The applicant lodged an appeal against that decision in June 2003, but in January 2004 the military tribunal dismissed her appeal.

Law – Article 2 (*substantive limb*): The present case concerned the exercise of military activity under the responsibility of the State, the dangerousness of which was not in doubt and was fully known to the domestic authorities. The firing range was not surrounded by a fence or barbed wire, it had no warning signs and a panel had been set up only after the incident that claimed the lives of six children. In view of the danger of unexploded military ordnance, it was primarily the responsibility

of the military authorities to ensure the safety and supervision of the area to prevent access to it and minimise the risk of the ordnance being moved. To this end, signs warning of the dangerous nature of the area should have been put in place to clearly delineate the perimeter of the ground at risk. In the absence of such signs, it was for the State to ensure that the firing range was cleaned up in order to eliminate all unexploded ordnance. The fact that the villagers were informed through the village *muhtar* (chief) about the firing exercises and the presence of unexploded ordnance could not be regarded as sufficient to exempt the national authorities from their responsibility towards the people living near such training areas. Such information was not, in any event, likely to reduce significantly the risks in question, because the military authorities themselves were not able to locate the ordnance. Having regard to the seriousness of the danger, the domestic authorities should have ensured that all civilians living near the military firing range were warned of the risks that they incurred from unexploded ordnance. The authorities should have particularly made sure that children, who were more vulnerable than adults, were fully aware of the dangers of such devices that they were likely to play with, believing them to be harmless. The shortcomings in the present case in terms of safety had been such that they exceeded mere negligence on the part of army personnel in the locating and destruction of unexploded ordnance.

In addition, and in view of the seriousness of the shortcomings observed, the violation of right to life of the applicant's son could not be remedied merely by an award of damages. The applicant could not therefore be criticised for failing to use the compensatory remedies relied on by the Government in their plea of non-exhaustion of domestic remedies. The Government's preliminary objection to that effect was thus rejected.

In conclusion, the national authorities had an obligation, which they had failed to fulfil, to take the appropriate measures as a matter of urgency in order to protect the lives of the people living near the firing range, independently of any action by the applicant herself, and to provide an explanation as to the cause of death of her son and any liability in that connection through a procedure initiated spontaneously.

Conclusion: violation (five votes to two).

Article 41: EUR 50,000 in respect of non-pecuniary damage; claim in respect of pecuniary damage dismissed.

Life
Use of force
Effective investigation

Inadequacies of investigation into use of lethal force by police officers resulting in deaths of father and his 13 year old son: *violation*

Makbule Kaymaz and Others v. Turkey - 651/10
Judgment 25.2.2014 [Section II]

Facts – The applicants were the widow, mother and brother of A. Kaymaz and the mother of U. Kaymaz. Following an anonymous denunciation to the effect that numerous armed and suspicious individuals had gone to the address of the Kaymaz family to plan a terrorist attack, their house was placed under surveillance, day and night, on 20-21 November 2004. On 21 November the public prosecutor issued a warrant for a search of the house. At about 5 p.m. A. Kaymaz, the father, and U. Kaymaz his 13-year-old son, were shot dead near their home. According to a report of the same day, they were killed in a shoot-out with law-enforcement officers. On 22 November the public prosecutor's office spontaneously opened an investigation. Witnesses and police officers were interviewed and forensic reports drawn up. In December 2004 an indictment was issued against four police officers for homicide resulting from the use of lethal force in circumstances that went beyond the context of self-defence. In April 2007 they were acquitted by the Assize Court. The applicants' appeal on points of law was dismissed.

Law – Article 2

(a) *Substantive limb* – The aim of the police action had been to carry out a lawful arrest, which was one of the aims mentioned in paragraph 2 of Article 2. The two individuals had been shot dead by police officers. The burden of proof was thus on the authorities.

It had been decided to arrest the suspects when they left their house, which was under surveillance, so as not to endanger the lives of the police officers or of the family members who lived there. No suspicious incidents had been noted during the surveillance. It thus appeared that the police had not explored any leads other than the anonymous denunciation. There was no evidence in the file to show that terrorists were hiding in their house, and there were no indications that a terrorist attack was being planned there. In addition, certain questions arose about the surveillance, bearing in mind that, on 21 November 2004, A. Kaymaz had left his

house in the company of an individual who had gone to help him extract his car from mud. Also, the three police officers who had stated that they had fired at the suspects had stressed the suddenness of the incident. However, the operation had been scheduled by the police and the police officers involved could thus have prepared it more carefully. The Court was not therefore convinced that that police forces had used the requisite vigilance to ensure that any risk to life was reduced to a minimum.

Diverging versions of the facts had been submitted by the parties. The judicial establishment of the facts by the Assize Court found that the police officers had responded in self-defence, in the exercise of their duties, to shots fired by the members of the applicants' families. However, the applicants had argued that their relatives had been the victims of an extrajudicial execution, as they had not been armed during the incident and that they had been killed deliberately by the police forces. In the light of the material available and in the absence of tangible evidence, this amounted to hypothesis and speculation. In those circumstances it was not established beyond all reasonable doubt that A. and U. Kaymaz had been killed deliberately by the police.

The establishment of the facts by the Assize Court had been based mainly on the statements obtained by the prosecutor's office from the police officers present at the scene and recorded on 4 December 2004. The fact that this had taken 10 days showed that the authorities had not acted with the requisite diligence. A risk of collusion between the officers could not be ruled out. The police officers' version of events had evolved over time. As neither of the two versions was consistent with the position of the spent cartridges found at the scene, if the origin of that discrepancy had been investigated it could have helped the national authorities to assess the credibility of the statements given by the accused officers. In particular, the Assize Court had indirectly accepted that discrepancy by stating that "not all the spent cartridges [had] remained in their original location because the two groups [had been] moving around during the incident". However, that argument did not explain the absence or presence of certain cartridges or bullets. Consequently, the credibility of the police officers' statements had not been assessed in depth by the national authorities. Moreover, the Government's arguments, at first sight, suggested that the applicants' relatives had been in possession of weapons and had used them during the incident. However, as this was an incident in which two people, including a 13-year-old, had been killed, the national authorities should have looked further into the possible leads before automatically accepting the version given by the accused police officers, especially as there were omissions and inconsistencies in the latter's statements. There had been no attempt to take fingerprints from the weapons found near the bodies of the applicants' relatives, even though the forensic reports had not dispelled doubts as to the last use of the weapons and the origin of the gunshot residue found on the hands of the deceased. Admittedly, the Court could not speculate in the abstract as to whether additional forensic reports and analyses would have enabled the domestic authorities to reach a different conclusion. That being said, the gaps in the evidence showed a lack of willingness to search for any other possible solutions. In any event, additional forensics and research would have enabled the Assize Court to return a more credible verdict and to rule out certain leads that had been legitimately invoked by the applicants. Consequently, the omissions attributable to the investigating bodies led to the conclusion that it was not established that the lethal force used against the applicants' relatives had not exceeded what was "absolutely necessary".

In view of the foregoing, the police operation during which A. and U. Kaymaz lost their lives had not been prepared or supervised such as to reduce any risk, to the extent possible, and it had not been established that the lethal force used in the present case was absolutely necessary within the meaning of Article 2.

Conclusion: violation (unanimously).

(b) *Procedural limb* – The police officers involved in the incident had not been interviewed by the public prosecutor until 10 days later. Moreover, they had not been held separately from each other after the incident and had been called to give statements in connection with the administrative investigation, before the prosecutor's office intervened. Even though there was nothing to suggest any collusion between the police officers in question or between them and other colleagues, the mere fact that the appropriate action had not been taken to reduce the risk of such collusion could be seen as a major shortcoming, undermining the effectiveness of the investigation.

In addition, notwithstanding the key role of their testimony with regard to the preparation of the operation, the two police officers responsible for the surveillance of the Kaymaz family's house had not been interviewed until one year later. This fact

showed that the investigative authorities had not bothered to analyse more closely how the surveillance had been carried out and had not sought to determine whether the counter-terrorism operation had been prepared and supervised by the authorities so as to limit the use of lethal force to the minimum extent possible.

Furthermore, the Assize Court had rejected the applicants' requests for an on-site reconstruction of the incident. In view of the sketches of the scene and the position of spent cartridges from the police officers' weapons, such a reconstruction was of crucial importance and should have been carried out in the presence of the accused police officers and the applicants' lawyers. This investigative act would have enabled the national authorities to establish the various hypotheses and to assess the credibility of the police officers' statements. It was only in this way that the domestic authorities could have shed light on the contradictions, especially as the position of the cartridges collected was not consistent with the police officers' statements. The lack of any such reconstruction, in spite of the applicants' reiterated request, had seriously undermined the national authorities' capacity to contribute to the establishment of the facts.

Lastly, it was troubling that no attempt had been made to trace fingerprints on the weapons found next to the bodies of the applicants' relatives.

The shortcomings in the investigation were all the more regrettable as, except for the police officers, there had been no witnesses who had had a close view of the shoot-out between the officers and the applicants' relatives. It could thus be inferred that those shortcomings had undermined the quality of the investigation and reduced its capacity to establish the circumstances of the deaths.

Conclusion: violation (unanimously).

The Court also found that there had been no violation of Article 3 and Article 14 taken together with Article 2.

Article 41: EUR 70,000 in respect of non-pecuniary damage; EUR 70,000 in respect of pecuniary damage.

ARTICLE 3

Inhuman or degrading treatment

Lack of independent access to prison facilities for paraplegic prisoner; lack of organised assistance with his mobility and daily routine resulting in his segregation and stigmatisation: *violation*

Semikhvostov v. Russia - 2689/12
Judgment 6.2.2014 [Section I]

Facts – The applicant, who was wheelchair-bound and suffering from numerous health problems, including complete paralysis of the lower body and extremely poor eyesight, was detained for almost three years in a correctional facility that was not adapted for the disabled. He had to rely on the help of other inmates to leave the dormitory and to access facilities such as the lavatory, bathhouse, library, shop and medical unit, which were inaccessible in a wheelchair.

Law – Article 3: The limitations on the applicant's personal mobility were so severe that he had been unable to eat at the canteen with fellow inmates. While it was not possible to verify the applicant's allegation that he had been denied food or had received it on dirty tableware, his formal segregation from the rest of the inmate population had stigmatised him and by itself served as the main restriction on his leading a dignified life in the already harsh environment of a penal facility.

The State's obligation to ensure adequate conditions of detention included making provision for the special needs of prisoners with physical disabilities, and the State could not absolve itself from that obligation by shifting the responsibility to other inmates. By appointing fellow inmates to care for the applicant the State had not taken the necessary steps to remove the environmental and attitudinal barriers which had seriously impeded the applicant's ability to participate in daily activities with the general prison population which, in its turn, had precluded his integration and stigmatised him even further. Many of the applicant's access problems could have been solved by reasonable improvements which would have been neither costly nor complicated. However, the authorities' response had been restricted to the temporary installation of an entrance ramp, the provision of a chair for use in the lavatory and assigning inmates to assist him. Those arrangements could not ensure the applicant's autonomy or promote his physical and moral integrity. The restrictions on his personal mobility and lack of reasonable accommodation during his three-year long detention must have had a dehumanising effect. The domestic authorities had failed to treat him in a safe and appropriate manner consistent with his disability. In sum, the conditions of the applicant's detention and, in particular, his

lack of independent access to parts of the facility, including the canteen and sanitation blocks, and the lack of any organised assistance with his mobility, must have caused the applicant unnecessary and avoidable mental and physical suffering amounting to inhuman and degrading treatment.

Conclusion: violation (unanimously).

The Court also found a violation of Article 13 of the Convention.

Article 41: EUR 15,000 in respect of non-pecuniary damage.

Use of pepper spray against an aggressive prisoner and his confinement to restraint bed for 3 hours and 40 minutes: *violation*

Tali v. Estonia - 66393/10
Judgment 13.2.2014 [Section I]

Facts – While serving a prison sentence, the applicant refused to comply with the orders of prison officers. Pepper spray, physical force and a telescopic baton were used against him in order to overcome his resistance. He was then handcuffed and later confined in a restraint bed for three hours and forty minutes. As a result he sustained a number of injuries, including haematomas and blood in his urine. Criminal proceedings against the prison guards were discontinued following a finding that the use of force had been lawful as the applicant had not complied with their orders and had behaved aggressively. A claim for compensation filed by the applicant was dismissed.

Law – Article 3: The Court was aware of the difficulties the States might encounter in maintaining order and discipline in penal institutions. This was particularly so in cases of unruly behaviour by dangerous prisoners, a situation in which it was important to find a balance between the rights of different detainees or between the rights of the detainees and the safety of the prison officers. The applicant's character and prior behaviour had given the prison officers reason to be alert in relation to their safety and for taking immediate measures when he had displayed disobedience, threats and aggression towards them. Moreover, the domestic authorities had established that the applicant had behaved aggressively and that it had therefore been justified to take measures to combat his aggression.

However, as regards the legitimacy of the use of pepper spray, according to the concerns expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), it was a potentially dangerous substance that should not be used in confined spaces. If exceptionally it needed to be used in open spaces, there should be clearly defined safeguards in place. Pepper spray should never be deployed against a prisoner who had already been brought under control. Although pepper spray was not considered a chemical weapon and its use was authorised for the purpose of law enforcement, it could produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it might cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging. Having regard to those potentially serious effects on the one hand and the alternative equipment at the disposal of the prison guards on the other, the circumstances had not justified its use in the instant case.

As regards the use of the restraint bed, the period for which the applicant had been strapped had been shorter than in the case of *Julin v. Estonia* (9 hours), his situation had been assessed on an hourly basis and he had also been checked on by medical staff. However, those factors had not rendered that measure justified in the circumstances of the instant case. The means of restraint at issue should never be used as a means of punishment, but rather in order to avoid self-harm or serious danger to other individuals or to prison security. It had not been convincingly shown that after the confrontation with the prison officers had ended the applicant – who had been locked in a single-occupancy disciplinary cell – had posed a threat to himself or others. Furthermore, the period for which he had been strapped to the restraint bed was by no means negligible and his prolonged immobilisation must have caused him distress and physical discomfort. Considering the cumulative effect of those measures, the applicant had been subjected to inhuman and degrading treatment.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

(See also *Oya Ataman v. Turkey*, 74552/01, 5 December 2006, Information Note 92; *Ali Güneş v. Turkey*, 9829/07, 10 April 2012, Information Note 151; *Julin v. Estonia*, 16563/08 et al., 29 May 2012, Information Note 152; and *İzci v. Turkey*, 42606/05, 23 July 2013, Information Note 165)

ARTICLE 5

Article 5 § 4

Review of lawfulness of detention

Requirement to prepare a fresh independent medical opinion on a detainee's mental health when examining a request for his release from detention: *violation*

Ruiz Riviera v. Switzerland - 8300/06
Judgment 18.2.2014 [Section II]

Facts – The applicant was examined by a psychiatrist after being accused of murdering his wife. The psychiatrist concluded in a report drawn up on 10 October 1995 that the applicant was suffering from acute paranoid schizophrenia and was not therefore responsible for the murder of his wife. The court found that he had killed his wife but held that he had not been responsible for his acts at the relevant time and ordered him to be detained in the psychiatric wing of a prison. On 7 June 2001 the applicant underwent a further psychiatric examination. The psychiatrists who examined him concluded that his mental health had hardly evolved since the psychiatric examination carried out in 1995. The applicant submitted several requests for release on probation, all of which were rejected. On 23 March 2004 two psychologists from the Judicial Execution Office, one of whom had been monitoring the applicant, submitted an annual therapeutic report. The report confirmed the conclusions of the psychiatric report produced in 2001 and noted that the applicant continued to deny his illness and refused to follow the prescribed medical treatment. It accordingly recommended rejecting his request for release on probation. In June 2004 the applicant submitted a further request for release on probation, which was rejected on the basis of the report drawn up in 2004 and the psychiatric report of 2001. He unsuccessfully appealed against that decision, arguing that an independent psychiatrist should be appointed to determine whether it was necessary to keep him in detention and observing that the last psychiatric examination dated back to 2001.

Law – Article 5 § 4: The annual therapeutic report that had been drawn up in 2004 was not the equivalent of an independent psychiatric report and the last psychiatric report on the applicant dated back to 2001. In the case of *Dörr v. Germany* the Court had accepted a decision keeping a person in preventive detention, even though the last medical report on which that decision had been based dated back six years, because the disorders noted in that report had been confirmed by the psychologist of the establishment where he was being held. That said, the present case more closely resembled the case of *H.W. v. Germany* in which the Court had found a violation of Article 5 § 1 of the Convention. Admittedly, the last medical report in that case had dated back more than 12 years whereas in the applicant's case the last expert report dated back fewer than 4 years, but, as in *H.W.*, the applicant's refusal to follow the prescribed treatment had been due to a breakdown in the relationship of trust between the applicant and the prison staff and to the resulting deadlock. In those circumstances, and in order to gain as clear a picture as possible of the applicant's mental state when he made his request for release on probation, the Judicial Execution Office or the cantonal judge should at least have tried to obtain an independent medical opinion. By basing their decisions on the therapeutic report of 2004 alone, the national authorities had therefore not been in possession of sufficient evidence to allow them to establish that the conditions for the applicant's release on probation were not met.

Conclusion: violation (four votes to three).

The Court also concluded by four votes to three that there had been a violation of Article 5 § 4 regarding the refusal of the domestic courts to hold an adversarial hearing.

Article 41: Finding of a violation constituted sufficient just satisfaction in respect of any non-pecuniary damage; claim in respect of pecuniary damage dismissed.

(See *Dörr c. Allemagne* (dec.), 2894/08, 22 January 2013; and *H.W. v. Germany*, 17167/11, 19 September 2013, Information Note 166)

ARTICLE 6

Article 6 § 1 (civil)

Adversarial trial
Equality of arms

Failure to send respondents' submissions to applicants for either information or comment in leave-to-appeal proceedings before the Supreme Court of Cassation: *inadmissible*

Valchev and Others v. Bulgaria - 47450/11, 26659/12 and 53966/12
Decision 21.1.2014 [Section IV]

Facts – The applicants were parties to different sets of civil proceedings. In 2010-11 they appealed on points of law. However, the Supreme Court of Cassation refused to admit their appeals for examination for failure to meet the criteria set out in the Code of Civil Procedure 2007. Before the European Court, the applicants complained under Article 6 § 1 of the Convention that the failure of the domestic courts to send them the respondents' submissions in reply to their appeals on points of law and give them an opportunity to reply to those submissions in writing or orally before the Supreme Court of Cassation determined whether or not to admit the appeals for examination had put them at a net disadvantage *vis-à-vis* their opponents, in breach of the principles of adversarial proceedings and equality of arms. They further complained that they had unjustifiably been denied access to the Supreme Court of Cassation.

The Bulgarian Code of Civil Procedure 2007 envisaged a new role for the Supreme Court of Cassation in civil cases. Under the Code, the main task of that court is to unify the application of the law by giving judgments of principle. For that reason, appeals on points of law to it do not lie as of right, as used to be the case under the Code of Civil Procedure 1952, but are subject to a pre-selection. In the pre-selection proceedings, the Supreme Court of Cassation does not deal with the merits of the case or even with the merits of the appeal on points of law, but merely decides, by reference to the criteria set out in the Code, whether or not the appeal should be admitted for examination. It does so on the basis of a brief by the appellant addressing the question of the admissibility of the appeal and of any submissions by the respondent in reply. The Code makes no provision for the respondent's submissions to be sent to the appellant and does not say whether the appellant may or may not reply to them. In addition, it provides for a closed hearing of the admissibility point. The burden of framing the issues clearly and convincing the Supreme Court of Cassation that the appeal should be admitted for examination plainly rests on the appellant.

Law – Article 6 § 1

(a) *Equality of arms and adversarial trial* – Having noted that there was no uniform approach in its case-law as to the applicability of Article 6 to leave-to-appeal or similar proceedings before a supreme court, the Court left that question open.

The specific point at issue was whether the practice of the Bulgarian courts, in the absence of any explicit rule, not to send respondents' submissions in reply to appeals on points of law to appellants or to give appellants an opportunity to reply was in breach of the principles of equality of arms and adversarial trial. In the instant case, each of the applicants had had an opportunity to put before the Supreme Court of Cassation all of their arguments as to why their appeals should be admitted for examination by reference to the relevant provisions of the 2007 Code. The non-communication of the respondents' submissions in reply and the lack of an additional opportunity to revisit the point in reaction to those submissions had not therefore – in view of the special nature of the proceedings – placed the applicants at a substantial disadvantage *vis-à-vis* their opponents or impermissibly impinged on the adversarial character of the proceedings. Moreover, it could not be overlooked that before reaching the Supreme Court of Cassation the applicants' cases had been subjected to a full and adversarial examination by two levels of court with full jurisdiction.

Conclusion: inadmissible (manifestly ill-founded).

(b) *Access to court* – As a result of the pre-selection procedure introduced by the 2007 Code, in the period 2010-12 only some 20% of appeals on points of law to the Supreme Court of Cassation in civil and commercial cases had been admitted for examination, relieving that court of the task of dealing with the merits of a considerable number of cases with a view to allowing it to concentrate on its core task of giving judgments elucidating and making uniform the application of the law. Similar rules governing access to the highest appeal courts existed in other Contracting States such as Albania, Armenia, Finland, France, Hungary, Poland, Sweden, Ukraine and the United Kingdom. In those circumstances, the Court was satisfied that the limitation on the admissibility of appeals on points of law in civil cases to the Bulgarian Supreme Court of Cassation had pursued a legitimate aim. The manner in which that limitation was set out in the 2007 Code was within the State's margin of appreciation. As regards the alleged vagueness of the provisions governing the pre-selection of appeals, such provisions had to be framed in a way that gave the highest courts of appeal enough latitude to determine whether or not to accept a case for examination, and thus allowed them to concentrate on their core task of unifying the application of the law throughout the judicial system at whose pinnacle they stood. In that connection, the relevant provision of the Bul-

garian 2007 Code had been challenged before the Constitutional Court, which had held that, although somewhat vague, it was as a whole not unconstitutional, and that the manner of its application would be a question of case-law and judicial practice. In an apparent response to that ruling, the Supreme Court of Cassation had issued a binding interpretative decision in which it had sought to clarify, as much as possible, the intended manner of application of that provision. In sum, bearing in mind the special role of the Supreme Court of Cassation envisaged in the 2007 Code, the Court found that the above regulatory setup could not in itself be regarded as being in breach of Article 6 § 1.

In the cases of each of the applicants, the respective panels of the Supreme Court of Cassation had found, in fully reasoned decisions, that the appeals on points of law had not met the criteria set out in the 2007 Code. Not being a court of appeal from the national courts, the Court did not consider that it had to assess the correctness of those rulings. In those circumstances, and given that before reaching the Supreme Court of Cassation the applicants' cases had been examined by two levels of court with full jurisdiction, the restriction on the applicants' right of access to a court had not been disproportionate and had not impaired the very essence of that right.

Conclusion: inadmissible (manifestly ill-founded).

Article 6 § 2

Presumption of innocence

Statements concerning a suspect under investigation contained in a judgment convicting co-accused tried separately:
Article 6 § 2 applicable; no violation

Karaman v. Germany - 17103/10
Judgment 27.2.2014 [Section V]

Facts – The applicant was the founder of a Turkish TV station whose programmes were broadcast in Turkey and Germany and the director of its operating company. In 2006 German prosecution authorities started investigations into the activities of the applicant and others like him suspected of fraudulently using donated funds for commercial purposes and their own benefit. In 2008 the preliminary criminal proceedings against the applicant were separated from the investigations against the other suspects. In the same year, criminal investigations against the applicant based on the same allegations of fraud were initiated in Turkey. In 2008 two of the applicant's co-accused were convicted of aggravated fraud and another of aiding and abetting them. Whilst the applicant had not formally been indicted at that stage, the judgment nevertheless described in detail how the scheme had been organised and the role played by the applicant. It originally indicated the applicant's full name (although only his initials were used in the Internet version) and explicitly stated that the applicant had played a prominent role in the criminal venture. The introductory remarks to the Internet publication further specified that references and findings in the judgment with respect to the actions of other persons, in particular those separately prosecuted, were not binding in relation to those persons, who still benefited from the presumption of innocence. The media coverage of the proceedings depicted the applicant as having played a main role in the events. In 2009 the applicant lodged a complaint with the German Federal Constitutional Court, arguing that the references in the reasoning of the regional court's judgment assuming his participation in the fraudulent use of the donated funds had violated his right to be presumed innocent. His complaint was, however, declared inadmissible. In 2013 the applicant's trials commenced in Turkey and in Germany. At the time the European Court gave its judgment in the present case, those proceedings were still pending.

Law – Article 6 § 2

(a) *Admissibility* – The Government argued that the applicant could not claim to be a victim of a violation of the right to be presumed innocent as any finding of guilt in the regional court's judgment was limited to his co-accused. Furthermore, the presumption of innocence did not protect a suspect from merely factual and indirect impacts resulting from a judgment delivered in criminal proceedings against third parties which did not contain a determination of his own guilt or expose him to disadvantages amounting to a conviction or sentence.

The Court observed however that, in principle, the presumption of innocence could also be engaged by premature expressions of a suspect's guilt made within the scope of a judgment against separately prosecuted co-accused. In the applicant's case, when the regional court's judgment against his co-accused was handed down, preliminary criminal proceedings had already been instituted against the

applicant on allegations of fraud in Germany and Turkey and he had thus been "charged with a criminal offence" within the meaning of Article 6 § 2, even though he had not been formally indicted. In this regard, the statements in the regional court's judgment, although not binding with respect to the applicant, could nevertheless have had a prejudicial effect on the criminal proceedings pending against him. In circumstances such as this, it was important to remember that a separately prosecuted accused who is not a party to the proceedings against his co-accused is deprived of any possibility to contest allegations with respect to his participation in the crime made during such proceedings.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits* – The Court accepted that in complex criminal proceedings involving several persons who could not be tried together, references by the trial court to the participation of third parties, who might later be tried separately, could be indispensable for the assessment of the guilt of those on trial. In this respect, criminal courts were bound to establish facts relevant for the assessment of the legal responsibility of the accused as accurately and precisely as possible and they could not present decisive facts as mere allegations or suspicions. This also applied to facts related to the involvement of third parties. However, where such facts had to be introduced, the trial court had to exercise restraint and provide no more that the information necessary to assess the legal responsibility of the persons on trial.

In the present case, the impugned statements in the regional court's judgment had to be read in the context of German law, which clearly did not allow the drawing of any inferences on the guilt of a person from criminal proceedings in which he or she had not participated. In respect of the domestic court's reasoning, the Court observed that, in order to assess the extent of the responsibility of one of the co-accused, the regional court had had to examine the role played and even the intentions of all the persons behind the scenes in Turkey, including the applicant. In this context, the mention of such elements in the regional court's judgment had been unavoidable. Furthermore, the language used and particularly the continuous reference to the applicant as "separately prosecuted" had made it sufficiently clear that any mention of the applicant did not entail a determination of his guilt. Moreover, both the introductory remarks to the Internet version of the regional court's judgment and the Federal Constitutional Court's decision in the case had emphasised that it would have been contrary to the presumption of innocence to attribute any guilt to the applicant on the basis of the outcome of the trial against his co-accused. In the light of those considerations, the Court concluded that the domestic courts had avoided as far as possible giving the impression of having prejudged the applicant's guilt, and so had not violated the applicant's right to be presumed innocent.

Conclusion: no violation (five votes to two).

(See also *Allen v. the United Kingdom* [GC], 25424/09, 12 July 2013, Information Note 165)

ARTICLE 8

Respect for private and family life

Restrictions on family visits for life-long prisoners: *relinquishment in favour of the Grand Chamber*

Khoroshenko v. Russia - 41418/04
[Section I]

The case concerns restrictions on family visits for life-long prisoners. According to Russian law, life-sentenced prisoners are automatically excluded from long-term family visits during the first ten years of imprisonment. During this period they are entitled to one short-term visit of a maximum of four hours every six months in conditions excluding any privacy. In his application to the European Court, the applicant, who is a life prisoner, complains that the above regime violates his right to respect for private and family life guaranteed under Article 8 of the Convention.

Expulsion

Exclusion orders based on undisclosed national security grounds: *inadmissible*

I.R. and G.T. v. the United Kingdom -
14876/12 and 63339/12
Decision 28.1.2014 [Section IV]

Facts – The case concerned two foreign nationals whom the Secretary of State for the Home Department decided to exclude from the United Kingdom on the grounds that their presence in the country was not conducive to the public good. As the Secretary of State's decisions were taken on

grounds of national security, the applicants' appeals against these decisions were heard by the Special Immigration Appeals Commission (SIAC). Part of the proceedings before SIAC took place in the absence of the applicants and their legal representatives, but in the presence of special advocates who had been appointed to represent their interests (in a so-called "closed procedure"). SIAC dismissed their appeals in decisions that were upheld by the Court of Appeal. In their application to the European Court, the applicants complained that their exclusion from the United Kingdom and the proceedings before SIAC had violated their rights under Article 8 and/or Article 13 of the Convention, in particular in that they had been denied access to sufficient information to enable them to conduct any meaningful challenge to the national security allegations against them.

Law – Article 8: The applicants' complaints were directed solely at the procedure followed by the Secretary of State in making the exclusion orders and before SIAC in examining their appeals. In particular, the applicants complained that they were not provided with adequate information to be able to understand and respond to the allegations against them. It was therefore appropriate to examine, in the light of the requirements of Article 8 taken on its own and together with Article 13, the nature and extent of the procedural safeguards available to the applicants during the impugned proceedings.

It was incumbent on States under Article 8 to put in place in cases giving rise to national-security concerns a procedure which strikes a balance between the need to restrict access to confidential material and the need to ensure some form of adversarial proceedings. The procedural guarantees inherent in Article 8 would vary depending on the context of the case in question and in some circumstances might not be as demanding as those that applied under Articles 5 and 6 of the Convention. Distinguishing *A. and Others v. the United Kingdom*, the Court noted that the express reference to the need for detailed information in Articles 5 § 2 and 6 § 3 of the Convention reflected the fact that what was at stake in such proceedings was a person's liberty, and that the fundamental principle was that everyone has the right to liberty and security of person unless a specified exception applies. By contrast, Article 8 did not guarantee aliens the freedom to enter or reside in the country of their choice and their right to respect for private and family life was qualified by Article 8 § 2, which specifically envisaged exceptions for reasons of national security.

Further, given the overlap between the procedural safeguards under Article 8 and the right to an effective remedy under Article 13, the former had to be interpreted in a manner consistent with the latter. The Court had in previous cases accepted that the context might entail inherent limitations on the remedy and in *Al-Nashif v. Bulgaria* had explained that in cases concerning the expulsion of aliens on grounds of national security, the guarantee of an effective remedy contained in Article 13 required as a minimum that the competent independent appeals authority be informed of the reasons grounding the deportation decision. It did not go so far as to require provision of this information to the individual concerned.

The Court was satisfied that the procedure in place in the United Kingdom was such as to offer sufficient procedural guarantees for the purposes of Article 8. SIAC was a fully independent court. It saw all the evidence upon which the Secretary of State's decision to exclude an individual was based. There was some form of adversarial proceedings before SIAC, with appropriate procedural limitations – in the form of the special advocates – on the use of classified information. Cases before SIAC were primarily concerned with allegations of terrorist activity: there was no evidence that SIAC had allowed the Secretary of State to adopt an interpretation of "national security" that was unlawful, contrary to common sense or arbitrary. Only parts of SIAC's judgments were classified (or "closed"). The appellant was provided with an "open" judgment providing as much information as possible on the reasons for SIAC's decision. Further, the "closed" parts of the judgment were disclosed to his special advocate. Finally, SIAC had full jurisdiction to determine whether the exclusion interfered with the individual's Article 8 rights and, if so, whether a fair balance had been struck between the public interest and the appellant's rights. If it found that the exclusion was not compatible with Article 8, it would quash the exclusion order.

The procedure had functioned as intended in the applicants' cases and the Court was satisfied that there were sufficient guarantees in the SIAC proceedings as required by Article 8 taken alone and together with Article 13 of the Convention.

Conclusion: inadmissible (manifestly ill-founded).

(See *A. and Others v. the United Kingdom* [GC], 3455/05, 19 February 2009, Information Note 116; and *Al-Nashif v. Bulgaria*, 50963/99, 20 June 2002, Information Note 43)

ARTICLE 10

Freedom of expression

Award of damages against internet news portal for offensive comments posted on its site by anonymous third parties: *case referred to the Grand Chamber*

Delfi AS v. Estonia - 64569/09
Judgment 10.10.2013 [Section I]

The applicant company owns one of the largest internet news portals in Estonia. In 2006 it published an article concerning a local ferry company, as a result of which a number of comments containing personal threats and offensive language directed against the ferry company owner were posted below the article by anonymous third parties. The applicant company removed the comments some six weeks later at the insistence of the ferry company. Subsequently, the owner of the ferry company instituted defamation proceedings against the applicant company, which was ultimately ordered to pay damages in the amount of EUR 320. In its application to the European Court, the applicant company complained of a violation of its rights under Article 10 of the Convention.

In a judgment of 10 October 2013 (see Information Note 167), a Chamber of the Court found unanimously that there had been no violation of Article 10.

On 17 February 2014 the case was referred to the Grand Chamber at the applicant company's request.

Arrest and conviction of journalist for not obeying police orders during a demonstration: *no violation*

Pentikäinen v. Finland - 11882/10
Judgment 4.2.2014 [Section IV]

Facts – The applicant was a photographer and journalist working for a Finnish magazine. In 2006 he was sent to report on a demonstration in Helsinki. Although a separate secure area had been reserved for the press, the applicant decided not to use it and stayed with the demonstrators. When the demonstration turned violent, the police sealed off the area concerned and ordered the protesters to disperse. Most people left but around 20 people, including the applicant, remained. They were again told to leave and were warned that they would be arrested if they did not. The applicant remained at the scene as he believed that the police order only applied to the demonstrators. Shortly afterwards he was arrested along with the remaining demonstrators and detained for over 17 hours. It is unclear when exactly the police became aware that he was a journalist. Subsequently, a district court found him guilty of disobeying police orders but decided not to impose a penalty. That decision was upheld on appeal and the applicant's subsequent complaint to the Supreme Court was rejected.

Law – Article 10: The applicant's arrest and conviction could be considered as constituting an interference with his freedom of expression which had been "prescribed by law" and pursued the legitimate aims of protecting public safety and preventing disorder and crime. As to the proportionality of that interference, the applicant had been given several opportunities to cover the event adequately. For example, he had not in any way been prevented from taking photographs of the demonstration and he had waived his right to use the separate secured area reserved for the press deciding instead to stay with the demonstrators even after the orders to disperse. Therefore, the interference with the applicant's exercise of his journalistic freedom had only been of limited extent. Moreover, the conduct sanctioned by the criminal conviction had not been the applicant's journalistic activity as such, but his refusal to comply with a police order at the very end of the demonstration, which the police had judged had become a riot. When assessing whether the "necessity" of such interference had been established convincingly by the domestic courts, the Court noted that, by reserving a separate, secure area for the press, the domestic authorities had acknowledged that the demonstration had been a matter of legitimate public interest and that there had been justified grounds for reporting on it to the public. The domestic courts had analysed the matter from the Article 10 viewpoint, balancing the applicant's freedom of expression against the State's interests, and found that there had been a pressing social need to take the impugned measures against the applicant. In particular, it had been necessary to disperse the crowd and to order people to leave because of the riot and the threat to public safety. As regards the applicant's conviction, no penalty had been imposed and no entry of the conviction had been made in his criminal record. Accordingly, taking into account the margin of appreciation afforded to the State in this area, the

domestic courts appeared to have provided relevant and sufficient reasons to justify the applicant's arrest and conviction and had thus struck a fair balance between the competing interests at stake.

Conclusion: no violation (five votes to two).

Applicant's precarious financial situation as a result of award of damages for defamation against her: *violation*

Tešić v. Serbia - 4678/07 and 50591/12
Judgment 11.2.2014 [Section II]

Facts – In 2006 the applicant, a pensioner suffering from various illnesses, was found guilty of defaming her lawyer and ordered to pay him 300,000 dinars (RSD) in compensation, together with default interest, plus costs in the amount of RSD 94,120 (equivalent to approximately EUR 4,900 in all). In July 2009 the Municipal Court issued an enforcement order requiring two thirds of the applicant's pension to be transferred to the lawyer's bank account each month, until the sums awarded had been paid in full. After these deductions the applicant was left with approximately EUR 60 a month on which to live.

Law – Article 10: The impugned measures had undoubtedly constituted an interference with the applicant's right to freedom of expression. They had been prescribed by law and had been adopted in pursuit of a legitimate aim, namely "for the protection of the reputation" of another.

The damages plus costs awarded against the applicant were equal to a total of more than 60% of her monthly pension. This sum was also very similar to the amount awarded in a separate civil suit concerning the same issue brought against, *inter alia*, the newspaper and the Autonomous Province of Vojvodina, both of which were certainly more financially viable. Furthermore, it could not be said that the applicant's statement in respect of her former counsel was merely a gratuitous personal attack. After all, the police had clearly seen some merit in the allegations. Moreover, the Government's assertion that a discussion of a practising lawyer's professional conduct was clearly of no public interest was in itself dubious, particularly bearing in mind the role of lawyers in the proper administration of justice. Finally but most strikingly, the municipal court had issued an enforcement order requiring two thirds of the applicant's pension to be transferred to her lawyer's bank account each month, notwithstanding that the applicable law had provided that that was the maximum that could be withheld, thus clearly leaving room for a more nuanced approach. By 30 June 2013 the applicant had paid a total of approximately EUR 4,350, but with accrued and future interest, she would have to continue with the payments for approximately another two years. In May 2012 her monthly pension was some EUR 170, so that after deductions she was left with approximately EUR 60 on which to live and buy her monthly medication, which at approximately EUR 44, she could no longer afford. This was a particularly precarious situation for an elderly person suffering from a number of serious illnesses. Therefore, the interference in question had not been necessary in a democratic society.

Conclusion: violation (six votes to one).

Article 41: EUR 6,000 in respect of non-pecuniary damage; EUR 5,500 in respect of pecuniary damage.

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies
Effective domestic remedy – Estonia

Claim for compensation before the administrative courts in respect of complaint concerning length of civil proceedings: *effective remedy*

Treial v. Estonia - 32897/12
Decision 28.1.2014 [Section I]

Facts – In his application to the European Court, the applicant complained of the length of domestic civil proceedings to which he had been a party. The Government raised a preliminary objection that he had not exhausted domestic remedies.

Law – Article 35 § 1: The Court had found in its decision in *Mets v. Estonia*, which concerned a complaint about the length of criminal proceedings, that the fact that the applicant in that case had been awarded compensation by an administrative court meant that he had lost his victim status in the proceedings before the European Court. While the enactment of legislation clearly establishing grounds for awarding compensation for excessively lengthy proceedings and swift procedures for dealing with such claims would contribute con-

siderably to legal certainty in this field, the applicant in that case had nevertheless had at his disposal an effective remedy developed by the practice of the Estonian courts.

Although the cases that had thus far been decided by the administrative courts concerned the length of criminal proceedings, the Estonian Supreme Court had indicated in a judgment of 22 March 2011 (*Osmjorkin* no. 3 3 1 85 09) that Articles 14 and 15 of the Constitution provided a right to proceedings within a reasonable time and that compensation could be awarded by virtue of Article 25. Noting that the provisions and principles relied on by the Supreme Court were of a general nature and not specific to criminal proceedings, the European Court found it hard to see how a different conclusion could be reached in respect of a complaint concerning the length of civil proceedings. The applicant was therefore required to have recourse to the administrative courts in order to comply with the requirement to exhaust domestic remedies. The Court emphasised, however, that its position might be subject to review in the future depending, in particular, on the domestic courts' capacity to establish consistent case-law in line with the Convention requirements.

Conclusion: inadmissible (failure to exhaust domestic remedies).

(See *Mets v. Estonia* (dec.), 38967/10, 7 May 2013)

Effective domestic remedy – Turkey

Entitlement to financial compensation under Article 141 § 1 (f) of the Code of Criminal Procedure for persons deprived of their liberty for a period exceeding the length of their sentence: *effective remedy*

Alican Demir v. Turkey - 41444/09
Judgment 25.2.2014 [Section II]

Facts – In December 2005 the applicant was sentenced to a prison term of six years and three months. Under the legislation on the enforcement of sentences, he was entitled to conditional release on 24 January 2009. However, as part of the case (not concerning the applicant's conviction) was still before the Court of Cassation, he was kept in custody until 13 February 2009. Before the European Court the applicant complained about the period of custody between 24 January and 12 February 2009, arguing that the release to which he was entitled had been unduly postponed.

Law – Article 35: It could be seen from the judgments adduced by the Government by way of example that Article 141 § 1 (f) of the Code of Criminal Procedure, as interpreted by the Court of Cassation in the light of the Turkish Constitution and the Convention, provided for an award of financial compensation to anyone deprived of liberty for a period exceeding that of the sanction that should have been imposed under the sentencing legislation and taking into account any entitlement to conditional release. This was precisely the situation in which the applicant had found himself. The remedy in question was thus appropriate in that it was capable of resulting in an acknowledgment of a breach of liberty and security and an award of compensation. However, the remedy had only recently been made available by the Court of Cassation. The relevant judgments of that court dated from 2012 and 2013, thus post-dating the lodging of the present application. At the material time, neither the text of the relevant provision nor its interpretation in the case-law would have enabled the applicant to obtain compensation for the period of custody subsequent to the date on which he should have been granted conditional release. In other words, even though the remedy based on the provision in question had become effective, there was nothing to show that this had been the case at the time the application was lodged. The applicant could not therefore be criticised for failing to avail himself of that remedy beforehand.

Conclusion: preliminary objection dismissed (unanimously).

The Court also found, unanimously, that there had been a violation of Article 5 §§ 1, 3 and 4 of the Convention and awarded the applicant EUR 9,500 in respect of non-pecuniary damage.

Six-month period

Failure to lodge timely application concerning failure of insolvent State entity to pay judgment debt: *inadmissible*

Sokolov and Others v. Serbia - 30859/10 et al.
Decision 14.1.2014 [Section II]

Facts – Between 2003 and 2005 the applicants obtained final court orders against their former employer, a "socially/State-owned" company, requiring it to pay them salary arrears and social security reimbursements. In 2005 insolvency proceedings were opened in respect of the company.

The applicants lodged claims in the insolvency proceedings but the company's assets were insufficient for them to be paid in full. In 2008 the commercial court terminated the insolvency proceedings and ordered the company's liquidation. Its decision was published in the Official Gazette and recorded in the relevant public registries. In 2010 the applicants' lawyer asked for the decision to be served on him. In the same year, the applicants filed a complaint with the Constitutional Court, which was rejected in 2012. In the proceedings before the European Court the Government raised a preliminary objection that the applicants had failed to comply with the six-month time-limit for lodging applications, arguing that time had started to run when the commercial court's decision terminating the insolvency proceedings was published in the Official Gazette and/or became final.

Law – Article 35 § 1: In cases concerning the execution of final court decisions the State was directly liable for the debts of entities which, as here, did not enjoy "sufficient institutional and operational independence from the State". Since the judgments in the applicants' favour remained partly unenforced, the situation complained of had to be considered as continuing.

However, a continuing situation could not postpone the running of the six-month time-limit indefinitely. Applicants had to introduce their complaints "without undue delay" once it was apparent that there were no realistic prospects of a favourable outcome or progress domestically. In the instant case, once they had become aware or should have been aware that the insolvency proceedings had been terminated and/or the debtor company liquidated without any legal successor or remaining assets, it should have been apparent to the applicants that there was no available legal avenue under domestic law for obtaining enforcement of the judgments in their favour against the company or against the State. The applicants should therefore have lodged their applications with the Court within six months from the publication in the Official Gazette of the commercial court's decision terminating the insolvency proceedings or, at the latest, from when that decision became final. In this regard, the Court noted that domestic law did not prescribe an obligation on the part of the commercial court to serve its decision on the applicants, who should therefore have made such a request in due time. It followed that the applications had been introduced outside the six-month time-limit and had to be rejected. However, the Court pointed out that the applicants' failure to comply with that duty did not lead to the extinguishment of the State's general liability for the debts of the company.

Conclusion: inadmissible (out of time).

(See, among other authorities, *Marinković v. Serbia* (dec.), 5353/11, 29 January 2013, Information Note 159)

Article 35 § 3

Abuse of the right of application

Representative's failure to inform Court that he had lodged two separate applications concerning the same facts on behalf of a husband and wife: *inadmissible*

Martins Alves v. Portugal - 56297/11
Decision 21.1.2014 [Section II]

Facts – In 2004 a private company initiated civil liability proceedings against the applicant and several other persons, including the applicant's husband.

In January 2011 the husband lodged an application (5340/11) with the European Court, complaining about the length of the proceedings. The instant application was lodged in August 2011, while the application lodged by the applicant's husband was still pending. The same lawyer acted in respect of both applications.

In 2013 the Court examined the husband's application and found a violation of Article 6 § 1 and Article 13 of the Convention on account of the length of the proceedings. It awarded him EUR 4,500 in respect of non-pecuniary damage and EUR 1,000 for costs and expenses.

Law – Article 35 § 3: When lodging the instant application, the applicant's representative, who had previously lodged numerous applications with the Court and was thus familiar with the procedure, had omitted to inform the Court that the case related to the same domestic proceedings as in the husband's application, or that the applicant in the instant case was the wife of the applicant in the previous case and that they had appeared jointly before the domestic courts.

The lodging, at different times, of two separate applications which could be considered essentially the same did not *per se* constitute an abuse of the right of application. However, the Court did not see any legitimate reason why the applicant's complaint had not been lodged with her husband's,

particularly since both spouses had appeared jointly in the proceedings before the domestic courts and both had been represented by the same lawyer. In addition, the applicant's representative had submitted incomplete and therefore misleading information. This omission had become all the more important after the matter at issue in the present case was determined by the Court, on the merits, in its judgment of 2 April 2013, and the applicant's husband was awarded compensation under Article 41. If the lawyer concerned had joined the present application to the application lodged by the applicant's husband, the Court would not have made any greater award in respect of non-pecuniary damage and costs and expenses, as the subject matter was the same, and the applicant and her husband had been parties to the same domestic proceedings, formed a single household and were represented by the same lawyer.

Finally, the Court had already held that two applications in which the applicants were represented by the lawyer in question had constituted an abuse of the right of application, while three other applications brought by that lawyer himself had been considered to be essentially the same as previous applications. In this connection, the Court emphasised that lawyers had to demonstrate a high level of professional prudence and genuine cooperation with the Court and avoid lodging unmeritorious complaints. Otherwise, their credibility would be undermined and – in the event of systematic abuses – they might be excluded from the proceedings under Rule 36 § 4 (b) and Rule 44D of the Rules of Court.

The conduct of the applicant's representative in the instant case had been contrary to the purpose of the right of individual petition as provided for in Article 34 and the application was therefore to be rejected as an abuse thereof.

Conclusion: inadmissible (abuse of the right of application).

(See *Ferreira Alves v. Portugal*, 5340/11, 2 April 2013)

ARTICLE 2 OF PROTOCOL No. 4

Article 2 § 1

Freedom of movement

Inability of minor to leave State without documentation necessary to prove father's consent: *inadmissible*

Șandru v. Romania - 1902/11
Decision 14.1.2014 [Section III]

Facts – At the material time the applicant was 13 years old and lived with his mother. On 6 March 2009, after obtaining his mother's consent, he paid to go on a trip being organised by his school. On an application by the mother on 27 March 2009, the court of first instance ordered the father to give his consent to the school trip. The order was enforceable, but subject to appeal within five days. On 10 April 2009, when checking the applicant's identity papers at the customs post, the police officers contacted the mother as they considered that the order should have been marked "final and irrevocable". The mother told them that the order was enforceable but that she could not certify that it was irrevocable because it had only become irrevocable on 8 April 2009 and, according to the practice of the domestic courts, the court clerk did not provide such certification the same day but only two days later in order to allow the necessary time for a possible appeal lodged by post within the statutory time-limit. The police officers therefore prohibited the applicant from leaving Romanian territory.

Law – Article 2 of Protocol No. 4: The applicant had suffered interference with his freedom of movement. That interference had been prescribed by law. The measure in question had been necessary for the protection of the rights and freedoms of others, namely, those of the applicant's father, and for the maintenance of *ordre public*, as it had concerned the supervision of minors travelling abroad. With regard to whether the interference had been necessary in a democratic society, the Court gave special consideration to the duration of the measure in question. The applicant had been the subject of a one-off, temporary measure on account of the absence of documents required by law. Moreover, he could have obtained the documents required by the customs authorities by applying for his father's consent sufficiently far in advance. The applicant had paid for the school trip

on 6 March 2009, but had waited three weeks before making the urgent application. Accordingly, the Court held that he had not had to bear an excessive burden.

Conclusion: inadmissible (unanimously).

REFERRAL TO THE GRAND CHAMBER

Article 43 § 2

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

Delfi AS v. Estonia - 64569/09
Judgment 10.10.2013 [Section I]

(See Article 10 above, page 17)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER

Article 30

Khoroshenko v. Russia - 41418/04
[Section I]

(See Article 8 above, page 15)

COURT NEWS

Stricter conditions for applying to the ECHR

Rule 47 of the Rules of Court, which introduces stricter conditions for applying to the Court, came into force on 1 January 2014 (See Information Note 169).

In order to inform potential applicants and/or their representatives and make them aware of the conditions for lodging an application, the Court has launched a wide information campaign among civil society organisations and the main actors working for European protection of Human Rights. As part of this campaign the Court is expanding its range of information materials assisting applicants with the procedure, not only in the official languages of the Council of Europe (French and English) but also in those of the States Parties to the Convention:

• *Video on lodging an application*

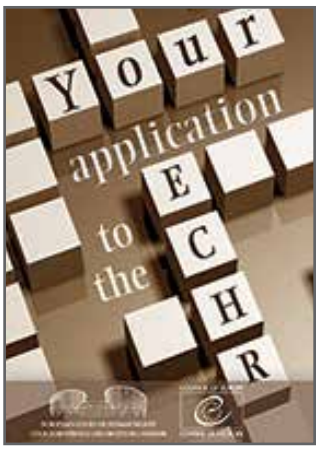
The video "The correct way to lodge an application" is a tutorial explaining how the application form must be completed in order to be examined by the Court. Already available in 6 languages (English, French, Romanian, Russian, Turkish and Ukrainian), this video can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

• *Notes for filling in the application form*

A document explaining how to fill in the application form and comply with the new conditions is available in 35 languages. It may be downloaded from the Court's Internet site (<www.echr.coe.int> – Applicants).

• *Your application to the ECHR*

The court has also launched a new pamphlet describing the various stages of the procedure by which the Court examines an application. Entitled "Your application to the ECHR: How to apply and how your application is processed", this pamphlet is intended to answer the main questions that applicants might ask, especially once their application has been sent to the Court. It is available on the Court's Internet site (<www.echr.coe.int> – Applicants).



OTHER NEWS

The 35th meeting of the European Coordination Committee on Human Rights Documentation (ECCHRD) will be held at the European Court of Human Rights in Strasbourg, France, from Wednesday 11 June to Friday 13 June 2014. This meeting aims to bring together people working on documentation, information and communication within human rights organisations and institutions.

People interested in attending can contact ecchrd2014@echr.coe.int for more information. Please note that the number of seats available is limited and the deadline for registration is 9 May 2014.

RECENT PUBLICATIONS

The Court in facts and figures 2013

This document contains statistics on cases dealt with by the Court in 2013, particularly judgments delivered, the subject-matter of the violations found and violations by Article and by State. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

The ECHR in facts & figures 2013 (eng)

Overview 1959-2013

This document, which gives an overview of the Court's activities since it was established, has been updated. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

Overview 1959-2013 (eng)

Guide to good practice in respect of domestic remedies

Adopted by the Committee of Ministers of the Council of Europe, this guide aims at helping the member States fulfil their obligations under Article 13 of the Convention, which establishes the right to an effective remedy. This right gives effect to the principle of subsidiarity by establishing the domestic mechanisms that must first be exhausted before individuals may have recourse to the Strasbourg Court.

Outlining the fundamental legal principles which apply to effective remedies in general and the characteristics required for certain specific and general remedies to be effective, the guide is available on the Court's Internet site (<www.echr.coe.int> – Publications).