

European Court  
of Human Rights

# ANNUAL REPORT 2012

Provisional Version

Registry of the European Court  
of Human Rights  
Strasbourg, 2013

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## FOREWORD

*The year 2012 almost exactly corresponded to the term of office of my predecessor Sir Nicolas Bratza. It would not be possible to look back at the year without paying a well-deserved tribute to such an outstanding President. During his brief term he steered the Court through some rough waters. Sir Nicolas Bratza's presidency coincided with the United Kingdom Chairmanship of the Council of Europe, during which the British Government took the initiative of holding a crucial conference on the Court's future. The President played a key role during that period and successfully contributed to the preservation of the Court's function. It is hard to overstate the significance of his action during the preparation for the conference in Brighton. Bringing the authority and prestige of his office to bear, he ensured that the human rights protection mechanism, that has been in place for several decades, was preserved. Through his determination the Court was able to avoid the pitfalls and cross the hurdles. I will certainly, during my term of office, endeavour to pursue his untiring action in serving the cause of human rights.*

*The Brighton Conference was ultimately a success for the Court. It resulted in a declaration that can be regarded as constructive and even positive, in which States reaffirmed their "deep and abiding commitment to the Convention" and their attachment to the right of individual application. They further recognised the Court's immense contribution to the protection of human rights in Europe for more than fifty years. The States also expressed their "strong commitment to fulfil their primary responsibility to implement the Convention at national level", and the Convention must indeed be implemented properly at that level to avoid cases coming before the Court. In addition, a certain number of amendments to the Convention were decided at the Conference, for inclusion in a draft Protocol No. 15 that is currently being negotiated. Lastly, the Conference invited the Committee of Ministers to draft an optional Protocol to the Convention under which the Court would be empowered to give advisory opinions on the interpretation of the Convention.*

*The year 2012 has also seen the Court develop its relations with other national and international courts, with which the exchanges have been numerous. Among the most memorable events was the visit by a delegation from the Court to the United States Supreme Court in Washington and a visit to the Inter-American Court of Human Rights in San José, Costa Rica. The fact that they hold the Strasbourg Court in high esteem was shown by their warm welcome and the fruitful discussions engaged in on those occasions. Cooperation has now been established with the Inter-American Court and will be pursued over the coming years.*

*In 2012 the Court made optimal use of the single-judge formation introduced by Protocol No. 14 and has at last reaped the benefits of this*

*mechanism, which has been fully operational since June 2010. This Annual Report contains precise statistical information on the Court's situation and the effects of Protocol No. 14.*

*In the spring of 2012 the Court's activity was subjected to an in-depth audit by the Council of Europe's external auditors. In their report and recommendations the auditors fully recognised the effectiveness and quality of the Court's work, thus encouraging us to pursue our efforts along the same lines, especially as the report was particularly well received by the Committee of Ministers.*

*2012 saw further development of the Court's communications policy. The Court's website – the key resource for informing the public about the Court and its activities – has been considerably improved. First, a new HUDOC database of the Court's case-law was launched successfully. Second, the website now contains general information on the Court's case-law and practice, together with advice to potential applicants on how to lodge applications. For example, the very useful Practical Guide on Admissibility Criteria, produced after the Interlaken Conference, is now available in some twenty languages. Over forty factsheets dealing with various questions raised in the case-law are also online. Most factsheets have been translated into German, Russian and Polish.*

*In addition, over the past few years a certain number of blogs have appeared online concerning the Convention and the Court's case-law. They shed new and often valuable light on the way in which our case-law is perceived by others, contributing very effectively to its dissemination. We read them with the greatest interest and I commend these initiatives.*

*Lastly, the Human Rights Trust Fund agreed to provide funding for a training unit within the Registry and for a case-law translation project. These projects, which are aimed at certain States in particular, seek to provide legal professionals (judges, prosecutors and lawyers) with high-quality training in Convention law and to contribute to the dissemination of the Court's case-law. We cannot but express our gratitude to the Human Rights Trust Fund for its contribution.*

*Despite the significant number of pending cases, thanks to the efforts of judges and Registry staff the Court's situation has seen clear improvement. The Court delivered almost 1,100 judgments and more than 1,800 decisions last year, and approximately 81,700 applications were declared inadmissible or struck out of the list by single judges. The number of pending applications, which had topped 160,000 in September 2011 and stood at 151,600 on 1 January 2012, had been reduced to 128,000 by the end of the year. With its mission to further human rights protection on the European continent and its high profile throughout the world, such improvement is particularly crucial.*

*For my part, I intend to follow resolutely in the footsteps of my predecessors, and it is a great honour for me now to preside over this institution – an institution often referred to as the conscience of Europe.*

*Dean Spielmann*  
President  
of the European Court of Human Rights





## **I. THE COURT IN 2012**



## THE COURT IN 2012

The year 2012 was an eventful and productive one for the Court, as reflected in the pages of this Annual Report. It was a year of transition in the leadership of the institution, and of significant change on the bench too. It was a year of two presidencies: that of Sir Nicolas Bratza, who presided the Court until his retirement on 31 October; and that of Mr Dean Spielmann, who was elected by the Plenary Court on 10 September and commenced his term on 1 November. The year was also marked by the retirement of one of the Court's Vice-Presidents, Françoise Tulkens. The other changes among the Court's officeholders and its composition as at the end of the year are described in Chapter III of this report.

The most significant event for the Court in 2012 was the high-level conference organised by the United Kingdom as the centrepiece of its chairmanship of the Committee of Ministers. The Brighton Conference (18-20 April) was the third such conference on the reform of the Convention since the process began with the Interlaken Conference in 2010. The Interlaken Action Plan laid down a timetable for the reform process that set 2012 as the first major staging post. By that point, a first set of proposals for amendment of the Convention was to be agreed in principle and then referred to the intergovernmental level for elaboration. In the detailed written contribution that it made to the preparation of the Conference, the Court proposed several amendments to the Convention for States to consider<sup>1</sup>. Three of these were accepted: a change in the age limit for judges by replacing the retirement age of 70 with an upper age-limit of 65 for new judges; the removal of the power of the parties to a case to veto relinquishment to the Grand Chamber (Article 30); and a shorter time-limit of four months for making an application to the Court. States agreed on two further amendments – the inclusion of a reference to subsidiarity and the margin of appreciation in the Preamble to the Convention, and the deletion of the second safeguard attached to the admissibility criterion that was introduced in 2010 by Protocol No. 14 (Article 35 § 3 (b)). These five elements will together comprise Protocol No. 15 to the Convention, currently in preparation under the auspices of the Committee of Ministers and intended to be opened for signature in 2013.

The Brighton Declaration also called for the drafting of an optional protocol creating a new advisory jurisdiction for the Court, so that the highest national courts may seek its guidance on the interpretation of a provision of the Convention. On this point too the Court contributed

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1. See "Preliminary opinion of the Court in preparation for the Brighton conference", adopted by the Plenary Court on 20 February 2012. The document is available on the Court's website.

a detailed paper to aid the discussions among States<sup>1</sup>, exploring the issues to which the idea gives rise. Unlike the reforms mentioned above, the decision in principle to adopt such a protocol (which would be the sixteenth) has not been taken. Instead, the Declaration invites the Committee of Ministers to decide, once the instrument has been prepared, whether it should be adopted. For the Court, the value of such an innovation lies in its potential to open a formal channel of communication and dialogue between the national and international levels that would complement the Court's existing dialogue with domestic courts. It should also foster subsidiarity, in the sense of better application of the Convention by national authorities, which has been a major theme of the reform discussions.

The largely constructive tone of the Brighton Declaration is all the more evident when set against the backdrop of the very strong criticism of the Court within the host country in the months leading up to the Conference. Tribute is due to the skill and tenacity of those who conducted the diplomatic negotiations right up to the eve of the Conference. The Brighton Declaration is particularly strong on the proper implementation of the Convention at the national level. It provides many concrete examples of measures which, properly followed-up, have the potential to improve considerably State compliance with the Convention, and to allow the Court to play its intended role as the final but subsidiary element in the Convention system.

The initial phase of the reform process thus came to a close at Brighton, which marked the transition to a new phase that will extend to 2015. This will be a time to gauge and evaluate the impact of the Protocol No. 14 reforms and all measures taken at the European and national levels pursuant to the three high-level conferences. The results achieved by the Court in 2012 have been truly exceptional. For the first time since the establishment of the new Court in 1998, the number of cases pending before it at the end of the year is lower than that of the previous year (128,100, a decrease of 16% in comparison to 2011). This is partly due to the levelling-off in the number of new applications, in contrast to previous years. But it is above all due to the remarkable impact of the single-judge procedure, by which the Court decided approximately 81,700 applications in 2012. Making optimum use of the procedure was a major priority for the Court in 2012, and will remain so in the coming years, the objective being to diminish the number of cases pending at this level to more manageable proportions in the medium-term (that is, by 2015). It is emphasised that this leap in productivity has not come at a cost to the Court's handling of other

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1. "Reflection paper on the proposal to extend the Court's advisory jurisdiction", adopted by the Plenary Court on 20 February 2012, and published on the website of the Council of Europe.

cases. Detailed statistical information appears in Chapter XI of this report.

While a certain optimism is therefore permitted regarding the Court's situation in the years ahead, the number of pending cases remains excessive. The Court has continued to develop the methods it uses to deal with cases, and to reflect on what further changes might be made so as to strengthen its adjudicative capacity. It has regularly sought an increase in its budget to permit additional recruitment to its Registry. While this has not been possible at a time of financial difficulty for many European States, many Governments have provided valuable support to the Court by seconding legal staff to its Registry, or directly funding their recruitment for a limited time. There were forty-five such officials working at the Registry in 2012, and they have made a significant contribution to the Court's work, in particular regarding the single-judge procedure. An additional resource was created after the Brighton Conference with the opening of a special account to which States have been invited to contribute. These funds will be used to recruit additional staff to work on the growing backlog of cases pending at Chamber level.

The Court was subject to an audit carried out early in the year by the external auditor of the Council of Europe, currently France's *Cour des Comptes*. Following an extensive and in-depth review of the Court's functioning, the external auditor delivered a very positive report to the Committee of Ministers<sup>1</sup>. The audit praises the efforts made by the Court in recent years to operate efficiently and effectively, streamlining its procedures, reviewing its methods and revising the structure of the Registry. It also highlights the value of the Court's sophisticated IT system which has accompanied and supported all these changes. At the same time it points to the need for further reform measures to relieve the great pressure on the Court's docket. The report was received very positively by the Committee of Ministers, and will be complemented by a second report in 2013 on the supervision of the execution of judgments.

In 2012 the Court maintained its usual busy schedule of official contacts and visits. Of particular note is the visit by a delegation of the Court to Washington DC to take part in a seminar with members of the Supreme Court of the United States on the theme "Judicial process and the protection of rights". The seminar was sponsored by the US State Department, with the close involvement of its Legal Adviser, Mr Harold Koh. The event was hosted by George Washington University Law School, which arranged for the opening session to be broadcast on the Internet. While in Washington, the Court's President delivered an

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1. Contained in the document CM (2012) 100, §§ 277-377.

address to the Permanent Council of the Organization of American States, and met with the members of the Inter-American Commission on Human Rights. The members of the Court's delegation were also the guests of Chief Justice Roberts at a dinner held at the premises of the Supreme Court.

The Court also developed its relations with other international human rights bodies and mechanisms in 2012. At the level of the United Nations, a meeting took place in Strasbourg between judges of the Court and members of the Human Rights Committee, the first such joint activity between these two bodies. Along with that there was an exchange of legal staff between the Court's Registry and the Secretariat of the Human Rights Committee, permitting a sharing of good practice and expertise. The Court also strengthened its ties with the Inter-American Court of Human Rights, which invited a delegation from Strasbourg composed of the President and the two Vice-presidents. The two Courts agreed to implement a number of practical steps to allow deeper dialogue and more continuous exchange between these regional human rights systems. A third international body with which the Court had substantive contacts in 2012 is the Special Tribunal for Lebanon, whose members visited Strasbourg for a day of discussions with the President and other members of the Court and Registry. At the level of the Council of Europe, a first meeting between members of the Court and the Group of Experts on Action against Trafficking in Human Beings (GRETA) took place.

As in previous years, the Court pursued its dialogue with the senior judiciary of a number of European States. The events organised included a working meeting at Strasbourg with a delegation from the Federal Constitutional Court of Germany. A similar visit was received from the judges of the Supreme Administrative Court of Sweden. The Court also provided assistance to the Constitutional Court of Turkey in its preparations for the new individual remedy that will permit individuals to bring human rights complaints directly before that court, creating a new possibility to remedy any violations at the domestic level. The Court's President led a delegation of judges from Strasbourg to the conference marking the fiftieth anniversary of Turkey's Constitutional Court, and gave the guest address at the solemn ceremony. The President led another delegation to a meeting in London with senior figures from the United Kingdom judiciary. Towards the end of the year the Court was the venue for a seminar of the International Association of Refugee Law Judges, attended by specialist judges from a number of European countries as well as many of the Court's judges. At the European level, the Court's annual meeting with the Court of Justice of the European Union saw both institutions agree to consolidate their long-standing links by organising more systematic contacts and exchanges among judges and between the legal staff of both courts.

The dialogue pursued in 2012 was not limited to the judicial sphere. A delegation of members of the German Parliament visited the Court for discussions with the President. A similar visit was received from the French Senate. Shortly before the Brighton Conference, the Court's President and Registrar met with the Joint Committee on Human Rights of the United Kingdom's Parliament to discuss the Court's situation. The hearing was broadcast live on the internet. In Strasbourg the Court maintained its close relations with the Parliamentary Assembly of the Council of Europe, receiving its new President, Mr Jean-Claude Mignon. In its Conference of Presidents of Parliaments held in September, the Parliamentary Assembly included on the agenda for discussion between national parliamentary leaders the issue of the reform of the Convention system. The Court's President took part in what was a very constructive debate, and delivered the keynote address. The following month the President returned to the Council of Europe's hemicycle to chair the first conference of the Council's key event in 2012, the World Forum for Democracy.





## **II. COMPOSITION OF THE COURT**



## COMPOSITION OF THE COURT

At 31 December 2012 the Court was composed as follows (in order of precedence):

Name	Elected in respect of
Dean Spielmann, President	Luxembourg
Josep Casadevall, Vice-President	Andorra
Guido Raimondi, Vice-President	Italy
Ineta Ziemele, Section President	Latvia
Mark Villiger, Section President	Liechtenstein
Isabelle Berro-Lefèvre, Section President	Monaco
Corneliu Bîrsan	Romania
Peer Lorenzen	Denmark
Boštjan M. Zupančič	Slovenia
Nina Vajić	Croatia
Anatoly Kovler	Russian Federation
Elisabeth Steiner	Austria
Alvina Gyulumyan	Armenia
Khanlar Hajiyev	Azerbaijan
Dauid Thór Björgvinsson	Iceland
Danutė Jočienė	Lithuania
Ján Šikuta	Slovak Republic
Dragoljub Popović	Serbia
Päivi Hirvelä	Finland
George Nicolaou	Cyprus
Luis López Guerra	Spain
András Sajó	Hungary
Mirjana Lazarova Trajkovska	“The former Yugoslav Republic of Macedonia”
Ledi Bianku	Albania
Nona Tsotsoria	Georgia
Ann Power-Forde	Ireland
Zdravka Kalaydjieva	Bulgaria
Işıl Karakaş	Turkey
Nebojša Vučinić	Montenegro
Kristina Pardalos	San Marino
Ganna Yudkivska	Ukraine
Vincent A. De Gaetano	Malta
Angelika Nußberger	Germany
Julia Laffranque	Estonia
Paulo Pinto de Albuquerque	Portugal
Linos-Alexandre Sicilianos	Greece
Erik Møse	Norway

<b>Name</b>	<b>Elected in respect of</b>
Helen Keller	Switzerland
André Potocki	France
Paul Lemmens	Belgium
Helena Jäderblom	Sweden
Paul Mahoney	United Kingdom
Aleš Pejchal	Czech Republic
Johannes Silvis	Netherlands
Krzysztof Wojtyczek	Poland
Valeriu Grițco	Republic of Moldova
Faris Vehabović	Bosnia and Herzegovina

Erik Fribergh, Registrar

Michael O'Boyle, Deputy Registrar

### **III. COMPOSITION OF THE SECTIONS**



## COMPOSITION OF THE SECTIONS

### First Section

From 1 January 2012	
<i>President</i>	Nina Vajić
<i>Vice-President</i>	Anatoly Kovler Peer Lorenzen Elisabeth Steiner Khanlar Hajiyev Mirjana Lazarova Trajkovska Julia Laffranque Linos-Alexandre Sicilianos Erik Møse
<i>Section Registrar</i>	Søren Nielsen
<i>Deputy Section Registrar</i>	André Wampach

From 1 November 2012	
<i>President</i>	Isabelle Berro-Lefèvre
<i>Vice-President</i>	Elisabeth Steiner Nina Vajić Anatoly Kovler Khanlar Hajiyev Mirjana Lazarova Trajkovska Julia Laffranque Linos-Alexandre Sicilianos Erik Møse
<i>Section Registrar</i>	Søren Nielsen
<i>Deputy Section Registrar</i>	André Wampach

## Second Section

<b>From 1 January 2012</b>	
<i>President</i>	Françoise Tulkens
<i>Vice-President</i>	Danutė Jočienė Dragoljub Popović Isabelle Berro-Lefèvre András Sajó İşıl Karakaş Guido Raimondi Paulo Pinto de Albuquerque Helen Keller
<i>Section Registrar</i>	Stanley Naismith
<i>Deputy Section Registrar</i>	Françoise Elens-Passos

<b>From 13 September 2012</b>	
<i>President</i>	Ineta Ziemele
<i>Vice-President</i>	Danutė Jočienė Dragoljub Popović Isabelle Berro-Lefèvre András Sajó İşıl Karakaş Guido Raimondi Paulo Pinto de Albuquerque Helen Keller
<i>Section Registrar</i>	Stanley Naismith
<i>Deputy Section Registrar</i>	Françoise Elens-Passos

<b>From 1 November 2012</b>	
<i>President</i>	Guido Raimondi
<i>Vice-President</i>	Danutė Jočienė Peer Lorenzen Dragoljub Popović András Sajó İşıl Karakaş Nebojša Vučinić Paulo Pinto de Albuquerque Helen Keller
<i>Section Registrar</i>	Stanley Naismith
<i>Deputy Section Registrar</i>	Françoise Elens-Passos



## Third Section

From 1 January 2012		From 1 November 2012	
<i>President</i>	Josep Casadevall	<i>President</i>	Josep Casadevall
<i>Vice-President</i>	Corneliu Bîrsan	<i>Vice-President</i>	Alvina Gyulumyan
	Alvina Gyulumyan		Corneliu Bîrsan
	Egbert Myjer		Ján Sikuta
	Ján Sikuta		Luis López Guerra
	Ineta Ziemele		Nona Tsotsoria
	Luis López Guerra		Kristina Pardalos
	Nona Tsotsoria		Johannes Silvis
	Mihai Poalelungi*		Santiago Quesada
	Kristina Pardalos		Marialena Tsirli
	Santiago Quesada		
	Marialena Tsirli		
<i>Section Registrar</i>		<i>Section Registrar</i>	
<i>Deputy Section Registrar</i>		<i>Deputy Section Registrar</i>	
	* Until 30 April 2012.		
From 1 August 2012		From 1 December 2012	
<i>President</i>	Josep Casadevall	<i>President</i>	Josep Casadevall
<i>Vice-President</i>	Egbert Myjer	<i>Vice-President</i>	Alvina Gyulumyan
	Corneliu Bîrsan		Corneliu Bîrsan
	Alvina Gyulumyan		Ján Sikuta
	Ján Sikuta		Luis López Guerra
	Ineta Ziemele*		Nona Tsotsoria
	Luis López Guerra		Kristina Pardalos
	Nona Tsotsoria		Johannes Silvis
	Kristina Pardalos		Valeriu Grițco
	Santiago Quesada		Santiago Quesada
	Marialena Tsirli		Marialena Tsirli
<i>Section Registrar</i>		<i>Section Registrar</i>	
<i>Deputy Section Registrar</i>		<i>Deputy Section Registrar</i>	
	* Until 11 September 2012.		

### Fourth Section

#### From 1 January 2012

<i>President</i>	Lech Garlicki
<i>Vice-President</i>	David Thór Björgvinsson
	Nicolas Bratza
	Päivi Hirvelä
	George Nicolaou
	Ledi Bianku
	Zdravka Kalaydjieva
	Nebojša Vučinić
	Vincent A. De Gaetano
<i>Section Registrar</i>	Lawrence Early
<i>Deputy Section Registrar</i>	Fatoş Aracı

#### From 1 November 2012

<i>President</i>	Ineta Ziemele
<i>Vice-President</i>	David Thór Björgvinsson
	Päivi Hirvelä
	George Nicolaou
	Ledi Bianku
	Zdravka Kalaydjieva
	Vincent A. De Gaetano
	Paul Mahoney
	Krzysztof Wojtyczek
	Faris Vehabović*
<i>Section Registrar</i>	Lawrence Early
<i>Deputy Section Registrar</i>	Fatoş Aracı

\* Took up office on 1 December 2012.

**Fifth Section**

<b>From 26 September 2012</b>	
<i>President</i>	Dean Spielmann
<i>Vice-President</i>	Mark Villiger Karel Jungwiert Boštjan M. Zupancič Ann Power-Forde Ganna Yudkivska Angelika Nußberger André Potocki Paul Lemmens Helena Jäderblom Claudia Westerdiek Stephen Phillips
<i>Section Registrar</i>	
<i>Deputy Section Registrar</i>	

<b>From 1 November 2012</b>	
<i>President</i>	Mark Villiger
<i>Vice-President</i>	Angelika Nußberger Dean Spielmann Boštjan M. Zupancič Ann Power-Forde Ganna Yudkivska André Potocki Paul Lemmens Helena Jäderblom Aleš Pejchal Claudia Westerdiek Stephen Phillips
<i>Section Registrar</i>	
<i>Deputy Section Registrar</i>	

<b>From 1 January 2012</b>	
<i>President</i>	Dean Spielmann
<i>Vice-President</i>	Elisabet Fura Karel Jungwiert Boštjan M. Zupancič Mark Villiger* Ann Power-Forde Ganna Yudkivska Angelika Nußberger André Potocki Claudia Westerdiek Stephen Phillips
<i>Section Registrar</i>	
<i>Deputy Section Registrar</i>	

\* Replaced Elisabet Fura as Vice-President on 1 June 2012.

<b>From 18 September 2012</b>	
<i>President</i>	Dean Spielmann
<i>Vice-President</i>	Mark Villiger Karel Jungwiert Boštjan M. Zupancič Ann Power-Forde Ganna Yudkivska Angelika Nußberger André Potocki Paul Lemmens Claudia Westerdiek Stephen Phillips
<i>Section Registrar</i>	
<i>Deputy Section Registrar</i>	



**IV. SPEECH GIVEN BY  
SIR NICOLAS BRATZA,  
PRESIDENT OF THE EUROPEAN COURT  
OF HUMAN RIGHTS,  
ON THE OCCASION OF THE OPENING  
OF THE JUDICIAL YEAR,  
27 JANUARY 2012**



**SPEECH GIVEN BY SIR NICOLAS BRATZA,  
PRESIDENT OF THE EUROPEAN COURT  
OF HUMAN RIGHTS,  
ON THE OCCASION OF THE OPENING  
OF THE JUDICIAL YEAR,  
27 JANUARY 2012**

Presidents, Excellencies,  
Monsieur le Président du Conseil Général du Bas-Rhin,  
Monsieur le Sénateur Maire,  
Deputy Secretary General, colleagues, ladies and gentlemen,

It is always a great pleasure to welcome our distinguished guests to this ceremony, with which we mark the opening of the judicial year. It is of course for us particularly pleasing to see so many senior representatives from national courts.

I must also welcome former colleagues and in particular my predecessors, Jean-Paul Costa and Luzius Wildhaber.

I must greet too the representatives of the local community and the host State who do us the honour of joining us this evening. Finally, those who represent our parent institution, the Council of Europe, parliamentarians, permanent representatives and senior officers, also have their role and their stake in the Convention system. The Court needs their support and I thank those of you who are with us today for this ceremony. The protection of human rights is too important and too complex a business to be monopolised by one institution or body; it requires a collective effort as the authors of the Convention recognised.

The omens for 2012 are hardly auspicious. The economic crisis with its potential for generating political instability seems to spiral further and further out of control. All our societies are experiencing difficulties that few of us can have foreseen only a short time ago. In this environment the vulnerable are more exposed and minority interests struggle to express themselves. The temptation is to be inward-looking and defensive, for States as well as individuals. Human rights, the rule of law, justice seem to slip further down the political agenda as governments look for quick solutions or simply find themselves faced with difficult choices as funds become scarce. It is in times like these that democratic society is tested. In this climate we must remember that human rights are not a luxury.

And yet at the same time events in North Africa and part of the Middle East and more recently in Burma remind us that the aspiration

for fundamental rights and democratic freedoms is universal. The humbling courage of ordinary people in Cairo, Tripoli and Homs brings home to us the true value of ideas and principles which we too often take for granted. It also reminds those of us who have the privilege of working within this system why we are here.

Looking at these different contexts I draw what is for me an inescapable conclusion. That is that the argument for effective international action to secure human rights and democracy is as compelling as it has ever been. Council of Europe countries which already have the benefit of what is incontestably the leading mechanism for international human rights protection have a responsibility to themselves but also to the wider international community to preserve and indeed build on their extraordinary achievement in giving concrete expression to the ideals and hopes expressed in the Universal Declaration.

I make no apologies for beginning this evening by addressing the broader picture because I do not believe that what we do here in Strasbourg can be seen in isolation – but also because it helps us put into perspective the difficulties confronting us, while placing them in a context which perhaps makes it easier to focus on priorities. For several years now the Court has been treated as a patient whose sickness, if not terminal, is all but incurable, or at least the eminent physicians summoned to diagnose the disease have seemed unable to agree on the cure to be prescribed. The reform process leading up to Protocol No. 14, the Wise Persons' Report, the Conferences of Interlaken and İzmir and a new conference to be held under the United Kingdom Chairmanship of the Committee of Ministers this year: these are all evidence of the efforts made to adapt the Convention system to the situation of massive caseload which was the inevitable consequence of the enlargement of the Council of Europe to include post-communist States as they embraced democracy.

While I do not underestimate the challenges which still face us and while I am grateful for the different initiatives taken by governments chairing the Committee of Ministers, I think we have sometimes lost sight of more healthy signs of life. Firstly, throughout this period of intense activity on the reform front, the Court has continued to deliver a substantial number of judgments on important issues of human rights jurisprudence. A glance at the short case-law survey in the provisional version of the Annual Report for 2011 which is available today indicates the range of cases dealt with and how the Court has steadily continued to apply the Convention and its own case-law across a wide spectrum of issues. In doing so it fulfils its Convention mission of maintaining and strengthening human rights at national level. These cases which commonly require a delicate balancing of sometimes multiple competing interests are the essence of the Court's work. They are perhaps the most



important yardstick by which the effectiveness of the Convention machinery should be measured.

But the Court has also taken a number of decisive and rather bold steps designed to enhance the effectiveness of the Convention system. Without going into details, as many of you will be aware, it developed the pilot-judgment procedure in response to the proliferation of structural and systemic violations capable of generating large numbers of applications from different countries. It has also adopted a prioritisation policy under which it aims to concentrate its resources, and particularly those of the Registry, on the cases whose adjudication will have the most impact in securing the goals of the Convention, as well as those raising the most serious allegations of human rights violations. Finally, in implementing Protocol No. 14 the Court has sought to achieve the maximum effect for the single-judge mechanism, under which a single judge assisted by a Registry rapporteur carries out the filtering function. The results obtained using this new procedure have been spectacular, with an increase of over 30% of applications disposed of in this way.

In direct response to the Interlaken and İzmir Conferences, the Court has also made a considerable effort to increase the information available on its procedure and particularly on admissibility conditions. Thus the Court has published a detailed admissibility guide now available in fourteen languages, notably thanks to contributions from different States. At the end of last year it put an admissibility checklist on its website, with a progressive sequence of questions aimed at helping potential applicants understand the reason why their application might be declared inadmissible. Just yesterday we launched a short admissibility video produced with the support of the authorities of Monaco which aims to get across the message in a simple, graphic way that 90% of applications fail to meet the admissibility conditions and what those conditions are.

Another example of responding to concerns expressed at these conferences is the reorganisation in 2011 of the Court's internal set-up for dealing with urgent requests for interim measures under Rule 39 of the Rules of Court. Having been nearly submerged by such requests just over a year ago, the Court changed its procedures at the judicial and administrative level, revised its practice direction, and, through its President, made a public statement on the situation. These measures have produced their effects quickly, returning this aspect of proceedings to a more normal rhythm.

I think that it is therefore fair to say that the Court has done broadly what it was asked to do under the different declarations and action plans. We now await proposals to be brought forward under the United Kingdom Chair in preparation for a conference to be held in Brighton

in April, as announced by the Prime Minister this week in his speech to the Parliamentary Assembly. Before leaving the topic of the Court's input to the reform process, I should like to take up one claim that has been repeated in different quarters and comes back at regular intervals. This is that the Court and its Registry are in some way inefficient and that that is why a backlog has been allowed to build up. I categorically refute that suggestion which is indeed offensive to the many highly committed and hard-working judges and officials who make up the Court and its Registry. What may be considered to be inefficient is the system, which was not designed to cope with the massive case-load with which it is now confronted. Within the means available to it, the Court has done everything it can to rationalise and streamline its processes and with remarkable success, as has been confirmed by a number of outside observers and by a consistent increase in its overall productivity. This year our working methods will be scrutinised by the French Court of Auditors, who are the Council of Europe's external auditors and while there is always something to learn from these exercises I have no doubt that they will recognise that much has already been achieved.

But as was acknowledged at both Interlaken and İzmir, the Convention is a shared responsibility. The Court self-evidently cannot shoulder the whole burden of its implementation. As is clear from the terms of the Convention and as the Court has consistently stressed, the primary responsibility for securing the Convention rights and freedoms falls on the Contracting States themselves. This means in particular acting to prevent violations and establishing remedies to afford redress where breaches are committed. Where States do this seriously, where national courts apply the Convention and its case-law convincingly, the Strasbourg Court's task is made considerably easier. The importance of effective action at domestic level has been recognised at every stage in the reform process, notably in the package of Resolutions accompanying Protocol No. 14 and in the Interlaken and İzmir Declarations.

One crucial area in this respect is the proper execution of judgments. The taking of timely and appropriate general measures to eliminate the causes of the violation found is a key component of the Convention system, among other things, because it reduces the risk of future applications brought on the same basis. Where the Court finds that the violation is of a structural, systemic or endemic character, speedy remedial action at national level is even more critical. Failure to take such action in good time results in what we refer to as repetitive cases. The Court currently has over 30,000 such cases on its docket. This phenomenon represents a significant obstacle to the smooth functioning of the Convention system as a whole and serious efforts must be made to identify effective solutions. Ultimately these are cases which should not be before the Court; there is typically a clear breach and the Court's only role is to establish the amount of compensation to be awarded. The

only effective response to these situations lies with the Contracting States themselves. So far we would say that the responsibility for these cases has not been shared equitably.

Another important aspect of effective Convention implementation is the role of the national courts and the necessary dialogue between Strasbourg and its national counterparts, as I mentioned earlier. Despite what is sometimes heard, the Court is highly respectful of national courts and their place in the Convention system. National courts applying themselves the Convention can be influential in the way in which the Court's own interpretation evolves. In pursuit of this dialogue we have regular working meetings with national superior courts, just this week for instance with the German Federal Constitutional Court.

But there is also scope for judicial dialogue through judgments and decided cases. I would cite one recent example in relation to my own country – the Grand Chamber's judgment in *Al-Khawaja and Tahery v. the United Kingdom*<sup>1</sup>. The Supreme Court of the United Kingdom conveyed to Strasbourg its misgivings over what it perceived as an inflexible application of the Court's case-law on the fairness of relying on hearsay evidence, with no proper regard to the specific features of the country's rules of criminal procedure. This view was considered carefully by our Court, and responded to at length in the Grand Chamber's judgment. It was, in my view, a very valuable exchange, conducted in a constructive spirit on both sides.

There is, of course, as things stand, no formal, direct channel permitting such communication or exchange within the Convention system. Whether there should be a new, purpose-made procedure for dialogue between national courts and the European Court is a question now under consideration in the broader reflection on future reforms.

Ladies and gentlemen, the notion of shared responsibility runs through the Convention, responsibility shared between the Court and the Contracting States, but also between the Contracting States themselves. It relates firstly to implementation of the Convention and particularly to the execution of judgments, the clearest expression of the principle of the collective guarantee. States are responsible for their own and each others' respect for human rights. But they are also responsible for the Convention machinery and its proper functioning. This includes ensuring that the Court is properly resourced. I am of course aware of the budgetary constraints imposed on the Council of Europe and the very real economic difficulties facing member States. I am also conscious of the special efforts that have been made until recently to increase, or at least to protect, the Court's budget. I would simply say that if the innovative measures taken by the Court are to be fully exploited, as long

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1. [GC], nos. 26766/05 and 22228/06, ECHR 2011.

as the volume of incoming cases continues to increase, some additional financial support will be necessary.

But support for the Court should be more than just financial. As judges we are responsible for ensuring that the Court's judgments continue to be of appropriate quality to carry sufficient weight. I do not expect governments to agree with all the Court's judgments and decisions and they are naturally free to express that disagreement. Where they feel the need to do so, I would urge them to use terms which do not undermine the independence and authority of the Court and which seek to rely on reasoned argument rather than emotion and exaggeration. Democracy cannot function effectively without the rule of law; there can be no rule of law without respect for an independent judiciary, and that is true at European as well as domestic level.

One important issue for the future of the Convention system is the European Union accession. Last October a draft accession treaty was submitted by the Steering Committee for Human Rights to the Committee of Ministers of the Council of Europe for consideration and further guidance. However, since then the process seems to have stalled. Without accession the European Union is left in the anomalous position of not being subject to the same external scrutiny as its member States. Moreover accession is now urgently needed for the sake of preserving legal certainty in the field of European fundamental rights protection. The increasing number of binding legal instruments laying down fundamental rights within the European Union legal system – and the risk of confusion which goes with it – only reinforces the need for an external mechanism capable of providing legal certainty as to the minimum protection standard applicable in the field. This was recognised in the Lisbon Treaty which provides that this anomaly is to be removed. After some thirty years of discussion, all that now appears to be lacking is the political will to overcome the last obstacles. I would therefore urge the member States to make every possible effort to reach a compromise allowing the completion of the process.

Ladies and gentlemen, this is the first time that I have been called upon to address this gathering, but as it is also the last time, since my term of office comes to an end next autumn, I hope you will forgive me a personal reflection as someone who has been involved with the Convention for over forty years, as counsel, member of the Commission and a judge of the Court itself. Looking back over the first fifty years of its existence, the achievements of the Court in setting standards throughout Europe and giving practical effect to each of the fundamental rights in the Convention have been truly remarkable.

Any process of selection is inevitably subjective. But certain of its achievements stand out: for example, the Court's protection of the right to life by its repeated insistence on a prompt, independent, effective and

transparent investigation into killings and sudden deaths, whether at the hands of the agents of the State or otherwise, and the Court's implacable opposition to the use of the death penalty, whether in member States or elsewhere; the increasing firmness shown by the Court in outlawing acts of ill-treatment of those in custody, in requiring an effective investigation into allegations of ill-treatment and in condemning unacceptable conditions of detention; the Court's continuing emphasis on the fundamental importance of prompt judicial control of all forms of detention; the Court's insistence on the independence and impartiality of national tribunals and its development of the principle of legal certainty to prevent the arbitrary quashing of final and binding judgments of the domestic courts; the strong protection given by the Court to private sexual relations, in particular private homosexual relations, whether in civilian life or in the armed forces; the Court's insistence that any system of covert surveillance should have effective statutory safeguards against abuse, and the increased attention shown to affording protection against media intrusion into the private life of individuals; the Court's strong defence of the freedom of the press, particularly when fulfilling their watchdog role and of the rights of journalists to protect their sources; and last, but not least, the increasing attention attached by the Court to the protection of minorities and the prohibition of discrimination on grounds of race, ethnic origin and gender.

What of the future? There are as I have indicated grounds for real optimism, but there are also major challenges. What is indispensable is to ensure that the Court remains strong, independent and courageous in its defence of Convention rights. But, of equal importance is that the Court should be able to assume the supervisory role for which it was designed. This it can only do with the help of the member States themselves and their willingness to assume their primary responsibility not only of protecting and giving effect to fundamental rights but of remedying breaches of those rights as and when they occur.

The British Prime Minister, David Cameron, in his speech to the Parliamentary Assembly this week acknowledged the importance of Contracting States, as he put it, "getting better at implementing the Convention at national level". He also recognised the strategic importance of fundamental rights protection over and above purely national interests. The Prime Minister finished his speech by promising us that the reform proposals put forward by his government would, to use his own words again, be "built on the noble intentions of the Convention" and "driven by a belief in fundamental human rights and a passion to advance them". I think that aspiration is something that we can all subscribe to. Thank you.

I turn now to our invited speaker this evening, Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights.

Commissioner, by inviting you to speak this evening as your term of office draws to a close we wished both to recognise the important role that other Council of Europe actors play within the Convention system and to pay tribute to your own tireless work for human rights throughout the Council of Europe States. You have built successfully on the foundations laid by your predecessor to make the office of Commissioner an essential point of reference on the landscape of European human rights protection. Your personal authority on an impressive range of human rights issues is acknowledged throughout Europe. You have also been an effective advocate for the European Court of Human Rights throughout your time in Strasbourg. We welcome you this evening as our honoured guest, and I invite you to take the floor.

**V. SPEECH GIVEN BY  
MR THOMAS HAMMARBERG,  
COUNCIL OF EUROPE  
COMMISSIONER FOR HUMAN RIGHTS,  
ON THE OCCASION OF THE OPENING  
OF THE JUDICIAL YEAR,  
27 JANUARY 2012**





**SPEECH GIVEN BY MR THOMAS HAMMARBERG,  
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President Bratza, members of the Court, excellencies, ladies and gentlemen,

Thank you for inviting me to this event today, marking the opening of the Court's judicial year.

The last time I had the honour to speak in this very room was during the hearing before the Grand Chamber in the case of *M.S.S. v. Belgium and Greece*<sup>1</sup>. That was in fact my first oral intervention here.

In that case the Court delivered a judgment a few months later which had wide-ranging consequences for the protection of the human rights of asylum-seekers in Europe: it recognised that the living conditions asylum-seekers had to endure in Greece amounted to degrading treatment.

In response several member States then suspended returns of asylum-seekers to Greece. The findings of the Court also prompted more calls within the European Union for a rethink of the "Dublin Regulation" itself.

***The significance of the Court***

I have now served as Commissioner for Human Rights for almost six years. I have travelled all over the European continent. I have visited police stations, courts, penitentiary institutions, refugee camps, Roma settlements, shelters for battered women and care institutions for both disabled children and adults.

At the same time I have had discussions with active civil society groups, ombudsmen, equality commissions, prosecutors, judges and other representatives of the judicial system as well as with local politicians, parliamentarians and, of course, government leaders, ministers and other governmental representatives.

Based on these experiences I can testify to the enormous importance of this Court.

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1. [GC], no. 30696/09, ECHR 2011.

– One. The Court is certainly important for *individual victims* who are given an opportunity to obtain justice when this is denied at home. This is also a relief for the families of the actual victims, who are in many cases victimised themselves.

– Two. The fact that such Court decisions *oblige national authorities themselves to take concrete action to remedy the violations committed against individual victims* is crucial. An example is set when a mistake is corrected by the same authorities which previously failed.

– Three. There is, moreover, an essential preventive dimension in the way the system works. Court decisions remind governments about the *need for changes to laws and procedures* to avoid future violations of the European Convention. I can testify that this dimension is in fact taken seriously by decision-makers in most member States.

– Four. The *interpretative authority (res interpretata)* of the Court's judgments is also important. National legislators and courts must take into account the Convention as interpreted by your Court – even in judgments concerning violations that have occurred in other countries. In all European States, law, policy and practice are now heavily influenced by the Court's decisions.

– Five. There is one more dimension to highlight, which is somewhat difficult to define but no less important. The fact that an individual can appeal to an international court when he or she feels let down by the domestic justice system and that governments will have to listen to the response of this body – on the case itself and on the system at the origin of the case – has a broader psychological effect. In short, it gives *hope* to quite a number of people – not only to those who file complaints or want to do so, but to many others as well.

The mere existence of such an international court – principled, impartial and fair in its procedures and rulings – is an encouragement for people working for human rights throughout the continent. I have noticed that this Court is an inspiration for people and courts outside Europe as well. Indeed, its judgments are looked to by superior courts all over the world.

### ***Essential features of the European system***

I hope these aspects of the system will not be forgotten in the ongoing discussion about the need to reform the Court. In spite of my enthusiasm I do agree that changes are needed – in order for the Court to be able to cope with its workload and for it to play its role as the supreme interpreter of the European Convention in a truly competent manner.

However, everything that I have learned has made me believe that there are some features of the system which definitely must be protected through the reform process. One is the possibility of individual petition. Another is the principle of collective guarantee. A third one is the notion of the Convention as a “living instrument”, allowing the Court to make dynamic interpretations of the rights set forth in the Convention.

The right of *individual petition* – giving an individual the right to seek justice, as a last resort, at supranational level – should in my opinion remain a key characteristic of the system of protecting European human rights.

There is deep concern among human rights organisations that this right will be undermined by the reform process. Even the less dramatic proposals such as introducing a fee or requiring communications via a professional attorney have met their opposition. This is understandable, as the individuals most in need of protection may lack financial resources or access to lawyers.

The dilemma is of course how to combine the principle of individual petition with an effective “filtering” mechanism which would make it possible for the Court to focus on the key problems – and with limited delays. This is clearly one of the major issues for the reform process and I notice that positive steps are already being taken by the Court itself to square this circle.

Another essential feature of the system which should be protected is the inter-State dimension. The Convention is built on the notion of a *collective guarantee*. This could be described as a reciprocal agreement between the State Parties based on the understanding that they – and their citizens – all have an interest in the protection of human rights, including in other States, and an interest in safeguarding the rights of individuals throughout Europe.

I am convinced that this idea that we will all benefit when human rights are respected all over the continent has become even more important with time. Nation States are less and less isolated from their neighbours – I do not need to mention the obvious link between human rights and peace; or the relationship between human rights and migration; or the simple fact that each and every State nowadays has citizens in other countries.

The principle of collective guarantee is also reflected in the peer approach to the monitoring of the execution of Court decisions – by the member States, together, in the Committee of Ministers. The possibility in the Convention for inter-State complaints is another reflection. However, most important in my view is the very idea that we are in this together.

A consequence of this attitude is that all member States should be concerned when the Convention is violated in another country and, also, that every member State should accept that they themselves may be subject to the Court's procedures. No government is given immunity and member States are not divided into categories; they must all, as a matter of principle, be treated equally, according to the same standards. Those with better systems at home will have fewer problems in Strasbourg.

I mentioned the notion of the Convention as a “living instrument” and argued that this approach should also be protected. The fact that the Court has established a practice of *dynamic interpretations* is indeed crucial to its relevance.

After all, our societies have developed enormously in the past six decades. One example is the revolutionary changes caused by new information technologies. In other areas too, totally new human rights issues have emerged since the Convention was first drafted – problems which were unknown at the time.

The Court has of course received complaints through the years on human rights violations which are not specifically mentioned in the Convention and its response has been to apply the principles of the Convention to these new situations. Any other approach would have limited the usefulness of the Convention and the Court's procedures.

It should, however, be admitted that this is a difficult task and a genuine challenge to the wisdom of the judges. This is particularly the case when it comes to the development of attitudes in society which may, to complicate the matter further, also differ considerably between member States. Of course, the possibility of having additional Protocols drafted, adopted and ratified does exist but would not meaningfully address this problem in all its depth.

However, I do consider that the Court on the whole has handled this challenge in a proper manner. Criticisms about “judicial activism” or arbitrariness have really not been fair. The approach has been serious. The judges have not introduced just personal ideas; they explore whether there is a consensus on such cases in the superior courts in the member States; they analyse decisions of other international jurisdictions; and they take into account, when relevant, treaty developments in the United Nations.

### ***Rulings of particular interest and relevance***

The image and reputation of the Court is of course primarily influenced by its actual rulings on controversial issues – and media reactions to these decisions. The British newspaper *The Guardian* carried the other day an editorial with the headline: “European court of

human rights: judgment day.” Yes, the article did describe two Court decisions, but the word “judgment” referred to something else.

The editorial started with these words: “In the dock at the court of public opinion was Europe’s human rights framework.” It turned out that the paper in this particular case felt that the Court had in fact passed the test. It even wrote that the judges showed themselves to have been hard-headed, principled and pragmatic.

Not every institution manages to be praised in the media for being, at the same time, both principled and pragmatic...

The “court of public opinion” is indeed a challenge – and primarily for responsible politicians in member States. It may be tempting to exploit populist media reactions against inopportune, though principled, Court decisions; but I think that those who know better should instead seek to clarify the role of the Court and the legal issues at stake.

The Court itself should not be forced to enter into discussions on this level.

Let me refer to some decisions of the Court which may have been controversial but have had a particular significance for the promotion of justice on our continent. I already mentioned the landmark decision on the “Dublin Regulation”. There have been other key decisions preventing the deportation of people to countries where they are at risk of torture or other ill-treatment.

Decisions on cases of *discrimination against Roma people* have been particularly helpful in my own efforts to promote the rights of individuals within this heavily abused and disadvantaged minority. One example is the Court’s positions on the rights of Roma children to enjoy education without discrimination.

The fact is that Roma children in a number of countries are disproportionately represented in schools for children with intellectual disabilities. They can also be sent to mainstream schools which are Roma only, or to Roma-only classes in mixed schools. In all cases, the tendency is that they receive substandard education.

The Court has addressed these aspects in three important judgments: against Greece, for non-enrolment; against Croatia, for separate classes; and against the Czech Republic, for routinely putting Roma children in schools for people with intellectual disabilities. The standards these decisions have set are binding on all States: they should all make sure that their practices are in line with these judgments.

The judgment in *A. v. the United Kingdom*<sup>1</sup> was in my view another landmark decision. It was the first ruling on parental corporal punishment and one of the relatively few cases brought before the Court by a child applicant. The judgment required the State to provide children, as vulnerable individuals, with adequate protection, including effective deterrence, against degrading punishment. The conclusion in this case was that repeated, forceful hitting of a child was in breach of Article 3 of the Convention.

During the last two decades the Court has also taken steady steps to address problems related to homophobia and transphobia. A major result is that homosexuality is now decriminalised across Europe and there is a new awareness of the situation of transgender people.

Article 14 of the Convention has rightly been interpreted to cover discrimination on grounds of *sexual orientation and gender identity*. The Court has acknowledged that the right to respect for family life under Article 8 of the Convention also covers same-sex couples. This opens up new perspectives for the recognition of the human rights enjoyed by members of LGBT families, including children.

Another area in which particularly crucial decisions have been made is the human rights of *persons with disabilities*. The Court has made the point that persons with mental health problems or intellectual disabilities tend to be vulnerable and have in many cases suffered considerable discrimination throughout their lives. In view of the long-standing prejudices against them, it is particularly important to avoid further social exclusion.

In 2010 the Court examined the banning in Hungary of such individuals from taking part in general elections. The Court found such a blanket, automatic ban to be inadmissible. An indiscriminate removal of voting rights based solely on a mental disability requiring partial guardianship was found not compatible with the European Convention and the fundamental democratic principle of universal suffrage.

The blanket denial of *voting rights for prisoners* is another important issue which the Court has dealt with – and thereby provoked a judgment by the “court of public opinion”, or at least by the tabloid press in one particular member State.

In fact, the Court has given a wide margin of appreciation to member States on this issue: it has left it to them to determine which categories of prisoners, if any, could be deprived of the right to vote and how to apply the agreed criteria for such decisions. I am aware that a case on this issue is still pending before the Grand Chamber.

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1. 23 September 1998, *Reports of Judgments and Decisions* 1998-VI.

It is very useful that this issue has come up for Europe-wide discussion. The matter itself is of great principal importance and practices vary widely between the member States.

My own opinion is that if the deprivation of voting rights is to be introduced as a punishment there should be a logical connection between the offence and this particular sanction. Furthermore, such decisions should be individual, for the duration of the imprisonment only and be based on a judicial procedure.

The principle of universal suffrage is, after all, a cornerstone of democracy; there should be extremely strong reasons for depriving anyone of the right to vote. This right symbolises belonging to the human community. We are no longer excommunicating from our societies people who are “unwanted”.

This is also a question of purpose. It can hardly be argued that disenfranchising prisoners would deter crime or facilitate the reintegration of convicts after release into a normal, law-abiding life in society.

In fact, a large number of member States do indeed allow imprisoned citizens to vote and I have noticed that there is no public pressure in those countries to change this policy.

### ***Non-implementation of judgments – and the consequences***

Of course, some judgments are not welcomed by the governments concerned. This is obviously one reason why Court decisions are implemented slowly or not at all. Non-execution is indeed a major problem in the current system.

Though the majority of member States do comply with the Court's decisions, there are some which are strikingly slow to abide by their obligation to execute the judgments. Some important Court decisions have remained unimplemented after several years despite guidance given by the Committee of Ministers.

This is unacceptable. It is another injustice against the individual whose rights had been endorsed by the Court. It undermines the credibility of the protection system as such.

It is also one of the roots of a very concrete problem for the Court itself: it tends to cause so-called “repetitive applications” – new applications coming in on issues which have already been the subject of Court decisions and therefore should have been resolved by the respondent member States.

These “repetitive applications” contribute to the overloading of the Court, which in turn creates the risk of delayed decisions in general. This is a situation which produces a number of negative chain-effects.

I am sad to report that I have met people who have declared that they have decided not to bring their urgent case to the Court because they felt they could not wait so long for a judgment. This is particularly problematic in cases where the potential applicant fears harassment after having filed his or her complaint.

I have in fact received information about threats against applicants because of their complaints to Strasbourg. This is intolerable. As the Court has stated, applicants or potential applicants should be able to communicate with it freely, without being subjected to any form of pressure from the authorities to withdraw or modify their complaints.

### ***Violations should be remedied at home***

The Court is overloaded. As you know, more than 60,000 new applications were filed last year and the number of pending cases is now over 150,000.

It must be stressed that the problem is not that people complain, but that many of them have reasons to do so.

In more than 80% of the judgments delivered since 1959, the Court has found at least one violation of the Convention by the respondent State. The main reason why the Court is overloaded is that people have found that justice could not be obtained at home.

The obvious answer is that much more must be done to protect human rights at home, at the domestic level.

The European system was never intended to act as a long-term substitute for national mechanisms – quite the reverse. Each individual should be able to seek and receive justice at home, in line with the principle of subsidiarity. Recourse to an international court should be seen for what it is – essentially a failure to provide proper national remedies.

The problem is that the judicial processes in European countries are far from perfect. In fact, many of the complaints to the Strasbourg Court relate to excessively slow proceedings and to the failure of member States to enforce domestic court decisions. In several European countries, court decisions are often enforced only partly, after long delays, or sometimes not at all. Flawed execution of final court decisions must be seen as a failure to uphold the rule of law.

Domestic courts themselves are not functioning as they should in a great number of States, and former communist countries in particular have been slow to develop a truly independent and competent judiciary. Corruption and political interference are undermining public trust in the system.



In several European countries there is a widespread belief that the judiciary is corrupt and that the courts tend to favour people with money and contacts. Though this perception may sometimes be exaggerated, it should be taken seriously. No system of justice is effective if it is not trusted by the population.

While there has also been some progress, I have observed that the independence of judges is still not fully protected in some of the countries I have visited. Political and economic pressures still appear to influence the courts in some cases. Ministers and other leading politicians do not always respect the independence of the judiciary and instead signal to prosecutors or judges what is expected of them.

In other words, more needs to be done in order to implement the Convention through the national courts. After all, the Convention is part of the law of the land in all member States. This is expressed in different manners, an interesting model being the Human Rights Act in the United Kingdom.

On a positive note, let me also mention the significant impact of the various national human rights structures such as parliamentary ombudsmen, equality bodies, data protection commissioners, children's ombudsmen, police complaints commissions and other similar mechanisms. When they are allowed to act truly independently, they have the potential to improve the human rights situation considerably.

Building a human rights culture also requires governments to introduce policies which favour freedom and pluralism of the media and the emergence of active civil society groups.

For me the problems of the Court are primarily symptoms of a deeper crisis: human rights principles are still not taken sufficiently seriously in our member States. This, in turn, underlines the essential linkage between the Court and other parts of the Council of Europe.

### ***What future for the Court?***

However, this is not an excuse to slow down the reform process of the Court itself.

In fact, this process is ongoing and the Court is self-reforming. As President Bratza pointed out, it has adopted a prioritisation policy to concentrate resources on the cases which will have the most impact on securing the goals of the Convention. The adoption of Protocol No. 14 has made it possible to decide on admissibility through a single-judge procedure and this has already helped to speed up the process.

It is also important to avoid any outside pressure to reform turning into a numbers game. The focus must be on quality rather than on quantity. Well-reasoned judgments on key issues are the particular

strength of this Court. High quality interpretations of the Convention should be the highest priority.

My emphasis on the need for reforms at national level means that the further development of contacts and dialogues with the national courts is essential and will certainly have positive chain effects – including on the workload.

Improved information on the Court and its proceedings is essential and the new guide and video on admissibility are welcome developments. Such information should be a preoccupation for the whole of the Council of Europe – including its field offices – but of course also for the domestic structures in member States. With time this may well reduce the number of ill-founded applications. But more importantly it will contribute to the building of a more solid human rights culture in our Europe.

What about the judgment of the “court of public opinion”?

We should not be nervous. That “court” has “judges” other than the tabloid press – and these “judges” rule in favour of our Court.

In fact, they regard it as invaluable; they want it to have sufficient resources and they are ready to provide constructive advice for its future work.

Thank you.

## VI. VISITS



## VISITS

- 23 January 2012 Delegation from the Constitutional Court, Karlsruhe, Germany  
Mr Bülent Arınç, Deputy Prime Minister, Turkey
- 24 January 2012 Rt Hon David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, United Kingdom  
Sir David Baragwanath, President of the Special Tribunal for Lebanon  
Mr Louis De Lorimier, Permanent Observer of Canada to the Council of Europe
- 26 January 2012 Mr Marcel Lemonde, former Co-Investigating Judge of the Extraordinary Chambers of Courts of Cambodia  
Mr Alfonso Quaranta, President of the Constitutional Court, Italy
- 27 January 2012 Delegation from the Constitutional Court and Supreme Court, Ukraine  
Ms Nata Mesarovic, President of the Supreme Court of Cassation, Serbia  
Ms Antonella Mularoni, Secretary of State for Foreign Affairs, San Marino
- 30 January 2012 Delegation of parliamentarians, Germany
- 15 March 2012 Mr Dominique Baudis, Ombudsman, France
- 26 March 2012 Mr Ögmundur Jonasson, Minister of the Interior, Iceland  
Ms Clare Sumner, Director, Law and Rights, Ministry of Justice, United Kingdom
- 27 March 2012 Mr Erkki Tuomioja, Minister of Foreign Affairs, Finland
- 29 March 2012 Ms Astri Aas-Hansen, Secretary of State, Ministry of Justice, Norway
- 13 April 2012 Mr Jean-Marie Heydt, President of the Council of Europe Conference of INGOs
- 10 May 2012 Delegation from the Supreme Administrative Court, Sweden

14 May 2012	Mr Fikrat Mammadov, Minister of Justice, Azerbaijan
18 May 2012	Mr Titus Corlatean, Minister of Justice, Romania
23 May 2012	Mr Uri Rosenthal, Minister of Foreign Affairs, Netherlands
30 May 2012	Mr Jean-Pierre Sueur, Chair of the Laws Commission of the Senate, France
13 June 2012	Mr Valdis Dombrovskis, Prime Minister of Latvia
15 June 2012	Ms Roseanna Cunningham, Scottish Minister for Community Safety and Legal Affairs, United Kingdom
21 June 2012	Ms Valeriya Lutkovska, Ombudsman, Ukraine Hegumen Philip Ryabykh, Moscow Patriarchate Representative to the Council of Europe
22 June 2012	Mr Mogoeng Mogoeng, President of the Constitutional Court of South Africa
29 June 2012	Delegation from the Office of the United Nations High Commissioner for Refugees
2 July 2012	Mr Bernard Cazeneuve, Minister of European Affairs, France
3 July 2012	Msgr Franjo Komarica, President of the Episcopal Conference of Bosnia and Herzegovina
11 September 2012	Mr Didier Reynders, Minister of Foreign Affairs, Belgium
19 September 2012	Mr Vicenç Mateu Zamora, President of the Parliament of Andorra
20 September 2012	Mr Pio Garcia-Escudero, President of the Senate, Spain Mr Yiannikis Omirou, President of the Senate, Cyprus
3 October 2012	Mr Nicolae Timofti, President of the Republic of Moldova
11 October 2012	Mr Stanislav Rizman, President of the Criminal Division of the Supreme Court, Czech Republic
29 October 2012	Mr Douglas Davidson, Department of State, United States of America
20 November 2012	Ms Erato Marcoullis, Minister of Foreign Affairs, Cyprus

- 22 November 2012 Ms Maija Sakslin, Chair of the Management Board, and Mr Morten Kjaerum, Director, European Union Agency for Fundamental Rights  
Ms Tea Tsulukiani, Minister of Justice, Georgia  
Delegation from the Ministry of Justice, Hungary
- 11 December 2012 Mr Stavros Lambrinidis, Special Representative for Human Rights, European Union

In addition to the visits of the dignitaries listed above, the Court also organised 51 training sessions (targeted training programmes held over one or more days) attended by 991 participants, and arranged 463 information visits for a total of 14,109 visitors, most of them connected with the legal professions.

Since the beginning of 2012, with the assistance of the Human Rights Trust Fund, the Court has staged training sessions for legal officers from specific countries. In 2012 four sessions were held for judges and lawyers from Armenia, Serbia, Azerbaijan and Albania.

In 2012 the Court welcomed a total of 19,099 visitors (compared with 18,043 in 2011).





**VII. ACTIVITIES OF THE GRAND CHAMBER,  
SECTIONS AND SINGLE-JUDGE FORMATIONS**



## ACTIVITIES OF THE GRAND CHAMBER, SECTIONS AND SINGLE-JUDGE FORMATIONS

### A. Grand Chamber

#### 1. Activities

In 2012 the Grand Chamber held 11 oral hearings. It delivered 26 judgments (12 in relinquishment cases, 14 in rehearing cases).

At the end of the year 19 cases (concerning 22 applications) were pending before the Grand Chamber.

#### 2. Cases accepted for referral to the Grand Chamber

In 2012 the five-member panel of the Grand Chamber (Article 43 § 2 of the Convention and Rule 24 § 5 of the rules of Court) held 8 meetings to examine requests by the parties for cases to be referred to the Grand Chamber under Article 43 of the Convention. It considered requests concerning a total of 185 cases. In 80 of these cases the request was submitted by the Government, in 98 by the applicant and in 7 by both the Government and the applicant.

In 2012 the panel accepted requests in the following 7 cases:

*X v. Latvia*, no. 27853/09

*Sindicatul "Păstorul cel Bun" v. Romania*, no. 2330/09

*Vinter and Others v. the United Kingdom*, nos. 66069/09, 130/10 and 3896/10

*Fernández Martínez v. Spain*, no. 56030/07

*Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09

*Del Rio Prada v. Spain*, no. 42750/09

*E.S. v. Sweden*, no. 5786/08

#### 3. Cases in which jurisdiction was relinquished by a Chamber in favour of the Grand Chamber

First Section – *El Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09<sup>1</sup>; *X and Others v. Austria*, no. 19010/07; *Vallianatos and Others v. Greece*, nos. 29381/09 and 32684/09

Fourth Section – *Allen v. the United Kingdom*, no. 25424/09; *Maktouf and Damjanović v. Bosnia and Herzegovina*, nos. 2312/08 and 34179/08

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1. Judgment of the Grand Chamber delivered on 13 December 2012.

Fifth Section – *Chabauty v. France*, no. 57412/08<sup>1</sup>; *Georgia v. Russia* (II), no. 38263/08; *O’Keeffe v. Ireland*, no. 35810/09

## **B. Sections**

In 2012 the Sections delivered 861 Chamber judgments (concerning 1,119 applications) and 206 Committee judgments (concerning 509 applications).

The First Section delivered 213 Chamber judgments (concerning 298 applications) and 46 Committee judgments (concerning 71 applications), the Second Section 180 Chamber judgments (concerning 247 applications) and 72 Committee judgments (concerning 107 applications), the Third Section 157 Chamber judgments (concerning 224 applications) and 22 Committee judgments (concerning 36 applications), the Fourth Section 168 Chamber judgments (concerning 202 applications) and 30 Committee judgments (concerning 32 applications) and, lastly, the Fifth Section delivered 143 Chamber judgments (concerning 165 applications) and 36 Committee judgments (concerning 264 applications).

At the end of the year, a total of approximately 68,000 Chamber or Committee applications were pending before the Sections (9,250 before the First Section, 34,000 before the Second Section, 8,850 before the Third Section, 7,350 before the Fourth Section and 8,550 before the Fifth Section).

## **C. Single-judge formation**

In 2012 approximately 81,700 applications were declared inadmissible or struck out of the list by single judges.

At the end of the year, approximately 59,850 applications were pending before that formation.

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1. Judgment of the Grand Chamber delivered on 4 October 2012.

**VIII. PUBLICATION OF INFORMATION  
ON THE COURT AND ITS CASE-LAW**



## **PUBLICATION OF INFORMATION ON THE COURT AND ITS CASE-LAW**

### **A. Overview**

In 2012 the Court continued to implement a series of changes intended to further enhance access to its case-law. The most significant of these was undoubtedly the replacement of the current HUDOC database, which had been in service for over a decade, with a new, completely redesigned system (more information below).

The Court also pursued its policy of making as much material as possible available in languages other than its two official languages, English and French. This policy reflects the Court's commitment to a wide and effective dissemination of its ever-growing body of case-law and will, it is hoped, assist State authorities and legal professionals alike in achieving more effective implementation of Convention standards at national level, in line with the Interlaken, İzmir and Brighton Declarations.

As part of an ongoing project in this area, the Registry has continued to populate the HUDOC database with third-party translations of judgments and decisions into non-official languages. It also launched a further translations project, with support from the Human Rights Trust Fund, in order to commission case-law translations into twelve target languages (see further below).

### **B. Communication tools**

#### ***1. The Court's website***

The focal point of the Court's communication policy is its website ([www.echr.coe.int](http://www.echr.coe.int)), which recorded a total of just over 300 million hits in 2012 (a 13% increase compared to 2011). The site is regularly updated, notably with news on developments in important cases, and users can subscribe to a selection of RSS news feeds for updates.

The website provides a wide range of information on all aspects of the Court and its work. Visitors to the site will find details of the Court's composition, organisation and procedure, core Convention materials, statistical and other reports, and general information and videos on the Court and the Convention.

Information about cases before the Court can be found in the section on pending cases or through the Court's press releases, while hearings can be viewed through webcasts.

There are special sections for potential applicants and for groups wishing to visit the Court.

The website also hosts the HUDOC case-law database and provides details of the Court's publications, most of which can be downloaded free of charge directly from the site.

Lastly, the website provides a gateway to the Court library website, which, though specialised in human-rights law, also has materials on comparative law and public international law. The library website was consulted over 61,500 times in 2012, and its online catalogue, containing references to the secondary literature on the Convention case-law and Articles, over 260,700 times.

## ***2. New HUDOC Search Portal***

The HUDOC case-law database contains the full text of all the Court's judgments, of admissibility decisions (except those adopted by single-judge formations) and of the statements of facts in certain pending cases. Resolutions of the Committee of Ministers relating to its examination of cases under Article 46 or former Articles 32 and 54 of the Convention are also available.

One of the most important developments in 2012 was the replacement of the current HUDOC database, which had been in service for over a decade, with a new, completely redesigned system. In addition to offering a brand-new interface and greater stability, the new system provides a series of new functionalities that make the process of searching the case-law simpler and more effective for the end-user. A manual and two video tutorials have been made available on the HUDOC Help page.

Further improvements to the HUDOC interface are underway and Russian and Turkish versions of the interface are also being developed.

Over 2,400 translations into 23 languages have been made available in HUDOC which is now increasingly serving as a one-stop shop for translations into languages other than English and French. The language-specific filter in the new HUDOC allows for rapid searching of these translations, including in full text.

In April 2012 the Registry started a project entitled "Bringing Convention standards closer to home: Translation and dissemination of key ECHR case-law in target languages" with the support of the Human Rights Trust Fund (<http://www.coe.int/humanrightstrustfund>). This three-year project aims to improve the understanding and domestic implementation of ECHR standards by commissioning translations of key Court case-law and ensuring its dissemination to legal professionals in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the



Republic of Moldova, Montenegro, Serbia, “the former Yugoslav Republic of Macedonia”, Turkey and Ukraine. In the first phase of the project nearly 500 translations of judgments and over 1,100 translations of legal summaries were commissioned for delivery before the end of 2012 (total number for all 12 languages). The translations will be published in HUDOC. More information on this project, as well as the country-specific lists of cases being translated can be found online (under Case-Law/Decisions and judgments/Translations).

### ***3. Publications***

#### ***3.1 Case-law Information Note***

The *Case-law Information Note* continues to provide a monthly round-up of the most significant developments in the Court’s case-law in the form of summaries of all pending Grand Chamber cases and of judgments, admissibility decisions and communicated cases considered to be of particular jurisprudential interest. The individual summaries are classified by reference to the Convention provision to which they relate and by keywords. These summaries are now also available (as ‘Legal Summaries’) in the new HUDOC database, where they are fully searchable. The complete Notes are available online (under Case-Law/Case-law analysis/Information notes) and a subscription option is available for the paper version.

#### ***3.2 Research reports and The Practical Guide on Admissibility Criteria***

The Research Division is attached to the Jurisconsult’s Office and its principal task is to provide research reports to assist the Grand Chamber and Sections in the examination of pending cases. In 2012 the Division prepared a total of 53 reports (23 on the Court’s case-law, 7 on international law and 23 on comparative law). 4 reports on the Court’s case-law were published online. These concerned: bioethics; the new admissibility criterion under Article 35 § 3 (b) of the Convention; references to the case-law of the Inter-American Court of Human Rights; and the Court’s case-law relating to young people. A total of 10 Research reports have been made available to the public on the Court’s website (under Case-Law/Case-law analysis/Research reports).

*The Practical Guide on Admissibility Criteria* is intended to assist lawyers in advising their clients on their chances of bringing an admissible case to the Court and to discourage clearly inadmissible applications. This Guide is now available in over 20 languages and can be downloaded free of charge online (under Case-Law/Case-law analysis/Admissibility guide). A hard copy is available for sale in English and French.

The Research Division has also published on the website a *Guide to Article 5*, the first of a series of new documents concerning various Articles of the Convention and its Protocols, aimed mainly at national judges and lawyers, following the example of *The Practical Guide on Admissibility Criteria*. A further guide, this time to Article 6 of the Convention, is being prepared and will be available in the first half of 2013.

### ***3.3 Joint handbook projects with the European Union Fundamental Rights Agency***

The first handbook co-published with FRA – on European non-discrimination law – has now been published in 24 languages. An update was published in 2012 (in English and French). The handbook editions and the update are available online (under Case-Law/Case-law analysis/Handbook on non-discrimination).

A second handbook – on European law relating to asylum, borders and immigration – is due to be launched in June 2013 in the following languages: Bulgarian, Croatian, English, French, German, Greek, Hungarian, Italian, Polish, Romanian and Spanish.

A third handbook – on European data-protection law – is scheduled for launch in 2014.

### ***3.4 Factsheets and Country Profiles***

In addition to publishing press releases on Court cases and events, the Press Unit has continued to prepare factsheets and country profiles containing snapshots of the most interesting decided and pending cases by theme and by country. Over 40 factsheets now exist in English, French and German. A smaller selection also exists in Polish and Russian.

The factsheets currently cover some 40 themes, including children's rights, data protection, the environment, forced labour and trafficking, gender identity, mental health, new technologies, protection of journalistic sources, Roma and Travellers, and violence against women. They enable readers to obtain a rapid overview of the most relevant cases on a given topic and are regularly updated to keep up with developments in the case-law.

The Country Profiles cover each of the 47 member States of the Council of Europe. In addition to general and statistical information on each State, they provide resumés of the most noteworthy cases concerning that State.

Both series can be downloaded free of charge from the Court's website.

### **3.5 Public-Relations materials**

The Public Relations unit carried out a project involving the translation of the Court's information documents with a view to raising awareness of the Convention system as widely as possible, particularly among potential applicants. As part of this project, which covers more than 40 languages, a number of Court publications, including "Questions and Answers", "The ECHR in 50 Questions" and "The Court in brief" have been translated into the official languages of Council of Europe member States.

In addition, the Public Relations unit continued to develop the Court's multimedia materials to make them accessible to everyone. A video clip on the criteria for admissibility was produced with the support of the Principality of Monaco; originally in French and English, this video, which aims to inform potential applicants of the main conditions for admissibility, was made available in 21 languages during the course of the year. The video clip on the Convention was also released in new language versions, and is now available in 38 languages.

Versions of these publications and videos were also produced in other languages, notably Chinese and Arabic.

### **3.6 Russian edition of the anniversary book**

*The Conscience of Europe: 50 Years of the European Court of Human Rights*, a book marking the Court's 50th anniversary in 2009 and the Convention's 60th in 2010, was launched in English and French in 2011. An updated edition in Russian was printed in 2012 in collaboration with iRGa 5 Publishing House Ltd (Moscow) and Third Millennium Information (London).

All three editions will also be made available online.

## **C. Selection and publication of the Court's leading case-law**

The *Reports of Judgments and Decisions* (cited in the case-law as ECHR) is the official collection of selected judgments and decisions of the Court and is published in English and French. The Court is currently examining various options for how to take this collection forward. Work is under way to create a separate online collection, where all selected cases will appear in an enhanced format, together with individual summaries to facilitate a rapid understanding of the case.

Pursuant to the policy it introduced in 2011, the Court's Bureau selects the cases to be included in the *Reports* each quarter following proposals made by the Jurisconsult. These cases are listed online (under Case-Law/Decisions and judgments/Reports collection).

The Bureau's selection for the first three quarters of 2012 is set out below. The final selection for 2012 will be published online. These cases will constitute the *Reports of Judgments and Decisions 2012*.<sup>1</sup>

## 2012

### **Armenia**

*Poghosyan and Baghdasaryan v. Armenia*, no. 22999/06, 12 June 2012  
*Piruzyan v. Armenia*, no. 33376/07, 26 June 2012 (extracts)

### **Bulgaria**

*Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012

### **Croatia**

*Đorđević v. Croatia*, no. 41526/10, 24 July 2012

### **Finland**

*X v. Finland*, no. 34806/04, 3 July 2012 (extracts)

### **France**

*SEGAME SA v. France*, no. 4837/06, 7 June 2012 (extracts)

### **Germany**

*Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08,  
7 February 2012

### **Greece**

*Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07,  
15 March 2012

### **Italy**

*Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, 23 February 2012  
*Francesco Sessa v. Italy*, no. 28790/08, 3 April 2012 (extracts)  
*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, 7 June  
2012

### **Luxembourg**

*Boulois v. Luxembourg* [GC], no. 37575/04, 3 April 2012

### **Russia**

*Konstantin Markin v. Russia* [GC], no. 30078/06, 22 March 2012  
(extracts)

### **Slovenia**

*Kurić and Others v. Slovenia* [GC], no. 26828/06, 26 June 2012  
(extracts)

### **Switzerland**

*Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, 13 July  
2012 (extracts)

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1. Note on citation: By default, all references are to Chamber judgments. Grand Chamber cases, whether judgments or decisions, are indicated by "[GC]". Decisions are indicated by "(dec.)".

*Nada v. Switzerland* [GC], no. 10593/08, 12 September 2012

**“The former Yugoslav Republic of Macedonia”**

*Sašo Gorgiev v. “the former Yugoslav Republic of Macedonia”*, no. 49382/06,  
19 April 2012 (extracts)

**Turkey**

*Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, 15 March 2012

*Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, no. 7819/03, 10 May  
2012

*Er and Others v. Turkey*, no. 23016/04, 31 July 2012 (extracts)

*Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05,  
25 September 2012 (not final – extracts)

**United Kingdom**

*Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January  
2012 (extracts)

*Austin and Others v. the United Kingdom* [GC], nos. 39692/09,  
40713/09 and 41008/09, 15 March 2012



**IX. SHORT SURVEY  
OF THE MAIN JUDGMENTS AND DECISIONS  
DELIVERED BY THE COURT IN 2012**





# SHORT SURVEY OF THE MAIN JUDGMENTS AND DECISIONS DELIVERED BY THE COURT IN 2012<sup>1</sup>

## Introduction

In 2012 the Court delivered a total of 1,093 judgments, compared with 1,157 judgments delivered in 2011. In fact, in 2012 a greater number of applications were resolved by a decision.

861 judgments were delivered by Chambers and 206 by Committees of three judges. 26 judgments were delivered by the Grand Chamber. Approximately 1,300 applications were declared inadmissible or struck out of the list by Chambers, and some 3,150 by Committees.

In 2012, 40.5% of all judgments delivered by a Chamber were categorised as being of medium importance or higher in the Court's case-law database (HUDOC).<sup>2</sup> All Grand Chamber judgments are of at least high-level importance in HUDOC.

The majority of decisions published in 2012 in the Court's case-law database concerned so-called "repetitive" cases.

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1. This is a selection of judgments and decisions which either raise new issues or important matters of general interest, establish new principles or develop or clarify the case-law.

2. **Importance Level:** This field in HUDOC can be used to make searches of judgments, decisions and/or advisory opinions classified by level of importance.

Cases are divided into four categories, the highest level of importance being Case Reports, followed by levels 1, 2 and 3. The classification by levels 1, 2 and 3 remains provisional until the Bureau has decided whether a case should appear in the Court's official reports series.

**Case Reports:** Judgments, decisions and advisory opinions delivered since the inception of the new Court in 1998 which have been published or selected for publication in the Court's official *Reports of Judgments and Decisions*. The selection from 2007 onwards has been made by the Bureau of the Court following a proposal by the Jurisconsult.

Judgments of the former Court (published in Series A and *Reports of Judgments and Decisions*) and cases published in the former Commission's series Decisions and Reports have not been included in the Case Reports category and are therefore classified by levels 1, 2 and 3 only.

**1 = High importance:** All judgments, decisions and advisory opinions not included in the Case Reports which make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State.

**2 = Medium importance:** Other judgments, decisions and advisory opinions which, while not making a significant contribution to the case-law, nevertheless go beyond merely applying existing case-law.

**3 = Low importance:** Judgments, decisions and advisory opinions of little legal interest, namely judgments and decisions that simply apply existing case-law, friendly settlements and striking-out judgments (unless raising a particular point of interest).

## Jurisdiction and admissibility

### *Obligation to respect human rights (Article 1)*

The Grand Chamber reiterated the general principles governing the concept of “jurisdiction”:

– in relation to events occurring on the high seas on board vessels flying the flag of a State Party to the Convention, the crews of which were composed exclusively of military personnel of that State (*Hirsi Jamaa and Others v. Italy*<sup>1</sup>);

– in relation to events occurring on a part of the national territory over which the State did not exercise effective control, following its approach in *Ilaşcu and Others v. Moldova and Russia*<sup>2</sup> (*Catan and Others v. the Republic of Moldova and Russia*<sup>3</sup>);

– in relation to the exercise of “effective control” by a State over an area situated outside the national territory, even though agents of that State were not directly involved in the acts complained of by the applicants (*ibid.*).

Thus, the Court found that the facts in issue in *Catan and Others*, cited above, fell within the “jurisdiction” of two member States within the meaning of Article 1 of the Convention.

The case of *Djokaba Lambi Longa v. the Netherlands*<sup>4</sup> was the first concerning the detention in the United Nations Detention Unit in The Hague of a witness called by the International Criminal Court (ICC). The Court considered that persons detained on the territory of a Contracting State on the authority of an international criminal tribunal, under arrangements entered into with a State not party to the Convention, did not fall within the “jurisdiction” of the Contracting State.

In its judgment in *El-Masri v. “the former Yugoslav Republic of Macedonia”*<sup>5</sup>, the Court stressed that a Contracting State was to be regarded as responsible under the Convention for acts performed by foreign officials on its territory with the acquiescence or connivance of its authorities.

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1. [GC], no. 27765/09, ECHR 2012.

2. [GC], no. 48787/99, ECHR 2004-VII.

3. [GC], nos. 43370/04, 8252/05 and 18454/06, 19 October 2012.

4. (dec.), no. 33917/12, 9 October 2012.

5. [GC], no. 39630/09, 13 December 2012.

### ***Admissibility conditions***

#### *Right of individual petition (Article 34)*

The Court considered that the criteria governing victim status had to be applied in a flexible manner (*Aksu v. Turkey*<sup>1</sup>). An applicant of Roma origin felt personally offended by expressions used to describe the Roma community, which he considered to be demeaning. Remarks aimed at an ethnic group could cause offence to one of its members even if he or she was not targeted personally. In this case the domestic courts had recognised that the applicant had standing to bring proceedings and had examined the case on the merits. Accordingly, the Court accepted that the applicant had victim status before it on account of the alleged breach of his right to respect for his private life, although he had not been targeted directly by the impugned remarks.

The judgment in *Kurić and Others v. Slovenia*<sup>2</sup> dealt with the issue of “adequate” and “sufficient” redress at domestic level for an alleged violation of the Convention; this was dependent on all the circumstances of the case, regard being had, in particular, to the nature of the violation at stake.

In this case concerning Article 8 the Grand Chamber considered, unlike the Chamber, that the acknowledgement of the violations by the national authorities and the issuance of permanent residence permits did not constitute “appropriate” and “sufficient” redress at the national level. The Court based its findings on the characteristics of the case, which created widespread human rights concern (resulting from the “erasure” of the applicants’ names from the Slovenian Register of Permanent Residents). It stressed the lengthy period of insecurity and legal uncertainty experienced by the applicants and the gravity of the consequences of the impugned situation for them.

#### *Exhaustion of domestic remedies (Article 35 § 1)*

The Court reiterated that it had to take realistic account not only of the existence of formal remedies in the legal system of the State concerned but also of the general legal and political context in which they operated, as well as the personal circumstances of the applicants (*Kurić and Others*, cited above). In this case in particular, the Constitutional Court had noted the existence of a general problem and had adopted leading decisions ordering general measures. However, the domestic authorities had subsequently failed to comply with those decisions over a long period.

#### *Six-month time-limit (Article 35 § 1)*

In calculating the time-limit the Court held that a non-working day should be taken into account as the day of expiry. Compliance with the

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1. [GC], nos. 4149/04 and 41029/04, ECHR 2012.

2. [GC], no. 26828/06, ECHR 2012.

six-month time-limit had to be assessed in accordance with Convention criteria, independently of domestic rules and practice. With regard to procedure and time-limits, the need for legal certainty prevailed. For their part, applicants needed to be alert with regard to observance of the relevant procedural rules (*Sabri Günes v. Turkey*<sup>1</sup>).

In a judgment concerning an applicant's detention pending trial which was broken down into several non-consecutive periods (*Idalov v. Russia*<sup>2</sup>), the Court clarified its case-law on the application of the six-month rule (see Article 5 § 3 below).

*Absence of significant disadvantage (Article 35 § 3 (b))*

This criterion is designed to enable the Court to deal swiftly with frivolous applications in order to concentrate on its core task of affording legal protection at European level of the rights guaranteed by the Convention and its Protocols. The Court applied this criterion in a case concerning the length of criminal proceedings (*Gagliano Giorgi v. Italy*<sup>3</sup>). For the first time, it considered that the reduction of the prison sentence imposed on an accused “at least compensated for or substantially reduced the disadvantage normally caused by the excessive length of proceedings”. It therefore concluded that the applicant had not suffered any “significant disadvantage” with regard to his right to be tried within a reasonable time.

## “Core” rights

*Prohibition of torture and inhuman or degrading treatment or punishment (Article 3)*

The case of *El-Masri*, cited above, concerned a foreign national suspected of terrorist offences who was held in solitary confinement for twenty-three days in an extraordinary place of detention outside any judicial framework, and his subsequent extra-judicial transfer from one State to another for the purposes of detention and interrogation outside the normal legal system. The Court reiterated that the prosecuting authorities must endeavour to undertake an adequate investigation into allegations of a breach of Article 3 in order to prevent any appearance of impunity and to maintain public confidence in their adherence to the rule of law.

The responsibility of the respondent State was engaged on account of the transfer of the applicant into the custody of the US authorities despite the existence of a real risk that he would be subjected to ill-treatment following his transfer outside the territory.

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1. [GC], no. 27396/06, 29 June 2012.

2. [GC], no. 5826/03, 22 May 2012.

3. No. 23563/07, 6 March 2012.

### *Expulsion*

The disembarkation on the Libyan coast of migrants intercepted on the high seas by a member State was the subject of the judgment in *Hirsi Jamaa and Others*, cited above. The operation had been aimed at preventing landings of irregular migrants along the Italian coast. The difficulties of policing Europe's southern borders in the context of the phenomenon of migration by sea could not absolve a member State of its obligations under Article 3.

The Court reiterated States' obligations arising out of international refugee law, including the *non-refoulement* principle, which was also enshrined in the Charter of Fundamental Rights of the European Union. The applicants had run a real risk of being subjected to treatment contrary to Article 3 in Libya.

This transfer of foreign nationals to Libya had also placed them at risk of arbitrary repatriation to their countries of origin (Eritrea and Somalia), in breach of Article 3. The indirect removal of an alien left the State's responsibility intact, and that State was required to ensure that the intermediary country offered sufficient guarantees against arbitrary *refoulement*, particularly where that State was not a party to the Convention. When the applicants were transferred to Libya, the Italian authorities had known or should have known that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin.

The *Othman (Abu Qatada) v. the United Kingdom*<sup>1</sup> judgment recapitulated the Court's case-law on diplomatic assurances, in a case concerning the proposed expulsion of an alien prosecuted for terrorist offences in his country of origin. The Court examined the content and scope of the assurances given by the destination State, in order to determine whether they were sufficient to protect the applicant against the real risk of ill-treatment on his return.

In *Popov v. France*<sup>2</sup>, the detention for fifteen days of two very young children with their parents in a holding centre for aliens pending their removal from the country gave rise to a violation of Article 3. The Court stressed that the extreme vulnerability of children was the decisive factor and took precedence over the status of illegal immigrant. In this case, the length of the period of detention and the conditions of confinement, which were unsuited to the extreme vulnerability of the children, had been bound to have a damaging effect on them.

The case of *S.F. and Others v. Sweden*<sup>3</sup> raised a new issue: that of the risk to which foreign nationals might be exposed in their country of

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1. No. 8139/09, ECHR 2012.

2. Nos. 39472/07 and 39474/07, 19 January 2012.

3. No. 52077/10, 15 May 2012.

origin on account of their activities in the host country, given that migrants could continue to champion national dissident causes after fleeing the country.

The case concerned fears on the part of Iranian nationals of being subjected to treatment contrary to Article 3 if they were deported to Iran, given their political activities in Sweden, notably the reporting of human rights violations in their country of origin. The Court took account of the extent and visibility of the applicants' political and human rights activities in Sweden and the risk that activists would be identified by the Iranian authorities in the event of their expulsion to Iran.

#### *Prison*

Where allegations are made of overcrowding in prison, the State authorities alone have access to information to corroborate or refute them. The documents they produce must be found to be sufficiently reliable. Failing this, the allegations will be deemed to be credible (*Idalov*, cited above). In this case, the overcrowding was such that the applicant's detention did not conform to the minimum standard of three square metres per person established by the Court's case-law.

In the same case the Court held that a prisoner had been subjected to inhuman and degrading treatment because of the overcrowding of the vans transferring him to the courthouse and the conditions in which he had been held at the court on hearing days (*ibid.*).

#### ***Prohibition of slavery and forced labour (Article 4)***

The *C.N. and V. v. France*<sup>1</sup> judgment centred on children forced to work as unpaid domestic help. The case concerned two young orphaned sisters from Burundi who were obliged to carry out household and domestic chores without remuneration. The sisters, aged ten and sixteen, had been taken in by relatives in France who threatened them with expulsion to their country of origin. Among other things, the Court clarified the concepts of "forced or compulsory labour" and "servitude" within the meaning of the first and second paragraphs of Article 4.

The judgment made clear the distinction between "forced labour" and work which could reasonably be expected in the form of help from a family member or person sharing accommodation. "Servitude" constituted a particular category of forced or compulsory labour or, put another way, an "aggravated" form thereof. The essential factor that distinguished servitude from forced or compulsory labour for the purposes of Article 4 of the Convention was the victims' feeling that their condition was immutable and that the situation was unlikely to

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1. No. 67724/09, 11 October 2012.

change. It was sufficient for this feeling to be based on objective circumstances created or perpetuated by the persons responsible.

The Court also reiterated the State's positive obligation to put in place an appropriate legislative and administrative framework in order to combat servitude and forced labour effectively.

In *C.N. v. the United Kingdom*<sup>1</sup> (not final) the Court stressed that domestic slavery constituted a specific offence, distinct from trafficking and exploitation of human beings.

### ***Right to liberty and security (Article 5)***

The Court pointed out that Article 5 could apply in expulsion cases (*Othman (Abu Qatada)*, cited above). A Contracting State would be in violation of Article 5 if it removed an applicant to a State where he or she would be at real risk of a flagrant breach of the rights protected under that Article. However, as with Article 6, a very high threshold applied in such cases.

A flagrant breach of Article 5 would occur only if, for example, the receiving State arbitrarily detained an applicant for many years without any intention of bringing him or her to trial. It might also occur if an applicant would be at risk of being imprisoned for a substantial period in the receiving State, having previously been convicted after a manifestly unfair trial.

The *El-Masri* judgment applied these principles in relation to the Macedonian authorities, which had handed over into the custody of CIA agents a German national suspected of terrorist offences who was subsequently detained in Afghanistan, although they must have been aware that he ran a real risk of being subjected to a flagrant violation of his rights under Article 5. The Court held that, in this case, the applicant's abduction and detention by CIA agents amounted to "enforced disappearance" as defined in international law. The respondent State was held responsible for the violation of Article 5 to which the applicant had been subjected after being removed from its territory, during the entire period of his captivity in Afghanistan.

Furthermore, while on the territory of the respondent State, the applicant had been placed in solitary confinement in a hotel without any court intervention or any entry being made in the custody records. The Grand Chamber found it "wholly unacceptable that in a State subject to the rule of law a person could be deprived of his or her liberty in an extraordinary place of detention outside any judicial framework". The applicant had been held in unacknowledged detention in complete disregard of the safeguards enshrined in Article 5 of the Convention;

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1. No. 4239/08, 13 November 2012.

this constituted “a particularly grave violation” of his right to liberty and security under that provision.

*Deprivation of liberty (Article 5 § 1)*

The Grand Chamber expanded upon the circumstances in which a measure was to be regarded as a “deprivation of liberty”, thus attracting the protection of Article 5:

– *Stanev v. Bulgaria*<sup>1</sup> concerned the placement in an institution of an adult who lacked legal capacity;

– *Creangă v. Romania*<sup>2</sup>, meanwhile, related to a summons to appear at the premises of the prosecution service for questioning in connection with a criminal investigation. In this case, the Court also ruled on the burden of proof with regard to deprivation of liberty.

– The case of *Austin v. the United Kingdom*<sup>3</sup> dealt for the first time with the containment of members of the public within a police cordon during a demonstration taking place in dangerous conditions. The Court held that crowd-control measures should not be used by national authorities to stifle or discourage protest. Police cordons should be imposed and maintained on public-order grounds only in situations where it was necessary in order to prevent serious injury or damage.

The Grand Chamber laid down some markers concerning restrictions on freedom of movement in public places (*Austin*, cited above). Its judgment reviewed commonly occurring restrictions in contemporary societies which, in some circumstances, had to be distinguished from “deprivations of liberty” for the purposes of Article 5 § 1. However, the use of crowd-control techniques could, in particular circumstances, give rise to a deprivation of liberty in breach of Article 5 § 1. In each case, account had to be taken of the specific context in which the techniques were deployed, as well as the police’s duty to maintain order and protect the public. Given the new challenges they now faced, the police must be allowed to fulfil their operational duties, provided they complied with the principle of protecting the individual from arbitrariness.

*Lawful detention (Article 5 § 1)*

States have a duty to afford vulnerable individuals effective protection against arbitrary detention. The Court’s judgment in *Stanev*, cited above, underlined the responsibility of the national authorities with regard to the placement in a psychiatric institution of an adult declared partially incapacitated. In the Court’s view, it was essential to assess at regular intervals whether the person’s condition continued to justify his or her confinement.

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1. [GC], no. 36760/06, ECHR 2012.

2. [GC], no. 29226/03, 23 February 2012.

3. [GC], nos. 39692/09, 40713/09 and 41008/09, ECHR 2012.



The case of *X v. Finland*<sup>1</sup> concerned the forced administration of medication in treating a person confined to a psychiatric hospital. The case centred on the protection of individuals confined to psychiatric institutions against arbitrary interference with their right to liberty. Forced administration of treatment had to be based on a procedure prescribed by law which afforded proper safeguards against arbitrariness. In particular, the person had to be able to bring proceedings for review of the need for his/her continued treatment. An independent psychiatric opinion on the continuation of treatment against a patient's will – issued by a psychiatrist from outside the institution where the person was confined – also had to be available.

In the *Creangă* judgment, cited above, the Court reiterated its settled case-law according to which, in cases of deprivation of liberty, it was particularly important to comply with the general principle of legal certainty. National law had to clearly define the conditions in which deprivation of liberty was authorised and the application of the law must be foreseeable.

Where individuals' liberty was concerned, the fight against the scourge of corruption could not justify recourse to arbitrariness and areas of lawlessness in places where people were deprived of their liberty (*ibid.*).

In its decision in *Simons v. Belgium*<sup>2</sup> the Court answered in the negative the question whether there was a "general principle" implicit in the Convention whereby all persons deprived of their liberty must have the possibility of being assisted by a lawyer from the start of their detention. In the Court's view, this was a principle inherent in the right to a fair trial<sup>3</sup>, which was based specifically on Article 6 § 3, rather than a general principle which by definition was overarching in nature. Accordingly, the impossibility under the law for accused persons deprived of their liberty to be assisted by a lawyer from the start of their detention was not sufficient to render the detention in question contrary to Article 5 § 1.

In *James, Wells and Lee v. the United Kingdom*<sup>4</sup> the Court dealt for the first time with the issue of programmes in prison to address offending behaviour. The case concerned the rehabilitative courses offered to prisoners serving indeterminate sentences for the public protection. The judgment is significant as it establishes benchmarks with regard to the rehabilitative part of sentences being served by offenders considered a danger to the public.

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1. No. 34806/04, ECHR 2012.

2. (dec.), no. 71407/10, 28 August 2012.

3. See *Salduz v. Turkey* [GC], no. 36391/02, ECHR 2008, and *Dayanan v. Turkey*, no. 7377/03, 13 October 2009.

4. Nos. 25119/09, 57715/09 and 57877/09, 18 September 2012.

In the Court's view, where a prisoner was in detention solely on the grounds of the risk he posed to the public, regard had to be had to the need to encourage his rehabilitation. In the applicants' case, this meant that they had to be given reasonable opportunities to undertake courses aimed at addressing their offending behaviour and the risks they posed to society. However, very lengthy periods of time had elapsed before the applicants had even been able to embark on the rehabilitative part of their sentences, despite the clear instructions in force.

The finding of a violation of Article 5 § 1 was made in respect of the applicants' continuing detention following the expiry of their minimum term ("tariff") and until steps had been taken to provide them with access to appropriate rehabilitative courses.

*Length of detention pending trial (Article 5 § 3)*

In a judgment concerning an applicant's detention pending trial which was broken down into several non-consecutive periods (*Idalov*, cited above), the Court clarified its case-law on the application of the six-month rule (Article 35 § 1).

That rule was to be applied separately to each period of detention pending trial<sup>1</sup>. Therefore, once at liberty, an applicant was obliged to bring any complaint he or she might have before the Court within six months of the date of actual release. Periods of pre-trial detention which ended more than six months before an applicant lodged a complaint with the Court could not be examined. However, where such periods formed part of the same set of criminal proceedings, the Court, when assessing the reasonableness of the detention for the purposes of Article 5 § 3, could take into consideration the fact that an applicant had previously spent time in custody pending trial.

The Grand Chamber observed that, in order to comply with Article 5 § 3, the judicial authorities had to justify the length of a period of detention pending trial by addressing specific facts and considering alternative "preventive measures", and could not rely essentially and routinely on the gravity of the criminal charges (*ibid.*).

*Speedy review of lawfulness of detention (Article 5 § 4)*

Where an individual's liberty is at stake, the Court applies very strict standards in assessing the State's compliance with the requirement of speedy review of the lawfulness of detention under Article 5 § 4 (*Idalov*, cited above).

*Right to take proceedings (Article 5 § 4)*

The lawfulness of the placement in detention pending deportation of children accompanying their parents is a new issue, dealt with in the judgment in *Popov*, cited above. While the law did not provide for

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1. Compare with the judgment in *Solmaz v. Turkey*, no. 27561/02, 16 January 2007.

children themselves to be taken into detention in such circumstances, the children concerned found themselves in a legal void preventing them from exercising the remedy available to their parents in order to obtain a decision on the lawfulness of their detention (no removal orders or orders for placement in a holding centre for aliens pending deportation were issued in respect of children). They were therefore deprived of the protection required by the Convention, in breach of Article 5 § 4.

***Prohibition of collective expulsion of aliens (Article 4 of Protocol No. 4)***

In the case of *Hirsi Jamaa and Others*, cited above, the applicants had not been on the territory of the respondent State when they were expelled, having been intercepted at sea while fleeing their country. The Court therefore examined for the first time the issue of the applicability of Article 4 of Protocol No. 4 to the removal of aliens to a third State, carried out outside national territory.

European States were faced with a new challenge in the form of irregular immigration by sea. The removal of aliens carried out in the context of interceptions on the high seas by the authorities of a State in the exercise of their sovereign authority, the effect of which was to prevent migrants from reaching the borders of the State or even to push them back to another State, constituted an exercise of jurisdiction within the meaning of Article 1 of the Convention which engaged the responsibility of the State in question under Article 4 of Protocol No. 4.

In this case, the transfer of the applicants to Libya by Italian military personnel had been carried out without any examination of each individual situation. No identification procedure had been carried out by the Italian authorities, who had merely embarked the applicants onto their military ships and then disembarked them in Libya. The applicants' removal had therefore been of a collective nature, in breach of Article 4 of Protocol No. 4. This is the second judgment in which the Court has found a violation of that Article, after its judgment in *Čonka v. Belgium*<sup>1</sup>.

## **Procedural rights**

***Right to a fair trial (Article 6)***

*Applicability (Article 6 § 1)*

Is Article 6 § 1 applicable to prisoners' requests for leave of absence (in this case prison leave)? This question was examined in the *Boulois v. Luxembourg* judgment<sup>2</sup>. The prisoner concerned had applied for leave in

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1. No. 51564/99, ECHR 2002-I.

2. [GC], no. 37575/04, ECHR 2012.

order to complete administrative formalities and look for work. The Court noted that in the domestic legal system concerned individuals could not claim, on arguable grounds, to possess a “right” within the meaning of Article 6. Other member States took a variety of approaches regarding the status of prison leave and the arrangements for granting it. In more general terms, the Court reaffirmed the legitimate aim of progressive social reintegration of persons sentenced to imprisonment.

*Access to court (Article 6 § 1)*

The case of *Stanev*, cited above, dealt with the procedural rights of persons declared to be partially lacking legal capacity. In principle, any person declared to be incapacitated had to have direct access to a court in order to seek the restoration of his or her legal capacity, and there was a trend in European countries to that effect. Furthermore, the international instruments for the protection of people with mental disorders attached growing importance to granting such persons as much legal autonomy as possible.

The *SEGAME SA v. France*<sup>1</sup> judgment concerned a system of tax fines set by law as a percentage of the unpaid tax. The applicant complained that the courts were unable to vary the fine in proportion to the seriousness of the accusations made against a taxpayer (it was set at a fixed rate of 25%). However, the Court acknowledged that the particular nature of tax proceedings implied a requirement of effectiveness, necessary in order to preserve the interests of the State. Furthermore, tax disputes did not form part of the “hard core” of criminal law for Convention purposes.

*Fairness of the proceedings (Article 6 § 1)*

The Court held for the first time that there would be a flagrant denial of justice in the event of the applicant’s expulsion, on account of the real risk that evidence obtained through torture of third parties would be admitted at his trial in the third country of destination (*Othman (Abu Qatada)*, cited above).

The admission of torture evidence was manifestly contrary not just to the provisions of Article 6 of the Convention but to the most basic international standards of a fair trial, and would make the whole trial immoral and illegal. It would therefore amount to a flagrant denial of justice if such evidence were admitted in a criminal trial. The Court did not exclude that similar considerations might apply in respect of evidence obtained by other forms of ill-treatment falling short of torture. Since the establishment of the principle in its 1989 judgment in *Soering v. the United Kingdom*<sup>2</sup>, this is the first case in which the

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1. No. 4837/06, ECHR 2012.

2. 7 July 1989, § 113, Series A no. 161.

Court has held that an applicant's expulsion would amount to a violation of Article 6.

A denial of justice occurs where a person convicted *in absentia* is unable subsequently to obtain a new judgment by a court after being given an opportunity to answer the charges. This settled case-law applies also where a person is declared guilty not in his absence but after his death (*Lagardère v. France*<sup>1</sup>).

*Adversarial proceedings (Article 6 § 1)*

The *Eternit v. France*<sup>2</sup> decision supplemented the case-law on medical confidentiality and employment law. An employer complained of being unable to gain access to medical documents establishing the work-related nature of an employee's illness.

The Court ruled that an employee's right to respect for medical confidentiality and an employer's right to adversarial proceedings had to coexist in such a way that the essence of neither was impaired. This balance was achieved where the employer contesting the work-related nature of an illness could request the court to appoint an independent medical expert to whom the documents constituting the employee's medical file could be given and whose report, drawn up in accordance with the rules of medical confidentiality, had the purpose of providing clarification to the court and the parties. The fact that an expert report was not ordered in every case in which the employer requested it, but only where the court considered itself insufficiently informed, was compatible with the Convention.

*Presumption of innocence (Article 6 § 2)*

The impact of a pre-trial detention measure on an individual's employment contract was the subject of the decision in *Tripon v. Romania*<sup>3</sup>. The applicant was dismissed following his placement in pre-trial detention, and hence before being finally convicted, as the Labour Code made it possible to dismiss employees who were placed in pre-trial detention for more than sixty days.

In this case, the applicant's dismissal had therefore been based on an objective factor, namely his prolonged absence from work, rather than on considerations linked to his guilt. The State was free to make that legislative choice, particularly if the legislation provided sufficient safeguards against arbitrary or abusive treatment of the employee concerned. In view of the various safeguards in place, which it listed in its decision, the Court accepted that placement in pre-trial detention for a certain length of time and on those objective grounds could justify dismissal even in the absence of a final criminal conviction.

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1. No. 18851/07, 12 April 2012.

2. (dec.), no. 20041/10, 27 March 2012.

3. (dec.), no. 27062/04, 7 February 2012.

The extension of the scope of Article 6 § 2 to the compensation proceedings in a case because of their link to the criminal proceedings was dealt with in *Lagardère*, cited above. The civil court had found a person guilty posthumously although the criminal proceedings against him had been extinguished on his death and the criminal courts had made no finding of guilt against him while he was alive. The Court held that there had been a violation of Article 6 § 2.

*Defence rights (Article 6 § 3)*

In *Idalov*, cited above, all the evidence, including the witness testimony, had been examined in the absence of the accused, who had been ejected from the courtroom for improper conduct. The removal of an accused from the courtroom during his criminal trial and his exclusion throughout the taking of evidence amounted to a breach of Article 6 unless it had been established that he had waived unequivocally his right to be present at his trial. Hence, exclusion for improper conduct had to be attended by certain safeguards: it had first to be established that the accused could reasonably have foreseen what the consequences of his ongoing conduct would be, and he had to be given an opportunity to compose himself. Failing that, and notwithstanding his disruptive behaviour, it could not be concluded unequivocally – as required by the Convention – that the applicant had waived his right to be present at his trial.

*Right to an effective remedy (Article 13)*

The case of *Hirsi Jamaa and Others*, cited above, concerned Somali and Eritrean migrants travelling from Libya who were arrested at sea and then returned to Libya on Italian military ships. The applicants alleged that they had not had an effective remedy under Italian law by which to assert their complaints concerning their removal to the third country.

The Court reiterated the importance of guaranteeing anyone subject to a removal measure, the consequences of which were potentially irreversible, the right to obtain sufficient information to enable them to gain effective access to the domestic procedures and to substantiate their complaints. The applicants had been deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced. There had therefore been a violation of Article 13 taken in conjunction with those two Articles.

The judgment in *De Souza Ribeiro v. France*<sup>1</sup> concerned the expulsion of foreign nationals, alleged to be in breach of their right to respect for their private and family life (Article 8). The applicant had been deported less than an hour after applying to the domestic court of first instance. This had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. While the Court acknowledged the importance of swift access to a remedy, this should not go so far as to constitute an obstacle or unjustified hindrance to making use of it, or take priority over its practical effectiveness. Although States had to take steps to combat illegal immigration, Article 13 did not permit them to deny applicants access in practice to the minimum procedural safeguards needed to protect them against arbitrary expulsion. There had to be genuine intervention by the court.

The Court held that there had been a violation of Article 13 in conjunction with Article 8. An effective possibility had to exist of challenging the deportation or refusal-of-residence order and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality.

The effectiveness of a remedy for the purposes of Article 13 also required that the person concerned should have access to a “remedy with automatic suspensive effect” when expulsion exposed him or her to a real risk of a violation of Article 2 or 3 of the Convention; that requirement also applied to complaints under Article 4 of Protocol No. 4

### ***Right not to be tried or punished twice (Article 4 of Protocol No. 7)***

The judgment in *Marguš v. Croatia*<sup>2</sup> (not final) concerned the conviction of a member of the armed forces prosecuted for war crimes having previously been granted an amnesty. The Court observed that granting amnesty in respect of “international crimes” – which included crimes against humanity, war crimes and genocide – was increasingly considered to be prohibited by international law. The amnesty granted to the applicant in respect of acts which were characterised as war crimes against the civilian population amounted to a “fundamental defect in the proceedings” for the purposes of the second paragraph of Article 4 of Protocol No. 7, justifying the reopening of the proceedings. There had therefore been no breach of that provision.

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1. [GC], no. 22689/07, 13 December 2012.

2. No. 4455/10, 13 novembre 2012.

## Civil and political rights

### ***Right to respect for private and family life, the home and correspondence (Article 8)***

#### *Applicability*

In the Court's view, any negative stereotyping of a group, when it reached a certain level, was capable of impacting on the group's sense of identity and the feelings of self-worth and self-confidence of members of the group. Negative stereotyping of this kind could be seen as affecting the private life of members of the group (*Aksu*, cited above). In this case, an applicant of Roma origin had criticised a publication which, he claimed, constituted an attack on the identity of the Roma community and thus an infringement of his private life.

Article 8 was found to be applicable to parental leave and the corresponding allowances since they promoted family life and necessarily affected the way in which it was organised (*Konstantin Markin v. Russia*<sup>1</sup>).

The case of *Hristozov and Others v. Bulgaria*<sup>2</sup> (not final) concerned the refusal to allow terminally ill cancer patients to obtain an unauthorised experimental drug. In the Court's view, a regulatory restriction on patients' capacity to choose their medical treatment, with a view to possibly prolonging their lives, fell within the scope of "private life".

#### ***Private life***

Media coverage of the private life of well-known figures involves competing interests. Two Grand Chamber judgments dealt with the balancing of the right to freedom of expression and the right to respect for one's private life. In these judgments, the Court recapitulated the relevant criteria in relation to this important issue.

In cases requiring such a balancing exercise, the Court considered that the outcome of the application should not, in theory, vary according to whether it was lodged with the Court under Article 8 of the Convention, by the person who was the subject of the article, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserved equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases.

The case of *Von Hannover (no. 2) v. Germany*<sup>3</sup> concerned the protection of a celebrity's right to the protection of her image (after she had been photographed without her knowledge), set against the press's right to freedom of expression when publishing photographs showing scenes

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1. [GC], no. 30078/06, ECHR 2012.

2. Nos. 47039/11 and 358/12, 13 November 2012.

3. [GC], nos. 40660/08 and 60641/08, ECHR 2012.



from an individual's private life. It was important, among other things, to determine whether the photograph had been published for entertainment purposes. In order to decide whether it contributed to a debate of general interest, the photograph in question had been considered in the light of the accompanying articles (and not in isolation).

The judgment in *Axel Springer AG v. Germany*<sup>1</sup> concerned the publication of press articles on the arrest and conviction of a well-known television actor. The application, which was lodged under Article 10 (see below), also raised issues in relation to Article 8, in particular the scope of protection of private life when weighed against the public interest in being informed about criminal proceedings.

The *Aksu* judgment, cited above, examined from the standpoint of Article 8 remarks on the subject of the Roma community which were alleged by one of the members of that community to be demeaning. This case differed from previous cases brought by members of the Roma community which had raised issues of ethnic discrimination. The Court's examination focused on the State's positive obligations and the margin of appreciation of the domestic courts.

The Court sought to ascertain whether the national courts had weighed the right of a member of the Roma community to respect for his private life against a university professor's freedom to publish the findings of his academic research into that community. This balancing of competing fundamental rights guaranteed by Articles 8 and 10 had to be carried out in accordance with the criteria set out in the Court's settled case-law.

The Grand Chamber reiterated that the vulnerable position of Roma meant that special consideration had to be given to their needs and their different lifestyle, both in the relevant regulatory framework and in reaching decisions in particular cases.

The applicant, of Roma origin, also claimed to be the victim of negative stereotypes contained in some dictionaries. Here, the target group was a relevant factor. Thus, in a dictionary aimed at pupils, more diligence was required when giving the definitions of expressions which were part of daily language but which might be construed as humiliating or insulting.

The Court examined for the first time the issue of consensual incest from the standpoint of Article 8 (*Stübing v. Germany*<sup>2</sup>). This case concerned a man's sentencing to a prison term for his incestuous relationship with his younger sister, with whom he had several children.

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1. [GC], no. 39954/08, 7 February 2012.

2. No. 43547/08, 12 April 2012.

The Court noted the absence of consensus among the Contracting States, the majority of which imposed criminal sanctions on consensual incest between brother and sister, and the absence of a general trend towards decriminalising such acts. It observed that all the legal systems surveyed, including those which did not treat incest as a criminal offence, prohibited brothers and sisters from marrying. It found to be legitimate the reasons given by the German Federal Constitutional Court, namely the protection of morals, the need to protect the structure of the family and accordingly of society as a whole, and the need to protect sexual self-determination.

The Court examined for the first time a system of urban risk areas in which civil liberties could be restricted. Anyone in those areas could be subjected to a preventive body search by police looking for weapons.

The Court took into consideration the legal framework in which the search system operated and the variety of authorities involved. It further noted the tangible results achieved in terms of combating violent crime. Given the legal framework and the system's effectiveness, the domestic authorities had been entitled to consider that the public interest outweighed the disadvantage caused by the interference with private life (*Colon v. the Netherlands*<sup>1</sup> decision).

For the first time, the Court examined on the merits the issue of access for terminally ill cancer patients to an unauthorised experimental treatment (*Hristozov and Others*, cited above). The medicine in question, which had not been clinically tested, was not authorised in any country but was allowed in some countries for compassionate use. The Court observed that there was a clear trend in the Contracting States towards allowing, under certain exceptional conditions, the use of unauthorised medicinal products. However, in the Court's view, that emerging consensus was not based on settled principles in the law of the Contracting States, nor did it appear to extend to the precise manner in which the use of such products should be regulated. Accordingly, States' margin of appreciation was wide, especially with regard to the detailed rules they laid down with a view to achieving a balance between the competing public and private interests.

### ***Family life***

The judgment in *Van der Heijden v. the Netherlands*<sup>2</sup> concerned the obligation for an individual to give evidence against her cohabiting partner in criminal proceedings. The case raised two competing public interests: the prosecution of serious crime and the protection of family life from interference by the State. Despite being in a stable family

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1. (dec.), no. 49458/06, 15 May 2012.

2. [GC], no. 42857/05, 3 April 2012.

relationship with her partner for several years, the applicant was not dispensed from the obligation to give evidence against him in the criminal proceedings against him, as the State had opted to reserve testimonial privilege to partners in formally recognised unions. The Court noted the States' margin of appreciation in that regard.

States that made provision in their legislation for testimonial privilege were free to limit its scope to marriage or registered partnerships. The legislature was entitled to confer a special status on marriage or registration and not to confer it on other *de facto* types of cohabitation. The Court stressed the importance of the interest in prosecuting serious crime.

The case of *Popov*, cited above, concerned the delicate issue of detention of under-age migrants in a closed centre with a view to their deportation. The Court emphasised the "child's best interests" in that context. There was broad consensus, particularly in international law, that the children's interests were paramount in all decisions concerning them. The Court therefore departed from the precedent established in *Muskhadzhiyeva and Others v. Belgium*<sup>1</sup>, on the ground that "the child's best interests could not be confined to keeping the family together"; the authorities had to "take all the necessary steps to limit as far as possible the detention of families with children".

The Court noted that there had been no risk that the applicants would abscond. However, no alternative to detention had been considered, such as a compulsory residence order or placement in a hotel. In the absence of any reason to suspect that the parents and their baby and three-year-old child would seek to evade the authorities, their detention for a period of two weeks in a closed facility was held to be contrary to Article 8.

The judgment in *Trosin v. Ukraine*<sup>2</sup> concerned the very severe restrictions on family visits imposed on life prisoners. There was no justification for an automatic restriction on the number of visits per year without any opportunity of assessing its necessity in the light of each prisoner's particular situation. The same applied to the restriction on the number of adults allowed per visit, the lack of privacy and the exclusion of any physical contact between prisoners and their relatives.

### ***Private and family life***

The Court held that "particularly serious reasons" must exist before restrictions on the family and private life of military personnel, especially those relating to "a most intimate part of an individual's private life", could satisfy the requirements of Article 8 § 2. Such restrictions were

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1. *Muskhadzhiyeva and Others v. Belgium*, no. 41442/07, § 98, 19 January 2010.

2. No. 39758/05, 23 February 2012.

acceptable only where there was a real threat to the armed forces' operational effectiveness. The respondent Government's assertions as to the existence of such a risk had to be substantiated by specific examples (*Konstantin Markin*, cited above).

The judgment in *Kurić and Others*, cited above, concerned persons deprived of permanent resident status in Slovenia (the "erased" persons) following the country's independence, and the serious consequences for them of the removal of their names from the Register of Permanent Residents. The Court held that the interference in issue had lacked sufficient legal basis. However, its examination did not end there. Noting the particular circumstances of the case and taking account of the far-reaching repercussions of the impugned measure, the Court further examined whether the interference had pursued a legitimate aim and had been proportionate.

### ***Private life and correspondence***

The case of *Michaud v. France*<sup>1</sup> (not final) dealt with the confidentiality of lawyer-client relations and legal professional privilege, against the background of the incorporation into domestic law of a European Union directive concerning money laundering. A lawyer complained of the obligation for members of the profession to report any "suspicions" they might have concerning their clients, on pain of disciplinary sanctions. Regarding the protection of fundamental rights afforded by the European Union, the Court had held in *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*<sup>2</sup> that it was in principle equivalent to that of the Convention system. For the first time, the Court held that this presumption did not apply in the case before it. The case concerned the transposition of a European directive – as opposed to the adoption of a European regulation – and the domestic court had refused to submit a request to the Court of Justice in Luxembourg for a preliminary ruling on the issue whether the obligation for lawyers to report their suspicions was compatible with Article 8 of the Convention. That question had never previously been examined by the Court of Justice, either in a preliminary ruling delivered in the context of another case, or in the context of one of the various actions open to the European Union's Member States and institutions. Hence, the supervisory machinery provided for by European Union law had not come into play.

Legal professional privilege was of great importance, and constituted one of the fundamental principles on which the administration of justice in a democratic society was based. It was not, however, inviolable. It was necessary to weigh its importance against the importance for the

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1. No. 12323/11, 6 December 2012.

2. [GC], no. 45036/98, ECHR 2005-VI.

member States of combating the laundering of the proceeds of unlawful activities, themselves likely to be used in financing criminal activities, particularly in the spheres of drug trafficking and international terrorism.

### ***Freedom of thought, conscience and religion (Article 9)***

In 2011<sup>1</sup>, the Court had occasion to revisit its case-law on the applicability of Article 9 to conscientious objectors. The judgment in *Savda v. Turkey*<sup>2</sup> concerned the objections to military service raised on grounds of conscience by a pacifist who did not rely on any religious beliefs. A further characteristic of this case was the absence of a procedure for review by the national authorities of the applicant's request to be recognised as a conscientious objector. In the Court's view, in the absence of such a procedure, the obligation to carry out military service was such as to entail "a serious and insurmountable conflict" with an individual's conscience or his deeply and genuinely held beliefs.

There was therefore an obligation on the State authorities to provide conscientious objectors with an effective and accessible procedure enabling them to have established whether they were entitled to conscientious-objector status, in order to preserve their interests protected by Article 9.

### ***Freedom of expression (Article 10)***

The case of *Axel Springer AG*, cited above, concerned an injunction prohibiting a newspaper from reporting on the arrest and conviction of a well-known actor. The Grand Chamber listed the criteria governing the balancing of the right to freedom of expression and the right to respect for private life. In principle, the task of assessing how well a person was known to the public fell primarily to the domestic courts, especially where that person was mainly known at national level. The Court examined whether the actor had been sufficiently well known to qualify as a public figure. The judgment examined the scope of the "legitimate expectation" that his private life would be effectively protected.

Other aspects explored by the judgment included the means by which the journalist had obtained the information, the accuracy of the information, the extent to which the press itself had preserved the actor's anonymity and the content and form of the impugned articles, including the use of "expressions which, to all intents and purposes, were designed to attract the public's attention".

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1. *Bayatyan v. Armenia* [GC], no. 23459/03, ECHR 2011.

2. No. 42730/05, 12 June 2012.

In the case of *Centro Europa 7 S.r.l. and Di Stefano v. Italy*<sup>1</sup>, a private television company had been granted a licence for nationwide television broadcasting but was unable to broadcast because no frequencies had been allocated to it by the authorities. The situation had deprived the licence of all practical purpose since the activity it authorised had been impossible to carry out in practice. The Grand Chamber reiterated the general principles governing media pluralism.

In particular, it was necessary to ensure effective pluralism in this very sensitive sector so as to guarantee diversity of overall programme content, reflecting the variety of opinions encountered in the society concerned.

In addition to its negative duty of non-interference the State had a positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective pluralism in the media. It was not sufficient to provide for the existence of several channels or the theoretical possibility for potential operators to access the audiovisual market: it was necessary in addition to allow effective access to the market.

A sufficiently precise legal framework was a particularly important requirement in cases concerning the conditions of access to the audiovisual market. Any shortcomings on the part of the State which resulted in reduced competition in the audiovisual sector would be in breach of Article 10.

The judgment in *Mouvement raëlien suisse v. Switzerland*<sup>2</sup> concerned the scope of the right to use public space to conduct poster campaigns. In the Court's view, individuals did not have an unconditional or unlimited right to the extended use of public space, especially in relation to facilities intended for advertising or information campaigns. With regard to freedom of expression there was little scope for restrictions on political speech. However, States had a wide margin of appreciation in regulating speech in commercial matters and advertising.

Hence, the examination by the local authorities of the question whether a poster in the context of a campaign that was not strictly political satisfied certain statutory requirements – for the defence of interests as varied as, for example, the protection of morals, road-traffic safety or the preservation of the landscape – fell within the margin of appreciation afforded to States. The authorities therefore had a certain discretion in granting authorisation in this area.

In this case the interference by the public authorities had been limited to prohibiting the display of posters in public areas. The Court

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1. [GC], no. 38433/09, ECHR 2012.

2. [GC], no. 16354/06, ECHR 2012.

acknowledged the necessity of protecting health and morals and the rights of others and preventing crime. The applicant association had been able to continue to disseminate its ideas through its website and through other means such as the distribution of leaflets in the street or in letter boxes. Where they decided to restrict fundamental rights, the authorities had to choose the means that caused the least possible prejudice to the rights in question.

The case of *Vejdeland and Others v. Sweden*<sup>1</sup> concerned the applicants' conviction for "agitation against a national or ethnic group" following the distribution to young pupils of leaflets worded in a manner offensive to homosexuals. This judgment is noteworthy as it is the first time that the Court has applied the principles relating to speech offensive to certain social groups in the context of speech against homosexuals. The Court stressed that discrimination based on sexual orientation was as serious as discrimination based on race, origin or colour.

In *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*<sup>2</sup>, the Court held that Article 10 included freedom to receive and impart information and ideas in any language which afforded the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. Article 10 protected not only the substance of the ideas and information expressed but also the form in which they were conveyed, irrespective of the language in which they were expressed.

The freedom to receive and impart information or ideas forms an integral part of the right to freedom of expression. For the first time, the Court dealt with the blocking of an Internet site which had the collateral effect of barring access to the entire "Google Sites" domain and all the websites hosted on it (*Ahmet Yıldırım v. Turkey*<sup>3</sup> (not final)). The blocking of the websites was the result of a preventive measure taken in the context of criminal proceedings against another individual, unconnected to the applicant's site.

The Court considered that "the Internet has now become one of the principal means by which individuals exercise their right to freedom of expression and information; it provides essential tools for taking part in activities and discussions concerning political issues or matters of public interest". It held that the domestic courts should have had regard to the fact that such measures – which rendered large amounts of information inaccessible – had a considerable impact on the rights of Internet users and a substantial collateral effect. The Court found a violation of Article 10.

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1. No. 1813/07, 9 February 2012.

2. No. 20641/05, ECHR 2012.

3. No. 3111/10, 18 December 2012.

### ***Freedom of assembly and association (Article 11)***

The *Eğitim ve Bilim Emekçileri Sendikası* judgment, cited above, concerned proceedings to have a trade union of education-sector employees dissolved on the grounds that its statutes defended teaching in a mother tongue other than Turkish. The union was eventually forced to delete the relevant references from its statutes in order to avoid being dissolved.

In the Court's view, the principle defended by the trade union, whereby the individuals making up Turkish society could be taught in their native languages other than Turkish, was not contrary to fundamental democratic principles. It observed that nothing in the impugned article of the union's statutes could be considered as a call to violence, insurrection or any other form of denial of democratic principles; this was an essential factor to be taken into account. Even assuming that the national authorities had been entitled to consider that teaching in a mother tongue other than Turkish promoted a minority culture, the existence of minorities and different cultures in a country was a historical fact that a democratic society had to tolerate and even protect and support according to the principles of international law. The Court held that there had been a violation of Article 11.

### ***Right to marriage (Article 12)***

The judgment in *V.K. v. Croatia*<sup>1</sup> (not final) concerned divorce proceedings the length of which was found to be unreasonable from the standpoint of Article 6 § 1. For the first time, the Court held that the failure of the national authorities to conduct divorce proceedings effectively left the petitioner in a state of prolonged uncertainty, thus constituting an unreasonable restriction on the right to marry. It took into account, among other considerations, the fact that the applicant had a well-established intention to remarry, as well as the circumstances of the divorce proceedings (the agreement of the spouses to get divorced, the possibility for the courts to take an interim decision and the urgent nature of the proceedings in domestic law).

### ***Prohibition of discrimination (Article 14)***

The exclusion of male military personnel from the right to parental leave, accorded to female personnel, raised an important question of general interest from the standpoint of Article 14 read in conjunction with Article 8. In its judgment in *Konstantin Markin*, cited above, the Court ruled on this issue for the first time. The Grand Chamber observed the way in which contemporary European societies had evolved in relation to the question of equality between the sexes with regard to parental leave. The traditional distribution of gender roles in

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1. No. 38380/08, 27 November 2012.



society could not justify the exclusion of men, including servicemen, from the entitlement to parental leave.

In the specific context of the armed forces certain restrictions linked to the importance of the army for the protection of national security might be justifiable, provided they were not discriminatory. It was possible to accommodate legitimate concerns about the operational effectiveness of the army and yet afford military personnel of both sexes equal treatment in the sphere of parental leave, as the example of numerous European countries demonstrated. The relevant comparative-law materials indicated that, in a substantial number of member States, both servicemen and servicewomen were entitled to parental leave. Conversely, a general and automatic restriction applied to a group of people on the basis of their sex – such as the exclusion of male military personnel alone from entitlement to parental leave – was incompatible with Article 14. The prohibition of sex discrimination was of fundamental importance; the right not to be discriminated against on account of sex could not be waived.

The case of *Gas and Dubois v. France*<sup>1</sup> concerned the refusal by the courts of an application by a woman living in a same-sex couple for a simple adoption order in respect of her partner's child, conceived in Belgium via anonymous donor insemination. The reason given for the refusal was that the transfer of parental responsibility to the adoptive parent would deprive the biological mother of all rights in relation to her child and would be against the child's interests, since the biological mother intended to continue raising her.

In the Court's view, the case differed fundamentally from that of *E.B. v. France*<sup>2</sup>, which related to the handling of an application for authorisation to adopt a child made by a single homosexual, since French law allowed single persons to adopt. The Court observed that the legal situation of same-sex couples was not comparable to that of married couples for the purposes of second-parent adoption (same-sex marriage is prohibited under French law). Same-sex couples were not treated differently compared with unmarried heterosexual couples, whether or not the latter were in a civil partnership, as the latter would likewise be refused a simple adoption order. The Court held that there had been no violation of Article 14 in conjunction with Article 8.

The case of *Özgürlük ve Dayanışma (ÖDP) v. Turkey*<sup>3</sup> dealt for the first time with the issue of direct State funding of political parties. The Court defined certain principles regarding systems of public funding for parties based on a minimum level of representation.

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1. No. 25951/07, 15 March 2012.

2. [GC], no. 43546/02, 22 January 2008.

3. No. 7819/03, ECHR 2012.

The case concerned the refusal to grant public funding to a political party which was not represented in Parliament, on the grounds that it had not attained the minimum level of electoral support required by law. The Court did not find any violation of Article 14 read in conjunction with Article 3 of Protocol No. 1. It noted the very low level of representation of the applicant party and the compensatory effect of other elements of public support available to it, such as tax exemption on various items of income and allocation of broadcasting time during electoral campaigns.

***Protection of property (Article 1 of Protocol No. 1)***

The judgment in *Centro Europa 7 S.r.l. and di Stefano*, cited above, reiterated the principles underlying the concept of “possessions” within the meaning of the Convention. The case concerned the granting of a broadcasting licence to a television company whose operations were delayed because no broadcasting frequencies were allocated to it (see Article 10 above).

***Right to education (Article 2 of Protocol No. 1)***

The case of *Catan and Others*, cited above, concerned the forced closure of schools linked to the language policy of the separatist regime, and harassment by the authorities after the schools reopened. There was no evidence to suggest that such measures pursued a legitimate aim. The Grand Chamber stressed the fundamental importance of primary and secondary education for each child’s personal development and future success, and reaffirmed the right to be taught in one’s national language.

With regard to the acts of a separatist regime not recognised by the international community, the Court examined the question of State responsibility for the infringement of the right to education: the responsibility of the State on whose territory the events occurred, and that of the State which ensured the survival of the administration by virtue of its ongoing military and other support. In the case of the latter State, which had exercised effective control over the administration during the period in question, the fact that it had not intervened directly or indirectly in the regime’s language policy did not prevent its responsibility from being engaged.

***Right to free elections (Article 3 of Protocol No. 1)***

The case of *Sitaropoulos and Giakoumopoulos v. Greece*<sup>1</sup> concerned the place from which citizens living abroad could exercise the right to vote in parliamentary elections. The specific question raised was whether the Convention required Contracting States to put in place a system allowing expatriates to exercise voting rights from abroad.

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1. [GC], no. 42202/07, ECHR 2012.

In general terms, Article 3 of Protocol No. 1 did not provide for the implementation by Contracting States of measures to allow expatriates to exercise their right to vote from their place of residence. Furthermore, as the law currently stood, no obligation or consensus to that effect could be derived either from the relevant European and international law or from the comparative survey of national systems. As to those member States that allowed voting from abroad, there was a wide variety of approaches with regard to the conditions of exercise. The Court summarised its case-law concerning restrictions on the exercise of expatriate voting rights based on the criterion of residence.

The issue of restrictions on convicted prisoners' voting rights was raised again before the Grand Chamber in the case of *Scoppola v. Italy (no. 3)*<sup>1</sup>. The principles articulated in the 2005 judgment in *Hirst v. the United Kingdom (no. 2)*<sup>2</sup> were reaffirmed. The Grand Chamber ruled that a prohibition on the right to vote could be ordered by a judge in a specific decision or could result from the application of the law. What was important was to ensure that the judge's decision or the wording of the law complied with Article 3 of Protocol No. 1 and, in particular, that the system was not excessively rigid.

In this case the Court stressed the legislature's concern to adjust the application of the measure to the particular circumstances of the case in hand, taking into account such factors as the gravity of the offence committed and the conduct of the offender. The duration of the measure was also adjusted to the sentence imposed and thus, indirectly, to the gravity of the offence. Accordingly, the prohibition on the right to vote under the system in question did not have the general, automatic and indiscriminate character that had led the Court to find a violation of Article 3 of Protocol No. 1 in *Hirst*.

The judgment in *Communist Party of Russia and Others v. Russia*<sup>3</sup> concerned the media coverage of a general-election campaign. This was the first judgment by the Court dealing directly with the coverage of a national electoral campaign by the major broadcasting media; the coverage had been condemned as unfair by opposition parties and candidates. The Court clarified States' positive obligations in this sphere and the scope of their margin of appreciation.

### ***Right to compensation for a miscarriage of justice (Article 3 of Protocol No. 7)***

The *Poghosyan and Baghdasaryan v. Armenia*<sup>4</sup> judgment was the first in which the Court examined on the merits a complaint under Article 3 of

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1. [GC], no. 126/05, 22 May 2012.

2. [GC], no. 74025/01, ECHR 2005-IX.

3. No. 29400/05, 19 June 2012.

4. No. 22999/06, ECHR 2012.

Protocol No. 7 and found a violation of that provision. The case concerned the failure to provide compensation to an accused who had been wrongly sentenced to fifteen years' imprisonment and had spent approximately five and a half years in detention before being considered to have been acquitted.

The Court held that compensation was due even where the law or practice of the State concerned made no provision for it. Furthermore, the victim of a judicial miscarriage was entitled to compensation not only for the pecuniary damage caused by the wrongful conviction, but also for any non-pecuniary damage such as distress, anxiety, inconvenience and loss of enjoyment of life.

### **Execution of judgments (Article 46)**

#### *Pilot judgments*<sup>1</sup>

One of the fundamental implications of the pilot-judgment procedure is that the Court's assessment of the situation complained of in a "pilot" case necessarily extends beyond the sole interests of the individual applicants and requires it to examine that case also from the perspective of the general measures that need to be taken in the interest of other potentially affected persons (*Kurić and Others*, cited above).

Even if only a few similar applications are currently pending before the Court, in the context of systemic, structural or similar violations the potential inflow of future cases is also an important consideration in terms of preventing the accumulation of such repetitive cases on the Court's docket (*ibid.*).

The *Ananyev and Others v. Russia*<sup>2</sup> judgment applied the pilot-judgment procedure in the context of inhuman and degrading conditions of detention of persons awaiting trial. The Court has pointed out in a large number of its judgments that remand in custody should be the exception rather than the norm and should be applied only as a last resort.

Stressing the fundamental nature of the right not to be subjected to inhuman or degrading treatment, the Court decided not to adjourn the examination of similar applications pending before it. It emphasised that adjournment was a possibility rather than an obligation under Rule 61 § 6 of the Rules of Court.

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1. According to Rule 61 § 1 of the Rules of Court: "The Court may initiate a pilot-judgment procedure and adopt a pilot judgment where the facts of an application reveal in the Contracting Party concerned the existence of a structural or systemic problem or other similar dysfunction which has given rise or may give rise to similar applications."

2. Nos. 42525/07 and 60800/08, 10 January 2012.

In *Ümmühan Kaplan v. Turkey*<sup>1</sup> the Court decided to apply the pilot-judgment procedure to cases concerning the length of proceedings. It identified a structural and systemic problem in the domestic legal system which was incompatible with Articles 6 § 1 and 13 of the Convention. Within the time-limit specified in the judgment, the respondent State was to put in place an effective domestic remedy providing adequate and effective redress in respect of excessively lengthy proceedings.

#### *General measures*

The case of *Aslakhanova and Others v. Russia*<sup>2</sup> (not final) concerned abductions and disappearances in the Northern Caucasus in breach of Articles 2, 3, 5 and 13 of the Convention. The Court observed that the situation complained of resulted from systemic problems at national level, for which there was no effective domestic remedy and which required the prompt implementation of comprehensive and complex measures. In the reasoning of its judgment the Court referred to the measures to be taken with regard to the situation of the victims' families and the effectiveness of the investigations, and urged the respondent State to submit a strategy to the Committee of Ministers without delay.

#### *Individual measures*

In *Hirsi Jamaa and Others*, cited above, the Court held that there was a risk of ill-treatment in Libya and of arbitrary repatriation. It ruled that the respondent Government was to take all possible steps to obtain assurances from the Libyan authorities that the applicants would not be subjected to treatment incompatible with Article 3 of the Convention or arbitrarily repatriated.

The case of *Sampani and Others v. Greece*<sup>3</sup> (not final) was the first in which Article 46 was applied in relation to education. After finding that there had been discrimination against Roma children, the Court invited the respondent State to take action to provide schooling for them.

### **Striking out (Article 37)**

Further examination of an application concerning an important question of general interest serves to elucidate, safeguard and develop the standards of protection of human rights. Raising those standards and extending human rights jurisprudence throughout the community of the Convention States forms part of the purpose of the Convention system (*Konstantin Markin*, cited above).

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1. No. 24240/07, 20 March 2012.

2. Nos. 2944/06, 8300/07, 50184/07, 332/08 and 42509/10, 18 December 2012.

3. No. 59608/09, 11 December 2012.



**X. CASES REPORTED IN THE COURT'S CASE-LAW  
INFORMATION NOTES IN 2012**





# CASES REPORTED IN THE COURT'S CASE-LAW INFORMATION NOTES IN 2012<sup>1</sup>

## Article 1

### Jurisdiction of States

Jurisdiction in relation to resident of enclaved area who was effectively prevented from travelling as a result of respondent State's implementation of UN Security Council Resolution

*Nada v. Switzerland* [GC], no. 10593/08,  
12 September 2012, [no. 155](#)

Jurisdiction of Moldovan and Russian Governments in relation to educational policy within separatist region of the Republic of Moldova

*Catan and Others v. the Republic of Moldova and Russia* [GC],  
nos. 43370/04, 8252/05 and 18454/06,  
19 October 2012, [no. 156](#)

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Jurisdiction in relation to detention in the United Nations Detention Unit (The Hague) of a Congolese remand prisoner who was transferred to the custody of the International Criminal Court: *inadmissible*

*Djokaba Lambi Longa v. the Netherlands* (dec.), no. 33917/12,  
9 October 2012, [no. 156](#)

## Article 2

### Positive obligations/Life

Failure adequately to vet police officer before issuing him with a firearm he subsequently used in fatal shooting: *violation*

*Gorovenko and Bugara v. Ukraine*, nos. 36146/05 and 42418/05,  
12 January 2012, [no. 148](#)

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1. This chapter is an extract from the Index to the Court's *Case-law Information Notes* for 2012. The cases (including non-final judgments, see Article 43 of the Convention) are listed with their name and application number. The three-digit number at the end of each reference line indicates the issue of the *Case-law Information Note* where the case was summarised. Depending on the Court's findings, a case may appear under several keywords. The monthly Information Notes and annual indexes are available on the Court's website at [www.echr.coe.int](http://www.echr.coe.int) (under "Case-law/ Information Notes"). A hard-copy subscription is available for 30 euros or 45 United States dollars per year, including the index, by contacting the ECHR Publications service via the online form at [www.echr.coe.int/echr/contact/en](http://www.echr.coe.int/echr/contact/en) (select "Contact the Publications service"). All judgments and decisions are available in full text in HUDOC (except for decisions taken by a single judge). The facts, complaints and the Court's questions in significant communicated cases are likewise available in HUDOC. The legal summaries from the Case-law Information Notes can also be searched in HUDOC

Killing by convicted murderer following his release on licence: *no violation*

*Choreftakis and Choreftaki v. Greece*, no. 46846/08,  
17 January 2012, **no. 148**

Non-fatal shooting of a waiter by police officer on unauthorised leave of absence: *violation*

*Sašo Gorgiev v. “the former Yugoslav Republic of Macedonia”*,  
no. 49382/06, 19 April 2012, **no. 151**

Fatal stabbing of youth by pupil outside school: *violation*

*Kayak v. Turkey*, no. 60444/08, 10 July 2012, **no. 154**

Refusal to allow the use of an unauthorised experimental drug for medical treatment: *no violation*

*Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12,  
13 November 2012, **no. 157**

Fatal shooting of a prosecution witness by accused in theft proceedings: *no violation*

*Van Colle v. the United Kingdom*, no. 7678/09,  
13 November 2012, **no. 157**

Duty to adequately protect members of a witness protection scheme: *violation*

*R.R. and Others v. Hungary*, no. 19400/11,  
4 December 2012, **no. 158**

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Alleged breach of State’s obligations to protect life during hostage taking crisis in Beslan in 2004: *communicated*

*Tagayeva and Others v. Russia*, nos. 26562/07 et al., **no. 152**

## **Life**

Murder of two villagers by soldiers, followed by a preliminary investigation started over thirteen years ago and still pending: *violation*

*Nihayet Arıcı and Others v. Turkey*, nos. 24604/04 and 16855/05,  
23 October 2012, **no. 156**

## **Use of force**

Conscript shot dead while trying to escape from detention to which he had been sentenced for disciplinary offence: *violation*

*Putintseva v. Russia*, no. 33498/04, 10 May 2012, **no. 152**

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Alleged breach of State’s obligations to protect life during hostage taking crisis in Beslan in 2004: *communicated*

*Tagayeva and Others v. Russia*, nos. 26562/07 et al., **no. 152**

### **Effective investigation**

Murder of two villagers by soldiers, followed by a preliminary investigation started over thirteen years ago and still pending: *violation*

*Nihayet Arıcı and Others v. Turkey*, nos. 24604/04 and 16855/05,  
23 October 2012, [no. 156](#)

Lack of investigation into death of man during June 1990 demonstrations against Romanian regime: *violation*

*Mocanu and Others v. Romania*, nos. 10865/09, 45886/07 and  
32431/08, 13 November 2012, [no. 157](#)

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Alleged breach of State's obligations to protect life during hostage taking crisis in Beslan in 2004: *communicated*

*Tagayeva and Others v. Russia*, nos. 26562/07 et al., [no. 152](#)

### **Article 3**

#### **Positive obligations**

Alleged failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyń in 1940: *case referred to the Grand Chamber*

*Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09,  
16 April 2012, [no. 155](#)

Alleged failure by State to prevent sexual abuse of school pupil in National School in 1973: *relinquishment in favour of the Grand Chamber*

*O'Keefe v. Ireland*, no. 35810/09, [no. 157](#)

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Failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyń in 1940: *violation*

*Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09,  
16 April 2012, [no. 151](#)

Violent and persistent harassment of a disabled person by neighbourhood children: *violation*

*Dorđević v. Croatia*, no. 41526/10, 24 July 2012, [no. 154](#)

Refusal to allow the use of an unauthorised experimental drug for medical treatment: *no violation*

*Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12,  
13 November 2012, [no. 157](#)

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Alleged failure to acknowledge and investigate details of ill-treatment and enforced disappearance: *communicated*

*Al Nashiri v. Poland*, no. 28761/11  
*Al Nashiri v. Romania*, no. 33234/12, [no. 155](#)

### **Torture**

Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA: *violation*

*El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC],  
no. 39630/09, 13 December 2012, [no. 158](#)

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Rape of illegal immigrant by coastguard responsible for supervising him: *violation*

*Zontul v. Greece*, no. 12294/07, 17 January 2012, [no. 148](#)

Disability caused by police ill-treatment: *violation*

*Savin v. Ukraine*, no. 34725/08, 16 February 2012, [no. 149](#)

Failure adequately to investigate allegations of police brutality or to afford legal representation to victim disabled as a result of his injuries: *violations*

*Savitsky v. Ukraine*, no. 38773/05, 26 July 2012, [no. 154](#)

No plausible explanation offered for injuries suffered while in detention: *violation*

*Virabyan v. Armenia*, no. 40094/05, 2 October 2012, [no. 156](#)

-ooo-

Alleged complicity in practice of rendition of persons to secret detention sites at which illegal interrogation methods were employed: *communicated*

*Al Nashiri v. Poland*, no. 28761/11  
*Al Nashiri v. Romania*, no. 33234/12, [no. 155](#)

### **Inhuman treatment**

Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA: *violation*

*El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC],  
no. 39630/09, 13 December 2012, [no. 158](#)

Alleged failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyń in 1940: *case referred to the Grand Chamber*

*Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09,  
16 April 2012, [no. 155](#)

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Wheelchair-bound prisoner required to descend and ascend four flights of stairs in order to undergo life-supporting medical treatment: *violation*

*Arutyunyan v. Russia*, no. 48977/09, 10 January 2012, [no. 148](#)

Ill-treatment of conscientious objector, a Jehovah's Witness, in military prison on account of his refusal to serve in the army: *violation*

*Feti Demirtaş v. Turkey*, no. 5260/07, 17 January 2012, [no. 148](#)

Repeated transfers, over four-year period, of schizophrenic prisoner to and from psychiatric hospital: *violation*

*G. v. France*, no. 27244/09, 23 February 2012, [no. 149](#)

Spraying of tear gas into applicant's face after arrest: *violation*

*Ali Güneş v. Turkey*, no. 9829/07, 10 April 2012, [no. 151](#)

Failure adequately to account for fate of Polish prisoners executed by Soviet secret police at Katyn in 1940: *violation*

*Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09, 16 April 2012, [no. 151](#)

Prolonged imposition of "dangerous detainee" regime: *violation*

*Piechowicz v. Poland*, no. 20071/07, 17 April 2012, [no. 151](#)

Confinement of prisoner to restraint bed for nine hours: *violation*

*Julin v. Estonia*, nos. 16563/08 et al., 29 May 2012, [no. 152](#)

Secret transfer of person at risk of ill-treatment in Uzbekistan to third-party State where he was beyond the protection of the Convention: *violation*

*Abdulkhakov v. Russia*, no. 14743/11, 2 October 2012, [no. 156](#)

Ill-treatment by police of journalist attempting to report on a matter of public interest and inadequate investigation: *violations*

*Najafli v. Azerbaijan*, no. 2594/07, 2 October 2012, [no. 156](#)

Holding of homosexual prisoner in total isolation for more than eight months to protect him from fellow prisoners: *violation*

*X v. Turkey*, no. 24626/09, 9 October 2012, [no. 156](#)

Harassment of minor by anti-abortion activists as a result of authorities' actions after she had sought an abortion following rape: *violation*

*P. and S. v. Poland*, no. 57375/08, 30 October 2012, [no. 156](#)

Detention of a person suffering from multiple disabilities and unable to communicate: *violation*

*Z.H. v. Hungary*, no. 28973/11, 8 November 2012, [no. 157](#)

### Degrading treatment

Living conditions in a social care home for persons with mental disorders: *violation*

*Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012, no. 148

Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA: *violation*

*El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, 13 December 2012, no. 158

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Failure to provide prisoner with adequate orthopaedic footwear: *violation*

*Vladimir Vasilyev v. Russia*, no. 28370/05, 10 January 2012, no. 148

Ill-treatment of conscientious objector, a Jehovah's Witness, in military prison on account of his refusal to serve in the army: *violation*

*Feti Demirtaş v. Turkey*, no. 5260/07, 17 January 2012, no. 148

Repeated transfers, over four-year period, of schizophrenic prisoner to and from psychiatric hospital: *violation*

*G. v. France*, no. 27244/09, 23 February 2012, no. 149

Spraying of tear gas into applicant's face after arrest: *violation*

*Ali Güneş v. Turkey*, no. 9829/07, 10 April 2012, no. 151

Prolonged imposition of "dangerous detainee" regime: *violation*

*Piechowicz v. Poland*, no. 20071/07, 17 April 2012, no. 151

Confinement of prisoner to restraint bed for nine hours: *violation*

*Julin v. Estonia*, nos. 16563/08 et al., 29 May 2012, no. 152

Secret transfer of person at risk of ill-treatment in Uzbekistan to third-party State where he was beyond the protection of the Convention: *violation*

*Abdulkhakov v. Russia*, no. 14743/11, 2 October 2012, no. 156

Ill-treatment by police of journalist attempting to report on a matter of public interest and inadequate investigation: *violations*

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Holding of homosexual prisoner in total isolation for more than eight months to protect him from fellow prisoners: *violation*

*X v. Turkey*, no. 24626/09, 9 October 2012, no. 156

Harassment of minor by anti-abortion activists as a result of authorities' actions after she had sought an abortion following rape: *violation*

*P. and S. v. Poland*, no. 57375/08, 30 October 2012, [no. 156](#)

Detention of a person suffering from multiple disabilities and unable to communicate: *violation*

*Z.H. v. Hungary*, no. 28973/11, 8 November 2012, [no. 157](#)

### **Inhuman punishment /Degrading punishment**

Imprisonment for life with release possible only in the event of terminal illness or serious incapacitation: *case referred to the Grand Chamber*

*Vinter and Others v. the United Kingdom*, nos. 66069/09, 130/10 and 3896/10, 17 January 2012, [no. 154](#)

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Proposed extradition to United States where applicants faced trial on charges carrying whole life sentences without parole: *extradition would not constitute a violation*

*Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012, [no. 148](#)

Imprisonment for life with release possible only in the event of terminal illness or serious incapacitation: *no violation*

*Vinter and Others v. the United Kingdom*, nos. 66069/09, 130/10 and 3896/10, 17 January 2012, [no. 148](#)

### **Effective investigation**

Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA: *violation*

*El-Masri v. "the former Yugoslav Republic of Macedonia" [GC]*, no. 39630/09, 13 December 2012, [no. 158](#)

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Inadequacy of redress afforded by State to detainee victim of torture: *violation*

*Zontul v. Greece*, no. 12294/07, 17 January 2012, [no. 148](#)

Failure to carry out effective investigation into allegations of violent sexual abuse of a child: *violation*

*C.A.S. and C.S. v. Romania*, no. 26692/05, 20 March 2012, [no. 150](#)

Violence in prison by fellow inmates in reprisal for cooperating with the police: *violation*

*J.L. v. Latvia*, no. 23893/06, 17 April 2012, [no. 151](#)

Failure adequately to investigate allegations of police brutality or to afford legal representation to victim disabled as a result of his injuries: *violations*

*Savitsky v. Ukraine*, no. 38773/05, 26 July 2012, [no. 154](#)

Ill-treatment by police of journalist attempting to report on a matter of public interest and inadequate investigation: *violations*

*Najafli v. Azerbaijan*, no. 2594/07, 2 October 2012, [no. 156](#)

Serious allegations of ill-treatment not followed by adequate investigation: *violation*

*Virabyan v. Armenia*, no. 40094/05, 2 October 2012, [no. 156](#)

Failure in criminal proceedings to take measures necessary to assess credibility of an alleged act of domestic violence that was supported by forensic evidence: *violation*

*E.M. v. Romania*, no. 43994/05, 30 October 2012, [no. 156](#)

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Alleged failure to acknowledge and investigate details of ill-treatment and enforced disappearance: *communicated*

*Al Nashiri v. Poland*, no. 28761/11

*Al Nashiri v. Romania*, no. 33234/12, [no. 155](#)

### **Expulsion**

Return of migrants intercepted on the high seas to country of departure: *violation*

*Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09,  
23 February 2012, [no. 149](#)

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Detailed assurances from receiving State that high-profile Islamist would not be ill-treated if returned to Jordan: expulsion would not constitute a violation

*Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09,  
17 January 2012, [no. 148](#)

Refusal of asylum to Iranian dissidents who had actively and openly campaigned against the regime there since their arrival in respondent State: deportation would constitute a violation

*S.F. and Others v. Sweden*, no. 52077/10, 15 May 2012, [no. 152](#)

### **Extradition**

Torture and inhuman and degrading treatment during and following applicant's extraordinary rendition to CIA: *violation*

*El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC],  
no. 39630/09, 13 December 2012, [no. 158](#)



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Proposed extradition to United States where applicants faced trial on charges carrying whole life sentences without parole: *extradition would not constitute a violation*

*Harkins and Edwards v. the United Kingdom*, nos. 9146/07 and 32650/07, 17 January 2012, [no. 148](#)

Conditions of detention in super-max US prison: *extradition would not constitute a violation*

*Babar Ahmad and Others v. the United Kingdom*, nos. 24027/07 et al., 10 April 2012, [no. 151](#)

Secret transfer of person at risk of ill-treatment in Uzbekistan to third-party State where he was beyond the protection of the Convention: *violation*

*Abdulkhakov v. Russia*, no. 14743/11, 2 October 2012, [no. 156](#)

## Article 4

### Positive obligations/Servitude/Forced Labour

Failure to put in place legislative and administrative framework to combat servitude and forced labour effectively: *violation*

*C.N. and V. v. France*, no. 67724/09, 11 October 2012, [no. 156](#)

Ineffective investigation into complaints of domestic servitude owing to absence of specific legislation criminalising such treatment: *violation*

*C.N. v. the United Kingdom*, no. 4239/08, 13 November 2012, [no. 157](#)

### Trafficking in human beings

Trafficking of a young Bulgarian girl in Italy not supported by sufficient evidence: *inadmissible*

*M. and Others v. Italy and Bulgaria*, no. 40020/03, 31 July 2012, [no. 154](#)

## Article 5

### Article 5 § 1

#### Lawful arrest or detention

Detention during and following operation involving extraordinary rendition to CIA: *violation*

*El-Masri v. "the former Yugoslav Republic of Macedonia"* [GC], no. 39630/09, 13 December 2012, [no. 158](#)

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Placement of pregnant minor in juvenile shelter to prevent her from seeking abortion following rape: *violation*

*P. and S. v. Poland*, no. 57375/08, 30 October 2012, [no. 156](#)

### **Deprivation of liberty**

Lawfulness of placement in a social care home for persons with mental disorders: *violation*

*Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012, [no. 148](#)

Failure to follow statutory procedure for detention of suspect: *violation*

*Creangă v. Romania* [GC], no. 29226/03, 23 February 2012, [no. 149](#)

Containment of peaceful demonstrators within a police cordon for over seven hours: Article 5 not applicable; *violation*

*Austin and Others v. the United Kingdom* [GC], nos. 39692/09, 40713/09 and 41008/09, 15 March 2012, [no. 150](#)

Prohibition on travel through country surrounding enclave: *inadmissible*

*Nada v. Switzerland* [GC], no. 10593/08, 12 September 2012, [no. 155](#)

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Failure to provide the rehabilitative courses to prisoners which were necessary for their release: *violation*

*James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09 and 57877/09, 18 September 2012, [no. 155](#)

### **Procedure prescribed by law**

Lawfulness of placement in a social care home for persons with mental disorders: *violation*

*Stanev v. Bulgaria* [GC], no. 36760/06, 17 January 2012, [no. 148](#)

Failure to follow statutory procedure for detention of suspect: *violation*

*Creangă v. Romania* [GC], no. 29226/03, 23 February 2012, [no. 149](#)

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Detention alleged to be unlawful on account of lack of legal representation during police custody and questioning by investigating judge: *inadmissible*

*Simons v. Belgium* (dec.), no. 71407/10, 28 August 2012, [no. 155](#)

**Article 5 § 1 (c)**

**Reasonable suspicion**

Failure to follow statutory procedure for detention of suspect: *violation*  
*Creangă v. Romania* [GC], no. 29226/03, 23 February 2012,  
no. 149

**Article 5 § 1 (e)**

**Persons of unsound mind**

Confinement of mentally disabled applicant against her will for over seven years: *no violation*

*D.D. v. Lithuania*, no. 13469/06, 14 February 2012, no. 149

Forced confinement in a mental institution: *violation*

*X v. Finland*, no. 34806/04, 3 July 2012, no. 154

Seven-year detention in prison psychiatric wings despite authorities' insistence on need for placement in structure adapted to applicant's pathology: *violation*

*L.B. v. Belgium*, no. 22831/08, 2 October 2012, no. 156

Forced confinement for medical reasons of man with no history of psychiatric disorders and who was no danger to himself or others: *violation*

*Plesó v. Hungary*, no. 41242/08, 2 October 2012, no. 156

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Court order for admission to psychiatric hospital for observation owing to concerns about applicant's mental state: *inadmissible*

*S.R. v. the Netherlands (dec.)*, no. 13837/07, 18 September 2012,  
no. 155

**Article 5 § 1 (f)**

**Extradition**

Lack of a sufficiently accessible, precise and foreseeable procedure under San Marino law to avoid arbitrary detention pending extradition: *violation*

*Toniolo v. San Marino and Italy*, no. 44853/10, 26 June 2012,  
no. 153

**Article 5 § 2**

**Information in language understood**

Authorities' failure to procure adequate assistance to a person suffering from multiple disabilities and unable to communicate, in order to inform him of the reasons for his arrest: *violation*

*Z.H. v. Hungary*, no. 28973/11, 8 November 2012, no. 157

### **Article 5 § 3**

#### **Guarantees to appear for trial**

Statutory prohibition on release on bail for persons accused of particular classes of offence: *violation*

*Piruzyan v. Armenia*, no. 33376/07, 26 June 2012, [no. 153](#)

### **Article 5 § 4**

#### **Review of lawfulness of detention**

Inability for mentally disabled applicant to contest involuntary confinement with separate legal representation: *violation*

*D.D. v. Lithuania*, no. 13469/06, 14 February 2012, [no. 149](#)

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Supreme Court decision declaring appeal against observation order inadmissible but nevertheless addressing the merits: *inadmissible*

*S.R. v. the Netherlands (dec.)*, no. 13837/07, 18 September 2012, [no. 155](#)

#### **Take proceedings**

Lack of remedies to challenge lawfulness of placement in a social care home for persons with mental disorders: *violation*

*Stanev v. Bulgaria [GC]*, no. 36760/06, 17 January 2012, [no. 148](#)

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Inability of minor children, placed in administrative detention with their parents pending expulsion, to challenge lawfulness of this measure: *violation*

*Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, [no. 148](#)

## **Article 6**

### **Article 6 § 1 (civil)**

#### **Civil rights and obligations**

Prison board's repeated refusal, with no right of appeal to the administrative courts, to grant prisoner temporary leave: *no violation*

*Boulois v. Luxembourg [GC]*, no. 37575/04, 3 April 2012, [no. 151](#)

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Undue length of proceedings for removal of conviction from criminal record: *violation*

*Alexandre v. Portugal*, no. 33197/09, 20 November 2012, [no. 157](#)

Alleged bias in disciplinary proceedings against Supreme Court President: *violation*

*Harabin v. Slovakia*, no. 58688/11, 20 November 2012, [no. 157](#)

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Non-disclosure to employer of medical documents establishing occupational nature of employee's disease: *inadmissible*

*Eternit v. France (dec.)*, no. 20041/10, 27 March 2012, [no. 150](#)

### **Access to court**

Lack of direct access to court for person seeking restoration of his legal capacity: *violation*

*Stanev v. Bulgaria [GC]*, no. 36760/06, 17 January 2012,  
[no. 148](#)

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Failure to duly inform applicant, who was neither present nor represented at hearing, of procedure for challenging a court order withdrawing his parental authority: *violation*

*Assunção Chaves v. Portugal*, no. 61226/08, 31 January 2012,  
[no. 148](#)

Refusal of legal aid to foreign company wishing to issue civil proceedings in German courts: *no violation*

*Granos Organicos Nacionales S.A. v. Germany*, no. 19508/07,  
22 March 2012, [no. 150](#)

Refusal by domestic courts to acknowledge deemed service against foreign State made in accordance with rules of customary international law: *violation*

*Wallishauser v. Austria*, no. 156/04, 17 July 2012, [no. 154](#)

Appointment of Official Solicitor to represent mother with learning disabilities in child care proceedings: *no violation*

*R.P. and Others v. the United Kingdom*, no. 38245/08, 9 October  
2012, [no. 156](#)

Failure to comply with judgments intended to remedy illegal transfer by authorities of private bank to State-owned entity: *violation*

*Süzer and Eksen Holding A.Ş. v. Turkey*, no. 6334/05, 23 October  
2012, [no. 156](#)

### **Fair hearing**

Retroactive legislative interference in litigation between private parties: *violation*

*Arras and Others v. Italy*, no. 17972/07, 14 February 2012,  
[no. 149](#)

Unfairness of guardianship proceedings concerning mentally disabled applicant: *violation*

*D.D. v. Lithuania*, no. 13469/06, 14 February 2012, [no. 149](#)

Posthumous finding of guilt engaging liability of heirs: *violation*

*Lagardère v. France*, no. 18851/07, 12 April 2012, [no. 151](#)

Final judgment given in brief interval before case-law conflict was resolved by the High Court: *no violation*

*Albu and Others v. Romania*, nos. 34796/09 et al., 10 May 2012, [no. 152](#)

### **Adversarial trial/Equality of arms**

Non-disclosure to employer of medical documents establishing occupational nature of employee's disease: *inadmissible*

*Eternit v. France (dec.)*, no. 20041/10, 27 March 2012, [no. 150](#)

### **Reasonable time**

Undue length of proceedings for removal of conviction from criminal record: *violation*

*Alexandre v. Portugal*, no. 33197/09, 20 November 2012, [no. 157](#)

### **Impartial tribunal**

Alleged bias in disciplinary proceedings against Supreme Court President: *violation*

*Harabin v. Slovakia*, no. 58688/11, 20 November 2012, [no. 157](#)

## **Article 6 § 1 (civil) (criminal)**

### **Fair hearing**

Confiscation of property of an accused's widow: *no violation*

*Silickienė v. Lithuania*, no. 20496/02, 10 April 2012, [no. 151](#)

## **Article 6 § 1 (criminal)**

### **Access to court**

Inability to contest alleged road-traffic offence after payment of on-the-spot fine: *violation*

*Célice v. France*, no. 14166/09, 8 March 2012

*Josseau v. France*, no. 39243/10, 8 March 2012, [no. 150](#)

Inability for domestic courts to adjust rate of administrative fine set by law: *no violation*

*SEGAME SA v. France*, no. 4837/06, 7 June 2012, [no. 153](#)

Appeal on points of law declared *inadmissible* on grounds that level of fine was below statutory minimum for appeal: *violation*

*Bayar and Gürbüz v. Turkey*, no. 37569/06, 27 November 2012, [no. 157](#)

### **Determination of a criminal charge**

Alleged lack of fairness of proceedings to have police report annulled following change in legislation: *no violation*

*Nicoleta Gheorghe v. Romania*, no. 23470/05, 3 April 2012, no. 151

### **Fair hearing**

Real risk of evidence obtained by torture of third parties being admitted at the applicant's retrial: deportation would constitute a violation

*Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, 17 January 2012, no. 148

Alleged lack of fairness of proceedings to have police report annulled following change in legislation: *no violation*

*Nicoleta Gheorghe v. Romania*, no. 23470/05, 3 April 2012, no. 151

Use of evidence from overseas when there was a real risk that it had been obtained by torture: *violation*

*El Haski v. Belgium*, no. 649/08, 25 September 2012, no. 155

Fairness of criminal proceedings undermined by the lack of a proper regulatory framework for the authorisation of test purchases of drugs: *violation*

*Veselov and Others v. Russia*, nos. 23200/10, 24009/07 and 556/10, 2 October 2012, no. 156

### **Equality of arms**

Raised position of public prosecutor in hearing room: *inadmissible*

*Diriöz v. Turkey*, no. 38560/04, 31 May 2012, no. 152

### **Reasonable time**

Criminal proceedings lasting over twenty-five years because of the applicant's state of health: *inadmissible*

*Krakolinig v. Austria (dec.)*, no. 33992/07, 10 May 2012, no. 152

### **Independent tribunal/Impartial tribunal**

Participation of serving military officer in military criminal court: *violation*

*Ibrahim Gürkan v. Turkey*, no. 10987/10, 3 July 2012, no. 154

Impartiality of judge who had previously participated in criminal proceedings in which applicant had been granted amnesty: *no violation*

*Marguš v. Croatia*, no. 4455/10, 13 November 2012, no. 157

## Expulsion

Real risk of evidence obtained by torture of third parties being admitted at the applicant's retrial: *deportation would constitute a violation*

*Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09,  
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## Article 6 § 2

### Presumption of innocence

Application of the presumption of innocence to non-criminal proceedings: *relinquishment in favour of the Grand Chamber*

*Allen v. the United Kingdom*, no. 25424/09, no. 154

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Judicial findings concerning criminal liability of a deceased suspect: *violation*

*Vulakh and Others v. Russia*, no. 33468/03, 10 January 2012,  
no. 148

Confiscation of property of an accused's widow: *no violation*

*Silickienė v. Lithuania*, no. 20496/02, 10 April 2012, no. 151

Posthumous finding of guilt engaging civil liability of heirs: *violation*

*Lagardère v. France*, no. 18851/07, 12 April 2012, no. 151

Finding of guilt after expiration of limitation period: *no violation*

*Constantin Florea v. Romania*, no. 21534/05, 19 June 2012,  
no. 153

Statement by prosecutor when discontinuing criminal proceedings that suspect had atoned for his guilt: *violation*

*Virabyan v. Armenia*, no. 40094/05, 2 October 2012, no. 156

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Dismissal of an official held in pre-trial detention: *inadmissible*

*Tripon v. Romania (dec.)*, no. 27062/04, 7 February 2012,  
no. 149

Publication of investigative body's report in press before independent administrative authority hearing the case had reached its decision: *inadmissible*

*Société Bouygues Telecom v. France (dec.)*, no. 2324/08, 13 March  
2012, no. 150

Refusal of operating licence owing to risk that it would be used to commit criminal offences: Article 6 not applicable

*Bingöl v. the Netherlands (dec.)*, no. 18450/07, 20 March 2012,  
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## Article 7

### Article 7 § 1

#### Heavier penalty

Allegedly retrospective application of heavier criminal sanction for war crimes: *relinquishment in favour of the Grand Chamber*

*Damjanović v. Bosnia and Herzegovina*, no. 34179/08, [no. 154](#)

*Maktouf v. Bosnia and Herzegovina*, no. 2312/08, [no. 154](#)

Postponement of date of applicant's release following change in case-law after she was sentenced: *case referred to the Grand Chamber*

*Del Rio Prada v. Spain*, no. 42750/09, 10 July 2012, [no. 156](#)

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Postponement of date of applicant's release following change in case-law after she was sentenced: *violation*

*Del Rio Prada v. Spain*, no. 42750/09, 10 July 2012, [no. 154](#)

## Article 8

#### Positive obligations

Refusal of domestic courts to issue injunction restraining further publication of a photograph of a famous couple taken without their knowledge: *no violation*

*Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, 7 February 2012, [no. 149](#)

Lack of clear statutory provisions criminalising act of covertly filming a naked child: *case referred to the Grand Chamber*

*E.S. v. Sweden*, no. 5786/08, 21 June 2012, [no. 157](#)

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Local population informed by authorities of potential risks of living in region contaminated with uncollected waste: *no violation*

*Di Sarno and Others v. Italy*, no. 30765/08, 10 January 2012, [no. 148](#)

Shortcomings of proceedings to establish paternity of a minor with disabilities: *violation*

*A.M.M. v. Romania*, no. 2151/10, 14 February 2012, [no. 149](#)

Lack of diligence by domestic authorities in executing court order granting biological father custody of abducted child: *violation*

*Santos Nunes v. Portugal*, no. 61173/08, 22 May 2012, [no. 152](#)

Lack of clear statutory provisions criminalising act of covertly filming a naked child: *no violation*

*E.S. v. Sweden*, no. 5786/08, 21 June 2012, [no. 153](#)

Refusal of permission to adopt owing to prohibition of adoption in child's country of birth: *no violation*

*Harroudj v. France*, no. 43631/09, 4 October 2012, [no. 156](#)

Medical authorities' failure to provide timely and unhindered access to lawful abortion to a minor who had become pregnant as a result of rape: *violation*

*P. and S. v. Poland*, no. 57375/08, 30 October 2012, [no. 156](#)

Refusal to allow the use of an unauthorised experimental drug for medical treatment: *no violation*

*Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, 13 November 2012, [no. 157](#)

### **Expulsion**

Administrative detention of foreign parents and their infant children for fifteen days, pending expulsion: *violation*

*Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, [no. 148](#)

Expulsion of long-term resident following series of criminal convictions: *no violation*

*Samsonnikov v. Estonia*, no. 52178/10, 3 July 2012, [no. 154](#)

### **Respect for private life**

Refusal of domestic courts to issue injunction restraining further publication of a photograph of a famous couple taken without their knowledge: *no violation*

*Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, 7 February 2012, [no. 149](#)

Publications allegedly insulting to the Roma community: *no violation*

*Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, 15 March 2012, [no. 150](#)

Conviction of university professor for refusing to comply with court order requiring him to grant access to research materials: Article 8 not applicable; *inadmissible*

*Gillberg v. Sweden* [GC], no. 41723/06, 3 April 2012, [no. 151](#)

Failure to regulate residence of persons who had been "erased" from the permanent residents register following Slovenian independence: *violation*

*Kurić and Others v. Slovenia* [GC], no. 26828/06, 26 June 2012, [no. 153](#)

Prohibition, under legislation implementing UN Security Council Resolutions, on travel through country surrounding enclave: *violation*  
*Nada v. Switzerland* [GC], no. 10593/08, 12 September 2012,  
no. 155

Refusal to renew teacher of Catholic religion and morals' contract after he publicly revealed his position as a "married priest": *case referred to the Grand Chamber*  
*Fernández Martínez v. Spain*, no. 56030/07, 15 May 2012,  
no. 155

Homosexual couples denied access to registered partnership status: *relinquishment in favour of the Grand Chamber*  
*Vallianatos and Others v. Greece*, nos. 29381/09 and 32684/09,  
no. 155

Lack of clear statutory provisions criminalising act of covertly filming a naked child: *case referred to the Grand Chamber*  
*E.S. v. Sweden*, no. 5786/08, 21 June 2012, no. 157

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Prolonged failure by authorities to ensure collection, treatment and disposal of rubbish: *violation*  
*Di Sarno and Others v. Italy*, no. 30765/08, 10 January 2012,  
no. 148

Theft of applicant's identity due to authorities' failure to invalidate his stolen driving licence: *violation*  
*Romet v. the Netherlands*, no. 7094/06, 14 February 2012,  
no. 149

Adoption of child following mother's deportation, despite father's opposition: *violation*  
*K.A.B. v. Spain*, no. 59819/08, 10 April 2012, no. 151

Conviction for incest: *no violation*  
*Stübing v. Germany*, no. 43547/08, 12 April 2012, no. 151

Planned eviction of Roma from established settlement without proposals for rehousing: *eviction would constitute a violation*  
*Yordanova and Others v. Bulgaria*, no. 25446/06, 24 April 2012,  
no. 151

Refusal to renew teacher of Catholic religion and morals' contract after he publicly revealed his position as a "married priest": *no violation*  
*Fernández Martínez v. Spain*, no. 56030/07, 15 May 2012,  
no. 152

Lack of clear statutory provisions criminalising act of covertly filming a naked child: *no violation*

*E.S. v. Sweden*, no. 5786/08, 21 June 2012, [no. 153](#)

Forced administration of therapeutic drugs in mental institution: *violation*

*X v. Finland*, no. 34806/04, 3 July 2012, [no. 154](#)

Refusal by the German courts to examine the merits of an application by a man whose wife had just committed suicide in Switzerland after having attempted unsuccessfully to obtain authorisation to purchase a lethal substance in Germany: *violation*

*Koch v. Germany*, no. 497/09, 19 July 2012, [no. 154](#)

Suspension of public official coupled with ban on exercising any gainful employment for six-year duration of criminal proceedings against him: *violation*

*D.M.T. and D.K.I. v. Bulgaria*, no. 29476/06, 24 July 2012, [no. 154](#)

Ban preventing healthy carriers of cystic fibrosis from screening embryos for in vitro fertilisation, despite existence of right to therapeutic abortion in domestic law: *violation*

*Costa and Pavan v. Italy*, no. 54270/10, 28 August 2012, [no. 155](#)

Inability of child abandoned at birth to gain access to non-identifying information or to make request for mother to waive confidentiality: *violation*

*Godelli v. Italy*, no. 33783/09, 25 September 2012, [no. 155](#)

Obstructive behaviour of local authorities in not returning embryos seized pursuant to investigation subsequently acknowledged by domestic court: *no violation*

*Knecht v. Romania*, no. 10048/10, 2 October 2012, [no. 156](#)

Disclosure by large-circulation national newspaper of exact residential address of a famous actress: *violation*

*Alkaya v. Turkey*, no. 42811/06, 9 October 2012, [no. 156](#)

Medical authorities' failure to provide timely and unhindered access to lawful abortion to a minor who had become pregnant as a result of rape: *violation*

Disclosure of information by public hospital about a pregnant minor who was seeking an abortion after being raped: *violation*

*P. and S. v. Poland*, no. 57375/08, 30 October 2012, [no. 156](#)

Refusal to allow the use of an unauthorised experimental drug for medical treatment: *no violation*

*Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, 13 November 2012, [no. 157](#)

Retention of caution on criminal record for life: *violation*

*M.M. v. the United Kingdom*, no. 24029/07, 13 November 2012,  
no. 157

Obligation on lawyers to report suspected money laundering by clients unless suspicions based on information obtained when acting for client in court proceedings: *no violation*

*Michaud v. France*, no. 12323/11, 6 December 2012, no. 158

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Police powers to stop and search individuals in city-centre areas designated as a security risk owing to the prevalence of violent crime there: *inadmissible*

*Colon v. the Netherlands (dec.)*, no. 49458/06, 15 May 2012,  
no. 152

The right to private life does not protect a right to take part in public life as a politician: *inadmissible*

*Misick v. the United Kingdom (dec.)*, no. 10781/10, 16 October 2012, no. 156

### **Respect for family life**

Refusal to grant long-term cohabitee privilege against testifying in criminal proceedings against partner: *no violation*

*Van der Heijden v. the Netherlands [GC]*, no. 42857/05, 3 April 2012, no. 151

Failure to regulate residence of persons who had been “erased” from the permanent residents register following Slovenian independence: *violation*

*Kurić and Others v. Slovenia [GC]*, no. 26828/06, 26 June 2012,  
no. 153

Prohibition, under legislation implementing UN Security Council Resolutions, on travel through country surrounding enclave: *violation*

*Nada v. Switzerland [GC]*, no. 10593/08, 12 September 2012,  
no. 155

Lack of in-depth examination of all relevant factors when deciding to return applicant's child under the Hague Convention on the Civil Aspects of International Child Abduction: *case referred to the Grand Chamber*

*X v. Latvia*, no. 27853/09, 13 December 2011, no. 153

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Administrative detention of foreign parents and their infant children for fifteen days, pending expulsion: *violation*

*Popov v. France*, nos. 39472/07 and 39474/07, 19 January 2012, no. 148

Insufficiently thorough analysis of best interests of child and unfairness of decision-making process in Hague Convention proceedings: *violation*

*Karrer v. Romania*, no. 16965/10, 21 February 2012, no. 149

Infrequent and restricted family visits for life prisoner: *violation*

*Trosin v. Ukraine*, no. 39758/05, 23 February 2012, no. 149

Placement of child from abusive background with prospective adoptive parent: *no violation*

*Y.C. v. the United Kingdom*, no. 4547/10, 13 March 2012, no. 150

Planned eviction of Roma from established settlement without proposals for rehousing: eviction would constitute a violation

*Yordanova and Others v. Bulgaria*, no. 25446/06, 24 April 2012, no. 151

Lack of diligence by domestic authorities in executing court order granting biological father custody of abducted child: *violation*

*Santos Nunes v. Portugal*, no. 61173/08, 22 May 2012, no. 152

Forced return to an allegedly abusive father of a child well integrated in the host country: forced return would constitute a violation

*B. v. Belgium*, no. 4320/11, 10 July 2012, no. 154

Automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children: *violation*

*M.D. and Others v. Malta*, no. 64791/10, 17 July 2012, no. 154

Obstructive behaviour of local authorities in not returning embryos seized pursuant to investigation subsequently acknowledged by domestic court: *no violation*

*Knecht v. Romania*, no. 10048/10, 2 October 2012, no. 156

Refusal of permission to adopt owing to prohibition of adoption in child's country of birth: *no violation*

*Harroudj v. France*, no. 43631/09, 4 October 2012, no. 156

### **Respect for home**

Prolonged failure by authorities to ensure collection, treatment and disposal of rubbish: *violation*

*Di Sarno and Others v. Italy*, no. 30765/08, 10 January 2012, no. 148

Planned eviction of Roma from established settlement without proposals for rehousing: eviction would constitute a violation

*Yordanova and Others v. Bulgaria*, no. 25446/06, 24 April 2012, no. 151

### **Respect for correspondence**

Authorisation of search and seizure of all electronic data in law office without sufficient reasons: *violation*

*Robathin v. Austria*, no. 30457/06, 3 July 2012, no. 154

Obligation on lawyers to report suspected money laundering by clients unless suspicions based on information obtained when acting for client in court proceedings: *no violation*

*Michaud v. France*, no. 12323/11, 6 December 2012, no. 158

## **Article 9**

### **Freedom of religion**

Refusal to adjourn a hearing scheduled on a Jewish holiday: *no violation*

*Francesco Sessa v. Italy*, no. 28790/08, 3 April 2012, no. 151

### **Freedom of conscience**

Absence of statutory framework or a procedure to establish right to conscientious objection: *violation*

*Savda v. Turkey*, no. 42730/05, 12 June 2012, no. 153

### **Manifest religion or belief**

Restriction on volume of church bell at night: *inadmissible*

*Schilder v. the Netherlands (dec.)*, no. 2158/12, 16 October 2012, no. 156

## **Article 10**

### **Positive obligations**

Failure to allocate radio frequencies to licensed television broadcaster: *violation*

*Centro Europa 7 S.r.l. and Di Stefano v. Italy [GC]*, no. 38433/09, 7 June 2012, no. 153

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Failure of authorities to take adequate measures to enforce court order allowing journalists access to radio station: *violation*

*Frăsilă and Ciocîrlan v. Romania*, no. 25329/03, 10 May 2012, no. 152

## Freedom of expression

Prohibition on reporting arrest and conviction of famous actor:  
*violation*

*Axel Springer AG v. Germany* [GC], no. 39954/08,  
7 February 2012, **no. 149**

Conviction of university professor for refusing to comply with court  
order requiring him to grant access to research materials: Article 10 not  
applicable; *inadmissible*

*Gillberg v. Sweden* [GC], no. 41723/06, 3 April 2012, **no. 151**

Ban on displaying advertising poster in public owing to immoral  
conduct of publishers and reference to proselytising Internet site: *no*  
*violation*

*Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06,  
13 July 2012, **no. 154**

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Obligation to pay compensation to child victim of sexual abuse for  
revealing her identity in a newspaper article: *no violation*

*Kurier Zeitungsverlag und Druckerei GmbH v. Austria*,  
no. 3401/07, 17 January 2012, **no. 148**

Convictions for circulating homophobic leaflets at school: *no violation*

*Vejdeland and Others v. Sweden*, no. 1813/07, 9 February 2012,  
**no. 149**

Conviction for defamation and order to publish apology in respect of  
unjustified allegations against a politician made in private correspondence  
with State-owned television: *no violation*

*Gąsior v. Poland*, no. 34472/07, 21 February 2012, **no. 149**

Imposition of suspended sentence and ban on journalist for refusing  
to grant right to reply or provide reasons for the refusal: *violation*

*Kaperzyński v. Poland*, no. 43206/07, 3 April 2012, **no. 151**

Convictions for illegal assembly for hanging dirty laundry outside  
Parliament building: *violation*

*Tatár and Fáber v. Hungary*, nos. 26005/08 and 26160/08,  
12 June 2012, **no. 153**

Absolute prohibition on filming an interview with an inmate inside  
prison: *violation*

*Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*,  
no. 34124/06, 21 June 2012, **no. 153**

Award of damages against journalist for publishing interview with  
strip dancer accusing her former employer of criminal conduct: *violation*

*Björk Eiðsdóttir v. Iceland*, no. 46443/09, 10 July 2012, **no. 154**



Fine for displaying a flag with controversial historical connotations in protest against an anti-racist demonstration: *violation*

*Fáber v. Hungary*, no. 40721/08, 24 July 2012, [no. 154](#)

Publication of untrue statements concerning alleged judicial bias: *no violation*

*Falter Zeitschriften v. Austria*, no. 3084/07, 18 September 2012, [no. 155](#)

Refusal to allow trade union to campaign for education in a mother tongue other than the national language: *violation*

*Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05, 25 September 2012, [no. 155](#)

Fine and demotion of police-union leader for allegations undermining police force: *no violation*

*Szima v. Hungary*, no. 29723/11, 9 October 2012, [no. 156](#)

Injunction against animal rights association's poster campaign featuring photos of concentration camp inmates alongside pictures of animals kept in mass stocks: *no violation*

*PETA Deutschland v. Germany*, no. 43481/09, 8 November 2012, [no. 157](#)

Interim court order incidentally blocking access to host and third-party websites in addition to website concerned by proceedings: *violation*

*Ahmet Yıldırım v. Turkey*, no. 3111/10, 18 December 2012, [no. 158](#)

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Newspaper and former jury member found guilty of contempt of court and fined for breach of secrecy of jury deliberations: *inadmissible*  
*Seckerson and Times Newspapers Limited v. the United Kingdom* (dec.), nos. 32844/10 and 33510/10, 24 January 2012, [no. 148](#)

Conviction for swearing at fellow army officers: *inadmissible*

*Rujak v. Croatia* (dec.), no. 57942/10, 2 October 2012, [no. 156](#)

### **Freedom to receive information**

Ill-treatment by police of journalist attempting to report on a matter of public interest: *violation*

*Najafli v. Azerbaijan*, no. 2594/07, 2 October 2012, [no. 156](#)

Surveillance of journalists and order for them to surrender documents capable of identifying their sources: *violations*

*Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, no. 39315/06, 22 November 2012, [no. 157](#)

### **Freedom to impart information**

Failure to allocate radio frequencies to licensed television broadcaster: *violation*

*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09,  
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Ill-treatment by police of journalist attempting to report on a matter of public interest: *violation*

*Najafli v. Azerbaijan*, no. 2594/07, 2 October 2012, [no. 156](#)

Surveillance of journalists and order for them to surrender documents capable of identifying their sources: *violations*

*Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, no. 39315/06, 22 November 2012, [no. 157](#)

## **Article 11**

### **Positive obligations**

Positive obligation to protect employees from discrimination based on political belief or affiliation: *violation*

*Redfearn v. the United Kingdom*, no. 47335/06, 6 November 2012,  
[no. 157](#)

### **Freedom of peaceful assembly**

Retroactive removal of legal basis of a ban on demonstration: *violation*

*Patyi v. Hungary*, no. 35127/08, 17 January 2012, [no. 148](#)

### **Freedom of association**

Refusal to register a trade union of church employees: *case referred to the Grand Chamber*

*Sindicatul “Păstorul cel Bun” v. Romania*, no. 2330/09,  
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Refusal to register a trade union of church employees: *violation*

*Sindicatul “Păstorul cel Bun” v. Romania*, no. 2330/09, 31 January  
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Application for trade union’s dissolution for supporting right to education in a mother tongue other than the national language: *violation*

*Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, no. 20641/05,  
25 September 2012, [no. 155](#)

Strong ministerial criticism of calls by police union for Government's resignation: *no violation*

*Trade Union of the Police in the Slovak Republic and Others v. Slovakia*, no. 11828/08, 25 September 2012, [no. 155](#)

Positive obligation to protect employees from discrimination based on political belief or affiliation: *violation*

*Redfearn v. the United Kingdom*, no. 47335/06, 6 November 2012, [no. 157](#)

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Ban on activities of Islamist association for advocating the use of violence: *inadmissible*

*Hizb Ut-Tahrir and Others v. Germany (dec.)*, no. 31098/08, 12 June 2012, [no. 153](#)

## Article 12

### Right to marry

Remarriage delayed by length of divorce proceedings: *violation*

*V.K. v. Croatia*, no. 38380/08, 27 November 2012, [no. 157](#)

## Article 13

### Effective remedy

Lack of remedies to obtain compensation for poor living conditions in a social care home for persons with mental disorders: *violation*

*Stanev v. Bulgaria [GC]*, no. 36760/06, 17 January 2012, [no. 148](#)

Lack of remedies available for migrants intercepted on the high seas and returned to country of departure: *violation*

*Hirsi Jamaa and Others v. Italy [GC]*, no. 27765/09, 23 February 2012, [no. 149](#)

Enforcement of deportation order within fifty minutes after court application for stay of execution was lodged: *violation*

*De Souza Ribeiro v. France [GC]*, no. 22689/07, 13 December 2012, [no. 158](#)

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Limited effectiveness of remedy available to asylum seeker to challenge deportation order: *violation*

*I.M. v. France*, no. 9152/09, 2 February 2012, [no. 149](#)

Lack of remedy in damages for suicide of applicant's son while in voluntary psychiatric care: *violation*

*Reynolds v. the United Kingdom*, no. 2694/08, 13 March 2012, no. 150

Ineffectiveness of new remedy, introduced following pilot judgment of the European Court, in cases of non-enforcement of domestic judgments ordering authorities to provide housing: *violation*

*Ilyushkin and Others v. Russia*, nos. 5734/08 et al., 17 April 2012, no. 151

Inability to claim compensation in respect of non-pecuniary damage sustained as a result of ill-treatment by the police: *violation*

*Poghosyan and Baghdasaryan v. Armenia*, no. 22999/06, 12 June 2012, no. 153

Lack of effective remedy to secure enforcement of final administrative decisions concerning compensation of property owners: *violation*

*Manushaqe Puto and Others v. Albania*, nos. 604/07 et al., 31 July 2012, no. 154

Rejection of documentary evidence submitted by asylum seekers without any prior verification of its authenticity: *violation*

*Singh and Others v. Belgium*, no. 33210/11, 2 October 2012, no. 156

## Article 14

### Discrimination (Article 3)

Ineffective investigation into possible racist motivation for ill-treatment allegedly suffered by Nigerian prostitute: *violation*

*B.S. v. Spain*, no. 47159/08, 24 July 2012, no. 154

Allegations of political motivation for ill-treatment not objectively verifiable: *no violation*

Failure to take reasonable steps to investigate allegations of political motivation for ill-treatment: *violation*

*Virabyan v. Armenia*, no. 40094/05, 2 October 2012, no. 156

Holding of homosexual prisoner in total isolation for more than eight months to protect him from fellow prisoners: *violation*

*X v. Turkey*, no. 24626/09, 9 October 2012, no. 156

### Discrimination (Article 5 § 1)

Refusal of social therapy or relaxation of conditions of preventive detention due to applicant's foreign nationality: *violation*

*Rangelov v. Germany*, no. 5123/07, 22 March 2012, no. 150

### **Discrimination (Article 8)**

Difference in treatment between male and female military personnel regarding rights to parental leave: *violation*

*Konstantin Markin v. Russia* [GC], no. 30078/06,  
22 March 2012, [no. 150](#)

Impossibility of second-parent adoption in same-sex couple:  
*relinquishment in favour of the Grand Chamber*

*X and Others v. Austria*, no. 19010/07, [no. 153](#)

Homosexual couples denied access to registered partnership status:  
*relinquishment in favour of the Grand Chamber*

*Vallianatos and Others v. Greece*, nos. 29381/09 and 32684/09,  
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Refusal of simple adoption order in favour of homosexual partner of biological mother: *no violation*

*Gas and Dubois v. France*, no. 25951/07, 15 March 2012,  
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Refusal to award compensation to serviceman for discrimination with respect to his right to parental leave: *violation*

*Hulea v. Romania*, no. 33411/05, 2 October 2012, [no. 156](#)

Inability of immigrants with limited leave to remain as refugees to be joined by post-flight spouses: *violation*

*Hode and Abdi v. the United Kingdom*, no. 22341/09,  
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Dismissal of HIV positive employee upheld by Court of Cassation in order to avoid tensions in the workplace: *admissible*

*I.B. v. Greece* (dec.), no. 552/10, 28 August 2012, [no. 155](#)

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Refusal to grant unmarried homosexual partner leave to remain as member of the family: *communicated*

*Taddeucci and McCall v. Italy*, no. 51362/09, [no. 149](#)

### **Discrimination (Article 10)**

Selection, by drawing of lots, of journalists authorised to attend criminal trial: *inadmissible*

*Axel Springer AG v. Germany* (dec.), no. 44585/10,  
13 March 2012, [no. 150](#)

### **Discrimination (Article 1 of Protocol No. 1)**

Inability of small landholders, in contrast to large landholders, to have land removed from control of approved hunters' association other than on ethical grounds: *no violation*

*Chabauty v. France* [GC], no. 57412/08, 4 October 2012,  
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Difference in treatment between Evangelical Church ministers and Catholic priests as regards number of years of pastoral activity taken into account when calculating pension rights: *violation*

*Manzanas Martín v. Spain*, no. 17966/10, 3 April 2012, no. 151

### **Discrimination (Article 2 of Protocol No. 1)**

Failure to provide schooling for and subsequent placement in special classes of 98 Roma children: *violation*

*Sampani and Others v. Greece*, no. 59608/09, 11 December 2012,  
no. 158

### **Discrimination (Article 3 of Protocol No. 1)**

Refusal of financial aid to political party on grounds that it had not received the statutory minimum number of votes (7%) required to be eligible for aid: *no violation*

*Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, no. 7819/03,  
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Judicial decision requiring the State to take steps to oblige a highly traditional protestant political party to open its lists of candidates for election to representative bodies to women: *inadmissible*

*Staatkundig Gereformeerde Partij v. the Netherlands* (dec.),  
no. 58369/10, 10 July 2012, no. 154

## **Article 17**

### **Destruction of rights and freedoms**

Ban on activities of Islamist association for advocating the use of violence: *inadmissible*

*Hizb Ut-Tahrir and Others v. Germany* (dec.), no. 31098/08,  
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## Article 18

### Restrictions for unauthorised purposes

Deprivation of opposition leader's liberty for reasons other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence: *violation*

*Lutsenko v. Ukraine*, no. 6492/11, 3 July 2012, [no. 154](#)

## Article 33

### Inter-State cases

Alleged pattern of official conduct by Russian authorities resulting in multiple breaches of Georgian nationals' Convention rights: *relinquishment in favour of the Grand Chamber*

*Georgia v. Russia (II)*, no. 38263/08, [no. 151](#)

## Article 34

### Victim

Non-transferability, in absence of moral interest in outcome of proceedings or other compelling reason, of strictly personal rights under Article 3: *inadmissible*

*Kaburov v. Bulgaria (dec.)*, no. 9035/06, 19 June 2012, [no. 153](#)

Loss of victim status following settlement in widely publicised proceedings: *inadmissible*

*Chagos Islanders v. the United Kingdom (dec.)*, no. 35622/04, 11 December 2012, [no. 158](#)

### Hinder the exercise of the right of petition

Failure to comply with interim measure indicated by Court on account of real risk of torture: *violation*

*Mannai v. Italy*, no. 9961/10, 27 March 2012, [no. 150](#)

Failure to comply with interim measure indicated by Court on account of real risk of torture: *violation*

*Labsi v. Slovakia*, no. 33809/08, 15 May 2012, [no. 152](#)

Refusal by the authorities to provide a copy of documents from his file to a prisoner wishing to substantiate his application to the Court: failure to comply with Article 34

*Vasiliy Ivashchenko v. Ukraine*, no. 760/03, 26 July 2012, [no. 154](#)

Secret transfer of person at risk of ill-treatment in Uzbekistan and in respect of whom a Rule 39 measure was in force to third-party State where he was beyond the protection of the Convention: *violation*

*Abdulkhakov v. Russia*, no. 14743/11, 2 October 2012,  
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## Article 35

### Article 35 § 1

#### Effective domestic remedy – Germany

Proceedings under Protracted Court Proceedings and Criminal Investigations Act: *effective domestic remedy*

*Taron v. Germany (dec.)*, no. 53126/07, 29 May 2012, no. 152

#### Effective domestic remedy – Republic of Moldova

Claim for compensation under Law no. 87 in length of proceedings and non-enforcement cases: *effective remedy*

*Balan v. the Republic of Moldova (dec.)*, no. 44746/08,  
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#### Effective domestic remedy – Turkey

Failure to exhaust new remedy providing for compensation but not release in case where unreasonably lengthy detention had already ended: *preliminary objection allowed*

*Demir v. Turkey (dec.)*, no. 51770/07, 16 October 2012, no. 156

Claims in respect of expropriated land for compensation under Article 1007 of Civil Code or for restitution under Law of 18 April 2012: *effective remedies*

*Arioğlu and Others v. Turkey (dec.)*, no. 11166/05,  
6 November 2012, no. 157

#### Exhaustion of domestic remedies

Inability, owing to particularly strict interpretation of a procedural rule, to obtain hearing of application: *preliminary objection dismissed; admissible*

*UTE Saur Vallnet v. Andorra*, no. 16047/10, 29 May 2012,  
no. 152

Constitutional remedy available only after prior use of ineffective remedy: *preliminary objection dismissed*

*Ištván and Ištvánová v. Slovakia*, no. 30189/07, 12 June 2012,  
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Change in case-law enabling persons deprived of title to forestry commission land to seek compensation: *inadmissible*

*Altunay v. Turkey* (dec.), no. 42936/07, 17 April 2012, [no. 151](#)

Proceedings available under Protracted Court Proceedings and Criminal Investigations Act: *inadmissible*

*Taron v. Germany* (dec.), no. 53126/07, 29 May 2012, [no. 152](#)

Failure to exhaust new remedy providing for compensation but not release in case where unreasonably lengthy detention had already ended: *preliminary objection allowed*

*Demir v. Turkey* (dec.), no. 51770/07, 16 October 2012, [no. 156](#)

Claims in respect of expropriated land for compensation under Article 1007 of Civil Code or for restitution under Law of 18 April 2012: effective remedies

*Arioğlu and Others v. Turkey* (dec.), no. 11166/05,  
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### **Six-month period**

Non-consecutive periods of pre-trial detention treated as separate for purposes of six-month time-limit

*Idalov v. Russia* [GC], no. 5826/03, 22 May 2012, [no. 152](#)

Non-working day taken into account when determining expiry date of six-month time-limit under Convention criteria, irrespective of position under domestic law: *preliminary objection allowed*

*Sabri Güneş v. Turkey* (preliminary objection) [GC],  
no. 27396/06, 29 June 2012, [no. 153](#)

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Failure by applicant to comply with time-limits set by Court for lodging a form of authority enabling representative to act: *inadmissible*

*Kaur v. the Netherlands* (dec.), no. 35864/11, 15 May 2012,  
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Starting point for six-month time-limit in deportation cases under Article 3

*P.Z. and Others v. Sweden* (dec.), no. 68194/10, 29 May 2012,  
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Application lodged nine years after disappearance of applicants' relative while domestic investigation was still under way: *preliminary objection dismissed*

*Er and Others v. Turkey*, no. 23016/04, 31 July 2012, [no. 154](#)

### **Article 35 § 3 (a)**

#### **Competence *ratione temporis***

Court's temporal jurisdiction in respect of deaths that occurred 58 years before the Convention entered into force in respondent State: *case referred to the Grand Chamber*

*Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09,  
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Court's temporal jurisdiction in respect of deaths that occurred 58 years before the Convention entered into force in respondent State: preliminary objection upheld

*Janowiec and Others v. Russia*, nos. 55508/07 and 29520/09,  
16 April 2012, [no. 151](#)

#### **Competence *ratione materiae***

Complaint relating to implementation of previous European Court judgment and raising no new facts: *inadmissible*

*Egmez v. Cyprus (dec.)*, no. 12214/07, 18 September 2012,  
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#### **Abuse of the right of petition**

Failure of applicant's representatives to submit observations or to inform the Court of crucial events in his case: preliminary objection upheld

*Bekauri v. Georgia (preliminary objection)*, no. 14102/02,  
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Failure to respect duty of confidentiality in friendly-settlement negotiations: *inadmissible*

*Mandil v. France (dec.)*, no. 67037/09, 13 December 2011,  
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### **Article 35 § 3 (b)**

#### **No significant disadvantage**

Reduction of prison sentence in length-of-criminal-proceedings case: *inadmissible*

*Gagliano Giorgi v. Italy*, no. 23563/07, 6 March 2012, [no. 150](#)

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Lengthy inactivity by applicant in enforcing low-value claim: *inadmissible*

*Shefer v. Russia (dec.)*, no. 45175/04, 13 March 2012, [no. 150](#)

Failure to communicate opinion of State Counsel's Office at Supreme Administrative Court to complainant: *inadmissible*

*Liga Portuguesa de Futebol Profissional v. Portugal* (dec.),  
no. 49639/09, 3 April 2012, **no. 151**

EUR 50 fine for refusing to participate in organisation of elections:  
*inadmissible*

*Boelens v. Belgium* (dec.), nos. 20007/09 et al., 11 September 2012,  
**no. 155**

Complaint that work inspectors had entered a private garage during the owner's absence and without his permission: *inadmissible*

*Zwinkels v. the Netherlands* (dec.), no. 16593/10, 9 October 2012,  
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## Article 37

### Article 37 § 1

#### Striking out applications

Applicant's express agreement to terms of Government's unilateral declaration considered friendly settlement: partial strike-out

*Cēsnieks v. Latvia* (dec.), no. 9278/06, 6 March 2012, **no. 150**

### Article 37 § 1 (c)

#### Continued examination not justified

Absence of real and imminent risk of extradition: struck out

*Atmaca v. Germany* (dec.), no. 45293/06, 6 March 2012,  
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## Article 46

#### Pilot judgment

European Court's decision to resume examination of applications concerning non-enforcement of domestic court judgments in Ukraine

*Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, **no. 149**

#### Pilot judgment – General measures

Respondent State required to set up a compensation scheme securing adequate redress to "erased" persons

*Kurić and Others v. Slovenia* [GC], no. 26828/06, 26 June 2012,  
**no. 153**

Respondent State required to take general measures to alleviate conditions of detention in remand prisons

*Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08,  
10 January 2012, **no. 148**

Respondent State required to introduce an effective remedy securing adequate redress for excessive length of proceedings

*Ümmühan Kaplan v. Turkey*, no. 24240/07, 20 March 2012,  
**no. 150**

Respondent State required to provide within one year domestic remedy for length of proceedings before the criminal courts

*Michelioudakis v. Greece*, no. 54447/10, 3 April 2012, **no. 151**

Respondent State required to introduce effective remedy to secure enforcement of final administrative decisions concerning compensation for property owners

*Manushaqe Puto and Others v. Albania*, nos. 604/07 et al.,  
31 July 2012, **no. 154**

Respondent State required to provide within one year domestic remedy for length of proceedings before the civil courts

*Glykantzi v. Greece*, no. 40150/09, 30 October 2012, **no. 156**

Slovenia and Serbia required to take measures to enable applicants and all others in their position to recover “old” foreign-currency savings

*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and “the former Yugoslav Republic of Macedonia”*, no. 60642/08,  
6 November 2012, **no. 157**

### **Execution of a judgment**

European Court’s decision to resume examination of applications concerning non-enforcement of domestic court judgments in Ukraine

*Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, **no. 149**

### **General measures**

Respondent State required to take general measures to ensure effective access to court for persons seeking restoration of their legal capacity

*Stanev v. Bulgaria [GC]*, no. 36760/06, 17 January 2012,  
**no. 148**

-000-

Respondent State required to introduce strict time-limits and effective remedy to address systemic problem in restitution of property cases

*Mutishev and Others v. Bulgaria (just satisfaction)*, no. 18967/03,  
28 February 2012, **no. 149**

Respondent State required to implement laws in order to secure payment of pensions to insured persons in Kosovo

*Grudić v. Serbia*, no. 31925/08, 17 April 2012, [no. 151](#)

Respondent State required to take measures to ensure proportionality when enforcing orders for recovery of public land

*Yordanova and Others v. Bulgaria*, no. 25446/06, 24 April 2012, [no. 151](#)

Respondent State required to effect urgent reforms to eradicate ill-treatment by police and ensure effective investigations into allegations of police brutality

*Kaverzin v. Ukraine*, no. 23893/03, 15 May 2012, [no. 152](#)

Respondent State required to introduce measures in respect of automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children and lack of access to court

*M.D. and Others v. Malta*, no. 64791/10, 17 July 2012, [no. 154](#)

Respondent State required to implement laws in order to ensure that prisoners can have effective access to the necessary documents for substantiating their complaints before the Court

*Vasiliy Ivashchenko v. Ukraine*, no. 760/03, 26 July 2012, [no. 154](#)

Respondent State required to take measures to resolve systemic problems with criminal investigations into missing persons

*Aslakhanova and Others v. Russia*, no. 2944/06 et al., 18 December 2012, [no. 158](#)

### **Individual measures**

Respondent State encouraged to waive continuing unlawful automatic taxation of gifts to a religious association

*Association Les Témoins de Jéhovah v. France* (just satisfaction), no. 8916/05, 5 July 2012, [no. 154](#)

Respondent State required to introduce measures in respect of automatic and perpetual deprivation of parental rights following criminal conviction for ill-treatment of children and lack of access to court

*M.D. and Others v. Malta*, no. 64791/10, 17 July 2012, [no. 154](#)

Respondent State required to conclude without delay thirteen-year preliminary investigation into villagers' deaths at the hands of the military and to take the delays into account when assessing compensation

*Nihayet Arıcı and Others v. Turkey*, nos. 24604/04 and 16855/05, 23 October 2012, [no. 156](#)

Respondent State required to adequately protect members of a witness protection scheme

*R.R. and Others v. Hungary*, no. 19400/11, 4 December 2012,  
no. 158

Respondent State required to enrol applicant pupils in a different State school

*Sampani and Others v. Greece*, no. 59608/09, 11 December 2012,  
no. 158

## Article 1 of Protocol No. 1

### Positive obligations

Unlawful distribution of assets of private bank by liquidator: *no violation*

*Kotov v. Russia* [GC], no. 54522/00, 3 April 2012, no. 151

-000-

Damage to property caused by flooding after heavy rainfall: *inadmissible*

*Hadzhiyska v. Bulgaria* (dec.), no. 20701/09, 15 May 2012,  
no. 152

### Possessions

Reimbursement of sum deposited with Portuguese Consulate on the independence of Mozambique without any allowance in respect of inflation or currency depreciation: *no violation*

*Flores Cardoso v. Portugal*, no. 2489/09, 29 May 2012, no. 152

-000-

Imposition of pollution tax on import of second-hand cars from European Union Member State: *inadmissible*

*Iovițoni and Others v. Romania* (dec.), nos. 57583/10, 1245/11  
and 4189/11, 3 April 2012, no. 151

Frustrated legitimate expectation that a tax liability that was not certain or of a fixed amount would become time-barred: *inadmissible*

*Optim and Industerre v. Belgium* (dec.), no. 23819/06,  
11 September 2012, no. 155

Legislative change depriving non-residents of certain entitlements under health care insurance contracts: *inadmissible*

*Ramaer and Van Willigen v. the Netherlands* (dec.), no. 34880/12,  
23 October 2012, no. 156

### **Peaceful enjoyment of possessions**

Absence of machinery to implement Government regulations providing for the restitution of property: *violation*

*Catholic Archdiocese of Alba Iulia v. Romania*, no. 33003/03,  
25 September 2012, [no. 155](#)

-000-

Reduction of applicants' pensions due to changes in their pension scheme: *inadmissible*

*Torri and Others v. Italy (dec.)*, nos. 11838/07 and 12302/07,  
24 January 2012, [no. 148](#)

### **Deprivation of property**

Unlawful distribution of assets of private bank by liquidator: *no violation*

*Kotov v. Russia [GC]*, no. 54522/00, 3 April 2012, [no. 151](#)

Compensation significantly lower than current cadastral value of land expropriated following restoration of Latvian independence: *violation*

*Vistiņš and Perepjolkins v. Latvia [GC]*, no. 71243/01,  
25 October 2012, [no. 156](#)

### **Control of the use of property**

Obligation of landowner opposed to hunting on ethical grounds to tolerate hunting on his land and to join a hunting association: *violation*

*Herrmann v. Germany [GC]*, no. 9300/07, 26 June 2012,  
[no. 153](#)

-000-

Confiscation of property of an accused's widow: *no violation*

*Silickienė v. Lithuania*, no. 20496/02, 10 April 2012, [no. 151](#)

Statutory right for lessees under ground leases to demand indefinite extension of lease on pre-existing conditions: *violation*

*Lindheim and Others v. Norway*, nos. 13221/08 and 2139/10,  
12 June 2012, [no. 153](#)

Inability to recover "old" foreign-currency savings following dissolution of former SFRY: *violation*

*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia"*, no. 60642/08,  
6 November 2012, [no. 157](#)

## Article 2 of Protocol No. 1

### Right to education/Respect for parents' religious and philosophical convictions

Closure of schools teaching in Latin script and harassment of pupils wishing to be educated in their national language: *violation*

*Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04, 8252/05 and 18454/06, 19 October 2012, no. 156

## Article 3 of Protocol No. 1

### Free expression of opinion of people

Lack of legislation covering procedure for Greek nationals resident overseas to vote in parliamentary elections: *no violation*

*Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, 15 March 2012, no. 150

-000-

Allegations of biased media coverage of parliamentary elections: *no violation*

*Communist Party of Russia and Others v. Russia*, no. 29400/05, 19 June 2012, no. 153

### Choice of the legislature

Allegations of biased media coverage of parliamentary elections: *no violation*

*Communist Party of Russia and Others v. Russia*, no. 29400/05, 19 June 2012, no. 153

### Vote

Lack of legislation covering procedure for Greek nationals resident overseas to vote in parliamentary elections: *no violation*

*Sitaropoulos and Giakoumopoulos v. Greece* [GC], no. 42202/07, 15 March 2012, no. 150

Ban on prisoner voting imposed automatically as a result of sentence: *no violation*

*Scoppola v. Italy (no. 3)* [GC], no. 126/05, 22 May 2012, no. 152

### Stand for election

Introduction of new conditions for participation in parliamentary elections one month before deadline for registering candidates: *violation*

*Ekoglasnost v. Bulgaria*, no. 30386/05, 6 November 2012, no. 157



## Article 2 of Protocol No. 4

### Article 2 § 1

#### Freedom of movement

Order prohibiting French national leaving Poland during criminal proceedings lasting for over five years: *violation*

*Miażdżyk v. Poland*, no. 23592/07, 24 January 2012, [no. 148](#)

### Article 2 § 2

#### Freedom to leave a country

Ban on travelling abroad following breach of immigration rules of a third-party State: *violation*

*Stamose v. Bulgaria*, no. 29713/05, 27 November 2012, [no. 157](#)

## Article 4 of Protocol No. 4

#### Prohibition of collective expulsion of aliens

Return of migrants intercepted on the high seas to country of departure: Article 4 of Protocol No. 4 applicable; *violation*

*Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09,  
23 February 2012, [no. 149](#)

## Article 3 of Protocol No. 7

#### Compensation

Inability to claim compensation in respect of non-pecuniary damage sustained as a result of ill-treatment by the police: *violation*

*Poghosyan and Baghdasaryan v. Armenia*, no. 22999/06,  
12 June 2012, [no. 153](#)

## Article 4 of Protocol No. 7

#### Right not to be tried or punished twice

Conviction for war crimes of a soldier who had previously been granted amnesty: *no violation*

*Marguš v. Croatia*, no. 4455/10, 13 November 2012, [no. 157](#)

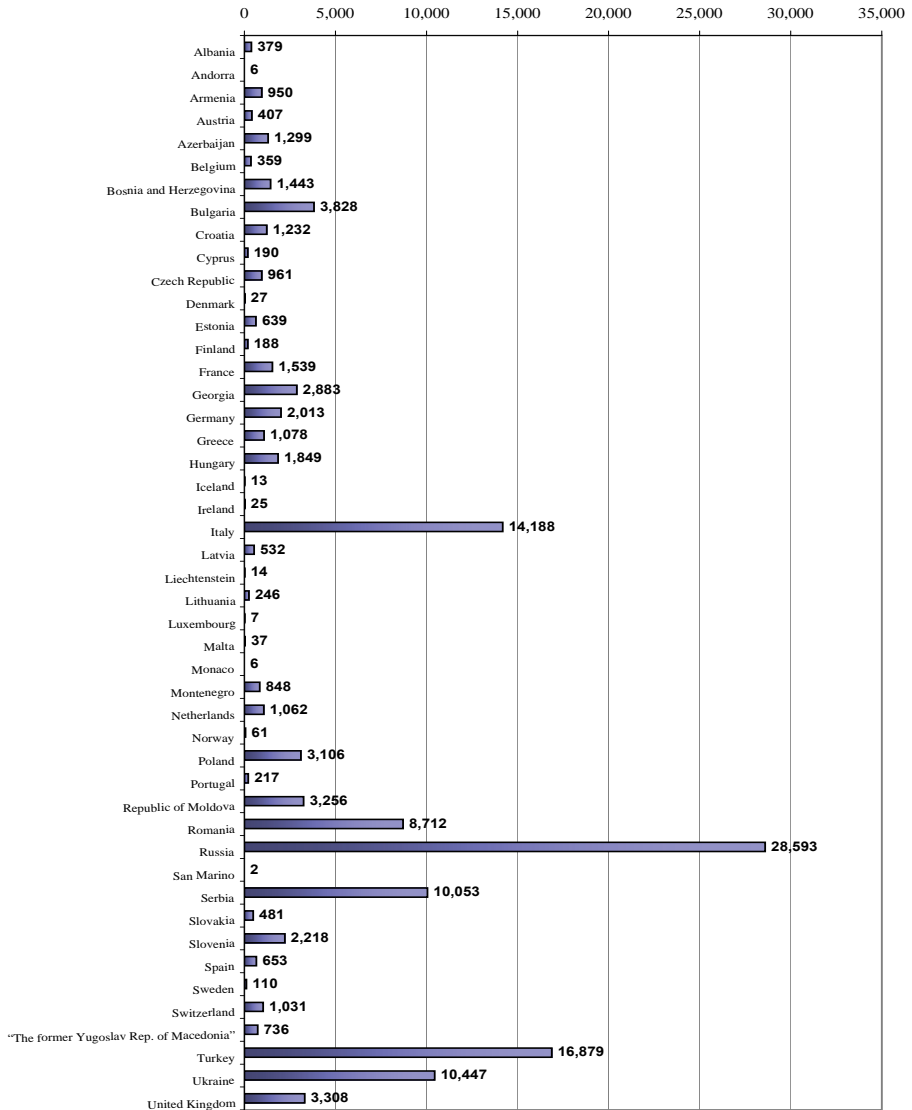


## **XI. STATISTICAL INFORMATION**



## STATISTICAL INFORMATION<sup>1</sup>

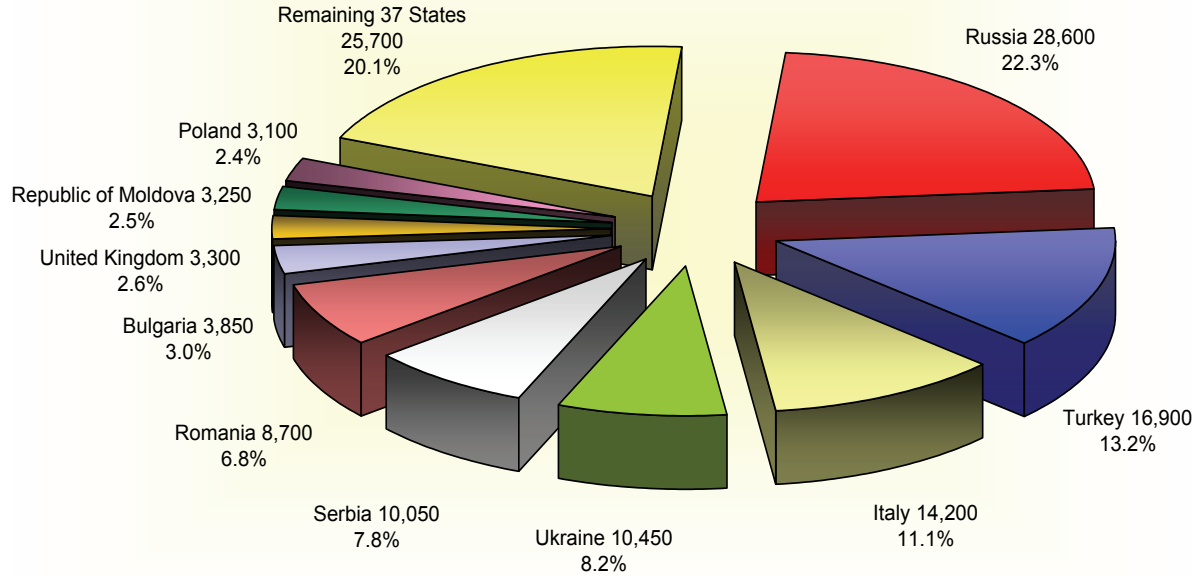
### Pending cases allocated to a judicial formation at 31 December 2012 (respondent States)



**Total: 128,100 applications pending before a judicial formation**

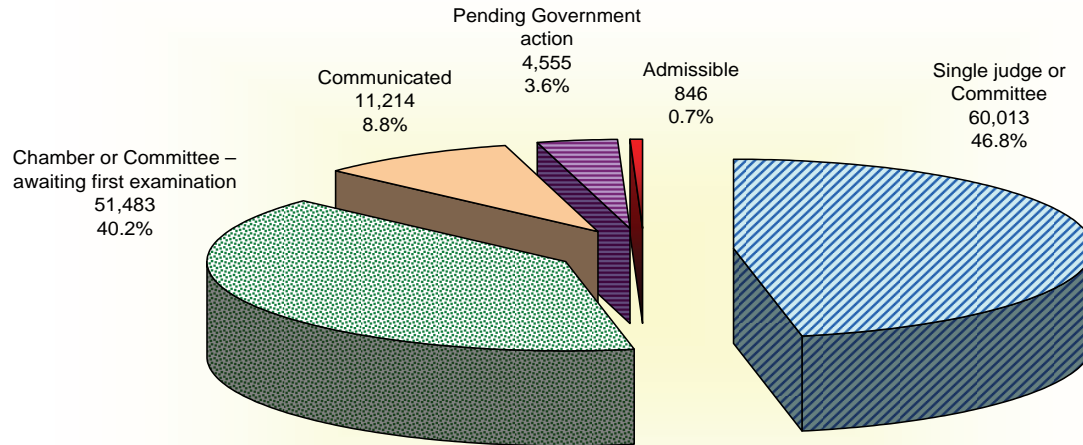
1. A glossary of statistical terms is available on the Court's website (under "Reports", "Statistics"): [www.echr.coe.int](http://www.echr.coe.int). Further statistics will be made available online in due course.

**Pending cases allocated to a judicial formation at 31 December 2012 (main respondent States)**



**Total number of pending applications: 128,100**  
(round figures [50])

### Court's workload by state of proceedings and application type at 31 December 2012



**Total number of pending applications: 128,100**

Violations by Article and by respondent State (2012)

2012	Total number of judgments	Other judgments*				2	2	3	3	3	4	5	6	6	6	7	8	9	10	11	12	13	14	PI-1	PI-2	PI-3	PI-4	
		Total	Total	Total	Total																							
	<b>Total</b>	<b>Total</b>	<b>Total</b>	<b>Total</b>	<b>Total</b>																							
Albania	7	5	0	2	0							1	1	2	1						1		1					1
Andorra	2	1	1	0	0																							1
Armenia	16	16	0	0	0			1	1	1		16	4	1	2	1	2		1		1	1	3					3
Austria	23	10	13	0	0									3		2		1				2						3
Azerbaijan	17	17	0	0	0				2	2			5	5	1			1					6		6			3
Belgium	6	6	0	0	0						4	1	1			1					1							1
Bosnia Herzegovina	7	7	0	0	0						2		1								2		8					3
Bulgaria	64	58	3	0	3	4	7	1	5	6		12	8	17	1	14		1			20	1	8		1			13
Croatia	23	19	4	0	0		1		2	1		4	2	5		4					1	3	1					3
Cyprus	0	0	0	0	0																							
Czech Republic	15	10	3	1	1	2	2		1	1		3	2			1							1					4
Denmark	1	0	1	0	0																							
Estonia	4	2	2	0	0				1				1															1
Finland	5	2	3	0	0						1					1		1										
France	29	19	8	0	2	1			3		1	7	3			1		3			2							3
Georgia	12	8	2	0	2				4	3		4	1	1	1													1
Germany	23	11	8	1	3						3	1			2	1		1				1	1					1
Greece	56	52	3	0	1			1	11	1		12	1	35							21	1	2					6
Hungary	26	24	1	0	1	1			3	2		4		9		1		2	3									2
Iceland	2	2	0	0	0																							2
Ireland	2	2	0	0	0									2														
Italy	63	36	2	2	23				2	2			3	16		7		1			4		13		1			7
Latvia	14	10	4	0	0				4	4			1	2		1							1					1
Liechtenstein	0	0	0	0	0																							
Lithuania	12	7	5	0	0		2		1			2	2	1		1					1							

\* Other judgments: just satisfaction, revision, preliminary objections and lack of jurisdiction.



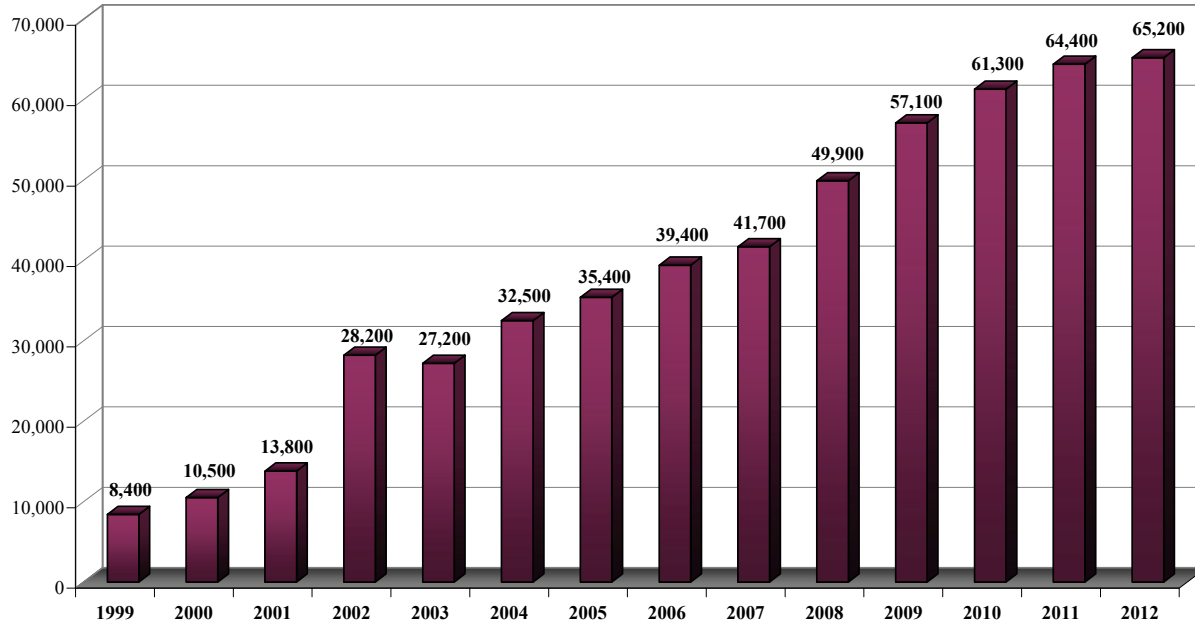
### Violations by Article and by respondent State (2012) (continued)

2012	Total number of judgments	Other judgments*					2	2	3	3	3	4	5	6	6	7	8	9	10	11	12	13	14	PI-1	PI-2	PI-3	PI-4			
		Friendly settlements/Striking-out judgments	Judgments finding no violation	Judgments finding at least one violation	Total	Total																								
Luxembourg	2	1	1	0	0									1																
Malta	3	1	1	0	1											1												1		
Monaco	0	0	0	0	0																									
Montenegro	6	5	1	0	0								6	3								3								
Netherlands	7	5	2	0	0							1	2			2		2			1									
Norway	3	2	1	0	0											1							1							
Poland	74	56	16	0	2					7			13	1	6		8		4				23					9		
Portugal	23	22	0	0	1								5	17		3		1			5		1				1			
Republic of Moldova	27	25	0	0	2	2	2		10	4		5	6			1	1		2		2	1	4	1			2			
Romania	79	70	6	1	2	1	3		24	12		10	13	10		1	5		3	1		3	7		1		4			
Russia	134	122	12	0	0	28	32	2	48	25		64	33	16	7	6					17	3	16	1			15			
San Marino	1	1	0	0	0							2																		
Serbia	12	10	0	0	2		1		1	1			2	1	1						1		5				3			
Slovakia	23	21	2	0	0				2	2		2	1	11		2						3					6			
Slovenia	22	20	2	0	0				2	1				13	1	2					12	1	1				4			
Spain	10	8	2	0	0				1	2		1	3	1		1	1					2								
Sweden	15	4	8	2	1				1						1	1											1			
Switzerland	8	3	5	0	0								2			1		1			1									
"The former Yugoslav Republic of Macedonia"	7	7	0	0	0	1		1	1	2		3	4	3	1	1					2		1				1			
Turkey	123	117	3	0	3	11	12		18	17		37	9	51	20	3	3	8	4		10	1	23				21			
Ukraine	71	69	2	0	0	4	4	5	12	10		23	26	31	3	10					7	1	4				8			
United Kingdom	24	10	13	0	1				1			1	1		1	2				1	1	1					1			
<b>Sub-total</b>		<b>903</b>	<b>140</b>	<b>9</b>	<b>51</b>	<b>55</b>	<b>66</b>	<b>11</b>	<b>168</b>	<b>99</b>	<b>2</b>	<b>236</b>	<b>143</b>	<b>268</b>	<b>44</b>	<b>5</b>	<b>86</b>	<b>6</b>	<b>30</b>	<b>13</b>	<b>1</b>	<b>121</b>	<b>19</b>	<b>131</b>	<b>2</b>	<b>9</b>	<b>0</b>	<b>136</b>		
<b>Total</b>		<b>1,093**</b>																												

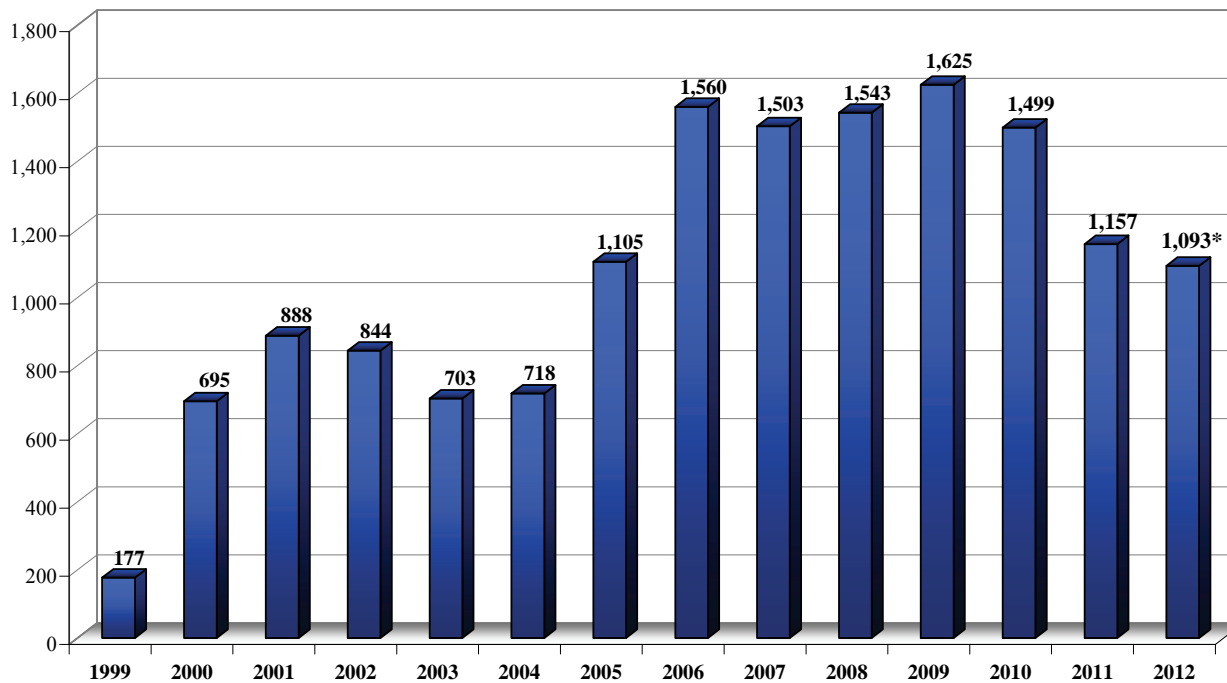
\* Other judgments: just satisfaction, revision, preliminary objections and lack of jurisdiction.

\*\* Some judgments are against more than one State: Armenia and the Republic of Moldova; Bosnia and Herzegovina, Croatia, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia"; Greece and Germany; Italy and Bulgaria; Montenegro and Serbia; the Republic of Moldova and Russia; and San Marino and Italy. Please note that with the launch of the new version of the Court's case-law database HUDOC this table has been generated automatically, using the conclusions recorded in the metadata for each judgment.

Applications allocated to a judicial formation (1999-2012)



### Judgments (1999-2012)



\* A judgment may concern more than one application.

### Allocated applications by State and by population (2009-2012)

State	Applications allocated to a judicial formation				Population (1,000)				Allocated/population (10,000)			
	2009	2010	2011	2012	01/01/2009	01/01/2010	01/01/2011	01/01/2012	2009	2010	2011	2012
Albania	99	96	85	111	3,185	3,185	2,832	3,195	0.31	0.30	0.30	0.35
Andorra	6	8	8	6	87	85	85	85	0.69	0.94	0.94	0.71
Armenia	125	197	173	238	3,238	3,249	3,263	3,274	0.39	0.61	0.53	0.73
Austria	410	439	387	376	8,355	8,375	8,404	8,443	0.49	0.52	0.46	0.45
Azerbaijan	361	337	527	342	8,897	8,998	9,111	9,235	0.41	0.37	0.58	0.37
Belgium	256	304	252	268	10,753	10,840	11,001	11,041	0.24	0.28	0.23	0.24
Bosnia and Herzegovina	621	658	508	430	3,844	3,844	3,843	3,829	1.62	1.71	1.32	1.12
Bulgaria	1,194	1,348	1,200	1,276	7,607	7,564	7,369	7,327	1.57	1.78	1.63	1.74
Croatia	755	992	1,192	1,912	4,435	4,426	4,412	4,398	1.70	2.24	2.70	4.35
Cyprus	59	118	69	79	797	819	840	862	0.74	1.44	0.82	0.92
Czech Republic	726	606	522	547	10,468	10,507	10,487	10,505	0.69	0.58	0.50	0.52
Denmark	63	96	111	103	5,511	5,535	5,561	5,581	0.11	0.17	0.20	0.18
Estonia	204	265	346	301	1,340	1,340	1,340	1,340	1.52	1.98	2.58	2.25
Finland	489	377	432	317	5,326	5,351	5,375	5,401	0.92	0.70	0.80	0.59
France	1,589	1,619	1,598	1,347	64,350	64,694	65,048	65,398	0.25	0.25	0.25	0.21
Georgia	2,122	375	395	367	4,385	4,436	4,469	4,498	4.84	0.85	0.88	0.82
Germany	1,515	1,683	1,758	1,494	82,002	81,802	81,752	81,844	0.18	0.21	0.22	0.18
Greece	518	585	668	722	11,260	11,305	11,310	11,291	0.46	0.52	0.59	0.64
Hungary	449	436	656	738	10,030	10,014	9,986	9,958	0.45	0.44	0.66	0.74
Iceland	10	15	10	10	319	318	318	320	0.31	0.47	0.31	0.31
Ireland	62	62	54	55	4,450	4,468	4,570	4,583	0.14	0.14	0.12	0.12
Italy	3,624	3,852	4,714	3,253	60,045	60,340	60,626	60,821	0.60	0.64	0.78	0.53
Latvia	326	271	291	286	2,261	2,248	2,075	2,042	1.44	1.21	1.40	1.40
Liechtenstein	14	15	9	16	36	36	36	36	3.92	4.17	2.50	4.44
Lithuania	261	242	305	373	3,350	3,329	3,053	3,008	0.78	0.73	1.00	1.24

### Allocated applications by State and by population (2009-2012) (continued)

State	Applications allocated to a judicial formation				Population (1,000)				Allocated/population (10,000)			
	2009	2010	2011	2012	01/01/2009	01/01/2010	01/01/2011	01/01/2012	2009	2010	2011	2012
Luxemburg	29	44	24	31	493	502	512	525	0.59	0.88	0.47	0.59
Malta	14	23	22	26	414	414	415	416	0.34	0.56	0.53	0.63
Monaco	9	13	8	5	33	33	33	36	2.73	3.94	2.42	1.39
Montenegro	269	305	314	180	630	616	618	618	4.27	4.95	5.08	2.91
Netherlands	500	727	800	675	16,486	16,575	16,656	16,730	0.30	0.44	0.48	0.40
Norway	79	86	155	101	4,799	4,858	4,920	4,986	0.16	0.18	0.32	0.20
Poland	4,986	5,777	5,023	4,077	38,136	38,167	38,530	38,538	1.31	1.51	1.30	1.06
Portugal	152	186	164	217	10,627	10,638	10,572	10,542	0.14	0.17	0.16	0.21
Republic of Moldova	1,322	945	1,021	938	3,568	3,564	3,560	3,560	3.71	2.65	2.87	2.63
Romania	5,260	5,992	5,130	6,790	21,499	21,462	21,414	21,356	2.45	2.79	2.40	3.18
Russia	13,666	14,309	12,455	10,755	141,904	141,915	142,857	143,056	0.96	1.01	0.87	0.75
San Marino	2	4	0	1	31	31	32	32	0.65	1.29	0.00	0.31
Serbia	1,576	1,566	3,726	4,900	7,335	7,307	7,276	7,241	2.15	2.14	5.12	6.77
Slovak Republic	569	568	553	531	5,412	5,425	5,392	5,404	1.05	1.05	1.03	0.98
Slovenia	598	837	424	422	2,032	2,047	2,050	2,055	2.94	4.09	2.07	2.05
Spain	641	689	807	694	45,828	45,989	46,153	46,196	0.14	0.15	0.17	0.15
Sweden	367	901	1,942	545	9,256	9,341	9,416	9,483	0.40	0.96	2.06	0.57
Switzerland	471	368	358	325	7,702	7,786	7,870	7,955	0.61	0.47	0.45	0.41
"The former Yugoslav Republic of Macedonia"	489	422	376	354	2,049	2,053	2,057	2,060	2.39	2.06	1.83	1.72
Turkey	4,474	5,821	8,668	9,098	71,517	72,561	73,723	74,724	0.63	0.80	1.18	1.22
Ukraine	4,693	3,962	4,618	7,796	45,963	45,783	45,598	45,453	1.02	0.87	1.01	1.72
United Kingdom	1,133	2,766	1,547	1,734	61,595	62,027	62,499	62,990	0.18	0.45	0.25	0.28
<b>Total</b>	<b>57,157</b>	<b>61,307</b>	<b>64,405</b>	<b>65,162</b>	<b>813,640</b>	<b>816,202</b>	<b>819,319</b>	<b>822,271</b>	<b>0.70</b>	<b>0.75</b>	<b>0.79</b>	<b>0.79</b>

\* The Council of Europe member States had a combined population of approximately 822 million inhabitants on 1 January 2012. The average number of applications allocated to a judicial formation per 10,000 inhabitants was 0.79 in 2012.

Sources 2011 and 2012: Internet site of the Eurostat service ("Population and social conditions") or from the United Nations Statistics Division.

