

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

Practical Guide on Admissibility Criteria

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Prepared by the Registry. It does not bind the Court.

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Note to readers

This Practical Guide is part of the series of Guides on the Convention published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners, and in particular lawyers who may be called upon to represent applicants before the Court, about the conditions of admissibility of individual applications. This Guide is designed to present a clearer and more detailed picture of the conditions of admissibility with a view, firstly, to reducing as far as possible the number of applications which have no prospect of resulting in a ruling on the merits and, secondly, to ensuring that those applications which warrant examination on the merits pass the admissibility test.

This guide does not therefore claim to be exhaustive and will concentrate on the most commonly occurring scenarios. The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

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

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

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

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

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

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

Introduction

1. The system of protection of fundamental rights and freedoms established by the European Convention on Human Rights ("the Convention") is based on the principle of subsidiarity. The importance of this principle has been reaffirmed with the adoption and entry into force of Protocol No. 15 to the Convention, which has introduced an explicit reference to it in the Preamble to the Convention. The task of ensuring the application of the Convention falls primarily to the States Parties to the Convention; the European Court of Human Rights ("the Court") should intervene only where States have failed in their obligations.

2. Supervision by Strasbourg is triggered mainly by individual applications, which may be lodged with the Court by any individual or non-governmental legal entity located within the jurisdiction of a State Party to the Convention. The pool of potential applicants is therefore vast: in addition to the eight hundred million inhabitants of greater Europe and the nationals of third countries living there or in transit, there are millions of associations, foundations, political parties, companies and so forth (not to mention those persons who, as a result of extraterritorial acts committed by the States Parties to the Convention outside their respective territories, fall within their jurisdiction).

3. For a number of years now, and owing to a variety of factors, the Court has been submerged by individual applications (64,100 were pending as of 31 January 2021). The overwhelming majority of these applications are, however, rejected without being examined on the merits for failure to satisfy one of the admissibility criteria laid down by the Convention. For instance, in 2020, out of the 39,190 applications disposed of by the Court, 37,289 were declared inadmissible or struck out of the list of cases. This situation is frustrating on two counts. Firstly, as the Court is required to respond to each application, it is prevented from dealing within reasonable time-limits with those cases which warrant examination on the merits, without the public deriving any real benefit. Secondly, tens of thousands of applicants inevitably have their claims rejected.

4. The States Parties to the Convention, and also the Court and its Registry, have constantly sought ways to tackle this problem and ensure effective administration of justice. One of the most visible measures has been the adoption of Protocol No. 14 to the Convention. This provides, among other things, for applications which are clearly inadmissible to be dealt with by a single judge assisted by non-judicial rapporteurs, rather than by a three-judge committee. Protocol No. 14, which came into force on 1 June 2010, also introduced a new admissibility criterion relating to the degree of disadvantage suffered by the applicant, aimed at discouraging applications from persons who have not suffered significant disadvantage.

5. On 19 February 2010, representatives of the forty-seven member States of the Council of Europe, all of which are bound by the Convention, met in Interlaken in Switzerland to discuss the future of the Court and, in particular, the backlog of cases resulting from the large number of inadmissible applications. In a solemn declaration, they reaffirmed the Court's central role in the European system for the protection of fundamental rights and freedoms, and undertook to increase its effectiveness while preserving the principle of individual application.

6. The need to ensure the viability of the Convention mechanism in the short, medium and long term was further stressed in the declarations adopted at follow-up conferences in İzmir, Brighton, Brussels and Copenhagen held in 2011, and 2012, 2015 and 2018 respectively. The Brighton Conference led to the adoption of Protocol No. 15 to the Convention, which apart from inserting a reference to the the principle of subsidiarity and the doctrine of the margin of appreciation into the Convention's Preamble, reduces from six to four months the time within which an application must be lodged with the Court after a final national decision.

7. The idea of providing potential applicants with comprehensive and objective information on the application procedure and admissibility criteria is expressly articulated in point C-6(a) and (b) of the

Interlaken Declaration. This practical guide to the conditions of admissibility of individual applications is to be seen in the same context. It is designed to present a clearer and more detailed picture of the conditions of admissibility with a view, firstly, to reducing as far as possible the number of applications which have no prospect of resulting in a ruling on the merits and, secondly, to ensuring that those applications which warrant examination on the merits pass the admissibility test. At present, in most cases which pass that test, the admissibility and merits are examined at the same time, which simplifies and speeds up the procedure.

8. This document is aimed principally at legal practitioners and in particular at lawyers who may be called upon to represent applicants before the Court.

9. All the admissibility criteria set forth in Articles 34 (individual applications) and 35 (admissibility criteria) of the Convention have been examined in the light of the Court's case-law. Naturally, some concepts, such as the four-month time-limit and, to a lesser extent, the exhaustion of domestic remedies, are more easily defined than others such as the concept of "manifestly ill-founded", which can be broken down almost *ad infinitum*, or the Court's jurisdiction *ratione materiae* or *ratione personae*. Furthermore, some Articles are relied on much more frequently than others by applicants, and some States have not ratified all the additional Protocols to the Convention, while others have issued reservations with regard to the scope of certain provisions. This guide does not therefore claim to be exhaustive and will concentrate on the most commonly occurring scenarios. Although it will focus on cases originated in individual applications (submitted under Article 34 of the Convention), it will refer to certain judgments and decisions delivered in inter-State cases (submitted under Article 33 of the Convention[1]) in so far as relevant to individual applications.

10. The guide was prepared by the Directorate of the Jurisconsult of the Court, and its interpretation of the admissibility criteria is in no way binding on the Court. It will be updated regularly. It was drafted in French and in English and will be translated into some other languages, with priority being given to the official languages of the high case-count countries.

11. After defining the notions of individual application and victim status, the guide will look at procedural grounds for inadmissibility (part I), grounds relating to the Court's jurisdiction (part II) and those relating to the merits of the case (part III)[2].

1. Not all the admissibility crtieria set forth in Article 35 of the Convention are applicable to inter-State applications submitted under Article 33 of the Convention (see *Slovenia v. Croatia* [GC] (dec.), §§ 40-44). Inter-State applications call for a different approach as regards admissibility.

2. For a clear view of the various stages of the procedure by which the Court examines an application, see the "Case processing" page of the Court website (www.echr.coe.int – The Court – How the Court works), and particularly the flow chart "Life of an application".

A. Individual application

Article 34 of the Convention – Individual applications

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ..."

HUDOC keywords

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

1. Purpose of the provision

12. Article 34, which guarantees the right of individual application, gives individuals a genuine right to take legal action at international level. It is also one of the fundamental guarantees of the effectiveness of the Convention system – one of the "key components of the machinery" for the protection of human rights (*Mamatkulov and Askarov v. Turkey* [GC], 2005, §§ 100 and 122; *Loizidou v. Turkey* (preliminary objections), 1995, § 70).

13. As a living instrument, the Convention must be interpreted in the light of present-day conditions. The well-established case-law to this effect also applies to the procedural provisions, such as Article 34 (*ibid.*, § 71).

14. In order to rely on Article 34 of the Convention, an applicant must meet two conditions: he or she must fall into one of the categories of petitioners mentioned in Article 34 and must be able to make out a case that he or she is the victim of a violation of the Convention (*Vallianatos and Others v. Greece* [GC], 2013, § 47).

2. Categories of petitioners

a. Physical persons

15. Any person may rely on the protection of the Convention against a State Party when the alleged violation took place within the jurisdiction of the State concerned, in accordance with Article 1 of the Convention (*Van der Tang v. Spain*, 1995, § 53), regardless of nationality, place of residence, civil status, situation or legal capacity. For a mother deprived of parental rights, see *Scozzari and Giunta v. Italy* [GC], 2000, § 138; for a minor, see *A. v. the United Kingdom*, 1998; for a person lacking legal capacity, without the consent of her guardian, see *Zehentner v. Austria*, 2009, §§ 39 et seq.

16. Applications can be brought only by living persons or on their behalf; a deceased person cannot lodge an application (*Aizpurua Ortiz and Others v. Spain*, 2010, § 30; *Dvořáček and Dvořáčková v. Slovakia*, 2009, § 41).

b. Legal persons

17. A legal entity claiming to be the victim of a violation by a member State of the rights set forth in the Convention and the Protocols has standing before the Court only if it is a "non-governmental organisation" within the meaning of Article 34 of the Convention.

18. The term "governmental organisations", as opposed to "non-governmental organisations" within the meaning of Article 34, applies not only to the central organs of the State, but also to decentralised authorities that exercise "public functions", regardless of their autonomy *vis-à-vis* the central organs;

likewise it applies to local and regional authorities (*Radio France and Others v. France* (dec.), 2003, § 26), a municipality (*Ayuntamiento de Mula v. Spain* (dec.), 2001), or part of a municipality which participates in the exercise of public authority (*Municipal Section of Antilly v. France* (dec.), 1999), none of which are entitled to make an application on the basis of Article 34 (see also *Döşemealtı Belediyesi v. Turkey* (dec.), 2010). A State not party to the Convention cannot be qualified as a "non-governmental organisation" and is therefore not entitled bring a case to the Court under Article 34 (*Democratic Republic of the Congo v. Belgium* (dec.), 2020, §§ 13-21).

19. The category of "governmental organisation" includes legal entities which participate in the exercise of governmental powers or run a public service under government control (*JKP Vodovod Kraljevo v. Serbia* (déc.), 2018, §§ 23-28, concerning a water and sewerage company established by a municipality; *İhsan Doğramacı Bilkent Üniversitesi v. Turkey* (dec.), 2020, §§ 35-47, concerning a university established by a foundation). The private nature of the act complained of is not relevant in this respect (§ 38).

20. In order to determine whether any given legal person other than a territorial authority falls within that category, account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out and the context in which it is carried out, and the degree of its independence from the political authorities (*Radio France and Others v. France* (dec.), 2003, § 26; *Kotov v. Russia* [GC], 2012, § 93; *Slovenia v. Croatia* [GC] (dec.), 2020, § 61). For public-law entities which do not exercise any governmental powers or public-service broadcasters, see *The Holy Monasteries v. Greece*, 1994, § 49; *Radio France and Others v. France* (dec.), 2003, §§ 24-26; *Österreichischer Rundfunk v. Austria*, 2004, §§ 46-53; *Schweizerische Radio- und Fernsehgesellschaft and publisuisse SA v. Switzerland*, 2020, §§ 46-48; *Croatian Radio-Television v. Croatia*, 2023, §§ 98-121. For State-owned companies, which enjoy sufficient institutional and operational independence from the State, see *Islamic Republic of Iran Shipping Lines v. Turkey*, 2007, §§ 80-81; *Ukraine-Tyumen v. Ukraine*, 2007, §§ 25-28; *Unédic v. France*, 2008, §§ 48-59; and, by contrast, *Zastava It Turs v. Serbia* (dec.), 2013; *State Holding Company Luganskvugillya v. Ukraine* (dec.), 2009; see also *Transpetrol, a.s., v. Slovakia* (dec.), 2011. As far as companies are concerned, the Court has considered a company to be "non-governmental" for the purposes of Article 34 where it was governed essentially by company law, did not enjoy any governmental or other powers beyond those conferred by ordinary private law in the exercise of its activities, and was subject to the jurisdiction of the ordinary rather than the administrative courts. The Court has also taken into account the fact that an applicant company carried out commercial activities and had neither a public service role nor a monopoly in a competitive sector (*Slovenia v. Croatia* [GC] (dec.), 2020, §§ 62-63, and the references cited therein).

21. The Court has clarified that Article 33 of the Convention (inter-State applications) does not allow an applicant Government to vindicate the rights of a legal entity which would not qualify as a "non-governmental organisation" and therefore would not be entitled to lodge an individual application under Article 34 (*Slovenia v. Croatia* [GC] (dec.), 2020, §§ 60-70 and 76-79, concerning a bank owned by the applicant State). Taking into account the specific nature of the Convention as a human rights treaty and recalling that even in inter-State cases it is the individual who is primarily "injured" by a violation of the Convention, the Court confirmed that only individuals, groups of individuals and legal entities which qualify as "non-governmental organisations" can be bearers of rights under the Convention, but not a Contracting State or any legal entity belonging to it (*ibid.*, § 66).

22. A religious organisation without aformally recognised legal personality in domestic law, whose capacity to take legal action and acquire real estate had never been questioned internally by administrative authorities or courts, may lodge an application under Article 34 (*Chief Rabbinate of the Jewish Community of Izmir v. Türkiye*, 2023, §§ 43-46).

c. Any group of individuals

23. An application can be brought by a group of individuals. However, local authorities or any other government bodies cannot lodge applications through the individuals who make up them or represent them, relating to acts punishable by the State to which they are attached and on behalf of which they exercise public authority (*Demirbaş and Others v. Turkey* (dec.), 2010). By contrast, a group of MPs from a regional parliament can be considered as "group of individuals" (instead of a governmental organisation) when they complain about the suspension of the plenary sitting of the Parliament of an autonomous community. In such a case, the rights and freedoms invoked by the applicants concern them individually and are not attributable to the Parliament as an institution (*Forcadell i Lluis and Others v. Spain* (dec.), 2019).

3. Victim status

24. The Court has consistently held that the Convention does not provide for the institution of an *actio popularis* and that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicant gave rise to a violation of the Convention (for example, *Roman Zakharov v. Russia* [GC], 2015, § 164).

a. Notion of "victim"

25. The word "victim", in the context of Article 34 of the Convention, denotes the person or persons directly or indirectly affected by the alleged violation. Hence, Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end (*Vallianatos and Others v. Greece* [GC], 2013, § 47). The notion of "victim" is interpreted autonomously and irrespective of domestic rules such as those concerning interest in or capacity to take action (*Gorraiz Lizarraga and Others v. Spain*, 2004, § 35), even though the Court should have regard to the fact that an applicant was a party to the domestic proceedings (*Aksu v. Turkey* [GC], 2012, § 52; *Micallef v. Malta* [GC], 2009, § 48; *Bursa Barosu Başkanliği and Others v. Turkey*, 2018, §§ 109-117). It does not imply the existence of prejudice (*Brumărescu v. Romania* [GC], 1999, § 50), and an act that has only temporary legal effects may suffice (*Monnat v. Switzerland*, 2006, § 33).

26. The interpretation of the term "victim" is liable to evolve in the light of conditions in contemporary society and it must be applied without excessive formalism (*ibid.*, §§ 30-33; *Gorraiz Lizarraga and Others v. Spain*, 2004, § 38; *Stukus and Others v. Poland*, 2008, § 35; *Ziętal v. Poland*, 2009, §§ 54-59). The Court has held that the issue of victim status may be linked to the merits of the case (*Siliadin v. France*, 2005, § 63; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 111). The Court can examine the question of victim status and *locus standi ex officio*, since it concerns a matter which goes to the Court's jurisdiction (*Buzadji v. the Republic of Moldova* [GC], 2016, § 70; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 93; *Unifaun Theatre Productions Limited and Others v. Malta*, 2018, §§ 63-66; *Jakovljević v. Serbia* (dec.), 2020, § 29).

27. The distribution of the burden of proof is intrinsically linked to the specificity of the facts, the nature of the allegation made and the Convention right at stake (*N.D. and N.T. v. Spain* [GC], 2020, §§ 83-88).

b. Direct victim

28. In order to be able to lodge an application in accordance with Article 34, an applicant must be able to show that he or she was "directly affected" by the measure complained of (*Tănase v. Moldova* [GC], 2010, § 104; *Burden v. the United Kingdom* [GC], 2008, § 33; *Lambert and Others v. France* [GC], 2015, § 89). This is indispensable for putting the protection mechanism of the Convention into motion (*Hristozov and Others v. Bulgaria*, 2012, § 73), although this criterion is not to be applied in a rigid,

mechanical and inflexible way throughout the proceedings (*Micallef v. Malta* [GC], 2009, § 45; *Karner v. Austria*, 2003, § 25; *Aksu v. Turkey* [GC], 2012, § 51). For instance, a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 92). However, in *Margulev v. Russia*, 2019, the Court considered the applicant to be a direct victim of defamation proceedings although he was only admitted as a third party to the proceedings. Since domestic law granted the status of third party to proceedings where "the judgment may affect the third party's rights and obligations vis-à-vis the claimant or defendant", the Court considered that the domestic courts had tacitly accepted that the applicant's rights might have been affected by the outcome of the defamation proceedings (§ 36; see also *Khural and Zeynalov v. Azerbaijan (no. 2)*, 2023, §§ 31-32). In *Mukhin v. Russia*, 2021, the Court recognised that the editor-in-chief of a newspaper could claim to be a victim of the domestic courts' decisions divesting that newspaper of its media-outlet status and annulling the document certifying its registration (§§ 158-160). Further, in some specific circumstances, direct victims who had not participated in the domestic proceedings were accepted as applicants before the Court (*Beizaras and Levickas v. Lithuania*, 2020, §§ 78-81). Standing in domestic proceedings is therefore not decisive, as the notion of "victim" is interpreted autonomously in the Convention system (see, for instance, *Kalfagiannis and Pospert v. Greece* (dec.), 2020, §§ 44-48, concerning the financial administrator of a public service broadcaster whose victim status was accepted by the domestic courts but not by the Court).

29. In the specific context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change, having regard to the special features of climate change and to the principle of exclusion of *actio popularis* under the Convention, the Court ruled that applicants needed to show that they were personally and directly affected by the impugned failures. That depends on two key criteria for which the threshold is especially high. Firstly, the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant. Secondly, there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, §§ 487-488). In that case, having carefully considered, *inter alia*, the nature and scope of the individual applicants' complaints and the material submitted by them, the degree of likelihood and/or probability of the adverse effects of climate change in time, the specific impact on each individual applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicants' vulnerability, the Court found that the four individual applicants did not fulfil the relevant criteria so as to constitute victims within the meaning of Article 34 (§§ 527-536). Applying the same criteria, the Court refused to recognise the victim status of the former mayor of a French municipality who alleged that the relevant territory ran the risk of climate-change induced flooding in the future but who had left that municipality and did not have any property or other relevant link to it (*Carême v. France* [GC] (dec.), 2024, § 83).

30. Moreover, in accordance with the Court's practice and with Article 34 of the Convention, applications can only be lodged by, or in the name of, individuals who are alive (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 96). However, particular considerations may arise in the case of victims of alleged breaches of Articles 2, 3 and 8 at the hands of the national authorities. Applications lodged by individuals or associations on behalf of the victim(s), even though no valid form of authority was presented, have thus been declared admissible (§§ 103-114).[3]

3. See section Representation.

c. Indirect victim

31. If the alleged victim of a violation has died before the introduction of the application, it may be possible for the person with the requisite legal interest as next-of-kin to introduce an application raising complaints related to the death or disappearance of his or her relative (*Varnava and Others v. Turkey* [GC], 2009, § 112). This is because of the particular situation governed by the nature of the violation alleged and considerations of the effective implementation of one of the most fundamental provisions in the Convention system (*Fairfield v. the United Kingdom* (dec.), 2005).

32. In such cases, the Court has accepted that close family members, such as parents, of a person whose death or disappearance is alleged to engage the responsibility of the State can themselves claim to be indirect victims of the alleged violation of Article 2, the question of whether they were legal heirs of the deceased not being relevant (*Van Colle v. the United Kingdom*, 2012, § 86; *Tsalikidis and Others v. Greece*, 2017, § 64; *Kotilainen and Others v. Finland*, 2020, §§ 51-52).

33. The next-of-kin can also bring other complaints, such as under Articles 3 and 5 of the Convention on behalf of deceased or disappeared relatives, provided that the alleged violation is closely linked to the death or disappearance giving rise to issues under Article 2. For example, see *Khayrullina v. Russia*, 2017, §§ 91-92 and §§ 100-107, regarding the next-of-kin's standing to lodge a complaint under Article 5 § 1 and Article 5 § 5. The same logic could be applied to a complaint under Article 6 if a person had died during the criminal proceedings against him or her and if the death had occurred in circumstances engaging the State's responsibility (*Magnitskiy and Others v. Russia*, 2019, §§ 278-279).

34. For married partners, see *McCann and Others v. the United Kingdom*, 1995; *Salman v. Turkey* [GC], 2000; for unmarried partners, see *Velikova v. Bulgaria* (dec.), 1999; for parents, see *Ramsahai and Others v. the Netherlands* [GC], 2007; *Giuliani and Gaggio v. Italy* [GC], 2011; for siblings, see *Andronicou and Constantinou v. Cyprus*, 1997; for children, see *McKerr v. the United Kingdom*, 2001; for nephews, see *Yaşa v. Turkey*, 1998; conversely, for a divorced partner who was not considered to have a sufficient link to her deceased ex-husband, see *Trivkanović v. Croatia*, 2017, §§ 49-50; for an uncle and a first cousin, see *Fabris and Parziale v. Italy*, 2020, §§ 37-41 and the recapitulation of the case-law. With regard to missing persons whose bodies have not been found following a boat accident, the Court has accepted that the next-of-kin can lodge an application under Article 2, in particular where the State has not found all the victims and has even failed to identify all those who had been found (*Ranđelović and Others v. Montenegro*, 2017, § 85).

35. In cases where the alleged violation of the Convention was not closely linked to the death or disappearance of the direct victim the Court's approach has been more restrictive (*Karpylenko v. Ukraine*, 2016, § 104, *A and B v. Croatia*, 2019, §§ 88-91). The Court has generally declined to grant standing to any other person unless that person could, exceptionally, demonstrate an interest of their own (*Nassau Verzekering Maatschappij N.V. v. the Netherlands* (dec.), 2011, § 20). See, for example, *Sanles Sanles v. Spain* (dec.), 2000, which concerned the prohibition of assisted suicide in alleged breach of Articles 2, 3, 5, 8, 9 and 14 and where the Court held that the rights claimed by the applicant, who was the deceased's sister-in-law and legal heir, belonged to the category of non-transferable rights and that therefore she could not claim to be the victim of a violation on behalf of her late brother-in-law; see under Article 8, *Petithory Lanzmann v. France* (dec.), 2019, § 16, where the Court held that the fate of gametes deposited by an individual and his wish that they be used after his death concerned an individual's right to decide how and when he wished to become a parent and that this right fell within the category of non-transferable rights; see also *Biç and Others v. Turkey* (dec.), 2006, (concerning complaints under Articles 5 and 6); *Fairfield v. the United Kingdom* (dec.), 2005, (complaints under Articles 9 and 10); *Rõigas v. Estonia*, 2017, § 127, and Jakovljević v. Serbia (dec.), 2020, §§ 29-30 (relating to complaints under Article 8).

36. As regards complaints of ill-treatment of deceased relatives under Article 3 of the Convention, the Court has accepted the *locus standi* of applicants in cases where the ill-treatment was closely linked to the death or the disappearance of their relatives (*Karpylenko v. Ukraine*, 2016, § 105; *Dzidzava*

v. Russia, 2016, § 46). The Court has also affirmed that it may recognise the standing of applicants who complain about ill-treatment of their late relative if the applicants show either a strong moral interest, besides the mere pecuniary interest in the outcome of the domestic proceedings, or other compelling reasons, such as an important general interest which requires their case to be examined (*Boacă and Others v. Romania*, 2016, § 46; *Karpylenko v. Ukraine*, 2016, § 106; see also *Stepanian v. Romania*, 2016, §§ 40-41; *Selami and Others v. the former Yugoslav Republic of Macedonia*, 2018, §§ 58-65).

37. In those cases where victim status was granted to close relatives, allowing them to submit an application in respect of complaints under, for example, Articles 5, 6 or 8, the Court took into account whether they have shown a moral interest in having the late victim exonerated of any finding of guilt (*Nölkenbockhoff v. Germany*, 1987, § 33; *Grădinar v. Moldova*, 2008, §§ 95 and 97-98; *Akbay and Others v. Germany,* 2020, §§ 73, 80-82) or in protecting their own reputation and that of their family (*Brudnicka and Others v. Poland*, 2005, §§ 27-31; *Armonienė v. Lithuania*, 2008, § 29; *Polanco Torres and Movilla Polanco v. Spain*, 2010, §§ 31-33), or whether they have shown a material interest on the basis of the direct effect on their pecuniary rights (*Nölkenbockhoff v. Germany*, 1987, § 33; *Grădinar v. Moldova*, 2008, § 97; *Micallef v. Malta* [GC], 2009, § 48; *Akbay and Others v. Germany,* 2020, §§ 74, 83-85). The existence of a general interest which necessitated proceeding with the consideration of the complaints has also been taken into consideration (*Micallef v. Malta* [GC], 2009, §§ 46 and 50; see also *Biç and Others v. Turkey* (dec.), 2006, §§ 22-23; *Akbay and Others v. Germany,* 2020, §§ 76, 86-88).

38. The applicant's participation in the domestic proceedings has been found to be only one of several relevant criteria (*Nölkenbockhoff v. Germany*, 1987, § 33; *Micallef v. Malta* [GC], 2009, §§ 48-49; *Polanco Torres and Movilla Polanco v. Spain*, 2010, § 31; *Grădinar v. Moldova*, 2008, §§ 98-99; see also *Kaburov v. Bulgaria* (dec.), 2012, §§ 57-58, where the Court found that, in a case concerning the transferability of Article 3 of the Convention, the applicant, in the absence of a moral interest in the outcome of proceedings or other compelling reason, could not be considered a victim merely because the domestic law allowed him to intervene in the tort proceedings as the late Mr Kaburov's heir; see also *Nassau Verzekering Maatschappij N.V. v. the Netherlands* (dec.), 2011, where the applicant company's claim to have victim status on account of having acquired a Convention claim by a deed of assignment was rejected by the Court).

39. The Court has usually considered the above criteria cumulatively and made its assessment of whether close relatives had standing to submit an application having regard to all the circumstances of the case (*Akbay and Others v. Germany,* 2020, §§ 77 and 89).

40. In addition to their status as "indirect victims", family members can also be "direct victims" of a treatment contrary to Article 3 of the Convention on account of the suffering stemming from serious human rights violations affecting their relatives (see the relevant criteria in *Janowiec and Others v. Russia* [GC], 2013, §§ 177-181, and 2018, , §§ 54-56).

41. Close relatives may under some circumstances claim to be indirect victims of a violation directly affecting a living relative. For instance, a mother can claim indirect victim status in respect of an alleged discrimination affecting her disabled child, in so far as, in addition to the care which she provided, she had instituted the domestic proceedings in her capacity as guardian to her daughter, who was incapable of discernment (*Belli and Arquier-Martinez v. Switzerland*, 2018, § 97).

42. As regards complaints pertaining to companies (*Agrotexim and Others v. Greece*, 1995, §§ 64-71), the Court has considered that a person cannot complain of a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or director of a company which was party to the proceedings (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, §§ 92-93). The same principle applies to trustees in a trust (*The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 204-208).

43. When it comes to cases brought by shareholders of a company (notably under Article 1 of Protocol Nno. 1), the Court has found it crucial to draw a distinction between complaints brought by shareholders about measures affecting their rights as shareholders and those about acts affecting companies, in which they hold shares (*Agrotexim and Others v. Greece*, 1995, §§ 65-66; *Albert and Others v. Hungary* [GC], 2020, § 122). In the former group, shareholders themselves may be considered victims within the meaning of Article 34 of the Convention (see *Olczak v. Poland* (dec.) 2022, §§ 57-62; *Albert and Others v. Hungary* [GC], 2020, §§ 126-134, and the references cited therein; *Project-Trade d.o.o. v. Croatia*, 2020, §§ 44-47*; Papachela and Amazon S.A. v. Greece*, 2020, §§ 37-41). In the latter group the general principle is that shareholders of companies cannot be seen as victims, within the meaning of Article 34 of the Convention, of acts and measures affecting their companies. The Court has recognised that this principle may be justifiably qualified in two kinds of situations, firstly, where the company and its shareholders are so closely identified with each other that it is artificial to distinguish between the two (see, for example, *Ankarcrona v. Sweden* (dec.), 2000, and *Rustamkhanli v. Azerbaijan*, 2024, § 30), and, secondly, if it is warranted by "exceptional circumstances" (*Albert and Others v. Hungary* [GC], 2020, §§ 124, 135-145). In this connection, the disregarding of a company's legal personality can be justified only in "exceptional circumstances", in particular where it is clearly established that it is impossible for the company to bring the case to the Court in its own name. In order for applicants to satisfy the Court that their pursuit, as shareholders, of a matter affecting the company is justified by such reasons, they ought to give weighty and convincing reasons demonstrating that it is practically or effectively impossible for the company to apply to the Court through the organs set up under its articles of association and that they should therefore be allowed to proceed with the complaint on the company's behalf (*ibid*., §§ 138-145, and the references cited therein; see, for an application of these principles, §§ 159-165).

44. As to the 'victim' status of applicant companies and/or their managers respectively when it comes to secret surveillance authorisations not formally issued against the companies, see *Liblik and others v. Estonia*, 2019, §§ 111-112.

45. As regards non-governmental organisations, the Court does not grant "victim" status to associations whose interests are not at stake, even if the interests of their members - or some of them - could be at stake. In addition, "victim" status is not granted to NGOs even if the associations have been founded for the sole purpose of defending the rights of the alleged victims (*Nencheva and Others v. Bulgaria*, 2013, § 90 and § 93 and the references cited therein; see also *Kalfagiannis and Pospert v. Greece* (dec.)*,* 2020, §§ 49-51, concerning a federation of trade unions representing media employees; *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (dec.), 2021, §§ 42-44, concerning a non-governmental organisation created with a view to defending the residents of an area where a dam was being built, and *Genderdoc-M and M.D. v. the Republic of Moldova*, 2021, §§ 25-26, concerning a non-governmental organisation representing the interests of LGBT persons. See, by contrast, *AsDAC c. the Republic of Moldova,* §§ 21-37, concerning a non-governmental organisation set up for the collective management of intellectual property rights of its members and its victim status in relation to an Article 1 of Protocol No. 1 complaint; and *Hoppen and trade union of AB Amber Grid employees v. Lithuania,* 2023, § 153, concerning a trade union that complained that the dismissal of one of its members had negatively affected its own freedom of association).

46. However, it should be noted that under certain circumstances NGOs (instead of the applicants) can take part in domestic proceedings, defending the applicants' interests. This does not deprive the applicants, who have not participated in the domestic proceedings, of their victim status (*Gorraiz Lizarraga and Others v. Spain*, 2004, §§ 37-39; *Centre of Societies for Krishna Consciousness in Russia and Frolov v. Russia*, 2021, § 30; for the interplay between victim status under Article 34 and exhaustion of domestic remedies under Article 35 § 1 see *Beizaras and Levickas v. Lithuania*, 2020, §§ 78-81; *Thibaut v. France* (dec.), 2022, §§ 26-31).

d. Potential victims and *actio popularis*

47. Article 34 of the Convention does not allow complaints *in abstracto* alleging a violation of the Convention (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 101 and the references cited therein). In certain specific situations, however, the Court has accepted that an applicant may be a potential victim. For example, where he was not able to establish that the legislation he complained of had actually been applied to him on account of the secret nature of the measures it authorised (*Klass and Others v. Germany*, 1978), or where an alien's removal had been ordered, but not enforced, and where enforcement would have exposed him in the receiving country to treatment contrary to Article 3 of the Convention or to an infringement of his rights under Article 8 of the Convention (*Soering v. the United Kingdom*, 1989) or where a law punishing homosexual acts was likely to be applied to a certain category of the population, to which the applicant belonged (*Dudgeon v. the United Kingdom*, 1981). The Court has also held that an applicant can claim to be a victim of a violation of the Convention if he or she is covered by the scope of legislation permitting secret surveillance measures and if the applicant has no remedies to challenge such cover surveillance (*Roman Zakharov* v. *Russia* [GC], 2015, §§ 173-78).

48. In order to be able to claim to be a victim in such a situation, an applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting him or her personally will occur; mere suspicion or conjecture is insufficient (*Senator Lines GmbH v. fifteen member States of the European Union* (dec.) [GC], 2004; *Shortall and Others v. Ireland* (dec.), 2021). For the absence of a formal expulsion order, see *Vijayanathan and Pusparajah v. France*, 1992, § 46; for alleged consequences of a parliamentary report, see *Fédération chrétienne des témoins de Jéhovah de France v. France* (dec.), 2001; for alleged consequences of a judicial ruling concerning a third party in a coma, see *Rossi and Others v. Italy* (dec.), 2008; for alleged consequences of anti-doping measures for sports associations and individual sports professionals, see *National federation of Sportspersons' Associations and unions (FNASS) and Others v. France*, 2018, §§ 91-103; for alleged consequences of amendments banning access to legal abortion on foetal malformation grounds, see *A.M. and Others v. Poland* (dec.), 2023, §§ 75-87; for the refusal to exempt an applicant, without her undergoing a medical examination to prove that she was not pregnant, from the 300-day waiting period imposed on divorced women wishing to remarry, in the absence of any actual intention to do so, see *Nurcan Bayraktar v. Türkiye*, 2023, §§ 27-29.

49. An applicant cannot claim to be a victim in a case where he or she is partly responsible for the alleged violation (*Paşa and Erkan Erol v. Turkey*, 2001).

50. The Court has also underlined that the Convention does not envisage the bringing of an *actio popularis* for the interpretation of the rights it contains or permit individuals to complain about a provision of a domestic law simply because they consider, without having been directly affected by it, that it may contravene the Convention (*Aksu v. Turkey* [GC], 2012, § 50; *Burden v. the United Kingdom* [GC], 2008, § 33; *Dimitras and Others v. Greece* (dec.), 2017, §§ 28-32; *Cordella and Others v. Italy*, 2019, § 100; *Kalfagiannis and Pospert v. Greece* (dec.), 2020, § 46). For instance, residents who have not participated in the domestic proceedings seeking the annulment of administrative decisions or associations which have not been granted *locus standi* by the domestic courts cannot claim to be victims of an alleged violation of the right to enforcement of judicial decisions under Article 6 § 1 (*Bursa Barosu Başkanliği and Others v. Turkey*, 2018, §§ 114-116, concerning an environmental case; compare with *Beizaras and Levickas v. Lithuania*, 2020, § 80). Where an applicant alleges a breach of the right to respect for private and family life on account of statutory restrictions on visits from family members or other persons, in order to claim to be a victim of the alleged violation , he should demonstrate at least: a) that he has relatives or other persons with whom he genuinely wishes and attempts to maintain contact in detention; and b) that he has used his right to visits as frequenty as was permitted under domestic law (*Chernenko and Others v. Russia* (dec.), 2019, § 45). In the context of Article 10 of the Convention, the mere fact that an applicant could no longer watch or listen to the programmes previously broadcast by a public service broadcaster closed by the Government did not

suffice to establish his victim status with respect to the right to receive information (*Kalfagiannis and Pospert v. Greece* (dec.), 2020, §§ 46-47).

51. However, it is open to a person to contend that a law violates his or her rights, in the absence of an individual measure of implementation, if he or she is required either to modify his or her conduct or risks being prosecuted or if he or she is a member of a class of people who risk being directly affected by the legislation (*Tănase v. Moldova* [GC], 2010, § 104; *Michaud v. France*, 2012, §§ 51-52; *Sejdić and Finci v. Bosnia and Herzegovina* [GC], 2009, § 28).

e. Loss of victim status

52. It falls first to the national authorities to redress any alleged violation of the Convention. Hence, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings before the Court (*Scordino v. Italy (no. 1)* [GC], 2006, § 179; *Rooman v. Belgium* [GC], 2019, §§ 128-133). In this regard, the applicant must be able to justify his or her status as a victim throughout the proceedings (*Burdov v. Russia*, 2002, § 30; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 80).

53. The issue of whether a person may still claim to be the victim of an alleged violation of the Convention essentially entails on the part of the Court an *ex post facto* examination of his or her situation (*ibid*., § 82).

54. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (*Scordino v. Italy (no. 1)* [GC], 2006, § 180; *Gäfgen v. Germany* [GC], 2010, § 115; *Nada v. Switzerland* [GC], 2012, § 128; *Blyudik v. Russia*, 2019, §§ 49-50; *Dimo Dimov and Others v. Bulgaria,* 2020, §§ 51-56; *Roth v. Germany*, 2020, §§ 75-81; *Kurkut and Others v. Türkiye*, 2024, § 86). Only when these conditions are satisfied does the subsidiary nature of the protective mechanism of the Convention preclude examination of an application (*Jensen and Rasmussen v. Denmark* (dec.), 2003; *Albayrak v. Turkey*, 2008, § 32; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, §§ 217-223).

55. The applicant would remain a victim if the authorities have failed to acknowledge either expressly or in substance that there has been a violation of the applicant's rights (*Albayrak v. Turkey*, 2008, § 33; *Jensen v. Denmark* (dec.), 2001) even if the latter received some compensation (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, § 88; *Bryan and Others v. Russia*, 2023, § 45).

56. Moreover, the redress afforded must be appropriate and sufficient. This will depend on all the circumstances of the case, with particular regard to the nature of the Convention violation in issue (*Gäfgen v. Germany* [GC], 2010, § 116; *Bivolaru v. Romania (no. 2)*, 2018, § 170; *Romanov and Others v. Russia*, 2023, § 86; *Tamazount and Others v. France*, 2024, §§ 155-162). However, if the applicant has agreed to the terms of a friendly settlement at domestic level, he or she cannot complain that the monetary compensation received under that settlement was not sufficient (*Chennouf and Others v. France* (dec.), 2023, § 39).

57. For instance, in cases of willful ill-treatment by State agents in breach of Article 3, the Court has repeatedly found that two measures are necessary to provide sufficient redress. Firstly, the State authorities must have conducted a thorough and effective investigation capable of leading to the identification and punishment of those responsible. Secondly, an award of compensation to the applicant is required where appropriate or, at least, the possibility of seeking and obtaining compensation for the damage which the applicant sustained as a result of the ill-treatment (*Gäfgen v. Germany* [GC], 2010, §§ 116-118). On the other hand, if the State had effectively investigated (including a criminal judgment not appealed by the applicant, she thereby tacitly agreeing that the domestic court has submitted the case to careful scrutiny and has not imposed an excessively light

punishment) and if the applicant does not claim compensation through the civil courts despite being entitled to do so, he or she can no longer claim to be a victim of the alleged violation (*K.P. v. Poland*, 2023, §§ 108-112).

58. In cases of willful ill-treatment by State agents, the breach of Article 3 cannot be remedied only by an award of compensation to the victim (*ibid.,* § 119; *Shmorgunov and Others v. Ukraine*, 2021, §§ 397-401). These principles are not only applicable to cases of ill-treatment by State agents but also to cases of ill-treatment inflicted by private individuals (*Beganović v. Croatia*, 2009, § 56; *Škorjanec v. Croatia*, 2017, § 47). In particular, in cases of domestic and/or gender-based violence the acknowledgment of a violation may imply the need to conduct a meaningful investigation into the response of law enforcement and their inaction, which might have been motivated by gender-based discrimination, in the face of the victim's complaints (*A. and B. v. Georgia*, 2022, § 44).

59. When domestic courts afford appropriate and sufficient redress for an alleged violation of Article 3 (conditions of detention) to applicants who are no longer in detention, these applicants lose their victim status. This is the case, for instance, where domestic authorities have compensated for the poor conditions of detention in which the applicants were held by a specific and measurable reduction in their sentences leading to their early release (*Dîrjan and Ștefan v. Romania* (dec.), 2020, §§ 23-34).

60. However, if domestic courts compensate individuals who are still detained, the compensation does not enable these individuals to obtain direct and appropriate redress for their rights under Article 3, namely the cessation or improvement of their conditions of detention (*J.M.B. and Others v. France*, 2020, §§ 167-169).

61. Where a breach of Article 5 § 1 had been expressly acknowledged at domestic level, which opened up the possibility for the applicant of claiming compensation in a separate set of proceedings and of obtaining an adequate amount of compensation, the applicant could reasonably have been expected to turn to the domestic courts to obtain compensation, rather than turning to the Court to seek confirmation of the unlawfulness of his detention which had already been recognised (*Al Husin v. Bosnia and Herzegovina (no. 2)*, 2019, §§ 89-90; for an acknowledgment of the unlawfulness of the detention in the context of disciplinary proceedings against the judges who had authorised the applicants' detention and the payment of the compensation awarded in separate civil proceedings, see *Dubovtsev and Others v. Ukraine*, 2021, §§ 57-66). As regards Article 5 § 5, an applicant might lose his victim status when national authorities grant redress by reducing the sentence imposed on the applicant in an express and measurable manner instead of granting the applicant a financial benefit (*Porchet v. Switzerland* (dec.), 2019, §§ 14-26). The mitigation of a sentence may also be relevant for removing victim status in respect of the length of a detention on remand in breach of Article 5 § 3 (*ibid*, § 20; *Ščensnovičius v. Lithuania*, 2018, §§ 88-93; compare and contrast *Malkov v. Estonia*, 2010, §§ 40-41).

62. Also, a person may not claim to be a victim of a violation of his right to a fair trial under Article 6 of the Convention which, according to him, took place in the course of proceedings in which he was acquitted or which were discontinued (*Sakhnovskiy v. Russia* [GC], 2011, § 77; *Oleksy v. Poland* (dec.), 2009; *Koç and Tambaş v. Turkey* (dec.), 2005; *Bouglame v. Belgium* (dec.), 2010), except for the complaint pertaining to the length of the proceedings in question (*Osmanov and Husseinov v. Bulgaria* (dec.), 2003). By contrast, for Article 10 complaints, an acquittal may not be relevant for removing victim status (*Döner and Others v. Turkey*, 2017, § 89).

63. If an applicant is finally convicted in proceedings which breached Article 6 and therefore acquires victim status, it is then for the State to provide him or her with adequate and sufficient redress in respect of that complaint in a timely manner. The Court would then assess whether those subsequent proceedings deprived the applicant of victim status because he or she had been provided with sufficient redress (*Webster v. the United Kingdom* (dec.) and the references cited therein).

64. The imposition of a more lenient sentence by a domestic criminal court on the ground of the excessive length of the proceedings may amount to an adequate acknowledgment of and sufficient redress for delays in those proceedings (Article 6 § 1), provided that the reduction is express and measurable (*Chiarello v. Germany*, 2019, §§ 54-59). The mitigation of a sentence may also be relevant for removing victim status in respect of the length of a detention on remand in breach of Article 5 § 3 (*Ščensnovičius v. Lithuania*, 2018, §§ 88-93; compare and contrast *Malkov v. Estonia*, 2010, §§ 40-41). Victim status as regards the right to a fair trial cannot be lost when another judgment, on a different issue from that alleged by the person concerned, was rendered in favour of him in another proceeding (*Sine Tsaggarakis A.E.E. v. Greece*, 2019, §§ 27-31).

65. In some other cases whether an individual remains a victim may also depend on the amount of compensation awarded by the domestic courts or at least on the possibility of seeking and obtaining compensation for the damage sustained, having regard to the facts about which he or she complains before the Court and the effectiveness (including the promptness) of the remedy affording the award (*Normann v. Denmark* (dec.), 2001; *Scordino v. Italy (no. 1)* [GC], 2006, § 202; see also *Jensen and Rasmussen v. Denmark* (dec.), 2003; *Kurić and Others v. Slovenia* [GC], 2012, § 262; *J.B. and Others v. Hungary* (dec.), 2018, § 59). With regard to the sufficiency of compensation awarded to an association representing several individuals, see *Društvo za varstvo upnikov v. Slovenia* (dec.), 2017, §§ 48-64. The express acknowledgment at the domestic level of a violation of an applicant's right to a fair trial within a reasonable time in criminal proceedings may not be sufficient to remove that applicant's victims status, in the absence of any award of compensation or reduction of the sentence (*Tempel v. the Czech Republic*, 2021, §§ 77-83). Conversely, in the case of a lawyer whose lawyer-client privilege had been breached by intercepting his telephone conversation and by forcing him to appear as a witness at his client's trial, an implicit acknowledgment of the violation by excluding the respective evidence from the file together with the possibility, for that lawyer, to seek compensation by filing a civil claim, were deemed to be sufficient to deprive him of his victim status in relation to Article 8 of the Convention (*Mateuț v. Romania* (dec.), 2022, §§ 33-39).

66. An applicant who has been forced by adverse environmental conditions to abandon his home and subsequently to buy another house with his own funds does not cease to be a victim in respect of an alleged violation of his right to respect for his private life and his home under Article 8 of the Convention (*Yevgeniy Dmitriyev v. Russia*, 2020, §§ 37-38).

67. For other specific situations, see, for instance, *Tamazount and Others v. France*, 2024, §§ 155-162 (Articles 3, 8 and Article 1 of Protocol No. 1); *Marshall and Others v. Malta*, 2020, §§ 33-34, 46-47 (Article 6); *Arat v. Turkey*, 2009, § 47 (Article 6); *Constantinescu v. Romania*, 2000, §§ 40-44 (Articles 6 and 10); *Guisset v. France*, 2000, §§ 66-70 (Article 6); *Chevrol v. France*, 2003, §§ 30 et seq. (Article 6); *Kerman v. Turkey*, 2016, § 106 (Article 6); *Sorbalo v. Moldova* (dec.), 2023, §§ 39-62 (Article 6); *Moskovets v. Russia*, 2009, § 50 (Article 5); *Bivolaru v. Romania (no. 2)*, 2018, §§ 168-175; *Y.Y. and Y.Y. v. Russia*, 2022, § 51, (Article 8); *X and Y v. Romania,* §§ 109-114 (Article 8); *Wikimedia Foundation, Inc. v. Turkey* (dec.), 2022, §§ 47-51, (Article 10); *Kemal Çetin v. Turkey*, 2020, § 33 (Article 11); *Moon v. France*, 2009, §§ 29 et seq. (Article 1 of Protocol No. 1); *D.J. and A.-K.R. v. Romania* (dec.), 2009, §§ 77 et seq. (Article 2 of Protocol No. 4); and *Sergey Zolotukhin v. Russia* [GC], 2009, § 115 (Article 4 of Protocol No. 7); *Dalban v. Romania* [GC], 1999, § 44 (Article 10); *Güneş v. Turkey* (dec.) (Article 10), 2004; *Çölgeçen and Others v. Turkey*, 2017, §§ 39-40, (Article 2 of Protocol No. 1).

68. The fact that a legal person is declared bankrupt during the Convention proceedings does not necessarily deprive it of its victim status (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 94). The same applies to a company which has ceased to exist and whose sole shareholders have indictated their interest in continuing the application in its name (*Euromak Metal Doo v. the former Yugoslav Republic of Macedonia*, 2018, §§ 32-33, concerning a tax dispute under Article 1 of Protocol No. 1; see also *Schweizerische Radio- und Fernsehgesellschaft and publisuisse SA v. Switzerland,* , 2020, § 43*,* concerning a company which ceased to operate after having lodged its

application with the Court and whose activities were taken over by another firm which wished to pursue the proceedings).

69. A case may be struck out of the list because the applicant ceases to have victim status/*locus standi*. Regarding resolution of the case at domestic level after the admissibility decision, see *Ohlen v. Denmark* (striking out), 2005; for an agreement transferring rights which were the subject of an application being examined by the Court, see *Dimitrescu v. Romania*, 2008, §§ 33-34.

70. The Court also examines whether the case should be struck out of its list on one or more of the grounds set forth in Article 37 of the Convention, in the light of events occurring subsequent to the lodging of the application, notwithstanding the fact that the applicant can still claim to be a "victim" (*Pisano v. Italy* (striking out) [GC], 2022, § 39, compare, *Hasanov and Others v. Azerbaijan* (dec.), §§ 38-44), or even irrespective of whether or not he or she can continue to claim victim status. For developments occurring after a decision to relinquish jurisdiction in favour of the Grand Chamber, see *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], 2007, §§ 28-35; after the application had been declared admissible, see *Shevanova v. Latvia* (striking out) [GC], 2007, §§ 44 et seq.; and after the Chamber judgment, see *Sisojeva and Others v. Latvia* (striking out) [GC], 2007, § 96.

f. Death of the applicant

71. In principle, an application lodged by the original applicant before his or her death may be continued by heirs or close family members expressing the wish to pursue the proceedings, provided that they have a sufficient/legitimate interest in the case (*López Ribalda and Others v. Spain* [GC], §§ 71-73; *Malhous v. the Czech Republic* (dec.) [GC], 2000; *Tagiyev and Huseynov v. Azerbaijan*, 2019, §§ 23-24 and the references cited therein; *Hristozov and Others v. Bulgaria*, 2012, § 71; *Ergezen v. Turkey*, 2014, § 30; *Pais Pires de Lima v. Portugal*, 2019, §§ 36-40; *Karastelev and Others v. Russia*, 2020, § 51; *Mile Novaković v. Croatia*, 2020, §§ 33-34).

72. However, where the applicant has died in the course of the proceedings and either no one has come forward with a wish to pursue the application or the persons who have expressed such a wish are not heirs or sufficiently close relatives of the applicant, and cannot demonstrate that they have any other legitimate interest in pursuing the application, the Court will strike the application out of its list (*Léger v. France* (striking out) [GC], 2009, § 50; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 57; *Burlya and Others v. Ukraine*, 2018, §§ 70-75) save for in very exceptional cases where the Court finds that respect for human rights as defined in the Convention and the Protocols thereto requires a continuation of the examination of the case (*Paposhvili v. Belgium* [GC], §§ 129-133; *Delecolle v. France*, 2018, § 39; *Karner v. Austria*, 2003, §§ 25 and seq.).

73. See, for example, *Raimondo v. Italy*, 1994, § 2, and *Stojkovic v. the former Yugoslav Republic of Macedonia*, 2007, § 25 (widow and children); *X v. France*, 1992, § 26 (parents); *Malhous v. the Czech Republic* (dec.) [GC], 2000, (nephew and potential heir); *Velikova v. Bulgaria* (dec.), 1999, *Ivko v. Russia*, 2015, §§ 64-70 and *Delecolle v. France*, 2018, §§ 39-44 (unmarried or *de facto* partner), *Kaganovskyy v. Ukraine*, 2022, §§ 67-72 (the Ukrainian Helsinki Human Rights Union in the case of a vulnerable person who had been confined in a psychiatric institution and in respect of whom no relative had wished to pursue his application); contrast with *Thévenon v. France* (dec.), 2006 (universal legatee not related to the deceased); *Léger v. France* (striking out) [GC], 2009, §§ 50-51 (niece); *Savenko and Others v. Russia*, 2021, § 53 (former wife who divorced the applicant twelve years before his death and did not have any close contact with him afterwards).

4. Representation

74. Where applicants choose to be represented under Rule 36 § 1 of the Rules of Court, rather than lodging the application themselves, Rule 45 § 3 requires them to produce a written authority to act, duly signed. It is essential for representatives to demonstrate that they have received specific and

explicit instructions from the alleged victim within the meaning of Article 34 on whose behalf they purport to act before the Court (*Post v. the Netherlands* (dec.), 2009; *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 102 - see also *Oliyevskyy v. Ukraine* (dec.), 2020, §§ 16-22 and *V.M. and Others v. Belgium* (striking out) [GC], §§ 32-41, where the applicants did not maintain contact with their representative and contrast with *N.D. and N.T. v. Spain* [GC], 2020, §§ 69-79, and the references therein, where the representative remained in contact with both applicants *via* telephone and WhatsApp, and the existence of special circumstances regarding respect for human rights as defined in the Convention and the Protocols thereto requiring the Court to continue the examination of the application (Article 37 § 1 *in fine*)). On the validity of an authority to act, see *Aliev v. Georgia*, 2009, §§ 44-49; on the authenticity of an application, see *Velikova v. Bulgaria*, 2000, §§ 48-52.

75. As a general rule, minor children are represented before the Court by their parents. The standing as the natural parent suffices to afford him or her the necessary power to apply to the Court on the child's behalf in order to protect the child's interests also, even—or indeed especially —if that parent is in conflict with the authorities and criticises their decisions and conduct as not being consistent with the rights guaranteed by the Convention (*Iosub Caras v. Romania*, 2006, § 21). In any event, the key criterion in relation to questions of *locus standi* is the risk that children's interests might not be brought to its attention and that they would be denied effective protection of their Convention rights (*Strand Lobben and Others v. Norway* [GC], 2019, § 157). In cases arising out of disputes between parents, it is in principle the parent entitled to custody and therefore entrusted with safeguarding the child's interests, who has standing to act on the child's behalf (*Hromadka and Hromadkova v. Russia*, 2014, § 119; *Y.Y. and Y.Y. v. Russia*, 2022, § 43). However, the situation may be different if the Court identifies conflicting interests between a parent and child in the case brought before it, for example, if serious joint parental child neglect has occurred (*Strand Lobben and Others v. Norway* [GC], 2019, § 158, and *E.M. and Others v. Norway*, 2022, §§ 64-65; compare and contrast with *Pedersen and Others v. Norway*, 2020, § 45).

76. Moreover, special considerations may arise in the case of victims of alleged breaches of Articles 2, 3 and 8 of the Convention at the hands of the national authorities, having regard to the victims' vulnerability on account of their age, sex or disability, which rendered them unable to lodge a complaint on the matter with the Court, due regard also being paid to the connections between the person lodging the application and the victim. In such cases, applications lodged by individuals on behalf of the victim(s), even though no valid form of authority was presented, have thus been declared admissible (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 103; however, compare and contrast with *Lambert and Others v. France* [GC], 2015, §§ 96-106). See, for example, *İlhan v. Turkey* [GC], 2000, § 55, where the complaints were brought by the applicant on behalf of his brother, who had been ill-treated; *Y.F. v. Turkey*, 2003, § 29, where a husband complained that his wife had been compelled to undergo a gynecological examination; *S.P., D.P. and A.T. v. the United Kingdom*, Commission decision, 1996, where a complaint was brought by a solicitor on behalf of children he had represented in domestic proceedings, in which he had been appointed by the guardian *ad litem*; *C.N. v. Luxembourg*, 2021, § 28-33, where the power of attorney had been given by the parents whose parental authority was later revoked; *V.D. and Others v. Russia*, 2019, §§ 80-84, where an application was brought by a guardian acting on behalf of minors. See also, by contrast, *Lambert and Others v. France* [GC], 2015, § 105, where the Court held that the parents of the direct victim, who was unable to express his wishes regarding a decision to discontinue nutrition and hydration which allowed him to be kept alive artificially, did not have standing to raise complaints under Articles 2, 3 and 8 of the Convention in his name or on his behalf; and *Gard and Others v. the United Kingdom* (dec.), 2017, § 63-70, which differed from *Lambert and Others* since the direct victim was a minor, who had never been able to express his views or live an independent life, and where the Court discussed whether the parents of the direct victim had standing to raise complaints under Articles 2 and 5 on his behalf, but did not come to a final conclusion on this point, given that the issues were also raised by the applicants on their own behalf.

77. In *Blyudik v. Russia*, 2019, §§ 41-44, relating to the lawfulness of a placement in a closed educational institution for minors, the Court stated that the applicant was entitled to apply to the Court to protect the interest of the minor under Article 5 and 8 as regards her placement in the institution: the daughter was a minor at the time of the events in issue, as well as at the time when the application was lodged. Once she had reached the age of majority, the applicant's daughter has confirmed her interest in the application and issued a power of attorney to the lawyer already representing the applicant in the case before the Court. In *Calvi and C.G. v. Italy*, 2023, §§ 68-70, the Court recognised that the applicant could lodge an application on behalf of his elderly cousin, subject to a legal protection measure, placed in social isolation in a nursing home for three years and unable to apply to the Court himself.

78. In *H.F. and Others v. France* [GC], 2022, §§ 148-152, the applicants complained about the refusal by the respondent State to repatriate their daughters and grandchildren, who were being held in camps in north-eastern Syria: they invoked Articles 3 and 8 of the Convention and Article 3 § 2 of Protocol No. 4. The Court found that the applicants' daughters and grandchildren were in a situation which prevented them from lodging applications directly with the Court and exposed them to the risk of being deprived of the effective protection of their rights under the Convention and its Protocols. Moreover, there was no conflict of interest between the applicants and the direct victims: in addition to having close family ties, they all shared the same objective namely, repatriation to France. Consequently, there were exceptional circumstances enabling the Court to conclude that the applicants had *locus standi* to raise the complaints as representatives of their daughters and grandchildren.

79. In *Ghazaryan and Bayramyan v. Azerbaijan*, 2023, the Court allowed the applicants to lodge the application, without written authority, in the name and on behalf of their son, an Armenian national with prior mental health issues, who had been apprehended in Azerbaijan, sentenced to twenty years' imprisonment and continuously kept in solitary confinement. In these circumstances, the cumulative effect of the serious mental health issues of the direct victim and his situation during his detention and confinement, had entailed a vulnerability that had rendered him unable to lodge a complaint with the Court (§§ 73-82). Conversely, in *Asgarova and Veselova v. Armenia* (dec.), 2023, the Court did not recognise the *locus standi* of two women complaining on behalf of their partners convicted and held in detention in the unrecognised "Nagorno-Karabakh Republic" under the effective control of Armenia. The applicants' partners having repeatedly had the opportunity to communicate with their families with the help of the International Committee of the Red Cross and having been visited by representatives of the International Working Group on Search for Missing Persons and Hostages, there was no proof of their inability to appoint a representative and/or to sign an authority form. Consequently, there were no exceptional circumstances allowing those applicants to act in the name and on behalf of their partners without a duly signed written authority (§§ 47-55).

80. The Court has established that in exceptional circumstances an association can act as a representative of a victim, in the absence of a power of attorney and not withstanding that the victim may have died before the application was lodged under the Convention (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, § 112). It considered that to find otherwise would amount to preventing serious allegations of a violation of the Convention from being examined at an international level, with the risk that the respondent State might escape accountability under the Convention (*Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea* v. *Romania*, 2015, § 42; *Kondrulin v. Russia*, 2016, § 31). In the case of *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], 2014, which concerned the failure of the State to provide adequate care for a HIV positive mental patient, the Court accepted the applicant association's standing to bring proceedings without a power of attorney for the following reasons: the vulnerability of Valentin Câmpeanu, who suffered from a serious mental disability; the seriousness of the allegations made under Articles 2 and 3 of the Convention; the absence of heirs or legal representatives to bring Convention proceedings on his behalf; the contacts which the applicant

had with Valentin Câmpeanu and its involvement in the domestic proceedings following his death, during which it had not been contested that it had standing to act on his behalf (§§ 104-11).

81. In the case of *L.R. v. North Macedonia*, 2020, (examined under Article 3), the applicant did have a legal guardian who could have provided an association with the requisite authority to represent the applicant before the Court. However, the applicant's guardian was accused of having failed in its responsibility to protect the applicant's interests both before the domestic authorities and before the Court. Accordingly, it could not be expected that the person suspected of having been part of the applicant's alleged overall neglect in violation of his rights under Article 3 would make a complaint on those grounds before the Court (§ 50). On the other hand, the association representing the applicant had visited the applicant shortly after his case had been made public, had contacted various authorities about his situation, had submitted the criminal complaint to the public prosecutor without delay and had pursued the matter, taking it up to the highest prosecuting authorities. As a result, the Court exceptionally accepted the association's standing to act on behalf of the applicant (§§ 51-53).

82. In the case of *Association Innocence en Danger and Association Enfance et Partage v. France*, 2020, (examined under Articles 3 and 13 in conjunction with 3), the Court accepted the standing of two child protection associations to act on behalf of a child who had died as a result of ill-treatment at the hands of her parents (§§ 119-131). The existence of known heirs or legal representatives of the child (his abusive convicted parents, three brothers and a sister, and an aunt) did not preclude the Court from granting standing to the applicant associations, in view of the exceptional circumstances of the case.

83. In the case of *Kaganovskyy v. Ukraine*, 2022, §§ 67-72, the applicant complained, under Articles 3 et 5, about his confinement in the "enhanced (intensive) supervision unit" of a psychoneurological institution for a period of ten days in 2017. The applicant having died, the Ukrainian Helsinki Human Rights Union pursued the application on his behalf (even though he had a brother who had been his guardian and who had not expressed his wish to pursue the application). Referring to Article 37 § 1 *in fine* of the Convention, the Court decided that the case raised a question of a serious nature involving a question of general interest and presenting an opportunity to clarify the conventional standards of protection of vulnerable persons: respect for human rights therefore required the Court to continue the examination of the application.

84. By contrast, in the case of *Bulgarian Helsinki Committee v. Bulgaria* (dec.), 2016, the Court did not accept the victim status of the applicant association acting on behalf of deceased minors who died in homes for mentally handicapped children because the applicant never had any contact with the minors prior to their deaths and the association had lacked formal standing in the domestic proceedings (§ 59); see also, *Nencheva and Others v. Bulgaria*, 2013, § 93, where the Court did not accept the victim status of the applicant association acting on behalf of the direct victims, noting that it had not pursued the case before the domestic courts and also that the facts complained of did not have any impact on its activities, since the association was able to continue working in pursuance of its goals.

85. Regarding the specific context of climate change, the Court held that it was important to make allowance for recourse to legal action by associations for the purpose of seeking the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of that phenomenon, instead of exclusively relying on proceedings brought by each individual on his or her own behalf. For an association to have the right to act on behalf of individuals and to lodge an application on account of the alleged failure of a Contracting State to take adequate measures to protect them against the adverse effects of climate change, the Court held that three criteria have to be fulfilled: (a) it has to be lawfully established in the jurisdiction concerned or have standing to act there; (b) it has to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those

rights against the threats arising from climate change; (c) it has to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who were subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention. In that connection, the Court will have regard to factors such as the purpose for which the association had been established, its non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance and whether on the whole, in the particular circumstances of a case, the grant of such standing is in the interests of the proper administration of justice. The standing of an association to act on behalf of the members or other affected individuals within the jurisdiction concerned is not subject to a separate requirement that those on whose behalf the case had been brought themselves meet the victim-status requirements for individuals in the climate-change context (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, § 502).

86. No provision of the Convention permits a third-party intervener to represent another person before the Court (*Lambert and Others v. France* [GC], 2015, § 110).

B. Freedom to exercise the right of individual application

Article 34 of the Convention – Individual applications

> "... The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

HUDOC keywords

> Hinder the exercise of the right of application (34)

1. Principles and examples

87. The right to apply to the Court is absolute and admits of no hindrance. This principle implies freedom to communicate with the Convention institutions (for correspondence in detention, see *Peers v. Greece*, 2001, § 84; *Kornakovs v. Latvia*, 2006, §§ 157 et seq.). See also, in this connection, the 1996 European Agreement relating to persons participating in proceedings of the European Court of Human Rights (CETS No. 161).

88. The domestic authorities must refrain from putting any form of pressure on applicants to withdraw or modify their complaints. According to the Court, pressure may take the form of direct coercion and flagrant acts of intimidation in respect of applicants or potential applicants, their families or their legal representatives, but also improper indirect acts or contacts designed to dissuade or discourage applicants from pursuing a Convention remedy (*Mamatkulov and Askarov v. Turkey* [GC], 2005, § 102). The Court examines the dissuasive effect on the exercise of the right of individual application (*Colibaba v. Moldova*, 2007, § 68). Whether or not contacts between the authorities and an applicant are tantamount to unacceptable practices from the standpoint of Article 34 must be determined in the light of the particular circumstances of the case (*Boškoćević v. Serbia*, 2024, § 65). A failure by the respondent Government to comply with their procedural obligation under Article 34 does not necessarily require that the alleged interference should have actually restricted, or had any appreciable impact on, the exercise of the right of individual petition. The procedural obligations under Articles 34 and 38 of the Convention must be enforced irrespective of the eventual outcome of the proceedings, and in such a manner as to avoid any actual or potential chilling effect on applicants or their representatives (*Mehmet Ali Ayhan and Others v. Turkey*, 2019, § 41).

89. In some circumstances, the Court can, of its own motion, raise the issue whether the applicant had been subjected to intimidation which had amounted to a hindrance to the effective exercise of his right of individual petition (*Lopata v. Russia*, 2010, § 147).

90. Consideration must be given to the vulnerability of the applicant and the risk that the authorities may influence him or her (*Iambor v. Romania (no. 1)*, 2008, § 212). Applicants may be particularly vulnerable when they are in pre-trial detention and restrictions have been placed on contact with their family or the outside world (*Cotleţ v. Romania*, 2003, § 71).

91. Some noteworthy examples:

- as regards interrogation by the authorities concerning the application: *Akdivar and Others v. Turkey*, 1996, § 105; *Tanrıkulu v. Turkey* [GC], 1999, § 131;
- threats of criminal proceedings against the applicant's lawyer: *Kurt v. Turkey*, 1998, §§ 159-65; complaint by the authorities against the lawyer in the domestic proceedings: *McShane v. the United Kingdom*, 2002, § 151; disciplinary and other measures against the applicant's lawyers: *Khodorkovskiy and Lebedev v. Russia*, 2013, §§ 929-33;
- police questioning of the applicants' lawyer concerning the signature of a power of attorney (*M.H. and Others v. Croatia*, 2021, §§ 62, 64, and §§ 325-336); police questioning of the applicant's lawyer and translator concerning the claim for just satisfaction: *Fedotova v. Russia*, 2006, §§ 49-51; regarding an inquiry ordered by the Government's representative: *Ryabov v. Russia*, 2008, §§ 53-65;
- inability of the applicant's lawyer and doctor to meet: *Boicenco v. Moldova*, 2006, §§ 158-59;
- measures limiting an applicant's contacts with her/his representative: *Shtukaturov v. Russia*, 2008, § 140, where a ban on a lawyer's visits, coupled with a ban on telephone calls and correspondence, was held to be incompatible with the respondent State's obligations under Article 34, and *Zakharkin v. Russia*, 2010, §§ 157-60, where the applicant's contacts with his representative before the Court had been restricted on the grounds that the representative in question was not a professional advocate and did not belong to any Bar association;
- interception of letters sent to the detained applicants by their legal representatives enclosing forms of authority to be completed for the purpose of lodging and then subsequently finalising their application with the Court: *Mehmet Ali Ayhan and Others v. Turkey*, 2019, §§ 39-45 and the references cited therein;
- failure to respect the confidentiality of lawyer-applicant discussions in a meeting room: *Oferta Plus SRL v. Moldova*, 2006, § 156;
- threats by the prison authorities: *Petra v. Romania*, 1998, § 44;
- refusal by the prison authorities to forward an application to the Court on the ground of non-exhaustion of domestic remedies: *Nurmagomedov v. Russia*, 2007, § 61;
- pressure put on a witness in a case before the Court concerning conditions of detention: *Novinskiy v. Russia*, 2009, §§ 119 et seq.;
- dissuasive remarks by the prison authorities combined with unjustified omissions and delays in providing the prisoner with writing materials for his correspondence and with the documents necessary for his application to the Court: *Gagiu v. Romania*, 2009, §§ 94 et seq.;
- the authorities' refusal to provide an imprisoned applicant with copies of documents required for his application to the Court: *Naydyon v. Ukraine*, 2010, § 68; *Vasiliy Ivashchenko v. Ukraine*, 2012, §§ 107-10;
- loss by prison authorities of irreplaceable papers relating to prisoner's application to the Court: *Buldakov v. Russia*, 2011, §§ 48-50;
- intimidation and pressuring of an applicant by the authorities in connection with the case before the Court: *Lopata v. Russia*, 2010, §§ 154-60;

- threats of dismissal from a job at a statutory corporation which cannot be regarded as "non-governmental" for the purposes of Article 34 of the Convention, for having applied to the Court, and pressuring the applicant into submitting to his employer copies of all relevant correspondence with the Court (*Boškoćević v. Serbia*, 2024, §§ 58-62, 65-67).

92. The circumstances of the case may make the alleged interference with the right of individual application less serious (*Sisojeva and Others v. Latvia* (striking out) [GC], 2007, §§ 118 et seq.). See also *Holland v. Sweden* (dec.), 2010, where the Court found that the destruction of tape recordings from a court hearing in accordance with Swedish law before the expiry of the six-month time-limit for lodging an application with the Court did not hinder the applicant from effectively exercising his right of petition; *Farcaş v. Romania* (dec.), 2010, where the Court considered that the alleged inability of the physically disabled applicant to exhaust domestic remedies, owing to lack of special facilities providing access to public services, did not hinder him from effectively exercising his right of petition; *Yepishin v. Russia*, 2013, §§ 73-77, where the Court considered that the prison administration's refusal to pay postage for dispatch of prisoner's letters to the Court did not hinder the applicant from effectively exercising his right of petition; *Yam v. the United Kingdom*, 2020, §§ 79-83, where the Court considered that the domestic authorities' decision not to disclose *in camera* material in the absence of a request from the Court did not hinder the applicant from effectively exercising his right of petition because there had been a meaningful independent scrutiny of the asserted basis for the continuing need for confidentiality.

2. Obligations of the respondent State

a. Rule 39 of the Rules of Court

93. Under Rule 39 of the Rules of Court, the Court may indicate interim measures (*Mamatkulov and Askarov v. Turkey* [GC], 2005, §§ 99-129). Article 34 will be breached if the authorities of a Contracting State fail to take all steps which could reasonably have been taken in order to comply with the measure indicated by the Court (*Paladi v. Moldova* [GC], 2009, §§ 87-92).

94. The Government must demonstrate to the Court that the interim measure was complied with or, in an exceptional case, that there was an objective impediment which prevented compliance and that the Government took all reasonable steps to remove the impediment and to keep the Court informed about the situation (see, for example, *A.N.H. v. Finland* (dec.), 2013, § 27).

95. Some examples:

- failure to secure a timely meeting between an asylum-seeker in detention and a lawyer despite the interim measure indicated under Rule 39 in this respect: *D.B. v. Turkey*, 2010, § 67;
- transfer of detainees to Iraqi authorities in contravention of interim measure: *Al-Saadoon and Mufdhi v. the United Kingdom*, 2010, §§ 162-65;
- expulsion of the first applicant in contravention of interim measure: *Kamaliyevy v. Russia*, 2010, §§ 75-79;
- inadvertent but not irremediable failure to comply with interim measure indicated in respect of Article 8: *Hamidovic v. Italy* (dec.), 2011;
- failure to comply with interim measure requiring a prisoner's placement in specialised medical institution: *Makharadze and Sikharulidze v. Georgia*, 2011, §§ 100-05, or an unjustified delay in complying with such measure: *Sy v. Italy*, 2022, §§ 167-174;
- failure to comply with interim measure indicated by the Court on account of a real risk of torture if extradited: *Mannai v. Italy*, 2012, §§ 54-57; *Labsi v. Slovakia*, 2012, §§ 149-51;
- secret transfer of a person at risk of ill-treatment in Uzbekistan and in respect of whom an interim measure was in force: *Abdulkhakov v. Russia*, 2012, §§ 226-31;

- forcible transfer of person to Tajikistan with a real risk of ill-treatment and circumvention of interim measures: *Savriddin Dzhurayev v. Russia*, 2013, §§ 218-19; see also failure by Russian authorities to protect a Tajik national in their custody from forcible repatriation to Tajikistan in breach of interim measure: *Nizomkhon Dzhurayev* v. *Russia*, 2013, §§ 157-59.
- preparation of an expulsion in a way that deliberately created a situation whereby the applicant would have great difficulty in submitting a request for an interim measure to the Court: *M.A. v. France*, 2018, § 70.

96. It is for the Court to verify compliance with the interim measure, while a State which considers that it is in possession of materials capable of convincing the Court to annul the interim measure should inform the Court accordingly (*Paladi v. Moldova* [GC], 2009, §§ 90-92; *Olaechea Cahuas v. Spain*, 2006, § 70; *Grori v. Albania*, 2009, §§ 181 et seq.).

97. The mere fact that a request has been made for application of Rule 39 is not sufficient to oblige the State to stay execution of an extradition decision (*Al-Moayad v. Germany* (dec.), 2007, §§ 122 et seq.; see also the obligation of the respondent State to cooperate with the Court in good faith).

98. While there is no exhaustion requirement in respect of Article 34 complaints and the Court is the sole authority to verify compliance with an interim measure, the Court may find a complaint under Article 34 to be premature if it is closely related to a complaint about the authorities' failure to protect the right to life and the latter complaint is still pending before the domestic courts (*Ahmet Tunç and Others v. Turkey* (dec.), 2019, §§ 141-145.

b. Establishment of the facts

99. Whereas the Court is responsible for establishing the facts, it is up to the parties to provide active assistance by supplying it with all the relevant information. Their conduct may be taken into account when evidence is sought (*Ireland v. the United Kingdom*, 1978, § 161).

100. The Court has held that proceedings in certain types of applications do not in all cases lend themselves to a rigorous application of the principle whereby a person who alleges something must prove that allegation, and that it is of the utmost importance for the effective operation of the system of individual petition instituted under Article 34 of the Convention that States should furnish all necessary facilities to make possible a proper and effective examination of applications (*Bazorkina v. Russia*, 2006, § 170; *Tahsin Acar v. Turkey* [GC], 2004, § 253). This obligation requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. A failure on a Government's part to submit such information which is in its hands without a satisfactory explanation may not only give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations, but may also reflect negatively on the level of compliance by a respondent State with its obligations under Article 38 of the Convention (*ibid*., § 254; *Imakayeva v. Russia*, 2006, § 200; *Janowiec and Others v. Russia* [GC], 2013, § 202).

101. The obligation to furnish the evidence requested by the Court is binding on the respondent Government from the moment such a request has been formulated, whether it be on initial communication of an application to the Government or at a subsequent stage in the proceedings (ibid., § 203; *Enukidze and Girgvliani v. Georgia*, 2011, § 295; *Bekirski v. Bulgaria*, 2010, §§ 111-13). It is a fundamental requirement that the requested material be submitted in its entirety, if the Court has so directed, and that any missing elements be properly accounted for (*Janowiec and Others v. Russia* [GC], 2013, § 203). In addition, any material requested must be produced promptly and, in any event, within the time-limit fixed by the Court, for a substantial and unexplained delay may lead the Court to find the respondent State's explanations unconvincing (*ibid.*).

102. The Court has previously found that the respondent Government failed to comply with the requirements of Article 38 in cases where it did not provide any explanation for the refusal to submit

documents that had been requested (see, for example, *Maslova and Nalbandov v. Russia*, 2008, §§ 128-29) or submitted an incomplete or distorted copy while refusing to produce the original document for the Court's inspection (see, for example, *Trubnikov v. Russia*, 2005, §§ 50-57).

103. If the Government advances confidentiality or security considerations as the reason for its failure to produce the material requested, the Court has to satisfy itself that there exist reasonable and solid grounds for treating the documents in question as secret or confidential (*Janowiec and Others v. Russia* [GC], 2013, § 205). As regards failure to disclose a classified report to the Court: *ibid*., §§ 207 et seq.; *Nolan and K. v. Russia*, 2009, §§ 56 et seq.

104. Regarding the relationship between Articles 34 and 38, see *Bazorkina v. Russia*, 2006, §§ 170 et seq. and 175. Article 34, being designed to ensure the effective operation of the right of individual application, is a sort of *lex generalis*, while Article 38 specifically requires States to cooperate with the Court.

c. Investigations

105. The respondent State is also expected to assist with investigations (Article 38), for it is up to the State to furnish the "necessary facilities" for the effective examination of applications (*Çakıcı v. Turkey* [GC], 1999, § 76). Obstructing a fact-finding visit constitutes a breach of Article 38 (*Shamayev and Others v. Georgia and Russia*, 2005, § 504).

I. Procedural grounds for inadmissibility

106. Under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party, in so far as the nature of the objection and the circumstances so allow, in its written or oral observations on the admissibility of the application. Any omission by the Government to raise such objections in their initial observations on the admissibility of the case may lead the Court to conclude that they are estopped from raising those objections at a later stage in the proceedings (*Khlaifia and Others v. Italy* [GC], 2016, §§ 51-54 and below).

A. Non-exhaustion of domestic remedies

Article 35 § 1 of the Convention – Admissibility criteria

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law ..."

HUDOC keywords

> Exhaustion of domestic remedies (35-1) – Exemption from exhaustion of domestic remedies (35-1) – Effective domestic remedy (35-1)

107. As the text of Article 35 itself indicates, this requirement is based on the generally recognised rules of international law. The obligation to exhaust domestic remedies forms part of customary international law, recognised as such in the case-law of the International Court of Justice (for example, see the case of Interhandel (Switzerland v. the United States), judgment of 21 March 1959). It is also to be found in other international human-rights treaties: the International Covenant on Civil and Political Rights (Article 41(1)(c)) and the Optional Protocol thereto (Articles 2 and 5(2)(b)); the American Convention on Human Rights (Article 46); and the African Charter on Human and Peoples' Rights (Articles 50 and 56(5)). The European Court of Human Rights observed in *De Wilde, Ooms and*

Versyp v. Belgium, 1971, that the State may waive the benefit of the rule of exhaustion of domestic remedies, there being a long-established international practice on this point (§ 55).

108. The Court is intended to be subsidiary to the national systems safeguarding human rights and it is appropriate that the national courts should initially have the opportunity to determine questions regarding the compatibility of domestic law with the Convention (*A, B and C v. Ireland* [GC], 2010, § 142). If an application is nonetheless subsequently brought to Strasbourg, the Court should have the benefit of the views of the national courts, as being in direct and continuous contact with the vital forces of their countries (*Burden v. the United Kingdom* [GC], 2008, § 42).

109. Article 35 § 1 concerns only domestic remedies; it does not require the exhaustion of remedies within the framework of international organisations. On the contrary, if the applicant submits the case to another procedure of international investigation or settlement, the application may be rejected under Article 35 § 2 (b) of the Convention (see point I.E.). However, the principle of subsidiarity may entail a requirement to exhaust domestic remedies in the context of which a preliminary ruling by the Court of Justice of the European Union (CJEU) is requested (*Laurus Invest Hungary KFT and Others v. Hungary* (dec.), 2015, § 42, where a preliminary ruling by the CJEU provided the domestic courts with guidance as to the criteria to be applied in a pending case concerning an alleged breach of Article 1 of Protocol No. 1 rights). It is for the Court to determine whether a particular body is domestic or international in character having regard to all relevant factors including the legal character, its founding instrument, its competence, its place (if any) in an existing legal system and its funding (*Jeličić v. Bosnia and Herzegovina* (dec.), 2005; *Peraldi v. France* (dec.), 2009) (see point Abuse of the right of application).

1. Purpose of the rule

110. The rationale for the exhaustion rule is to afford the national authorities, primarily the courts, the opportunity to prevent or put right the alleged violations of the Convention (see the summary of the principles in *Gherghina v. Romania* (dec.) [GC], 2015, §§ 84-89; *Mocanu and Others v. Romania* [GC], 2014, §§ 221 and seq.; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, §§ 69-77, with further references therein). It is based on the assumption, reflected in Article 13, that the domestic legal order will provide an effective remedy for violations of Convention rights. This is an important aspect of the subsidiary nature of the Convention machinery (*Selmouni v. France* [GC], 1999, § 74; *Kudła v. Poland* [GC], 2000, § 152; *Andrášik and Others v. Slovakia* (dec.), 2002). It applies regardless of whether the provisions of the Convention have been incorporated into national law (*Eberhard and M. v. Slovenia*, 2009). The rule of exhaustion of domestic remedies is an indispensable part of the functioning of the protection system under the Convention and a basic principle (*Demopoulos and Others v. Turkey* (dec.) [GC], 2010, §§ 69 and 97, *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, §§ 69-77 with further references therein, in particular to *Akdivar and Others v. Turkey*, 1996).

111. Determining whether a domestic procedure constitutes an effective remedy within the meaning of Article 35 § 1, which an applicant must exhaust and which should therefore be taken into account for the purposes of the four-month time-limit, depends on a number of factors, notably the applicant's complaint, the scope of the obligations of the State under that particular Convention provision, the available remedies in the respondent State and the specific circumstances of the case (*Lopes de Sousa Fernandes v. Portugal* [GC], 2017, § 134; see, also, *Kozacıoğlu v. Turkey* [GC], 2009, § 40 and *D.H. and Others v. the Czech Republic* [GC], 2007, § 116).

2. Application of the rule

a. Flexibility

112. The exhaustion rule may be described as one that is golden rather than cast in stone. The Commission and the Court have frequently underlined the need to apply the rule with some degree of flexibility and without excessive formalism, given the context of protecting human rights (*Ringeisen v. Austria*, 1971, § 89; *Lehtinen v. Finland* (dec.), 1999; *Gherghina v. Romania* (dec.) [GC], 2015, § 87). For instance, the Court accepts that the last stage of domestic remedies may be reached after the application has been lodged but before its admissibility has been determined (*Molla Sali v. Greece* [GC], § 90).

113. The rule of exhaustion is neither absolute nor capable of being applied automatically (*Kozacıoğlu v. Turkey* [GC], 2009, § 40). For example, the Court decided that it would be unduly formalistic to require the applicants to avail themselves of a remedy which even the highest court of the country had not obliged them to use (*D.H. and Others v. the Czech Republic* [GC], 2007, §§ 116-18). The Court took into consideration in one case the tight deadlines set for the applicants' response by emphasising the "haste" with which they had had to file their submissions (*Financial Times Ltd and Others v. the United Kingdom*, 2009, §§ 43-44). However, making use of the available remedies in accordance with domestic procedure and complying with the formalities laid down in national law are especially important where considerations of legal clarity and certainty are at stake (*Saghinadze and Others v. Georgia*, 2010, §§ 83-84).

114. Although in principle it would be conceivable to accept public interest litigation by an NGO - explicitly provided for by domestic law as a means of defending the interests of a larger group of people - as a form of exhausting domestic remedies, public interest litigation cannot exonerate an individual applicant from bringing his/her own domestic proceedings if that litigation did not correspond exactly to his or her individual situation and specific complaints (*Kósa v. Hungary* (dec.), 2017, §§ 55-63, concerning an alleged discrimination against Roma children). In *Beizaras and Levickas v. Lithuania*, 2020, §§ 78-81, the Court held that a non-governmental organization, although not an applicant before the Strasbourg Court, could have acted as a representative of the applicants' interests in the domestic criminal proceedings, because the NGO had been set up so that persons who had suffered discrimination could be defended, including in court. The Court also took into account that the NGO's representation of the applicants' interests before the prosecutors and domestic courts (two instances) had never been questioned or challenged in any way (see also *Gorraiz Lizarraga and Others v. Spain*, 2004, §§ 37-39).

b. Compliance with domestic rules and limits

115. Applicants must comply with the applicable rules and procedures of domestic law, failing which their application is likely to fall foul of the condition laid down in Article 35 (*Ben Salah Adraqui and Dhaime v. Spain* (dec.), 2000; *Merger and Cros v. France* (dec.), 2004; *MPP Golub v. Ukraine* (dec.), 2005; *Agbovi v. Germany* (dec.), 2006; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, §§ 72 and 80). Article 35 § 1 has not been complied with when an appeal is not accepted for examination because of a procedural mistake by the applicant (*Gäfgen v. Germany* [GC], 2010, § 143). Where the Government claims that an applicant has failed to comply with domestic rules (e.g. rules on the exhaustion of ordinary remedies before constitutional redress), the Court must verify whether those rules were pre-existing mandatory legal requirements deriving from law or well-established case-law (*Brincat and Others v. Malta*, 2014, § 69; *Pop-Ilić and Others v. Serbia*, 2014, § 42).

116. However, it should be noted that where an appellate court examines the merits of a claim even though it considers it inadmissible, Article 35 § 1 will be complied with (*Voggenreiter v. Germany*, 2004). The Court also considers the available remedy to be exhausted when a Constitutional Court declares the complaint inadmissible when the applicant raises sufficiently in substance the complaint

about an alleged infringement of Convention rights (*Magyar Kétfarkú Kutya Párt v. Hungary* [GC], 2020, §§ 53, 56-57 and the references cited therein). This is also the case regarding applicants who have failed to observe the forms prescribed by domestic law, if the competent authority has nevertheless examined the substance of the claim (*Vladimir Romanov v. Russia*, 2008, § 52). The same applies to claims worded in a very cursory fashion barely satisfying the legal requirements, where the court has ruled on the merits of the case albeit briefly (*Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], 2009, §§ 43-45).

c. Existence of several remedies

117. If more than one potentially effective remedy is available, the applicant is only required to have used one of them (*Moreira Barbosa v. Portugal* (dec.), 2004; *Jeličić v. Bosnia and Herzegovina* (dec.), 2005; *Karakó v. Hungary*, 2009, § 14; *Aquilina v. Malta* [GC], 1999, § 39). Indeed, when one remedy has been attempted, use of another remedy which has essentially the same purpose is not required (*Riad and Idiab v. Belgium*, 2008, § 84; *Kozacıoğlu v. Turkey* [GC], 2009, §§ 40 et seq.; *Micallef v. Malta* [GC], 2009, § 58; *Lagutin and Others v. Russia*, 2014, § 75; *Nicolae Virgiliu Tănase v. Romania* [GC], 2019, § 177). It is for the applicant to select the remedy that is most appropriate in his or her case (*Fabris and Parziale v. Italy*, 2020, where the applicant was unable to bring a civil action due to the discontinuation of the criminal proceedings after seven years which he had joined as a civil party, §§ 49-59; *O'Keeffe v. Ireland* [GC], 2014, §§ 110-111; *Nicolae Virgiliu Tănase v. Romania* [GC], 2019, § 176, concerning the choice made by an applicant to join the criminal proceedings as a civil party and not lodge a separate civil action). To sum up, if domestic law provides for several parallel remedies in different fields of law, an applicant who has sought to obtain redress for an alleged breach of the Convention through one of these remedies is not necessarily required to use others which have essentially the same objective (*Jasinskis v. Latvia*, 2010, §§ 50 and 53-54). For a contrary example (different levels of effectiveness of complaints before the federal Constitutional Court and before the constitutional court of a federal entity), see *Köhler v. Germany* (dec.), 2021, §§ 67-74.

d. Complaint raised in substance

118. It is not necessary for the Convention right to be explicitly raised in domestic proceedings provided that the complaint is raised "at least in substance" (*Castells v. Spain*, 1992, § 32; *Ahmet Sadik v. Greece*, 1996, § 33; *Fressoz and Roire v. France* [GC], 1999, § 38; *Azinas v. Cyprus* [GC], 2004, §§ 40-41; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, §§ 72, 79 and 81-82; *Platini v. Switzerland* (dec.), 2020, § 51; *Kemal Çetin v. Turkey*, 2020, §§ 28-30). This means that if the applicant has not relied on the provisions of the Convention, he or she must have raised arguments to the same or like effect on the basis of domestic law, in order to have given the national courts the opportunity to redress the alleged breach in the first place (*Gäfgen v. Germany* [GC], 2010, §§ 142, 144 and 146; *Radomilja and Others v. Croatia* [GC], 2018, § 117; *Karapanagiotou and Others v. Greece*, 2010, § 29; *Marić v. Croatia*, 2014, § 53; *Portu Juanenea and Sarasola Yarzabal v. Spain*, 2018, §§ 62-63; *Rodina v. Latvia*, 2020, §§ 81-83; and, in relation to a complaint that was not raised, even implicitly, at the final level of jurisdiction, *Association Les témoins de Jéhovah v. France* (dec.), 2010; *Nicklinson and Lamb v. the United Kingdom* (dec.), 2015, §§ 89-94; *Peacock v. the United Kingdom* (dec.), 2016, §§ 32-41). It is not sufficient that the applicant may have exercised a remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of "effective remedies" (*Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, § 75; *Nicklinson and Lamb v. the United Kingdom* (dec.), 2015, § 90).

119. In sum, the mere fact that an applicant has submitted his or her case to the relevant court does not of itself constitute compliance with the requirements of Article 35 § 1. Even in those jurisdictions where the domestic courts are able, or even obliged, to examine the case of their own motion (that

is, to apply the principle of *jura novit curia*), applicants are not dispensed from raising before them a complaint which they may intend to subsequently make to the Court (see, among other authorities, *Kandarakis v. Greece*, 2020, § 77), it being understood that for the purposes of exhaustion of domestic remedies the Court must take into account not only the facts but also the legal arguments presented domestically (see *Radomilja and Others v. Croatia* [GC], 2018, § 117; *Fu Quan, s.r.o. v. the Czech Republic* [GC], 2023, § 171). it must be borne in mind that the Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (*Grosam v. the Czech Republic* [GC], 2023, § 91). Thus, in order properly to exhaust domestic remedies it is not sufficient for a violation of the Convention to be "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must actually have complained (expressly or in substance) about it in a manner which leaves no doubt that the same complaint that was subsequently submitted to the Court had indeed been raised at the domestic level (*Peacock v. the United Kingdom* (dec.), 2016, § 38; *Farzaliyev v. Azerbaijan*, 2020, § 55; *Grosam v. the Czech Republic* [GC], 2023, § 90; *Fu Quan, s.r.o. v. the Czech Republic* [GC], 2023, § 145 and 172).

120. For instance, where the applicant complains of the lack of an effective criminal investigation under the procedural limb of Article 2 or 3 of the Convention, it is sufficient, in order to comply with Article 35 § 1 of the Convention, including with regard to legal arguments not explicitly raised at the domestic level, if the applicant has challenged the effectiveness of that investigation before the competent domestic court and, by describing the course and duration of the investigation and subsequent court proceedings in detail, referred to the relevant factual elements for that court to assess the investigation's effectiveness (*Hanan v. Germany* [GC], 2021, §§ 149-151).

121. On the other hand, domestic law must enable the courts to properly engage with the substance of Convention complaints, failing which the remedy cannot be considered to be effective (*P.C. v. Ireland*, 2022, § 107).

e. Existence and appropriateness

122. Applicants are only obliged to exhaust domestic remedies which are available in theory and in practice at the relevant time and which they can directly institute themselves – that is to say, remedies that are accessible, capable of providing redress in respect of their complaints and offering reasonable prospects of success (*Sejdovic v. Italy* [GC], 2006, § 46; *Paksas v. Lithuania* [GC], 2011, § 75; see also the Court's subsidiary consideration in *S.A.S. v. France* [GC], 2014, § 61, regarding reasonable prospects of success of an appeal on points of law on the basis of Article 9 of the Convention).

123. Discretionary or extraordinary remedies need not be used, for example requesting a court to review its decision (*Çınar v. Turkey* (dec.), 2003; *Prystavska v. Ukraine* (dec.), 2002), or requesting the reopening of proceedings, except in special circumstances where, for example, it is established under domestic law that such a request does in fact constitute an effective remedy (*K.S. and K.S. AG v. Switzerland*, Commission decision, 1994; *Shibendra Dev v. Sweden* (dec.), 2014, §§ 41-43, 45 and 48), or where the quashing of a judgment that has acquired legal force is the only means by which the respondent State can put matters right through its own legal system (*Kiiskinen and Kovalainen v. Finland* (dec.), 1999; *Nikula v. Finland* (dec.), 2000; *Dinchev v. Bulgaria* (dec.), 2017, §§ 27-29). Similarly, an appeal to a higher authority does not constitute an effective remedy (*Horvat v. Croatia*, 2001, § 47; *Hartman v. the Czech Republic*, 2003, § 66); nor does a remedy that is not directly accessible to the applicant but is dependent on the exercise of discretion by an intermediary (*Tănase v. Moldova* [GC], 2010, § 122). In particular, in criminal matters, an appeal to a higher prosecutor is an effective remedy only if it is not merely a hierarchical appeal and if the person making it has a personal right to have it examined (*Aspiotis v. Greece* (dec.), 2022, § 52, and, *a contrario*, *Belevitskiy c. Russia*, 2007, §§ 59-60). A complaint to the Ministry amounts to a hierarchical complaint and is not considered an effective remedy (*Polyakh and Others v. Ukraine*, 2019, § 135; *Milovanović v. Serbia*, 2019, § 104). Regarding the effectiveness in the case in question of an appeal that does not in principle have to be used (Ombudsman), see the reasoning in *Egmez v. Cyprus*, 2000, §§ 66-73. Lastly, a domestic remedy

which is not subject to any precise time-limit and thus creates uncertainty cannot be regarded as effective (*Williams v. the United Kingdom* (dec.), 2009, and the references cited therein; *Nicholas v. Cyprus*, 2018, §§ 38-39).

124. Whether an individual application to the Constitutional Court is required by Article 35 § 1 of the Convention will depend largely on the particular features of the respondent State's legal system and the scope of its Constitutional Court's jurisdiction (*Uzun v. Turkey* (dec.), 2013, §§ 42-71 and the references cited therein). Thus, in a State where this jurisdiction is limited to reviewing the constitutionality of legal provisions and their compatibility with provisions of superior legal force, applicants will be required to avail themselves of a complaint to the Constitutional Court only if they are challenging a provision of a statute or regulation as being in itself contrary to the Convention (*Grišankova and Grišankovs v. Latvia* (dec.), 2003; *Liepājnieks v. Latvia* (dec.), 2010). However, this will not be an effective remedy where the applicant is merely complaining of the erroneous application or interpretation of statutes or regulations which are not unconstitutional *per se* (*Smirnov v. Russia* (dec.), 2006; *Szott-Medyńska and Others v. Poland* (dec.), 2003; *Petrova v. Latvia*, 2014, §§ 69-70). In a federal State, the Court may reach different conclusions as to the respective effectiveness of complaints before the federal Constitutional Court and before the constitutional court of a federal entity (*Köhler v. Germany* (dec.), 2021, §§ 67-74). The Court has also taken into account whether an individual complaint to the Constitutional Court has evolved over time to be considered to offer the appropriate kind of redress in respect of a certain complaint (*Riđić and Others v. Serbia*, 2014, §§ 68-74, as regards the non-enforcement of judgements rendered in respect of socially/State owned companies) and whether such a remedy, that is effective in principle, would also be effective in practice, due to the duration of such proceedings (*Story and Others v. Malta*, 2015, §§ 82-85, in respect of complaints of conditions of detention under Article 3 of the Convention). For instance, the Court considered a constitutional complaint an effective remedy when the Constitutional Court had reviewed in recent cases the effectiveness of investigations under Articles 2 and 3, taking the Court's case-law as the basis for its assessment (*Kušić and Others v. Croatia* (dec.), 2019, §§ 104-105). Furthermore, the Court interprets the term "remedy" extensively which is why remedial actions that are not remedies in a strict sense, should be exhausted (*Dos Santos Calado and Others v. Portugal*, 2020, § 91, concerning an objection lodged with the three-judge committee of the Constitutional Court against the summary decision in question).

125. Where an applicant has tried a remedy which the Court considers inappropriate, the time taken to do so will not stop the four-month period from running, which may lead to the application being rejected as out of time (*Rezgui v. France* (dec.), 2000; *Prystavska v. Ukraine* (dec.), 2002).

f. Availability and effectiveness

126. The existence of remedies must be sufficiently certain not only in theory but also in practice. In determining whether any particular remedy meets the criteria of availability and effectiveness, regard must be had to the particular circumstances of the individual case (see point 4 below). The position taken by the domestic courts must be sufficiently consolidated in the national legal order. Thus, the Court has held that recourse to a higher court ceases to be "effective" on account of divergences in that court's case-law, as long as these divergences continue to exist (*Ferreira Alves v. Portugal (no. 6)*, 2010, §§ 27-29).

127. In order for a judicial remedy to be effective, the domestic courts must be able to properly engage with the substance of the Convention complaint raised by the applicant (*P.C. v. Ireland*, 2022, § 107).

128. For example, the Court has held that where an applicant complains about conditions of detention after the detention has already ended, a compensatory remedy that is available and sufficient – that is to say, one which offers reasonable prospects of success – is a remedy that has to be used for the purposes of Article 35 § 1 of the Convention (*Lienhardt v. France* (dec.), 2011; *Rhazali*

and Others v. France (dec.), 2012; *Ignats v. Latvia* (dec.), 2013; *J.M.B. and Others v. France*, 2020, § 163; *Leroy and Others v. France*, 2024, § 59). However, if the applicant was still detained at the time of the lodging of the application, the remedy must be capable of preventing the alleged continuous situation in order for it to be effective (*Torreggiani and Others v. Italy*, 2013, § 50; *Neshkov and Others v. Bulgaria*, 2015, §§ 181 and 192-93; *Vasilescu v. Belgium*, 2014, §§ 70 and 128). Normally, before bringing their complaints to the Court concerning their conditions of detention, applicants are first required to use properly the available and effective preventive remedy and then, if appropriate, the relevant compensatory remedy. However, the Court accepted that there may be instances in which the use of an otherwise effective preventive remedy would be futile in view of the brevity of an applicant's stay in inadequate conditions of detention and thus the only viable option would be a compensatory remedy allowing for a possibility to obtain redress for the past placement in such conditions. This period may depend on many factors related to the manner of operation of the domestic system of remedies (*Ulemek v. Croatia*, 2019, §§ 84-88). The Court has examined different remedies in this context: see, for instance, *Petrescu v. Portugal*, 2019, §§ 81-84, *Shmelev and Others v. Russia* (dec.), 2020, §§ 123-131; *J.M.B. and Others v. France*, 2020, §§ 212-221; compare and contrast with *Leroy and Others v. France*, 2024 §§ 60-67).[4]

129. Where an applicant seeks to prevent his removal from a Contracting State for an alleged risk of a violation of Articles 2 or 3 in a third State, a remedy will only be effective if it has suspensive effect (see, for Article 3 and Article 4 of Protocol No. 4 complaints, *M.K. and Others v. Poland*, 2020, §§ 142-148, and the references cited therein). Conversely, where a remedy does have suspensive effect, the applicant will normally be required to exhaust that remedy. Judicial review, where it is available and where the lodging of an application for judicial review will operate as a bar to removal, must be regarded as an effective remedy which in principle applicants will be required to exhaust before lodging an application with the Court or indeed requesting interim measures under Rule 39 of the Rules of Court to delay a removal (*NA v. the United Kingdom*, 2008, § 90; *A.M. v. France*, 2019, §§ 64 and 79).

130. In the context of Article 5 of the Convention, preventive and compensatory remedies are complementary. A remedy that does not afford a possibility of release cannot be regarded as an effective remedy while the deprivation of liberty is ongoing. However, where the applicant complains that he or she was detained in breach of domestic law and where the detention has come to an end, a compensation claim capable of leading to an acknowledgment of the alleged violation and an award of compensation is in principle an effective remedy which needs to be pursued if its effectiveness in practice has been convincingly established (*Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, §§ 205-214, where a compensation claim was not considered to be an effective remedy in the absence of a previous acknowledgment by the criminal courts or the Constitutional Court that the applicant's pre-trial detention was unlawful; see also *Dubovtsev and Others v. Ukraine*, 2021, §§ 67-71, where the compensation claim with civil courts was not considered to be an effective remedy that could have adequately dealt with the specific complaints submitted under Article 5).

131. The Court has held that an effective remedy must operate without excessive delay (*Story and Others v. Malta*, 2015, § 80). As regards length-of-proceedings cases, a remedy designed to expedite the proceedings in order to prevent them from becoming excessively lengthy is the most effective solution. However, States can also choose to introduce only a compensatory remedy, without that remedy being regarded as ineffective (*Scordino v. Italy (no. 1)* [GC], 2006, § 183 and seq.; *Marshall and Others v. Malta*, 2020, §§ 82). To conform with the reasonable time principle, a remedy for length of proceedings should not, in principle and in the absence of exceptional circumstances, last more than two and half years over two jurisdictions, including the execution phase (*ibid.*, § 88).

4. See the Guide on Prisoners' rights.

132. As concerns non-enforcement of judgments, the Court found, in *Solonskiy and Petrova v. Russia* (dec.), 2020, that the possibility to lodge a vicarious liability claim against authorities, which had not paid judgment debts to applicants, constituted an effective remedy as it had reasonable prospects of success in the applicants' cases (§§ 34-40).

133. As concerns the presumption of innocence (Article 6 § 2), a remedy under civil law can, in principle, be considered effective against alleged violations. In several cases the Court found remedies under civil law, offering the possibility of obtaining monetary compensation, together with various other procedures for acknowledgment of or putting an end to the infringement of the presumption of innocence, to be effective within the meaning of the Convention (see *Januškevičienė v. Lithuania*, 2019, §§ 58-62 and the references cited therein, as well as *Narbutas v. Lithuania*, 2023, §§ 214-217, where the applicants could have lodged a civil claim to obtain monetary compensation for the breach of their honour and dignity).

134. In the context of continuous non-enforcement of custody/contact-related rights under Article 8, an applicant cannot be expected to make a separate complaint to the Constitutional Court or this Court about the non-enforcement of each and every interim order, of which there may be a large number, within the main proceedings. The Court therefore adopts a global approach when considering the domestic proceedings and has regard to the overall facts which may be important for the context and merits of the main proceedings (*Milovanović v. Serbia*, 2019, § 106).

135. In the context of defamation proceedings, the Court considered a remedy, which did not allow a claim to be made in respect of non-pecuniary damages, to be ineffective for the purposes of privacy cases under Article 8 (*Lewit v. Austria*, 2019, §§ 66-67). In a case concerning an alleged breach of the right to protection of reputation, the Court found that compensation proceedings before civil courts (ensuring full procedural guarantees for both parties and allowing for an appropriate balancing exercise between the various interests in dispute) were an appropriate remedy as opposed to an expedited rectification procedure, subscribing to the interpretation given by the Constitutional Court of the respondent State (*Gülen v. Turkey* (dec.), 2008, §§ 58-69).

136. Whether raising an issue of covert surveillance in criminal proceedings can be regarded as an effective remedy in respect of a complaint under Article 8 will depend on the circumstances of the case. Although criminal courts could consider questions of the fairness of admitting evidence in the criminal proceedings, the Court has found that they were not capable of providing an effective remedy where it was not open to them to deal with the substance of the Article 8 complaint that the interference was not "in accordance with the law" or not "necessary in a democratic society", or to grant appropriate relief in connection with that complaint (*Hambardzumyan v. Armenia*, 2019, §§ 40-44 and and the references cited therein; *Zubkov and Others v. Russia*, 2017, § 88). Regarding the Article 8 complaints raised by the publishers of a magazine whose journalists had been subject to secret interception of telephone communications within the framework of a criminal investigation against a third person, the Court found that a compensatory claim against the State for "defective functioning of the judiciary" would constitute an accessible and effective remedy to be exhausted (*Gernelle and S.A. Société d'Exploitation de l'Hebdomadaire Le Point v. France* (dec.), §§ 50-54, 2024).

137. In the context of an alleged abuse of power contrary to Article 1 of Protocol no. 1 (forced demolition of a building by municipal authorities) the Court held that criminal proceedings with a monetary claim amounted to an effective remedy, having regard to the direct bearing on the determination of the lawfulness of the demolition in question and the possiblity of monetary redress for the applicants for the alleged breach of their property rights (*FINE DOO and Others v. North Macedonia* (dec.), 2022, § 35).

138. The Court must take realistic account not only of formal remedies available in the domestic legal system, but also of the general legal and political context in which they operate as well as the personal circumstances of the applicant (*Akdivar and Others v. Turkey*, 1996, §§ 68-69; *Khashiyev and Akayeva v. Russia*, 2005, §§ 116-117; *Chiragov and Others v. Armenia* [GC], 2015, § 119; *Sargsyan v. Azerbaijan*

[GC], 2015, §§ 117-119). It must examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (*D.H. and Others v. the Czech Republic* [GC], 2007, §§ 116-122). For instance, an applicant has not exhausted domestic remedies when he failed to use the remedy - which could not be regarded as obviously futile - suggested by the domestic court, which guided him as to the further concrete steps to be taken (*P. v. Ukraine* (dec.), 2019, §§ 52-55). In a case where the enforcement of a judgment ordering urgent rehousing was delayed and achieved after the requisite deadline, an action for damages against the State in order to challenge the lengthy non-enforcement of the judgment can be considered an effective remedy even if it was enforced after the application had been lodged with the Court (*Bouhamla v. France* (dec.), 2019, §§ 35-44).

139. It should be noted that borders, factual or legal, are not an obstacle *per se* to the exhaustion of domestic remedies; as a general rule applicants living outside the jurisdiction of a Contracting State are not exempted from exhausting domestic remedies within that State, practical inconveniences or understandable personal reluctance notwithstanding (*Demopoulos and Others v. Turkey* (dec.) [GC], 2010, §§ 98 and 101, concerning applicants who had not voluntarily submitted to the jurisdiction of the respondent State).

3. Limits on the application of the rule

140. According to the "generally recognised rules of international law", there may be special circumstances dispensing the applicant from the obligation to avail him or herself of the domestic remedies available (*Sejdovic v. Italy* [GC], 2006, § 55) (and see point 4 below).

141. The rule is also inapplicable where an "administrative practice" consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (*Aksoy v. Turkey*, 1996, § 52; *Georgia v. Russia (I)* [GC], 2014, §§ 125-159; *Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, §§ 260-263, 363-368; *Georgia v. Russia (II)* [GC], 2021, §§ 98-99 and 220-221). However, only if both component elements of the alleged "administrative practice" (the "repetition of acts" and "official tolerance") are sufficiently substantiated by *prima facie* evidence does the exhaustion rule under Article 35 § 1 of the Convention not apply (*Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 366).

142. In cases where requiring the applicant to use a particular remedy would be unreasonable in practice and would constitute a disproportionate obstacle to the effective exercise of the right of individual application under Article 34 of the Convention, the Court concludes that the applicant is dispensed from that requirement (*Veriter v. France*, 2010, § 27; *Gaglione and Others v. Italy*, 2010, § 22; *M.S. v. Croatia (no. 2)*, 2015, §§ 123-125).

143. Imposing a fine based on the outcome of an appeal when no abuse of process is alleged excludes the remedy from those that have to be exhausted (*Prencipe v. Monaco*, 2009, §§ 95-97).

144. In situations raising legitimate doubts to a judge's impartiality under Article 6 of the Convention, it may not be necessary for an applicant to seek the judge's disqualification but instead it may be for the judge to be removed from the case when national law required this (*Škrlj v. Croatia*, 2019, §§ 43-45 and the references cited therein). Where no further remedy is available because the applicant alleges a violation of Article 6 § 1 of the Convention on account of lack of impartiality of the last-instance judicial authority of the domestic legal system, the principle of subsidiarity may require special diligence from the applicants in complying with their obligation to exhaust domestic remedies (for instance, seeking withdrawal of the judge concerned). Naturally, these considerations apply only if the applicant knew or could have known of the composition of the court in question (*Croatian Golf Federation v. Croatia*, 2020, §§ 110-120, and the references cited therein).

145. As a rule, the requirement that domestic remedies should be exhausted, including the option of reopening the proceedings, does not apply to just satisfaction claims submitted under Article 41 of

the Convention (*Jalloh v. Germany* [GC], 2006, § 129; *S.L. and J.L. v. Croatia* (just satisfaction), 2016, § 15).

4. Distribution of the burden of proof

146. Where the Government claims non-exhaustion of domestic remedies, it bears the burden of proving that the applicant has not used a remedy that was both effective and available (*Molla Sali v. Greece* [GC], § 89; *Mocanu and Others v. Romania* [GC], 2014, § 225; *Dalia v. France*, 1998, § 38; *McFarlane v. Ireland* [GC], 2010, § 107; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, § 77). The availability of any such remedy must be sufficiently certain in law and in practice (*Vernillo v. France*, 1991). The remedy's basis in domestic law must therefore be clear (*Scavuzzo-Hager and Others v. Switzerland* (dec.), 2004; *Norbert Sikorski v. Poland*, 2009, § 117; *Sürmeli v. Germany* [GC], 2006, §§ 110-112). The remedy must be capable of providing redress in respect of the applicant's complaints and of offering reasonable prospects of success (*Scoppola v. Italy (no. 2)* [GC], 2009, § 71; *Magyar Keresztény Mennonita Egyház and Others v. Hungary*, 2014, § 50; *Karácsony and Others v. Hungary* [GC], 2016, §§ 75-82; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, § 205). As an example, in the area of unlawful use of force by State agents, an action leading only to an award of damages is not an effective remedy in respect of complaints based on the substantive or procedural aspect of Articles 2 and 3 of the Convention (*Mocanu and Others v. Romania* [GC], 2014, §§ 227 and 234; *Jørgensen and Others v. Denmark* (dec.), 2016, §§ 52-53; see, by contrast, medical negligence cases, where the Court has accepted or required that applicants use civil or administrative remedies to obtain redress, *Lopes de Sousa Fernandes v. Portugal* [GC], 2017, §§ 137-138; *V.P. v. Estonia* (dec.), 2017, §§ 52-61; *Dumpe v. Latvia* (dec.), 2018, §§ 55-76; see also, by contrast, cases concerning the alleged failure by the State to ensure the protection of property in the context of dangerous industrial activities, for instance a case concerning an oil refinery explosion resulting in damage to property, *Kurşun v. Turkey*, 2018, §§ 118-132). The development and availability of a remedy said to exist, including its scope and application, must be clearly set out and confirmed or complemented by practice or case-law (*Mikolajová v. Slovakia*, 2011, § 34). This applies even in the context of a common law-inspired system with a written constitution implicitly providing for the right relied on by the applicant (*McFarlane v. Ireland* [GC], 2010, § 117, concerning a remedy that had been available in theory for almost twenty-five years but had never been used).

147. The Government's arguments will clearly carry more weight if examples from national case-law are supplied (*Andrášik and Others v. Slovakia* (dec.), 2002; *Di Sante v. Italy* (dec.), 2004; *Giummarra and Others v. France* (dec.), 2001; *Paulino Tomás v. Portugal* (dec.), 2003; *Johtti Sapmelaccat Ry and Others v. Finland* (dec.), 2005; *Parrillo v. Italy* [GC], 2015, §§ 87-105; *P. v. Ukraine* (dec.), 2019, § 53). Even though the Government normally should be able to illustrate the practical effectiveness of a remedy with examples of domestic case-law, the Court accepts that this may be more difficult in smaller jurisdictions, where the number of cases of a specific kind may be fewer than in larger jurisdictions (*Aden Ahmed v. Malta*, 2013, § 63; *M.N. and Others v. San Marino*, 2015, § 81): in such cases, the Government should be able to provide a reasonable explanation for the absence of relevant case-law (*Guðmundur Gunnarsson and Magnús Davíð Norðdahl v. Iceland*, 2024, § 48).

148. The decisions cited should in principle have been delivered before the application was lodged (*Norbert Sikorski v. Poland*, 2009, § 115, *Dimitar Yanakiev v. Bulgaria (no. 2)*, 2016, §§ 53 and 61), and be relevant to the case at hand (*Sakhnovskiy v. Russia* [GC], 2011, §§ 43-44); see, however, the principles (referred to below) concerning the creation of a new remedy while the proceedings are pending before the Court.

149. Where the Government argues that the applicant could have relied directly on the Convention before the national courts, the degree of certainty of such a remedy will need to be demonstrated by concrete examples (*Slavgorodski v. Estonia* (dec.), 1999). The same applies to a purported remedy directly based on certain general provisions of the national Constitution (*Kornakovs v. Latvia*, 2006, § 84).

150. The Court has been more receptive to these arguments where the national legislature has introduced a specific remedy to deal with excessive length of judicial proceedings (*Brusco v. Italy* (dec.), 2001; *Slaviček v. Croatia* (dec.), 2002). See also *Scordino v. Italy (no. 1)* [GC], 2006, §§ 136-148. Contrast with *Merit v. Ukraine*, 2004, § 65.

151. Once the Government has discharged its burden of proving that there was an appropriate and effective remedy available to the applicant, it is for the latter to show that:

- the remedy was in fact used (*Grässer v. Germany* (dec.), 2004); or
- the remedy was for some reason inadequate and ineffective in the particular circumstances of the case (*Selmouni v. France* [GC], 1999, § 76; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, § 77; *Gherghina v. Romania* (dec.) [GC], 2015, § 89; *Joannou v. Turkey*, 2017, §§ 86-87 and §§ 94-106) – for example, in the case of excessive delays in the conduct of an inquiry (*Radio France and Others v. France* (dec.), 2003, § 34), or a remedy which is normally available, such as an appeal on points of law, but which, in the light of the approach taken in similar cases, was ineffective in the circumstances of the case (*Scordino v. Italy* (dec.), 2003; *Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, §§ 26-27), even if the decisions in question were recent (*Gas and Dubois v. France* (dec.), 2010). This is also the case if the applicant was unable to apply directly to the court concerned (*Tănase v. Moldova* [GC], 2010, § 122). In certain specific circumstances, there may be applicants in similar situations, some of whom have not applied to the court referred to by the Government but are dispensed from doing so because the domestic remedy used by others has proved ineffective in practice and would have been in their case too (*Vasilkoski and Others v. the former Yugoslav Republic of Macedonia*, 2010, §§ 45-46; *Laska and Lika v. Albania*, 2010, §§ 45-48). However, this applies in very specific cases (compare *Saghinadze and Others v. Georgia*, 2010, §§ 81-83); or
- there existed special circumstances absolving the applicant from the requirement (*Akdivar and Others v. Turkey*, 1996, §§ 68-75; *Sejdovic v. Italy* [GC], 2006, § 55; *Veriter v. France*, 2010, § 60.

152. One such factor may be constituted by the national authorities remaining totally passive in the face of serious allegations of misconduct or infliction of harm by State agents, for example where they have failed to undertake investigations or offer assistance. In such circumstances it can be said that the burden of proof shifts once again, so that it becomes incumbent on the respondent Government to show what it has done in response to the scale and seriousness of the matters complained of (*Demopoulos and Others v. Turkey* (dec.) [GC], 2010, § 70).

153. Mere doubts on the part of the applicant regarding the effectiveness of a particular remedy will not absolve him or her from the obligation to try it (*Epözdemir v. Turkey* (dec.), 2002; *Milošević v. the Netherlands* (dec.), 2002; *Pellegriti v. Italy* (dec.), 2005; *MPP Golub v. Ukraine* (dec.), 2005; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, §§ 74 and 84; *Zihni v. Turkey* (dec.), 2016, §§ 23 and 29-30, in respect of the applicant's fears as to the impartiality of the judges of the Constitutional Court). On the contrary, it is in the applicant's interests to apply to the appropriate court to give it the opportunity to develop existing rights through its power of interpretation (*Ciupercescu v. Romania*, 2010, § 169). In a legal system providing constitutional protection for fundamental rights, it is incumbent on the aggrieved individual to test the extent of that protection and to allow the domestic courts to develop those rights by way of interpretation (*A, B and C v. Ireland* [GC], 2010, § 142; *Vučković and Others v. Serbia* (preliminary objection) [GC], 2014, § 84). But where a suggested remedy did not in fact offer reasonable prospects of success, for example in the light of settled domestic case-law, the fact that the applicant did not use it is no bar to admissibility (*Pressos Compania Naviera S.A. and Others v. Belgium*, 1995, § 27; *Carson and Others v. the United Kingdom* [GC], 2010, § 58).

5. Procedural aspects

154. The requirement for the applicant to exhaust domestic remedies is normally determined with reference to the date on which the application was lodged with the Court (*Baumann v. France*, 2001, § 47), subject to exceptions which may be justified by the particular circumstances of the case (see point 6 below). This applies in principle to a request for interim measures under Rule 39 of the Rules of Court, which may be submitted to the Court before the lodging of a formal application (*A.M. v. France*, 2019, §§ 65 and 68). Nevertheless, the Court accepts that the last stage of such remedies may be reached shortly after the lodging of the application but before it determines the issue of admissibility (*Molla Sali v. Greece* [GC], § 90; *Karoussiotis v. Portugal*, 2011, § 57; *Cestaro v. Italy*, 2015, §§ 147-148, where the applicant lodged his application with the Court concerning Article 3 of the Convention without awaiting the judgment of the Court of Cassation, which was deposited one year and eight months after; *A.M. v. France*, 2019, §§ 66 and 80, where the only stage at which a measure with suspensive effect could be secured – an asylum request – had been reached after the application was lodged with the Court; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, §§ 193-194).

155. Where the Government intends to lodge a non-exhaustion plea, it must do so, in so far as the character of the plea and the circumstances permit, in its written or oral observations on the admissibility of the application, though there may be exceptional circumstances dispensing it from that obligation (*López Ribalda and Others v. Spain* [GC], § 83; *Mooren v. Germany* [GC], 2009, § 57-59 and the references cited therein; *Svinarenko and Slyadnev v. Russia* [GC], 2014, §§ 79-83; *Blokhin v. Russia* [GC], 2016, §§ 96-98; see also Rule 55 of the Rules of Court). At this stage, when notice of the application has been given to the respondent Government and the Government has not raised the question of non-exhaustion, the Court cannot examine it of its own motion (*M.C. v. Türkiye*, 2024, § 44 and the references cited therein). In *Strezovski and Others v. North Macedonia*, 2020, the Court found that the Government was not estopped from raising the objection of non-exhaustion of domestic remedies although they had raised their objection for the first time in their additional observations, having regard to the special circumstances of the case (the adoption of a Supreme Court's legal opinion subsequent to the Government's initial observations on the admissibility and merits, §§ 33, 35; see, conversely, *Khlaifia and Others v. Italy* [GC], 2016, §§ 52-53; *Varyan v. Armenia*, §§ 73-75).

156. The Government must raise an explicit plea of inadmissibility on grounds of failure to exhaust domestic remedies (*Navalnyy v. Russia* [GC], 2018, §§ 60-61, where the respondent Government had only mentioned in passing when addressing the merits of a complaint that the applicant had not challenged the disputed measures in the domestic proceedings; *Liblik and others v. Estonia*, 2019, § 114, where the Government outlined other remedies available to the applicants but did not raise an objection of non-exhaustion of domestic remedies).

157. The Court may reconsider a decision to declare an application admissible, even at the merits stage and subject to Rule 55 of the Rules of Court (*O'Keeffe v. Ireland* [GC], 2014, § 108; *Muršić v. Croatia* [GC], 2016, § 69; *Merabishvili v. Georgia* [GC], 2017, § 214).

158. It is not uncommon for an objection on grounds of non-exhaustion to be joined to the merits, particularly in cases concerning procedural obligations or guarantees (*Nicolae Virgiliu Tănase v. Romania* [GC], 2019, § 103), for example applications relating to:

- the procedural limb of Article 2 (*Dink v. Turkey*, 2010, §§ 56-58; *Oruk v. Turkey*, 2014, § 35; *Nicolae Virgiliu Tănase v. Romania* [GC], 2019, §§ 103-104; *Vovk and Bogdanov v. Russia*, 2020, § 58);
- the procedural limb of Article 3 (*Husayn (Abu Zubaydah) v. Poland*, 2014, § 337; *Al Nashiri v. Poland*, 2014, § 343);
- Article 5 (*Margaretić v. Croatia*, 2014, § 83);
- Article 6 (*Scoppola v. Italy (no. 2)* [GC], 2009, § 126);
- Article 8 (*A, B and C v. Ireland* [GC], 2010, § 155; *Konstantinidis v. Greece*, 2014, § 31);

- Article 13 (*Sürmeli v. Germany* [GC], 2006, § 78; *M.S.S. v. Belgium and Greece* [GC], 2011, § 336; *J.M.B. and Others v. France*, 2020, § 176);
- Article 1 of Protocol No. 1 (*S.L. and J.L. v. Croatia*, 2015, § 53; *Joannou v. Turkey*, 2017, § 63).

6. Creation of new remedies

159. The assessment of whether domestic remedies have been exhausted is normally carried out with reference to the state of the proceedings on the date on which the application was lodged with the Court. This rule is, however, subject to exceptions following the creation of new remedies (*İçyer v. Turkey* (dec.), 2006, §§ 72 et seq.). The Court has departed from this rule in particular in cases concerning the length of proceedings (*Predil Anstalt v. Italy* (dec.), 2002; *Bottaro v. Italy* (dec.), 2002; *Andrášik and Others v. Slovakia* (dec.), 2002; *Nogolica v. Croatia* (dec.), 2002; *Brusco v. Italy* (dec.), 2001; *Korenjak v. Slovenia* (dec.), 2007, §§ 66-71; *Techniki Olympiaki A.E. v. Greece* (dec.), 2013; *Szaxon v. Hungary* (dec.), 2023, §§ 42-48) or concerning a new compensatory remedy in respect of interferences with property rights (*Charzyński v. Poland* (dec.), 2005; *Michalak v. Poland* (dec.), 2005; *Demopoulos and Others v. Turkey* (dec.) [GC], 2010; *Beshiri and Others v. Albania* (dec.), § 177 and §§ 216-218; *Olkhovik and Others v. Russia* (dec.), 2022, §§ 34-41); or failure to execute domestic judgments (*Nagovitsyn and Nalgiyev v. Russia* (dec.), 2010, §§ 36-40; *Balan v. Moldova* (dec.), 2012); or prison overcrowding (*Łatak v. Poland* (dec.), 2010; *Stella and Others v. Italy* (dec.), 2014, §§ 42-45); or improper conditions of detention (*Shmelev and Others v. Russia* (dec.), 2020, §§ 123-131).

160. The Court takes into account the effectiveness and accessibility of supervening remedies (*Demopoulos and Others v. Turkey* (dec.) [GC], 2010, § 88). For a case where the new remedy is not effective in the case in question, see *Parizov v. the former Yugoslav Republic of Macedonia*, 2008, §§ 41-47; for a case where a new constitutional remedy is effective, see *Cvetković v. Serbia*, 2008, § 41.

161. As regards the date from which it is fair to require the applicant to use a remedy newly incorporated into the judicial system of a State following a change in case-law, the Court has held that it would not be fair to require exhaustion of such a new remedy without giving individuals reasonable time to familiarise themselves with the judicial decision (*Broca and Texier-Micault v. France*, 2003, § 20). The extent of a "reasonable time" depends on the circumstances of each case, but generally the Court has found it to be about six months (*ibid.*; *Depauw v. Belgium* (dec.), 2007; *Yavuz Selim Güler v. Turkey*, 2015, § 26). For, example, in *Leandro Da Silva v. Luxembourg*, 2010, § 50, the period was eight months from the adoption of the domestic decision in question and three and a half months from its publication. See also *McFarlane v. Ireland* [GC], 2010, § 117; for a remedy newly introduced after a pilot judgment, see *Fakhretdinov and Others v. Russia* (dec.), 2010, §§ 36-44; regarding a departure from domestic case-law, see *Scordino v. Italy (no. 1)* [GC], 2006, § 147.

162. The Court gave indications in *Scordino v. Italy (no. 1)* [GC], 2006, and *Cocchiarella v. Italy* [GC], 2006, as to the characteristics that domestic remedies must have in order to be effective in length-of-proceedings cases (see also *Vassilios Athanasiou and Others v. Greece*, 2010, §§ 54-56). As a rule, a remedy without preventive or compensatory effect in respect of the length of proceedings does not need to be used (*Puchstein v. Austria*, 2010, § 31). A remedy in respect of the length of proceedings must, in particular, operate without excessive delays and provide an appropriate level of redress (*Scordino v. Italy (no. 1)* [GC], 2006, § 195 and §§ 204-207).

163. Where the Court has found structural or general defects in the domestic law or practice, it may ask the State to examine the situation and, if necessary, to take effective measures to prevent cases of the same nature being brought before the Court (*Lukenda v. Slovenia*, 2005, § 98). It may conclude that the State should either amend the existing range of remedies or add new ones so as to secure genuinely effective redress for violations of Convention rights (see, for example, the pilot judgments in *Xenides-Arestis v. Turkey*, 2005, § 40; and *Burdov v. Russia (no. 2)*, 2009, §§ 42, 129 et seq. and 140).

Special attention should be devoted to the need to ensure effective domestic remedies (see the pilot judgment in *Vassilios Athanasiou and Others v. Greece*, 2010, § 41).

164. Where the respondent State has introduced a new remedy, the Court has ascertained whether that remedy is effective (see, for example, *Robert Lesjak v. Slovenia*, 2009, §§ 34-55; *Demopoulos and Others v. Turkey* (dec.) [GC], 2010, § 87; *Xynos v. Greece*, 2014, §§ 37 and 40-51; *Preda and Others v. Romania*, 2014, §§ 118-133). It does so by examining the circumstances of each case; its finding as to whether or not the new legislative framework is effective must be based on its practical application (*Nogolica v. Croatia* (dec.), 2002; *Rutkowski and Others v. Poland*, 2015, §§ 176-186). However, neither the fact that no judicial or administrative practice has yet emerged as regards the application of the framework nor the risk that the proceedings might take a considerable time can in themselves render the new remedy ineffective (*Nagovitsyn and Nalgiyev v. Russia* (dec.), 2010, § 30).

165. If the Court finds that the new remedy is effective, this means that other applicants in similar cases are required to have used the new remedy, provided that they were not time-barred from doing so. It has declared these applications inadmissible under Article 35 § 1, even if they had been lodged prior to the creation of the new remedy (*Grzinčič v. Slovenia*, 2007, §§ 102-110; *İçyer v. Turkey* (dec.), 2006, §§ 74 et seq.; *Stella and Others v. Italy* (dec.), 2014, §§ 65-68; *Preda and Others v. Romania*, 2014, §§ 134-42; *Muratovic v. Serbia* (dec.), 2017, §§ 17-20; *Beshiri and Others v. Albania* (dec.), §§ 177 and 216-218).

166. This concerns domestic remedies that became available after the applications were lodged. The assessment of whether there were exceptional circumstances compelling applicants to avail themselves of such a remedy will take into account, in particular, the nature of the new domestic regulations and the context in which they were introduced (*Fakhretdinov and Others v. Russia* (dec.), 2010, § 30). In this case, the Court held that the effective domestic remedy, introduced following a pilot judgment in which it had ordered the introduction of such a remedy, should be used before applicants were able to apply to the Court.

167. The Court has also taken into account the fact that the State was dealing with an exceptionally difficult and complex situation which involved a choice as to which pecuniary and moral obligations could be fulfilled, while referring to the authorities' wide margin of appreciation in situations involving a wide-reaching but controversial legislative scheme with significant economic impact for the country as a whole (*Beshiri and Others v. Albania* (dec.), § 194, with regard to a new remedy dealing with prolonged non-enforcement of final decisions awarding compensation for property expropriated during the communist regime, introduced in response to a pilot judgment).

168. The Court has pointed out that it is ready to change its approach as to the potential effectiveness of the remedy introduced after a pilot judgment, should the practice of the domestic authorities show, in the long run, that the new legislation is not applied in a manner that is in conformity with the pilot judgment and the Convention standards in general (*Muratovic v. Serbia* (dec.), 2017, §§ 17-20; *Beshiri and Others v. Albania* (dec.), § 222).

169. The Court has also specified the conditions for the application of Article 35 § 1 according to the date of the application (*Fakhretdinov and Others v. Russia* (dec.), 2010, §§ 31-33; *Nagovitsyn and Nalgiyev v. Russia* (dec.), 2010, §§ 29 et seq. and 40-41).

B. Non-compliance with the four-month time-limit

Article 35 § 1 of the Convention – Admissibility criteria

> "1. The Court may only deal with the matter ... within a period of four months from the date on which the final decision was taken."

HUDOC keywords

Four-month period (35-1) – Final domestic decision (35-1) – Continuing situation (35-1)

1. Purpose of the rule

170. The primary purpose of the four-month rule is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (*Mocanu and Others v. Romania* [GC], 2014, § 258; *Lopes de Sousa Fernandes v. Portugal* [GC], 2017, § 129). It also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised and facilitates the establishment of facts in a case, since with the passage of time, any fair examination of the issues raised is rendered problematic (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 99-101; *Sabri Güneş v. Turkey* [GC], 2012, § 39).

171. The rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible (*Radomilja and Others v. Croatia* [GC], 2018, § 138). It reflects the wish of the High Contracting Parties to prevent past judgments being constantly called into question and constitutes a legitimate concern for order, stability and peace (*Idalov v. Russia* [GC], 2012, § 128; *Sabri Güneş v. Turkey* [GC], 2012, § 40; *Lopes de Sousa Fernandes v. Portugal* [GC], 2017, § 129).

172. The four-month rule is a public policy rule and the Court has jurisdiction to apply it of its own motion, even if the Government has not raised that objection (*Sabri Güneş c. Turquie* [GC], § 29 ; § 29; *Svinarenko and Slydanev v. Russia* [GC], 2014, § 85; *Blokhin v. Russia* [GC], 2016, § 102; *Merabishvili v. Georgia* [GC], 2017, § 247; *Radomilja and Others v. Croatia* [GC], 2018, § 138). Therefore, it is not necessary for the Court to assess whether the respondent Government have properly raised an objection on this point or whether they are estopped from doing so (*Fu Quan, s.r.o. v. the Czech Republic* [GC], 2023, § 168).

173. The four-month rule cannot require an applicant to lodge his or her complaint with the Court before his or her position in connection with the matter has been finally settled at the domestic level (*Varnava and Others v. Turkey* [GC], 2009, § 157; *Lekić v. Slovenia* [GC], 2018, § 65; *Chapman v. Belgium* (dec.), 2013, § 34). For a recapitulation of the relevant principles, see *Svinarenko and Slydanev v. Russia* [GC], 2014, § 86.

174. Before the entry into force of Protocol No. 15 to the Convention (1 August 2021), Article 35 § 1 of the Convention referred to a period of six months. Article 4 of Protocol No. 15 has amended Article 35 § 1 to reduce the period from six to four[5] months. According to the transitional provisions of the Protocol (Article 8 § 3), this amendment applies only after a period of six months following the entry into force of the Protocol (as from 1 February 2022), in order to allow potential applicants to become fully aware of the new deadline. Furthermore, the new time limit does not have a retroactive effect, since it does not apply to applications in respect of which the final decision within the meaning of Article 35 § 1 of the Convention was taken prior to the date of entry into force of the new rule (see the Explanatory Report to Protocol No.15, § 22). If the final decision within the meaning of Article 35 § 1 was taken before the entry into force of Protocol no. 15 but notified to the applicant after 1 August 2021, the applicable time-limit is still that of *six* months; however, it starts to run from the day following the notification of the final decision (*Orhan v. Türkiye* (dec.), 2022, §§ 23-47).

5. Article 4 of Protocol No. 15: In Article 35, paragraph 1 of the Convention, the words “within a period of six months” shall be replaced by the words “within a period of four months”.

175. Although the judgments and decisions pre-dating Protocol No. 15 mentioned in this section referred to the "six-month period" or "six-month rule", those terms have been replaced in this guide by the terms "four-month period" and "four-month rule", in order to reflect the new time-limit established in the Convention. The general principles in the Court's case-law on how the former rule operated remain valid for the operation of the new time limit (*Saakashvili v. Georgia* (dec.), 2022, § 46).

2. Starting date for the running of the four-month period

a. Final decision

176. The four-month period runs from the final decision in the process of exhaustion of domestic remedies (*Paul and Audrey Edwards v. the United Kingdom* (dec.), 2001; *Lekić v. Slovenia* [GC], 2018, § 65). The applicant must have made normal use of domestic remedies which are likely to be effective and sufficient (*Moreira Barbosa v. Portugal* (dec.), 2004; *O'Keeffe v. Ireland* [GC], 2014, §§ 110-113; see also *Călin and Others v. Romania*, 2016, §§ 59-60 and 62-69, regarding a momentarily effective remedy). When there is only one final decision, there is only one set of proceedings for the purposes of the four-month time limit, even if the case is examined twice before the different levels of jurisdiction (*Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], 2017, § 93). Where an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate for the purposes of Article 35 § 1 to take the start of the four-month period from the date when the applicant first became or ought to have become aware of those circumstances (*Mocanu and Others v. Romania* [GC], 2014, § 260).

177. The pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the purposes of establishing the date of the "final decision" or calculating the starting point for the running of the four-month rule (*Jeronovičs v. Latvia* [GC], 2016, § 75; *Alekseyev and Others v. Russia*, 2018, §§ 10-16). Only remedies which are normal and effective can be taken into account as an applicant cannot extend the strict time-limit imposed by the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (*Lopes de Sousa Fernandes v. Portugal* [GC], 2017, § 132; *Fernie v. the United Kingdom* (dec.), 2006). However, in the case of *Červenka v. the Czech Republic*, 2016, where the applicant waited for the Constitutional Court's decision even though he had doubts about the effectiveness of the remedy, the Court stated that the applicant should not be blamed for having tried to exhaust this remedy (§§ 90 and 113-121). Equally, in *Polyakh and Others v. Ukraine*, 2019, the Court held that, even though the length of the proceedings in the applicants' cases had not been "reasonable" in violation of Article 6 § 1, it did not find that the applicants ought to have been aware that the remedy in question was ineffective (because of the excessive delay), so as to trigger the running of the four-month period at any point prior to the delivery of the final judgment (§§ 213-216).

178. Determining whether a domestic procedure constitutes an effective remedy, which an applicant must exhaust and which should therefore be taken into account for the purposes of the four-month time-limit, depends on a number of factors, notably the applicant's complaint, the scope of the obligations of the State under that particular Convention provision, the available remedies in the respondent State and the specific circumstances of the case. For example, it will differ in cases concerning unlawful use of force by State agents compared to cases concerning medical negligence (*Lopes de Sousa Fernandes v. Portugal* [GC], 2017, §§ 134-137). For a case concerning covert surveillance measures, see *Hambardzumyan v. Armenia*, 2019, §§ 52-53.

179. Account cannot be taken of remedies the use of which depends on the discretionary powers of public officials and which are, as a consequence, not directly accessible to the applicant. Similarly,

remedies which have no precise time-limits create uncertainty and render nugatory the four-month rule contained in Article 35 § 1 (*Williams v. the United Kingdom* (dec.), 2009; *Abramyan and Others v. Russia* (dec.), 2015, §§ 97-102 and 104; *Kashlan v. Russia* (dec.), 2016, §§ 23 and 26-30). Yet, in an exceptional case, the Court found it reasonable for an applicant to await the final decision of a discretionary remedy. The applicant was therefore not considered to have deliberately tried to defer the time-limit by making use of inappropriate procedures which could not offer her effective redress (*Petrović v. Serbia*, 2014, §§ 57-61).

180. As a rule Article 35 § 1 does not require applicants to have applied for the reopening of proceedings or to have used similar extraordinary remedies and does not allow the four-month time-limit to be extended on the grounds that such remedies have been used (*Berdzenishvili v. Russia* (dec.), 2004; *Tucka v. the United Kingdom (no. 1)* (dec.), 2011; *Haász and Szabó v. Hungary*, 2015, §§ 36-37). However, if an extraordinary remedy is the only judicial remedy available to the applicant, the four-month time-limit may be calculated from the date of the decision given regarding that remedy (*Ahtinen v. Finland* (dec.), 2005; *Tomaszewscy v. Poland*, 2014, §§ 117-119).

181. An application in which an applicant submits his or her complaints within four months of the decision dismissing his or her request for reopening of the proceedings is inadmissible because the decision is not a "final decision" (*Sapeyan v. Armenia*, 2009, § 23).

182. In cases where proceedings are reopened or a final decision is reviewed, the running of the four-month period in respect of the initial set of proceedings or the final decision will be interrupted only in relation to those Convention issues which served as a ground for such a review or reopening and were the subject of examination before the extraordinary appeal body (*ibid*., § 24). If proceedings are reopened and the court examines an issue that had not been addressed in the initial proceedings, the four-month time-limit restarts in respect of the complaint concerning this issue (*Mehmet Zeki Doğan v. Türkiye (no. 2)*, 2024, § 66). Even when an application for extraordinary review could not lead to the reopening of the initial proceedings, but the domestic courts were provided with the opportunity of addressing the core of the human rights issues that the applicant subsequently brought before the Court and did address them, the running of the four-month time-limit has been considered to have restarted (*Schmidt v. Latvia*, 2017, §§ 70-71).

b. Starting point

183. The four-month rule is autonomous and must be construed and applied to the facts of each individual case, so as to ensure the effective exercise of the right to individual petition. While taking account of domestic law and practice is an important aspect, it is not decisive in determining the starting point of the four-month period (*Sabri Güneş v. Turkey* [GC], 2012, §§ 52 and 55). As an example, the Court has considered that it would be an overly formalistic interpretation of the four-month time-limit to require an applicant with two related complaints to bring two applications before it on different dates in order to take account of certain procedural rules of domestic law (*Sociedad Anónima del Ucieza v. Spain*, 2014, §§ 43-45). Applying the same principle, the Court has held that, when a recusal request against a judge had been rejected by a final decision in the course of the domestic proceedings and the applicant later alleged a violation of the right to an impartial tribunal, the four-month time limit regarding that complaint had to be counted as running from the date of the final domestic judgment on the merits of the case (*Sperisen v. Switzerland*, 2023, §§ 47-49).

i. Knowledge of the decision

184. The four-month period starts running from the date on which the applicant and/or his or her representative has sufficient knowledge of the final domestic decision (*Koç and Tosun v. Turkey* (dec.), 2008).

185. It is for the State which relies on the failure to comply with the four-month time-limit to establish the date when the applicant became aware of the final domestic decision (*Şahmo v. Turkey* (dec.), 2003; *Belozorov v. Russia and Ukraine*, 2015, §§ 93-97).

ii. Service of the decision

186. Service on the applicant: Where an applicant is entitled to be served automatically with a copy of the final domestic decision, the object and purpose of Article 35 § 1 of the Convention are best served by counting the four-month period as running from the date of service of the copy of the decision (*Worm v. Austria*, 1997, § 33), irrespective of whether that decision had been previously delivered orally (*Akif Hasanov v. Azerbaijan*, 2019, § 27).

187. Service on the lawyer: The four-month period runs from the date on which the applicant's lawyer became aware of the decision completing the exhaustion of the domestic remedies, notwithstanding the fact that the applicant only became aware of the decision later (*Çelik v. Turkey* (dec.), 2004).

iii. No service of the decision

188. Where the domestic law does not provide for service, it is appropriate to take the date the decision was finalised as the starting-point, that being when the parties were definitely able to find out its content (*Papachelas v. Greece* [GC], 1999, § 30). The applicant or his or her lawyer must show due diligence in obtaining a copy of the decision deposited with the court's registry (*Ölmez v. Turkey* (dec.), 2005). When a decision is not served, although domestic law sets a time-limit of three days for deciding such appeals, an applicant cannot remain inactive indefintely. He or she has an individual obligation to undertake elementary steps and to seek information from the relevant authorities about the outcome of the appeal (*Akif Hasanov v. Azerbaijan*, 2019, §§ 28-33).

iv. No remedy available

189. It is important to bear in mind that the requirements in Article 35 § 1 concerning the exhaustion of domestic remedies and the four-month period are closely interrelated (*Jeronovičs v. Latvia* [GC], 2016, § 75; *Lopes de Sousa Fernandes v. Portugal* [GC], 2017, § 130). Where it is clear from the outset that the applicant has no effective remedy, the four-month period runs from the date on which the act complained of took place or the date on which the applicant was directly affected by or became aware of such an act or had knowledge of its adverse effects (*Dennis and Others v. the United Kingdom* (dec.), 2002; *Varnava and Others v. Turkey* [GC], 2009, § 157; *Aydarov and Others v. Bulgaria* (dec.), 2018, § 90).

190. Where an applicant avails himself or herself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, it may be appropriate to take the start of the four-month period from the date when the applicant first became or ought to have become aware of those circumstances (*Varnava and Others v. Turkey* [GC], 2009, §§ 157-158; *Jeronovičs v. Latvia* [GC], 2016, § 75; *Zubkov and Others v. Russia*, 2017, §§ 105-109).

v. Continuing situation

191. The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicants victims. The continuing situation may also be a direct effect of legislation that has an impact on an applicant's private life (*S.A.S. v. France* [GC], 2014, § 110; *Parrillo v. Italy* [GC], 2015, §§ 109-114). The fact that an event has significant consequences over time does not mean that the event has produced a "continuing situation" (*Iordache v. Romania*, 2008, § 49; *Călin and Others v. Romania*, 2016, §§ 58-60).

192. In the situation of a repetition of the same events, the absence of any marked variation in the conditions to which the applicant had been routinely subjected created, in the Court's view, a

"continuing situation" which brought the entire period complained of within the Court's competence (*Fetisov and Others v. Russia*, 2012, § 75 and the references cited therein, regarding the transfer conditions from prison to court; *Svinarenko and Slydanev v. Russia* [GC], 2014, §§ 86-87, regarding the use of a metal cage to hold defendants during criminal trial; *Chaldayev v. Russia*, 2019, §§ 54-57, regarding the conditions of visits in prison; *Shlykov and Others v. Russia,* §§ 60-65, regarding the systematic handcuffing of life prisoners every time they left their cells).

193. Where the alleged violation constitutes a continuing situation against which no domestic remedy is available, it is only when the situation ends that the four-month period starts to run (*Sabri Güneş v. Turkey* [GC], 2012, § 54; *Varnava and Others v. Turkey* [GC], 2009, § 159; *Ülke v. Turkey* (dec.), 2004). As long as the situation continues, the four-month rule is not applicable (*Iordache v. Romania*, 2008, § 50; *Oliari and Others v. Italy*, 2015, §§ 96-97).

194. Nevertheless, a continuing situation may not postpone the application of the four-month rule indefinitely. The Court has imposed a duty of diligence and initiative on applicants wishing to complain about the continuing failure of the State to comply with certain of its obligations, such as ongoing disappearances, the right to property or home and non-enforcement of pecuniary debts of a State-owned company (*Varnava and Others v. Turkey* [GC], 2009, §§ 159-172; *Sargsyan v. Azerbaijan* (dec.) [GC], 2011, §§ 124-148; *Sokolov and Others v. Serbia* (dec.), 2014, §§ 31-36; see also point 5.a below).

3. Expiry of the four-month period

195. Time starts to run on the day following the date on which the final decision has been pronounced in public, or on which the applicant or his/her representative was informed of it, and expires four calendar months later, regardless of the actual duration of those calendar months (*Otto v. Germany* (dec.), 2009; *Ataykaya v. Turkey*, 2014, § 40).

196. Compliance with the four-month deadline is determined using criteria specific to the Convention, not those of each respondent State's domestic legislation (*BENet Praha, spol. s r.o., v. the Czech Republic* (dec.), 2010; *Poslu and Others v. Turkey*, 2010, § 10). Application by the Court of its own criteria in calculating time-limits, independently of domestic rules, tends to ensure legal certainty, proper administration of justice and thus, the practical and effective functioning of the Convention mechanism (*Sabri Güneş v. Turkey* [GC], 2012, § 56).

197. The fact that the last day of the four-month period falls on a Saturday, a Sunday or an official holiday and that in such a situation, under domestic law, time-limits are extended to the following working day, does not affect the determination of the *dies ad quem* (*ibid*., §§ 43 and 61).

198. It is open to the Court to determine a date for the expiry of the four-month period which is at variance with that identified by the respondent State (*İpek v. Turkey* (dec.), 2000).

199. Moreover, in very exceptional circumstances, the Court may rely on its interpretive jurisdiction under Article 32 of the Convention to adjust the method of calculation of the four-month rule in order to preserve the substance of the right of individual petition. Thus, during the global outbreak of COVID-19 and the public health emergency of international concern declared by the World Health Organisation, on 16 March and 9 April 2020 the President of the Court announced a number of exceptional measures to allow applicants, High Contracting Parties and the Court to deal with the difficulties arising[6]. One effect of those measures (decided by the President in the exercise of his competence to direct the work and the administration of the Court under Rule 9 of the Rules of Court) was that the Registry of the Court, when registering newly received applications and without prejudice to any subsequent judicial decision on the matter, was to add three months in total to the calculation of the then six-month period whenever a calendar six-month period either started to run or, on the contrary, was due to expire at any time between 16 March and 15 June 2020. The Court held that the

6. See the press releases issued by the Registrar of the Court on 16 March and 9 April 2020.

running of the then six-month period could legitimately be considered to have been suspended during the most critical phase of the global pandemic: this was, moreover, consistent with the general principle in public international law of *force majeure* as well as that of *contra non valentem agere nulla currit praescriptio*, a legal maxim according to which prescriptions cannot run against those who are incapable of acting. It follows that if the aforementioned time-limit either started to run or was due to expire during the aforementioned specified time-frame, the then six-month rule had to be exceptionally considered to have been suspended for three calendar months (*Saakashvili v. Georgia* (dec.), 2022, §§ 49-59); *Makarashvili and Others v. Georgia*, 2022, § 47). For a negative example when the time-limit expired after the end of the exceptional time-frame, see *Kitanovska and Barbulovski v. North Macedonia*, 2023, § 40.

4. Date of introduction of an application

a. Completed application form

200. According to Rule 47 of the Rules of Court, as in force from 1 January 2014, the date of introduction of an application for the purposes of Article 35 § 1 of the Convention is the date on which an application form satisfying the requirements of that Rule is sent to the Court. An application must contain all of the information requested in the relevant parts of the application form and be accompanied by copies of the relevant supporting documents. The decision in *Malysh and Ivanin v. Ukraine*, 2014, illustrates how the amended Rule 47 operates in practice. Except as provided otherwise by Rule 47, only a completed application form will interrupt the running of the four-month time-limit (Practice Direction on Institution of Proceedings, § 1).

201. If the applicant chooses to have his or her application lodged by a representative, the authority section on the application form must be filled in. Both the applicant and the representative must sign the authority section (see Rule 47 § 1 (c) of the Rules of the Court). A separate power of attorney is not acceptable at this stage as the Court requires all essential information to be contained in its application form. If it is claimed that it is not possible to obtain the applicant's signature on the authority section in the application form due to insurmountable practical difficulties, this should be explained to the Court with any substantiating elements. The requirement of completing the application form speedily within the four-month time-limit will not be accepted as an adequate explanation (Practice Direction on Institution of Proceedings, § 9).

202. By virtue of Rule 47 § 5 (1), a failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule may, under certain conditions, result in the application not being examined by the Court (*Radomilja and Others* [GC], §§ 112).

b. Date of dispatch

203. The date of introduction of the application is the date of the postmark when the applicant dispatched a duly completed application form to the Court (Rule 47 § 6 (a) of the Rules of Court; see also *Abdulrahman v. the Netherlands* (dec.), 2013; *Brežec v. Croatia*, 2013, § 29; *Vasiliauskas v. Lithuania* [GC], 2015, §§ 115-17); *J.L. v. Italy*, §§ 73-74).

204. Only special circumstances – such as an impossibility to establish when the application has been posted – could justify a different approach: for example, taking the date of the application form or, in its absence, the date of its receipt at the Court's Registry as the introduction date (*Bulinwar OOD and Hrusanov v. Bulgaria*, 2007, §§ 30-32).

205. Applicants cannot be held responsible for any delays that may affect their correspondence with the Court in transit (*Anchugov and Gladkov v. Russia*, 2013, § 70). In the case of *Victoria Cassar* (dec.) 2024, the application was originally dispatched within the time-limit, but, due to a postal error, it was returned to Malta nearly six months later. The relevant period coincided with the COVID-19 lockdown

and disturbances of postal services. However, no explanation had been submitted justifying the delay of more than two weeks to dispatch the application afresh. Hence, while the postal delays were certainly regrettable and cannot be attributed to the applicant, the applicant did not pursue her interests diligently (*ibid.,* §§ 35-40).

c. Dispatch by fax

206. Applications sent by fax will not interrupt the running of the four-month time-limit. Applicants must also dispatch the signed original by post within the same four-month time-limit (Practice Direction on Institution of Proceedings, § 3).

d. Characterisation of a complaint

207. The scope of a case "referred to" the Court in the exercise of the right of individual application is determined by the applicant's complaint or "claim" – which is the term used in Article 34 (*Radomilja and Others v. Croatia* [GC], 2018, § 109). A complaint is characterised by the facts alleged in it and not merely by the legal grounds or arguments relied on (*Scoppola v. Italy (no. 2)* [GC], 2009, § 54); *Radomilja and Others v. Croatia* [GC], 2018, §§ 110-126). By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant (*Navalnyy v. Russia* [GC], 2018, §§ 62-66, where the Court observed that the factual elements of the complaints under Article 18 were present in all the initial applications although the applicant had only relied on this provision in two of them, and therefore dismissed the Government's objection that parts of these complaints had been introduced out of time, that is to say, during the Grand Chamber proceedings).

208. However, it must be borne in mind that the Court has no power to substitute itself for the applicant and formulate new complaints simply on the basis of the arguments and facts advanced (*Grosam v. the Czech Republic* [GC], 2023, § 91). Since the Court can base its decision only on the facts complained of, it is not sufficient that a violation of the Convention is "evident" from the facts of the case or the applicant's submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto, in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not (*Grosam v. the Czech Republic* [GC], 2023, § 90; *Fu Quan, s.r.o. v. the Czech Republic* [GC], 2023, § 145). Therefore, ambiguous phrases or isolated words do not suffice to accept that a particular complaint has been raised (*Ilias and Ahmed v. Hungary* [GC], 2019, §§ 82-85; *Fu Quan, s.r.o. v. the Czech Republic* [GC], 2023, § 146).

209. In this connection, Rule 47 § 1 (e) and (f) of the Rules of Court provides that all applications must contain, amongst other things, a concise and legible statement of the facts and of the alleged violation(s) of the Convention and the relevant arguments. According to Rule 47 §§ 1 (f) and 2 (a) of the Rules of Court, when determining the nature and scope of the submitted complaints, the Court cannot be expected to have regard to any document other than the concise and legible statement of the alleged violation(s) of the Convention as described by the applicant (*Rustavi 2 Broadcasting Company Ltd and Others v. Georgia*, 2019, §§ 244-246).

210. A difference must be made between complaints (that is, the arguments pointing to the cause or the fact constitutive of the alleged violations of the Convention) clearly formulated as such, and a mere secondary argument in support of a complaint (*Grosam v. the Czech Republic* [GC], 2023, §§ 94-95).

e. Subsequent complaints

211. As regards complaints not included in the initial application, the running of the four-month time-limit is not interrupted until the date when the complaint is first submitted to the Court (*Allan v. the United Kingdom* (dec.), 2001).

212. An applicant can clarify or elaborate on the facts initially submitted, but if such additions amount, in effect, to raising new and distinct complaints these complaints must comply with the admissibility requirements, including the four-month rule (*Radomilja and Others v. Croatia* [GC], 2018, §§ 122 and 128-139). Complaints raised after the expiry of the four-month time-limit can only be examined if they are not in fact separate complaints but simply further aspects, or further arguments in support of, the initial complaints raised within the time-limit (*Merabishvili v. Georgia* [GC], 2017, § 250; *Sâmbata Bihor Greco-Catholic Parish v. Romania* (dec.), 2004).

213. The mere fact that the applicant has relied on Article 6 in his or her application is not sufficient to constitute introduction of all subsequent complaints made under that provision where no indication has initially been given of the factual basis of the complaint and the nature of the alleged violation (*Ramos Nunes de Carvalho e Sá v. Portugal* [GC], 2018, §§ 102-106; *Allan v. the United Kingdom* (dec.), 2001; *Adam and Others v. Germany* (dec.), 2005). Similarly, a complaint under Article 14 should provide at least an indication of the person or group of persons in comparison with whom the applicant claims he or she was treated differently, as well as of the ground of the distinction that was allegedly applied. The Court cannot accept that the mere fact that a complaint under Article 14 of the Convention was included in the application form is sufficient to constitute introduction of all subsequent complaints made under that provision (*Fábián v. Hungary* [GC], 2017, § 96).

214. The provision of documents from the domestic proceedings is not sufficient to constitute an introduction of all subsequent complaints based on those proceedings. Some, albeit summary, indication of the nature of the alleged violation under the Convention is required to introduce a complaint and thereby interrupt the running of the four-month time-limit (*Božinovski v. the former Yugoslav Republic of Macedonia* (dec.), 2005).

5. Special situations

a. Applicability of time constraints to continuing situations concerning the right to life, home and property

215. Although there is no precise point in time on which the four-month period would start running, the Court has imposed a duty of diligence and initiative on applicants wishing to complain about the continued failure to investigate disappearances in life-threatening situations. Because of the uncertainty and confusion typical of such situations, the relatives of a disappeared person may be justified in waiting lengthy periods of time for the national authorities to conclude their proceedings, even if the latter are sporadic and plagued by problems (*Varnava and Others v. Turkey* [GC], 2009, §§ 162-163). Nevertheless, applicants cannot wait indefinitely before coming to Strasbourg. They must introduce their complaints without undue delay (*ibid.*, §§ 161-166). Considerations of undue delay by the applicants will not generally arise as long as there is some meaningful contact between relatives and authorities concerning complaints and requests for information, or some indication, or realistic possibility, of progress in investigative measures (*ibid.*, § 165; see also *Pitsayeva and Others v. Russia*, 2014, §§ 386-393; *Sultygov and Others v. Russia*, 2014, §§ 375-380; *Sagayeva and Others v. Russia*, 2015, §§ 58-62; *Doshuyeva and Yusupov v. Russia* (dec.), 2016, §§ 41-47). Where more than ten years have elapsed, applicants would generally have to show convincingly that there was some ongoing, and concrete, advance being achieved to justify further delay in coming to Strasbourg (*Varnava and Others v. Turkey* [GC], 2009, § 166; see also *Açış v. Turkey*, 2011, §§ 41-42; *Er and Others v. Turkey*, 2012, §§ 59-60 and *Trivkanović v. Croatia*, 2017, §§ 54-58).

216. Similarly, where alleged continuing violations of the right to property or home in the context of a long-standing conflict are at stake, the time may come when an applicant should introduce his or her case, as remaining passive in the face of an unchanging situation would no longer be justified. Once an applicant has become aware or should have been aware that there is no realistic hope of regaining access to his or her property and home in the foreseeable future, unexplained or excessive delay in lodging the application may lead to the application being rejected as out of time. In a complex post-conflict situation the time-frames must be generous in order to allow for the situation to settle and to permit applicants to collect comprehensive information of obtaining a solution at the domestic level (*Sargsyan v. Azerbaijan* (dec.) [GC], 2011, §§ 140-141, for a period of about three years after ratification of the Convention; *Chiragov and Others v. Armenia* (dec.) [GC], 2011, §§ 141-142, for a period of four years and almost four months after ratification; compare and contrast *Samadov v. Armenia* (dec.), §§ 9-18, for a period of more than six years after ratification).

217. The principle of duty of diligence has also been applied in the context of non-enforcement of pecuniary debts of a State-owned company (*Sokolov and Others v. Serbia* (dec.), 2014, §§ 31-33).

b. Applicability of time constraint concerning the lack of an effective investigation into deaths and ill-treatment

218. In establishing the extent of the duty of diligence on applicants who wish to complain about the lack of an effective investigation into deaths or ill-treatment (Article 2 and 3 of the Convention), the Court has been largely guided by the case-law on the disappearance of individuals in a context of international conflict or state of emergency within a country (*Mocanu and Others v. Romania* [GC], 2014, § 267). In these cases too, the Court has considered whether there has been meaningful contact with the authorities or some indication, or realistic possibility, of progress in investigative measures (*Şakir Kaçmaz v. Turkey*, 2015, §§ 72-75; *Vatandaş v. Turkey*, 2018, §§ 26-27). The Court has also considered the scope and the complexity of the domestic investigation in the assessment of whether an applicant legitimately could have believed that it would be effective (*Melnichuk and Others v. Romania*, 2015, §§ 87-89). For the determination of the date in which the applicant must have become aware of the ineffectiveness of domestic remedies in the face of the failure of the authorities to act on his complaint, see *Mehmet Ali Eser v. Turkey*, 2019, §§ 30-31).

219. The obligation of diligence contains two distinct but closely linked aspects: applicants must contact the domestic authorities promptly concerning progress in the investigation and, they must lodge their application promptly with the Court as soon as they become aware or should have become aware that the investigation is not effective. Applicants' inactivity at the domestic level is not as such relevant for the assessment of the fulfilment of the four-month requirement. However, if the Court were to conclude that before the applicants petitioned the competent domestic authorities they were already aware, or ought to have been aware, of the lack of any effective criminal investigation, it is obvious that the subsequent applications lodged with the Court have *a fortiori* been lodged out of time (*Mocanu and Others v. Romania* [GC], 2014, §§ 256-257, 262-64 and 272). In *Sakvarelidze v. Georgia*, 2020, the Court found that the applicant, who regularly enquired about progress in the investigation, starting from an early stage of the proceedings, and took steps to speed up the investigation's progress in the hope of a more effective outcome, fulfilled his obligation of due diligence (§§ 41-46 and the references cited therein).

220. The question of compliance with the duty of diligence must be assessed in the light of the circumstances of the case. An applicant's delay in lodging a complaint with the domestic authorities is not decisive where the authorities ought to have been aware that an individual could have been subjected to ill-treatment as the authorities' duty to investigate arises even in the absence of an express complaint (*Velev v. Bulgaria*, 2013, §§ 40 and 59-60). Nor does such a delay affect the admissibility of the application where the applicant was in a particularly vulnerable situation. As an example, the Court has acknowledged an applicant's vulnerability and feeling of powerlessness as an

acceptable explanation for a delay in lodging a complaint at the domestic level (*Mocanu and Others v. Romania* [GC], 2014, §§ 265 and 273-275).

221. The issue of identifying the exact point in time at which the applicant realised, or ought to have realised, that an investigation is not effective, is difficult to determine with precision. Thus, the Court has rejected as out of time applications where a delay on the part of the applicants has been excessive or unexplained (*Melnichuk and Others v. Romania*, 2015, §§ 82-83 and the references cited therein; see also *Khadzhimuradov and Others v. Russia*, 2017, §§ 73-74).

222. In some cases information purportedly casting new light on the circumstances of a death may come into the public domain at a later stage. Depending on the situation the procedural obligation to investigate can then be revived and provide a new starting point for the purposes of calculating the four-month time-limit (*Khadzhimuradov and Others v. Russia*, 2017, §§ 67 and 75-77). If different phases of an investigation are regarded as distinct an applicant may fail to comply with the four-month rule in respect of complaints alleging deficiencies in the initial investigation (*Tsalikidis and Others v. Greece*, 2017, § 52, where more than five years had elapsed between two phases of a preliminary criminal investigation).

c. Application of the four-month rule as regards the conditions of detention

223. The applicant's detention should be regarded as a "continuing situation" as long as the applicant was detained in the same type of detention facility in substantially similar conditions. Short periods of absence (if the applicant was taken out of the facility for interviews or other procedural acts) would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within four months from the end of the situation complained about or, if there was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (*Ananyev and Others v. Russia,* §§ 75-78 and the references cited therein, and for an example of detention in two prisons, *Petrescu v. Portugal*, 2019, § 93). When there has been an interruption of more than three months between the periods of detention, the Court does not regard them as a "continuing situation" (*Shishanov v. the Republic of Moldova*, 2015, §§ 68-69). Similarly, multiple consecutive arrests, with ensuing prosecutions, convictions and sentences of imprisonment, which followed directly upon offences committed by the applicant, do not constitute a "continuing situation" even if the applicant enjoyed periods of liberty only for minutes (*Gough v. the United Kingdom*, 2014, §§ 133-134).

224. In *Ulemek v.* Croatia, 2019, the highest court in the State had examined the merits of the applicant's complaints about inadequate conditions of detention for the overall period of his confinement in two different prisons after his release, his complaints before the Court were not dismissed for failure to exhaust domestic remedies and/or non‑compliance with the four-month time limit (§§ 117-118).

225. In *Mamasakhlisi and Others v. Georgia and Russia*, 2023, concerning unlawful arrests, ill-treatment and detention of two vulnerable men by *de facto* Abkhaz authorities in Georgia, the Court emphasised that the psychological effects of torture and other ill-treatment might render people incapable of instigating proceedings without delay. Because of the exceptional circumstances of the case, the Court accepted that, after their arrests in a generally politically unclear and unstable context, the applicants might well feel helpless and unable to influence what was happening to them. In addition, they might have been waiting for developments that could resolve crucial factual or legal issues. With that in mind and the absence of effective domestic remedies, the Court accepted that the application was not belated (§§ 271-277). In similar circumstances regarding complaints under Articles 3, 5, and 6 of the Convention, the Court accepted that being detained in the Abkhaz territory by the *de facto* Abkhaz authorities represented, of itself, a serious obstacle to an applicant's applying to the Court within the required time-limit (*O.J. and J.O. v. Georgia and Russia*, 2023, § 51).

d. Application of the four-month rule in cases of multiple periods of detention under Article 5 § 3 of the Convention

226. Multiple, consecutive detention periods should be regarded as a whole, and the four-month period should only start to run from the end of the last period of detention (*Solmaz v. Turkey*, 2007, § 36).

227. Where an accused person's pre-trial detention is broken into several non-consecutive periods, those periods should not be assessed as a whole, but separately. Therefore, once at liberty, an applicant is obliged to bring any complaint which he or she may have concerning pre-trial detention within four months of the date of actual release. However, where such periods form part of the same set of criminal proceedings against an applicant, the Court, when assessing the overall reasonableness of detention for the purposes of Article 5 § 3, can take into consideration the fact that an applicant has previously spent time in custody pending trial (*Idalov v. Russia* [GC], 2012, §§ 129-30).

C. Anonymous application

Article 35 § 2 (a) of the Convention – Admissibility criteria

"1. The Court shall not deal with any application submitted under Article 34 that

(a) is anonymous;"[7]

HUDOC keywords

Anonymous application (35-2-a)

228. The applicant must be duly identified in the application form (Rule 47 § 1 (a) of the Rules of Court). The Court may decide that the applicant's identity should not be disclosed to the public (Rule 47 § 4); in that case, the applicant will be designated by his or her initials or simply by a letter.

229. The Court alone is competent to determine whether an application is anonymous within the meaning of Article 35 § 2 (a) (*Sindicatul Păstorul cel Bun v. Romania* [GC], 2013, § 69). If the respondent Government has doubts as to the authenticity of an application, it must inform the Court in good time (*ibid.*).

1. Anonymous application

230. An application to the Court is regarded as anonymous where the case file does not indicate any element enabling the Court to identify the applicant (*"Blondje" v. the Netherlands* (dec.), 2009). None of the forms or documents submitted contained a mention of the name of the applicant, but only a reference and aliases, and the power of attorney was signed "X": the identity of the applicant was not disclosed.

231. The Court has declared inadmissible as incompatible *ratione personae* (rather than on grounds of anonymity) complaints submitted by a group of persons whose names and/or surnames, and sometimes even gender, as indicated in the application form, were different from those figuring in

7. An **"**anonymous**"** application within the meaning of Article 35 § 2 (a) of the Convention is to be distinguished from the question of non-disclosure to the public of the identity of an applicant by way of derogation from the normal rule of public access to information in proceedings before the Court, and from the question of confidentiality before the Court (see Rule 33 and Rule 47 § 4 of the Rules of Court and the Practice directions annexed thereto).

domestic proceedings, which made it excessively difficult to ascertain their identity (*Mastilović and Others v. Montenegro*, 2022, §§ 35-36).

232. An application introduced by an association on behalf of unidentified persons, the association not claiming to be itself the victim but complaining of a violation of the right to respect for private life on behalf of unidentified individuals, who had thus become the applicants whom they declared that they were representing, was considered anonymous (*Federation of French Medical Trade Unions and National Federation of Nurses v. France*, Commission decision, 1986).

2. Non-anonymous application

233. Article 35 § 2 (a) of the Convention is not applicable where applicants have submitted factual and legal information enabling the Court to identify them and establish their links with the facts in issue and the complaint raised (*Sindicatul Păstorul cel Bun v. Romania* [GC], 2013, § 71).

234. Applications lodged under fictitious names: Individuals using pseudonyms and explaining to the Court that the context of an armed conflict obliged them not to disclose their real names in order to protect their family members and friends. Finding that "behind the tactics concealing their real identities for understandable reasons were real people identifiable from a sufficient number of indications, other than their names" and "the existence of a sufficiently close link between the applicants and the events in question", the Court did not consider that the application was anonymous (*Shamayev and Others v. Georgia and Russia* (dec.), 2003); see also the judgment in *Shamayev and Others*, § 275.

235. Applications lodged by a church body or an association with religious and philosophical objects the identity of whose members is not disclosed have not been rejected as being anonymous (Articles 9, 10 and 11 of the Convention): see *Omkarananda and Divine Light Zentrum v. Switzerland*, Commission decision, 1981.

D. Substantially the same

Article 35 § 2 (b) of the Convention – Admissibility criteria

"2. The Court shall not deal with any application submitted under Article 34 that

...

(b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information."

HUDOC keywords

Matter already examined by the Court (35-2-b) – Matter already submitted to another international procedure (35-2-b) – Relevant new information (35-2-b)

236. An application will be rejected pursuant to Article 35 § 2 (b) of the Convention where it is substantially the same as a matter which has already been examined by the Court or by another procedure of international investigation or settlement and contains no relevant new information.

1. Substantially the same as a matter that has been examined by the Court

237. The purpose of the first limb of Article 35 § 2 (b) is to ensure the finality of the Court's decisions and to prevent applicants from seeking, through the lodging of a fresh application, to appeal previous judgments or decisions of the Court (*Harkins v. the United Kingdom* (dec.) [GC], 2017, § 51; *Kafkaris*

v. Cyprus (dec.), 2011, § 67; *Lowe v. the United Kingdom* (dec.), 2009). Moreover, in addition to serving the interests of finality and legal certainty, 35 § 2 (b) also marks out the limits of the Court's jurisdiction. While certain rules on admissibility must be applied with a degree of flexibility and without excessive formalism the Court has adopted a more rigorous approach in applying those admissibility criteria whose object and purpose is to serve the interests of legal certainty and mark out the limits of its competence (*Harkins v. the United Kingdom* (dec.) [GC], 2017, § 52-54).

238. An application or a complaint is declared inadmissible if it "is substantially the same as a matter that has already been examined by the Court ... and contains no relevant new information". This includes cases where the Court has struck the previous application out of its list of cases on the basis of a friendly settlement procedure (*Kezer and Others v. Turkey* (dec.), 2004). However, if a previous application has never formed the subject of a formal decision, the Court is not precluded from examining the recent application (*Sürmeli v. Germany* (dec.), 2004).

239. The Court examines whether the two applications brought before it by the applicants relate essentially to the same persons, the same facts and the same complaints (*Vojnović v. Croatia* (dec.), 2012, § 28; *Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], 2009, § 63; *Amarandei and Others v. Romania*, 2016, §§ 106-111; *Leon Madrid v. Spain*, 2021, § 44). In order to determine whether an application or a complaint is substantially the same in terms of Article 35 § 2 (b) of the Convention, the complaint is always characterised by the facts alleged in it (*Radomilja and Others v. Croatia* [GC], 2018, § 120).

240. An inter-State application does not deprive individual applications of the possibility of introducing, or pursuing their own claims (*Varnava and Others v. Turkey* [GC], 2009, § 118; *Shioshvili and Others v. Russia*, 2016, §§ 46-47).

241. An application will generally fall foul of this Article where it has the same factual basis as a previous application. It is insufficient for an applicant to allege relevant new information where he has merely sought to support his past complaints with new legal arguments (*I.J.L. v. the United Kingdom* (dec.), 1999; *Mann v. the United Kingdom and Portugal* (dec.), 2011) or provided supplementary information on domestic law incapable of altering the reasons for the dismissal of his/her previous application (*X. v. the United Kingdom*, Commission decision, 1981). In order for the Court to consider an application which relates to the same facts as a previous application, the applicant must genuinely advance a new complaint or submit new information which has not been previously considered by the Court (*Kafkaris v. Cyprus* (dec.), 2011, § 68). The relevant new information must be new *factual* information, which may include significant changes in the applicable domestic law (*Ekimdzhiev and Others v. Bulgaria*, 2022, § 255). Developments in the Court's jurisprudence do not constitute "relevant new information" for the purposes of Article 35 § 2 (b) (*Harkins v. the United Kingdom* (dec.) [GC], 2017, §§ 50 and 55-56).

242. The Convention organs have found that the application or a complaint was not essentially the same as a previous application in *Nobili Massuero v. Italy* (dec.), 2004; *Riener v. Bulgaria*, 2006, § 103; *Chappex v. Switzerland*, Commission decision, 1994; *Yurttas v. Turkey*, 2004, §§ 36-37; *Sadak v. Turkey*, 2004, §§ 32-33; *Amarandei and Others v. Romania*, 2016, §§ 106-112; *Tsalikidis and Others v. Greece*, 2017, §§ 56-58; *Volodina v. Russia (no. 2)*, 2021, §§ 37-40; *Ekimdzhiev and Others v. Bulgaria*, 2022, §§ 253-255). On the contrary, they have found that the application or a complaint was essentially the same in *Moldovan and Others v. Romania* (dec.), 2011; *Hokkanen v. Finland*, Commission decision, 1996; *Adesina v. France*, Commission decision, 1996; *Bernardet v. France*, Commission decision, 1996; *Gennari v. Italy* (dec.)2000; *Manuel v. Portugal* (dec.), 2002.

2. Substantially the same as a matter submitted to another procedure of international investigation or settlement

243. The purpose of the second limb of Article 35 § 2 (b) is to avoid the situation where several international bodies would be simultaneously dealing with applications which are substantially the same. A situation of this type would be incompatible with the spirit and the letter of the Convention, which seeks to avoid a plurality of international proceedings relating to the same cases (*OAO Neftyanaya Kompaniya Yukos v. Russia*, 2011, § 520; *Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, 2012, § 37; *Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, § 180). For this reason, it is necessary for the Court to examine this matter of its own motion (*POA and Others v. the United Kingdom* (dec.), 2013, § 27).

244. In determining whether its jurisdiction is excluded by virtue of this Convention provision the Court would have to decide whether the case before it is substantially the same as a matter that has already been submitted to a parallel set of proceedings and, if that is so, whether the simultaneous proceedings may be seen as "another procedure of international investigation or settlement" within the meaning of Article 35 § 2 (b) of the Convention (*OAO Neftyanaya Kompaniya Yukos v. Russia*, 2011, § 520; *Gürdeniz v. Turkey* (dec.), 2014, §§ 39-40; *Doğan and Çakmak v. Turkey* (dec.), 2019, § 20).

a. The assessment of similarity of cases

245. The assessment of similarity of the cases would usually involve the comparison of the parties in the respective proceedings, the relevant legal provisions relied on by them, the scope of their claims and the types of the redress sought (*OAO Neftyanaya Kompaniya Yukos v. Russia*, 2011, § 521; *Greek Federation of Bank Employee Unions v. Greece* (dec.), 2011, § 39).

246. The Court therefore verifies, like it is the case with the first limb of Article 35 § 2 (b) mentioned above, whether the applications to the different international institutions concern substantially the same persons, facts and complaints (*Patera v. the Czech Republic* (dec.), 2006; *Karoussiotis v. Portugal*, 2011, § 63; *Gürdeniz v. Turkey* (dec.), 2014, §§ 41-45; *Pauger v. Austria*, Commisison decision, 1995).

247. For example, if the complainants before the two institutions are not identical the "application" to the Court cannot be considered as being "substantially the same as a matter that has ... been submitted to another procedure of international investigation or settlement" (*Folgerø and Others v. Norway* (dec.), 2006). Thus, the Court found that it was not precluded from examining the application before it when the other international procedure was initiated by a non-governmental organisation (*Celniku v. Greece*, 2007, §§ 39-41; *Illiu and Others v. Belgium* (dec.), 2009), or by a Confederation of Unions which it was affiliated to (*Eğitim ve Bilim Emekçileri Sendikası v. Turkey*, 2012, § 38), or by a Government acting on their own behalf in an inter-governmental procedure (*Bryan and Others v. Russia*, 2023, § 40), and not by the applicants themselves. In *Kavala v. Turkey*, 2019, UN Special Rapporteurs and the Vice-Chair of the Working Group on Arbitrary Detention (WGAD) had sent a letter to Turkey containing an "urgent appeal", in the context of special proceedings introduced by the Office of the UN High Commissioner for Human Rights, which could give rise to the opening of a procedure. However, since the WGAD had not opened such a procedure and since neither the applicant nor his close relatives had lodged any appeal before the UN bodies, the "application" was not "substantially the same" (§§ 92-94; see also *Taner Kılıç v. Turkey (no. 2)*, 2022, § 62-63).

248. However, the Court has recently reaffirmed that an application lodged with the Court which was virtually identical with an application submitted previously to another international body (ILO) but is brought by individual applicants who were not, and could not be, parties to that previous application, as the procedure was collective in nature with standing confined to trade unions and employer organisations, was substantially the same as the one submitted to that body. This is because these individual applicants must be seen as being closely associated with the proceedings and the

complaints before that body by virtue of their status as officials of the trade union in question. Allowing them to maintain their action before the Court would therefore have been tantamount to circumventing Article 35 § 2 (b) of the Convention (*POA and Others v. the United Kingdom* (dec.), 2013, §§ 30-32).

b. The concept of "another procedure of international investigation or settlement"

249. In its assessment under Article 35 § 2 (b), the Court has to determine whether the parallel proceedings in question constitute another international procedure for the purposes of this admissibility criterion (*POA and Others v. the United Kingdom*, § 28).

250. The Court's examination in this respect is not limited to a formal verification but would extend, where appropriate, to ascertaining whether the nature of the supervisory body, the procedure it follows and the effect of its decisions are such that the Court's jurisdiction is excluded by Article 35 § 2 (b) (*OAO Neftyanaya Kompaniya Yukos v. Russia*, 2011, § 522; *De Pace v. Italy*, 2008, §§ 25-28; *Karoussiotis v. Portugal*, 2011, §§ 62 and 65-76; *Greek Federation of Bank Employee Unions v. Greece* (dec.), 2011, §§ 33-38; *Doğan and Çakmak v. Turkey* (dec.), 2019, § 21; *Peraldi v. France* (dec.), 2009). The Court has developed the criteria that an international body must satisfy in order to be regarded as "another procedure of international investigation or settlement" within the meaning of that provision. The requirement of judicial or quasi-judicial proceedings similar to the Convention mechanism means that the examination must be clearly defined in scope and limited to certain rights based on a legal instrument whereby the relevant body is authorised to determine the State's responsibility and to afford legal redress capable of putting an end to the alleged violation. It must also afford institutional and procedural safeguards, such as independence, impartiality and an adversarial procedure (*Selahattin Demirtaş v. Turkey (no. 2)* [GC], 2020, §§ 182-186; *Tunç v. Turkey* (dec.), 2022, §§ 65-66).

E. Abuse of the right of application

Article 35 § 3 (a) of the Convention – Admissibility criteria

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is ... an abuse of the right of individual application;"

HUDOC keywords

Abuse of the right of application (35-3-a)

1. General definition

251. The concept of "abuse" within the meaning of Article 35 § 3 (a) must be understood in its ordinary sense according to general legal theory – namely, the harmful exercise of a right for purposes other than those for which it is designed (*Petrović v. Serbia* (dec.), 2011). Accordingly, any conduct of an applicant that is manifestly contrary to the purpose of the right of individual application as provided for in the Convention and impedes the proper functioning of the Court or the proper conduct of the proceedings before it constitutes an abuse of the right of application (*Zhdanov and Others v. Russia*, 2019, §§ 79-81 and the references cited therein; *Miroļubovs and Others v. Latvia*, 2009, §§ 62 and 65; *S.A.S. v. France* [GC], 2014, § 66; *Bivolaru v. Romania*, 2017, §§ 78-82). Dealing with manifestly abusive conduct by applicants or their authorised representatives is incompatible with the Court's proper functions under the Convention (*Mamić v. Croatia* (dec.), 2024, § 140, and the references cited therein).

252. In assessing whether an application should be considered an abuse of the right of application, the Court may take into account the applicant's behaviour not only before itself but also at the domestic level (*Ferrara and Others v. Italy* (dec.), 2023, § 43; *Mamić v. Croatia* (dec.), 2024, § 139). Furthermore, the applicant is entirely responsible for the conduct of his or her lawyer or any other person representing him or her before the Court. Any actions or omissions on the representative's part are in principle attributable to the applicant himself or herself and may lead to the application being rejected as an abuse of the right of application (*Bekauri v. Georgia* (preliminary objections), 2012, §§ 22-25; *Migliore and Others v. Italy* (dec.), 2013; *Martins Alves v. Portugal* (dec.), 2014, §§ 11-13 and 16-17; *Gross v. Switzerland* [GC], 2014, § 33).

253. Having due regard to the functions of the Court as defined by Article 19 of the Convention, lawyers must show a high level of professional prudence and meaningful cooperation with the Court by refraining from bringing unmeritorious complaints and, once proceedings before the Court have been instituted, by abiding by all the relevant rules of procedure and professional ethics. Otherwise, an abusive or negligent application undermines the credibility of lawyers' work in the eyes of the Court and, if done systematically, may even result in their being excluded from the proceedings under Rule 36 § 4 (c), as amended by the Court on 7 February 2022, and Rule 44D of the Rules of Court (*Ferrara and Others v. Italy* (dec.), 2023, § 66).

254. The Court has stressed that rejection of an application on grounds of abuse of the right of application is an exceptional measure (*Miroļubovs and Others v. Latvia*, 2009, § 62). The cases in which the Court has found an abuse of the right of application can be grouped into five typical categories: misleading information; use of offensive language; violation of the obligation to keep friendly-settlement proceedings confidential; application manifestly vexatious or devoid of any real purpose; and misuse of domestic remedies or other blameworthy acts at the domestic level insofar as they are directly connected with the proceedings before the Court (*Mamić v. Croatia* (dec.), 2024, §§ 116-119).

2. Misleading the Court

255. An application is an abuse of the right of application if it is knowingly based on untrue facts with a view to deceiving the Court (*Varbanov v. Bulgaria*, 2000, § 36; *Gogitidze and Others v. Georgia*, 2015, § 76). The most serious and blatant examples of such abuses are, firstly, the submission of an application under a false identity (*Drijfhout v. the Netherlands* (dec.), 2011, §§ 27-29), and, secondly, the falsification of documents sent to the Court (*Jian v. Romania* (dec.), 2004; *Bagheri and Maliki v. the Netherlands* (dec.), 2007; *Poznanski and Others v. Germany* (dec.), 2007; *Gogitidze and Others v. Georgia*, 2015, §§ 77-78; *Mamić v. Croatia* (dec.), 2024, §§ 123-124). In a case concerning detention pending expulsion, the Court has found that there was an abuse of the right of application when an applicant had misled both the domestic authorities and the Court about his nationality (see *Bencheref v. Sweden* (dec.), 2017, § 39). The Court has also deemed an application abusive when the applicant had made, before the Court, a factual allegation contrary to his own testimony in domestic proceedings on a point relevant for the outcome of the case (*Povilonis v. Lithuania* (dec.), 2022, §§ 92-101), or when the applicants had used vague and undefined terms in order to make the circumstances of the case appear similar to another case where the Court had found a violation (*Kongresna Narodna Stranka and Others v. Bosnia and Herzegovina* (dec.), 2016, §§ 13 and 15-19).

256. This type of abuse may also be committed by omission, where the applicant fails to inform the Court at the outset of a factor essential for the examination of the case (*Kerechashvili v. Georgia* (dec.), 2006; *Martins Alves v. Portugal* (dec.), 2014, §§ 12-15; *Gross v. Switzerland* [GC], 2014, §§ 35-36; *Gevorgyan and Others v. Armenia* (dec.), 2020, §§ 31-37; *Safaryan v. Armenia* (dec.), 2020, §§ 24-30; contrast with *Al-Nashif v. Bulgaria*, 2002, § 89; *G.I.E.M. S.R.L. and Others v. Italy* [GC], § 174; *S.L. and J.L. v. Croatia*, 2015, § 49; *Zličić v. Serbia*, §§ 55-56). The misleading information should however concern the very core of the case in order for the Court to find the omission to amount to an abuse of the right of individual application (*J.B. v. Poland*, 2015, § 44; *Mitrović v. Serbia*, 2017, §§ 33-34; *Shalyavski and Others v. Bulgaria*, 2017, § 45; *Saakashvili v. Georgia* (dec.), 2022, §§ 64-65). Whenever

an applicant omits, contrary to Rule 44C § 1 of the Rules of Court, to divulge relevant information, depending on the particular circumstances of the case, the Court may draw such inferences as it deems appropriate, including striking the application out under either of the three sub-paragraphs of Article 37 § 1 of the Convention (*Belošević v. Croatia* (dec.), 2019, §§ 48-49 and §§ 51-54, and *Şeker v. Turkey* (dec.), 2021, §§ 19-23).

257. Likewise, if new, important developments occur during the proceedings before the Court and if - despite the express obligation on him or her under the Rules of Court - the applicant fails to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts, his or her application may be rejected as being an abuse of application (*Hadrabová and Others v. the Czech Republic* (dec.), 2007; *Predescu v. Romania*, 2008, §§ 25-27; *Gross v. Switzerland* [GC], 2014, §§ 28-37; *Dimo Dimov and Others v. Bulgaria*, 2020, §§ 42-47; *Y.T. v. Bulgaria* (revision), 2024, §§ 39-40).

258. An intention to mislead the Court must always be established with sufficient certainty (*Melnik v. Ukraine*, 2006, §§ 58-60; *Nold v. Germany*, 2006, § 87; *Miszczyński v. Poland* (dec.), 2011; *Gross v. Switzerland* [GC], 2014, § 28; *S.L. and J.L. v. Croatia*, 2015, §§ 48-49; *Bagdonavicius and Others v. Russia*, 2016, §§ 64-65; *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (dec.), 2021, §§ 29-30). Parties can submit arguments which are rejected by the Court without such contentious submissions being regarded as an abuse of the right of individual application (*Hoti v. Croatia*), 2018, § 92.

259. Even where the Court's judgment on the merits has already become final and it subsequently transpires that the applicant had concealed a fact that would have been relevant to the examination of the application, the Court is able to reconsider its judgment by means of the revision procedure (laid down in Rule 80 of the Rules of Court) and to reject the application as an abuse of the right of application (*Gardean and S.C. Grup 95 SA v. Romania* (revision), 2013, §§ 12-22; *Vidu and Others v. Romania* (revision), 2017, §§ 17-30; *Petroiu v. Romania* (revision), 2017, §§ 16-30; *Y.T. v. Bulgaria* (revision), 2024, where the revision of the judgment was followed by an assessment as to whether there had been an abuse of the right of individual petition, §§ 32-40; and as regards the effect of the resulting inadmissibility of the application on the State's obligation under the Convention, see §§ 41-43). Revision of a judgment is possible only if the respondent Government could not reasonably have known of the fact in question at the time of the Court's examination of the case, and if it submits the request for revision within a period of six months after acquiring knowledge of the fact, in accordance with Rule 80 § 1 (*Grossi and Others v. Italy* (revision), 2012, §§ 17-24; *Vidu and Others v. Romania* (revision), 2017, §§ 20-23; *Petroiu v. Romania* (revision), 2017, §§ 19 and 27-28; *Y.T. v. Bulgaria* (revision), 2024, §§ 19-21).

3. Offensive language

260. There will be an abuse of the right of application where the applicant, in his or her correspondence with the Court, uses particularly vexatious, insulting, threatening or provocative language – whether this be against the respondent Government, its Agent, the authorities of the respondent State, the Court itself, its judges, its Registry or members thereof (*Řehák v. the Czech Republic* (dec.), 2004; *Duringer and Others v. France* (dec.), 2003; *Stamoulakatos v. the United Kingdom*, Commission decision, 1997). The same applies when an applicant publishes offensive statements about the Court and its judges outside the context of the pending case and continues to do so after a warning (*Zhdanov and Others v. Russia*, 2019, §§ 82-86).

261. It is not sufficient for the applicant's language to be merely cutting, polemical or sarcastic; it must exceed "the bounds of normal, civil and legitimate criticism" in order to be regarded as abusive (*Di Salvo v. Italy* (dec.), 2007, *Apinis v. Latvia* (dec.), 2011; for a contrary example, see *Aleksanyan v. Russia*, 2008, §§ 116-118; *X and Others v. Bulgaria* [GC], § 146; *Gherardi Martiri v. San Marino*, 2022, §§ 83-84). If, during the proceedings, the applicant ceases using offensive remarks after a formal

warning from the Court, expressly withdraws them or, better still, offers an apology, the application will no longer be rejected as an abuse of application (*Chernitsyn v. Russia*, 2006, §§ 25-28).

262. The Court has held that the mere fact of accusing the Agent of the respondent Government of "abuse of process" was not in itself abusive, provided that it is not founded on untrue factual allegations. It would be inconsistent with the spirit of equality of the parties to consider an allegation that the State Agent is acting in abuse of process as gratuitous, given that States have the possibility, without restriction, to argue that an application is inadmissible because an applicant has abused the right of individual petition (*Gherardi Martiri v. San Marino*, 2022, § 84).

4. Breach of the principle of confidentiality of friendly-settlement proceedings

263. An intentional breach, by an applicant, of the duty of confidentiality of friendly-settlement negotiations, imposed on the parties under Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court, may be considered as an abuse of the right of application and result in the application being rejected (*Hadrabová and Others v. the Czech Republic* (dec.), 2007; *Popov v. Moldova (no. 1)*, 2005, § 48; *Miroļubovs and Others v. Latvia*, 2009, § 66).

264. In order to determine whether the applicant has breached the duty of confidentiality, the limits on that duty must first be defined. It must always be interpreted in the light of its general purpose, namely, facilitating a friendly settlement by protecting the parties and the Court against possible pressure. Accordingly, whereas the communication to a third party of the content of documents relating to a friendly settlement can, in theory, amount to an abuse of the right of application within the meaning of Article 35 § 3(a) of the Convention, it does not mean that there is an absolute and unconditional prohibition on showing or talking about such documents to any third party. Such a wide and rigorous interpretation would risk undermining the protection of the applicant's legitimate interests – for example, where he or she seeks informed advice on a one-off basis in a case in which he or she is authorised to represent him or herself before the Court. Moreover, it would be too difficult, if not impossible, for the Court to monitor compliance with such a prohibition. What Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court prohibit the parties from doing is publicising the information in question, for instance through the media, in correspondence liable to be read by a large number of people, or in any other way (*Miroļubovs and Others v. Latvia*, 2009, § 68; see also *Mătăsaru v. the Republic of Moldova* (dec.), 2020, §§ 36-39, where the applicant's wife disclosed to the media the Court's friendly-settlement proposal). It is thus this type of conduct, where a degree of seriousness is involved, that is an abuse of the right of application.

265. In order to be regarded as an abuse of application, the disclosure of confidential information must be intentional. The direct responsibility of the applicant in the disclosure must always be established with sufficient certainty; a mere suspicion will not suffice (*Miroļubovs and Others v. Latvia*, 2009, § 66 *in fine*). Concrete examples of the application of this principle: for an example where the application was rejected, see *Hadrabová and Others v. the Czech Republic* (dec.), 2007, in which the applicants had expressly cited the proposals of the friendly settlement formulated by the Court Registry in their correspondence with the Ministry of Justice of their country, which led to their application being rejected as an abuse of application; for an example where the application was found admissible, see *Miroļubovs and Others v. Latvia*, 2009, in which it was not established with certainty that all three applicants had been responsible for the disclosure of confidential information, with the result that the Court rejected the Government's preliminary objection.

266. A distinction must be drawn between, on the one hand, declarations made in the context of strictly confidential friendly-settlement proceedings and, on the other, unilateral declarations made by a respondent Government in public and adversarial proceedings before the Court, even though the material outcome of those procedures may be similar. A disclosure of the conditions of a unilateral

declaration does not amount to an abuse of the right of individual application (*Eskerkhanov and Others v. Russia*, 2017, § 26-29).

267. With regard to the failure to respect the rule of confidentiality after the principal judgment has been handed down, but before the Court has ruled on just satisfaction, see *Žáková v. the Czech Republic* (just satisfaction), 2017, §§ 18-25, where the Court, in light of the particular circumstances of the case, found it appropriate to continue the examination of the case.

5. Application manifestly vexatious or devoid of any real purpose

268. An applicant abuses the right of application where he or she repeatedly lodges vexatious and manifestly ill-founded applications with the Court that are similar to an application that he or she has lodged in the past that has already been declared inadmissible (*M. v. the United Kingdom* and *Philis v. Greece*, both Commission decisions, 1987, 1996; *Petrović v. Serbia* (dec.), 2011). It cannot be the task of the Court to deal with a succession of ill-founded and querulous complaints or with otherwise manifestly abusive conduct of applicants or their authorised representatives (*ibid.*), which creates gratuitous work for the Court, incompatible with its real functions under the Convention (*Bekauri v. Georgia* (preliminary objections), 2012, § 21; see also *Migliore and Others v. Italy* (dec.), 2013, and *Simitzi-Papachristou and Others v. Greece* (dec.), 2013).

269. The Court found an abuse of the right of application on the part of an applicant who had published, on his website and on YouTube, calls to visitors to join him in lodging a collective application with the Court and to submit multiple applications through an automatically generated and standardised application form. Almost 18,000 applications had already been sent to the Court as a result of this technique. In unambiguous terms, the objective being pursued was not to win the respective cases, but, on the contrary, to bring about "congestion, excessive workload and a backlog" at the Court, to "paralyse its operations", to "create a relationship of power" in order to "negotiate" with the Court by threatening its operations, and to "derail the system" in which the Court was a "link in the chain". This approach, seeking to undermine the Convention system and the functioning of the Court, was manifestly contrary to the purpose of the right of individual application, to the spirit of the Convention and the objectives pursued by it (*Zambrano v. France* (dec.), 2021, §§ 35-38).

270. The Court may also find that there has been an abuse of the right of application where the application manifestly lacks any real purpose, concerns a petty sum of money or, generally speaking, has no bearing on the objective legitimate interests of the applicant (*Simitzi-Papachristou and Others v. Greece* (dec.), 2013; *Bock v. Germany* (dec.), 2010, contrast with *S.A.S. v. France* [GC], 2014, §§ 62 and 68). Since the entry into force of Protocol No. 14 on 1 June 2010, applications of this kind are more readily dealt with under Article 35 § 3 (b) of the Convention (no significant disadvantage).

6. Misuse of domestic remedies or other blameworthy acts at the domestic level

271. The applicant's conduct at the domestic level is a relevant factor in assessing whether an application should be considered an abuse of the right of application. As domestic remedies are the primary means to protect human rights guaranteed by the Convention, the Court would often decide on the basis of a cumulative analysis of the applicant's behaviour both at the domestic level and before the Court. In particular, a blatant misuse of domestic remedies may lead to the application being declared inadmissible as abusive (*Ferrara and Others v. Italy* (dec.), 2023, § 43). For example, unjustified fragmentation of domestic enforcement proceedings with no other purpose than to take the advantage of domestic law to multiply awards of legal fees to lawyers, coupled with the same technique before the Court (lodging many separate identical applications based on the same or similar facts, without joining them or even informing the Court of the existence of a link between them), was considered to be manifestly abusive, negatively affecting the organisation and the workload of both the domestic courts and the Court itself (*ibid.*, §§ 63-68).

272. In *Mamić v. Croatia* (dec.), 2024, the applicants were found to have manipulated the domestic proceedings in their favour, seriously obstructing the justice system, and thereafter to have aimed at taking advantage of the system of protection of human rights under the Convention and benefit from their own abusive conduct at domestic level (§§ 139-143). Although the conduct which constituted abuse had directly concerned only one of several complaints under Article 6 of the Convention communicated to the respondent Government, the Court considered that such behaviour should have implications for the admissibility of the entire applications which, as a whole, had to be rejected as an abuse of the right of individual application (§§ 144-145).

273. Sometimes judgments and decisions of the Court, and cases still pending before it, are used for the purposes of a political speech at national level in the Contracting States. An application inspired by a desire for publicity or propaganda is not for this reason alone an abuse of the right of application (*McFeeley and Others v. the United Kingdom*, Commission decision, 1980, and also *Khadzhialiyev and Others v. Russia*, 2008, §§ 66-67). However, there may be an abuse if the applicant, motivated by political interests, gives interviews to the press or television in which he or she expresses an irresponsible and frivolous attitude towards proceedings pending before the Court (*Georgian Labour Party v. Georgia*, 2008). Dissemination of false information to the press in a way that could have been a result of an error in good faith has not been found to be an abuse of the right of application (*Podeschi v. San Marino*, 2017, § 88, where the applicant or his representatives had erroneously publicly alleged that the application had already been declared admissible by the Court).

274. The Court has found that there was an abuse of the right of individual petition when an applicant invoked Article 8 before the Court on the basis of evidence obtained in violation of others' Convention rights. The applicant had, in an attempt to prove that he was not the father of a child, obtained DNA samples by force, without consent, and had been convicted of an attack on his former wife's physical integrity as a result (*Koch v. Poland* (dec.), 2017, §§ 31-34).

7. Approach to be adopted by the respondent Government

275. If the respondent Government considers that the applicant has abused the right of application, it must inform the Court accordingly and bring to its attention the relevant information in its possession so that the Court can draw the appropriate conclusions (*Mamić v. Croatia* (dec.), 2024, §§ 120-122). It is for the Court itself and not the respondent Government to monitor compliance with the procedural obligations imposed by the Convention and by its Rules on the applicant party. However, threats on the part of the Government and its bodies to bring criminal or disciplinary proceedings against an applicant for an alleged breach of its procedural obligations before the Court could raise a problem under Article 34 *in fine* of the Convention, which prohibits any interference with the effective exercise of the right of individual application (*Miroļubovs and Others v. Latvia*, 2009, § 70).

276. Even if the Government does not argue that the applicants' behaviour amounted to an abuse of the right of individual petition, the question of possible abuse can be raised by the Court *proprio motu* (*Gevorgyan and Others v. Armenia* (dec.), 2020, § 32; *Dimo Dimov and Others v. Bulgaria,* 2020, § 41).

II. Grounds for inadmissibility relating to the Court's jurisdiction

Article 35 § 3 (a) of the Convention – Admissibility criteria

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is incompatible with the provisions of the Convention or the Protocols thereto ...;"

Article 32 of the Convention – Jurisdiction of the Court

"1. The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47.

2. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide."

HUDOC keywords

Ratione personae (35-3-a) – *Ratione loci* (35-3-a) – *Ratione temporis* (35-3-a) – Continuing situation (35-3-a) – *Ratione materiae* (35-3-a)

A. Incompatibility *ratione personae*

1. Principles

277. Compatibility *ratione personae* requires the alleged violation of the Convention to have been committed by a Contracting State or to be in some way attributable to it.

278. Even where the respondent State has not raised any objections as to the Court's jurisdiction *ratione personae*, this issue calls for consideration by the Court of its own motion (*Sejdić and Finci v. Bosnia and Herzegovina* [GC], 2009, § 27; *Mutu and Pechstein v. Switzerland*, 2018, § 63).

279. Fundamental rights protected by international human rights treaties should be secured to individuals living in the territory of the State Party concerned, notwithstanding its subsequent dissolution or succession (*Bijelić v. Montenegro and Serbia*, 2009, § 69).

280. A State may be held responsible for debts of a State-owned company even if the company is a separate legal entity, provided that it does not enjoy sufficient institutional and operational independence from the State to absolve the latter from its responsibility under the Convention (*Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], §§ 114-115; *Kuzhelev and Others v. Russia*, 2019, §§ 93-100, 117; *Mykhaylenky and Others v. Ukraine*, 2004, §§ 43-45). This principle developed in relation to debts also applies to other acts and ommissions of these companies, such as the use of patented inventions (*Tokel v. Turkey*, §§ 58-62). Acts and omissions of a private-law foundation may also be capable of engaging the respondent State's responsibility under the Convention (*Mutu and Pechstein v. Switzerland*, 2018, §§ 65-67).

281. Applications will be declared incompatible *ratione personae* with the Convention on the following grounds:

- if the applicant lacks standing as regards Article 34 of the Convention (see, for instance, *Municipal Section of Antilly v. France* (dec.), 1999; *Döşemealtı Belediyesi v. Turkey* (dec.),

2010; *Moretti and Benedetti v. Italy*, 2010, §§ 32-35; *Bulgarian Helsinki Committee v. Bulgaria* (dec.), 2016; *V.D. and Others v. Russia*, 2019, §§ 72-76; *İhsan Doğramacı Bilkent Üniversitesi v. Turkey* (dec.), 2020, §§ 34-47; *Democratic Republic of the Congo v. Belgium* (dec.), 2020, §§ 13-21);

- if the applicant is unable to show that he or she is a victim of the alleged violation (*Kátai v. Hungary* (dec.), 2014, §§ 25-26; *Trivkanović v. Croatia*, 2017, §§ 49-51; see Introduction, point A.3 "victim status");
- if the application is brought against an individual (*X. v. the United Kingdom*, Commission decision, 1976; *Durini v. Italy*, Commission decision, 1994);
- if the application is brought directly against an international organisation which has not acceded to the Convention (*Stephens v. Cyprus, Turkey and the United Nations* (dec.), 2008, last paragraph);
- if the complaint involves a Protocol to the Convention which the respondent State has not ratified (*Horsham v. the United Kingdom*, Commission decision, 1995; *De Saedeleer v. Belgium*, 2007, § 68).

2. Jurisdiction[8]

282. A finding of lack of jurisdiction *ratione loci* will not dispense the Court from examining whether the applicants come under the "jurisdiction" of one or more Contracting States within the meaning of Article 1 of the Convention (*Drozd and Janousek v. France and Spain*, 1992, § 90). Therefore, objections that the applicants are not within the "jurisdiction" of a respondent State will more normally be raised as claims that the application is incompatible *ratione personae* with the Convention (see submissions of the respondent Governments in *Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 35; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 300; *Weber and Saravia v. Germany* (dec.), 2006; see also *Mozer v. the Republic of Moldova and Russia* [GC], 2016, § 79, where the Russian Government raised an objection *ratione personae* and *ratione loci*; see *M.A. and Others v. Lithuania*, 2018, § 67). "Jurisdiction" under Article 1 of the Convention is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 311; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 130).

283. A State's jurisdictional competence under Article 1 is primarily territorial (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, §§ 61 and 67; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 104). Jurisdiction is presumed to be exercised normally throughout the State's territory (*N.D. and N.T. Spain* [GC], §§ 102-103, 105 and seq.; *Assanidze v. Georgia* [GC], 2004, § 139; *Sargsyan v. Azerbaijan* [GC], 2015, §§ 129, 139 and 150). Jurisdiction can also be exercised at the border (by way of example, the refusal by border officials to accept asylum applications and to admit the applicants into the territory of the State in *M.A. and Others v. Lithuania*, 2018, §§ 69-70; *M.K. and Others v. Poland*, 2020, §§ 126-132). The concept of "jurisdiction" must be considered to reflect the term's meaning in public international law under which the existence of a fence located some distance from the border does not authorise a State to unilaterally exclude, alter or limit its territorial jurisdiction, which begins at the line forming the border. The Court has acknowledged that States forming the external border of the Schengen area have experienced considerable difficulties in coping with the increasing influx of migrants and asylum-seekers but did not draw any inferences with regard to the jurisdiction of the States concerned (*N.D. and N.T. Spain* [GC], §§ 104-111 where the State invoked an exception to territorial jurisdiction in an illegal immigration context, §§ 107-108).

8. See the Guide on Article 1 of the Convention.

284. States may be held responsible for acts of their authorities performed, or producing effects, outside their own territory (*Drozd and Janousek v. France and Spain*, 1992, § 91; *Soering v. the United Kingdom*, 1989, §§ 86 and 91; *Loizidou v. Turkey* (preliminary objections), 1995, § 62). However, this will occur only exceptionally (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 71; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 314), namely where a Contracting State is in effective control over an area or has at the very least a decisive influence over it (*ibid*., §§ 314-316 and 392; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, §§ 106-107; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, §§ 138-140; *Medvedyev and Others v. France* [GC], 2010, §§ 63-64; *Georgia v. Russia (II)* [GC], 2021, §§ 161-175, concerning the occupation phase after the cessation of hostilities). For the concepts of "effective control" over an area and effective control through the armed forces of a State, see *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 314-316; see also *Banković and Others v. Belgium and Others* [GC] (dec.), 2001, §§ 67 et seq. and 74-82; *Cyprus v. Turkey* [GC], 2001, §§ 75-81; *Loizidou v. Turkey* (merits), 1996, §§ 52-57; *Hassan v. the United Kingdom* [GC], 2014, § 75; *Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, §§ 315-335; *Georgia v. Russia (II)* [GC], 2021, §§ 126 and 165. For the concept of effective control exercised not directly but through a subordinate local administration that survives thanks to that State's support, see *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, §§ 116-122; *Chiragov and Others v. Armenia* [GC], 2015, §§ 169-186; *Georgia v. Russia (II)* [GC], 2021, §§ 166-174. For an example of effective control over an area in the context of a purported "annexation" of the territory of one Contracting State by another Contracting State, see *Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, §§ 338-349.

285. A State may be held accountable for violations of the Convention rights of persons who are in the territory of another State but who are found to be under the former State's authority and control through its agents operating – whether lawfully or unlawfully – in the latter State (*Issa and Others v. Turkey*, 2004, § 71; *Sánchez Ramirez v. France*, Commission decision, 1996; *Öcalan v. Turkey* [GC], 2005, § 91; *Veronica Ciobanu v. the Republic of Moldova*, 2021, §§ 25-26; for military operations abroad, see *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 149; *Hassan v. the United Kingdom* [GC], 2014, §§ 76-80; *Jaloud v. the Netherlands* [GC], 2014, §§ 140-152).

286. With regard to acts committed by troops of a Multinational Force authorised by the United Nations and attributability of those acts to the State's responsibility when the international organisation has no effective control nor ultimate authority over that conduct, see *Al-Jedda v. the United Kingdom* [GC], 2011, §§ 84-86. With regard to acts taking place in a United Nations buffer zone, see *Isaak and Others v. Turkey* (dec.), 2006. With regard to the active phase of hostilities (bombing and artillery shelling) in the context of an international armed conflict between two Contracting States, see *Georgia v. Russia (II)* [GC], 2021, §§ 125-144.

287. For territories which are legally within the jurisdiction of a Contracting State but not under the effective authority/control of that State, applications may be considered incompatible with the provisions of the Convention (*An and Others v. Cyprus*, Commission decision, 1991), but regard must be had to the State's positive obligations under the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 312-313 and 333 et seq.; see also *Stephens v. Cyprus, Turkey and the United Nations* (dec.), 2008; *Azemi v. Serbia* (dec.), 2013; *Ivanţoc and Others v. Moldova and Russia*, 2011, §§ 105-106; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, §§ 109-10; *Mozer v. the Republic of Moldova and Russia* [GC], 2016, §§ 99-100). For disputed zones within the internationally recognised territory of a Contracting State in respect of which no other State has effective control, see *Sargsyan v. Azerbaijan* [GC], 2015, §§ 139-151. For a prison fully controlled by a Contracting State but whose electricity and water had been cut off by the municipal authority of a *de facto* entity beyond its control, see *Pocasovschi and Mihaila v. the Republic of Moldova and Russia*, 2018, §§ 43-46. A State was not allowed to claim an exception to the jurisdiction principles where it erected three fences on its territory to prevent unauthorised entry by non-nationals and argued that an individual fell within its jurisdiction only after passing all three fences: the Court held that the State

nevertheless exercised effective authority over its territory at the border (*N.D. and N.T. Spain* [GC], §§ 104-111).

288. There are exceptions to the principle that an individual's physical presence in the territory of one of the Contracting Parties has the effect of placing that individual under the jurisdiction of the State concerned, for example where a State hosts the headquarters of an international organisation against which the applicant's complaints are directed. The mere fact that an international criminal tribunal has its seat and premises in the Netherlands is not a sufficient ground for attributing to that State any alleged acts or omissions on the part of the international tribunal in connection with the applicant's conviction (*Galić v. the Netherlands* (dec.), 2009; *Blagojević v. the Netherlands* (dec.), 2009; *Djokaba Lambi Longa v. the Netherlands* (dec.), 2012). For an application against the respondent State as the permanent seat of an international organisation, see *Lopez Cifuentes v. Spain* (dec.), 2009, §§ 25-26; *Klausecker v. Germany* (dec.), 2015, §§ 80-81. For the acceptance of an international civil administration in the respondent State's territory, see *Berić and Others v. Bosnia and Herzegovina* (dec.), 2007, § 30.

289. The mere participation of a State in proceedings brought against it in another State does not in itself amount to an exercise of extraterritorial jurisdiction (*McElhinney v. Ireland and the United Kingdom* (dec.) [GC], 2000; *Treska v. Albania and Italy* (dec.), 2006; *Manoilescu and Dobrescu v. Romania and Russia* (dec.), 2005, §§ 99-111). However, once a person brings a civil action in the courts or tribunals of a State, there indisputably exists a "jurisdictional link" between that person and the State, in spite of the extraterritorial nature of the events alleged to have been at the origin of the action (*Markovic and Others v. Italy* [GC], 2006, §§ 49-55, concerning Article 6 of the Convention; see similarly *Arlewin v. Sweden*, 2016, §§ 65-74, concerning the jurisdiction of a Contracting State in respect of defamation proceedings brought in respect of a television programme broadcast from a foreign country; see, by contrast, *M. N. and Others v. Belgium* (dec.) [GC], 2020, §§ 121-125, with regard to proceedings brought in Belgium with a view to obtaining authorisation to enter that country to claim asylum and avoid treatment in breach of Article 3 of the Convention). Similarly, if investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death – even if that death occurred outside the jurisdiction of that State – the institution of that investigation or those proceedings is sufficient to establish a "jurisdictional link" for the purposes of Article 1 of the Convention between that State and the victim's relatives who later bring a complaint under the procedural limb of Article 2 before the Court (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, §§ 188-189 and 191; *Aliyeva and Aliyev v. Azerbaijan,* 2014, § 57; see, by contrast, *Hanan v. Germany* [GC], 2021, §§ 134-135, concerning deaths occurred in the context of an extraterritorial military operation outside the territory of the Contracting Parties to the Convention). In the absence of an investigation or proceedings in the Contracting State concerned, "special features"in a given case may trigger the existence of a "jurisdictional link" in relation to the procedural obligation under Article 2 to investigate a death occurred under a different jurisdiction or which did not necessarily fall within that State's jurisdiction (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, §§ 190 and 192-196, where the suspects of the murder had fled to the part of the Cypriot territory which was under the effective control of Turkey, therefore preventing Cyprus from pursuing its own criminal investigation in respect of those suspects; *Georgia v. Russia (II)* [GC], 2021, §§ 331-332, with regard to alleged war crimes committed during the active phase of the hostilities which the Russian Federation was obliged to investigate under international humanitarian law and domestic law; *Hanan v. Germany* [GC], 2021, §§ 136-142, where Germany retained exclusive jurisdiction over its troops with respect to serious crimes which it was obliged to investigate under international and domestic law). The Court has applied the "special features" approach and found a "jurisdictional link" also in relation to the procedural obligation to continue the enforcement of a prison sentence commenced in another Contracting State (*Makuchyan and Minasyan v. Azerbaijan and Hungary*, 2020, §§ 49-51, concerning a murder committed in Hungary by an Azerbaijani officer convicted and later transferred to his home country).

290. The Court has also laid down principles governing extraterritorial responsibility for arrest and detention executed in a third State in the context of an extradition procedure set in motion by the respondent State (*Stephens v. Malta (no. 1)*, § 52; *Vasiliciuc v. the Republic of Moldova*, 2017, §§ 22-25).

291. Other recognised instances of the extraterritorial exercise of jurisdiction by a State include cases involving the activities of its diplomatic or consular agents abroad (*M. v. Denmark*, Commission decision, 1994; see, by contrast, *M. N. and Others v. Belgium* (dec.) [GC], 2020, §§ 106 and 117-119) and those involving the activities on board aircraft and ships registered in, or flying the flag of, that State (*Hirsi Jamaa and Others v. Italy* [GC], 2012, §§ 70-75 and 79-81; *Medvedyev and Others v. France* [GC], 2010, § 65; *Bakanova v. Lithuania*, 2016, § 63).

3. Responsibility and imputability

292. Compatibility *ratione personae* with the Convention additionally requires the alleged violation to be imputable to a Contracting State (*Gentilhomme, Schaff-Benhadji and Zerouki v. France*, 2002, § 20; *M.A. and Others v. Lithuania*, 2018, § 70). However, recent cases have considered questions of imputability/responsibility/ attribution without explicitly referring to compatibility *ratione personae* (*Assanidze v. Georgia* [GC], 2004, §§ 144 et seq.; *Hussein v. Albania and 20 Other Contracting States* (dec.), 2006; *Isaak and Others v. Turkey* (dec.), 2006; *Stephens v. Malta (no. 1)*, § 45; *Jaloud v. the Netherlands* [GC], 2014, §§ 154-155). In *Georgia v. Russia (II)* [GC], 2021, § 162, the Court has noted that the question whether the facts complained of fall within the jurisdiction of the respondent State and whether they are attributable to that State and engage its responsibility are separate matters, the latter two having to be determined on an examination of the merits.

293. The liability of Contracting States for the acts of private persons, while traditionally considered under the heading of compatibility *ratione personae*, may also depend on the terms of the individual rights in the Convention and the extent of the positive obligations attached to those rights (see, for example, *Söderman v. Sweden* [GC], 2013, § 78; *Aksu v. Turkey* [GC], 2012, § 59; *Siliadin v. France*, 2005, §§ 77-81; *Beganović v. Croatia*, 2009, §§ 69-71). The State's responsibility may be engaged under the Convention as a result of its authorities' acquiescence or connivance in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 318; see, by contrast, *Makuchyan and Minasyan v. Azerbaijan and Hungary*, 2020, §§ 111-120, concerning crimes committed abroad by an officer in its private capacity, without clear and unequivocal "acknowledgment" and "adoption" by the State) or even when those acts are performed by foreign officials on its territory (*El-Masri v. the former Yugoslav Republic of Macedonia* [GC], 2012, § 206; *Al Nashiri v. Poland*, 2014, § 452; *Nasr and Ghali v. Italy*, 2016, § 241; *Al Nashiri v. Romania*, 2018, §§ 594 and 600-602).

294. The responsibility of States for judicial decisions concerning disputes between private persons can be engaged on the basis of the existence of an interference with a Convention right (*Zhidov v. Russia*, 2018, §§ 71 and 95, concerning judicial orders to demolish unlawfully constructed buildings following requests by private companies operating gas and oil pipelines, where the Court considered that such orders amounted to an interference by the authorities with the applicants' right to the peaceful enjoyment of their possessions, dismissing therefore the Government's preliminary objection of incompatibility *ratione personae*).

4. Questions concerning the possible responsibility of States Parties to the Convention on account of acts or omissions linked to their membership of an international organisation

295. The Convention cannot be interpreted in a manner which would subject to the Court's scrutiny acts and omissions of Contracting Parties which are covered by United Nations Security Council

Resolutions and occur prior to or in the course of United Nations missions to secure international peace and security. To do so would be to interfere with the fulfilment of a key United Nations mission (*Behrami v. France and Saramati v. France, Germany and Norway* (dec.) [GC], 2007, §§ 146-152; contrast with *Al-Jedda v. the United Kingdom* [GC], 2011, §§ 74-85, concerning acts of national troops within a multinational force over which the United Nations Security Council had no authority and control and which were attributable to the Contracting State). However, the Court adopts a different approach in respect of the national acts implementing the United Nations Security Council Resolutions, which are not directly attributable to the United Nations and may therefore engage the State's responsibility (*Nada v. Switzerland* [GC], 2012, §§ 120-122; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, §§ 93-96).

296. As regards decisions of international courts, the Court has by extension ruled that it had no jurisdiction *ratione personae* to deal with applications concerning actual proceedings before the International Criminal Tribunal for the former Yugoslavia, which was set up by virtue of a United Nations Security Council resolution (*Galić v. the Netherlands* (dec.), 2009; *Blagojević v. the Netherlands* (dec.), 2009). For the dismissal of public officials by decision of the High Representative for Bosnia and Herzegovina, whose authority derives from United Nations Security Council resolutions, see *Berić and Others v. Bosnia and Herzegovina* (dec.), 2007, §§ 26 et seq.

297. An alleged violation of the Convention cannot be attributed to a Contracting State on account of a decision or measure emanating from a body of an international organisation of which that State is a member, where it has not been established or even alleged that the protection of fundamental rights generally afforded by the international organisation in question is not "equivalent" to that ensured by the Convention and where the State concerned was not directly or indirectly involved in carrying out the impugned act (*Gasparini v. Italy and Belgium* (dec.), 2009; *Klausecker v. Germany* (dec.), 2015, § 97).

298. Thus, the Court has held that it had no jurisdiction *ratione personae* to deal with complaints directed against individual decisions given by the competent body of an international organisation in the context of a labour dispute falling entirely within the internal legal order of such an organisation with a legal personality separate from that of its member States, where those States at no time intervened directly or indirectly in the dispute and no act or omission on their part engaged their responsibility under the Convention (individual labour dispute with Eurocontrol: *Boivin v. 34 member States of the Council of Europe* (dec.), 2008; disciplinary proceedings within the International Olive Council: *Lopez Cifuentes v. Spain* (dec.), 2009, §§ 28-29; disciplinary proceedings within the Council of Europe: *Beygo v. 46 member States of the Council of Europe* (dec.), 2009). For alleged violations of the Convention resulting from the dismissal of a European Commission official and the procedures before the EU courts, see *Connolly v. 15 Member States of the European Union* (dec.), 2008; *Andreasen v. the United Kingdom and 26 other member States of the European Union* (dec.), 2015, §§ 71-72.

299. It is instructive to compare those findings with the Court's examination of allegations of a structural deficiency in an internal mechanism of an international organisation to which the States Parties concerned had transferred part of their sovereign powers, where it was argued that the organisation's protection of fundamental rights was not "equivalent" to that ensured by the Convention (*Gasparini v. Italy and Belgium* (dec.), 2009; *Klausecker v. Germany* (dec.), 2015, §§ 98-107).

300. The Court adopts a different approach to cases involving direct or indirect intervention in the dispute in issue by the respondent State, whose international responsibility is thus engaged: see *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 153; *Michaud v. France*, 2012, §§ 102-104; *Nada v. Switzerland* [GC], 2012, §§ 120-122; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, §§ 93-96; compare with *Behrami v. France and Saramati v. France, Germany and Norway* (dec.) [GC], 2007, § 151. See also the following examples:

- decision not to register the applicant as a voter on the basis of a treaty drawn up within the European Union (*Matthews v. the United Kingdom* [GC], 1999);
- enforcement against the applicant of a French law implementing a European Union Directive (*Cantoni v. France*, 1996);
- denial of access to the German courts on account of jurisdictional immunities granted to international organisations (*Beer and Regan v. Germany* [GC], 1999; *Waite and Kennedy v. Germany* [GC], 1999; *Klausecker v. Germany* (dec.), 2015, § 45);
- impounding in the respondent State's territory by its authorities by order of a minister, in accordance with its legal obligations under European law (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, - a European Union Regulation which was itself issued following a United Nations Security Council resolution - see §§ 153-54);
- request by a domestic court to the Court of Justice of the European Union to give a preliminary ruling (*Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), 2009);
- decision of the Swiss authorities to return the applicants to Italy under the Dublin II Regulation establishing the criteria and mechanisms for determining the member State responsible for examining an asylum application lodged in one of the member States by a third-country national, applicable to Switzerland by virtue of an association agreement with the EU (*Tarakhel v. Switzerland* [GC], 2014, §§ 88-91).

301. As regards the European Union, applications against individual member States concerning their application of EU law will not necessarily be inadmissible on this ground (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 137; *Matthews v. the United Kingdom* [GC], 1999, §§ 26-35).

302. As regards applications brought directly against institutions of the European Union, which is not a Party to the Convention, there is some older authority for declaring them inadmissible for incompatibility *ratione personae* (*Confédération française démocratique du travail v. the European Communities*, Commission decision, 1978; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, § 152 and the references cited therein; *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.), 2009).

303. This position has also been adopted for the European Patent Office (*Lenzing AG v. Germany*, Commission decision, 1998) and other international organisations, such as the United Nations (*Stephens v. Cyprus, Turkey and the United Nations* (dec.), 2008).

304. As to whether a State's responsibility may be engaged on account of its Constitution, which is an annex to an international treaty, see *Sejdić and Finci v. Bosnia and Herzegovina* [GC], 2009, § 30.

B. Incompatibility *ratione loci*[9]

1. Principles

305. Compatibility *ratione loci* requires the alleged violation of the Convention to have taken place within the jurisdiction of the respondent State or in territory effectively controlled by it (*Cyprus v. Turkey* [GC], 2001, §§ 75-81; *Drozd and Janousek v. France and Spain*, 1992, §§ 84-90).

306. Where applications are based on events in a territory outside the Contracting State and there is no link between those events and any authority within the jurisdiction of the Contracting State, they will be dismissed as incompatible *ratione loci* with the Convention.

9. See section Jurisdiction.

307. Where complaints concern actions that have taken place outside the territory of a Contracting State, the Government may raise a preliminary objection that the application is incompatible *ratione loci* with the provisions of the Convention (*Loizidou v. Turkey* (preliminary objections), 1995, § 55; *Rantsev v. Cyprus and Russia*, 2010, § 203; *Mozer v. the Republic of Moldova and Russia* [GC], 2016, §§ 79 and 111; *Güzelyurtlu and Others v. Cyprus and Turkey*, §§ 170-174; *Hanan v. Germany* [GC], 2021, §§ 104-113). Such an objection will be examined under Article 1 of the Convention[10] (for the scope of the concept of "jurisdiction" under this Article, see for instance, *N.D. and N.T. Spain* [GC], §§ 102-103; *Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 75; *Güzelyurtlu and Others v. Cyprus and Turkey*, §§ 178-197; *Hanan v. Germany* [GC], 2021, §§ 132-142; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 547-564; see also point II.A.2 above). Even if the Government do not raise an objection, the Court can of its own motion examine the matter (*Vasiliciuc v. the Republic of Moldova*, 2017, § 22; *Stephens v. Malta* (no. 1), § 45).

308. Objections are sometimes raised by the respondent Government that an application is inadmissible as being incompatible *ratione loci* with the provisions of the Convention on the ground that, during the proceedings, the applicant was resident in another Contracting State but instituted proceedings in the respondent State because the regulations were more favourable. The Court will also examine such applications from the standpoint of Article 1 (*Haas v. Switzerland* (dec.), 2010).

309. It is clear, however, that a State will be responsible for acts of its diplomatic and consular representatives abroad and that no issue of incompatibility *ratione loci* may arise in relation to diplomatic missions (*X. v. Germany*, Commission decision, 1965; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 134; *M. v. Denmark*, Commission decision, 1994, § 1 and the references cited therein; see, by contrast, *M. N. and Others v. Belgium* (dec.) [GC], 2020, §§ 106 and 117-119) or to acts carried out on board aircraft and vessels registered in, or flying the flag of, that State (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 73; *Hirsi Jamaa and Others v. Italy* [GC], 2012, §§ 77 and 81; *Bakanova v. Lithuania*, 2016, § 63).

310. Lastly, a finding of lack of jurisdiction *ratione loci* will not dispense the Court from examining whether the applicants come under the jurisdiction of one or more Contracting States for the purposes of Article 1 of the Convention (*Drozd and Janousek v. France and Spain*, 1992, § 90).

311. Therefore, objections that the applicants are not within the jurisdiction of a respondent State will more normally be raised as claims that the application is incompatible *ratione personae* with the Convention (see submissions of the respondent Governments in *Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 35; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 300; *Weber and Saravia v. Germany* (dec.), 2006).

2. Specific cases

312. As regards applications concerning dependent territories, if the Contracting State has not made a declaration under Article 56 extending the application of the Convention to the territory in question, the application will be incompatible *ratione loci* (*Gillow v. the United Kingdom*, 1986, §§ 60-62; *Bui Van Thanh and Others v. the United Kingdom*, Commission decision, 1990; *Yonghong v. Portugal* (dec.), 1999; *Chagos Islanders v. the United Kingdom* (dec.), 2012, §§ 60-76). By extension, this also applies to the Protocols to the Convention (*Quark Fishing Limited v. the United Kingdom* (dec.), 2006).

313. Where the Contracting State has made such a declaration under Article 56, no such incompatibility issue will arise (*Tyrer v. the United Kingdom*, 1978, § 23).

10. See the Guide on Article 1 of the Convention.

314. If the dependent territory becomes independent, the declaration automatically lapses. Subsequent applications against the metropolitan State will be declared incompatible *ratione personae* (*Church of X. v. the United Kingdom*, Commission decision, 1968).

315. When the dependent territory becomes part of the metropolitan territory of a Contracting State, the Convention automatically applies to the former dependent territory (*Hingitaq 53 and Others v. Denmark* (dec.), 2006).

C. Incompatibility *ratione temporis*

1. General principles

316. In accordance with the general rules of international law (principle of non-retroactivity of treaties), the provisions of the Convention do not bind a Contracting Party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the Convention in respect of that Party (*Blečić* v. *Croatia* [GC], 2006, § 70; *Šilih v. Slovenia* [GC], 2009, § 140; *Varnava and Others v. Turkey* [GC], 2009, § 130).

317. Jurisdiction *ratione temporis* covers only the period after the ratification of the Convention or the Protocols thereto by the respondent State. However, the Convention imposes no specific obligation on Contracting States to provide redress for wrongs or damage caused prior to that date (*Kopecký v. Slovakia* [GC], 2004, § 38; *Tamazount and Others v. France*, 2024, §§ 134-135 and the references cited therein).

318. From the ratification date onwards, all the State's alleged acts and omissions must conform to the Convention or its Protocols, and subsequent facts fall within the Court's jurisdiction even where they are merely extensions of an already existing situation (*Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, 2000, § 43). The Court may, however, have regard to facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (*Broniowski v. Poland* (dec.) [GC], 2002, § 74; *Hutten-Czapska v. Poland* [GC], 2006, §§ 147-153; *Kurić and Others v. Slovenia* [GC], 2012, §§ 240-241).

319. The Court is obliged to examine its competence *ratione temporis* of its own motion and at any stage of the proceedings, since this is a matter which goes to the Court's jurisdiction rather than a question of admissibility in the narrow sense of the term (*Blečić* v. *Croatia* [GC], 2006, § 67; *Petrović v. Serbia*, 2014, § 66; *Hoti v. Croatia*, 2018, § 84 – compare *Agrotexim and Others v. Greece*, 1995, § 58).

2. Application of these principles

a. Critical date in relation to the ratification of the Convention or acceptance of the jurisdiction of the Convention institutions

320. In principle, the critical date for the purposes of determining the Court's temporal jurisdiction is the date of the entry into force of the Convention and Protocols in respect of the Party concerned (for an example, see *Šilih v. Slovenia* [GC], 2009, § 164).

321. However, the 1950 Convention made the competence of the Commission to examine individual applications (Article 25) and the jurisdiction of the Court (Article 46) dependent on specific declarations by the Contracting States to that effect. These declarations could be subject to limitations, in particular temporal limitations. As regards the countries which drafted such declarations after the date of their ratification of the Convention, the Commission and the Court have accepted temporal limitations of their jurisdiction with respect to facts falling within the period

between the entry into force of the Convention and the relevant declaration (*X. v. Italy*, Commission decision, 1976; *Stamoulakatos v. Greece (no. 1)*, 1993, § 32; see also *Chong and Others v. the United Kingdom* (dec.), 2018, §§ 84-90, where the Court clarified that the "critical date" was the date on which the United Kingdom had recognised the right of individual petition – 1966 – and not when the Convention had entered into force with respect to that State - 1953).

322. Where there is no such temporal limitation in the Government's declaration (see France's declaration of 2 October 1981), the Convention institutions have recognised the retrospective effect of the acceptance of their jurisdiction (*X. v. France*, Commission decision, 1982).

323. The temporal restrictions included in these declarations remain valid for the determination of the Court's jurisdiction to receive individual applications under the current Article 34 of the Convention by virtue of Article 6 of Protocol No. 11 (*Blečić* v. *Croatia* [GC], 2006, § 72). The Court, taking into account the previous system as a whole, has considered that it had jurisdiction as from the first declaration recognising the right of individual petition to the Commission, notwithstanding the lapse of time between the declaration and the recognition of the Court's jurisdiction (*Cankoçak v. Turkey*, 2001, § 26; *Yorgiyadis v. Turkey*, 2004, § 24; *Varnava and Others v. Turkey* [GC], 2009, § 133).

b. Instantaneous facts prior or subsequent to entry into force or declaration

324. The Court's temporal jurisdiction must be determined in relation to the facts constituting the alleged interference. To that end it is essential to identify, in each specific case, the exact time of the alleged interference. In doing so the Court must take into account both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated (*Blečić* v. *Croatia* [GC], 2006, § 82; *Varnava and Others v. Turkey* [GC], 2009, § 131; Nešić v. Montenegro, 2020, §§ 36-38).

325. When applying this test to different judicial decisions prior and subsequent to the critical date, the Court has regard to the final judgment which was by itself capable of violating the applicant's rights (the Supreme Court's judgment terminating the applicant's tenancy in *Blečić* v. *Croatia* [GC], 2006, § 85; or the County Court's judgment in *Mrkić v. Croatia* (dec.), 2006), despite the existence of subsequent remedies which only resulted in allowing the interference to subsist (the subsequent Constitutional Court decision upholding the Supreme Court's judgment in *Blečić* v. *Croatia* [GC], 2006, § 85; or both decisions by the Supreme Court and the Constitutional Court in *Mrkić v. Croatia* (dec.), 2006).

326. The subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction (*Blečić* v. *Croatia* [GC], 2006, §§ 77-79). The Court has reiterated that domestic courts are not compelled to apply the Convention retroactively to interferences that occurred before the critical date (*Varnava and Others v. Turkey* [GC], 2009, § 130).

327. Examples of cases include:

- interferences occurring prior to the critical date and final court decisions delivered after that date (*Meltex Ltd v. Armenia* (dec.), 2008);
- interferences occurring after the critical date (*Lepojić v. Serbia*, 2007, § 45; *Filipović v. Serbia*, 2007, § 33);
- use of evidence obtained as a result of ill-treatment occurring prior to the critical date in judicial decisions delivered after that date (*Harutyunyan v. Armenia*, 2007, § 50);
- action for the annulment of title to property instituted prior to the critical date but concluded afterwards (*Turgut and Others v. Turkey*, 2008, § 73);
- date of final annulment of title to property (*Fener Rum Patrikliği (Ecumenical Patriarchy) v. Turkey* (dec.), 2007).

328. See also:

- conviction of the applicant in absentia by the Greek courts prior to Greece's declaration under Article 25, despite the ultimately unsuccessful appeals lodged against the conviction after that date (*Stamoulakatos v. Greece (no. 1)*, 1993, § 33);
- implicit decision of the Central Electoral Commission, prior to ratification, refusing the applicant's request to sign a petition without having a stamp affixed to his passport, whereas the proceedings instituted on that account were conducted after that date (*Kadiķis v. Latvia* (dec.), 2000);
- dismissal of the applicant from his job and civil action brought by him prior to ratification, followed by the Constitutional Court's decision after that date (*Jovanović v. Croatia* (dec.), 2002);
- ministerial order transferring the management of the applicants' company to a board appointed by the Minister for the Economy, thus depriving them of their right of access to a court, whereas the Supreme Court's judgment dismissing the applicants' appeal was given after the critical date (*Kefalas and Others v. Greece*, 1995, § 45);
- conviction of the applicant after the relevant declaration under Article 46 on account of statements made to journalists before that date (*Zana v. Turkey*, 1997, § 42);
- search of the applicant's company's premises and seizure of documents, although the subsequent proceedings took place after ratification (*Veeber v. Estonia (no. 1)*, 2002, § 55; see also *Kikots and Kikota v. Latvia* (dec.), 2002).

329. However, if the applicant makes a separate complaint as to the compatibility of the subsequent proceedings with an Article of the Convention, the Court may declare that it has jurisdiction *ratione temporis* with regard to the remedies in question (cassation appeal to the Supreme Court against the first-instance court's order to terminate the production and distribution of a newspaper in *Kerimov v. Azerbaijan* (dec.), 2006; unlawful distribution of bank assets occurred prior to the critical date and tort claim lodged after that date in *Kotov v. Russia* [GC], 2012, §§ 68-69).

330. The test and criteria established in *Blečić* v. *Croatia* [GC], 2006, are of a general character; the special nature of certain rights, such as those laid down in Articles 2 and 3 of the Convention, must be taken into consideration when applying those criteria (*Šilih v. Slovenia* [GC], 2009, § 147).

3. Specific situations

a. Continuing violations

331. The Convention institutions have accepted the extension of their jurisdiction *ratione temporis* to situations involving a continuing violation which originated before the entry into force of the Convention but persists after that date (*De Becker v. Belgium*, Commission decision, 1958).

332. The Court has followed this approach in several cases concerning the right of property:

- continuing unlawful occupation by the navy of land belonging to the applicants, without compensation (*Papamichalopoulos and Others v. Greece*, 1993, § 40);
- denial of access to the applicant's property in Northern Cyprus (*Loizidou v. Turkey* (merits), 1996), §§ 46-47);
- failure to pay final compensation for nationalised property (*Almeida Garrett, Mascarenhas Falcão and Others v. Portugal*, 2000, § 43);
- continued impossibility for the applicant to regain possession of her property and to receive an adequate level of rent for the lease of her house, stemming from laws which were in force before and after ratification of Protocol No. 1 by Poland (*Hutten-Czapska v. Poland* [GC], 2006, §§ 152-153);

- continued non-enforcement of a domestic decision in the applicant's favour against the State (*Krstić v. Serbia*, 2013, §§ 63-69).

333. Limits: The mere deprivation of an individual's home or property is in principle an "instantaneous act" and does not produce a continuing situation of "deprivation" in respect of the rights concerned (*Blečić* v. *Croatia* [GC], 2006, § 86 and the references cited therein). In the specific case of post-1945 deprivation of possessions under a former regime, see the references cited in *Preussische Treuhand GmbH & Co. KG a.A. v. Poland* (dec.), 2008, §§ 55-62.

334. The continuing nature of a violation can also be established in relation to any other Article of the Convention (for Article 2 and the death sentence imposed on the applicants before the critical date, see *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 406-408; for Article 8 and the failure to regulate the residence of persons who had been "erased" from the Register of Permanent Residents before the critical date, see *Kurić and Others v. Slovenia* [GC], 2012, §§ 240-241; see also for Article 8 and the impossibility to regularise the residence status of the applicant, *Hoti v. Croatia*, 2018, § 84).

b. "Continuing" procedural obligation to investigate disappearances that occurred prior to the critical date

335. A disappearance is not an "instantaneous" act or event. On the contrary, the Court considers a disappearance a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred. Furthermore, the subsequent failure to account for the whereabouts and fate of the missing person gives rise to a continuing situation. Thus, the procedural obligation to investigate will potentially persist as long as the fate of the person is unaccounted for; the ongoing failure to provide the requisite investigation will be regarded as a continuing violation, even where death may, eventually, be presumed (*Varnava and Others v. Turkey* [GC], 2009, §§ 148-149). For an application of the *Varnava* case-law, see *Palić v. Bosnia and Herzegovina*, 2011, § 46.

c. Procedural obligation under Article 2 to investigate a death: proceedings relating to facts outside the Court's temporal jurisdiction

336. The Court makes a distinction between the obligation to investigate a suspicious death or homicide and the obligation to investigate a suspicious disappearance.

337. Thus, it considers that the positive obligation to carry out an effective investigation under Article 2 of the Convention constitutes a detachable obligation capable of binding the State even when the death took place before the critical date (*Šilih v. Slovenia* [GC], 2009, § 159 – the case concerns a death which occurred before the critical date, whereas the shortcomings or omissions in the conduct of the investigation occurred after that date). Its temporal jurisdiction to review compliance with such obligations is exercised within certain limits it has established, having regard to the principle of legal certainty (*ibid*., §§ 161-163). Firstly, only procedural acts and/or omissions occurring after the critical date can fall within the Court's temporal jurisdiction (*ibid.*, § 162). Secondly, the Court emphasises that in order for the procedural obligations to come into effect there must be a genuine connection *between* the death and the entry into force of the Convention in respect of the respondent State. Thus, for such connection to be established, two criteria must be met: firstly, the lapse of time between the death and the entry into force of the Convention must have been reasonably short (not exceeding ten years) and, secondly, it must be established that a significant proportion of the procedural steps – including not only an effective investigation into the death of the person concerned but also the institution of appropriate proceedings for the purpose of determining the cause of the death and holding those responsible to account – were or ought to have been carried out after the ratification of the Convention by the State concerned (*Janowiec and Others v. Russia* [GC], 2013, §§ 145-148; *Mocanu and Others v. Romania* [GC], 2014, §§ 205-206). For a subsequent application of

the "genuine connection" test, see, for example, *Şandru and Others v. Romania*, 2009, § 57; *Çakir and Others v. Cyprus* (dec.), 2010; *Jelić v. Croatia*, 2014, §§ 55-58; *Melnichuk and Others v. Romania*, 2015, §§ 72-75; *Ranđelović and Others v. Montenegro*, 2017, §§ 92-94; *Chong and Others v. the United Kingdom* (dec.), 2018, §§ 84-90; *Jurica v. Croatia*, 2017, §§ 67-72 (application of the test to the procedural requirements under Article 8 in a case of medical negligence).

338. In *Tuna v. Turkey*, 2010, concerning a death as a result of torture, the Court for the first time applied the principles established in the *Šilih* judgment by examining the applicants' procedural complaints under Articles 2 and 3 taken together. The Court reiterated the principles regarding the "detachability" of procedural obligations, in particular the two criteria applicable in determining its jurisdiction *ratione temporis* where the facts concerning the substantive aspect of Articles 2 and 3 occurred, as in this case, outside the period covered by its jurisdiction, whereas the facts concerning the procedural aspect – that is, the subsequent procedure – occurred, at least in part, within that period.

339. For a subsequent application to procedural complaints under Article 3, see, for example, *Yatsenko v. Ukraine*, 2012, and *Mocanu and Others v. Romania* [GC], 2014, §§ 207-211.

340. However, the Court would not rule out that in certain extraordinary circumstances, which do not satisfy the "genuine connection" standard, the connection might also be based on the need to ensure that the guarantees and the underlying values of the Convention are protected in a real and effective manner (*Šilih v. Slovenia* [GC], 2009, § 163). This "Convention values" test, which operates as an exception to the general rule thus allowing a further extension of the Court's jurisdiction into the past, may be applied only if the triggering event has a larger dimension which amounts to a negation of the very foundations of the Convention (such as in cases of serious crimes under international law), but only to events which occurred after the adoption of the Convention, on 4 November 1950. Hence a Contracting Party cannot be held responsible under the Convention for not investigating even the most serious crimes under international law if they predated the Convention (*Janowiec and Others v. Russia* [GC], 2013, §§ 149-151, the case concerning the investigations into the massacres of Katyn in 1940, which accordingly fell outside the Court's jurisdiction *ratione temporis*; *Chong and Others v. the United Kingdom* (dec.), 2018, § 91, concerning the killing of twenty-four unarmed civilians by British soldiers in Malaya in 1948).

d. Consideration of prior facts

341. The Court takes the view that it may "have regard to the facts prior to ratification inasmuch as they could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date" (*Broniowski v. Poland* (dec.) [GC], 2002, § 74; *Hoti v. Croatia*, 2018, § 85). For instance, the Court could take into account relevant facts prior to that date in order to assess the context and the impugned situation as a whole (*Tamazount and Others v. France*, §§ 136 et 138).

e. Pending proceedings or detention

342. A special situation results from complaints concerning the length of judicial proceedings (Article 6 § 1 of the Convention) which were brought prior to ratification but continue after that date. Although its jurisdiction is limited to the period subsequent to the critical date, the Court has frequently taken into account the state of the proceedings by that date for guidance (for example, *Humen v. Poland* [GC], 1999, §§ 58-59; *Foti and Others v. Italy*, 1982, § 53).

The same applies to cases concerning pre-trial detention under Article 5 § 3 (*Klyakhin v. Russia*, 2004, §§ 58-59) or conditions of detention under Article 3 (*Kalashnikov v. Russia*, 2002, § 36).

343. As regards the fairness of proceedings, the Court may examine whether the deficiencies at the trial stage can be compensated for by procedural safeguards in an investigation conducted before the

critical date (*Barberà, Messegué and Jabardo v. Spain*, 1988, §§ 61 and 84). In doing so the Strasbourg judges consider the proceedings as a whole (see also *Kerojärvi v. Finland*, 1995, § 41).

344. A procedural complaint under Article 5 § 5 cannot fall within the Court's temporal jurisdiction where the deprivation of liberty occurred before the Convention's entry into force (*Korizno v. Latvia* (dec.), 2006).

f. Right to compensation for wrongful conviction

345. The Court has declared that it has jurisdiction to examine a complaint under Article 3 of Protocol No. 7 where a person was convicted prior to the critical date but the conviction was quashed after that date (*Matveyev v. Russia*, 2008, § 38).

g. Right not to be tried or punished twice

346. The Court has declared that it has temporal jurisdiction to examine a complaint under Article 4 of Protocol No. 7 where a person was tried or punished in a second set of proceedings after the critical date, even though the first set of proceedings was concluded prior to that date. The right not to be tried or punished twice cannot be excluded in respect of proceedings conducted before ratification where the person concerned was convicted of the same offence after ratification of the Convention (*Marguš v. Croatia* [GC], 2014, §§ 93-98).

D. Incompatibility *ratione materiae*

347. The compatibility *ratione materiae* with the Convention of an application or complaint derives from the Court's substantive jurisdiction. Since the question of applicability is an issue of the Court's jurisdiction *ratione materiae*, as a general rule the relevant analysis should be carried out at the admissibility stage, unless there is a particular reason to join this question to the merits (see the principles set forth in *Denisov v. Ukraine* [GC], 2018, § 93 and, as an example, see *Studio Monitori and Others v. Georgia*, 2020, § 32).

348. For a complaint to be compatible *ratione materiae* with the Convention, the right relied on by the applicant must be protected by the Convention and the Protocols thereto that have come into force. For example, applications are inadmissible where they concern the right to be issued with a driving licence (*X. v. Germany*, Commission decision, 1977), the right to self-determination (*X. v. the Netherlands*, Commission decision, 1976), the right of foreign nationals to enter and reside in a Contracting State (*Peñafiel Salgado v. Spain* (dec.), 2002) or an alleged universal individual right to the protection of a specific cultural heritage (*Ahunbay and Others v. Turkey* (dec.), 2019, §§ 21-26), since those rights do not, as such, feature among the rights and freedoms guaranteed by the Convention.

349. A "right to nationality" similar to that in Article 15 of the Universal Declaration of Human Rights, or a right to acquire or retain a particular nationality, is also not guaranteed (*Petropavlovskis v. Latvia*, 2015, §§ 73-74). Nevertheless, the Court has not excluded the possibility that an arbitrary denial of nationality might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial on the private life of the individual (*Slivenko and Others v. Latvia* (dec.) [GC], 2002, § 77; *Genovese v. Malta*, 2011, § 30). The same principles have to apply to the revocation of citizenship already obtained since this might lead to a similar – if not greater – interference with the individual's right to respect for family and private life (*Ramadan v. Malta*, 2016, §§ 84-85; *K2 v. the United Kingdom* (dec.), 2017, §§ 49-50; *Ghoumid and Others v. France*, 2020, §§ 41-44). Likewise, the Court has ruled that no right to renounce citizenship is guaranteed by the Convention or its Protocols; but it cannot exclude that an arbitrary refusal of a request to renounce citizenship might in certain very exceptional circumstances raise an issue under Article 8 of the Convention if such a refusal has an impact on the individual's private life (*Riener v. Bulgaria*, 2006, §§ 153-154).

350. Although the Court is not competent to examine alleged violations of rights protected by other international instruments, when defining the meaning of terms and notions in the text of the Convention it can and must take into account elements of international law other than the Convention (see, for example, *N.D. and N.T. v. Spain* [GC], 2020, §§ 172, 174-183 and the references cited therein; *Demir and Baykara v. Turkey* [GC], 2008, § 85; *Hassan v. the United Kingdom* [GC], 2014, §§ 99 et seq.; *Blokhin v. Russia* [GC], 2016, § 203).

351. According to *Blečić v. Croatia* [GC], 2006, § 67, any question affecting the Court's jurisdiction is determined by the Convention itself, in particular by Article 32 (*Slivenko and Others v. Latvia* (dec.) [GC], 2002, §§ 56 et seq.), and not by the parties' submissions in a particular case and the mere absence of a plea of incompatibility cannot extend that jurisdiction. As a result, the Court is obliged to examine whether it has jurisdiction *ratione materiae* at every stage of the proceedings (*Vegotex International S.A. v. Belgium* [GC], 2022, § 59), irrespective of whether or not the Government is estopped from raising such an objection (*Tănase v. Moldova* [GC], 2010, § 131). The Court can therefore address this issue of its own motion (*Studio Monitori and Others v. Georgia*, 2020, § 32;).

352. Applications concerning a provision of the Convention in respect of which the respondent State has made a reservation are declared incompatible *ratione materiae* with the Convention (*Benavent Díaz v. Spain* (dec.), 2017, § 53; *Kozlova and Smirnova v. Latvia* (dec.), 2001), provided that the issue falls within the scope of the reservation (*Göktan v. France*, 2002, § 51) and that the reservation is deemed valid by the Court for the purposes of Article 57 of the Convention (*Grande Stevens and Others v. Italy*, 2014, §§ 206 et seq.). For an interpretative declaration deemed invalid, see *Belilos v. Switzerland*, 1988. For a reservation in respect of prior international treaty obligations, see *Slivenko and Others v. Latvia* (dec.) [GC], 2002, §§ 60-61.

353. In addition, the Court has no jurisdiction *ratione materiae* to examine whether a Contracting Party has complied with the obligations imposed on it by one of the Court's judgments. Complaints of a failure either to execute the Court's judgment or to redress a violation already found by the Court fall outside its competence *ratione materiae* (*Bochan v. Ukraine (no. 2)* [GC], 2015, § 34 (citing *Egmez v. Cyprus* (dec.), 2012, and § 35). The Court cannot entertain complaints of this nature without encroaching on the powers of the Committee of Ministers of the Council of Europe, which supervises the execution of judgments by virtue of Article 46 § 2 of the Convention. However, the Committee of Ministers' role in this sphere does not mean that measures taken by a respondent State to remedy a violation found by the Court cannot raise a new issue undecided by the judgment and, as such, form the subject of a new application that may be dealt with by the Court (*Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* [GC], 2009, § 62). In other words, the Court may entertain a complaint that the reopening of proceedings at domestic level by way of implementation of one of its judgments gave rise to a new breach of the Convention (*ibid.*; *Lyons and Others v. the United Kingdom* (dec.), 2003). The Court may be competent to examine a complaint about the refusal by a domestic court to reopen civil or criminal proceedings following an earlier finding of a violation of Article 6 by the Court, as long as the complaint relates to a "new issue" undecided by the first judgment, for instance the alleged unfairness of the subsequent proceedings before the domestic court at issue (*Bochan v. Ukraine (no. 2)* [GC], 2015, §§ 35-39, in a civil context, *Moreira Ferreira v. Portugal (no. 2)* [GC], 2017, §§ 52-58, in a criminal context). Similarly, the Court may have jurisdiction to examine the alleged lack of effectiveness of a fresh investigation following a previous judgment finding a violation of the procedural limb of Article 3 (*V.D. v. Croatia (no. 2)*, 2018, §§ 46-54.

354. It is to be noted that the vast majority of decisions declaring applications inadmissible on the ground of incompatibility *ratione materiae* pertain to the limits of the scope of the Articles of the Convention or its Protocols, in particular Article 2 of the Convention (right to life), Article 3 (prohibition of torture), Article 4 of the Convention (prohibition of slavery and forced labour), Article 5 of the Convention (right to liberty and security), Article 6 of the Convention (right to a fair hearing), Article 7 (no punishment without law), Article 8 (right to respect for private and family life; see for instance, *Denisov v. Ukraine* [GC], 2018, § 134), Article 9 (freedom of thought, conscience and religion),

Article 10 (freedom of expression), Article 11 (freedom of assembly and association) and Article 1 of Protocol No. 1 (protection of property) and other Articles.). As concerns the applicability of Article 5 of Protocol No. 7, see *Blazheski v. North Macedonia* (dec.), 2023.

355. The scope of application of these Articles is examined in the relevant Case-Law Guide (available on the Court's ECHR Knowledge Sharing - Gateway homepage):

- Guide on Article 1 of the Convention;
- Guide on Article 2 of the Convention;
- Guide on Article 3 of the Convention.
- Guide on Article 4 of the Convention;
- Guide on Article 5 of the Convention;
- Guide on Article 6 (civil limb) of the Convention;
- Guide on Article 6 (criminal limb) of the Convention;
- Guide on Article 7 of the Convention;
- Guide on Article 8 of the Convention;
- Guide on Article 9 of the Convention;
- Guide on Article 10 of the Convention;
- Guide on Article 11 of the Convention;
- Guide on Article 12 of the Convention;
- Guide on Article 13 of the Convention;
- Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention;
- Guide on Article 15 of the Convention;
- Guide on Article 17 of the Convention;
- Guide on Article 18 of the Convention;
- Guide on Article 1 of Protocol No. 1;
- Guide on Article 1 of Protocol No. 7
- Guide on Article 2 of Protocol No. 1;
- Guide on Article 2 of Protocol No. 4
- Guide on Article 2 of Protocol No. 7
- Guide on Article 3 of Protocol No. 1;
- Guide on Article 3 of Protocol No. 4
- Guide on Article 4 of Protocol No. 4;
- Guide on Article 4 of Protocol No. 7.

III. Inadmissibility based on the merits

A. Manifestly ill-founded

Article 35 § 3 (a) of the Convention – Admissibility criteria

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

(a) the application is ... manifestly ill-founded ...;"

HUDOC keywords

Manifestly ill-founded (35-3-a)

1. General introduction

356. Even where an application is compatible with the Convention and all the formal admissibility conditions have been met, the Court may nevertheless declare it inadmissible for reasons relating to the examination on the merits. By far the most common reason is that the application is considered to be manifestly ill-founded. It is true that the use of the term "manifestly" in Article 35 § 3 (a) may cause confusion: if taken literally, it might be understood to mean that an application will only be declared inadmissible on this ground if it is immediately obvious to the average reader that it is far-fetched and lacks foundation. However, it is clear from the settled and abundant case-law of the Convention institutions (that is, the Court and, before 1 November 1998, the European Commission of Human Rights) that the expression is to be construed more broadly, in terms of the final outcome of the case. In fact, any application will be considered "manifestly ill-founded" if a preliminary examination of its substance does not disclose any appearance of a violation of the rights guaranteed by the Convention, with the result that it can be declared inadmissible at the outset without proceeding to a formal examination on the merits (which would normally result in a judgment).

357. The fact that the Court, in order to conclude that an application is manifestly ill-founded, sometimes needs to invite observations from the parties and enter into lengthy and detailed reasoning in its decision does nothing to alter the "manifestly" ill-founded nature of the application (*Mentzen v. Latvia* (dec.), 2004).

358. The majority of manifestly ill-founded applications are declared inadmissible *de plano* by a single judge or a three-judge committee (Articles 27 and 28 of the Convention). However, some complaints of this type are examined by a Chamber or even - in exceptional cases - by the Grand Chamber (*Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], 2002, §§ 78-86, concerning Article 6 § 1; *Demopoulos and Others v. Turkey* (dec.) [GC], 2010, §§ 130-138, concerning Article 8; *Hanan v. Germany* [GC], 2021, § 152, concerning the alleged lack of independence of the investigation undertaken in Germany).

359. The term "manifestly ill-founded" may apply to the application as a whole or to a particular complaint within the broader context of a case. Hence, in some cases, part of the application may be rejected as being of a "fourth-instance" nature, whereas the remainder is declared admissible and may even result in a finding of a violation of the Convention. It is therefore more accurate to refer to "manifestly ill-founded complaints".

360. In order to understand the meaning and scope of the notion of "manifestly ill-founded", it is important to remember that one of the fundamental principles underpinning the whole Convention system is the principle of subsidiarity. In the particular context of the European Court of Human Rights,

this means that the task of securing respect for implementing and enforcing the rights enshrined in the Convention falls first to the authorities of the Contracting States rather than to the Court. Only where the domestic authorities fail in their obligations may the Court intervene (*Scordino v. Italy (no. 1)* [GC], 2006, § 140). It is therefore best for the facts of the case to be investigated and the issues examined in so far as possible at the domestic level, so that the domestic authorities, who by reason of their direct and continuous contact with the vital forces of their countries are best placed to do so, can act to put right any alleged breaches of the Convention (*Dubská and Krejzová v. the Czech Republic* [GC], 2016, § 175).

361. Manifestly ill-founded complaints can be divided into four categories: "fourth-instance" complaints, complaints where there has clearly or apparently been no violation, unsubstantiated complaints and, finally, confused or far-fetched complaints.

2. "Fourth instance"[11]

362. One particular category of complaints submitted to the Court comprises what are commonly referred to as "fourth-instance" complaints. This term - which does not feature in the text of the Convention and has become established through the case-law of the Convention institutions (*Kemmache v. France (no. 3)*, 1994, § 44) - is somewhat paradoxical, as it places the emphasis on what the Court is not: it is not a court of appeal or a court which can quash rulings given by the courts in the States Parties to the Convention or retry cases heard by them, nor can it re-examine cases in the same way as a Supreme Court. Fourth-instance applications therefore stem from a misapprehension on the part of the applicants as to the Court's role and the nature of the judicial machinery established by the Convention.

363. Despite its distinctive features, the Convention remains an international treaty which obeys the same rules as other inter-State treaties, in particular those laid down in the Vienna Convention on the Law of Treaties (*Demir and Baykara v. Turkey* [GC], 2008, § 65). The Court cannot therefore overstep the boundaries of the general powers which the Contracting States, of their sovereign will, have delegated to it. These limits are defined by Article 19 of the Convention, which provides:

> "To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights ..."

364. Accordingly, the Court's powers are limited to verifying the Contracting States' compliance with the human rights engagements they undertook in acceding to the Convention (and the Protocols thereto). Furthermore, in the absence of powers to intervene directly in the legal systems of the Contracting States, the Court must respect the autonomy of those legal systems. That means that it is not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors may have infringed rights and freedoms protected by the Convention. It may not itself assess the facts which have led a national court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action (*García Ruiz v. Spain* [GC], 1999, § 28; *De Tommaso v. Italy* [GC], 2017, § 170).

365. In the light of the above considerations, the Court may not, as a general rule, question the findings and conclusions of the domestic courts as regards:

- the establishment of the facts of the case;
- the interpretation and application of domestic law;
- the admissibility and assessment of evidence at the trial;

11. For more information, see the Case-Law Guides on the civil and criminal aspects of Article 6 of the Convention.

- the substantive fairness of the outcome of a civil dispute;
- the guilt or innocence of the accused in criminal proceedings.

366. The only circumstance in which the Court may, as an exception to this rule, question the findings and conclusions in question is where the latter are flagrantly and manifestly arbitrary, in a manner which flies in the face of justice and common sense and gives rise in itself to a violation of the Convention (*De Tommaso v. Italy* [GC], 2017, § 170; Kononov v. Latvia [GC], § 189).

367. Fourth-instance complaints may be lodged under any substantive provision of the Convention and irrespective of the legal sphere to which the proceedings belong at domestic level. The fourth-instance doctrine is applied, for instance, in the following cases:

- cases concerning detention (*Thimothawes v. Belgium*, § 71);
- civil cases (*García Ruiz v. Spain* [GC], 1999, § 28; *Hasan Tunç and Others v. Turkey*, 2017, §§ 54-56);
- criminal cases (*Perlala v. Greece*, 2007, § 25; *Khan v. the United Kingdom*, 2000, § 34);
- cases concerning *praeter delictum* preventive measures (*De Tommaso v. Italy* [GC], 2017, §§ 156-173);
- taxation cases (*Dukmedjian v. France*, 2006, §§ 71-75; *Segame SA v. France*, 2012, §§ 61-65);
- cases concerning social issues (*Marion v. France*, 2005, § 22; *Spycher v. Switzerland* (dec.), 2015, §§ 27-32);
- administrative cases (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], 2012, §§ 196-199);
- cases on State liability (*Schipani and Others v. Italy*, 2015, §§ 59-61);
- disciplinary cases (*Pentagiotis v. Greece* (dec.), 2011);
- cases concerning voting rights (*Ādamsons v. Latvia*, 2008, § 118);
- cases concerning the entry, residence and removal of non-nationals (*Sisojeva and Others v. Latvia* (striking out) [GC], 2007, § 89; *Ilias and Ahmed v. Hungary* [GC], 2019, §§ 147, 150);
- cases concerning assemblies (*Mushegh Saghatelyan v. Armenia*, § 241);
- cases concerning Article 1 of Protocol No. 1 (*Anheuser-Busch Inc. v. Portugal* [GC], §§ 83-86).

368. However, most fourth-instance complaints are made under Article 6 § 1 of the Convention concerning the right to a "fair hearing" in civil and criminal proceedings. It should be borne in mind - since this is a very common source of misunderstandings on the part of applicants - that the "fairness" required by Article 6 § 1 is not "substantive" fairness (a concept which is part-legal, part-ethical and can only be applied by the trial judge), but "procedural" fairness. This translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (*Star Cate – Epilekta Gevmata and Others v. Greece* (dec.), 2010).

369. Accordingly, a fourth-instance complaint under Article 6 § 1 of the Convention will be rejected by the Court on the grounds that the applicant had the benefit of adversarial proceedings; that he was able, at the various stages of those proceedings, to adduce the arguments and evidence he considered relevant to his case; that he had the opportunity of challenging effectively the arguments and evidence adduced by the opposing party; that all his arguments which, viewed objectively, were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decision were set out at length; and that, accordingly, the proceedings taken as a whole were fair (*García Ruiz v. Spain* [GC], 1999; *De Tommaso v. Italy* [GC], 2017, § 172).

3. Clear or apparent absence of a violation

370. An applicant's complaint will also be declared manifestly ill-founded if, despite fulfilling all the formal conditions of admissibility, being compatible with the Convention and not constituting a

fourth-instance complaint, it does not disclose any appearance of a violation of the rights guaranteed by the Convention. In such cases, the Court's approach will consist in examining the merits of the complaint, concluding that there is no appearance of a violation and declaring the complaint inadmissible without having to proceed further. A distinction can be made between three types of complaint which call for such an approach.

a. No appearance of arbitrariness or unfairness

371. In accordance with the principle of subsidiarity, it is in the first place for the domestic authorities to ensure observance of the fundamental rights enshrined in the Convention. As a general rule, therefore, the establishment of the facts of the case and the interpretation of the domestic law are a matter solely for the domestic courts and other authorities, whose findings and conclusions in this regard are binding on the Court. However, the principle of the effectiveness of rights, inherent in the entire Convention system, means that the Court can and should satisfy itself that the decision-making process resulting in the act complained of by the applicant was fair and was not arbitrary (the process in question may be administrative or judicial, or both, depending on the case).

372. Consequently, the Court may declare manifestly ill-founded a complaint which was examined in substance by the competent national courts in the course of proceedings which fulfilled, *a priori*, the following conditions (in the absence of evidence to the contrary):

- the proceedings were conducted before bodies empowered for that purpose by the provisions of domestic law;
- the proceedings were conducted in accordance with the procedural requirements of domestic law;
- the interested party had the opportunity of adducing his or her arguments and evidence, which were duly heard by the authority in question;
- the competent bodies examined and took into consideration all the factual and legal elements which, viewed objectively, were relevant to the fair resolution of the case;
- the proceedings resulted in a decision for which sufficient reasons were given.

b. No appearance of a lack of proportionality between the aims and the means

373. Where the Convention right relied on is not absolute and is subject to limitations which are either explicit (expressly enshrined in the Convention) or implicit (defined by the Court's case-law), the Court is frequently called upon to assess whether the interference complained of was proportionate.

374. Within the group of provisions which set forth explicitly the restrictions authorised, a particular sub-group of four Articles can be identified: Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and Article 11 (freedom of assembly and association). All these Articles have the same structure: the first paragraph sets out the fundamental right in question, while the second paragraph defines the circumstances in which the State may restrict the exercise of that right. The wording of the second paragraph is not wholly identical in each case, but the structure is the same. For example, in relation to the right to respect for private and family life, Article 8 § 2 provides:

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

Article 2 of Protocol No. 4 (freedom of movement) also belongs to this category, as its third paragraph follows the same model.

375. When the Court is called upon to examine interference by the public authorities with the exercise of one of the above-mentioned rights, it always analyses the issue in three stages. If there has indeed been "interference" by the State (and this is a separate issue which must be addressed first, as the answer is not always obvious), the Court seeks to answer three questions in turn:

- Was the interference in accordance with a "law" that was sufficiently accessible and foreseeable?
- If so, did it pursue at least one of the "legitimate aims" which are exhaustively enumerated (the list of which varies slightly depending on the Article)?
- If that is the case, was the interference "necessary in a democratic society" in order to achieve that aim? In other words, was there a relationship of proportionality between the aim and the restrictions in issue?

376. Only if the answer to each of these three questions is in the affirmative is the interference deemed to be compatible with the Convention. If this is not the case, a violation will be found. In examining the third question, the Court must take into account the State's margin of appreciation, the scope of which will vary considerably depending on the circumstances, the nature of the right protected and the nature of the interference (*Paradiso and Campanelli v. Italy* [GC], 2017, §§ 179-182; *Mouvement raëlien suisse v. Switzerland* [GC], 2012, §§ 59-61).

377. The same principle applies not just to the Articles mentioned above, but also to most other provisions of the Convention – and to implicit limitations not spelled out in the Article in question. For instance, the right of access to a court secured by Article 6 § 1 of the Convention is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation of the right of access to a court will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (*Cudak v. Lithuania* [GC], 2010, § 55; *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016, § 129).

378. If, following a preliminary examination of the application, the Court is satisfied that the conditions referred to above have been met and that, in view of all the relevant circumstances of the case, there is no clear lack of proportion between the aims pursued by the State's interference and the means employed, it will declare the complaint in question inadmissible as being manifestly ill-founded. The reasons given for the inadmissibility decision in such a case will be identical or similar to those which the Court would adopt in a judgment on the merits concluding that there had been no violation (*Mentzen v. Latvia* (dec.), 2004).

c. Other relatively straightforward substantive issues

379. In addition to the situations described above, the Court will declare a complaint manifestly ill-founded if it is satisfied that, for reasons pertaining to the merits, there is no appearance of a violation of the Convention provision relied on. There are two sets of circumstances in particular in which this occurs:

- where there is settled and abundant case-law of the Court in identical or similar cases, on the basis of which it can conclude that there has been no violation of the Convention in the case before it (*Galev and Others v. Bulgaria* (dec.), 2009);
- where, although there are no previous rulings dealing directly and specifically with the issue, the Court can conclude on the basis of the existing case-law that there is no appearance of a violation of the Convention (*Hartung v. France* (dec.), 2009).

380. In either set of circumstances, the Court may be called upon to examine the facts of the case and all the other relevant factual elements at length and in detail (*Collins and Akaziebie v. Sweden* (dec.), 2007).

4. Unsubstantiated complaints: lack of evidence

381. The proceedings before the Court are adversarial in nature. It is therefore for the parties – that is, the applicant and the respondent Government – to substantiate their factual arguments (by providing the Court with the necessary factual evidence) and also their legal arguments (explaining why, in their view, the Convention provision relied on has or has not been breached).

382. The relevant parts of Rule 47 of the Rules of Court, which governs the content of individual applications, provide as follows:

> "1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out
>
> ...
>
> (d) a concise and legible statement of the facts;
>
> (e) a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and
>
> ...
>
> 2. (a) All of the information referred to in paragraph 1 (d) to (f) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document.
>
> ...
>
> 3.1 The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by
>
> (a) copies of documents relating to the decisions or measures complained of, judicial or otherwise;
>
> (b) copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;
>
> ...
>
> 5.1 Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless
>
> (a) the applicant has provided an adequate explanation for the failure to comply;
>
> ...
>
> (c) the Court otherwise directs of its own motion or at the request of an applicant.
>
> ..."

383. In addition, under Rule 44C § 1 of the Rules of Court:

> "Where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate."

384. Where the above-mentioned conditions are not met, the Court may declare the application inadmissible as being manifestly ill-founded. There are two sets of circumstances in particular where this may occur:

- where the applicant simply cites one or more provisions of the Convention without explaining in what way they have been breached, unless this is obvious from the facts of the case (*Trofimchuk v. Ukraine* (dec.), 2005; *Baillard v. France* (dec.), 2008);
- where the applicant omits or refuses to produce documentary evidence in support of his allegations (in particular, decisions of the courts or other domestic authorities), unless there are exceptional circumstances beyond his control which prevent him from doing so (for instance, if the prison authorities refuse to forward documents from a prisoner's case file to the Court) or unless the Court itself directs otherwise.

5. Confused or far-fetched complaints

385. The Court will reject as manifestly ill-founded complaints which are so confused that it is objectively impossible for it to make sense of the facts complained of by the applicant and the grievances he or she wishes to submit to the Court. The same applies to far-fetched complaints, that is, complaints concerning facts which are objectively impossible, have clearly been invented or are manifestly contrary to common sense. In such cases, the fact that there is no appearance of a violation of the Convention will be obvious to the average observer, even one without any legal training.

B. No significant disadvantage

Article 35 § 3 (b) of the Convention – Admissibility criteria

"3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:

...

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits"

HUDOC keywords

No significant disadvantage (35-3-b) – Continued examination not justified (35-3-b) – Case duly considered by a domestic tribunal (35-3-b)

1. Background to the new criterion

386. A new admissibility criterion was added to the criteria laid down in Article 35 with the entry into force of Protocol No. 14 on 1 June 2010. In accordance with Article 20 of the Protocol, the new provision will apply to all applications pending before the Court, except those declared admissible. Accordingly, in *Vistiņš and Perepjolkins v. Latvia* [GC], 2012, § 66, the Government's preliminary objection raising no significant disadvantage was dismissed because the application was declared admissible in 2006, before the entry into force of Protocol No. 14.

387. The introduction of this criterion was considered necessary in view of the ever-increasing caseload of the Court. It provides the Court with an additional tool which should assist it in concentrating on cases which warrant an examination on the merits. In other words, it enables the Court to reject cases considered as "minor" pursuant to the principle whereby judges should not deal with such cases ("*de minimis non curat praetor*").

388. The "*de minimis*" notion, while not formally being part of the European Convention on Human Rights until 1 June 2010, nevertheless has been evoked in several dissenting opinions of members of the Commission (see Commission reports in *Eyoum-Priso v. France*, 1997; *H.F. K-F v. Germany*, 1996;

Lechesne v. France, 1997), and of judges of the Court (see, for example, *Dudgeon v. the United Kingdom*, 1981; *O'Halloran and Francis v. the United Kingdom* [GC], 2007; *Micallef v. Malta* [GC], 2009), and also by Governments in their observations to the Court (see, for example, *Koumoutsea and Others v. Greece* (dec.), 2001).

389. Protocol No. 15 to the Convention, entered into force on 1 August 2021, amended Article 35 § 3 (b) of the Convention to delete the proviso that the case has been duly considered by a domestic tribunal. This amendment was intended to give greater effect to the maxim "*de minimis non curat praetor*" (see the Explanatory Report to Protocol No.15, § 23). It is applicable as of the date of the entry into force of the Protocol. This change applies also to applications on which the admissibility decision was pending at the date of entry into force of the Protocol.

2. Scope

390. Article 35 § 3 (b) is composed of two distinct elements. Firstly, the admissibility criterion itself: the Court may declare inadmissible any individual application where the applicant has suffered no significant disadvantage. Next comes the safeguard clause: the Court may not declare such an application inadmissible where respect for human rights requires an examination of the application on the merits. Where the two conditions of the inadmissibility criterion are satisfied, the Court declares the complaint inadmissible under Article 35 §§ 3 (b) and 4 of the Convention.

391. Before the entry into force of Protocol No. 15, no case could be rejected under this new criterion if it had not been duly considered by a domestic tribunal (see, for instance, *Varadinov v. Bulgaria*, 2017, § 25; compare and contrast *Çelik v. the Netherlands* (dec.), 2013). Following the entry into force of Protocol No. 15 amending the Convention, this second safeguard clause has been removed.[12] For the first application of the new wording of Article 35 § 3 (b), see *Bartolo v. Malta* (dec.), 2021.

392. In *Shefer v. Russia* (dec.), 2012, the Court noted that while no formal hierarchy exists between the different elements of Article 35 § 3 (b), the question of "significant disadvantage" is at the core of the new criterion. In most of the cases, a hierarchical approach is therefore taken, where each element of the new criterion is dealt with in turn (*Kiril Zlatkov Nikolov v. France*, 2016; *C.P. v. the United Kingdom* (dec.), 2016; *Borg and Vella v. Malta* (dec.), 2015). However, the Court has also in some cases considered it unnecessary to determine whether the first element of this admissibility criterion is in place (*Finger v. Bulgaria*, 2011; *Daniel Faulkner v. the United Kingdom*, 2016; *Turturica and Casian v. the Republic of Moldova and Russia*, 2016; *Varadinov v. Bulgaria*, 2017, § 25).

393. The Court alone is competent to interpret this admissibility requirement and decide on its application. During the first two years following entry into force, application of the criterion was reserved to Chambers and the Grand Chamber (Article 20 § 2 of Protocol No. 14). From 1 June 2012 the criterion has been used by all of the Court's judicial formations.

394. The Court may raise the new admissibility criterion of its own motion (for example in the cases of *Vasyanovich v. Russia* (dec.), 2016; *Ionescu v. Romania* (dec.), 2010; *Magomedov and others v. Russia*, 2017, § 49) or in response to an objection raised by the Government (*Gaglione and Others v. Italy*, 2010). In some cases, the Court looks at the new criterion before the other admissibility requirements (*Korolev v. Russia* (dec.), 2010; *Rinck v. France* (dec.), 2010; *Gaftoniuc v. Romania* (dec.), 2011; *Burov v. Moldova* (dec.), 2011; *Shefer v. Russia* (dec.), 2012. In other cases, it moves on to addressing the new criterion only after having excluded others (*Ionescu v. Romania* (dec.), 2010; *Holub v. the Czech Republic* (dec.), 2010).

12. Article 5 of Protocol No. 15: "In Article 35, paragraph 3, sub-paragraph b, of the Convention, the words "and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal" shall be deleted."

395. The application of the no significant disadvantage criterion is not limited to any particular right protected under the Convention. However, the Court has found it difficult to envisage a situation in which a complaint under Article 3, which would not be inadmissible on any other grounds and which would fall within the scope of Article 3 (which means that the minimum level of severity test would be fulfilled), might be declared inadmissible because the applicant has not suffered significant disadvantage (*Y v. Latvia*, 2014, § 44). Similarly, the Court has rejected the application of the the new criterion in relation to an Article 2 complaint, stressing that the right to life is one of the most fundamental provisions of the Convention (*Makuchyan and Minasyan v. Azerbaijan and Hungary*, 2020, §§ 72-73). In relation to complaints under Article 5, the Court has so far rejected the application of the "no significant disadvantage" admissibility criterion in the light of the prominent place that the right to liberty has in a democratic society (*Zelčs v. Latvia*, 2020, § 44 and the references cited therein). The Court has also stated that in cases concerning freedom of thought, conscience and religion (Article 9) or freedom of expression (Article 10), the application of the no significant disadvantage criterion should take due account of the importance of these freedoms and be subject to careful scrutiny by the Court (for Article 9, see *Stavropoulos and Others v. Greece*, 2020, §§ 29-30). In the context of Article 10, such scrutiny should encompass elements such as the contribution made to a debate of general interest and whether the case involves the press or other news media (*Margulev v. Russia*, 2019, §§ 41-42; *Sylka v. Poland* (dec.), 2014, § 28; *Panioglu v. Romania*, 2020, §§ 72-76; *Šeks v. Croatia*, 2022, § 48). As regards cases concerning freedom of assembly and freedom of association (Article 11), the Court should take due account of the importance of these freedoms for a democratic society and carry out a careful scrutiny (*Obote v. Russia*, 2019, § 31; *Yordanovi v. Bulgaria*, 2020, §§ 49-52). Unlike previous cases, in *Boronenkov v. Ukraine* (dec.), 2024, §§ 17-23, the Court found that the applicant had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) in respect of his complaint under Article 11 (freedom of assembly). In addition, having regard to the link between the Article 11 complaint and the complaint under Article 6, the Court arrived at the same conclusion in respect of the latter complaint (*ibid.*, § 23).

3. Whether the applicant has suffered a significant disadvantage

396. The main element contained in the criterion is the question of whether the applicant has suffered a "significant disadvantage". "Significant disadvantage" hinges on the idea that a violation of a right, however real from a purely legal point of view, should attain a minimum level of severity to warrant consideration by an international court. Violations which are purely technical and insignificant outside a formalistic framework do not merit European supervision (*Shefer v. Russia* (dec.), 2012). The assessment of this minimum level is relative and depends on all the circumstances of the case. The severity of a violation should be assessed by taking into account both the applicant's subjective perception and what is objectively at stake in a particular case (*Korolev v. Russia* (dec.), 2010).

397. However, the applicant's subjective perception cannot alone suffice to conclude that he or she suffered a significant disadvantage. The subjective perception must be justified on objective grounds (*Ladygin v. Russia* (dec.), 2011). A violation of the Convention may concern important questions of principle and thus cause a significant disadvantage regardless of pecuniary interest (*Korolev v. Russia* (dec.), 2010; *Biržietis v. Lithuania*, 2016; *Karelin v. Russia*, 2016). In *Giuran v. Romania*, 2011, §§ 17-25, the Court found that the applicant had suffered a significant disadvantage because the proceedings concerned a question of principle for him, namely his right to respect for his possessions and for his home. This was despite the fact that the domestic proceedings which were the subject of the complaint were aimed at the recovery of stolen goods worth 350 euros (EUR) from the applicant's own apartment. Similarly, in *Konstantin Stefanov v. Bulgaria*, 2015, §§ 46-47, the Court took into account the fact that the fine concerned a question of principle for the applicant, namely the respect for his position as a lawyer in the exercise of his professional activities.

398. Moreover, in evaluating the subjective significance of the issue for the applicant, the Court can take into account the applicant's conduct, for example in being inactive in court proceedings during a

certain period which demonstrated that in this case the proceedings could not have been significant to her (*Shefer v. Russia* (dec.), 2012). In *Giusti v. Italy*, 2011, §§ 22-36, the Court introduced certain new elements to take into account when determining the minimum threshold of seriousness to justify examination by an international court, namely the nature of the right allegedly violated, the seriousness of the claimed violation and/or the potential consequences of the violation on the personal situation of the applicant. In evaluating these consequences, the Court will examine, in particular, what is at stake or the outcome of the national proceedings. For instance, in *Boronenkov v. Ukraine* (dec.), 2024, §§ 17-21, the Court took into account several factors diminishing the significance of any "disadvantage" suffered by the applicant and found a lack of a "chilling effect" on the exercise of his right to freedom of assembly.

a. Lack of significant financial disadvantage

399. In a number of cases, the level of severity attained is assessed in light of the financial impact of the matter in dispute and the importance of the case for the applicant. The financial impact is not assessed merely in light of the non-pecuniary damages claimed by the applicant. In *Kiousi v. Greece* (dec.), 2011, the Court held that the amount of non-pecuniary damages sought, namely EUR 1,000, was not relevant for calculating what was really at issue for the applicant. This was because non-pecuniary damages are often calculated by applicants themselves on the basis of their own speculation as to the value of the litigation.

400. As far as insignificant financial impact is concerned, the Court has thus far found a lack of "significant disadvantage" in the following cases where the amount in question was equal or inferior to roughly EUR 500:

- in a case concerning proceedings in whiMerci infinimentch the amount in dispute was EUR 90 (*Ionescu v. Romania* (dec.), 2010);
- in a case concerning a failure by the authorities to pay to the applicant a sum equivalent to less than one euro (*Korolev v. Russia* (dec.), 2010);
- in a case concerning a failure by the authorities to pay to the applicant a sum roughly equal to EUR 12 (*Vasilchenko v. Russia*, 2010, § 49);
- in a case concerning a traffic fine of EUR 150 and the endorsement of the applicant's driving licence with one penalty point (*Rinck v. France* (dec.), 2010);
- delayed payment of EUR 25 (*Gaftoniuc v. Romania* (dec.), 2011);
- failure to reimburse EUR 125 (*Ştefănescu v. Romania* (dec.), 2011);
- failure by the State authorities to pay the applicant EUR 12 (*Fedotov v. Moldova* (dec.), 2011);
- failure by the State authorities to pay the applicant EUR 107 plus costs and expenses of 121, totalling EUR 228 (*Burov v. Moldova* (dec.), 2011);
- in a case concerning a fine of EUR 135, EUR 22 of costs and one penalty point on the applicant's driving licence (*Fernandez v. France* (dec.), 2012);
- in a case where the Court noted that the amount of pecuniary damages at issue was EUR 504 (*Kiousi v. Greece* (dec.), 2011);
- in a case where the initial claim of EUR 99 made by the applicant against his lawyer was considered in addition to the fact that he was awarded the equivalent of EUR 1,515 for the length of the proceedings on the merits (*Havelka v. the Czech Republic* (dec.), 2011);
- in the case of salary arrears of a sum equivalent to approximately EUR 200 (*Guruyan v. Armenia* (dec.), 2012);
- in a case concerning EUR 227 in expenses (*Šumbera v. the Czech Republic* (dec.), 2012);
- in the case concerning enforcement of a judgment for EUR 34 (*Shefer v. Russia* (dec.), 2012);

- in a case concerning non-pecuniary damages of EUR 445 for cutting off an electricity supply (*Bazelyuk v. Ukraine* (dec.), 2012);
- in a case concerning administrative fines of EUR 50 (*Boelens and Others. v. Belgium* (dec.), 2012;
- where claims related to remuneration of between EUR 98 and 137, plus default interest (*Hudecová and Others v. Slovakia* (dec.), 2012);
- failure to enforce decisions of relatively small awards, between EUR 29 and 62 (*Shtefan and Others v. Ukraine*, 2014; *Shchukin and Others v. Ukraine* [Committee], 2014);
- in a case concerning administrative fines of EUR 35 and 31 (Şimşek, Andiç and Boğatekin v. Turkey (dec.), 2020, §§ 26-29);
- attachment for more than four years and a half of an applicant's shares in a company with an overall nominal value of two roubles, i.e., less than EUR 0.50 (*Sebeleva and Others v. Russia*, 2022, §§ 42-43).

401. In *Havelka v. the Czech Republic* (dec.), 2011, the Court took into consideration the fact that while the award of EUR 1,515 could not strictly speaking be considered to provide adequate and sufficient redress under the Court's case-law, the sum did not differ from the appropriate just satisfaction to such an extent as to cause the applicant a significant disadvantage.

402. In *Magomedov and others v. Russia*, 2017, the applicants had been awarded increases in various allowances and additional benefits in their capacity as participants in the emergency operations on the site of the Chernobyl nuclear power plant. As the national authorities had not appealed within the statutory deadlines, the judgments became final. However, the authorities were granted leave to lodge a late appeal and the judgments were later quashed. The applicants complained under Article 6 and Article 1 of Protocol 1. For some of the applicants, the first instance decision had been annulled before it could be executed. The Court rejected the Government's claim that these applicants had not suffered a significant disadvantage (§§ 47-48). However, applications from those that had received payments under the initial judgment were considered inadmissible under this criterion. The Court noted that these applicants were not required to reimburse the money they had received; that the Convention does not guarantee a right to a pension or social benefit of a particular amount; that the sums in question did not constitute the applicants' main source of income; that their right to allowances and benefits was not itself called into question since only the method of calculating the amounts owed had been corrected; and that the delay caused by the Government's late appeal had been beneficial to the applicants since they had continued to receive benefits calculated according to the original judgments in the intervening period (§§ 50-52).

403. Finally, the Court is conscious that the impact of a pecuniary loss must not be measured in abstract terms; even modest pecuniary damage may be significant in the light of the person's specific condition and the economic situation of the country or region in which he or she lives. Thus, the Court looks at the effect of the financial loss taking into account the individual's situation. In *Fernandez v. France* (dec.), 2012, the fact that the applicant was a judge at the administrative appeal court in Marseille was relevant for the court finding that the fine of EUR 135 was not a significant amount for her.

b. Significant financial disadvantage

404. Conversely, where the Court considers that the applicant has suffered significant financial disadvantage, then the criterion may be rejected. This has been so in the following examples of cases:

- in a case where delays were found of between nine and forty-nine months in enforcing judgments awarding compensation for length of proceedings where the sums involved ranged from EUR 200 to 13,749.99 (*Gaglione and Others v. Italy*, 2010);

- in a case concerning delays in the payment of compensation for expropriated property and amounts running to tens of thousands of euros (*Sancho Cruz and other "Agrarian Reform" cases v. Portugal*, 2011, §§ 32-35);
- in a case concerning disputed employment rights with the claim being approximately EUR 1,800 (*Živić v. Serbia*, 2011);
- in a case concerning length of civil proceedings of fifteen years and five months and the absence of any remedy with the claim being "an important amount" (*Giusti v. Italy*, 2011, §§ 22-36);
- in a case concerning length of civil proceedings where the sum in question concerned disability allowances which were not insignificant (*De Ieso v. Italy*, 2012);
- in a case where the applicant was required to pay court fees which exceeded, by 20 per cent, her monthly income (*Piętka v. Poland*, 2012, §§ 33-41);
- in a case where the applicants were obliged to pay a recurrent standing charge, although the highest single monthly instalment payable by them did not exceed 30 euros, as the overall amount could not be said to have been insignificant in the overall context in which the payment requirement operated and in the light of the standard of living in the respondent State (*Strezovski and Others v. North Macedonia*, 2020, §§ 47-49).

c. Lack of significant non-financial disadvantage

405. However, the Court is not exclusively concerned with cases of insignificant financial sums, when applying the no significant disadvantage criterion. The actual outcome of a case at national level might have repercussions other than financial ones. In *Holub v. the Czech Republic* (dec.), 2010; *Bratři Zátkové, A.S., v. the Czech Republic* (dec.), 2001; *Matoušek v. the Czech Republic* (dec.), 2011; *Čavajda v. the Czech Republic* (dec.), 2011, and *Hanzl and Špadrna v. the Czech Republic* (dec.), 2013, the Court based its decisions on the fact that the non-communicated observations of the other parties had not contained anything new or relevant to the case and the decision of the Constitutional Court in each case had not been based on them. In *Liga Portuguesa de Futebol Profissional v. Portugal* (dec.), 2012, the Court followed the same reasoning as that set out in *Holub v. the Czech Republic* (dec.), 2010. The prejudice in question was the fact that the applicant had not been sent the prosecutor's opinion, and not the sum of 19 million euros which the company could have been forced to pay. The Court found that the applicant company had not been prejudiced by the non-communication of the opinion in question.

406. Similarly, in *Jančev v. the former Yugoslav Republic of Macedonia* (dec.), 2011, the complaint concerned the non-pronouncement in public of a first-instance court decision. The Court concluded that the applicant had not suffered any significant disadvantage since he was not the aggrieved party. The Court also took into account that the obligation to demolish the wall and remove the bricks, which was a result of the applicant's unlawful behaviour, did not impose a significant financial burden on him. Another case in which no financial sum was directly invoked by the applicant was *Savu v. Romania* (dec.), 2011. In that case, the applicant complained of the non-enforcement of certain judgments in his favour, including the obligation to issue a certificate.

407. In *Gagliano Giorgi v. Italy*, 2012, the Court for the first time dealt with a complaint concerning the length of *criminal* proceedings. Looking at the fact that the applicant's sentence was reduced as a result of the length of the proceedings, the Court concluded that this reduction compensated the applicant or particularly reduced any prejudice which he would encounter as a result of the lengthy proceedings. Accordingly, the Court held that he had not suffered any significant disadvantage. In *Galović v. Croatia* (dec.), 2013, the Court found that the applicant had actually benefited from the excessive length of *civil* proceedings because she remained in her property for another six years and two months. Two further Dutch cases have also dealt with the length of criminal proceedings and the lack of an effective remedy, namely *Çelik v. the Netherlands* (dec.), 2013, and *Van der Putten v. the*

Netherlands (dec.), 2013. The applicants' complaints concerned solely the length of the proceedings before the Supreme Court as a consequence of the time taken by the Court of Appeal to complete the case file. However, in both, the applicants lodged an appeal on points of law to the Supreme Court without submitting any ground of appeal. Finding that no complaint was made about the judgment of the Court of Appeal or about any aspect of the prior criminal proceedings, the Court considered in both cases that the applicants suffered no significant disadvantage.

408. In *Kiril Zlatkov Nikolov v. France*, 2016, the Court found that there was no indication of any significant impact on the exercise of the applicant's right not to be discriminated against and his right to a fair trial in the context of the criminal proceedings against him, or even, more broadly, on his personal situation. Thus, the Court concluded that in any event, the discrimination alleged by the applicant in the enjoyment of his right to a fair trial did not cause him a "significant disadvantage".

409. In *Zwinkels v. the Netherlands* (dec.), 2012, the only interference with the right to respect to home under Article 8 concerned the unauthorised entry of labour inspectors into a garage, and accordingly the Court dismissed such a complaint as having "no more than a minimal impact" on the applicant's right to home or private life. Similarly, in *Borg and Vella v. Malta* (dec.), 2015, § 41, the fact that the applicants' relatively small piece of land had been expropriated for a period of time did not appear to have had any particular consequence on them.

410. In *C.P. v. the United Kingdom* (dec.), 2016, the applicant claimed that his temporary exclusion from school for three months had breached his right to education. The Court stated that "in most instances a three-month exclusion from school will constitute a "significant disadvantage" for a child". However, in the present case there were several factors diminishing the significance of any enduring "disadvantage" suffered by the applicant. Any prejudice sustained by the applicant regarding his right to education in substantive terms was thus speculative.

411. In *Vasyanovich v. Russia* (dec.), 2016, the Court concluded that the most substantial element of the applicant's claim had been his inability to redeem beer tokens and that this claim had been successful. The remainder of the applicant's claim, and the appeal, related to bets which he had lost and a claim for non-pecuniary damage, were largely speculative. In *Grozdanić and Grković-Grozdanić v. Croatia*, 2021, §§ 127-132, the Court noted that the access-to-court complaint submitted by the applicant under Article 6 § 1 of the Convention concerned the refusal to hear an appeal on points of law that lacked any prospect of success (on the merits), and therefore concluded that the applicant had not suffered a significant disadvantage.

412. The first time the Court applied the no significant disadvantage criterion in a freedom of expression case was in *Sylka v. Poland* (dec.), 2014, § 35. The case concerned an unfortunate verbal confrontation between the applicant and a police officer, with no wider implications or public interest undertones which might raise real concerns under Article 10 (contrary to *Eon v. France*, 2013).

d. Significant non-financial disadvantage

413. Turning to the cases where the Court has rejected the new criterion, in *3A.CZ s.r.o. v. the Czech Republic*, 2011, § 34, the Court found that the non-communicated observations could have contained some new information of which the applicant company was not aware. Distinguishing the *Holub v. the Czech Republic* (dec.), 2010, line of cases, the Court could not conclude that the company had not suffered a significant disadvantage. The same reasoning was used in *BENet Praha, spol. s r.o., v. the Czech Republic*, 2011, § 135; and *Joos v. Switzerland*, 2012, § 20.

414. In *Luchaninova v. Ukraine*, 2011, §§ 46-50, the Court observed that the outcome of the proceedings, which the applicant claimed had been unlawful and conducted in an unfair manner, had a particularly negative effect on her professional life. In particular, the applicant's conviction was taken as a basis for her dismissal from work. Therefore, the applicant had suffered a significant disadvantage.

In *Diacenco v. Romania*, 2012, § 46, the question of principle for the applicant was his right to be presumed innocent under Article 6 § 2.

415. Another Article 6 example is *Selmani and Others v. the former Yugoslav Republic of Macedonia*, §§ 28-30 and 40-41, which concerned the lack of an oral hearing in the proceedings before the Constitutional Court. The Government argued that an oral hearing would not have contributed to the establishment of new or different facts and that the relevant facts regarding the applicants' removal from the Parliament gallery had been undisputed between the parties and could have been established on the basis of written evidence submitted in support of the applicants' constitutional complaint. The Court considered that the Government's objection was at the very heart of the complaint, for which reason it examined it at the merits stage. The Court noted that the applicants' case was examined only before the Constitutional Court, which acted as a court of first and only instance. It also found that, although the applicants' removal from the Parliament gallery, as such, was not disputed between the parties, the Constitutional Court's decision was based on facts which the applicants contested and which were relevant for the outcome of the case. Those issues were neither technical nor purely legal. The applicants were therefore entitled to an oral hearing before the Constitutional Court. Thus, the Court dismissed the Government's objection.

416. In *Schmidt v. Latvia*, 2017, §§ 72-75, the applicant had separated from her husband, with whom she had been living in Latvia, and moved to the couple's former residence in Germany. Unbeknown to the applicant, her husband had subsequently brought divorce proceedings in Latvia. He had informed the divorce court that he did not know her current address. After an initial failed attempt to serve the divorce papers on the applicant at the couple's Latvian address, the divorce court had published two notifications in the Latvian Official Gazette. Unaware of the proceedings, the applicant had not attended the hearing and the divorce had been pronounced in her absence. She had learned that her marriage had been dissolved and that her husband had remarried only when she came to what she thought was her husband's funeral. The applicant complained that the divorce proceedings breached Article 6. The Court held that there were no grounds for concluding that the applicant had suffered no significant disadvantage, noting, *inter alia,* that the importance of the case for the applicant and its effects on her private and family life could not be underestimated.

417. The Court has on several occasions stated the importance of personal liberty in a democratic society and has not yet applied the no significant disadvantage criterion to an Article 5 case. In *Čamans and Timofejeva v. Latvia*, 2016, §§ 80-81, the Government submitted that the alleged restrictions on the applicants' rights not to be deprived of their liberty had lasted for only a few hours. The Court concluded that the applicants had suffered a disadvantage which could not be considered as insignificant. Another example of the importance of personal liberty, in connection to Article 6, is *Hebat Aslan and Firas Aslan v. Turkey*, 2014. In that case the subject matter and outcome of the appeals had been of crucial importance for the applicants, as they sought a court decision on the lawfulness of their detention and in particular the termination of that detention if it were to be found unlawful. In view of the importance of the right to liberty in a democratic society, the Court could not conclude that the applicants had not suffered a "significant disadvantage" in the exercise of their right to participate appropriately in the proceedings concerning the examination of their appeals.

418. In *Van Velden v. the Netherlands*, 2011, §§ 33-39, the applicant complained under Article 5 § 4 of the Convention. The Government argued that the applicant had not suffered any significant disadvantage since the entire period of pre-trial detention had been deducted from his prison sentence. However, the Court found that it was a feature of the criminal procedure of many contracting Parties to set periods of detention prior to final conviction and sentencing off against the eventual sentence; for the Court to hold generally that any harm resulting from pre-trial detention was thereby *ipso facto* nugatory for Convention purposes would remove a large proportion of potential complaints under Article 5 from the scope of its scrutiny. The Government's objection under the no significant disadvantage criterion was therefore rejected. Another Article 5 case in which the Government's objection under the present criterion was rejected was *Bannikov v. Latvia*, 2013,

§§ 54-60. In that case, the period of pre-trial detention was one year, eleven months and eighteen days.

419. In interesting cases involving complaints under Articles 8, 9, 10 and 11, the Government's objections on the basis of no significant disadvantage were also rejected. In *Biržietis v. Lithuania*, 2016, §§ 34-37, internal regulations of the prison prohibited the applicant from growing a beard and he contended that the prohibition had caused him mental suffering. The Court considered that the case raised issues concerning restrictions on prisoners' personal choices as to their desired appearance, which was arguably an important matter of principle. In *Brazzi v. Italy*, 2018, §§ 24-29, a case concerning a house search devoid of any financial implications, the Court took into account the subjective importance of the matter for the applicant (his right to the peaceful enjoyment of his possessions and his home) as well as what was objectively at stake, namely the existence under domestic law of effective judicial supervision in respect of a search. In *Cordella and Others v. Italy*, 2019, §§ 135-139, a case concerning the alleged lack of reaction by the State to air pollution by a steelworks, to the detriment of the surrounding population's health, the Court took into account the nature of the complaints brought by the applicants (under Article 8) and the existence of scientific studies showing the polluting effects of the emissions from the steelworks on the environment and on the health of the persons living in the affected areas. In *Vartic v. Romania (no. 2)*, 2013, §§ 37-41, the applicant complained that by refusing to provide him with the vegetarian diet required by his Buddhist convictions, the prison authorities had infringed his right to manifest his religion under Article 9. The Court concluded that the subject matter of the complaint gave rise to an important matter of principle (see also *Stavropoulos and Others v. Greece*, 2020, §§ 29-30, concerning a birth certificate revealing the parents' choice not to christen their child in relation to the right not to manifest their beliefs). In *Eon v. France*, 2013, § 34, the complaint under Article 10, turned on whether insulting the head of State should remain a criminal offence. Rejecting the Government's objection, the Court concluded that the issue was subjectively important to the applicant and objectively a matter of public interest. Another Article 10 case, *Jankovskis v. Lithuania*, 2017, §§ 59-63, concerned a prisoner's right to receive information. The applicant was denied access to a website containing information about learning and study programmes. Such information was directly relevant to the applicant's interest in obtaining education, which was in turn of relevance for his rehabilitation and subsequent reintegration into society. Having regard to the consequences of that interference for the applicant, the Court dismissed the Government's objection that the applicant had not suffered significant disadvantage. In *Šeks v. Croatia*, 2022, § 49, where the applicant complained about the refusal of the national authorities to declassify some documents that he considered essential for his scientific monograph, the Court dismissed the Government's objection based on the fact that the book in question had eventually been published, even without the respective references. In *Panioglu v. Romania*, 2020, §§ 75-76, the Court also dismissed the Government's objection and considered that the alleged violation of Article 10 (code-of-conduct proceedings against a judge for publishing allegations calling into question the moral and professional integrity of the President of the Court of Cassation) concerned "important questions of principle", having regard to the applicant's subjective perception that it had affected her prospects of career advancement and had penalised her for participating in a debate of general interest on the reform and the functioning of the justice system. In *Berladir and Others v. Russia*, 2012, § 34, the Court did not find it appropriate to dismiss the complaints under Articles 10 and 11 with reference to Article 35 § 3 (b) of the Convention, given that they arguably concerned a matter of principle. In *Akarsubaşı and Alçiçek v. Turkey*, 2018, §§ 16-20, the applicants, who were members of a trade union, had been fined for attaching a banner stating "Workplace on Strike" to a fence in front of a secondary school on a day of national mobilisation. They complained under Article 11 of the Convention. The Court rejected the Government's objection that the applicants had not suffered a significant disadvantage. It emphasized the crucial importance of the right to peaceful assembly and noted that the alleged violation was likely to have a considerable impact on the applicants' exercise of this right, since the fines could discourage them from participating in other assemblies as part of their trade union activities. The Court also relied on the

crucial importance of the freedom of peaceful assembly in rejecting the Government's objection under Article 35 § 3 (b) of the Convention in *Öğrü and Others v. Turkey*, 2017, §§ 53-54 (concerning human rights activists). Both these cases differ from the case of *Boronenkov v. Ukraine* (dec.), 2024, §§ 22-23, where the penalty imposed on the applicant and the alleged disadvantage he suffered were not significant enough to warrant examination of his case on the merits. On another hand, see, as regards freedom of association, *Yordanovi v. Bulgaria*, 2020, §§ 49-52 (concerning criminal proceedings for attempting to set up a political party).

420. Two examples where the Court has rejected governments' objections involving complaints under Article 1 of Protocol No. 1 are *Siemaszko and Olszyński v. Poland*, 2016, and *Statileo v. Croatia*, 2014. The first case concerned detainees complaining about an obligation to place sums of money, intended to constitute a savings fund to be handed over to them on their release, in a savings account with an interest rate so low that the value of their reserve diminished. The second case concerned the legislation on housing in Croatia. The applicant complained that he was unable to use or sell his flat, rent it to the person of his choice or charge the market rent for its lease.

4. The safeguard clause: whether respect for human rights requires an examination of the case on the merits.

421. Once the Court has determined, in line with the outlined approach, that no significant disadvantage has been caused, it proceeds to check whether the safeguard clause contained in Article 35 § 3 (b) would nevertheless oblige it to consider the complaint on the merits.

422. The second element is a safeguard clause (see the Explanatory Report to Protocol No. 14, § 81) to the effect that the application will not be declared inadmissible if respect for human rights as defined in the Convention or the Protocols thereto requires an examination on the merits. Such questions of a general character would arise, for example, where there is a need to clarify the States' obligations under the Convention or to induce the respondent State to resolve a structural deficiency affecting other persons in the same position as the applicant (*Savelyev v. Russia* (dec.), 2019, § 33).

The wording of this element is drawn from the second sentence of Article 37 § 1 of the Convention where it fulfils a similar function in the context of decisions to strike applications out of the Court's list of cases. The same wording is used in Article 39 § 1 as a basis for securing a friendly settlement between the parties.

423. The Convention organs have consistently interpreted those provisions as compelling them to continue the examination of a case, notwithstanding its settlement by the parties or the existence of any other ground for striking the case out of its list. Thus, even when other criteria for rejecting the complaint under Article 35 § 3 (b) of the Convention are met, respect for human rights could require the Court's examination of a case on the merits (*Maravić Markeš v. Croatia*, 2014, §§ 50-55). In *Daniel Faulkner v. the United Kingdom*, 2016, § 27, the Court did not feel the need to determine whether the applicant could be said to have suffered a "significant disadvantage", as his complaint raised a novel issue of principle under Article 5, an issue which warranted consideration by the Court.

424. Precisely this approach was taken in *Finger v. Bulgaria*, 2011, §§ 67-77, where the Court considered it unnecessary to determine whether the applicant had suffered a significant disadvantage because respect for human rights required an examination of the case on the merits (concerning a potential systemic problem of unreasonable length of civil proceedings and the alleged lack of an effective remedy).

425. In *Živić v. Serbia*, 2011, §§ 36-42, the Court also found that even assuming that the applicant had not suffered a significant disadvantage the case raised issues of general interest which required examination. This was due to the inconsistent case-law of the District Court in Belgrade as regards the right to fair wages and equal pay for equal work, that is, payment of the same salary increase granted to a certain category of police officers.

426. Similarly, in *Nicoleta Gheorghe v. Romania*, 2012, the Court rejected the new criterion despite the insignificant financial award at stake (EUR 17), because a decision of principle on the issue was needed for the national jurisdiction (the case concerned a question of presumption of innocence and equality of arms in criminal proceedings and was the first judgment after the change of national law). In *Juhas Đurić v. Serbia* (revision), 2012, the applicant complained of the payment of fees to police-appointed defence counsel in the course of a preliminary criminal investigation. The Court concluded that the issues complained of could not be considered trivial, or, consequently, something that did not deserve an examination on the merits, since they related to the functioning of the criminal justice system. Hence, the Government's objection based on the new admissibility criterion was rejected because respect for human rights required an examination on the merits. In *Strezovski and Others v. North Macedonia*, 2020, the Court rejected the Government's objection because, *inter alia*, the case raised questions of general importance (there were 12,000 households in the same position as the applicants) and there were more than 120 similar cases pending before the Court (§ 49).

427. As noted in paragraph 39 of the Explanatory Report to Protocol No. 14, the application of the admissibility requirement should ensure avoiding the rejection of cases which, notwithstanding their trivial nature, raise serious questions affecting the application or the interpretation of the Convention or important questions concerning national law (*Maravić Markeš v. Croatia*, 2014, § 51).

428. The Court has already held that respect for human rights does not require it to continue the examination of an application when, for example, the relevant law has changed and similar issues have been resolved in other cases before it (*Léger v. France* (striking out) [GC], 2009, § 51; *Rinck v. France* (dec.), 2010; *Fedotova v. Russia*, 2006). Nor where the relevant law has been repealed and the complaint before the Court is of historical interest only (*Ionescu v. Romania* (dec.), 2010). Similarly, respect for human rights does not require the Court to examine an application where the Court and the Committee of Ministers have addressed the issue as a systemic problem, for example non-enforcement of domestic judgments in the Russian Federation (*Vasilchenko v. Russia*, 2010) or Romania (*Gaftoniuc v. Romania* (dec.), 2011; *Savu v. Romania* (dec.), 2011) or indeed the Republic of Moldova (*Burov v. Moldova* (dec.), 2011) or Armenia (*Guruyan v. Armenia* (dec.), 2012), or where the Court has already dealt with almost identical issues in a number of cases in respect of the State concerned (*Hasanov and Others v. Azerbaijan* (dec.), § 45). Where the issue involves length of proceedings cases in Greece (*Kiousi v. Greece* (dec.), 2011, or the Czech Republic (*Havelka v. the Czech Republic* (dec.), 2011), the Court has had numerous opportunities to address the issue in previous judgments. This applies equally with respect to the public pronouncement of judgments (*Jančev v. the former Yugoslav Republic of Macedonia* (dec.), 2011) or the opportunity to have knowledge of and to comment on observations filed or evidence adduced by the other party (*Bazelyuk v. Ukraine* (dec.), 2012).

List of cited cases

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

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

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

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

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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