

Ensuring access to rights for Roma and Travellers

The role
of the European Court of Human Rights

A handbook
for lawyers defending Roma and Travellers

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Preface

I welcome this publication on “Ensuring access to Rights for Roma and Travellers – The Role of the European Court of Human Rights”, a handbook for practitioners and activists defending the Human Rights of Roma and Travellers before national and international jurisdictions.

An important step towards eliminating injustice and abusive treatment against the Roma is to use the tool that all citizens in democratic societies have at their disposal: the Law Courts. The Roma and Travellers Division in the Directorate General for Social Cohesion is convinced that the dissemination of knowledge and know-how about the European Convention on Human Rights and the European Court of Human Rights is crucial. To this end, and in cooperation with the European Roma Rights Centre, training sessions for persons involved in Roma rights advocacy have been organised for the last 13 years for NGOs and independent lawyers defending Roma.

This handbook is based on the experience gained during these training sessions. Rather than seeking to provide an exhaustive analysis of the Convention and its protection system, it presents the steps to be followed in order to present a case before the European Court of Human Rights together with the principal case law concerning Roma and Travellers, illustrating substantive provisions of the Convention and its protocols.

The practical approach of this handbook makes it a useful tool for both newcomers to the Convention and its case law and for experienced practitioners alike.

Maria Ochoa-Llido
Head of Migration and Roma Department

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Foreword

I can only welcome the publication of a handbook intended to familiarise those providing legal assistance to NGOs, in particular to Roma and Travellers' communities with the European Convention of Human Rights and the workings of the European Court of Human Rights.

If properly understood and employed, the Convention and the Court can turn into two dynamic tools for the assertion of minority rights and their protection against prejudice and the abuse of power. Much has already been achieved through the operation of their intrinsic resources, and yet, plenty more remains to be done. It is wrong to see in the Convention the infallible cure for all evils. It is would be even worse to underestimate its actual and latent energies. What can be achieved through and by the Court will be fortified if it goes hand in hand with education for awareness, with collective action and political leverage. Without this symbiosis, the resources of the Convention can never yield the maximum in returns.

This publication unfolds in four sections – starting with a practical and a theoretical approach towards the Convention and the implementation mechanism entrusted to the Court. The last two sections contain an analysis of relevant case-law concerning Roma, with an explanation of the specific Convention Articles mentioned and their reference to the everyday situation of Roma in the Contracting States, and finally a moot trial exercise on the well-known pattern of similar assignments, including feedback and an evaluation of frequently asked questions. This section aims to show readers how the Court works and how lawyers should react to perceived violations of articles of the Convention. A guiding principle throughout has been to present all the topics in the most comprehensive way, compatible with the utmost clarity.

Of course, this handbook should only be viewed as a first lifting of the curtain, as an invitation to explore further, as a step towards the hidden riches of the Court's case-law; then to approach with boldness and creativity the myriad factual situations still to be tackled, and the myriad legal issues still to be highlighted and considered.

My desire is that those who handle this work will keep in mind the necessity of using the Convention and the Court properly and to their maximum effect. This advice includes the inescapable need of choosing judiciously which cases to bring to the Court, as a poor case lost can do more, on the scale of harm, than a good case won can do on the scale of achievement. This also comprises a plea to construct the factual basis of the case with the utmost thoroughness, both in the national fora and before the Court. And it rounds off with an appeal to be adventurous – to succumb with calculated daring to the risks of novelty.

The Court should hardly be expected to turn into a hothouse of revolutionary brainstorm, but new ideas and a stealthy evolutionary process, also have a place on its agenda. Concepts unthinkable a few years ago first started claiming attention, and then credit. It is not that I believe that all the wrongs of the world will be righted overnight by the Court's magic wand. What I do believe is that, step after painful step, the legal protection of unfavoured minorities will progress. What it takes is a rich mix of perseverance, strategic design and fine lawyering too.

My plea has always been not to shy away from bringing worthy cases to the Court. Mostly these will be complaints which failed the test of the domestic courts, or for which no remedy exists in the national order. Keep the Court busy. If it is true that hard cases make bad law, no cases make no law at all. The judgments of the Court will then percolate back into the domestic system.

This handbook should primarily be seen as an organic introduction to human rights law. If it serves to whet the appetite of those who work for and with disadvantaged minorities to delve deeper into the case-law, the doctrine of human rights and the fuller textbooks (excellent ones do exist), it will have served its purpose.

I can only congratulate and thank all those who worked hard for this project's achievement: in particular, Maria Ochoa-Llido and the Roma and Travellers Division Secretariat, Gloria Jean Garland and Luke Clements. They have done a splendid job and deserve the praise of all human rights activists, and, better still, of human rights sufferers.

Giovanni Bonello

Defending Roma rights – a lawyer’s perspective

In 1993 when I first moved to Central Europe, I was invited to a reception with a group of high-ranking Slovak judges and lawyers. I found myself in a conversation with a small group of English speakers discussing Bill Clinton, world politics and rock-and-roll music, among other topics. I found them to be intelligent and interesting, warm and engaging. These are wonderful people, I thought. This is a friendly and fascinating part of the world. Then the topic of conversation switched to Roma, and the beautiful people I was speaking to suddenly became very ugly. The jokes and comments were appalling. But in Central and Eastern Europe in the 1990s, it was absolutely acceptable for politicians, judges, government officials – the kind of people one normally looks up to – to make derisive and racist comments about the Roma.

In Slovakia, a young Roma man was doused with gasoline and set on fire by a group of skinheads, in full view of his horrified family. Also in Slovakia, a group of young thugs decided they would attack a Roma family for no reason other than the fact that they were Roma – brutally beating to death the mother of six children. In Romania, an angry mob killed three Romani men who had been involved in a fight and burned 14 Romani family homes. In Bulgaria, police beat to death a young Romani man who had been arrested for theft. In the Czech Republic, more than 50% of the children in special schools for the mentally handicapped are Roma, even though they make up about only 5% of the total population. In Croatia, education officials apologetically explained to me that they could only have separate Romani classes in the lower grades because there were not enough Roma in the higher grades to make separate classes financially feasible.

Western Europe is not much different. In Aspropyrgos, Greece, I saw bulldozers destroying make-shift Romani family homes in an effort to “clean up” Athens before the Olympic Games. Denmark and Germany expelled Roma refugees back to a dangerous and uncertain situation in Kosovo. Italy placed Roma seeking public assistance into squalid and dangerous

camps, reserving the public housing in the cities for the non-Roma. Belgium expelled a group of Slovak Roma by tricking them into coming to the police station under the pretext of completing documents to seek asylum. The United Kingdom passed a regulation authorizing customs officials to single out Roma and other minority groups for special scrutiny at the border. In light of the attitudes expressed by politicians, judges, police and the public in general towards the Roma, it is not so surprising that such appalling conduct is often shrugged off or ignored.

The Roma make up Europe's largest and most despised minority group. In virtually every country in Europe they struggle with poverty, discrimination, lower education levels and shortened life expectancies. They are often the victims of police brutality and public and political indifference, if not downright hostility. But the situation appears to be improving, albeit slowly. Creative and dedicated lawyers and human rights organisations have used the European Court of Human Rights to challenge the member states of the Council of Europe in their treatment of the Roma and have forged new paths to justice in cases like *Assenov v. Bulgaria*, *Connors v. United Kingdom*, *Moldovan v. Romania*, *Nachova v. Bulgaria*, and others.

Armed with a mandate of defending human rights and protecting parliamentary democracy and the rule of law, the Council of Europe and the European Court of Human Rights have been at the forefront in defending the rights of the Roma and in encouraging their social and political inclusion in European affairs. To encourage and assist lawyers in bringing cases involving Roma before the Court, the Council of Europe provides study sessions and training programs to familiarise them with the Court's procedural requirements and case law. This publication is offered in the hope of encouraging stronger and better defence of human rights in general and Roma rights in particular. Welcome to the struggle!

Gloria Jean Garland

Section I – Theoretical approach to the Convention for the Protection of Human Rights and Fundamental Freedoms

The Convention¹

Historical Background. The Convention was opened for signature by Member States of the Council of Europe in Rome in November 1950. It came into force on September 1953. Taking the 1948 Universal Declaration of Human Rights as their starting point, the framers of the Convention sought to pursue the aims of the Council of Europe through the maintenance and further realisation of human rights and fundamental freedoms. The Convention was to represent the first step for the collective enforcement of some of the rights set out in the Universal Declaration.

In accordance with Article 1 of the Convention:

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Thus, all individuals who are living in a State's territory (as well as those living outside of it in circumstances where they are affected by its jurisdiction) are entitled to complain when their rights are violated.²

Article 19 of the Convention provides that the European Court of Human Rights³ be set up to in order to ensure the observance by the States of their duties under the Convention and the Protocols thereto and that it should function on a permanent basis.

The obligation to recognise the Convention and the Court's competency is now **a condition for admission to the Council of Europe.**

1. That is, the Convention for the Protection of Human Rights and Fundamental Freedoms.

2. See *Issa and Others v. Turkey*, Application No. 31821/96, Judgment date 16 November 2004.

3. Referred to hereafter as the "Court".

Relevant principles to be applied when interpreting the Convention

Subsidiarity. The Convention is intended to be subsidiary to national systems safeguarding human rights, performing those tasks which cannot be performed effectively at national level.

The concept of subsidiarity reflects three basic features of the Convention system:

1. **The list of rights and freedoms is not exhaustive.** Contracting states are free to provide better protection under their own law or by any other international agreement.⁴
2. **The Convention does not impose uniform rules across contracting states.**⁵
3. National authorities are in better position **to strike the right balance between the competing interests of the community and the protection of the fundamental rights of the individual.**

Democratic Society. This principle means that the rights set up by the Convention are to be considered, guaranteed and applied by State Parties in the **light of the values of a democratic society**. It is used in order to **evaluate whether a State's interference with a right protected by the Convention is justified**.⁶ The concept of democratic society prevails throughout the Convention and is acknowledged as a fundamental feature of the European public order.⁷ In addition to the rule of law, reliance is placed on democratic values in the interpretation and application of Convention rights.⁸

4. This principle is reflected in Article 53 of the Convention.

5. See *Belgian linguistic case* (No. 2), (1970) 1 E.H.R.R. 252, paragraph 10: “... *The national authorities remain free to choose between the measures which they consider appropriate in those matters governed by the Convention. Review by the court concerns only the conformity of those measures with the requirements of the Convention*”

6. To be justified the interference must fulfil a pressing social need and must be proportionate to the legitimate aim relied upon.

7. See: *Oberschlick v. Austria*, (No. 1) (1991) 19 E.H.R.R. 389 paragraph 58; and *United Communist Party of Turkey and others v. Turkey*, (1998) 26 E.H.R.R. 121.

8. See *Soering v. United Kingdom*, Series A, No. 161, (1989) 11 E.H.R.R. 439, paragraph 87.

Legal Certainty (lawfulness). The legal basis for any interference with Convention rights must be **adequately accessible⁹ and formulated with sufficient precision to enable a person to regulate their conduct.**¹⁰ In the context of discretionary powers that give rise to potential interferences in Convention rights, the discretion must, as a minimum, give an adequate indication of the scope of the intervention.¹¹

Proportionality. This concept is used in order to establish a **balance between the applicant's interests and those of the community.**¹² When used in assessing the proportionality of a particular measure, the Court will consider whether there is an alternative means of protecting the relevant public interest without interference at all, or by means which are less intrusive. **Proportionality requires a reasonable relationship between the goal pursued and the means used to achieve that goal.**¹³

Margin of Appreciation. This principle is used in order to describe the latitude left to national authorities once the appropriate level of review has been decided by the Court.¹⁴ In practice, the margin of appreciation operates as a means of **leaving a State freedom to manoeuvre in assessing what its society needs and the best way to achieve those needs, and even the timing of policies.**¹⁵

The Convention as a living instrument. The Convention is seen as a **living instrument to be interpreted by the Court in the light of present day conditions**, rather than by it trying to assess what was intended by its original drafters. We may speak about a dynamic, rather than an historical

9. To enable citizens to ascertain the applicable legal rules.

10. See *Silver v. United Kingdom*, Series A, No. 161 (1983) 5 E.H.R.R. 347, paragraph 88: "... a norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail."

11. See *Hentrich v. France*, Series A, No. 296-A (1994) 18 E.H.R.R. 440, paragraph 42.

12. See *Sporrong and Lönnroth v. Sweden*, Series A, No. 52, (1983) 5 E.H.R.R. 35, paragraph 69.

13. See *James and Others v. United Kingdom*, Series A, No. 98, (1986) 8 E.H.R.R. 123, paragraph 50.

14. See *James and Others v. United Kingdom*, Series A, No. 98, (1986) 8 E.H.R.R. 123, paragraph 46: "... Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment both of the existence of a problem of public concern... and of the remedial action to be taken... Here, as the other fields to which the safeguards of the Convention extend, the national authorities accordingly enjoy a certain margin of appreciation".

15. See *Lindsay v. United Kingdom*, App. No. 11089/84, 49 D.R. 181; (1986) 9 E.H.R.R. 555.

approach.¹⁶ This cannot however extend so far as the creation of rights not intended to be included in the Convention.¹⁷

Autonomous Concepts. Specific terms have been found by the Court to constitute an “autonomous concept”. Justification for this principle lies in the fact that **terms do not have the same meaning in the national legal systems of the member states, so it is necessary for the Court to ensure uniformity of treatment.**¹⁸ Another reason may be found in the case that an independent classification may be necessary in order to prevent the protection of fundamental human rights provisions from being subordinated to the sovereign will of the contracting state.

Positive Obligations. The Court has recognised that in order to secure truly effective protection, **certain rights must be read as imposing obligations on the state to take action to ensure they are protected.** In order to decide whether there is a positive obligation, the Court will try to take account of the fair balance to be struck between **the general interest of the community and the interests of the individual.**¹⁹ Contravention of such rights arises by way of an omission or failure to act.²⁰

Fourth Instance. The Court can not act as a court of appeal when considering the decisions of national courts. In this context the assessment of domestic law is primarily for the national courts; the Court will intervene with decisions of fact made by the domestic courts **only if they have drawn arbitrary conclusions from the evidence before them.**²¹

Effectiveness. As the Convention is a system for the protection of human rights, it is interpreted and applied in a manner **which renders these rights practical and effective, not theoretical and illusory.**²² The Court

16. See *Selmouni v. France*, App. No. 25803/94 (2000) 29 EHRR 403, paragraph 10.

17. See *Johnston v. Ireland*, Series A, No. 112, (1987) 9 E.H.R.R. 203, paragraph 53.

18. The Court is free to assess their application to particular situations in domestic systems.

19. See *McGinley and Egan v. United Kingdom* (1998) 27 E.H.R.R. 1, paragraph 98.

20. In *Osman v. United Kingdom* (2000) 29 E.H.R.R. 245, paragraph 116, the Court was careful to emphasise that this obligation had to be: “*interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.*”

21. See *Edwards v. United Kingdom* (1993) 15 E.H.R.R. 417, paragraph 34.

22. See: *Marckx v. Belgium*, Series A, No. 31, (1970) 2 E.H.R.R. 330, paragraph 31; *Airey v. Ireland*, Series A, No. 32, (1979) 2 E.H.R.R. 305, paragraph 24; *Soering v. United Kingdom*, Series A, No. 161, (1989) 11 E.H.R.R. 439, paragraph 87.

considers not only whether the domestic legislation complies with the Convention article invoked, but also whether the application of the law in the circumstances of the actual case complied with the Convention.²³

The notion of jurisdiction

This notion has to be analysed from four different perspectives:

- **Ratione loci: Contracting Parties are responsible for violations that occur within their national territory.** However, they may make an ad hoc declaration extending Convention rights to some (or all) of their territories. In addition, a Contracting State will be liable even if the alleged violation takes place outside its territory but it is responsible for its commission.²⁴
- **Ratione temporis:** the Convention expressly provides that it has no retrospective effect. This is however a complex issue and the prevailing interpretation is that the declaration made by a Contracting State accepting the competence of the Court is retroactive, in the sense that it relates back to when the Contracting State ratified the Convention. There may nevertheless be individual exceptions resulting from an individual State's declaration which may restrict its temporal scope. However any retroactive effect is limited by the six-month rule.
- **Ratione personae:** a complaint can be directed only against States which are Party to the Convention. In this case the State is considered in its unity as responsible for an act contrary to the Convention rights.
- **Ratione materiae:** in accordance with Article 1 of the Convention, the Court cannot consider an application which concerns a right outside the scope of the Convention.

23. The principle of effectiveness will be applied by the Court when the respondent government makes excessively formal or technical arguments, which, if accepted would result in a reduction in the effectiveness of the rights guaranteed.

24. For a more comprehensive analysis see: *Cyprus v. Turkey*, App. No. 6950/75, (1975) 2 D.R. 125; *Loizidou v. Turkey* (1995) 20 E.H.R.R. 99, paragraph 62.

Protocol No. 11²⁵

Protocol No. 11 came into force on 1 November 1998, abolishing the dual system of the European Court and the European Commission of Human Rights and replacing them with a single permanent European Court of Human Rights. Reform of the control machinery established by the Convention was required so that it could cope with the growing number of complaints. **The creation of a single Court was intended to prevent the overlapping of a certain amount of work and also to avoid certain delays which were inherent in the previous system. The new Court has jurisdiction in all matters concerning the interpretation and application of the Convention including inter-State cases as well as individual applications. In addition, the Court is able to give advisory opinions when so requested by the Committee of Ministers.** The changes introduced by the Protocol mainly concern the competence, composition, organisation of the Court and the relevant Procedure before it.

Substantive rights protected by the Convention

The rights guaranteed by the Convention and the Protocols thereto can be divided into two categories, respectively: civil and political; and social and economic rights. It should be noted that most of the safeguards concern civil and political rights; only a few social and economic rights are protected.

Article 2 – Right to life

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

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

a in defence of any person from unlawful violence;

25. For a comprehensive analysis of the changes introduced by Protocol 11 see the following sections dedicated to the procedure and the Rules of the Court and the execution of its judgments.

- b *in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
- c *in action lawfully taken for the purpose of quelling a riot or insurrection."*

Article 2 protects the right of every person to their life. The right is subject to exceptions listed in paragraph (2) which include the cases of lawful executions, death as a result of "the use of force which is no more than absolutely necessary" in defending one's self or others, arrest of a suspect or fugitive and suppression of riots or insurrections.

Article 3 – Prohibition of Torture

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

This Article requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.²⁶ In the case of arrest or detention, persons deprived of their liberty must be protected by the State from physical injury; in addition, they must receive proper medical treatment without being subject to discrimination. The conditions of any detention must be compatible with human dignity.

Article 4 – Prohibition of slavery and forced labour

- 1 *No one shall be held in slavery or servitude.*
- 2 *No one shall be required to perform forced or compulsory labour.*
- 3 *For the purpose of this article the term "forced or compulsory labour" shall not include:*
 - a *any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;*

26. See *A. v. United Kingdom*, App. No. 25599/94, Judgment date 23 September 1998, paragraph 22.

- b *any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;*
- c *any service exacted in case of an emergency or calamity threatening the life or well-being of the community;*
- d *any work or service which forms part of normal civic obligations.”*

Slavery or servitude as well as forced labour are prohibited. Exceptions to the prohibition within the meaning of this Article concern: conscription, national service, prison labour, service exacted in cases of emergency or calamity, and “*normal civic obligations*”. The prohibition established by Article 4 is absolute.

With the aim of not establishing an independent definition for the term “*forced or compulsory labour*” the Court has applied the definitions provided in the relevant conventions of the International Labour Organisation (ILO).²⁷

Article 5 – Right to liberty and security

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

- a *the lawful detention of a person after conviction by a competent court;*
- b *the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;*
- c *the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is*

27. See, for instance, *Van der Musselle v. Belgium*, App. No. 8919/80, Judgment date 23 November 1983, paragraph 32 in which the Court began its review by citing Article 2 of the ILO Convention No. 9, which defines “*compulsory labour*” as “*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily*”.

reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

- d the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;*
- e the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;*
- f the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.*

2 *Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.*

3 *Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.*

4 *Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.*

5 *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation."*

Article 5 provides that everyone has the right to liberty and security of person. The right to liberty is subject to limitations in cases of lawful arrest or detention under certain other circumstances, such as arrest on suspicion of a crime or imprisonment in fulfilment of a sentence.

The word "*after*" in Article 5(1)(a) does not simply mean that the detention must follow the "*conviction*" in point of time: "*detention*" must also result

from, “follow and depend upon” or occur “by virtue of” the “conviction”.²⁸ The words “secure the fulfilment of any obligation prescribed by law” in Article 5(1)(b) only concern cases where the law permits the detention of a person to compel him to fulfil a specific and concrete obligation which he has until then failed to satisfy.²⁹

Article 5(2) provides the right to be informed promptly in a language one understands of the reasons for the arrest and any charge brought against a person. Article 5(3) and (4) provide for the right of prompt access to judicial proceedings to determine the legality of one’s arrest or detention and to trial within a reasonable time or to release pending trial and Article 5(5) provides for the right to compensation in the case of arrest or detention in violation of this Article.

Article 6 – Right to a Fair Trial

“1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

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

3 Everyone charged with a criminal offence has the following minimum rights:

a to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

28. See: *Weeks v. United Kingdom*, App. No. 9787/82, Judgment date 2 March 1987, paragraph 42; *Van Droogenbroeck v. Belgium*, App. No. 7906/77, Judgment date 24 June 1982, Series A No. 50, paragraph 35

29. See *Engel and Others v. the Netherlands*, App. Nos. 5100/71, 5101/71, 5102/71, 5354/72, 5370/72 – Judgment date 8 June 1976, paragraph 69.

- b to have adequate time and facilities for the preparation of his defence;*
- c to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;*
- d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;*
- e to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*

This Article provides the right to a fair trial, including the right to a public hearing before an independent and impartial tribunal within a reasonable time and the right to the presumption of innocence.

The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law. Elements like the complexity of the case, the conduct of the applicant and of the relevant authorities are analysed by the Court.³⁰ Article 6 provides also for some procedural safeguards like: presence at proceedings; freedom from self-incrimination; equality of arms and the right to adversarial proceedings and a reasoned judgment.

Article 7 – No Punishment without Law

"1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

³⁰ See: *Zappia v. Italy*, App. No. 24295/94, Judgment date 26 September 1996, paragraph 23; *Proszak v. Poland*, App. No. 25086/94, Judgment date 16 December 1997, paragraph 32.

Retrospective criminalisation of acts and omissions are prohibited. According with the principle of non-retroactivity, no person may be punished for an act that was not a criminal offence at the time of its commission. Article 7 also prohibits a heavier penalty being imposed than was applicable at the time when the criminal act was committed. The word “law” in the expression “*prescribed by law*” covers not only statute but also unwritten law.³¹

Article 8 – Right to Respect for Private and Family Life

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

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

Article 8 provides a right to respect for one’s “*private and family life, his home and his correspondence*”. Restrictions to this right are only considered lawful if they are “*in accordance with law*” and “*necessary in a democratic society*”. A Convention right cannot be regarded as “*necessary in a democratic society*” unless, amongst other things, it is proportionate to the legitimate aim pursued.³²

In the case of *Johnston and others v. Ireland*³³, the Court held that:

“The principles which emerge from the Court’s case-law on Article 8 (art. 8) include the following. a. By guaranteeing the right to respect for family life, Article 8 (art. 8) presupposes the existence of a family. b. Article 8 (art. 8) applies to the “family life” of the “illegitimate” family as well as to that of the “legitimate” family. c. Although the essential object of Article 8 (art. 8) is to protect the individual against arbitrary interference by the public authorities,

31. See *Sunday Times v. United Kingdom* (2), App. No. 6538/74, Judgment date 26 April 1979, paragraph 47.

32. See *Dudgeon v. United Kingdom* (1982) 1 E.H.R.R. 438, App. No. 7525/76, paragraph 53.

33. See Series A, No. 112, (1987) 9 E.H.R.R. 203 and specifically paragraphs 55-58.

there may in addition be positive obligations inherent in an effective “respect” for family life.”³⁴

Article 9 – Freedom of Thought, Conscience and Religion

“1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.”

Article 9 provides a right to freedom of thought, conscience and religion. Article 9 implies, *inter alia*, freedom to manifest one’s religion not only in community with others, in public and within the circle of those whose faith one shares, but also alone and in private. Article 9 lists a number of forms which manifestation of one’s religion or belief may take namely worship, teaching, practice and observance. Article 9 does not protect every act motivated or inspired by a religion or belief. Moreover, in exercising his freedom to manifest his religion, an individual may need to take his specific situation into account.³⁵

Article 10 – Freedom of Expression

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

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the

34. See also *X and Y v. the Netherlands*, App. No. 8978/80, Judgment date 26 March 1985, paragraphs 22-23.

35. See *Kalaç v. Turkey*, App. No. 20704/92, Judgment date 1 July 1997, paragraph 27.

prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 10 provides the right to freedom of expression. This right includes the freedom to hold opinions, and to receive and impart information and ideas. Restrictions to this right are only considered lawful considered if “*prescribed by law*” and “*necessary in a democratic society*”.

The last sentence of Article 10(1) specifies that a State may require the licensing of broadcasting, television or cinema enterprises.³⁶ The licensing measures must comply with the requirements in Article 10(2).

Article 10(2) is applicable not only to “*information and ideas*” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no democratic society.³⁷

Article 11 – Freedom of Assembly and Association

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

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

Article 11 protects the right to freedom of assembly and association, both public and private, including the right to form trade unions.³⁸ Article 11(2)

36. See *Groppera Radio AG and Others v. Switzerland*, App. No. 10890/84, Judgment date 28 March 1990, paragraph 61.

37. See *Sener v. Turkey* App. No. 26680/95, Judgment date 18 July 2000, paragraph 39.

38. See *Young James and Webster v. United Kingdom*, Apps. Nos. 7601/76;7806/77, Judgment date 13 August 1981, paragraph 52.

states that no restrictions shall be placed on the exercise of these rights of assembly and association other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom others.

Article 12 – Right to Marry

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

Article 12 refers to traditional marriage between persons of opposite biological sex. According to the Court’s opinion in the case *Johnston and others v. Ireland*:

“...the ordinary meaning of the words “right to marry” is clear, in the sense that they cover the formation of marital relationships but not their dissolution. (54) The Court thus concludes that the applicants cannot derive a right to divorce from Article 12 (art. 12).”³⁹

Article 13 – Right to an Effective Remedy

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

Article 13 states the right to an effective remedy for each person who consider that one of their Convention rights has been violated.⁴⁰ There is no need that the effective remedy be a judicial one. As long as it is effective any kind of remedy (be it judicial, administrative or legislative) will be sufficient to meet the requirements of Article 13.

39. See: *Johnston and Others v. Ireland*, Series A, No. 112 paragraph 52, (1987) 9 E.H.R.R. 203; and *F v. Switzerland*, App. No. 11329/85, Judgment date 18 December 1987, paragraph 38.

40. Under Article 1 of the Convention, Contracting Parties should secure the rights and fundamental freedoms by measures one of which is providing effective domestic remedies under Article 13.

Article 14 – Prohibition of Discrimination

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

The list of grounds appearing in Article 14 is illustrative and not exhaustive, as is shown by the words *“any ground such as”*.⁴¹ In addition to the grounds listed in Article 14 the Court now also recognises categories such as disability and sexual orientation that were not contemplated at the time when the original Convention was formulated.

However, Article 14 will not be engaged unless an applicant can point to a disadvantage which relates to rights protected by one of the other Articles of the Convention.

Article 14 is violated when a State treats a person differently in relevantly similar situations without providing an objective and reasonable justification.⁴² Article 14 does not prohibit a State from treating different groups differently in order to correct *“factual inequalities”* between them and in certain circumstances a failure to do so may in itself give rise to a breach of the Article.⁴³ The Court has also accepted that a general policy or measure that has disproportionately prejudicial effects on a particular group may be considered discriminatory even though it is not specifically aimed at that group.⁴⁴

Substantive rights protected by the Additional Protocols

To date, fourteen Protocols to the Convention have been opened for signature with the aim of developing the human rights protected by the Court. These can be divided into two main groups: those changing the machinery of the Convention, and those adding additional rights to those protected by the Convention (Protocols Nos. 1, 4, 6, 7, 12 and 13). **It is important to underline that Protocols are**

41. See *Rasmussen v. Denmark*, App. No. 8777/79, Judgment date 28 November 1984, at paragraph 34.

42. See *DH v. The Czech Republic*, Application No. 57325/00, Judgment date 13 November 2007, at paragraph 175.

43. See *Thlimmenos v. Greece*, (2001) 31 E.H.R.R. 15.

44. See *DH v. The Czech Republic*, at paragraph 175.

binding only for member States that have ratified them. Not all the Council of Europe Member States have yet ratified all the Protocols.

Regarding the substantive rights introduced by the Protocols:

Protocol 1

Article 1 – Protection of Property

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

This Article provides for the protection of private property. Concerning its scope, the Court has said that the notion “possessions” has an autonomous meaning which is certainly not limited to the ownership of physical goods.⁴⁵ Article 1 only protects existing possessions⁴⁶ and the right to dispose of them.⁴⁷

The concept of deprivation does not include situations where the prerogatives flowing from the right of property are preserved.⁴⁸ The requirement of the deprivation has to be in the “public interest” and this condition implies a relationship of proportionality between the aim in view and the means used.⁴⁹

Article 2 – Right to Education

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall

45. See *Gasus Dossier-und Födertechnik GmbH v. the Netherlands*, (1995) 20 E.H.R.R. 403, p. 46, paragraph 53.

46. See *Marckx v. Belgium*, Judgment date 13 June 1979, Series A No. 31, p. 23, paragraph 50.

47. See *Marckx v. Belgium*, Judgment date 13 June 1979, Series A No. 31, p. 23, paragraph 62.

48. See *Sporrong and Lönnroth v. Sweden*, Series A, No. 52, (1983) 5 E.H.R.R. 35, paragraph 62.

49. See *James and Others v. United Kingdom* (1986) 8 E.H.R.R. 123, paragraph 50.

respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

This Article provides for the right to an education, and the right for parents to have their children educated in accordance with their religious or philosophical convictions. Article 2 guarantees the right of access to education institutions existing at a given time⁵⁰ and the right to obtain official recognition for studies which have been completed.⁵¹ States have to respect the parents’ convictions, be they religious or philosophical, throughout their entire education programme.⁵² In order to be considered as relevant, parents’ convictions have to attain a certain level of cogency, seriousness, cohesion and importance.⁵³ Significantly, in *DH v. The Czech Republic*⁵⁴ the Court found a violation of Article 14 read in conjunction with Article 2 of Protocol 1.

Article 3 – Right to Free Elections

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

This Article provides for the right to regular, free and fair elections and is one of the rare provisions to impose a positive obligation on the State. Regarding the method of appointing the legislature, the provision does not create any obligation to introduce a specific system. However, the Contracting Parties have a margin of appreciation in the provision of the right to vote and to stand for election, but it is for the Court to determine in the last resort whether the requirements of the Protocol have been complied with.⁵⁵

50. See *Coster v. United Kingdom* (2001) 33 E.H.R.R. 479.

51. See *Belgian linguistic Case* (No. 2), (1970) 1 E.H.R.R. 252, paragraph 35.

52. See *Kjeldsen, Busk Madsen and Pedersen v. Denmark* Series A No.23, Judgment date 2 December 1976, paragraphs 51-52.

53. See *Campbell and Cosans v. United Kingdom* (1982) 4 E.H.R.R. 293, paragraph 36.

54. See *DH v. The Czech Republic*, Application No. 57325/00, Judgment date 13 November 2007.

55. See *Gitonas and Others v. Greece* (1998) 26 E.H.R.R. 691, p. 23, paragraph 52.

Protocol 4⁵⁶

Article 1 – Prohibition of Imprisonment for Debt

This Article prohibits the imprisonment of people due to “*inability to fulfil a contractual obligation*.” The Article aims at prohibiting any deprivation of liberty for the sole reason that the individual did not have the material means to fulfil his contractual obligations. Deprivation of liberty is not forbidden when in addition to the inability to fulfil a contractual obligation: a debtor acts with malicious or fraudulent intent; or, a person deliberately refuses to fulfil an obligation, irrespective of his reasons; or, the inability to meet a commitment is due to negligence.

Article 2 – Freedom of Movement

This Article allows people to move freely within the territory of a State, as well as the right to leave one’s own nation. Considering the expression “*lawfully within the territory of a State*”, an alien would not be entitled, by virtue of this provision, to secure permanent admission to the territory of a State.

Article 3 – Prohibition of Expulsion of Nationals

Article 3 prohibits expulsion, both by individual and collective measures, and the denial of entrance of a national to the territory of the State of which he/she is a national. Extradition is outside the scope of the Article. The aim of the Article is to specify that the collective expulsions of nationals are prohibited in the same way as the collective expulsion of aliens.

Article 4 – Prohibition of Collective Expulsion of Aliens

This provision also covers Stateless persons. Concerning the definition of collective expulsion, it was considered as:

“[...] any measures of the competent authorities compelling aliens as a group to leave the country, except where such a measure is taken after and on the

56. See Appendix 2.

*basis of a reasonable and objective examination of the particular cases of each individual alien of the group*⁵⁷

Protocol 6⁵⁸

Article 1 – Abolition of Death Penalty

Article 1 affirms the principle of the abolition of the death penalty. A State must, where appropriate, delete the death penalty from its law in order to become a Party of the Protocol.

Article 2 – Death Penalty in Time of War

Article 2 qualifies the scope of the Protocol by limiting the obligation to abolish the death penalty to peacetime.

Article 3 – Prohibition of Derogations

This Article specifies that no derogation may be made under Article 15 of the Convention.

Article 4 – Prohibition of Reservations

Article 4 specifies that States may not make a reservation in respect of the Protocol.

Protocol 7⁵⁹

Article 1 – Procedural Safeguards Relating to Expulsion of Aliens

Article 1(1) prohibits the expulsion of a lawfully resident alien unless the decision was reached according to the law. It also provides such a person with the right to submit reasons why expulsion should not take place, to have the case reviewed and to be represented before the competent authority. The concept of expulsion does not include extradition.

The term “*lawfully*” refers to the domestic law of the State concerned. The term “*resident*” intends to exclude from the application of the Article any

57. See *A and Others v. The Netherlands* App. No.14209/88, decision date 16 December 1988, DR 59, p. 277.

58. See **Appendix 2**.

59. See **Appendix 2**.

alien who has not yet passed through the immigration control or who has been admitted to the territory for the purpose only of transit or for a limited period for a non-residential purpose. This period also covers the period pending a decision on a request for a residence permit.

Article 1(1) also applies to aliens who have entered unlawfully and whose position has been subsequently regularised.

The right to have a case review does not require a two-stage procedure; only that a competent authority reviews the case.

Article 1(2) provides that an alien may be expelled before the exercise of his rights under Article 1(1) when such expulsion is necessary in the interests of public order or for reasons of “national security”. In both cases, however, the person concerned should be entitled to exercise the rights specified in Article 1(1) after his expulsion.

Article 2 – Rights of Appeal in Criminal Matters

This Article provides a person convicted of a criminal offence by a tribunal with a right to appeal to a higher tribunal.⁶⁰ The Article leaves the procedures for the exercise of the right and the grounds on which it may be exercised to be determined by domestic law. The Article does not apply where the proceedings instituted against the applicant do not constitute the determination of a criminal charge against him within the meaning of Article 6(1) of the Convention.⁶¹

Article 2(2) provides that “*this right may be subject to exceptions in regard to offences of a minor character*”: in such a case it will be important to consider whether the offence is punishable by imprisonment or not.

Article 3 – Compensation for wrongful conviction

This Article does not apply in cases where the charge is dismissed or the accused person is acquitted either by the court of first instance or, on appeal, by a higher tribunal. The Article applies only if there has been a

60. This Protocol is not intended to limit the scope of the guarantee contained in Article 6 of the Convention. See *Ekbatani v. Sweden*, Judgment date 26 May 1988, Series A No. 134, p. 13, paragraph 26.

61. See *Borrelli v. Switzerland*, App. No. 17571/90, decision date 2 September 1993, DR 75, p. 152, paragraph 3.

miscarriage of justice when the person's conviction has been reversed or he has been pardoned. Compensation is granted "according to the law or the practice of the State concerned": this means that the law or practice should provide for the payment compensation in all cases to which the Article applies. The State would be obliged to compensate persons only in clear cases of miscarriage of justice.

Article 4 – Right not to be Tried or Punished Twice

It is clear from the terms of this provision, that it upholds the "ne bis in idem" principle only in respect of cases where a person has been tried or punished twice for the same offence by the Courts of a single State.⁶² Using the term "criminal proceedings" the provision does not prevent that person from being made subject, for the same act, to action of a different character as well as to criminal proceedings. Article 4 is applicable if the new proceedings are concluded after the coming into force of the Protocol.⁶³

Article 5 – Equality between Spouses

This Article provides that States should put in place a system of laws by which spouses have equal rights and responsibilities concerning matters of private law but it does not apply to areas of law external to the relationship of marriage such as criminal law and specifically excludes the period preceding the marriage.

Protocol 12⁶⁴

At this point in time only seventeen States have signed and ratified this Protocol.

Article 1 – General Prohibition of Discrimination

Article 1(1) provides that: the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status; and Article 1(2) makes it clear that no one shall be discriminated against by

62. See *Baragiola v. Switzerland*, (1993) 75 DR 76, p. 127, paragraph 3.

63. See *Gradiner v. Austria*, 23 October 1995, Series A No. 328-C, paragraph 53.

64. See Appendix 2.

any public authority (such as administrative authorities, the courts and legislative bodies) on any such ground.

Clearly, Article 1 provides a scope of protection which extends far beyond the enjoyment of the rights and freedoms set forth in the Convention and that afforded by Article 14 of the Convention.

Protocol 13⁶⁵

At this point in time, there are five States that have signed this Protocol but not yet ratified it (i.e. Armenia, Italy, Latvia, Poland and Spain) and two other States that have not yet signed it (i.e. Azerbaijan and Russia).

Article 1 – Abolition of Death Penalty

This Article obliges States to abolish the death penalty in all circumstances, including for acts committed in time of war or of imminent threat of war.

Article 2 – Prohibition of Derogations

This Article makes it clear that there shall be no derogation from the provisions of Protocol No. 13.

Article 3 – Prohibition of Reservations

This Article specifies that States may not make a reservation in respect of the Protocol.

65. See Appendix 2.

Substantive Articles of the European Convention and Additional Protocols:

Convention

Article 2 Right to life

Article 3 Prohibition of torture

Article 4 Prohibition of slavery and forced labour

Article 5 Right to liberty and security

Article 6 Right to a fair trial

Article 7 No punishment without law

Article 8 Right to respect for private and family life

Article 9 Freedom of thought, conscience and religion

Article 10 Freedom of expression

Article 11 Freedom of assembly and association

Article 12 Right to marry

Article 13 Right to an effective remedy

Article 14 Prohibition of discrimination

Protocol No. 1

Article 1 Protection of Property

Article 2 Right to education

Article 3 Right to free elections

Protocol No. 4

Article 1 Prohibition of imprisonment for debt

Article 2 Freedom of movement

Article 3 Prohibition of expulsion of nationals

Article 4 Prohibition of collective expulsion of aliens

Protocol No. 6

Article 1 Abolition of the death penalty

Protocol No. 7

Article 1 Procedural safeguards relating to expulsion of aliens

Article 2 Right of appeal in criminal matters

Article 3 Compensation for wrongful conviction

Article 4 Right not to be tried or punished twice

Article 5 Equality between spouses

Protocol No. 12

Article 1 General prohibition of discrimination

Protocol No. 13

Article 1 Abolition of the death penalty (in all circumstances)

Rules of the Court⁶⁶**Public character**

All documents deposited with the Registry by any of the parties or persons involved in an application are **accessible to the public**, unless the President of the Chamber decides otherwise.⁶⁷ Public access to a document may be restricted in accordance with Rule 33(2). Any request for confidentiality must be justified. Notwithstanding the general rule, it should be noted that the documents related to the reaching of a friendly settlement are not public.⁶⁸

Language⁶⁹

English and French are the official languages of the Court. However, where an individual application is made then up until the point when the Contracting party has been given notice of it, communication with the Court may be in one of the official languages of the Contracting Parties. Thereafter all communications (including oral submissions at hearings)

66. Hereafter referred to as "Rules".

67. For reasons laid down by Rule 33 (2).

68. Rule 62 and Article 38 (2).

69. **Rule 34.**

shall be in one of the Court's official languages unless the President of the Chamber decides otherwise.

All communications by a Contracting Party involved in the case shall be in English or French, unless the President of the Chamber decides otherwise. **In order to ensure that the applicant understands, the President of Chamber may invite the contracting Party to provide a translation of its written submissions in the official language of the applicant. A witness, expert or other person may use his/her own language in case of insufficient knowledge of the Court's official languages.**⁷⁰

Representation of applicants

Following the notification of the application to the respondent Contracting Parties **the applicant must be represented at any hearing decided by the Chamber, unless the President of the Chamber grants leave to the applicant to present his/her own case. The representative should be an advocate resident and authorised to practice in any of the Contracting States, or any other person approved by the President of the Chamber.** The representative must have an adequate understanding of one of the Court's official languages; in case of insufficient knowledge, the President of the Chamber may give leave to the representative to use one of the official languages of the Contracting Parties.

Written pleadings⁷¹

No written observations or other documents may be filed after the time-limit set by the President of the Chamber or the Judge Rapporteur. If observations or documents are filed outside the time-limit or contrary to any practice direction then they will not be included in the case file, unless the President of the Chamber decides otherwise. A time-limit may be extended on receipt of a request from a party. When determining whether a time-limit has been met, the material date is the certified date of dispatch of the document or, if there is none, the actual date of receipt at the Registry.

70. In any such case the Registrar makes the necessary arrangements for interpreting and translation.

71. See also "Written Pleadings" – Practice Direction, available from the Court's website (www.echr.coe.int).

Interim measures⁷²

These are adopted in the interest of the parties or of the proper conduct of the proceedings before the Court, with the aim of safeguarding pending applications.⁷³ The Chamber or the President may, following a request of a party or of any other person concerned, or of its own motion, indicate the interim measures that it requires the parties to take. Notice of the measures shall be given to the Committee of Ministers. The Chamber may request additional information concerning the implementation of the measures.

Striking out and restoration to the list

The Court may at any stage of the proceedings decide pursuant to Rule 43 to strike an application out of its list of cases in circumstances which lead to the conclusion that: the applicant does not intend to pursue the application; or that the matter has been resolved; or that for other reasons the examination of the application is no longer justified.⁷⁴ However, the Court will continue the examination of the application if respect for human rights as defined by the Convention and the Protocols thereto so requires.⁷⁵ Once a decision to strike out an application has become final it is forwarded to the Committee of Ministers by the President of the Chamber. The Court may restore an application to its list of cases if it considers that the circumstances justify such a course.⁷⁶

Third Party intervention⁷⁷

In all cases before the Chamber or the Grand Chamber, a Contracting Party whose citizen or national is an applicant shall have the right to submit written comments and to take part in hearings. If the Contracting Party wants

72. See Rule 39.

73. The Court has exercised this function in cases where an applicant is being subjected to inhuman or degrading treatment and in cases where there is an imminent risk that such treatment will be suffered (e.g on deportation). See: *Cruz Varaz v. Sweden* (1991) 14 E.H.R.R. 1; *Mamatkulov and Abdurasulovic v. Turkey* App. No. 46827/99; 46951/99, Judgment date 6 February 2003.

74. See **Article 37 of the Convention**.

75. Article 37(1).

76. Article 37(2).

77. See also Rule 44.

to exercise this right, it shall advise the Registrar in writing not later than twelve weeks after the transmission or notification of the application, unless the President of the Chamber decides otherwise.

The President of the Court may, “*in the interest of the proper administration of justice*”, invite any Contracting Party that is not a party to the proceedings or any person concerned⁷⁸ who is not the applicant to submit written comments or take part in hearings.⁷⁹ In this case the request must be duly reasoned and submitted in one of the Court’s official languages not later than twelve weeks after the notice of the application has been given to the respondent Contracting Party, unless the President of the Chamber sets another time limit.

Legal aid

Legal aid is a contribution towards expenses and fees. In order to obtain legal aid the applicant must complete a form of declaration⁸⁰ that must be certified by the appropriate domestic authority or authorities.⁸¹

Legal aid may be granted, pursuant to Rule 92, by the President of the Chamber once a case has been communicated to the Respondent State; applicants are informed about the availability of legal aid following the communication. The Registrar shall fix the rate of fees to be paid in accordance with the legal-aid scales in force and the level of expenses to be paid.⁸²

Jurisdiction of the Court

The jurisdiction of the court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34 and 47 of the

78. See: *T and V v. United Kingdom* (2000) 30 E.H.R.R.121; *Teixeira de Castro v. Portugal* (1999) 28 E.H.R.R. 101; *Incal v. Turkey* (2000) 29 E.H.R.R. 449.

79. Pursuant to Article 36 (2) of the Convention.

80. Stating the income, capital assets and any financial commitments in respect of dependants, or any financial obligations.

81. Rule 93 (1).

82. Rule 95.

Convention.⁸³ By ratifying the Convention, a State automatically accepts the jurisdiction of the Court to review inter-State and individual complaints.

Composition and working of the Court

The Registry

Article 25 of the Convention provides that the Court shall have a Registry. The Registry, which assists the Court in the performance of its functions, is headed by the Registrar elected by the Plenary Court.

The officials of the Registry, appointed by the Secretary-General of the Council of Europe,⁸⁴ consist of Section Registries for each of the Sections set up by the Court and of the departments necessary to provide the legal and administrative services required by the Court. The Section Registrar shall assist the Section in the performance of its functions and may be assisted by a Deputy Section Registrar.

The Working of the Court

The President of the Court shall convene a plenary session if at least one-third of the members of the Court so request, and in any case once a year to consider administrative matters.⁸⁵

The Grand Chamber, the Chambers and the Committees sit full time. The Court deliberates in private and its deliberations remain secret. Only the judges take part in the deliberations. The Registrar or the designated substitute, as well as such other officials of the Registry and interpreters whose assistance is deemed necessary, will be present.⁸⁶ The decisions and judgments of the Grand Chamber and the Chambers are adopted by a majority of the sitting judges. Abstentions are not be allowed in final votes on the admissibility and merits of cases.⁸⁷

83. Under Article 47, in 2002 the Committee of Ministers made its first request for an advisory opinion from the Court. The request was related to the co-existence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights.

84. **Rule 18 (3).**

85. **See Rules 20 (2) and (3) for the quorum.**

86. **Rule 22.**

87. **Rule 23.**

Composition of the Court⁸⁸

The Court consists of a number of judges equal to that of the number of Contracting Parties.⁸⁹ A Chamber consists of seven judges drawn from one of the five Sections currently established; the term “Chamber” means any Chamber of seven judges constituted in pursuance of Article 27(1) of the Convention.⁹⁰ The Chamber in each case includes the President of the Section and the judge elected in respect of any Contracting Party concerned; if not already a member of the Section, then such an elected judge will sit an *ex officio* member of the Chamber.⁹¹ Chamber decisions are taken by majority vote. Committees consist of three judges, all from the same Section.⁹²

The Sections

A “Section” is a Chamber set up by the Plenary Court for a fixed period in pursuance of Article 26(b) of the Convention. There are five Sections. Each judge is a member of a Section. The composition of the Sections is geographically and gender balanced and reflects the different legal systems among the Contracting Parties.

The Grand Chamber

The Grand Chamber is composed of seventeen judges and at least three substitute judges.⁹³ It includes: the President and Vice President of the Court; the Presidents of the Sections; twelve other selected judges; and the judge from the Contracting State that is party to the case (who sits as an *ex officio* member).⁹⁴ At least three substitute judges also form part of the Grand Chamber and sit when another member is unavailable.⁹⁵ When a case is referred to the Grand Chamber under Article 43 of the Convention, no judge from the Chamber which rendered the judgment sits in the

88. Article 20, 26, 27 – Rule 24 to 30.

89. See Article 20 of the Convention.

90. Rule 1 (e).

91. Rule 26 (1) (a).

92. Rules 26 and 27 (1).

93. Rule 24 (1).

94. Rule 24(2)(b) and Rule 24(2)(c) provides that in cases referred to the Grand Chamber under Article 30 of the Convention, the Grand Chamber shall also include the members of the Chamber which relinquished jurisdiction.

95. Rule 24(1).

Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.⁹⁶ The panel of five judges of the Grand Chamber called to consider a request submitted under Article 43 of the Convention for a case to be referred to it will be composed in accordance with the Rule 24(5)(a). The panel will not include any judge who took part in the consideration of the admissibility or merits of the case in question or any judge elected in respect of, or who is a national of, a Contracting Party concerned.⁹⁷

The Plenary Court

This Court has both administrative and formal responsibilities. Its main tasks are: the election of the President and two Vice Presidents of the Court and the Presidents of the Sections; the election of the Registrar and the Deputy Registrars; the setting up of the Chambers; and the adoption and amendment of the Rules of the Court.

96. Rule 24(2)(d).

97. Rules 24(5)(b) and (c).

Section II – Practical approach and procedure

Individual applications (Article 34)

The Court is able to determine any complaints that have arisen after a State has ratified the Convention itself. In a number of cases, however, the Court has reviewed cases where the complaint related to matters that occurred prior to ratification.⁹⁸

Possible complainants

The Court may receive applications from any legal or natural person, non-governmental organisation⁹⁹ or group of individuals, claiming to be a victim of a violation of the Convention. A complaint can also be introduced by: children and other incapacitated persons, whether or not represented by their parents, legal persons such as companies,¹⁰⁰ churches,¹⁰¹ political parties,¹⁰² corporate bodies¹⁰³ and trade unions.

There is no requirement that the complainant has to be a citizen, or resident of the respondent State, or of any Council of Europe member State;¹⁰⁴ or physically present on its territory, and if present they do not have to be lawfully so under national law.¹⁰⁵

98. When the length of domestic legal proceedings has exceeded the “reasonable time” required under Article 6, and the proceedings had not been completed when the State ratified the Convention.

99. See *Open Door Counselling Ltd and Dublin Well Woman Centre Ltd v. Ireland* (1993) 15 E.H.R.R. 244.

100. See *Sunday Times v. United Kingdom* (1992) 14 E.H.R.R. 229.

101. See *Canea Catholic Church v. Greece* (1999) 27 E.H.R.R. 521.

102. See *Liberal Party v. United Kingdom* App. No. 8765/79, (1982) 4 E.H.R.R. 106.

103. See: *Autotronic AG v. Switzerland* (1990) 12 E.H.R.R. 485; *Neves E Silva v. Portugal* (1991) 13 E.H.R.R. 535; *Agrotexim v. Greece* (1996) 21 E.H.R.R. 250.

104. See: *Ahmed v. Austria* (1997) 24 E.H.R.R. 278; *D v. United Kingdom* (1997) 24 E.H.R.R. 423.

105. See *D v. United Kingdom* (1997) 24 E.H.R.R. 423, paragraph 48.

Group complaints

The Convention does not permit an *actio popularis*¹⁰⁶ (general petition). In the case of a group of individuals, the application has to be signed by those persons competent to represent the group; where there are no such persons available, the complaint has to be signed by all the members. In the case of a group complaint, where possible, it would be advisable to make an individual complaint as well, so that if the Court rejects the group application (because it considers that the group is not a victim) then the Court will still be able to consider the individual complaint.

Unions and NGOs can only complain about acts directed towards them,¹⁰⁷ though they can provide representation to their members. A registered association can submit a complaint on behalf of its members in appropriate circumstances,¹⁰⁸ provided that there is evidence of the association's authority to represent them. However, this is not possible when the association itself is part of the State.¹⁰⁹

Representatives

An individual may however submit a complaint through a duly authorised representative.¹¹⁰ The Court will generally require either a signed letter of authority, or some other evidence of the representative's authority.¹¹¹ Where the victim is incapacitated, the Court will accept complaints by suitable representatives on his or her behalf but it will require confirmation of the representative's authority.

106. See: *Lindsay v. United Kingdom* (1997) 23 E.H.R.R. C.D. 199; *X v. Austria* App. No. 7045/75; 7 D.R. 87.

107. See *Swedish Engine Drivers Union v. Sweden* (1978) E.C.C.1, (1970) 1 E.H.R.R. 617.

108. See: *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v. France* 9 B.H.R.C. 27, ECHR; *Metropolitan Church of Bessarabia and Others v. Moldova* App. No. 45701/99, Judgment date 13 December 2001.

109. See *Radio France and Others v. France*, App. No. 53984/00, Judgment date 30 March 2004

110. See: *Hokkanen v. Finland* (1995) 19 E.H.R.R. 139.

111. See: *SP, DP and T v. United Kingdom* (1996) 22 E.H.R.R. C.D. 148; *Z. v. United Kingdom* App. No. 28945/95.

Death of the complainant or victim

The next-of-kin may introduce an application in his own name as an “indirect victim” in circumstances where the primary victim has died.¹¹² Where the applicant dies during the course of the proceedings, a spouse or next of kin with a legitimate interest in the proceedings may continue to pursue the complaint.¹¹³

Victim status

Actual victims

An actual victim is one who has already been personally affected by the alleged violation. No specific detriment has to be suffered in order to qualify as a “victim” for the purposes of the Convention.¹¹⁴

Potential victims

These are individuals at risk of being directly affected by a law or administrative act.¹¹⁵ A potential future violation may be sufficient in itself to render the applicant a “victim.”¹¹⁶ An applicant does not have to show that the measure in question has caused specific prejudice or damage.¹¹⁷ However, these matters are clearly relevant when the Court considers the assessment of just satisfaction under Article 41.¹¹⁸ Also *Burden v. the United Kingdom* [GC], No. 13378/05, § § 33-35, 29 April 2008.

112. See: *McCann v. United Kingdom* (1996) 21 E.H.R.R. 97; *Osman v. United Kingdom* (2000) 29 E.H.R.R. 245; *Yasa v. Turkey* (1999) 28 E.H.R.R. 408.

113. See *Scherer v. Switzerland* (1994) 18 E.H.R.R. 276.

114. See *Eckle v. Germany* (1982) 5 E.H.R.R. 1, paragraph 66.

115. See: *Ahmed v. Austria* (1997) 24 E.H.R.R. 278; *Marckx v. Belgium* (1970) 2 E.H.R.R. 330; *Norris v. Ireland* (1988) 13 E.H.R.R. 186, paragraph 31.

116. See: *Campbell and Cosans v. United Kingdom* (1982) 4 E.H.R.R. 293, paragraph 26; *Soering v. United Kingdom* (1989) 11 E.H.R.R. 439, paragraph 90.

117. See *Eckle v. Germany* (1982) 5 E.H.R.R. 1, paragraph 66.

118. See: *Artico v. Italy* (1981) 3 E.H.R.R. 1, paragraph 35; *Benham v. United Kingdom* (1996) 22 E.H.R.R. 293, paragraph 68; *Perks v. United Kingdom* (2000) 30 E.H.R.R. 33.

Indirect victims

The Court will accept applications from those who have suffered as a result of a violation of the Convention rights of another.¹¹⁹

Legal scope of the Convention

States can only be held liable for violations which occur within their jurisdiction, but this does not mean that events which occur outside the territory of a State are automatically outside its jurisdiction. The crucial test for jurisdiction is whether or not the State exercised *de facto* control over the events in question.¹²⁰ The exercise of extra-territorial jurisdiction depends on an effective control of the relevant territory and inhabitants abroad, and an exercise of all or some public powers.¹²¹

Admissibility criteria (Article 35)¹²²

Exhaustion of domestic remedies

In general, complaints should not be submitted before all effective domestic remedies have been exhausted so as to provide the State with the chance to comply with the Convention's requirements. The applicant is required to make use of remedies that are "effective", "sufficient" and "available".¹²³

Burden of proof

The burden is on the Government invoking the rule to prove the practical existence at the relevant time of an available and sufficient remedy.¹²⁴ The State must explain with sufficient clarity the effective remedy that the applicant has failed to pursue¹²⁵ and demonstrate that the applicant had effective access to that remedy. Once the State has proved the availability

119. See: *Abdulaziz, Cabales and Balkandali v. United Kingdom* (1985) 7 E.H.R.R. 471; *McCann v. United Kingdom* (1996) 21 E.H.R.R. 97.

120. See *Chrysostomos, Papachrysostomou v. Turkey*, App. No. 15299/89 and 15300/89; 86-A D.R. 4.

121. See *Bankovic and others v. Belgium and Others*, App. No. 52207/99 at paragraph 71.

122. See **Article 35 of the Convention**.

123. See: *Pine Valley Developments v. Ireland*, (1992) 14 E.H.R.R. 319; *Brozicek v. Italy* (1990) 12 E.H.R.R. 371; *Katte Klitsche de la Grange v. Italy* (1995) 19 E.H.R.R. 368.

124. See *Deweer v. Belgium* (1980) 2 E.H.R.R. 439, paragraph 26.

125. See *Stran Greek Refineries and Stratis Andreadis v. Greece* (1995) 19 E.H.R.R. 293.

of an unused domestic remedy, then the applicant has to demonstrate that the remedy is ineffective or that special reasons exist why that remedy was not pursued.¹²⁶ In practice the applicant must be able to demonstrate that he complied with national time limits¹²⁷ and procedural requirements.¹²⁸

Effective remedy

To be effective, a remedy must be capable of remedying the violation¹²⁹ and be practically and directly “accessible” to the individual concerned.¹³⁰ Thus discretionary remedies that cannot be sought by the applicant himself will not be considered “effective” or “accessible.”¹³¹ An individual is not required to try more than one way of redress when there are several available;¹³² the Court only expects the most obvious and sensible remedy to be pursued,¹³³ reflecting the practical realities of the individual's position.

Remedies must offer reasonable prospects of success

The rule requires the use of remedies which clearly have a prospect of success.¹³⁴ “No prospects of success” may constitute a sufficient basis for a finding that the remedy is ineffective.¹³⁵ Mere doubt about the prospects of success will not exempt the applicant from the requirement to pursue a particular remedy. If the domestic law is unclear or contradictory then the

126. See: *Donnelly v. United Kingdom* App. No. 557583/72, 4 D.R. 4; *Hilton v. United Kingdom* App. No. 5613/72, (1981) 3 E.H.R.R. 104; *Aksoy v. Turkey* (1997) 23 E.H.R.R. 553.

127. See *W. v. Germany*, App. No. 10785/84, (1986) 48 D.R. 102.

128. See: *Cunningham v. United Kingdom*, App. No. 10636/84, 43 D.R. 171; *T. v. Switzerland* App. No. 18079/91, 72 D.R. 263.

129. See: *Vijayanathan and Pusparajah v. France* (1993) 15 E.H.R.R. 62; *Purcell v. Ireland* App. No. 15404/89; 70 D.R. 262.

130. See *Kuijk v. Greece*, App. No. 14986/89, 70 D.R. 240.

131. See: *Byloos v. Belgium*, App. No. 14545/89; 66 D.R. 28; *X. v. Denmark*, App. No. 8395/78; 27 D.R. 50.

132. See: *Airey v. Ireland*, Series A, No. 32; (1979) 2 E.H.R.R. 305, paragraph 23; *Agee v. United Kingdom*, App. No. 7729/76; 7 D.R. 164.

133. See: *Remli v. France* (1996) 22 E.H.R.R. 253; *Leander v. Sweden* (1987) 9 E.H.R.R. 433.

134. See *De Wilde, Ooms and Versyp v. Belgium* (1970) 1 E.H.R.R. 438.

135. See *H. v. United Kingdom*, App. No. 10000/82, 33 D.R. 247.

applicant may well be expected to pursue the remedy in order to enable the domestic courts to rule on the issues.¹³⁶

Non judicial remedies

Administrative remedies may be effective, provided they are realistically capable of affording redress.¹³⁷ Purely advisory powers are insufficient.¹³⁸ The Ombudsman procedure is not generally considered to be an effective remedy.¹³⁹ A Royal Pardon or an *ex gratia* payment cannot be considered as an effective remedy. In general, a remedy which depends on the discretionary power of a public authority cannot be considered as effective.

The six-month rule

The commencement of the six-month period

The period commences on the day after the delivery of the final decision in the last effective or potentially effective domestic remedy available. The final decision is given when the judgment is rendered orally in public, or if not pronounced in public, the date on which the applicant or his lawyer were informed of it,¹⁴⁰ whichever is the earlier.¹⁴¹ If the decision is relevant for the application, time runs from the date on which the full text is received.¹⁴² Where the applicant was initially unaware of a violation of a Convention right, time runs from the date of knowledge.¹⁴³ Where there is a sequence of events, time starts to run from the end of the episode, unless it is practical to expect the application to be made earlier. If a prosecution involves multiple charges, time runs from the date on which the first conviction was affirmed,¹⁴⁴ rather than from the conclusion of the proceedings as a whole.¹⁴⁵ An application concerning a jurisdictional decision must be

136. See *Whiteside v. United Kingdom*, App. No. 20357/92, 76-A(E)/B D.R. 80.

137. See *McFeeley v. United Kingdom*, App. No. 8317/78, 20 D.R. 44, (1999) 29 E.H.R.R. 615.

138. See *Agee v. United Kingdom*, App. No. 7229/76, 7 D.R. 164.

139. See: *Montion v. France*, App. No. 11192/84, 52 D.R. 227; *Leander v. Sweden* (1987) 9 E.H.R.R. 433.

140. See *KCM v. Netherlands*, App. No. 21304/92 80-A D.R. 87.

141. See *Aarts v. Netherlands*, App. No. 4056/88 70 D.R. 208.

142. See *P v. Switzerland*, App. No. 9299/81 36 D.R. 20.

143. See *Hilton v. United Kingdom*, App. No. 12015/86, 57 D.R.108.

144. A similar rule is applied also in civil proceedings.

145. See *N v. Germany*, App. No. 9132/82, 31 D.R. 154.

brought within six months of its date, and not the date of any subsequent decision.

Continuing situation

Where the act or omission that amounts to a violation is continuous or repeated¹⁴⁶ and there is no domestic remedy, the six-month period will run from the end of the state of affairs; and so long as the situation continues to exist, the six-month rule will not apply.¹⁴⁷ Also *Loizidou v. Turkey*, 18 December 1996, § 41, *Reports of Judgments and Decisions* 1996-VI.

Pursuit of ineffective remedies

Where the applicant has pursued a remedy that later proves to be ineffective, time runs from the moment that he became aware or should reasonably have become aware of this situation. See *Adalı v. Turkey*, No. 38187/97, § 195, 31 March 2005.

Date of introduction

The application should normally be introduced by way of a written communication in accordance with Rule 47(1), but the complaint may also be introduced by letter.¹⁴⁸ The date of introduction is either: *a.* the date of the letter; or *b.* the date of the postmark on the envelope, if the letter is undated; or *c.* if the postmark is illegible, the date of arrival at the registry; or *d.* if the application is sent by fax, the date of its arrival by fax. If an application has not been submitted on the official form or an introductory letter does not contain all the information required by Rule 47(1) then the Registry may write to the applicant and ask that the official form be completed. As a rule it should be returned within 6 weeks of the date of the Registry's letter.¹⁴⁹

146. See: *De Becker v. Austria*, 2 Y.B. 215; *McDaid v. United Kingdom*, App. No. 25681/94, 85-A D.R. 134; *Norris v. Ireland* (1988) 13 E.H.R.R. 186; *Modinos v. Cyprus* (1993) 16 E.H.R.R. 485.

147. See *Dudgeon v. United Kingdom* (1982) 4 E.H.R.R. 149.

148. Before presenting an application is also very important to have a look at the Practice Direction in the Rules of the Court which can be downloaded without charge from the Court's website (www.echr.coe.int).

149. According to the Court's Practice Directions.

Special circumstances suspending the period

Only very limited circumstances amounting to “force majeure” will be regarded as suspending the running of the six-month period. Illness and mental incapacity have not been accepted in any case to date.¹⁵⁰ Detention is not in itself sufficient, unless it can be proved that contact with the outside world was prohibited.¹⁵¹ Nor is ignorance of the law sufficient.¹⁵²

Additional inadmissibility grounds

Anonymity

Anonymous applications are inadmissible. However, an applicant can make a request for confidentiality.

Incompatibility with the provisions of the Convention

Applications are declared incompatible if: the alleged violated right was not binding on the State concerned at the time of the event about which complaint is made; the application is based on events in a territory outside the Contracting State’s jurisdiction;¹⁵³ the application related to the acts of a person not bound by the Convention, or over whom the Convention organs have no jurisdiction; or the application does not relate to a right or freedom protected by the Convention, i.e. it falls outside of the scope of the Convention.¹⁵⁴

“Substantially the same”

An application can be ruled inadmissible if it concerns a matter that has been examined already by the Court or in another procedure of international investigation or settlement. However, the provision does not apply to cases involving different facts or circumstances even if the legal issues are substantially the same as previous applications.

150. See *X v. Austria*, App. No., 6317/73, 2 D.R. 87.

151. See *Kalenziz v. Greece*, App. No. 13208/87, 68 D.R. 125.

152. See *Dell Preiti v. Italy*, App. No. 15488/89, 80 D.R. 14.

153. See **Article 56 of the Convention**. However, this is subject to extra-territorial responsibility in certain cases – see footnote 24 above.

154. See: *LI v. Sweden* App. No. 21808/93, 75 D.R. 264; *BC v. Switzerland*, App. No. 19898/92, 75 D.R. 223; *Autio v. Finland*, App. No. 17086/90, 72 D.R. 245.

In a case where the Court has determined a complaint and the applicant then makes a second application in respect of the same complaint based upon relevant new information or facts, not in existence or not known at the time when the first application was made, then the provision cannot be applied.

Manifestly ill founded

Applications which do not disclose any possible ground upon which it could be established that the Convention has been violated will be declared inadmissible on the basis that they are manifestly ill-founded.

Abuse of the right of petition

Vexatious or repeated applications, those tainted by forgery or misrepresentation, or written in offensive or provocative language or made in deliberate breach of the Court's ruling will be struck out as an abuse of the right to petition.¹⁵⁵

Institution of proceedings¹⁵⁶

Application form and signature

The application must be made in writing and signed by the applicant or his/her representative. The representative must provide a power of attorney, or other written authority to act. An explanation concerning data to include and relevant documents to be attached to the application form is provided by Rule 47(1) of the Rules of Court

Judge Rapporteur

A Judge Rapporteur is appointed by the President of the Section in order to prepare a report on the admissibility of the application, when its examination by a Chamber seems justified.¹⁵⁷ In the examination the Judge Rapporteur: *a.* may request the parties to submit, within a specified time, any factual information, documents or other material which they consider

155. See *Van der Tang v. Spain* (1993) 22 E.H.R.R. 363.

156. **When filling in the application it is advisable to follow the instructions contained in the "Practice Direction – Institution of proceedings" and the related "Explanatory Note" that can be downloaded from the Court's website (www.echr.coe.int).**

157. **Rule 49.**

to be relevant;¹⁵⁸ *b.* shall, subject to the President of the Section directing that the case be considered by a Chamber, decide whether the application is to be considered by a Committee or by a Chamber; *c.* shall submit such reports, drafts and other documents as may assist the Chamber or its President in carrying out their functions.

Proceedings on admissibility

Procedure before a Committee¹⁵⁹

Article 28 of the Convention provides that the Committee may, by a unanimous vote of all three judges, declare an application inadmissible or strike out of the Court's list of cases an application where such a decision can be taken without further examination. If no decision is taken under Article 28 then the application will be forwarded to a Chamber.

Examination before a Chamber¹⁶⁰

The case may be struck out or rejected as inadmissible in whole or in part on its first examination by the Chamber, and before any communication with the relevant Contracting State has taken place. Alternatively, the Chamber or its President may decide to: *a.* request the parties to present any factual information, documents and other material considered as relevant; *b.* communicate the application to the Contracting State, inviting it to submit written observations on the application and, upon receipt thereof, invite the applicant to submit observations in reply; *c.* invite the parties to submit further observations in writing.

Before taking its decision on admissibility, the Chamber may decide to hold a hearing and the parties will usually be invited to address the issues arising in relation both to the admissibility and the merits of the application.¹⁶¹ The deliberation of the Chamber takes place immediately after the hearing is closed.

158. According to Rule 38, no written observations or other documents may be filed after the time-limit set by the President, unless the President decides otherwise.

159. Rule 53.

160. Rule 54.

161. Rule 54(3).

Communication to the High Contracting Parties

When an application is communicated to the Contracting Party it will generally be given three months to submit its observations. It is now 16 weeks. Those observations will then be copied to the applicant who is then given four to six weeks to reply.¹⁶² Extensions may be granted to either party, but the request for an extension must be received before the expiry of the time limit. The Chamber may also decide to examine the admissibility and merits at the same time.¹⁶³ In such cases the parties are invited to include in their observations any submissions concerning just satisfaction and any proposal for a friendly settlement.¹⁶⁴ If no friendly settlement or other solution is reached and the Chamber is satisfied that the case is admissible and ready for a determination on the merits it shall immediately adopt a judgment including the Chamber's decision on admissibility.¹⁶⁵

Admissibility decision¹⁶⁶

A Chamber's decision on admissibility will generally contain a summary of the facts, complaints and a section on the law that gives rise to the decision.¹⁶⁷ The Chamber will communicate its decision to the Contracting Party concerned and to any third party previously informed.¹⁶⁸

Proceedings after an application has been declared admissible

Procedure on the Merits

Once the Chamber has decided to admit the application, it may invite the parties to submit further evidence and written observations, including any

162. According to Rule 38, no written observations or other documents may be filed after the time-limit set by the President, unless the President decides otherwise.

163. In accordance with Article 29 (3) of the Convention and Rule 54A(1).

164. Rule 54A(1), though note that Rule 54A(3) enables the Court to dispense with this procedure.

165. Rule 54A(2).

166. The Court's current practice is to examine both the admissibility and the merits of an application which is straightforward, for example, because the complaint mirrors a complaint considered in a definitive lead judgment.

167. See Article 45 and Rule 56.

168. Rule 57 provides that a decision made by a Chamber will be given either in English or French unless the Court considers that it should be given in both official languages.

claims for “just satisfaction” by the applicant. If no hearing has taken place at the admissibility stage, it may decide to hold a hearing on the merits of the case. The President of the Chamber may, in the interests of the proper administration of justice, invite or grant leave to any Contracting State which is not party to the proceedings, or any person concerned who is not the applicant, to submit written comments, and, in exceptional circumstances, to make representations at the hearing. A Contracting State whose national is an applicant in the case is entitled to intervene as of right.

Claims for Just Satisfaction¹⁶⁹

The Court shall afford just satisfaction to the injured party.¹⁷⁰ In order to obtain a grant of just satisfaction an applicant must make a specific claim.¹⁷¹ If the applicant fails to comply with the requirements the Chamber may reject the claim in whole or in part. Applicant’s claims for just satisfaction are transmitted to the respondent Contracting State for comment.

Friendly settlement¹⁷²

After a case is declared admissible, the Court will make contact with the parties in order to try to get them to negotiate a friendly settlement of the case.¹⁷³ If the friendly settlement is reached, the Court in accordance with Rule 43(3) will strike the case out of its list by means of a decision which will be confined to a brief statement of the facts and the solution reached. Any communications or proposals made in the course of friendly settlement negotiations are confidential and cannot be referred to any later contentious proceedings.

Examination of a case

The Court has powers to embark on an investigation where necessary after admissibility. Contracting States are obliged to furnish all necessary

169. Article 41 and Rule 60.

170. Article 41 of the Convention.

171. In accordance with Rule 60, the claim has to be presented with the relevant supporting documents, within the time-limit fixed by Rule 38, unless the President of the Chamber decides otherwise.

172. Article 38 (2) and Rule 62.

173. Article 38: “... on the basis of respect for human rights as defined in the Convention and the protocols thereto”.

facilities for the investigations, in accordance with Article 38(1)(a) of the Convention.

Hearings

Hearings are public unless the Chamber decides otherwise, for one of the reasons specified in Rule 63(2). Any request for private hearings must be justified.¹⁷⁴ In the case of the failure to appear by a party or any other person, the Chamber may, in accordance with a proper administration of justice, nonetheless proceed with the hearing.¹⁷⁵

Proceedings before the Grand Chamber

Relinquishment of jurisdiction by a Chamber in favour of the Grand Chamber¹⁷⁶

The Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber; the decision has to be taken for the reasons set out in Article 30 of the Convention. Reasons need not be given for the decision to relinquish. The Registrar shall notify the parties of the Chamber's intention to relinquish jurisdiction. The parties shall have one month from the date of that notification within which to file at the Registry a duly reasoned objection.

Referral of a case to the Grand Chamber¹⁷⁷

A referral can be requested exceptionally and within a period of three months from the date of the judgment of a Chamber, by any parties filing in writing at the Registry. The request has to be justified by the parties. A panel of five judges of the Grand Chamber examines the request solely on the basis of the existing case file. If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

174. Rule 63 (3).

175. Rule 65.

176. Rule 72.

177. Article 45, Rule 72 and 73.

Judgments

Final judgment

The judgment of the Grand Chamber shall be final.¹⁷⁸ 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. Contents of the judgment are listed in Rule 74. In accordance with Article 45 of the Convention reasons are given for the judgments. In a case where the decision is not unanimous, any judge is entitled to deliver a separate dissenting opinion.¹⁷⁹ The final decision is published, under the responsibility of the Registry, in an appropriate form.¹⁸⁰

The judgment is transmitted to the Committee of Ministers, which supervise its execution.¹⁸¹ The Registrar sends certified copies to the parties, the Secretary General of the Council of Europe and to any third party and to any other person directly concerned.¹⁸²

Request for interpretation of a judgment

Parties may request the interpretation of a judgment within a period of one year following the delivery of that judgment, as stated by Rule 79 (1) of the Court. The original Chamber, if it is possible,¹⁸³ may decide of its motion on the request. If the Chamber accepts the request, the Registrar communicates it to the parties and invites them to submit any written comments within a time-limit decided by the President of the Chamber.

Request for revision of a judgment

Within a period of six months after that party acquired knowledge of the decision a party may request the Court to revise that judgment. The request is allowed: *a.* in case of discovery of a fact which might by its nature

178. Article 44 of the Convention.

179. Article 45 (2).

180. Article 44 (3) and Rule 78.

181. Article 46 (2).

182. Rule 77.

183. Rule 79 (3).

have a decisive influence; *b.* if the fact, when the judgement was delivered, was unknown to the Court and *c.* could not reasonably have been known to that party. The request must be supported by all relevant documents. The original Chamber may decide of its own motion to refuse the request.¹⁸⁴ If the Chamber accepts the request, the Registrar communicates it to the parties and invites them to submit any written comments within a time-limit decided by the President of the Chamber.

The Court may also, of its own motion or at the request of a party made within one month of the delivery of a decision or a judgment, rectify clerical errors, errors in calculation or obvious mistakes.

European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights¹⁸⁵

The agreement explains to whom it applies,¹⁸⁶ the relative system of immunities established in the proceedings¹⁸⁷ and the Contracting Parties' obligation.

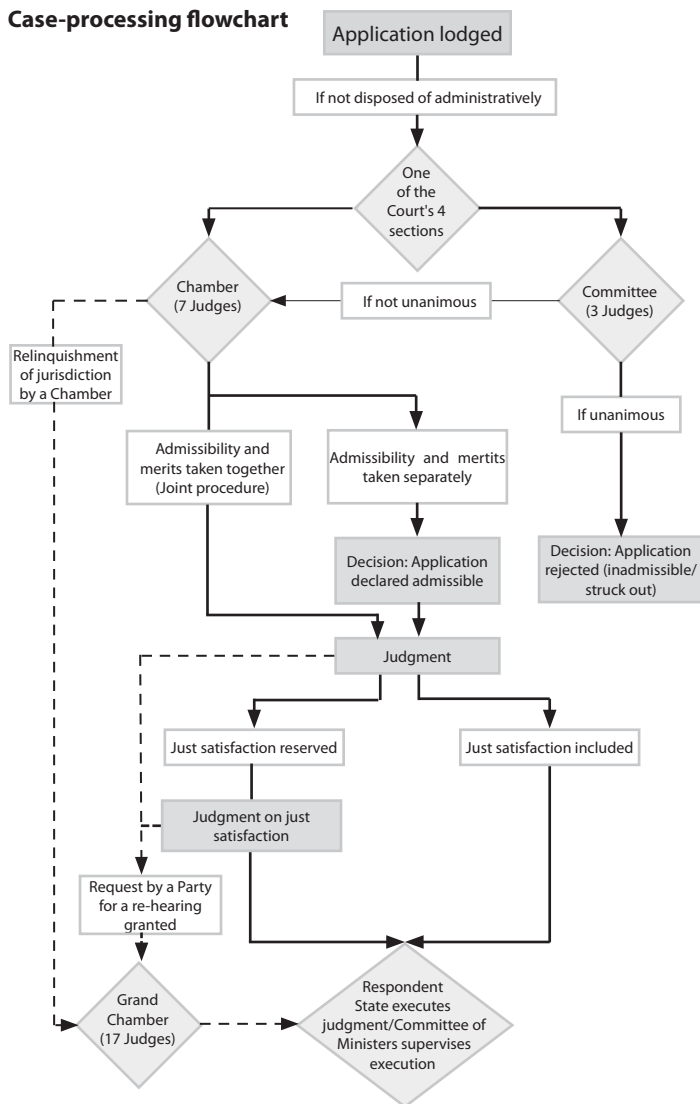
184. See Rule 80 (2).

185. Entry into force on 1 January 1999.

186. As amended by Protocol No. 11, the agreement concerns: agents, advisors, advocates, applicants, delegates, witnesses, and experts.

187. In Article 2.

Case-processing flowchart



This flowchart indicates the progress of a case through the different judicial formations. In the interests of readability, it does not include certain stages in the procedure – such as communication of an application to the respondent State, consideration of a re-hearing request by the Panel of the Grand Chamber and friendly settlement negotiations.

NB. Court's 5 sections

Execution of judgments

The principle of *Restitutio in Integrum*

The principle implies that the amount of compensation awarded should put the applicant in the position he/she would have been if the action not been committed. A judgment in which the Court finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach.¹⁸⁸ The Court will not award just satisfaction if fresh proceedings have brought about a situation as close to *restitutio in integrum* as possible.¹⁸⁹ In property cases the Court has sometimes stated that the return of the property would constitute *restitutio in integrum*.¹⁹⁰

Claims for Just Satisfaction

Just satisfaction is granted when the internal law of the High Contracting Party concerned allows only partial reparation to the violation.¹⁹¹ It is granted having regard to what is equitable,¹⁹² and where the nature of the violation will render *restitutio in integrum* impossible¹⁹³. The Court makes awards of financial just satisfaction under three heads: pecuniary loss, non-pecuniary loss, and costs and expenses. Domestic fee scales may be relevant but they are not binding on the Court.¹⁹⁴ The respondent State is usually expressly required to pay compensation and costs within a period of three months of the date of the judgment. Where an applicant fails to make a claim for just satisfaction, the Court will not consider an award of its own motion.¹⁹⁵ The applicant also has to submit a detailed bill of costs to the Court. The Court will award damages only in respect of losses which can be shown to have been caused by the violation in question.¹⁹⁶

188. See *Piersack v. Belgium* (Article 50), (1987) 7 E.H.R.R. 251, paragraph 12.

189. See *Windisch v. Austria* (1991) 13 E.H.R.R. 281.

190. See: *Papamichalopoulos v. Greece* (Just Satisfaction), (1996) 21 E.H.R.R. 439, paragraphs 38-40; *Hentrich v. France*, Series A, No. 296-A, (1994) 18 E.H.R.R. 440, paragraph 71.

191. Pursuant to Article 41 of the Convention.

192. See *X v. United Kingdom* (Article 50) (1982) 5 E.H.R.R. 192.

193. See *Konig v. Germany* (Article 50), (1980) 2 E.H.R.R. 469, paragraph 15

194. See: *Hood v. United Kingdom* (2000) 29 E.H.R.R. 365, paragraph 86; *Eckle v. Germany* (Article 50), (1991) 13 E.H.R.R. 556, paragraph 25.

195. See *Moore and Gordon v. United Kingdom* (2000) 29 E.H.R.R. 728, paragraph 28.

196. See *Le Compte, Van Leuven and De Meyere v. Belgium* (Article 50), (1983) 5 E.H.R.R. 183.

Execution

In accordance with Article 46 of the Convention High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties. Respondent States must take measures in favour of applicants to put an end to violations and, as far as possible, erase their consequences, and on the other hand, they must take the measures needed to prevent new, similar violations.¹⁹⁷

States have considerable freedom in the choice of the individual and general measures they take to meet these requirements; however, this freedom will be monitored by the Committee of Ministers.

Depending on the circumstances, the execution of judgments may require the respondent State to take measures in favour of the applicant, such as:

- **Individual measures.** They may be examined by the Committee of Ministers, if the violation continues to have adverse effects which have not been offset by the just satisfaction awarded to the applicant. The aim of the measures is to put an end to any continuing violation and to redress, as far as possible, their effects. These measures depend on the nature of the violation and the applicant's situation.
- **Reopening and re-examination of national proceedings.** These measures may be an effective way of redressing the consequences of a violation of the Convention caused by unfair national proceedings.¹⁹⁸ Re-opening proceedings may also provide the opportunity to rectify a domestic decision which is deemed incompatible with the substance of the Convention.¹⁹⁹ In the case of expulsion from a country, the measure may oblige the State to reconsider its decisions to ensure that the applicant can return to the country in question or remain there if the deportation has not yet taken place.²⁰⁰
- **General measures.** These measures are used when the circumstances of the case clearly show that the violation is the result of domestic legislation, or where it is the lack of legislation which has led to the violation. The State concerned has to amend the existing legislation or

197. A first obligation is therefore the payment of just satisfaction.

198. See *Barberà, Messegué and Jabardo v. Spain* (1989) 11 E.H.R.R. 360.

199. See *Open Door Counselling Ltd. and Dublin Well Woman*, Resolution DH (96) 368.

200. See: *Ocalan v. Turkey* (2003) 37 E.H.R.R. 10; *D. v. United Kingdom*, Resolution DH (98) 010.

introduce new, appropriate legislation in order to comply with the Court's judgment. The State automatically adjusts its legal stance and its interpretation of national law to meet the demands of the Convention, as reflected in the Court's judgments; and makes the Court's judgments directly enforceable by virtue of its domestic law.²⁰¹

Monitoring body on the execution of judgments

In accordance with Article 46(2) of the Convention the final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.²⁰² Once the Court's final judgment has been transmitted, the Committee of Ministers invites the respondent State to inform it of the steps taken to pay any just satisfaction awarded as well as of any individual measures adopted.

When supervising the execution the Committee of Ministers examines: whether any just satisfaction awarded by the Court has been paid; and, if required, whether individual measures have been taken.²⁰³

The Committee of Ministers is also entitled to consider any communication from the injured party with regard to the payment of the just satisfaction or the taking of individual measures.²⁰⁴ In the performance of this task the Committee is assisted by the Council of Europe Department for the Execution of Judgments of the European Court of Human Rights. After establishing that the State concerned has taken all the necessary measures to abide by the judgment, the Committee adopts a resolution concluding that its functions under Article 46(2) of the Convention have been exercised. In some cases, interim resolutions may be appropriate.

201. In case of systemic violation see also *Broniowski v. Poland* [GC], No. 31443/96, ECHR 2004-V. The case is an example of *Pilot Judgment Procedure*, a recent development in Convention Case Law.

202. See also the document: "Rule adopted by the Committee of Ministers for the application of Article 46, paragraph 2 of the Convention".

203. **Rule 3** – "Rule adopted by the Committee of Ministers for the application of Article 46, paragraph 2 of the Convention".

204. **Rule 3** – "Rule adopted by the Committee of Ministers for the application of Article 46, paragraph 2 of the Convention".

Recommendation No. R (2000) 2

This Recommendation was adopted by the Committee of Ministers due to execution problems, caused in certain cases by the lack of appropriate national legislation on the re-opening of proceedings. The Committee of Ministers uses this Recommendation to invite the Contracting Parties to ensure the existence at national level of adequate possibilities to achieve, as far as possible, *restitutio in integrum*. In this case possibilities of re-examination of the case and re-opening of proceedings are included, as well as the consideration of the situations under Article II (ii) (a) (b) of the Recommendation.

Future development

Protocol No. 14

Protocol No. 14 is not yet in force. It will enter into force once all State Parties to the Convention have ratified it. The only State yet to ratify the Protocol is Russia.

The aim of the Protocol is to reduce the time spent by the Court on clearly inadmissible applications and repetitive applications so as to enable the Court to concentrate on those cases which require in-depth examination. The changes that are made by the Protocol relate more to the functioning than to the structure of the system.²⁰⁵

The Court's filtering capacity, under Article 7 of the Convention, will be extended by a new Article 27 of the Convention; making a single judge, assisted by non-judicial Rapporteurs, competent to declare inadmissible or strike out an individual application. The new admissibility requirement inserted in Article 35 of the Convention will provide the Court with an additional tool which should assist it in concentrating on cases which warrant an examination on the merits, by empowering it to declare inadmissible applications where the applicant has not suffered a significant disadvantage and which, in terms of respect for human rights, do not otherwise require an examination on the merits by the Court. However, the new requirement contains an explicit condition to ensure that it does not lead

205. See also Articles 4 and 6 of the Protocol.

to rejection of cases which have not been duly considered by a domestic tribunal.²⁰⁶

The competence of the Committee of three judges, under Article 8 of the Protocol, will be extended to cover repetitive cases. They will be empowered to rule, in a simplified procedure, not only on the admissibility but also on the merits of an application.

In addition the Court will have more latitude to rule simultaneously on the admissibility and merits of individual applications; joint decisions on admissibility and merits of individual cases will become the norm. However, the Court will be free to choose, on a case by case basis, to take separate decisions on admissibility.

The Committee of Ministers may decide, by a two-thirds majority of the representatives entitled to sit on the Committee, to bring proceedings before the Grand Chamber of the Court against any High Contracting Party which refuses to comply with the Court's final judgment in a case to which it is party, after having given it notice to do so.²⁰⁷ The purpose of such proceedings would be to obtain a ruling from the Court as to whether that Party has failed to fulfil its obligation under Article 46(1) of the Convention.

Article 13 of Protocol 14 will allow the Commissioner for Human Rights to submit written comments and take part in hearings in all cases before a Chamber or the Grand Chamber.

Friendly settlements will be encouraged at any stage of the proceedings by Article 15 of the Protocol. Judges will be elected for a single nine-year term²⁰⁸ and, pursuant to Article 17 of the Protocol, an amendment has been introduced with a view to the possible accession of the European Union to the Convention.

Article 22 (Election of the Judges) and Article 24 (Dismissal) of the Convention will be deleted.²⁰⁹

206. Article 12 of the Protocol.

207. Article 16 of the Protocol.

208. Article 2 of the Protocol.

209. Respectively Article 1 and 3 of the Protocol.

Section III – Articles most frequently involved in Roma cases and the relevant jurisprudence

Gloria Jean Garland and Luke Clements

This section offers an overview of the articles of the European Convention on Human Rights that arise most frequently in cases involving Roma. They are: Article 2 (right to life), Article 3 (freedom from torture), Article 5 (right to liberty), Article 6 (fair trial), Article 8 (respect for private and family life), Article 14 (freedom from discrimination), and Article 4 of Protocol No. 4 to the Convention (prohibition of mass expulsions). Of course, other articles, for instance Article 10 (freedom of speech) and Article 11 (freedom of association), may apply in individual cases as well, but for the sake of brevity, they are not discussed further here. The Court's case law interpreting these articles is an important tool in combating prejudice and mistreatment of Roma, and in protecting their rights. Citations of cases involving Romani applicants are included, where applicable. In some instances, examples of situations that are common to Roma are offered to illustrate the principles, even though they may not yet represent actual cases before the Court.

Article 2 – Right to Life

Article 2(1) provides that everyone's right to life shall be protected by law, and that no one shall be deprived of his life intentionally except in cases where a court legally imposes the death penalty. This exception, included in the original 1950 Convention, was superseded by Protocol 6, which abolishes the death penalty in peacetime. All member States except Russia have ratified Protocol 6. Also can mention Protocol 13.

When viewed in conjunction with the State's duty under Article 1 to "secure to everyone within its jurisdiction the rights and freedoms" protected by the Convention, Article 2 involves both negative obligations (the State and its agents must refrain from killing people) and positive obligations (the State must implement legislation making murder a crime, must investigate and prosecute people who kill, and must take appropriate steps to safeguard lives).

The obligation to safeguard life

Securing the right to life requires the State in some instances to take active steps to protect against possible risks to life. If authorities know or ought to know of a real and immediate risk to an individual from criminal acts of another, there is a positive obligation to take measures to protect the intended victim.²¹⁰ Thus, in a Roma context, if skinheads at a rally announce their intention to attack a Romani family, there may be a positive obligation on the part of the police to prevent the attack.²¹¹

Article 2 can also be used to claim protection against potentially fatal environmental pollution and to compel the State to provide information about the circumstances. In *Oneryildiz v. Turkey*, a methane explosion at a municipal rubbish tip killed nearby residents. The Court found a violation of Article 2, holding that the positive obligation to safeguard life applied to any activities, public or private, where the right to life may be at stake, including the public's right to information about the potential dangers.²¹² Many Romani settlements are located in environmentally polluted areas, which may trigger a positive obligation to inform them of the dangers and relocate them to safer areas.

If a foreign national faces a risk to his life (or ill-treatment) if he is returned to his home country, it could amount to a violation of Article 2 (or Article 3) for the State to send him back (regardless of the reason for the risk).²¹³

Procedural requirement to conduct an independent investigation

The burden of proving a violation of Article 2 normally rests with the applicant. The Court recognizes that the available evidence needed to prove the violation is often in the hands of State authorities or can only be gathered through the investigative powers of the State. Thus, the Court imposes a procedural requirement on the State under Article 2 to investigate any deaths where there is credible evidence that the State is responsible. The

210. See *Osman v. United Kingdom* (2000) 29 E.H.R.R. 245, Judgment date 28 October 1998.

211. This sentence is based on an actual incident occurring in Slovakia in 2001. The matter did not go before the European Court because the assailants were prosecuted and the Slovak Romani family subsequently sought and obtained political asylum in Belgium.

212. (2004) 39 E.H.R.R. 12, Judgment date 30 November 2004, paragraph 90.

213. The 1951 Geneva convention on refugees and asylum seekers protects only against persecution based on race, gender, etc.

investigation must be independent and capable of leading to the identification and punishment of those responsible.²¹⁴

The requirement to investigate was extended by the Grand Chamber in *Nachova v. Bulgaria* (discussed in more detail under Article 14) to take into account possible racial motivations in appropriate cases. The *Nachova* Grand Chamber noted that:

*“Racial violence is a particular affront to human dignity and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction”*²¹⁵

and stated that –

*“[w]here such evidence comes to light in the investigation, it must be verified and – if confirmed – a thorough examination of all the facts should be undertaken in order to uncover any possible racist motives.”*²¹⁶

See also *Angelova and Iliev v. Bulgaria*, No. 55523/00, ECHR 2007

Standard of proof

The Court will apply the *beyond reasonable doubt* standard of proof in Article 3 cases. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact.²¹⁷

Burden of proof and the exception in custody cases

The general rule is that an applicant in an Article 2 case (usually a surviving family member) has the burden of proving State responsibility for the death. An exception to that rule is made when a death occurs while someone is in police custody. In such cases, the burden shifts to the State to prove that it is not responsible for the death. In *Velikova v. Bulgaria*, a case

214. See: *Kaya v. Turkey*, App. No. 22535/93, Judgment date 28 March 2000; *McCann v. United Kingdom*, (1996) 21 E.H.R.R. 97.

215. See *Nachova v. Bulgaria*, App. Nos. 43577/98 – 43579/98, Judgment date 6 July 2005, paragraph 145.

216. *Ibid*, paragraph 164.

217. See: *Salman v. Turkey*, App. No. 21986/93, Judgment date 27 June 2000; and *Nachova v. Bulgaria*, App. Nos. 43577/98 – 43579/98, Judgment date 6 July 2005.

involving the death of a Romani man while in police custody, the Court held:

*“Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as in the case of persons within their control while in custody, strong presumptions of fact will arise in respect of injuries and death occurring during that detention. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.”*²¹⁸

Exceptions to the right to life

Article 2(2) provides that the deprivation of life will not constitute a violation in prescribed circumstances. Thus there will be no violation if a police officer or other State agent kills someone while defending any person from unlawful violence, to effect a lawful arrest or prevent the escape of a person lawfully detained, or to quell a riot or insurrection. These exceptions are narrowly tailored, however, and the use of force must be absolutely necessary in view of the circumstances.

Article 3 – Freedom from Torture or Inhuman or Degrading Treatment or Punishment

Along with Article 2, Article 3 is considered to be of paramount importance among the rights guaranteed by the Convention. A State can never ‘derogate’ from its responsibilities under Articles 2 and 3, even in times of national emergency or terrorist threats.

The difference between torture, inhuman or degrading treatment is one of degree. Torture is defined as deliberate inhuman treatment causing very serious and cruel suffering.²¹⁹ Inhuman treatment involves infliction of intense physical or mental suffering. Degrading treatment or punishment is ill-treatment designed to arouse feelings of fear, anguish and inferiority, capable of humiliating and debasing a person and breaking physical or

218. App. No. 41488/98, Judgment date 18 May 2000, paragraph 70.

219. These definitions are taken from *Ireland v. United Kingdom*, (1979-80) 2 E.H.R.R. 25, Judgment date 18 January 1978.

moral resistance. There must be a minimum level of severity before ill-treatment will constitute a violation of Article 3, but the assessment of that minimum depends upon the circumstances of the case; the sex, age and state of health of the victim; the duration of the treatment; and its mental or physical effects.²²⁰ Thus, the Court may find a violation of Article 3 with respect to prisoners who are elderly or disabled, where the same treatment may not rise to the level of an Article 3 violation in the case of a prisoner who is young and healthy. Implicit in this is an obligation to provide adequate medical treatment to prisoners.

Standard of proof

As in Article 2 cases, the Court will apply the *beyond reasonable doubt* standard of proof in Article 3 cases.²²¹

Burden of proof and the exception in custody cases

Generally, the applicant in an Article 3 case will have the burden of proving the complaint. However, as with Article 2, if the applicant was in police custody at the time of the alleged ill-treatment, the burden of proof shifts to the State to demonstrate that an injury was caused by something other than ill-treatment.²²²

Thus, in *Cobzaru v. Romania*²²³ the Court concluded that there had been a violation of Article 3 in circumstances where a Romani man had alleged that he had been beaten by police officers when in custody and the State had failed to establish that his injuries were sustained otherwise.²²⁴

Discrimination as “degrading treatment”

Discrimination in itself can constitute degrading treatment where it is gross. The *East African Asians* case, for instance, concerned UK passport

220. *Ibid.*

221. **Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact.** See: *Salman v. Turkey*, App. No. 21986/93, Judgment date 27 June 2000; and *Nachova v. Bulgaria*, App. Nos. 43577/98 – 43579/98, Judgment date 6 July 2005.

222. See *Assenov v. Bulgaria*, (1999) E.H.R.L.R. 225, Judgment date 28 October 1998.

223. See *Cobzaru v. Romania* (2007) App. No. 48254/99, Judgment date 26 July 2007.

224. Note well that the Court also concluded that there had been a violation of Articles 13 and 14.

holders of Asian descent living in Uganda, Kenya and Tanzania who attempted to settle in the United Kingdom following efforts to “purge” those African nations of their non-African citizens. The 1968 Commonwealth Immigrants Act specifically subjected commonwealth citizens of Asian origin to immigration control. The Commission held that:

*“differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when different treatment on some other ground would raise no such question.”*²²⁵

This finding was reiterated in the recent case of *Moldovan v. Romania*,²²⁶ where Romani victims of mob violence whose homes were burned to the ground were forced to live for years in hen houses, stables and windowless cellars. The Court held that the applicants’ living conditions and the racial discrimination to which they were publicly subjected constituted an interference with their human dignity which, in the special circumstances of that case, amounted to “degrading treatment.”²²⁷

Procedural requirement to investigate

Where there is credible evidence that the State has subjected a person to degrading treatment in violation of Article 3, there is a positive obligation on the state to hold a full independent and public investigation into the matter. In *Assenov v. Bulgaria*²²⁸ the Court held that the investigation should be capable of leading to the identification and punishment of those responsible and stated that:

“If this were not the case, the general legal prohibition of torture and in-human and degrading treatment and punishment, despite its fundamental importance, would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”

225. 3 EHRR 76 (1973).

226. See *Moldovan v. Romania*, App. No. 41138/98 ; 64320/01, Judgment date 12 July 2005.

227. *Ibid*, paragraph 113.

228. See *Assenov v. Bulgaria*, (1999) E.H.R.L.R. 225, Judgment date 28 October 1998, paragraph 102.

The Court has reiterated this point in a number of recent Article 3 cases involving Roma applicants.²²⁹

It should be noted that the positive obligation to investigate is not restricted to circumstances where it is alleged that individual suffered degrading treatment at the hands of agents of the State. In *Secic v. Croatia*²³⁰ the Court concluded that the State's failure to investigate properly an allegation that a Romani man had been attacked by a group of unidentified skinheads breached Article 3 of the Convention.²³¹

The obligation to safeguard

Like Article 2, Article 3 carries with it an obligation to protect individuals from torture or inhuman or degrading treatment from both public and private actors, including preventing expulsion to a country where an individual risks torture or inhuman or degrading treatment.²³²

Article 5 – Liberty and Security of Person²³³

Article 5 lists six situations in which a State can deprive an individual of liberty. If one of those six instances is not present, then an arrest or detention or other deprivation of liberty is a violation of Article 5. In addition, Article 5 provides guarantees with which a State must comply after a person has been detained.

229. See: *Petropoulou-Tsakiris v. Greece*, App. No. 44803/04, Judgment date 6 December 2007; *Stoica v. Romania*, App. No. 42722/02, Judgment date 4 March 2008; *Dzeladinov v. the Former Yugoslav Republic of Macedonia*, App. No. 13252/02, Judgment date 10 April 2008; and *Sulejmanov v. the Former Yugoslav Republic of Macedonia*, App. No. 69875/01, Judgment date 24 April 2008.

230. See *Secic v. Croatia* (1997) App. No. 40116/02, Judgment date 31 May 2007. Note well that the Court also concluded in that case that there had been a violation of Article 14 – in circumstances where the police had been aware that the attack was most probably induced by ethnic hatred but had done little during a period of seven years following the attack to investigate the crime.

231. See also the case of *Angelova and Illiev v. Bulgaria* (2007) App. No. 55523/00, Judgment date 27 July 2007 for a similar decision in the context of an unlawful killing of a Romani man which the State had failed properly to investigate.

232. See, e.g. *Soering v. United Kingdom*, Series A, No. 161, (1989) 1 E.H.R.R. 439.

233. A Council of Europe Handbook on Article 5 is accessible at www.coe.int/T/E/Human_rights/hrhb5.pdf.

The six specific instances laid down in Article 5(1) are as follows:

- a. after a person has been convicted of a crime by a court;
- b. arrest or detention following non-compliance with a court order or to secure a legal obligation (for example, to compel attendance of a witness at trial, injunctions, paternity tests, or detentions to establish an individual's identity – but detention should be used only if less drastic options won't work);
- c. reasonable suspicion of having committed a crime or to prevent flight after commission of a crime (the "reasonable" suspicion is an objective one, and states have a margin of appreciation);
- d. detaining a minor for educational supervision or legal action;
- e. to prevent the spreading of infectious diseases, or persons of unsound mind, alcoholics or drug addicts (for their own protection and that of others – the mental disorder must be reliably established and the state has the burden of justifying the detention);
- f. detention in order to deport or extradite someone.

The State cannot create additional categories and must act within the confines of the six circumstances stated above. Generally, the Court gives a narrow interpretation to the listed categories, in deference to the high importance of the right to liberty in democratic societies.²³⁴

Procedural guarantees following arrest or detention

Once a person has been lawfully detained or arrested, several procedural guarantees then come into play, requiring continued justification of the detention. Article 5(2) requires that everyone who is arrested be informed promptly of the reasons for arrest, in a language he or she understands. Under Article 5(3), a person arrested on reasonable suspicion of committing an offence must be brought promptly before a judge or other judicial officer and has a right to bail except where there are compelling reasons for it to be refused. A "reasonable suspicion" may be adequate to justify an initial arrest, but more is needed to continue the detention. In the *Assenov*

234. See *DeWilde, Ooms and Versyp v. Belgium*, (1970) 1 E.H.R.R. 438, Judgment date 18 June 1971.

v. Bulgaria case, for instance, two years of pre-trial detention violated Article 5(3), even though authorities may have had a “reasonable fear of further offences” if the prisoner were released from jail.²³⁵

Article 5(4) is the right to habeas corpus – an ongoing right to have the legality of detention reviewed (primarily with respect to pre-trial detention, not after conviction). Finally, Article 5(5) guarantees the right of compensation to anyone who has been unlawfully arrested or detained.

With respect to Roma cases, Article 5 issues can arise in the context of raids conducted in Roma camps or neighbourhoods where police detain numerous individuals, often on rather dubious grounds of a theft or crime having been committed by a person of Roma descent. Roma are sometimes arrested without adequate cause and kept in detention or denied bail for longer than can be justified.

See also *Čonka v. Belgium*, No. 51564/99, ECHR 2002-I

Article 6 – Right to a Fair Trial²³⁶

Article 6(1) guarantees a fair and public hearing to determine “civil rights and obligations” or criminal charges within a reasonable time and by an independent and impartial tribunal. The Court has not clearly defined what is included in “civil rights and obligations,” but the Article clearly applies to rights of a private law character (such as contract obligations, employment rights, personal injury claims and so on) and excludes public law rights unless there are financial or economic implications. The Court has in general given a broad interpretation to the scope of Article 6, covering pre-trial and post-trial procedures as well as the trial itself.

What is “fair”?

What is “fair” depends upon the particular circumstances of the case, but also includes the right to get to court in the first place. Procedural guarantees are meaningless without a right of access to the courts.²³⁷ Excessively

235. See *Assenov v. Bulgaria*, (1999) E.H.R.L.R. 225, Judgment date 28 October 1998, paragraph 156.

236. A Council of Europe Handbook on Article 6 is accessible at http://www.coe.int/T/E/Human_rights/hrhb3.pdf

237. See *Golder v. United Kingdom*, Series A, No. 18; (1979-80) 1 E.H.R.R. 524, Judgment date 21 February 1975.

high court fees or other barriers can violate Article 6.²³⁸ In Roma cases, lawyers must be particularly alert to the kinds of cultural and practical barriers their clients can face when trying to resolve their grievances. In addition, a court must give each party the opportunity to present his or her case without being at a disadvantage. This concept, known as “equality of arms,” recognizes that the State’s police power and ability to compel witnesses and gather evidence must be balanced by requiring that the evidence be disclosed to the accused and that it be gathered in a fair manner (for example, without coercion or illegal tactics). The principle of fairness also requires that a court state the reasons for its judgments.

What is a “reasonable time”?

What is “reasonable” in terms of time also depends on the particular circumstances of a case. In criminal cases, the time is shorter because the defendant’s liberty is restricted pending trial. Cases involving children or applicants suffering from illnesses such as HIV/AIDS should be resolved more quickly than cases involving adults or healthy applicants. See *F.E. v. France*, 30 October 1998, § 57, *Reports of Judgments and Decisions* 1998-VIII. In *Moldovan v. Romania*, the mob violence case described earlier, the Court found a violation of Article 6(1) because the resolution of the applicants’ civil claims took over 12 years. The civil claims could not be addressed under Romanian law until the criminal proceedings were resolved, and those proceedings had likewise lasted for several years.

Particular obligations in criminal cases

Article 6(2) and (3) lists particular obligations with respect to criminal trials. There is a presumption of innocence and the burden of proof is on the State. The defendant must be informed promptly in a language he or she understands of the nature of the charges and must be given time and facilities for preparing a defence and must have the right to compel witnesses to attend. Interpretation must be provided if needed, for witnesses as well as the defendant.

If a defendant cannot afford a lawyer the State must provide one “if the interests of justice so require.” Accordingly, if a defendant is at risk of a

238. See *Kreuz v. Poland*, (2001) 25 E.H.R.R. CD 80, Judgment date 19 June 2001.

serious penalty (for instance, a prison sentence) then the Court will require that legal aid is potentially available.

Article 8 – Right to respect for private and family life, home and correspondence

The rights protected by Article 8 fall into a category of rights that are qualified rather than absolute. Unlike Articles 2 and 3 (for instance), the Article 8 rights may be subject to a certain level of interference by state authorities.

Article 8(1) provides that “Everyone has the right to respect for his private and family life, his home and his correspondence.”

What is protected?

Article 8 protects four rights – the right to respect for one’s (1) private and (2) family life, one’s (3) home and (4) correspondence. It is in relation to the concept of “private life,” however, that the court has been most radical in its interpretation. The concept of “private life” has been interpreted as including a “person’s physical and psychological integrity” for which respect is due in order to “ensure the development, without outside interference, of the personality of each individual in his relations with other human beings”.²³⁹ Thus, issues of sexual rights,²⁴⁰ environmental pollution,²⁴¹ physical barriers to movement,²⁴² access to files²⁴³ and information about one’s illness²⁴⁴ have been held to come within its reach.

By guaranteeing *respect* for private and family life, and not just a right to privacy, the Convention protects a wide range of overlapping and interrelated rights. For instance, in *Chapman v. United Kingdom*, the Court considered a complaint made by a Romani woman who wished to live in a caravan on her plot of land, in violation of national and local planning regulations and had been subjected to enforcement action. The Court

239. See *Botta v. Italy* (1998) 153/1996/772/973, Judgment date 24 February 1998.

240. See *Norris v. Ireland* (1988) 13 E.H.R.R. 186.

241. See *Hatton v. UK* (2003) (36022/97).

242. See *Botta v. Italy* (1998) 153/1996/772/973, Judgment date 24 February 1998.

243. See *Gaskin v. U.K.* 12 EHRR 36 (1989).

244. See: *McGinley & Egan v. UK* (1998) 27 E.H.R.R. 1; and *LCB v. UK* (1998) 27 E.H.R.R. 212.

accepted that the applicant's occupation of her caravan was an integral part of her ethnic identity as a Gypsy,

"reflecting the long tradition of the minority of following a travelling lifestyle ... even though, under the pressure of development and diverse policies or from their own volition, many Gypsies no longer live a wholly nomadic existence and increasingly settle for long periods in one place in order to facilitate, for example, the education of their children"

and held that Article 8 protected the right of Roma to enjoy a traditional lifestyle. Nevertheless, the Court dismissed the complaint having afforded the State a wide margin of appreciation and concluded that enforcement action was proportionate in that case.²⁴⁵ See also *Jane Smith v. the United Kingdom* [GC], No. 25154/94, § 138, 18 January 2001; *Coster v. the United Kingdom* [GC], No. 24876/94, § 141, 18 January 2001; *Lee v. the United Kingdom* [GC], No. 25289/94, § 129, 18 January 2001 and *Beard v. the United Kingdom* [GC], No. 24882/94, § 132, 18 January 2001.

Article 8 imposes positive as well as negative obligations on the State. Thus, in addition to refraining from interference, the State must take positive steps to ensure respect for private and family life, including laws giving full status to illegitimate children or providing a means for transsexual individuals to have their chosen sexual classification recognized. With respect to Roma, the Court held in *Connors v. United Kingdom* that the vulnerable position of Gypsies as a minority required special consideration for their needs and different lifestyle. It imposed a positive obligation on member States to facilitate the Gypsy way of life.²⁴⁶

Although the Court has not found a right under the Convention to be provided with a home, the right to respect for private and family life was violated in *Moldovan v. Romania* by the government's failure to adequately rebuild Romani family homes after a mob of villagers, with police complicity, had burned them to the ground.²⁴⁷

245. See *Chapman v. United Kingdom* (2001) 33 E.H.R.R. 18, Judgment date 18 January 2001.

246. See: *Connors v. United Kingdom* (2005) 40 E.H.R.R. 9, Judgment date 27 May 2004; and *Chapman v. United Kingdom* (2001) 33 E.H.R.R. 18, Judgment date 18 January 2001 at paragraph 96.

247. See *Moldovan v. Romania*, App. No. 41138/98, 64320/01, Judgment date 12 July 2005, paragraph 109.

When can the State interfere?

Article 8(2) prohibits any interference by a public authority with the exercise of the article 8(1) rights, unless the interference is in accordance with the law, pursues one of the six “legitimate aims” listed in Article 8(2) and is necessary in a “democratic society.” Legitimate aims include such things as the interests of national security, public safety, preventing crime or disorder, protecting health or morals, or protecting the rights and freedoms of others. The proportionality of a measure depends on its effectiveness, whether there are less restrictive means of achieving the same goal, and the level of interference involved. If a person is completely deprived of a right, even the most legitimate of aims may not be sufficient. When applying this balancing test, the Court generally gives a “margin of appreciation” to the State – a discretion accorded to States to determine the best balance between qualified rights and the public interest in any interference.

Thus, the right to respect for private and family life is not absolute, and a State can obtain a warrant on good cause to tap someone’s telephone, collect medical information to combat a potential epidemic, or install surveillance cameras in public places as a security measure.

See also *Yordanova and Others v. Bulgaria* – (25446/06) communicated on 8 July 2008 – available on HUDOC

Article 14 – Freedom from Discrimination

Article 14, which guarantees freedom from discrimination with respect to the “rights and freedoms” guaranteed by the Convention, is an accessory right. It does not stand on its own, and there is no general right under the European Convention to be free from discrimination. Thus, the discrimination must occur within the context of another right, such as freedom from torture, the right to privacy, or the right of free speech, before it is actionable. On the positive side, however, the potential categories of discrimination are open-ended (“sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, or *other status*”) and the Court now recognises categories such as disability and sexual orientation that were not contemplated at the time when the original Convention was drafted.

Like other articles, Article 14 protects the rights of individuals, not groups. Thus, Roma or Ashkali or women or other individuals can bring an action relating to the violation of their Convention rights only where they are individually affected, rather than on behalf of a group. Each applicant must be able to demonstrate that he or she is personally the victim of a violation.

No substantive violation required

Although Article 14 is an accessory right, the Court does not need to find a violation of the underlying right. If the claim falls within the ambit of another Convention right, then the Court can consider Article 14 allegations. For example, in *Abdulaziz, Cabales, and Balkandali v. United Kingdom*,²⁴⁸ the applicants complained of different treatment for wives/fiancées who wished to immigrate to join their husbands in the United Kingdom than for husbands/fiancés to join their wives. They alleged violations of Article 8 and Article 14 in conjunction with Article 8. The Court found no violation of Article 8 because the applicants had no right under the Convention to a choice of residence and could have made their homes in Turkey, Pakistan, or elsewhere. Nonetheless, the claim fell within the ambit of Article 8 and the Court ruled in their favour with respect to the discriminatory treatment of husbands and wives in similar situations.

Similar treatment for persons in similar situations; different treatment for persons in different situations

In essence, Article 14 guarantees that persons in similar situations should be treated in a similar manner with respect to Convention rights, unless there are objective and reasonable justifications for the different treatment. In *Hoffmann v. Austria*,²⁴⁹ a mother, who was a Jehovah's witness, was treated differently in a child custody matter because of her religion. In the *Belgian linguistic case*, French-speaking children living in Flemish-speaking communes were treated differently than Flemish-speaking children living in French-speaking communes.²⁵⁰ In the *Abdulaziz* case discussed above, the Court rejected the United Kingdom's argument that its different

248. See *Abdulaziz, Cabales and Balkandali v. United Kingdom*, (1985) 7 E.H.R.R. 471, Judgment date 28 May 1983.

249. See *Hoffman v. Austria*, (1994) 17 E.H.R.R. 293, Judgment date 23 June 1993.

250. See *Belgian linguistic case* (1970) 1 E.H.R.R. 252, Judgment date 23 July 1968.

treatment of husbands compared to wives with respect to immigration matters was justified by the State's high levels of unemployment.

Article 14 also guarantees the right of persons in different situations to be treated differently. In *Thlimmenos v. Greece*,²⁵¹ the Court held that a Jehovah's witness who was sent to jail for refusing to wear a military uniform must be treated differently than "ordinary" criminals with respect to laws preventing those with a criminal record from becoming public accountants. While there was a legitimate reason for keeping convicted criminals from becoming public accountants, the same rationale did not apply to conscientious objectors, and their different circumstances compelled different treatment.

This reasoning is important in Roma cases – the Court in *Chapman v. United Kingdom*²⁵² specifically recognised the different lifestyle of the Roma and the State's positive obligation to facilitate that lifestyle, which could in some cases require different treatment for Roma because of their different situation.

The State's "margin of appreciation" in discrimination cases

Freedom from discrimination under Article 14 is a qualitative rather than an absolute right, and the States can have a considerable margin of appreciation. The different treatment must have an objective and reasonable justification – a legitimate end and means proportional to that end. Whether that margin of appreciation is wide or narrow depends upon:

- The nature of the right involved (States are given more leeway in social and economic fields whereas the margin with respect to fundamental rights is very narrow).
- The level of interference (is the underlying right completely eliminated?) In *Aziz v. Cyprus*,²⁵³ the Court found a violation on behalf of a Turkish Cypriot living in the Greek part of Cyprus who could not register to vote because the Cypriot constitution required Turks to be on the Turkish voting rolls and Greeks to be on the Greek voting rolls, thus completely depriving him of his right to vote.

251. See *Thlimmenos v. Greece* (2001) 31 E.H.R.R. 15, Judgment date 6 April 2000.

252. See *Chapman v. United Kingdom* (2001) 33 E.H.R.R. 18, Judgment date 18 January 2001.

253. See *Aziz v. Cyprus* (2002) 35 E.H.R.R. CD 14, Judgment date 22 June 2004.

- The public interest involved in the category of discrimination (the strong public interest in combating gender and racial distinctions requires a higher level of justification for discrimination on those bases).

The decision in *DH v. The Czech Republic*

In the recent case of *DH v. The Czech Republic*,²⁵⁴ the Court held that the Roma applicants had been the victims of indirect discrimination. The Grand Chamber stated that there had been a violation of Article 14 read in conjunction with Article 2 of Protocol 1 (the right to education) in circumstances where the applicants had been indirectly discriminated against when selected for and assigned to special schools for children with learning difficulties. Although Roma children only represented 5% of all primary school pupils at the time the application was lodged, they made up more than 50% of the overall population of special schools, and 80-90% of some of these schools.

The Grand Chamber concluded that: the selection tests were biased and did not take into account the special characteristics of Roma children;²⁵⁵ that the parents were not in a position to give informed consent;²⁵⁶ and that, in any case:

*“no waiver of the right not to be subjected to racial discrimination can be accepted.”*²⁵⁷

In reaching that conclusion the Grand Chamber commented upon the margin of appreciation in the following terms:

“206. ... whenever discretion capable of interfering with the enjoyment of a Convention right is conferred on national authorities, the procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation ...”

254. See *DH v. The Czech Republic*, Application No. 57325/00, Judgment date 13 November 2007.

255. *Ibid.* paragraphs 200-201.

256. *Ibid.* paragraph 202.

257. *Ibid.* paragraph 204.

Compare with recent Chamber judgment in case of *Oršuš and Others v. Croatia*, No. 15766/03, § 65-69, 17 July 2008.

The standard and burden of proof in discrimination cases

In Article 14 cases the Court will apply the *beyond reasonable doubt* standard of proof.

In *Anguelova v. Bulgaria*,²⁵⁸ the applicant's son, a Romani man, died while in police custody. The Court found the applicant's claim that he was tortured because of his ethnicity raised "serious argument" and noted that the State had not provided any other plausible explanation. Nonetheless, the Court could not conclude *beyond reasonable doubt* that the death and lack of a meaningful investigation into it were motivated by racial prejudice. That conclusion led Judge Bonello in a strong dissenting opinion to note that:

*"Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it."*²⁵⁹

The Court's traditional approach was challenged in *Nachova v. Bulgaria*, where the applicants and intervenors argued that the *beyond reasonable doubt* standard of proof was simply too difficult to meet and pointed to a growing trend by other courts to shift the burden of proof in discrimination cases.

In *Nachova* the Grand Chamber acknowledged the *beyond reasonable doubt* standard, but noted that it had never been the purpose of the Court to borrow the approach of national legal systems that apply that standard and that it had no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment. The Court stated that it could base its conclusions on inferences that flow from the facts, and reiterated the point made in earlier cases that:

*"proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar un rebutted presumptions of fact."*²⁶⁰

258. See *Anguelova v. Bulgaria*, App. No. 38361/97, Judgment date 13 June 2002.

259. See *Anguelova v. Bulgaria*, App. No. 38361/97, Judgment date 13 June 2002, dissenting opinion.

260. See: *Salman v. Turkey*, App. No. 21986/93, Judgment date 27 June 2000; and *Nachova v. Bulgaria*, App. Nos. 43577/98 – 43579/98, Judgment date 6 July 2005, paragraph 147

In Article 14 cases it is clear that once an applicant had proved that there had been a difference in treatment then the burden of proof shifts on to the respondent State to show that it was justified.

That point was recently made by the Grand Chamber in *DH v. The Czech Republic*:²⁶¹

*"Where an applicant alleging indirect discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory."*²⁶²

In order to create this rebuttable presumption, the Grand Chamber stated that:

*"...statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence."*²⁶³

The procedural obligation to investigate possible racist motives

In *Nachova* the Grand Chamber endorsed the following analysis of the Contracting States' procedural obligation to investigate possible racist motives for acts of violence:

"160 ... States have a general obligation under Article 2 of the Convention to conduct an effective investigation in cases of deprivation of life.

... That obligation must be discharged without discrimination, as required by Article 14 of the Convention ... [W]here there is suspicion that racial attitudes induced a violent act it is particularly important that the official investigation is pursued with vigour and impartiality, having regard to the need to reassert continuously society's condemnation of racism and ethnic hatred and to maintain the confidence of minorities in the ability of the authorities to protect them from the threat of racist violence. Compliance with the State's positive obligations under Article 2 of the Convention requires that the domestic legal system must demonstrate its capacity to enforce criminal law against those

261. See *DH v. The Czech Republic*, Application No. 57325/00, Judgment date 13 November 2007.

262. *Ibid.* paragraph 189.

263. *Ibid.* at paragraph 188.

who unlawfully took the life of another, irrespective of the victim's racial or ethnic origin ...

... [W]hen investigating violent incidents and, in particular, deaths at the hands of State agents, State authorities have the additional duty to take all reasonable steps to unmask any racist motive and to establish whether or not ethnic hatred or prejudice may have played a role in the events. Failing to do so and treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be to turn a blind eye to the specific nature of acts that are particularly destructive of fundamental rights. A failure to make a distinction in the way in which situations that are essentially different are handled may constitute unjustified treatment irreconcilable with Article 14 of the Convention (see, mutatis mutandis, Thlimmenos v. Greece ...). In order to maintain public confidence in their law enforcement machinery, Contracting States must ensure that in the investigation of incidents involving the use of force a distinction is made both in their legal systems and in practice between cases of excessive use of force and of racist killings.

Admittedly, proving racial motivation will often be extremely difficult in practice. The respondent State's obligation to investigate possible racist overtones to a violent act is an obligation to use best endeavours and not absolute ... The authorities must do what is reasonable in the circumstances to collect and secure the evidence, explore all practical means of discovering the truth and deliver fully reasoned, impartial and objective decisions, without omitting suspicious facts that may be indicative of ... racially induced violence."

The Grand Chamber added that:

"... the authorities' duty to investigate the existence of a possible link between racist attitudes and an act of violence is an aspect of their procedural obligations arising under Article 2 of the Convention, but may also be seen as implicit in their responsibilities under Article 14 of the Convention taken in conjunction with Article 2 to secure enjoyment of the right to life without discrimination."

Adopting those principles the Grand Chamber found that the State had failed in its duty under Article 14 of the Convention taken together with Article 2 to take all possible steps to investigate whether or not

discrimination may have played a part in the events that led to the killing of two Romani men who had been shot dead by a military police officer.²⁶⁴

Protocol 12

Protocol 12, which came into effect in April of this year for the 13 countries that have ratified it, expands the protection against discrimination to any right “set forth by law” of the member State rather than just the rights enumerated in the Convention. Protocol 12 accordingly makes Article 14 freestanding and not dependent upon establishing an interference with another Convention right. While the underlying goal of Protocol 12 – a general ban on discrimination – is potentially radical, it is difficult to predict in advance how effective a tool it will become. Many of the larger member States – France, Germany and the United Kingdom, for example – have not ratified it (France and the United Kingdom did not even sign, much less ratify, the Protocol) and many countries with the largest Roma populations – Bulgaria, the Czech Republic, Slovakia, Hungary and Romania – have not ratified it. Thus, Article 14 remains the only viable tool for many of Europe’s Roma to challenge discrimination under the Convention.

Article 4 of Protocol No. 4

Protocol 4 of Article 4 prohibits mass expulsions of aliens. In the unpublished decision in *Andrić v. Sweden*²⁶⁵ the Court held that there is no collective expulsion when an alien’s immigration status is individually and objectively examined in a way that permits him or her to put forward a case against expulsion. Thus, collective expulsion

*“is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.”*²⁶⁶

264. In *Stoica v. Romania*, App. No. 42722/02, Judgment date 4 March 2008, the Court not only found the State to have committed a substantive and procedural breach of Article 3 but also, having adopted the principles spelt out by the Grand Chamber in *Nachova*, a violation of Article 14.

265. Case No. 4591/99, [Section 1] Judgment date 23 February 1999.

266. See *Conka v. Belgium* (2002) 34 E.H.R.R. 54, Judgment date 5 February 2002, paragraph 59.

In *Conka v. Belgium*, the applicants were a part of a group of Slovak Roma who were seeking asylum in Belgium. They reported to the police station on 1 October 1999, in response to a notice stating that their attendance was required in order to complete their asylum application files. Instead, upon arrival at the police station, they were given an order to leave the country and held in a detention centre until their deportation en masse from Brussels four days later. The Court rejected the government's claim that the applicants' asylum claims had been denied based upon an examination of their personal circumstances. Given the large number of persons in the group, all of whom were expelled, the Court considered:

*"... that the procedure followed did not enable it to eliminate all doubt that the expulsion might have been collective ... [Therefore] ... there has been a violation of Article 4 of Protocol No. 4."*²⁶⁷

The clear implication of this language is that, upon the showing of an arguable claim that a collective expulsion has occurred, the State then bears the burden of demonstrating that the expulsion was not collective. Because the procedure involved did not enable the Court to "eliminate all doubt that the expulsions might have been collective," the government was found to have violated the Convention.

267. *Ibid.*, paragraph 61.

Section IV – Practical exercises

Gloria Jean Garland and Luke Clements

Introduction

A training workshop is most effective when it incorporates an element of hands-on application of the topics covered. For lawyers interested in litigating human rights cases, one such exercise is to put together a set of hypothetical facts, generally based on a combination of actual events, and have the participants argue both sides of the case before a panel of judges (which can be composed of both actual judges and/or experienced human rights lawyers). The hypothetical case should involve different articles of the European Convention and, ideally, some procedural issues as well.

This process is known as a “moot court exercise,” and the same approach is used in many law schools and in international competitions. Some participants in previous training workshops have reported that the moot court exercise was the most valuable part of the training. Below is an example of the kind of hypothetical case based on actual events that can be used in a moot court exercise – it has been called “*Five Roma Families v. Plodalot*”.

There are as many different approaches to a moot court training exercise as there are trainers. What follows is one suggested approach that has proven effective in previous training sessions.

The participants are divided into two teams, selected randomly. One team will represent the government and the other will represent the applicants. The teams can be chosen either by the trainers or the participants themselves.

The participants will read through the hypothetical case carefully, underlining relevant dates and making notes of significant events. Then, as a group, the participants will review the facts and be given a chance to ask any questions about them. As a group, the participants, with direction from the trainers, will also identify the issues presented by the hypothetical case.

The participants then split up into the two teams and discuss with their trainers in more detail the arguments they would like to raise on behalf of their respective clients (i.e. the government or the applicants). The issues to be argued should then be divided up among the team members (either by them volunteering to take a particular issue or, if that doesn't work, by them being assigned to cover an issue). Participants are strongly encouraged to try to present a portion of their team's arguments, but anyone who is truly uncomfortable speaking in public can elect instead to assist a team mate in the preparation of his or her argument. Depending on the number of issues and the number of participants, a decision can then be made how best to split up the arguments between participants and whether the arguments on each issue can be advanced by individuals or by groups of two or three participants. One team member should be selected to present an introduction to the case, summarising the important facts, and another member should be selected to conclude the arguments, briefly highlighting the most important points. There will be time for rebuttal of the other team's arguments in the moot court exercise – the rebuttal may be left to the individuals responsible for the particular issues covered by the rebuttals, or the team may prefer to have one person respond to all rebuttal arguments. The judges may also have questions for the teams and so the members of the team should be prepared to answer them.

Once the arguments are presented, the judges will retire and then return with their verdict. The verdict is often a mixed result – the applicants will win on some issues and the government will win on others. The point of the exercise is to have the experience of formulating creative arguments – every participant is a winner, despite the judges' decision.

Feedback/Frequently Asked Questions

Why not use an actual case instead of a hypothetical one?

There is no problem with using an actual case, except it's better to avoid using a case that has already been decided. The hypothetical cases are usually based on actual facts, but those facts may have arisen in more than one case. The cases are designed to present a variety of issues in order to give participants a chance to review what they have learned in several different areas.

How similar is a moot court exercise to an actual hearing?

The trainers should try to follow, as far as possible, the actual procedure a lawyer would face in presenting his or her case to the European Court of Human Rights, including the order of presentation and suggested time limits. However, account should also be taken of the fact that many of the participants in a training workshop will not have the same level of experience as those lawyers that have appeared before the Court.

The time limits to prepare the arguments are way too short! Why aren't the hypothetical cases sent out in advance?

Where possible, the trainers do try to send the hypothetical case to participants in advance. However, experience shows that when this has been done in the past, many of the participants did not prepare in advance.

Why do the countries have such silly names? Why not use a real country?

The participants come from many different countries. The idea is to focus on the Convention itself, and at a broad level, without being distracted by the actual legal situations of particular countries. In addition, using a hypothetical country avoids the prospect that participants from a particular country will think their home country is being identified as a human rights abuser.

Five Roma Families v. Plodalot

Plodalot became a member of the Council of Europe 1 January 2002. Roma make up 8% of its population.

Five Roma families in the city of Plod complain to the European Court of Human Rights. The facts underlying their complaint are as follows:

1. Almost all of Plod's Roma community (including the five Roma families) live in municipal housing in one area known as Hell. The housing here is very much worse than any other municipal housing. The buildings are very damp, the water has a chemical taste and the sewerage system does not work.

2. The health of Roma children in the area is poor and many have serious unexplained illnesses. 10 years ago an international report found that Roma children living in the Hell district had a markedly higher risk of a number of diseases than children from the general population. For example, the risk of certain forms of leukaemia was 10 times higher and the infant mortality rate was 12 times higher. The report called upon the government of Plodalot to relocate the community, since it alleged that Hell had been constructed on a former secret government chemical dump.
3. As a result of the report the government of Plodalot commissioned its own report from Plodabit University. This report was completed in June 2000. The Roma complainants believe that this report also found that the prevalence of certain childhood diseases amongst Hell's inhabitants was statistically significant. The Plodalot government has, however, refused to disclose the report.
4. Although the Roma community have frequently complained to the municipality about poor housing, Roma are still being placed in Hell, whereas non-Roma are offered housing elsewhere in better areas.
5. Not only are the houses poor, but the only school in the area (which is attended by virtually all the Roma) is also considered unsuitable by the five Roma families. They allege that the school is designated for children with a mental handicap and that its educational standards are much worse than those of other schools in the city. Only 5% of the school's population are non-Roma.
6. The five Roma families commenced proceedings in the Plod Municipal Court. There is no legal aid in Plodalot for civil claims and the families were unable to pay for a lawyer. However, they did obtain some help from a community worker, and they made a complaint to the Court concerning the refusal of the government to disclose the Plodabit University report.
7. Plodalot Court Rules only allow reports prepared by approved experts to be used as evidence in proceedings. The Plodabit University report was prepared by an approved expert but the international report was not. The families sought disclosure of the Plodabit university report because they could not afford to pay one of the court approved

experts to prepare another report: it is estimated that the cost of this would be in the region of 100,000 plodlets (a sum equivalent to about \$1,500: the average Plodalot annual wage).

8. The domestic proceedings were commenced on 1 March 2001 and were eventually dismissed by the Plod Regional Court on 10 September 2005.
9. Although it was possible to appeal to the Plodalot Supreme Court, the families were advised by the community worker that such an appeal would stand no chance of success. In addition it should be noted that no one has ever taken a case to the Plodalot Supreme Court without being represented by a lawyer and in any event the families were unable to afford the court fee for lodging an appeal – which was 50,000 plodlets per applicant.
10. There is a procedure by which applicants can apply to have the Court fee reduced, but this process generally takes a long time (on average 18 months) and an applicant cannot appeal before this process has been completed (unless they pay the full fee).
11. The only other domestic remedy pursued by the five Roma families was an administrative appeal to the Plod education department concerning the children's schooling. They requested that their children be transferred to a non-Roma school outside the district. This appeal was rejected on the 1 October 2005 because the children's school reports indicated that the children lacked the necessary intellectual ability to cope in any school apart from one for children with a mental handicap.
12. There is no further right of appeal against such an administrative decision, although there is the theoretical possibility of taking a case to the Constitutional Court.
13. The five Roma families decided to complain directly to the European Court of Human Rights concerning these various matters and lodged their complaint in Strasbourg on 1 February 2006.

Possible outline answer:

The issues and complaints raised in this case include:

1. General admissibility issues raised by the Government;
2. A complaint alleging a substantive violation of Article 2 concerning the failure to protect the right to life of the residents of Hell – particularly the children;
3. A complaint alleging a substantive violation of Article 3 concerning the alleged degrading treatment endured by the children of Hell;
4. A complaint alleging a substantive violation of Article 3 concerning the alleged degrading treatment endured by the parents of Hell arising out the mental anguish they have endured fearing that their children may contract leukaemia;
5. A complaint alleging a violation of the State's positive obligation under Article 3, to investigate the harm caused to the families by the former chemical dump (alone and in combination with Article 14);
6. A violation of Article 6 in relation to:
 - the lack of access to the University report and the procedural rule prohibiting the reliance upon the international report)
 - the absence of legal aid to pay for a lawyer for the appeal; and
 - the very high court fees
 - the delay;
7. That the appalling environmental conditions (and the lack of environmental information) endured in Hell amounted to a breach of the applicants' right to respect for their private and family life under Article 8;
8. That the five families only experienced these appalling environmental conditions because they were Roma and therefore this constitutes a breach of Article 8 in combination with Article 14;
9. The poor housing constituting degrading treatment on the basis of an *East African Asians*²⁶⁸ argument;
10. That the applicants were without an effective domestic remedy contrary to Article 13;

268. See *Patel v. United Kingdom (the East Africans case)* (1973) 3 E.H.R.R.76.

11. That the failure to provide education of an adequate standard constituted a violation of Article 2 of Protocol 1 alone and in combination with Article 14.

1. General admissibility issues

The six-month rule

Although the government raised no objection concerning the 6 month period, the European Court of Human Rights will nevertheless have to satisfy itself under this ground. All the complaints do however appear to have been made within the six-month time limit.

Ratione temporis

The Court can only examine complaints which allege that the state has violated its obligations under the Convention. States can only be held responsible for violations which occur after they have accepted those obligations; that is, after their ratification of the Convention. However, the Court will take account of the situation at the date of ratification. Thus in *Loukanov v. Bulgaria*²⁶⁹ the Court considered the fact that the grounds for the applicant's detention remained the same before and after the effective date of the Court's competence. The decision to refuse to release the applicant from detention was made after ratification and therefore the decision of the supreme court, which had been made prior to ratification, could be examined.

In the present case, the violation appears to be a continuing one and the Court is likely therefore to reject the government's arguments on this ground.

Exhaustion of domestic remedies

A number of issues concerning this question were raised by the government, and most of these would be considered by the Court when assessing the merits, because they are inextricably linked. However the Court would consider as a preliminary question the government's contention

269. (1997) 24 E.H.R.R.121.

that the applicants took the wrong proceedings, or at least failed to take available action – for instance:

- with regard to the alleged poor state of the housing – by making an ordinary rent/housing contract dispute claim;
- with regard to the alleged environmental harm, by making a claim under the environmental protection legislation;
- with regard to the alleged discrimination, by using the Constitutional safeguards in this respect.

The Court will reiterate that where there is a choice of remedies open to the applicant, it only expects the most obvious and sensible to be pursued. It accepts that the rule of exhaustion of domestic remedies can only be applied to reflect the practical realities of the individual's position. Where an applicant has exhausted a remedy which is apparently effective and sufficient then he or she will not be required to exhaust others which are available, but probably ineffective. On the other hand, the applicant cannot ignore a remedy that is generally held to be available and effective. In the present circumstances the Court will probably reject this aspect of the government's argument.

2. The alleged substantive violation of Article 2 concerning the failure to protect the right to life of the residents of Hell – particularly the children

The Court will accept that it may in theory be possible for a person's rights under Article 2 to be violated — even where no death has occurred, but these cases will be rare and will require compelling evidence of a very real and immediate risk to the applicant [see for instance *Osman v. United Kingdom*,²⁷⁰ *Yaşa v. Turkey*²⁷¹ and *Makaratzis v. Greece*²⁷²]. In *Osman v. United Kingdom*²⁷³ the Court stated that Article 2(1) requires States to:

“not only refrain from the international and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction”.

270. (2000) 29 E.H.R.R. 245.

271. (1999) 28 E.H.R.R. 408.

272. App. No. 50385/99, Judgment date 20 December 2004.

273. At 305.

Significantly, the Commission's decision in *Osman v. UK* includes the following passage:

"91. While effective investigation procedures and enforcement of criminal law prohibitions in respect of events which have occurred provide an indispensable safeguard and the protective effect of deterrence, the Commission is of the opinion that for Article 2 to be given practical force it must be interpreted also as requiring preventive steps to be taken to protect life from known and avoidable dangers. However, the extent of this obligation will vary inevitably having regard to the source and degree of danger and the means available to combat it. Whether risk to life derives from disease, environmental factors or from the intentional activities of those acting outside the law, there will be a range of policy decisions, relating, inter alia, to the use of State resources, which it will be for Contracting States to assess on the basis of their aims and priorities, subject to these being compatible with the values of democratic societies and the fundamental rights guaranteed in the Convention. Thus, where an applicant alleged a risk to her life from the threat of terrorist attack in Northern Ireland, her husband and brother having been killed, the Commission considered that it was not its task to consider in detail the appropriateness or efficiency of the measures taken to counter terrorism and that the United Kingdom could not be required by the Convention to take measures going beyond those already being taken to protect the lives of the inhabitants in Northern Ireland. It referred to the fact that the army strength had been increased to 10,500 and that several hundred members of the security forces had lost their lives in combating terrorism.

92. The extent of the obligation to take preventive steps may however increase in relation to the immediacy of the risk to life. Where there is a real and imminent risk to life to an identified person or group of persons, a failure by State authorities to take appropriate steps may disclose a violation of the right to protection of life by law. In order to establish such a failure, it will not be sufficient to point to mistakes, oversights or that more effective steps might have been taken."

In the present case, however there is no compelling evidence of immediate risk of harm and so the Court will find no violation of Article 2.

3. The alleged substantive violation of Article 3 concerning the alleged degrading treatment endured by the children of Hell

The applicants allege that their children's elevated risk of leukaemia amounts to degrading treatment contrary to Article 3 of the Convention. They do not allege that the State deliberately inflicted this treatment on their children – but that the State is indirectly responsible for the harm to which they are exposed.

The Court will examine all the material placed before it and remind itself that the standard of proof to be applied in Article 3 cases is 'beyond reasonable doubt'²⁷⁴. The only evidence before the Court consists of the international report which is now of some considerable age. Nevertheless the Court will note that in considering whether this evidential burden has been discharged, it has frequently resorted to the use of presumptions, inferences, and shifts in the burden of proof in its efforts to secure adequate protection against human rights violations [see, for instance, *Ribbitsch v. Austria*²⁷⁵ and *Saliabaku v. France*²⁷⁶].

The Court may express its concern that the State has not furnished it with a copy of the Plodabit University report and conclude that the evidential burden has been discharged. However, in this case none of the children have actually contracted leukaemia and accordingly they are unable to claim victim status for the purposes of Article 3. As a consequence the Court will find no violation in this respect.

4. The alleged substantive violation of Article 3 concerning the mental anguish and distress that the parents have endured fearing that their children may contract leukaemia

The Court will note that in principle the anguish experienced by a grieving parent may be sufficient to amount to a violation of Article 3 [see, for example, *Kurt v. Turkey*²⁷⁷]. However, the Court will reiterate that the ill-treatment must attain a minimum level of severity if it is to fall within the scope of

274. See *Ireland v. UK* (1979-80) 2 E.H.R.R. 25.

275. (1995) 21 E.H.R.R. 573; see also *Tomasi v. France* (1992) 15 E.H.H.R.1

276. (1988) 13 E.H.R.R. 379.

277. (1999) 27 E.H.R.R. 373.

Article 3 [see *Ireland v. United Kingdom*²⁷⁸] and it is for the applicants to produce evidence to establish that this threshold has been crossed. Although it is self evident that parents will suffer severe anguish fearing that their children may become ill, this in itself is unlikely to be sufficient to discharge this evidential burden. In the absence of medical reports as evidence and a causal link establishing (beyond reasonable doubt) the government's responsibility for the environmental problems, the Court is likely to consider this part of the claim too speculative and find no violation.

5. The alleged violation of Article 3 concerning the state's positive obligation to investigate the harm caused to the families by the former chemical dump (alone and in combination with Article 14)

The Court will refer to its increasingly sophisticated jurisprudence concerning the positive obligations on States to investigate – once provided with credible evidence – whether someone has been seriously ill-treated by its agents. Thus, for instance in *Assenov v. Bulgaria*²⁷⁹ it stated:

"102. The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This obligation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible."

Additionally in *Edwards v. United Kingdom*²⁸⁰ – the Court stated:

"69. ... whatever mode [of investigation] is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave it to the initiative of the next-of-kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures."

278. See *Ireland v. UK* (1979-80) 2 E.H.R.R. 25.

279. (1999) 28 E.H.R.R.652, E.H.R.L.R.225.

280. (2002) 35 E.H.R.R. 487.

However, all cases so far decided have concerned situations where there has been a death or significant physical injuries and credible evidence that the State is responsible. In the present case, although there is credible evidence of State responsibility for the environmental harm – there is not (amongst the five Roma families) a death or injuries sufficient for the Article 3 threshold to be crossed.

Nevertheless, there is the added dimension to this complaint, namely that there appears to be a credible argument that the Roma have been singled out on racial grounds. In *Nachova v. Bulgaria*²⁸¹ the Court's Grand Chamber held that Article 14 contained a procedural obligation – of a similar nature to that identified in respect of Articles 2 and 3. In the Grand Chamber's view, where there is cogent evidence that an arguable violation of a Convention right had taken place because of a person's race, then there is a duty on the State to undertake an exhaustive investigation to decide whether this is the case. The judgment has since been applied in similar cases.²⁸² Given the combination of factors it is possible (but probably unlikely) that the Court would find the State had failed to comply with its procedural obligations under Articles 3 and 14 in this respect.

6. The alleged violation of Article 6(1) concerning the delay, lack of legal aid and the court fees

The applicants argue that they did not have a fair hearing because of the absence of legal aid, the high fees that had to be paid for an appeal to be lodged and the fact that the proceedings took an unreasonably long time.

On the contrary, the government argue that the applicants were able to represent themselves, were able to apply to have the court fees reduced and that the delay was not excessive. It also alleges that the applicants' failure to pursue an appeal to the Plodalot Supreme Court renders their complaint inadmissible due to their failure to exhaust all domestic remedies. The Court will consider this question at the same time as it considers the merits of the Article 6 argument.

281. (2005) Apps. Nos. 43577/98-43579/98, Judgment date 6 July 2005.

282. See, for instance, *Bekos and Koutropoulos v. Greece* (2005) App. No. 15250/02.

Legal aid

The first argument concerns the absence of legal aid. In this respect the case is very similar to *Airey v. Ireland*.²⁸³ In *Airey* the Court accepted that in complex proceedings concerning vital rights under Article 8 legal aid might be required in civil proceedings. It held that:

“24. ... For these reasons, the Court considers it most improbable that a person in Mrs. Airey's position ... can effectively present his or her own case. This view is corroborated by the Government's replies to the questions put by the Court, replies which reveal that in each of the 255 judicial separation proceedings initiated in Ireland in the period from January 1972 to December 1978, without exception, the petitioner was represented by a lawyer

The Court concludes from the foregoing that the possibility to appear in person before the High Court does not provide the applicant with an effective right of access and, hence, that it also does not constitute a domestic remedy

...

It would be erroneous to generalise the conclusion that the possibility to appear in person before the High Court does not provide Mrs. Airey with an effective right of access; that conclusion does not hold good for all cases concerning "civil rights and obligations" or for everyone involved therein. In certain eventualities, the possibility of appearing before a court in person, even without a lawyer's assistance, will meet the requirements of Article 6(1); there may be occasions when such a possibility secures adequate access even to the High Court. Indeed, much must depend on the particular circumstances.

In addition, whilst Article 6(1) guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations", it leaves to the State a free choice of the means to be used towards this end. The institution of a legal aid scheme ... constitutes one of those means but there are others such as, for example, a simplification of procedure. In any event, it is not the Court's function to indicate, let alone dictate, which measures should be taken; all that the Convention requires is that an individual should enjoy his effective right of access to the courts in conditions not at variance with Article 6(1).

283. (1979) 2 E.H.R.R.305.

The conclusion ... does not therefore imply that the State must provide free legal aid for every dispute relating to a "civil right".

To hold that so far-reaching an obligation exists would, the Court agrees, sit ill with the fact that the Convention contains no provision on legal aid for those disputes ... However ... Article 6(1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.

...

27. The applicant was unable to find a solicitor willing to act on her behalf in judicial separation proceedings. The Commission inferred that the reason why the solicitors she consulted were not prepared to act was that she would have been unable to meet the costs involved. The Government question this opinion but the Court finds it plausible and has been presented with no evidence which could invalidate it.

28. Having regard to all the circumstances of the case, the Court finds that Mrs. Airey did not enjoy an effective right of access to the High Court for the purpose of petitioning for a decree of judicial separation. There has accordingly been a breach of Article 6(1)."

The *Airey* case was unusual but it is possible that since the facts are so similar, the Court may find that in the present case the inability to obtain legal aid rendered the civil proceedings unfair and the remedy inaccessible.

Court fees

The second point raised by the applicants is that the proceedings were unfair because they could not afford to pay the appeal fee. The government counter this point by relying upon the fact that there was a procedure by which one could apply to reduce the fees. The Court will be concerned about the delay and also the high fees and will remind itself of the decision in *Kreuz v. Poland* (2001)²⁸⁴ where, after weighing up all the arguments, it concluded:

284. (2001) 11 B.H.R.C.456, App. No. 28249/95.

“66. Assessing the facts of the case as a whole and having regard to the prominent place held by the right to a court in a democratic society, the Court considers that the judicial authorities have failed to secure a proper balance between, on the one hand, the interest of the State in collecting court fees for dealing with claims and, on the other hand, the interest of the applicant in vindicating his claim through the courts.

The fee required from the applicant for proceeding with his action was excessive. It resulted in his desisting from his claim and in his case never being heard by a court. That, in the Court’s opinion, impaired the very essence of his right of access.

67. For the above reasons, the Court concludes that the imposition of the court fees on the applicant constituted a disproportionate restriction on his right of access to a court. It accordingly finds that there has been a breach of Article 6(1) of the Convention.”

The Court will note that present case is different from the *Kreuz* case in that there is a process for having the fees reduced. Nevertheless, that procedure takes 18 months and the Court may conclude that the applicants should not have been expected to wait that length of time for such an application to be determined.

Delay

The applicants complain that the proceedings concerning the disclosure of the expert’s report took an unreasonably long time. The proceedings were commenced on the 1 March 2001 and were dismissed by the Plod Regional Court on 10 September 2005, some 4½ years later. The government draws the Court’s attention to the fact that the time relevant to the application, is that which followed Plodalot’s ratification of the Convention on 1 January 2002, i.e. in this case a period of 3½ years. However, the Court will take account of the situation at the date of ratification – see *Loukanov v. Bulgaria*.²⁸⁵

The Court will state that in determining whether proceedings take an unreasonably long period of time, regard must be had to the nature of the proceedings and their importance to the applicants. In this case the question concerned whether or not evidence should be disclosed – a relatively

285. (1997) 24 E.H.R.R. 121.

simple issue of law. Given the strict rules of evidence in Plodalot, the disclosure of the Plodabit University report was a matter of fundamental importance to the applicants and the issue at stake was the severe risk of fatal illness to their children.

Given these many arguments concerning the unsatisfactory nature of the domestic court proceedings, the Court is likely to find a violation of Article 6(1).

7. The alleged violation of the State's positive obligations under Article 8 to take action to ameliorate the environmental conditions endured in Hell and to provide information about the risk of harm

In relation to the dangerous environment, the Court will repeat its point that there has been no medical evidence provided that in any way suggests that the applicants themselves have been exposed to severe harm and on this basis may be inclined to reject this aspect of the complaint.

If there had been substantial evidence, then a violation might well have been found. For instance in *López Ostra v. Spain*²⁸⁶ (which concerned environmental issues similar to the present case) the Court's judgment was set out as follows:

"47. Mrs López Ostra maintained that ... the plant continued to emit fumes, repetitive noise and strong smells, which made her family's living conditions unbearable and caused both her and them serious health problems. She alleged in this connection that her right to respect for her home had been infringed.

...

49. On the basis of medical reports and expert opinions produced by the Government or the applicant ... the Commission noted, inter alia, that hydrogen sulphide emissions from the plant exceeded the permitted limit and could endanger the health of those living nearby and that there could be a causal link between those emissions and the applicant's daughter's ailments.

...

286. (1995) 20 E.H.R.R. 277.

51. Naturally, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely, without, however, seriously endangering their health.

Whether the question is analysed in terms of a positive duty on the State – to take reasonable and appropriate measures to secure the applicant's rights under paragraph 1 of Article 8(1) –, as the applicant wishes in her case, or in terms of an "interference by a public authority" to be justified in accordance with paragraph 2, the applicable principles are broadly similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole, and in any case the State enjoys a certain margin of appreciation. ...

52. ... Admittedly, the Spanish authorities, ... were theoretically not directly responsible for the emissions in question. However, as the Commission pointed out, the town allowed the plant to be built on its land and the State subsidised the plant's construction

58. Having regard to the foregoing, and despite the margin of appreciation left to the respondent State, the Court considers that the State did not succeed in striking a fair balance between the interest of the town's economic well-being – that of having a waste-treatment plant – and the applicant's effective enjoyment of her right to respect for her home and her private and family life. There has accordingly been a violation of Article 8."

The Court will ask the rhetorical question "What would a State do, if it knew such a dangerous situation existed in a region in its country?" Obviously one step would be to commission an expert investigation, and this has been done by Plodalot. However, the failure to disclose this report has arguably aggravated the situation – by increasing the anxiety and fear of the residents. The State would also be expected to hold an enquiry and take action to improve the conditions (i.e. propose changes to the water supply and so on). None of these things have occurred.

In *Fadeyeva v. Russia*²⁸⁷ the European Court of Human Rights held that the adverse effects of environmental pollution must attain a certain minimum

287. (2005) App. No. 55723/00, Judgment date 9 June 2005.

level if they are to fall within the scope of Article 8. The applicant lived within ½km of a steel-making plant which was found to have such high toxic contamination that the Government decided there should be resettlement of the residents – however the applicant was not offered alternative accommodation. Although the applicant advanced no medical evidence of ill health directly connected to the steel plant, the Court considered that prolonged exposure must have inevitably made her more vulnerable to disease and adversely affected the quality of life at her home. Although the plant was privately owned the Court held that the State had failed in its positive obligation to prevent or reduce the emissions and found a violation of Article 8.

Environmental information

The applicants will argue that the denial of access to the University report denied them evidence about the real risks they and their families were running in remaining in the area. The Court will consider that this case is similar in principle to both *Guerra v. Italy*²⁸⁸ and to *Öneryildiz v. Turkey*²⁸⁹ and on this basis it will almost certainly find that the refusal to disclose the evidence of risk amounts to an unreasonable interference with the applicants' rights to respect for their private life under Article 8. In so finding, it may also refer to *McGinley & Egan v. UK*²⁹⁰ where it stated that:

“97. The Court considers that, in view of the above, the issue of access to information which could either have allayed the applicants' fears in this respect, or enabled them to assess the danger to which they had been exposed, was sufficiently closely linked to their private and family lives within the meaning of Article 8 as to raise an issue under that provision. It follows that Article 8 is applicable.

98. The Court considers that the United Kingdom cannot be said to have “interfered” with the applicants' right to respect for their private or family lives. The instant complaint does not concern an act by the State, but instead its alleged failure to allow the applicants access to information.

288. (1998) 26 E.H.R.R. 357.

289. (2004) 39 E.H.R.R. 12.

290. (1998) 27 E.H.R.R. 1.

*Although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life. In determining whether or not such a positive obligation exists, the Court will have regard to the fair balance that has to be struck between the general interest of the community and the competing interests of the individual, or individuals, concerned.*²⁹¹

The Court will refer to *Öneryildiz v. Turkey*²⁹² and *Guerra v. Italy*.²⁹³ In *Guerra* (a case concerning pollution from a fertilizer factory) it stated that:

*“ ... severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect their private and family life adversely (see, mutatis mutandis, the López Ostra judgment cited above, p. 54, § 51). In the instant case the applicants waited, right up until the production of fertilisers ceased in 1994, for essential information that would have enabled them to assess the risks they and their families might run if they continued to live at Manfredonia, a town particularly exposed to danger in the event of an accident at the factory.”*²⁹⁴

A similar conclusion was reached in *Öneryildiz v. Turkey*²⁹⁵ where people living on a rubbish dump were killed as a result of an explosion, the risks of which were known to the municipal authorities. The Court considered that the positive obligations it had found in *Guerra* (to inform the local population of the environmental risk) applied in cases where the risk concerned Article 2 – and accordingly found a violation of Article 2.²⁹⁶

In *Roche v. UK*²⁹⁷ a former soldier alleged that his ill-health stemmed from a training episode in the 1950's where he had been exposed to mustard gas.

291. See *Gaskin v. UK* (1989) 12 E.H.R.R. Judgment date 7 July 1989, paragraph 42.

292. (2004) 39 E.H.R.R. 12.

293. (1998) 26 E.H.R.R. 357.

294. At paragraph 60 of the Judgment.

295. (2004) 39 E.H.R.R. 12.

296. See paragraph 84 of the Judgment.

297. (2005) App. No. 32555/96, Judgment date 19 October 2005.

He tried to obtain the medical records for the incidents but the government was uncooperative and the process took over 10 years and countless applications (including an application to the European Court of Human Rights). The Court held (unanimously) that this amounted to a violation of Article 8.

In view of all these issues, the Court is likely to find a violation of Article 8(1).

8. That the families only experienced these appalling environmental conditions because they were Roma and therefore this constitutes a breach of Article 8 in combination with Article 14

Although the Court is likely to have found a substantive violation of Article 8, it is also likely to consider whether there is also a violation of Article 8 in combination with Article 14.²⁹⁸

In *Moldovan v. Romania*²⁹⁹ the Roma applicants had been forced to live in intolerable housing and had been the victims of an overtly racist police and judicial investigation – solely because of their race. Given the particularly harsh (and uncontested) facts of the case the Court found that the treatment was discriminatory contrary to Article 14 (in that case – in combination with Article 3). In this case, the evidence is less clear and it is unlikely that a violation of Article 14 will be found.

9. The alleged violation of Article 3 on the basis that the poor housing constituted degrading treatment (the *East African Asians* argument)

The applicants argue that they have been singled out for grossly discriminatory treatment in relation to the provision in housing, purely on the basis of race – and they thereby argue that this amounts to degrading treatment contrary to Article 3 on the basis of the Commission's findings in

298. See, by way of analogy, the cases of *Nachova v. Bulgaria* (2005) and *Secic v. Croatia* (2007).

299. (2005) App. No. 41138/98 ; 64320/01, Judgment date 12 July 2005.

*Patel v. United Kingdom (the East African Asians case)*³⁰⁰ and more recently by the Court in *Cyprus v. Turkey*³⁰¹ and *Moldovan v. Romania*.³⁰²

In the *East African Asians case* the Commission considered that degrading treatment was not restricted to actual assaults but included acts of a serious nature designed to interfere with the dignity of a person. The case concerned the mass expulsion of Asians from East Africa, some of whom, even though they held a valid British passport, were refused residence in the United Kingdom. By analogy the deliberate placing of a racial group in a ghetto, accompanied by severe environmental dangers, could constitute the same type of humiliating and degrading treatment. In the *East African Asians case*, the Commission considered that the State's immigration laws discriminated on grounds of race and colour to a degree that the complainants were the victims of degrading treatment:

"207 ...the legislation applied in the present case discriminated against the applicants on the grounds of their colour or race ... discrimination based on race could, in certain circumstances, of itself amount to discrimination within the meaning of Article 3 of the Convention.

...

a special importance should be attached to discrimination based on race; that publicly to single out a group of persons for different treatment on the basis of race might in certain circumstances constitute a special form of affront to human dignity; and that differential treatment of a group of persons on the basis of race might therefore be capable of constituting degrading treatment when differential treatment on some other ground would raise no such question.

208. The Commission considers that racial discrimination to which the applicants have been publicly subjected by the application of the above immigration legislation, constitutes an interference with the human dignity which in the special circumstances described above amounted to 'degrading treatment' in the sense of Article 3 of the Convention."

300. (1973) 3 EHRR 76 Comm Rep; CM DH (77) 2.

301. (2002) 35 E.H.R.R. 30.

302. (2005) App. No. 41138/98 ; 64320/01, Judgment date 12 July 2005.

In the subsequent complaint of *Abdulaziz Cabales and Balkandali v. United Kingdom*³⁰³ which concerned the United Kingdom's immigration policy of refusing to allow husbands from certain countries to join their wives in the UK) the Court held that:

"91. ...the difference in treatment complained of did not denote any contempt or lack of respect for the personality of the applicants and that it was not designed to, and did not, humiliate or debase, but was intended solely to achieve the aims [of primary immigration control]. It cannot therefore be regarded as 'degrading'."

The *Abdulaziz* judgment can be distinguished from the present case of the five Roma families, since in their case there appears to be no legitimate aim underlying the policy of segregation.

In the *East African Asians* and the *Cyprus* cases there were established administrative practices of racial segregation. In the present case the evidence is not so clear and the government argue that many of the Roma simply chose to live together and have refused alternative accommodation. Accordingly, though the allegation made in the present case could (if supported by conclusive evidence) constitute grossly discriminatory behaviour so as to bring it within the ambit of Article 3, the applicants will find it difficult to establish such a violation.

10. The alleged violation of Article 13: the lack of an effective remedy

The applicants alleged that although they have evidence to show the government has violated a number of their Convention rights, they do not have access to an adequate domestic remedy to resolve these matters. However, the government has indicated that there are a number of other possible domestic remedies that the applicants could have pursued – for example, by bringing rent, environmental and constitutional actions. In circumstances where the applicants have not attempted to pursue such actions, the Court is likely to conclude that this aspect of their complaint is not made out and to find no violation of Article 13.

303. (1985) 7 E.H.R.R. 471.

11. The alleged violation of Article 2 of Protocol 1 (alone and in combination with Article 14) on the basis of the inferior education provided for the Roma in Hell

Article 2 of Protocol 1 alone

The Court will reiterate its restrictive interpretation of Article 2 of Protocol 1 – namely, that this Article does not require the State to provide education to any particular standard – and, accordingly, it will find no substantive violation of this right.

Article 2 of Protocol 1 in combination with Article 14

The Court will consider the statistical evidence and the government's argument that although only 8% of the population of Plodalot are Roma, there are a far higher percentage of Roma in the city of Plod and in the region of Hell in particular. Set against this the Court will be concerned that the only possible school in Hell is one for children with learning disabilities and will be likely to conclude that the applicants have shown there to be a difference in treatment. Furthermore, given the Grand Chamber's decision in *D.H v. The Czech Republic* it is also likely that the Court would be prepared to find a violation of Article 14 in conjunction with Article 2 of Protocol 1 in this case.

Appendix 1 – Table of relevant cases

A v. United Kingdom, App. No. 25599/94, Judgment date 23 September 1998.

A and Others v. The Netherlands App. No.14209/88, decision of 16 December 1988, DR 59

Aarts v. Netherlands, App. No. 4056/88; 70 D.R. 208

Abdulaziz, Cabales & Balkandali v. United Kingdom (1985) 7 E.H.R.R. 471

Agee v. United Kingdom, App. No. 7729/76, 7 D.R. 164

Agrotexim v. Greece (1996) 21 E.H.R.R. 250

Ahmed v. Austria (1997) 24 E.H.R.R. 278

Airey v. Ireland, Series A, No. 32, (1979) 2 E.H.R.R. 305

Aksoy v. Turkey (1997) 23 E.H.R.R. 553

Andrić v. Sweden Case No. 4591/99, [Section 1], Judgment date 23 February 1999

Angelova and Illiev v. Bulgaria (2007) App. No. 55523/00, Judgment date 27 July 2007

Anguelova v. Bulgaria, App. No. 38361/97, Judgment date 13 June 2002

Artico v. Italy (1981) 3 E.H.R.R. 1

Assenov v. Bulgaria (1999) 28 E.H.R.R.652, E.H.R.L.R. 225, Judgment date 28 October 1998

Autio v. Finland, App. No. 17086/90, 72 D.R. 245

Autotronic AG v. Switzerland (1990) 12 E.H.R.R. 485

Aziz v. Cyprus (2002) 35 E.H.R.R. CD 14

BC v. Switzerland, App. No. 19898/92, 75 D.R. 223

Balogh v. Hungary, App. No. 47940/99, Judgment date 20 July 2004

Bankovic and Others v. Belgium and Others, App. No. 52207/99

Baragiola v. Switzerland, (1993) 75 DR 76

Barberà, Messegué and Jabardo v. Spain (1989) 11 E.H.R.R. 360
Belgian linguistic case (No. 2) (1970) 1 E.H.R.R. 252
Bekos and Koutropoulos v. Greece, App. No. 15250/02, Judgment date 13 December 2005
Benham v. United Kingdom (1996) 22 E.H.R.R. 293
Borrelli v. Switzerland, App. No. 17571/90, DR 75, decision date 2 September 1993
Botta v. Italy 153/1996/772/973, Judgment date 24 February 1998
Broniowski v. Poland [GC], No. 31443/96, ECHR 2004-V
Brozicek v. Italy (1990) 12 E.H.R.R. 371
Byloos v. Belgium, App. No. 14545/89, 66 D.R. 28

Canea Catholic Church v. Greece (1999) 27 E.H.R.R. 521
Campbell and Cosans v. United Kingdom (1982) 4 E.H.R.R. 293
Chapman v. United Kingdom (2001) 33 E.H.R.R. 18
Chrysostomos, Papachrysostomou v. Turkey, App. No. 15299/89 and 15300/89, 86-A D.R. 4
Conka v. Belgium (2002) 34 E.H.R.R. 54
Connors v. United Kingdom (2005) 40 E.H.R.R. 9, Judgment date 27 May 2004
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Appendix II – The Convention for the Protection of Human Rights and Fundamental Freedoms

Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13

The text of the Convention had been amended according to the provisions of Protocol No. 3 (ETS No. 45), which entered into force on 21 September 1970, of Protocol No. 5 (ETS No. 55), which entered into force on 20 December 1971 and of Protocol No. 8 (ETS No. 118), which entered into force on 1 January 1990, and comprised also the text of Protocol No. 2 (ETS No. 44) which, in accordance with Article 5, paragraph 3 thereof, had been an integral part of the Convention since its entry into force on 21 September 1970. All provisions which had been amended or added by these Protocols are replaced by Protocol No. 11 (ETS No. 155), as from the date of its entry into force on 1 November 1998. As from that date, Protocol No. 9 (ETS No. 140), which entered into force on 1 October 1994, is repealed.

Registry of the European Court of Human Rights
September 2003

Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.1950

The governments signatory hereto, being members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

Reaffirming their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend;

Being resolved, as the governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration,

Have agreed as follows:

Article 1 – Obligation to respect human rights

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Section I – Rights and freedoms

Article 2 – Right to life

1 Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a

court following his conviction of a crime for which this penalty is provided by law.

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

- a* in defence of any person from unlawful violence;
- b* in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c* in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 3 – Prohibition of torture

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

Article 4 – Prohibition of slavery and forced labour

1 No one shall be held in slavery or servitude.

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

3 For the purpose of this article the term “forced or compulsory labour” shall not include:

- a* any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- b* any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- c* any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- d* any work or service which forms part of normal civic obligations.

Article 5 – Right to liberty and security

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

- a* the lawful detention of a person after conviction by a competent court;
- b* the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- c* the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- d* the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- e* the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
- f* the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3 Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4 Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5 Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Article 6 – Right to a fair trial

1 In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

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

3 Everyone charged with a criminal offence has the following minimum rights:

- a* to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- b* to have adequate time and facilities for the preparation of his defence;
- c* to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

- d to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- e to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7 – No punishment without law

1 No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2 This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8 – Right to respect for private and family life

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

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

Article 9 – Freedom of thought, conscience and religion

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic

society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10 – Freedom of expression

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

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

Article 11 – Freedom of assembly and association

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

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

Article 12 – Right to marry

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

Article 13 – Right to an effective remedy

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

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 15 – Derogation in time of emergency

1 In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2 No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3 Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefore. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.

Article 16 – Restrictions on political activity of aliens

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

Article 17 – Prohibition of abuse of rights

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.

Article 18 – Limitation on use of restrictions on rights

The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.

Section II – European Court of Human Rights

Article 19 – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as 'the Court'. It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2 The judges shall sit on the Court in their individual capacity.

3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

1 The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

2 The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

1 The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.

2 The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.

3 In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.

4 In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.

5 A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.

6 The terms of office of judges shall expire when they reach the age of 70.

7 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

Article 25 – Registry and legal secretaries

The Court shall have a registry, the functions and organisation of which shall be laid down in the rules of the Court. The Court shall be assisted by legal secretaries.

Article 26 – Plenary Court

The plenary Court shall

- a* elect its President and one or two Vice-Presidents for a period of three years; they may be re-elected;
- b* set up Chambers, constituted for a fixed period of time;
- c* elect the Presidents of the Chambers of the Court; they may be re-elected;
- d* adopt the rules of the Court, and
- e* elect the Registrar and one or more Deputy Registrars.

Article 27 – Committees, Chambers and Grand Chamber

1 To consider cases brought before it, the Court shall sit in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges. The Court's Chambers shall set up committees for a fixed period of time.

2 There shall sit as an ex officio member of the Chamber and the Grand Chamber the judge elected in respect of the State Party concerned or, if there is none or if he is unable to sit, a person of its choice who shall sit in the capacity of judge.

3 The Grand Chamber shall also include the President of the Court, the Vice-Presidents, the Presidents of the Chambers and other judges chosen in accordance with the rules of the Court. When a case is referred to the Grand Chamber under Article 43, no judge from the Chamber which

rendered the judgment shall sit in the Grand Chamber, with the exception of the President of the Chamber and the judge who sat in respect of the State Party concerned.

Article 28 – Declarations of inadmissibility by committees

A committee may, by a unanimous vote, declare inadmissible or strike out of its list of cases an application submitted under Article 34 where such a decision can be taken without further examination. The decision shall be final.

Article 29 – Decisions by Chambers on admissibility and merits

1 If no decision is taken under Article 28, a Chamber shall decide on the admissibility and merits of individual applications submitted under Article 34.

2 A Chamber shall decide on the admissibility and merits of inter-State applications submitted under Article 33.

3 The decision on admissibility shall be taken separately unless the Court, in exceptional cases, decides otherwise.

Article 30 – Relinquishment of jurisdiction to the Grand Chamber

Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects.

Article 31 – Powers of the Grand Chamber

The Grand Chamber shall

- a determine applications submitted either under Article 33 or Article 34 when a Chamber has relinquished jurisdiction under Article 30 or when the case has been referred to it under Article 43; and

- b* consider requests for advisory opinions submitted under Article 47.

Article 32 – Jurisdiction of the Court

1 The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34 and 47.

2 In the event of dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 33 – Inter-State cases

Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and the protocols thereto by another High Contracting Party.

Article 34 – Individual applications

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

Article 35 – Admissibility criteria

1 The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken.

2 The Court shall not deal with any application submitted under Article 34 that

- a* is anonymous; or

- b* is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.

3 The Court shall declare inadmissible any individual application submitted under Article 34 which it considers incompatible with the provisions of the Convention or the protocols thereto, manifestly ill-founded, or an abuse of the right of application.

4 The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.

Article 36 – Third party intervention

1 In all cases before a Chamber or the Grand Chamber, a High Contracting Party one of whose nationals is an applicant shall have the right to submit written comments and to take part in hearings.

2 The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings.

Article 37 – Striking out applications

1 The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

- a the applicant does not intend to pursue his application; or
- b the matter has been resolved; or
- c for any other reason established by the Court, it is no longer justified to continue the examination of the application.

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

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

Article 38 – Examination of the case and friendly settlement proceedings

1 If the Court declares the application admissible, it shall

- a* pursue the examination of the case, together with the representatives of the parties, and if need be, undertake an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities;
- b* place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for human rights as defined in the Convention and the protocols thereto.

2 Proceedings conducted under paragraph 1.b shall be confidential.

Article 39 – Finding of a friendly settlement

If a friendly settlement is effected, the Court shall strike the case out of its list by means of a decision which shall be confined to a brief statement of the facts and of the solution reached.

Article 40 – Public hearings and access to documents

1 Hearings shall be in public unless the Court in exceptional circumstances decides otherwise.

2 Documents deposited with the Registrar shall be accessible to the public unless the President of the Court decides otherwise.

Article 41 – Just satisfaction

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

Article 42 – Judgments of Chambers

Judgments of Chambers shall become final in accordance with the provisions of Article 44, paragraph 2.

Article 43 – Referral to the Grand Chamber

1 Within a period of three months from the date of the judgment of the Chamber, any party to the case may, in exceptional cases, request that the case be referred to the Grand Chamber.

2 A panel of five judges of the Grand Chamber shall accept the request if the case raises a serious question affecting the interpretation or application of the Convention or the protocols thereto, or a serious issue of general importance.

3 If the panel accepts the request, the Grand Chamber shall decide the case by means of a judgment.

Article 44 – Final judgments

1 The judgment of the Grand Chamber shall be final.

2 The judgment of a Chamber shall become final

- a* when the parties declare that they will not request that the case be referred to the Grand Chamber; or
- b* three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or
- c* when the panel of the Grand Chamber rejects the request to refer under Article 43.

3 The final judgment shall be published.

Article 45 – Reasons for judgments and decisions

1 Reasons shall be given for judgments as well as for decisions declaring applications admissible or inadmissible.

2 If a judgment does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

Article 46 – Binding force and execution of judgments

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

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

Article 47 – Advisory opinions

1 The Court may, at the request of the Committee of Ministers, give advisory opinions on legal questions concerning the interpretation of the Convention and the protocols thereto.

2 Such opinions shall not deal with any question relating to the content or scope of the rights or freedoms defined in Section I of the Convention and the protocols thereto, or with any other question which the Court or the Committee of Ministers might have to consider in consequence of any such proceedings as could be instituted in accordance with the Convention.

3 Decisions of the Committee of Ministers to request an advisory opinion of the Court shall require a majority vote of the representatives entitled to sit on the Committee.

Article 48 – Advisory jurisdiction of the Court

The Court shall decide whether a request for an advisory opinion submitted by the Committee of Ministers is within its competence as defined in Article 47.

Article 49 – Reasons for advisory opinions

1 Reasons shall be given for advisory opinions of the Court.

2 If the advisory opinion does not represent, in whole or in part, the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

3 Advisory opinions of the Court shall be communicated to the Committee of Ministers.

Article 50 – Expenditure on the Court

The expenditure on the Court shall be borne by the Council of Europe.

Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made there under.

Section III – Miscellaneous Provisions

Article 52 – Inquiries by the Secretary General

On receipt of a request from the Secretary General of the Council of Europe any High Contracting Party shall furnish an explanation of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention.

Article 53 – Safeguard for existing human rights

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

Article 54 – Powers of the Committee of Ministers

Nothing in this Convention shall prejudice the powers conferred on the Committee of Ministers by the Statute of the Council of Europe.

Article 55 – Exclusion of other means of dispute settlement

The High Contracting Parties agree that, except by special agreement, they will not avail themselves of treaties, conventions or declarations in force between them for the purpose of submitting, by way of petition, a dispute arising out of the interpretation or application of this Convention to a means of settlement other than those provided for in this Convention.

Article 56 – Territorial application

1 Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this

Article, extend to all or any of the territories for whose international relations it is responsible.

2 The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.

3 The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

4 Any State which has made a declaration in accordance with paragraph 1 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention.

Article 57 – Reservations

1 Any State may, when signing this Convention or when depositing its instrument of ratification, make a reservation in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision. Reservations of a general character shall not be permitted under this article.

2 Any reservation made under this article shall contain a brief statement of the law concerned.

Article 58 – Denunciation

1 A High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.

2 Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

3 Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to this Convention under the same conditions.

4 The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 56.

Article 59 – Signature and ratification

1 This Convention shall be open to the signature of the members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary General of the Council of Europe.

2 The present Convention shall come into force after the deposit of ten instruments of ratification.

3 As regards any signatory ratifying subsequently, the Convention shall come into force at the date of the deposit of its instrument of ratification.

4 The Secretary General of the Council of Europe shall notify all the members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties who have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Done at Rome this 4th day of November 1950, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatories.

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms

Paris, 20.III.1952

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Have agreed as follows:

Article 1 – Protection of property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Article 2 – Right to education

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

Article 3 – Right to free elections

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

Article 4 – Territorial application

Any High Contracting Party may at the time of signature or ratification or at any time thereafter communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of the present Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may from time to time communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

Article 5 – Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1, 2, 3 and 4 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 6 – Signature and ratification

This Protocol shall be open for signature by the members of the Council of Europe, who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of ten instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

Done at Paris on the 20th day of March 1952, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory governments.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto

Strasbourg, 16.IX.1963

The governments signatory hereto, being members of the Council of Europe,

Being resolved to take steps to ensure the collective enforcement of certain rights and freedoms other than those already included in Section I of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 (hereinafter referred to as the "Convention") and in Articles 1 to 3 of the First Protocol to the Convention, signed at Paris on 20th March 1952,

Have agreed as follows:

Article 1 – Prohibition of imprisonment for debt

No one shall be deprived of his liberty merely on the ground of inability to fulfil a contractual obligation.

Article 2 – Freedom of movement

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

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

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

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

Article 3 – Prohibition of expulsion of nationals

1 No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2 No one shall be deprived of the right to enter the territory of the state of which he is a national.

Article 4 – Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Article 5 – Territorial application

1 Any High Contracting Party may, at the time of signature or ratification of this Protocol, or at any time thereafter, communicate to the Secretary General of the Council of Europe a declaration stating the extent to which it undertakes that the provisions of this Protocol shall apply to such of the territories for the international relations of which it is responsible as are named therein.

2 Any High Contracting Party which has communicated a declaration in virtue of the preceding paragraph may, from time to time, communicate a further declaration modifying the terms of any former declaration or terminating the application of the provisions of this Protocol in respect of any territory.

3 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

4 The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.

5 Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in

Article 34 of the Convention in respect of all or any of Articles 1 to 4 of this Protocol.”

Article 6 – Relationship to the Convention

As between the High Contracting Parties the provisions of Articles 1 to 5 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 7 – Signature and ratification

1 This Protocol shall be open for signature by the members of the Council of Europe who are the signatories of the Convention; it shall be ratified at the same time as or after the ratification of the Convention. It shall enter into force after the deposit of five instruments of ratification. As regards any signatory ratifying subsequently, the Protocol shall enter into force at the date of the deposit of its instrument of ratification.

2 The instruments of ratification shall be deposited with the Secretary General of the Council of Europe, who will notify all members of the names of those who have ratified.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 16th day of September 1963, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General shall transmit certified copies to each of the signatory states.

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty

Strasbourg, 28.IV.1983

The member States of the Council of Europe, signatory to this Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention"),

Considering that the evolution that has occurred in several member States of the Council of Europe expresses a general tendency in favour of abolition of the death penalty;

Have agreed as follows:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No-one shall be condemned to such penalty or executed.

Article 2 – Death penalty in time of war

A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law.

Article 3 – Prohibition of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 4 – Prohibition of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 5 – Territorial application

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the date of receipt of such notification by the Secretary General.

Article 6 – Relationship to the Convention

As between the States Parties the provisions of Articles 1 and 5 of this Protocol shall be regarded as additional articles to the Convention and all the provisions of the Convention shall apply accordingly.

Article 7 – Signature and ratification

The Protocol shall be open for signature by the member States of the Council of Europe, signatories to the Convention. It shall be subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 8 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 7.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the date of the deposit of the instrument of ratification, acceptance or approval.

Article 9 – Depositary functions

The Secretary General of the Council of Europe shall notify the member States of the Council of:

- a* any signature;
- b* the deposit of any instrument of ratification, acceptance or approval;
- c* any date of entry into force of this Protocol in accordance with Articles 5 and 8;
- d* any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of April 1983, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Strasbourg, 22.XI.1984

The member States of the Council of Europe signatory hereto,

Being resolved to take further steps to ensure the collective enforcement of certain rights and freedoms by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as “the Convention”),

Have agreed as follows:

Article 1 – Procedural safeguards relating to expulsion of aliens

1 An alien lawfully resident in the territory of a State shall not be expelled there from except in pursuance of a decision reached in accordance with law and shall be allowed:

- a* to submit reasons against his expulsion,
- b* to have his case reviewed, and
- c* to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2 An alien may be expelled before the exercise of his rights under paragraph 1.*a*, *b* and *c* of this Article, when such expulsion is necessary in the interests of public order or is grounded on reasons of national security.

Article 2 – Right of appeal in criminal matters

1 Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2 This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal.

Article 3 – Compensation for wrongful conviction

When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed, or he has been pardoned, on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to the law or the practice of the State concerned, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

Article 4 – Right not to be tried or punished twice

1 No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.

2 The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.

3 No derogation from this Article shall be made under Article 15 of the Convention.

Article 5 – Equality between spouses

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution. This Article shall not prevent States from taking such measures as are necessary in the interests of the children.

Article 6 – Territorial application

1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which the Protocol shall apply and state the extent to which it

undertakes that the provisions of this Protocol shall apply to such territory or territories.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of receipt by the Secretary General of such declaration.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of two months after the date of receipt of such notification by the Secretary General.

4 A declaration made in accordance with this Article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5 The territory of any State to which this Protocol applies by virtue of ratification, acceptance or approval by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, may be treated as separate territories for the purpose of the reference in Article 1 to the territory of a State.

6 Any State which has made a declaration in accordance with paragraph 1 or 2 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided in Article 34 of the Convention in respect of Articles 1 to 5 of this Protocol.

Article 7 – Relationship to the Convention

As between the States Parties, the provisions of Article 1 to 6 of this Protocol shall be regarded as additional Articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 8 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 9 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date on which seven member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 8.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of two months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 10 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a* any signature;
- b* the deposit of any instrument of ratification, acceptance or approval;
- c* any date of entry into force of this Protocol in accordance with Articles 6 and 9;
- d* any other act, notification or declaration relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 22nd day of November 1984, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Rome, 4.XI.2000

The member States of the Council of Europe signatory hereto,

Having regard to the fundamental principle according to which all persons are equal before the law and are entitled to the equal protection of the law;

Being resolved to take further steps to promote the equality of all persons through the collective enforcement of a general prohibition of discrimination by means of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Reaffirming that the principle of non-discrimination does not prevent States Parties from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures,

Have agreed as follows:

Article 1 – General prohibition of discrimination

1 The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2 No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

Article 2 – Territorial application

1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the

month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General of the Council of Europe. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

4 A declaration made in accordance with this article shall be deemed to have been made in accordance with paragraph 1 of Article 56 of the Convention.

5 Any State which has made a declaration in accordance with paragraph 1 or 2 of this article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention in respect of Article 1 of this Protocol.

Article 3 – Relationship to the Convention

As between the States Parties, the provisions of Articles 1 and 2 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 4 – Signature and ratification

This Protocol shall be open for signature by member States of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 5 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 4.

2 In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 6 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member States of the Council of Europe of:

- a* any signature;
- b* the deposit of any instrument of ratification, acceptance or approval;
- c* any date of entry into force of this Protocol in accordance with Articles 2 and 5;
- d* any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Rome, this 4th day of November 2000, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty in all circumstances

Vilnius, 3.V.2002

The member States of the Council of Europe signatory hereto,

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings;

Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950 (hereinafter referred to as "the Convention");

Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war;

Being resolved to take the final step in order to abolish the death penalty in all circumstances,

Have agreed as follows:

Article 1 – Abolition of the death penalty

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 2 – Prohibitions of derogations

No derogation from the provisions of this Protocol shall be made under Article 15 of the Convention.

Article 3 – Prohibitions of reservations

No reservation may be made under Article 57 of the Convention in respect of the provisions of this Protocol.

Article 4 – Territorial application

1 Any state may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2 Any state may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn or modified by a notification addressed to the Secretary General. The withdrawal or modification shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 5 – Relationship to the Convention

As between the states Parties the provisions of Articles 1 to 4 of this Protocol shall be regarded as additional articles to the Convention, and all the provisions of the Convention shall apply accordingly.

Article 6 – Signature and ratification

This Protocol shall be open for signature by member states of the Council of Europe which have signed the Convention. It is subject to ratification, acceptance or approval. A member state of the Council of Europe may not ratify, accept or approve this Protocol without previously or simultaneously ratifying the Convention. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 7 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which ten member states of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of Article 6.

2 In respect of any member state which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 8 – Depositary functions

The Secretary General of the Council of Europe shall notify all the member states of the Council of Europe of:

- a* any signature;
- b* the deposit of any instrument of ratification, acceptance or approval;
- c* any date of entry into force of this Protocol in accordance with Articles 4 and 7;
- d* any other act, notification or communication relating to this Protocol;

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Vilnius, this 3rd day of May 2002, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe.

