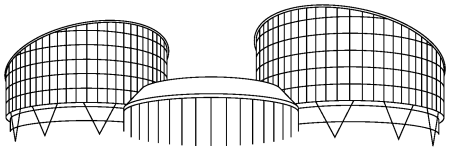

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 13 of the European Convention on Human Rights

Right to an effective remedy

Updated on 31 August 2026

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on Article 13 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, 18 January 1978, § 154, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, 5 July 2016).

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently, *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a List of keywords, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The HUDOC database of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the HUDOC user manual.

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* The case-law cited may be in either or both of the official languages (English or French) of the Court and the European Commission of Human Rights Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

I. General principles

Article 13 of the Convention – Right to an effective remedy

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

HUDOC keywords

Effective remedy (13) – National authority (13) – Arguable claim (13)

A. Meaning of Article 13 of the Convention

1. Under Article 1 of the Convention, which provides: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention", the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities. The machinery of complaint to the Court is thus subsidiary to national systems safeguarding human rights. This subsidiary character is articulated in Articles 13 and 35 § 1 of the Convention[1] (*Cocchiarella v. Italy* [GC], 2006, § 38; *Scordino v. Italy (no. 1)* [GC], 2006, § 140). Case-law concerning Article 35 § 1 in respect of the non-exhaustion of domestic remedies is full of concrete examples of effective remedies: *Mendrei v. Hungary* (dec.), 2018 (constitutional remedy to challenge the validity of a law directly affecting an individual); *Saygılı v. Turkey* (dec.), 2017 (civil action for damages in respect of a breach of the right to protection of one's reputation); *Atanasov and Apostolov v. Bulgaria* (dec.), 2017 (preventive and compensatory remedy to complain of detention conditions); *Di Sante v. Italy* (dec.), 2004 (appeal on points of law to challenge the amount of compensation paid for non-pecuniary damage under the "Pinto Act").

2. As can be seen from the *travaux préparatoires* in respect of the European Convention on Human Rights[2], the object of Article 13 is to provide a means whereby individuals can obtain relief at national level for violations of their Convention rights before having to set in motion the international machinery of complaint before the Court (*Kudła v. Poland* [GC], 2000, § 152). Article 13 thus in principle concerns complaints of substantive violations of Convention provisions. This Article, in giving direct expression to the States' obligation to protect human rights first and foremost within their own legal system, establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights (*ibid.*, § 152).

3. If Article 13 does not have full application, individuals will systematically be forced to refer to the Court complaints that would otherwise have to be addressed in the first place within the national legal system and, generally speaking, the effective functioning, on both the national and international level, of the scheme of human rights protection set up by the Convention is liable to be weakened (*Kudła v. Poland* [GC], 2000, § 155). Accordingly, the incomplete scrutiny of the existence and functioning of domestic remedies would weaken and render illusory the guarantees of Article 13, while the Convention is intended to guarantee not theoretical or illusory rights, but rights that are practical and effective (*Scordino v. Italy (no. 1)* [GC], 2006, § 192). Thus, the principle of subsidiarity does not mean renouncing all supervision of the result obtained from using domestic

1. See the Practical Guide on Admissibility Criteria, in particular on the non-exhaustion of domestic remedies.
2. Collected edition of the "Travaux préparatoires" of the European Convention on Human Rights, vol. II, pp. 485 et 490, and vol. III, p. 651.

remedies (*Prince Hans-Adam II of Liechtenstein v. Germany* [GC], 2001, § 45; *Riccardi Pizzati v. Italy* [GC], 2006, § 82).

4. Consequently, an applicant who has failed to use the appropriate and relevant domestic remedies cannot rely on Article 13 separately or in conjunction with another Article (*Slimani v. France*, 2004, §§ 39-42; *Sultan Öner and Others v. Turkey*, 2006, § 117).

5. Article 13 secures the granting of an effective remedy before a national authority to everyone whose Convention rights and freedoms have been violated. The word "grant" ("octroi") does not appear in the English text of Article 13, which reads "*everyone ... shall have an effective remedy*".

6. Article 13 thus requires a domestic remedy before a "competent national authority" affording the possibility of dealing with the substance of an "arguable complaint" under the Convention (*Boyle and Rice v. the United Kingdom*, 1988, § 52; *Powell and Rayner v. the United Kingdom*, 1990, § 31; *M.S.S. v. Belgium and Greece* [GC], 2011, § 288; *De Souza Ribeiro v. France* [GC], 2012, § 78; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 148) and of granting appropriate relief, Contracting States nevertheless being afforded a margin of appreciation in conforming with their obligations under this provision (*Vilvarajah and Others v. the United Kingdom*, 1991, § 122; *Chahal v. the United Kingdom*, 1996, § 145; *Smith and Grady v. the United Kingdom*, 1999, § 135).

7. However, the protection afforded by Article 13 does not go so far as to require any particular form of remedy, in view of that margin of appreciation afforded to Contracting States (*Budayeva and Others v. Russia*, 2008, § 190).

Nor does Article 13 go so far as to require the incorporation of the Convention in domestic law (*Smith and Grady v. the United Kingdom*, 1999, § 135). But the States parties have now all incorporated the Convention into their domestic legal order; the Court's case-law will thus be directly applicable.

8. Article 13 does not guarantee an applicant a right to secure the prosecution and conviction of a third party or a right to "private revenge" (*Öneryıldız v. Turkey* [GC], 2004, § 147).

9. The requirements of Article 13, and of the other Convention provisions, take the form of a guarantee and not of a mere statement of intent or a practical arrangement (*Čonka v. Belgium*, 2002, § 83; *Gebremedhin [Gaberamadhien] v. France*, 2007, § 66; *Singh and Others v. Belgium*, 2012, § 98; *A.C. and Others v. Spain*, 2014, § 95; *Allanazarova v. Russia*, 2017, § 97). That is one of the consequences of the rule of law, one of the fundamental principles of a democratic society, which is inherent in all the Articles of the Convention.

1. An arguable claim

10. Article 13 cannot reasonably be interpreted so as to require a remedy in domestic law in respect of every supposed grievance under the Convention that an individual may have, no matter how unmeritorious his complaint may be: **the grievance must be an "arguable" one** in terms of the Convention (*Boyle and Rice v. the United Kingdom*, 1988, § 52; *Maurice v. France* [GC], 2005, § 106).

11. Article 13 guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order (*Rotaru v. Romania* [GC], 2000, § 67). Article 13 **has no independent existence**; it merely complements the other substantive clauses of the Convention and its Protocols (*Zavoloka v. Latvia*, 2009, § 35 (a)). It can only be applied in combination with, or in the light of, one or more Articles of the Convention or the Protocols thereto of which a violation has been alleged. To rely on Article 13 the applicant must also have an arguable claim under another Convention provision.

12. Where an applicant submits an arguable claim of a violation of a Convention right, the domestic legal order must afford an effective remedy (*Costello-Roberts v. the United Kingdom*, 1993, § 39; *Hatton and Others v. the United Kingdom* [GC], 2003, § 138).

13. **The Court does not believe that it should give an abstract definition of the notion of arguability.** Rather it must be determined, in the light of the particular facts and the nature of the legal issue or issues raised, whether each individual claim of violation forming the basis of a complaint under Article 13 was arguable and, if so, whether the requirements of Article 13 were met in relation thereto (*Boyle and Rice v. the United Kingdom*, 1988, § 55; *Plattform "Ärzte für das Leben" v. Austria*, 1988, § 27; *Esposito v. Italy* (dec.), 2007).

14. **Where the arguability of a complaint on the merits is not in dispute**, the Court finds Article 13 applicable (*Vilvarajah and Others v. the United Kingdom*, 1991, § 121; *Chahal v. the United Kingdom*, 1996, § 147).

15. Where the Court has found a **violation of the Article** of the Convention or the Protocols in response to the complaint for which the right to a domestic remedy is invoked under Article 13, the Court finds the Article 13 complaint to be arguable.

In general, the Court examines "arguability" on the merits (*Hirsi Jamaa and Others v. Italy* [GC], 2012, § 201; *De Tommaso v. Italy* [GC], 2017, § 181; *Beizaras and Levickas v. Lithuania*, 2020, § 150; *Darboe and Camara v. Italy*, 2022, § 196; *Haugen v. Norway*, 2024, § 162).

In the case of *M.S.S. v. Belgium and Greece* [GC], 2011 (§ 385), the Court found that the applicant's expulsion to Greece by the Belgian authorities amounted to a violation of Article 3 of the Convention. The applicant's complaints in that regard were therefore "arguable" for the purposes of Article 13.

In the case of *Haugen v. Norway*, 2024 (§ 162), the Court found that the respondent State was responsible under Article 2 of the Convention for the death of the applicant's son, who suffered from mental disorders and committed suicide in custody. The applicant's complaint in this regard was therefore "arguable" for the purposes of Article 13.

16. Where an applicant relies on Article 13 in conjunction with another Article, without previously having raised a complaint under the latter Article by itself, the Court may take the view that the complaint is nevertheless arguable, having regard, for example, to all the facts and arguments put forward by the applicant before the domestic courts and reiterated before the Court (*Stelian Roşca v. Romania*, 2013, §§ 93-95); to the findings of both the pre-trial investigation and the trial court about the length of the pre-trial stage (*Hiernaux v. Belgium*, 2017, § 44); to the recognition by the domestic court of the poor conditions of detention endured by an applicant in a prison cell (*Barbotin v. France*, 2020, § 32).

17. The Court may also **consider *prima facie* that the complaint is arguable**. This was the finding in cases concerning the effectiveness of remedies by which to complain of the length of proceedings, where the Court addressed the complaint under Article 13 first, then the Article 6 § 1 complaint. In *Panju v. Belgium*, 2014 (§ 52), without prejudging the question whether or not the reasonable time requirement had been met, the Court found that the applicant's complaint concerning the length of the judicial investigation constituted *prima facie* an "arguable" complaint, as it had lasted for over eleven years. The applicant was thus entitled to an effective remedy in this connection (see also *Sürmeli v. Germany* [GC], 2006, § 102, concerning civil proceedings which had lasted more than sixteen years; *Valada Matos das Neves v. Portugal*, 2015, § 74, concerning civil proceedings lasting more than nine years; *Olivieri and Others v. Italy*, 2016, § 48, concerning administrative proceedings lasting more than eighteen years; *Brudan v. Romania*, 2018, § 70, concerning criminal proceedings lasting more than fourteen years).

The Court has also found Article 13 applicable as the applicant had *prima facie* an arguable complaint to make before the national courts under Article 3 of the Convention. In the case of *Yengo v. France*, 2015 (§ 64), the Court based that conclusion on an interpretation of the recommendations issued urgently by an independent national authority for the review of detention conditions. The Court found a violation of Article 13 in the light of Article 3 and did not examine the question of the Article 3 violation separately.

18. **The fact that a complaint has been declared admissible may be an indication that it can be regarded as "arguable"**. In the case of *Hatton and Others v. the United Kingdom* [GC], 2003 (§ 137), the Court did not find a violation of Article 8 of the Convention, but took the view that it had to accept the arguable nature of the complaint under that Article.

19. In addition, the **inadmissibility of a complaint may be an indication of the inapplicability or non-violation of Article 13**. In the case of *Boyle and Rice v. the United Kingdom*, 1988 (§ 54), the Court found that on the ordinary meaning of the words, it was difficult to conceive how a "manifestly ill-founded" claim could nevertheless be "arguable" and *vice versa*. Rejection of a case as "manifestly ill-founded" means basically that there is not even an appearance of a justified complaint against the respondent State (see also *Airey v. Ireland*, 1979, § 18; *Gökçe and Demirel v. Turkey*, 2006, §§ 69-70).

In the case of *Powell and Rayner v. the United Kingdom*, 1990 (§ 33), the Court stated that, to address the question whether substantive claims were "arguable", the particular facts and the nature of the legal issues raised had to be examined, notably in the light of the Commission's admissibility decisions and the reasoning contained therein. However, a claim was not necessarily rendered arguable because, before rejecting it as inadmissible, the Commission had devoted careful consideration to it and to its underlying facts (see also *Boyle and Rice v. the United Kingdom*, 1988, §§ 68-76 and 79-83; *Plattform "Ärzte für das Leben" v. Austria*, 1988, §§ 28-39). The Court was thus competent to take cognisance of all questions of fact and law arising in the context of the Article 13 complaints duly referred to it, including the "arguability" or not of each of the substantive claims. And while it was not decisive, the Commission's decision on the admissibility of the basic complaints provided, in its operative part and reasons, useful indications on their arguability for the purposes of Article 13.

In the case of *Walter v. Italy* (dec.), 2006, the substantive complaints were declared inadmissible as manifestly ill-founded given that there was not even an appearance of a justified complaint against the respondent State. Thus Article 13 did not apply and this part of the application was incompatible *ratione materiae* with the Convention provisions.

In the case of *Al-Shari and Others v. Italy* (dec.), 2005, the considerations as to the factual elements which had led the Court to dismiss the applicants' complaints under the substantive provision relied upon led it to conclude, under Article 13, that there was no arguable complaint. Consequently, Article 13 did not apply and this part of the application was inadmissible as manifestly ill-founded.

In the case of *Kiril Zlatkov Nikolov v. France*, 2016 (§§ 71-72) the Court found that a complaint which had been declared inadmissible for a lack of significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention, even if it might seem not to be manifestly ill-founded, was not "arguable" within the meaning of the Article 13 case-law (see also *Kudlička v. the Czech Republic* (dec.), 2015). It followed that Article 13 did not apply and that part of the application was manifestly ill-founded.

20. **The finding of a violation of another Convention provision is not a prerequisite for the application of Article 13** (*Camenzind v. Switzerland*, 1997, § 53; *Hatton and Others v. the United Kingdom* [GC], 2003, §§ 130, 137 and 142; *Nuri Kurt v. Turkey*, 2005 § 117; *Ratushna v. Ukraine*, 2010, § 85). Notwithstanding its wording, **Article 13 may come into play even without a violation of another provision** – one of the so-called "substantive" Articles – of the Convention (*Klass and Others*

v. Germany, 1978, § 64). A person cannot establish a violation before a "national authority" unless he is first able to lodge with such an "authority" a complaint to that effect. Consequently, it cannot be a prerequisite for the application of Article 13 that the Convention be in fact violated. Article 13 guarantees the availability within the national legal order of an effective remedy to enforce the Convention rights and freedoms – and therefore to complain of an inability to exercise them – in whatever form they may happen to be secured (*Lithgow and Others v. the United Kingdom*, 1986, § 205). Thus, even if the Court has found no violation of a provision, the complaint may remain "arguable" for the purposes of Article 13 (*Valsamis v. Greece*, 1996, § 47; *Ratushna v. Ukraine*, 2010, § 85).

In the case of *D.M. v. Greece*, 2017 (§ 43), even though the Court found no violation of Article 3 of the Convention under its substantive head, having regard to the conditions of the applicant's detention, it did not find that the applicant's complaint in this connection was prima facie unarguable. The Court reached this conclusion only after examining the merits of the case. It thus found that the applicant had raised an arguable complaint for the purposes of Article 13.

In the case of *Nicolae Virgiliu Tănase v. Romania* [GC], 2019 (§ 219), the complaint under Article 2 of the Convention was declared admissible. While the Court did not find a violation of that provision, it nevertheless considered that the complaint submitted by the applicant under Article 2 raised serious questions of fact and law requiring an examination on the merits. The Court thus found that the relevant complaint was "arguable" for the purposes of Article 13 of the Convention.

In the case of *Zavoloka v. Latvia*, 2009 (§§ 38-39), the mere fact that the Court had found no violation of Article 2 of the Convention taken separately was not in itself capable of depriving the complaint of its "arguable" nature for the purposes of Article 13. However, given all the relevant circumstances of the case, the Court took the view that no arguable allegation of a violation of Article 2 had been made out in respect of redress for damage sustained by the applicant on account of the death of her daughter in a car accident caused by a third party (see also *Younger v. the United Kingdom* (dec.), 2003, concerning a suicide in prison). The Court thus found no violation of Article 13 in connection with Article 2.

21. **Considerations as to the facts which have led the Court to dismiss the applicant's complaints under substantive clauses may lead it to conclude, under Article 13, that the complaints were not arguable** (*Al-Shari and Others v. Italy* (dec.), 2005; *Walter v. Italy* (dec.), 2006). Article 13 will thus not be applicable.

In the case of *Halford v. the United Kingdom*, 1997 (§§ 69-70), the Court had found no violation of Article 8 as regards telephone calls made by the applicant on her home telephone. And the evidence submitted by the applicant as to a reasonable likelihood of some measure of surveillance having been applied to her in breach of Article 8 had not been sufficient to found an "arguable" claim within the meaning of Article 13. It followed that there had been no violation of Article 13 in relation to the applicant's complaint concerning her home telephone.

In the case of *Çaçan v. Turkey*, 2004 (§ 80), the Court found that there had been no violation of Articles 3 and 8 of the Convention or of Article 1 of Protocol No. 1 as there was no sufficient factual basis for the applicant's complaint that her home and possessions had been destroyed by the security forces. After a comprehensive examination of the facts, the Court found that the complaint was not arguable for the purposes of Article 13 given that the applicant had failed to lay the basis of a prima facie case of misconduct on the part of the security forces.

In the case of *Ivan Atanasov v. Bulgaria*, 2010 (§§ 101-102), the Court, taking account of the specific circumstances and the evidence available, found that, as the violations of Article 8 and of Article 1 of Protocol No. 1 were not made out, Article 13 was not applicable in the absence of an arguable complaint.

22. In order to find that complaints are not "arguable" for the purposes of Article 13, the Court may refer either **to the considerations which led it to find no violation of another provision** (*Halford v. the United Kingdom*, 1997, § 68; *Hüsniye Tekin v. Turkey*, 2005, § 55; *Russian Conservative Party of Entrepreneurs and Others v. Russia*, 2007, § 90; *Galanopoulos v. Greece*, 2013, § 49), finding on the basis of the evidence adduced that it discloses no appearance of a violation (*Söylemez v. Turkey*, 2006, § 112; *contrast Boyle and Rice v. the United Kingdom*, 1988, § 52; *Kaya v. Turkey*, 1998, § 107; *Yaşa v. Turkey*, 1998, § 113), **or to its inapplicability** (*Athanassoglou and Others v. Switzerland* [GC], 2000, § 59).

In the case of *Russian Conservative Party of Entrepreneurs and Others v. Russia*, 2007 (§ 90), given that the third applicant had no arguable complaint of a violation of his right to vote and that the Court had found no violation of Article 3 of Protocol No. 1, Article 13 was not applicable in respect of that applicant.

In the case of *Athanassoglou and Others v. Switzerland* [GC], 2000 (§ 59), in the context of a complaint about the lack in domestic law of a judicial remedy to challenge a decision, the connection between that decision and the Convention rights recognised in domestic law and invoked by the applicants was too tenuous and remote to attract the application of Article 6 § 1 of the Convention. The reasons for that finding likewise led to the conclusion, on grounds of remoteness, that no arguable claim of a violation of Article 2 or Article 8 of the Convention and, consequently, no entitlement to a remedy under Article 13, had been made out by the applicants. In sum, Article 13 was inapplicable. Similarly, in *Balmer-Schafroth and Others v. Switzerland*, 1997 (§ 42) the Court reached the same conclusion as to Article 13 after finding Article 6 inapplicable.

23. The Court may also declare admissible an application whose sole complaint concerns Article 13 (*Chizzotti v. Italy* (dec.), 2005). Moreover, the Court has decided on the applicability of Article 13 and the existence of an arguable complaint under Article 1 of Protocol No. 1 by analogy with another case (*Chizzotti v. Italy*, 2006, §§ 39-40).

2. National authority

24. Article 13 requires that where an individual plausibly considers himself to have been prejudiced by a measure allegedly in breach of the Convention, he should have a **remedy before a national "authority"** in order both to have his claim decided and, if appropriate, to obtain redress (*Klass and Others v. Germany*, 1978, § 64; *Silver and Others v. the United Kingdom*, 1983, § 113; *Leander v. Sweden*, 1987, § 77 (a)).

25. According to the *travaux préparatoires* in respect of the European Convention on Human Rights[3], the national authority before which a remedy will be effective may be a **judicial or non-judicial body**.

26. The Court may **find a remedy before a judicial authority to be essential**. In the case of *Ramirez Sanchez v. France* [GC], 2006 (§§ 165-166), having regard to the serious repercussions of prolonged solitary confinement for a prisoner, the Court found a violation of Article 13 of the Convention in the light of Article 3, as under the domestic law there was no effective remedy before a judicial body by which to challenge the procedural compliance or the merits, and thus the grounds, of decisions to prolong a convicted terrorist's solitary confinement over an eight-year period.

27. By contrast, the Court may also take the view that there is **no need to rule on whether effective redress necessarily required a judicial procedure**, even if it is true that judicial remedies furnish strong guarantees of independence, access for the victim and family, and enforceability of awards in

3. Collected edition of the "Travaux préparatoires" of the European Convention on Human Rights, vol. II, pp. 485 and 490, and vol. III, p. 651.

compliance with the requirements of Article 13 (*Klass and Others v. Germany*, 1978, § 67; *T.P. and K.M. v. the United Kingdom* [GC], 2001, § 109; *Z and Others v. the United Kingdom* [GC], 2001, § 110).

In the case of *Z and Others v. the United Kingdom* [GC], 2001 (§§ 110-111), the Court did not consider it appropriate to make any findings as to whether only court proceedings could have furnished effective redress in respect of local authorities' failings to care for children who were ill-treated by their parents. However, the Court recognised that the applicants did not have available to them an appropriate means of obtaining a determination of their allegations that the local authority failed to protect them from inhuman and degrading treatment or the possibility of obtaining an enforceable award of compensation for the damage suffered thereby. Consequently, they had not been afforded an effective remedy in breach of Article 13 of the Convention.

28. **The "authority" referred to in Article 13 does not need, in all cases, to be a judicial institution** in the strict sense or a tribunal within the meaning of Articles 6 § 1 and 5 § 4 of the Convention (*Golder v. the United Kingdom*, 1975, § 33; *Klass and Others v. Germany*, 1978, § 67; *Rotaru v. Romania* [GC], 2000, § 69; *Driza v. Albania*, 2007, § 116).

The national authority may be a quasi-judicial body such as an ombudsman (*Leander v. Sweden*, 1987), an administrative authority such as a government minister (*Boyle and Rice v. the United Kingdom*, 1988), or a political authority such as a parliamentary commission (*Klass and Others v. Germany*, 1978).

29. However, **the authority's powers and the procedural safeguards** that it affords are taken into account in order to determine whether the remedy is effective (*Klass and Others v. Germany*, 1978, § 67; *Silver and Others v. the United Kingdom*, 1983, § 113 (b); *Kudła v. Poland* [GC], 2000, § 157; *Mugemangango v. Belgium* [GC], 2020, § 67). The Court will verify **whether non-judicial "authorities" are independent** (*Leander v. Sweden*, 1987, §§ 77 b) and 81; *Khan v. the United Kingdom*, 2000, §§ 44-47) and whether **procedural safeguards are afforded to the applicant** (*Chahal v. the United Kingdom*, 1996, §§ 152-154; *De Souza Ribeiro v. France* [GC], 2012, § 79; *Allanazarova v. Russia*, 2017, § 93).

In the case of *Khan v. the United Kingdom*, 2000 (§§ 45-47), the referral of complaints to the Police Complaints Authority, for an investigation into the conduct of police officers, was left to the discretion of the Chief Constable. Moreover, the Secretary of State played an important role in appointing, remunerating and, in certain circumstances, dismissing members of the Police Complaints Authority. Thus, the system of investigation of complaints did not meet the requisite standards of independence needed to constitute sufficient protection against the abuse of authority and thus provide an effective remedy within the meaning of Article 13.

30. **A non-judicial body must normally have the power to hand down a legally binding decision**. As regards remedies by which to complain about the monitoring of prisoners' correspondence, this was not the case, for example, of a Board of Visitors which could not enforce its conclusions or entertain applications from individuals who were not in prison; or of a Parliamentary Commissioner, who had no power to render a binding decision granting redress (*Silver and Others v. the United Kingdom*, 1983, §§ 114-115). The same conclusion was reached as regards the Ombudsman and Chancellor of Justice in the context of a remedy available to the individual concerned in a system of secret security checks, in spite of their power to bring criminal or disciplinary proceedings (*Leander v. Sweden*, 1987, § 82; *Segerstedt-Wiberg and Others v. Sweden*, 2006, § 118).

In the case of *Chahal v. the United Kingdom*, 1996 (§ 154), the Court found shortcomings in non-judicial proceedings before an advisory panel reviewing the deportation order of a terrorism suspect, as the applicant was not entitled, *inter alia*, to legal representation, the panel had no power of decision and its advice to the Home Secretary was not binding and was not disclosed. In those circumstances, the advisory panel could not be considered to offer sufficient procedural safeguards for the purposes of Article 13.

A commission only having advisory powers cannot be regarded as an effective remedy. In the case of *Zazanis v. Greece*, 2004 (§ 47), the powers of the commission in question, which could be called upon in the conditions laid down by presidential decree, were purely advisory. Thus, any finding as to the non-enforcement of a judgment of the Supreme Administrative Court by the executive was not binding on the latter.

31. **The reviewing authority cannot be a political organ which has issued the impugned instructions,** otherwise it would be a judge in its own cause. That would be the case of the competent Minister, if dealing with a complaint as to the validity of an Order or Instruction under which a measure of control over correspondence had been carried out, as he could not be considered to have a sufficiently independent standpoint to satisfy the requirements of Article 13 (*Silver and Others v. the United Kingdom*, 1983, § 116). The position, however, would be otherwise if the complainant alleged that the impugned measure resulted from a misapplication of one of those directives.

3. An effective remedy

32. **To be effective, the remedy must be capable of directly remedying the impugned situation** (*Pine Valley Developments Ltd and Others v. Ireland*, Commission decision, 1989; see also Scope of Article 13 of the Convention in this Guide).

33. **Contracting States are afforded some discretion** (or a margin of appreciation) as to the manner in which they provide the requisite remedy and conform to their Convention obligations under Article 13 (*Kaya v. Turkey*, 1998, § 106). Neither Article 13 nor the Convention in general lays down for the Contracting States any given manner for ensuring within their internal law the effective implementation of any of the provisions of the Convention (*Silver and Others v. the United Kingdom*, 1983, § 113; *Council of Civil Service Unions and Others v. the United Kingdom*, Commission decision, 1987). But the nature of the right at stake has implications for the type of remedy the State is required to provide under Article 13 (*Budayeva and Others v. Russia*, 2008, § 191). See also Scope of Article 13 of the Convention et Article 13 of the Convention and the other substantive provisions of the Convention and its Protocols in this Guide.

34. **The domestic authorities ruling on the case must examine the merits of the Convention complaint** (*Smith and Grady v. the United Kingdom*, 1999, § 138; *Peck v. the United Kingdom*, 2003, §§ 105-106; *Hasan and Chaush v. Bulgaria* [GC], 2000, § 100; *Hatton and Others v. the United Kingdom* [GC], 2003, § 141; *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, 2007, § 69; *Boychev and Others v. Bulgaria*, 2011, § 56). Thus, the **effectiveness of the remedy is assessed in relation to each complaint**.

The remedy must encompass the merits of the complaint as submitted by the applicant. If the authority or court concerned reformulates the complaint or fails to take into consideration an essential element of the alleged violation of the Convention, the remedy will be insufficient (*Glas Nadezhda EOOD and Elenkov v. Bulgaria*, 2007, § 69).

In the case of *Hasan and Chaush v. Bulgaria* [GC], 2000 (§ 100), the Supreme Court had refused to examine the merits of a complaint under Article 9 of the Convention, alleging State interference with the internal organisation of a religious community, finding that the Council of Ministers enjoyed an unlimited discretionary power in deciding whether or not to register the constitution and leadership of a religious denomination. It had merely ruled on the formal question whether the Decree laying down changes to the leadership and constitution of the Muslim community had been issued by the competent body. The appeal to the Supreme Court against the Decree was not, therefore, found to be an effective remedy.

In the case of *Metropolitan Church of Bessarabia and Others v. Moldova*, 2001 (§ 138), the Supreme Court of Justice had not replied to the applicants' main complaints, namely their wish to join together

and manifest their religion collectively within a Church distinct from the Metropolitan Church of Moldova and to have the right of access to a court to defend their rights and protect their assets, given that only denominations recognised by the State enjoyed legal protection. Consequently, not being recognised by the State, the Metropolitan Church of Bessarabia had no rights it could assert in the Supreme Court of Justice.

See, in the same vein, *Hatton and Others v. the United Kingdom* [GC], 2003, § 141, and *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, 2007, §§ 68-70.

35. **The effectiveness of the remedy is assessed *in concreto*** (*Colozza and Rubinat v. Italy*, Commission decision, 1982, pp. 146-147). To challenge a judgment handed down against him the applicant had sought to lodge an appeal – prima facie out of time – which would have allowed him to complain that the proceedings *in absentia* were not compatible with Article 6 of the Convention. The appeal was declared inadmissible by the Court of Appeal. However, on an appeal on points of law the Court of Cassation nevertheless examined his complaint and concluded that he had rightly been convicted *in absentia*. The applicant had thus had an effective remedy.

36. **The requirements of Article 6 may be relevant** for the assessment of the effectiveness of a remedy for the purposes of Article 13 of the Convention. As a general rule, the fundamental criterion of fairness, which encompasses the equality of arms, is a constitutive element of an effective remedy. A remedy cannot be considered effective unless the minimum conditions enabling an applicant to challenge a decision that restricts his or her rights under the Convention are provided (*Csüllög v. Hungary*, 2011, § 46).

37. The term "effective" means that **the remedy must be sufficient and accessible, fulfilling the obligation of promptness** (*Paulino Tomás v. Portugal* (dec.), 2003; *Çelik and İmret v. Turkey*, 2004, § 59). The remedy **must enable the submission of a complaint about the alleged violation of the Convention**.

38. **Excessively restrictive requirements** may render the remedy ineffective. In the case of *Camenzind v. Switzerland*, 1997 (§ 54), concerning the effectiveness of a remedy by which to complain of a house search under Article 8 of the Convention, only persons who were still affected, at least in part, by the impugned decision had *locus standi* to lodge a complaint before the Indictment Division of the Federal Court, which had accordingly declared inadmissible that part of the applicant's complaint concerning the search because the measure had ceased and he was no longer affected by it. Thus, even though the court had considered the complaint in so far as it concerned the interception and recording of a telephone conversation, the remedy could not be termed "effective" within the meaning of Article 13.

39. Remedies **must be accessible for the person concerned**.

In the case of *Petkov and Others v. Bulgaria*, 2009 (§ 82), candidates standing in parliamentary elections could challenge the result of the elections before the Constitutional Court, but only through the limited category of persons or bodies who were entitled to refer a matter to it.

However, the Court has also found that a remedy was not ineffective merely because it was not directly accessible to the person concerned, given that the latter had the benefit of a statutory collective system of dispute settlement before an arbitral tribunal through the shareholders' representative, the Court having found this system not to be in breach of the requirements of Article 6 § 1 of the Convention, which were stricter than those of Article 13 (*Lithgow and Others v. the United Kingdom*, 1986, § 207).

In cases involving minors, a legal representative must be capable of bringing proceedings on their behalf. In *Margareta and Roger Andersson v. Sweden*, 1992 (§ 101), a mother had not been prevented from challenging, on behalf of her twelve-year-old child, the restrictions on contacts between her and her son.

40. A domestic remedy must present **minimum guarantees of promptness** (*Kadiķis v. Latvia (no. 2)*, 2006, § 62). A remedy which will not bear fruit in sufficient time is inadequate and ineffective (*Pine Valley Developments Ltd and Others v. Ireland*, 1991, § 47; *Payet v. France*, 2011, §§ 131-134).

In the case of *Kadiķis v. Latvia (no. 2)*, 2006 (§§ 62-63), the Court found a violation of Article 13 of the Convention in the light of Article 3 given that, in particular, the applicant had been imprisoned for fifteen days and the competent authority by law had a period of fifteen or thirty days to respond to an application or complaint, with the possibility for those time-limits to be extended in certain cases.

See, in the same vein, *Wasserman v. Russia (no. 2)*, 2008, § 55-58 (over two and a half years to rule on the length of the enforcement proceedings), and *Vidas v. Croatia*, 2008, § 37 (three years and fifteen days to rule on the length of the civil proceedings).

However, in the case of *Kaić and Others v. Croatia*, 2008 (§ 41), the Court did not rule out the possibility that there might be cases where the delayed implementation, or even non-implementation, of the Constitutional Court's decisions might be justified, rather than entailing a violation of Article 13 in the light of Article 6 § 1. However, in that case the Government had not attempted to justify the six-month delay, which was of particular importance given the fact that the predicate violation concerned the length of proceedings.

41. The existence of a **mere power of suspension** may suffice for the purposes of Article 13, taking account of the nature of the damage that might be caused and the specificities of the case at hand (*Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. v. Turkey (no. 1)*, 2006, § 94; *contrast Jabari v. Turkey*, 2000, § 50). In the case of *Özgür Radyo-Ses Radyo Televizyon Yayın Yapım Ve Tanıtım A.Ş. v. Turkey (no. 1)*, 2006 (§ 94), the applicant company, which broadcast radio programmes, had been banned by the RTÜK, an independent administrative authority whose role was to govern the activities of radio and TV stations, after it had found a breach of the law. The Court took the view that the existence of a mere possibility of suspending the implementation of the measure could suffice for compliance with Article 13, even though the domestic courts had not granted the applicant company's request for a stay of execution in that case.

The same conclusion has been reached in cases concerning the expulsion and extradition of aliens who argue that they will be exposed, in their destination country, to a serious and proven risk of torture or other ill-treatment. In the case of *Allanazarova v. Russia*, 2017 (§§ 100-115), the Court found a violation of Article 13 of the Convention in the light of Article 3, as an appeal against the extradition under Russian law did not have an automatic suspensive effect or entail stringent scrutiny of the risk of ill-treatment in the State, Turkmenistan, which had requested the extradition of a woman.

42. **Post-hoc remedies may suffice to be effective**. In the case of *M.S. v. Sweden*, 1997 (§§ 55-56), it had been open to the applicant, whose complaint under Article 8 of the Convention concerned the disclosure, without her consent, of confidential personal and medical data by one public authority to another, to bring criminal and civil proceedings before the ordinary courts against the relevant staff of a clinic and to claim damages for breach of professional secrecy. Having regard to the limited nature of the disclosure and to the different safeguards, in particular the Social Security Office's obligation to secure and maintain the confidentiality of the information, the various *post-hoc* remedies satisfied the requirements of Article 13.

By contrast, the Court has found a violation of Article 13 in conjunction with Article 11 where the judicial remedy that was available to the organisers in respect of decisions refusing to authorise their public events, only after the time when they were due to take place (and thus a *post-hoc* remedy), was not such as to provide satisfactory redress for the alleged violations of the Convention (*Bączkowski and Others v. Poland*, 2007, §§ 81-84; *Alekseyev v. Russia*, 2010, §§ 97-100; *Lashmankin and Others v. Russia*, 2017, §§ 342-361).

43. The Court **must take realistic account not only of the existence of formal remedies in the legal system of the Contracting Party concerned but also of the general legal and political context in which they operate as well as the personal circumstances of the applicant** (*Akdivar and Others v. Turkey*, 1996, § 69), these principles having been developed under Article 35 § 1 of the Convention. In the case of *A.B. v. the Netherlands*, 2002 (§ 98), the Court took account, first, of the lack of adequate implementation by the authorities of judicial orders to repair the unacceptable shortcomings in prisons and, secondly, the failure to implement urgent recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). In the case of *Orhan v. Turkey*, 2002 (§ 392), the Court had regard to the situation which existed in south-east Turkey at the time of the events complained of by the applicant, which was characterised by violent confrontations between the security forces and members of the PKK. In the case of *Aydın v. Turkey*, 1997 (§ 107), the Court found that the State should have taken particular precautions in the examination of a woman who alleged that she was raped in custody by a State official. The victim should have been examined, with all appropriate sensitivity, by medical professionals with particular competence in this area and whose independence was not circumscribed by instructions given by the prosecuting authority as to the scope of the examination.

However, a respondent State is not entitled to raise the political context as a defence to an insufficient remedy (*Cyprus v. Turkey* [GC], 2001, § 193). The respondent Government had pleaded before the Commission that, pending the elaboration of an agreed political solution to the overall Cyprus problem, there could be no question of a right of displaced persons either to return to the homes and properties which they had left in Northern Cyprus or to lay claim to any of their immovable property vested in the "TRNC" authorities.

44. **The remedy required by Article 13 must be "effective" in practice as well as in law** (*Menteş and Others v. Turkey*, 1997, § 89; *İlhan v. Turkey* [GC], 2000, § 97).

In the cases of *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria*, 1994 (§ 53), *Doran v. Ireland*, 2003 (§§ 68-69), and *Djavit An v. Turkey*, 2003 (§ 73),the Government had not put forward any example showing the application of possible remedies in a similar case.

In the case of *Iovchev v. Bulgaria*, 2006 (§§ 145-148), the courts dismissed the applicant's action and refused compensation on the sole ground that he had failed to adduce sufficient proof that he had suffered non-pecuniary damage arising out of the conditions of his detention. There was nothing to indicate that an action under the State Responsibility for Damage Act could not in principle provide a remedy in this connection.

45. In particular, **the exercise of the remedy must not be unjustifiably hindered by acts or omissions of the respondent State** (*Aksoy v. Turkey*, 1996, § 95 *in fine*; *Aydın v. Turkey*, 1997, § 103; *Paul and Audrey Edwards v. the United Kingdom*, 2002, § 96). Thus, no question of hindering access to a tribunal arises where a litigant, represented by a lawyer, freely brings proceedings in a court, makes his submissions to it and lodges such appeals against its decisions as he considers appropriate (*Matos e Silva, Lda., and Others v. Portugal*, 1996, § 64).

The obligation of States under Article 13 encompasses a duty to ensure that the competent authorities enforce remedies when granted (compare Article 2 § 3 (c) of the International Covenant on Civil and Political Rights[4]). It would be inconceivable if Article 13 secured the right to a remedy, and provided for it to be effective, but did not guarantee the implementation of remedies used successfully. To hold the contrary would lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (*Kenedi v. Hungary*, 2009, § 47; *Kaić and Others v. Croatia*, 2008, § 40).

4. This provision of the Covenant obliges State parties to "ensure that the competent authorities shall enforce such remedies when granted".

46. In order for the exhaustion rule to come into operation, the effective remedy must exist at the date when the application is lodged with the Court (*Stoica v. Romania*, 2008, § 104). However, this rule is subject to exceptions which might be justified by the specific circumstances of each case (*Baumann v. France*, 2001, § 47). The Court has accepted that this was the case when at the national level a new law, specifically designed to provide direct redress for violations of fundamental procedural rights, was introduced with retrospective effect, thus putting an end to a systemic problem that existed in the national legal system before its adoption (*Charzyński v. Poland* (dec.), 2005, §§ 40-41; *İçyer v. Turkey* (dec.), 2006, §§ 83-84; *Ismayilov v. Azerbaijan*, 2008, § 38).

47. The effectiveness must be established **in relation to the relevant period**, as a subsequent development of the case-law will not be sufficient (*Khider v. France*, 2009, §§ 142-145).

In the case of *Ramirez Sanchez v. France* [GC], 2006 (§§ 165-166), a new remedy stemming from a change in the case-law did not have retrospective effect and could not have any bearing on the applicant's position; it could not therefore be regarded as effective. The Court accordingly found a violation of Article 13, in the light of Article 3, on account of the lack of a remedy in domestic law that would have allowed the applicant to challenge the decisions to prolong his solitary confinement.

The Court has found that it does **not need to examine remedies which did not exist at the relevant time or were not applicable to the facts of the case**. As the Court reiterated in *Peck v. the United Kingdom*, 2003 (§ 102), its task is not to review the relevant law or practice in the abstract but rather to confine itself, without overlooking the general context, to examining the issues raised by the case before it (see also *Amann v. Switzerland* [GC], 2000, § 88) and, in particular, to considering only those remedies which could have some relevance for the applicant (see also *N. v. Sweden*, Commission decision, 1986; *Stewart-Brady v. the United Kingdom*, Commission decision, 1997).

48. **A single final judicial decision**, however comprehensive in its reasoning – given, moreover, at first instance – is not sufficient to satisfy the Court that there was an effective remedy available in theory and in practice (*Sürmeli v. Germany* [GC], 2006, § 113; *Abramiuc v. Romania*, 2009, § 128). The absence of further case-law indicates the present uncertainty of a remedy in practical terms (*Horvat v. Croatia*, 2001, § 44). Thus in the case of *Martins Castro and Alves Correia de Castro v. Portugal*, 2008 (§§ 56-57), the Court found a violation of Article 13 in the light of Article 6 § 1, given that an action to establish non-contractual State liability could not be regarded as an "effective" remedy while the case-law emanating from the Supreme Administrative Court had not been consolidated in the Portuguese legal system, through a harmonisation of the case-law divergences which were to be found at the time of the judgment.

49. The Court may nevertheless examine the effectiveness of a remedy **before the practice of the domestic courts can be determined** (*Slaviček v. Croatia* (dec.), 2002; *Nogolica v. Croatia* (dec.), 2002). A lack of established judicial practice may not be decisive. In the case of *Charzyński v. Poland* (dec.), 2005 (§ 41), at the time when a law of 2004 entered into force, the long-term practice of the domestic courts could not yet be established. However, the wording of the 2004 Act clearly indicated that it was specifically designed to address the issue of an excessive length of proceedings before the domestic courts. The applicant was thus required by Article 35 § 1 of the Convention to complain to a domestic court, under that Act, about a breach of the right to a trial within a reasonable time, to ask for the proceedings to be expedited and to claim just satisfaction.

50. **The "effectiveness" of a remedy for the purposes of Article 13 does not depend on the certainty of a favourable outcome for the applicant** (*Swedish Engine Drivers' Union v. Sweden*, 1976, § 50; *Kudła v. Poland* [GC], 2000, § 157; *Costello-Roberts v. the United Kingdom*, 1993, § 40; *Hilal v. the United Kingdom*, 2001, § 78).

The word "*remedy*", in the context of Article 13, does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint (*C.*

v. the United Kingdom, Commission decision, 1983). Article 13 guarantees the availability of a remedy but not a successful outcome (*R. v. the United Kingdom*, Commission decision, 1984).

Feeble prospects of success in the light of the particular circumstances of the case do not detract from the "effectiveness" of a remedy for the purpose of Article 13 (*Murray v. the United Kingdom*, 1994, § 100).

The existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to make use of it (*Akdivar and Others v. Turkey*, 1996, § 71; *Krasuski v. Poland*, 2005, §§ 69-73; *Scoppola v. Italy (no. 2)* [GC], 2009, § 70; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, § 74).

The mere fact that an applicant's claims were all dismissed is not in itself sufficient to determine whether or not the remedy was "effective" (*Swedish Engine Drivers' Union v. Sweden*, 1976, § 50; *Boyle and Rice v. the United Kingdom*, 1988, § 67; *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria*, 1994, § 55; *Amann v. Switzerland* [GC], 2000, § 89). Thus in *Amann v. Switzerland* [GC], 2000 (§§ 89-90), the Court found no violation of Article 13 in the light of Article 8, taking the view that the remedy was effective even though the applicant's claims had been dismissed. The Federal Court had jurisdiction to rule on those complaints and duly examined them.

51. The context in which an alleged violation – or category of violations – occurs, **as the protection afforded by Article 13 is not absolute**, may entail **inherent limitations on the conceivable remedy** (*Kudła v. Poland* [GC], 2000, § 151). The Convention is to be read as a whole and therefore any interpretation of Article 13 must be in harmony with the logic of the text. In such circumstances Article 13 is not regarded as inapplicable, but its "effective remedy" requirement means a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in the context (*Klass and Others v. Germany*, 1978, §§ 68-69). See in the same vein, *Leander v. Sweden*, 1987, §§ 78-79; see also the part of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 8 (Respect for private life – Covert surveillance and personal data retention).

52. **The scope of judicial scrutiny by a domestic court must be sufficient** to guarantee protection under Article 13. Insufficient powers of judicial review exercised by the courts may entail a violation of Article 13 (*Smith and Grady v. the United Kingdom*, 1999, §§ 136-139; *Hatton and Others v. the United Kingdom* [GC], 2003, §§ 141-142).

In the cases of *Soering v. the United Kingdom*, 1989 (§§ 121-124), and *Vilvarajah and Others v. the United Kingdom*, 1991 (§§ 123-127), the Court found judicial review to be an effective remedy for the applicants' complaints, concluding that there had been no violation of Article 13 of the Convention in the light of Article 3. The UK courts had been able to review the "reasonableness" of an extradition or expulsion decision in the light of the kind of factors relied on by the applicants before the Convention institutions in the context of Article 3.

53. In addition, **the aggregate of remedies provided for under domestic law may meet the requirements of Article 13, even where no single remedy may itself entirely satisfy them** (*Silver and Others v. the United Kingdom*, 1983, § 113 (c); *Leander v. Sweden*, 1987, § 77 (c); *Chahal v. the United Kingdom*, 1996, § 145; *Kudła v. Poland* [GC], 2000, § 157; *De Souza Ribeiro v. France* [GC], 2012, § 79).

In the case of *Brincat and Others v. Malta*, 2014 (§ 64), the Court pointed out that it had sometimes found, under certain conditions, that an aggregate of remedies sufficed for the purposes of Article 13 in conjunction with Articles 2 and 3 (see also *Giuliani and Gaggio v. Italy* [GC], 2011, § 338). This concept generally refers to a number of remedies which can be taken up one after the other or in parallel and which cater for different aspects of redress, such as a civil remedy providing for compensation and a criminal action for the purposes of satisfying the procedural aspect of Articles 2 and 3 (*ibid.*, § 337).

In *Sürmeli v. Germany* [GC], 2006 (§§ 102-116), concerning the length of court proceedings, the Court did not rule on the effectiveness of four remedies in the aggregate, given that the Government had neither alleged nor shown that a combination of two or more of them would satisfy the requirements of Article 13.

54. Remedies may not be effective where **there is some doubt as to which courts – civil, criminal, administrative or others – have jurisdiction** to examine a complaint, and there is no effective or speedy mechanism for the purpose of resolving such uncertainty. In the case of *Mosendz v. Ukraine*, 2013 (§§ 122-125), the applicant had brought a civil claim against the Ministry of the Interior seeking compensation for damage in respect of the ill-treatment and death of her son during his compulsory military service. Pursuant to the instructions of a local court which refused to institute civil proceedings, she resubmitted her claim under the rules of administrative procedure. While the first-instance court allowed her claim, the appellate court quashed that judgment on procedural grounds, holding that the case fell under the jurisdiction of the civil rather than the administrative courts, this decision being upheld by the highest court more than five years after the applicant had lodged her claim. As a result, the applicant's claim for damages remained without examination and she was denied an effective domestic remedy, in breach of Article 13, in respect of her complaints under Articles 2 and 3 of the Convention.

55. Where an applicant relies on the argument that an existing domestic remedy is ineffective, **it is incumbent on the Government to adduce evidence of the implementation and practical effectiveness of the remedy** that they have suggested, in the particular circumstances of the case, providing relevant examples of case-law from national courts or pointing to the decisions of administrative authorities in a similar case (*Efstratiou v. Greece*, 1996, § 49; *Kudła v. Poland* [GC], 2000, § 159; *Segerstedt-Wiberg and Others v. Sweden*, 2006, § 120; *Ananyev and Others v. Russia*, 2012, § 110; *Stanev v. Bulgaria* [GC], 2012, § 219). The Court will consider whether a given remedy has acquired a sufficient degree of certainty in its implementation (*Čonka v. Belgium*, 2002, § 83; *Krasuski v. Poland*, 2005, § 68). The Government must demonstrate the effectiveness of all the remedies on which they rely, failing which the Court may find a violation of Article 13 (*Wille v. Liechtenstein* [GC], 1999, §§ 74-78; *Yarashonen v. Turkey*, 2014, §§ 64-66) or decline to rule on the matter.

B. Scope of Article 13 of the Convention

56. The scope or extent of the field of action of the obligation under Article 13 **will vary depending on the nature of the complaint** under the Convention (*Chahal v. the United Kingdom*, 1996, §§ 150-151; *Aksoy v. Turkey*, 1996, § 95; *Aydın v. Turkey*, 1997, § 103; *Z and Others v. the United Kingdom* [GC], 2001, § 108; *Paul and Audrey Edwards v. the United Kingdom*, 2002, § 96) **or the nature of the right relied upon** under the Convention (*Hasan and Chaush v. Bulgaria* [GC], 2000, § 98).

57. **To be effective, a remedy must be capable of directly providing redress for the impugned situation** (*Pine Valley Developments Ltd and Others v. Ireland*, Commission decision, 1989). The means of submitting complaints will be regarded as "effective" if they could have prevented the alleged violation occurring or continuing or could have afforded the applicant appropriate redress for any violation that had already occurred (*Kudła v. Poland* [GC], 2000, § 158; *Ramirez Sanchez v. France* [GC], 2006, § 160). Thus, a successful outcome of an effective remedy could be, for example, depending on the case, the annulment, withdrawal or amendment of an act breaching the Convention, an investigation, reparation, or sanctions imposed on the person responsible for the act. See also the part of this Guide on Article 13 of the Convention and other substantive provisions of the Convention and its Protocols.

Where an arguable breach of one or more of the rights under the Convention is in issue, there should be available to the victim a mechanism for establishing any liability of State officials or bodies for that breach. Furthermore, in appropriate cases, compensation for the pecuniary and

non-pecuniary damage flowing from the breach should in principle be available as part of the range of redress (*T.P. and K.M. v. the United Kingdom* [GC], 2001, § 107).

58. The Court adopts a **stricter approach** to the notion of "effective remedy" in the following situations:

- Where a right with as fundamental an importance as **the right to life** (Article 2 of the Convention) or the **prohibition of torture and inhuman or degrading treatment** (Article 3 of the Convention) is at stake, the notion of an effective remedy for the purposes of Article 13 entails, without prejudice to any other remedy available under the domestic system, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (*Kaya v. Turkey*, 1998, § 107; *Yaşa v. Turkey*, 1998, § 114).
- The same is true where **the right to a lawful arrest or detention** (Article 5 of the Convention) is at stake and a relative has validly claimed that his or her son was taken into custody and has disappeared since his arrest (*Kurt v. Turkey*, 1998, § 140).

See also the parts of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 2, Article 3 and Article 5 § 1.

But the Court has also drawn a distinction between the degrees of effectiveness of the remedies required in relation to the **violations of substantive rights by the State or its agents (negative obligations) and violations due to a failure by the State to protect individuals against acts of third parties** (positive obligations) (*Z and Others v. the United Kingdom* [GC], 2001, § 109; *Keenan v. the United Kingdom*, 2001, § 129). In *Paul and Audrey Edwards v. the United Kingdom*, 2002 (§ 97), the Court pointed out that in cases where an alleged failure by the authorities to protect persons from the acts of others was concerned, Article 13 might not always require that the authorities undertake the responsibility for investigating the allegations. There should, however, be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention. Furthermore, compensation for the non-pecuniary damage flowing from the breach should, in principle, be available.

See also the parts of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 2 and Article 3.

59. A complaint by an applicant alleging that his return to another country would expose him to treatment prohibited by Articles 2, 3 and 8 of the Convention requires independent and rigorous scrutiny (*Jabari v. Turkey*, 2000, § 50) and particular promptness (*Batı and Others v. Turkey*, 2004, § 136). Moreover, to be effective the remedy must be accompanied by the automatic suspensive effect of expulsion measures in cases where the applicant complains of a risk under Articles 2 or 3 (*Gebremedhin [Gaberamadhien] v. France*, 2007, § 66; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 200). This requirement of automatic suspensive effect has also been confirmed in respect of complaints under Article 4 of Protocol No. 4 (*Čonka v. Belgium*, 2002, §§ 81-83; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 206). See also the parts of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 3 (Asylum and expulsion), Article 8 (Expulsion) and Article 4 of Protocol No. 4.

60. The Court recognises two types of effective remedy, namely preventive and compensatory remedies, by which to complain about the effectiveness of remedies concerning allegations of poor conditions of detention under Article 3 of the Convention, the length of proceedings under Article 6 § 1 of the Convention and in cases of a particular nature with high stakes where the length of proceedings is clearly decisive for an applicant's family life under Article 8 of the Convention. Thus, for example, the means available to an applicant under domestic law for raising a complaint

about the length of proceedings under Article 6 § 1 will be "effective" within the meaning of Article 13 if they can be used either to expedite a decision by the courts dealing with the case or to provide the litigant with adequate redress for delays that have already occurred (*Krasuski v. Poland*, 2005, § 66). See also the parts of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 3: Detention conditions (general principles), Preventive remedies and Compensatory remedies; Article 6 § 1 (preventive and compensatory remedies); and Article 8 (Respect for the right to family life).

61. In cases where the authorities, through deliberate actions and omissions, prevent a parliamentary candidate from standing, the breach of Article 3 of Protocol No. 1 cannot be remedied exclusively through an award of compensation (*Petkov and Others v. Bulgaria*, 2009, § 79). See also the part of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 3 of Protocol No. 1.

62. The effectiveness of a remedy may be restricted **in respect of qualified rights** such as the right to **freedom of religion** (*Hasan and Chaush v. Bulgaria* [GC], 2000, §§ 98-99). See also the part of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 9.

The same is true during the implementation of **surveillance measures**. See also paragraph 51 of this Guide, and the part on Article 13 of the Convention in conjunction with or in the light of Article 8 (Respect for private life – Covert surveillance and personal data retention).

63. **The scope of Article 13 may overlap with that of other Convention provisions** which guarantee a specific remedy.

In matters of deprivation of liberty, where a violation of Article 5 § 1 of the Convention is at issue, Article 5 §§ 4 and 5 of the Convention constitutes *lex specialis* in relation to the more general requirements of Article 13 (*Tsirlis and Kouloumpas v. Greece*, 1997, § 73; *Nikolova v. Bulgaria* [GC], 1999, § 69; *Dimitrov v. Bulgaria* (dec.), 2006). The less stringent requirements of Article 13 will thus be absorbed thereby. Accordingly, in order to decide whether an applicant was required to make use of a particular domestic remedy in respect of his or her complaint under Article 5 § 1 of the Convention, the Court must evaluate the effectiveness of that remedy from the standpoint of Article 5 §§ 4 and 5 (*Ruslan Yakovenko v. Ukraine*, 2015, § 30). If the Court finds a violation of the Convention in the light of that *lex specialis*, there is no legal interest in re-examining the same subject matter of complaint under the *lex generalis* of Article 13 (*De Wilde, Ooms and Versyp v. Belgium*, 1971, § 95; *Khadisov and Tsechoyev v. Russia*, 2009, § 162). See also the part of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 5 §§ 4 and 5.

The same principle applies under Article 1 of Protocol No. 7, which secures a right of appeal to aliens in respect of an expulsion decision.

Moreover, Article 6 § 1 of the Convention, which guarantees *inter alia* a right of access to a court, provides for more stringent safeguards than those of the effective remedy under Article 13. As a result, the Article 6 § 1 safeguards, applying to civil rights and obligations and to criminal charges, entirely absorb those of Article 13 (*Airey v. Ireland*, 1979, § 35; *C. v. the United Kingdom*, Commission decision, 1983). There is, however, no overlap and hence no absorption where the alleged Convention violation that the individual seeks to bring before a "national authority" is a violation of the right to trial within a reasonable time, contrary to Article 6 § 1 (*Kudła v. Poland* [GC], 2000, § 147). See also the part of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 6 § 1.

64. **Where the violation of a Convention right is accompanied by a lack of an effective remedy**, the Court may decide that it does not need to examine the same situation under Article 13 (*Hokkanen v. Finland*, 1994, § 74; *McDonnell v. the United Kingdom*, 2014, § 90). In the case of *X. and Y. v. the Netherlands*, 1985 (§ 36), the lack of a sufficient remedy was among the factors which led the

Court to find a violation of Article 8 of the Convention. It therefore did not need to examine the same question in the light of Article 13.

C. Acts covered by Article 13 of the Convention

65. The scope of Article 13 extends to all acts in respect of which there could be a remedy under domestic law.

1. Acts of the administration or the executive

66. In principle, all acts of the administration (of government) or of the executive fall within the scope of Article 13 (*Al-Nashif v. Bulgaria*, 2002, § 137). The Article itself states that it extends to acts entailing a violation of the Convention committed by persons acting in an official capacity (*Wille v. Liechtenstein* [GC], 1999, §§ 76-78).

67. In *Ukraine and the Netherlands v. Russia* [GC], 2025 (§§ 510-514), the Court found that the failure to investigate credible allegations of administrative practices or to provide any redress was in breach of Article 13 in conjunction with Articles 2, 3, 4 § 2, 5, 8, 9, 10, 11 and 14 and Articles 1 and 2 of Protocol No. 1.

2. Acts of the legislature

68. As regards acts of the legislature, **Article 13 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention** (*The Sunday Times v. the United Kingdom (no. 2)*, 1991, § 61; *Costello-Roberts v. the United Kingdom*, 1993; § 40; *A. v. the United Kingdom*, 2002, §§ 112-113; *Supreme Holy Council of the Muslim Community v. Bulgaria*, 2004, § 107; *Maurice v. France* [GC], 2005, § 107; *Paksas v. Lithuania* [GC], 2011, § 114) or contrary to equivalent domestic legal norms (*James and Others v. the United Kingdom*, 1986, § 85). The Court may thus reject part of the complaint as incompatible *ratione materiae* with the Convention (*Saccoccia v. Austria* (dec.), 2007) or find no violation of Article 13 (*Roche v. the United Kingdom* [GC], 2005). Similarly, Article 13 does allow **a general policy as such** to be challenged (*Hatton and Others v. the United Kingdom* [GC], 2003, § 138).

However, according to the Commission, this principle **does not apply to immigration rules** (*Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 1985, § 92). After examining the remedies available, the Court found a violation of Article 13 in the absence of effective domestic remedies for complaints under Articles 3, 8 and 14 of the Convention.

69. **It cannot be deduced from Article 13 that there must be a remedy against legislation as such which is considered not to be in conformity with the Convention.** Such a remedy would in effect amount to some sort of judicial review of legislation because any other review – generally sufficient for Article 13 which requires only a "remedy before a national authority" – could hardly be effective concerning legislation (*Young, James and Webster v. the United Kingdom*, Commission's report, 1979, § 177). In *Christine Goodwin v. the United Kingdom* [GC], 2002 (§ 113), the Court stated that **Article 13 could not be interpreted as requiring a remedy against the state of domestic law**, as otherwise the Court would be imposing on Contracting States a requirement to incorporate the Convention (see also *James and Others v. the United Kingdom*, 1986, § 85).

In the area of complaints about legislation the Court has found that it does not need to examine questions of interpretation relating to the obligations under Article 13 (*Boyle and Rice v. the United Kingdom*, 1988, § 87), or that Article 13 does not apply (*Gustafsson v. Sweden*, 1996, § 70), or that there has been no violation of Article 13 (*Maurice v. France* [GC], 2005, § 107; *Tsonyo Tsonev v. Bulgaria*, 2009, § 48).

70. **Article 13 does not guarantee an effective remedy in respect of constitutional provisions** (*Johnston and Others v. Ireland*, Commission's report, 1995, pp. 32-33; *Paksas v. Lithuania* [GC], 2011, § 114).

3. Acts of the judiciary

71. Concerning the acts of the judiciary, Article 13:

- does not impose the existence of different levels of jurisdiction (*Müller v. Austria*, Commission decision, 1974);
- does not guarantee a right of appeal, this only being recognised by Article 2 of Protocol No. 7 in a limited number of cases (*Pizzetti v. Italy*, Commission's report, 1991, § 41), nor a right to a second level of jurisdiction (*Z. and E. v. Austria*, Commission decision, 1986; *Kopczynski v. Poland*, Commission decision, 1998; *Csepyová v. Slovakia* (dec.), 2002); and
- does not guarantee a right to complain to a Constitutional Court in addition to the rights already available before the ordinary courts (*Altun v. Germany*, Commission decision, 1983).

72. **The mere fact that the judgment of the highest judicial body** is not subject to further judicial review does not in itself infringe Article 13 or does not constitute an arguable complaint under the Convention (*Tregubenko v. Ukraine* (dec.), 2003; *Sitkov v. Russia* (dec.), 2004; *Yuriy Romanov v. Russia*, 2005, § 55). Where the impugned act emanates from the highest national court or authority, the application of Article 13 is impliedly restricted since it does not require any further appellate remedy (*Crociani and Others v. Italy*, Commission decision, 1980, pp. 150 and 183, concerning the Constitutional Court; *Verein Alternatives Lokalradio Bern and Verein Radio Dreyeckland Basel v. Switzerland*, Commission decision, 1986, concerning the Federal Council, the supreme administrative authority; *Times Newspapers Ltd and Andrew Neil v. the United Kingdom*, Commission's report, 1991, § 60, concerning the House of Lords). In the case of *Wendenburg and Others v. Germany* (dec.), 2003, the lack of a remedy in respect of a decision of the Constitutional Court, which had declared a provision incompatible with the Basic Law had not raised any question under Article 13, and that part of the application was declared inadmissible as manifestly ill-founded.

73. Consequently, the Convention provisions cannot be interpreted as obliging States to create bodies to supervise the judiciary or national legal service (*Pizzetti v. Italy*, Commission's report, 1991, § 41). Article 13 is thus not applicable in cases where the alleged violation of the Convention is a judicial act.

As a general rule, Article 13 is not applicable where the alleged violation of the Convention has taken place **in the context of judicial proceedings**, except where the violation that the individual wishes to bring before the court is a violation of the right to trial within a reasonable time, contrary to Article 6 § 1 (*Kudła v. Poland* [GC], 2000, § 147). Thus Article 13 cannot be read as requiring the provision of an effective remedy that would enable the individual to complain about the absence in domestic law of access to a court as secured by Article 6 § 1 (*ibid.*, § 151; *Yassar Hussain v. the United Kingdom*, 2006, § 26). See also the part of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 6 § 1.

The Court has also found a violation of Article 13 of the Convention in the light of Article 6 § 2 where there was no remedy available to an applicant before a criminal court in order to obtain redress for a breach of his right to be presumed innocent (*Konstas v. Greece*, 2011, §§ 56-57). See also the part of this Guide on Article 13 of the Convention in conjunction with or in the light of Article 6 § 2.

4. Acts of private persons

74. As to acts of private persons, there must be a remedy **where the State shares responsibility for such acts or has not taken the necessary measures concerning them**. This has been the case, for example, in the context of remedies concerning State protection of demonstrations organised by individuals, namely a group of doctors who were campaigning against abortion and calling for a reform of the relevant Austrian legislation (*Plattform "Ärzte für das Leben" v. Austria*, 1988, §§ 34-39) and concerning State liability for the death of a prisoner who was killed by a mentally ill cell-mate (*Paul and Audrey Edwards v. the United Kingdom*, 2002, § 101).

II. Article 13 of the Convention and other substantive provisions of the Convention and its Protocols

A. Article 13 of the Convention in conjunction with or in the light of Article 2[5]

Article 2 of the Convention – Right to life

"1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

(a) in defence of any person from unlawful violence;

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) in action lawfully taken for the purpose of quelling a riot or insurrection."

HUDOC keywords

Positive obligations (2) – Life (2-1) – Effective investigation (2-1) – Use of force (2-2)

Alleged violations of the right to life

a. General principles

75. The nature of the right which the authorities are alleged to have violated will have implications for the nature of the remedies under Article 13. Having regard to the fundamental importance of the right to life, the notion of an effective remedy for the purposes of Article 13 entails, without prejudice to any other remedy available under the domestic system, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complaint to the investigatory procedure (*Kaya v. Turkey*, 1998, § 107; *Yaşa v. Turkey*, 1998, § 114; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 149).

76. More precisely, where the alleged violations engage the direct responsibility of State agents, the Court has found that the requirements of Article 13 are broader than the procedural obligation to

5. See the Guide on Article 2 - Right to life.

investigate imposed on the Contracting States by Article 2 of the Convention (*Kılıç v. Turkey*, 2000, § 93; *Orhan v. Turkey*, 2002, § 384; *Gongadze v. Ukraine*, 2005, § 192; *Tagayeva and Others v. Russia*, 2017, § 619). In such circumstances, where a criminal investigation into the circumstances of an attack was ineffective, and where the effectiveness of any other remedy that may have existed, including the civil remedies suggested by the Government, was consequently undermined, the Court found that the State had not met its obligations under Article 13 of the Convention (*Isayeva v. Russia*, 2005, § 229).

77. However, in examining an alleged violation of Article 2 under its procedural limb for shortcomings in the effectiveness of an investigation, it may consider that it has already examined the legal question and that it does not need to examine the complaints separately under Article 13 (*Makaratzis v. Greece* [GC], 2004, § 86; *Ramsahai and Others v. the Netherlands* [GC], 2007, § 363; *Karandja v. Bulgaria*, 2010, § 72; *Janowiec and Others v. Russia* (dec.), 2011, § 124; *Maskhadova and Others v. Russia*, 2013, § 193; *Tagayeva and Others v. Russia*, 2017, § 622). In *Budayeva and Others v. Russia*, 2008 (§ 195), making its assessment in the context of the procedural aspect of the right to life, the Court addressed not only the absence of a criminal investigation following accidental deaths, but also the lack of further means available to the applicants by which they could secure redress for the authorities' alleged failure to discharge their positive obligations. Accordingly, the Court considered that it was not necessary to examine this complaint also under Article 13 of the Convention as regards the complaint under Article 2.

i.Thorough and effective investigations

78. In cases where the State is allegedly involved in the disappearance and/or death of individuals, Article 13 in conjunction with or in the light of Article 2 imposes an obligation to conduct thorough and effective investigations capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (*Kaya v. Turkey*, 1998, § 107-108; *Yaşa v. Turkey*, 1998, § 114; *Kılıç v. Turkey*, 2000, §§ 92-93; *Salman v. Turkey* [GC], 2000, § 109).

79. However, seen from the standpoint of the interests of the deceased's family and their right to an effective remedy, it does not inevitably follow from the above-mentioned case-law that Article 13 will be violated if the criminal investigation or resultant trial in a particular case do not satisfy the State's procedural obligation under Article 2. In four cases, the Court found no violation of Article 13 in the light of Article 2 since the existing civil actions were effective remedies capable of providing redress for fatal shootings by police officers (*Hugh Jordan v. the United Kingdom*, 2001, §§ 161-165; *McKerr v. the United Kingdom*, 2001, §§ 172-176; *Kelly and Others v. the United Kingdom*, 2001, §§ 155-159; *Shanaghan v. the United Kingdom*, 2001, §§ 136-140).

80. Thus, the State's failure to conduct a thorough and effective investigation in accordance with its procedural obligations under Article 2 will not necessarily violate Article 13. What is important, however, is the impact the State's failure to comply with those obligations have on the deceased's family's access to other available and effective remedies for establishing liability on the part of State agents or bodies in respect of acts or omissions entailing the breach of their rights under Article 2 and, as appropriate, obtaining compensation (*Öneryıldız v. Turkey* [GC], 2004, § 148; *Budayeva and Others v. Russia*, 2008, § 191; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 149).

81. In relation to fatal accidents arising out of dangerous activities which fall within the responsibility of the State, Article 2 requires the authorities, of their own motion, to carry out an investigation, satisfying certain minimum conditions, into the cause of the loss of life. Without such an investigation, the individual concerned may not be in a position to use any remedy available to him for obtaining relief, given that the knowledge necessary to elucidate facts is often in the sole

hands of State officials or authorities (*Öneryıldız v. Turkey* [GC], 2004, § 149; *Budayeva and Others v. Russia*, 2008, § 192).

82. Where alleged failure by the authorities to protect persons from the acts of others is concerned, Article 13 may not always require that the authorities undertake the responsibility for investigating the allegations. There should, however, be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention (*Keenan v. the United Kingdom*[6], 2001, § 129; *Paul and Audrey Edwards v. the United Kingdom*, 2002, § 97).

ii.Compensation

83. In the case of a breach of as fundamental a right as the right to life, Article 13 requires an award of compensation where appropriate. Compensation for non-pecuniary damage flowing from the breach should, in principle, be available as part of the range of redress (*Keenan v. the United Kingdom*, 2001, § 130; *Paul and Audrey Edwards v. the United Kingdom*, 2002, § 97; *Bubbins v. the United Kingdom*, 2005, § 171).

84. The Court itself will in appropriate cases award just satisfaction, recognising pain, stress, anxiety and frustration as rendering compensation for non-pecuniary damage appropriate (*Keenan v. the United Kingdom*, 2001, § 130; *Kontrová v. Slovakia*, 2007, § 64; *Poghosyan and Baghdasaryan v. Armenia*, 2012, § 46).

85. The timely payment of a final amount awarded by way of compensation for the distress caused will be an essential element of a remedy under Article 13 for a bereaved spouse or parent (*Paul and Audrey Edwards v. the United Kingdom*, 2002, § 101).

86. In general, actions for damages in the domestic courts may provide an effective remedy in cases of alleged unlawfulness or negligence by public authorities (*Caraher v. the United Kingdom* (dec.), 2000; *Hugh Jordan v. the United Kingdom*, 2001, § 162; *Paul and Audrey Edwards v. the United Kingdom*, 2002, § 99).

iii.Access to information

87. Where all the applicants have received compensation from the State as victims of a terrorist attack, the Court attaches special importance under Article 13 to their access to information and thus to the establishment of truth for the victims of the alleged violations, while ensuring justice and preventing impunity for the perpetrators (*Tagayeva and Others v. Russia*, 2017, § 627).

In the case of *Tagayeva and Others v. Russia*, 2017 (§§ 628-632), in addition to the criminal investigation into the terrorist attack, various other proceedings had taken place and parliamentary commissions had made extensive and detailed studies of the events. The ensuing reports could be regarded as an aspect of effective remedies aimed at establishing the knowledge necessary to elucidate the facts, this being distinct from the State's procedural obligations under Articles 2 and 3 of the Convention. The Court thus found no violation of Article 13 in the light of Article 2.

b. Selected examples

88. The Court found a violation of Article 13 in the light of Article 2 in the absence of an effective criminal investigation, entailing the ineffectiveness of any other remedy that might be available, including civil remedies such as a compensation claim, in the following examples of the use of force by State agents:

6. Violation of Article 13 of the Convention in the light of Articles 2 and 3.

- murders perpetrated by State security forces or with their connivance, or in suspicious circumstances (*Tanrıkulu v. Turkey* [GC], 1999, §§ 118-119; *Kılıç v. Turkey*, 2000, §§ 92-93; *Mahmut Kaya v. Turkey*, 2000, §§ 125-126);
- murder of civilians killed by soldiers (*Khashiyev and Akayeva v. Russia*[7], 2005, §§ 184-186);
- murder resulting from forced disappearance (*Gongadze v. Ukraine*, 2005, §§ 192-194);
- murder of a family in the lethal aerial bombing of a village by the army (*Abakarova v. Russia*, 2015, §§ 104-105);
- death in police custody (*Salman v. Turkey* [GC][8], 2000, §§ 122-123);
- death of a conscript during his military service (*Ataman v. Turkey*, 2006, §§ 77-79).

89. The Court found a violation of Article 13 in the light of Article 2 concerning the acts of private individuals:

- suicide of a prisoner (*Keenan v. the United Kingdom*[9], 2001, §§ 124-128; see also paragraph 91 of this Guide);
- murder of a prisoner by his mentally ill cell-mate (*Paul and Audrey Edwards v. the United Kingdom*, 2002, §§ 98-101; see also paragraph 91 of this Guide);
- death of an individual, who was mentally handicapped and HIV positive, in a psychiatric hospital (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, §§ 152-153).

90. The Court found no violation of Article 13 in the light of Article 2 where there were preventive and/or compensatory remedies in the following cases:

- death of a prisoner (*Slimani v. France*[10], 2004, §§ 39-42);
- death of a demonstrator struck by a bullet fired by the security forces (*Giuliani and Gaggio v. Italy* [GC], 2011, §§ 337-339).

91. The Court found a violation of Article 13 in conjunction with or in the light of Article 2 in the absence of a remedy providing compensation for non-pecuniary damage in cases concerning:

- the suicide of a prisoner (*Keenan v. the United Kingdom*, 2001, §§ 129-131);
- the murder of a prisoner by his cell-mate (*Paul and Audrey Edwards v. the United Kingdom*, 2002, §§ 98-101);
- deaths caused by the accidental explosion of a rubbish tip near a slum quarter and lack of expedition in administrative proceedings (*Öneryıldız v. Turkey* [GC], 2004, §§ 150-155);
- a man shot dead for refusing to obey police orders (*Bubbins v. the United Kingdom*, 2005, § 172);
- deaths of children killed by their father, owing to a lack of police protection (*Kontrová v. Slovakia*, 2007, §§ 63-65);
- suicide after voluntary transfer to psychiatric facility (*Reynolds v. the United Kingdom*, 2012, §§ 61-69);
- suicide in pre-trial detention in an ordinary prison unit of a man who suffered from psychiatric disorders (*Haugen v. Norway*, 2024, §§ 162-165);

7. Violation of Article 13 of the Convention in the light of Articles 2 and 3.
8. Violation of Article 13 of the Convention in the light of Articles 2 and 3.
9. Violation of Article 13 of the Convention in the light of Articles 2 and 3.
10. No violation of Article 13 of the Convention in conjunction with Articles 2 or 3.

- the downing of flight MH17 as a consequence of the firing, from separatist-controlled territory, of a missile supplied by Russia, resulting in the deaths of all 298 civilians on board (*Ukraine and the Netherlands v. Russia* [GC], 2025, §§ 510-514).

92. The Court found no violation of Article 13 in the light of Article 2 concerning compensation for the non-pecuniary damage sustained, absent an arguable complaint, following the death of an individual in a car accident caused by a third party (*Zavoloka v. Latvia*, 2009, §§ 40-42).

B. Article 13 of the Convention in conjunction with or in the light of Article 3

Article 3 of the Convention – Prohibition of torture

"No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

HUDOC keywords

Torture (3) – Inhuman treatment (3) – Inhuman punishment (3) – Degrading treatment (3) – Degrading punishment (3) – Effective investigation (3) – Expulsion (3) – Extradition (3) – Positive obligations (3)

1. Allegations of torture

a. General principles

93. The nature of the right safeguarded under Article 3 of the Convention has implications for Article 13. Where an individual has an arguable claim that he has been tortured by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (*Aksoy v. Turkey*, 1996, § 98; *Aydın v. Turkey*, 1997, § 103).

94. Where the Court has found a violation of Article 3 under its procedural head for a lack of effectiveness of the investigation, it may take the view that it has already examined the legal issue and that no separate issue arises under Article 13 (*Iorgov v. Bulgaria*, 2004, § 90; *Gömi and Others v. Turkey*, 2006, § 83; *Šečić v. Croatia*, 2007, § 61; *Zelilof v. Greece*, 2007, § 64; *Rizvanov v. Azerbaijan*, 2012, § 66; *Jeronovičs v. Latvia* [GC], 2016, § 125; *Aleksandr Andreyev v. Russia*, 2016, § 71; *Olisov and Others v. Russia*, 2017, § 92).

95. However, the requirements of Article 13 are broader than a Contracting State's obligation under Article 3 (as under Articles 2 and 5) to conduct an effective investigation into the disappearance of a person who has been shown to be under their control and for whose welfare they are accordingly responsible (*Khashiyev and Akayeva v. Russia*, 2005, § 183; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 256; *Nasr and Ghali v. Italy*, 2016, § 332).

i. Thorough and effective investigations

96. Given the fundamental importance of the prohibition of torture and the especially vulnerable position of torture victims, Article 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation of incidents of torture (*Aksoy v. Turkey*, 1996, § 98; *Aydın v. Turkey*, 1997, § 103).

97. It is true that no express provision exists in the Convention such as can be found in Article 12 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which imposes a duty to proceed to a "prompt and impartial" investigation whenever

there is a reasonable ground to believe that an act of torture has been committed. However, in the Court's view, such a requirement is implicit in the notion of an "effective remedy" under Article 13 (*Aksoy v. Turkey*, 1996, § 98; *mutatis mutandis*, *Soering v. the United Kingdom*, 1989, § 88).

98. Where alleged failure by the authorities to protect persons from the acts of private persons is concerned, Article 13 may not always require that the authorities undertake the responsibility for investigating the allegations. There should, however, be available to the victim or the victim's family a mechanism for establishing any liability of State officials or bodies for acts or omissions involving the breach of their rights under the Convention (*Z and Others v. the United Kingdom* [GC], 2001, § 109; *E. and Others v. the United Kingdom*, 2002, § 110; *O'Keeffe v. Ireland* [GC], 2014, § 115).

ii. Compensation

99. Where a right as fundamental as the prohibition of torture and inhuman or degrading treatment is at stake, Article 13 requires an award of compensation where appropriate. Compensation for the non-pecuniary damage flowing from the breach should in principle be part of the range of available remedies (*Z and Others v. the United Kingdom* [GC], 2001, § 109; *McGlinchey and Others v. the United Kingdom*, 2003, § 63).

100. The Court itself will often award just satisfaction, recognising pain, stress, anxiety and frustration as rendering compensation for non-pecuniary damage appropriate (*McGlinchey and Others v. the United Kingdom*, 2003, § 66).

b. Selected examples

101. The Court found a violation of Article 13 in the light of Article 2 in the absence of an effective criminal investigation, entailing the ineffectiveness of any other remedy that might be available, including civil remedies such as a compensation claim, in the following examples of the use of force by State agents:

- police custody or imprisonment (*Aksoy v. Turkey*, 1996, §§ 99-100; *Aydın v. Turkey*, 1997, §§ 104-109; *Assenov and Others v. Bulgaria*, 1998, § 118; *Büyükdağ v. Turkey*, 2000, §§ 65-69; *Batı and Others v. Turkey*, 2004, §§ 145-149; *Chitayev v. Russia*, 2007, §§ 202-203);
- attack on a village by security forces (*İlhan v. Turkey* [GC], 2000, §§ 98-103);
- extraordinary rendition of detainees to CIA agents (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC][11], 2012, §§ 258-262; *Nasr and Ghali v. Italy*[12], 2016, §§ 334-337; see also paragraph 143 of this Guide).

102. The Court found a violation of Article 13 in conjunction with Article 3 in the absence of an effective remedy by which to examine the applicants' allegations concerning the lack of protection by the authorities against acts of private persons in cases concerning:

- children who were victims of negligence and serious abuse on account of ill-treatment by their parents (*Z and Others v. the United Kingdom* [GC], 2001, §§ 109-111; see also paragraph 104 of this Guide);
- children who were victims of sexual abuse by their stepfather (*D.P. and J.C. v. the United Kingdom*[13], 2002, §§ 136-138);

11. Violation of Article 13 of the Convention in conjunction with Articles 3, 5 and 8.
12. Violation of Article 13 of the Convention in conjunction with Articles 3, 5 and 8 in respect of the first applicant and violation of Article 13 of the Convention in conjunction with Articles 3 and 8 in respect of the second applicant.
13. Violation of Article 13 of the Convention in the light of Articles 3 or 8.

- a child who was the victim of sexual abuse by a teacher in a State school (*O'Keeffe v. Ireland* [GC], 2014, §§ 184-187);
- a prisoner who was a heroin addict suffering from withdrawal symptoms (*McGlinchey and Others v. the United Kingdom*, 2003, §§ 64-67; see also paragraph 104 of this Guide).

103. In *Hüseyin Esen v. Turkey*, 2006, (§§ 56-64), the Court found a violation of Article 13 in the light of Article 3 on account of the ineffectiveness of criminal proceedings, which had first led to the conviction of police officers for acts of torture against a man held in police custody, but which had subsequently become time-barred, thus annulling the conviction.

104. The Court found a violation of Article 13 in the light of Article 3 in the absence of a remedy enabling compensation for non-pecuniary damage in cases concerning:

- children who were victims of negligence and serious abuse on account of ill-treatment by their parents (*Z and Others v. the United Kingdom* [GC], 2001, §§ 110-111);
- children who were victims of sexual and physical abuse by their mother's partner (*E. and Others v. the United Kingdom*, 2002, §§ 111-116);
- a prisoner who was a heroin addict suffering from withdrawal symptoms (*McGlinchey and Others v. the United Kingdom*, 2003, §§ 64-67);
- a soldier with health problems punished by excessive physical exercises (*Chember v. Russia*, 2008, §§ 71-73);
- poor living conditions in a social care home for people with mental disorders (*Stanev v. Bulgaria* [GC], 2012, §§ 219-221);
- police ill-treatment of a man in order to extract a confession (*Poghosyan and Baghdasaryan v. Armenia*, 2012, §§ 44-48).

105. In the case of *Association Innocence en Danger and Association Enfance et Partage v. France*, 2020, §§ 188-196, the Court found no violation of Article 13 in conjunction with Article 3 as the fact that the applicant association did not fulfil the statutory conditions to sue the French State (on grounds of malfunctioning of the justice system, because of a failure to take necessary and appropriate measures to protect a child from parental ill-treatment leading to death), could not suffice for a finding that, as a whole, the remedy did not comply with Article 13. The conditions for bringing proceedings to establish State liability had been relaxed over time by French case-law. Thus, the State's liability for "gross negligence" could be established by an aggregate series of more minor negligent acts resulting in the malfunctioning of the justice system. It did not appear unreasonable for the French legislature to have laid down rules for the State's civil liability to be engaged in this particular context of protecting the independence of the justice system, in the light of its complexity and the specificity of its adjudicatory powers, including investigative and police activities. However, the choice of such rules had to ensure a remedy that was effective both in practice and in law.

106. In the case of *Loste v. France*, 2022 (§§ 67-78), the Court found a violation of Article 13 in conjunction with Articles 3 and 9 concerning an action for damages (to establish the liability of the State for ill-treatment of the applicant by the husband of a certified childminder for 12 years during her placement with a foster family, and for the failure by the family to comply with the undertaking they had given in the form of a religious neutrality clause to respect the Muslim faith of the applicant and her family). The remedy had been ineffective as the administrative courts had showed excessive formalism in dismissing the applicant's action on the basis of a four-year limitation rule. The courts had not questioned the applicant, as provided by law, about the date from which she had had "sufficient information" enabling her to demonstrate that the damage she had suffered was attributable to the administrative authorities and to bring an action.

2. Conditions of detention

a. General principles

107. Where the fundamental rights of a prisoner under Article 3 are concerned, the preventive and compensatory remedies have to be complementary in order to be considered effective (*Ananyev and Others v. Russia*, 2012, § 98; *Torreggiani and Others v. Italy*, 2013, § 50; *Volodya Avetisyan v. Armenia*, 2022, § 29).

108. The decisive question in assessing the effectiveness of a remedy concerning a complaint of ill-treatment is whether the applicant can raise this complaint before domestic courts in order to obtain direct and timely redress, and not merely an indirect protection of the rights guaranteed in Article 3 of the Convention (*Mandić and Jović v. Slovenia*, 2011, § 107). Thus, an exclusively compensatory remedy cannot be regarded as a sufficient response to allegations of detention or confinement conditions in breach of Article 3, since it would have no "preventive" effect, in the sense that it would not be capable of preventing the continuation of the alleged violation or of enabling prisoners to obtain an improvement in their material conditions of detention (*Cenbauer v. Croatia* (dec.), 2004; *Norbert Sikorski v. Poland*, 2009, § 116; *Mandić and Jović v. Slovenia*, 2011, § 116).

109. The sole prospect of future compensation would legitimise particularly severe suffering in breach of Article 3 and unacceptably weaken the legal obligation on the State to bring its standards of detention into line with the Convention requirements (*Ananyev and Others v. Russia*, 2012, § 98; *Varga and Others v. Hungary*, 2015, § 49).

110. The case of *Ulemek v. Croatia*, 2019, describes the relationship between preventive and compensatory remedies for detention conditions in breach of Article 3.

111. Prisoners must be able to avail themselves of remedies without having to fear that they will incur punishment or negative consequences for doing so (*Neshkov and Others v. Bulgaria*, 2015, § 191).

Preventive remedies

112. Where an applicant has been imprisoned in conditions which breach Article 3, the best possible form of redress is the prompt termination of the violation of the right not to be subjected to inhuman and degrading treatment. Preventive remedies must ensure a prompt and diligent handling of prisoners' complaints by an independent authority or tribunal empowered to order measures of relief (*Ananyev and Others v. Russia*, 2012, §§ 214 and 219). It has to consider the substance of the Convention complaint (*Neshkov and Others v. Bulgaria*, 2015, § 183).

For instance, for a preventive remedy with respect to conditions of detention before an administrative authority to be effective, this authority must (a) be independent of the authorities in charge of the prison system, (b) secure the inmates' effective participation in the examination of their grievances, (c) ensure the speedy and diligent handling of the inmates' complaints, (d) have at its disposal a wide range of legal tools for eradicating the problems that underlie these complaints, and (e) be capable of rendering binding and enforceable decisions (*Neshkov and Others v. Bulgaria*, 2015, §§ 182-183 and 282-283). Any such remedy must also be capable of providing relief in reasonably short time-limits (*Torreggiani and Others v. Italy*, 2013, § 97).

Consequently, a complaint to a prosecutor, which does not give the person using it a personal right to the exercise by the State of its supervisory powers, and a complaint to an ombudsman, who cannot give enforceable and binding decisions, cannot be regarded as effective remedies (*Ananyev and Others v. Russia*, 2012, §§ 102-106). However, a complaint to a sentence enforcement judge or to an administrative court represents an effective remedy (*Stella and Others v. Italy* (dec.), 2014, §§ 46-55; *Atanasov and Apostolov v. Bulgaria* (dec.), 2017). A system in which a complaint is first

examined by a prison authority, with a further judicial review before the judge responsible for the execution of sentences, will be an effective remedy (*Domján v. Hungary* (dec.), 2017, §§ 21-23).

A remedy that is otherwise effective may prove not to be satisfactory in the particular circumstances of a case. Thus, for example, if the reply to a complaint by a prisoner to the judicial authorities is given only by means of a letter and not a decision, as required by the relevant domestic law, this circumstance is capable of rendering the remedy ineffective (*Lonić v. Croatia*, 2014, §§ 57-63). Similarly, a complaint to the public prosecutor, who is normally independent of the prison service, does not represent an effective remedy if, in the particular circumstances of the case, the public prosecutor has not been able to examine documents concerning the detention conditions of a prisoner under a high security classification (*Csüllög v. Hungary*, 2011, §§ 48-49).

113. In the context of preventive remedies, the relief may, depending on the nature of the underlying problem, consist either in measures that only affect the inmate concerned or wider measures that are capable of resolving situations of massive and concurrent violations of prisoners' rights resulting from the inappropriate conditions in a given correctional facility (*Ananyev and Others v. Russia*, 2012, § 219; *Neshkov and Others v. Bulgaria*, 2015, § 189).

Compensatory remedies

114. In addition, anyone who has been detained in conditions which fail to respect the individual's human dignity must be able to obtain redress for the violation (*Benediktov v. Russia*, 2007, § 29; *Ananyev and Others v. Russia*, 2012, §§ 97-98 and 221-231).

115. Remedies must enable individuals who have been imprisoned in inhuman or degrading conditions pending trial *inter alia* to claim compensation, of an amount which must not be unreasonable in comparison with the awards made by the Court in similar cases (*Ananyev and Others v. Russia*, 2012, §§ 221-231; *Yarashonen v. Turkey*, 2014, § 61). However, the Court found that the fact that the applicant's compensation claim had only been satisfied in part was not sufficient in itself to call into question the effectiveness of a compensatory remedy provided for under Estonian law (*Nikitin and Others v. Estonia*, 2019, § 216). It has also pointed out that, under the subsidiarity principle, a broad margin of appreciation must be afforded to the national authorities for the evaluation of the compensation to be awarded. The evaluation is to be made in accordance with the State's own legal system and traditions, taking into account the standard of living in the country even if that results in amounts that fall short of those fixed by the Court in similar cases (*Shmelev v. Russia* (dec.), 2020, §§ 91-94).

116. A compensatory remedy should be accessible to any current or former inmate who has been held in inhuman or degrading conditions in breach of Article 3 and has made an application to this effect. The burden of proof imposed on the claimant should not be excessive. While inmates may be required to make a prima facie case and produce such evidence as is readily accessible, such as a detailed description of the impugned conditions, witness' statements, or complaints to and replies from the prison authorities or supervisory bodies, it then falls to the authorities to refute the allegations (*Neshkov and Others v. Bulgaria*, 2015, § 184). Poor conditions of detention give rise to a strong presumption that they have caused non-pecuniary damage to the aggrieved person (*Iovchev v. Bulgaria*, 2006, § 146; *Neshkov and Others v. Bulgaria*, 2015, § 190). The domestic rules and practice governing the operation of the remedy must reflect the existence of this presumption rather than make the award of compensation conditional on the claimant's ability to prove the fault of specific officials or bodies and the unlawfulness of their actions (*Ananyev and Others v. Russia*, 2012, § 229) or to prove, through extrinsic evidence, the existence of non-pecuniary damage in the form of emotional distress (*Neshkov and Others v. Bulgaria*, 2015, § 190).

117. Remedies must enable prisoners who are held pending trial in inhuman or degrading conditions to seek forms of relief which may include a reduction in sentence, provided that the reduction is implemented expressly for that reason and its impact on the length of sentence is

measurable (*Stella and Others v. Italy* (dec.), 2014, §§ 59-63; *Varga and Others v. Hungary*, 2015, § 109).

b. Selected examples

118. The Court has found a violation of Article 13 in conjunction with Article 3 in the following cases:

- conditions of detention (*Assenov and Others v. Bulgaria*, 1998, §§ 114-118, in police custody; *Ananyev and Others v. Russia*, 2012, §§ 100-119; *Neshkov and Others v. Bulgaria*, 2015, §§ 192-213; *Varga and Others v. Hungary*, 2015, §§ 51-65; *G.B. and Others v. Turkey*, 2019, §§ 125-137, of a migrant mother and her minor children; *Barbotin v. France*, 2020, §§ 50-59; *J.M.B. and Others v. France*, 2020, §§ 212-221; *Sukachov v. Ukraine*, 2020, §§ 118-125; *Dikaiou and Others v. Greece*, 2020, §§ 65-73, about HIV-positive inmates; *Volodya Avetisyan v. Armenia*, 2022, §§ 29-34; *Ottlakán v. Hungary*, 2026, §§ 41-48, of a life prisoner);
- measures prolonging the solitary confinement of a convicted terrorist for eight years (*Ramirez Sanchez v. France* [GC], 2006, §§ 162-166);
- repeated prison transfers and frequent body searches imposed on a high-risk prisoner (*Khider v. France*, 2009, §§ 141-145);
- repeated transfers and special detention measures (*Bamouhammad v. Belgium*, 2015, §§ 168-173);
- transport of prisoners (*Tomov and Others v. Russia*, 2019, §§ 143-156);
- enforcement of a prison disciplinary sanction in a disciplinary cell for forty-five days (*Payet v. France*, 2011, §§ 131-134);
- systemic failure rendering ineffective an order to provide for the basic needs of prisoners during a strike of prison staff (*Clasens v. Belgium*, 2019, §§ 44-47);
- repeated and random strip-searches imposed on prisoner in conjunction with prison visits (*Roth v. Germany*, 2020, §§ 94-98).

119. In *Mozer v. the Republic of Moldova and Russia* [GC], 2016 (§§ 213-218), the Court found no violation of Article 13 in the light of Articles 3, 8 and 9 on the part of the Republic of Moldova as regards the existence of effective domestic remedies by which to complain of the violation of Convention rights for an individual imprisoned in a separatist region of that State.

120. In the case of *Ulemek v. Croatia*, 2019 (§§ 93-119), the Court declared inadmissible as manifestly ill-founded the part of the application concerning Article 13 in the light of Article 3, given that there was nothing in the applicant's arguments that could call into question the general ineffectiveness of the preventive and compensatory remedies in Croatia concerning allegedly unsatisfactory conditions of detention.

121. In the case of *Shmelev v. Russia* (dec.), 2020 (§§ 121-142), the Court declared the application inadmissible for non-exhaustion of domestic remedies, as the applicants had not exercised a newly introduced compensatory remedy available to individuals complaining that they had been imprisoned, before or after trial, in conditions that did not comply with domestic standards.

122. In the case of *Polgar v. Romania*, 2021 (§§ 75-99), the Court accepted that an action in tort had been effective, from 13 January 2021 onwards, for the purpose of obtaining compensation for poor conditions of detention or transport that had now ended. However, the Court found a violation of Article 13 in conjunction with Article 3 because the applicant, having taken that action, had not secured a full acknowledgment of the violation of the Convention and had not received sufficient compensation. The final domestic decision was given on 13 February 2019, well before the date taken by the Court as the starting point for the effectiveness of the remedy in question.

123. In the case of *Sekour v. France*, 2026 (§ 140), the Court found no violation of Article 13, in conjunction with Article 3, holding that an application to set aside an administrative decision, together with the *référé-suspension* and *référé-liberté* applications, constituted effective remedies against measures prolonging the solitary confinement of a convicted terrorist for protective or security reasons.

3. Asylum, expulsion and extradition

a. General principles

124. Article 13 is applicable to asylum and expulsion/extradition procedures whereas Article 6 of the Convention, with its range of procedural rights guaranteeing the right to a fair trial, is not applicable to the domestic proceedings in those areas.

125. As regards applications concerning asylum and immigration, the Court confines itself, in accordance with the subsidiarity principle, to assessing the effectiveness of the domestic proceedings and ensuring that they respect human rights (*M.S.S. v. Belgium and Greece* [GC], 2011, §§ 286-287; *I.M. v. France*, 2012, § 136). Its main concern is whether effective guarantees exist to protect the applicant against arbitrary *refoulement*, be it direct or indirect, to the country from which he or she has fled (*T.I. v. the United Kingdom* (dec.), 2000; *Müslim v. Turkey*, 2005, §§ 72-76).

126. An individual's complaint that his or her removal to another State would expose him or her to a risk of treatment prohibited by Articles 2 and 3 of the Convention must imperatively be subject to close scrutiny by a "national authority" and must be examined speedily (*Jabari v. Turkey*, 2000, § 39; *Shamayev and Others v. Georgia and Russia*, 2005, § 448; *Gebremedhin [Gaberamadhien] v. France*, 2007, § 58; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 198; *De Souza Ribeiro v. France* [GC], 2012, § 82). While leaving a certain margin of appreciation to the States, conformity with Article 13 requires that the competent body must be able to examine the substance of the complaint and afford proper reparation (*M.S.S. v. Belgium and Greece* [GC], 2011, § 387).

127. An excessively short time-limit for filing an application (for example in fast-track asylum procedures), and/or for appealing against a subsequent removal decision, may render the procedure ineffective in practice, and thus in breach of the requirements of Article 13 in conjunction with Article 3 (*I.M. v. France*, 2012, §§ 136-160; *R.D. v. France*, 2016, §§ 55-64). But remedies may prove effective where the asylum-seeker is heard and enjoys safeguards for the purposes of making his or her case, in spite of tight deadlines (*E.H. v. France*, 2021, §§ 174-207).

128. The notion of an effective remedy requires independent scrutiny of the claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3, given the irreversible nature of the harm that might occur if the risk of ill-treatment materialised. This scrutiny must be carried out without regard to what the person may have done to warrant expulsion or to any perceived threat to the national security of the expelling State (*Chahal v. the United Kingdom*, 1996, § 151).

129. In addition, an effective remedy must provide for an automatic suspensive effect in expulsion cases (*A.M. v. the Netherlands*, 2016, § 66). A remedy with a merely "theoretical" suspensive effect will not be sufficient.

130. However, a suspensive remedy is not necessary as to the practical arrangements of a deportation which have nothing to do with an examination or risks governing the choice of destination country (*Moustahi v. France*, 2020, §§ 152-155). Such practicalities are often known to the authorities only a few hours prior to implementation and in themselves are not usually capable of constituting a violation of Article 3. The possibility of a remedy that could be used by the applicant at a subsequent stage would thus suffice to comply with this Article.

131. The individuals concerned must receive sufficient information concerning their situations to be able to make use of the appropriate remedies and to substantiate their complaints, and to have access to interpreters and legal assistance (*Abdolkhani and Karimnia v. Turkey*, 2009, §§ 114-115; *M.S.S. v. Belgium and Greece* [GC], 2011, §§ 301-304 and 319; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 204).

In the case of *M.S.S. v. Belgium and Greece* [GC], 2011 (§§ 294-321), the Court noted the following shortcomings among others: (i) insufficient information on the asylum procedures to be followed in the absence of a reliable system of communication between authorities and asylum-seekers, and malfunctions in the notification procedure in respect of "persons of no known address"; (ii) the very short three-day time-limit within which to report to the police, considering how difficult it was to gain access to the police premises; (iii) a shortage of interpreters and lack of training of the staff responsible for conducting the individual interviews; (iv) a lack of legal aid effectively depriving the asylum-seekers of legal counsel; (v) excessively lengthy delays in receiving a decision; (vi) the fact that an application to the Supreme Administrative Court did not offset the lack of guarantees surrounding the examination of asylum applications on the merits, owing to the lack of expedition in the proceedings; and (vii) the risks of *refoulement* faced by the applicant in practice before any decision was taken on the merits of his case. The Court found that there had been a violation of Article 13 in conjunction with Article 3 because of the deficiencies in the Greek authorities' examination of the applicant's asylum request and the risk he faced of being returned directly or indirectly to his country of origin without any serious examination of the merits of his asylum application and without affording him access to an effective remedy.

132. Since the effects of the violation may be irreversible in the expulsion context, the Court has decided that the loss of victim status for alleged violations of Articles 2 or 3, where the individual no longer faces expulsion, is not in principle sufficient to render the complaint unarguable or to deprive that individual of his status as a victim under Article 13 (*Gebremedhin [Gaberamadhien] v. France*, 2007, § 56; *I.M. v. France*, 2012, § 100; *M.A. v. Cyprus*, 2013, § 118; *contrast Mir Isfahani v. the Netherlands* (dec.), 2008). Moreover, the fact that the Court had declared inadmissible, as incompatible *ratione personae*, complaints under Articles 2 and 3 of the Convention since the applicants no longer faced a risk of deportation from Turkey to Syria, or elsewhere, did not necessarily exclude the operation of Article 13 (*Sakkal and Fares v. Turkey* (dec.), 2016, § 63).

b. Selected examples

133. The Court found a violation of Article 13 in conjunction with or in the light of Article 3 in the absence of effective and suspensive remedies to address:

- the expulsion or extradition of applicants to States where they risked ill-treatment:
  - Afghanistan (*M. and Others v. Bulgaria*[14], 2011, §§ 127-133; see also paragraph 234 of this Guide, on the applicant's complaint under Article 8);
  - Afghanistan, from Greece (*M.S.S. v. Belgium and Greece* [GC], 2011, §§ 294-321);
  - Cameroon (*Yoh-Ekale Mwanje v. Belgium*, 2011, §§ 106-107, with no certainty that the applicant, who was HIV-positive at an advanced stage, could receive appropriate medical treatment there);
  - Eritrea (*Gebremedhin [Gaberamadhien] v. France*, 2007, §§ 58-67, where the applicant, an asylum-seeker, had been placed in the airport transit area after being refused leave to enter France);
  - the Russian Federation (Chechnya) via Belarus (*M.K. and Others v. Poland*, 2020, §§ 219-220, concerning a refusal by border guards to register asylum applications with

14. Violation of Article 13 of the Convention in the light of Articles 3 and 8.

summary return to a third State, Belarus, together with a risk of indirect *refoulement* to the State of origin, the Russian Federation (Chechnya) and of ill-treatment there);
  - Greece, from Belgium (*M.S.S. v. Belgium and Greece* [GC], §§ 385-396);
  - India (*Chahal v. the United Kingdom*, 1996, §§ 153-155, concerning a Sikh separatist accused of political activism);
  - Iran (*Jabari v. Turkey*, 2000, §§ 49-50, where the applicant risked death by stoning for adultery);
  - Iran or Iraq (*Abdolkhani and Karimnia v. Turkey*, 2009, §§ 113-117);
  - Morocco (*A.C. and Others v. Spain*[15], 2014, §§ 90-105, concerning individuals of Sahrawi origin whose application for international protection was rejected);
  - Sudan (*I.M. v. France*, 2012, §§ 136-160) and Syria (*M.A. v. Cyprus*[16], 2013, §§ 134-143), where only the application of Rule 39 could suspend the applicants' removal);
  - Syria (*S.K. v. Russia*, 2013, §§ 78-99; *Akkad v. Turkey*, 2022, §§ 82-92, concerning remedies available under Turkish law, the use of which by the applicant had been hampered by hasty and misleading actions of the authorities prior to his removal);
  - Turkmenistan (*Allanazarova v. Russia*, 2017, §§ 100-115);
- lack of information for Chechen applicants about decisions concerning their extradition to Russia (*Shamayev and Others v. Georgia and Russia*, 2005, §§ 449-466);
- complaints by migrants, Somali and Eritrean nationals, intercepted on the high seas and returned to the country from which they had come, Libya, by which to obtain a thorough and rigorous assessment of their applications before the removal measure was enforced (*Hirsi Jamaa and Others v. Italy* [GC][17], 2012, §§ 201-207);
- rejection as inconclusive of documents submitted by asylum-seekers from Afghanistan, subject to a refusal-of-entry decision, without prior verification of their authenticity (*Singh and Others v. Belgium*, 2012, §§ 86-105);
- risk of immediate return to Turkey without an *ex nunc* assessment by the Greek authorities of the applicant's personal situation (*B.A.C. v. Greece*, 2016, §§ 66-67);
- expedited return to Turkey of a journalist, 24 hours after his arrest at the border, rendering the available remedies ineffective in practice and therefore inaccessible (*D v. Bulgaria*, 2021, §§ 131-135);
- denial of applicant's requests for asylum without any assessment as to the risk incurred on his return to Bangladesh on account of his investigation as a journalist into election fraud (*S.H. v. Malta*, 2022, §§ 80-99);
- removal from Croatia of the applicant who had been denied access to a lawyer and to the international protection procedure (*Y.K. v. Croatia*, 2025, § 131).

134. The Court found no violation of Article 13 in conjunction with or in the light of Article 3 in view of the effective remedies available:

- for complaints based on the risks in the event of expulsion or extradition to:
  - Algeria (*Bensaid v. the United Kingdom*, 2001, §§ 56-58);
  - the USA (*Soering v. the United Kingdom*, 1989, §§ 121-124);
  - Iran (*G.H.H. and Others v. Turkey*, 2000, §§ 37-40);
  - Morocco (*E.H. v. France*, 2021, §§ 174-207);

15. Violation of Article 13 of the Convention in conjunction with Articles 2 and 3.
16. Violation of Article 13 of the Convention in conjunction with Articles 2 and 3.
17. Violation of Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4.

  - Somalia (*Salah Sheek v. the Netherlands*, 2007, § 154);
  - Sri Lanka (*Vilvarajah and Others v. the United Kingdom*, 1991, §§ 121-127);
- in the absence of any obligation under Article 13 for States to create a second level of appellate jurisdiction with suspensive effect in asylum cases (*A.M. v. the Netherlands*, 2016, §§ 67-71); the requirements of Article 13 had been satisfied on account of the suspensive effect of the asylum procedure.

135. In *Sakkal and Fares v. Turkey* (dec.), 2016 (§ 64), the Court found the application inadmissible as manifestly ill-founded, the applicants having had effective remedies by which to challenge the decisions to deport them to Syria in the light of Article 3.

C. Article 13 of the Convention in conjunction with or in the light of Article 4[18]

Article 4 of the Convention – Prohibition of slavery and forced labour

"1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. For the purpose of this Article the term 'forced or compulsory labour' shall not include:

(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

HUDOC keywords

Effective investigation (4) – Positive obligations (4) – Slavery (4-1) – Servitude (4-1) – Trafficking in human beings (4-1) – Forced labour (4-2) Compulsory labour (4-2) – Work required of detainees (4-3-a) – Work required to be done during conditional release (4-3-a) – Service of military character (4-3-b) – Alternative civil service (4-3-b) – Service exacted in case of emergency (4-3-c) – Service exacted in case of calamity (4-3-c) – Normal civic obligations (4-3-d)

136. Where the Article 13 complaint is subsumed by a complaint alleging a violation of the positive procedural obligations under Article 4 of the Convention, those obligations form *lex specialis* in relation to the general obligations under Article 13.

137. In the case of *C.N. and V. v. France*, 2012 (§§ 113-114), after examining the merits of the complaint that no effective investigation had been carried out from the standpoint of the State's positive obligations under Article 4, the Court found that there had been no violation of that provision on this count. It accordingly considered it unnecessary to examine separately the complaint concerning the alleged violation of Article 13 (see also *C.N. v. the United Kingdom*, 2012, §§ 85-86).

18. See the Guide on Article 4 - Prohibition of slavery and forced labour.

D. Article 13 of the Convention in conjunction with or in the light of Article 5[19]

1. Article 13 of the Convention in conjunction with or in the light of Article 5 § 1

Article 5 § 1 of the Convention – Lawful arrest or detention

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law ..."

HUDOC keywords

> Liberty of person (5-1) – Security of person (5-1) – Deprivation of liberty (5-1) – Procedure prescribed by law (5-1) – Lawful arrest or detention (5-1)

138. The Court has found a violation, or no violation, of Article 13 in conjunction with or in the light of Article 5 in various cases.

139. However, where the Court has found a violation of Article 5 on procedural aspects, it may conclude that it does not need to examine the complaint separately under Article 13, even though it is closely related to the Article 5 complaint and must therefore be declared admissible (*Bazorkina v. Russia*, 2006, § 165; *Imakayeva v. Russia*, 2006, § 197). The Court takes the view that Article 5 contains a certain number of procedural safeguards related to the lawfulness of detention.

140. But the requirements of Article 13 are broader than a Contracting State's obligation under Article 5 to conduct an effective investigation into the disappearance of a person who has been shown to be under its control and for whose welfare it is accordingly responsible (*Kurt v. Turkey*, 1998, § 140; *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 252). Where the relatives of a person have an arguable claim that the latter has disappeared at the hands of the authorities, the notion of an effective remedy for the purposes of Article 13 entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the relatives to the investigatory procedure (*Kurt v. Turkey*, 1998, § 140).

141. In *Kurt v. Turkey*, 1998 (§§ 140-142), the applicant could be considered to have had an arguable complaint that her son had been taken into custody in her village by the security forces and had disappeared in circumstances engaging the responsibility of the authorities. The authorities had a duty to carry out an effective and thorough investigation into the disappearance, for the benefit of the relatives. No investigation had taken place, for the same reasons as those which had led to a finding of a violation of Article 5. The Court thus found a violation of Article 13 in the light of Article 5.

142. In the case of *Syrkin v. Russia* (dec.), 1999, concerning the effectiveness of an investigation by the authorities into the disappearance of a soldier abroad, the Court found the application inadmissible as manifestly ill-founded under Article 13 in conjunction with Article 5. Faced with the difficulties in conducting a search in a foreign country, the authorities had sought international assistance. The authorities had given adequate consideration to the applicant's versions of his son's possible whereabouts and allowed him to consult the material gathered in the course of the investigation. Furthermore, while it was true that the official investigation had not led to a positive

19. See the Guide on Article 5 - Right to liberty and security.

result and had been suspended several times, the Court considered that, generally speaking, the authorities had not failed in their duty to take adequate steps in investigating the disappearance.

In many Chechen disappearance cases, in the light of a violation of Article 5 § 1 for unlawful detention, the Court has found that no separate question arose under Article 13 in the light of Article 5 (*Imakayeva v. Russia*, 2006, § 197; *Luluyev and Others v. Russia*, 2006, § 197; *Chitayev v. Russia*, 2007, § 204; *Baysayeva v. Russia*, 2007, § 159).

143. In the cases of *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012 (§§ 259-262), and *Nasr and Ghali v. Italy*, 2016 (§§ 334-337), in the light of the torture and inhuman or degrading treatment inflicted on the applicants during their extraordinary rendition to CIA agents, the applicants had not had any effective remedies in respect of their complaints under Articles 3, 5 and 8 of the Convention in breach of Article 13 in conjunction with those Articles.

In *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, the applicant should have been able to avail himself of effective and practical remedies capable of leading to the identification and punishment of those responsible and to an award of compensation. No effective criminal investigation had been carried out with regard to the applicant's complaints under Articles 3 and 5, particularly in view of the superficial approach taken by the public prosecutor. Those complaints were never the subject of any serious investigation, being discounted in favour of a hastily reached explanation that he had never been subjected to any of the actions complained of. In addition, no evidence had been submitted to show that the decision to transfer the applicant into the custody of the CIA was reviewed with reference to the question of the risk of ill-treatment or a flagrant breach of his right to liberty and security of person, either by a judicial authority or by any other authority providing sufficient guarantees that the remedy before it would be effective.

In *Nasr and Ghali v. Italy*, 2016, the investigation by the national authorities had been deprived of any effectiveness on account of the application of State secrecy by the executive. It had not been possible to use the evidence covered by State secrecy and there had been no point seeking the extradition of the convicted US agents. As to the civil consequences, it was in practice impossible, in the circumstances, for the applicants to obtain damages.

2. Article 13 of the Convention in conjunction with or in the light of Article 5 §§ 4 and 5

Article 5 §§ 4 and 5 of the Convention – Review of lawfulness of detention

> "4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

HUDOC keywords

> Review of lawfulness of detention (5-4) – Take proceedings (5-4) – Review by a court (5-4) – Speediness of review (5-4) – Procedural guarantees of review (5-4) – Order release (5-4)
>
> Compensation (5-5)

144. On the subject of the review of lawfulness of detention, according to the Court's established case-law, Article 5 §§ 4 and 5 of the Convention constitutes *lex specialis* in relation to the more general requirements of Article 13 and absorbs the latter. If the facts underlying the applicants'

complaint under Article 13 are identical to those examined under Article 5 §§ 4 and/or 5, the Court does not need to examine the allegation of a violation of Article 13, since it has already found a violation of Article 5 §§ 4 and/or 5 (*De Jong, Baljet and Van Den Brink v. the Netherlands*, 1984, § 60; *Chahal v. the United Kingdom*, 1996, § 126; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006, §§ 110-111; *A.B. and Others v. France*, 2016, § 158; see also paragraph 63 of this Guide).

145. In the case of *Gusinskiy v. Russia* (dec.), 2003, concerning the review of the lawfulness of detention by a higher court, which had taken place after the lodging of the application with the Court, it found the application inadmissible for a lack of victim status. The application for supervisory review had acknowledged in substance that the applicant had been deprived of his right to seek a judicial review of the lawfulness of his detention once released. But once that application had been granted, it had resulted in a re-hearing during which the applicant had had a full opportunity to plead his case in substance. The authorities had thus acknowledged the breach of the applicant's rights under Article 13 of the Convention and had then afforded redress for it.

E. Article 13 of the Convention in conjunction with or in the light of Article 6[20]

1. Article 13 of the Convention in conjunction with or in the light of Article 6 § 1

Article 6 of the Convention – Right to a fair hearing

> "1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by [a] tribunal ..."

HUDOC keywords

Reasonable time (6-1)

a. General principles

146. Article 6 § 1 of the Convention is *lex specialis* in relation to Article 13. In many cases where the Court has found a violation of Article 6 § 1 it has not deemed it necessary to rule separately on an Article 13 complaint. Thus, where the Convention right asserted by the individual is a "civil right" recognised under domestic law – such as a property right – the protection afforded by Article 6 § 1 will also be available (*Sporrong and Lönnroth v. Sweden*, 1982, § 88; *Kudła v. Poland* [GC], 2000, § 146). In such circumstances the safeguards of Article 6 § 1, implying the full panoply of a judicial procedure, are stricter than, and absorb, those of Article 13 (*Sporrong and Lönnroth v. Sweden*, 1982, § 88; *Silver and Others v. the United Kingdom*, 1983, § 110; *Campbell and Fell v. the United Kingdom*, 1984, § 123; *Brualla Gómez de la Torre v. Spain*, 1997, § 41).

The Court has applied a similar logic in cases where the applicant's grievance has been directed at the adequacy of an existing appellate or cassation procedure coming within the ambit of both Article 6 § 1 under its "criminal" head and Article 13 (*Kamasinski v. Austria*, 1989, § 110; *Kadubec v. Slovakia*, 1998, § 64).

147. As a general rule, Article 13 is not applicable where the alleged violation of the Convention took place in the context of judicial proceedings (*Pizzetti v. Italy*, Commission's report, 1991, §§ 41; *Menesheva v. Russia*, 2006, § 105; *Ferré Gisbert v. Spain*, 2009, § 39).

20. See the Guides on Article 6 - Right to a fair trial, civil limb and criminal limb.

i. Breach of the right to a hearing within a reasonable time

148. There is, however, no overlap and hence no absorption where the alleged Convention violation that the individual wishes to bring before a "national authority" is a violation of the right to trial within a reasonable time, contrary to Article 6 § 1. The question of whether the applicant in a given case did benefit from trial within a reasonable time in the determination of civil rights and obligations or a criminal charge is a separate legal issue from that of whether there was available to the applicant under domestic law an effective remedy to ventilate a complaint on that ground (*Kudła v. Poland* [GC], 2000, § 147).

149. The Court will examine an applicant's complaint of a failure to ensure a hearing within a reasonable time under Article 13 taken separately, notwithstanding an earlier finding of a violation of Article 6 § 1 for failure to try the applicant within a reasonable time (*Kudła v. Poland* [GC], 2000, § 149).

150. The right of an individual to trial within a reasonable time will be less effective if there exists no opportunity to submit the Convention claim first to a national authority; and the requirements of Article 13 are to be seen as reinforcing those of Article 6 § 1, rather than being absorbed by the general obligation imposed by that Article not to subject individuals to inordinate delays in legal proceedings (*Kudła v. Poland* [GC], 2000, § 152).

151. Thus, the correct interpretation of Article 13 is that that provision guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (*Kudła v. Poland* [GC], 2000, § 156).

152. The absence of any remedy by which to invoke under Article 6 § 1 the right to a hearing within a reasonable time gives rise to a violation of Article 13 in conjunction with or in the light of Article 6 § 1 (*Konti-Arvantini v. Greece*, 2003, §§ 29-30; *Nastou v. Greece (no. 2)*, 2005, §§ 46-47).

ii. Preventive remedies and compensatory remedies

153. It can be seen, both from the judgment in *Kudła v. Poland* [GC], 2000 (§ 159) and the decision in *Mifsud v. France* (dec.) [GC], 2002 (§ 17), that Article 13 provides for two options: a remedy is effective if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (*Sürmeli v. Germany* [GC], 2006, § 99).

154. Article 13 thus allows a State to choose between a "preventive or expediting" remedy, designed to expedite the proceedings in order to prevent them from becoming excessively lengthy, and a "reparatory, compensatory or pecuniary remedy", providing for *ex post facto* redress for delays already occurring, whether the proceedings are still pending or have come to an end.

155. While a preventive remedy is preferable, a compensatory remedy may be regarded as effective where the proceedings have already been excessively lengthy and there is no preventive remedy available (*Kudła v. Poland* [GC], 2000, § 158; *Scordino v. Italy (no. 1)* [GC], 2006, § 187). As to the appropriateness and sufficiency of such redress, that conclusion applies only on condition that an application for compensation remains itself an effective, adequate and accessible remedy in respect of the excessive length of judicial proceedings (*Mifsud v. France* (dec.) [GC], 2002, § 17).

156. Some States, such as Austria, Croatia, Spain, Poland and Slovakia, have understood the situation perfectly by choosing to combine two types of remedy, one designed to expedite the proceedings and the other to afford compensation (*Cocchiarella v. Italy* [GC], 2006, § 77; *Scordino v. Italy (no. 1)* [GC], 2006, § 186). Those States may award amounts that are less than those awarded by the Court. However, these sums must not be unreasonable in comparison with the awards made by the Court in similar cases (*Cocchiarella v. Italy* [GC], 2006, § 213). Thus, in the case of *Rutkowski and Others v. Poland*, 2015 (§§ 176 and 181-186), the compensation awarded to the first applicant

amounted to only 5.5% of what the Court would have awarded him had there been no domestic remedy and thus did not constitute "appropriate and sufficient redress" to compensate for the excessive length of the proceedings.

157. Preventive and compensatory remedies must be available in theory and in practice in order to be effective (*Burdov v. Russia (no. 2)*, 2009, § 104; *Panju v. Belgium*, 2014, §§ 62-63).

158. In the case of *Bara and Kola v. Albania*, 2021 (§§ 103-124), the Court found that the new acceleratory/preventive and compensatory remedy introduced to speed up the civil procedure in response to the leading judgment of the Court in *Luli and Others v. Albania*, 2014, was effective in theory but not in practice.

159. The violation of a right to a trial within a reasonable time implies a continuing situation and a delay in pending proceedings is capable of causing the applicant considerable inconvenience and prolonged uncertainty. Thus, when he or she finds that the length of proceedings has been excessive, an applicant must have the possibility of seeking redress before the domestic courts at any time during the main proceedings (*Verrascina and Others v. Italy*, 2022, § 26).

α. Preventive remedies

160 As regards preventive remedies, the Court has explained that the best solution in absolute terms is indisputably, as in many spheres, prevention (*Sürmeli v. Germany* [GC], 2006, § 100; *Wasserman v. Russia (no. 2)*, 2008, § 47; *Burdov v. Russia (no. 2)*, 2009, § 98; *Olivieri and Others v. Italy*, 2016, § 45).

161. Where the judicial system is deficient in respect of the Article 6 § 1 reasonable time requirement, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. Such a remedy offers an undeniable advantage over a remedy affording only compensation since it also prevents a finding of successive violations in respect of the same set of proceedings and does not merely repair the breach *a posteriori*, as does a compensatory remedy (*Giuseppina and Orestina Procaccini v. Italy* [GC], 2006, § 72; *Scordino v. Italy (no. 1)* [GC], 2006, § 183; *Hiernaux v. Belgium*, 2017, § 50).

162. Likewise, in cases concerning non-enforcement of judicial decisions, any domestic means to prevent a violation by ensuring timely enforcement is, in principle, of greatest value (*Burdov v. Russia (no. 2)*, 2009, § 98). However, where a judgment is delivered in favour of an individual against the State, the former should not, in principle, be compelled to use such means (*Metaxas v. Greece*, 2004, § 19): the burden to comply with such a judgment lies primarily with the State authorities, which should use all means available in the domestic legal system in order to speed up the enforcement, thus preventing violations of the Convention (*Akashev v. Russia*, 2008, §§ 21-22).

163. In criminal matters the Court has found it satisfactory to take account of the length of the proceedings in granting a reduction of sentence, in an express and measurable manner (*Beck v. Norway*, 2001, § 27; *Cocchiarella v. Italy* [GC], 2006, § 77).

β. Compensatory remedies

164. As regards compensatory remedies, States can also choose to introduce only a compensatory remedy, without that remedy being regarded as ineffective (*Mifsud v. France* (dec.) [GC], 2002; *Scordino v. Italy (no. 1)* [GC], 2006, § 187; *Burdov v. Russia (no. 2)*, 2009, § 99). In the case of *Hiernaux v. Belgium*, 2017 (§§ 59-62), in the absence of an effective preventive remedy, the Court found no violation of Article 13 in the light of Article 6 § 1, as the compensatory remedy allowed a complaint about the length of the criminal proceedings, including during the judicial investigation or at the committal stage.

165. Where a State has taken a significant step by introducing a compensatory remedy, the Court must leave a wider margin of appreciation to the State to allow it to organise the remedy in a manner consistent with its own legal system and traditions and consonant with the standard of living in the country concerned (*Cocchiarella v. Italy* [GC], 2006, § 80). The level of compensation depends on the characteristics and effectiveness of the domestic remedy. The Court can perfectly well accept that a State which has introduced a number of remedies, one of which is designed to expedite proceedings and one to afford compensation, will award amounts which – while being lower than those awarded by the Court – are not unreasonable (*ibid.*, §§ 95-97).

The Court is nonetheless required to verify whether the way in which the domestic law is interpreted and applied produces consequences that are consistent with the Convention principles, as interpreted in the light of the Court's case-law (*Burdov v. Russia (no. 2)*, 2009, § 99).

166. To that end the Court has set key criteria for verification of the effectiveness of a compensatory remedy in respect of the excessive length of judicial proceedings (*Burdov v. Russia (no. 2)*, 2009, § 99; *Valada Matos das Neves v. Portugal*, 2015, § 73; *Wasserman v. Russia (no. 2)*, 2008, §§ 49-51), as follows:

- An action for compensation must be heard within a reasonable time (*Scordino v. Italy (no. 1)* [GC], 2006, § 194).
- Compensation must be paid promptly, in principle no later than six months after the decision awarding it becomes enforceable (*Scordino v. Italy (no. 1)* [GC], 2006, § 198).
- The procedural rules governing an action for compensation must conform to the principles of fairness guaranteed by Article 6 (*Scordino v. Italy (no. 1)* [GC], 2006, § 200).
- The rules regarding legal costs must avoid placing an excessive burden on litigants where their action is justified (*Scordino v. Italy (no. 1)* [GC], 2006, § 201).
- Compensation must not be unreasonable in comparison with the awards made by the Court in similar cases (*Scordino v. Italy (no. 1)* [GC], 2006, §§ 202-206 and 213).

167. The mere fact that compensation awarded to applicants at the domestic level does not correspond to the amounts awarded by the Court in comparable cases will not render the length-of-proceedings remedy ineffective (*Rišková v. Slovakia*, 2006, § 100; *Kaić and Others v. Croatia*, 2008, §§ 39 and 42). It is the combination of several factors which can make remedies ineffective. Thus the Court found a violation of Article 13 in the light of Article 6 § 1, (i) where the applicant had not received sufficient compensation together with an inability to expedite the proceedings, thus, in the particular circumstances of the case, rendering an otherwise effective remedy ineffective (*ibid.*, §§ 43-44); and (ii) where speedy redress could not be obtained, together with an insufficient award of damages (*Wasserman v. Russia (no. 2)*, 2008, §§ 54-58).

168. A remedy based on the "Pinto Act", leading to an award of compensation, was found to be effective in so far as the national court decision had been consistent with the Court's case-law on Article 41 of the Convention (*Cataldo v. Italy* (dec.), 2004). This part of the application was declared inadmissible by the Court as manifestly ill-founded.

169. Similarly, an insufficient award of compensation by the national court for excessively long proceedings had not entailed a violation of Article 13 in the light of Article 6 § 1 in *Delle Cave and Corrado v. Italy*, 2007 (§§ 45-46). The mere fact that the compensation was low did not in itself call into question the effectiveness of the "Pinto" remedy. The "Pinto Act" did not lay down any limits for the fixing of compensation: the amount of the award was left to the courts' discretion.

170. Thus, in the case of *Simaldone v. Italy*, 2009 (§§ 82-84), the Court found no violation of Article 13 in the light of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, finding that a twelve-month delay in the payment of the "Pinto" compensation, while constituting a violation of those Articles, was not sufficient to shed doubt on the effectiveness of the "Pinto" remedy. Between

2005 and 2007 the national courts of appeal with jurisdiction under the "Pinto Act" had delivered some 16,000 decisions, so that the number of applications (about 500) lodged with the Court concerning delays in the payment of "Pinto" compensation, although high, did not, for the time being, indicate that the remedy provided under the Act was systemically ineffective.

171. With regard to pecuniary damage, the domestic courts are clearly in a better position to determine its existence and quantum.

172. The situation is, however, different with regard to non-pecuniary damage. There exists a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage (*Scordino v. Italy (no. 1)* [GC], 2006, §§ 203-204; *Wasserman v. Russia (no. 2)*, 2008, § 50).

This presumption is particularly strong in the event of excessive delay in enforcement by the State of a judgment delivered against it, given the inevitable frustration arising from the State's disregard for its obligation to honour its debt and the fact that the applicant has already gone through judicial proceedings and obtained success (*Burdov v. Russia (no. 2)*, 2009, § 100).

In the case of *Martins Castro and Alves Correia de Castro v. Portugal*, 2008 (§§ 52-57), the case-law of the Portuguese Supreme Administrative Court, accepting this interpretation and the principles emerging from the Court's case-law, did not yet appear sufficiently consolidated in the Portuguese legal system, as no compensation could be awarded for the applicants' non-pecuniary damage in the absence of evidence substantiating its existence.

173. In certain cases, however, the length of the proceedings only entails minimal non-pecuniary damage or even none at all (*Wasserman v. Russia (no. 2)*, 2008, § 50; *Martins Castro and Alves Correia de Castro v. Portugal*, 2008, § 54). The domestic courts will then have to justify their decision by giving sufficient reasons (*Scordino v. Italy (no. 1)* [GC], 2006, §§ 203-204).

b. Selected examples

Length of criminal proceedings

174. The Court found a violation of Article 13 in conjunction with or in the light of Article 6 § 1 concerning the absence of effective domestic remedies by which to complain about the length of criminal proceedings in the following cases: *Kudła v. Poland* [GC], 2000, §§ 159-160; *Nuvoli v. Italy*, 2002, §§ 34-37; *Stratégies et Communications and Dumoulin v. Belgium*, 2002, §§ 52-56; *Kangasluoma v. Finland*, 2004, §§ 48-49; *De Clerck v. Belgium*, 2007, §§ 84-86; *McFarlane v. Ireland* [GC], 2010, §§ 115-129; *Dimitrov and Hamanov v. Bulgaria*, 2011, §§ 91-99; *Michelioudakis v. Greece*, 2012, §§ 53-54; *Panju v. Belgium*, 2014, §§ 54-77; *Galea and Pavia v. Malta*, 2020, §§ 59-65.

175. The Court found no violation of Article 13 in conjunction with Article 6 § 1 concerning a refusal to award compensation for the excessive length of criminal proceedings that had been established by the European Court (*Panju v. Belgium*, 2014, §§ 54-77), given that the non-pecuniary damage had been remedied by the subsequent decision as to the inadmissibility of the proceedings (*Panju v. Belgium (no. 2)*, 2023, §§ 67-79).

Length of civil proceedings

176. The absence of effective remedies under domestic law by which to complain of the length of civil proceedings led the Court to find a violation of Article 13 in conjunction with or in the light of Article 6 § 1 in the following cases: *Konti-Arvantini v. Greece*, 2003, §§ 29-30; *Hartman v. the Czech Republic*, 2003, §§ 82-84; *Doran v. Ireland*, 2003, §§ 62-69; *D.M. v. Poland*, 2003, §§ 48-50; *Lukenda v. Slovenia*, 2005, §§ 87-88; *Sürmeli v. Germany* [GC], 2006, §§ 102-116; *Rumpf v. Germany*, 2010, §§ 51-52; *Finger v. Bulgaria*, 2011, §§ 84-91; *Ümmühan Kaplan v. Turkey*, 2012, §§ 56-58; *Glykantzi v. Greece*, 2012, §§ 54-57; *Vlad and Others v. Romania*, 2013, §§ 113-125; *Gazsó v. Hungary*, 2015,

§§ 21; *Valada Matos das Neves v. Portugal*, 2015, § 101; *Brudan v. Romania*, 2018, §§ 72-91; *Marshall and Others v. Malta*, 2020, §§ 82-90; *Bara and Kola v. Albania*, 2021, §§ 122-124.

177. In *Krasuski v. Poland*, 2005 (§§ 69-73) the Court found no violation of Article 13 in the light of Article 6 § 1. Since the entry into force of the "Kudła" Act in 2004, an action for damages under the Civil Code for the protracted length of judicial proceedings now had an explicit legal basis and had acquired a sufficient level of certainty to become an "effective remedy" for an applicant alleging a violation of the right to a hearing within a reasonable time in judicial proceedings in Poland.

178. In the case of *Titan Total Group S.R.L. v. Republic of Moldova*, 2021 (§§ 86-91), the Court found no violation of Article 13 in conjunction with Article 6 § 1 as it considered the compensatory remedy effective, since the length of the proceedings had not been excessive, 18 months in total. The conditions applicable to the length of proceedings in respect of a compensatory remedy cannot be the same as those used for assessing the length of ordinary proceedings, particularly having regard to the fact that compensation proceedings are not usually complex (see *Gagliano Giorgi v. Italy*, § 69). The States have to act expeditiously to ensure that a violation is acknowledged and remedied as quickly as possible and, save in exceptional circumstances, this should not take more than two years and six months, inclusive of implementation (*ibid.*, § 73).

Length of administrative proceedings

179. As to the effectiveness of remedies by which to complain of unreasonably lengthy administrative proceedings, the Court found an application inadmissible for non-exhaustion of domestic remedies in *Daddi v. Italy* (dec.), 2009. The "Pinto" remedy was effective for the length of such proceedings where no application for an expedited hearing had been made. The applicant ought therefore to have applied to the competent court of appeal in accordance with the "Pinto Act".

180. The Court found a violation of Article 13 in the light of Article 6 § 1 for a lack of effective domestic remedies by which to complain of the length of administrative proceedings in the following cases: *Martins Castro and Alves Correia de Castro v. Portugal*, 2008, §§ 56-57 and 66; *Vassilios Athanasiou and Others v. Greece*, 2010, §§ 34-35; *Olivieri and Others v. Italy*, 2016, §§ 48-71.

Length of enforcement proceedings

181. The lack of effective domestic remedies by which to obtain the enforcement of domestic court decisions or to complain of delays in their enforcement has led the Court to find a violation of Article 13 in conjunction with or in the light of Article 6 § 1 in the following cases: *Zazanis v. Greece*, 2004, §§ 45-49; *Amat-G Ltd and Mebagishvili v. Georgia*, 2005, §§ 53-54; *Ramadhi and Others v. Albania*, 2007, §§ 46-53; *Burdov v. Russia (no. 2)*, 2009, §§ 101-117; *Abramiuc v. Romania*, 2009, §§ 121-132; *Yuriy Nikolayevich Ivanov v. Ukraine*[21], 2009, § 69; *Ilyushkin and Others v. Russia*[22], 2012, §§ 34-44; *Manushaqe Puto and Others v. Albania*, 2012, §§ 72-84; *Gerasimov and Others v. Russia*, 2014, §§ 157-166.

182. In the case of *Beshiri and Others v. Albania* (dec.), 2020 (§§ 178-222), the Court declared the application inadmissible as the applicant had failed to use a new remedy for lengthy periods of non-enforcement of final decisions granting compensation for property expropriated during the Communist regime. The remedy had been created in 2015 by the respondent State in response to the pilot judgment in *Manushaqe Puto and Others v. Albania*, 2012 (see paragraph 322 of this Guide).

21. Violation of Article 13 in conjunction with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.
22. Violation of Article 13 in conjunction with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

2. Article 13 of the Convention in conjunction with or in the light of Article 6 § 2

Article 6 § 2 of the Convention – Presumption of innocence

> "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

HUDOC keywords

> Presumption of innocence (6-2)

183. The Court has found a violation of Article 13 in the light of Article 6§ 2 in one case and no violation in another.

184. In the case of *Konstas v. Greece*, 2011 (§§ 56-57) the Court found a violation of Article 13 in the light of Article 6 § 2 as no remedy had been available to the applicant before a criminal court in order to obtain redress for the breach of his right to be presumed innocent, in its procedural aspect, as regards certain remarks made about him by two Ministers in Parliament. An action for damages could not have provided full redress for the alleged breach. The Government had not suggested any other remedy that the applicant could have used.

185. By contrast, in the case of *Januškevičienė v. Lithuania*, 2019 (§§ 60-63 and 69), the Court found no violation of Article 13 in the light of Article 6 § 2, given that an effective civil-law remedy, by which to obtain compensation for the breach of the applicant's right to be presumed innocent during criminal proceedings against third parties, had been available to her.

F. Article 13 of the Convention in conjunction with or in the light of Article 7[23]

Article 7 of the Convention – No punishment without law

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
>
> 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

HUDOC keywords

> *Nullum poena sine lege* (7-1) – Retrospectiveness (7-1)

186. In one case the Court found a violation of Article 13 in conjunction with Article 7.

187. In *Gouarré Patte v. Andorra*, 2016 (§§ 41-43), the Court found a violation of Article 13 in conjunction with Article 7 as there was no effective remedy that the applicant could have used in order to raise the issue of the application of the more favourable provisions of the new Criminal

23. See the Guide on Article 7 - No punishment without law.

Code. The Supreme Court of Justice had dismissed the applicant's application for revision without examining the merits of his allegations on the ground that the new Code referred exclusively to sentences entailing deprivation or restriction of liberty and did not provide for revision in the case of professional disqualification. Moreover, the remedy was available only on the basis of a limited series of criteria within which the applicant's case did not fall. While it was true that the new Andorran Criminal Code guaranteed the retrospective nature of the more lenient criminal law, it had to be recognised that it provided for no specific procedure enabling a convicted person to apply to the courts for revision of his or her sentence where the relevant courts failed to do so. The Article in question merely ordered the court which had imposed the sentence to revise it on its own initiative.

G. Article 13 of the Convention in conjunction with or in the light of Article 8[24]

Article 8 of the Convention – Right to respect for private and family life

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

HUDOC keywords

Expulsion (8) – Extradition (8) – Positive obligations (8) – Respect for private life (8-1) – Respect for family life (8-1) – Respect for home (8-1) – Respect for correspondence (8-1)

188. The Court has found a violation or no violation of Article 13 in conjunction with or in the light of Article 8 in various cases.

189. However, where the Court finds a violation of Article 8 on procedural aspects, it may take the view that there is no need to examine separately the complaint under Article 13, even though it is closely related to that under Article 8 and must therefore be declared admissible (*Liberty and Others v. the United Kingdom*, 2008, § 73; *Roman Zakharov v. Russia* [GC], 2015, § 307). By contrast in the case of *B.A.C. v. Greece*, 2016 (§§ 46-47), the Court found a violation of Article 8 and, having regard to that conclusion, it found that there had also been a violation of Article 13 in conjunction with Article 8 (see also *Sargsyan v. Azerbaijan* [GC], 2015, §§ 272-274; *Đorđević v. Croatia*, 2012, § 168).

1. Respect for the right to private life

190. The Court has dealt with various subjects concerning the effectiveness of remedies for complaints related to respect for the right to private life.

a. Freedom of movement

191. Where there is an arguable claim that an act of the authorities may infringe the individual's right to leave his or her country, guaranteed by Article 2 of Protocol No. 4 to the Convention, or that person's right to respect for private and family life, protected by Article 8 of the Convention, Article 13 of the Convention requires that the national legal system must make available to the

24. See the Guide on Article 8 - Right to respect for private and family life.

individual concerned the effective possibility of challenging the measure complained of in an adversarial procedure before an appropriate domestic forum offering adequate guarantees of independence and impartiality (*Riener v. Bulgaria*, 2006, § 138).

192. In *Riener v. Bulgaria*, 2006 (§§ 138-143), the lack of an effective remedy concerning a travel ban for unpaid taxes led the Court to find a violation of Article 13 of the Convention in conjunction with Article 8 and Article 2 of Protocol No. 4 (See also the part of this Guide on Article 13 in conjunction with or in the light of Article 2 of Protocol No. 4).

b. Professional conduct

193. In the case of *S.W. v. the United Kingdom*, 2021 (§§ 70-74), the Court of Appeal had clearly held that the process by which a Family Court judge had arrived at his criticisms of the applicant, directing that his unfavourable findings be sent to the local authorities and to the relevant professional bodies, had been "manifestly unfair to a degree which wholly failed to meet the basic requirements of fairness established under Article 8 and/or common law"; but the applicant had nevertheless been advised by counsel that a claim for compensation would have no real prospect of success as she was unlikely to establish an absence of good faith on the part of the judge. The Court therefore proceeded on the basis that a claim for compensation would not have been successful and found a violation of Article 13 in conjunction with Article 8.

c. Detention

194. In the case of *Wainwright v. the United Kingdom*, 2006 (§§ 54-56), the fact that prison staff had been cleared of any civil liability in spite of their negligence when carrying out a strip-search on prison visitors led the Court to find a violation of Article 13 in the light of Article 8. The House of Lords had found that negligent action disclosed by the prison officers did not ground any civil liability, in particular as there was no general tort of invasion of privacy.

195. In *Gorlov and Others v. Russia*, 2019 (§§ 109-110), the Court found a violation of Article 13 in conjunction with Article 8 on the ground that domestic law, as interpreted by the courts, did not presuppose any balancing exercise and did not allow prisoners to seek judicial review of the proportionality of their placement under permanent video surveillance in their cells, which had adversely affected their privacy.

196. In the case of *Maslák v. Slovakia (no. 2)*, 2022 (§ 165), the Court observed that in the case of *Neshkov and Others v. Bulgaria*, 2015 (§ 183) it had found that the effective remedy required by Article 13 had been one where the domestic authority or court dealing with the case had had to consider the substance of the Convention complaint. For instance, in cases where this complaint was under Article 8, it meant that the domestic authority had to examine, *inter alia*, whether the interference with the applicant's rights had been necessary in a democratic society for the attainment of a legitimate aim.

d. Environment

197 In the case of *Hatton and Others v. the United Kingdom* [GC], 2003 (§§ 137-142), the limited scope of review of the excessive noise caused by night flights entailed a violation of Article 13 in the light of Article 8. The scope of review by the domestic courts was limited to the classic English public-law concepts, such as irrationality, unlawfulness and patent unreasonableness, and did not at the time allow consideration of whether the claimed increase in night flights represented a justifiable limitation on the right to respect for the private and family life or the homes of those who lived in the vicinity of Heathrow Airport.

e. Insolvency

198. In the case of *Albanese v. Italy*, 2006 (§§ 73-77), the Court found a violation of Article 13 in the light of Article 8 as regards the lack of an effective remedy by which to complain of the existence or prolongation of the personal disqualifications imposed on the bankrupt and automatically attached to the bankruptcy order.

f. Legal office

199. In the case of *Özpınar v. Turkey*, 2010 (§§ 82-88), the lack of an effective remedy for a judge removed from office for reasons partly related to her private life led the Court to find a violation of Article 13 in conjunction with Article 8. The applicant had been unsuccessful in her judicial appeal against the decisions of the National Legal Service Council. The impartiality of the Council panel that examined challenges to its decisions was highly questionable. Furthermore, during the proceedings, no distinction had been made between aspects of the applicant's private life that bore no direct connection with her duties and those that might have done.

g. Sexual orientation

200. In the case of *Beizaras and Levickas v. Lithuania*, 2020 (§§ 151-156), the Court found that there had been a violation of Article 13 in the light of Article 14 in conjunction with Article 8 as the discriminatory attitudes of the domestic courts with regard to the applicants' sexual orientation had compromised the effectiveness of the remedies for the application of domestic law. Remedies that were generally effective had not been in this case because the domestic courts had refused to try the perpetrators of serious homophobic comments on Facebook, including unhidden calls to violence, without any prior effective investigation.

201. In the case of *Valaitis v. Lithuania*, 2023 (§§ 93-117), the Court found no violation of Article 13 in the light of Article 14 in conjunction with Article 8, because the discontinuance of an investigation into homophobic comments on the Internet did not disclose any prejudicial attitude by the authorities. In response to the judgment in *Beizaras and Levickas v. Lithuania*, the national authorities have recently adopted guidelines and recommendations on combatting hate speech, and have more generally clamped down on hate crimes, as can be seen in particular from many decisions by prosecutors and courts. These measures show that the discriminatory attitude of the authorities is no longer evident and that effective remedies for the prevention, detection and repression of hate-related offences may also stem from domestic practice.

h. Reputation

202. In the case of *Bastys v. Lithuania*, 2020 (§§ 67-87), the applicant, who was the Vice-President of the Parliament, had been unable to dispute the conclusions of an intelligence note from the State Security Department which had assessed whether he could obtain security clearance to access classified information. However, that inability had been compensated for by the possibility of challenging, in the administrative courts, the decision by the Parliament's President to refuse security clearance on the basis of the note. However, that remedy had not been used on account of the Vice-President's voluntary resignation without waiting for the President's decision. The Court thus found there had been no violation of Article 13 in combination with Article 8.

i. Residence

203. In the case of *Kurić and Others v. Slovenia* [GC], 2012 (§§ 370-372), the Court found a violation of Article 13 in conjunction with Article 8 in the absence of effective remedies by which to complain of a failure to address the question of the right to abode of individuals who had been "deleted" from the register of permanent residents following Slovenia's return to independence.

j. Covert surveillance and personal data retention

204. The secrecy of surveillance measures renders it difficult, if not impossible, for the person concerned to seek any remedy of his own accord, particularly while surveillance is in progress. An "effective remedy" under Article 13 must mean a remedy that is as effective as can be having regard to the restricted scope for recourse inherent in any system of secret surveillance (*Klass and Others v. Germany*, 1978, §§ 68-69). Objective supervisory machinery may be sufficient as long as the measures remain secret. It is only once the measures have been divulged that legal remedies must become available to the individual within a reasonable time (*Rotaru v. Romania* [GC], 2000, § 69).

205. In the field of covert surveillance measures, where abuse is potentially so easy in individual cases and could have such harmful consequences for democratic society as a whole, it is in principle desirable to entrust supervisory control to a judge, judicial control offering the best guarantees of independence, impartiality and a proper procedure. As soon as notification can be carried out without jeopardising the purpose of the restriction, after the termination of the surveillance measure, information should be provided to the persons concerned. To enable that person to obtain a review of the proceedings concerning the interference with the exercise of his or her right to private life it is in principle necessary to provide that individual with a minimum amount of information on the decision that could be challenged, for example its date of adoption and the authority from which it emanates (*Roman Zakharov v. Russia* [GC], 2015, §§ 233, 287 and 291; *İrfan Güzel v. Turkey*, 2017, §§ 96 and 98-99).

206. In the case of *Klass and Others v. Germany*, 1978 (§§ 65-72), the "G 10" Act allowed certain authorities to open and inspect mail and post, to read telegraphic messages and to monitor and record telephone conversations in order to protect the country against "imminent dangers". Although, according to the G 10, there could be no recourse to the courts in respect of the ordering and implementation of restrictive measures, certain other remedies were nevertheless open to the individual believing himself to be under surveillance. In pursuance of a 1970 judgment of the Federal Constitutional Court, however, the competent authority was bound to inform the person concerned as soon as the surveillance measures were discontinued, and notification could be made without jeopardising the purpose of the restriction. From the moment of such notification, various legal remedies – before the courts – became available to the individual: an action for a declaration, to obtain a review by an administrative court of the lawfulness of the application to the individual of the "G 10" and the conformity with the law of the surveillance measures ordered; an action for damages in a civil court if the individual had been prejudiced; an action for the destruction or, if appropriate, restitution of documents; finally, if none of these remedies was successful, an application to the Federal Constitutional Court for a ruling as to whether there had been a breach of the Basic Law. Accordingly, the aggregate of remedies provided for under German law satisfied, in the particular circumstances of the case, the requirements of Article 13 in the light of Article 8 in terms of respect for private life and correspondence.

See, in the same vein, the cases of *Leander v. Sweden*, 1987, §§ 78-84, concerning a system of covert monitoring of candidates to important posts from a national security perspective, and *Amann v. Switzerland* [GC], 2000, §§ 89-90, concerning the interception and recording of a telephone call, and the retention of personal data by the security services.

207. In the absence of a remedy by which to complain of the retention, by State agents, of data on a person's private life or the veracity of such information, the Court found a violation of Article 13 in the light of Article 8 in the case of *Rotaru v. Romania* [GC], 2000 (§§ 68-73). This was also the case in *Segerstedt-Wiberg and Others v. Sweden*, 2006 (§§ 116-122), in the absence of a remedy by which to obtain all the information stored on the Security Police register, the destruction of its files, or the erasure or rectification of information kept in the files.

208. In the absence of a response to the doubts expressed by an accused as to the lawfulness of the decision to tap his phone, the Court found a violation of Article 13 in conjunction with Article 8 in the case of *İrfan Güzel v. Turkey*, 2017 (§§ 100-109).

k. Use and disclosure of personal data

209. Concerning the disclosure of medical data, in the case of *Anne-Marie Andersson v. Sweden*, 1997 (§§ 41-42), the Court found no violation of Article 13 in the light of Article 8 concerning a lack of remedies before the disclosure of confidential and personal medical information by the medical authority to a social service. In the light of the facts, the applicant had no arguable claim in respect of a violation of the Convention. The interference with her enjoyment of her right to respect for private life which the disclosure of the data in question entailed was in conformity with Swedish law and pursued the legitimate aims of protecting "health or morals" and the "rights and freedoms of others". The measure had been notified to the applicant and had been of a limited nature as the information concerned was not made public but remained protected by the same level of confidentiality as that applicable to psychiatric records.

210. In the absence of an effective remedy by which to complain of the disclosure of confidential psychiatric information at a public hearing, the Court found a violation of Article 13 in the light of Article 8 in *Panteleyenko v. Ukraine*, 2006 (§§ 82-84). While the holding of the hearing *in camera* could have prevented the public disclosure of that information, it could neither have secured the confidentiality of the information disclosed to the parties and their representatives at the hearings nor limited access to the case file. Even though the applicant had successfully appealed, this remedy had proved ineffective in so far as it had not resulted in the discontinuance of the disclosure of confidential psychiatric data in the court's case file or any award to the applicant of compensation for damage suffered as a result of the unlawful interference with his private life.

211. Concerning the on-line publication of a judicial decision disclosing information on the adoption of the applicants' children, in the case of *X and Others v. Russia*, 2020 (§§ 73-79), the Court found that there had been a violation of Article 13 in conjunction with Article 8 in the absence of any judicial remedy by which to obtain compensation for the non-pecuniary damage caused by failings in the justice system.

212. As to the use of personal data in a professional context, the lack of an effective remedy in respect of a violation of the applicants' right to respect for their private life following indiscreet investigations into the private life of homosexuals, leading to their dismissal from the army, had entailed a violation of Article 13 in conjunction with Article 8 in *Smith and Grady v. the United Kingdom*, 1999 (§§ 136-139).

213. In the case of *Karabeyoğlu v. Turkey*, 2016 (§§ 128-132), the lack of a remedy by which to obtain an examination of the use, in a disciplinary investigation, of data from phone tapping during a criminal investigation led the Court to find a violation of Article 13 in the light of Article 8.

214. The lack of an effective remedy by which to seek the deletion of the applicant's name from a list annexed to the Swiss "Taliban" ordinance entailed a violation of Article 13 in conjunction with Article 8 in the case of *Nada v. Switzerland* [GC], 2012 (§§ 209-214). The applicant had been able to apply to the domestic courts and could thus have obtained redress for his Convention complaints. However, those authorities had not examined his complaints on the merits. In particular, the Federal Court had taken the view that while it was entitled to verify that Switzerland was bound by Security Council resolutions, it could not itself, on human rights grounds, lift the sanctions imposed on the applicant. Moreover, the Federal Court had expressly acknowledged that the procedure for asking the United Nations to delete a name from the list could not be regarded as an effective remedy under Article 13.

2. Respect for family life

215. In cases involving a particular nature and interest, and where the length of the proceedings has a clear impact on the applicant's family life (and which thus fall to be examined under Article 8 of the Convention) a more rigid approach is called for – one which obliges the States to put into place a remedy which is at the same time preventive and compensatory (*Macready v. the Czech Republic*, 2010, § 48; *Bergmann v. the Czech Republic*, 2011, §§ 45-46; *Kuppinger v. Germany*, 2015, § 137). The Court observed that the State's positive obligation to take appropriate measures to ensure the applicant's right to respect for family life risked becoming illusory if the interested parties only had at their disposal a compensatory remedy, which could only lead to an *a posteriori* award for monetary compensation (*Macready v. the Czech Republic*, 2010, § 48).

216. The Court has set out the principles applicable to Article 13 in cases where a violation of Article 8 has been found under its procedural limb (*Macready v. the Czech Republic*, 2010; *Bergmann v. the Czech Republic*, 2011). Whilst Article 8 contains no explicit procedural requirements, the decision-making process involved in measures of interference must be fair and such as to afford due respect to the interests safeguarded by this Article, particularly regarding the care of children (*W. v. the United Kingdom*, 1987, §§ 62 and 64; *McMichael v. the United Kingdom*, 1995, § 92; *T.P. and K.M. v. the United Kingdom* [GC], 2001, §§ 72-73).

In the case of *Macready v. the Czech Republic*, 2010 (§§ 48-51), there was a need for a remedy by which to obtain a decision on the prompt return of a child which had been taken abroad by its mother without the consent of the father, the applicant; to put an end to any vagaries that might occur in the return proceedings; to safeguard the bond between the displaced child and the applicant; or to challenge the failure to ensure that the applicant could exercise his right of contact. It was only if such remedies could not produce those results that, in the Court's view, a pecuniary award could have been appropriate for the applicant. The Court noted that if the applicant raised a complaint under Article 13, the same considerations would apply.

In the case of *Bergmann v. the Czech Republic*, 2011 (§§ 46-51), the Court found that its considerations in *Macready v. the Czech Republic*, 2010, were valid not only in the context of international child abduction but also in other situations where the conduct or inaction of the authorities in proceedings had repercussions for the private or family life of the applicants.

217. The lack of a domestic remedy enabling the prompt enforcement of a decision on parental rights led the Court to find a violation of Article 13 in conjunction with Article 8 in the case of *Kuppinger v. Germany*, 2015 (§§ 138-145). The proceedings at issue concerned the applicant's contact rights with his young child and thus fell within the category of cases which risked being predetermined by their length. The "Remedy Act", which had only entered into force a year and a half after the start of the proceedings on contact rights provided for monetary compensation, a remedy which did not have a sufficient expediting effect on pending proceedings in cases such as this one. In addition, neither of the other two remedies relied upon by the Government could be regarded as effective.

218. In the absence of an effective remedy in respect of the action of the local authorities after removing a child from its mother on account of suspected sexual abuse by their mother's boyfriend, the Court found a violation of Article 13 in the light of Article 8 in the case of *T.P. and K.M. v. the United Kingdom* [GC], 2001 (§§ 109-110). The Court found that if psychiatric damage had occurred, there might have been elements of medical costs as well as significant pain and suffering to be addressed. The applicants did not have available to them an appropriate means for obtaining a determination of their allegations that the local authority had breached their right to respect for family life or the possibility of obtaining an enforceable award of compensation for the damage suffered thereby.

See, in the same vein, *D.P. and J.C. v. the United Kingdom*, 2002, §§ 136-138, where the Court found a violation of Article 13 in the light of Articles 3 or 8 on account of the lack of an effective remedy by which to examine the alleged failure of the social services to protect children from sexual abuse by their stepfather.

219. The lack of an effective remedy in respect of the automatic application of a total and absolute ban on the exercise of parental rights, as an ancillary penalty by operation of law imposed on anyone serving a prison sentence, without any review by the courts of the type of offence committed by the imprisoned father or the interests of minor children, led the Court to find a violation of Article 13 in the light of Article 8 in the cases of *Sabou and Pircalab v. Romania*, 2004 (§§ 53-56), and *Iordache v. Romania*, 2008 (§§ 57-67).

220. In the case of *Mik and Jovanović v. Serbia* (dec.), 2021 (§§ 47-52), the Court struck out the complaint under Article 13 in conjunction with Article 8 in the light of a new legal framework which included a mechanism whereby parents of babies who had disappeared in Serbian maternity wards could claim compensation (further to the Court's request in *Zorica Jovanović v. Serbia*, 2013, § 92). The law of February 2020 provided for judicial and extrajudicial procedures, including a DNA database and training for judges, police officers, parents, etc.

3. Respect for one's home

221. Where an individual has an arguable claim that his or her home and possessions have been purposely destroyed by agents of the State, the notion of an "effective remedy" entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigative procedure (*Menteş and Others v. Turkey*, 1997, § 89).

222. In the case of *Menteş and Others v. Turkey*, 1997 (§§ 90-92), no thorough and effective investigation had been conducted into the applicants' allegations and this resulted in undermining the exercise of any remedies they had at their disposal, including the pursuit of compensation before the courts in respect of their complaints concerning respect for their right to private and family life and to their home, after the security forces set fire to their houses in south-eastern Turkey. There had therefore been a breach of Article 13 in conjunction with Article 8.

See, in the same vein, the case of *Nuri Kurt v. Turkey*, 2005, §§ 117-122, where an unsatisfactory investigation into a fire which destroyed houses led the Court to find a violation of Article 13 in the light of Article 8 of the Convention and of Article 1 of Protocol No. 1.

223. As regards the displacement of individuals from northern Cyprus, where they had been living, in *Cyprus v. Turkey* [GC], 2001 (§§ 193-194), there had been a violation of Article 13 of the Convention, in conjunction with Article 8 and Article 1 of Protocol No. 1, by reason of the respondent State's failure to provide to Greek Cypriots any remedies to contest their exclusion from northern Cyprus.

See, in the same vein, *Chiragov and Others v. Armenia* [GC], 2015, §§ 213-215, and *Sargsyan v. Azerbaijan* [GC], 2015, §§ 269-274, where the Court found a violation of Article 13 in the light of Article 8 of the Convention and Article 1 of Protocol No. 1 concerning the lack of remedies for the loss of home and property by displaced persons in the context of the Nagorno-Karabakh conflict.

224. In a case concerning house searches, *Posevini v. Bulgaria*, 2017 (§§ 83-87), the Court found that the mere possibility of seeking disciplinary proceedings against the police officers who had carried out searches in a house and a photography studio was not an effective remedy, in breach of Article 13 in the light of Article 8. The notion of an effective remedy in the context of the right to respect for one's home depends on whether the applicants have had access to a procedure enabling them to contest the lawfulness of the searches and seizures and obtain appropriate redress if appropriate.

In the same vein, violations of Article 13 in the light of Article 8 were found in the case of *Panteleyenko v. Ukraine*, 2006, §§ 78-81, on account of the lack of an effective remedy following a search of a notary's office after the case against him was terminated at the pre-trial stage; and in the case of *Peev v. Bulgaria*, 2007, § 70, where there had been no effective remedy following an unlawful search of the office of a civil servant following the publication in the press of a letter in which he criticised the prosecutor general.

In the case of *Keegan v. the United Kingdom*, 2006 (§§ 41-43), the Court found a violation of Article 13 in the light of Article 8 on the ground that, while the applicants had taken domestic proceedings seeking damages for the forcible entry of police offers into a house to carry out a search, allegedly in bad faith, they were unsuccessful, as the courts were unable to examine issues of proportionality or reasonableness and the balance was set in favour of protection of the police in such cases. Damages only lay where malice could be proved, and negligence of this kind did not qualify.

4. Respect for correspondence

225. The Court has dealt with various subjects concerning the effectiveness of remedies in respect of complaints relating to the right to respect for one's correspondence.

226. As regards the correspondence of prisoners, in *Silver and Others v. the United Kingdom*, 1983 (§§ 114-119), the Court found a violation and no violation of Article 13 in the light of Article 8, on the question of the control, interception and withholding of such letters.

The lack of a remedy whereby a prisoner could challenge the refusal of the prison governor to forward his letters led the Court to find a violation of Article 13 in the light of Article 8 in the case of *Frérot v. France*, 2007 (§ 66). The *Conseil d'Etat* had declared inadmissible the applicant's request for the annulment of the governor's decision, on the sole ground that the refusal to forward the letter was an internal regulatory measure, not amenable to judicial review for abuse of power. The Government had not claimed that any other remedies meeting the Article 13 requirements had been available to the applicant.

227. As to the correspondence of a bankrupt, in *Bottaro v. Italy*, 2003 (§§ 44-46) the Court found a violation of Article 13 in the light of Article 8 having regard to the lack in domestic law of an effective remedy by which to complain of the control of correspondence, which had lasted for over twelve years and six months, and to obtain redress.

5. Asylum and expulsion

228. In expulsion cases the Court has decided that the loss of victim status concerning an alleged violation of Article 8 of the Convention, because the applicant is no longer exposed to a risk of expulsion, does not necessarily deprive the applicant of such status for the purposes of Article 13. In the case of *De Souza Ribeiro v. France* [GC], 2012 (§§ 86-100), even though the Court had decided that the applicant could no longer be regarded as a victim in respect of the alleged violations of Article 8, it took the view that the complaint had raised a serious question and that, in the particular circumstances of the case the applicant was still a victim of the alleged violation of Article 13 in conjunction with Article 8, as he had not had access in practice to effective remedies in respect of his complaint under Article 8 when he was about to be deported. The Court therefore dismissed the Government's preliminary objection concerning the applicant's loss of "victim" status within the meaning of Article 34 of the Convention.

229. Where immigration cases are concerned, the Court's sole concern, in keeping with the principle of subsidiarity, is to examine the effectiveness of the domestic procedures and ensure that they respect human rights (*De Souza Ribeiro v. France* [GC], 2012, § 84).

230. In the case of *B.A.C. v. Greece*, 2016 (§§ 37-47), the Court found a violation of Article 13 in conjunction with Article 8 on account of the failure of the Ministry of Public Order for twelve years to take any decision on the applicant's request for asylum, despite the favourable opinion issued by the Advisory Board on Asylum and while the Greek judicial authorities, including the Supreme Administrative Court, had dismissed an extradition request from the Turkish authorities.

231. Where expulsions are challenged on the basis of alleged interference with private and family life, it is not imperative, in order for a remedy to be effective, that it should have automatic suspensive effect. Nevertheless, in immigration matters, where there is an arguable claim that expulsion threatens to interfere with the alien's right to respect for his private and family life, Article 13 in conjunction with Article 8 requires that States must make available to the individual concerned the effective possibility of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (*Al-Nashif v. Bulgaria*, 2002, § 133; *M. and Others v. Bulgaria*[25], 2011, §§ 122-133; *De Souza Ribeiro v. France* [GC], 2012, § 83). Without prejudice to the issue of its suspensive nature, in order for a remedy to be effective and to avoid any risk of an arbitrary decision, there must be genuine intervention by the court or "national authority" (*ibid.*, § 93).

232. Where national security is at stake, some restrictions on the type of remedies available may be justified, but the remedy must be effective, both in practice and in law. While procedural restrictions may be necessary to ensure that no leakage detrimental to national security would occur and while any independent authority may need to afford a wide margin of appreciation to the executive in such matters, that can by no means justify dispensing with remedies altogether whenever the executive has chosen to invoke the term "national security". The competent independent appeals authority must be informed of the reasons grounding the deportation decision, even if such reasons are not publicly available, and it must be competent to reject the executive's assertion that there is a threat to national security where it finds it arbitrary or unreasonable. There must be some form of adversarial proceedings, if need be through a special representative after security clearance. Furthermore, the question whether the impugned measure would interfere with the individual's right to respect for family life and, if so, whether a fair balance is struck between the public interest involved and the individual's rights, must be examined (*Al-Nashif v. Bulgaria*, 2002, § 137).

233. In the case of *Al-Nashif v. Bulgaria*, 2002 (§§ 134-138) the Court found a violation of Article 13 in the light of Article 8 in the absence of any effective remedy against an expulsion on national security grounds, as the domestic courts had not been authorised to scrutinise the genuineness of the national security concerns.

See, in the same vein, *Musa and Others v. Bulgaria*, 2007, §§ 70-73, where the Court found a violation of Article 13 in the light of Article 8 as regards the inability to seek judicial review of an order withdrawing a residence permit on national security grounds.

234. In the case of *M. and Others v. Bulgaria*, 2011 (§§ 124-125 and 127), the Court found a violation of Article 13 in the light of Articles 3 and 8 in the absence of an effective remedy before the Supreme Administrative Court. While apparently acknowledging that the first applicant risked being exposed to ill-treatment or execution if returned to Afghanistan, that court had placed on the first applicant the burden of proving that these risks stemmed from the Afghan authorities and that those authorities would not guarantee his safety (see also paragraph 133 of the present Guide, concerning the applicant's complaint under Article 3).

235. In the case of *De Souza Ribeiro v. France* [GC], 2012 (§§ 86-100), the lack of effective remedies in respect of an order for the applicant's removal via Brazil, which had been enforced within fifty

25. Violation of Article 13 of the Convention in the light of Articles 3 and 8.

minutes from the time when an application for its suspension had been lodged with a court, led the Court to find a violation of Article 13 in conjunction with Article 8. The haste with which the removal order had been executed had had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. Furthermore, the French authorities had been in possession of evidence that the applicant's removal was not in accordance with the law and might therefore constitute an unlawful interference with his rights. In addition, the geographical location of French Guiana and the strong pressure of immigration there, or the danger of overloading the courts and adversely affecting the proper administration of justice, could not justify the exception to the ordinary legislation and the manner in which it was applied there. The applicant had not had access to effective remedies when he was about to be deported, a fact not remedied by the subsequent issue of a residence permit.

236. In the case of *Abuhmaid v. Ukraine*, 2017 (§§ 119-126) the Court found no violation of Article 13 in conjunction with Article 8 concerning the uncertainty surrounding the immigration status in Ukraine of an alien holding a passport issued by the Palestinian Authority. The issues of uncertainty of his stay in Ukraine and his inability to regularise his status there had not been resolved by the refusal of the applicant's deportation and it was not clear whether they could have been effectively resolved with the help of the procedures under the Immigration Act. However, since the applicant still had access to different domestic procedures which could help him regularise his stay and status in Ukraine, it could not be said that the respondent State had disregarded its positive obligation to provide an effective and accessible procedure, or a combination of procedures, enabling him to have the issues of his further stay and his status in Ukraine determined.

H. Article 13 of the Convention in conjunction with or in the light of Article 9[26]

Article 9 of the Convention – Freedom of thought, conscience and religion

> "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
>
> 2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

HUDOC keywords

Freedom of religion (9-1) – Manifest religion or belief (9-1)

237. The Court has found a violation or no violation of Article 13 in conjunction with or in the light of Article 9 in a number of cases.

238. However, where the Court has found a violation of Article 9 in its procedural aspects, it has not deemed it necessary to examine the complaint separately under Article 13 (*Members of the Gldani Congregation of Jehovah's Witnesses and Others v. Georgia*, 2007, § 137).

239. In the cases of *Efstratiou v. Greece*, 1996 (§§ 48-50), and *Valsamis v. Greece*, 1996 (§§ 47-49), the Court found a violation of Article 13 in conjunction with Article 9 of the Convention and Article 2 of Protocol No. 1 in the absence of an effective remedy by which to complain about the one-day

26. See the Guide on Article 9 - Freedom of thought, conscience and religion.

suspension of a pupil from school for refusing to take part in a school parade on the grounds of the religious beliefs of his parents, who were Jehovah's Witnesses. The applicants could not obtain a judicial decision that the disciplinary measure of suspension from school was unlawful, this being a prerequisite for a compensation claim. The actions for damages were therefore of no avail to them. As to the other remedies relied upon, the Government had cited no instance of their use similar to the case at hand, and their effectiveness had accordingly not been established.

240. In the case of *Hasan and Chaush v. Bulgaria* [GC], 2000 (§§ 97-104), there had been no effective remedy by which to complain about the lack of legal basis for the recognition of a religious leader's election, thus entailing a violation of Article 13 in the light of Article 9. In the Court's view, Article 13 could not be seen as requiring a possibility for every believer to institute in his individual capacity formal proceedings challenging a decision concerning the registration of his religious community's leadership. Individual believers' interests in this respect could be safeguarded by their turning to their leaders and supporting any legal action which the latter might initiate. The State's obligation might well be discharged by the provision of remedies which were only accessible to representatives of the religious community. As the Supreme Court had accepted the case for examination, a representative of the religious community was provided with access to a judicial remedy. However, the Supreme Court had refused to study the substantive issues, considering that the Council of Ministers enjoyed full discretion; thus, the first remedy was not effective. Two other appeals to the Supreme Court were not effective remedies either. Furthermore, the Government had not indicated how criminal proceedings, if instituted, could have led to an examination of the substance of the applicants' complaints; they had not indicated any other remedy.

241. In the case of *Metropolitan Church of Bessarabia and Others v. Moldova*, 2001 (§§ 137-139), the Court found a violation of Article 13 in the light of Article 9 concerning the lack of an effective remedy against a refusal by the authorities to officially recognise a Church. The Supreme Court of Justice had not replied to the applicants' main complaints, namely their wish to join together and manifest their religion collectively within a Church distinct from the Metropolitan Church of Moldova and to have the right of access to a court to defend their rights and protect their assets, given that only denominations recognised by the State enjoyed legal protection. Consequently, not being recognised by the State, the Metropolitan Church of Bessarabia had no rights it could assert in the Supreme Court of Justice. Accordingly, the appeal to the Supreme Court of Justice based on the Code of Civil Procedure was not effective. Moreover, the 1992 Religious Denominations Act contained no specific provision governing the recognition procedure and making remedies available in the event of a dispute. Consequently, the applicants had been unable to obtain redress from a national authority in respect of their complaint relating to their right to the freedom of religion.

242. In the case of *Loste v. France*, 2022 (§§ 67-78), the Court found a violation of Article 13 of the Convention in conjunction with Articles 3 and 9 concerning an action for damages (to establish the liability of the State for ill-treatment of the applicant by the husband of a certified childminder for 12 years during her placement with a foster family, and for the failure by the family to comply with the undertaking they had given in the form of a religious neutrality clause to respect the Muslim faith of the applicant and her family). The remedy had been ineffective as the administrative courts had showed excessive formalism in dismissing the applicant's action on the basis of a four-year limitation rule. The courts had not questioned the applicant, as provided by law, about the date from which she had had "sufficient information" enabling her to demonstrate that the damage she had suffered was attributable to the administrative authorities and to bring an action.

243. In the case of G.K. and A.S. v. Switzerland, 2026 (§§ 88-92, 94, 96), the Court found a violation of Article 13 of the Convention in conjunction with Article 9, since the remedy pursued by the applicants to challenge the authorities' failure to accommodate their vegan dietary needs during, respectively, their pre-trial detention and involuntary psychiatric care, had not been effective. The Court considered that the applicants' vegan beliefs had met the required level of cogency, seriousness, cohesion and importance to fall within the scope of Article 9. Their complaints under

that Article were therefore arguable, rendering Article 13 applicable. Although domestic law had provided for a possibility to challenge the (formal) "decisions" of the administrative authorities, the Court held that the way in which the domestic authorities had applied that law in the applicants' case had rendered the remedy ineffective in practice. In particular, the authorities replied to the applicants' complaints by letters rather than issuing formal "decisions", so that the applicants' subsequent appeals were declared inadmissible precisely because no such decisions had been issued and, therefore, their complaints (about the accommodation of their vegan dietary needs) had never been examined on the merits at the national level. The Court concluded that the approach of the domestic authorities, both administrative and judicial, had therefore been excessively formalistic and showed that the applicants' complaints had not been taken seriously.

I. Article 13 of the Convention in conjunction with or in the light of Article 10[27]

Article 10 of the Convention – Freedom of expression

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

HUDOC keywords

Freedom of expression (10-1)

244. The Court has found a violation of Article 13 in conjunction with or in the light of Article 10 in various cases.

245. However, where the Court has found a violation of Article 10 in its procedural aspects, it has not deemed it necessary to examine the complaint separately under Article 13 in conjunction with Article 10 (*Zarakolu and Belge Uluslararası Yayıncılık v. Turkey*, 2004, § 45; *Bucur and Toma v. Romania*, 2013, § 170; *Karácsony and Others v. Hungary* [GC], 2016, § 174).

246. In the case of *Wille v. Liechtenstein* [GC], 1999 (§§ 76-78), the lack of any precedent in the Constitutional Court's case-law to show that that court had ever accepted for adjudication a complaint brought against the Prince, in relation to a complaint against a refusal to nominate the applicant to public office, following an opinion expressed by the Prince at a conference, led the Court to find a violation of Article 13 in the light of Article 10.

247. In the case of *Lindberg v. Sweden* (dec.), 2004, concerning the recognition and enforcement by the Swedish courts of a Norwegian judgment limiting the freedom of expression of an inspector of seal hunting, the Court found the application inadmissible under Article 13 in conjunction with Article 10 as manifestly ill-founded. It was questionable whether the applicant could at all be said to

27. See the Guide on Article 10 - Freedom of expression.

have an arguable claim for the purposes of Article 13 with respect to his claim, as an arguable claim in the present case could not directly address the main libel case in Norway (the applicant had previously lodged an application against Norway but the European Commission of Human Rights had declared it inadmissible as out of time) but was limited to the ensuing enforcement proceedings in Sweden. Even assuming that Article 13 was applicable, there were no compelling reasons against enforcement. The Swedish courts, at three levels of jurisdiction, had reviewed the substance of the applicant's complaint against the requested enforcement, to a sufficient degree to provide him with an effective remedy for the purposes of Article 13.

248. In the case of *Peev v. Bulgaria*, 2007 (§§ 71-73), the Court found a violation of Article 13 in conjunction with Article 10 on account of the lack of an effective remedy by which the applicant, a civil servant, could have set out in substance his complaints about an alleged violation of his right to freedom of expression following his unlawful dismissal, preceded by a search of his office, apparently ordered in retaliation for the publication in the press of a letter in which he had made accusations against the Chief Prosecutor.

249. In the case of *Kayasu v. Turkey*, 2008 (§§ 114-123), the Court found a violation of Article 13 in conjunction with Article 10 in the absence of an effective remedy before the Supreme Council of Judges and Public Prosecutors by which to complain of the criminal conviction and removal from office of a public prosecutor for abuse of authority and insulting the armed forces. The impartiality of the bodies of the Supreme Council that had been called upon to review the applicant's appeal was open to serious doubt, especially as the Council's Rules of Procedure provided for no means of guaranteeing the impartiality of its members when they sat on the appeals review board. The members of the Council that had been called upon to review the applicant's appeal were unquestionably those who had reviewed his case and pronounced the impugned sanction. The decision to dismiss him had been examined by an appeals review board composed of nine members, four of whom had sat as members of the Council that had given the decision to which he objected.

250. In the case of *Kenedi v. Hungary*, 2009 (§ 48), the authorities' opposition to the enforcement of the applicants' rights relating to freedom of expression led the Court to find a violation of Article 13 in conjunction with Article 10. The respondent State body had adamantly resisted the applicant's lawful attempts to secure the enforcement of his right, as granted by an order of the domestic courts, to gain free access to documents concerning the State's former security services. Accordingly, he had not been able to publish an objective study on the functioning of the State security service.

251. In the cases of *Bulgakov v. Russia*, 2020, §§ 47-49; *Engels v. Russia*, 2020, §§ 42-44; *OOO Flavus and Others v. Russia*, 2020, §§ 53-55 ; *Vladimir Kharitonov v. Russia*, 2020, §§ 55-57, the Court found a violation of Article 13 in conjunction with Article 10 on the grounds that the domestic courts had refused to examine the merits of the complaint and had not examined either the legality or the proportionality of the effects of blocking orders against the claimants' websites.

252. The case of *Miliūtė and Danauskienė v. Lithuania* (dec.), 2026 (§§ 73-74, 77) concerned the alleged absence of an effective domestic remedy in relation to the refusal by the authorities to provide journalists with an audio recording of a government's consultative meeting. The Supreme Administrative Court examined the substance of the applicants' complaint and acknowledged that the refusal had been ill-founded and unlawful. The Court was satisfied that the applicants had an arguable complaint under Article 10 of the Convention so that Article 13 was applicable. However, the applicants did not challenge either the scope of the review carried out by the Supreme Administrative Court or the reasons underlying its decision. Furthermore, they did not question its finding that it had not been technically possible to restore the audio-recording. Nor did they claim financial compensation. In those circumstances, the Court found that the applicants had had at their disposal a domestic remedy capable of dealing with the substance of their complaint and granting

them appropriate relief. Accordingly, the application was declared inadmissible as manifestly ill-founded.

J. Article 13 of the Convention in conjunction with or in the light of Article 11[28]

Article 11 of the Convention – Freedom of assembly and association

"1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.

2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

HUDOC keywords

Freedom of peaceful assembly (11-1) – Freedom of association (11-1)

253. The Court has found a violation or no violation of Article 13 in conjunction with or in the light of Article 11 in various cases.

254. However, where the Court has found a violation of Article 11 in its procedural aspects, it has not deemed it necessary to examine the complaint separately under Article 13 in conjunction with Article 11 (*Young, James and Webster v. the United Kingdom*, Commission's report, 1979, §§ 176, 178; *Tüm Haber Sen and Çınar v. Turkey*, 2006, §§ 41-42; *Ekşi and Ocak v. Turkey*, 2010, § 38; *Chernega and Others v. Ukraine*, 2019, § 285).

255. As regards effective remedies in respect of complaints concerning the right to peaceful assembly, such is the nature of democratic debate that the timing of public meetings held in order to voice certain opinions may be crucial for the political and social weight of such meetings. Therefore, the State authorities may, in certain circumstances, refuse permission to hold a demonstration if such a refusal is compatible with the requirements of Article 11 of the Convention, but they cannot change the date on which the organisers plan to hold it. If a public assembly is organised after a given social issue loses its relevance or importance in a current social or political debate, the impact of the meeting may be seriously diminished. Freedom of assembly – if prevented from being exercised at a propitious time – can well be rendered meaningless. Thus, it is important for the effective enjoyment of freedom of assembly that the applicable laws provide for reasonable time-limits within which the State authorities, when giving relevant decisions, should act (*Bączkowski and Others v. Poland*, 2007, §§ 82-83).

256. In *Bączkowski and Others v. Poland*, 2007 (§§ 83-84) the Court found a violation of Article 13 in conjunction with Article 11 on account of the belated annulment, after the date on which demonstrations and rallies against homophobia were due to take place, of a decision illegally refusing to authorise them. The notion of effective remedy meant that the applicants should have been able to obtain an outcome before the date of the planned events. They had complied with the applicable laws, which provided for time-limits within which to submit requests to the municipality

28. See the Guide on Article 11 - Freedom of assembly and association.

for permission (up to three days before the date). In contrast, the authorities were not obliged by any legally binding time-frame to give their final decisions before the planned date of the demonstration. The Court was not therefore persuaded that the remedies available to the applicants, all of them being of a *post-hoc* character, could provide adequate redress in respect of the alleged violations of the Convention.

257. The lack of any *a priori* remedies by which to have examined the repeated refusals of the authorities to authorise a Gay Pride parade (*Alekseyev v. Russia*, 2010, §§ 97-100) or by which to obtain an enforceable judicial decision concerning the authorities' refusal to approve the place, date and time or organisation of a public rally before the scheduled date (*Lashmankin and Others v. Russia*, 2017, §§ 342-361), both constituted violations of Article 13 in conjunction with Article 11.

Russian laws provided for time-limits for the organisers to give notice of a public event. In contrast, the authorities were not obliged by any legally binding time-frame to give their final decisions before the planned date of the public event. The judicial remedy available to the organisers of public events, which was of a *post-hoc* character, could not provide adequate redress in respect of the alleged violations of the Convention. Moreover, in the case of *Lashmankin and Others v. Russia*, 2017 (§ 360), the scope of judicial review was limited to examining the lawfulness of the proposal to change the location, time or manner of conduct of a public event, and the courts, which were not required by law to assess its "proportionality", did not do so in practice.

258. In *Serbian-Chinese Friendship Society FDH v. Serbia*, 2026 (§§ 88-90, 92), the Court found that the applicant society had been denied an effective domestic remedy in respect of the prohibition of its planned public protests on the alleged persecution of Falun Gong and its members in the People's Republic of China at the time of the Chinese President's official visit to Serbia. The relevant administrative disputes and constitutional appeal proceedings had been *post hoc* in character and were therefore not effective in the circumstances of the case.

259. As to remedies for complaints concerning freedom of association, in the case of *Metin Turan v. Turkey*, 2006 (§§ 36-38) the lack of a remedy before a national authority by which to challenge a decision to transfer a civil servant to a town in another region, on account of his being a member of a legally founded union, as requested by the governor of a region where a state of emergency had been declared, had entailed a violation of Article 13 in the light of Article 11. Faced with the wide powers of the governor, the lack of judicial review in respect of the transfer did not afford sufficient safeguards in order to avoid any abuse or simply to allow a review of the lawfulness of the relevant decisions. The requisite remedy was not effective either in law or in practice.

260. In the cases of *Karaçay v. Turkey*, 2007 (§§ 44-45), and *Kaya and Seyhan v. Turkey*, 2009 (§§ 41-42), the lack of an effective remedy by which to challenge a warning received by members of a union on account of their participation in a day of protests was judged by the Court to be in breach of Article 13 in the light of Article 11. The lack of an effective remedy before a national authority in respect of a disciplinary sanction such as the warning in question had deprived those concerned of any safeguards in order to prevent possible abuse or simply to allow a review of the lawfulness of disciplinary measures such as the one imposed on them. This was also the case in *Doğan Altun v. Turkey*, 2015 (§§ 58-60), concerning the lack of a remedy in respect of a warning issued to a trade-union representative for organising union action on work premises outside working hours. The only remedy available against the disciplinary sanction in question was an administrative appeal before the disciplinary board.

K. Article 13 of the Convention in conjunction with or in the light of Article 12

Article 12 of the Convention – Right to marry

"Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right."

HUDOC keywords

Men and women (12) – Marry (12)

261. In two cases the Court has dealt with the question of effective remedies by which to challenge refusals to authorise a prisoner to get married and to obtain appropriate redress.

262. In the case of *Frasik v. Poland*, 2010 (§ 104), the lack of any procedure by which a prisoner could have effectively challenged the decision denying him or her the right to get married in prison had entailed a violation of Article 13 in the light of Article 12.

263. In the case of *Jaremowicz v. Poland*, 2010 (§§ 70-71) the Court found a violation of Article 13 in the light of Article 12 as regards the lack of appropriate redress for a refusal to allow a prisoner to get married in prison. The applicant had been able to challenge the initial refusal before the prison court. However, the procedure had lasted nearly five months and no ruling on his appeal had been given by the time the prison authorities eventually changed their original decision. In consequence, the procedure could not be said to have offered the applicant the requisite relief, that is to say, a prompt decision on the substance of his Convention claim under Article 12. Nor could the belated grant of permission to marry constitute the redress required by this Article.

L. Article 13 of the Convention in conjunction with or in the light of Article 34[29]

Article 34 of the Convention – Individual applications

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or [its] Protocols ... The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

HUDOC keywords

Petition (34) – Defendant State Party (34) – Individual (34) – Non-governmental organisation (34) – Group of individuals (34) – Victim (34) – *Actio popularis* (34) – *Locus standi* (34) – Hinder the exercise of the right of application (34)

264. The Court has found, in one case, a violation of Article 13 in the light of Article 34.

265. In *Al-Saadoon and Mufdhi v. the United Kingdom*, 2010 (§§ 162-166), the authorities had not taken all reasonable steps to seek to comply with the Rule 39 indication. The applicants' transfer to

29. See the Practical Guide on Admissibility Criteria, on Articles 34 and 35 of the Convention.

the Iraqi authorities, in spite of the risk that the death penalty might be applied before their appeals could be examined had exposed them to a serious risk of grave and irreparable harm. This had also had the effect of unjustifiably nullifying the effectiveness of any appeal to the House of Lords. The Court thus found a violation of Article 13 in the light of Article 34.

M. Article 13 of the Convention in conjunction with or in the light of Article 1 of Protocol No. 1[30]

Article 1 of Protocol No. 1 – Protection of property

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

HUDOC keywords

> Positive obligations (P1-1) – Possessions (P1-1-1) – Peaceful enjoyment of possessions (P1-1-1) – Interference (P1-1-1) – Deprivation of property (P1-1-1) – General principles of international law (P1-1-1) – Control of the use of property (P1-1-2) – General interest (P1-1-2) – Secure the payment of taxes (P1-1-2) – Secure the payment of contributions or penalties (P1-1-2)

266. The Court has found a violation or no violation of Article 13 in conjunction with or in the light of Article 1 of Protocol No. 1 in various cases.

267. However, where the Court has found a violation of Article 1 of Protocol No. 1 in its procedural aspects, it has not deemed it necessary to examine the complaint separately under Article 13 in conjunction with that Article (*Velikovi and Others v. Bulgaria*, 2007, §§ 251-252; *Džinić v. Croatia*, 2016, § 82).

268. The Court has stated that there is a difference in the nature of the interests protected by Article 13 of the Convention and Article 1 of Protocol No. 1: the former affords a procedural safeguard, namely the "right to an effective remedy", whereas the procedural requirement inherent in the latter is ancillary to the wider purpose of ensuring respect for the right to the peaceful enjoyment of possessions. Having regard to the difference in purpose of the safeguards afforded by the two Articles, the Court has judged it appropriate to examine the same set of facts under both Articles (*Iatridis v. Greece* [GC], 1999, § 65).

269. As regards the restitution of property or compensation for its loss, the lack of an effective remedy by which to challenge the authorities' refusal to return an open-air cinema to the lessee after the quashing of the eviction order had constituted a violation of Article 13 in the light of Article 1 of Protocol No. 1 in the case of *Iatridis v. Greece* [GC], 1999 (§§ 65-66). A remedy had been available to the applicant in the form of an application to have an eviction order quashed; he had availed himself of it, and successfully, but in the light of the Minister of Finance's refusal to comply with the judgment of the Court of First Instance, the remedy in question could not be regarded as "effective".

30. See the Guide on Article 1 of Protocol No. 1 - Protection of property.

270. In the case of *Vasilev and Doycheva v. Bulgaria*, 2012 (§§ 58-61), the lack of an effective remedy by which to complain of the authorities' inaction in the restitution of farmland, collectivised by the communist regime, had entailed a violation of Article 13 in the light of Article 1 of Protocol No. 1. Certain provisions of the Code of Administrative Procedure provided for a remedy that was capable of expediting the administrative proceedings. But they had entered into force in 2007 and, by that time, the restitution proceedings initiated by the applicants had already accumulated a considerable delay of several years. In addition, the Government had not adduced any decision of the domestic courts to show that those provisions were applicable and effective in the context of the procedure for the restitution of the farmland and in the applicants' particular situation.

271. In the case of *Driza v. Albania*, 2007 (§§ 115-120), the inability to obtain the enforcement of a court decision awarding compensation in respect of unlawful nationalisation of the property of the applicant's relatives in the absence of an appropriate procedure or legislative framework had entailed a violation of Article 13 in the light of Article 1 of Protocol No. 1. The Government had, in particular, failed to set up the appropriate bodies to deal with the valuation of the properties that could not be returned or to adopt site plans for that purpose. Moreover, it was unlikely that the Government would put in place such a system imminently or within a sufficiently short time-frame to enable the settlement of the dispute related to the determination of the applicants' rights.

272. In the cases of *Chiragov and Others v. Armenia* [GC], 2015 (§§ 213-215), and *Sargsyan v. Azerbaijan* [GC], 2015 (§§ 269-274), the lack of an effective remedy concerning the loss of home and property of displaced persons in the context of the Nagorno-Karabakh conflict, and their ongoing inability to access their property, had entailed a violation of Article 13 in the light of Article 1 of Protocol No. 1 and of Article 8 of the Convention.

273. In the case of *Edward and Cynthia Zammit Maempel v. Malta*, 2019 (§§ 70-86), the Court found a violation of Article 13 in conjunction with Article 1 of Protocol No. 1, concluding that although constitutional redress proceedings were an effective remedy in theory, they were not so in practice, as they did not make it possible to obtain compensation for loss caused by property requisition orders which, though lawful and pursuing legitimate objectives, had imposed an excessive individual burden on the applicants. The Constitutional Court had found a breach and had awarded compensation for non-pecuniary damage, but not for pecuniary damage, and had failed to revoke the requisition order, taking the view that it was for the applicants to bring proceedings to that end. Thus, even assuming that each of the successive remedies relied upon by the Government could have provided appropriate redress, and taking account of the fact that it took the constitutional courts more than five years (at two levels of jurisdiction) to decide the applicants' claims, it appeared reasonable to consider that it could take another five years (at two levels) for the civil courts to determine the remaining claims. An applicant having sustained a long-term violation could not be expected to use yet another remedy to obtain redress for his loss. Moreover, successive procedures would have further burdened the applicants with supplementary legal costs and expenses.

274. In the case of *Marshall and Others v. Malta*, 2020 (§§ 70-81), the Court found a violation of Article 13 in conjunction with Article 1 of Protocol No. 1, for although constitutional redress proceedings – the sole remedy available – were an effective remedy in theory, they were not so in practice. The applicants had arguable complaints in respect of the rent laws in place, which, though lawful and pursuing legitimate objectives, imposed an excessive individual burden in view of the flagrant discrepancy between the rent they received and the market value of the property. The Constitutional Court, as was its normal practice, had found that it had no jurisdiction to order the eviction of the tenants. It had further taken the view that the provision of the Civil Code, amended in 2009, enabling the owners to recover their property, could only apply at the end of a transition period in 2028. It had nevertheless ruled that the impugned rent control legislation could no longer be applied in respect of the applicants' property. In the absence of an award covering future rent until 2028, the only remedy capable of giving adequate and speedy redress to the applicants was the

eviction of the tenants. However, it transpired that no eviction proceedings had since been undertaken (or, if so, been concluded); nor had the tenants voluntarily vacated the property. The inaction of both parties has thus led to the status quo remaining that which existed on the date of the Constitutional Court judgment, more than three years earlier. This notwithstanding, there was little justification for delaying redress in the present case, given that: (i) unlike in similar cases where the interferences had been justified by the legitimate aim of providing social housing, in the present case the interference applied in favour of a commercial entity, namely a bank; (ii) as the law stood, the bank would in any event lose the protection of the law and therefore would have to vacate the property when the lease came to an end in 2028. Furthermore, the financial redress offered to the applicants had not been adequate. The Court was concerned that the Maltese courts often failed: (i) as to pecuniary damage, to bear in mind that awards must be intended to put the applicant, as far as possible, in the position he would have enjoyed had the breach not occurred; and (ii) to accompany such awards by an adequate award in respect of non-pecuniary damage and/or an order for the payment of the relevant costs.

275. In *Cauchi v. Malta*, 2021 (§§ 75-87), the Court reiterated that although constitutional redress proceedings were an effective remedy in theory, they were not so in practice in cases concerning rent levels – imposed by law – that were insufficient for landlords. This was also true for the civil court, ruling in constitutional matters, which had not awarded the applicant sufficient compensation. The same law provided that where a tenant did not meet the means test to be eligible for welfare, they could continue occupying the premises for up to five years. The Court could not accept that following a favourable judgment of the courts of constitutional jurisdiction, whether at first-instance or on appeal before the Constitutional Court, an aggrieved applicant could remain the victim of an interference which no longer pursued a legitimate aim for at least five more years. Furthermore, the same legislation provided that where a tenant was eligible for welfare the rent could increase, gradually, up to a maximum of 2% of the property's market value, taking account of the means and age of the tenant and any disproportionate burden on the landlord. In the absence of eviction, in order to bring the violation (already acknowledged by the domestic court) to an end, the applicant should have been paid an appropriate rent for the period subsequent to the domestic judgment. It was incomprehensible how a gradual increase over the years would fulfil such a requirement. Moreover, the establishment of this rent was dependent on the means of the tenant. Thus, a low rent could still be established, leaving the landlord to bear most of the social and financial costs of providing housing to the individual, as opposed to the State. In those circumstances the Court found a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 as all the remedies had been ineffective.

276. In the case of *Rizzo and Others v. Malta*, 2024 (§§ 31-46), the appeal to the Constitutional Court as of 2021 had been a remedy, available in theory as well as in practice, which was accessible, capable of providing redress and offering reasonable prospects of success in relation to claims under the old rent laws. The Constitutional Court had consistently applied the specific guidelines for the award of adequate compensation indicated in *Cauchi v. Malta*. Moreover, domestic law had been amended subsequent to *Cauchi*. A new potentially effective procedure, capable of evicting the tenant or putting in place a higher future rent, had been open to the applicants. The Court thus found no violation of Article 13 in conjunction with Article 1 of Protocol No. 1.

277. As regards compensation following disasters, in the case of *Öneryıldız v. Turkey* [GC], 2004 (§§ 156-157), the applicant had been denied an effective remedy by which to allege a violation of his right under Article 1 of Protocol No. 1 concerning the fact that a decision on compensation for the destruction of household goods, following an explosion on a public industrial site, had been long in coming and the award had never been paid. The advantages which had accrued to the applicant through the provision to him of subsidised housing had proved incapable of removing from the applicant his status as the victim of an alleged violation of Article 1 of Protocol No. 1, or *a fortiori* of depriving him of his right to an effective remedy in order to obtain redress for that alleged violation.

The Court thus took the view that there had been a violation of Article 13 of the Convention as regards the complaint under Article 1 of Protocol No. 1.

278. In the case of *Budayeva and Others v. Russia*, 2008 (§§ 196-198), the Court found no violation of Article 13 in the light of Article 1 of Protocol No. 1 on the ground that a refusal by the courts to award the applicants damages for the part of their claim not covered by the disaster victims' benefits they received could not be considered unreasonable or arbitrary. The applicants had been able to lodge a claim for damages and have it examined by competent courts. The reason why no award had been made in these proceedings was that the applicants had already received free substitute housing and a monetary allowance, and no grounds were found to establish tort liability of the State in respect of the difference between that compensation and the actual losses. Moreover, it would not be appropriate to impose an absolute obligation on the State to evaluate material damage and to assume tort liability in the circumstances where it had implemented measures through a general scheme of emergency relief, in that case for the benefit of victims of property damage caused by mudslides.

279. In the case of *Nuri Kurt v. Turkey*, 2005 (§§ 118-122), the inadequacy of the investigation concerning a fire having destroyed houses led the Court to find a violation of Article 13 in the light of Article 8 of the Convention and of Article 1 of Protocol No. 1. There were serious defects in the authorities' investigation, in particular the fact that a gendarme officer had been appointed as the investigator in a case where gendarmes were alleged to have been the perpetrators, and other aspects raising serious doubts about the credibility of his investigation, which had not been thorough or effective.

280. As regards the payment of a debt in *Saggio v. Italy*, 2001 (§§ 42-44), the Court found a violation of Article 13 in the light of Article 1 of Protocol No. 1 given that, for approximately four years and two months after extraordinary liquidation proceedings had been instituted against a company which had not paid its employee for about six months, the applicant had been unable to apply to any authority to assert his right to recover the sums owed to him or to challenge the measures taken by the liquidator; nor had he had any other effective means of obtaining an examination of the matter. The rules that had governed extraordinary liquidation proceedings, together with the length of time taken to verify the statement of claims, had constituted an unjustified interference with the applicant's right to an effective remedy.

281. As regards the freezing of assets under a Sanctions Act to address national security concerns, in *M.S.L., TOV v. Ukraine*, 2025 (§§ 117-121) the Court found a violation of Article 13 in conjunction with Article 1 of Protocol No. 1 because the applicant companies had, in the particular circumstances of the case, been denied a reasonable opportunity to effectively challenge the impugned measures, due both to the limited scope of judicial review by the Supreme Court and to the excessive delay in examining the case.

N. Article 13 of the Convention in conjunction with or in the light of Article 2 of Protocol No. 1[31]

Article 2 of Protocol No. 1 – Right to education

> "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

HUDOC keywords

Right to education (P1-2) – Respect for parents' religious convictions (P1-2) – Respect for parents' philosophical convictions (P1-2)

282. The Court has found a violation or no violation of Article 13 in conjunction with or in the light of Article 2 of Protocol No. 1 in various cases.

283. In the case of *Olsson v. Sweden (no. 1)*, 1988 (§ 98), the Court found no violation of Article 13 in conjunction with Article 2 of Protocol No. 1 since various effective remedies had been available to the applicants in respect of an alleged breach of that Article as a result of the religious upbringing given to one of their children who had been taken into care. In addition to the possibility of complaining to the administrative authorities, a parent was entitled, after the entry into force of a 1980 Act, to appeal to the County Administrative Court against a placement decision taken by a Social Council. Both before and after that time, the question of a child's religious upbringing could have been raised and examined in a request for termination of care.

284. In the cases of *Efstratiou v. Greece*, 1996 (§§ 48-50), and *Valsamis v. Greece*, 1996 (§§ 47-49), the Court found a violation of Article 13 in conjunction with Article 2 of Protocol No. 1 and Article 9 of the Convention in the absence of an effective remedy by which to submit complaints concerning the one-day suspension of a pupil from school for refusing to join a school parade on account of the religious beliefs of his parents, who were Jehovah's witnesses. The applicants could not obtain a judicial decision that the disciplinary measure of suspension was unlawful, this being a prerequisite for a compensation claim. The actions for damages were therefore of no avail to them. As to the other remedies relied upon, the Government had cited no instance of their use similar to the present case, and their effectiveness had accordingly not been established.

285. In the case of *Sampanis and Others v. Greece*, 2008 (§§ 58-59), the Government had not referred to any effective remedy by which to obtain redress for an alleged omission of the administration to register Roma children for schooling. Accordingly, there had been a violation of Article 13 in the light of Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1.

31. See the Guide on Article 2 of Protocol No. 1 - Right to education.

O. Article 13 of the Convention in conjunction with or in the light of Article 3 of Protocol No. 1[32]

Article 3 of Protocol No. 1 – Right to free elections

> "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

HUDOC keywords

Right to free elections (P1-3) – Free expression of the opinion of the people (P1-3) – Choice of the legislature (P1-3) – Vote (P1-3) – Stand for election (P1-3)

286. The Court has found a violation or no violation of Article 13 in conjunction with or in the light of Article 3 of Protocol No. 1 in various cases.

287. In a case where a post-election dispute concerning electoral rights had been examined by the national courts, the Court chose to examine the complaint solely in the light of Article 3 of Protocol No. 1 and no separate question arose under Article 13 (*Gahramanli and Others v. Azerbaijan*, 2015, § 56; *Riza and Others v. Bulgaria*, 2015, § 95; *Davydov and Others v. Russia*, 2017, § 200). However, in those cases where such a dispute had not been examined by the courts, the Court engaged in a separate examination of the Article 13 complaint (*Grosaru v. Romania*, 2010, §§ 55-57; *Paunović and Milivojević v. Serbia*, 2016, §§ 68-73).

288. The Council of Europe's Venice Commission, in its Code of Good Practice in Electoral Matters, recommends judicial review of the application of electoral rules, possibly in addition to appeals to the electoral commissions or before parliament. While several Council of Europe member States have adopted judicial review, only a few States still maintain purely political supervision of elections (*Grosaru v. Romania*, 2010, § 56).

289. In cases where the authorities, through deliberate actions and omissions, prevent a parliamentary candidate from running, the breach of Article 3 of Protocol No. 1 cannot be remedied exclusively through an award of compensation. If States were able to confine their response to such incidents to the mere payment of compensation, without putting in place effective procedures ensuring the proper unfolding of the democratic process, it would be possible in some cases for the authorities to arbitrarily deprive candidates of their electoral rights and even to rig elections. The right to stand for Parliament, which along with the other rights guaranteed by Article 3 of Protocol No. 1 is crucial to establishing and preserving the foundations of a meaningful democracy, would then be ineffective in practice (*Petkov and Others v. Bulgaria*, 2009, § 79).

290. As regards the right to stand for election, in the case of *Mugemangango v. Belgium* [GC], 2020, §§ 125-127 and 132-139, the Court found a violation of Article 13 in conjunction with Article 3 of Protocol No. 1 as there had been no effective remedy by which candidates standing in the parliamentary elections could challenge the result and request a recount. Domestic law conferred exclusive jurisdiction on the Walloon Parliament to rule on the validity of elections as regards its members. Pursuant to those provisions, the courts had found they had no jurisdiction to deal with disputes concerning post-election issues. The Court held, under Article 3 of Protocol No. 1, that the procedure for complaints to the Walloon Parliament had not provided adequate and sufficient

32. See the Guide on Article 3 of Protocol No. 1 - Right to free elections.

safeguards ensuring the effective examination of the applicant's grievances. Therefore, in the absence of such safeguards, that remedy could likewise not be deemed "effective" within the meaning of Article 13.

The Court reiterated that the "authority" referred to in Article 13 did not necessarily have to be a judicial authority in the strict sense. Having regard to the subsidiarity principle and the diversity of the electoral systems existing in Europe, it was not for the Court to indicate what type of remedy should be provided in order to satisfy the requirements of the Convention. That question, closely linked to the principle of the separation of powers, fell within the wide margin of appreciation afforded to Contracting States in organising their electoral system. A judicial or judicial-type remedy, whether at first instance or following a decision by a non-judicial body, was in principle such as to satisfy the requirements of Article 3 of Protocol No. 1.

291. As regards the right to stand for election, in the case of *Petkov and Others v. Bulgaria*, 2009 (§§ 80-83), the remedial action invoked by the Government to deal with complaints about a failure by the electoral authorities to abide by final court decisions and about a refusal to re-register the applicants on the list of parliamentary candidates would only afford pecuniary compensation. As a result of the considerable time constraints in the run-up to the elections, the situation could be rectified solely by means of a post-election remedy. Therefore, the requirements of Article 13 could be fulfilled only by a procedure by which the candidates could seek vindication of their right to stand for Parliament before a body with the power to annul the election result. However, the scope of the review by the Constitutional Court, which had jurisdiction to hear disputes about the lawfulness of parliamentary elections, was not clearly defined in the absence of clear provisions. Moreover, there was a limitation on the persons and bodies who were entitled to refer a case to the Constitutional Court; candidates – or, indeed, any other participant in the electoral process – could not directly compel the institution of proceedings before that court. Thus, the Court found a violation of Article 13 in the light of Article 3 of Protocol No. 1.

292. The lack of an effective remedy for a decision by a Central Electoral Commission to disqualify a party and one of its candidates from standing in an election led the Court to find a violation of Article 13 in the light of Article 3 of Protocol No. 1 in the case of *Russian Conservative Party of Entrepreneurs and Others v. Russia*, 2007 (§§ 86-89). An appeal had failed because the domestic courts considered that the supervisory-review judgment of the Presidium of the Supreme Court was final and that no further examination of the matter was possible. In addition, the Code of Civil Procedure at the time did not provide for any appeal against a judgment or decision given in supervisory-review proceedings. It could only be set aside by means of another supervisory-review judgment or decision. However, the power to institute supervisory-review proceedings was discretionary, that is to say it was solely for the State official concerned to decide whether or not a particular case warranted supervisory review. A new round of supervisory-review proceedings could not have been set in motion by a party.

293. As regards the short time-limit for appealing against the annulment of the candidatures of electoral groups to territorial elections on grounds that they were carrying on activities of parties that had been declared illegal owing to their links with a terrorist organisation, the Court found no violation of Article 13 in the light of Article 3 of Protocol No. 1 in the case of *Etxeberria and Others v. Spain*, 2009 (§§ 78-82). The time-limit of two days allowed to the groupings in question to submit their appeals had been short, particularly with reference to the standards laid down by the Venice Commission, which recommended three to five days at first instance. However, the time-limit in Spain was not manifestly unreasonable when compared with the approach taken by most other European countries. In any event, the applicants had not demonstrated that the time-limits had prevented the representatives of the groupings in question from lodging their appeals with the Supreme Court or the Constitutional Court or from filing observations and defending their interests in an appropriate manner.

294. As regards post-election disputes, in the case of *Grosaru v. Romania*, 2010 (§ 62), the lack of an effective remedy in respect of the authorities' refusal to grant the applicant the parliamentary seat belonging to the Italian minority had entailed a violation of Article 13 in the light of Article 3 of Protocol No. 1. The parliamentary candidate had not been able to obtain a judicial ruling on the interpretation of the disputed statutory provision of electoral law, which lacked clarity as to the procedure to be followed for the allocation of the parliamentary seat reserved for the winning organisation representing a national minority. The Supreme Court of Justice had dismissed the applicant's case as inadmissible, taking the view that the decisions of the central bureau were final. The Constitutional Court subsequently confined itself to informing the applicant that it had no jurisdiction in electoral matters.

295. The lack of effective remedies before the Supreme Court and Constitutional Court by which to seek the annulment of Parliament's decision to terminate the applicant's office led the Court to find a violation of Article 13 in conjunction with Article 3 of Protocol No. 1 in the case of *Paunović and Milivojević v. Serbia*, 2016 (§§ 72-73). Those courts had dismissed the applicant's complaints without examining them on their merits. Even assuming that the applicant had successfully had his "blank resignation" set aside in civil proceedings, this would not have been an effective remedy in the particular circumstances of the case, because there was no suggestion by the Government that the annulment would have resulted in the applicant's parliamentary mandate being restored. In addition, the Government were unable to cite any domestic case-law in which a claim had been brought successfully in a case such as the applicant's.

296. In the case of *Strack and Richter v. Germany* (dec.), 2016, the complaint of a lack of effective remedies, in view of the refusal to terminate the office of European Parliament members elected as a result of an eligibility threshold declared unconstitutional, was declared inadmissible as manifestly ill-founded. The applicants had had recourse before the Federal Parliament and the Federal Constitutional Court, which both had the power to rectify certain electoral errors. The manner in which those proceedings had been conducted guaranteed the applicants an effective remedy in respect of their complaint under Article 3 of Protocol No. 1.

297. In the case of *Galan v. Italy* (dec.), 2021 (§§ 146-153), the Court could not require scrutiny by a court of parliamentary procedure concerning the composition of the elected body – and particularly of a decision to exclude a member with a criminal conviction – without any consideration of the very nature of the relevant constitutional law. Such a requirement would not take account of a system which, like the one in question, had a constitutional reservation in respect of Parliament's power to adjudicate not only upon the admission of its members but also upon any causes of ineligibility and incompatibility. Thus, having regard to the safeguards in the parliamentary procedure of "triple validation", the Court considered that Article 13 could not require judicial scrutiny of a decision taken by Parliament in availing itself of a constitutional reservation of competence.

298. Concerning the exercise of the right to vote, in the case of *Toplak and Mrak v. Slovenia*, 2021 (§§ 94-96), the second applicant, who was disabled, had voted but complained that he had been unable to do so on an equal basis with others owing to the practical obstacles that he had encountered in his polling station and the failure to respond reasonably to his needs. However, it had been open to him to express any concerns that he might have had concerning the accommodation of his needs to the competent electoral bodies, which had previously responded constructively to his requests. If he had considered that he was the victim of discrimination in the exercise of his right to vote, he could have submitted a compensation claim under a provision that was specifically designed to address discrimination and which did not raise any ambiguity that would, prima facie, have called into question the effectiveness of the remedy. In the circumstances of the present case, a remedy that was capable of providing sufficient redress in the form of compensation would satisfy the criteria of Article 13. The Court thus found that there had been no violation of Article 13 in conjunction with Article 14 of the Convention and Article 3 of Protocol No. 1.

P. Article 13 of the Convention in conjunction with or in the light of Article 2 of Protocol No. 4

Article 2 of Protocol No. 4 – Freedom of movement

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

HUDOC keywords

Freedom of movement (P4-2-1)

299. The Court has found a violation or no violation of Article 13 in conjunction with Article 2 of Protocol No. 4 in two cases.

300. Where there is an arguable claim that an act of the authorities may infringe the individual's right to freedom of movement, guaranteed by Article 2 of Protocol No. 4 to the Convention, Article 13 of the Convention requires that the national legal system must make available to the individual concerned the effective possibility of challenging the measure complained of and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (*Riener v. Bulgaria*, 2006, § 138).

301. In the case of *Riener v. Bulgaria*, 2006 (§§ 138-143), the lack of an effective remedy concerning a travel ban on grounds of unpaid taxes led the Court to find a violation of Article 13 in conjunction with Article 8 of the Convention and Article 2 of Protocol No. 4. Once satisfied that that she had not paid her debt, the courts and the administrative authorities had automatically upheld the travel ban against the applicant. All the other circumstances of the case had been considered irrelevant and no attempt had been made to assess whether the continuing restrictions after a certain time were still a proportionate measure, striking a fair balance between the public interest and the applicant's rights. The procedure had not been effective given that it afforded no possibility of having examined the substance of an "arguable complaint" under the Convention or of obtaining appropriate relief.

302. In the case of *De Tommaso v. Italy* [GC], 2017 (§§ 181-185), the Court found no violation of Article 13 in conjunction with Article 2 of Protocol No. 4, because the applicant had been able to avail himself of an effective remedy before the Court of Appeal, arguing that the special surveillance with a compulsory residence order had been imposed unlawfully. After reviewing the terms and proportionality of the special supervision order, the Court of Appeal had quashed the impugned measure.

Q. Article 13 of the Convention in conjunction with or in the light of Article 4 of Protocol No. 4[33]

Article 4 of Protocol No. 4 – Prohibition of collective expulsion of aliens

"Collective expulsion of aliens is prohibited."

HUDOC keywords

Prohibition of collective expulsion of aliens (P4-4)

303. The Court has found a violation or no violation of Article 13 in conjunction with Article 4 of Protocol No. 4 in a number of cases.

304. Concerning the right to an effective remedy in the light of a ban on the collective expulsion of aliens, the Court has emphasised the need for a suspensive remedy (*Čonka v. Belgium*, 2002, §§ 79 et seq.). The Court observed in particular that the notion of an effective remedy under Article 13 required that the remedy might prevent the execution of measures that were contrary to the Convention and whose effects were potentially irreversible. Consequently, it was inconsistent with Article 13 for such measures to be executed before the national authorities had examined whether they were compatible with the Convention, although Contracting States were afforded some discretion as to the manner in which they conformed to their obligations under that provision.

305. The lack of suspensive remedies by which to complain of a failure to examine the individual situation of each of the applicants facing collective expulsion led the Court to find a violation of Article 13 in conjunction with Article 4 of Protocol No. 4 in *Čonka v. Belgium*, 2002 (§§ 77-85). The *Conseil d'État* had been called upon, within a time-limit of forty-five days, to examine the merits of the applicants' complaints in their application for judicial review of the decision to deny them leave to remain, bearing in mind that the applicants had only five days in which to leave the national territory. Applications for a stay of execution under the ordinary procedure or under the extremely urgent procedure did not of themselves have suspensive effect.

306. In the case of *Hirsi Jamaa and Others v. Italy* [GC], 2012 (§§ 201-207), where migrants of Somali and Eritrean nationality had been returned to the country they had left from after being intercepted on the high seas, the lack of any suspensive remedies by which to lodge their complaints with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced led the Court to find a violation of Article 13 in conjunction with Article 3 of the Convention and Article 4 of Protocol No. 4. The verification of the applicants' individual situations could not be envisaged on board the military vessels which had picked them up. There were no interpreters or legal advisers among the personnel. The applicants had been given no information by the Italian military personnel, who had led them to believe that they were being taken to Italy and who had not informed them as to the procedure to be followed to avoid being returned to Libya.

307. In the case of *A.A. and Others v. North Macedonia*, 2022 (§§ 128-132), the Court found that there had been no violation of Article 13 in conjunction with Article 4 of Protocol No. 4, concerning the availability of an effective remedy with suspensive effect by which a summary expulsion could be challenged. Macedonian law provided for a right of appeal against removal orders. However, by

33. See the Guide on Article 4 of Protocol No. 4 - Prohibition of collective expulsion of aliens.

deliberately attempting to enter the country as a group and in an unauthorised location, the applicants had placed themselves in a situation of unlawfulness and had thus chosen not to follow the existing legal procedures.

308 Where an applicant alleges that the expulsion procedure against him or her was "collective" in nature, without claiming at the same time that it had exposed him or her to a risk of irreversible harm in the form of a violation of Articles 2 or 3 of the Convention, there is no need for the expulsion to be regarded as potentially carrying such a risk: in such cases the Convention does not impose an absolute obligation on a State to guarantee an automatically suspensive remedy, but merely requires that the person concerned should have an effective possibility of challenging the expulsion decision by having a sufficiently thorough examination of his or her complaints carried out by an independent and impartial domestic forum (*Khlaifia and Others v. Italy* [GC], 2016, § 279).

309. In *Khlaifia and Others v. Italy* [GC], 2016 (§§ 272-281), the Court found no violation of Article 13 in conjunction with Article 4 of Protocol No. 4 in the absence of any suspensive effect of the remedy against the collective expulsion, where no risk of a violation of the rights guaranteed by Articles 2 or 3 in the destination country had been alleged. The refusal-of-entry orders had indicated expressly that the individuals concerned could appeal against them to the Justice of the Peace within a period of sixty days. There was no reason to doubt that, in that context, the Justice of the Peace would also be entitled to examine any complaint about a failure to take account of the personal situation of the migrant concerned and based therefore, in substance, on the collective nature of the expulsion.

310. In the case of *N.D. and N.T. v. Spain* [GC], 2020 (§§ 241-243), concerning the immediate and forcible return of aliens from Spain's land border, following the attempt of a large number of migrants to cross it unlawfully and *en masse*, the Court found no violation of Article 13 in conjunction with Article 4 of Protocol No. 4 as to the lack of a remedy against the applicants' removal. The lack of an individual removal procedure had been the consequence of the applicants' own conduct, as they had failed to use the official entry procedures. A complaint as to risks they allegedly faced in the destination country had been dismissed at the outset.

R. Article 13 of the Convention in conjunction with or in the light of Article 1 of Protocol No. 12

Article 1 of Protocol No. 12 – General prohibition of discrimination

> "1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
>
> 2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

HUDOC keywords

Prohibition of discrimination (P12-1)

311. In the case of *Toplak and Mrak v. Slovenia*, 2021 (§§ 88-91), the Court found a violation of Article 13 in conjunction with Article 1 of Protocol No. 12 owing to the lack of an effective remedy for complaints raised by disabled applicants about practical obstacles to accessing a polling station and the free exercise of their right to vote by secret ballot in a national referendum. None of the available remedies would have enabled them to obtain any compensation for the alleged violation. Taking into account the absence of any legal remedy with a preventive effect, an action of which the

sole purpose was to obtain a finding of a violation without the possibility of seeking redress would constitute an inadequate remedy. The fact that the Court in some cases concerning the right to vote had awarded no monetary compensation could not alter this finding. The Court was not, in the present case, confronted with a domestic decision by which no compensation was awarded in view of the circumstances of the case, but with a domestic court that lacked any power to award appropriate redress.

S. Article 13 of the Convention and Article 46[34]

Article 46 of the Convention – Binding force and execution of judgments

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

3. If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a problem of interpretation of the judgment, it may refer the matter to the Court for a ruling on the question of interpretation. A referral decision shall require a majority vote of two thirds of the representatives entitled to sit on the Committee.

..."

HUDOC keywords

Pilot judgment (46) – Systemic problem (46) – General measures (pilot judgment) (46) – Individual measures (pilot judgment) (46) – Abide by judgment (46-1) – Execution of judgment (46-2) – Individual measures (46-2) – General measures (46-2): Legislative amendments (46-2); Changes of regulations (46-2); Changes in case-law (46-2)

1. Pilot judgment procedure

312. In the context of the pilot judgment procedure[35], the Court identifies the redress to be put in place for the benefit of the States parties to the Convention, in order to remedy a structural or systemic problem or to resolve the failure that has been found.

313. Concerning a violation of Article 13 in the light of Article 3 (substantive aspect), in the case of *Ananyev and Others v. Russia*, 2012 (§§ 210-231), the Court asked the respondent State to set up effective preventive and compensatory domestic remedies for complaints about conditions in remand prisons. Preventive remedies had to make it possible for detainees to obtain prompt and effective examination of their complaints by an independent authority or court empowered to order remedial action. Compensatory remedies should provide redress, including a reduction of sentence or monetary compensation in an amount comparable to the Court's awards in similar cases, to detainees held in inhuman or degrading conditions pending trial. The Court thus required the respondent State to grant redress to all the victims who had suffered from those conditions.

314. In the case of *Neshkov and Others v. Bulgaria*, 2015 (§§ 282-283), the respondent State was required to take general measures in the form of a preventive remedy capable of providing swift redress to prisoners held in unsatisfactory conditions. The Court suggested that the best way of

34. See the Guide on Article 46 - Binding force and execution of judgments.
35. See Rule 61 of the Rules of Court.

putting such a remedy into place would be to set up a special authority to supervise correctional facilities. Other options would be to set up a procedure at the level of existing authorities such as public prosecutors or to mould existing forms of injunctive relief to accommodate grievances relating to conditions of detention.

315. In the case of *Varga and Others v. Hungary*, 2015 (§§ 106-113), the respondent Government were encouraged to provide an effective remedy or a combination of remedies, both preventive and compensatory in nature and guaranteeing genuinely effective redress for prison overcrowding. The Court pointed out that the most appropriate solution for the problem would be the reduction of the number of prisoners by more frequent use of non-custodial punitive measures and minimising recourse to pre-trial detention. A reduced prison sentence also offered adequate redress to poor material conditions of detention, provided that the reduction was carried out in an express and measurable way.

316. In the case of *Sukachov v. Ukraine*, 2020 (§§ 153-160), the Court invited the respondent State to put in place effective preventive and compensatory remedies by which to complain about the detention conditions and prison overcrowding. The best way of putting in place a preventive remedy would be to set up a special authority to supervise detention facilities. As to compensatory remedies, one form of compensation might consist in reducing the sentence of the person concerned proportionately in relation to each day that he or she had spent in unsatisfactory conditions of detention. Another form of compensation could be the provision of monetary compensation, the only option possible for persons who were no longer in detention.

317. Having found a violation of Article 13 in the light of Article 6 § 1, concerning the lack of remedies in domestic law by which to complain of the length of civil proceedings, in the case of *Rutkowski and Others v. Poland*, 2015 (§§ 211-222), the Court asked the respondent State to take fresh measures in order to guarantee the end of the "fragmentation of proceedings" principle and to provide "sufficient and appropriate redress".

318. Also in the context of a violation of Article 13 in conjunction with or in the light of Article 6 § 1 concerning the lack of effective remedies in domestic law by which to complain of the length of civil proceedings, the Court asked the respondent States to introduce an effective domestic remedy, or set of remedies, preventive and compensatory, capable of affording appropriate redress in the following cases: *Rumpf v. Germany*, 2010, § 73; *Ümmühan Kaplan v. Turkey*, 2012, § 75; *Glykantzi v. Greece*, 2012, § 81; *Gazsó v. Hungary*, 2015, § 39.

319. Having found a violation of Article 13 in the light of Article 6 § 1 concerning the lack of remedies in domestic law by which to complain of the length of criminal proceedings, in *Michelioudakis v. Greece*, 2012 (§§ 74-78) the Court asked the respondent State to introduce an effective domestic remedy, or set of remedies (a preventive remedy to expedite the proceedings and a compensatory remedy or reduction of sentence), capable of affording adequate and sufficient redress.

320. As regards a violation of Article 13 in the light of Article 6 § 1 concerning the lack of an effective remedy in domestic law by which to complain of the length of administrative proceedings, in the case of *Vassilios Athanasiou and Others v. Greece*, 2010 (§§ 54-57) the Court asked the respondent State to introduce an effective domestic remedy or set of remedies.

321. The Court has also had occasion to point out the main criteria for the purpose of verifying the effectiveness of the compensatory remedies in length-of-proceedings cases (*Burdov v. Russia (no. 2)*, 2009, § 99; see also paragraph 166 of this guide), and the existence of a strong but rebuttable presumption that excessively long proceedings will occasion non-pecuniary damage (*Scordino v. Italy (no. 1)* [GC], 2006, §§ 203-204; *Burdov v. Russia (no. 2)*, 2009, § 100; see also paragraphs 172 and 173 of this guide).

322. As regards a violation of Article 13 in the light of Article 6 § 1 concerning the lack of effective domestic remedies by which to complain of a prolonged failure to enforce final judicial decisions, in the case of *Burdov v. Russia (no. 2)*, 2009, §§ 138-141 the Court asked the respondent State to put in place an effective remedy providing compensation for failure to enforce or for belated enforcement of judicial decisions. See also in the same vein *Yuriy Nikolayevich Ivanov v. Ukraine*[36], 2009, §§ 91-94; *Manushaqe Puto and Others v. Albania*, 2012, §§ 110-118; *Gerasimov and Others v. Russia*, 2014, §§ 219-226.

323. Having found a violation of Article 13 in conjunction with Article 8 concerning the lack of effective remedies by which to complain of a failure to settle the question of the right of abode of individuals who had been "erased" from the register of permanent residents after Slovenia's return to independence, in the case of *Kurić and Others v. Slovenia* [GC], 2012 (§ 415), the Court asked the respondent State to set up an *ad hoc* domestic compensation scheme.

2. Execution of judgments

324. In the context of the execution of its judgments, the Court may ask the respondent State to take general and/or individual measures.

325. Having found a violation of Article 13 in the light of Article 2 (procedural aspect), in *Abakarova v. Russia*, 2015 (§ 114), the Court asked the respondent State to take measures to ensure adequate protection of the applicant's rights in any new proceedings, including access to measures for obtaining reparation for the harm suffered on account of the injury she had received in her childhood and the death of her family in a lethal air raid on her village.

326. Following a violation of Article 13 in the light of Article 3 (substantive aspect), in the case of *Tomov and Others v. Russia*, 2019 (§§ 190-197), the Court asked the respondent State to provide redress for the absence of effective domestic remedies, preventive or compensatory, for raising claims of inhuman and degrading conditions of transport of prisoners. The Court indicated how complaints should be processed, the authorities before which the effective remedies should be used, and the need to provide for monetary compensation.

327. In *J.M.B. and Others v. France*, 2020 (§§ 316), the Court asked the respondent State to take general measures to establish an effective preventive remedy in practice by which to complain of the poor detention conditions and prison overcrowding.

328. Having found a violation of Article 13 in the light of Article 6 § 1, concerning the lack of effective remedies by which to complain of the length of criminal proceedings in the case of *Dimitrov and Hamanov v. Bulgaria*, 2011 (§ 131), and concerning the length of civil proceedings in *Finger v. Bulgaria*, 2011 (§ 133), the Court asked the respondent State to introduce effective compensatory remedies.

329. In *Lukenda v. Slovenia*, 2005 (§ 98), the respondent State was encouraged to either amend the existing range of legal remedies or add new remedies so as to secure genuinely effective redress for violations of the right to a fair hearing.

36. Violation of Article 13 in conjunction with Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that are not final within the meaning of Article 44 of the Convention are marked with an asterisk ("*") in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, the Chamber judgment does not become final and thus has no legal effect; it is the subsequent Grand Chamber judgment that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (http://hudoc.echr.coe.int) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note), and of the Commission (decisions and reports) and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties. All the language versions available for cited cases are accessible via the 'Language versions' tab in the HUDOC database, a tab which can be found after you click on the case hyperlink.

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