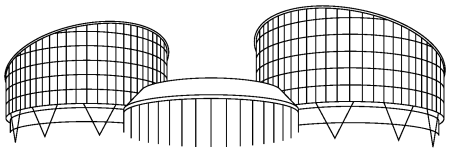

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 46 of the European Convention on Human Rights

Binding force and execution of judgments

Updated on 28 February 2025

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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 46 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).

This Guide is supplemented by an Appendix which notes the main indications made by the Court under Article 46, for many of the substantive Articles.

It should be noted that the Article 46 indications, to which the Guide and Appendix refer, do not form part of the Court's finding of a violation. As the Guide points out, such indications are not binding in the same manner as the Court's findings under the substantive Articles of the Convention and they should be read in the context of the broader supervision mechanism governed by Article 46 of the Convention.

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], § 324).

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.

* 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 (*).

Introduction

1. One of the most significant features of the Convention system is that it includes a mechanism for reviewing compliance with its provisions. Thus, the Convention not only requires the Contracting States to observe the rights and obligations deriving from it (Article 1), but also establishes a judicial body, the Court (Article 19), which is empowered to find violations of the Convention, through judgments which the Contracting States have undertaken to abide by (Article 46 § 1). In addition, it sets up a mechanism for supervising the execution of judgments, entrusted to the Committee of Ministers (Article 46 § 2). Such a mechanism demonstrates the importance in the Convention system of the effective implementation of the Court's judgments (*Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], 2009, § 84). In *Kavala v. Türkiye* [GC], 2022, the Court further underlined that the whole structure of the Convention rests on the general assumption that public authorities in the member States act in good faith. That structure includes the supervision procedure, and the execution of judgments should also involve good faith and take place in a manner compatible with the "conclusions and spirit" of the judgment. The failure to implement a final, binding judicial decision would be likely to lead to situations incompatible with the principle of the rule of law which the Contracting States undertook to respect when they ratified the Convention (§§ 169-170).

I. The content of Article 46

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.

4. If the Committee of Ministers considers that a High Contracting Party refuses to abide by a final judgment in a case to which it is a party, it may, after serving formal notice on that Party and by decision adopted by a majority vote of two thirds of the representatives entitled to sit on the Committee, refer to the Court the question whether that Party has failed to fulfil its obligation under paragraph 1.

5. If the Court finds a violation of paragraph 1, it shall refer the case to the Committee of Ministers for consideration of the measures to be taken. If the Court finds no violation of paragraph 1, it shall refer the case to the Committee of Ministers, which shall close its examination of the case."

HUDOC keywords

Pilot judgment (46): Systemic problem (46); General measures (pilot judgment) (46); Individual measures (pilot judgment) (46)

Abide by judgment (46-1) – Parties to case (46-1)

Execution of judgment (46-2):
Just satisfaction (46-2): Default interest (46-2); Freedom from attachment (46-2)
Individual measures (46-2): Reopening of proceedings (46-2); Pardon (46-2); Striking out of criminal records (46-2)
General measures (46-2): Legislative amendments (46-2); Changes of regulations (46-2); Changes in case-law (46-2)

Infringement proceedings (46-4)

2. The first paragraph of Article 46 sets out the obligation on the Contracting States to abide by the Court's judgments. The remaining paragraphs set the framework for the procedural modalities to assess the steps taken by a State to fulfil its obligation.

A. When does Article 46 apply?

3. Article 46 applies to every judgment in which the Court has found a breach of the Convention. Article 46 means that the Court's finding imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences (*Papamichalopoulos and Others v. Greece* (Article 50), 1995, § 34).

B. The nature of the obligation under Article 46

1. In general

4. The Contracting State in question will be under an obligation not only to pay the applicant the sums awarded by way of just satisfaction but also to take individual and/or, if appropriate, general measures in its domestic legal order to put an end to the violation found by the Court and to redress its effects (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, § 147).

5. The State party to the case is, in principle, free to choose the means by which to comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (*Papamichalopoulos and Others v. Greece* (Article 50), 1995, § 34).

a. Individual measures for the applicants concerned

6. A State responsible for a wrongful act is under an obligation to make restitution, consisting of restoring the situation which existed before the wrongful act was committed, provided that restitution is not "materially impossible" and "does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation" (see Article 35 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA)[1]. In other words, while restitution is the rule, there may be circumstances in which the State responsible is exempted – fully or in part – from this obligation, provided that it can show that such circumstances

[1] *Article 35 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA).*

obtain (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, § 151). It is for the respondent State to remove any obstacles in its domestic legal system that might prevent the applicant's situation from being adequately redressed (*Maestri v. Italy* [GC], 2004, § 47). As far as individual measures are concerned, the aim of restitutio in integrum is to put the applicants, to the extent possible, in the position in which they would have been had the requirements of the Convention not been disregarded. In exercising their choice of individual measures, the State party must bear in mind their primary aim of achieving restitutio in integrum (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, § 150). Individual measures should be timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court (*ibid.*, § 170).

7. If the nature of the breach allows restitutio in integrum, it is for the respondent State to effect it. If, on the other hand, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (*Brumărescu v. Romania* (just satisfaction) [GC], 2001, § 20).

b. General measures

8. General measures should prevent similar violations occurring. The Court has drawn attention to the Recommendation of the Committee of Ministers of 12 May 2004 (Rec(2004)6) on the improvement of domestic remedies[2], in which the Committee of Ministers reiterates that the States have the general obligation to solve the problems underlying violations found. Furthermore, under the Convention, particularly Article 1, in ratifying the Convention the Contracting States undertake to ensure that their domestic law is compatible with the Convention (*Scordino v. Italy (no. 1)* [GC], 2006, §§ 232-234).

2. In a particular case

9. The measures to execute the judgment taken by the respondent State must be compatible with the conclusions and spirit of the Court's judgment (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, § 186). The scope of the legal obligations flowing from a final judgment under Article 46 is set by the reasons for which the Court found the violation (*ibid.*, § 187).

C. Continued obligation to execute under Article 46 in case of cessation of membership

10. The question of the binding force and the execution of judgments and the supervision thereof by the Committee of Ministers arose in the context of the cessation of membership of the Russian Federation. On 16 March 2022 the Committee of Ministers adopted Resolution CM/Res(2022)2 by which the Russian Federation ceased to be a member of the Council of Europe as from that same date. On 22 March 2022 the Court, sitting in plenary session, adopted the "Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights". It stated that the Russian Federation would cease to be a Party to the Convention on 16 September 2022. On 23 March 2022 the Committee of Ministers adopted Resolution CM/Res(2022)3, pursuant to which the Committee of Ministers continues to supervise the execution of judgments against the Russian Federation, and the Russian Federation is required to implement them.

11. The Court expressly acknowledged this continued obligation to execute when it noted in a subsequent inter-State case that Article 46 required that the Committee of Ministers set forth an

[2] *Recommendation of the Committee of Ministers of 12 May 2004 (Rec(2004)6) on the improvement of domestic remedies*.

effective mechanism for the implementation of the Court's judgments also in cases against a State which has ceased to be a party to the Convention. It observed in that connection that the Committee of Ministers continued to supervise the execution of its judgments against the Russian Federation, and the Russian Federation was required, pursuant to Article 46 § 1 of the Convention, to implement them, despite the cessation of its membership of the Council of Europe (*Georgia v. Russia (II)* (just satisfaction) [GC], 2023, § 46).

II. Indications in the Court's judgments under Article 46

A. Origin of the practice

12. As part of a package of measures to guarantee the effectiveness of the Convention machinery, the Committee of Ministers adopted on 12 May 2004 a Resolution (Res(2004)3) on judgments revealing an underlying systemic problem, in which, after emphasising the interest in helping the State concerned to identify the underlying problems and the necessary execution measures (seventh paragraph of the preamble), it invited the Court "to identify in its judgments finding a violation of the Convention what it considers to be an underlying systemic problem and the source of that problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments" (paragraph I of the resolution). The Court expressly referred to this resolution in the first pilot judgment, looking at it in the context of the growth in its caseload, particularly as a result of series of cases deriving from the same structural or systemic cause (*Broniowski v. Poland* [GC], 2004, § 190).

B. Status and purpose of such indications

13. While the Court's judgments are essentially declaratory in nature, in certain special circumstances it may seek to indicate the type of measure that might be taken in order to put an end to a violation it has found to exist. Occasionally, the Court has included indications with relevance to the execution process concerning both individual and general measures. However, taking account of the institutional balance between the Court and the Committee of Ministers under the Convention, and of the States' responsibility in the execution process, the ultimate choice of the measures to be taken remains with the States under the supervision of the Committee of Ministers (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, § 182). The inclusion or absence of an explicit statement relevant to execution is not decisive for the question whether a state has fulfilled its obligations under Article 46 § 1. What is decisive is whether the measures taken by the respondent State are compatible with the conclusions and spirit of the Court's judgment (*ibid.*, § 186). The Court has further clarified that limiting the supervision process to the Court's explicit indications would remove the flexibility needed by the Committee of Ministers to supervise, on the basis of the information provided by the respondent State and with due regard to the applicant's evolving situation, the adoption of measures that are feasible, timely, adequate and sufficient (*ibid.*, § 184). The Committee of Ministers may review the indications relevant to execution, for example, where objective factors which came to light after the Court's judgment was delivered must be taken into account in the supervision process (*ibid.*, § 183).

14. The Court also explained that providing indications under Article 46, in the first place, enables the Court to ensure, as soon as it delivers its judgment, that the protection afforded by the Convention is effective and to prevent continued violation of the rights in issue and, subsequently, assists the Committee of Ministers in its supervision of the execution of the final judgment. Such indications also enable and require the State concerned to put an end, as quickly as possible, to the violation of the Convention found by the Court (*Kavala v. Türkiye* [GC], 2022, § 148).

C. Types of indication

1. Indications under Article 46

a. What are they for?

15. With a view to helping the respondent State fulfil its obligations under Article 46, the Court may seek to indicate the type of individual and/or general measures that might be taken in order to put an end to the situation which it has found to violate the Convention (*Suso Musa v. Malta*, 2013, § 120).

16. The Court's concern is to facilitate the rapid and effective correction of a defect identified in the national system of human-rights protection. Once such a defect has been identified, the national authorities have the task, subject to supervision by the Committee of Ministers, of taking – retrospectively if necessary – the necessary measures of redress in accordance with the principle of subsidiarity under the Convention, so that the Court does not have to reiterate its finding of a violation in a series of comparable cases (*Baybaşin v. the Netherlands*, 2006, § 79; *Aliyev v. Azerbaijan*, 2018, § 222).

b. When are they included? – Indications under Article 46 in respect of the individual applicant (individual measures)

17. In certain particular situations, the Court may find it useful or, indeed, even necessary to indicate to the respondent Government the type of measures that might or should be taken by the State in order to put an end to the situation that gave rise to the finding of a violation. Sometimes the nature of the violation found may be such as to leave no real choice as to the individual measures required (*Hirsi Jamaa and Others v. Italy* [GC], 2012, §§ 209-211; *Assanidze v. Georgia* [GC], 2004, § 202; *Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, § 171; *Savriddin Dzhurayev v. Russia*, 2013, §§ 252-254; *Taganrog LRO and Others v. Russia*, 2022, § 290).

18. As regards the reopening of proceedings, the Court does not have jurisdiction to order such a measure. However, where an individual has been convicted following proceedings that have entailed breaches of the requirements of Article 6 of the Convention, the Court may indicate that a retrial or the reopening of the case, if requested, represents in principle an appropriate way of redressing the violation. These principles are also relevant in situations in which the Court has found a violation of Article 7 of the Convention (*Yüksel Yalçınkaya v. Türkiye* [GC], 2023, § 407). On the other hand, in some of its judgments the Court has itself explicitly ruled out the reopening, following a finding of a violation of Article 6 of the Convention, of proceedings concluded by final judicial decisions (*Moreira Ferreira v. Portugal (no. 2)* [GC], 2017, §§ 49 and 51, and also *Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, §§ 311-314). The issue of reopening proceedings has also been considered where the Court has found a violation of Article 4 of Protocol No. 7 (right not to be tried or punished twice). In the case concerned, the Court noted that in the particular circumstances there was no obligation on the respondent State to reopen either set of proceedings (*Tsonyo Tsonev v. Bulgaria (no. 4)*, 2021, §§ 62-66).

c. When are they included? – Indications under Article 46 in respect of a structural problem (general measures)

19. Where the Court has found that the violation of the Convention is occurring or likely to occur in similar situations, it has observed that general measures at the national level were undoubtedly called for and that those measures should take into consideration the entire group of individuals affected by the practice found to be in breach. Furthermore, the measures should be such as to remedy the

Court's finding of a violation in respect of a general practice, so that the system established by the Convention is not compromised by a large number of repetitive applications stemming from the same cause (*Baybaşin v. the Netherlands*, 2006, § 79, *Yüksel Yalçınkaya v. Türkiye* [GC], 2023, § 418).

New para. In certain circumstances, the Court has been specific about the general measures required in order to resolve the shortcoming in the domestic legal order identified in the case. See for example the similar cases of *Zorica Jovanović v. Serbia*, 2013 and *Petrović and Others v. Croatia**, 2025, both of which involved complaints by parents that the true fate of their babies, said to have died in hospital soon after birth, had not been definitively ascertained. In each judgment, the Court indicated that the respondent State must, within one year, take appropriate measures, preferably by a lex specialis, to put in place a mechanism to provide redress to parents in the same situation as the applicants. It further specified that the mechanism should be under independent supervision and have adequate powers to provide credible answers regarding the fate of the babies, and to award compensation as appropriate (§ 92 and § 171, respectively).

2. Pilot judgments

a. What are they for?

20. In order to facilitate effective implementation of its judgments, the Court may adopt a pilot judgment procedure enabling it to identify clearly in a judgment the existence of structural problems underlying the violations and to indicate specific measures or actions to be taken by the respondent State to remedy them. This adjudicative approach is, however, pursued with due respect for the Convention organs' respective functions: it falls to the Committee of Ministers to evaluate the implementation of individual and general measures under Article 46 § 2 of the Convention (*Greens and M.T. v. the United Kingdom*, 2010, § 107).

21. Another important aim of the pilot-judgment procedure is to induce the respondent State to resolve large numbers of individual cases arising from the same structural problem at the domestic level, thus implementing the principle of subsidiarity which underpins the Convention system (*Varga and Others v. Hungary*, 2015, § 96).

22. The dual purpose of the pilot judgment procedure therefore is, on the one hand, to reduce the threat to the effective functioning of the Convention system and, on the other, to facilitate the most speedy and effective resolution of a dysfunction affecting the protection of Convention rights in the national legal order. By incorporating into the process of execution of the pilot judgment the interests of all other existing or potential victims of the systemic problem identified, the procedure aims to afford proper relief to all actual and potential victims of that dysfunction, as well as to the particular applicant(s) in the pilot case (for a recent and detailed summary of the principles deriving from the Court's case-law as regards pilot judgments, see *Wałęsa v. Poland*, 2023, §§ 314-318).

b. When are they adopted?

23. The Court has applied the pilot-judgment procedure in situations affecting a large number of people and in which there is an urgent need to grant them speedy and appropriate redress at domestic level. In finding that cases are suitable for the pilot judgment procedure the Court has also taken into account the fact that the continuing existence of major structural deficiencies causing repeated violations of the Convention is not only an aggravating factor as regards the State's responsibility under the Convention for a past or present situation, but is also a threat for the future effectiveness of the supervisory system put in place by the Convention. It has also had regard to the fact that the applicants' situation cannot be detached from the general problem originating in a structural dysfunction, which has affected large numbers of people and is likely to continue to do so in future (*Varga and Others v. Hungary*, 2015, § 111, *Rezmiveș and Others v. Romania*, 2017, §§ 106-111).

i. Procedural significance - disposal of similar cases

24. Since its judgment in *Broniowski v. Poland* [GC], 2004, it has been the Court's consistent practice to include in pilot judgments, in addition to rulings in the pilot case, various procedural decisions concerning the future treatment of follow-up cases – those communicated to the respondent Government and new applications alike. For instance, the Court has often decided to adjourn similar cases pending the implementation of general measures by the respondent State. It has discontinued its examination of similar applications already pending before it and suspended the processing of any applications not yet registered at the date of delivery of the pilot judgment (*Greens and M.T. v. the United Kingdom*, 2010, §§ 121-122). It has also anticipated its rulings on the admissibility of pending and future cases, holding that, in certain circumstances, it may declare them inadmissible in accordance with the Convention (*Suljagić v. Bosnia and Herzegovina*, 2009, § 65). Where appropriate, the Court has decided to communicate, by virtue of the pilot judgment, all similar applications lodged with it before the date of delivery of the judgment (*Rutkowski and Others v. Poland*, 2015, §§ 226-227, and the ninth operative provision of the judgment). That practice, embracing a range of solutions, reflects the rationale of the pilot-judgment procedure, according to which all cases deriving from the same systemic root cause are incorporated into its framework and absorbed into the execution process of the pilot judgment (*Burmych and Others v. Ukraine*, 2017, § 166).

25. Rule 61 § 6 of the Rules of Court provides for the possibility of adjourning the examination of all similar applications pending the implementation of the remedial measures by the respondent State. The Court has emphasised that adjournment is a possibility rather than an obligation, as clearly shown by the inclusion of the words "as appropriate" in the text of Rule 61 § 6 and the variety of approaches used in the previous pilot judgments (*Varga and Others v. Hungary*, 2015, § 114 with further references).

26. In general, three types of approach can be identified in the Court's case-law for the timescale of adoption of general measures. Where the Court has previously identified the problem giving rise to the violation but repetitive cases have continued to come to the Court, it has observed that the lengthy delay thus far demonstrated the need for a timetable and indicated that timetable in the pilot judgment (*Greens and M.T. v. the United Kingdom*, 2010, § 115). Similarly, where the judgment concerns a long standing and serious problem that requires to be urgently addressed, the Court has set a time-limit for the implementation of the indicated measures, such as the two-year limit in *Cannavacciuolo and Others v. Italy**, 2025, § 501 and operative provision no. 15 (see further under Article 2 below). In other cases, the Court has also considered that a reasonable time-limit was warranted for the adoption of the measures, given the importance and urgency of the matter and the fundamental nature of the right at stake, but did not find it appropriate to indicate a specific time frame, indicating that given the nature of the problem the Government should take the appropriate steps as soon as possible (*Varga and Others v. Hungary*, 2015, § 112). Finally, the Court has also considered that, having regard to the importance and urgency of the problem identified and the fundamental nature of the rights in question, a reasonable deadline had to be set for the implementation of the general measures. However, it concluded that it was not for the Court to set such a deadline at that stage; the Committee of Ministers was better placed to do so. The Court nevertheless set a period of six months for the respondent Government to provide, in cooperation with the Committee of Ministers, a precise timetable for the implementation of the appropriate general measures (*Rezmives and others v. Romania*, 2017, § 126).

27. If the respondent State fails to adopt such measures following a pilot judgment and continues to violate the Convention, the Court may have no choice but to resume the examination of all similar applications previously adjourned (§ 27 above) and to adopt judgments in order to ensure effective observance of the Convention (*Rezmiveș and Others v. Romania*, 2017, § 105).

28. Where the Court has resumed its examination of similar applications in the context of a pilot judgment and the execution process for that judgment has failed to eliminate the root cause of the

systemic problem, the Court has found that this reexamination of all pending similar applications can be incapable of achieving its intended purpose. In *Burmych and Others v. Ukraine*, 2017 (§§ 176-199), the Court found that pending and future cases were part and parcel of the process of execution of the pilot judgment, *Yuriy Nikolayevich Ivanov v. Ukraine*, 2009. Recalling that the legal issues under the Convention had been already resolved in the pilot judgment, the Court proceeded to strike the pending similar cases out of its list and to transmit them to the Committee of Ministers. It considered that their resolution, including individual measures of redress, had to be encompassed by the general measures of execution to be put in place by the respondent State under the supervision of the Committee of Ministers. No useful purpose would be served, in terms of the aims of the Convention, by the Court continuing to deal with these cases. The Court did however recall that it retained the power to take the applications up again (Article 37 § 2), and indicated that it might reassess the situation within two years to determine if it should do so (*Burmych and Others v. Ukraine*, 2017, § 223). In *Ryaska v. Ukraine*, 2024 the Court clarified the scope of its ruling in Burmych. Since Burmych the Court had distinguished between cases covered by Burmych (the non-enforcement of monetary awards) and those involving the non-enforcement of non-pecuniary civil obligations with the latter type of case being taken to judgment from 2020. However, the Court noted that the Burmych judgment had not expressly distinguished between pecuniary and non-pecuniary obligations, the applications struck out by Burmych had included non-pecuniary obligations and the ongoing execution process covered both categories of case. The Court considering that the practice of distinguishing cases involving non-pecuniary obligations (and thus taking those to judgment) did not serve any useful purpose, it concluded that such cases should be dealt with in accordance with the procedure followed in Burmych, namely struck out and transmitted to the Committee of Ministers (*ibid*., §§ 36-45) .

III. Jurisdiction

A. Supervision of compliance

29. The question of compliance by the Contracting States with the Court's judgments falls outside the Court's jurisdiction unless it is raised in the context of the "infringement procedure" provided for in Article 46 §§ 4 and 5 of the Convention (*Moreira Ferreira v. Portugal (no. 2)* [GC], 2017, § 102). Rather, under the second paragraph of Article 46, the function of supervising the execution of judgments is entrusted to the Committee of Ministers.

30. Given the variety of means available to achieve restitutio in integrum and the nature of the issues involved, in the exercise of its competence under Article 46 § 2 of the Convention, the Committee of Ministers is considered to be better placed than the Court to assess the specific measures to be taken. This is well illustrated by the Court's climate change judgment in which it said that, in view of the complexity and the nature of the issues involved, it was unable to be detailed or prescriptive as regards any measures to be implemented in order to effectively comply with the judgment (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 657). It is thus for the Committee of Ministers to supervise, on the basis of the information provided by the respondent State and with due regard to the applicant's evolving situation, the adoption of such measures that are feasible, timely, adequate and sufficient to ensure the maximum possible reparation for the violations found by the Court (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, § 155).[3]

31. The Committee is the executive body of the Council of Europe and as such its work has a political character. That said, when supervising the execution of judgments it is fulfilling a particular task which

[3] As to the competence of the Committee of Ministers to take account, when supervising the execution of a judgment, post-judgment developments even where these form the basis of a new application to the Court, see *CM/Notes/1383/H46-17*.

consists of applying the relevant legal rules. The execution process concerns compliance by a Contracting Party with its obligations in international law under Article 46 § 1 of the Convention. Those obligations are based on the principles of international law relating to cessation, non-repetition and reparation as reflected in the ARSIWA. They have been applied over the years by the Committee of Ministers and currently find expression in Rule 6.2 of the Rules of the Committee of Ministers (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, §§ 161-162).

32. Accordingly, the supervision mechanism under Article 46 of the Convention provides a comprehensive framework for the execution of the Court's judgments, reinforced by the Committee of Ministers' practice. Within that framework, the Committee's continuous supervision work has generated a corpus of public documents encompassing information submitted by respondent States and others concerned by the execution process, and recording decisions taken by the Committee in cases pending before it. That practice has also influenced general standard-setting in the Committee's Recommendations to the Member States on topics relevant to execution issues (for example Recommendation R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights[4], or Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings[5]). The result is that the Committee of Ministers has developed an extensive acquis (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, §§ 161-163).

33. Only in infringement proceedings under Article 46 § 4 is the Court required to make a definitive legal assessment of the question of compliance. In so doing, the Court takes into consideration all aspects of the procedure before the Committee of Ministers, including the measures indicated by the Committee. The Court conducts its assessment having due regard to the Committee's conclusions in the supervision process, the position of the respondent Government and the submissions of the victim of the violation. In the context of infringement proceedings, the Court identifies the legal obligations flowing from the final judgment, as well as the conclusions and spirit of that judgment with a view to determining whether the respondent State has failed to fulfil its obligations under Article 46 § 1 (*Ilgar Mammadov v. Azerbaijan* [GC], 2019, § 168). Infringement proceedings do not aim to reopen the question of violation, already decided in the Court's first judgment, or provide for payment of a financial penalty: they seek to add political pressure in order to secure execution of the Court's initial judgment and were introduced to increase the efficiency of the supervision proceedings, namely to improve and accelerate them (*ibid.*, §§ 159-160). In a case in which the Court finds a violation of Article 46 § 1 following infringement proceedings, the Committee of Ministers remains competent under Article 46 § 5 to take the measures that it deems necessary to ensure compliance with the obligations arising from the Court's finding of such a violation (*Kavala v. Türkiye* [GC], 2022, § 176). In reality, the finding of a violation of Article 46 § 1 means that the primary obligation resulting from the Court's initial judgment, namely restitutio in integrum with all the ensuing consequences, continues to exist (*ibid.*, § 175).

34. The Court's has jurisdiction, under Protocol No. 16, to give advisory opinions at the request of designated domestic courts of the States that have ratified that instrument. The overall purpose is to enhance subsidiarity within the Convention system by enabling a domestic court to receive guidance from the European Court on questions of principle regarding the case-law of the Convention arising in proceedings before the former. The Armenian Court of Cassation requested the Court's advice on the applicability of prescription periods in cases involving acts of torture. The domestic proceedings at issue followed on directly from an earlier judgment of the Court, *Virabyan v. Armenia*, 2012, where the Court had found both a substantive and a procedural violation of Article 3. Subsequently, by way of execution of that judgment, new criminal charges were brought against two police officers implicated in the ill-treatment of the applicant. At first and second instance it was held that the

[4] Recommendation No R (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights.
[5] Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings.

relevant prescription period had elapsed so that the accused could not be held criminally responsible. The prosecutor appealed, arguing that on account of the absolute prohibition of torture in international law this should override any prescription of such acts in domestic law. The Court of Cassation asked the European Court to indicate whether the non-application of the statute of limitations in a case involving a breach of Article 3 of the Convention would be compliant with its Article 7 of the Convention. This gave the Court the occasion to comment on both the difficulty that States may encounter in the execution of judgments finding violations of Article 3 on account of their rules on limitation, as well as on the solutions found by certain States as regards this difficulty. The Court, through Protocol No. 16, thereby provided guidance to a domestic court in the context of the latter's involvement in the execution of a judgment, while the supervision of the process by the Committee of Ministers was ongoing.

B. Related questions of admissibility

1. Article 35 § 2 (b)

35. The Committee of Ministers' role in the sphere of execution of the Court's judgments does not prevent the Court from examining a new application concerning measures taken by a respondent State in execution of a judgment if that application contains relevant new information relating to issues undecided by the initial judgment. Measures taken by a respondent State to remedy a violation found by the Court which raise a new issue undecided by the original judgment fall within the Court's jurisdiction and, as such, may form the subject of a new application that may be dealt with by the Court (*Guja v. the Republic of Moldova (no. 2)*, 2018, § 35). The fact that a supervision procedure in respect of the execution of the judgment is still pending before the Committee of Ministers does not prevent the Court from considering a new application in so far as it includes new aspects which were not determined in the initial judgment (*Moreira Ferreira v. Portugal (no. 2)* [GC], 2017, § 57).

36. Reference should be made in this context to the criteria established in the case-law concerning Article 35 § 2 (b), by which an application is to be declared inadmissible if it "is substantially the same as a matter that has already been examined by the Court ... and contains no relevant new information". The Court must therefore ascertain whether the two applications brought before it by the applicant association relate essentially to the same person, the same facts and the same complaints (*Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], 2009, § 63).

37. The determination of the existence of a "new issue" very much depends on the specific circumstances of a given case, and distinctions between cases are not always clear-cut. So, for instance, in *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], 2009, the Court found that it was competent to examine a complaint that the domestic court in question had dismissed an application to reopen proceedings following the Court's judgment. The Court relied mainly on the fact that the grounds for dismissing the application were new and therefore constituted relevant new information capable of giving rise to a fresh violation of the Convention (§ 65). It further took into account the fact that the Committee of Ministers had ended its supervision of the execution of the Court's judgment without taking into account the refusal to reopen as it had not been informed of that decision. The Court considered that, from that standpoint also, the refusal in issue constituted a new fact (§ 67). Similarly, in *Emre v. Switzerland (no. 2)*, 2011, the Court found that a new domestic judgment given following the reopening of the case and in which the domestic court had proceeded to carry out a new balancing of interests, constituted a new fact. It also observed in this respect that the execution procedure before the Committee of Ministers had not yet commenced (cited in *Egmez v. Cyprus* (dec.), 2012, §§ 54-56). In another case (*Mehmet Zeki Doğan v. Türkiye (No. 2)*, 2024), the Court found that the process of the determination of the criminal charge against the applicant in newly reopened proceedings had been revived because of the fresh assessment carried out by the trial court. This necessarily entailed a "new issue" which had not been decided by the Court's previous judgment

in respect of the applicant. Accordingly, the Court declared itself competent to examine the applicant's new complaint concerning the alleged unfairness of the reopened criminal proceedings (§ 57).

38. Comparable complaints were, however, dismissed in *Schelling v. Austria (no. 2)* (dec.), 2010, and *Steck-Risch and Others v. Liechtenstein* (dec.), 2010, as the Court considered, that on the facts, the decisions of the domestic courts refusing the applications for reopening were not based on or connected with relevant new grounds capable of giving rise to a fresh violation of the Convention. Further, in *Steck-Risch and Others v. Liechtenstein* (dec.), 2010, the Court observed that the Committee of Ministers had ended its supervision of the execution of the Court's previous judgment prior to the domestic court's refusal to reopen the proceedings and without relying on the fact that a reopening request could be made. There was no relevant new information in this respect either (cited in *Egmez v. Cyprus* (dec.), 2012, §§ 54-56).

39. It cannot be said that the powers assigned to the Committee of Ministers by Article 46 are being encroached on where the Court has to deal with relevant new information in the context of a fresh application. From that standpoint also, if the Court were unable to examine a new fact, it would escape all scrutiny under the Convention (*Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], 2009, § 67), and an applicant would be deprived, in case of a finding of a violation, of the just satisfaction that might be awarded (*Ivanţoc and Others v. Moldova and Russia*, 2011, § 95). Consequently, the Court and the Committee of Ministers, in the context of their different duties, may be required to examine, even simultaneously, the same domestic proceedings without upsetting the fundamental institutional balance between them (*Kavala v. Türkiye* [GC], 2022, § 155).

40. As regards the specific context of a continuing violation of a Convention right following adoption of a judgment in which the Court has found a violation of that right during a certain period of time, it is not unusual for the Court to examine a second application concerning a violation of that right in the subsequent period (*Ivanţoc and Others v. Moldova and Russia*, 2011, § 87). In such cases, the "new issue" results from the continuation of the violation that formed the basis of the Court's initial decision. The examination by the Court in the second application is, however, confined to the new periods concerned and any new complaints invoked in this respect (*Jurišić v. Croatia (No. 2)*, 2022, § 30). For example, in *Ivanţoc and Others v. Moldova and Russia*, 2011, the Court concluded that the question of the prolongation of the applicants' arbitrary detention between 8 July 2004 [the date of the Court's initial judgment finding, *inter alia*, a violation of Article 5] and 2 and 4 June 2007 respectively fell within its jurisdiction (§ 93-96). In *Wasserman v. Russia (no. 2)*, 2008, the Court accepted jurisdiction of a new complaint which concerned a further period of almost two years after its initial judgment of non-enforcement of a domestic decision in the applicant's favour (§§ 36-37). Similarly, in *Jurišić v. Croatia (No. 2)*, 2022, the Court declared itself competent to examine the new decisions on the applicant's contact orders with his minor child adopted by the domestic authorities after the Court's initial judgment (§§ 32-33). In *Ştefan-Gabriel Mocanu and Others v. Romania*, 2023, the Court first noted that the Committee of Ministers had closed its supervision of the execution of its previous judgment concerning the ineffective investigation into allegations made by the (heirs of) victims of the repression of antigovernment protests in Bucharest in June 1990. It went on to note that the High Court's conclusions concerning the irregularity of the indictment, the quashing of the prosecution proceedings, the exclusion of all the evidence examined and the referral of the case back to the prosecuting authorities, all of which occurred after the closure of the supervision process by the Committee of Ministers, constituted "new elements" in relation to its previous judgment: consequently, the Court declared itself competent to examine the new complaints relating to the continuation of the investigation into the events in question. The Court concluded by finding a new violation in respect of new developments which occurred in the investigation after its first judgment (§§ 37-38, 42-43, 57). Similarly, in *Beley v. Ukraine*, 2024, the Court declared admissible a second complaint from the applicant that the ongoing investigation into acts of torture perpetrated by the police against him was ineffective. The Court had previously established, in a judgment in 2019, that the applicant had been tortured and that the authorities had failed to investigate the matter

effectively. Since the second application referred to the investigative steps taken after the 2019 judgment, the Court considered that the complaint was within its jurisdiction as it concerned new factual developments giving rise to new legal issues (§§ 33-39).

2. Article 35 § 3 (a)

41. The Court has declared a complaint under Article 46, in conjunction with the procedural limb of Article 3, inadmissible under Article 35 § 3 (a) of the Convention where the applicant complained that the authorities had misrepresented the scope of a previous striking-out decision of the Court adopted after a unilateral decision by the Government in which the latter acknowledged that degrading treatment had occurred during the applicant's arrest (*Boutaffala v. Belgium*, 2022, §§ 48-54). Upon the applicant's agreement, the Court took note of the implicit friendly settlement between the parties and struck the application out of the list. In the second case before the Court, the latter reiterated that it was very doubtful that Article 46 § 1 could be regarded as conferring upon an applicant a right that could be asserted in proceedings originating in an individual application to the Court. While the Court had previously examined several applications concerning steps taken by a respondent State to execute a judgment of the Court – where those applications had raised new issues not determined by the original judgment – the Court did not, outside of proceedings instituted pursuant to the "infringement procedure" under Article 46 §§ 4 and 5, have jurisdiction to verify whether a State Party had complied with the obligations laid down by one of its judgments. Even assuming the applicant could rely on a breach of Article 46 taken in conjunction with Article 3, it sufficed to note that the striking-out decision had not amounted to a judgment finding a violation. The Court had merely taken note of the Government's unilateral declaration, and the applicant's agreement to its terms, without having examined its admissibility, let alone its merits. Consequently, the striking-out decision did not fall within the ambit of Article 46, which concerned only final judgments. Moreover, where the parties had reached a friendly settlement, the task of supervising its execution fell not to the Court but to the Committee of Ministers pursuant to Article 39 § 4 of the Convention.

3. Article 37

42. The Court has referred to the principles under Article 46 when assessing whether to strike out a case on the basis of a unilateral declaration under Article 37 § 1 (c) with reference to the acquis of the Committee of Ministers (*Taşdemir v. Turkey* (dec.), 2019, § 20). The Court was satisfied that respect for human rights as defined in the Convention and the Protocols thereto did not require it to continue the examination of the application in particular given the clear and extensive case-law on the topic. In particular, the Court considered that the nature and extent of the obligations arising under the Convention for the respondent State had already been specified in a number of its judgments. Furthermore, the prevailing issues had also sufficiently been brought to the attention of the Committee of Ministers and were being followed up under the terms of Article 46 § 2 of the Convention (*ibid.*, § 22).

43. The Court has restored a case to its list despite its prior decision accepting the Government's unilateral declaration. In *Willems and Gorjon v. Belgium*, 2021, the applicants complained originally about a restriction on their right of access to court. The case was struck out (37 § 1 c) of the Convention) on the basis of a unilateral declaration by the Government which acknowledged that the rejection of the applicants' appeal by the Court of Cassation, for failure to respect a formality, was contrary to Article 6. The applicants then sought to reopen the domestic proceedings, but the Court of Cassation refused to do so, taking the view that the Government's position could not bind the courts, on account of the separation of powers. Moreover, it considered that the initial refusal had not been contrary to the Convention. In view of this, the European Court restored the case to its list and delivered a judgment on the complaint. It stated that, although its first examination of the case had not led to a judgment so there was nothing to execute under Article 46, the applicants were entitled to expect that the national authorities, courts included, would give effect in good faith to the

undertakings given by the Government in proceedings before the Court. It noted the parallels between a decision taken on the basis of a unilateral declaration acknowledging a violation of an individual's rights and a judgment declaring a violation of the Convention. As part of its shared responsibility for ensuring protection of human rights, the Court of Cassation should have drawn the consequences within the domestic legal order of the Government's declaration and of the Court's acceptance of it (*Willems and Gorjon v. Belgium*, 2021, §§ 54-66).

IV. Appendix

A. Relevant indications under Article 46 by Article

1. Introduction

44. This Appendix to the case-law Guide on Article 46 describes the main indications made by the Court under Article 46, in relation to many of the substantive Articles.

a. Article 2

i. The substantive aspect

45. In cases where there was a risk of a violation of the applicants' right to life, on account of expulsion - actual or threatened - to a country where they faced the death penalty or other circumstances which would be in violation of Article 2, the Court has indicated that the respondent State should take all possible steps to obtain an assurance from the relevant State authorities of the non-application of the death penalty (*Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, § 171; in the context of extraordinary renditions, see *Al Nashiri v. Poland*, 2014, § 589; *Al Nashiri v. Romania*, 2018, § 739; *Al-Hawsawi v. Lithuania*, 2024, § 276)[6].

46. In *Cannavacciuolo and Others v. Italy**, 2025 the Court also examined the severe risks to health caused by the years-long problem of the illegal disposal of hazardous waste in the Campania region of Italy, finding that the risks were such as to render Article 2 applicable and to engage the State's obligation to protect the lives of the population of the affected areas. The Court found that the Government had failed to demonstrate that the State had done all that could have been required of it to protect the applicants' lives and it decided to apply the pilot judgment procedure and to specify a range of general measures to be taken by the State within two years of the judgment becoming final. In particular, it indicated that a systematic, coordinated and comprehensive response was required and recommended that a comprehensive strategy be drawn up with prior consultation of relevant stakeholders. Further points regarding the content and scope of the strategy, its implementation and updating over time and regular reporting on the measures taken under it were also made. The judgment also calls for the creation of an independent mechanism to monitor the implementation and impact of the strategy and compliance with the timeframe. The Court also called for transparency so that the affected population could be informed, via a single public information platform, about the risks to health. These recommendations were integrated into the operative provisions of the judgment (ibid, §§ 490-501 and operative provision no. 15).

ii. The procedural (effective investigation) aspect

47. The Court has on occasion expressly declined to give an indication that a Government should, as a response to such a finding of a breach of Article 2, hold a fresh investigation into the death concerned (*Ülkü Ekinci v. Turkey*, 2002, § 179). It has declined on the basis that it cannot be assumed in such cases that a future investigation can usefully be carried out or provide any redress, either to the victim's family or to the wider public by ensuring transparency and accountability. The lapse of time and its effect on the evidence and the availability of witnesses inevitably render such an investigation unsatisfactory or inconclusive, by failing to establish important facts or put to rest doubts and suspicions. Even in disappearance cases, where it might be argued that more is at stake since the

[6] For an example of this practice in the execution acquis see CM Resolution *DH (90) 8* of 12 March 1990 in *Soering v. the United Kingdom*, 1989, where the respondent State obtained diplomatic assurances that the applicant would not be extradited to face offences which carried the death penalty.

relatives suffer from the ongoing uncertainty about the exact fate of the victim or the location of the body, the Court has refrained from issuing any declaration that a new investigation should be launched. The Court has considered that it falls rather to the Committee of Ministers acting under Article 46 of the Convention to address the issues as to what may be required in practical terms by way of compliance in each case (*Finucane v. the United Kingdom*, 2003, § 89).

48. However, in some circumstances it has also indicated that it considered it inevitable that a new, independent, investigation should take place under Article 46. That investigation should be in the light of the terms of the Court's judgment and with due regard to its conclusions in respect of the failures of the investigation to date (*Abuyeva and Others v. Russia*, 2010, § 240; *Navalnyy v. Russia (no. 3)*, 2023, § 167)[7]. Where the domestic investigation is still open, the Court may consider it appropriate to specify certain essential steps that should now be taken, for example evaluating in light of all the known facts the actions of State agents who used lethal force, and granting the next-of-kin access to key documents (*Gasangusenov v. Russia*, 2021, § 102).

49. Where there was a risk that pending investigations could become time-barred, the Court has indicated that the respondent State must put an end to the situation identified to ensure that an investigation is not terminated by application of the statutory limitation of criminal liability. It has given such indications bearing in mind the seriousness of the crimes, the large number of persons affected, the relevant legal standards applicable to such situations in modern-day democracies, the importance for society of knowing the truth about the events concerned and the fact that public interest in obtaining the prosecution and conviction of the perpetrators is firmly recognised, particularly in the context of war crimes and crimes against humanity (*Association "21 December 1989" and Others v. Romania*, 2011, §§ 189-195; *Aslakhanova and Others v. Russia*, 2012, § 237). In a follow-up judgment examining the subsequent developments in the investigation found previously to be ineffective, the Court urged the respondent State to take all necessary measures, including allocating the necessary human resources for the proper conduct of the criminal proceedings, to ensure a Convention compliant investigation into the allegations of the (heirs of) victims (*Ştefan-Gabriel Mocanu and Others v. Romania*, 2023, §§ 82-83).

50. In other contexts, and with reference to the Committee of Ministers' acquis, the Court has accepted that there may be situations where it is de jure or de facto impossible to reopen criminal investigations into the incidents giving rise to the applications brought before it. Such situations may arise, for example, in cases in which the alleged perpetrators were acquitted and cannot be put on trial for the same offence, or in cases in which the criminal proceedings became time-barred on account of the domestic statute of limitations. Indeed, reopening criminal proceedings that were terminated on account of prescription may raise issues of legal certainty and thus have a bearing on a defendant's rights under Article 7 of the Convention. In a similar vein, putting the same defendant on trial for an offence for which he or she has already been finally acquitted or convicted may raise issues concerning that defendant's right not to be tried or punished twice within the meaning of Article 4 of Protocol No. 7 to the Convention (*Taşdemir v. Turkey* (dec.), 2019, § 14).

51. Similarly, the Court cannot overlook the possibility that if a long time has passed since the incident took place, evidence might have disappeared, been destroyed or become untraceable and it may therefore no longer be possible in practice to reopen an investigation and conduct it in an effective

[7] It is the Committee's position that respondent States have a continuing obligation to conduct effective investigations: "when it comes to fresh investigations following a judgment of the European Court finding shortcomings in the initial investigations, it is essential for the authorities to assess and inform the Committee in detail of what investigatory steps can still be taken, what investigatory steps can no longer be taken for practical or legal reasons, what means are deployed to overcome existing obstacles, and what concrete results are expected to be achieved and within which time limit." (See *Corsacov v. Moldova*, 2006, presentation at the 1208th CM-DH (23-25 September 2014; see also *Gharibashvili v. Georgia*, presentation at the 1222nd CM-DH (March 2015).

fashion. Thus, whether a member State is under an obligation to reopen criminal proceedings, and consequently whether a unilateral declaration should contain such an undertaking, will depend on the specific circumstances of the case, including the nature and seriousness of the alleged violation, the identity of the alleged perpetrator, whether other persons not involved in the proceedings may have been implicated, the reason why the criminal proceedings were terminated, any shortcomings and defects in the proceedings prior to the decision to bring them to an end, and whether the alleged perpetrator contributed to the shortcomings and defects that led to the criminal proceedings being brought to an end (*Taşdemir v. Turkey* (dec.), 2019, §§ 15-16).

52. The Court has noted that the fact that it may be impossible to reopen proceedings in cases concerning complaints under Articles 2 and 3 of the Convention is not, in principle, an impediment to the closure by the Committee of Ministers of its examination of the case under Article 46 of the Convention. For example, following the Grand Chamber's finding of a violation of the procedural aspect of Article 3 of the Convention in the case of *Jeronovičs*, cited above, the applicant requested the national prosecutor to reopen the investigation into his allegations. His request was rejected on account of the expiry of the applicable period under the statute of limitations. The Committee of Ministers considered that all the measures required by Article 46 § 1 of the Convention had been adopted, and decided to close its examination of the case (see Resolution CM/ResDH(2017)312) (*Taşdemir v. Turkey* (dec.), 2019, § 19).

iii. Specific issue: planning and control of operations

53. The Court has given indications where violations occurred in relation to the planning and control of State operations deploying lethal force. It found that violations should be addressed by a variety of both individual and general measures consisting of appropriate responses by the State institutions, aimed at drawing lessons from the past, raising awareness of the applicable legal and operational standards and deterring new violations of a similar nature. Such measures could include further recourse to non-judicial means of collecting information and establishing the truth, public acknowledgement and condemnation of violations of the right to life in the course of security operations, and greater dissemination of information and better training for police, military and security personnel in order to ensure strict compliance with the relevant international legal standards. The prevention of similar violations in the future should also be addressed in the appropriate legal framework, in particular ensuring that the national legal instruments pertaining to large-scale security operations and the mechanisms governing cooperation between military, security and civilian authorities in such situations are adequate, as well as clearly formulating the rules governing the principles for and constraints on the use of lethal force during security operations, reflecting the applicable international standards (*Tagayeva and Others v. Russia*, 2017, § 640).

54. With respect to the failure to investigate in such circumstances where the relevant investigation was still open at national level and a number of important factual findings had been made it considered that the specific measures required of the Russian Federation in order to discharge its obligations under Article 46 of the Convention must be determined in the light of the terms of the Court's judgment, and with due regard to the conclusions drawn in respect of the failures of the investigation carried out to date. In particular, this investigation should elucidate the main circumstances of the use of indiscriminate weapons by the State agents and evaluate their actions in consideration of all the known facts. It should also ensure proper public scrutiny by securing the victims' access to the key documents, including expert reports, which had been crucial for the investigation's conclusions on the causes of death and the officials' responsibility (*Tagayeva and Others v. Russia*, 2017, § 641).

b. Article 3

i. Substantive: expulsion

α. Expulsion

55. As for Article 3, the Court has indicated that diplomatic assurances should be obtained from the destination country that an applicant will not be subjected to treatment contrary to Article 3 on return (*M.A. v. France*, 2018, § 91; *Hirsi Jamaa and Others v. Italy*, 2012, § 211).

56. More generally, in the absence of safeguards against the applicants being expelled from a country to face circumstances that would be in violation of Article 3 (or 2), the Court has given indications in respect of general measures to amend legislation, and ensure such change of administrative and judicial practice so as to ensure that: (a) there exists a mechanism requiring the competent authorities to consider rigorously, whenever there is an arguable claim in that regard, the risks likely to be faced by an alien as a result of his or her expulsion on national security grounds, by reason of the general situation in the destination country and his or her particular circumstances; (b) the destination country should always be indicated in a legally binding act and a change of destination should be amenable to legal challenge; (c) the above-mentioned mechanism should allow for consideration of the question whether, if sent to a third country, the person concerned may face a risk of being sent from that country to the country of origin without due consideration of the risk of ill-treatment; (d) where an arguable claim about a substantial risk of death or ill-treatment in the destination country is made in a legal challenge against expulsion, that legal challenge should have automatic suspensive effect pending the outcome of the examination of the claim; and (e) claims about serious risk of death or ill-treatment in the destination country should be examined rigorously by the courts (*Auad v. Bulgaria*, 2011, § 139).

β. Extraordinary rendition

57. In the context of an extraordinary rendition case, the Court found that, by enabling the applicant's transfer to another CIA detention site, the respondent State had exposed him to a foreseeable risk of continued secret, incommunicado and otherwise arbitrary detention (in breach of Article 5), as well as to further ill-treatment and conditions of detention, in breach of Article 3 of the Convention. While the Court was mindful of the fact that the respondent State had already sought assistance and judicial cooperation from the US authorities, it considered that the respondent State was under an obligation to take the necessary individual measures to redress as far as possible the violations found, which required that the respondent State attempted to make further representations to the US authorities with a view to removing or, at the very least seeking to limit, as far as possible, the effects of these violations (*Al-Hawsawi v. Lithuania*, 2024, § 277).

χ. Preventing torture, inhuman and degrading treatment

58. In *Cestaro v. Italy*, 2015, the Court found that the Italian criminal legislation had proved both inadequate in terms of the requirement to punish the acts of torture at issue and devoid of any deterrent effect capable of preventing similar future violations of Article 3. The structural nature of the problem thus appeared to the Court to be undeniable. Moreover, having regard to the principles set out in its case-law and the reasons for its finding, the Court considered that the same problem arose in respect of the criminalisation, not only of acts of torture, but also of the other types of ill-treatment prohibited by Article 3: in the absence of appropriate provision for all the types of ill-treatment prohibited by Article 3 under Italian criminal legislation, statute-barring and remission of sentence could, in practice, prevent the punishment not only of those responsible for acts of "torture" but also of the perpetrators of "inhuman" and "degrading" treatment pursuant to the same provision, despite all the efforts of the prosecuting authorities and the trial courts.

59. As regards the measures required to remedy that problem, the Court reiterated, first of all, that the State's positive obligations under Article 3 might include a requirement to establish an appropriate legal framework, in particular by introducing effective criminal-law provisions. That requirement also derived from other international instruments such as, inter alia, Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The conclusions and recommendations of the UN Human Rights Committee, the UN Committee Against Torture and the Council of Europe Committee for the Prevention of Torture, Inhuman and Degrading Treatment also mention this. In that context, the Court considered it necessary for the Italian legal system to introduce legal mechanisms capable of imposing appropriate penalties on those responsible for acts of torture and other types of ill-treatment under Article 3 and of preventing them from benefiting from measures incompatible with the case-law of the Court (*Cestaro v. Italy*, 2015, §§ 242-246).

ii. Procedural

60. It can be inferred from the Court's case-law that the obligation of a Contracting State to conduct an effective investigation under Article 3, as under Article 2, of the Convention persists as long as such an investigation remains feasible but has not been carried out or has not met the Convention standards. An ongoing failure to carry out the requisite investigation will be regarded as a continuing violation of that provision which should be remedied by ensuring that the pending investigation is reactivated without delay. Thereafter, in accordance with the applicable Convention principles, the investigation should be brought to a close as soon as possible, once, in so far as this proves feasible, the circumstances and conditions of the events in question have been elucidated further, so as to enable the identification, accountability and, where appropriate, punishment of those responsible (*Abu Zubaydah v. Lithuania*, 2018, § 682; *Al-Hawsawi v. Lithuania*, 2024, § 279).

iii. Specific issue: missing persons

61. In *Aslakhanova and Others v. Russia*, 2012, §§ 222-239, a case concerning a structural problem of missing persons, the Court gave the following extensive indications under Article 46, the measures falling into two principal groups:

α. Situation of the victims' families

62. The first and, in the Court's opinion, the most pressing group of measures to be considered concerned the suffering of the relatives of the victims of disappearances, who continued to remain in agonising uncertainty as to the fate and the circumstances of the presumed deaths of their family members. The Court had already found that a duty on the State to account for the circumstances of the deaths and the location of the graves could be derived from Article 3 and it was apparent from the Court's previous judgments on the subject that the criminal investigations had been particularly ineffective in this regard, resulting in a sense of acute helplessness and confusion on the part of the victims. As a rule, investigations of abduction - in circumstances suggesting the carrying out of clandestine security operations – did not reveal the fate of those who had disappeared. Despite the magnitude and gravity of the problem, noted in many national and international reports, the response to this aspect of human suffering by means of the criminal investigations remained inadequate.

63. The Court went on to note one recurrent proposal: to create a single, sufficiently high-level body in charge of solving disappearances in the region, which would enjoy unrestricted access to all relevant information and would work on the basis of trust and partnership with the relatives of the disappeared. This body could compile and maintain a unified database of all disappearances.

64. Another pressing need was the allocation of specific and adequate resources required to carry out large-scale forensic and scientific work on the ground, including the location and exhumation of presumed burial sites; the collection, storage and identification of remains and, where necessary, systematic matching through up-to-date genetic databanks. It would appear reasonable to

concentrate the relevant resources within a specialised institution, based in the region where the disappearances had occurred and, possibly, working in close cooperation with, or under the auspices of, the specialist high-level body mentioned above.

65. Another aspect of the problem concerned the possibility of payment of financial compensation to the victims' families. The Court noted that, under certain circumstances, the payment of substantial financial compensation, coupled with a clear and unequivocal admission of State responsibility for the relatives' "frustrating and painful situation", could resolve the issues under Article 3 of the Convention.

66. In the same vein, it did not rule out the possibility of unilateral remedial offers to the relatives in cases concerning persons who had disappeared or had been killed by unknown perpetrators, where there was prima facie evidence supporting allegations that the domestic investigation fell short of what was necessary under the Convention. In addition to the question of compensation, such an offer should at the very least contain an admission to that effect, combined with an undertaking by the respondent Government to conduct, under the supervision of the Committee of Ministers in the context of the latter's duties under Article 46 § 2 of the Convention, an investigation in full compliance with Convention requirements as defined by the Court in previous similar cases.

β. Effectiveness of the investigation

67. The second group of measures the Court considered should be taken without delay related to the ineffectiveness of the criminal investigation and the resulting impunity for the perpetrators of what were the most serious of human rights abuses.

68. The Court accepted that many years after the events there would be considerable difficulty in assembling eye-witness evidence or in identifying and mounting a case against any alleged perpetrators. However, the Court's case-law on the ambit of the procedural obligation was unambiguous. Even if investigations might prove inconclusive or insufficient evidence might be available, that outcome was not inevitable even at a late stage and the respondent Government could not be absolved from making the requisite efforts. It could not therefore be said that there was nothing further that could be done.

69. The continuing obligation to investigate the situations of known or presumed deaths of individuals, where there was at least prima facie evidence of State involvement, remained in force even if the humanitarian aspect of the case under Article 3 might be resolved.

70. Practically speaking, it was of the utmost importance that the disappearances which had occurred in the region in the past became the subject of a comprehensive and concentrated effort on the part of the law-enforcement authorities. In view of the clear patterns and similarities in the occurrence of such events, it was vital to adopt a time-bound general strategy or action plan to elucidate a number of the questions that were common to all the cases where it was suspected that the abductions had been carried out by State servicemen. The plan should also include an evaluation of the adequacy of the existing legal definitions of the criminal acts leading to the specific and widespread phenomenon of disappearances.

71. Given their wide-ranging scope, the nature of the violations concerned and the pressing need to remedy them, it appeared necessary to the Court that a comprehensive and time-bound strategy to address these problems be prepared by the State without delay and submitted to the Committee of Ministers for the supervision of its implementation.

iv. Specific Issue: conditions of detention

72. The Court has on a number of occasions given indications under Article 46 concerning inadequate conditions of detention. In its thematic debates on conditions of detention, the Committee of Ministers has grouped the elements to be addressed by respondent States under Article 46 under

structural measures designed to improve conditions and often reduce overcrowding, and the introduction of remedies at domestic level both to prevent ill-treatment and to compensate for ill-treatment suffered (see *CM/Inf(2018)4*). Recommendations and other resources referred to in that document are also referenced in the indications given by the Court on this topic (*Ananyev and Others v. Russia*, 2012, §§ 197-240; *Torreggiani and Others v. Italy*, 2013, §§ 91-99; *Rezmiveș and Others v. Romania*, 2017, §§ 115-126; and *Sukachov v. Ukraine*, 2020, §§ 126-161), from which the aspects noted below are drawn.

α. Measures to reduce overcrowding and improve the material conditions of detention

73. Where a State is unable to guarantee that each prisoner is detained in conditions compatible with Article 3 of the Convention, the Court encourages it to take action with a view to reducing the prison population, for example by making greater use of non-custodial punitive measures, minimising recourse to pre-trial detention and preventing the excessive duration of such detention.

74. It is not for the Court to indicate how States are to organise their criminal-law and penal systems, since these processes raise complex legal and practical issues going beyond the Court's judicial function. The Court refers to the recommendations issued by the CPT, the assessments made by the Committee of Ministers and to the recommendations set out in the White Paper on Prison Overcrowding[8], which identify a number of possible solutions to tackle overcrowding and inadequate material conditions of detention.

75. With regards to pre-trial detention, the Court has noted that cells at police stations have been found by the CPT and the Committee of Ministers to be "structurally unsuitable" for detention beyond a few days and that these facilities are intended to house detainees for only very short periods.

76. With regard to post-conviction detention, the Court has noted reforms focused on the reduction of the maximum sentences for certain offences, the imposition of fines as an alternative to imprisonment, discharge and suspension of sentences. Such measures, also coupled with a more diverse range of alternatives to imprisonment, could have a positive impact in reducing the prison population. Other possible options include relaxing the conditions for waiving the imposition of a sentence, suspending sentences, and above all expanding the possibility of access to parole and ensuring the effective operation of the probation service.

77. As to investment to create additional detention capacity, the Court has drawn attention to Recommendation Rec(99)22 of the Committee of Ministers, according to which such a measure is generally unlikely to offer a lasting solution to this problem. Furthermore, bearing in mind the precarious physical conditions and poor state of hygiene in certain prisons, funds should also continue to be set aside for renovation work at existing detention facilities (*Rezmiveș and Others v. Romania*, 2017, § 119).

β. Remedies

78. As to the domestic remedy or remedies to be adopted in order to tackle the systemic problem identified in cases of this sort, the Court has often stated that where conditions of detention are concerned, the "preventive" and "compensatory" remedies have to be complementary. Thus, where an applicant is held in conditions that are in breach of Article 3 of the Convention, the best possible form of redress is to put a rapid end to the violation of the right not to be subjected to inhuman and degrading treatment. Furthermore, anyone who has been detained in conditions undermining his or her dignity must be able to obtain redress so that a specific compensatory remedy should be introduced to allow appropriate compensation to be awarded (*J.M.B. and Others v. France*, 2020, § 316).

[8] European Committee on Crime Problems (CDPC) of the Council of Europe, June 2016

79. In this context, the Court has noted with interest legislative initiatives concerning the remission of sentences, which may afford appropriate redress in respect of poor conditions of detention, provided that, firstly, such a remission is explicitly granted to redress the violation of Article 3 of the Convention and, secondly, it has a measurable impact on the sentence served by the person concerned (*Rezmiveș and Others v. Romania*, 2017, § 125). Returning to the issue four years later, the Court considered that the positive developments in domestic case-law regarding the availability of damages for those who had endured inhuman and degrading conditions of detention allowed it to find that an adequate compensatory remedy was now in place in Romania (*Polgar v. Romania*, 2021, §§ 77-97 and § 108). However, it considered that the resurgence in prison overcrowding was such that it could not regard the preventive remedy as effective; it encouraged the domestic authorities to work to reduce the number of persons in prison to manageable levels (*idem*., § 107).

χ. Informal hierarchy among prisoners

80. In a case concerning informal hierarchy among prisoners (*D v. Latvia*, 2024), the Court found a violation on account of the applicant's degrading treatment in the form of physical and social segregation, coupled with restricted access to basic prison resources and denial of human contact (though not subjected to physical violence), a situation which he had endured for years on account of his position in the lowest caste of prisoners in the informal hierarchy. The Court found a further violation on account of the authorities' failure to protect the applicant, as the domestic authorities had not had in place effective mechanisms to improve his individual situation or to deal with the issue in a comprehensive manner. The Court consequently held that to prevent future similar violations, the domestic authorities had to address the issue of informal prison hierarchies in a manner going beyond the circumstances of that case. The competent authorities had to draw the necessary conclusions from the judgment and take appropriate general measures. More specifically, the domestic courts were required to take due account of the Convention standards as applied in that judgment (§ 62).

δ. Conditions of detention of aliens in an immigration context

81. In the specific context of the conditions of detention of migrants, the Court has found a violation of Article 3 in relation to an applicant who was a vulnerable individual due to his presumed minority and health situation, as well as of Article 5 § 1, inter alia, in relation to his prolonged detention in those conditions (*A.D. v. Malta*, 2023). Having regard to those findings, the Court recommended that the respondent State envisage taking the necessary general measures to ensure: (i) that the relevant law was effectively applied in practice; (ii) that vulnerable individuals were not detained; (iii) that any necessary detention periods were limited so that they remained connected to the ground of detention applicable in an immigration context; and (iv) that they were undertaken in places and conditions which were appropriate, bearing in mind that the measure was applicable not to those who had committed criminal offences but to aliens in an immigration context (§ 211 – see also below for the general measures indicated under Article 5 in the same case).

ε. Conditions of detention of persons of unsound mind in preventive detention

82. In the case of *Miranda Magro v. Portugal*, 2024, the Court found a violation of Article 3 (and of Article 5 § 1 (e)) of the Convention of a mentally ill person, exempted from criminal responsibility and held in preventive detention for around six months at a prison hospital's psychiatric unit in inadequate conditions and without appropriate assistance and care, pending placement in an appropriate mental health facility. It referred to reports by the CPT, the UN Committee against Torture (CAT) and the UN Human Rights Committee, as well as by national bodies (the Ombudsperson as "National Preventive Mechanism", NPM, and the General Directorate for Reintegration and Prison Services) which had identified mental health-related issues as one of the main challenges facing the prison system in Portugal. Despite the positive steps taken in national legislation to favour the placement of persons with mental disorders in mental health facilities in the wider health system, the Court held that the

enactment of legislation would not in itself solve the problems identified in that case, as effective measures were needed to implement and enforce the provisions thus introduced. The Court thus encouraged the Government to adopt an approach to the matter in keeping with the spirit of the protection system set up by the Convention. It considered that, in view of its findings and the structural nature of the issues arising in the context of the enforcement of preventive detention measures in prison facilities, the necessary steps should be taken as a matter of urgency to secure appropriate living conditions and the provision of suitable and individualised forms of therapy to mentally ill persons who needed special care owing to their state of health to support their possible return and integration into the community (§§ 106-07).

83. The Court has also highlighted systemic problems in the treatment of children with intellectual disabilities. In the case of *V.I. v. Moldova*, 2024, it found that the treatment of the applicant, an adolescent whose parents had died, in a psychiatric institution with medication given, not out of therapeutic necessity but so as to control his behaviour, was in breach of Article 3 of the Convention. It further established a violation of Article 14, finding that the treatment of the applicant was discriminatory on the basis of his mental disability. There was also a lack of domestic remedies in violation of Article 13. Ruling under Article 46, the Court referred to a systemic problem in the respondent State and outlined the general measures that would need to be taken to address it. These would include reforms to the system of involuntary placement in psychiatric hospital and to the involuntary psychiatric treatment of persons with intellectual disabilities, particularly children. While not taking a position on the nature and scope of the reform, the Court pointed to the need for legal safeguards and mechanisms as described in the judgment, and the need to address discrimination against persons with intellectual disabilities, in particular children (§§ 196-7).

v. Specific Issue: domestic violence

84. There is a substantial body of Article 3 case-law concerning domestic violence, ill-treatment that can take many forms, involving both serious physical violence against the victims as well as severe emotional and psychological harm through fear, coercion, isolation, controlling behaviour, etc. In its examination of such cases, the Court considers both the concrete facts of the case (effectiveness of the response of the relevant authorities to the victim's plight) as well as the adequacy of the domestic framework (legislative, institutional, procedural, policy) in preventing domestic violence, sanctioning the perpetrators and protecting the victims. In the case of *Tunikova and Others v. Russia*, 2021, the Court analysed in detail the gaps and shortcomings in the domestic system. It went on to urge the respondent State under Article 46 to introduce legislative and other types of measures without further delay, giving detailed indications on the comprehensive and targeted response required, taking in all areas of State action. The indications given reflect the standards that have emerged from the Court's case-law, further inspired by the those elaborated by other international actors, in particular the Council of Europe (Istanbul Convention) and the UN (CEDAW Convention). They include amendments to the criminal law, the ready availability of protective measures, prompt and proactive responses to complaints or other indications of domestic violence, changing public perception of gender-based violence, providing information about protection and assistance to victims, ensuring interagency cooperation, and training the various professionals who are likely to encounter cases of domestic violence (see §§ 145-158 of the judgment).

c. Article 5

85. In some cases under Article 5, the Court has considered that the nature of the violation found was such as to leave no real choice as to the measures required to remedy it and went on to indicate those measures (see below under Article 9 concerning the deprivation of liberty and criminal prosecution of Jehovah's Witnesses in Russia in violation of several Articles of the Convention).

86. For example in *Şahin Alpay v. Turkey*, 2018, §§ 194-195, the Court considered that any continuation of the applicant's pre-trial detention would entail a prolongation of the violation of

Article 5 § 1 and a breach of the obligation on the respondent State to abide by the Court's judgment. Accordingly, having regard to the particular circumstances of the case, the reasons for its finding of a violation and the urgent need to put an end to it, the Court considered that the respondent State must ensure the termination of the applicant's pre-trial detention at the earliest possible date.

87. In *S.K. v. Russia*, 2017, §§ 134-135, the applicant was held in immigration detention. The Court indicated both individual and general measures. It concluded that the applicant's removal would be in breach Articles 2 and 3 of the Convention and that his continued detention was in violation of Article 5 § 1. It considered it appropriate that the applicant be released without delay and no later than on the day following notification that the judgment had become final.

88. In another case which concerned immigration detention (*A.D. v. Malta*, 2023), the Court considered that the problems detected could subsequently give rise to numerous other well-founded applications which were a threat to the future effectiveness of the Convention system. It consequently held that general measures at national level were undoubtedly called for in execution of that judgment. As regards the violation of Article 5 § 1 on account, inter alia, of the lack of legal basis surrounding detention for health considerations, it noted that concerns had already been raised by the CPT and the Commissioner. It thus called on the Government to ensure a legal basis in domestic law for any such detention, in conformity with the general principle of legal certainty (§§ 209-210 – see also above for the general measures indicated under Article 3 in the same case). Later, in *J.B. and Others v. Malta*, 2024, the Court upheld a complaint that the Immigration Appeals Board (IAB) and its members did not meet the Convention requirements of independence from the executive. The judgment outlines the shortcomings of the IAB including as regards the process for appointment of the members, the professional criteria for appointment, the relatively short term of office and possibility of reappointment, few guarantees against outside pressure and the absence of safeguards against dismissal. Under Article 46, the Court called on the Government to introduce legislation to ensure that the IAB satisfies the Convention requirements of independence and impartiality (*J.B. and Others v. Malta*, 2024, §§ 150-155, 167).

d. Article 6

89. Cases of excessive length of proceedings are frequent in the Court's case-law and are often linked to structural problems. The Committee of Ministers' acquis in the execution phase is reflected in Recommendation CM/Rec(2010)3 on effective remedies for excessive length of proceedings. That document recommends a number of steps for States to take to resolve structural problems of excessive length, and preferably introduce remedies which can both accelerate proceedings and compensate for past delay. The Court also refers to that recommendation in its indications on this topic.

90. The Court has indicated that where the judicial system is deficient with regard to the reasonable-time requirement in Article 6 § 1 of the Convention, 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. The Court has found that some States 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 (*Gazsó v. Hungary*, 2015, § 39).

91. The re-opening of criminal proceedings under Article 46 is also a well-established part of the acquis of the Committee of Ministers in relation to Article 6. In only one member State, Liechtenstein, is there no possibility of re-examining or reopening a criminal case on the basis of a judgment delivered by the European Court of Human Rights (*Moreira Ferreira v. Portugal (no. 2)*, 2017, § 39).

92. The re-opening of criminal proceedings is thus available to nearly all applicants who have suffered a violation of Article 6 in its criminal limb. The Court sometimes refers to the availability of that possibility in its indications stating that the most appropriate form of redress would, in principle, be trial de novo or the reopening of the proceedings, if requested by the applicant (*Öcalan v. Turkey* [GC], 2005, § 210, *Sakhnovskiy v. Russia* [GC], 2010, § 112).

93. However, the Court has also indicated that re-opening of the domestic proceedings would not be a relevant measure given the particular circumstances of a case. In *Henryk Urban and Ryszard Urban v. Poland*, 2010, (§§ 64-67) the Court gave such an indication where the violation was related to the use of 'assessors' (a type of trainee judge whose dismissal could be ordered by the executive) at first instance. It noted that the structural problem had already been rectified at domestic level and where the Constitutional Court had found the role of 'assessors' to be unconstitutional. That court had ruled it would not allow the reopening of the cases decided in the past by assessors on the ground that it would undermine the principle of legal certainty and observed that in there was no automatic correlation between that deficiency and the validity of each and every ruling given previously by assessors in individual cases. The Court did not consider this interpretation to have been arbitrary or manifestly unreasonable referring to its jurisprudence underlining the significance of the principle of legal certainty in the context of final judicial rulings. One applicant made the opposite argument before the Court, i.e., he argued that as his original prosecution had been politically motivated there should not be a retrial following the Court's finding of violations of Article 6, since the charges would still be baseless and the domestic courts would not be independent or impartial. In its consideration of this point the Court simply recalled that, under domestic law, there is provision for the reopening of proceedings in cases where a violation of the Convention has been established and found it unnecessary to say anything further on the need for individual measures of execution regarding the applicant (*Nevzlin v. Russia*, 2022, §§ 195-199).

94. The Court has given indications regarding other types of violation of Article 6. For example, it identified a structural defect in Russian law in relation to the practice of test purchases of illegal drugs, which lacked effective legal safeguards against abuse (entrapment). It indicated a need to amend domestic law so as to provide for a clear and foreseeable procedure, for the authorisation of such undercover operations by a judicial body providing effective guarantees against abuse. This would in turn enable the domestic courts to carry out a proper review of entrapment complaints in conformity with the Convention standard (*Kuzmina and Others v. Russia*, 2021, §§ 108-120).

95. There have been a number of judgments in which the Court has found that the applicant's case was not decided at domestic level by a "tribunal established by law" as required by Article 6, and it has given consideration under Article 46 to what consequences should be drawn from such a finding. In the case *Guðmundur Andri Ástráðsson v. Iceland* [GC], 2020, the violation of Article 6 stemmed from the intervention of the Minister of Justice in the procedure for appointing the judges of the newly-created court of appeal, who failed to follow the statutory procedure. Under Article 46, and regarding the applicant himself, the Court noted his position at the hearing that he did not wish the original criminal proceedings against him to be reopened. It then clarified that the finding of a violation did not as such impose an obligation on the domestic authorities to reopen all similar cases in which the judgment had, by then, acquired final force (res judicata). In another case involving a failure at the domestic level to ensure the applicant's right to a "tribunal established by law", the Court noted the Government's submissions that the possibility of reopening the proceedings (which had involved the vetting and dismissal of a prosecutor) was not entirely clear under domestic law. However, since there might be a legal avenue to seek reopening of the proceedings, the Court indicated that to do so, and to re-examine the applicant's case in compliance with the requirements of Article 6, would be the

most appropriate form of redress for the applicant, were he to request this (*Besnik Cani v. Albania*, 2022, §§ 144-149)[9].

96. A wider systemic problem was brought to light in the case of *Dolińska-Ficek and Ozimek v. Poland*, 2021. The applicants complained that the newly created Chamber of Extraordinary Review and Public Affairs of the Supreme Court did not meet the requirements of Article 6 in light of the circumstances in which its members had been appointed. The Court ruled that the breaches of domestic law that it had established in its judgment, and that arose from non-compliance with the rule of law, the principle of the separation of powers and the independence of the judiciary, inherently tarnished the procedure of judicial appointment. This failing was compounded by the action of the Head of State, acting in blatant defiance of the rule of law by proceeding with the appointments despite a court order suspending the procedure on foot of a legal challenge. The Court stated that a procedure for appointing judges, which disclosed undue influence by the legislative and executive powers over the appointment of judges, was per se incompatible with Article 6 § 1 of the Convention and, as such, amounted to a fundamental irregularity adversely affecting the whole process and compromising the legitimacy of a court composed of the judges so appointed. Under Article 46, the Court decided not to give any specific indication, but by way of general guidance to the authorities of the respondent State it pointed out that its conclusion could systematically affect the future appointment of judges to all courts. Recalling that the legislative amendments of 2017 were at the origin of the problem, it stated that rapid remedial action was required from the domestic authorities.

97. The Court returned to this issue shortly afterwards in *Advance Pharma sp. z o.o v. Poland*, 2022. It observed that the continued operation of the judicial appointments authority in its current form was perpetuating the systemic dysfunction within the domestic judicial system, leading to further aggravation of the rule of law crisis in that country. As for the consequences for final judgments delivered by judicial formations including judges who had been appointed under the 2017 rules, the Court noted that one option would be for the respondent State to take general measures based on the position adopted by the Supreme Court when it issued an important ruling on the matter in early 2020 (cited in the judgment at § 127). However, it would ultimately be for the domestic authorities to draw the necessary conclusions from the European Court's reasoning and to take measures to resolve the problems at the root of the violations established and to prevent similar violations in future (see §§ 364-366). Given the respondent State's lack of response to these cases and its conduct in the execution of the judgments concerning the independence of the judiciary, the Court considered itself compelled to apply the pilot-judgment procedure in a subsequent case and to give more detailed indications as to general measures to be taken in respect of the systemic problem identified in these cases (*Wałęsa v. Poland*, 2023, §§ 326-32 and points 6-7 of the operative part).

98. Another very wide and systemic problem affecting potentially thousands of persons was identified in *Yüksel Yalçınkaya v. Türkiye* ([GC], 2023) in which the Court noted that the violations in that case under Articles 6 and 7 of the Convention resulted notably from the domestic courts' characterisation of the use of an encrypted messaging application by the name of "ByLock". Under that approach, anyone whose use of that application was established by the domestic courts could, in principle, be convicted on that sole basis of membership of an armed terrorist organisation (described by the Turkish authorities as the "Fetullahist Terror Organisation/Parallel State Structure", or the FETÖ/PDY, and considered by the authorities to be behind the coup attempt that took place in Türkiye on 15 July 2016) pursuant to Article 314 § 2 of the Criminal Code. That situation was therefore not prompted by an isolated incident but as stemming from a systemic problem and affecting a great number of persons, as evidenced by the fact that there were over 8,000 similar applications pending before the Court relating to convictions based on the use of ByLock (and around one hundred thousand ByLock

[9]. A similar approach was taken in another case concerning the vetting and dismissal of a prosecutor, which the Court found to be a disproportionate interference with the applicant's right to respect for private life (*Sevdari v. Albania*, 2022).

users identified by the authorities). Consequently, the defects identified in that case needed to be addressed on a larger scale – that is, beyond the specific case of the present applicant. More specifically, the domestic courts were required to take due account of the relevant Convention standards as interpreted and applied in that case (see §§ 413-18).

e. Article 7

99. In the event of a violation of Article 7, the Court has sometimes indicated individual measures: reopening the domestic proceedings at the applicant's request (*Dragotoniu and Militaru-Pidhorni v. Romania*, 2007, § 55, applying the same principle as where an individual has been convicted in breach of Article 6 of the Convention; and also *Yüksel Yalçınkaya v. Türkiye* [GC], 2023, §§ 409-12); releasing the applicant at the earliest possible date (*Del Río Prada v. Spain* [GC], 2013, § 139, having found a violation of Article 7 as well as of Article 5 § 1 of the Convention); or requiring the respondent State to ensure that the applicant's sentence of life imprisonment is replaced by a sentence not exceeding thirty years' imprisonment, pursuant to the principle of the retroactivity of the lighter penalty (*Scoppola v. Italy (no. 2)* [GC], 2009, § 154 and operative provision no. 6 (a)).

f. Article 9

100. In the context of Article 9 the Court has indicated that the re-opening of domestic proceedings might offer the possibility of remedying the violation found (*Biblical Centre of the Chuvash Republic v. Russia*, 2014, § 66).

101. In *Taganrog LRO and Others v. Russia*, 2022, the Court found several violations, notably of Articles 9, 10 and 11, taken alone and in conjunction with and/or read in the light of each other, and of Article 5. The case concerned, inter alia, the forced dissolution of the Jehovah's Witnesses Administrative Centre in Russia and of their local religious organisations; the characterisation as "extremist" of Jehovah's Witnesses' publications and their international website; the domestic courts' failure to provide relevant and sufficient reasons and to uphold the adversarial nature of the various proceedings when declaring these publications "extremist" and when prosecuting individual members of Jehovah's Witnesses; the arbitrary criminal prosecution of several applicants for continuing to practice their religion; and the unlawful pre-trial detention of one individual applicant. The Court considered that the continued prosecution and imprisonment of Jehovah's Witnesses would entail a prolongation of the violation of their rights and a breach of the obligation of Russia to abide by the Court's judgment under Article 46 § 1. It further noted that this view was consistent with the requirement of release of all imprisoned Jehovah's Witnesses addressed to Russia by the UN Working Group on Arbitrary Detention. The Court consequently held that Russia had to take all necessary measures to secure the discontinuation of all pending criminal proceedings against Jehovah's Witnesses and the release of all Jehovah's Witnesses who had been deprived of their liberty (§ 290). It included this indication also in the operative part of its judgment.

g. Article 10

102. In *OOO Informatsionnoye Agentstvo Tambov-Inform v. Russia*, 2021, the Court found a violation of the freedom of expression of an online media outlet on account of rules imposing certain restrictions on the media in the run-up to parliamentary elections. It considered these restrictions to be based on a vague criterion that allowed a very wide discretion for the relevant authorities, and pointed to the absence of specific regulation of online publications by media companies relating to upcoming elections. It further noted the broad scope of the relevant rules, their lack of clarity in certain respects and the overall uncertainty of the legal framework for media outlets. It called on the respondent State to take the necessary measures to protect the freedom of expression of the media (print and online) and to protect editorial independence during electoral campaigns, and to mitigate the chilling effect on the media of the rules regulating "pre-election campaigning" (§§ 126-128).

h. Article 14

103. In *Stoyanova v. Bulgaria*, 2022, the Court found a violation of Article 14 taken together with Article 2 on account of the State's response to the attack against the applicant's son resulting in his death and held that Bulgaria had not in sufficient measure discharged its duty to ensure that deadly attacks motivated by hostility towards victims' actual or presumed sexual orientation do not remain without an appropriate response. Under Article 46, the Court noted that the violation appeared to be of a systemic character, in that it resulted from the content of the relevant domestic criminal law, as interpreted and applied by the domestic courts. Depending on how the matter was seen, the breach resulted either from a lacuna in the Criminal Code, or from the way in which the domestic courts construed and applied the relevant provisions of that Code. It was not for the Court to say whether one or the other had to change to avoid future similar breaches. The Court concluded by indicating that Bulgaria should ensure that violent attacks (in particular those resulting in the victim's death) motivated by hostility towards the victim's actual or presumed sexual orientation were in some way treated as aggravated in criminal-law terms, without construing criminal law extensively to the accused's detriment (§§ 78-79).

104. As to, for example, segregation in school, the Court has found, in a series of cases in involving different States, that Roma children were subject to this practice, whether systematically or as a result of a failure to address the over-representation of members of this group in the schools in question. In two judgments, in particular, the Court stated, in relation to Article 46, that "the coexistence of members of society free from racial segregation is a fundamental value of democratic societies and that inclusive education is the most appropriate means of guaranteeing the fundamental principles of universality and non-discrimination in the exercise of the right to education". It continued that the respondent States concerned must ensure the end of segregation in the schools concerned (*Elmazova and Others v. North Macedonia*, 2022, § 89), and more generally develop a policy against segregation in schools and take steps to eliminate this problem (*Szolcsán v. Hungary*, 2023, § 69).

i. Article 18 in conjunction with Articles 5 and 8

105. The Court examined the respondent State's obligations under Article 46 following a violation of Article 18 in conjunction with Article 5 in *Ilgar Mammadov v. Azerbaijan* (Article 46 § 4) with reference to its initial judgment in that case where no indication was given relevant to execution. When the Grand Chamber examined the execution measures in the Article 46 § 4 judgment it found that in light of its conclusion in relation to the nature of its finding of a violation of Article 18 in conjunction with Article 5 in the first Mammadov judgment, Azerbaijan was required to eliminate the negative consequences of the imposition of the charges which the Court found to be abusive. In light of that conclusion, the first Mammadov judgment and the corresponding obligation of restituto in integrum initially obliged the State to lift or annul the charges criticised by the Court as abusive, and to end Mr Mammadov's pre-trial detention. In fact, his pre-trial detention was brought to an end when he was convicted by the first instance court in March 2014. However, the charges were never annulled. On the contrary, his subsequent conviction was based wholly on them. Therefore, the fact that he was later detained based on that conviction (rather than detained in pre-trial detention) did not put him back in the position he would have been in had the requirements of the Convention not been disregarded. The primary obligation of restitutio in integrum therefore still required that the negative consequences of the imposition of the impugned criminal charges be eliminated, including by his release from detention. The Court then went on to consider whether restitutio in integrum in the form of eliminating the negative consequences of the imposition of the criminal charges criticised by the Court as abusive was achievable, or whether that would be "materially impossible" or "involve a burden out of all proportion to the benefit deriving from restitution instead of compensation". As regards those elements, the Court found that there were no obstacles to achieving restitutio in integrum. It therefore identified the corresponding obligation of restitutio in integrum falling upon Azerbaijan under Article 46 § 1 as requiring Azerbaijan to eliminate the negative consequences of the

imposition of the criminal charges criticised by the Court as abusive and to release Mr Mammadov from detention.

106. The Court has since decided, in a number of cases in which it found a violation of Article 18 in conjunction with Article 5, to include an indication under Article 46 that the applicant should be released immediately, along with an operative provision to that effect (see *Kavala v. Turkey*, 2019, §§ 235-240). In *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, at the time of the Court's judgment the applicant was being held in pre-trial detention on different criminal charges to those impugned in his application. However, as the new charges related to the same facts that the Court found to be insufficient to justify depriving the applicant of his liberty, it still indicated that the applicant should be released. Otherwise, it would be possible for the authorities to circumvent the right to liberty (see §§ 440-442).

107. The Court was subsequently called upon, in the second infringement proceedings initiated by the Committee of Ministers under Article 46 § 4, to examine the measures taken by Türkiye in response to the *Kavala v. Turkey*, 2019, judgment finding a violation of Article 5 § 1, read separately and in conjunction with Article 18. The Court stressed that, in contrast to the *Ilgar Mammadov v. Azerbaijan*, 2014, judgment, the *Kavala v. Turkey*, 2019, judgment contained, in its reasoning and operative provisions, an explicit indication as to how it was to be executed. The urgent need to put an end to the violation of the detention in breach of Article 5 § 1 was all the more valid as the violation originated in detention that had also been held to be contrary to Article 18 taken together with Article 5 § 1. The Court considered that, in the absence of other relevant and sufficient circumstances, a mere reclassification of the same facts could not in principle modify the basis for those conclusions, since such a reclassification would only be a different assessment of facts already examined by the Court. Were it otherwise, the judicial authorities could continue to deprive individuals of their liberty simply by opening new criminal investigations in respect of the same facts. Such a situation would amount to permitting the law to be circumvented and could lead to results incompatible with the object and purpose of the Convention (*Kavala v. Türkiye* [GC], 2022, §§ 143-148). The Court also underlined that in its analysis, it must look behind appearances and investigate the realities of the situation complained of. If this were not the case, the obligation to comply with a judgment delivered by the Court would be deprived of its substance in practice (*ibid*., § 162). The Court concluded that the measures indicated by Türkiye did not permit it to conclude that Türkiye had acted in "good faith", in a manner compatible with the "conclusions and spirit" of the *Kavala v. Turkey*, 2019, judgment, or in a way that would make practical and effective the protection of the Convention rights which the Court had found to have been violated in that judgment (*ibid*., § 173).

108. In other cases relating to Article 18 the Court has indicated that general measures to be taken by the respondent State must focus, as a matter of priority, on the protection of critics of the government, civil society activists and human-rights defenders against arbitrary arrest and detention. The measures to be taken must ensure the eradication of retaliatory prosecutions and misuse of criminal law against this group of individuals and the non-repetition of similar practices in the future (*Aliyev v. Azerbaijan*, 2018, §§ 223-228).

In *Ukraine v. Russia (Re Crimea)* [GC], 2024, among the multiple findings of violations of the Convention by the respondent State the Court found, as regards the transfer of prisoners from Crimea to penal institutions located within Russia, an administrative practice in violation of the right to respect for family life. Under Article 18, the Court established that in relation to Ukrainian "political prisoners", their rights under Article 8 (and other provisions) had been restricted predominantly for the ulterior purpose of punishing and silencing those who opposed to Russia's occupation of Ukraine. This finding led it to indicate that the relevant prisoners must be returned safely as soon as possible from Russia (§§ 1386-7 and operative provision D1).

j. Article 34

109. In cases where there has been a violation of Article 34 and the matter concerns an expulsion, deportation or abduction, the applicant is often outside the territory of the respondent state by the time the Court has found a violation. In such cases, the Court has noted the fact that the applicant remains outside the respondent State's jurisdiction arguably makes it more difficult for the latter to reach him and take remedial measures in his favour. However, these are not circumstances that in themselves exempt the respondent State from its legal obligation to take all measures within its competence in order to put an end to the violation found and make reparation for its consequences. While specific necessary measures may vary depending on the specificity of each case, the obligation to abide by the judgment commands the respondent State, subject to the supervision of the Committee of Ministers, to find out and use in good faith such legal, diplomatic and/or practical means as may be necessary to secure to the maximum possible extent the applicant's right which the Court has found to have been violated. Also, it remains a fortiori open to the respondent State to take those individual measures that lie totally within its own jurisdiction, such as carrying out an effective investigation into the incident at issue in order to remedy the procedural violations found by the Court (*Savriddin Dzhurayev v. Russia*, 2013, §§ 253-255).

k. Article 1 of Protocol No. 1

110. The Court has given indications relevant to execution in a number of cases concerning Article 1 of Protocol No. 1 such as issues related to property rights arising in the context of structural problems (*Broniowski v. Poland* [GC], 2004, § 190).

111. In such cases the Court has indicated that the respondent State must first and foremost either remove all obstacles to the effective exercise of the right in question by the large numbers of persons who, like the relevant applicants, were affected by the situation found by the Court to be incompatible with the Convention, or, failing that, it must provide appropriate redress (*Maria Atanasiu and others v. Romania*, 2010, § 231; *Broniowski v. Poland* [GC], 2004, § 194). The latter element usually implies the establishment of a remedy enabling persons who have lost their property to secure compensation reasonably related to its market value (*Krasteva and others v. Bulgaria*, 2017, § 34).

112. The Court has also observed that balancing the rights at stake, as well as the gains and losses of the different persons affected by the process of transforming the State's economy and legal system, is an exceptionally difficult exercise involving a number of different domestic authorities. Therefore it considered that the respondent State must have a considerable margin of appreciation in selecting the measures to secure respect for property rights or to regulate ownership relations within the country, and in their implementation (*Maria Atanasiu and others v. Romania*, 2010, § 233). The enduring difficulties in Romania, ensuring respect for property rights in relation to properties that were taken by the State during the communist era, has meant that the Court has had to revisit its initially positive assessment of the measures adopted following the Maria Atanasiu pilot judgment. The various shortcomings of these measures, evidenced by several years of practice, were identified by the Court in *Valeanu and Others v. Romania*, 2022. In the context of Article 46, the judgment calls for more straightforward measures to streamline and clarify the procedures and criteria which apply where an individual has a judgment that cannot be enforced. The suggestion is made "for purely indicative purposes" to give priority to a compensatory remedy for these property claims, based on the current value of the property and, to this end, adequate funding must be provided. The Court also heavily underlined the need at this stage to avoid excessive delay by setting short, but realistic and binding, time-limits (§§ 269-73).

113. In cases where the interference originated in rent control laws, the Court indicated that the it should be remedied in the sense of enabling landlords to collect rents related to the free-market value and that the State should introduce, as soon as possible, a specific and clearly regulated compensatory

remedy in order to provide genuine and effective relief for the breach found (*Bittó and Others v. Slovakia*, 2014, §§ 134-135).

114. In a case in which the violation was due to the absence of procedural safeguards, with the result that those affected by an interference with their property rights (cancellation of shares and bonds) could not effectively challenge the measures taken by the national authorities, the Court underlined that it was essential to give the applicants an avenue towards effective legal protection. This should be done as soon as it became possible (after the conclusion of pending constitutional proceedings). Given that a period of several years had passed since the interference occurred, the Court further stressed the importance of avoiding any further unnecessary delays in the determination of the applicants' claims (*Pintar and Others v. Slovenia*, 2021, § 114).

New para. Outside of the specific situations referred to above, the Court has also given indications under Article 46 about appropriate forms of redress for a violation of property rights. The case of *Drozdyk and Mikula v. Ukraine*, 2024, concerned the invalidation of the applicants' title to plots of land adjoining the railway line, the domestic courts accepting the argument of the railway company that it was the owner of the plots in question as they were within the railway protection zone. The Court found that the interference with the applicants' possessions, who had received no compensation, constituted a disproportionate burden on them. In making its award for pecuniary damage, the Court indicated that the respondent State should ensure full restitution of the applicants' titles, through reopening of the domestic proceedings if necessary. Alternatively, it should pay them compensation, or transfer comparable property to them (§ 62 and operative provision 5(a)).

l. Article 2 of Protocol No. 4

115. In a case concerning freedom of movement under Article 2 of Protocol No. 4, the Court observed that the State's prolonged failure to implement its own domestic law allowing a travel document to be issued to recognised refugees and to persons eligible for subsidiary protection, and adopt regulations as a precondition for it, amounted to a structural problem. It was incumbent on the Committee of Ministers to address the issue of what may be required of the respondent Government by way of compliance, through both individual and general measures, given that that judgment should have effects extending beyond the confines of that particular case. In the Court's view, the respondent State had to take all appropriate statutory and operational measures to complete the pertinent legislative framework and implementing regulations to provide the effective right to leave the territory, and the possibility for any individual in a similar situation to that in which the applicant had found himself to access the procedure to apply for and obtain a travel document (*S.E. v. Serbia*, 2023, § 98).

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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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