



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

Guide on the case-law of the European Convention on Human Rights

Immigration

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter “the Court”, “the European Court” or “the Strasbourg Court”) to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law on a wide range of provisions of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”) relating to immigration. It should be read in conjunction with the case-law guides by Article, to which it refers systematically.

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

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

The mission of the system set up by the Convention is thus to determine, in the general interest, issues of public policy, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], 30078/06, § 89, ECHR 2012). Indeed, the Court has emphasised the Convention’s role as a “constitutional instrument of European public order” in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI).

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

Introduction

1. The present document is intended to serve as a reference tool to the Court's case-law in immigration related cases, covering all Convention Articles that could come into play. It is divided into six chapters, in principle corresponding to the sequence of events in chronological order. It primarily refers to, rather than reproduces or elaborates on, the Court's relevant judgments and decisions, including, wherever possible, recent judgments and decisions consolidating the relevant principles. It is thus conceived as an entry point to the Court's case-law on a given matter, not as an exhaustive overview.
2. Few provisions of the Convention and its Protocols explicitly concern "aliens" and they do not contain a right to asylum. As a general rule, States have the right, as a matter of well-established international law and subject to their treaty obligations, to control entry, residence and expulsion of non-nationals. In *Soering v. the United Kingdom* the Court ruled for the first time that the applicant's extradition could raise the responsibility of the extraditing State under Article 3 of the Convention. Since then, the Court has consistently held that the removal of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. The Court also adjudicates cases concerning the compliance, of the removal of migrants from and the refusal of entry into the territory of a Contracting State, with their right to respect for their private and/or family life as guaranteed by Article 8 of the Convention.
3. Many immigration related cases before the Court begin with a request for interim measures under Rule 39 of the Rules of Court, measures most commonly consisting of requesting the respondent State to refrain from removing individuals pending the examination of their applications before the Court (see paragraph 60 below for more details).

I. Access to the territory and procedures

Article 3 of the Convention

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

Article 4 of the Convention

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

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

3. For the purpose of this article the term ‘forced or compulsory labour’ shall not include:

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

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

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

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

Article 8 of the Convention

“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 2 of Protocol No. 4 of the Convention

“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 4 of Protocol No. 4 of the Convention

“Collective expulsion of aliens is prohibited.”

4. As mentioned above, access to the territory for non-nationals is not expressly regulated in the Convention, nor does it say who should receive a visa.

A. Access for the purposes of family reunification

5. A State may, under certain circumstances, be required to allow the entry of an individual when it is a pre-condition for his or her exercise of certain Convention rights, in particular the right to respect for family life. The Court summarised the pertinent principles under Article 8 of the

Convention concerning family reunification of children of foreign nationality with parents, or a parent, settled in a Contracting State in *I.A.A. and Others v. the United Kingdom* (dec.) (§§ 38-41). The criteria, including notably the best interests of the child, must be sufficiently reflected in the reasoning in the decisions of the domestic authorities (*El Ghatet v. Switzerland*).

6. There is no obligation on a State under Article 8 to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country. However, where a State decides to enact legislation conferring the right on certain categories of immigrants to be joined by their spouses, it must do so in a manner compatible with the principle of non-discrimination enshrined in Article 14. The Court found a breach of Article 14 taken in conjunction with Article 8 in *Hode and Abdi v. the United Kingdom* because one applicant, the post-flight spouse of the other applicant, a recognised refugee, was not allowed to join him in the respondent State, whereas refugees married prior to the flight and immigrants with temporary residence status could be joined by their spouses. The family reunification procedure needs to be flexible (for instance in relation to the use and admissibility of evidence for the existence of family ties), prompt and effective (*Tanda-Muzinga v. France*; *Mugenzi v. France*).

7. Another scenario concerning family reunification of refugees was examined by the Court in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*. The first applicant had obtained refugee status and indefinite leave to remain in Canada and had asked her brother, a Dutch national, to collect her five year-old daughter (the second applicant) from the country of origin, where the child was living with her grandmother, and to look after the child until she was able to join her. Upon arrival in Belgium, instead of facilitating the reunification of the two applicants, the authorities detained and subsequently deported the second applicant to the country of origin, which amounted to a breach of Article 8 (§§ 72-91).

8. As regards the refusal to grant family reunion based on ties with another country and a difference in treatment between persons born with the nationality of the respondent State and those who acquired it later in life, see *Biao v. Denmark* [GC]. In *Schembri v. Malta*, the Court found that Article 8 did not apply to a “marriage of convenience”: albeit not in the context of seeking permission to enter, but rather to remain in, the respondent State (see, more generally, paragraphs 44-46 below), the Court found that the refusal to grant a family residence permit to the applicant’s same-sex partner breached Article 14 taken in conjunction with Article 8 (*Taddeucci and McCall v. Italy*).

B. Granting visas and Article 4

9. In *Rantsev v. Cyprus and Russia*, the applicant’s daughter, a Russian national, had died in unexplained circumstances after falling from a window of a private property in Cyprus, a few days after she had arrived on a “cabaret-artiste” visa. The Court found that Cyprus had, inter alia, failed to comply with its positive obligations under Article 4 because, despite evidence of trafficking in Cyprus and the concerns expressed in various reports that Cypriot immigration policy and legislative shortcomings were encouraging the trafficking of women to Cyprus, its regime of “artiste visas” did not afford to the applicant’s daughter practical and effective protection against trafficking and exploitation (§§ 290-293). In respect of the procedural obligation to conduct an effective investigation into the issuing of visas by public officials in human trafficking cases, see *T.I. and Others v. Greece*.

C. Entry and travel bans

10. An entry ban prohibits individuals from entering a State from which they have been expelled. The ban is typically valid for a certain period of time and ensures that individuals who are considered dangerous or non-desirable are not given a visa or otherwise admitted to enter the territory. In respect of states which are part of the Schengen area, entry bans are registered into a database

called the Schengen Information System (SIS). In *Dalea v. France* (dec.), the Court found that the applicant's registration on the SIS database did not breach his right to respect for his private life under Article 8 of the Convention. It considered the effects of a travel ban imposed as a result of placing an individual on an UN-administered list of terrorist suspects under Article 8 of the Convention (*Nada v. Switzerland* [GC]), as well as of a travel ban designed to prevent breaches of domestic or foreign immigration laws, under Article 2 of Protocol No. 4 to the Convention (*Stamose v. Bulgaria*).

D. Push backs at sea

11. In *Hirsi Jamaa and Others v. Italy* [GC], the Court dealt with push backs at sea. The applicants were part of a group of about 200 migrants, including asylum-seekers and others, who had been intercepted by the coastguard of the respondent State on the high seas within the search and rescue area of another Contracting Party. The applicants were summarily returned to Libya under an agreement concluded between Italy and Libya, and were given no opportunity to apply for asylum. The Court found that the applicants fell within the respondent State's jurisdiction for the purposes of Article 1 of the Convention as it exercised control over them on the high seas and considered that the Italian authorities knew, or should have known, that the applicants, when returned to Libya as irregular migrants, would be exposed to treatment in breach of the Convention, that they would not be given any kind of protection and that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin. It reaffirmed that the fact that the applicants had not asked for asylum or described the risks they faced as a result of the lack of asylum system in Libya did not exempt the respondent State from complying with its obligations under Article 3 of the Convention. It also found violations of Article 4 of Protocol No. 4 of the Convention and of Article 13 of the Convention taken in conjunction with Article 3 and Article 4 of Protocol No. 4 to the Convention.

II. Entry into the territory of the respondent State

Article 3 of the Convention

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

Article 5 of the Convention

“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 2 of Protocol No. 4 of the Convention

“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 4 of Protocol No. 4 of the Convention

“Collective expulsion of aliens is prohibited.”

A. Situations at the border

12. The Court has also examined cases under Article 3 alone and in conjunction with Article 13 of the Convention in which border guards prevented persons from entering the respondent State's territory by not allowing them to disembark at a port (*Kebe and Others v. Ukraine*) or at a land border checkpoint (*M.A. and Others v. Lithuania*), and either prevented the applicants from lodging an asylum application or, where they had submitted such applications, refused to accept them and to initiate asylum proceedings. In *Sharifi and Others v. Italy and Greece*, the applicants had entered Greece from Afghanistan and subsequently illegally boarded vessels for Italy. Upon arrival in the port of Ancona, the Italian border police intercepted them and immediately took them back to the ships from which they had just disembarked and deported them back to Greece, without being given the possibility to apply for asylum, to contact lawyers or interpreters or providing them with any information about their rights. The Court found a violation by Italy of Article 3 with a view to their subsequent removal to Afghanistan and the risk of ill-treatment there, of Article 13 taken together with Article 3 of the Convention and of Article 4 of Protocol No. 4. Whereas the applicants in *Ilias and Ahmed v. Hungary* [GC] were able to lodge an asylum application while staying at the land border transit zone between Hungary and Serbia, the Hungarian authorities failed to discharge their procedural obligation under Article 3 when rejecting their asylum requests as inadmissible based on the presumption that Serbia was a safe third country which could examine their asylum requests on the merits (see paragraph 30 below).

13. In *N.D. and N.T. v. Spain* [GC] the Court found that Article 4 of Protocol No. 4 was applicable to situations in which the conduct of persons - who cross a land border in an unauthorised manner, deliberately taking advantage of their large numbers and using force - is such as to create a clearly disruptive situation which is difficult to control and endangers public safety. It set out a two-tier test for compliance with Article 4 of Protocol No. 4 in such circumstances: whether the State provided genuine and effective access to means of legal entry, in particular border procedures, to allow all persons who face persecution to submit an application for protection, based in particular on Article 3, under conditions which ensure that the application is processed in a manner consistent with international norms including the Convention. Where the State provided such access but an applicant did not make use of it, it has to be considered whether there were cogent reasons for not doing so which were based on objective facts for which the State was responsible. The absence of such cogent reasons could lead to this being regarded as the consequence of the applicants' own conduct, justifying the lack of individual identification. On the facts of the case, the Court found that there had been no breach of Article 4 of Protocol No. 4, but underlined that this finding did not call into question the obligation and necessity for Contracting States to protect their borders in a manner which complies with Convention guarantees and, in particular, with the prohibition of *refoulement*. In another recent case not concerning an underlying risk of a violation of Articles 2 or 3 of the Convention as a result of removal, the Court found no violation of Article 4 of Protocol No. 4 in respect of the applicants' removal to Ukraine by the Slovak border police based on standard expulsion decisions after brief interviews with standardised questions in the presence of an interpreter at the police station (*Asady and Others v. Slovakia**). The applicants had had sufficient opportunity to put forward arguments against their removal and to have their individual situation examined.

B. Confinement in transit zones and reception centres

14. In determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in transit zones and reception centres for the identification and registration of migrants, the factors taken into consideration by the Court may be summarised as follows: i) the applicants' individual situation and their choices; ii) the applicable legal regime of the respective country and its purpose; iii) the relevant duration, especially in the light of

the purpose and the procedural protection enjoyed by applicants pending the events; and iv) the nature and degree of the actual restrictions imposed on or experienced by the applicants (*Z.A. and Others v. Russia* [GC], § 138; *Ilias and Ahmed v. Hungary* [GC], §§ 217-218). The Court has distinguished the lengthy confinement in airport transit zones, where it found Article 5 of the Convention to apply (see *Z.A. and Others v. Russia* [GC]), from the applicants' stay in a land border transit zone where they awaited the outcome of their asylum claims (*Ilias and Ahmed v. Hungary* [GC], where the Court found Article 5 not to apply). In *J.R. and Others v. Greece*, the applicants, Afghan nationals, arrived on the island of Chios and were arrested and placed in the Vial "hotspot" facility (a migrant reception, identification and registration centre). After one month, that facility became semi-open and the applicants were allowed out during the day. The Court considered that the applicants had been deprived of their liberty within the meaning of Article 5 during the first month of their stay in the facility, but that they were subjected only to a restriction of movement, rather than a deprivation of liberty, once the facility had become semi-open.

C. Immigration detention under Article 5 § 1(f)

1. General principles

15. Article 5 § 1(f) of the Convention allows States to control the liberty of aliens in an immigration context in two different situations: the first limb of that provision permits the detention of an asylum-seeker or other immigrant prior to the State's grant of authorisation to enter (for the second limb, see paragraphs 52-54 below). The question as to when the first limb of Article 5 § 1(f) ceases to apply, because the individual has been granted formal authorisation to enter or stay, is largely dependent on national law (*Suso Musa v. Malta*, § 97; see also *O.M. v. Hungary*, where the detention of the asylum-seeking applicant was consequently examined under Article 5 § 1(b), since domestic law created a more favourable position than required by the Convention, with the result that the Court did not consider it necessary to address the lawfulness of the detention under Article 5 § 1(f)). Such detention must be compatible with the overall purpose and requirements of Article 5, notably its lawfulness, including the obligation to conform to the substantive and procedural rules of national law. However compliance with domestic law is not sufficient, since a deprivation of liberty may be lawful in terms of domestic law but still be arbitrary (*Saadi v. the United Kingdom* [GC], § 67). In the case of massive arrivals of asylum-seekers at State borders, subject to the prohibition of arbitrariness, the lawfulness requirement of Article 5 may be considered generally satisfied by a domestic legal regime that provides, for example, for no more than the name of the authority competent to order deprivation of liberty in a transit zone, the form of the order, its possible grounds and limits, the maximum duration of the confinement and, as required by Article 5 § 4, the applicable avenue of judicial appeal (*Z.A. and Others v. Russia* [GC], § 162). The requirement of lawfulness was an issue, for example, where the detention was based on an administrative circular (*Amuur v. France*), where the legal basis was not accessible to the public (*Nolan and K. v. Russia, and Khlaifia and Others v. Italy* [GC]: readmission agreement) or where no maximum period of detention was laid down in legislation (*Mathloom v. Greece*). In *Nabil and Others v. Hungary*, the domestic courts had not duly assessed whether the conditions set out in domestic law for the prolongation of the detention - falling under the second limb of Article 5 § 1(f) - were met.

16. In respect of adults with no particular vulnerabilities, detention under Article 5 § 1(f) is not required to be reasonably necessary. However, it must not be arbitrary. "Freedom from arbitrariness" in the context of the first limb of Article 5 § 1(f) means that such detention must be carried out in good faith; it must be closely connected to the purpose of preventing unauthorised entry of the person to the country; the place and conditions of detention should be appropriate, bearing in mind that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country; and the length of the detention should not exceed that reasonably required for the purpose pursued (*Saadi v. the*

United Kingdom [GC], § 74). If the place and conditions of detention are not appropriate, this may also breach Article 3 of the Convention (see, for example, *M.S.S. v. Belgium and Greece* [GC], §§ 205-234; *S.Z. v. Greece*, and *HA.A. v. Greece*).

2. Vulnerable individuals

17. Additional safeguards against arbitrary detention apply to children and other individuals with specific vulnerabilities, who, to be able to benefit from such protection, should have access to an assessment of their vulnerability and be informed about respective procedures (see *Thimothawes v. Belgium*, and *Abdi Mahamud v. Malta*). Lack of active steps and delays in conducting the vulnerability assessment may be a factor in raising serious doubts as to the authorities' good faith (*Abdullahi Elmi and Aweys Abubakar v. Malta*; *Abdi Mahamud v. Malta*). The detention of vulnerable individuals will not be in conformity with Article 5 § 1(f) if the aim pursued by detention can be achieved by other less coercive measures, requiring the domestic authorities to consider alternatives to detention in the light of the specific circumstances of the individual case (*Rahimi v. Greece*; *Yoh-Ekale Mwanje v. Belgium*, concerning the second limb of the provision). In addition to Article 5 § 1(f), immigration detention of children and other vulnerable individuals can raise issues under Article 3 of the Convention, with particular attention being paid to the conditions of detention, its duration, the person's particular vulnerabilities and the impact of the detention on him or her (in respect of the detention of accompanied children see *Popov v. France* concerning the second limb and the overview of the Court's case-law in *S.F. and Others v. Bulgaria*; in respect of unaccompanied children see *Abdullahi Elmi and Aweys Abubakar v. Malta*; *Rahimi v. Greece*; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, where the Court found a violation of Article 3 in respect of both the detained child and the child's mother who was in another country; in respect of adults with specific health needs see *Aden Ahmad v. Malta*, and *Yoh-Ekale Mwanje v. Belgium*, and a heavily pregnant woman *Mahmundi and Others v. Greece*; see also *O.M. v. Hungary*, § 53, with a view to the assessment of the vulnerability of the applicant, an LGBTI asylum-seeker, under Article 5 § 1(b)). The detention of accompanied children may also raise issues under Article 8 of the Convention in respect of both children and adults (see overview of the Court's case-law in *Bistieva and Others v. Poland*).

3. Procedural safeguards

18. Under Article 5 § 2, any person who has been arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his deprivation of liberty, so as to be able to apply to a court to challenge its lawfulness in accordance with Article 5 § 4 (*Khlaifia and Others v. Italy* [GC], § 115). Whilst this information must be conveyed "promptly", it need not be related in its entirety by the arresting officer at the very moment of the arrest. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features (*ibid.*; see *Čonka v. Belgium*; *Saadi v. the United Kingdom* [GC]; *Nowak v. Ukraine*; *Dbouba v. Turkey*).

19. Article 5 § 4 (applicable if the impugned detention is not of a very short duration) has been found applicable to a period of three and a half days of detention pending expulsion in *A.M. v. France*, § 36). It entitles a detained person to bring proceedings for review by a court of the procedural and substantive conditions which are essential for the "lawfulness", in the sense of Article 5 § 1, of his or her deprivation of liberty (*Khlaifia and Others v. Italy* [GC], § 131; see, in particular, *A.M. v. France*, §§ 40-41, concerning the required scope of judicial review under Article 5 § 1(f)). Proceedings to challenge the lawfulness under Article 5 § 1(f) of administrative detention pending deportations do not need to have a suspensive effect on the implementation of the deportation order (*ibid.*, § 38). Where deportation is expedited in a manner preventing the detained person or his lawyer from bringing proceedings under Article 5 § 4, that provision is breached (*Čonka v. Belgium*). In cases where detainees had not been informed of the reasons for their deprivation of liberty, their right to appeal against their detention was deprived of all effective substance (*Khlaifia*

and Others v. Italy [GC], § 132). The same holds true if the detained person is informed about the available remedies in a language he does not understand and is unable, in practice, to contact a lawyer (*Rahimi v. Greece*, § 120). The proceedings under Article 5 § 4 must be adversarial and ensure equality of arms between the parties (see *A. and Others v. the United Kingdom* [GC], §§ 203 et seq.; and *Al Husin v. Bosnia and Herzegovina (no. 2)* in respect of national security cases).

20. Article 5 § 4 also secures to persons arrested or detained the right to have the lawfulness of their detention decided “speedily” by a court and to have their release ordered if the detention is not lawful (*Khlaifia and Others v. Italy* [GC], § 131; in relation to case-law on the “speediness” requirement in respect of detention under Article 5 § 1(f), albeit with a view to the second limb of the provision, see also *Khudyakova v. Russia*, §§ 92-100; *Abdulkhakov v. Russia*, § 214; *M.M. v. Bulgaria*). Where the national authorities decide in exceptional circumstances to detain a child and his or her parents in the context of immigration controls, the lawfulness of such detention should be examined by the national courts with particular expedition and diligence at all levels (*G.B. and Others v. Turkey*, §§ 167 and 186). Where an automatic review is not conducted in compliance with the time-limits provided for by domestic law, but nonetheless speedily from an objective point of view, there is no breach of Article 5 § 4 (*Aboya Boa Jean v. Malta*).

D. Access to procedures and reception conditions

1. Access to the asylum procedure or other procedures to prevent removal

21. In addition to cases concerning the refusal to accept or examine asylum applications at the border (see paragraph 12 above), the Court has examined cases under Article 13 taken in conjunction with Article 3 where a person present on the territory was unable to lodge an asylum application (*A.E.A. v. Greece*) or where such application was not seriously examined (*M.S.S. v. Belgium and Greece* [GC], §§ 265-322).

22. The Court found that there had been no violation of Article 4 of Protocol No. 4 where the applicants were afforded a genuine and effective possibility of submitting arguments against their expulsion (*Khlaifia and Others v. Italy* [GC]).

2. Reception conditions and freedom of movement

23. Article 3 cannot be interpreted as obliging the High Contracting Parties to provide everyone within their jurisdiction with a home (*Chapman v. the United Kingdom* [GC], § 99). Nor does Article 3 entail any general obligation to give refugees financial assistance to enable them to maintain a certain standard of living (*Tarakhel v. Switzerland* [GC], § 95). However, asylum-seekers are members of a particularly underprivileged and vulnerable population group in need of special protection and there exists a broad consensus at the international and European level concerning this need for special protection, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the Reception Directive (*M.S.S. v. Belgium and Greece* [GC], § 251). It may thus raise an issue under Article 3 if the asylum-seekers, including persons intending to lodge an asylum application, are not provided with accommodation and adequate reception conditions (*ibid.* [GC], §§ 235-264; *N.T.P. and Others v. France*). States are obliged under Article 3 to protect and to take charge of unaccompanied children, which requires the authorities to identify them as such and to take measures to ensure their placement in adequate accommodation, even if the children do not lodge an asylum application in the respondent State, but intend to do so in another State, or to join family members there (see *Khan v. France*, concerning the situation in a makeshift camp in Calais; and *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* in respect of the situation in a makeshift camp in Idomeni; see also *M.D. v. France* regarding the reception of an asylum seeker who had identified himself as an unaccompanied minor, but in respect of whose actual age there were doubts). In *Rahimi v. Greece*

(§§ 87-94), the Court also found a breach of Article 3 because the authorities did not offer the applicant, an unaccompanied child asylum-seeker, any assistance with accommodation following his release from detention.

24. In *Omwenyeki v. Germany* (dec.), the applicant asylum-seeker had temporary residence for the duration of the asylum procedure, but had lost his lawful status by violating the conditions attached to his temporary residence – the obligation to stay within the territory of a certain city. The Court found that he could thus not rely on Article 2 of Protocol No. 4.

III. Substantive and procedural aspects of cases concerning expulsion, extradition and related scenarios

Article 2 of the Convention

“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 of the Convention

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

Article 6 of the Convention

“1. In the determination of his civil rights and obligations or of any criminal charge against him, ... “

Article 8 of the Convention

“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 13 of the Convention

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

Article 4 of Protocol No. 4 of the Convention

“Collective expulsion of aliens is prohibited.”

Article 1 of Protocol No. 6 of the Convention

“The death penalty shall be abolished. No one shall be condemned to such penalty or executed.

Article 1 of Protocol No. 7 of the Convention

“1. An alien lawfully resident in the territory of a State shall not be expelled therefrom 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 1 of Protocol No. 13 of the Convention

“The death penalty shall be abolished. No one shall be condemned to such penalty or executed.”

A. Articles 2 and 3 of the Convention

1. Scope and substantive aspects of the Court’s assessment under Articles 2 and 3 in asylum-related removal cases

25. The right to political asylum is not contained in either the Convention or its Protocols and the Court does not itself examine the actual asylum application or verify how the States honour their obligations under the 1951 Geneva Convention or European Union law (*F.G. v. Sweden* [GC], § 117; *Sufi and Elmi v. the United Kingdom*, §§ 212 and 226). However, the expulsion of an alien by a Contracting State may give rise to an issue under Articles 2 and 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. In these circumstances, Articles 2 and 3 imply an obligation not to deport the person in question to that country (*F.G. v. Sweden*, §§ 110-111). Removal cases concerning Article 2 – notably in respect of the risk of the applicant being subjected to the death penalty – typically also raise issues under Article 3 (see paragraph 42 below): because the relevant principles are the same for Article 2 and Article 3 assessments in removal cases, the Court either finds the issues under both Articles indissociable and examines them together (see *F.G. v. Sweden* ([GC], § 110; *L.M. and Others v. Russia*, § 108) or deals with the Article 2 complaint in the context of the related main complaint under Article 3 (see *J.H. v. United Kingdom*, § 37).

26. The Court has adjudicated a vast number of cases in which it had to assess whether substantial grounds had been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment contrary to Articles 2 or 3 in the destination country. It consolidated, to a large extent, the relevant principles in two Grand Chamber judgments *F.G. v. Sweden* ([GC], §§ 110-127) and *J.K. and Others v. Sweden* ([GC], §§ 77-105), notably as regards the risk assessment (including as regards a general situation of violence, particular circumstances of the applicant such as membership of a targeted group and other individual risk factors - which may give rise a real risk when considered separately or when taken cumulatively -, risk of ill-treatment by private groups, the reliance on the existence of an internal flight alternative, the assessment of country of origin reports, the distribution of the burden of proof, past ill-treatment as an indication of risk, and sur place activities), the nature of the Court’s inquiry and the principle of *ex nunc*

evaluation of the circumstances where the applicant has not already been deported (for scenarios in which the person has already been deported, see *X v. Switzerland*; and *A.S. v. France*).

27. As regards the procedural obligations on the part of the authorities, the Court clarified in *F.G. v. Sweden* (§ 127) that, considering the absolute nature of the rights guaranteed under Articles 2 and 3 of the Convention, and having regard to the vulnerable position that asylum-seekers often find themselves in, if a Contracting State is made aware of facts, relating to a specific individual, that could expose him to a risk of ill-treatment in breach of the said provisions upon returning to the country in question, the obligations under Articles 2 and 3 of the Convention entail that the authorities carry out an assessment of that risk of their own motion. As regards the distribution of the burden of proof, the Court clarified in *J.K. and Others v. Sweden* ([GC], §§ 91 et seq.) that it is the shared duty of an asylum-seeker and the immigration authorities to ascertain and evaluate all relevant facts in asylum proceedings. On the one hand, the burden remains on asylum-seekers as regards their own personal circumstances, although the Court recognised that it was important to take into account all of the difficulties which an asylum-seeker may encounter in collecting evidence. On the other hand, the general situation in another State, including the ability of its public authorities to provide protection, had to be established *proprio motu* by the competent domestic immigration authorities. As to the significance of established past ill-treatment contrary to Article 3 in the receiving State, the Court considered that established past ill-treatment contrary to Article 3 would provide a strong indication of a future, real risk of ill-treatment, although the Court conditioned that principle on the applicant having made a generally coherent and credible account of events that is consistent with information from reliable and objective sources about the general situation in the country at issue. In such circumstances, the burden shifted to the Government to dispel any doubts about that risk.

28. The Court has developed ample case-law in respect of all of the above-mentioned principles. By way of example, in respect of the weight attributed to country material see *Sufi and Elmi v. the United Kingdom* (§§ 230-234); in respect of the assessment of an applicant's credibility see *N. v. Finland*; *A.F. v. France*, and *M.O. v. Switzerland*; and in respect of the domestic authorities' obligation to assess the relevance, authenticity and probative value of documents put forward by an applicant – from the outset or later on – which relate to the core of their protection claims see *M.D. and M.A. v. Belgium*; *Singh and Others v. Belgium*, and *M.A. v. Switzerland*. Again by way of example, see *Sufi and Elmi v. the United Kingdom* where the Court determined the situation in the country of destination to be such that the removal would breach Article 3, having regard to the situation of general violence in Mogadishu and the lack of safe access to, and the dire conditions in, IDP camps; see *Salah Sheekh v. the Netherlands* as regards a risk assessment in respect of an applicant who belonged to a group which is systematically at risk; and with regard to various forms and scenarios of gender-related persecution, such as widespread sexual violence (*M.M.R. v. the Netherlands* (dec.)), the alleged lack of a male support network (*R.H. v. Sweden*), ill-treatment of a separated woman (*N. v. Sweden*), ill-treatment inflicted by family members in view of a relationship (*R.D. v. France*, §§ 36-45), honour killings and forced marriage (*A.A. and Others v. Sweden*), and female genital mutilation (*R.B.A.B. v. the Netherlands*; *Sow v. Belgium*). As regards forced prostitution and/or return to a human trafficking network see *L.O. v. France* (dec.). In *V.F. v. France* (dec.), the Court assessed the risk under Article 4, while leaving open the extraterritorial applicability of that Article: in this latter respect, the case of *M.O. v. Switzerland* concerned the risk of forced labour upon removal and the Article 4 complaint was inadmissible due to non-exhaustion of domestic remedies.

29. Where the risk of ill-treatment emanates from a person's sexual orientation, he or she may not be asked to conceal it in order to avoid ill-treatment, as it concerns a fundamental aspect of a person's identity (*I.K. v. Switzerland* (dec.)). Similar questions may arise in respect of a person's religious beliefs (see *A. v. Switzerland*).

2. Removal to a third country

30. While the majority of removal cases examined by the Court under Articles 2 or 3 concern removals to the country from which the applicant has fled, such cases may also arise in connection with the applicant's removal to a third country. In *Ilias and Ahmed v. Hungary* [GC] the Court observed that where a Contracting State sought to remove an asylum seeker to a third country without examining the asylum request on the merits, the State's duty not to expose the individual to a real risk of treatment contrary to Article 3 was discharged in a manner different from that in cases of return to the country of origin. In the former situation, the main issue was the adequacy of the asylum procedure in the receiving third country. While a State removing asylum seekers to a third country may legitimately choose not to deal with the merits of the asylum requests, it cannot therefore be known whether those persons risk treatment contrary to Article 3 in the country of origin or are simply economic migrants not in need of protection. It is the duty of the removing State to examine thoroughly whether or not there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement*, namely, against being removed, directly or indirectly, to his or her country of origin without a proper evaluation of the risks he or she faces from the standpoint of Article 3. If it is established that the existing guarantees in this regard are insufficient, Article 3 gives rise to a duty not to remove the asylum seekers to the third country concerned. To determine whether the removing State has fulfilled its procedural obligation to assess the asylum procedures of a receiving third State, it has to be examined whether the authorities of the removing State had taken into account the available general information about the receiving third country and its asylum system in an adequate manner and of their own initiative; and whether an applicant had been given a sufficient opportunity to demonstrate that the receiving State was not a safe third country in their particular case. In applying this test, the Court indicated that any presumption that a particular country is "safe", if it has been relied upon in decisions concerning an individual asylum seeker, must be sufficiently supported at the outset by the above analysis. Importantly, the Court specified that it is not its task to assess whether there was an arguable claim about Article 3 risks in their country of origin, this question only being relevant where the expelling State had dealt with these risks.

31. The removal of asylum seekers to a third country may furthermore be in breach of Article 3, because of inadequate reception conditions in the receiving State (*M.S.S. v. Belgium and Greece* [GC], §§ 362-368) or because they would not be guaranteed access to reception facilities adapted to their specific vulnerabilities, which may require that the removing State obtains assurances from the receiving State to that end (see *Tarakhel v. Switzerland* [GC]; *Ali and Others v. Switzerland and Italy* (dec.); *Ojei v. the Netherlands* (dec.)).

3. Procedural aspects

32. Where the individual has an "arguable complaint" that his removal would expose him to treatment contrary to Article 2 or 3 of the Convention, he must have an effective remedy, in practice as well as in law, at the domestic level in accordance with Article 13 of the Convention, which imperatively requires, inter alia, independent and rigorous scrutiny of any claim that there exist substantial grounds for fearing a real risk of treatment contrary to Articles 2 or 3 and automatic suspensive effect (*M.S.S. v. Belgium and Greece* [GC], §§ 288 and 291: for an overview of the Court's case-law as to the requirements under Article 13 taken in conjunction with Articles 2 or 3 in removal cases, see, in particular, *ibid.*, §§ 286-322; *Abdolkhani and Karimnia v. Turkey*, §§ 107-117; *Gebremedhin [Gaberamadhien] v. France*, §§ 53-67; *I.M. v. France*; *Chahal v. the United Kingdom* [GC], §§ 147-154; *Shamayev and Others v. Georgia and Russia*, § 460). The same principles apply when considering the question of effectiveness of remedies which have to be exhausted for the purposes of Article 35 § 1 of the Convention in asylum cases (*A.M. v. the Netherlands*, §§ 65-69). In respect of asylum-seekers the Court has found, in particular, that individuals need to have adequate information about the asylum procedure to be followed and their entitlements in a language they

understand, and have access to a reliable communication system with the authorities: the Court also has regard to the availability of interpreters, whether the interviews are conducted by trained staff, whether asylum-seekers have access to legal aid, and requires that asylum-seekers be given the reasons for the decision (see *M.S.S. v. Belgium and Greece* [GC], §§ 300-302, 304, and 306-310; see also *Abdolkhani and Karimnia v. Turkey*; and *Hirsi Jamaa and Others v. Italy* [GC], § 204).

33. Article 6 of the Convention is not applicable *ratione materiae* to asylum, deportation and related proceedings (*Maaouia v. France* [GC], §§ 38-40; *Onyejekwe v. Austria* (dec.), § 34; see *Panjeheighalehei v. Denmark* (dec.) concerning an action in damages by an asylum-seeker on account of the refusal to grant asylum).

34. The failure to examine an asylum application in reasonable time may breach Article 8 (see *B.A.C. v. Greece*) and the adequate nature of a remedy under Article 13 can be undermined by its excessive duration (*M.S.S. v. Belgium and Greece* [GC], § 292). On the other hand, a speedy processing of an applicant's asylum claim should not take priority over the effectiveness of the essential procedural guarantees to protect him or her against arbitrary removal. An unreasonably short time-limit to submit a claim, such as in the context of accelerated asylum procedures, and/or to appeal a subsequent removal decision can render a remedy practically ineffective, contrary to the requirements of Article 13 taken together with Article 3 of the Convention (see *I.M. v. France*, where a five-day limit for lodging an initial asylum application and a 48-hour time-limit for an appeal were found to violate these provisions; see also the overview on accelerated asylum procedures in *R.D. v. France*, §§ 55-64).

35. In respect of the requirements under Article 13 taken in conjunction with Article 8 in removal cases, see *De Souza Ribeiro v. France* [GC] (§§ 82-83). In respect of the requirements under Article 13 taken in conjunction with Article 4 of Protocol No. 4, see *Khlaifia and Others v. Italy* [GC] (§§ 276-281; see also *Hirsi Jamaa and Others v. Italy* [GC]; *Sharifi and Others v. Italy and Greece*; and *Čonka v. Belgium*).

4. Cases relating to national security

36. The Court has often dealt with cases concerning the removal of individuals deemed to be a threat to national security (see, for example, *A.M. v. France*). It has repeatedly held that Article 3 is absolute and that it is not possible to weigh the risk of ill-treatment against the reasons put forward for the expulsion (*Saadi v. Italy* [GC], §§ 125 and 138; *Othman (Abu Qatada) v. the United Kingdom*, §§ 183-185). The Court cannot rely on the findings of the domestic authorities if they did not have all essential information before them – for example for reasons of national security – when rendering the expulsion decisions (see *X v. Sweden*).

5. Extradition

37. Extradition by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question would, if extradited, face a real risk of being subjected to treatment contrary to Article 3 in the receiving country (*Soering v. the United Kingdom*, §§ 88-91). The question of whether there is a real risk of ill-treatment contrary to Article 3 in another State cannot depend on the legal basis for removal to that State, as there may be little difference between extradition and other removals in practice (*Babar Ahmad and Others v. the United Kingdom*, §§ 168 and 176; *Trabelsi v. Belgium*, § 116). For example, extradition requests may be withdrawn and the Contracting State may nonetheless decide to proceed with removal from its territory on other grounds; or a State may decide to remove someone who faces criminal proceedings (or has already been convicted) in another State in the absence of an extradition request; and there may be cases where someone has fled a State because he or she fears the implementation of a particular sentence that has already been passed upon him or her and is to be returned to that State, not under any

extradition arrangement, but as a failed asylum seeker (see *Babar Ahmad and Others v. the United Kingdom*, § 168, with further references). There may also be cases where a State grants an extradition request in which the individual, who has applied for asylum, is charged with politically motivated crimes (see *Mamazhonov v. Russia*) or where extradition concerns an individual recognised as a refugee in another country (*M.G. v. Bulgaria*).

38. Articles 2 and 3 of the Convention as well as Article 1 of Protocol No. 6 or Article 1 of Protocol No. 13 (see paragraph 42 below) prohibit the extradition, deportation or other transfer of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 123 and 140-143; *A.L. (X.W.) v. Russia*, §§ 63-66; *Shamayev and Others v. Georgia and Russia*, § 333). It may similarly breach Article 3 to extradite or transfer an individual to a State where he faces a whole life sentence without a de facto or de jure possibility of release (see *Babar Ahmad and Others and Others v. the United Kingdom* and *Trabelsi v. Belgium*; see also *Murray v. the Netherlands* [GC], and *Hutchinson v. the United Kingdom* [GC], in respect of whole life sentences and Article 3). Ill-treatment contrary to Article 3 in the requesting State may take various forms, including poor conditions of and ill-treatment inflicted in detention (see *Allanazarova v. Russia*) or conditions of detention that are inadequate for the specific vulnerabilities of the individual concerned (*Aswat v. the United Kingdom*, concerning the extradition of a mentally-ill individual).

39. The criteria examined by the Court in respect of diplomatic assurances are set out in *Othman (Abu Qatada) v. the United Kingdom* (§§ 186-189).

40. Article 6 of the Convention is not applicable *ratione materiae* to extradition proceedings (*Mamatkulov and Askarov v. Turkey* [GC], §§ 81-83).

6. Expulsion of seriously ill persons

41. The Court summarised and clarified the relevant principles as to when humanitarian considerations will or will not outweigh other interests when considering the expulsion of seriously ill individuals in *Paposhvili v. Belgium* [GC]. The applicant, a Georgian national, faced deportation and a ban on re-entering Belgium for 10 years on public interest grounds (criminal convictions). Whilst in prison, he was diagnosed and treated for serious illnesses (chronic lymphocytic leukaemia, hepatitis C and tuberculosis). Other than the imminent death situation in *D. v. the United Kingdom*, the later *N. v. the United Kingdom* [GC] judgment referred to “other very exceptional cases” which could give rise to an issue under Article 3 in such contexts. In *Paposhvili v. Belgium*, the Grand Chamber indicated how “other very exceptional cases” was to be understood, referring to “situations involving the removal of a seriously ill person in which substantial grounds have been shown for believing that he or she, although not at imminent risk of dying, would face a real risk, on account of the absence of appropriate treatment in the receiving country or the lack of access to such treatment, of being exposed to a serious, rapid and irreversible decline in his or her state of health resulting in intense suffering or to a significant reduction in life expectancy” (*ibid.*, § 183). The Grand Chamber also clarified that that obligation to protect was to be fulfilled primarily through appropriate domestic procedures reflecting, in particular, the following elements (*ibid.*, §§ 185-193): the applicants should adduce evidence “capable of demonstrating that there are substantial grounds for believing” that they would be exposed to a real risk of treatment contrary to Article 3, noting that a certain degree of speculation was inherent in the preventive purpose of Article 3 and that applicants were not required to provide clear proof of their claim. Where such evidence was adduced, it was for the authorities of the returning State to dispel any doubts raised by it. The impact of removal on the persons concerned was to be assessed by comparing his or her state of health prior to removal and how it would evolve after removal. In this respect, the State had to consider inter alia (a) whether the care generally available in the receiving State “is sufficient and appropriate in practice for the treatment of the applicant’s illness so as to prevent him or her being

exposed to treatment contrary to Article 3”, the Grand Chamber specifying that the benchmark is not the level of care existing in the returning State; and (b) the extent to which the individual would actually have access to such care in the receiving State (the associated costs, the existence of a social and family network, and the distance to be travelled to access the required care, all being relevant in this respect). If “serious doubts” persisted as to the impact of removal on the person concerned, the authorities had to obtain “individual and sufficient assurances” from the receiving State, as a precondition to removal, that appropriate treatment will be available and accessible to the person concerned. The proposed deportation of a person suffering from serious illness to his country of origin in the face of doubts as to the availability of appropriate medical treatment may also breach Article 8 (*ibid.*, §§ 221-226).

B. The death penalty: Article 1 of Protocol No. 6 and Article 1 of Protocol No. 13

42. Protocols No. 6 and 13 to the Convention, which have been ratified by almost all member States of the Council of Europe, contributed to the interpretation of Article 2 of the Convention as prohibiting the death penalty in all circumstances so that there is no longer any bar to considering the death penalty – which caused not only physical pain but also intense psychological suffering as a result of the foreknowledge of death – as inhuman and degrading treatment or punishment within the meaning of Article 3 (see *Al-Saadoon and Mufdhi v. the United Kingdom*, §§ 115 et seq.). At the same time, the Court has found that Article 1 of Protocol No. 13 prohibits the extradition or deportation of an individual to another State where substantial grounds have been shown for believing that he or she would face a real risk of being subjected to the death penalty there (*ibid.*, § 123). Yet, in *Al-Saadoon and Mufdhi v. the United Kingdom*, which concerned the handover by the authorities of the United Kingdom operating in Iraq of Iraqi civilians to the Iraqi criminal administration under circumstances where the civilians faced capital charges, the Court, after finding a breach of Article 3, did not consider it necessary to examine whether there had also been violations of the applicants’ rights under Article 2 of the Convention and Article 1 of Protocol No. 13 (*ibid.*, §§ 144-145). In *Al Nashiri v. Poland*, which concerned the extraordinary rendition to the US naval base in Guantanamo of a suspected terrorist facing the death penalty, the Court found that at the time of the applicant’s transfer from Poland there was a substantial and foreseeable risk that he could be subjected to the death penalty following his trial before a military commission, in breach of Articles 2 and 3 of the Convention taken together with Article 1 of Protocol No. 6 (*ibid.*, §§ 576-579).

C. Flagrant denial of justice: Articles 5 and 6

43. Where a person risks suffering a flagrant breach of Articles 5 or 6 of the Convention in the country of destination, these provisions may exceptionally constitute barriers to the person’s expulsion, extradition or other form of transfer. Although the Court has not yet been required to define the term “flagrant denial of justice” more precisely, it has indicated that certain forms of unfairness could amount to such treatment (see the overview in *Harkins v. the United Kingdom* (dec.) [GC], §§ 62-65): conviction in absentia with no subsequent possibility of a fresh determination of the merits of the charge; a trial which is summary in nature and conducted with a total disregard for the rights of the defence; detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed; a deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country; and the use in criminal proceedings of statements obtained as a result of torture of the accused or a third person in breach of Article 3.

D. Article 8

1. Expulsion

44. In respect of the expulsion of foreigners, who were unlawfully present in the territory of the respondent State and could thus not be considered “settled migrants”, see *Butt v. Norway*. As regards the expulsion of “settled migrants”, that is, persons who have already been granted formally a right of residence in a host country and where such right is subsequently withdrawn, for instance because the person concerned has been convicted of a criminal offence, the Court has set out the relevant criteria to assess compatibility with Article 8 of the Convention in *Üner v. the Netherlands* [GC] (§§ 54-60): the nature and seriousness of the offence committed by the applicant; the length of the applicant’s stay in the country from which he or she is to be expelled; the time elapsed since the offence was committed and the applicant’s conduct during that period; the nationalities of the various persons concerned; the applicant’s family situation, such as the length of a marriage, and other factors expressing the effectiveness of a couple’s family life; whether the spouse knew about the offence at the time when he or she entered into a family relationship; whether there are children from the marriage and, if so, their age; the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled; the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and the solidity of social, cultural and family ties with the host country and with the country of destination.

45. The Court has applied these criteria in numerous cases since *Üner v. the Netherlands* [GC], although the weight to be attached to each criterion will vary according to the specific circumstances of the case (*Maslov v. Austria* [GC], § 70). By way of example, it has, inter alia, found that the fact that an adult “alien” had been born and had lived all his life in the respondent State from which he was to be expelled did not bar his expulsion (*Kaya v. Germany*, § 64). However, very serious reasons are required to justify expulsion in cases concerning settled migrants, who have lawfully spent all or the major part of their childhood and youth in the host country (*Levakovic v. Denmark*, § 45). In respect of expulsions of young adults who had been convicted of criminal offences committed as a juvenile, see *Maslov v. Austria* [GC], and *A.A. v. the United Kingdom*. Where there is a significant lapse of time between the denial of the residence permit – or the final decision on the expulsion order – and the actual deportation, the developments during that period of time may be taken into account (*T.C.E. v. Germany*, § 61). In *Hasanbasic v. Switzerland*, the Court dealt with a scenario where the refusal of a residence permit and the expulsion order primarily related to the economic well-being of the country, rather than the prevention of disorder and crime. In recent cases concerning expulsion of “settled migrants” and Article 8, the Court emphasised that, where the domestic courts have carefully examined the facts, applying the Convention case-law, and adequately balanced the applicant’s personal interests against the more general public interest in the case, it is not for the Court to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities, except where there are strong reasons for doing so (*Ndidi v. the United Kingdom*, § 76; *Levakovic v. Denmark*). By contrast, where the domestic courts do not adequately motivate their decisions and examine the proportionality of the expulsion order in a superficial manner, preventing the Court from exercising its subsidiary role, an expulsion based on such decision would breach Article 8 (*I.M. v. Switzerland*). This also holds true where the domestic courts do not take all relevant facts into consideration, such as an applicant’s paternity of a child in the respondent State (*Makdoudi v. Belgium**). In respect of a revocation of a residence permit on the basis of undisclosed information and the existence of sufficient procedural guarantees in the specific context of national security, see *Gaspar v. Russia*.

2. Residence permits

46. In addition to the scenarios concerning access to the territory for the purposes of family reunification (see paragraphs 5-8 above), the Court has examined cases under Article 8 concerning the denial of – and whether there was a positive obligation to grant – a residence permit to individuals already present in the territory of the respondent State (see *Jeunesse v. the Netherlands* [GC]; *Rodrigues da Silva and Hoogkamer v. the Netherlands*; see also *T.C.E. v. Germany*, in respect of a person who had been convicted of criminal offences). The Court also examined, in connection with administrative charges to be paid as a precondition for the processing of the request for a residence permit, whether a foreigner had effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully in the respondent State (*G.R. v. the Netherlands*). As regards the protection of a migrant's private-life interests in so far as they are affected by the uncertainty of his status and stay in a foreign country, see *Abuhmaid v. Ukraine* (see also *B.A.C. v. Greece* in respect of an asylum-seeker). Determining an application for a residence permit based on an applicant's health status is discriminatory and breaches Article 14 taken in conjunction with Article 8 (*Kiyutin v. Russia*; *Novruk and Others v. Russia*, concerning the denial of residence permits because the applicants were HIV-positive).

3. Nationality

47. In *Hoti v. Croatia*, the Court found a breach of Article 8 because of the uncertainty of the residence status of the applicant, a stateless person, due to the lack of an effective possibility to regularise his residence status. Article 8 does not guarantee a right to acquire a particular nationality or citizenship, but an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (*Slivenko and Others v. Latvia* (dec.) [GC], § 77; *Genovese v. Malta*, § 30). The same holds true for the revocation of citizenship already obtained, with the test requiring an assessment of whether the revocation was arbitrary and of the consequences of revocation were for the applicant (see *Ramadan v. Malta*, § 85, with regard to a person who nonetheless remained in the respondent country; and *K2 v. the United Kingdom* (dec.), who was, while abroad, deprived of citizenship and excluded from the territory of the respondent State because he was considered to be a threat to national security). The relevant principles also apply to the seizure of, and refusal to exchange, passports (*Alpeyeva and Dzhalogoniya v. Russia*, concerning the practice of invalidating passports issued to former Soviet Union Nationals).

48. The right to hold a passport and the right to nationality are not civil rights for the purposes of Article 6 of the Convention (*Sergey Smirnov v. Russia* (dec.)).

E. Article 1 of Protocol No. 7

49. In the event of expulsion, aliens lawfully resident in the territory of a State which has ratified Protocol No. 7 also benefit from the specific guarantees provided in its Article 1 (see *C.G. and Others v. Bulgaria*, § 70). The provision is applicable even if the decision ordering the applicant to leave has not been enforced to-date and requires the authorities to provide grounds for the expulsion, including in national security cases, in order for the applicant to make use of its guarantees (see *Ljatifi v. the former Yugoslav Republic of Macedonia*).

F. Article 4 of Protocol No. 4

50. Apart from push backs at sea or removals at or near borders described above (see paragraphs 11-13 above), the Court has dealt with collective expulsions of aliens who had been

present in the territory of the respondent State (asylum-seekers in *Čonka v. Belgium* and *Sultani v. France*; migrants in *Georgia v. Russia (I)* [GC], § 170), irrespective of whether they were lawfully resident in the respondent State or not. In *Čonka v. Belgium* and *Georgia v. Russia (I)* [GC], in which the Court found violations of Article 4 of Protocol No. 4, the individuals targeted for expulsion in each case had the same origin (Roma families from Slovakia in the former and Georgian nationals in the latter).

IV. Prior to the removal and the removal itself

Article 3 of the Convention

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

Article 5 of the Convention

“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 8 of the Convention

“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.”

Rule 39 of the Rules of Court

1. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may, at the request of a party or of any other person concerned, or of their own motion, indicate to the parties any interim measure which they consider should be adopted in the interests of the parties or of the proper conduct of the proceedings.
2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
3. The Chamber or, where appropriate, the President of the Section or a duty judge appointed pursuant to paragraph 4 of this Rule may request information from the parties on any matter connected with the implementation of any interim measure indicated.
4. The President of the Court may appoint Vice-Presidents of Sections as duty judges to decide on requests for interim measures.

A. Restrictions of freedom of movement and detention for purposes of removal

51. Once a foreigner has been served with a final expulsion order, his presence is no longer “lawful” and he cannot rely on the right to freedom of movement as guaranteed by Article 2 of Protocol No. 4 (*Piermont v. France*, § 44).

52. Under the second limb of Article 5 § 1(f), States are entitled to keep an individual in detention for the purpose of his deportation or extradition. To avoid being branded as arbitrary, detention under Article 5 § 1(f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the Government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued (*A. and Others v. the United Kingdom* [GC], § 164). The detention does not have to be reasonably considered necessary, for example to prevent the individual from committing an offence or fleeing, but it will be justified only for as long as the deportation or extradition proceedings are in progress (*ibid.*). If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 § 1(f) (*ibid.*). It is immaterial under Article 5 § 1(f) whether the underlying decision to expel can be justified under national or Convention law (*M and Others v. Bulgaria*, § 63). However, as asylum-seekers cannot be deported prior to a determination of their asylum application, in a number of cases the Court found there to be neither a close connection between the detention of an applicant who had lodged an asylum application which had not yet been determined and the possibility of deporting him, nor good faith on the part of the national authorities (*R.U. v. Greece*, §§ 94-95; see also *Longa Yonkeu v. Latvia*, § 143; and *Čonka v. Belgium*, § 42, for examples of bad faith). Detention for the purposes of extradition may be arbitrary from the outset due to the person’s refugee status prohibiting extradition (*Eminbeyli v. Russia*, § 48; see also *Dubovik v. Ukraine*, where the applicant applied for and was granted refugee status after being placed in detention for purposes of extradition). Where an alien cannot be removed for the time being, for example because the removal would breach Article 3, a policy of keeping an individual’s possible deportation “under active review” is not sufficiently certain or determinate to amount to “action being taken with a view to deportation” (*A. and Others v. the United Kingdom* [GC], §§ 166-167), including in national security cases (*ibid.*, §§ 162-190; see also *Al Husin v. Bosnia and Herzegovina (no. 2)*, where the Court found that the ground for the applicant’s detention did not remain valid after it had become clear that no safe third country would admit the applicant; for a case where the Court found the detention of a migrant who was considered a security threat to have been in conformity with Article 5 § 1(f), see *K.G. v. Belgium*).

53. States must make an active effort to organise a removal and take concrete steps and provide evidence of efforts made to secure admission in order to comply with the due diligence requirement, for example where the authorities of a receiving state are particularly slow to identify their own nationals (see, for example, *Singh v. the Czech Republic*) or where there are difficulties in connection with identity papers (*M and Others v. Bulgaria*). For the detention to be compliant with the second limb of Article 5 § 1(f), there must be a realistic prospect that the deportation or extradition will be carried out; the detention cannot be said to be effected with a view to the alien's deportation if the deportation is, or becomes, unfeasible because the alien's cooperation is required and he is unwilling to provide it (see *Mikolenko v. Estonia*, in which the Court also considered that the authorities had at their disposal measures other than the applicant's protracted detention in the deportation centre in the absence of any immediate prospect of his expulsion; see also *Louled Massoud v. Malta*, §§ 48-74; *Kim v. Russia* and *Al Husin v. Bosnia and Herzegovina (no. 2)*). However, the Court found that it amounted to an abuse of the right of application where an applicant had claimed to be of another nationality and refused to cooperate in order to clarify his identity, while the authorities intending to remove him were in contact over a lengthy period with their counterparts in the alleged country of nationality, and also tried to deceive the Court as to his nationality (see *Bencherif v. Sweden* (dec.)). There may also be no realistic prospect of deportation in the light of the situation in the country of destination (*S.Z. v. Greece*, where the applicant's Syrian nationality was established when he submitted his passport and the worsening armed conflict in Syria was well-known).

54. The indication of an interim measure by the Court under Rule 39 of the Rules of Court (see paragraph 60 below) does not in itself have any bearing on whether the deprivation of liberty to which that individual may be subject complies with Article 5 § 1 of the Convention (*Gebremedhin [Gaberamadhien] v. France*, § 74). Where the respondent States refrained from deporting applicants in compliance with the interim measure indicated by the Court, the Court was, in a number of cases, prepared to accept that deportation or extradition proceedings were temporarily suspended but nevertheless were "in progress", and that therefore no violation of Article 5 § 1(f) had occurred (see *Azimov v. Russia*, § 170). At the same time, the suspension of the domestic proceedings due to the indication of an interim measure by the Court should not result in a situation where the applicant languishes in prison for an unreasonably long period (*ibid.*, § 171). Article 5 § 1(f) does not contain maximum time-limits; the question whether the length of deportation proceedings could affect the lawfulness of detention under this provision thus depends solely on the particular circumstances of each case (*Auad v. Bulgaria*, § 128, and *J.N. v. the United Kingdom*). The Court has also held that automatic judicial review of immigration detention is not an essential requirement of Article 5 § 1 of the Convention (*J.N. v. the United Kingdom*, § 96). Where the authorities make efforts to organise removal to a third country in view of an interim measure indicated by the Court, detention may fall within the scope of Article 5 § 1(f) (*M and Others v. Bulgaria*, § 73).

55. As regards the detention of persons with specific vulnerabilities, the same considerations apply under the second limb of Article 5 § 1(f) as apply under the provision's first limb (see paragraph 17 above, and, by way of example, *Rahimi v. Greece* and *Yoh-Ekale Mwanje v. Belgium*). As regards medical treatment during a hunger strike in detention pending deportation, see *Ceesay v. Austria*.

56. As regards the procedural safeguards under Article 5 §§ 2 and 4, see paragraphs 18-20 above. There are, however, a number of cases relating specifically to the shortcomings of domestic law as regards the effectiveness of judicial review of detention pending expulsion and the requirements of Article 5 § 4 (see, for example, *S.D. v. Greece*, §§ 68-77; *Louled Massoud v. Malta*, §§ 29-47; and *A.B. and Others v. France*, §§ 126-138).

B. Assistance to be provided to persons due to be removed

57. As regards the existence and scope of a positive obligation under Article 3 to provide medical, social assistance or other forms of assistance to aliens due to be removed, see *Hunde v. the Netherlands* (dec.), and *Shioshvili and Others v. Russia* (concerning a heavily pregnant applicant and her young children, whose stay in connection with the removal was caused by the authorities).

C. The forced removal itself

58. The fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the envisaged measure, provided that concrete measures are taken to prevent those threats from being realised, including in respect of applicants who had a record of previous suicide attempts (see *Al-Zawatia v. Sweden* (dec.), § 57). Where there are doubts as to the alien’s medical fitness to travel, the authorities have to ensure that appropriate measures are taken with regard to the alien’s particular needs (*ibid.*, § 58). In *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (§§ 64-71) the Court found a breach of Article 3 in respect of the manner in which a five-year old unaccompanied child was removed to the country of origin, without having ensured that the child would be looked after there. Situations of ill-treatment by public officials during the deportation process may breach Article 3 (see *Thuvo v. Cyprus*, where the Court found no violation of the substantive limb of Article 3 on account of the alleged ill-treatment, but a violation of the provision’s procedural limb due to the authorities’ failure to investigate effectively the applicant’s complaints about his alleged ill-treatment during the deportation process). Furthermore, breaches of confidentiality in the removal process - which in themselves may raise an issue under Article 8 - may lead to a risk of ill-treatment contrary to Article 3 upon return (see *X v. Sweden*, where the Swedish authorities informed their Moroccan counterparts that the applicant was a terrorist suspect).

D. Agreement to “assisted voluntary return” in Article 2 and 3 removal cases

59. In *N.A. v. Finland* the Court dealt with a situation where the applicant’s father had agreed to a so-called “assisted voluntary return” to the country of origin after his asylum request had been rejected. He left when the removal order was enforceable and was subsequently killed in the country of origin. The Court saw no reason to doubt that the applicant’s father would not have returned there under the scheme of “assisted voluntary return” had it not been for the enforceable removal order issued against him. Consequently, his departure had not been “voluntary” in terms of his free choice. The facts complained of were thus not incapable of engaging the respondent State’s jurisdiction under Article 1 of the Convention (§§ 53-57). Moreover, the absence of a genuinely free choice rendered invalid the supposed waiver of his rights under Article 2 and 3 by the applicant’s father, and the removal thus had to be considered as a forced return engaging the responsibility of the respondent State (§§ 58-60).

E. Rule 39 / Interim measures¹

60. When the Court receives an application, it may indicate to the respondent State under Rule 39 of the Rules of Court certain interim measures which it considers should be adopted pending the Court’s examination of the case. According to its well-established case-law and practice, the Court indicates interim measures only where there is a real and imminent risk of serious and irreparable

1. [Rule 39 / Interim measures](#)

harm. These measures most commonly consist of requesting a State to refrain from removing individuals to countries where it is alleged that they would face death or torture or other ill-treatment. In many cases, this concerns asylum-seekers or persons who are to be extradited whose claims have been finally rejected and who do not have any further appeal with suspensive effect at the domestic level at their disposal to prevent their removal or extradition (see paragraph 32 above). The Court has, however, also indicated interim measures in other kinds of immigration related cases, including with regard to the detention of children. Failure by the respondent State to comply with any Rule 39 measure indicated by the Court amounts to a breach of Article 34 of the Convention (see *Mamatkulov and Askarov v. Turkey* [GC], §§ 99-129; see also *Savridin Dzhurayev v. Russia* and *M.A. v. France*).

V. Other case scenarios

Article 4 of the Convention

- “1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term ‘forced or compulsory labour’ shall not include:
- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of [the] Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations.”

Article 8 of the Convention

- “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 12 of the Convention

“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 14 of the Convention

“The enjoyment of the rights and freedoms set forth in [the] 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.”

A. Economic and social rights

61. Other than in the context of reception conditions and assistance to be provided to persons due to be removed (see paragraphs 23 and 57 above), the Court has dealt with a number of cases

concerning the economic and social rights of migrants, asylum-seekers and refugees, primarily under the angle of Article 14 in view of the fact that, where a Contracting State decides to provide social benefits, it must do so in a way that is compliant with Article 14. In this respect, the Court found that a State may have legitimate reasons for curtailing the use of resource-hungry public services - such as welfare programmes, public benefits and health care - by short-term and illegal immigrants, who, as a rule, do not contribute to their funding and that it may also, in certain circumstances, justifiably differentiate between different categories of aliens residing in its territory (*Ponomaryovi v. Bulgaria*, § 54).

62. Differential treatment based on the immigration status of the child of an alien, whose application for refugee status had been rejected but who had been granted indefinite leave to remain, in respect of allocating social housing may thus be justified (*Bah v. the United Kingdom*). In *Ponomaryovi v. Bulgaria*, the Court found that a requirement to pay secondary school fees based on the immigration status and nationality of the applicants was not justified. In *Bigaeva v. Greece*, the Court found that excluding foreigners from the law profession was, in itself, not discriminatory, but that there had been a breach of the applicant's right to respect for her private life in view of the incoherent approach by the authorities, which had permitted the applicant to commence an 18-month traineeship with a view to being admitted to the bar, but upon completion refused her to sit for the bar examinations on that ground that she was a foreigner. Other cases adjudicated by the Court concerned child benefits (*Niedzwiecki v. Germany*; *Weller v. Hungary*; *Saidoun v. Greece*), unemployment benefits (*Gaygusuz v. Austria*), disability benefits (*Koua Poirrez v. France*), contribution-based benefits, including pension (*Andrejeva v. Latvia* [GC]), and admission to a contribution-based social security scheme (*Luczak v. Poland*).

63. The Court also found that the requirement for persons subject to immigration control to submit an application for a certificate of approval before being permitted to marry in the United Kingdom breached Article 12 (*O'Donoghue and Others v. the United Kingdom*).

B. Trafficking in human beings

64. A number of cases, dealt with by the Court under Article 4 in the context of trafficking in human beings, concerned foreigners, in connection with domestic servitude (*Siliadin v. France*; *C.N. and V. v. France*; *C.N. v. the United Kingdom*), sexual exploitation (*Rantsev v. Cyprus and Russia*; *L.E. v. Greece*; *T.I. and Others v. Greece*), and work in agriculture (*Chowdury and Others v. Greece*).

C. Obligations to prevent harm and to carry out an effective investigation in other migrant-specific situations

65. As regards the procedural obligations under Article 3 when investigating a racist assault on a migrant, see *Sakir v. Greece*.

VI. Procedural aspects of applications before the Court

Article 37 of the Convention

“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.”

A. Applicants in poor mental health

66. The case of *Tehrani and Others v. Turkey* concerned, *inter alia*, the removal of the applicants, Iranian nationals and ex-members of the PMOI recognised as refugees by UNHCR. After one of the applicants had written to the Court that he wished to withdraw his application, his representative informed the Court that he wished to pursue the application and that the applicant was in poor mental health and needed treatment. The Government stated that the applicant did not suffer from a psychotic illness but that further diagnosis could not be carried out due to his lack of co-operation. The Court noted that one of the applicant’s allegations concerned the possible risk of death or ill-treatment and considered that striking the case out of its list would lift the protection afforded by the Court on a subject as important as the right to life and physical well-being of an individual, that there were doubts about the applicant’s mental state and discrepancies of the medical reports, and concluded that respect for human rights as defined in the Convention and the Protocols thereto required the examination of the application to continue (§§ 56-57).

B. Starting point of the six-month period in Article 2 or 3 removal cases

67. While the date of the final domestic decision providing an effective remedy is normally the starting-point for the calculation of the six-month time-limit for which Article 35 § 1 of the Convention provides, the responsibility of a sending State under Article 2 or Article 3 of the Convention is, as a rule, incurred only when steps are taken to remove the individual from its territory. The date of the State’s responsibility under Article 2 or 3 corresponds to the date when that six-month time-limit starts to run for the applicant. Consequently, if a decision ordering a removal has not been enforced and the individual remains on the territory of the State wishing to remove him or her, the six-month time-limit has not yet started to run (see *M.Y.H. and Others v. Sweden*, §§ 38-41). The same would apply to removals concerning a sending State’s responsibility for an alleged risk of a flagrant denial of rights under Article 5 and 6 in the receiving State (see paragraph 43 above).

C. Absence of an imminent risk of removal

68. In removal cases, in which the applicant no longer faces any risk, at the moment or for a considerable time to come, of being expelled and in which he has the opportunity to challenge any new expulsion order before the national authorities and if necessary before the Court, the Court normally finds that it is no longer justified to continue to examine the application within the meaning of Article 37 § 1(c) of the Convention and strikes it out of its list of cases, unless there are special circumstances relating to respect for human rights as defined in the Convention and the Protocols thereto requiring the continued examination of the application (see *Khan v. Germany* [GC]). After the Court has struck an application out of its list of cases, it can at any time decide to restore it to the list if it considers that the circumstances justify such a course, in accordance with Article 37 § 2 of the Convention.

D. Standing to lodge an application on behalf of the applicant

69. In *G.J. v. Spain* (dec.), the Court found that a non-governmental organisation did not have standing to lodge an application on behalf of the applicant, an asylum-seeker, after his expulsion, as it had not presented a written authority to act as his representative, contrary to the requirements of Rule 36 § 1 of the Rules of Court. The case of *N. and M. v. Russia* (dec.) concerned the alleged disappearance of the applicants, two Uzbek nationals, whose extradition had been requested by the Uzbek authorities. The Court had indicated to the respondent Government, under Rule 39 of the Rules of Court, that they should not be removed to Uzbekistan or any other country for the duration of the proceedings before the Court. The Court later found that the lawyer who lodged the application to the Court on behalf of the applicants did not have standing to do so: the lawyer had not presented a specific authority to represent the applicants; there were no exceptional circumstances that would allow the lawyer to act in the name and on behalf of the applicants. There was no risk of the applicants being deprived of effective protection of their rights since they had close family members in Uzbekistan with whom they had been in regular contact and who, in turn, had been in contact with the lawyer after the applicants' alleged abduction: it was open to the applicants' immediate family to complain to the Court on their own behalf and there was no information that they had been unable to lodge applications with the Court.

List of cited cases

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

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

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

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

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

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