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

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TABLE OF CONTENTS / TABLE DES MATIÈRES

ARTICLE 6

Article 6 § 1 (civil)

Adversarial trial/Procédure contradictoire
Equality of arms/Égalité des armes

- Failure to send respondents' submissions to applicants for either information or comment in leave-to-appeal proceedings before the Supreme Court of Cassation: *inadmissible*
- Défaut d'envoi, pour information ou commentaire, des observations de la partie adverse aux requérants dans la procédure d'autorisation de saisir la Cour suprême de cassation: *irrecevable*

Article 6 § 2

Presumption of innocence/Présomption d'innocence

- Statements concerning a suspect under investigation contained in a judgment convicting co-accused tried separately: *Article 6 § 2 applicable; no violation*
- Déclarations relatives à un suspect visé par une enquête, contenues dans un jugement ayant condamné un coaccusé jugé séparément : *article 6 § 2 applicable ; non-violation*

ARTICLE 8

Respect for private and family life/Respect de la vie privée et familiale

- Restrictions on family visits for life-long prisoners: *relinquishment in favour of the Grand Chamber*
- Restrictions frappant les visites de proches pour les détenus condamnés à une peine de réclusion à perpétuité : *dessaisissement au profit de la Grande Chambre*

Expulsion

- Exclusion orders based on undisclosed national security grounds: *inadmissible*
- Arrêtés d'expulsion fondés sur des motifs de sécurité nationale non divulgués : *irrecevable*

ARTICLE 10

Freedom of expression/Liberté d'expression

- Award of damages against Internet news portal for offensive comments posted on its site by anonymous third parties: *case referred to the Grand Chamber*
- Condamnation à des dommages-intérêts d'un portail d'actualités internet pour des propos insultants postés sur son site par des tiers anonymes : *affaire renvoyée devant la Grande Chambre*

- Arrest and conviction of journalist for not obeying police orders during a demonstration: *no violation*
- Arrestation et condamnation d'un journaliste pour non-obtempération à des ordres donnés par la police lors d'une manifestation : *non-violation*

- Applicant's precarious financial situation as a result of award of damages for defamation against her: *violation*
- Condamnation pour diffamation à des dommages et intérêts résultant en une situation de grande précarité : *violation*

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies/Épuisement des voies de recours internes
Effective domestic remedy/Recours interne effectif – Estonia/Estonie

- Claim for compensation before the administrative courts in respect of complaint concerning length of civil proceedings: *effective remedy*
- Demande de réparation formée auprès des juridictions administratives en raison de la durée excessive d'une procédure civile : *recours effectif*

Effective domestic remedy/Recours interne effectif – Turkey/Turquie

- Entitlement to financial compensation under Article 141 § 1 (f) of the Code of Criminal Procedure for persons deprived of their liberty for a period exceeding the length of their sentence: *effective remedy*
- Recours en vertu de l'article 141 § 1 f) du code de procédure pénale ouvrant droit à réparation pécuniaire à toute personne privée de sa liberté pendant une durée supérieure à celle de la sanction : *recours effectif*

Six-month period/Délai de six mois

- Failure to lodge timely application concerning failure of insolvent State entity to pay judgment debt: *inadmissible*
- Introduction tardive d'une requête concernant la non-exécution d'une décision de justice par un organisme d'État devenu insolvable : *irrecevable*

Article 35 § 3

Abuse of the right of application/Requête abusive

- Representative's failure to inform Court that he had lodged two separate applications concerning the same facts on behalf of a husband and wife: *inadmissible*
- Manquement d'un représentant à informer la Cour sur l'introduction de deux requêtes séparées aux noms de deux époux, portant sur les mêmes faits : *irrecevable*

ARTICLE 2 OF PROTOCOL No. 4 / ARTICLE 2 DU PROTOCOLE N° 4

Article 2 § 1

Freedom of movement/Droit de circulation

- Inability of minor to leave State without documentation necessary to prove father's consent: *inadmissible*
- Impossibilité pour un mineur de quitter le territoire en l'absence des documents requis pour prouver le consentement du père : *irrecevable*

ARTICLE 1

Jurisdiction of States/Juridiction des États

Absence of territorial jurisdiction in respect of immigrant applicant who had voluntarily returned to his country of origin

Absence de juridiction territoriale à l'égard d'un requérant immigré qui est volontairement retourné dans son pays d'origine

Khan – United Kingdom/Royaume-Uni - 11987/11
Decision/Décision 28.1.2014 [Section IV]

Facts – The applicant, a Pakistani national, came to the United Kingdom in 2006 on a student visa. In 2009 he and four other Pakistani nationals were arrested on suspicion of conspiracy to carry out acts of terrorism. They were released by the police without charge but were served with a notice of intention to deport and taken into immigration detention. The applicant voluntarily left the United Kingdom in August 2009. In December 2009 he was notified by letter of the Secretary of State's decision to cancel his leave to remain in the United Kingdom on the grounds that his presence would not be conducive to the public good for reasons of national security. The letter also informed him that he was judged to be involved in Islamist extremist activity. His appeal against the decision to cancel his leave was dismissed by the Special Immigration Appeals Commission (SIAC). In his application to the European Court the applicant complained, *inter alia*, of violations of Articles 2, 3, 5 and 6 of the Convention.

Law – Article 1: Whether Articles 2, 3, 5 and 6 were engaged turned on whether the applicant could be said to be "within the jurisdiction" of the United Kingdom. A State's jurisdictional competence under Article 1 was primarily territorial, although the Court had recognised two principal exceptions to that principle, namely circumstances of "State agent authority and control" and "effective control over an area".[1] In the present case, where the applicant had returned voluntarily to Pakistan, neither exception applied, particularly as he had not complained about the acts of British diplomatic and consular agents in Pakistan and remained free to go about his life in the country without any control by agents of the United Kingdom. Moreover, and contrary to the applicant's submission, there was no principled reason to distinguish between someone who was in the jurisdiction of a Contracting State but had left voluntarily and someone who was never in the jurisdiction of that State. Nor was there any support in the Court's case-law for the applicant's argument that the State's obligations under Article 3 required it to take that provision into account when making adverse decisions against individuals, even when those individuals were not within its jurisdiction. Lastly, jurisdiction could not be established simply on the basis of the proceedings before SIAC. The mere fact that the applicant had availed himself of his right to appeal against the decision to cancel his leave to remain had no direct bearing on whether his complaints relating to the alleged real risk of his ill-treatment, detention and trial in Pakistan fell within the jurisdiction of the United Kingdom: it was the subject matter of the applicants' complaints alone that was relevant.

Conclusion: inadmissible (incompatible *ratione loci*).

1. See *Al-Skeini and Others v. the United Kingdom* [GC], 55721/07, 7 July 2011, Information Note 143.

ARTICLE 2

Life/Vie
Positive obligations (substantive aspect)/ Obligations positives (volet matériel)

Death of 6 children as a result of failure to secure and supervise firing range containing unexploded ordnance: *violation*

Absence de sécurisation et de surveillance d'une zone de tir contenant des munitions non explosées ayant causé la mort de 6 enfants : *violation*

Oruk – Turkey/Turquie - 33647/04
Judgment/Arrêt 4.2.2014 [Section II]

En fait – En octobre 1993, l'explosion d'un obus de mortier dans un village, situé à proximité d'une zone d'exercice de tir militaire comprenant des munitions militaires non explosées, provoqua la mort de six enfants dont le fils de la requérante. Entre autres, un croquis sommaire du lieu où l'explosion était survenue fut réalisé par la gendarmerie, de nombreux témoignages furent déposés et une expertise demandée. En décembre 1993, le procureur de la République rendit une décision d'incompétence. Le dossier fut transmis au parquet militaire. En décembre 1995, le procureur militaire adopta une décision de non-lieu à poursuivre. En juin 2003, la requérante forma opposition contre

cette décision. En janvier 2004, le tribunal militaire rejeta l'opposition ainsi formée.

En droit – Article 2 (*volet matériel*) : La présente affaire concerne l'exercice d'une activité militaire relevant de l'État dont la dangerosité ne faisait aucun doute et était pleinement connue des autorités nationales. La zone de tir n'était pas entourée d'un grillage ou de barbelés, elle ne comportait aucune signalétique d'avertissement et un panneau n'a été mis en place qu'après l'incident ayant coûté la vie à six enfants. Compte tenu du danger que représentent les munitions militaires non explosées, il relevait de la responsabilité première des autorités militaires de veiller à la sécurisation et à la surveillance de la zone afin d'empêcher tout accès à celle-ci et de réduire au maximum le risque de déplacement des munitions qui s'y trouvaient. À cette fin, une signalétique susceptible de marquer la dangerosité de la zone aurait dû être mise en place pour délimiter clairement le périmètre du terrain à risque. En l'absence de tels dispositifs, il appartenait à l'État d'assurer la dépollution de la zone de tir afin d'éliminer toutes les munitions non explosées. La seule information des villageois par le biais du *muhtar* du village sur les exercices de tir et sur la présence de munitions non explosées ne saurait être considérée comme suffisante pour exonérer les instances nationales de leur responsabilité au regard des personnes résidant à proximité de la zone d'exercice. En effet, cette information ne pouvait en tout état de cause être de nature à réduire de manière significative les risques en question puisque les autorités militaires elles-mêmes n'étaient pas en mesure de localiser les munitions. Eu égard à la gravité du danger en cause, les autorités internes auraient dû veiller à ce que la population civile résidant à proximité de la zone de tir militaire soit, dans son ensemble, avertie des risques auxquels elle s'exposait lorsqu'elle se trouvait en présence de munitions non explosées. Les autorités auraient dû particulièrement veiller à ce que les enfants, plus vulnérables que les adultes, prennent la mesure du danger que représente ce type de munition qu'ils s'avèrent susceptibles de manipuler par jeu, en les croyant inoffensifs. Les défaillances en l'espèce en matière de sécurité ont été telles qu'elles dépassent la simple négligence de la part de militaires dans la localisation et la destruction de munitions non explosées.

De plus et compte tenu de la gravité des défaillances constatées, il ne pouvait être remédié à l'atteinte au droit à la vie du fils de la requérante par le seul octroi de dommages-intérêts. On ne saurait dès lors reprocher à la requérante de ne pas avoir exercé les recours compensatoires dont se prévaut le Gouvernement pour exciper du non-épuisement des voies de recours internes. Il convient donc de rejeter l'exception préliminaire du Gouvernement à cet égard.

En conclusion, les autorités nationales avaient l'obligation de prendre de manière urgente des mesures appropriées pour protéger la vie des personnes résidant à proximité de la zone de tir litigieuse, et ce indépendamment de toute action de la part de la requérante, et de fournir une explication quant aux causes du décès du fils de l'intéressée et quant aux éventuelles responsabilités à cet égard par le biais d'une procédure engagée d'office, ce qu'elles n'ont pas fait.

Conclusion : violation (cinq voix contre deux).

Article 41 : 50 000 EUR pour préjudice moral ; demande pour dommage matériel rejetée.

Life/Vie
Use of force/Recours à la force
Effective investigation/Enquête effective

Inadequacies of investigation into use of lethal force by police officers resulting in deaths of father and his 13 year old son: *violation*

Omissions des organes d'instruction concernant l'usage de la force meurtrière par des policiers ayant conduit au décès d'un père et de son fils de 13 ans : *violation*

Makbule Kaymaz and Others/et autres – Turkey/Turquie - 651/10
Judgment/Arrêt 25.2.2014 [Section II]

En fait – Les requérants sont la veuve, la mère et le frère de A. Kaymaz, et la mère de U. Kaymaz. À la suite d'une dénonciation selon laquelle des personnes munies d'armes s'étaient rendues au domicile de la famille Kaymaz et projetaient de perpétrer un attentat terroriste, leur maison avait été placée sous surveillance jour et nuit les 20 et 21 novembre 2004. Le 21 novembre, le procureur de la République délivra un mandat de perquisition dudit domicile. Vers 17 heures, A. Kaymaz, le père de famille, et U. Kaymaz, son fils de 13 ans, furent tués par balles près de leur domicile. Le procès-verbal établi le jour même décrit qu'ils avaient été tués à la suite d'un affrontement armé survenu entre eux et les forces de l'ordre. Le 22 novembre 2004, le parquet déclencha d'office une enquête. Des témoins et les policiers furent entendus et des rapports d'expertise établis. En décembre 2004, l'action pénale fut ouverte contre quatre policiers pour homicide résultant de l'usage d'une force meur-

trière dans des circonstances dépassant le cadre de la légitime défense. En avril 2007, ils furent acquittés par la cour d'assises. Le pourvoi en cassation des requérants fut rejeté.

En droit – Article 2

a) *Volet matériel* – L'action policière visait à effectuer une arrestation régulière, soit l'un des objectifs mentionnés au paragraphe 2 de l'article 2. Les deux personnes ont été tuées par balles par des membres de la police. La charge de la preuve pèse donc sur les autorités.

Il a été décidé d'arrêter les suspects à leur sortie de leur maison mise sous surveillance afin de ne pas mettre en danger la vie des policiers et des membres de la famille qui y résidaient. Aucun incident douteux n'avait été remarqué lors de la surveillance. Ainsi il semblerait que la police n'ait aucunement tenu compte d'hypothèses autre que celle relative à la dénonciation anonyme. Aucun élément concret dans le dossier ne permettait de conclure que des terroristes étaient cachés dans le domicile, et aucun indice ne donnait à penser qu'un attentat terroriste ait pu y être planifié. En outre des questions se posent quant à la surveillance sachant que, le 21 novembre 2004, A. Kaymaz était sorti de son domicile en compagnie d'une personne qui lui avait rendu visite pour l'aider à sortir son véhicule de la boue. Par ailleurs, les trois policiers ayant déclaré avoir tiré sur les suspects ont mis l'accent sur la soudaineté de l'incident. Toutefois l'opération était programmée par la police et il était donc loisible aux policiers impliqués de soigner sa préparation. Ainsi, la Cour n'est pas convaincue que les forces de l'ordre avaient déployé la vigilance voulue pour s'assurer que tout risque pour la vie avait été réduit au minimum.

Des versions divergentes des faits existent entre les parties. L'établissement judiciaire des faits par la cour d'assises a tenu pour établi que les policiers avaient riposté en état de légitime défense dans l'exercice de leurs fonctions aux tirs du père, du fils et des proches des requérants. Mais les requérants soutiennent que leurs proches ont été victimes d'une exécution extrajudiciaire, étant donné qu'ils n'étaient pas armés lors de l'incident et qu'ils ont été tués délibérément par les forces de l'ordre. Or, à la lumière des éléments et en l'absence de preuves tangibles, ceci relève du domaine de l'hypothèse et de la spéculation. Dans ces conditions, il n'est pas établi, au-delà de tout doute raisonnable, que A. et U. Kaymaz aient été tués délibérément par les forces de l'ordre.

L'établissement des faits effectué par la cour d'assises se fondait principalement sur les déclarations obtenues par le parquet des policiers présents sur les lieux et enregistrées le 4 décembre 2004. Un délai de plus de 10 jours montre que les autorités n'ont pas agi avec la diligence requise. Et on ne peut exclure qu'un risque de collusion entre eux ait été créé. La version des faits présentée par les policiers a évolué dans le temps. Alors même qu'aucune des deux versions des faits n'était concordante avec la position des douilles, si l'origine de cette divergence avait été recherchée, cela aurait pu permettre aux autorités nationales d'apprécier davantage la crédibilité des déclarations des policiers accusés. En particulier, la position des douilles retrouvées sur les lieux ne concorde pas avec la version des faits présentée par les accusés mais la cour d'assises a indirectement accepté cette incohérence, en précisant que « toutes les douilles n'étaient pas restées à leur emplacement d'origine car les deux groupes étaient en mouvement lors de l'incident ». Toutefois, cette argumentation n'explique pas l'absence ou la présence de certaines douilles ou balles. Par conséquent, la crédibilité des déclarations des policiers n'a pas été appréciée de manière approfondie par les autorités nationales. Par ailleurs, les arguments du Gouvernement, à première vue, font penser que les proches des requérants étaient en possession d'armes et s'en étaient servis lors de l'incident. Toutefois, s'agissant d'un incident qui a abouti au décès de deux personnes dont un mineur âgé de 13 ans, les autorités nationales auraient dû explorer davantage les diverses pistes possibles avant d'admettre automatiquement la version fournie par les policiers accusés, d'autant plus que les déclarations de ces derniers présentaient des lacunes et des incohérences. En effet, aucune recherche d'empreintes digitales n'a été réalisée sur les armes retrouvées près des dépouilles des proches des requérants, alors que les rapports d'expertise avaient laissé planer le doute sur la dernière utilisation de ces armes et sur l'origine des résidus de tirs décelés sur les mains des défunts. Certes, la Cour ne saurait spéculer dans l'abstrait pour savoir si des expertises et recherches complémentaires auraient permis aux autorités internes de parvenir à une conclusion différente. Cela étant, les lacunes constatées dénotent une absence de volonté de rechercher d'éventuelles autres issues envisageables. En tout état de cause, ces expertises et recherches complémentaires auraient permis à la cour d'assises de rendre davantage crédible son verdict et d'exclure certaines pistes légitimement invoquées par les requérants. En conséquence, les omissions imputables aux organes d'instruction conduisent à conclure qu'il n'est pas établi que la force meurtrière utilisée contre les proches des requérants n'était pas allée au-delà de ce qui était « absolument nécessaire ».

Compte tenu de ce qui précède, l'opération de police au cours de laquelle A. et U. Kaymaz ont perdu la vie n'avait pas été préparée et contrôlée de manière à réduire autant que possible tout risque, et il n'est pas établi que la force meurtrière utilisée en l'espèce était absolument nécessaire au sens de l'article 2.

Conclusion: violation (unanimité).

b) *Volet procédural* – Les policiers impliqués dans l'incident n'ont été entendus par le procureur que plus de 10 jours après les faits. Qui plus est, ils n'ont pas été tenus séparés les uns des autres après l'incident et ils ont été appelés à faire des dépositions dans le cadre de l'enquête administrative avant que le parquet n'intervienne. Bien que rien ne suggère que les policiers en cause se soient entendus entre eux ou avec leurs collègues de la police, le simple fait que les démarches appropriées n'aient pas été entamées pour réduire le risque de pareille collusion s'analyse en une lacune importante affectant l'adéquation de l'enquête.

En outre, nonobstant le rôle capital de leurs déclarations quant à la préparation de l'opération, les deux policiers chargés de surveiller le domicile de la famille Kaymaz n'ont été entendus qu'environ un an après les faits. Cet élément démontre que les autorités d'enquête ne se sont pas souciées d'analyser de près la manière dont la surveillance a été faite et n'ont pas cherché à déterminer si l'opération antiterroriste avait été préparée et contrôlée par les autorités de façon à réduire au minimum, autant que faire se peut, le recours à la force meurtrière.

Par ailleurs, la cour d'assises a rejeté les demandes des requérants tendant à obtenir une reconstitution des faits sur les lieux de l'incident. Or, au vu des croquis des lieux et de la position des douilles appartenant aux policiers, une reconstitution présentait une importance cruciale et aurait dû être réalisée en présence des policiers mis en cause et des avocats des requérants. Un tel acte d'investigation aurait pu permettre aux autorités nationales d'élaborer les scénarios possibles et d'apprécier la crédibilité des déclarations des policiers. En effet, c'est seulement de cette façon que les autorités internes auraient pu éclaircir les contradictions présentes, et ce d'autant plus que la position des douilles collectées sur les lieux n'était pas concordante avec les déclarations des policiers. L'absence de mise en œuvre d'une reconstitution des faits, en dépit de la demande réitérée des requérants en ce sens, a sérieusement nui à la capacité des autorités nationales à contribuer à l'établissement des faits.

Enfin, il est troublant qu'aucune tentative n'ait été faite pour rechercher la présence d'empreintes digitales sur les armes retrouvées à côté des corps des proches des requérants.

Les carences ayant entaché l'enquête sont d'autant plus regrettables que, en dehors des policiers, il n'y a aucun témoin qui a vu de près la scène de l'échange de tirs entre les policiers et les proches des requérants. On peut donc en conclure que ces déficiences ont nui à la qualité de l'enquête et affaibli sa capacité à établir les circonstances des décès.

Conclusion: violation (unanimité).

La Cour conclut également à la non-violation de l'article 3 et de l'article 14 combiné avec l'article 2.

Article 41: 70 000 EUR pour préjudice moral; 70 000 EUR pour dommage matériel.

ARTICLE 3

Inhuman or degrading treatment/Traitement inhumain ou dégradant

Lack of independent access to prison facilities for paraplegic prisoner; lack of organised assistance with his mobility and daily routine resulting in his segregation and stigmatisation: *violation*

Impossibilité pour un prisonnier paraplégique d'avoir un accès indépendant à l'infrastructure de la prison et absence d'assistance organisée pour sa mobilité et sa routine quotidienne ayant pour conséquences sa mise à l'écart et stigmatisation: *violation*

Semikhvostov – Russia/Russie - 2689/12
Judgment/Arrêt 6.2.2014 [Section I]

Facts – The applicant, who was wheelchair-bound and suffering from numerous health problems, including complete paralysis of the lower body and extremely poor eyesight, was detained for almost three years in a correctional facility that was not adapted for the disabled. He had to rely on the help of other inmates to leave the dormitory and to access facilities such as the lavatory, bathhouse, library, shop and medical unit, which were inaccessible in a wheelchair.

Law – Article 3: The limitations on the applicant's personal mobility were so severe that he had been unable to eat at the canteen with fellow inmates. While it was not possible to verify the applicant's allegation that he had been denied food or had received it on dirty tableware, his formal segregation

from the rest of the inmate population had stigmatised him and by itself served as the main restriction on his leading a dignified life in the already harsh environment of a penal facility.

The State's obligation to ensure adequate conditions of detention included making provision for the special needs of prisoners with physical disabilities, and the State could not absolve itself from that obligation by shifting the responsibility to other inmates. By appointing fellow inmates to care for the applicant the State had not taken the necessary steps to remove the environmental and attitudinal barriers which had seriously impeded the applicant's ability to participate in daily activities with the general prison population which, in its turn, had precluded his integration and stigmatised him even further. Many of the applicant's access problems could have been solved by reasonable improvements which would have been neither costly nor complicated. However, the authorities' response had been restricted to the temporarily installation of an entrance ramp, the provision of a chair for use in the lavatory and assigning inmates to assist him. Those arrangements could not have ensured the applicant's autonomy or promote his physical and moral integrity. The restrictions on his personal mobility and lack of reasonable accommodation during his three-year long detention must have had a dehumanising effect. The domestic authorities had failed to treat him in a safe and appropriate manner consistent with his disability. In sum, the conditions of the applicant's detention and, in particular, his lack of independent access to parts of the facility, including the canteen and sanitation blocks, and the lack of any organised assistance with his mobility, must have caused the applicant unnecessary and avoidable mental and physical suffering amounting to inhuman and degrading treatment.

Conclusion: violation (unanimously).

The Court also found a violation of Article 13 of the Convention.

Article 41: EUR 15,000 in respect of non-pecuniary damage.

Use of pepper spray against an aggressive prisoner and his confinement to restraint bed for three hours and forty minutes: *violation*

Usage de gaz poivre contre un détenu agressif et son immobilisation sur un lit de contention pendant trois heures et quarante minutes: *violation*

Tali – Estonia/Estonie - 66393/10
Judgment/Arrêt 13.2.2014 [Section I]

Facts – While serving a prison sentence, the applicant refused to comply with the orders of prison officers. Pepper spray, physical force and a telescopic baton were used against him in order to overcome his resistance. He was then handcuffed and later confined in a restraint bed for three hours and forty minutes. As a result he sustained a number of injuries, including haematomas and blood in his urine. Criminal proceedings against the prison guards were discontinued following a finding that the use of force had been lawful as the applicant had not complied with their orders and had behaved aggressively. A claim for compensation filed by the applicant was dismissed.

Law – Article 3: The Court was aware of the difficulties the States might encounter in maintaining order and discipline in penal institutions. This was particularly so in cases of unruly behaviour by dangerous prisoners, a situation in which it was important to find a balance between the rights of different detainees or between the rights of the detainees and the safety of the prison officers. The applicant's character and prior behaviour had given the prison officers reason to be alert in relation to their safety and for taking immediate measures when he had displayed disobedience, threats and aggression towards them. Moreover, the domestic authorities had established that the applicant had behaved aggressively and that it had therefore been justified to take measures to combat his aggression.

However, as regards the legitimacy of the use of pepper spray, according to the concerns expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), it was a potentially dangerous substance that should not be used in confined spaces. If exceptionally it needed to be used in open spaces, there should be clearly defined safeguards in place. Pepper spray should never be deployed against a prisoner who had already been brought under control. Although pepper spray was not considered a chemical weapon and its use was authorised for the purpose of law enforcement, it could produce effects such as respiratory problems, nausea, vomiting, irritation of the respiratory tract, irritation of the tear ducts and eyes, spasms, chest pain, dermatitis and allergies. In strong doses it might cause necrosis of the tissue in the respiratory or digestive tract, pulmonary oedema or internal haemorrhaging. Having regard to those potentially serious effects on the one hand and the alternative equipment at the disposal of the prison guards on the

other, the circumstances had not justified its use in the instant case.

As regards the use of the restraint bed, the period for which the applicant had been strapped had been shorter than in the case *Julin v. Estonia* (9 hours), his situation had been assessed on an hourly basis and he had also been checked on by medical staff. However, those factors had not rendered that measure justified in the circumstances of the instant case. The means of restraint at issue should never be used as a means of punishment, but rather in order to avoid self-harm or serious danger to other individuals or to prison security. It had not been convincingly shown that after the confrontation with the prison officers had ended the applicant – who had been locked in a single-occupancy disciplinary cell – had posed a threat to himself or others. Furthermore, the period for which he had been strapped to the restraint bed was by no means negligible and his prolonged immobilisation must have caused him distress and physical discomfort. Considering the cumulative effect of those measures, the applicant had been subjected to inhuman and degrading treatment.

Conclusion: violation (unanimously).

Article 41: EUR 5,000 in respect of non-pecuniary damage.

(See also *Oya Ataman v. Turkey*, 74552/01, 5 December 2006, Information Note 92; *Ali Güneş v. Turkey*, 9829/07, 10 April 2012, Information Note 151; *Julin v. Estonia*, 16563/08 et al., 29 May 2012, Information Note 152; and *İzci v. Turkey*, 42606/05, 23 July 2013, Information Note 165)

ARTICLE 5

Article 5 § 4

Review of lawfulness of detention/Contrôle de la légalité de la détention

Requirement to prepare a fresh independent medical opinion on a detainee's mental health when examining a request for his release from detention: *violation*

Obligation, pour les autorités internes, de procéder à une nouvelle expertise psychiatrique d'un détenu avant d'examiner la demande de remise en liberté présentée par celui-ci : *violation*

Ruiz Riviera – Switzerland/Suisse - 8300/06
Judgment/Arrêt 18.2.2014 [Section II]

En fait – Accusé du meurtre de sa femme, le requérant fut examiné par un psychiatre. Celui-ci conclut dans un rapport établi le 10 octobre 1995 que l'intéressé souffrait de schizophrénie paranoïde aiguë et qu'il n'était donc pas responsable du meurtre de sa femme. Le tribunal devant lequel le requérant fut déféré constata que celui-ci avait tué sa femme mais le jugea irresponsable de ses actes au moment des faits et ordonna son internement dans l'annexe psychiatrique d'un établissement pénitencier. Le 7 juin 2001, le requérant subit un nouvel examen psychiatrique. Les psychiatres qui l'examinèrent conclurent que sa santé mentale n'avait guère changé depuis l'expertise psychiatrique de 1995. Le requérant présenta plusieurs demandes de remise en liberté, qui furent toutes rejetées. Le 23 mars 2004, deux psychologues de l'Office de l'exécution judiciaire, dont l'un avait suivi le requérant, rendirent un rapport annuel de thérapie. Ce rapport confirmait les conclusions de l'expertise psychiatrique réalisée en 2001 et relevait que le requérant continuait de nier sa maladie et refusait de suivre le traitement médical qui lui avait été prescrit. Il recommandait en conséquence de refuser à l'intéressé le bénéfice d'une libération conditionnelle. En juin 2004, le requérant présenta une nouvelle demande de libération conditionnelle, qui fut rejetée sur la base du rapport établi en 2004 et de l'expertise psychiatrique de 2001. Il fit appel de cette décision, soutenant qu'un psychiatre indépendant devait être désigné pour rechercher si son maintien en détention était nécessaire et faisant valoir que le dernier examen psychiatrique qu'il avait subi remontait à 2001, en vain.

En droit – Article 5 § 4 : Le rapport annuel de thérapie établi en 2004 n'équivalait pas à une expertise psychiatrique et la dernière expertise psychiatrique du requérant remontait à 2001. Dans l'affaire *Dörr c. Allemagne*, la Cour a accepté une décision de maintenir une personne en rétention de sûreté alors que la dernière expertise médicale sur laquelle se fondait cette décision datait de 6 ans, dans la mesure où les troubles relevés dans cette expertise avaient été confirmés par le psychologue de l'établissement au sein duquel la personne était internée. Cela étant, la présente affaire se rapproche plus de l'affaire *H.W. c. Allemagne* où la Cour a constaté une violation de l'article 5 § 1 de la Convention. Il est vrai que la dernière expertise médicale datait de plus de 12 ans alors que dans le cas du requérant la dernière expertise datait de moins de 4 ans mais, comme dans *H.W.*, le refus du requérant

de suivre la thérapie qui lui avait été prescrite était dû à la rupture du lien de confiance avec le personnel de l'établissement qui l'accueillait et à la situation de blocage qui en avait suivi. Dans ces conditions, et afin de s'informer avec le plus de précision possible sur l'état mental du requérant au moment de sa demande de libération à l'essai, l'Office de l'exécution judiciaire ou le juge cantonal auraient dû, au moins, tenter d'obtenir un avis médical tiers. Les autorités nationales n'étaient ainsi pas fondées à appuyer leurs décisions sur le rapport de thérapie de 2004 et ne disposaient donc pas de suffisamment d'éléments permettant d'établir que les conditions pour la libération à l'essai du requérant n'étaient pas réunies.

Conclusion : violation (quatre voix contre trois).

La Cour conclut également par quatre voix contre trois à la violation de l'article 5 § 4 concernant le refus des juridictions nationales de tenir une audience contradictoire.

Article 41 : constat de violation suffisant en lui-même pour le préjudice moral ; demande pour dommage matériel rejetée.

(Voir *Dörr c. Allemagne* (déc.), 2894/08, 22 janvier 2013, et *H.W. c. Allemagne*, 17167/11, 19 septembre 2013, Information Note 166)

ARTICLE 6

Article 6 § 1 (civil)

Adversarial trial/Procédure contradictoire
Equality of arms/Égalité des armes

Failure to send respondents' submissions to applicants for either information or comment in leave-to-appeal proceedings before the Supreme Court of Cassation: *inadmissible*

Défaut d'envoi, pour information ou commentaire, des observations de la partie adverse aux requérants dans la procédure d'autorisation de saisir la Cour suprême de cassation: *irrecevable*

Valchev and Others/et autres – Bulgaria/Bulgarie
- 47450/11, 26659/12 and/et 53966/12
Decision/Décision 21.1.2014 [Section IV]

Facts – The applicants were parties to different sets of civil proceedings. In 2010-11 they appealed on points of law. However, the Supreme Court of Cassation refused to admit their appeals for examination for failure to meet the criteria set out in the Code of Civil Procedure 2007. Before the European Court, the applicants complained under Article 6 § 1 that the failure of the domestic courts to send them the respondents' submissions in reply to their appeals on points of law and give them an opportunity to reply to those submissions in writing or orally before the Supreme Court of Cassation determined whether or not to admit the appeals for examination had put them at a net disadvantage *vis-à-vis* their opponents, in breach of the principles of adversarial proceedings and equality of arms. They further complained that they had unjustifiably been denied access to the Supreme Court of Cassation.

The Bulgarian Code of Civil Procedure 2007 envisaged a new role for the Supreme Court of Cassation in civil cases. Under that Code, the main task of that court is to unify the application of the law by giving judgments of principle. For that reason, appeals on points of law to it do not lie as of right, as used to be the case under the Code of Civil Procedure 1952, but are subject to a pre-selection. In the pre-selection proceedings, the Supreme Court of Cassation does not deal with the merits of the case or even with the merits of the appeal on points of law, but merely decides, by reference to the criteria set out in the Code, whether or not the appeal should be admitted for examination. It does so on the basis of a brief by the appellant addressing the question of the admissibility of the appeal and of any submissions by the respondent in reply. The Code makes no provision for the respondent's submissions to be sent to the appellant and does not say whether the appellant may or may not reply to them. In addition, it provides for a closed hearing of the admissibility point. The burden of framing the issues clearly and convincing the Supreme Court of Cassation that the appeal should be admitted for examination plainly rests on the appellant.

Law – Article 6 § 1

(a) *Equality of arms and adversarial trial* – Having noted that there was no uniform approach in its case-law as to the applicability of Article 6 to leave-to-appeal or similar proceedings before a supreme court, the Court left that question open.

The specific point at issue was whether the practice of the Bulgarian courts, in the absence of any explicit rule, not to send respondents' submissions in reply to appeals on points of law to appellants or to give appellants an opportunity to reply was in breach of the principles of equality of arms and adversarial trial. In the instant case, each of the applicants had

had an opportunity to put before the Supreme Court of Cassation all of their arguments as to why their appeals should be admitted for examination by reference to the relevant provisions of the 2007 Code. The non-communication of the respondents' submissions in reply and the lack of an additional opportunity to revisit the point in reaction to those submissions had not therefore – in view of the special nature of the proceedings – placed the applicants at a substantial disadvantage *vis-à-vis* their opponents or impermissibly impinged on the adversarial character of the proceedings. Moreover, it could not be overlooked that before reaching the Supreme Court of Cassation the applicants' cases had been subjected to a full and adversarial examination by two levels of court with full jurisdiction.

Conclusion: inadmissible (manifestly ill-founded).

(b) *Access to court* – As a result of the pre-selection procedure introduced by the 2007 Code, in the period 2010-12 only some 20% of appeals on points of law to the Supreme Court of Cassation in civil and commercial cases had been admitted for examination, relieving that court of the task of dealing with the merits of a considerable number of cases with a view to allowing it to concentrate on its core task of giving judgments elucidating and making uniform the application of the law. Similar rules governing access to the highest appeal courts existed in other Contracting States such as Albania, Armenia, Finland, France, Hungary, Poland, Sweden, Ukraine and the United Kingdom. In those circumstances, the Court was satisfied that the limitation on the admissibility of appeals on points of law in civil cases to the Bulgarian Supreme Court of Cassation had pursued a legitimate aim. The manner in which that limitation was set out in the 2007 Code was within the State's margin of appreciation. As regards the alleged vagueness of the provisions governing the pre-selection of appeals, such provisions had to be framed in a way that gave the highest courts of appeal enough latitude to determine whether or not to accept a case for examination, and thus allowed them to concentrate on their core task of unifying the application of the law throughout the judicial system at whose pinnacle they stood. In that connection, the relevant provision of the Bulgarian 2007 Code had been challenged before the Constitutional Court, which had held that, although somewhat vague, it was as a whole not unconstitutional, and that the manner of its application would be a question of case-law and judicial practice. In an apparent response to that ruling, the Supreme Court of Cassation had issued a binding interpretative decision in which it had sought to clarify, as much as possible, the intended manner of application of that provision. In sum, bearing in mind the special role of the Supreme Court of Cassation envisaged in the 2007 Code, the Court found that the above regulatory setup could not in itself be regarded as being in breach of Article 6 § 1.

In the cases of each of the applicants, the respective panels of the Supreme Court of Cassation had found, in fully reasoned decisions, that the appeals on points of law had not met the criteria set out in the 2007 Code. Not being a court of appeal from the national courts, the Court did not consider that it had to assess the correctness of those rulings. In those circumstances, and given that before reaching the Supreme Court of Cassation the applicants' cases had been examined by two levels of court with full jurisdiction, the restriction on the applicants' right of access to a court had not been disproportionate and had not impaired the very essence of that right.

Conclusion: inadmissible (manifestly ill-founded).

Article 6 § 2

Presumption of innocence/Présomption d'innocence

Statements concerning a suspect under investigation contained in a judgment convicting co-accused tried separately: *Article 6 § 2 applicable; no violation*

Déclarations relatives à un suspect visé par une enquête, contenues dans un jugement ayant condamné un coaccusé jugé séparément: *article 6 § 2 applicable; non-violation*

Karaman – Germany/Allemagne - 17103/10
Judgment/Arrêt 27.2.2014 [Section V]

Facts – The applicant was the founder of a Turkish TV station whose programmes were broadcast in Turkey and Germany and the director of its operating company. In 2006 German prosecution authorities started investigations into the activities of the applicant and others like him suspected of fraudulently using donated funds for commercial purposes and their own benefit. In 2008 the preliminary criminal proceedings against the applicant were separated from the investigations against the other suspects. In the same year, criminal investigations against the applicant based on the same allegations of fraud were initiated in Turkey. In 2008 two of the applicant's co-accused were convicted of aggravated fraud and another of aiding

and abetting them. Whilst the applicant had not formally been indicted at that stage, the judgment nevertheless described in detail how the scheme had been organised and the role played by the applicant. It originally indicated the applicant's full name (although only his initials were used in the Internet version) and explicitly stated that the applicant had played a prominent role in the criminal venture. The introductory remarks to the Internet publication further specified that references and findings in the judgment with respect to the actions of other persons, in particular those separately prosecuted, were not binding in relation to those persons, who still benefited from the presumption of innocence. The media coverage of the proceedings depicted the applicant as having played a main role in the events. In 2009 the applicant lodged a complaint with the German Federal Constitutional Court, arguing that the references in the reasoning of the regional court's judgment assuming his participation in the fraudulent use of the donated funds had violated his right to be presumed innocent. His complaint was, however, declared inadmissible. In 2013 the applicant's trials commenced in Turkey and in Germany. At the time the European Court gave its judgment in the present case, those proceedings were still pending.

Law – Article 6 § 2

(a) *Admissibility* – The Government argued that the applicant could not claim to be a victim of a violation of the right to be presumed innocent as any finding of guilt in the regional court's judgment was limited to his co-accused. Furthermore, the presumption of innocence did not protect a suspect from merely factual and indirect impacts resulting from a judgment delivered in criminal proceedings against third parties which did not contain a determination of his own guilt or expose him to disadvantages amounting to a conviction or sentence.

The Court observed however that, inn principle, the presumption of innocence could also be engaged by premature expressions of a suspect's guilt made within the scope of a judgment against separately prosecuted co-accused. In the applicant's case, when the regional court's judgment against his co-accused was handed down, preliminary criminal proceedings had already been instituted against the applicant on allegations of fraud in Germany and Turkey and he had thus been "charged with a criminal offence" within the meaning of Article 6 § 2, even though he had not been formally indicted. In this regard, the statements in the regional court's judgment, although not binding with respect to the applicant, could nevertheless have had a prejudicial effect on the criminal proceedings pending against him. In circumstances such as this, it was important to remember that a separately prosecuted accused who is not a party to the proceedings against his co-accused is deprived of any possibility to contest allegations with respect to his participation in the crime made during such proceedings.

Conclusion: preliminary objection dismissed (unanimously).

(b) *Merits* – The Court accepted that in complex criminal proceedings involving several persons who could not be tried together, references by the trial court to the participation of third parties, who might later be tried separately, could be indispensable for the assessment of the guilt of those on trial. In this respect, criminal courts were bound to establish facts relevant for the assessment of the legal responsibility of the accused as accurately and precisely as possible and they could not present decisive facts as mere allegations or suspicions. This also applied to facts related to the involvement of third parties. However, where such facts had to be introduced, the trial court had to exercise restraint and provide no more that the information necessary to assess the legal responsibility of the persons on trial.

In the present case, the impugned statements in the regional court's judgment had to be read in the context of German law, which clearly did not allow the drawing of any inferences on the guilt of a person from criminal proceedings in which he or she had not participated. In respect of the domestic court's reasoning, the Court observed that, in order to assess the extent of the responsibility of one of the co-accused, the regional court had had to examine the role played and even the intentions of all the persons behind the scenes in Turkey, including the applicant. In this context, the mention of such elements in the regional court's judgment had been unavoidable. Furthermore, the language used and particularly the continuous reference to the applicant as "separately prosecuted" had made it sufficiently clear that any mention of the applicant did not entail a determination of his guilt. Moreover, both the introductory remarks to the Internet version of the regional court's judgment and the Federal Constitutional Court's decision in the case had emphasised that it would have been contrary to the presumption of innocence to attribute any guilt to the applicant on the basis of the outcome of the trial against his co-accused. In the light of those considerations, the Court concluded that the domestic courts had avoided as far as possible giving the impression of having prejudged the ap-

plicant's guilt, and so had not violated the applicant's right to be presumed innocent.

Conclusion: no violation (five votes to two).

(See also *Allen v. the United Kingdom* [GC], 25424/09, 12 July 2013, Information Note 165)

ARTICLE 8

Respect for private and family life/Respect de la vie privée et familiale

Restrictions on family visits for life-long prisoners: *relinquishment in favour of the Grand Chamber*

Restrictions frappant les visites de proches pour les détenus condamnés à une peine de réclusion à perpétuité : *dessaisissement au profit de la Grande Chambre*

Khoroshenko – Russia/Russie - 41418/04
[Section I]

The case concerns restrictions on family visits for life-long prisoners. According to Russian law, life-sentenced prisoners are automatically excluded from long-term family visits during the first ten years of imprisonment. During this period they are entitled to one short-term visit of a maximum of four hours every six months in conditions excluding any privacy. In his application to the European Court, the applicant, who is a life prisoner, complains that the above regime violates his right to respect for private and family life guaranteed under Article 8 of the Convention.

Expulsion

Exclusion orders based on undisclosed national security grounds: *inadmissible*

Arrêtés d'expulsion fondés sur des motifs de sécurité nationale non divulgués : *irrecevable*

I.R. and/et G.T. – United Kingdom/Royaume-Uni
- 14876/12 and/et 63339/12
Decision/Décision 28.1.2014 [Section IV]

Facts – The case concerned two foreign nationals whom the Secretary of State for the Home Department decided to exclude from the United Kingdom on the grounds that their presence in the country was not conducive to the public good. As the Secretary of State's decisions were taken on grounds of national security, the applicants' appeals against these decisions were heard by the Special Immigration Appeals Commission (SIAC). Part of the proceedings before SIAC took place in the absence of the applicants and their legal representatives, but in the presence of special advocates who had been appointed to represent their interests (in a so-called "closed procedure"). SIAC dismissed their appeals in decisions that were upheld by the Court of Appeal. In their application to the European Court, the applicants complained that their exclusion from the United Kingdom and the proceedings before SIAC had violated their rights under Article 8 and/or Article 13 of the Convention, in particular in that they had been denied access to sufficient information to enable them to conduct any meaningful challenge to the national security allegations against them.

Law – Article 8: The applicants' complaints were directed solely at the procedure followed by the Secretary of State in making the exclusion orders and before SIAC in examining their appeals. In particular, the applicants complained that they were not provided with adequate information to be able to understand and respond to the allegations against them. It was therefore appropriate to examine, in the light of the requirements of Article 8 taken on its own and together with Article 13, the nature and extent of the procedural safeguards available to the applicants during the impugned proceedings.

It was incumbent on States under Article 8 to put in place in cases giving rise to national security concerns a procedure which strikes a balance between the need to restrict access to confidential material and the need to ensure some form of adversarial proceedings. The procedural guarantees inherent in Article 8 would vary depending on the context of the case in question and in some circumstances might not be as demanding as those that applied under Articles 5 and 6 of the Convention. Distinguishing *A. and Others v. the United Kingdom*,[1] the Court noted that the express reference to the need for detailed information in Articles 5 § 2 and 6 § 3 of the Convention reflected the fact that what was at stake in such proceedings was a person's liberty, and that the fundamental principle was that everyone has the right to liberty and security of person unless a specified exception applies. By contrast, Article 8 did not guarantee aliens the freedom to enter or reside in the country of their choice and their right to respect for private and family life was

1. *A. and Others v. the United Kingdom* [GC], 3455/05, 19 February 2009, Information Note 116.

qualified by Article 8 § 2, which specifically envisaged exceptions for reasons of national security.

Further, given the overlap between the procedural safeguards under Article 8 and the right to an effective remedy under Article 13, the former had to be interpreted in a manner consistent with the latter. The Court had in previous cases accepted that the context might entail inherent limitations on the remedy and in *Al-Nashif v. Bulgaria*[1] had explained that in cases concerning the expulsion of aliens on grounds of national security, the guarantee of an effective remedy contained in Article 13 required as a minimum that the competent independent appeals authority be informed of the reasons grounding the deportation decision. It did not go so far as to require provision of this information to the individual concerned.

The Court was satisfied that the procedure in place in the United Kingdom was such as to offer sufficient procedural guarantees for the purposes of Article 8. SIAC was a fully independent court. It saw all the evidence upon which the Secretary of State's decision to exclude an individual was based. There was some form of adversarial proceedings before SIAC, with appropriate procedural limitations – in the form of the special advocates – on the use of classified information. Cases before SIAC were primarily concerned with allegations of terrorist activity: there was no evidence that SIAC had allowed the Secretary of State to adopt an interpretation of "national security" that was unlawful, contrary to common sense or arbitrary. Only parts of SIAC's judgments were classified (or "closed"). The appellant was provided with an "open" judgment providing as much information as possible on the reasons for SIAC's decision. Further, the "closed" parts of the judgment were disclosed to his special advocate. Finally, SIAC had full jurisdiction to determine whether the exclusion interfered with the individual's Article 8 rights and, if so, whether a fair balance had been struck between the public interest and the appellant's rights. If it found that the exclusion was not compatible with Article 8, it would quash the exclusion order.

The procedure had functioned as intended in the applicants' cases and the Court was satisfied that there were sufficient guarantees in the SIAC proceedings as required by Article 8 taken alone and together with Article 13 of the Convention.

Conclusion: inadmissible (manifestly ill-founded).

1. *Al-Nashif v. Bulgaria*, 50963/99, 20 June 2002, Information Note 43.

ARTICLE 10

Freedom of expression/Liberté d'expression

Award of damages against Internet news portal for offensive comments posted on its site by anonymous third parties: *case referred to the Grand Chamber*

Condamnation à des dommages-intérêts d'un portail d'actualités internet pour des propos insultants postés sur son site par des tiers anonymes : *affaire renvoyée devant la Grande Chambre*

Delfi AS – Estonia/Estonie - 64569/09
Judgment/Arrêt 10.10.2013 [Section I]

The applicant company owns one of the largest Internet news portals in Estonia. In 2006 it published an article concerning a local ferry company, as a result of which a number of comments containing personal threats and offensive language directed against the ferry company owner were posted below the article by anonymous third parties. The applicant company removed the comments some six weeks later at the insistence of the ferry company. Subsequently, the owner of the ferry company instituted defamation proceedings against the applicant company, which was ultimately ordered to pay damages in the amount of EUR 320. In its application to the European Court, the applicant company complained of a violation of its rights under Article 10 of the Convention.

In a judgment of 10 October 2013 (see Information Note 167), a Chamber of the Court found unanimously that there had been no violation of Article 10 of the Convention.

On 17 February 2014 the case was referred to the Grand Chamber at the applicant company's request.

Arrest and conviction of journalist for not obeying police orders during a demonstration: *no violation*

Arrestation et condamnation d'un journaliste pour non-obtempération à des ordres donnés par la police lors d'une manifestation : *non-violation*

Pentikäinen – Finland/Finlande - 11882/10
Judgment/Arrêt 4.2.2014 [Section IV]

Facts – The applicant was a photographer and journalist working for a Finnish magazine. In 2006 he

was sent to report on a demonstration in Helsinki. Although a separate secure area had been reserved for the press, the applicant decided not to use it and stayed with the demonstrators. When the demonstration turned violent, the police sealed off the area concerned and ordered the protesters to disperse. Most people left but around 20 people, including the applicant, remained. They were again told to leave and were warned that they would be arrested if they did not. The applicant remained at the scene as he believed that the police order only applied to the demonstrators. Shortly afterwards he was arrested along with the remaining demonstrators and detained for over 17 hours. It is unclear when exactly the police became aware that he was a journalist. Subsequently, a district court found him guilty of disobeying police orders but decided not to impose a penalty. That decision was upheld on appeal and the applicant's subsequent complaint to the Supreme Court was rejected.

Law – Article 10: The applicant's arrest and conviction could be considered as constituting an interference with his freedom of expression which had been "prescribed by law" and pursued the legitimate aims of protecting public safety and preventing disorder and crime. As to the proportionality of that interference, the applicant had been given several opportunities to cover the event adequately. For example, he had not in any way been prevented from taking photographs of the demonstration and he had waived his right to use the separate secured area reserved for the press deciding instead to stay with the demonstrators even after the orders to disperse. Therefore, the interference with the applicant's exercise of his journalistic freedom had only been of limited extent. Moreover, the conduct sanctioned by the criminal conviction had not been the applicant's journalistic activity as such, but his refusal to comply with a police order at the very end of the demonstration, when the latter had been judged by the police to have become a riot. When assessing whether the "necessity" of such interference had been established convincingly by the domestic courts, the Court noted that, by reserving a separate, secure area for the press, the domestic authorities had acknowledged that the demonstration had been a matter of legitimate public interest and that there had been justified grounds for reporting on it to the public. The domestic courts had analysed the matter from the Article 10 viewpoint, balancing the applicant's freedom of expression against the State's interests, and found that there had been a pressing social need to take the impugned measures against the applicant. In particular, it had been necessary to disperse the crowd and to order people to leave because of the riot and the threat to public safety. As regards the applicant's conviction, no penalty had been imposed and no entry of the conviction was made in his criminal record. Accordingly, taking into account the margin of appreciation afforded to the State in this area, the domestic courts appeared to have provided relevant and sufficient reasons to justify the applicant's arrest and conviction and had thus struck a fair balance between the competing interests at stake.

Conclusion: no violation (five votes to two).

Applicant's precarious financial situation as a result of award of damages for defamation against her: *violation*

Condamnation pour diffamation à des dommages et intérêts résultant en une situation de grande précarité : *violation*

Tešić – Serbia/Serbie - 4678/07 and/et 50591/12
Judgment/Arrêt 11.2.2014 [Section II]

Facts – In 2006 the applicant, a pensioner suffering from various illnesses, was found guilty of defaming her lawyer and ordered to pay him 300,000 dinars (RSD) in compensation, together with default interest, plus costs in the amount of RSD 94,120 (equivalent to approximately EUR 4,900 in all). In July 2009 the Municipal Court issued an enforcement order requiring two thirds of the applicant's pension to be transferred to the lawyer's bank account each month, until the sums awarded had been paid in full. After these deductions the applicant was left with approximately EUR 60 a month on which to live.

Law – Article 10: The impugned measures had undoubtedly constituted an interference with the applicant's right to freedom of expression. They had been prescribed by law and had been adopted in pursuit of a legitimate aim, namely "for the protection of the reputation" of another.

The damages plus costs awarded against the applicant were equal to a total of more than 60% of her monthly pensions. This sum was also very similar to the amount awarded in a separate civil suit concerning the same issue brought against, *inter alia*, the newspaper and the Autonomous Province of Vojvodina, both of which were certainly more financially viable. Furthermore, it could not be said that the applicant's statement in respect of her former counsel was merely a gratuitous personal attack. After all, the police had clearly seen some

merit in the allegations. Moreover, the Government's assertion that a discussion of a practising lawyer's professional conduct was clearly of no public interest was in itself dubious, particularly bearing in mind the role of lawyers in the proper administration of justice. Finally but most strikingly, the municipal court had issued an enforcement order requiring two thirds of the applicant's pension to be transferred to her lawyer's bank account each month, notwithstanding that the applicable law had provided that that was the maximum that could be withheld, thus clearly leaving room for a more nuanced approach. By 30 June 2013 the applicant had paid a total of approximately EUR 4,350, but with accrued and future interest, she would have to continue with the payments for approximately another two years. In May 2012 her monthly pension was some EUR 170, so that after deductions she was left with approximately EUR 60 on which to live and buy her monthly medication, which at approximately EUR 44, she could no longer afford. This was a particularly precarious situation for an elderly person suffering from a number of serious illnesses. Therefore, the interference in question had not been necessary in a democratic society.

Conclusion: violation (six votes to one).

Article 41: EUR 6,000 in respect of non-pecuniary damage; EUR 5,500 in respect of pecuniary damage.

ARTICLE 35

Article 35 § 1

Exhaustion of domestic remedies/Épuisement des voies de recours internes
Effective domestic remedy/Recours interne effectif – Estonia/Estonie

Claim for compensation before the administrative courts in respect of complaint concerning length of civil proceedings: *effective remedy*

Demande de réparation formée auprès des juridictions administratives en raison de la durée excessive d'une procédure civile : *recours effectif*

Treial – Estonia/Estonie - 32897/12
Decision/Décision 28.1.2014 [Section I]

Facts – In his application to the European Court, the applicant complained of the length of domestic civil proceedings to which he had been a party. The Government raised a preliminary objection that he had not exhausted domestic remedies.

Law – Article 35 § 1: The Court had found in its decision in *Mets v. Estonia*,[1] which concerned a complaint about the length of criminal proceedings, that the fact that the applicant in that case had been awarded compensation by an administrative court meant that he had lost his victim status in the proceedings before the European Court. While the enactment of legislation clearly establishing grounds for awarding compensation for excessively lengthy proceedings and swift procedures for dealing with such claims would contribute considerably to legal certainty in this field, the applicant in that case had nevertheless had at his disposal an effective remedy developed by the practice of the Estonian courts.

Although the cases that had thus far been decided by the administrative courts concerned the length of criminal proceedings, the Estonian Supreme Court had indicated in a judgment of 22 March 2011 (*Osmjorkin* no. 3 3 1 85 09) that Articles 14 and 15 of the Constitution provided a right to proceedings within a reasonable time and that compensation could be awarded by virtue of Article 25. Noting that the provisions and principles relied on by the Supreme Court were of a general nature and not specific to criminal proceedings, the European Court found it hard to see how a different conclusion could be reached in respect of a complaint concerning the length of civil proceedings. The applicant was therefore required to have recourse to the administrative courts in order to comply with the requirement of exhaustion of domestic remedies. The Court emphasised, however, that its position might be subject to review in the future depending, in particular, on the domestic courts' capacity to establish consistent case-law in line with the Convention requirements.

Conclusion: inadmissible (failure to exhaust domestic remedies).

1. *Mets v. Estonia* (dec.), 38967/10, 7 May 2013.

Effective domestic remedy/Recours interne effectif – Turkey/Turquie

Entitlement to financial compensation under Article 141 § 1 (f) of the Code of Criminal Procedure for persons deprived of their liberty for a period exceeding the length of their sentence: *effective remedy*

Recours en vertu de l'article 141 § 1 f) du code de procédure pénale ouvrant droit à réparation pécuniaire à toute personne privée de sa liberté pendant une durée supérieure à celle de la sanction : *recours effectif*

Alican Demir – Turkey/Turquie - 41444/09
Judgment/Arrêt 25.2.2014 [Section II]

En fait – Le requérant a été condamné en décembre 2005 à une peine d'emprisonnement de six ans et trois mois. Eu égard à la législation relative à l'exécution des peines, il devait bénéficier d'une mesure de mise en liberté conditionnelle le 24 janvier 2009. Cependant, la Cour de cassation étant restée saisie de l'affaire – en raison d'un point qui ne concernait pas la condamnation du requérant –, la juridiction de première instance n'a pas accordé à l'intéressé la libération conditionnelle au 24 janvier 2009 mais seulement à une date ultérieure, à savoir le 13 février 2009. Devant la Cour européenne, le requérant se plaint de son maintien en détention du 24 janvier au 12 février 2009, maintien qui avait pour cause, à ses dires, l'octroi tardif de la libération conditionnelle à laquelle il avait droit.

En droit – Article 35 : Il ressort des arrêts produits à titre d'exemple par le Gouvernement que l'article 141 § 1 f) du code de procédure pénale, tel qu'interprété par la Cour de cassation à la lumière de la Constitution turque et de la Convention, ouvre droit à réparation pécuniaire à toute personne privée de sa liberté pendant une durée supérieure à celle de la sanction qu'il aurait dû subir selon la législation relative à l'exécution des peines et compte tenu du bénéfice de la libération conditionnelle auquel elle a droit. Il s'agit précisément de la situation qui était celle du requérant. Ce recours est donc adéquat en ce qu'il permet de faire reconnaître une atteinte au droit à la liberté et à la sûreté et d'obtenir une indemnité. Toutefois, ce recours n'a été que récemment ouvert par la Cour de cassation. En effet, les arrêts pertinents en l'espèce de la haute juridiction datent de 2012 et de 2013 et sont postérieurs à l'introduction de la présente requête. À l'époque des faits, ni la lettre de cette disposition ni l'interprétation qui en était faite par les tribunaux ne permettaient au requérant d'obtenir réparation pour la période de détention excédant celle qu'il aurait dû subir compte tenu de la libération conditionnelle. En d'autres termes, si le recours fondé sur la disposition en question est devenu effectif, rien ne permet d'affirmer qu'il l'était lors de l'introduction de la requête. On ne peut dès lors reprocher au requérant de ne pas l'avoir préalablement exercé.

Conclusion : exception préliminaire rejetée (unanimité).

La Cour conclut également, à l'unanimité, à la violation de l'article 5 §§ 1, 3 et 4 de la Convention et octroie au requérant 9 500 EUR pour préjudice moral.

Six-month period/Délai de six mois

Failure to lodge timely application concerning failure of insolvent State entity to pay judgment debt: *inadmissible*

Introduction tardive d'une requête concernant la non-exécution d'une décision de justice par un organisme d'État devenu insolvable : *irrecevable*

Sokolov and Others/et autres – Serbia/Serbie - 30859/10 et al.
Decision/Décision 14.1.2014 [Section II]

Facts – Between 2003 and 2005 the applicants obtained final court orders against their former employer, a "socially/State-owned" company, requiring it to pay them salary arrears and social security reimbursements. In 2005 insolvency proceedings were opened in respect of the company. The applicants lodged claims in the insolvency proceedings but the company's assets were insufficient for them to be paid in full. In 2008 the commercial court terminated the insolvency proceedings and ordered the company's liquidation. Its decision was published in the Official Gazette and recorded in the relevant public registries. In 2010 the applicants' lawyer asked for the decision to be served on him. In the same year, the applicants filed a complaint with the Constitutional Court, which was rejected in 2012. In the proceedings before the European Court the Government raised a preliminary objection that the applicants had failed to comply with the six-month time-limit for lodging applications, arguing that time had started to run when the commercial court's decision terminating the insolvency proceedings was published in the Official Gazette and/or became final.

Law – Article 35 § 1: In cases concerning the execution of final court decisions the State was

directly liable for the debts of entities which, as here, did not enjoy "sufficient institutional and operational independence from the State". Since the judgments in the applicants' favour remained partly unenforced, the situation complained of had to be considered as continuing.

However, a continuing situation could not postpone the running of the six-month time-limit indefinitely. Applicants had to introduce their complaints "without undue delay" once it was apparent that there were no realistic prospects of a favourable outcome or progress domestically. In the instant case, once they had become aware or should have been aware that the insolvency proceedings had been terminated and/or the debtor company liquidated without any legal successor or remaining assets, it should have been apparent to the applicants that there was no available legal avenue under domestic law for obtaining enforcement of the judgments in their favour against the company or against the State. The applicants should therefore have lodged their applications with the Court within six months from the publication in the Official Gazette of the commercial court's decision terminating the insolvency proceedings or, at the latest, from when that decision became final. In this regard, the Court noted that domestic law did not prescribe an obligation on the part of the commercial court to serve its decision on the applicants, who should therefore have made such a request in due time. It followed that the applications had been introduced outside the six-month time-limit and had to be rejected. However, the Court pointed out that the applicants' failure to comply with that duty did not lead to the extinguishment of the State's general liability for the debts of the company.

Conclusion: inadmissible (out of time).

(See, among other authorities, *Marinković v. Serbia* (dec.), 5353/11, 29 January 2013, Information Note 159)

Article 35 § 3

Abuse of the right of application/Requête abusive

Representative's failure to inform Court that he had lodged two separate applications concerning the same facts on behalf of a husband and wife: *inadmissible*

Manquement d'un représentant à informer la Cour sur l'introduction de deux requêtes séparées aux noms de deux époux, portant sur les mêmes faits : *irrecevable*

Martins Alves – Portugal - 56297/11
Decision/Décision 21.1.2014 [Section II]

Facts – In 2004 a private company initiated civil liability proceedings against the applicant and several other persons, including the applicant's husband.

In January 2011 the husband lodged an application (5340/11) with the Court, complaining about the length of the proceedings. The instant application was lodged in August 2011, while the application lodged by the applicant's husband was still pending. The same lawyer acted in respect of both applications.

In 2013 the Court examined the husband's application and found a violation of Article 6 § 1 and Article 13 on account of the length of the proceedings. The Court awarded him EUR 4,500 in respect of non-pecuniary damage and EUR 1,000 for costs and expenses.[1]

Law – Article 35 § 3: When lodging the instant application, the applicant's representative, who had previously lodged numerous applications with the Court and was thus familiar with the procedure, had omitted to inform the Court that the case related to the same domestic proceedings as in the husband's application, or that the applicant in the instant case was the wife of the applicant in the previous case and that they had appeared jointly before the domestic courts.

The lodging, at different times, of two separate applications which could be considered essentially the same did not *per se* constitute an abuse of the right of application. However, the Court did not see any legitimate reason why the applicant's complaint had not been lodged with her husband's, particularly since both spouses had appeared jointly in the proceedings before the domestic courts and both had been represented by the same lawyer. In addition, the applicant's representative had submitted incomplete and therefore misleading information. This omission had become all the more important after the matter at issue in the present case was determined by the Court, on the merits, in its judgment of 2 April 2013, and the applicant's husband was awarded compensation under Article 41. If the lawyer concerned had joined the present application to the application lodged by the applicant's husband, the Court would not have

1. See *Ferreira Alves v. Portugal*, 5340/11, 2 April 2013.

made any greater award in respect of non-pecuniary damage and costs and expenses, as the subject matter was the same, and the applicant and her husband had been parties to the same domestic proceedings, formed a single household and were represented by the same lawyer.

Finally, the Court had already held that two applications in which the applicants were represented by the lawyer in question had constituted an abuse of the right of application, while three other applications brought by that lawyer himself had been considered to be essentially the same as previous applications. In this connection, the Court emphasised that lawyers had to demonstrate a high level of professional prudence and genuine cooperation with the Court and avoid lodging unmeritorious complaints. Otherwise, their credibility would be undermined and – in the event of systematic abuses – they might be excluded from the proceedings under Rule 36 § 4 (b) and Rule 44D of the Rules of Court.

The conduct of the applicant's representative in the instant case had been contrary to the purpose of the right of individual petition as provided for in Article 34 and the application was therefore to be rejected as an abuse thereof.

Conclusion: inadmissible (abuse of the right of application).

ARTICLE 2 OF PROTOCOL No. 4 / ARTICLE 2 DU PROTOCOLE N° 4

Article 2 § 1

Freedom of movement/Droit de circulation

Inability of minor to leave State without documentation necessary to prove father's consent: *inadmissible*

Impossibilité pour un mineur de quitter le territoire en l'absence des documents requis pour prouver le consentement du père : *irrecevable*

Şandru – Romania/Roumanie - 1902/11
Decision/Décision 14.1.2014 [Section III]

En fait – À l'époque des faits, le requérant était âgé de 13 ans et résidait avec sa mère. Le 6 mars 2009, après avoir obtenu le consentement de sa mère, il s'acquitta des frais d'un voyage proposé par son collège. Saisi par la mère du requérant le 27 mars 2009, le tribunal de première instance condamna le père à donner son accord à ce voyage. Cette ordonnance avait force exécutoire, mais était toutefois susceptible de pourvoi en recours sous cinq jours. Le 10 avril 2009, lors du contrôle des papiers au poste des douanes, les policiers, estimant que l'ordonnance devait comporter la mention « définitive et irrévocable », contactèrent la mère du requérant. Celle-ci indiqua que l'ordonnance avait force exécutoire mais ne put fournir une attestation de son caractère irrévocable puisque cette ordonnance était devenue irrévocable le 8 avril 2009 et que, selon la pratique des tribunaux internes, le greffe des tribunaux ne fournissait pas de telle attestation le jour même, mais seulement deux jours après, pour laisser ainsi le temps nécessaire aux éventuels pourvois envoyés par la poste, dans les délais légaux. Les policiers interdirent donc au requérant de quitter le territoire roumain.

En droit – Article 2 du Protocole n° 4 : Le requérant a subi une ingérence dans sa liberté de circulation. Celle-ci était prévue par la loi. La mesure en cause était nécessaire à la protection des droits et libertés d'autrui, à savoir ceux du père du requérant, ainsi qu'au maintien de l'ordre public, puisqu'elle avait trait au contrôle des voyages des ressortissants mineurs à l'étranger. Quant à savoir si l'ingérence était nécessaire dans une société démocratique, la Cour accorde une attention spéciale à la durée de la mesure en cause. Le requérant a fait l'objet d'une mesure ponctuelle et limitée dans le temps, motivée par l'absence des documents requis par la législation. Par ailleurs, il lui était loisible de se procurer les documents requis par les autorités douanières, en formant suffisamment à l'avance l'action visant à faire condamner son père à donner son consentement. À cet égard, le requérant a acquitté les frais du voyage le 6 mars 2009, mais a attendu trois semaines pour former l'action en référé. Pour ces raisons, la Cour estime que le requérant n'a pas subi une charge excessive.

Conclusion : irrecevable (unanimité).

REFERRAL TO THE GRAND CHAMBER / RENVOI DEVANT LA GRANDE CHAMBRE

Article 43 § 2

The following case has been referred to the Grand Chamber in accordance with Article 43 § 2 of the Convention:

L'affaire suivante a été déférée à la Grande Chambre en vertu de l'article 43 § 2 de la Convention :

Delfi AS – Estonia/Estonie - 64569/09
Judgment/Arrêt 10.10.2013 [Section I]

(See Article 10 above/Voir l'article 10 ci-dessus – page 17)

RELINQUISHMENT IN FAVOUR OF THE GRAND CHAMBER / DESSAISISSEMENT AU PROFIT DE LA GRANDE CHAMBRE

Article 30

Khoroshenko – Russia/Russie - 41418/04
[Section I]

(See Article 8 above/Voir l'article 8 ci-dessus – page 16)

COURT NEWS / DERNIÈRES NOUVELLES

Stricter conditions for applying to the ECHR / Des conditions de forme plus strictes pour saisir la CEDH

Rule 47 of the Rules of Court, which introduces stricter conditions for applying to the Court, came into force on 1 January 2014 (See Information Note 169).

In order to inform potential applicants and/or their representatives and make them aware of the conditions for lodging an application, the Court has launched a wide information campaign among civil society organisations and the main actors working for European protection of Human Rights. As part of this campaign the Court is expanding its range of information materials assisting applicants with the procedure, not only in the official languages of the Council of Europe (French and English) but also in those of the States Parties to the Convention.

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L'article 47 du règlement de la Cour, introduisant des conditions de forme plus strictes pour saisir la Cour, est entré en vigueur le 1er janvier 2014 (voir la Note d'information 169).

Afin d'informer et de sensibiliser les requérants potentiels et/ou leurs représentants aux conditions de forme requises pour la saisir, la Cour a initié une large campagne d'information auprès de la société civile et des principaux acteurs œuvrant pour la protection européenne des droits de l'homme. Dans le cadre de cette campagne, la Cour développe son matériel d'information visant à assister les requérants dans leurs démarches, non seulement dans les langues officielles du Conseil de l'Europe (à savoir le français et l'anglais), mais également dans celles des États parties à la Convention :

- ***Video on lodging an application / Clip sur l'introduction d'une requête***

The video "The correct way to lodge an application" is a tutorial explaining how the application form must be completed in order to be examined by the Court. Already available in 6 languages (English, French, Romanian, Russian, Turkish and Ukrainian), this video can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

Le clip « Comment introduire valablement une requête » est un tutoriel expliquant de quelle manière le formulaire de requête doit être rempli afin d'être examiné par la Cour. Déjà disponible dans six langues (anglais, français, roumain, russe, turc et ukrainien), cette vidéo peut être téléchargée à partir du site internet de la Cour (<www.echr.coe.int> – La Cour).

- ***Notes for filling in the application form / Comment remplir le formulaire de requête***

A document explaining how to fill in the application form and comply with the new conditions is available in 35 languages. It may be downloaded from the Court's Internet site (<www.echr.coe.int> – Applicants).

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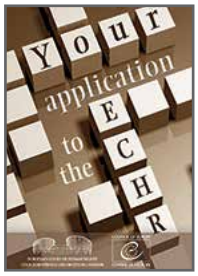
Un document expliquant comment remplir le formulaire de requête et respecter les nouvelles conditions de forme est accessible dans 35 langues. Il peut être téléchargé à partir du site internet de la Cour (<www.echr.coe.int> – Requérants).

• *Your application to the ECHR / Ma requête à la CEDH*

The court has also launched a new pamphlet describing the various stages of the procedure by which the Court examines an application. Entitled "Your application to the ECHR: How to apply and how your application is processed", this pamphlet is intended to answer the main questions that applicants might ask, especially once their application has been sent to the Court. It is available on the Court's Internet site (<www.echr.coe.int> – Applicants).



La Cour vient de publier une nouvelle brochure présentant le cheminement d'une requête au travers des différentes étapes de son examen par la Cour. Intitulée « Ma requête à la CEDH : comment l'introduire et quel en sera son cheminement », cette brochure répond aux principales questions que les requérants pourraient se poser, notamment, une fois leur requête envoyée à la Cour. Elle est disponible sur le site internet de la Cour (<www.echr.coe.int> – Requérants).

OTHER NEWS / AUTRES NOUVELLES

The 35th meeting of the European Coordination Committee on Human Rights Documentation (ECCHRD) will be held at the European Court of Human Rights in Strasbourg, France, from Wednesday 11 June to Friday 13 June 2014. This meeting aims to bring together people working on documentation, information and communication within human rights organisations and institutions.

People interested in attending can contact ecchrd2014@echr.coe.int for more information. Please note that the number of seats available is limited and the deadline for registration is 9 May 2014.

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La 35e réunion du Comité de coordination européen sur la documentation des droits de l'homme (CCEDDH) aura lieu à la Cour européenne des droits de l'homme à Strasbourg, France, du mercredi 11 au vendredi 13 juin 2014. Cette réunion a pour but de réunir des personnes travaillant dans les domaines de la documentation, de l'information et de la communication au sein d'organisations et d'institutions traitants des droits de l'homme.

Les personnes intéressées à participer à cette réunion peuvent contacter ecchrd2014@echr.coe.int pour plus d'informations. Veuillez noter que le nombre de place disponibles est limité et que la date limite d'inscription est fixée au 9 mai 2014.

RECENT PUBLICATIONS / PUBLICATIONS RÉCENTES

The Court in facts and figures 2013 / La Cour en faits et chiffres 2013

This document contains statistics on cases dealt with by the Court in 2013, particularly judgments delivered, the subject-matter of the violations found and violations by Article and by State. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

The ECHR in facts & figures 2013 (eng)

La CEDH en faits & chiffres 2013 (fra)

Ce document contient des statistiques sur les affaires que la Cour a traitées en 2013, notamment sur les arrêts rendus, l'objet des violations constatées ainsi que les violations par article et par État. Il peut être téléchargé à partir du site internet de la Cour (<www.echr.coe.int> – La Cour).

Overview 1959-2013 / Aperçu 1959-2013

This document, which gives an overview of the Court's activities since it was established, has been updated. It can be downloaded from the Court's Internet site (<www.echr.coe.int> – The Court).

Overview 1959-2013 (eng)

Aperçu 1959-2013 (fra)

Ce document, qui donne un aperçu des activités de la Cour depuis sa création, vient d'être mis à jour. Il peut être téléchargé à partir du site internet de la Cour (<www.echr.coe.int> – La Cour).

Guide to good practice in respect of domestic remedies / Guide de bonnes pratiques en matière de voies de recours internes

Adopted by the Committee of Ministers of the Council of Europe, this guide aims at helping the member States fulfil their obligations under Article 13 of the Convention, which establishes the right to an effective remedy. This right gives effect to the principle of subsidiarity by establishing the domestic mechanisms that must first be exhausted before individuals may have recourse to the Strasbourg Court.

Outlining the fundamental legal principles which apply to effective remedies in general and the characteristics required for certain specific and general remedies to be effective, the guide is available on the Court's Internet site (<www.echr.coe.int> – The Court).

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Adopté par le Comité des Ministres du Conseil de l'Europe, ce guide de bonnes pratiques contribue à aider les États membres à respecter leurs obligations au regard de l'article 13 de la Convention qui établit le droit à un recours effectif. Celui-ci donne effet au principe de subsidiarité en établissant des mécanismes internes qui doivent être épuisés avant que les individus puissent avoir recours au mécanisme de contrôle qu'est la Cour de Strasbourg.

Exposant les principes juridiques fondamentaux applicables aux recours effectifs de manière générale et les caractéristiques que doivent présenter les recours dans certaines situations spécifiques, ainsi que les recours généraux, pour être effectifs, ce guide est disponible à partir du site internet de la Cour (<www.echr.coe.int> – Publications).